

PLANNING BOARD
MINUTES

**Public Hearing on The Sheffield Water Company Special Permit Application
Case Number 72210**

Thursday, August 26, 2010

The public hearing was opened at 8:00 PM.

Planning Board members present were: David Smith Sr., Christopher Tomich, Peter Cherneff and Alternate Planning Board Member, Anthony Gulotta, who substituted for the absent Margaret Martin. Tim Fulco was also absent.

Sign-in sheet attached. C. Tomich reminded all who were present at the hearing that they must sign in.

Christopher Tomich chairman of the Planning Board introduced case number 72210, Special Permit Application of the Sheffield Water Company. Mr. Tomich explained that although the Planning Board only has 4 of its 5 members present at this hearing, the Attorney for the applicant, Edward McCormick, agreed to accept that 4 members conduct the hearing and that a unanimous 4 member decision would be required.

C. Tomich read the notice of public hearing published in the Berkshire Record into the record. Notice of the hearing was posted on August 6 for 2 weeks as mandated by bylaw 3.1.3.c.6 3-28-Cw.

C. Tomich explained that the Applicant will present their application, Board members will ask questions first, then Town Officials can comment or ask questions, then all those in favor may ask, then all who are against the Special Permit and then anyone else may speak. Each person should speak for 5 minutes and whatever material covered should not be restated by other speakers.

Ed McCormick, provided documents that the Planning Board had requested at the time the Special Permit was accepted. The proposed tank would be located on Lot #30. He

introduced his clients, Beth Bartholomew, President of the Sheffield Water Co. and Joe Wilkinson, Superintendent of the Sheffield Water Co. This Special Permit Application is for a new 250,000 gal water tank. The Applicant listed documents given to the Board. The Special Permit is applied for under bylaws section 3.1.3c6, 9.4 and 9.5 section 10 applicable to the Rural District. Atty. McCormick stated that the facility is allowed in a rural district by Special Permit by the Planning Board. Location of the water tank meets all requirements of the Sheffield Bylaws except the height. The Sheffield Water Co. has applied for a variance to the ZBA and that determination is still pending. Atty. McCormick reminded the members that the Planning Board has to consider the social, economic or community needs. He stated that the tank serves a crucial need and will provide much needed increased supply in consumable water and greatly increased fire protection. Currently the Water Co. provides 30,000 gallons of water per day. They are not adequately serving health and fire safety needs. Currently, Sheffield has about 10 minutes of fire protection. The new tank will allow 45 minutes to an hour of fire fighting. There are no issues relating to traffic, parking or loading in this Special Permit Application. This site was chosen because it is suitable for the structure of this tank. The existing pipe goes a mile through a swamp which is a hazard to health and safety. The new tank will provide adequate pressure and volume, engineers have chosen this as an ideal site. Visual effects, noise, dust, vibration and erosion will not be an issue. The tank will be located in a remote area of town well screened from all neighboring properties and will be painted a dark green color. It will not be readily visible. This project will have a positive fiscal impact, not drain town services and increase the tax base and employment. Businesses like Custom Extrusion will be getting adequate water which they are not doing now. Atty. McCormick offered a set of proposed findings. He offered to take any questions.

Joe Wilkinson stated that the reason we need this is that the Town had problems with water last spring, there was contamination and the Water Co. was down to one reservoir. Currently, he stated, water supply is really down. He said that if we lose one pump right now the water company would be out of water in 12 hours. McCormick did get permission from the DEP approved to receive a low interest loan. The paperwork for the loan must be submitted by the 10th of September.

Beth Bartholomew stated that because of lack of storage, the Water Co. is losing 80,000 gallons of water every day in overflow. Coliform bacteria were discovered in the water last Spring. The system has to be updated to prevent recurrence of such bacteria.

C. Tomich asked what would feed the tank.

Atty. McCormick stated that two wells would feed it.

Joe Wilkinson pointed out that the Department of Environmental Protection is mandating that the Sheffield Water Co. stop the huge overflow.

C. Tomich asked if the Town Board of Health has been involved with issues pertaining to water safety and the Sheffield Water Co.

Susan Silk stated that the Sheffield Board of Health has been informed of all health issues that have arisen. She said that if one more bacteria test comes back positive the Sheffield Water Co. will be required by the state to chlorinate on a permanent basis.

C. Tomich asked what the base for the tank will be made of.

Joe Wilkinson answered that it will be a concrete floor and a steel tank. The possibility for rust to arise is gone. The tank has a porcelain baked-on finish.

A. Gulotta asked if there was a major fire in Sheffield could we fight it?

Joe Wilkinson said that there would not be enough water power to fight a major fire.

P. Cherneff asked Atty. McCormick on what basis was the Sheffield Water Co. considered a public utility?

Atty. McCormick answered because the company supplies a necessary product to the public in the town and it meets the definition of a public utility under the bylaws.

P. Cherneff asked if Atty. McCormick has information of the status of Lot 30 as a separate lot.

Atty. McCormick stated that when he filed the Special Permit Application in July, he found that it was labeled as a separate lot on the Assessor's map. The Assessor herself referred to the Lot as Lot 30. Looking at the title it goes back to the 1800s and is difficult to read. Both lots in question, 28 and 30, are owned by the Sheffield Water Co.

C. Tomich stated that the Planning Board are in the business of approving new uses for unimproved lots. He said that if there is a non-conforming situation, and you are adding to the non-conforming situation, it becomes a Zoning Board of Appeals issue, not a Planning Board issue.

Atty. McCormick agrees that would apply if the Zoning Bylaws did not allow a normally permitted use in the Rural District in question. But the bylaws do allow the proposed use. The Application before the Planning Board is not to improve Lot 28 but rather his client is asserting that Lot 30 is a separate Lot and they should therefore be granted a Special Permit for Lot 30.

C. Tomich asked if Lot 30 is indeed a separate lot. He wants to be able to make a decision, but he also wants the decision to be strong enough to stand if appealed.

Atty. McCormick wants to get a Special Permit from the Planning Board and apply for a Special Permit from the Zoning Board of Appeals. He has discussed the best way to proceed for his client with 3 other law firms and he would like to satisfy the requirements for a Special Permit from both Boards.

P. Cherneff asked Atty. McCormick to help the Planning Board establish without a doubt that Lot 30 is a separate lot.

Atty. McCormick stated that the Assessors have established that.

P. Cherneff stated that the Planning Board is struggling with a jurisdictional question.

Atty. McCormick said that if Lot 30 is not a separate lot then its got to be part of Lot 28. The solution is to go to both Boards. The best thing his client can do is to resolve the question by getting two Special Permits. The Building Inspector thinks that the only valid permit will be from the Zoning Board of Appeals. The Water Company must also satisfy him.

D. Smith Sr. stated that the Board of Assessors must have a process to assign lot numbers, it can't be off the top of their head. He stated that Lot 30 must have been established somehow. He stated that Lot 30 exists and that Lot 30 is the subject of this application and that in his opinion the Board is beating a dead horse in reviewing whether or not Lot 30 exists.

P. Cherneff asked what the existing elevation is.

Joe Wilkinson stated that the tank will be 8 feet lower than existing reservoirs. This will increase the pressure from the current 40 lbs per square foot to 60 lbs per square foot. This is the highest point the Sheffield Water Co. could find.

P. Cherneff asked if the tank would be visible.

Beth Bartholomew, one owner of the Sheffield Water Co., said that the tank will blend in well to the environment. She stated that such tanks normally are blue, but that they are painting this one green. She said that all abutters are aware of these proposed plans.

P. Cherneff asked if the Sheffield Water Co. is taxable.

Atty. McCormick said yes, it is taxable.

David Smith Jr. of the Board of Selectmen is in favor of the Special Permit for the fire and water customers. He remembered that Joe Wilkinson had been up in the middle of the night at various times during the summer to make sure there would be sufficient water.

Julie Hannum of the Board of Selectmen and abutter to the property said that the whole process for granting a permit in this case seems to be the wrenching issue. She would like to see a common solution. This permit is important to public safety and health for the local workforce and residents.

Rick Boardman, Fire Chief, said that granting this Special Permit is a matter of public safety, specifically clean drinking water and fire safety. He wondered, especially with the need caused by a dry summer, why the tank hasn't been already installed when there was a public meeting on the issue in May.

C. Tomich stated that the Planning Board knew nothing about this project until they accepted the application for a Special Permit in July.

David West, Vice Chair of the Zoning Board of Appeals (ZBA), said he believes that the jurisdictional problem between the Planning Board and the ZBA has to be straightened out.

C. Tomich read the decision by the Building Inspector, Tom Carmody, that he finds the applicant is applying for permits involving one lot, not two. Mr. Carmody states that there is no record of a Form A separating these lots and his decision requires the Sheffield Water Co. to "seek relief from the Zoning Board of Appeals pursuant to section 5.2 Special Permit Required, and or section 5.3 Variance Required as dictated by the extent of the proposed alteration, change, extension or structural change."

P. Cherneff stated that he would like to get something in the record to show that this is a separate lot. He stated that respected people in town have a difference of opinion on that point.

David Macy pointed out that the Planning Board does not have to decide whether or not the lot is a valid lot. The Planning Board only has to decide whether the proposed use is an appropriate use for the lot.

Atty. McCormick said that the Planning Board can only look at the best evidence in front of them now. This lot has been in existence for at least 15 years and probably much longer. The best solution is to let both Boards act on this question and thus resolve all potential issues.

Julie Hannum of the Board of Selectmen, pointed out that there are discrepancies in town maps and that the Planning Board can simply work in good faith with the evidence they have. The process of seeking clarification can take years.

D. Smith Sr. pointed out that the Planning Board and the ZBA each have a role to play in this permitting process. The Sheffield Water Co. would also have to go to the ZBA because of the height of the tank they would like to install.

Catherine Miller stated that it was possible the lot could have been divided before the Form A process or the Planning Board itself came into existence.

Atty. McCormick said that the best solution for his client is to let both the Planning Board and the ZBA approve this permit, then all bases will be covered for the State to approve the loan rate and the project can go forward.

A. Gulotta stated that he believes there is enough evidence in front of the Board to show two lots and that the Board must approve this Special Permit for fire safety as well as the other reasons presented.

David West, Vice Chair of the Zoning Board of Appeals (ZBA), explained that the Sheffield Water Co.'s application before the ZBA will not be heard for 2 weeks because of notification requirements. He stated that he has examined the Bobrowski book and has not found a way to speed up the process.

Morvin Allen of Balsam Hill dairy farm explained that there is currently not enough water available from the Sheffield Water Company such that all his cows have water available to them at one time. He also does not have enough water to clean the whole milk collection system at once.

At 9:21, Anthony Gulotta made a motion, seconded and approved, to close the public hearing.

Respectfully submitted,

Nadia Milleron,
Secretary to the Planning Board