



Hanover Zoning Board of Appeals  
April 24, 2023 – Hanover Town Hall  
Minutes

**Present:**

Matthew Perkins, Chair  
David Connolly  
Fred Adami  
Chris Bernard

**Also Present:**

Ann Lee, CDMI Director  
Christine Stickney, Town Planner  
Adam Hill, Chair Parks & Recreation Committee  
Patrick Brennan, Engineer – PGB Engineering  
Jason Cavallaro - 11 Larchmont Drive  
Attorney Thomas Callahan, Client - J. Fogg

**Absent:** Brian Callow

**Opening**

Chairman Perkins opened the meeting at 7:32 pm and noted the meeting was being recorded. The Chair acknowledged the Zoning Board Public Hearing General Rules previously read into the record at the last public hearing.

**Public Hearing–Forge Pond Park- 253 King Street – Amendment to Special Permit Decision (File #23-2)**

The Chair noted this was a continuation of the public hearing of 4/12/23. Since then, the Board had a site visit at Forge Pond Park last Wednesday 4/19/23 at 9am and that the site visit was posted as a meeting and interested parties were invited to attend – Present were Member Perkins, Connolly, Adami, Bernard and the applicant’s team and Mr. Manna from Webster Street – no others at site visit. The Chair noted new correspondence for tonight was received from Attorney Thomas J. Callahan representing Mr. Fogg, a direct abutter. An email dated 4/24/23 from Town Manager Joseph Colangelo was read regarding the fence that was to be installed this summer. The applicant provided us with schematics of foundations of the lights and the Chair had previously raised a concern about padding on the lights. Member Connolly clarified padding of the poles not lights. The Chair called for any additional comments from persons in favor of the project – no one responded and then the Chair asked for anyone in opposition to the project.

Attorney Thomas Callahan, representing Mr. John Fogg of 269 King Street, he is out of Town couldn’t attend, rose and stated he had previously dropped a letter at the Planning Office as to his client’s opposition of the project citing that the use is not allowed under Hanover Zoning Bylaws and in addition his client has had detrimental impacts to the use of his property. He stated his client opposes the project on the grounds, as he did 12 years ago, this is not an allowed use and feels it is more substantially detrimental to his client. He provided a history of the original special permit hearings, promises were made that were never accomplished by the Town. Since then and Mr. Fogg has had a lot of trespassers on his property trying to park since the park opened. The original Special Permit had no intention of lighting and now here we are years later discussing lights and he opposed it then and he opposes it now.

Member Connolly acknowledge Attorney Callahan’s exhibit “A” to the Board, asking if this is a copy of Mr. Fogg’s complaint/appeal of the 2009 Special Permit and within the complaint would you say Meeting Date April 24, 2023

Approved: August 9, 2023

that the issue of the use being a playground vs recreational facility was raised within complaint— Attorney Callahan said he believed it was and the case was settled with no substantive decision therefore the use remains an open issue. Member Connolly said a decision was not reached but the settlement was issued with “prejudice” and he provided a copy to Attorney Callahan. Member Connolly continued, so there was a case which you provided and you said the issue of use was raised but the settlement was with prejudice and any issue that was raised by your client is deemed satisfied. To me the issue before the ZBA is not playground v. recreational use it is the addition of lights in whatever manner is proposed to the facility and if the lights are more substantially detrimental noting the field has been in existence for more ten (10) years.

Attorney Callahan commented it is not just about the lights and additional use that comes with lights alone and additional use brings the traffic and other impacts that will come with installing lights and his client’s rights as an abutter. Member Connolly stated you are raising the issue that was raised thirteen years ago, with a stipulation of dismissal with prejudice was filed which is binding on both parties - In my mind, I am only one board member, it has nothing to do with that issue it was resolved with prejudice it has to do with what are the lights, where are they, how are they illuminated and do they any potential impacts on the abutters.

Chair noted correspondence from the Parks/Recreation and Victor Diniak about installing lights that special conditions required if additional lighting on the site it has to go back before the ZBA After reading this did the proposed lighting engineer uses the shoebox cut-off as I described – I asked the applicant to address? Mr. Brennan commented he was not familiar with details of the lighting design but did know it is dark sky compliant because he didn’t submit the lighting information. The Chair noted in the details submitted it shows the shields to reduce glare to any properties and at our site visit we looked at their locations and it was there that we were told the that the lights can be shut off immediately on the far side of the walkway at the end of games. Mr. Brennan confirmed yes. Attorney Callahan added it is not about lights it is about everything and your 2009 permit left open the use issue and settlement was not completed. Member Adami would like to know where Attorney Callahan says the Board does not have authority to manage the situation? Mr. Callahan said he didn’t say that and rather referenced your 2009 permit how it left open the possibility of additional lighting but you still have to meet the standards.

Chair Perkins asked about the after-use hours and the police patrolling if after hours use had increased at the park and previously police sector patrols were checking the site – Adam Hill says no increase in activity relative to public safety and then the Chair asked Chief Cavallaro do you have calls back there other than injuries at the sports fields and the Fire Chief commented no. Chair Perkins also asked the Fire Chief of his thoughts on locking the gate? Chief Cavallaro noted the locking and unlocking of the gates causes no detriment to public safety – the Chair feels the public safety divisions should decide if it should be locked or unlocked – Member Bernard & Perkins had a brief discussion on who is responsible to tending to the gate in the past - it was park/rec for a while. Attorney Callahan asked is the gate you are talking about is the one for Mr. Fogg who was promised keys to a gate - Chair Perkins clarified the Park entrance gate about 400 yds up the property – Christine Stickney clarifies the gates asked by Mr. Fogg are three within the fence along his property to access from Forge Pond Park is what Attorney Callahan questions. Chair Perkins asked Attorney Callahan if Mr. Fogg ever pursued action to get the fence put up through a compliant to get the Town to do the fence.

Member Connolly commented, to me that is not relative it is between the Town and the abutter as to enforcement and is not an issue before of us – what is before us is the use is allowed and been

continuously operated for over 10 years and the dismissal was a dismissal with prejudice, those words have legal meaning and what is before us is the lighting and what we think the lights could or could not have detrimental impact to abutters. Attorney Callahan objected stating except the settlement with prejudice could be re-opened. Member Connolly adds, I respectfully request that you should speak with the Town's counsel if you think a settlement is not being dealt with properly – respectfully as to the determination before this Board and any issue concerning the playground and recreation use are off the table and we can differ and that is fine.

Member Bernard asks, at the last meeting you talked about initial plans; if one field or more and the proposals to minimize impact had more fields and shields were proposed and because of tonight's conversation has it changed your client's opinion as to impact? Attorney Callahan responded Mr. Fogg is out of Town and I can't speak for him and I haven't gotten an opportunity to discuss the details with my client but I would say 11/12 years ago he was agreeable to a settlement and he maybe now as well, he has been putting up with stuff. Attorney Callahan asked about the details of lights being shut off and they if they can show locations of s the spread of light on his client's property? Mr. Brennan using a plan, displays the nearest light pole to the Fogg property and the candle foot light which doesn't even enter the Fogg property – the photometrics plan doesn't show the spread into his property because of existing vegetation and that pole in particular has the shield on it and they can turn it to make it even more protective. Mr. Brennan commented at the last meeting the financial aspect of the total project and if they have money appropriated it will be for two fields only at this time and they most likely will be lighting the furthest fields away from Mr. Fogg's property possibly one of the softball fields furthest away. Jason Cavallaro commented the original proposal was for six fields and the funding at Town Meeting (5/1/23) is only sufficient funding for 2 fields, roadway and walkways future funding is unknown at this time. Mr. Cavallaro added the road in from the street will be lit and the walkways with only direct lighting to the ground and they would be shut off when not in use by a select few individuals who would have remote access. Lights are on a scheduled basis so they would be on for a practice/game and off when not in use. Chair Perkins asked about the season and duration of the baseball/softball – Adam Hill said it would be probably mid-April to early November and Member Bernard asked what are the playing hours? Adam answered we have discussed 10pm as a hard shut off time we do not see games going beyond because of league time limits.

Member Connolly commented just so I am clear – the application before us is for all of the lighting at Forge Pond Park as proposed and if someone in HYA hits the lottery and wants to donate funds for additional lighting so be but what we are looking at is the whole project and how it impacts the property and if we see how it goes we will not be involved again unless something is not following the conditions or goes wrong we are not involved. Member Connolly said once again we determine all of the lights regardless of the ability of who is paying in the future phases. Member Bernard asked if we allowed isn't there a certain amount of time they have to do it? Ms. Stickney noted one year to commence and the Special Permit is valid for 3 years and Member Connolly added however once commence and with the intent to build you are good as to exercising the permit. He also confirmed you have agreed to install diffusers on all of the lights adjacent to abutters on the left & right (driving in) at the residential properties abutting. Mr. Cavallaro responded yes, we are putting them on all poles and the ability to direct will be decided. Member Connolly added that If we decide to go forward with any motion those two poles will have diffusers wither they are needed or not and Attorney Callahan questioned the poles immediately adjacent to Fogg (eastern side) and pass will have diffusers – plan with light poles were circled by Member Connolly for clarification in the file. Chair clarified the diffusers would stop the light from going on the neighbor's property and within lighting the closest side of the walkway and all light would remain on Town of Hanover property,

Member Connolly asked that in addition to what you have also put in front of us as to your objection of the playground vs recreationally facility use challenge and while we are here - What are the other legal points you continued to mention? We have had three meetings and Mr. Fogg has only come to one and chose not to come to the second/site visit and Member Connolly asked can you please provide those additional legal points to the Board for a determinant on what we are deciding today.

Attorney Callahan responds, it is substantially more detrimental to neighborhood and although the use been there for 10 years and is non-conforming and the use has intensified nonconformity of situation and there are standards to be considered. He asked about the walkway lights on the roadway would be on all the time? Chair Perkins clarifies so field and parking lighting are when the fields are in use and not general night time use. Mr. Cavallaro says yes and the parking lights do not radiate outward they shine out like the larger lights. Member Bernard asked about at one point in discussion were all paths beyond the field was something thinking about and Mr. Cavallaro commented this not part of the project.

Chair Perkins asks if there is anyone on the zoom hearing who wants to speak for or against the project. No response.

Member Bernard clarifies the abutters across the street directly had submitted a letter of their support and Chair Perkins said yes and he noted three new items tonight; Atty. Callahan letter, Town Manager email and specifications of lights from light engineers.

Member Connolly made a Motion to approve the application as follows having found that based on testimony, evidence, the site visit, the engineer's statements testimony and the plan before us approve the lighting as proposed to us with the conditions; the diffusers be on the two circled light poles closest to any residential property, further the season of usage April 1<sup>st</sup> to October 31<sup>st</sup> and with no other changes any modification and/or changes will require coming back to the ZBA , the lighting shall all be consistent on timers as to on/off for all light poles and the police department during nightly checks see if the gate needs to be locked or not locked located back off King Street needs closure to avoid traffic accidents in terms of where it has been to see determine if the gate and I request that once the lights are installed, a report from public safety division as to the overall usage and based on the testimony, evidence provided to us by abutters in favor and engineers and plans that the proposed use as modified by the conditions of the Board is not more substantially detrimental to the neighborhood than that currently exists - Chair Perkins added a friendly amendment as to the lights circled on the plan direct the lights so that will not shine on the Fogg property or any abutters but only light the path – Member Bernard also added that lighting be shut off at 10pm. On the amended motion as seconded by Member Bernard – unanimous (4:0) vote - Bernard, Perkins, Adami and Connolly in the affirmative as reported by the Chair.

Member Connolly made a motion to adjourn the meeting, seconded Member Bernard – Meeting adjourned at 8:08 PM.