

BOARD OF SELECTMEN
MEMORIAL BUILDING

February 13, 2023
4:30 P.M.

The following are to be considered draft minutes only until approved by the Board at their next meeting.

Selectmen Present: Dick Hendl, Chairman; Amy Lewis, Vice Chairman; Poul Heilmann

Others: Jeremiah Crosby, Josh McGraw, Whit Smit, Steve Dzubak

Scheduled Appointments:

Josh McGraw appeared before the Board to express his interest in pursuing the short-term rental path. Josh has reviewed the checklist and it is apparent that he is running a business and will need to meet with the planning board and the zoning board. Dick asked about the lack of septic on the property. Josh explained that NH DES does not regulate buildings that do not have electricity or running water; privy, outhouses, composting toilets, NH DES just allow it. Josh will have at least two of these on the property. The Board has no objections or concerns with Josh moving forward in the STR process.

Zoning Permits:

REPORT from ZONING COORDINATOR. -- Board of Selectmen - Monday, February 13, 2023.

Application for Permit – APPROVED

1. Mr. Peter Tourin/Ms. Jean Twombly, 203 Colby Hill Road, are planning to have a 9.43 Kw system (roof-mounted solar panels) installed on the south facing roof of the house. Zoning Coordinator has been out to the site. Location is obvious. There are no setback or wetlands issues, and the structure will be less than 35' tall. No observed home business or commercial activity and applicants have represented the same on his application. Permit approved per delegation of authority.

Permit Application – Clarification from Planning Board

2. Mark McCalmont Oak Hill - Zoning Permit application received including fee (\$50 paid January 9) to install TESLA Solar Roof™ tiles. This is a case of first impression. We asked the Planning Board for a determination as to whether the solar roof system planned for the install is a separate "structure."

The planning board has previously decided that "conventional" roof-mounted solar panels (held in place generally with racking) are a structure requiring a zoning permit. However, in this case, where the TESLA "glass or steel solar tiles" are the roof system itself, the Planning Board specified no separate Zoning Permit is required (provided a Zoning Permit was approved for the home construction). Mr. McCalmont was notified that his contractor could with the installation of the roof and the town will refund the \$50 fee.

Other Matters.

A. Attended Zoning Board meeting. (Aucoin/Ruppel – Sandy Beach Special Exception hearing). Hearing continued at the election of the applicant(s) for failure of the Zoning Board to be able to seat a full board (5 members present).

B. Received copy and reviewed letter from Mr. Mike Hummel pertaining to sound engineering study. On receiving email from Mr. Hummel, I advised him to make an appointment to discuss with the Select Board.

C. Inquiry from Mr. Josh McGraw regarding his plan to offer his camp as short-term rental of guest facilities in a rustic setting. The camp is located up the hill back in the woods a good mile or so off a Class VI road, which Mr. McGraw maintains. No water, no electricity, no sub-surface waste disposal (septic). I advised him to make an appointment to discuss with the Select Board.

D. Inquiry from Clayton Platt L.L.S. regarding expansion of deck on two sides of cottage on Dutchman Pond Road. Provided Mr. Platt with instructions regarding need for a Special Exception because deck with encroach (de minimis) into setback boundaries.

E. Reviewed NHMA article (forwarded by Hendl) regarding proposed “tourism fee” currently being considered by NH legislature.

F. Inquiry regarding proposed house build on Brookridge Drive (Eastman section, Cold Pond Builders). Advised the contractor/builder of need for approved septic design that has been reviewed by the Town Health Officer.

G. Was advised of house for sale on Four Corners Road that apparently has second dwelling unit (studio apartment) over garage. Forwarded information to the Select Board.

H. Inquiry regarding build of temporary access road to property on Dutchman Pond Road to allow equipment for build of an addition (previously approved).

I. Completed work on short-term rental process summary. Waiting for approval to send out to property owners who have received Special Exception from Zoning Board to operate short-term rental of guest facilities business.

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Whit has been made aware that there is a house for sale on Four Corners Road where a studio apartment has been built above the garage. This would be considered a second dwelling unit and should have to go before the planning board for review; the property owner should be informed of this. Whit is unsure if the appropriate next step is from what authority but either Tamara or a member of the Selectboard should contact the real estate agent and say that it's come to our attention there is a studio apartment above the garage and the town would like to make sure that it is permitted.

The Hildebrand's, on Dutchman Pond Road, are doing an addition. They did not inform Whit that they would build a temporary access road to allow equipment access. Whit referred this matter to Tamara and the road agent and it should be followed up on. Tamara added that she spoke to a planning board member and because Dutchman Pond is a private road the town does not have any say over them putting an access road in.

Minutes of January 23, 2023:

A zoom meeting was held last week. Attorneys Christine Fillmore and Dimitrio Aspiras asked Dick and Tamara to collect information dated back to 2005 regarding Kazenas matter.

Dick received a request from Dan Saulnier that the Selectboard run it by the town council again to make sure attorney Fillmore is comfortable with the changes that were made based on her latest comments. The decibel levels were not changed. Subsequent to that, the Board has received a letter and the results of a sound study from the Hummels that suggested to the planning board that they might take the results of that into consideration. Dick is unaware if the subcommittee decided that what they provided to the Board is not yet finished or where it stands. Poul understands it to be that the adjustments suggested by town counsel have been made in this ordinance.

Poul made a motion to accept the minutes of January 23, 2023 as amended. The motion was seconded by Amy. Poul, Amy and Dick voted in favor of the motion.

Court Status:

Dick and Tamara had a zoom meeting on Friday with Attorneys Fillmore and Aspiras. What they are doing is collecting the data that Dick and Tamara provided to negotiate with the lawyer on the other side to see what the next step is in the Kazenas matter. There are no further details, they hope to have some specifics by the time they meet again in two weeks.

Unfinished Business:

Poul feels we need to advertise for the road agent position as well as equipment operator position; these should be advertised at the same time. Dick stated first we need to receive Peter Abair's resignation letter stating his date of retirement. The Board decided to advertise both positions beginning April 1st. The Board will stagger the decision date for the two positions.

At the last meeting the Board received a revised portion of the personnel manual to redefine part-time employees. Poul feels the revision has streamlined everything and is in favor of the changes. Amy has no objections. Poul made a motion to accept the changes to the personnel manual. The motion was seconded by Dick. Poul, Dick and Amy voted in favor of the motion.

Dick asked if there has been any further communication from the attorney for the Sanborn Hill situation. Amy needs to complete a draft response to that letter.

Dick asked if there has been a response to the letter sent to the owner of the short term rental on George's Mills Road. Tamara has not heard anything yet.

Dick sent the drafted commercial noise ordinance off to attorney Fillmore asking her to verify the planning board sub-group had included all of her comments. Attorney Fillmore still feels the 55/45 decibel levels are too low; for intermittent noise she would like to see 65db. Dick asked attorney Fillmore if the town is potentially setting up a two-tier noise ordinance for commercial businesses if we are allowing people already in business to not-comply with this and people starting a new business or amending a site plan must comply with this ordinance. She stated it is two-tier and it's ok to do that, but most towns make it retroactive. The other comment attorney Fillmore made was that section 7 and 9 both refer to special permits and it is confusing. If the planning board has a reason to address special permits in two different sections that don't reinforce one another it needs to be explained more.

Dick stated the ordinance reads that the Board or its agent is the group that goes out and makes the measurements if there are complaints. Dick would like to see it written as the measurements need to be taken at the property boundary.

Dick stated that when asked at a prior planning board meeting why this doesn't apply to residents Tim Bray's response was that the existing ordinance applies to residents. If the existing ordinance applies to residents, why wouldn't it also apply to commercial businesses; why do we need two different approaches to handling noise in town. For all the reasons discussed tonight Dick is not in favor of moving forward with this draft until there is discussion on these items. Poul does not think the ordinance is ready to be presented to the town at this point. Poul has the same concern about why it isn't retroactive, noise is noise. There are many things left to discuss and address in this ordinance.

Whit informed the Board that in the last year and a half the planning board was under the impression that noise fell into a general category of land use statutes. Therefore the planning board was the appropriate authority to be working on this. At the eleventh hour the ordinance reviewed by attorney Fillmore, and Whit admits he was surprised that her opinion was that it's not included in the land use statutes; it's really a separate ordinance and therefore is the purview of the selectboard rather than the planning board. The planning board can do all the drafting, but at the end of the day, if our council is correct, it's not a land use regulation it's a town ordinance relating to noise and therefore it gets to the town meeting either by petition or by the Selectboards action.

Whit knows there is a considerable amount of interest in what the town will do about noise, and there are opinions on both sides. If the opinion of town council is that there is no need for a public hearing in advance, the public hearing would then be at the town meeting. Poul asked, assuming we aren't going to do this in 2023, could the Board hold work sessions along the way to hear the concerns of town residents; yes, that can be done. Whit, as someone who receives a lot of feedback, feels it would be good practice for the Selectboard to figure out how they want

to address this. Whit pointed out we do have a noise regulation in our zoning ordinance and it does not use objective measurement standards; that is a point where he disagrees with some of the more popular views that ask how to you regulate something you can't measure. Whit's response to that is a reasonable person can decide what's too loud and a reasonable person's standard is an enforceable standard.

Poul asked how this got to the point where we are now. Whit pointed out this has been going on since 2011, the driving force being commercial operations. People are generally tolerant to intermittent noises; it's the droning that gets to some people more, and understandably so. Whit stated this all started back in 2011 with Evarts; several residents did bring litigation to address the issue at the time. That litigation was never successfully resolved. Poul asked if the starting point was the current noise regulation; Whit is unsure of the answer to that. Poul asked if the "good neighbor" soft approach has been attempted. Whit believes that is how round two, with Kennebec, evolved. Dick added that the Weathers took the good neighbor approach. The history of the Kennebec situation was discussed.

Steve Dzubak agrees with the approach that this noise ordinance needs to be slow-rolled on moving forward. Steve is relatively new to town, but his first reaction to the proposed ordinance is one of concern because what has already been said about it, mainly that they are setting up a tiered ordinance. This is not wise because in his experience having something that is uniform and simple is going to be best in the future, rather than setting up a system that is going to potentially complicate and make it more difficult than it already is. Steve also thinks that if there is not some vetting by attorneys we put ourselves and the town at risk of serious complication down the road.

Jeremiah Crosby asked if a noise ordinance needs to take into consideration what state inspections allow for decibels on things like motorcycles, altered exhaust systems on vehicles and things of that nature. Whit said there are state statutes already addressing that. The enforcement action on motor vehicles or motorcycles is all outside of the purview of the town ordinance.

Dick made a motion that the Board has decided this draft commercial noise ordinance is not sufficiently complete to proceed with any type of action at town meeting or public hearings and that we arrange to solicit from the public, in a public hearing format, more views on what the town would support for a reasonable noise ordinance. The motion was seconded by Poul. Dick, Poul and Amy voted in favor of the motion.

New Business:

Amy has made some adjustments to the capital reserve forecast she has drafted. The plan will be disbursed to the Board members this week. Dick asked if it would be reasonable to set up a work session with members of the budget committee to discuss this topic; this would be a posted meeting and open to the public. Whit, as a budget committee member, feels this is a good idea.

Dick informed the Board members that the annual report for ARPA funds will be due at the end of April. Dick provided an explanation as to what it would entail; there will be an annual report of spending due every year until the funds are spent in full. The money has to be committed by the end of 2024 and it has to be spent by the end of 2026. Poul has volunteered to take over this report.

Board and Department Updates:

The cemetery committee will hold a meeting at 1pm on Tuesday, February 21st, to discuss a transition plan as there are two open seats on the committee.

Signatures:

Appointment form for Luke Munholand

Transfer station agreement for 2023; The amount is \$120,465.

Veteran's Tax Credit application

Intent to Cut for John and Sarah Anderson – Map & Lot 35-099-158. The logging has already begun.

Miscellaneous:

Tamara stated there has been a lot of talk about the hours at the town office and how people aren't happy that the hours have been reduced and the complaints are coming to the Selectboard. Tamara feels it would be good if the Board made a statement about who is in control of the town office hours. These concerns should be going to Pixie as she sets the hours for the town office. The hours for the Selectmen's office haven't changed at all. Dick asked how many people have expressed this view and do they understand why the town office is closed on Wednesday. Tamara couldn't put a number on it, but there is a lot, and she doesn't feel they understand why the decision was made to close on Wednesdays. There was discussion as to reasons why business may have been slow on Wednesdays. Poul said perhaps a statement explaining that this is transitional because of training needs and that we can readdress appropriate times sometime in the spring or early summer. Poul will talk with Pixie and they will come up with a statement. Tamara stated looking forward, once Annika is trained, there probably are better hours to be open for the public.

It was brought to Tamara's attention that the rental application for town buildings asks for proof of liability insurance coverage. Is this something that we have ever required, because if we don't we should remove the sentence from the application. If we do require it we need to start collecting some type of document. Dick stated all the resident needs to do is contact their insurance company and ask for a certificate of insurance. Tamara will edit the rental application to show what is needed of the renter as far as insurance.

Ian MacMillian, the town's new Emergency Management Director, was unable to attend tonight's meeting but provided Tamara with some information. Ian has applied for a \$4,000 grant for LEOP (Local Emergency Operating Plan, aka Local Emergency Management Plan). After some discussion, it was decided by the Board they would like time to review this grant and speak with Ian before signing the agreement to apply for the grant.

The town has received a \$22,442.32 bridges grant specifically for the purposes of bridge improvement and/or maintenance. Dick suggested these funds possibly be used to repair the bridge over Kidder Brook in Twin Lake Villa on Golf Course Road. Dick made a motion to accept the \$22,442.32 for bridges. The motion was seconded by Amy. Dick, Amy and Poul voted in favor of the motion.

At 6:01 p.m. Dick made a motion to enter into non-public session to discuss hiring of personnel RSA 91-A:3,(II)(b). The motion was seconded by Poul. By roll call vote Dick voted aye, Poul voted aye and Amy voted aye.

Dick made a motion to exit non-public session at 6:12 p.m. The motion was seconded by Poul. By roll call vote Poul voted aye, Dick voted aye and Amy voted aye. Dick made a motion to seal the minutes. The motion was seconded by Amy. By roll call vote Dick voted aye, Amy voted aye and Poul voted aye.

The meeting adjourned at 6:13 pm.

Jill Hastings

Deputy Administrative Assistant