

PLANNING BOARD

MAY 21, 2020

MEMORIAL BUILDING

7:00 P.M.

The following are to be considered draft minutes until approved by the Board.

Due to technical difficulties opening Zoom, the meeting was called to order a little late. (Many thanks to Whit Smith for his assistance.)

A joint session with Zoning took place at the beginning of this meeting to review Article 8 of the Zoning Ordinance,

Chairman Kevin Lee began with introductions:

Planning members present via Zoom: Chairman, Kevin Lee; Michael Howard, Alternates, Tim Bray and Dan Saulnier. Alex Belensz, circuit rider from UVLSRPC.

Zoning members present via Zoom: Chairwoman, Susan Chiarella, and Alternate, Tanner Jacques.

Planning members present at the meeting room: Ken Jacques, Bryan O'Day and George McCusker. Absent Darrin Patten and Peter Keene. Zoning Board members present Cody Patten and Justin Hastings. Absent Peter Abair.

Tim Bray and Dan Saulnier were asked to step in for Planning Board and Tanner Jacques was asked to step in on Zoning.

Others present at the meeting room. Agricultural Commission Member Cynthia Bruss.

Others present via ZOOM: Zoning Coordinator, Whit Smith; Agricultural Committee members Keith Cutting, Jim Bednar, and Bill Ellis; Selectman, Dick Hendl; Applicants, abutters, and/or other interested parties present via Zoom: Representing Durgin and Crowell, Ben Crowell, Erin Darrow, B. Manning, Malcolm Milne, Scott Sanborn, and abutter Bob Domings. Michael Hansen, representing himself.

Susan stated Ken had spoken to her about the subject of non-conforming use and what constitutes making a property more non-conforming. Ken noted he sat in on a recent zoning hearing as an abutter to one of the cases. He does not have objections regarding the case, but when he looked at the information presented by two of the cases before the board, at least in one he did not think there was enough information in order for the board to make a decision. Article 8 speaks to making a non-conforming property or dwelling more non-conforming. His understanding is it is the applicant's obligation to exhaust all possible remedies or options under the spirit of the ordinance. He has spoken to several Planning Board members and has gotten conflicting thoughts, so a joint meeting was suggested for everyone to be on the same page. Susan reminded both boards must not discuss any specifics on any of the cases before them. Whit read Article 8 to those present. Whit stated comments from Tim Bray a couple of meetings

ago, regarding if you are expanding non-conforming use within the scope of that use, then you are allowed to do that, but if you add a use that makes it more non-conforming you must get appropriate approval from the Zoning Board of Adjustment in the form of a Special Exception. Kevin asked are the questions related to making sure everyone is on the same page with the meaning of Article 8. Susan stated it is not clear to her as to what makes something more non-conforming. She has shared information on grandfathering and non-conforming use that was sent to her from the NHMA. Mike stated the way he understands it Article 8 is about changing the way a building is being used, but most often what comes before the Boards is a building that is already over a setback and they want to add to the building even closer to setback and that makes it more non-conforming. Kevin stated the basis of conversations in the past has been for applicants to look at the potential of other locations on the property where they possibly can make their proposal less non-conforming. If it is non-conforming, they appeal to the ZBA to seek relief for through a Variance or Special Exception to adjudicate that. If in the ZBA's opinion furtherance of non-conforming is allowed, then they would vote that way. Tim stated there can only be so much written into these articles. There is plenty of relief through special exceptions. There are a variety of reasons for non-conforming and perhaps what is being proposed does not make it more non-conforming to the neighborhood, or the abutters. It comes down to an individual application and review of that impact. Review of Article 9 says the ZBA determines what dimensional requirements are reasonable and practical considering the conditions of the lot and the nature and purpose of proposed construction. Kevin stated the nature and size of the development of a non-conforming lot is up to the Zoning Board. Whit stated the Zoning Board has the discretion to determine if a case has merit, and if it finds that is the case, the ZBA can grant whatever special exception it sees is appropriate, including something less than what the applicant may be applying for. The only one real prohibition in the ordinance is a Special Exception cannot be granted if the proposed structure is going to be closer than 10' to the right of way line. The Zoning Board has authority to decide the merits of each case being heard. Tanner stated he has reviewed the documentation. There is not a cut and dried way to approach it and the Board uses their best interpretation of it. Based on what he has read, the ZBA needs to follow their ordinance as best as possible in situations it applies to. There were no other questions or comments by Board members. Susan felt the session was good to bring this out in the open and get peoples questions out there. The joint meeting of the Boards was adjourned at 7:48 p.m.

The Board continued with the agenda of the Planning Board.

Minutes of May 21, 2020: Motion made by Ken to approve the minutes as written, seconded by George and unanimously approved.

Literature and Correspondence: Pamphlet from the Lake Sunapee Protective Association is available at the office if anyone would like to look at it.

Merger Application: The Board reviewed merger request for Richard and Janet Hendl for two lots Map 29; Lot 143-034 to Map 29; Lot 136-023 on the shores of Lake KOLELEMOOK at

Woodcrest. The Board acknowledged receipt. Kevin will sign the document and it will be filed with the Sullivan County Registry of Deeds.

Request by Durgin & Crowell Lumber Company, Inc. for subdivision/annexation. Applicant proposes to subdivide 15.95 acres from an existing 56.2-acre parcel (Map 8; Lot 005-215) to be annexed to the existing 49.47-acre parcel (Map 08; Lot 002-215). Both parcels are owned by Durgin & Crowell and is located on Fisher Corner Road. Malcolm Milne, speaking on behalf of Durgin & Crowell reported they are seeking to annex 16 acres from one lot owned by Durgin & Crowell to another lot owned by Durgin & Crowell. Malcom stated the 16 acres from Map 08 – 005-215 was purchased by the company in 2017. Durgin and Crowell owns both lots. They are not applying for any potential use on the 16 acres right now. They thought this would make an application to the Zoning Board simpler and clearer by drawing the lines and cutting off the 16 acres that sticks out between the pellet plant and Exit 12A storage if and when the company decides to do something different there,

Scott Sanborn stated the application is to join two lots commonly owned by Durgin & Crowell, the 15.95 acres is all back land. The proposed annexation does not impact any road frontages and the areas of both lots are way over zoning dimensional minimums. There is no land use specifically associated with this application, but just a change of the boundary lines. The 15.95- acre parcel being transferred has been surveyed and certified, the remaining portions of 56.2-acre parcel is shown with existing information. There is nothing on the remaining property critical to zoning or like that.

Tim Bray state he heard when and if something were done down there, and asked what is the purpose for adjusting these lot lines in general? Malcolm stated whether it pertains to this application or not, there is the 16-acre square that sticks out next to the pellet plant. They conceived a special exception application back in March and from feedback from the zoning bord and the abutters they figured when and if they were to seek a special exception for a use of that land, they could refine and limit the application to that 16 acres as opposed to what is now the 56 acres of the entire parcel. It is up to the owners when and if anything might be done there.

The Board reviewed the application checklist. A motion was made by Michael Howard to accept the application as complete, seconded by Dan, and unanimously approved.

The Board reviewed the plan and the checklist for approval of the annexation. No one present spoke in opposition of the proposal. Motion by Michael to approve the annexation, seconded by Tim, and unanimously approved. The hearing was closed at 8:12 p.m. The Board will sign the mylar.

Request by Hansen Bridge, LLC for an amended Site Plan Review. Applicant proposes a 48' x 33' addition to the existing shop to house a wood-treatment plant for the existing bridge business. Property located at 163 Hansen Road, tax map 03; Lot 560-485.

Mike Hansen stated he is in the process of buying a new piece of equipment for the treatment process used on their timber bridges and would like to put a roof over it. He would like to put it in

its own building off to the side of the building they built two years ago. The treatment is done through a pressure vessel. Tim Bray asked what kind of wood treatment, is it a new process for the area and does it involve chemicals? Mike stated it is a product called copper naphthenate and they have been using it in the shop for about 15 years to treat in the holes they drill in the timber bridges. They can purchase the product on Amazon and is at 2% but if they were to buy it in bulk, it would be less than 1%; about .5% because it is cut with diesel fuel. Their bridge materials currently come pre-treated. They want to be able to treat their own material. A whole bridge section can be treated in the equipment so they would not have to ship material out to be treated and then back again. They can do it at their facility. The pressure equipment comes all prefabricated, on a skid in a double-walled containment. He wants to put it a building so their intent is to build an addition that would also make handling the beams easier. Tim asked if there is any run-off from this. Mike stated the equipment is pressurized by air that mixes the product with diesel fuel. The timbers stay in the cylinder and the cylinder tilts, so the product runs off the wood back into the chamber. The let it sit for a while and there is no residual when they pull it out. Kevin asked how often the liquid gets used and is there any residual product left over after they finish using it. Mike stated it gets recycled in the pressure vessel and stays in a closed circuit in the containment. Product is added once in a while. Bulk storage would be 1,000-gallon tanks under a roof stored next to the building. Tim asked if the State gets involved to look at the process. Mike stated he has checked with the State and the product is not on the state watch list for a controlled chemical. They have also checked on the federal level and it is basically a product that can be shipped like milk. Kevin asked in the event of a tank breach, would the building have floor drains or some sort of containment? Mike stated the unit is already in a containment, but they will set it inside a concrete foundation that would be an additional containment. Mike Howard stated this sounds like a new process and suggested perhaps this is an expansion of a special exception that would warrant going to the ZBA for an amended Site Plan. Michael Howard stated it would be nice to have on paper a cross section of the concrete containment that matches the volume in the pressure vessel. It seems like it is changing or adding a new use to that site and those changes should be noted in the Special Exception. Kevin discussed the Special Exception that exists. Mike stated the existing Special Exception was to run the bridge construction company, which is basically the product. They do everything from welding the bridges together to selling the timber bridge packages. This is another step to what they have been doing and makes it so they can do an entire timber bridge process which is different from what they have been doing. They currently have done guardrails and posts and treat all the holes they drill in timber beams, but they cannot do a bridge beam. The vessel is 45 feet long. George McCusker asked Dan whether he thought this was an issue where conservation should be at least informed and involved in. Dan stated the way the Boards are structured if Planning Board could ask the Conservation Commission for some guidance if they wanted, but as it stands the Conservation Commission does not have any authority over a question like this. Tim stated if there is a breach impacting waterways there could be conditions put on it and that might be handled from the Conservation Commission's standpoint. Dan stated it might make sense to look at the contours to see what is on the other side of the property line. Tim stated it is a significant change and a significant volume of chemical and as a town there should be some sort of idea what kind of safety plan is in place and what would happen if there was an accident or spill, and is there any contamination over time from the process. Tim felt it should call for some sort of review. Kevin stated it would probably be good to have on record of the Special Exception, so it protects Michael as well. Dan suggested Mike submit MSDS safety sheets for the chemicals to alleviate

some of the concerns. He also suggested Mike show what the containment plan is for the chemical storage so board can look at the vessel, the skid, and the concrete and bulk storage area. Mike stated he does not want this equipment all over his yard. He can put the vessel in a building, and no one has to look at it. It does not make any noise or give off any smoke or anything. The building will keep the weather off it. Mike Howard asked how many of these are in existence. Mike Hansen stated there are not a in the area. The laminated bridge business is not a huge business. Mike stated American Wood Treaters is who sells the vessel and the guy to talk to is the guy that sells the chemical. Mike Howard stated the Board is looking for the most information they can get to make sure it is being done safely and to show that due diligence was followed through this process. Mike Howard stated his feeling is amending the special exception is probably in Mike Hansen's advantage so there is no question that this process is allowed at this site. Mike Hansen stated this process probably falls under bridge construction, but if he ever started doing telephone poles, or railroad ties, etc., he would need to come back before the board. Mike Howard stated if this is the direction, they see the business moving in, it makes sense to go after an amended special exception now. Mike Hansen said his intent right now is to use it for the bridge business, but in the winter time if they wanted to do railroad ties in their downtime they could. Ken asked for clarification of where they do their hand processing. Mike stated whenever they drill a hole in the timber, they hand spray it and treat the hole according to EPA specs as to how they fabricate and produce the timber bridges. Raw materials are ordered, and the beams come pre-treated from a plant in Oregon. They cannot do a beam right now. They can do guardrail posts, guardrails. They buy the product in a five-gallon tote from Amazon. The process takes place at his facility. With no further questions at this time, Ken Jacques moved to continue the Site Plan Hearing to Thursday, July 16, seconded by George and unanimously approved.

Kevin noted the Board is approaching the nine o'clock hour and asked the Board if they wished to continue. The meeting continues.

Agricultural Commission: Keith Cutting, Chair of Agricultural Commission stated Cynthia Bruss had some documents she prepared to share with the Board. Cynthia was present and said she would leave copies for the Board members.

Keith stated the Commission has discussed how to keep communications between the agricultural commission and the other boards and commissions in town open. They had talked about inviting Chairman Lee to one of their meetings, but they felt it would be best if the commission members met with the planning board and addressed their questions or comments to the board.

Jim Bednar stated the basic issue is what does the planning board expect from the ag commission. Kevin stated the Board has recognized Keith as a strong proponent of the ag commission and he has articulated the areas of concern and RSAs that cover AG commissions. The Board anticipates they will be hearing the commission's thoughts on necessary adjustments that might need to be made to the zoning ordinance. Jim suggested it would be helpful include some questions about agriculture on the town survey rather than them doing a separate survey. Cynthia noted on the last survey there was high support of agriculture. One of the other things to observe is what agriculture and farming is defined as. One of the goals is to be supportive and

helpful and to be fair and treat everyone the same in the pursuit of agriculture. Kevin stated local agriculture was responded to quite favorably in the previous survey and he thinks local agriculture will still be supported.

Keith stated the Ag Commission was frustrated with the response they got to the Planning Board's request for an opinion as to the sap tank issue. The Commission was disappointed the Board did not respond to their recommendation other than to put it off until the end of the year. Their recommendation was based on the Board's request for opinion. Kevin apologized if that was the way it was taken. The comment was that rather than amending the appendix for what are not structures to take care of them all at once rather than piecemeal. Change would need to be presented as a change to the Zoning Ordinance and approved at Town Meeting. It was not to push it off, but to make the update as efficient as possible since it is likely there will be more to come as the year goes on. Dan stated he fully expects the agricultural commission will have a significant number of recommendations to make in terms of adjusting ordinances and making them clearer and is the spirit of the inaction from the last meeting. Keith stated he agrees, but in this case, the resident was prepared to file a zoning permit to comply with a structure and was told to withdraw the zoning application until the question was resolved. The resident needs to be provided with some direction whether to continue in the agricultural enterprise. Tim Bray stated he heard the recommendation from the commission, and he thinks it was honored on the advice of the commission and a permit was not required. He is fairly sure the applicant is aware of that. Keith stated his opinion is the Planning Board owes this resident a resolution to this situation, both formal and informal. Kevin stated his perception is the Board agreed with the agricultural commission that this it would not need a zoning permit and would get added to the appendix of things that are not structures. If the minutes of the last meeting do not reflect that, perhaps they need to be amended. Kevin stated the minutes should reflect that the Board agreed with the commission's recommendation, it was the process of getting it on the list of what to be concerned about. Kevin asked for a reconsideration of the minutes of May 21, 2020. Motion by Tim to amend last month's minutes (May 21) to reflect that the Board agrees with the Agricultural Commission's recommendation that the sap tank is considered equipment. Motion seconded by Dan. Ken asked for clarification. The understanding is a sap tank with an attached roof system on a skid moved on a seasonal basis is considered equipment and is not a structure. Ken and George abstained. All others voted in favor.

Keith's final question is to ask that a representative from the AG Commission be part of the working group as far as doing the town-wide survey. Kevin noted review of the survey is on the agenda.

Review of Sections 1 and 2 of the Draft Noise Ordinance: Susan Chiarella thanked the Planning Board members for drawing this up and noted it has been a tough road with noise for the zoning board and anything to clear it up will make things more helpful. She stated at one point she did hear about exempting logging and she has expressed concerns with a blanket exemption for when logging operations go on year after year, it becomes a commercial industrial situation. She doesn't have a problem exempting logging, but she would like to see a term on it. Kevin stated the Board has had some conversations about hours of operating or doing that.

Another part of the discussion was about cutting personal firewood and how that was something exempted. Tim stated he remembers some comments from Mike Howard about impact to the neighborhood when constant logging is around them. If it is a matter of someone cutting a piece of their property and there is a beginning and end within that season is one thing, but if they are running it like a business they would fall under the noise levels in table A and would have to follow the same rules as anyone else. It was noted that in Section 7 under exemptions, logging is not mentioned. Dan stated in the last discussion the Board had there was a lot of interest shown in developing some language about timber harvesting and putting hour limits on it and looking to see what the definition of forestry is in the RSA. It is on the list to talk about in more depth when the Board gets to section 7. Susan's point is of interest because as a receiver of noise, any one resident could experience logging noise even if several properties were doing it. Someone could be logging property for a year on one side of you and then another person starts up on the other side and there is no way to regulate that. The Board could limit hours for logging operations but would have to determine if there is a way to differentiate between someone who is cutting some of their acreage from someone who has made a continual business out of it. Dan stated the Board's process is to view the ordinance section by section. In anticipation of that if there are ideas on the subject now is the time to note them, but it may be a while before the Board gets to the discussion of timber harvesting. Input is welcome that would make things better for the town.

Whit shared Sections 1 and 2 on the screen for the Board. After review, Tim moved to accept sections 1 and 2. The motion was seconded by Mike Howard, and unanimously passed.

The Board agreed Section 3 will be included on the agenda for the July 16 meeting. Board members should read the section beforehand and come prepared with questions and concerns.

Amended draft of town survey: Due to the late hour, the Board agreed to continue the meeting for a survey work session to Thursday, June 25, 2020 at 7:00 p.m. Motion by Mike to continue the meeting seconded by Tim and unanimously approved. Kevin will send the latest version of the survey to everyone.

Miscellaneous Business: Ken Jacques stated according to the minutes of last month he wondered if there is an answer to a question, he raised about site plan requirements for an existing business. There was going to be some research done. Ken suggested the Board read past Selectmen's minutes (June 8) because there was some commentary from the town attorney regarding what is required for the existing business from a site plan perspective and whether it is an actual hearing or the evidence is being gathered. Janet stated counsel has recommended this not be called a site plan. The purpose is to register the improvements as to what is on the property as it exists right now and does not require a hearing. Ken suggested the minutes be read. Kevin asked Alex to do a little bit of looking into this if he has time. Alex suggested calling NHMA and he could do that as the middle man. He asked Kevin to let him know what they would like him to do.

The meeting ended at 9:44 p.m. and will be continued on Thursday, June 25, 2020 at 7:00 p.m.

Minutes transcribed from Zoom recording.

Submitted by,

Janet Roberts,
Administrative Assistant