

## **PLANNING BOARD**

**OCTOBER 15, 2020**

## **MEMORIAL BUILDING**

**7:00 P.M.**

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

Members present in the meeting room: Bryan O'Day, George McCusker, Darrin Patten, Ken Jacques, and Tim Bray. Absent: Dan Saulnier.

Members present via ZOOM: Peter Keene, Michael Howard, and Alex Belensz, Circuit Rider from the Upper Valley Lake Sunapee Regional Planning Commission. Kevin Lee signed in about 8:30 or so.

Others present via ZOOM: Whit Smith, Zoning Coordinator; Andy D'Amico and B. Manning.

Peter, Vice Chair, called the meeting to order. Board members introduced themselves. Tim Bray was asked to step in Kevin's absence.

Consultation: Hoptimystic Brewery: Bill Waddell, Mike and Joni Boucher met with the Board. Bill reported there has been a complaint about parking on Four Corner's Road. They met with the Selectmen earlier this week. They are working on plans by driving through the current section to a two separate lots in the back to remedy parking along the side of the road. They will put down gravel to make smoother, better parking, and eliminate mud. Bill explained the business kind of "exploded" and they wound up with more people than they thought would come. They want to remedy the parking situation. Currently they put some signs up along the road to eliminate people from parking there. Tim Bray noted he experienced a driver pulling out in front of him and wanted to make them aware to mark direction of travel and parking areas adequately. Bill stated they are not always able to be outside and evaluate what is going on because they are usually busy inside. As part of the site plan traffic slow needs to be considered. Bill and Mike asked for feedback from the Board to see what is required to move forward. Peter stated making changes to deal with the needed parking is the right next step. The Board discussed an amended site plan review. Construction of the parking lot should be shown, traffic flow, ingress and egress, and allowance for emergency vehicles, and suggested lighting for the back-parking lot. They have two existing bridges that cross a brook there; one is a foot bridge, and one is for vehicles. The foot bridge comes right to the back of the building. Ken suggested working with the fire department for emergency access. He also suggested they look carefully at the design and safety of the foot bridge for liability issues. Tim stated they are doing a great job and he is glad to see that. There is finite amount of spaces to park. He asked if there was a plan to limit the number of people that could be on-site at a time, not because of the number of people but the number of cars. Bill stated, with the current parking lot layout they left enough space for cars to drive in and back out of the spaces safely. Ken asked if they ever envision getting to the point where this grows too big and they cannot be there anymore. Bill stated a lot of people like what they have. They like the location, the layout, the quietness, and being able to come and communicate with people and neighbors. Bill stated they have the control to rein it in and be the type of business they want and what the community wants. The business is only 3 months old. There has been a lot of hype and people come in to check out their beer and then may not come

again. They feel they need to get through a full year to see how things may settle out. It is hard to tell what the normal may be after COVID. Indoor seating is limited to 8 right now, but they have a maximum of 10 indoor seats. They expect that to drop off as the weather gets colder. They have recognized the parking problems and are willing to remedy the issues, keep the neighbors happy, and get the parking off the road. They were aware of the parking and were working on plans even before a complaint was made. Peter addressed the following items should be addressed when they come back with their amended site plan: Lighting, details on the foot bridge, signage to help direct the flow of traffic, information on design of parking and drive, show of pedestrian traffic and flow of vehicle traffic. The Board reviewed the process for an amended Site Plan and considerations to Bill and Mike to consider. An amended Site Plan Hearing will be required. Peter suggested rather than hurry to get an amended plan and hearing, they take their time on this to make sure what they come back with is well thought out and designed plan to meet their needs down the road rather than try to come up with something quicker.

Minutes of September 17 and 24, 2020: Darrin moved to approve as written, seconded by Tim. All voted in favor except Michael Howard abstained.

Whit reported he got a call regarding from someone wanting to install a wood boiler. A wood boiler is not included in the list (appendix) of what is and is not a structure. The wood boiler is 6' x 4', (i.e. 24 sf.) of ground coverage. A generator on a pad which is probably a noise producer is a structure and is required to be 35' from lot line. Things like a wood rick are not a structure, and a few other examples of sheds or decks less than 100 sf are not structures. Peter stated he felt the noise from an external generator would fall into the same category as smoke emitted from a wood-fired boiler. Tim stated now that the Board has determined a generator on a pad is a structure, he would be hard pressed to say it would not be comparable to an outside wood burner that emits smoke that could aggrieve a neighbor the same way the noise from a generator could. Alex Belensz stated looking at the definitions of structure in the Zoning Ordinance, nothing in the list would emit sound or smoke or something that could have impact on a neighboring property. That seems to be the standard. Peter stated it appears the consensus of the Board is a wood-fired boiler would be a structure and thereby would need to comply with setbacks. Whit stated he is continuing to compile the list of things the Planning Board has determined qualifies as a structure or not.

Whit reported he has an application for a 13' x 20' (260 sf) goat shed, on metal skids, that can be pulled around by a medium sized tractor. The agricultural commission weighed in saying something under 112 sf., they recommend be farm or agricultural equipment. If it is something larger it would be deemed to be a structure. The resident is on board with what he needs to do. He has filed an application and is not doing this after the fact. This is an opportunity for the Planning Board to give some thought as to how they want to treat these moveable livestock shelter consistently. If something is of a certain size, maybe it is ok and does not need a zoning permit, and if it is beyond a certain size, maybe it needs a permit which subjects it to the setbacks and buffers. Michael asked if the AG Commission felt that anything that houses livestock falls into the same category as generators and wood boilers in that there are emissions that some

might find obnoxious and because of that they should be subject to the 35' setback. The Board reviewed the AG Commissions recommendation and discussed how this applies to the request for a moveable goat shed on skids. Tim suggested and the Board agreed 100 sf is the number to stay consistent with. The goat shed is greater than that and should be considered a structure. Currently, there is a size requirement of 100 sf and that is what the Board should remain consistent with whether it is agricultural or not or on skids or not. A motion was made by Tim; the Agricultural Commission's recommendation has been considered and the Planning Board has determined a structure more than 100 sf whether on skids or not, is recognized as a structure, [requiring a zoning permit] and is not precluded from setback requirements. The motion was seconded by Darrin and unanimously approved. Whit stated that while agriculture is a preferred activity and certainly a protected activity in the State, it does not create exemptions from local zoning.

No Literature and Correspondence.

George McCusker stated with this water shortage, if someone brings a big sap tank in to put water in it for a homeowner, does that need a permit. The Board asked whether this was going to be something temporary? Peter said this an emergency with the drought going on and did not think the Planning Board would make things more difficult for someone already facing a difficult situation.

Update – noise regulations: Tim stated there were two action items. Dan was going to review the definition of timber harvesting as it refers to the agricultural RSA. Dan was absent. Ken agreed to see how these regulations would fit with existing business needs. The plan was when the Board was satisfied with those two issues, there would be a last overlook of the whole document in preparation of sending it to the Selectboard. Tim stated it looks like perhaps Dan looked at the best management practices for forestry and found it had more to do with erosion and not so much noise. Tim stated, as it stands right now, as agreed at the last meeting that the way the document is written right now, timber harvesting would be exempt from this noise bylaw because it is enacted under the RSA for agriculture.

Ken stated he was not quite sure where to start, and up front he is uncomfortable being an existing business owner and trying to figure out how to deal with existing business owners. The Board had asked if there were other communities in this area who had ordinances or how they deal with them. He talked with Peter Stanley, former Zoning Coordinator/Enforcement in New London, currently now in Sutton. His comment was in New London they looked at having a large-scale ordinance on noise, and agreed they were not prepared to deal with it in terms of certification, calibration, or going to court perspective. New London refers to the State definition on obnoxious use and litigate as needed. He next sat down and talked with B. Manning, Ben Crowell, and Malcolm Milne, for a viewpoint from another existing business about how it would affect them. They are concerned about the proposed ordinance and being able to operate their business. Currently a legal business exists and then there are a bunch of parameters on which they could be "called to the carpet" with decibel levels, etc., and then they are not able to meet those conditions. The waiver process also causes concern. Select Board is

fluid board and unless there is something that says we made this decision, and you can operate “forever” that decision could change depending on who is on the Board. After that, he spoke with Whit. They discussed where the town is at today, is this noise regulation a reaction to current issues or issues going way back. Ken’s thought was where are we going with this and what are we going to do to ensure that the businesses there are can operate. There are 7 exemptions in the proposed regulation. Manchester has 16, and they have a variance board for complaints or if someone is looking for a variance or exclusion from the noise ordinance. Would this be what the Board of Selectmen would be doing under this proposal? Ken asked Tim if the Sunapee Noise Ordinance and asked if it had been looked at.

Tim stated Sunapee and a lot of other small towns in NH were looked at. Sunapee’s relies on unreasonable amount of noise. Who is going to decide what is unreasonable and as personnel changes, their perception of unreasonable could be different? It is all subjective. The objective approach is reasonable hours and level of noise that can be measured by decibels. It is more difficult and more challenging for the towns. The town is not extremely noisy right now, but with growth things are going to escalate. This is the opportunity to try to hold the line. A document cannot protect from every possibility or legal situation. That is the spirit in which the draft was written. This is geared to someone who is generating more and more noise, or a new operation that is going to generate a lot of noise in a residential area, this is a tool to try to slow that down and stand up to it. Tim stated ultimately, he will vote with the Board whether they want to scrap the whole thing now. He is not going to take it personally. The intent was to put something on the table. Tim stated he did not believe that Durgin & Crowell or Twin Lake Villa will be impacted by this regulation.

Mike Howard does not see there is anything going on at Durgin and Crowell now that violates this draft. He does feel logging needs to be addressed because it is noisy but is a normal part of the town. He is willing to take that on as a separate issue. Mike stated hours of operation is the key to all of this and is a simple thing to enforce. He spoke to the awareness of the issues with noise from Kennebec. Hours of operation would remedy that. He thinks this is needed and should be followed through with.

Ken asked B. Manning for his comment. B. stated the way the ordinance is written right now, he does not believe that Durgin & Crowell as a company could meet those standards. He disagrees with Mr. Bray in the comments that we have nothing now. When you look at zoning ordinances, they have both the subjective and the objective styles they use, and there are court cases that have subjective ordinances that are held up in court. It is true there is nothing now. If you have town attorney that does not want to litigate something, he does not think that should be the basis of which you make the decision that you have nothing to stand on right now. His take on it, is compared to Manchester they have 7 zoning districts. The draft is stricter than Manchester with less exemptions and applies to the entire town with one district. Planning Board minutes time after time, the word reasonable is referred to. It is the unreasonable person who is going to have this document and hire an attorney to do what they can to businesses or even people with chickens in their back yard. The legal budget for the town has increased gone from \$13K to

\$72K over the last four years. That tells of the way the world we live in now is. He feels this document is just going to give the unreasonable person the ability to cause problems to people. He appreciates the nice words about Durgin and Crowell. They want to do the right thing; they try to be good neighbors and are doing the right thing. If you looked at google earth 40 years ago there was not a better spot to put an industrial operation in the location, there. They are an industrial operation within a rural residential district. They were there a decade before zoning was even conceived. This document scares them. One of the things about doing an ordinance like this, one of the first things you read is to do a comprehensive survey of what you have in town currently. Durgin & Crowell is the largest tax payer in Town, and no one has reached out to them. They are concerned.

George McCusker would like to echo B's comments on the amount of money spent on legal fees. It keeps spiraling. He believes he can speak for all three selectmen that they have problems with the enforcement of this. There are problems enforcing things now. As soon as you try, the legal fees start. He has concerns with how to enforce any of this. The Health Inspector, and Whit are not going to do it. The Police Department will do what they can. Other than that, if the Selectmen move it is a court order and that is what is concerned about. Ken asked is not that what the Selectmen have now, and there is no way around the legal part.

Ken asked Whit for comments. Whit stated he agrees with what B. Manning said. He thinks a subjective standard in the situation we have here in Springfield is better than an objective standard. The reasonable person standard is well-settled both through litigation and common law. It applies and is effective and is a lot better than a decibel meter. The other thing is it is a challenge for the legal department, but it is their responsibility to carry through where there is obnoxious noise that needs to be addressed. They just cannot say you do not have a case to stand on.

Peter asked Alex for input. Alex stated this was not really a situation they get involved in too much through Planning work. Whit's point is well taken with subjective versus objective standard. Decibel rates are too hard to know except on a case by case basis what is an appropriate decibel level and is not. The reasonable person standard does come in with case law for planning and zoning, so that may be an issue to review to see if people feel comfortable relying on it or not. He has not spent a lot of time with this issue.

Andy D'Amico asked to comment. He stated this has been interesting to listen to, he has read the proposal, and this seems to be a lot, but these are the definitions called for. He read a section from Judge Morrill's summary from 1999 when issues began. Those findings stated there was not a definition employed by the Town of Springfield that was spelled out. Andy suggested the Board also consider adding language about Infrasound. He presented information about Infrasound to the Board. He suggested calibrated equipment will give the town a lot of help and strength in a court situation. He will share the information about infrasound and the 1999 findings of fact from the court with anyone who may be interested.

Tim stated he sat through all those hearings 25 years ago. He remembers the judgment and that was a reason why the plant could do what they wanted to do because there was no way to measure or objectify the claims. He only recently joined the planning board and shortly after, he and Dan were asked to craft a noise ordinance. They asked Brooks to sit on the sub-committee. Based on Tim's experience, and with Brooks' insight as to what decibels were livable a great deal of time and effort was spent putting this together. The town does not have legal teams or teams of planners who could create the wheel that Manchester's document provided. They took what they could from that document and tried to make it specific to the Town. The Planning Board has gone through each section step by step, that now comes to this point, and now the question is should we even have this, this makes it worse to. He feels perhaps some of these questions should have come before so many hours were spent working on this. Tim stated the planning board at this juncture should look at this and decide if they want to proceed with an objective document, or put something like Sunapee in place, and then vote on it. To spend any more time worrying about the details of a plan that has no chance of passing, does not make any sense. Does the board want this type of document or not?

Mike Howard said he would like to talk to B. more about this. He is surprised this presents a threat to any business in town. That concern needs to be taken seriously and be looked into with the people who raised the issue. There are clearly some concerns that need to be looked at and addressed if not in this framework in some other framework. The fact that a business can come in and force people out of a residential neighborhood by their activities is something that needs to be addressed. There needs to be a way to create something that is going to work for businesses to continue operating and feel secure in town and at the same time residents that have every right to have a quiet peaceful life. He would like to reach out to B. and Ken and others to come up with something that is going to work to protect the town. He is willing to work on that committee.

Peter said Mike described the situation well, and his offer would be a good next step. Tim and Dan put in a great deal of work, and it would be good to have someone else take the next step. (Kevin Lee had joined the meeting at some point in this conversation).

Ken stated he thinks Mike is right. The Board can reevaluate and not just give up on it. The Planning Board works best discussing a situation in a work session, and not as part of a regular meeting, to continue the dialogue and listen to both sides of it. Peter said it might be good to gather some more information before the next work session and perhaps Mike's offer would be a way to provide specifics about concerns. There needs to be a way to balance the interests of business and residents of the town. Mike is willing to reach out to B., and Ken. B. stated he has no capacity to represent the mill, but he would be willing to talk to them and participate in conversations.

Peter authorized Mike to reach out to B. and others at the mill, and Ken to work through the concerns and come to a productive conclusion that will work for the town.

There was quite a bit more conversation regarding the proposed regulations and defining how the regulations will impact existing businesses and residents.

Peter suggested Board members let all this information “percolate”, and everyone appreciates the work that Tim and Dan have done which was important to get the ball rolling on this. The Board has agreed there needs to be something to address noise in town. Now the process is to have this starting point and take steps to determine where to go from the in depth starting point the Board has been given. He suggests letting Mike get feedback and then the Board have a work session.

B. asked the Board to review RSA 31:39. The Board of Selectmen under that RSA can enact laws, and things related to noise. The Board of Selectmen can be a fluid group and vote this in one year and vote out the next year. If the Planning Board is doing something of this nature, it should be done with public hearings through the Zoning Ordinance as supported or not supported by the Planning Board for the public to vote on. He has no doubt under the RSA that it can be done, but he is not sure it is the best way to go about it.

Tim suggests expanding the subcommittee to work on these conversations and findings, to protect the board and people willing to work on the committee. Motion made by Tim that the existing subcommittee to look at the noise ordinance, now include board members Mike Howard and Ken Jacques and B. Manning and anyone else the Planning Board would like to assign at this time. Mike seconded the motion. B. does not want to be on a Planning Board Committee. Whit stated B. is not on the Planning Board. Ken stated neither was Brooks. Peter stated Brooks was willing to participate. He asked if those who were named were willing to be participants. B. stated he was not comfortable with it now. Ken stated he has no problem helping with it. He also must sit back from a business perspective and keep that separate. He does not recommend a subcommittee with just two people talking to each other. They must be able to talk to other people that could be affected. He understands B. does not want to be on the subcommittee. B. stated he would be happy if he was invited to one of the meetings. Tim stated in light of B. Manning not wanting to serve on the subcommittee he amends the motion for the new subcommittee to be Ken Jacques and Mike Howard, who will have the responsibility of discussing the noise regulations with local businesses and citizens and gather more information and report back to the Planning Board what their findings are. The motion was seconded by Mike. Tim said he would step down from the subcommittee at this time. The Board will ask Dan if he wishes to continue. The motion passed unanimously.

~~The Board agreed to schedule a work session for noise bylaws on Tuesday, November 9, 2020 at 7:00 p.m.~~

**AMENDMENT 10/29/2020 work session is scheduled for Tuesday, November 10, 2020 at 7:00 p.m.**

Kevin Lee reported the survey is at the printer. The survey will be collected until November 30<sup>th</sup>.

Postage will be paid and then the surveys will be mailed.

The Board voted to adjourn at 9:30 p.m.

Submitted by,

Janet Roberts,  
Administrative Assistant

AMENDED PAGE 7 - 10-29-2020