

## PLANNING BOARD

April 15, 2021

## MEMORIAL BUILDING

7:00 P.M.

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

Present in meeting room: Tim Bray, Darrin Patten, Ken Jacques and Michael Howard.  
Members present via ZOOM: Peter Keene and Alternate Dan Saulnier  
Others present in the room: Whit Smith, Ron Slayton and Andrea Slayton  
Others present via ZOOM: Amy Lewis, Alex Belenz of UVLSRPC, John Wheatley and William St. Cyr.

The meeting began at 7:00 p.m. Dan Saulnier was asked to participate for absent member.

Minutes of March 18, 2021: Tim asked to have the first sentence of the final paragraph removed as it could be easily misinterpreted and leave the rest as is. ~~Tim noted the issue appears to be a relationship between Planning and Zoning and quantifying the regulation as the Planning Board has.~~ Whit stated that was discussed as some length at the Zoning Board meeting. A discussion with both boards on the zoning ordinance to review the lot sizing article was suggested. Tim stated he would speak to Susan Chiarella to get her thoughts on the matter. Ken moved to accept the minutes as edited, seconded by Darrin and unanimously approved.

**Lot Line Adjustment/Annexation:** John and Marie Wheatley want to eliminate lot 2 and merge portions of lot 2 with lots 1 and 3. Tim opened the public hearing at 7:10 p.m. The board reviewed the application for completeness. The board determined the checklist is complete. Mike made a motion to accept the application as complete. The motion was seconded by Darrin and unanimously approved. Tim asked if there were any abutters present for comments. William St. Cyr, of 2334 Main St, asked what this application was for. Tim explained that the property owner is asking for a lot line readjustment and an annexation of smaller lots they acquired; they want to combine to make two larger lots. William asked if there was any construction involved with this. Tim stated there is no construction being proposed at this time. Mike explained what they are doing is taking three lots and turning them in to two. William asked if the property owners know what the future plans are, as this seems like the first step of a project. Mike stated that is beyond the scope of this hearing. Tim said if they were to propose any kind of construction they would have to go through the normal process to do that and file a site plan and there would be a public hearing involved in that as well. Ken stated this subdivision went through some years ago and right now there are three lots, one of which has a home on it already. What these folks are proposing is to get rid of one of the lots ending up with two lots. One of which already has a home on it, making it a bigger lot. The lot to the north would become a bigger, and there is no home on that lot.

With the subdivision years ago there was a proposed driveway, which was filed with the state. From what Ken see's they are making a situation better for themselves and for that area. These

people are not the original subdividers. William thanked the board for the information. Darrin made a motion to approve the annexation. The motion was seconded by Ken and unanimously approved. The board members signed the maps.

Ron Slayton, Town Farm Extension; Consultation. Ron is interested in a federal firearms license and potentially opening a home business to buy and sell firearms. Ron said it will mainly be an online business to sell accessories and firearms. Ron has already been approved for his FFL, however the ATF requires an address. Ron is not interested in opening a store front as this is just a side business. Tim's concern is not necessarily with the business, but with safety. Fire engines going down there would need to be aware of what is being stored; we want to think about things like that. Making the police department aware that you are involved in gun sales and that type of thing. Tim believes this falls in the area of a home business and thinks a site plan would give the board an idea of where, and how, things will be stored.

Ron stated he has a two-car garage, in the back of that there is a 12 x 12 room that has a locked door on it. That 12 x 12 room will be his storage, which will include fire-proof gun safes for ammunition and the firearms. There is also a camera installed. Tim asked if there were any windows in the structure. Ron said there is no window in the room yet but plans to install a window with bars. Ron said the ATF checks with towns on the local ordinances. The ATF doesn't seem to have regulations on the set up. As far as they are concerned, the way it's locked up, it is left up to the town. The ATF provides you with the best option to keep things safe. Ron had a four-hour meeting with an ATF agent to go over all the safety protocols and paperwork to file if people want to purchase a gun. Again, this is an online business, and will be by appointment only, so there will be no traffic. An appointment will be scheduled if someone wants to come down, or a meeting place will be selected to make deliveries.

Tim said one question that came up from a member of another board was that if a customer wanted to test fire something on property, is there a plan for that. Ron said that won't happen down there, it is not a firing range. For clarification Mike stated that essentially people will contact you through the internet and they would order a firearm. How do you get the firearm from you to them. Ron said there is a background form they will have to fill out, which would then be sent to the government for approval. If approved, then the sale can continue. Ron said the firearms could be picked up at his house by appointment or at an agreed meeting place. Tim said by getting the federal firearms license aren't you required to make the transaction on that site. Ron said if you are approved you are allowed to hand deliver.

Mike asked if the storage area or the garage will have signage on it. What Mike is anticipating is if the fire department comes to a general house fire, will there be some way that they will know that there's storage of these items there. Ron is not planning to put signs up as they don't want to advertise for people to come to there home.

Tim said this discussion is to determine whether this should be considered a home occupation or a home business. Ken asked how close the abutters are, are there any other houses close to you. Andrea said there is one home, about ¼ mile up the road. Dan stated that it was mentioned by

Ron that potentially people could pick up their materials at a meeting place; would that just be picking a spot, like in front of the town library, to complete the transaction. Ron said that was correct.

Tim asked if any board members had any thoughts on what we should ask for the Slaytons, as far as a site plan or no site plan. Ron provided a picture to the board from his garage doors looking in at his storage room. Peter pointed out to Tim that the ATF publication 3317.2 seems to have some specific guidelines, criteria, and expectations for the physical security of the structure. That would be a good guideline for us to use in this case. Tim agrees, he has one printed out and feels this would be the gold standard for making this a secure business for the Slaytons. Tim described the picture to Dan and Peter as a two-car garage, one bay with no car in it, with a 12 x 12 room in the back with what looks like French doors on the back to be the entrance and the egress.

Dan would be inclined to see us go towards a formal site plan review on this. We'd want to make sure these folks are getting off on the right foot in terms of setting up their business. Dan feels a site plan review would give us a better ability to do that. And given there are potentially going to be people going in and out of there, Dan feels it lines up with a home business rather than a home occupation. Whit stated the ordinance itself spells out the criteria for a home occupation versus a home business, it could be that the Slaytons qualify on all of the points of a home occupation which would not require a site plan. So, the planning board needs to consider or deliberate whether due to safety/security considerations; this would constitute an exception if they qualify as a home occupation. If it's qualified as a home business than a site plan review would be required. With no employees, limited customer visits, no real deliveries to speak of, operating out of the enclosed structure that's part of their home it may actually meet the requirements of a home occupation as opposed to a home business; that is what you need to be thinking about.

After reading the two, Tim said it appears you qualify by the letter of the ordinance as a home occupation, but he feels this is a type of business that is an exception to that. Tim would go towards having a site plan and write conditions on the business. Ken stated in going through the entire process, getting the special exception, and going through the site plan process, you have a sanctioned business by the town. Another property owner wouldn't be able to come in and complain to the town, you would be safe from any town enforcement on your property. Whit added one exception to that, which would be if there is a substantial change in the nature of the business. Mike said that is something they advise the applicant to do when going through the site plan process, look at what you want your business to be five years from now. That can be added now so you don't have to come back and go through the process again.

Ron asked what the site plan process consists of. Darrin said you need to start by getting the application for a special exception of the zoning board, if it goes that way, and for a site plan review with the planning board. This process includes noticing all abutters. Mike said the abutters don't have a veto over whether your business is approved or not. They can come in and

voice concerns or their support. This gives the abutters a chance to be informed. The board members are the ones who make the judgement.

Whit clarified, the site plan review and also the application for special exception process, those both involve a public hearing which is noticed. The abutters are entitled as a matter of law to receive a notice of that hearing. The public hearing gives them a chance to appear and speak up with any questions or to express their support. Once the public hearing is closed the planning board in the case of the site plan review and the zoning board in the case of the special exception, will consider all the merit of what you're asking and reach a decision. That decision is an appealable decision if you are not satisfied with the outcome.

Andrea said the ATF has their own long list of requirements for Ron to be able to do this, would there be different requirements from the town. Mike said the only thing he is thinking of is keeping emergency personnel informed on what is being stored there. Andrea asked how that works in your personal home, if everything's locked in a safe you can assume what's in there. Tim added that a lot of people have ammunition in their homes, it's their legal right to do that in this state. There is no authority for this board to do anything about it or any other board because it's a state law. With that being said, when you come in to try to establish a business it just makes it a process the town boards need to review. Ken said it becomes a land use issue when it involves a business.

Andrea said for their own safety at their home they don't want signage showing what's there. Mike said maybe the way to deal with it is to just have it on record in the site plan and make sure the fire department knows about it, that is something we have to work out. Dan said if you haven't looked at the publication mentioned by Peter, the 3317.2, it might be worth going through because it's presented as a general way to look at things like security. It's not a list of requirements, it's more of a list of best practices.

Tim told the Slaytons that when they go to the zoning board, if that's their decision, to make sure you talk about the time you spent with ATF thinking about safety measures and what the plans are to secure the location. Whit stated he will be happy to help them with the process, but what's hanging out there is the board's decision on whether this is a home occupation or a home business. Ken feels it meets the criteria of a home occupation; the question is the nature of the business. The board could handle it in that it does meet the criteria of a home occupation, but this board strongly suggests that you evaluate your interest in getting a special exception to operate out of your home and then come for the site plan process to probably allay any concerns down the road and give you some flexibility if you wanted to grow the business, which could be included in the site plan process. Tim agrees with this thought.

Tim stated the Slayton's came to the board for a consultation to get our opinions on how to move forward. Tim proposes that their business seems to meet the requirements of a home occupation, however the board strongly advises they go a step further and get a special exception and come before the planning board to get a site plan review so that they have a business that is potentially approved by the town. This will give the Slayton's more security for the future and will be less

open to complaints and criticism. Darrin stated he agrees except for one part, we need to send to the selectmen that we approve of what they are doing because the selectmen are probably the ones that need to sign off on that paperwork that will be sent to the ATF. So, the selectmen need guidance as to how they were approved so they can sign that paperwork. Tim said the selectmen can read the board's statement and see that you meet the zoning requirements for a home occupation then there will be a recommendation that the planning board strongly recommends you go through special exception and site plan review.

Mike informed the Slaytons it has been decided by the board that they qualify as a home occupation, so they can go ahead and get started. What the planning board is saying is that at some point someone could object to that. Mike said anyone that wants to operate a business in town needs to have special permission to do it, and that is the special exception the board has been talking about. Being that your business is the type of business that raises questions with some people, the board feels it would be in your best interest to just go ahead and do the whole process, have the town's approval. That would be the best way to guarantee that you're not going to have a lot of hassles running your business. But you can walk out of here tonight as a home occupation.

Andrea said the ATF needs to be made aware, they need to know if there are any zoning laws that need to be complied with. Whit said the ATF got in touch with him. Whit stated the selectmen would be happy to reiterate what is contained in our ordinance in summary, and then state that the matter has been brought before the planning board and the planning board confirmed that this proposed activity would qualify as a home occupation and it would continue to be a home occupation until it became a home business. At which time a site plan review and a special exception would be required. The planning board has recommended that to the applicant. However, we'd essentially be signing off today or in two weeks that after review it was deemed to be a home occupation. The Slayton's are getting the message that the prudent course of action would then be to go through the steps as if it were a home business, but in fact we can't require that because our zoning ordinance doesn't say that. The board agrees with that. Whit said the Slaytons will need some assistance going forward, which he is happy to provide, but as a matter of right they can engage in a home occupation and we will say that to the ATF and the justice department if necessary.

Dan stated, for clarification purposes, that at the beginning of this conversation Whit said something to the effect of we can look at the classification of home business versus home occupation and if it doesn't rise to the level of home business, we can basically require that it go through that process anyway if we feel something about that business brings it to that level. Dan asked if he misheard or misunderstood that. Whit said he hear part of it, but not all of it. What Whit had said is you would have to make an exception to the ordinance to cause them to go through that process. Mike said the sense in the room is that nobody here in the room is willing to try and make that exception. Ken stated if you read the home occupation, they do qualify for that. Tim stated the board has no jurisdiction to require a site plan, but it can be recommended, which they are doing. Ken said Whit made a good point in that the zoning board might not even

hear it; they may just tell them they aren't supposed to be here until you become a home business. Mike said you can also define your business in a way that would make it a home business then the zoning board would have to hear it. Darrin said you can set it up with what you are anticipating in the future. Ron asked if they were a home occupation, and someone didn't like it would they be able to shut it down. The answer was no, but they can complain.

Ken thinks the planning board has given the best advice they can. Whit thinks Darrin's suggestion is something to think about, forward thinking. Tim made sure the Slaytons had a clear understanding as to what their options are. Darrin asked Whit who is it the ATF will accept the information from. Andrea stated the correspondence just asks if there are any zoning laws that they need to come into compliance with.

Whit said if the board is comfortable concluding that it is a home occupation then we can proceed on that basis. Tim asked Dan and Peter if they had comments; it is currently before the board that this is a home occupation and it's not in their jurisdiction to require a site plan. Peter agrees, in looking at the letter of how things are spelled out it does fall into that category. Peter feels it would be in the best interest of the applicant to that request the special exception, to look at it as a home business, for all the points previously mentioned. Dan asked when it comes to classifying it as a home business versus a home occupation Dan looks to the full board as having been there longer and gone through the history knowing more the previous decisions. Ken told Dan to read section 5.10 and 5.20 in the zoning ordinance. Start with the home occupation, that's the criteria we would go by. If you meet some of those criteria you are a home occupation. Then go in to 5.20, which is home business, it's a step up. You'll see the differences between the two. Dan feels it is the boards place to look at the letter of the law and review everything, but it's also to look at the nuances of it. This is about the planning board doing due diligence to prevent what could be a magnet for thieves, it's not even about the people in town that might not like guns being in here. Dan would highly recommend they read the publication he's referring to and think about those things before they build everything out and order their inventory.

Dan asked if voting in a unanimous way was important to the board, as it seems to be the way they have always voted in the past. Dan said if we did have to vote on this, he'd be curious what others on the board think on the importance of unanimity and recognizing that we might not always have it. Is it better to vote in a unanimous way, or is it important to show decent? This is a general question as Dan has not seen a divided board in his time as an alternate. Tim appreciates Dan's comments. There is nothing to vote on here, the zoning ordinance speaks to this and it basically says we don't have any jurisdiction over this business. As far as voting in a unanimous way, being a new chairman Tim believes every member should vote the way they believe is the best way to vote. Don't worry about how others are voting.

Alex Belenz said it is helpful to think about when you are going to deviate from the zoning ordinance. Where you are unable to do that is in terms of providing relief from the zoning ordinance, that's where variances and special exceptions come in. There is no enabling to go beyond what is stated in the ordinance, even if you might feel it's within the spirit of that

ordinance. Any kind of deviation is more looking at relief rather than expanding the scope of what the ordinance covers. As far as unanimity, Alex agrees with Tim. It doesn't weaken a board's decision to have a split decision versus a unanimous decision.

Whit pointed out that Amy Lewis of the selectboard was present through Zoom. Amy can report to the board of selectmen with the consensus of the planning board that the view of this board is that the business, as it is explained to us, would constitute a home occupation. Whit reviewed his correspondence from the investigator from the ATF, she referred to it as the manufacture and sale of firearms at a particular address without any further expansion. Whit said now you've heard the further explanation of what's planned and thinks Amy at the next meeting, and Whit would back it up, can say it was the view of the planning board that as currently proposed the business would constitute a home occupation. Then we can reply to the inquiry from the investigator. The board agrees with that. Amy thinks for the next selectboard meeting the board would like to see a recommendation from the planning board, pros and cons, what you have discussed, there have been good points to both sides here. That would go a long way to help clear up any questions. Amy stated if this is going to end up being a decision of the selectboard they need some kind of recommendation from the planning board to show what the scenario is. Something defined from the planning board to present to the selectboard would be helpful. Tim informed Amy that what the planning board is saying is under the zoning ordinance as written these people have a right to run this business as a home occupation. Again, the planning board has a strong recommendation that they go through a site plan review and special exception to protect the interest of their business, but it would have to be either triggered by something that they're proposing in the business plan to make it home business or they would have to do it voluntarily and it would be up to the ZBA as to whether they would accept it or not. That is the best the planning board can do because they don't have jurisdiction beyond that. Amy is not disputing anything regarding home business / home occupation, they have right to that. If this moves from a planning board issue to the zoning board and then to the selectboard everything needs to be dotted and crossed appropriately.

Tim wants to make sure the Slayton's are leaving with a clear understanding of what has happened and let them know if they have any questions to feel free to ask. Whit will also advise and translate all of this for them if necessary. The Slayton's thanked the board for their time.

#### Miscellaneous Business:

Tim had a discussion with Susan Chiarella. The topic was the process in general, with no reference to particular cases, and coordination between the planning board and zoning board. Particularly around the issue of these ADU's and the process we should go through before the applicant can go to the zoning board. Tim believes there was agreement that the ZBA doesn't want to be involved in any soils and slopes calculations, that is something the planning board can and should do. Situations where an applicant can say I know I don't have enough land but I want to do it anyway so I'm going to skip over the planning board and go to the ZBA was discussed. Tim said they agreed that would not be an acceptable process. The applicant must come to the

planning board, go through site plan review, undergo these soils and slopes calculations so we know if there's enough property to allow a second dwelling. If we determine there is not enough property, we'll know by how much. They need to finish the process with the planning board before seeking relief from the zoning board because now they can seek relief of X number of acres, X amount of square foot or whatever it is. The two boards just need to keep the lines of communication open so as these things come up we can be on a level playing field and understand each other. It was a positive meeting and feels Susan is quite approachable to discuss these issues.

Tim feels there is still more work to do, he thinks Ken brought it up, with the fact that there may be some inconsistency with how we complete this process. And that is, does the applicant come back to the planning board after they have a hearing and get a decision from the ZBA. Ken has suggested that is the process in the zoning regulations. Tim is unsure about it and suggested there be a work session, which Whit has agreed to come to. We will ask Janet to set that up and send emails out to set up a date and time that would work.

Ken said being involved and having to do the slopes and soils, and this one not qualified and that guy can't figure it out, there is a couple of lines in there, the applicant shall pay the total cost of posting/advertising any hearing, cost of certified mailings and any necessary site inspection fees, cost of any expert and professional advisory services, ie: planning, engineering, legal etcetera deemed necessary by either the planning board or the board of adjustment. The burden is on the applicant to provide that information so that a decision can be made reasonably. Ken said the other thing he thinks has happened over time is what is a wetland in the town of Springfield in the year 2021 and what is a designated wetland and what does it mean to an applicant coming in. If it's not on the big map, can it be a designated wetland. Tim said yes, Ken agreed. If Ken remembers correctly there was a course filter process that came out of that, which involved an inspection individual, which at the time was Tom Duling, and a selectman. They would go out and visit the site, they would make the determination on whether or not it needed further evaluation. Ken would like, in those fees for slopes and soils, to be exactly the same criteria we would put on an applicant looking to do anything on their property that involved a wetland. And they would be responsible for proving to this board or to the zoning board that it's not a wetland; if there's any ambiguity.

Ken mentioned to Tim, if we are going to have the work session, in the spirit of continuity, Janet had done a bit of light research and she pulled up some of the minutes of the O'Day hearing which is similar to Josh McGraw's situation. Ken felt that he didn't think there was a complete circle that transpired there. Brian went through an extra step that Josh didn't go through. This can be discussed at the work session.

The other thing that would be beneficial is the Wetland Project, that was done in Springfield, it is what Van de Poll had done and it's what the wetlands subcommittee utilized in making their recommendations. It would be useful for everybody to understand what a regulated wetland is in Springfield and even if it's not a designated wetland when it comes to land use purposes it still

gets subtracted from the acreage of usable land. Tim mentioned he was a certified wetlands scientist in Massachusetts for several years, he was also a consultant for the DES, town conservation commissions and private subdivisions so he is very familiar with the wetland act. Tim said the town is well served because of the soils and slopes by the zoning. Whether it's a regulated wetland or in a buffer zone or whether it's even identified as a wetland, if it's extremely poorly drained it gets exempted from that calculation, so it's very good protection for the town for something that's clearly a wetland but not on some map. In those cases, Tim feels the wetlands map that's used by Whit and the town gives a general idea where wetlands have been established. Tim stated we have two layers of protection, wetlands that are designated on a map and the wetlands that we know are on the lot from a site visit and are not on the map. The property owner would then be instructed to hire a wetlands scientist to delineate this so we know what wetlands are on your site and calculate the soils and slopes. Tim said in the work session the board needs to come together and have an understanding of this to move forward. Ken will talk to Janet to see if she can provide a copy of the study by Van de Poll to the board. Parts of the study refer to designated wetlands, which is what we regulate in Springfield. This would be good information for the board members to have.

It is Tim's opinion that there is a lot of confusion about wetlands. Whit agrees with having the work session and stated we do have a wetlands mapping tool that he has been directed to use for Springfield. Whit has studied all the criteria for wetlands and the mapping tool shows designated wetlands, as well as the buffers, vernal ponds/pools, lakes, streams and even brooks. Whit knows this has come up in the concept of second dwelling units, but in the last week and a half he has had seven zoning permit applications that all require a wetlands review. One of the things Whit would like to address at the work session is the level of investigation that is required to determine whether something is a wetland if it's not on the wetlands mapping tool. Whit has no other resource other than the mapping tool. There isn't much else you can do, you can't suddenly declare to a landowner because you are standing in four inches of water where they want to put a garage, that it's a wetland unless you have some sort of documentary evidence to support that. Mike said that it is up to the property owner to prove that it's not a wetland. Whit said that it is important to understand that the process for considering zoning permit applications will change dramatically overnight if in fact we put the burden on the applicant to show that the swale behind their house which is allowing drainage of water, which technically would make it a wetlands, is not a wetlands so they can go forward with their building plan.

Mike stated that the town doesn't regulate wetlands other than designated wetlands and vernal pools. Whit said we designate wetlands too; you cannot build on a wetland. Mike said that is a state law, they take jurisdiction of all wetlands in the state. Mike said we advise the property owner that there is a wetland and would be violating state law if you were to build in the wetland. The designated wetland kicks in our buffer, but regular wetlands are not buffered in this town, but you are not allowed to build in them by state law. Tim asked Mike how you know if they are there. Mike said that is what the course filter was. Rather than requiring every applicant for a zoning permit to hire a wetlands scientist we said we would send a representative

of the town to go out and basically look at it and unprofessionally advise them that they would need a wetlands scientist. Ken stated it was Tom Duling and a selectman that would do this. Tim feels this is something we need to go back to, and this will be discussed at the work session. Ken said with the course filter the selectmen are supposed to be on the site visit. Ken will find the information and bring it to the work session. Whit stated this process has not occurred in some time.

Tim asked what was happening with the noise ordinance. Mike said we should look at Tim's draft of it and see if we can import the decibel limits from another draft on the commercial operations in town, define continuous noise and then bring that before the entire board for discussion. Dan and Mike will go forward on the noise ordinance and they will provide an update at another meeting.

Ken stated the visit with Brooks on Saturday morning has been cancelled due to weather. The visit will be rescheduled for a later time.

The meeting was adjourned at 9:10 p.m.

Jill Hastings  
Deputy Administrative Assistant