

Lyme Planning Board Minutes  
July/27/2017

Board Members and Staff Present: John Stadler, Chair; Tim Cook, Vice Chair; Rusty Keith, Alternate Select Board Representative; Vicki Smith, Member; Amber Boland Alternate; David Roby Jr. Alternate; David Robbins, Planning and Zoning Administrator.

Board Members Absent: C Jay Smith, Eric Furstenberg, Member;

Members of the Public Present: Sue Ryan, Betsy Uline, Nancy Uline, Aaron Rich, Joseph Longacre, Michael Whitman, Karen Menge, Mark Puffer, Barry Schuster, Bret Ryan, Russell Barnes, Doug Holler.

John opened the meeting at 7:00 pm

Item 1: Acceptance of minutes from June 22, 2017

Vicki moved to approve the minutes as submitted.

Tim seconded the motion.

John called for a vote and the motion passed unanimously.

Item 2: Acceptance of the minutes from July 13<sup>th</sup>, 2017.

John appointed David Roby Jr. to sit for Eric Furstenburg and Amber Boland to continue for Vicki Smith, since they had been in attendance for all the relevant meetings. Vicki was present, but had missed relevant meetings. Rusty Keith, who had also been at all relevant meetings, replaced the absent Jay Smith. John asked both Mark Puffer and Barry Schuster if they had any concerns with the appointees. There were none.

Mark Puffer stated that Karen Menge had an alternate set of minutes that she would like the Board to incorporate into its Minutes. Alternatively, if the Board did not want to include her version, he requested that they be added to the record.

Barry Schuster stated that he and his client had various objections to Karen's minutes. He suggested that the minutes for this meeting show that alternate minutes were entered into the record while acknowledging his objections to them. This was an acceptable solution to all parties.

The Board agreed to include Karen's version of the minutes as part of the record, but not as part of the Board's minutes. Mark Puffer said that would be fine.

Tim noted several minor grammatical errors to be corrected.

John moved to approve the minutes as amended by Tim.

Amber seconded the motion.

John called for a vote and the motion passed unanimously.

Vicki abstained from the vote as she had not been at the meeting.

Item 3: Continuation of Planning Board's interpretation of sections 8.12, 8.13, 8.27 and 4.46 on remand from the Zoning Board of Adjustment in response to Karen Menge's appeal of the Planning Board's approval of the Site Plan of Holts Ledge LLC, dated 05-11-17 for the property at 65 Dartmouth College Hwy. (Tax map 401 Lot 53.1).

John asked if anyone had any crucial new testimony that they wished to add before the Board held formal deliberations.

Barry believed that the hearing had been closed at the end of the July 13<sup>th</sup>, 2017 meeting. John agreed but wanted to give both parties one last chance to include any new important information. There being no new information, John stated that the Board would go into deliberations. If either party had a concern, they could raise their hands and the Board would come out of deliberations to address the issue. Otherwise, the discussion would be between the Board members.

John suggested that the Board review each of the four sections individually and decide if the section had been interpreted correctly.

#### Section 4.46

John noted that while this section had been remanded back from the Zoning Board, there had been agreement by all parties, including Karen Menge's lawyer, Mr. Puffer, that this section can not be applied to this situation. The Board had expressed their view that 8.12 was the sole and proper route for conversion of a non-conforming business use to another. On the other hand, 4.46 concerns itself with the conversion of currently conforming uses. The Board, and both lawyers, were in full agreement that this section did not apply.

#### Section 8.27

John stated that the Zoning Administrator had, under his sole authority, approved the replacement of both structures under section 8.27. John noted that there is a clear process and time period during which the Administrator's decisions can be appealed to the Zoning Board of Adjustment. No such appeal, however, was made. By the time the application for Site Plan Review was submitted, the buildings were already legally built and the appeal period had passed. The Planning Board had no role to play in that prior process under Site Plan Review. During Site Plan Review, the Board dealt with the buildings as accomplished facts on the ground. The entire Board agreed with this analysis.

#### Section 8.13

A central issue was whether the existing business use had ever been thoroughly discontinued for 24 consecutive months.

John established a time line for the property:

The property went on sale around May of 2012, after the owner's death in October of 2011. It was purchased in September/October of 2013.

Up until the property went on sale it was used as a tractor repair business, though mostly at a diminished intensity from earlier times.

A memo to the file from the Planning and Zoning Administrator dated July 20<sup>th</sup>, 2015 stated:

"The existing garage and shop building historically had been used for a tractor repair business. After it was sold the new owner used it to store and repair machinery."

On May 11, 2017 the Planning Board heard a Site Plan Review for the property. The gas pumps and tanks were removed in 2009. It had been agreed by all parties that this specific use had been discontinued as of that time.

The applicant had testified that he had used the buildings on the property to store and repair equipment and to store materials in support of his rental business.

John also stated that the standard for the intensity of use was what had been happening on the lot as of March of 1989, when zoning had been adopted by Lyme.

Rusty noted that it was his feeling that the Board could not consider the time that the property was on the market as part of the 24 months to determine discontinuance. He felt that during this time the owner had a reasonable expectation that the property was a commercial property and would continue to be until a new owner purchased the property. Perspective buyers also had a reasonable expectation that the property would remain commercial until they took ownership.

John felt that it would be better to determine whether there was a continuous 24 month period where the commercial activity had fully stopped.

John asked the Board if there was any further discussion. The entire Board agreed there seemed to be no continuous 24 month period where commercial use had completely ceased.

The Board exited deliberations so that John could ask Bret to discuss the business use during the period under discussion. He said he immediately filled it with equipment and made it the focal point for servicing rentals. He said the bins were full, parts were available and subcontractors came and went.

John asked if the business was open to the public. Bret said subcontractors were coming and going.

Karen Menge asked for more clarity about whether the business was open to the public. Bret reiterated what he had just stated.

The Board re-entered deliberations.

Amber noted that a business does not have to be open to the public in order to be considered a business.

John noted that the gas pumps had been removed in 2009 but were still in use in 1989. Other Board members felt that although that would be a lapsed use going forward, the consideration of level of intensity could include that. John asked the Zoning Administrator his opinion. The Zoning Administrator believed that while the use had been discontinued and could not be re-established, it was in fact a business use on the property in 1989.

John reviewed Phil Elder's detailed written testimony regarding the many, varied and intense business uses associated with the property prior to the adoption of zoning, including traffic impact and general activity.

Rusty said that a tractor and auto repair business that was open to the public certainly generates a good amount of noise and traffic.

John noted that there had been testimony that certain business interests had diminished at some point after 1989, but that this was really a moot point given that it was an uninterrupted, ongoing non-conforming business.

The Board agreed that there was a lawful continuation of a non-conforming business use and that the standard for comparison was set as of March of 1989.

#### Section 8.12

John read the section aloud. He stressed the portion that read: "*considering such matters as the following*: traffic generated, number of employees, number of shifts, volume of water use, volume of sewage effluent, noise, odor, glare, vibration, dust, and smoke. "

He noted that by using the wording "considering such matters as", the ordinance did not require that these were the only matters the Board could consider and that, most importantly, there was no requirement that all of the factors carry equal weight.

John said that during the site plan review different weights were given to different issues. By far and away, he gave the greatest consideration to the intense impact of the tractor repair and associated business uses and their associated noise, odor, vibration, dust, smoke and even the possibility of toxic substances being used. The elimination or great lessening of each of those factors in this neighborhood, when compared to the more benign office use, weighed most heavily.

When it came to traffic, John believed it was a comparison of apples to oranges. There would be more cars but lighter vehicles that will be staying on site all day as opposed to heavy machinery with unpredictable delivery hours. He stated while it could be argued

that the greater number of cars meant greater intensity, he thought the comparative impact could be fairly benign.

Similarly, while there would be a greater number of employees, their comings and goings would be more predictable versus the more erratic arrival and departures of the past uses. Additionally, the office use employees would have a quieter, more benign presence than those associated with the former use.

Water usage as well as volume of sewer effluent were impossible to determine on a comparative basis, but did not seem to be major issues.

John concluded that overall and on balance, the new use would likely be a lessening of the intensity of use, while at worst it might be of equal intensity.

Amber agreed with John's assessment stating that she had a similar approach on how she deliberated. She also felt that the traffic generated by the conversion would not significantly impact the conditions on Rt 10 and that it could be an overall decrease from what a tractor repair with heavy deliveries would produce.

Tim agreed and believed that the overall intensity of use for the office space would be less than the tractor repair business.

David Roby Jr. noted that it would be more desirable to live next to an office building than a tractor supply and repair business. He felt that the Board had spent considerable time at the original hearing looking over the details of the plan to ensure it was the best environment possible.

John asked if there was anything that anyone wanted to add. Nobody had any further comment.

John made the following motion: "In regards to Holts Ledge LLC's application for Site Plan Review after considering additional evidence regarding sections 4.46, 8.12, 8.13 and 8.27 as directed by the Zoning Board that Holts Ledge's application is consistent with the provisions of the Town's Zoning Ordinance."

There was a short discussion in regards to the wording. Vicki felt that it should be worded: "consistent or does not apply" as the Board had determined that section 4.46 did not apply. The rest of the Board felt that "consistent" also included consideration of what did not apply. They decided not to make any changes.

Tim seconded the motion.

John called for a vote and the motion passed unanimously.

Mr. Puffer was concerned about a procedural issue. He felt that the vote should have been on Karen Menge's appeal to the Planning Board. This would allow him to appeal the decision to the Zoning Board.

The Planning and Zoning Administrator noted that the Zoning Board had remanded back four sections of the ordinance for review. The Board was therefore appropriately voting on their review of those four sections.

Mr. Schuster pointed out that there had been no appeal to the Planning Board and agreed that the Zoning Board had remanded four sections of the ordinance back to be reviewed. He felt that the next step for Karen Menge would have to be to go back to the Zoning Board for further consideration upon her original appeal. Mr. Puffer indicated that he felt that the Board's intent was clear and that the wording of the decision was workable for him.

Item 4: Site Plan Review for the Dartmouth Skiway for a Site Plan Review to enhance the existing parking site for Ski Team van parking near the base of the Holt's lift and to add a 'portal' tower to the base of the Holt's double chair. Both projects will be on the Holt's ledge (East) side of the Skiway on the property at 39 Grafton Turnpike. (Tax map 414 Lot 61.1)

Doug Holler gave an overview of the two proposed projects. The Skiway would like to enhance existing parking site for Ski Team van parking near base of Holt's lift. This enhancement will improve safety for all using Grafton Turnpike. Currently, the vans pull in and park, or back in to allow access to the rear of the van to unload gear. In this manner, they either back in to park, causing a traffic nuisance, or back out onto Grafton Turnpike to make the return trip to Hanover. The proposed enhancement will create a 'u' shaped parking area, promoting a better, safer situation as the vans can simply drive in and out directly on the Turnpike, eliminating any backing onto or from the traveled lanes.

The impact of this enhancement will increase the existing graveled area by approximately 850 square feet to accommodate the intended use. An existing road-side drop inlet/culvert which, through road maintenance and time, has been rendered ineffective, will receive re-grading and perform as originally intended. Topsoil, or what there is of it, will be removed and relocated onsite, using BMP for erosion control. Gravel will be placed to provide an optimal permeable surface for vehicular traffic and drainage. Work on the project should take no more than a day.

In addition, the Skiway would like to add a 'portal' tower to the base of the Holt's double chair. Currently, the spacing of the chairs on the haul rope creates significant shaking and motion of the drive terminal. This situation was created when the rope was shortened a few years ago, and has been a concern. The added portal tower would be an 'H' shaped set-up located adjacent to the existing drive terminal, moving the existing in/out sheave trains from current location attached to drive terminal to the new tower, thus isolating the drive terminal from that energy. This added portal tower must be approved by NH Tramboard in order to legally operate the lift. That permit is pending and the Town will

receive a copy of the permit. BMP will be adhered to during the projects for safety and the environment.

Vicki worked through the checklist to ensure that the application was complete.

She noted that there was no letter from the Police Chief. She asked Doug if he had talked to him about the changes to the parking. Doug responded that he had not. She also felt that the Highway Dept. should review the parking to ensure that it will not damage the road.

The Board discussed waiving the following requirements and the rationale for each waiver:

Full perimeter survey. Location Map, North point, Graphic scale, dates of revision. The Board felt that the scope of the projects covered such a small area that having these details would not provide any additional useful information.

Seal of professional preparing the site plan. The plan was not completed by a licensed professional. The Board concluded that the aerial photographs were sufficient.

Town of Lyme Conservation Districts. There were none outside the Skiway to be shown, therefore it should be waived.

Fresh water supply, sewage disposal systems, fuel storage and Air conditioning. All these systems are located far away and will not be impacted by the project.

Fire Protection plan from the Fire Chief. Neither project will introduce any flammable materials to the site.

Landscaping plan. The Board concluded that it is not appropriate to add any landscaping to this area as it would impact the skiing operations.

Existing grades, method for handling runoff, location of catch basins, calculations for drainage requirements. There will be no change in the existing grade for the parking area, all runoff will continue to use the same drainage paths that exist. The Board decided that there was such a small impact to the drainage area that these items were not needed.

Building layout. Other than the portal tower there will be no new buildings. Plans for the tower were submitted. Plans with the existing buildings would not provide any useful information.

John moved to waive the listed items and deem the application complete

Vicki seconded the motion.

John called for a vote and the motion passed unanimously.

In addition the Board reviewed the 13 additional Skiway specific requirements as stated in section 4.54 A 1-13.

1. Parking areas shall be adequately signed or controlled by parking attendants so as to guide traffic flow and direction.

*Proper signs for the entrance and exit and prohibiting pedestrian traffic from using the openings to cross to and from the ski lodge.*

2. All graded areas shall be constructed in accordance with best management practices and in such a manner as to protect surface waters from sedimentation, turbidity, runoff of storm water and effluent from sewage disposal systems.

*Best Management practices will be used during construction.*

3. There shall be located on site a water storage facility capable of delivering the required fire flows and accessible year round, constructed in accordance with best management practices and in such a manner as to protect surface waters from sedimentation, turbidity, runoff of storm water and effluent from sewage disposal systems.

*Not applicable.*

4. Traffic patterns on the lot shall be coordinated so as to compose a convenient system. There shall be a proper arrangement of roadways, loading and unloading areas and parking areas on the lot to ensure the safety of vehicles, pedestrians and buses.

*The Police Chief to comment on traffic impact and location of Curb Cuts.*

5. There shall be adequate access for fire, police and emergency vehicles to the lot from the public highway and sufficient maneuvering room. Comments shall be obtained from the Police and Fire Departments.

*Needs comments from both the Police and Fire Chiefs.*

6. Adequate provision shall be made for handling water drainage on the lot utilizing best management practices.

*Flat site – drainage will not change*

7. Adequate provision shall be made for snow storage or removal utilizing best management practices.

*Snow storage and removal practices will not change.*



8. Adequate provision shall be made for skiers and other pedestrians crossing the public highway.

*Sign “Not for Pedestrian use” will be required to prevent people from crossing the road using these entrance.*

9. On-site exterior lighting shall be designed to assure adequate illumination for the safety of vehicles and pedestrian travel.

*No changes to the exterior lights.*

10. Notwithstanding the provisions in subparagraph A above, any proposed new parking structure such as a parking garage, other than additional horizontal parking on land, shall meet the general Site Plan Review standards contained in Section 12.10.

*Not applicable as there will be no parking structures.*

11. Any road or proposed trail crossing of water courses must be located and constructed so as to cause the least reasonably practicable damage to the surface water.

*Not applicable as there will be no crossing of water courses.*

12. Within 100 feet of any water course, there shall be no use which utilizes, stores, processes or disposes of toxic substances which may pose a threat to surface or ground water quality, nor shall underground fuel storage tanks be permitted.

*Not applicable.*

13. Water impoundments shall not unreasonably interfere with the functioning of natural systems unless the environmental benefits of the impoundment will outweigh adverse impacts. This standard shall not apply to water impoundments on the Skiway tributary to Grant Brook.

*Not applicable, there will be no increase to water impoundments.*

John asked if there was any further discussion.

Vicki stated that she would like to see the comment from the Police and Fire chiefs as well as having the Road Agent approve the curb cuts before a decision is made.

John asked the Board for their opinion. The consensus of the rest of the Board members was that these items could be made conditions of the approval.

John moved to approve the Site Plan with the following conditions:

- 1) The Police and Fire Chiefs will provide input and approval as to the safety of the location of the entrance and exit of the parking area.
- 2) An approved curb cut will be required for both the entrance and exit of the parking area.
- 3) There will be proper signs for the entrance and exit and for prohibiting pedestrian traffic from using the openings to cross to and from the ski lodge.

Tim seconded the motion.

John called for a vote and Rusty, Tim, John and David voted to approve the motion, Vicki voted not to approve. Vicki noted that she voted no because she would have preferred to have the Fire, Police, and Highway Departments input before making a decision.

The motion passed 4 to 1.

Item 5: Robert Wetzel Preliminary subdivision. Lot 4 on Tax Map 406.

Mr. Wetzel is working with the owner of the property to subdivide the lot into two lots. He would purchase the southern lot and the owner would keep the northern lot. He intends to conserve the lot with the Upper valley Land Trust. He had sold the lot to the south (Tax map 406 lot 2) but has the right to purchase it back. He intends to annex that lot to the newly subdivided lot.

Mr. Wetzel had several issues that he wanted to discuss with the Board prior to submitting a plan for final subdivision.

The Planning Board recently merged Lot 4 with lot 7. His current plan did not show the newly merged area. He wanted to know if he would need to have his surveyor change the current plan. The Board concluded that the plat should show the entire lot including the newly merged area.

The intent for the southern subdivided lot is to place it in conservation. He asked if the Board would be willing to waive the requirements for septic location and conservation district calculations. The Board determined that they could waive those requirements for a conservation lot but the remainder northern portion would need both a septic location and the conservation district calculations. Furthermore, the Board would likely set a building envelope to restrict where development could occur.

Item 6: New Business

John asked Vicki about hosts for the upcoming Planning Board Forums. Vicki noted that she was having a difficult time getting responses back from people. She stated that she would keep trying.

John noted that at the next meeting he would like to work on zoning amendments and changes to the subdivision regulations and site plan review regulations.

The meeting adjourned at 9:55 pm.

Respectfully Submitted  
David A. Robbins  
Lyme Planning and Zoning Administrator.