

**MINUTES OF THE MEETING  
PLANNING BOARD  
September 18, 2014  
7:00 PM**

**MEMBERS PRESENT:** Mark Beliveau, Acting Chairman; Ryan Crosbie; Lou Ann Griswold; Ed Bannister; David Cedarholm, Selectmen's Rep.; John LaCourse, Alternate

**OTHERS PRESENT:** Roger Rice; Christine Moss; Jonathan Moss; Jody Epstein; Jon Epstein; Lisa Lentz; Frank Eitler; Andrew Ward; Rene French; Chris Wyskiel, Wyskiel, Box & Tillinghast; Eric Reuter; Jocelyn Hawe; Jacob Brownell; Judy Eitler; Daniel Bassett; Bruno Posset; Elaine McLean; Susan Browning; Daniel Browning; Karen Immel; Ben Heiderscheidt; Kathleen Dallon; Christina Marshall; Karen Benoit; Tom Ballestero; Scott Giordano; Julie Giordano; Jacqueline McCabe; Jean Benoint; Robin Wunderlich; Molly Darling ; Sharon Cuddy Somers, DTC Lawyers; & Caren Rossi, Planning & Zoning Admin.

Mark Beliveau, Acting Chairman opened up the meeting at 7:05 PM.

- **Review and Approval of Draft 09/11/2014 Meeting Minutes**

David Cedarholm made a motion to approve the minutes as amended.  
Ed Bannister second.

Vote: majority, minutes approved

- **Report of officers and committees**

- **Review any correspondence**

- **Old Business**

**A continued accepted application for a Site Review Application presented by Mike Sievert, MJS Engineering PC, Agent for Molly Darling & Robin Wunderlich. The property is owned by Colleen Latham/122 Mast Road, LLC. The property is located on 122 Mast Road and is known as Lee Tax Map#13-11-0200. The applicant is proposing a Dog Daycare and a Boarding Kennel with support services. This is a possible final public hearing.**

Mark Beliveau, Acting Chairman reminded the Board that they had set a 9/11/14 submittal deadline. There were two items received from Attorney Hildreth on 9/15/14, he asked the Board what their feelings were about accepting these. The Board discussed this with both attorneys and agreed to let the items be submitted.

Mark Beliveau, Acting Chairman explained that each side will be given about 30 minutes each and then in the public session the Board will discuss the waiver request. If the Board denies the waiver request it will then be discussed what the next procedure will be. If the waiver request is granted, then the public session will be closed. Once the public portion of

the hearing is closed, there will be no more public comments allowed. The Board will hold all questions until the end of each section. They will give both sides equal time to speak.

Attorney Wyskiel outlined who will be speaking tonight for the applicant and why. He started by stating by addressing Attorney Hildreth's statement that a special exception is required. He doesn't feel it is because the property is in the residential zone and has received a variance for the use and not a special exception. He continued to read the town's current regs for the Board. He explains that parking issues are dealt with by the planning board. He stated that when the applicant was first applying to the ZBA they were going to apply for a special exception and were advised not to because the state definition of a kennel is for the boarding and raising of dogs so they then applied for a variance. He doesn't feel there is any need to go back to the ZBA at all.

Mike Sievert, MJS engineering explained the changes to the plans, the changes were to the Existing Conditions Plans and the Storm Water Maintenance Plans dated 9/10/14.

- Added a tie-in to the new septic into the existing building.
- Addressing the fire department's concerns they modified the driveway between the two buildings making it possible to turn around a single unit fire truck, redesigned parking around the circle to accommodate for the lost spaces.
- Submitted a letter from a Fire Protection Consultant stating will work per the Chief's request.
- All of the Geosyntec changes in the letter and the e-mail have been addressed on the plans.
- The septic design was not based on miss information as Attorney Hildreth suggests. He is an expert in septic designs. He calculated the flow for the tank based on metered flow; this is one of the three ways allowed to design a septic. He then addressed the employees etc. This design is more than adequate for the use. This system is a Clean Solutions System that is a specialty system that is put in for high flow systems and it is overly designed for the use.

Eric Reuter explained his most recent submitted report. He explained that it had a few new models. (In file) He addressed Attorney Hildreth's accusation that he (Reuter) spoke at a past meeting that the db at the bridal trail will be 58, he explained and pointed out a slide from a previous slide from a presentation; this was at the property line, not the bridal trail and when the barrier is in place it is 49db and 58db without the barrier.

Molly Darling explained that Attorney Hildreth has claimed that at the last meeting the lack of noise in police reports were not good measures of people being bothered by the noise of a dog facility in the neighborhood and that they could have gone out and spoken with the neighbors in the area. They went out and spoke with neighbors in the areas of three dog facilities, they submitted Google maps showing their house with distances from the facilities as well as signed statements stating they had no issues with the facilities. She feels this is due diligence on their part. All these distances are similar distances to their proposal.

Robin Wunderlich reviewed a calculation he has done on the square footage verses the number of dogs. He explained that there are no actual industry standards to use but there are recommendations. He used the Iowa Standards as they have set standards. They compare to these except for square footage on the indoor facility. He presented his comparisons and he compared there operation to WAGS. (In file)

Attorney Hildreth explains that he feels the process has become unnecessarily adversary and confrontational. He doesn't feel it needs to be this way; it sometimes yields this way when there are two sides vigorously contesting an issue. They pointed out in one of the letters that it was a step in the right direction when the applicant dropped the composting. He objected the closing of the public record tonight as he did in his letters too. He feels the applicant has the burden of proof to present and then the abutters react to it. The four letters he submitted didn't introduce any new information just combing thru the existing record and suggestion a conclusion. A lot of new information was presented tonight that they have not had an opportunity to rebut. The Board didn't choose to get their own sound expert; he feels they were relying on theirs to be the independent test. He stated that the industry standards information just came in on Sept. 11 and they have had no time to evaluate and object to these. He spoke that the information he has read in the record state that this is important substance information and he objects to the record being closed and him not having the time to object to the information as this information was submitted in the 11<sup>th</sup> hour. He stated he doesn't mean to cast aspersions on Mike Sievert, he knows he's a great engineer he just trying to follow the record. He read a few statements from past minutes that he was confused with. It has been hard for him to follow this. The septic permit submitted and is dated April 2014 and to his knowledge has not been updated. He is just trying to make sense of the record. From Attorneys Wyskiel' letter he found out that the outdoor yards have a drainage system to collect the urine. He also spoke with concerns of the Geosyntec letter as it is loaded with concerns. He addressed these concerns in his letter and its 5 pages. MJS replied to these concerns and sent it to them but we have not heard back from them yet. This is one of the major concerns that he and his group have. Will there be two septic on this property or just one? He isn't going to belabor the point that he feels the use needs a special exception, he feels it does. He stated with regards to the area kennels that Molly Darling spoke about and they are on major highways, not the 30 mph zone this proposal is on. The biggest concern to his client is noise; he doesn't have a chance to have his own sound expert review what was presented tonight. He feels Reuter is equal parts advocate and expert. He read portions of his letter regarding the noise concerns. (In file) He then read from his other letter regarding the closing arguments. He suggested/amended his letter "Possible Specific Conditions" # 8 to 15 based on the Iowa Standards he heard tonight. In summary he feels the abutters have valid substantive concerns and would like to have input on the conditions of approval.

Roger Rice, Garrity Road spoke in favor of the application. He has been to several meetings, and watched it evolved. He feels these are good resident; he feels that it would be a nice contribution to have a dog care in Lee. He has a dog and would like to see it approved. It will be a good addition to the town and feels it should be approved tonight if possible.

Frank Eitler, Sheep Road spoke with regards to the Master Plan. He read a statement into the record. (In file)

The Board asked questions of the applicant.

Mark Beliveau, Acting Chairman asked Mike Sievert if his last plan submitted 9/10/14 address the 9/3/14 Civil Consultants issues.

Mike Sievert replied yes.

Mark Beliveau, Acting Chairman asked him to explain the items that were “dropped” on the plan set that Civil Consultants reviewed.

Mike Sievert explained that additional information was asked to get from the surveyor, not his office, and that page was turned off in the system, and now it has been all back added. It was a mistake. All information has been added.

Mark Beliveau, Acting Chairman asked for clarification on the septic system.

Mike Sievert explained the existing system was proposed to stay for the remaining use, UNH. Then the new system would be for all of the new area, the dog facility. There are no issues with the existing system but they cannot locate the field. The answer to the issue is to just tie everything into the new system. UNH and dog facility. The old system will be abandoned by being cut off and the pipes will be moved into the new system. The existing tank will be pumped and will either be filled or removed.

Mark Beliveau, Acting Chairman asked if the permit currently issued will need to be amended for the change.

Mike Sievert explained that he will submit back to DES and explain the calculations and possibly amend the approval. If the UNH office space use were to change, it then would need to go back to DES for the change.

David Cedarholm asked him about the new parking areas.

Mike Sievert explained the new spots on the plan. (In file) These changes were made in response to the fire chiefs letter.

David Cedarholm the number hasn't change, just moved around?

Mike Sievert replied yes.

David Cedarholm spoke to the double parked spaces. There are 18?

Mike Sievert replied yes.

David Cedarholm stated he feels the parking is an improvement.

Mark Beliveau, Acting Chairman asked if the curved parking area reflects the need to add pavement.

Mike Sievert replied yes, they will be adding pavement.

David Cedarholm stated that as a result of Geosytec the drainage swale is more involved and the rip-rap apron is larger as well. The swale is grass lined?

Mike Sievert replied yes.

Ryan Crosbie asked with regards to the Stephen Pernaw report will the entrance be widened?

Mike Sievert stated he made these changes and has sent the changes back to DOT.

Ryan Crosbie asked about the parking spaces by the kennel drop off area.

Mike Sievert commented that in the past they had 6 cars stacked in this area and the fire chief requested that he have an area to turn around and if needed they can get to the full end of the apartment building area and put a ladder to the second floor.

David Cedarholm asked for an explanation of Geosytecs concern of additional overflow in the storm water management.

Mike Sievert explained that this was in the internal water design. That pipe that was laid in the stone in the section down there was called out as a standard perforated pipe. Their analysis said it could take in a certain amount of water. Geosytec didn't agree. They re-ran the numbers and installed a slotted pipe which they recommended along with the storm water center and this change has been made. It has been put back into the report.

Ryan Crosbie asked if there was a maintenance plan.

Mike Sievert explained that there was and it has been submitted.

Mark Beliveau, Acting Chairman asked if the fire chief has reviewed the 9/10/14 plan set and was there any life safety changes since his last letter.

Mike Sievert explained that NFPA 1 states that you don't need to have a turnaround for an existing condition that remains the same or doesn't get any worse. We felt we didn't meet that requirement so we made the changes. When they add parking it makes it worse than the existing conditions. They worked with FSC Engineering and the fire chief and made the changes.

Molly Darling stated that the fire chief and FSC have worked together and agreed it will work.

Lou Ann Griswold asked Molly and Robin if there was only one person outside with each group of dogs, if there is a barking dog and that person takes the dog inside, who is left to attend to the other dogs? How will you continue to control barking noise with the staff you have?

Molly Darling replied that there will be 3 people outside if they are allowed the 40 dogs outside. As well as staff inside. It would be a brief period if someone brought in a dog that only 2 people would be left outside.

Lou Ann Griswold asked with the issue around noise if they would consider fewer dogs outside.

Molly Darling commented yes, Durham allowed 30 outside as well as the Yellow Dog.

Robin Wunderlich commented that they don't have the space they do, nor the separate pens but they would entertain less.

Lou Ann Griswold asked if they would also be willing to regulate the hours that the dogs are outside.

Molly Darling stated that they have done this, between 8am and 5pm.

Lou Ann Griswold stated that she understands this but she is thinking about the neighbors who are riding horses and they may have a time of day that they know they will have trail riders. She is very concerned about the safety issues.

Molly Darling stated that prior to the Feb 9<sup>th</sup> meeting they meet the neighbors at the barn and explained that they would be happy to bring the dogs in if they called over and said they would be going on a trail ride. They would be happy to do this. She explained that there is a significant amount of distance between the dog yard and the bridal trail.

Robin Wunderlich stated that they would have to have a protocol as to how often they call over. Not every 5 minutes.

Lou Ann Griswold stated she is very concerned with the safety.

John LaCourse suggested we get a new letter from the fire chief confirming that he has seen this most recent plan.

John LaCourse asked if the 6 ft sound barrier fence follows the terrain.

Robin Wunderlich stated that it would be 6ft or taller depending upon the terrain.

John LaCourse asked about the burm, is it gone?

Molly Darling replied that there are two burms one is associated with the bio-retention system and it is staying.

Eric Reuter explained that originally they looked at putting a burm along the eastern side of the property as a potential means of controlling sound but with the fence etc. it wasn't effective. It would have to be quite high and cut several trees.

Robin Wunderlich stated that they would entertain periods of time during that day that could be relied upon that the dogs would not be outside.

Ryan Crosbie asked if the kennel dogs on the weekends would be walked on leash on the dog's trails and where that area was?

Robin Wunderlich showed on the plans where that area is. It is on the westerly side only of the property and its one person with one dog.

Ryan Crosbie asked how many dogs/people at one time

Molly Darling explained that there protocol is one person/one dog per time; the most they proposed is 3 outside at one time. 3 employees/3 dogs.

David Cedarholm asked that a detail be added to the plan for the stock fence, shiplap.

The Board discussed the pens and the formations of pens for the outside dogs. They don't all have to be on the same side at one time. There are a total of 8 pens to be used in the rotation. The upper pens are not grassed and will be the only ones used mostly in the winter months. This is for snow removal.

The Board discussed the waiver request. (Written request in file).

Mark Beliveau, Acting Chairman asked for a summary of the request.

Mike Sievert explained that the current requirements are 10' x 20'. These are designed as 9' x 18' because the existing spaces are 9' x 18'.

Robin Wunderlich stated that they also submitted a list of every town facility and other business there are only 4 places in Lee that have the required 10' x 20' spaces. The rest of the buildings, including all town facilities have 9' x 18' or less.

Molly Darling replied this is also true with the other dog facilities they have visited.

Mark Beliveau, Acting Chairman summarized that the parking. They have 21 spaces; they will be adding 29 spaces for a total of 50 spaces. 18 spaces are double stacked. The waiver is requested for the size of the spaces. Our regulations require 37 spaces and they are

proposing 50. He asked if they had to build it all at full dimension how many would you have?

Mike Sievert explained that they would still get the same number it would take up more room so the arc would get bigger and would have to do another small configuration or another row of spaces.

Mark Beliveau, Acting Chairman asked based on the pavement that exists there today, how many full size spaces could you get on site if you re-stripped it to regulation size?

Mike Sievert explained they would lose about 3 spaces in the row of 24, 2 in the row of 18, and another space if had to change the existing spaces. 6 if no other changes are made.

Mark Beliveau, Acting Chairman read the RSA that pertains to waivers. 674:44 III e

*(e) Include provision for waiver of any portion of the regulations. The basis for any waiver granted by the planning board shall be recorded in the minutes of the board. The planning board may only grant a waiver if the board finds, by majority vote, that:*

*(1) Strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations; or*

*(2) Specific circumstances relative to the site plan, or conditions of the land in such site plan, indicate that the waiver will properly carry out the spirit and intent of the regulations*

He then continued and read from the Site Review regulations a section of General Provisions

*All developments shall make adequate provisions for off street parking and loading facilities. Such facilities shall be designed to ensure the safety and convenience of pedestrian and vehicle movement of the site. The design shall also minimize the impact of intrusive elements of parking and loading such as noise, dust and glare.....*

Attorney Wyskiel explained that second criteria as well as it was written with this requirement in mind. They want to limit the number of trees cut to keep a larger buffer. They are trying to preserve the buffer. The other places in town speak to the spirit and the intent not be adversely impacted as it appears to work for other places in town. Not to lose existing spaces and make it all match.

Ryan Crosbie asked why they need the extra 6 spaces if they are not required.

Attorney Wyskiel explained that they are needed for the class on Tuesday and Thursdays and the regulations are very general numbers and not specific to the use. They feel more parking is better than less.

Molly Darling explained most of the time the parking will be underutilized but when UNH has a class for brief time during the day they will be full. And they have had a complaint that in the past they parked in the street. She feels this is due to poor snow removal.

Mark Beliveau, Acting Chairman asked if anyone spoke in opposition to the waiver request.



Frank Eitler asked what the space requirement was for Aroma Joes & Subway.

Caren Rossi explained 9' x 18'.

Jacqueline McCabe spoke that when you get something out of car in a tighter spot getting something out can be tough.

Randy Hertog spoke that the size doesn't seem real material, but when you think about it is a 19% difference in the actual size.

Elaine McLean commented thinking that they are expanding sizes for retirement people and you do have a lot of retired people that are the docents.

Lou Ann Griswold spoke to the designated spots for drop off. She asked if someone is getting out with an animal, do they need more space. Thinking about what the spots are used for, this might make a difference.

John LaCourse suggested making the drop off spots larger and the other reduced.

Lou Ann Griswold made a motion grant the waiver request subject  
The drops off spaces for the day care remain at the 10' x 20' and the Handicap Parking be closest to the door.  
John LaCourse second.

Discussion

John LaCourse asked if the motion goes thru how does it affect the plan?

Mike Sievert explained that he will either have to shift parking over or lose one space. It is the length that will be the problem.

Ryan Crosbie suggested that we just extend the width and not the length as it is only the width that is the problem. He also feels we should consider the kennel drop off as well.

Lou Ann Griswold made a friendly amendment to her previous motion to grant the waiver request subject to the following conditions:

The handicap space for the daycare be moved to the closest spot nearest the entrance.

The 5 spaces will be 10' in width and 18' in length. (Including the handicap)

These spaces were marked on the plan and signed and dated by the Chairman.

John LaCourse second.

Discussion:

Jacob Brownell asked how the size is measured of the parking spots as they are on a curve/pie space?

Mark Beliveau, Acting Chairman stated that this area is pretty straight.

Vote: All, motion carried. Waiver is granted subject to the two conditions.

Mark Beliveau asked if there was anything else the Board wished to discuss while still in public session?

Ryan Crosbie asked if we needed to hear back from Geosyntec prior to closing the public session?

Mark Beliveau, Acting Chairman stated that when the last set of plans came in they went out to both Geosyntec and Civil Consultants as well as we need to get an updated letter from the Fire Chief. What he recommends is that the Board considers closing the public portion tonight with the exception of receiving these three letters.

Lou Ann Griswold asked if Eric Reuter's latest report went to the abutter's sound expert?

Caren Rossi explained that she sent that report to the abutters attorney and wasn't sure if he sent it to HMMH or not.

Lou Ann Griswold asked if they submitted an additional report would it come to the Board.

Mark Beliveau explained no, not if the Board votes to close the public hearing.

John LaCourse made a motion to close the public hearing.

Ed Bannister second.

#### Discussion

Attorney Hildreth commented that the value of public input is to comment on what is submitted into the record. He already has his objection in to close the record. They will look at items that come in and if they see things that they think are deficient they will submit something. You can do with it what you want and he hopes you think the input provided so far is of some value and hope you will look at it. Otherwise, you will negate the value of the public process.

Mark Beliveau, Acting Chairman explained that on numerous occasions this same point was made. Statutorily, this board has 65-days to make a decision. This by itself indicates that this process is not designed by law to go on indefinitely. There needs to become a point in time, we are well beyond the 65-day this goes without saying, maybe double or more, the public input process has been abundant, it has been robust, there has been time for a neighborhood group to form, and become very well organized, and present mountains of paper, three rings

binders, they have engaged experts that have attended meetings, the public process has been extensive, doubled the statutory time frame, he understands that some people would like this to just go on but it's not designed to do that. The state legislature has imposed a time limit on this. The Board believes we have acted prudently, very generous with the time and everyone has been very patient with these many months of discussion; let people speak pretty much freely. He is very comfortable with the way the Board has preceded with public input.

Vote: all, motion carried, public session closed.

Mark Beliveau, Acting Chairman explained that you have an option to have the minutes done verbatim at expense of whoever requests them. They are done summary now. If no one requests them, they will be done the way they are usually done.

The Board discussed the next meeting date

Meeting adjourned at 10:20 PM.

MINUTES TRANSCRIBED BY:

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Caren Rossi, Secretary

MINUTES APPROVED BY:

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Mark Beliveau, Acting Chairman

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Lou Ann Griswold

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Ryan Crosbie

\_\_\_\_\_  
David Cedarholm, Selectmen Rep

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John LaCourse, Alternate

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Ed Bannister