

**MINUTES OF THE MEETING
LEE ZONING BOARD OF ADJUSTMENT
May 29, 2013**

MEMBERS PRESENT: Tobin Farwell, Acting Chairman; John A. Hutton, III; Philip Sanborn; Frank Reinhold, Alternate; and Peter Hoyt, Alternate.

OTHERS PRESENT: Caren Rossi, Planning/Zoning Admin; Allan Dennis, Building Inspector; Attorney Sharon Summers; Alan Jacobson; Peter MacDonald; Jane Crawford; Kevin Crawford; Bradley Giles; Judy Eitler; Nathaniel Meyer; Peter Meyer; Jeff Strong; Judy Strong; David Przybylski; Frank Eitler; Thomas Seubert; David Cedarholm; Stephen Osmond .

Tobin Farwell, Acting Chairman opened up the meeting at 7:03 pm and the board introduced themselves.

John Hutton clerked and read the notice and abutters into the record.

(Z1213-12)

The Town of Lee Zoning Board of Adjustment will conduct a public hearing on May 29, 2013 at a meeting beginning at 7:00 p.m. at the Public Safety Complex on 20 George Bennett Rd. The application is for the Veteran Resort-Chapel, Peter MacDonald applicant. The property is known as Lee Tax Map # 12-03-0300 and is located on 101 Stepping Stones Road. The applicant is requesting the following.

-An application for an Appeal to an Administrative Decision relating to Article IX, Minimum Building Standards, Section-E of the 2007 Town of Lee Building Regulations. The building permit application is currently denied due to noncompliance with RSA 676:13, section I and a recently drilled well, without obtaining a building permit. Said well appears to be in violation of Article IX, Minimum Building Standards, Section-E of the 2007 Town of Lee; Building Regulations. And in addition, this well was not installed per the approved Septic Design drawn by Atlantic Survey and as approved by Town of Lee (date stamped and reviewed November 20, 2012) and the State of N.H. DES, Subsurface Bureau dated 12/05/2013 with State approval # 201211178 and therefore violates current setbacks.

If the above request for an Appeal to an Administrative Decision is denied, the applicant is requesting the following:

-A Variance to Article IX, Minimum Building Standards, Section -E, Wells, to allow the well to be approximately 44+/- feet from an existing or proposed septic system leach bed where 125' is required. The variance request is to the 2007 Town of Lee Building Regulations.

-A Variance to Article IX, Minimum Building Standards, Section J, Septic Systems to allow for the use of compost toilets and not septic system/leach-field, where compost toilets are not allowed. The variance request is to the 2007 Town of Lee Building Regulations.

Tobin Farwell, Acting Chairman explained to the members of the board that he has stamped the applicant's septic design with his PE Stamp. He doesn't recall why he did this as it isn't required. He works with Adam Fogg, the designer, they are separate companies, and when needed, Mr. Fogg hires him to stamp drawings and vice-versa. He does not feel he has a conflict.

The other board members agreed and felt he should sit in on the hearing.

Tom Suebert spoke with concern as to why he stamped the plan and didn't remember doing it?

Tobin Farwell, Acting Chairman explained that he remembers going to Mr. Fogg's office where he had left plans to be stamped and he stamped them. This stamp isn't required in Lee, but it is required in other towns. He has a working relationship with Mr. Fogg, not Mr. MacDonald; he does not know the applicant.

The board agreed that Tobin Farwell should proceed.

Peter MacDonald stated for the record that he has no issues with Mr. Farwell sitting in on the hearing.

Peter MacDonald read his presentation into the record. (In file) He also stated that he would like a copy of the recordings from this meeting.

Allan Dennis, Building Inspector explained his reasons for denying the requested building permit. He first explained that he disagrees with several items Mr. MacDonald stated in his presentation. We are here only tonight to address the well's location. Not the fines, not the driveway, not the use, just the well and how it pertains to the denial of the building permit. He presented the approved septic design and outlined where the proposed approved well location was supposed to be and the estimated location it was. He further explained that he had asked Mr. MacDonald shortly after the well was drilled to contact a licensed surveyor or equivalent and get an exact distance of the well to the proposed septic. This has never been completed. He then explained that N.H. RSA 676:13 defines that he cannot issue a building permit as the application does not meet zoning. (RSA in file) He then read the RSA as follows. **676:13 Building Permits Restricted.** – *I. The building inspector shall not issue any building or occupancy permit for any proposed construction, remodeling, or maintenance which will not comply with any or all zoning ordinances, building codes, or planning board regulations which are in effect.*

Mr. Dennis then continued to cite applicable portions of state and local codes explaining why the permit was denied. They are as follows:

- RSA 155A:1: RSA 485-A:33 & 485-A; 30-b (In file) Outlines the requirement that you must have a septic system on site.

- International Residential Code (IRC)- Definition of a Dwelling Unit; Sanitation -R306-R306.1 Toilet Facilities & R306.3 Sewage disposal (In file) Outlining that you must have a sanitary drainage system.
- International Plumbing Code (IPC)-General 301 – 301.3; Water Required 602 (In file) Explains that all plumbing fixtures shall be connected to a sanitary drainage system.
- General 801- 801.1 Scope (In file) Explains that every structure shall be provided with a potable water system.

Mr. Dennis also read for the record an email he had sent to Attorney Somers recapping the meeting that he, Caren Rossi and Jay Baas, the local state septic/water/subsurface inspector, had regarding this issue. This email concurs with the codes. (In file) He also informed the board the State setback is 75' from the well to septic. This setback does not meet the State's requirements either.

Mr. Dennis then proceeded to cite the location regulations supporting his denial. They are as follows:

- 2008 Lee Building Regulations- Lot of Record Definition (In file)
- 2008 Lee Building Regulations- Application Process (In file)
- 2008 Lee Building Regulations- Wells (In file)
- 200 Lee Building Regulations- J. Septic Systems (In file)
- 2013 Lee Zoning Regulations- Article II, Lot of Record Definition (In file)
- 2013 Lee Zoning Regulations- Residential Zone, Article V, -4 Lot of Record (In file)

Tobin Farwell, Acting Chairman, asked Mr. MacDonald what the intent of the well was.

Peter MacDonald replied that it was a drilled well; a guy showed up and said he could do it for him for a really good price. His intentions are to use it for a hydro-heating system and to go down and see how deep the ledge was.

Tobin Farwell, Acting Chairman, asked if he was using it for a water source.

Peter MacDonald replied not at this time, heat source only. He continued to state that it is in compliance with the State's regulation because under RLUIPA he can use compost toilets. So there won't be a septic system on the property. He plans on drilling a well up further, when the time comes, this will be legal.

Frank Reinhold read an excerpt from Mr. MacDonald's application. *"I am asking the ZBA to grant a building permit for the tiny home and two mediation shacks with full bathrooms using compost toilets, as our religious beliefs require. To also approve the drilled hole in the ground as a well for a source of water, possible heat source and ledge depth measurement"* (In file)

Peter MacDonald stated at this time he has no intentions of using it as a well.

Tobin Farwell, Acting Chairman, commented that it doesn't meet regulations; it should be put in the correct spot.

Tobin Farwell, Acting Chairman, commented that if you have a kitchen or a shower in the buildings, a septic system needs to be built. He asked Allan Dennis, Building Inspector, if the State looked at black water and grey water differently?

Allan Dennis, Building Inspector replied that they take all into account, based on the usage of the lot. The State's regulations are that even irrigation wells must be 75' from the septic. The Town has the right to be more restrictive than the State, and they are, by 50'. Jay Baas, the state inspector, also explained to Mr. Dennis that if the well was used for irrigation, it also is not allowed in the 75' setback under the State rules.

Tobin Farwell, Acting Chairman, asked Mr. MacDonald what his intentions were for the grey water.

Peter MacDonald replied that the septic will not be built; under State regulations grey water can go into a dry well. They are allowed as long as no black water (toilet water) goes in.

Tobin Farwell, Acting Chairman, asked Mr. MacDonald if he had this information in writing.

Peter MacDonald replied that he wasn't sure if he brought it with him.

John Hutton asked Allan Dennis, Building Inspector, if the 44' setback would meet State standards?

Allan Dennis, Building Inspector, replied no, the State setback is 75'.

Frank Reinhold asked if there was any more information on the compost toilets or outhouses.

Allan Dennis, Building Inspector, explained that no, the State does actually allow them as long as you don't have pressurized water on site. Once you have pressurized water on site, they are not allowed. We don't have any experience in Lee with compost toilets.

Frank Reinhold asked if there was a system to collect rain water for the sink and had an outhouse, does this meet State standards?

Tobin Farwell, Acting Chairman, commented that in order to pull a building permit, you need to have well and septic.

Peter MacDonald replied that under law with RLUIPA, he doesn't need a septic system. He plans on using compost toilets; this is the law that regulates N.H. Not only N.H. Supreme Court, it's also the U.S. Supreme Court.

Tobin Farwell, Acting Chairman, asked if you wake up and wash your hands, where does the water go?

Peter MacDonald stated that he doesn't have a problem with drilling a new well, he is going to do that, but he is using compost toilets and a dry well for the grey water under RLUIPA.

Tobin Farwell, Acting Chairman, then asks then why you don't. That is what this whole argument is about?

Peter MacDonald replied he is, but he is going to have compost toilets. Where the leach field was designed to go, will be a dry well. It will be grey water only; no black water will be going to it. The building inspector is telling me we can't use compost toilets. Under RLUIPA, in the Supreme Court decision.

Tobin Farwell, Acting Chairman, stated that they are not discriminating; every lot gets a well and septic.

Frank Reinhold stated that we would not be here if the well was in the correct spot. He asked Mr. MacDonald if he agreed with this statement.

Peter MacDonald stated no, because if he was going to have compost toilets, Allan Dennis told him he had to come here.

Allan Dennis, Building Inspector, replied because the compost toilets are not allowed. He stated he couldn't find anything in the regulations addressing compost toilets at all. He read the State requirements for a septic. 1022:02. (In file)

Tobin Farwell, Acting Chairman, opened up the floor to public comment.

Steve Osmond, American Legion, spoke that he understands that the well is for radiant heat/test well and the use of compost toilets are not allowed. He commented that it is a good cause and hopes everyone can work together.

Allan Jacobson spoke about concerns with a hydro heat system being approved tonight.

Tobin Farwell, Acting Chairman, stated that isn't what's happening, that would be approved after submitted plans etc. to the building inspector. This is about the well.

Kevin Crawford asked how deep the well was.

Peter MacDonald replied roughly 400' deep.

Kevin Crawford commented that earlier he stated he hit ledge at 44'; why did he keep going to 400'? There was no need to go past the ledge at 44' if it was a test well. Once you hit ledge, it doesn't go away.

Tom Suebert stated that he feels the ordinance is clear, no connection with grey water, he doesn't understand. There are different variations of the project; he doesn't understand what is going on. The variations of what is going on, is incredible.

Frank Eitler thanked the board and stated he felt Allan Dennis did a great job explaining the nuts and bolts, nothing novel, all basic stuff to get a permit.

Brad Giles asked how many people this establishment will hold.

Tobin Farwell stated that issue hasn't come up yet, it doesn't matter, once you have one person the rules apply.

Floor closed to public comment unless a question was asked by a board member.

Tobin Farwell, Acting Chairman, stated he feels that Allan Dennis, Building Inspector, outlined the process very well. He has stated that he will move the well, and then he will be all set.

The board discussed if they should withdraw the application or continue it?

John Hutton commented that he feels it's pretty cut and dry. He created his own problem; it is a clear State and Town law. Usually, we deal with issues that were created years ago, people were not sure of their lot-lines, then people resurvey and find out there is problems. This is a brand new lot, clean slate. If he wants to come back with another plan, do the well, it does solve the problem.

Philip Sanborn commented that the location was on the approved plan, which would have met the minimum building requirement to give him a building permit.

Tobin Farwell, Acting Chairman, asked Attorney Somers what the procedure was for this. Typically they have forms and findings of fact.

Attorney Somers explained the process as an up or down vote. It would require a 3 person vote to overturn the decision of the building inspector. You can note for the record that he is interested in pursuing hydro system for the well and that you explained he would still need to get the necessary review to even to do that.

John Hutton made a motion to uphold the Administrator's Decision relating to Article IX, Minimum Building Standards, Section-E of the 2007 Town of Lee Building Regulations. The building permit application is currently denied due to noncompliance with RSA 676:13, section I and a recently drilled well, without obtaining a building permit. Said well appears to be in violation of Article IX, Minimum Building Standards, Section-E of the 2007 Town of Lee; Building Regulations. And in addition, this well was not installed per the approved Septic Design drawn by Atlantic Survey and as approved by Town of Lee (date stamped and reviewed November 20, 2012) and the State of N.H. DES, Subsurface Bureau dated 12/05/2013 with State approval # 201211178 and therefore violates current setbacks.

Philip Sanborn second.

Vote: Majority, motion carries, Administrator's Decision upheld.

If the above request for an Appeal to an Administrative Decision is denied, the applicant is requesting the following:

-A Variance to Article IX, Minimum Building Standards, Section -E, Wells, to allow the well to be approximately 44+/- feet from an existing or proposed septic system leach bed where 125' is required. The variance request is to the 2007 Town of Lee Building Regulations.

John Hutton stated this is where he feels this applicant can withdraw, do his well and a lot of his problems will go away.

Tobin Farwell, Acting Chairman, asked if he wished to table the request.

Peter MacDonald replied that he will move the well but he will not be putting in a leach field on the property. He will put it in writing. Allan Dennis quoted laws. The law has changed, and he will be using a drywell. There will be no leach field on the property.

Attorney Somers commented that based on the applicant, he said he'll move the well. Let's table the well request, move forward to the date certain, revisit it if it is necessary, then the only matter would be the compost toilets.

Allan Dennis stated that he wants it to be clear to everyone, that he will not issue a building permit until he gets a completed application with all the facts as to what this property is going to be used for, he will not get a permit until a proper completed application has been received. This does not just mean moving the well.

Tom Seubert and Tobin Farwell, Acting Chairman, discussed the leach field and drywell requirements for the State. Tobin Farwell explained that he has not applied for a leach field variance. They need to deal with the request only.

Allan Dennis stated further, if he moves the well, he will need to properly discontinue the existing well, and it must be to the State's requirements.

Frank Reinhold commented on the order of the requests. He spoke with concern if the well request is continued; he doesn't want it to appear to the applicant that they will grant the second request. He doesn't want to encourage the applicant.

Attorney Somers suggested that they table the well request and hear the compost toilet request first; testimony has not been presented for the compost toilet request.

Frank Reinhold made a motion to hear the variance request out of order. Starting with the request for A Variance to Article IX, Minimum Building Standards, Section J, Septic Systems to allow for the use of compost toilets and not septic system/leach-field, where compost toilets are not allowed. Followed by A Variance to Article IX, Minimum Building Standards, Section -E, Wells, to allow the well to be approximately 44+/- feet from an existing or proposed septic system leach bed where 125' is required.

John Hutton second.

Vote: Majority, motion carried.

-A Variance to Article IX, Minimum Building Standards, Section J, Septic Systems to allow for the use of compost toilets and not septic system/leach-field, where compost toilets are not allowed.

Attorney Somers stated that the board should ask the applicant to address the variance criteria for the record.

Peter MacDonald stated that the rules have changed; you no longer need the 5 criteria for a variance. Under RLUIPA, you need to show compelling reasons why he can't do it; that is the law now. He thinks he was quite clear for the record what RLUIPA was for. RLUIPA was created for zoning boards putting arbitrary decision making ahead of the rights of the citizens to worship freely on their own land. Must have a complete reason not to let them do it. Unless you can state a compelling reason why he can't have compost toilets, the courts have already ruled that the ordinance is arbitrary and can't be used.

Attorney Somers clarified to the board that one thing that the board may wish to do, the provisions that RLUIPA that Mr. MacDonald refers to, he may be stating them correctly, he may not. She thinks it's a threshold matter that with those provisions, there needs to be a determination, presumably by a court of law that the particular statute applies. She doesn't think that as a board you can simply make that presumption here tonight. You should invite Mr. MacDonald, simply for the sake of argument, to assume like RLUIPA perhaps doesn't apply and he should present something to the board in the way of the five variance criteria.

Tobin Farwell, Acting Chairman, asked Mr. MacDonald if he heard that.

Peter MacDonald replied he did. He disagrees with her, but he will make a presentation for the record. He doesn't have the 5 criteria on the top of his head.

The board provided this to him.

Peter MacDonald addressed the variance criteria as follows:

Not be contrary to the public interest because compost toilets are better for the environment, than putting black water into the ground. With compost toilets, you don't have all the bacteria that you do with the black water. It is in the public interest to have compost toilets. For you to enforce this ordinance, it is arbitrary. He has already shown the board it helps the environment to use compost toilets. Because of the wetlands ordinance in Lee, wetlands is a major part of this property, even though it's not all wetlands, but with the setbacks and everything it encompasses a lot of square footage of the property. To enforce this arbitrary thing, that the fact that you are going to need a regular flush toilet is just wrong and unnecessary. A special condition does exist on this property that doesn't require them to put in a regular septic system.

Special conditions exist on the property because of the zoning; a lot of the property is wet. Also his religious belief is to not have a septic on the property. The restrictions that the Town wants to impose have absolutely no merits to impose them (Are there words missing?). There is no gain to public health or safety to allow compost toilets to be used on this property. He is talking about trying to put up, as low cost as possible, decent places for homeless veterans to come and get help. These veterans' physical disabilities range from many to minimum. To give these homeless veterans someplace to come back to after combat, is a unique condition that this property is ideally suited for. It's 11 acres where they can wander around the property and not be hounded by comments from people who never served. Even though they are meant as innocent things, they still do mental harm to these veterans that come back from combat. Being called baby killer, or any other thing. They all have an effect on people. Especially a combat veteran with PTSD or TBI or any other disability. The uniqueness is it's close to a lot of places, if these veterans want to walk out and get a job and try to come back into society and re-enter, they can. If they want to stay in solitude on the property and wander around, they can. It is a unique piece of property that is ideally suited for this.

It is consistent with the ordinance because the spirit and intent of the ordinance tells us that we should help disabled veterans. No one should disagree with him on this. We should do everything possible to help our veterans. When people take their own money and have no intent for profit, he thinks the Town should want to work with them and try to help them do it. They are not asking for Town money, it's their own. He believes vets are worth it, he's one.

Justice will be done; you can't say that helping veterans can't be looked at as a just thing to do. He has not asked for anything that is not allowed by law. He made a mistake. He put the well in the wrong spot, and said he would move it to the right spot. As far as applying for a building permit, that is a standard thing, meeting the criteria for this will be no problem. There will be no well on the property according to what the law allows him. The administrative decision should have been overturned but it wasn't. We're not talking about this now, but justice would be done by granting this.

No diminished value to surrounding properties, as the property is 11 acres. Want to put up tiny buildings to help veterans, not a lot, just a few. There are 635 registered homeless veterans in the State now; this is only the registered ones. If he can help one or two veterans try to come home mentally and physically with 11 acres of land; with his own money. He thinks that is the proper thing for this Town to do to work with him and his wife to try to do this. He hopes he met the 5 criteria.

Tobin Farwell, Acting Chairman, asked that Allan Dennis the Building Inspector read the Building Regulations again. (In file)

Tobin Farwell asked if there was a specific spot that said compost toilets are not allowed?

Allan Dennis, Building Inspector, then replies that it is a permitted use ordinance. If it doesn't say you can do it; you can't, no different than zoning. This ordinance doesn't allow for alternative technology. Maybe we should, maybe we shouldn't. That isn't a discussion for tonight. The folks voted on this ordinance for this Town.

Tobin Farwell, Acting Chairman, and Allan Dennis discussed their interpretations of the ordinance.

Allan Dennis explained that the Town does not recognize alternative systems. The State does, but they don't recognize compost toilets. Compost toilets are not listed under the State's rules as an alternative system.

Allan Dennis and Tobin Farwell then discussed the State's regulations on septic design criteria. Allan Dennis explained that you have to design one of the 3 types of systems, and compost toilets are not on the list.

Attorney Somers reminds the board that Jay Baas from N.H. DES stated that if you have a pressurized water system, this is a triggering event; you have to have a septic system.

Tobin Farwell, Acting Chairman, opened up the floor to public comment.

Kevin Crawford, he has an approved septic system, correct?

Tobin Farwell, Acting Chairman, yes.

Kevin Crawford, we have a drilled well on that property right now?

Tobin Farwell, Acting Chairman, explained it's a hole in the ground that is not connected to a water supply system. That is what it is.

Kevin Crawford states he can't see, even going forward, if he doesn't want to use this, this is fine, but it needs to be sealed and closed. If you let him drill another well, who is to say that he isn't going to drop the pump in the first one? You are going to end up having 2 wells on this property, one of which the State will not accept. That first well has to be dealt with no matter what. He understands the compost thing. He doesn't know much about septic designs. If a system is designed for a 2- bedroom home, can John Doe, all of a sudden decide he isn't going to use it? If he's going to make it a grey water system, is this legal?

Tobin Farwell, Acting Chairman, stated if you are using the septic design of the leach field as its design, yes you can.

Kevin Crawford asked for only grey water?

Tobin Farwell, Acting Chairman, replied, yes.

Kevin Crawford asked, "is this because it is designed to accept both black and grey water?"

Tobin Farwell, Acting Chairman, replied "yes."

Kevin Crawford asked, "so he could use that system for grey only?"

Tobin Farwell, Acting Chairman, replied, “yes, that’s true.”

Kevin Crawford, “Is the compost toilet a system that needs to be designed like the septic system?”

Tobin Farwell, Acting Chairman, replied “they don’t know. That is what they are debating now.”

Kevin Crawford asked if this is something that needs to be designed.

Tobin Farwell, Acting Chairman stated he thinks so, but he doesn’t know for sure.

Tom Seubert asked if anyone has gone online to read about compost toilets, that require a certain amount of maintenance. If they are not run correctly, they can be very dangerous. Also there is leaching that comes off of them. He has read various things about them. The board needs to understand fully what they are all about. You need to dispose of this waste. There are procedures to get rid of the waste. Is it going to be stored on the 11 acres? There are wetlands on site; it can’t be stored in the wetlands. There is only about 1 acre that isn’t wet. Yet, he wants to have homeless vets walking on the trails, wandering around, if this isn’t maintained properly, they could get sick, they come home and get sick. We should all read and understand fully what they are all about. Who is going to maintain these, where is the stuff going to go? This all needs to be considered. Make sure you know what is involved. There are many manufacturers of these.

Frank Eitler stated that Mr. MacDonald has wide range contentions; he is having problems connecting the dots. Why did he pay for a design if he wasn’t going to use it? Was the plan from the get-go to use compost toilets? Is his assumption right that the driver for the compost toilet is a religious belief?

Peter MacDonald replied that it is his religious belief to use compost toilets.

Frank Eitler asked where the grey water would go? Would it be going into a sealed tank or a drywell. As we all know, drywells leach into the ground. There will be waste water in the ground on one end, but it is against one’s religious beliefs. Solids don’t go into the ground anyhow. The grey water goes into the leach field. Something doesn’t ring true.

Peter MacDonald replied the black water comes out of the toilet. Grey water does not have any human waste in it. He is not going to put black water into a dry well; he will put the grey water in it.

Steve Osmond, VFW, spoke in favor of the application, good cause to help homeless vets.

Jane Crawford asked where the burden of proof was for his religious background.

Frank Reinhold explained that is beyond the scope of this board.

Jane Crawford stated that we are talking a lot about religious practices, so she thought it was appropriate.

Tobin Farwell, Acting Chairman, explained that he understands why she thinks that but the board is taking that we are not certain how much RLUIPA plays a part of this process, so for the sake of argument, we are ignoring that.

Floor closed to public comment.

Frank Reinhold stated that Tobin made a comment about RLUIPA. We haven't had the privilege of having an attorney here for a long time; is there anything to be added to that statement? He has never ever heard it before now. Is this something they should consider in their deliberations?

Attorney Somers stated it is difficult to explain in 25 words or less. The only comment she would make is they should address the variance in good faith as any other applicant. Analyze the variance criteria for this as you would any other applicant. She would simply reiterate the comments she made earlier which is that in order for RLUIPA to have relevance to this discussion or any land use discussion, there needs to be a determination, a question of law, as to whether the provisions even apply, you have to have a religious institution, a religious exercise, various other questions of law, she thinks this is something a court would decide, not necessary you folks. Her recommendation at this point is that this is up to the applicant to demonstrate and your course of action should simply be to exercise; to operate in good faith; and do the variance analysis.

John Hutton stated so we treat this the same as any other application, the concerns to any hardships the applicants may feel they have or have not, and also the same concerns with the abutters and the other residents of the town of Lee.

Attorney Somers added that again, her comments are made with regards to the application that is in front of you right now, her advice might be different if some future set of facts might apply.

Tobin Farwell commented that he thought a good comment come up from an abutter as to what he was going to do with the compost toilet material? Will it be stored on site? He wants to ask the applicant.

Frank Reinhold replied that he has to comply with the law.

Tobin Farwell replied that he sees this as a health issue if this is the case. Is there a hazard here? What's his intention?

Frank Reinhold states that he doesn't disagree, but it isn't an action for this board. It is for the code enforcement and zoning people.

Tobin Farwell explained it helps with his decision, is there a hazard?

Frank Reinhold stated he would hate to be in the position to disapprove something because you might do something bad with the waste. It's not that he isn't concerned about it; he just doesn't think it's in their jurisdiction.

Tobin Farwell feels the spirit of the ordinance is to properly treat human waste. He is unclear if a compost toilet will do that.

Frank Reinhold stated that there has been no evidence to support the approach the applicant is trying to provide us. If it was evident that a certain, specific compost toilet was in fact a perfect system and worked; and the technology was and we had a way to remove grey water and achieved the goal, that would be great. He has no evidence in front of him that says anything like that. Because he has no evidence to say; the applicant hasn't provided anything but RLUIPA, that he isn't addressing. He feels compelled to comply what he is interpreting in his mind are the State and Town regulations that says this isn't a system that works.

Tobin Farwell, Acting Chairman, stated the burden of proof is on the applicant.

The Board agreed.

John Hutton commented there seems to be more regulations on his manure disposal than compost toilets.

Philip Sanborn stated that this property has the ability to comply with the regulations; it has an approved septic and a well that meets the criteria. Your lot, my lot, they meet the criteria. We are being less than equal. It has the ability to have the septic and well in the right place.

John Hutton commented that it was left 11- acres for a reason.

Peter Hoyt feels that it can't be approved due to the Town and State regulations.

Frank Reinhold stated that to be fair, this lot can comply, and if it can comply, it should comply.

The Board determined the following Findings of Fact.

PRELIMINARY FINDING

After reviewing the Petition and having heard the presentation by the applicant, it is found that the Board **has (majority)** sufficient information available upon which to render a decision. If there is sufficient information, the application will be deemed accepted and the public hearing will continue. If it is found that the Board does not have sufficient information, the public hearing will be postponed to a date certain on _____.

FINDINGS AND RULINGS

After reviewing the Petition, hearing all of the evidence, and by taking into consideration the personal knowledge of the property in question, the Board of Adjustment for the Town of Lee has determined the following findings of fact:

- 1) The variance **will (majority)** be contrary to the public interest because: it does have viable means to use the property, has an approved septic system, if uses it the problem will go away.
- 2) Special conditions **do not (majority)** exist such that the literal enforcement of the ordinance results in unnecessary hardship. In deciding this criteria, you must decide whether: (Were any findings made about special conditions/hardship?)
- 3) The variance **is not (majority)** consistent with the spirit of the ordinance because: compliance can be achieved.
- 4) By granting the variance, substantial justice **will not (majority)** be done because: no backup, has an alternative use, just doesn't want to use it.
- 5) The value of surrounding properties **will (majority)** be diminished because: don't know anything about compost toilets and don't have any information on them.

John Hutton made a motion to deny the request for a Variance to Article IX, Minimum Building Standards, Section J, Septic Systems to allow for the use of compost toilets and not septic system/leach-field, where compost toilets are not allowed.

Philip Sanborn second.

Vote: Majority

Peter MacDonald wanted to make sure the compelling reasons for the denial are stated.

Tobin Farwell, Acting Chairman, explained that they are in the Findings of Facts.

John Hutton made a motion to table the request for a Variance to Article IX, Minimum Building Standards, Section -E, Wells, to allow the well to be approximately 44+/- feet from an existing or proposed septic system leach bed where 125' is required. The variance request is to the 2007 Town of Lee Building Regulations to June 26th, 2013 at 7:00p.m.

Philip Sanborn second.

Vote: all

Tobin Farwell, Acting Chairman explained the 30-day appeal process to the applicant.

MINUTES TRANSCRIBED BY:

Caren Rossi, Planning & Zoning Administrator

MINUTES APPROVED BY:

Tobin Farwell, Acting Chairman

Philip Sanborn

John A. Hutton, III

Frank Reinhold, Alternate

Peter Hoyt, Alternate