

**MINUTES OF THE MEETING
PLANNING BOARD
August 21, 2014
7:00 PM**

MEMBERS PRESENT: Robert Smith, Chairman; Ryan Crosbie; Mark Beliveau; Lou Ann Griswold; David Cedarholm, Selectmen's Rep.; John LaCourse, Alternate

OTHERS PRESENT: Robin Wunderlich; Judy Eitler; Eric Reuter; Tom Ballestero; Jocelyn Hawe Bill Hawe; Rich Sorensen; Frank Eitler; Chris Wyskiel, Wyskiel, Boc & Tillinghast; Elaine McLean; Tom Hildreth, McLane Law Firm; Andrew Ward; Bruno Posset; Michael Sievert, MJS Engineering; Dan Bourdeau, Geosyntec; Jean Benoit; Molly Darling; Ben Heiderscheidt; Chris Moss; Karen Immel; Sharon Cuddy Somers, DTC Lawyers; & Caren Rossi, Planning & Zoning Admin.

Robert Smith, Chairman opened up the meeting at 7:00 PM.

- **Review and Approval of Draft 08/13/2014 Meeting Minutes**

David Cedarholm made a motion to approve the minutes as amended.
Ryan Crosbie second.
Vote: all, minutes approved

- **Report of officers and committees**

Robert Smith announced that the subcommittee for the master plan is underway.

- **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.

Chris Wyskiel, Wyskiel, Boc & Tillinghast stated there are changes to be presented. (In file) The applicant has agreed to the extensions of the hearing, today is day 120 of the applications acceptance. They intend to give a general rebuttal of the comments. They have a package of information for the Board as well as the updated plans. They have prepared a summary quest to help in the deliberations. They are in hopes for the Board to begin their deliberations tonight. The property owner made a verbal plea on July 23, asking the Board to please make a decision. A lot of the comments have been repetitive in nature, they are prepared tonight to get on with it and close the public hearing session tonight. Then choose

a date certain to deliberate. The plans have been updated largely in response to the pier review comments. Civil Consultants and Geosyntec. He explained that Mike, Molly, and Robin will also speak and address concerns as well. He understands that the 3rd party review on the traffic isn't back yet, but they don't feel the public comment section should remain open until then.

Mark Beliveau stated that he supports the efforts to get this moving along. He suggests we hear from the applicant tonight, have everything presented and then determine what is new etc. and what opportunities should be given to others at this point.

Lou Ann Griswold commented that she appreciates the desire to bring it to a close but she feels it is important to give everyone an opportunity to speak.

Mike Sievert presented the revised plan and explains that they address the engineering review from Civil Consultants, and not from Geosyntec as this review was just received yesterday. He read the letter (in file) to the Board addressing Civil Consultants concerns. This letter has been submitted to Civil Consultants along with the revised plans. He continued to say he has just received the Geosyntec review and he along with Tom Ballestero has reviewed it. They have not made the changes on the plan but they will address them and update the plans as necessary. Then he read a letter (in file) that addressed these concerns. He will update the plan and make the recommended suggestions. He asked about the email that was in addition to the review letter.

Dan Bourdeau, Geosyntec stated that the memorandum and the emails purpose is to help the applicant with considerations that may make the system more functional. Just to highlight the key finding of the review for the storm water system basically the storm water designed is very robust and when adequately installed and maintained, there should not be any issues.

Mike Sievert stated that he won't go thru the comments, but they don't disagree with them and will address them.

Mark Beliveau asked precisely what this means?

Mike Sievert stated he will amend the plans addressing these concerns and then he will get it back to them for review and final comment/signoff.

Mike Sievert asked about the parking waiver. If the waiver isn't granted, the parking spaces shown need to get one foot wider and he will need to make this change.

Robert Smith, Chairman stated he isn't going to deal with the waiver until we get further along.

Molly Darling & Robin Wunderlich read into the record responses to things that have been said at previous meetings mostly by the abutters. Nothing in this book is new. It is all rebuttals. They broke it down into sections.

Mark Beliveau asked a question about the parking. The photo presented from the winter showing cars parking in the street. From his point of view this is a problem regardless of the use. How will your business going there bring in more cars and people, how will this be addressed?

Molly Darling explained that Paul used to let people park on the old green house area. Paul let the marine docents' park there, there weren't any issues then. When Colleen took over, she was advised that if she allowed people to park there, she would be able put a building back. She also doesn't plow this area or plow the back area very well either. In the winter the parking gets constricted. The new kennel area will only be in part of this area the rest will be parking.

Mike Sievert currently there are 21 existing parking spaces and they are proposing 53 spaces. See sheet C-1.

Molly Darling explained that recently the parking lot has been relined and given parking passes. Another option would be to reduce the size of the docent program. The proposed parking is sufficient for the current program.

Mark Beliveau asked how long the term of the UNH lease is.

Molly Darling replied that it is another couple of years. If they purchase the property, they have the option to renegotiate the lease.

David Cedarholm asked if they can't get the waivers, what other options they have considered.

Robin Wunderlich stated that they would work with UNH on the class size that would fit the parking.

David Cedarholm asked if they considered making more spaces.

Molly Darling stated that they have but they are trying to keep as much buffer as they can to work with the abutters issues.

Robert Smith, Chairman asked how they know they leave when class is over?

Molly Darling stated that they have met with them and discussed what would work as parking has been an issue with the docents too.

Ryan Crosbie asked how many spaces the ordinance says they need? Why 53?

Robin Wunderlich explained because of the class.

Ryan Crosbie asked what if you don't get the waiver, what about the reduction in spaces?

Mike Sievert stated that he wasn't planning on losing any spaces; he would expand the parking out.

Robin Wunderlich read the waste section into the record. (In file)

Mark Beliveau asked where the signature was for Dr. Salkovitz letter.

Molly Darling stated that they will get a signed copy.

Robert Smith, Chairman asked the point of the manure pile etc.

Robin Wunderlich explained it was to point out all of the contributors to the brook and groundwater. Monitoring isn't fruitful because you don't have 5 years of data preexisting road runoff etc. Water comes on to the property from offsite. Any septic systems upgrade plus there is a septic system upstream. If you monitor, you won't get an accurate sample.

Robert Smith, Chairman stated that that if most solid waste is being bagged and hauled off, the only thing you would be monitoring is the urine.

Tom Ballestero replied yes, and not all solid waste is bagged, some might get missed.

Robin Wunderlich explained that the studies that Allyson Powers refers to, is with no mitigation at all. Just a flat, non-mitigated site.

Robert Smith, Chairman explained that what concerns him is that the Town has worked really hard to protect the brook. Any additional contributions to it seem to him, to be wrong, if anything we should be making sure things are not going into it.

Robin Wunderlich & Molly Darling explained that they are just pointing out what is contributing, they are not contributing.

Robert Smith, Chairman commented that what he is trying to say is you're a source that isn't currently happening and we should not have any. This is his concern. Not the volume, the direction.

Mark Beliveau asked how far away the brook is? It isn't shown on any plans.

Molly Darling replied about 2,500 feet. They have it on a plan used in one of their original presentations and they will submit it. They are very far away and their purpose to keeping the woods the best they can is to help with this. The Barking Dog & the Yellow Dog are in wetlands. The Lee Dog Park is near wetlands. There have not been any concerns with any of these locations.

Attorney Wyskiel stated that the Chairman's point is admirable, the standard isn't to accept or deny on this. This lot could have 3 houses put in and you would have no control over this. The neighbor next door is a bigger contributing source than this is.

Robert Smith, Chairman stated all he is saying it is the wrong direction. We can't talk about the houses or Coyote Springs as they are not before the Board. We can only talk about what is before the Board.

Molly Darling continued with Traffic Issues. (In file)

No questions on traffic.

Molly Darling continued with the Noise Issues (In file)

Lou Ann Griswold asked how the noise from the paint ball will affect this.

Molly Darling stated that in speaking with the paint ball people, their hours won't overlap. They will have plenty of inside space if need be as well as the paintball balls are poisonous to dogs so they want to avoid this.

Eric Reuter stated that based on the study, using Chris data and my data, this is a daytime issue, there will not be any issues from this facility outside of business hours Monday thru Friday.

Robin Wunderlich if the dogs were barking all the time, as indicated in Lisa Kane's presentation, when dogs play as well as Craig Williams stated it in the ZBA meeting on July 31st. When dogs are engaged in play, they are not barking. It's the dogs that are left at home that are barking. When you observe other daycares and the pack walks, they don't bark. Happy dogs don't sit around and bark.

John LaCourse asked, from the procedures manual, what you consider a chronic barker.

Molly Darling explained that that is a dog that barks constantly. Barks when it plays etc. They recognize they are in the residential neighborhood and care about sound; the employees care about sound and the neighbors too.

John LaCourse asked who determines a sick dog.

Molly Darling explained it is in there and their staff is trained to this.

Robin Wunderlich explained that in the manual it explains the pre-screening process.

Ryan Crosbie asked what will happen on the weekend.

Molly Darling explained there will be no use of the outside area. They will be leash walked or in the indoor area. One person, per dog.

Robert Smith, Chairman asked what the maximum number on the kennels.

Robin Wunderlich answered that we have 41 kennels; it could be 14 more than 41 if it was at its maximum, sold out, and the large kennels all contained 2 dogs that were smaller in size. This is the boarding facility. Cats will not be outside. The daycare is the 70.

Robert Smith announced that at 10PM he will call the meeting.

Robin Wunderlich read a summary into the record. (In file) He submitted a copy of the 7/31/14 ZBA minutes for the Board. He also submitted a binder of all of their submittals to the Board. (In file)

Dan Bourdeau, Geosyntec clarified that the memorandum submitted is what they would be looking for responses too and the email submission these are for consideration by the applicant, no response is needed.

Robert Smith, Chairman opened up the floor for public comment.

Tom Hildreth, McLane Law Firm posed several questions. He first objected to the closing of the public hearing tonight. They are just getting material tonight and want a chance to look at it. In addition there are outstanding third party reviews. Traffic and environment. All parties should have a chance to speak to these reviews. There is a lot of information to review. Someone needs to go thru the record to see if there are things that still need to be addressed. As an example very early on there was a letter from the Lee Police Chief and he had concerns with traffic and parking. They should now have a chance to look at all what is proposed now. Including the dog grooming etc. Lots of details learned along the way that may have an impact on those concerns. Minutes from the April meeting when Molly Darling and standards for daycares and kennels when asked by Robert Moynihan. She had said there were and she would submit them. He hasn't seen any. Likewise when Mr. Moynihan asked of the slope and the dog yard. Robin Wunderlich replied that they would put in a switch back trail and add this to the plan. He doesn't think this has been done. These are details and that is what the planning board's job is. These came to his mind when he reviewed the record. There was discussion of a berm on the Coyote Springs Farm property line side. At one point there was dispute on the noise consultant and the applicant suggested we will still have it. Where is this at? Similarly there was discussion as to have solid surfaces or solid liners along the outside play area as the best way to control the waste. Maybe the 3rd party reviewer will address this. The Fire Department has requested items that shouldn't be lost, it's a large record. He heard someone say tonight that the stone wall and landscaping are going to be moved back.

Molly Darling replied that it is shown on the plan.

Attorney Hildreth continued at some point, there was conversation of weekend classes. Where has this gone? Numbers, hours and so forth. He offered a personal antidote. He lives in Hollis, it's a small town like Lee, and he was a selectman in this town. They have a large number of horse farms. One of the persons who gave testimony road at a horse farm that was in Hollis next to a horse farm that had a neighbor with 3 German Sheppard's. This resulted in a lot of friction between the horse farm riders and the neighbors. Including noise

complaints. They also had a small kennel that wasn't approved, it was for 12 dogs, and this resulted in the selectmen having to give tax abatements with the neighbors until they were able to get the kennel out of the residential neighborhood. It only took a year. The BOS denied the abatements, but the residents took them to court and won. With the subject of noise, they were shown aerial photos with measurements of allegedly 3 comparable facilities and were told that there were no reports to the police of any problems with these facilities. Maybe there is some merit to this. He would submit that it is a very limited utility, not knowing how many dogs are allowed outside at any given time, what the ambient level is, it would also appear that none of the neighbors shown were talked too. Not every call that is made to the police or dispatch center gets logged in. There can be friction or a problem between neighbors that aren't necessary known or logged. He stated that if he were a board member he would be interested in how Great Bay Kennel compares to this operation, the design features that didn't employ that are the cause of their noise problems. These three operations aren't a problem but maybe there are other locations that are a problem. On the subject of noise, the "LRTN'S complaints of anticipated annoying noise is unfounded". There is ample concern for being concerned with the noise of an operation this size. In looking at the record, there are a lot of sources of information. Several in letters, and number in the own words that were well founded and heartfelt. We also have industry experts with people who have run dog facilities and people who also have both experience with dogs and horses and can speak with person experience that they don't mix. They have a valid foundation of their concerns, their own sound expert will be summarizing and updating on their findings. He is trying to understand how the rain garden will work, and wonders if there is no way to do some estimation of the volume of liquid that will make its way into the garden and how much will make its way out untreated? Is there any way to get a handle on this instead of wondering? He hopes that the 3rd party review will address this.

Mark Beliveau asked Attorney Hildreth to elaborate what he means by the 3rd party review yet to come.

Attorney Hildreth explained he was told there was a 3rd party review on the environmental issues that hasn't yet been received.

Mark Beliveau explained that has been received already.

Caren Rossi explained that she had sent it to his office already but will resend it.

He was given a copy of the report and he will review it and to see if it answers his questions.

Attorney Hildreth continued asking if the dumpster contains the dog waste removed from the site? There has been little discussion on snow removal. What's the depth to ground water and where does it flow? He felt that the application is well thought out, a lot of capable people working on the application, just not the appropriate schedule. He doesn't feel this is not a 3 lot subdivision, a duplex at best. Possibly phase the project? When the kennel moves out, move the kennel into that portion. This makes more sense than to add to this lot that is already over burden. He feels that there are sound issues that still need to be

addressed based on concerns. They are not unfounded concerns, they are real. It's going to be hard to dispute what they say.

Jean Bonoit asked how the consultants are selected by the Board. How was Geosyntec hired?

Robert Smith, Chairman stated that we work on recommendations mostly.

Caren Rossi explained that Geosyntec was not the only firm that was called; there were others that could not do it for various reasons.

Jean Bonoit stated that his concern was Rob Roseen from Geosyntec worked at UNH with Tom Ballestero he wanted to make sure there was no conflict.

Caren Rossi explained that we are aware of that.

Dan Bourdeau, Geosyntec explained that is why Rob did not take on the responsibility of the project. He and another gentleman, Brandon Stevenson did the work.

Robert Smith, Chairman explained that we asked for Rob originally, this came out and that is why he didn't do the work.

Bill Hawe, 150 Mast Rd wanted to pick up on sound issue. He feels that there has either been a lack of technical knowledge or presentation of topic x, when the real topic is topic y. The issue has always been the startle effect, the sudden onset of sound. If the dogs bark, all day long the police will probably shut the place down. Although there is testimony and the applicant's attorney even referred to it but if you can't prove which dog it is that barks for the half an hour. This has been to court in other jurisdictions as a defense. The startle effect has already been experienced with the paint ball. We have testimony from national experts saying this is true. Their point has always been the distance from the trail to the horses, not the distance to the apt. etc. They can't move the trail, it's their crop. The town runs a program to monitor the noise, just like the race way. Make a condition of approval of a year, if it works ok. People have their lives here, this isn't fun. Nobody is having fun. They are spending a lot of time, money and emotions. He doesn't like to be involved in conflict with the town and neighbors. This isn't fun. If you don't believe there experts, get others. He is hardened to see the progress on the waste management. The solids are now going to be removed, this is great. They have always said the startling is going to be the issue. That is also a reason people get upset, the startling. A lot of the neighbors want to know how many dogs will be on the 7 acres. Will the town impose a maximum and if so what will this number be? They are really concerned about safety. If there farm gets a reputation of being unsafe, they are out of business.

Robert Smith, Chairman closed the floor for public comment.

Robert Smith, Chairman asked the Board what the Board thinks of starting deliberations at the next meeting?

Caren Rossi stated she will get an updated letter from the new police chief.

Ryan Crosbie commented that he feels both parties will like to comment on the 3rd party review of the traffic study.

Lou Ann Griswold commented that she feels the applicant has had unlimited time, as they should have and would like the public to have ample time.

Robert Smith, Chairman explained that he will open it up at the next meeting; they just had the 10pm cut off for tonight.

David Cedarholm stated he agrees we should hold off until the traffic review is back. This is one of his big concerns. He feels comfortable with the rest of the information. He has enough information to start talking about it.

Mark Beliveau agrees and would like to consider some ground rules between now and the next meeting. As soon as the traffic report is done, Caren will circulate it to all who would like to see it. Mike Sievert is going to make some minor changes to the plan and at the new meeting we will not accept any technical information. If anything is changing it needs to be submitted a week to 10 days ahead of time. This will give everyone a chance to see anything that is generated after tonight. A lot of planning boards won't entertain anything that is presented at a meeting. At the next meeting we take the first hour, ½ hour to each side, and then that piece is closed and we move into deliberations. This will not be typical deliberations. So we must also decide how we work thru the evidence. He appreciates the summaries but he is not going to limit his review to just those. The record is too large to limit it to that.

John LaCourse in reviewing all the testimony and material. All material should be in ahead of time, report and reviews. He felt that all of the loose ends mentioned are probably in the record somewhere.

Robert Smith, Chairman has requested that Attorney Hildreth submit a letter with all outstanding items he comes across. He stated that it is also open to Attorney Wyskiel and his clients.

The Board discussed the next meeting date and it is September 18, 2014 at 7pm. Any items must be submitted to Caren no later than September 11, 2014. Any documentation that comes in after this will not be ignored, but it won't be used. One hour open public session, any repetitive comments will be cut, there has been an opportunity for all to be heard and now we are hearing repeat things. We will allow one hour for open public comment. Then we will start our deliberations

Attorney Somers stated that the Board should make sure this is ok with Attorney Wyskiel.

Attorney Wyskiel stated what is being proposed is in line with what they are trying to accomplish.

Robert Smith, Chairman reminded everyone that we have no control what happens on the state highway.

Frank Eitler read a blurb from the site review regulations that it is the Boards job to ensure the safe vehicular traffic in our town.

Robert Smith, Chairman stated he realizes this but he doesn't want people to think the Board can change the intersection.

Meeting adjourned at 10:20 PM.

MINUTES TRANSCRIBED BY:

Caren Rossi, Secretary

MINUTES APPROVED BY:

Robert Smith, Chairman

Lou Ann Griswold

Ryan Crosbie

Mark Beliveau

John LaCourse, Alternate

David Cedarholm, Selectmen Rep.