TOWN OF LYNDEBOROUGH
Zoning Board of Adjustment
May 22, 2018
Minutes

Approved on Aug. 7, 2018

7:05 p.m. Roll Call: Chairman Karen Grybko; Vice Chair Rick Roy; Tom Chrisenton; Lisa Post

Lyndeborough Town Administrator Russ Boland and Code Enforcement Officer Leo Trudeau

Public: Sharon Boisvert, Laurent (Larry) Boisvert, Attorney James Lombardi, Wally Holt, Julie Zebuhr, Emily Hartnett, Paul Turner and Dan Holt were some of the public present

Case 2018-2

Laurent Boisvert and Sharon Boisvert of 54 Johnson Corner Road, Map 237, Lot 13 and Map 237 Lot 14, applied for an Appeal of Administration Decision of the Code Enforcement Officer Ed Hunter's letter dated March 22, 2018. Business name is Portable Privies, Inc. and also D/B/A Feel Good Farm.

Attorney James Lombardi presented an additional document not included with the application titled, "Town of Milford Water Utilities Department Permit # S109".

Mr. Lombardi addressed the Zoning Board of Adjustment with opening remarks his clients are here on an appeal of the Code Enforcement Officer's decision which denied Larry Boisvert to operate a Home Business for portable toilets under Section 1200. Mr. Lombardi wanted to clarify his client also applied for a request for a variance in case the Board did not overturn the Code Enforcement Officer's decision. If this is heard it will be Case 2018-3.

History per Mr. Lombardi: The Portable Privies, Inc. business was subject of a lawsuit over 10-years ago. The business was served a cease and desist order to remove the portable toilet from the property and as a result they were stored at Boston Sand & Gravel in Milford. In 2005, a Superior Court case ruled that Mr. Boisvert's business Portable Privies, LLC was not a grandfathered business and Mr. Boisvert did not appeal the decision.

The Sand & Gravel site was vandalized in 2015. At that time Mr. Boisvert checked the ordinance and believed, that because of zoning changes, that their business was allowed and brought trailers onto the property to store the portable toilets. After their main house on the property suffered a fire on Feb. 1, 2015 the trailers were used to store household belonging resulting in some of the portable toilets to be stored outside the trailers. In 2016, the town requested Mr. Boisvert remove the toilets. Mr. Boisvert applied to the Planning Board in September 2016 seeking a permit to operate the portable toilet business on his property. Mr. Lombardi said the town didn't act upon the application. The Code Enforcement Officer sent three letters to Mr. Boisvert from March 2016 to August 2016. He was served a Notice of Violation to Cease and Desist of the operation of portable toilet business. The town filed a lawsuit in April 2017.

In January 2018, the Town office discovered the application Mr. Boisvert filed with the Planning Board in which he was previously informed and it was determined the Planning Board no longer

has jurisdiction to hear this. On March 22, 2018, Ed Hunter denied their application on the grounds:

1. Home Business is to be conducted in the residence or an accessory structure. The portable toilets will be loaded and unloaded as they are transported to and from other locations. The toilets may require cleaning and possible repairs. Also conducted outside.
2. This business is not incidental and secondary to the residential use of the property.
3. One other item, the Town needs to consider here that there is another business on this residential site. This is an approved business that has an approved site plan. Potentially, there may be a conflict or consideration that may be of interest to the Planning Board that could affect the original approval.

Attorney Lombardi concluded that "Mr. Boisvert objects to the denial of his application on these grounds and submits this appeal of Mr. Hunter's decision on the basis that it incorrectly interprets the Home Business provisions under Sec. 1200 of the Zoning Ordinance". The applicant felt that the 2016 Notice of Violation is based on violations no longer valid because the zoning ordinance was changed. The language changed in 2012, which at that time was, "…home businesses are not subject Site Plan Review of the Planning Board…"

The approved 2012 Zoning Ordinance amendments for "Home Businesses" does not require Site Plan Review.

Sub-Section a: "The home business shall be incidental and secondary to the use of the dwelling unit as a residence.

Sub-Section g: **"**Exterior display of materials and equipment is secured from public view".

Mr. Lombardi pointed out that land use planner James Phippard accompanied Larry Boisvert to a Lyndeborough Planning Board meeting in 2016. He was informed by the Planning Board on Sept. 15, 2016 that the Board no longer oversees home business.

The exact language from the Sept. 15, 2016 Planning Board Meeting Minutes are:

-Home Business: Sharon and Larry Boisvert filed an application to bring their porta-potty business back to the Feel Good Farm Property on Johnson's Corner Road.

"The above applicants were informed by Chairman Rogers the course of action for their applications is to see the Building Inspector and the Planning Board cannot take action."

Details of the business operation:
The Portable Privies, Inc. (PPI) is run out a home office that consists of about 50 square feet that includes desk, phone and a filing cabinet at 54 Johnson Corner Road in Lyndeborough, NH. The cottage is 1,200 square feet. There is no business sign on the property. There are no outside employees and no customer traffic. The storage trailers are about 300 feet behind the main house and shown on the map presented. PPI has 80 portable toilets in which some are stored in the trailers and some outside the trailers. Customers call the office to order the toilets. Biodegradable cleaning products are used. PPI has a NHDES septage hauler permit and the work truck is inspected yearly. Toilets are cleaned on the premise prior to being brought to a client's location thereafter they are disinfected/cleaned on location and waste is hauled to a dumping station.

Zoning 1200 states a home business must take place in a residence or accessory building. Attorney Lombardi argued that portable toilets can't be kept in the home. He felt with zoning changes they are allowed outside a building and out of sight. Mr. Lombardi felt it is reasonable to unload and clean the toilets and this activity is minimal and not visible to the public. He feels the business is secondary to the property.

Mr. Lombardi discussed the Portable Privies, Inc. was cited by DES for violations this in the past and no current issues exist.

Mr. Lombardi noted mistakes on the application and stated Mr. Boisvert should have answered "Yes" to accessory building question instead of "No" as was on the application. The business is in the home but storage is outside the home. Another error is the business occupies about 50% of the square footage of the cottage and Mr. Boisvert should have answered "Yes" when asked if the home business occupies less than a third of the floor space. Mr. Boisvert also checked, "not applicable" when asked about guest parking. Mr. Lombardi questioned the definition of "secondary to the property" as discussed in 1200 a.

As part of the on-going litigation, Attorney Lombardi asked Attorney Drescher to provide him with identification of home business that have been approved from 2013-present. As a result, five businesses were identified during that time frame which included: sales of fire arms and accessories, excavation of sand and gravel, earth excavation, massage therapy and a B&B.

A 2005 Superior Court decision ruled Portable Privies, Inc. is not a permissible use on the property. The court referenced certain language that talks about customary use of the property. Mr. Lombardi discussed if the business was a secondary use and could be supported by the ordinance to prevent it. Permitted use under section 700, 701 was discussed. The zoning ordinance has changed since 2005. ZBA Member Tom Chrisenton asked if the court ruled the septic business was not grandfathered in 2005 and the answer was yes. Mr. Boisvert did not appeal the ruling.

Mr. Chrisenton wanted a clear timeline on the events because Attorney Lombardi kept referring to 2012 but the porta-potties were re-introduced to the property in 2015. Mr. Chrisenton wanted to know why Ed Hunter visited the property and sent a letter dated 3-22-18 after the town amended the Home Business/Home Occupation Ordinance in March 2018. Mr. Lombardi felt the town removed the site plan approval for a home business. Mr. Boisvert kept the toilets in Milford for 10-years then brought them back to Lyndeborough when they realized the zoning changed and felt his business was permitted. The town was not informed of this activity nor asked for approval.

Mr. Chrisenton asked if Code Enforcement Officer Ed Hunter had concerns with the paint ball business because the letter dated Nov. 17, 2016, from Planning Board Chairman Bob Rogers did not mention of the porta-potty business, it just mentions the paint ball operation.

Town of Lyndeborough Planning Board
9 Citizens' Hall Road
Lyndeborough, NH 03082
November 17, 2016

Laurent Boisvert II
Johnson Corner Road
Lyndeborough, NH 03082

Dear Mr. Boisvert:

For the past few months, we have anticipated a request from you for an amendment to your approved site plan for the recreational activities on your property on Johnson Corner Road. Such a request must include a detailed description of the proposed amendment along with a copy of the existing site plan with an overlay of your proposal, and any supporting documents you may choose to submit. To date, we have not received these. In order to schedule and legally notice the required public hearing in December, we must have a complete application by Wednesday, November 23, 2016.

We have received an application for a home business, which we are not authorized by the present zoning to consider. Please give this matter your immediate attention.

Sincerely,
Robert H. Rogers, Chair, Lyndeborough Planning Board

Attorney Lombardi said he was under the impression his client submitted an application which was stamped when received. Mr. Chrisenton informed him it was not a completed application and was not heard. Mr. Lombardi thought the reason it was not heard was because the application was misplaced. Mr. Chrisenton informed him a completed application was not submitted to the Planning Board. Mr. Rogers sent a letter dated Nov. 17, 2016 informing Mr. Bosivert his application was not complete. Going to the Code Enforcement Office was the action that should have been taken by Mr. Boisvert for his homes business.

Mr. Lombardi asked what the point of this conversation was and Mr. Chrisenton said there is no reference to the porta-potty business in 2016 but Attorney Lombardi earlier said it was reintroduced to Johnson Corner Road property in 2015 and his statement is they stored the toilets in Lyndeborough. There was a court order in 2005 not to store porta-potties on the property, which was not challenged by Mr. Boisvert, but the town did not receive any notice or court action that the porta-potty business/storage could resume on the property. Mr. Lombardi argued Mr. Boisvert didn't need to do anything but Mr. Chrisenton's point of view is the town didn't know the porta-potties returned to the property. Mr. Lombardi said the town was aware of it in March 2017 when Mr. Hunter viewed the property. Mr. Hunter visited the property as part of the Feel Good Farm Air Soft/Paintball site plan update. Mr. Chrisenton asked if he operated after a Cease & Desist Order. Letters were sent from Mr. Hunter, on March 14, 2016; May 2, 2016 and Aug. 23, 2016. They were issued a Cease & Desist. The court order in June 2005 specified not to store the porta-potties on the Lyndeborough property. Records do not show this has been reversed. The applicant did not take any legal action to remove the 2005 court action after he brought the toilets back.

Mr. Chrisenton explained in Section 1200; if you meet those sections you don't need Planning Board approval and Ed Hunter will make that determination. Mr. Lombardi referred to a notice of Violation from November 2016 and felt the language was in error.

The secretary requested a copy of Aug 23, 2016 document.
The secretary requested a letter dated Nov. 2016.
Both submitted by Attorney Lombardi during the meeting. She did not receive a copy of either documents at this time.

Mr. Lombardi felt the Code Enforcement Officer should have considered the application from the ordinance as it stood in April 2017 when it was filed which was the most favorable language for his client. He argues that application was submitted initially at the end of 2016. Mr. Chrisenton

reminded him that in 2016 the incomplete application before the Planning Board was for the Paintball operation before the Planning Board and not the porta-potty business.

Mr. Chrisenton asked if everyone has a copy of the 2012 Ordinance. It was noted the Board should look at the ordinance from March 2018 because the action was taken after 2018. A home business now requires a site plan review.

Mr. Chrisenton proposed that this ZBA hearing be suspended and Mr. Boisvert could apply to the Planning Board for a site plan review for a home business.

Board member Lisa Post inquired how many square feet are used in the trailer for toilet storage in relation to the 1,200 square foot home. Mr. Lombardi interpreted that rule that the one-third rule does not apply to accessory space. Ms. Post requested the square footage and number of privies in the trailers. She read 1200B, #2: Home Occupation which states business activity shall occupy less than one-fourth the floor area of the residence or an equivalent area in an accessory building. #5: Exterior storage of material and equipment is prohibited.

After discussion, it was determined that Mr. Boisvert washes out the porta-potties prior to delivery with water and does not use chemicals at Johnson Corner Road. He uses chemicals on the client's site to wash and disinfect the toilets.

8:12 p.m.
Lyndeborough Town Administrator Russ Boland spoke on behalf of Retired Code Enforcement Officer Ed Hunter.

T/A Boland read the denial letter from Code Enforcement Officer Ed Hunter dated 3-22-18 and the 2005 court decision.
See attached

Mr. Hunter felt the business was not incidental to the property and provided language from the 2005 court decision.

T/A Boland asked the Zoning Board of Adjustment Board to support and uphold the decision of the Code Enforcement Officer as rendered.

The hearing was opened for abutter questions

An abutter letter from Michael and Lauren Wile, dated 5-18-18 was given to each Board member prior to the meeting and emailed. (See file for copy)

Abutter Paul Turner, Purgatory Falls Road
Mr. Turner questioned if Zoning Ordinance 1200 on the website is current because it appears it specified that exterior storage and material is prohibited as in B, Home Occupation. He was informed the latest version was amended on 3-13-18. Mr. Turner also asked if there was a transfer of ownership would it make the business illegal and informed the Board there are currently "for sale" signs on the property and possible foreclosure. The ZBA would like to consult with an attorney to clarify the correct answer.

Resident Wally Holt wanted to ask a question but was not allowed because he is not an abutter.

Abutter Emily Hartnett, 35 Larger Lane

Ms. Hartnett asked if the paintball business is a legal approved business by the town in reference to Ed Hunter's letter that mentioned another business on the property. Mr. Chrisenton said that Mr. Hunter's letter suggested it is approved and that the Planning Board has not received an application to expand. She also inquired if the business is for Air Soft or Paintball and it was confirmed both are approved. She noted there is a lot of noise from the activities.

Abutter Dan Holt, 352 Center Road asked if the Code Enforcement Officer's letter is dated from 2005 or 2018? The answer was it was dated 2018. Mr. Holt then asked if the decision is made from today's ordinance and the answer is yes. He questioned why a business since 1987 is being challenged now and why the ordinance has changed so often.
Emily Hartnett, 35 Larger Lane asked about the equipment in public view which consist of trailers, fences and other items and wondered if these items are for the porta-potty business or the air soft business.

Paul Turner, 78 Purgatory Falls Road had a concern about washing and discharge of water, dust or leftover human waste and referenced 1200 Item #5 from the website. He has concerns about these items discharging into the water system, ground or air. The Board reminded him that Mr. Boisvert has a NH DES permit which has standards he has to meet. The permit expires in 2019.

Mr. Lombardi stated the property will not be foreclosed. Mr. Boisvert added he will not take chances to pollute his well or his neighbor's wells.

Board Member Rick Roy asked Mr. Boisvert about his future business plans and the number of privies on the properties. Mr. Boisvert answered he has 80 toilets. He is 65-years old and operates the business alone. During the summer months most units are on location therefore maybe 5-6 toilets are stored on the property. During the winter months roughly 60 toilets are on the property while 20 are in service.

Lisa Post asked the Board if they wanted to conduct a site walk at 54 Johnsons Corner.

VOTE: Tom Chrisenton made a motion, Rick Roy seconded to end public comment at this time. The time was 8:45pm. Motion passed unanimously 4-0.

The Board would like to make sure they have a copy of the current zoning laws; consult with counsel in regards to Mr. Turner's question about transfer of ownership and know the square footage of the storage units.

VOTE: Ms. Post made a motion, Mr. Roy seconded to start deliberating. Motion passed 4-0.

Mr. Chrisenton re-read Ed Hunter's letter and Zoning Section1200 A that the business should be incidental to the property. These two paragraphs are in conflict. He noted that Mr. Boisvert did not challenge the court and believes Ed Hunter responded with the court's decision in-hand. The ordinances from 2012 and 2018 have the same wording. Under 1200 A, the Home Business should be incidental to the dwelling unit. The court said the porta-potty business is not incidental. There has been nothing to reverse his ruling and this is where Ed Hunter made his decision from.

Larry Boisvert explained each tank holds 40-gallons and all the waste water is in the toilet. When the toilet is delivered it has 5-gallons of water and 4 oz. of chemicals which is sucked up

weekly and delivered to the waste treatment plant which accounts for his gallons and yearly use. pH samples are taken. He tries to wash his truck at the waste treatment plant. He answered questions that he is the only person who cleans/repairs the toilets and that waste does not leak from them.

Mr. Chrisenton suggested a solution is the ZBA can conditionally approve his appeal subject to the Planning Board doing a site plan review.

VOTE: Tom Chrisenton made a motion to approve the appeal subject to Planning Board site plan approval under 1200 C.

Lisa Post asked for an amendment

VOTE: Lisa Post made motion, Karen Grybko seconded to add to Mr. Chrisenton's motion that the portable toilets come back to the property cleaned; no chemicals are used on the property and the truck comes back clean and is not washed on the property.

The Board discussed the proposed amendment

NEW AMENDMENT #1:
VOTE: Lisa Post made motion, Karen Grybko seconded to add to Mr. Chrisenton's motion that the portable toilets come back to the property cleaned; no chemicals are used on the property and only the exterior of the portable toilets can be washed and the truck comes back clean and is not washed on the property. Motion passed 4-0.

Karen Grybko proposed an amendment that Mr. Boisvert completes an application by Sept. 1, 2018 to the Planning Board. Rick Roy proposed to add the business will not expand or be transferred.

AMENDMEN #2:
VOTE: Rick Roy made a motion, Lisa Post seconded that the business plan is limited to its current size of 80 portable toilets and the business can't be transferred to another party on that property at 52-54 Johnson Corner. Motion passed 4-0.

VOTE: Tom Chrisenton made a motion, Karen Grybko seconded to approve the appeal subject to Planning Board site plan approval under 1200 C for a Home Business by the September 2018 meeting. Motion passed 4-0.

Because the office is closed this Thursday plus the Monday Memorial Day holiday the decision will be available next Tuesday, May 29, 2018.

Most of the residents left the meeting.

Attorney Lombardi asked to hold over the variance request.

VOTE: Mr. Chrisenton made a motion, Mr. Roy seconded to recess this meeting on the variance application which will be Case 2018-3 until Thursday, October 4, 2018 at 7:00 p.m. Motion passed 4-0.

Approve Minutes

Tabled until the next meeting

Adjournment:

VOTE: Mr. Chrisenton made a motion, Mr. Roy seconded to adjourn at 9:42 p.m.

Respectfully submitted,

Kathleen Humphreys

Kathleen Humphreys
ZBA Secretary

See attachments:
Code Enforcement Ed Hunter's Letter, March 22, 2018 - Yes
Planning Board Chairman Bob Rogers' Letter, Nov. 17, 2016 - Yes
2005 Court Decision - Yes
Town of Milford Water Utilities Department Permit # S109 – Yes
March 2018 Home Business & Home Occupation Amendments – Yes
Notice of Decision-ZBA Case 2018-2 Larry Boisvert d/b/a Portable Privies, Inc. Dated 5-22-18 – Yes

Pending:
Document from Attorney Lombardi (Pending)
The secretary requested a copy of Aug 23, 2016 document Mr. Lombardi referred to in the meeting.
The secretary requested a letter dated Nov. 2016 that Mr. Lombardi referred to

See File:
Abutter letter from Mr. & Mrs. Wile

TOWN OF LYNDEBOROUGH
Office of Selectmen
9 Citizens' Hall Road • Lyndeborough, NH 03082
Phone (603)654-5955 • Fax (603)654-5777

3/22/2018

COPY

CERTIFIED
Laurent Boisvert
54 Johnson Corner Rd.
Lyndeborough, NH 03082

Ref: Home Business Application

Dear Larry:

I am writing to address your application for a home business dated 8/25/16. Apparently, this document was submitted with the intent that the Lyndeborough Planning Board would be reviewing and acting upon your request. It is however, my understanding that you were advised at the time that the Building Inspector is the authority to make a determination whether or not the application would meet the standards for a home business. The application was discovered a short time ago at the Town office. It was inappropriately placed back in the Planning Board mailbox and never found its way to me.

In any case, here we are. It is true that the zoning ordinance was amended at Town Meeting on 3/18/17. To a great extent, this was a housekeeping action within the zoning ordinance. Section 1200.00 continues to allow for Home business within most districts provided they meet the narrow criteria for a home operated business.

The list of questions on the application you have provided, substantially follow the required criteria for a home business that is "compatible with the residential character of the neighborhood". Based on your answers to these questions I find that this business does not meet the standard. My decision is based on the following.

1. Home business is to be conducted in the residence or an accessory structure. The portable toilets will be loaded and unloaded as they are transported to and from other locations. The toilets may require cleaning and possible repairs. Also conducted outside.

2. This business is not incidental and secondary to the residential use of the property.

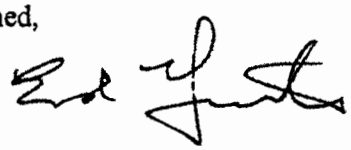
3. One other item, the Town needs to consider here is that there is another business on this residential site. This is an approved business that has an approved site plan. Potentially, there may be a conflict or consideration that may be of interest to the Planning Board that could effect that original approval.

It is my determination that this application does not meet the criteria for a home business and therefore is denied.

As in all my administrative decisions, you have the right to appeal. You may make either of two appeals. The first would be to appeal my administrative decision. In which case, you would have an opportunity to make a case that I have made a mistake in my interpretation of the ordinance. The second type of appeal to be for a variance to the ordinance. Either one, or the other of these appeals, would be made to the Lyndeborough Zoning Board of Adjustment. Forms for an appeal to the ZBA can be obtained at the Town Office or found on the internet at the Lyndeborough Website.

As always, if you have any questions, please contact me at 603-325-2890

Signed,



Lyndeborough Building Inspector/ Code Enforcement Officer

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Laurent Boisvert
54 Johnson Corner Rd
Lyndeborough NH 03082

9590 9402 1427 5329 4702 42

2. Article Number *(Transfer from service label)*

7011 2970 0002 5173 9192

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Sharon Boisvert ☐ Agent ☐ Addressee

B. Received by *(Printed Name)* Sharon Boisvert C. Date of Delivery 4-11-18

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over $500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

USPS TRACKING #

9590 9402 1427 5329 4702 42

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

Town of Lyndeborough
Building Inspector's Office
9 Citizens' Hall Rd
Lyndeborough

APR 16 2018

Planning Board
Town of Lyndeborough
9 Citizens' Hall Road
Lyndeborough, NH 03082
November 17, 2016

Laurent Boisvert II
Johnson Corner Road
Lyndeborough, NH 03082

Dear Mr. Boisvert:

For the past few months, we have anticipated a request from you for an amendment to your approved site plan for the recreational activities on your property on Johnson Corner Road. Such a request must include a detailed description of the proposed amendment along with a copy of the existing site plan with an overlay of your proposal, and any supporting documents you may choose to submit. To date, we have not received these. In order to schedule and legally notice the required public hearing in December, we must have a complete application by Wednesday, November 23, 2016.

We have received an application for a home business, which we are not authorized by the present zoning to consider.

Please give this matter your immediate attention.

Sincerely,

Robert H. Rogers, Chair
Lyndeborough Planning Board

file

THE STATE OF NEW HAMPSHIRE
Northern District of Hillsborough County

300 Chestnut Street
Manchester, NH 03101 2490
603 669-7410

WILLIAM R DRESCHER ESQ
DRESCHER & DOKMO P A
PO BOX 7483
MILFORD NH 03055-7483

- 02-E-0466 Town of Lyndeborough v. Boisvert Properties, LLC, et als

You are hereby notified that on June 21, 2005, the following order was entered in the above matter

re: PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT:

(see copy of order attached hereto)

(Conboy, J.)

6/22/2005
Date

/s/ John Safford
Clerk of Court

cc: Robert M Shepard, Esq.
Kenneth E Churbuck, Esq.
Noah A. Mandell, Esq.

Operations; 2) Forestry Resource Management; 3) Single Family Dwelling; and 4) Seasonal Dwelling. Id. at § 203.3. According to a more current version of the Town's zoning ordinances, "[t]he purpose of the Rural Lands 1 District is to provide for residential development at higher densities than other areas while conserving the rural character of the Town . . . ." Id. at Ex. 8, p. 1, § 700.00. The list of permitted uses has grown to include: 1) home businesses subject to site plan review and approval by the planning board; 2) manufactured housing; and 3) outdoor recreation uses and facilities, with the noted exception of campgrounds. Id. at § 701.00.

In approximately 1985, Laurent Boisvert (the father of respondent Laurent Boisvert, II, and hereinafter "Mr. Boisvert") established a portable toilet business called Portable Privies, Inc. ("Portable Privies"). Before registering Portable Privies with the New Hampshire Secretary of State, Mr. Boisvert is said to have met informally with the then chairman of the Lyndeborough Board of Selectmen Tedo Rocca and with the Town's legal counsel. Laurent claims that Mr. Rocca and the Town's legal counsel told Mr. Boisvert that he would not need a variance or site plan approval from the planning board in order to store portable toilets (used in connection with Portable Privies) on the property. Portable Privies then began operation and has continued to the present day.

The precise scope of Portable Privies' past operation and management is not clear from the record. Nevertheless, at this time Portable Privies is owned by Barbara and operated by Laurent. Portable Privies stores unused portable toilets on the property as well as a pickup truck and a small tank truck used in

connection with the business. The toilets are serviced at the sites on which they are used—that is, on the property of the businesses/organizations that rent them. The tank and pickup trucks likewise are not serviced on the property. Portable Privies receives its telephone calls at Laurent's home (the cottage on the property). However, no customers visit the property in connection with the Portable Privies business.

Over the last approximately twenty years, Portable Privies has rented its portable toilets to various entities throughout the area, including the Town of Milford and certain individuals and/or businesses in the Town of Lyndeborough. The Town also has used toilets from Portable Privies. Boisvert Aff. at ¶ 9, attached to Resp. Obj. to Town's Mot. for Summ. J. However, over the course of its operation, Portable Privies has encountered some problems. For example, in approximately April 2000, the State Department of Environmental Services ("DES") issued a letter of citation to the respondents for illegally operating a septage lagoon on the property. The respondents created this septage lagoon by emptying effluent from the portable toilets onto an area of the property. Town's Mot. for Summ. J. at Ex. Str-1, p.1. The DES ordered this septage lagoon closed and Laurent complied. However, on April 30, 2001, the DES issued a Site Inspection Report, which concluded that Laurent was again dumping portable toilet effluent on his property, but in a different location. Id. On May 21, 2001, the DES issued an Administrative Order, directing Laurent to discontinue all septage disposal activities on the property. Id. at Ex. Str-3, p. 3. The order further required Laurent to clean all portions of the property where

septage disposal had taken place, and to submit various forms of documentation regarding the clean-up and his level of compliance with State law. Id. The Town then issued a Cease and Desist Order to the respondents on August 26, 2002. The Town's Cease and Desist Order was signed by Selectmen Lorraine Strube and Dwight Sowerby and provided, in pertinent part, "[a]s to the past and current, (if still ongoing) use of the property in connection with the portable toilet business: Cease all such use of the property." Id. at Ex. Str-2, p. 5. See also id. at ¶¶ 14-16, p. 4-5. This order cautions that the operation of the business on the property would violate Town zoning ordinances and potentially subject the respondents to fines and other penalties. Id.

Recently, Portable Privies' business has declined. According to Laurent, this decline is due to "derogatory statements" made by Selectmen Sowerby and Strube. Id. at ¶¶ 8, 12. In September 2004, Selectman Sowerby took aerial photographs of the property while riding in a helicopter that happened to be "in the process of overflying the defendants' property . . . ." Sowerby Aff. at ¶ 10, attached to Town's Mot. for Summ. J. The respondents contend that they have complied with the DES administrative order (referenced above), "properly remediated the disposal site[,]" Def. Memo. of Law at p. 4, and are paying the DES-imposed fine on an installment basis. The respondents further contend that they properly dispose of portable toilet effluent by hauling it to licensed sewage disposal facilities in accordance with New Hampshire law.

Against that factual backdrop, the Town has moved for summary judgment on its request for an injunction, asserting that no genuine issues of material fact

exist and that it is entitled to judgment as a matter of law. More specifically, the Town argues that because the activities related to Portable Privies constitute a business operating on the property in violation the Town's zoning ordinances, this court should issue an injunction requiring any and all activities related to the portable toilet business to cease unless and until the respondents obtain all appropriate approvals from the Town. The respondents object, arguing that disputed issues of material fact exist and that the asserted activities related to Portable Privies do not constitute a business that would require Town approval. The respondents further assert three affirmative defenses: municipal estoppel, laches, and selective enforcement. At hearing, the parties agreed, pursuant to RSA 491:8-a, III (1997), to limit the scope of the Town's motion solely to liability issues regarding the portable toilet business. The parties also agreed that if the court were to rule in the Town's favor on the pending summary judgment motion, a further hearing on remedial issues would be required. Thus, the court has two tasks. First, it must determine whether the current activities on the property violate the relevant ordinance. Second, it must analyze the viability of each of the asserted defenses. As to each of these inquiries, the court must be sensitive to the existence of genuine issues of material fact that would preclude summary judgment.

In order to prevail on a motion for summary judgment, the moving party must "show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." RSA 491:8-a, III (1997). A fact is "material if it affects the outcome of the litigation under the applicable

substantive law." Palmer v. Nan King Restaurant, Inc., 147 N.H. 681, 683 (2002). In considering a motion for summary judgment the trial court must construe the pleadings, discovery and affidavits in the light most favorable to the non-moving party to determine whether the proponent of the motion has established the absence of a dispute over any material fact and the right to judgment as a matter of law. Panciocco v. Lawyer's Title Ins. Corp., 147 N.H. 610, 613 (2002) (citing Singh v. Therrien Management Corp., 140 N.H. 355, 356-57 (1995)). The party objecting to a motion for summary judgment "may not rest upon mere allegations or denials of his [or her] pleadings, but his [or her] response, by affidavits or by reference to depositions, answers to interrogatories, or admissions, must set forth specific facts showing that there is a genuine issue [of material fact] for trial." Id. at 612 (citing RSA 491:8-a, IV (1997)).

The Existence of a Business on the Property

The court begins with the Town's contention that the activities taking place on the property constitute a business in violation of Rural Lands One zoning restrictions. More specifically, the Town asserts that because the property is found within a Rural Lands One District, only the uses enumerated in the Rural Lands One ordinance are permitted thereon, unless the respondents can establish that Portable Privies (or its related activities) constitutes a permissible accessory use. To that end, the Town argues that storage of portable toilets and trucks, among other activities, is not a permissible accessory use. The respondents counter that there "is a genuine question of fact as to whether this is

a business which requires a variance or permit and a site plan." Resp. Memo. of Law in Supp. of Obj. to Town's Mot. for Summ. J. at p. 7.

Portable Privies began—at the earliest—in 1983. Town's Mot. for Summ. J. at Ex. So-10, p.1. Rural Lands One districts were created by the Town in 1982.[1] See Town's Mot. for Summ. J. at Ex. So-7, p.2. As stated above, in 1982, the Town listed the following acceptable uses of property lying within a Rural Lands One district: 1) Agricultural Operations; 2) Forestry Resource Management; 3) Single Family Dwelling; and 4) Seasonal Dwelling. Id. at § 203.3. Since 1982, the list of permitted uses has grown to include: 1) home businesses subject to Site Plan Review and approval by the Planning Board; 2) manufactured housing; and 3) outdoor recreation uses and facilities, with the noted exception of campgrounds. Id. at Ex. 8, p. 1 § 701.00.

The facts demonstrate that the Portable Privies operates as follows: 1) it stores ten to fifty toilet units and two trucks (a tank truck and a pickup truck), Resp. Memo. of Law at p. 5; 2) it services the toilets and the trucks elsewhere, id.; 3) it no longer disposes of effluent on the property; and 4) its customers call Laurent's residence with inquiries related to Portable Privies, but do not visit the property, id. at pp. 5, 7. The property is "the business address contained in the corporation papers." Town's Memo. of Law in Supp. of Mot. for Summ. J. at p. 11.[2] With respect to the operation of Portable Privies, there are no other material facts, disputed or otherwise, in the record. Therefore, based on these undisputed facts, the court has little difficulty concluding that the respondents

[1] Thus, there is no argument that Portable Privies operated on the property before the relevant zoning ordinance was enacted.
[2] The court does not find any dispute to the Town's assertion of this fact.

operate a business on the property. Indeed, the respondents concede as much, "acknowledg[ing] that [t]he[y] maintain[ ] a portable toilet business on the premises." Resp. Memo. of Law at p. 7.

Thus, the only question that remains is whether the court can conclude, as a matter of law, that the portable toilet business requires Town approval for continued operation on the property. The operation of a business is not listed among the enumerated permitted uses in either the 1982 version or the more current version of the Rural Lands One District zoning ordinance. In New Hampshire, uses not expressly permitted by ordinance may be allowed if they are incidental to a permissible use, customary, and do no violence to the plain intent of the statute or ordinance. Dumais v. Somersworth, 101 N.H. 111, 114 (1957). In other words, "in the absence of a variance or special exception, . . . an ordinance functions generally to prohibit uses of land unless they are expressly permitted as primary uses or can be found to be accessory to a permitted use." 15 P. Loughlin, New Hampshire Practice, Land Use Planning and Zoning § 9.02 at 138 (3d ed. 2000). Here, there is no evidence of a variance or special exception. Indeed, the Town asks the court to compel the respondents to obtain a variance, exception, or other approval before continuing their business on the property. Thus, the court must determine if the portable toilet business constitutes a permissible accessory use.

"A zoning ordinance itself sometimes defines 'accessory use,' but where the ordinance is silent courts apply the common law definition." Treisman v. Bedford, 132 N.H. 54, 59 (1989). In the instant case, the portions of the

Lyndeborough zoning regulations submitted by the Town do not define accessory use. Generally, "[a]n accessory use is a subordinate use, customarily incident to the principal use, and so necessary or commonly to be expected in conjunction therewith that it cannot be supposed that an ordinance was intended to prevent it." 83 Am. Jur. 2d Zoning & Planning § 168 (2003). See also Fox v. Town of Greenland, ___ N.H. ___, ___ (slip. op. at 5) (Dec. 29, 2004) (noting that accessory uses are "not the principal use of the property, but rather a use occasioned by the principal use and subordinate to it"); Treisman, 132 N.H. at 59 (holding that if a use is customary and incidental, "it will be deemed that the legislative intent was to include it"). "A use maintained for profit may be regarded as commercial and excluded from a residential district notwithstanding that the same use is permitted if it is maintained not for profit." 83 Am. Jur. 2d Zoning & Planning § 166 (2003). "[W]hether a particular use is an accessory use [is] a question of law . . . [,]" Hannigan v. City of Concord, 144 N.H. 68, 70 (1999), and the burden is on the landowner "to plead his reliance and to produce evidence sufficient to permit a prima facie inference that the disputed use qualifies as an accessory one." Windham v. Alfond, 129 N.H. 24, 29 (1986).

Under the facts of this case, even in a light most favorable to the respondents, the court cannot conclude that the storage of up to fifty portable toilets, a pickup truck, and a tank truck is incidental to the primary use of Laurent's cottage as a residential dwelling. Nor can the court conclude that the storage of these items is customary such that regulatory authorities in Lyndeborough intended to permit such use in a Rural Lands One district. See

Treisman, 132 N.H. at 59. See also Taddeo v. Commonwealth, 412 A.2d 212, 213 (Pa. Commw. Ct. 1980) (holding that storage of heavy equipment is not customary in a residential area). The court's conclusion is bolstered by the apparent trend in New Hampshire to strictly interpret the doctrine of accessory uses. 15 P. Loughlin, New Hampshire Practice, Land Use Planning and Zoning § 9.03 at 139 (3d. ed. 2000); Becker v. Town of Hampton Falls, 117 N.H. 437, 440 (1977) (holding that storage of heavy commercial construction equipment cannot constitute an accessory use); Dumais, 101 N.H. at 114 (holding that three-stall garage of commercial oil trucks cannot be deemed an accessory use to a residential dwelling). Other legal authority supports the conclusion that commercial storage is not a permissible accessory use to a residential dwelling. See 2 R. Anderson, American Law of Zoning § 9.26, at 191-94 (4th ed. 1996) (discussing general exclusion of commercial uses in residentially-zoned areas); 83 Am. Jur. 2d Zoning & Planning § 170 (2003) (stating that a garage is often regarded as an accessory use, but the parking of commercial vehicles [such as trucks] is not); 83 Am. Jur. 2d Zoning & Planning § 570 (2003) (stating that "storage is not a use accessory to an outdoor sign business"). Authorities such as these "may be said to reflect the fact that zoning ordinances generally seek to avoid the infiltration of residential areas with small businesses or their appurtenances." Becker, 117 N.H. at 440 (1977). Therefore, the court concludes that: 1) there are no genuine issues of material fact; and 2) the asserted facts, taken in a light most favorable to the respondents, do not support a determination that the activities taking place on the property constitute a

permissible primary use or accessory use. Thus, in the absence of a viable defense, the Town is entitled to summary judgment on liability.

Municipal Estoppel

The respondents contend that summary judgment in favor of the Town may not be granted because genuine issues of material fact exist with respect to the doctrine of municipal estoppel. More particularly, the respondents claim that the Town is estopped from enforcing its Rural Lands One zoning ordinance due to certain asserted, informal conversations (described above) between Mr. Boisvert, the chairman of the Town's Board of Selectmen, and the Town's legal counsel. The respondents further assert that they reasonably relied on the representations made during these conversations and that any harm to the Town (by permitting the Portable Privies business to continue, as is, on the property) is far outweighed by the financial loss the respondents would incur if the current use were not allowed to continue. The Town denies the respondents' characterization of the aforementioned conversations and contends that any reliance the respondents may have placed on the asserted representations was unreasonable.

"Equitable estoppel serves to forbid one to speak against his own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon." Town of Seabrook v. Vachon Mgmt., 144 N.H. 660, 666 (2000) (quotation and citation omitted). There are four necessary elements for estoppel:

> first, a false representation or concealment of material facts made with knowledge of those facts; second, the party to whom the representation was made must have been ignorant of the truth of the matter; third, the representation must have been made with the intention of inducing the other party to rely on it; and fourth, the other party must have been induced to rely upon the representation to his or her injury.

Id. Nonenforcement of an ordinance, alone, does not support a claim for estoppel. See Alfond, 129 N.H. at 32 (stating, "the law is clear that 'a municipality's failure to enforce an ordinance does not constitute ratification of a policy of nonenforcement and, consequently, will not estop a municipality's subsequent enforcement of the ordinance'").

"Although municipal corporations may, indeed, be subject to estoppel, the law does not favor its application against [them] This is especially true when a valuable public interest may be jeopardized." Vachon, 144 N.H. at 666 (2000) (quotation and citation omitted). See also 83 Am. Jur. 2d Zoning & Planning § 980 (2003) (stating that estoppel is "judicially disfavored in the zoning context because of the public interest in enforcement of zoning laws . . . "). "Accordingly, the doctrine is applied against a municipality with caution and only in exceptional cases under circumstances clearly demanding its application to prevent manifest injustice." Vachon, 144 N.H. at 666 (quotation and citation omitted). Several policy reasons underlie this reluctance to apply estoppel to municipalities in the context of zoning regulation enforcement: 1) the party seeking to invoke estoppel is under at least constructive notice of the zoning ordinance he seeks to avoid; 2) the purpose of zoning is to protect the public interest and zoning regulations are drawn by representation of the public will pursuant to the political process; and 3)

a particular officer or individual city representative lacks authority to waive the public's right to enforce its ordinance. Jackson v. Kenai Peninsula Borough, 733 P.2d 1038, 1043-44 (Alaska 1987). In this State, the respondents bear the burden of proving the elements of their estoppel claim. Vachon, 144 N.H. at 666.

Here, the respondents assert that estoppel applies because of the alleged conversations between Mr. Boisvert, the Chairman of the Board of Selectmen, and the Town's legal counsel. In New Hampshire, "estoppel may be invoked against a town as a result of conduct or statements by town officials only if the conduct or statements were authorized," id. (citation omitted), and only if the reliance is reasonable. Turco v. Town of Barnstead, 136 N.H. 256, 261 (1992). In other words, "there can be no estoppel by an unauthorized statement of an official. Authority cannot be created by estoppel, and one cannot rely on asserted authority or apparent authority." Id. at 262 (citations omitted). See also Willow Creek Ranch, LLC v. Town of Shelby, 611 N.W.2d 693, 704 (Wis. 2000) (noting that "[a]lthough municipalities are not wholly immune from the doctrine of equitable estoppel, it is well established that erroneous acts or representations of municipal officers do not afford a basis to estop a municipality from enforcing zoning ordinances . . . "); 28 Am. Jur. 2d Estoppel and Waiver § 152 (2000) (stating that municipality may be estopped if there is good faith reliance on the act of an administrative official, within the ambit of that official's duty); 83 Am. Jur. 2d Zoning & Planning § 980 (2003) (stating same and citing Willow Creek Ranch). In New Hampshire, the level of conduct required to reach a threshold of "official capacity" is more demanding than the occurrence of merely informal

conversations. See, e.g., Aranosian Oil Co. v. City of Portsmouth, 136 N.H. 57, 60 (1992) (holding that Town was estopped from attempt to halt construction after issuing building permit for same); Turco, 136 N.H. at 263 (holding that Town was estopped as a result of issuing building permit).

Here, the respondents state that the relevant conversations took place when Mr. Boisvert "met informally" with certain members of the Board of Selectmen.[3] The respondents allege generally the existence of these conversations, but advance no direct evidence of what actually was said. Pursuant to the above-cited legal authority, such informal conversations cannot serve as the basis for municipal estoppel. There is no evidence of any type of formal meeting, formal approval, or other official act of any municipal officer or body. Although courts must be wary of imputing knowledge regarding the extent of a government official's authority to someone who is inexperienced in the affairs of government, "[t]his mitigation . . . does not apply to representations made in the course of informal conversations with government officials, such as here, where they are speaking or acting outside their official capacity, for such informality would put a reasonable person on notice to make further inquiries." Turco, 136 N.H. at 262. The court further notes that Mr. Boisvert was a member of the Lyndeborough Zoning Board of Adjustment at the time of these conversations. Therefore, it appears that Mr. Boisvert cannot be characterized as inexperienced in the affairs of government, especially with respect to zoning

[3] In their Memorandum of Law in support of their objection to the Town's Motion for Summary Judgment, the respondents state that Mr. Boisvert met informally with "the Board of Selectmen." Memo. of Law at p.7. In his affidavit, Laurent states that Mr. Boisvert met only with the chairman of the Board of Selectmen, Tedo Rocca, and with the Town's legal counsel. Boisvert Aff., attached to Resp. Obj. to Town's Mot. for Summ. J. at ¶ 5.

matters. The court concludes that the asserted estoppel claim is not supported by the facts that have been advanced. Accordingly, summary judgment for the Town is not precluded.

Laches

The respondents next contend that summary judgment in favor of the Town must not be granted because genuine issues of material fact exist with respect to the doctrine of laches. More particularly, the respondents assert that Portable Privies has been in operation since at least 1985, the Town has known about its operation, and the Town has done nothing during that approximately twenty-year period to enforce the zoning ordinance at issue here. The respondents further assert that they reasonably relied on the Town's failure to enforce the relevant ordinance in growing and expanding Portable Privies. Therefore, according to the respondents, they would suffer unreasonable prejudice if the Town were now to obtain the requested injunction.

In response, the Town contends that because the property is in a remote location, it did not have knowledge of the extent of the operations taking place on the property until two significant events occurred: 1) the DES investigation into Portable Privies' method of effluent disposal; and 2) the respondents' efforts to establish the OHRV trail. In addition, the Town claims that the DES investigation should reasonably have cautioned the respondents that their activities were likely to run afoul of Town regulations and that any potential prejudice to the respondents (if the ordinance were now to be enforced) is insignificant.

"Laches is an equitable doctrine that bars litigation when a potential plaintiff has slept on his rights. Ascertaining whether the doctrine of laches applies is not a mere matter of time, but is principally a question of the inequity of permitting the claim to be enforced." Vachon, 144 N.H. at 668 (quotations and citations omitted). The respondents must show that the Town's delay "was not merely a result of the lack of awareness of the nature of the conduct . . . ." Healey v. Town of New Durham, 140 N.H. 232, 242 (1995). "Because it is an equitable doctrine, laches will constitute a bar to suit only if the delay was unreasonable and prejudicial." Vachon, 144 N.H. at 668 (quotations and citations omitted). Accord 83 Am. Jur. 2d Zoning & Planning § 987 (2003) (stating that "[i]t is not the delay alone, but delay that is unexcused and that prejudices the respondent, that disqualifies a petitioner for an injunction"). In analyzing the respondents' assertion of laches, the court considers factors such as the Town's knowledge, the conduct of the respondents, the interests to be vindicated, and the resulting prejudice. Vachon, 144 N.H. at 668. As the party asserting laches, the respondents bear the burden of proving that the Town's delay in enforcing the ordinance was unreasonable and that prejudice resulted from the delay. Id.

Laches is judicially disfavored in the zoning context because of the public interest in enforcing zoning laws. 83 Am. Jur. 2d Zoning & Planning § 980 (2003). In many states, laches and estoppel do not bar a municipality from enforcing ordinances that have been allowed to lie fallow. See, e.g., Latrieste Restaurant & Cabaret v. Village of Port Chester, 40 F.3d 587, 590 (2d Cir. 1994).

However, in New Hampshire and a few other states, laches is allowed against governmental entities, but only in extraordinary and compelling circumstances. Vachon, 144 N.H. at 668. See also Jackson, 733 P.2d at 1043-44 (holding that laches should apply to a municipality's enforcement of a zoning ordinance only under clear and compelling circumstances and affirming trial court's grant of summary judgment in favor of municipality despite 18 years of non-enforcement).

The court first considers the Town's knowledge and the respondents' conduct. "The propriety of applying the doctrine of laches depends upon the conduct and situation of all the parties, not solely upon those of one." Healey, 140 N.H. at 242. Here, Portable Privies began—at the earliest—in 1983. Town's Mot. for Summ. J. at Ex. So-10, p.1. The Town issued its Cease and Desist Order on August 26, 2002. The petition that initiated this litigation was filed on October 1, 2002. Thus, the critical time period begins in approximately 1983. As stated above, the mere passage of time—even if over eighteen years—does not automatically implicate laches. See Vachon, 144 N.H. at 668.

In the respondents' most precise statement of the events leading up to Portable Privies' registration as a corporation, Laurent stated that the informal conversations with the chairman of the Board of Selectmen and the Town's legal counsel were premised on the understanding "that he [Mr. Boisvert] would be storing portable toilets on 256 acres." Boisvert Aff. at ¶ 5, attached to Resp. Obj. to Town's Mot. for Summ. J. [Docket No. 68].[4] However, the respondents did not simply store toilets for the entire period at issue. Rather, they emptied toilet

[4] The Town disputes this version of events; however, the court assumes its truth for purposes of deciding the pending summary judgment motion.

effluent on the property during some portion of the relevant time period. Town's Mot. for Summ. J. at Ex. Str-1, p.1. Furthermore, the undisputed facts show that after the DES cited the respondents for improper sewage disposal in April 2000, the respondents simply moved the location of their septage lagoon and began dumping effluent again in spite of the DES order. Id. Thus, even if the respondents' version of events is assumed true, there is no evidence that the Town was aware of the illegal effluent disposal until the DES investigation exposed it. In any event, under these undisputed factual circumstances, the court cannot conclude that the status quo continued for the entire asserted period, that the Town slept on its rights, and that its decision to enforce its zoning ordinance at this time is unreasonable. See id.

With respect to the interests to be vindicated, the court notes that the Town has an important interest in enforcing zoning regulations. 83 Am. Jur. 2d Zoning & Planning § 980 (2003); Loundsbury v. Keene, 122 N.H. 1006, 1009 (1982) (noting Town interest in zoning regulations for general welfare); RSA 674:17 (Supp. 2004) (setting forth purposes of zoning ordinances). In addition, the public has an interest in guarding residential property from commercial encroachment. Absent a persuasive argument as to why the Town's interest in separating residential land from business uses should be ignored in this case, the court declines to do so.

> Furthermore, because under laches the only fault of a local government is its inaction, additional policy considerations operate to deny its effect [against a municipality under most circumstances]. A city's inactivity is not necessarily wrong; it may be the result of a reasonable decision to use limited enforcement resources for other matters. Indeed, a zoning board cannot police every possible

> violation. The remedy of nonenforcement of a law is a drastic one for such 'fault.' Furthermore, the only 'reliance' which a landowner can show under a laches theory is that he or she relied upon nonenforcement of a law.

Jackson, 733 P.2d at 1043.

Obviously, the respondents have an interest in continuing their business and not at undue expense. However, that interest can be protected by simply applying for the necessary approvals or by relocating the toilets (at most 50, by the respondents' estimates, see Resp. Memo. of Law in Support of Obj. to Town's Mot. for Summ. J. at p. 5). The respondents assert that submitting an application for approval to Town authorities would be futile because it will be denied. However, there is no evidence that the respondents have ever wrongfully been denied a requested approval from the Town. The court declines to assign nefarious motives to the Town's zoning board in the absence of any evidence to suggest that such a conclusion is warranted. Similarly, although the respondents may be inconvenienced to some extent if they ultimately are required to move the toilets, this inconvenience does not rise to the level of prejudice. By the respondents own version of events, customers never visit the site (so there is no risk of losing business because customers cannot find the new location) and no activity aside from storage (of toilets and trucks) takes place outside the cottage.

Thus, the court concludes that the respondents have failed to meet their burden of raising facts—let alone disputed facts—to demonstrate that the circumstances of this case are extraordinary or compelling such that they support application of the doctrine of laches. Vachon, 144 N.H. at 668. Similarly, the

respondents have failed to meet their burden of raising facts that would show unreasonableness and prejudice. Therefore, the court concludes that the asserted laches defense is not supported by the facts that have been advanced. Accordingly, summary judgment for the Town is not precluded.

Selective or Discriminatory Enforcement

Finally, the respondents contend that summary judgment in favor of the Town must not be granted because genuine issues of material fact exist with respect to the asserted defense of selective enforcement. More particularly, the respondents assert that certain Town officials, particularly Selectmen Strube and Sowerby, have a personal vendetta against the Boisvert family which escalated sharply as a result of the dispute over the proposed OHRV trail on the respondents' property. As support, the respondents point to the following facts: 1) Selectman Sowerby took a helicopter ride over the respondents' land to photograph the portable toilets, Sowerby Aff. at ¶¶ 10-12, attached to Town's Mot. for Summ. J.; 2) Selectman Sowerby "was quoted in the newspapers as making derogatory statements against [the Boisvert family,]" Boisvert Aff. at ¶ 8, attached to Resp. Obj. to Town's Mot. for Summ. J.; and 3) Selectman Strube is said to have "made disparaging comments that were printed in local newspapers about the Boisvert Family and the portable toilet business[,]" Resp. Memo. of Law in Supp. of Obj. to Town's Mot. for Summ. J. at p. 9. According to the respondents, these acts have caused them to lose valuable business opportunities and are evidence of a conscious and intentional effort to discriminatorily apply Town regulations against the respondents. The Town does

not address the selective enforcement argument in its Memorandum of Law; however, at hearing, the Town countered that the respondents had failed to properly plead a defense of selective enforcement and that even if the court were to reach the merits of such a defense, the respondents could not succeed.

The court begins its analysis with the Town's assertion that the respondents failed to properly plead selective enforcement. New Hampshire is a liberal pleading state. Arsenault v. Scanlon, 139 N.H. 592, 593 (1995). See also Super. Ct. R. 26; RSA 514:8 (1997) (stating that "[n]o writ . . . shall be abated, quashed or reversed for any error or mistake, where the person or case may be rightly understood by the court, nor through defect or want of form or addition only"). The claims now advanced in connection with the asserted selective enforcement defense were raised in the respondents' Answer. For example, in their Answer, the respondents asserted, inter alia, that Selectman Strube "publicly declared that she is opposed to the recreation facility and she will make every effort to stop this proposed use." Ans. To Pet. at ¶ 59. The respondents also referenced certain hot air balloon surveillance of their property, id. at ¶ 58, and general hostility from the Town, see, e.g., id. at ¶ 60.[5] Thus, the selective enforcement defense, as currently raised, does not appear to call for the introduction of substantially different evidence. Nor do the arguments now advanced depart from the types of arguments made in the respondents' Answer.

[5] Whether these allegations are sufficient to oppose the Town's summary judgment motion is a separate question. See New England Tel. & Tel. Co. v. City of Franklin, 141 N.H. 449, 454 (1996) (describing burdens applicable on summary judgment and stating that conclusory allegations are not sufficient to oppose a summary judgment motion).

Therefore, the court will assume, without deciding, that the Town had sufficient notice of this defense and consider its merits.

For the respondents "to show that the town's enforcement was discriminatory, [t]he[y] must show more than that it was merely historically lax." Alexander v. Town of Hampstead, 129 N.H. 278, 283 (1987). They must show that "the selective enforcement of the ordinance against [them] was a conscious intentional discrimination." Id. (quotations and citations omitted). "Additionally, it is conceivable that a pattern of nonenforcement would be so systematic as to constitute ratification of a policy of nonenforcement." Id. (citations omitted). However, "a municipality's failure to enforce an ordinance does not constitute ratification of a policy of nonenforcement [for purposes of a selective enforcement analysis] and, consequently, will not estop a municipality's subsequent enforcement of the ordinance." Id. The court further notes that because selective enforcement involves an inquiry into state of mind, i.e. whether discrimination is conscious and intentional, summary judgment must be cautiously applied. See Concord Group Ins. Cos. v. Sleeper, 135 N.H. 67, 69 (1991) (noting that "[i]t has been recognized that the presence of a question involving state of mind or intent does not automatically foreclose the application of summary judgment, but it should be cautiously and sparingly invoked in such instances").

Applying the foregoing legal standards, the court concludes that the respondents have alleged various acts (by the Town) in connection with enforcement of the relevant ordinance, but they have not alleged the requisite

selectivity or discrimination. That is, the respondents have made no assertion or showing that there were other specific properties in the area (or even in Lyndeborough generally) that were also used in violation of the regulation without objection from any citizen or official. The respondents have not even alleged that Town officials permitted some other ordinance to be violated in Lyndeborough without enforcement. The respondents also have not alleged that they are the first individuals in Lyndeborough to experience enforcement of the Rural Lands One ordinance. In the absence of such assertions or evidence, there is no basis to support a conclusion that the Town permitted other individuals or entities to violate relevant ordinances or improperly targeted the respondents alone, or as part of a small, disfavored group. On the contrary, the only evidence presented focuses on respondents' property alone—and that evidence establishes that the property was being used improperly and the Town acted to enforce its ordinance against that property.

In the absence of any asserted or demonstrated selectivity or discrimination in the enforcement of the zoning ordinance, there is no conduct for the court to examine. See Botchlett v. City of Bethany, 416 P.2d 613, 616-17 (Oklahoma 1966) (holding, in case involving storage of building materials/equipment on property zoned for residential use, that party alleging a selective enforcement type of defense [called harassment by the property owner] must show that municipality consistently failed to enforce ordinance against properties containing similarly improper uses).[6] Cf. Twp. of Ridley v. Pronesti,

[6] Botchlett is a closer case because the property owner alleged that "there were other residential properties in the annexed area that were also used in violation of the regulation without objection

244 A.2d 719, 721 (Pa. 1968) (reaching question of, but declining to find, intent for selective enforcement after property owner alleged other violators not prosecuted by the municipality). See also 15 P. Loughlin, New Hampshire Practice, Land Use Planning and Zoning § 7.14 at 118 (3d. ed. 2000) (citing Alexander v. Town of Hampstead and stating that "[a]n individual may allege that an ordinance is being enforced against him in a discriminatory manner because other individuals have not been prosecuted"); Latrieste, 40 F.3d at 590 (acknowledging that selective enforcement is a "murky" area of the law and explaining that comparison to others similarly situated is integral part of selective enforcement analysis). While the respondents hypothesize that "many businesses . . . may exist in a residential zone that do not require a variance or site plan approval," such as a Tupperware vendor, Amway sales associate, or Internet-based company, they point to no particular such businesses in Lyndeborough. Conclusory allegations are not sufficient to oppose a motion for summary judgment. New England Tel. & Tel. Co., 141 N.H. at 454.

The respondents have broadly alleged selective/discriminatory enforcement of the ordinance, but they have not made any assertion or alleged any fact that supports a conclusion that the contested enforcement was targeted only or improperly at them. Thus, the court does not reach the issue of intent or state-of-mind. Because the asserted selective enforcement claim is not

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from any citizen or official." 416 P.2d at 616. The Oklahoma Supreme Court, however, refused to find that the property owner had been singled out or harassed by the City's decision to enforce its zoning ordinance because "the failure of municipal authorities to enforce a zoning ordinance against some violators does not preclude its enforcement against others," id. at 617, and the property owner had failed to show that the property owners against whom the city did not enforce the ordinance had run any similar kind of business operation or similarly improper enterprise. Id.

supported by the facts that have been advanced, summary judgment for the Town is not precluded.

Conclusion

Accordingly, consistent with the foregoing, the Town's motion for summary judgment, solely with respect to liability, is GRANTED. A structuring conference shall be scheduled, as the docket permits, for the purpose of addressing the requirements of a further hearing on remedial issues.

SO ORDERED.

Date: June 21, 2005

Carol Ann Conboy

CAROL ANN CONBOY
Presiding Justice

COPY

Town of Milford
WATER UTILITIES DEPARTMENT

TOWN OF MILFORD, NEW HAMPSHIRE
SEPTAGE HAULER DISCHARGE PERMIT

PERMIT NO. S109

In accordance with the provisions of Article XII of the Town of Milford Sewer Use Ordinance,

Portable Privies
P. O. Box 135
Lyndeborough, NH 03082

Waste Hauler's Name / Mailing Address

is hereby authorized to discharge hauled domestic septage to the Milford Wastewater Treatment Facility located at 564 Nashua Street, Milford, New Hampshire in accordance with the conditions set forth in this permit. Compliance with this permit does not relieve the permittee of its obligation to comply with any applicable pretreatment regulations, standards, or requirements under Federal, State or local laws, including any such regulations, standard requirements, or laws that may become effective during the term of this Permit.

Noncompliance with any term or condition of this Permit shall constitute a violation of the Town of Milford, New Hampshire Sewer Use Ordinance.

This permit shall become effective on **4-24-18** and shall expire at midnight on **4-23-20**.

This permit will be renewed only if the permittee continues to meet all the conditions of this permit. If the permittee has not met all the conditions of this permit, an application must be filed for a renewal permit. At anytime, this permit may be revoked for not complying with Permit conditions.

Permit Issued By:

Kevin J Stetson
Director, Water Utilities Department

564 Nashua Street, Milford, NH 03055-4240. Telephone: (603) 249-0660, Fax (603) 249-0699
www.milford.nh.gov

Section I Discharge Requirements

A. The wastewater treatment plant operator acting on behalf of the Director shall have authority to limit the disposal of septage if such disposal could interfere with the treatment facility operation. Procedures for disposal of septage shall be in conformance with the operating policy of the Director and disposal shall be accomplished under a wastewater treatment facility operator's supervision unless specifically permitted otherwise.

B. Domestic septic tank waste may be introduced into the wastewater treatment facility only at a location designated by the Director or wastewater treatment facility operator acting on behalf of the Director. Discharge to the Town of Milford's sewer system at any other location is prohibited. The permittee must provide 24 hour advance notice to Milford Water Utility Department personnel of the intent to discharge material removed from a grease interceptor or grease trap serving a restaurant or other facilities requiring such a device. The discharge of septic tank waste may only be performed Monday through Friday, 7:00 AM to 3:00 PM. Any deviation from this schedule must have prior approval from the Director.

C. Hauled wastes are subject to sampling by Milford Water Utility personnel. The hauler may also be required to suspend the discharging of wastes until the analysis is complete. The Milford Water Utilities Department reserves the right to refuse permission to dump any load.

D. The septage hauler will incur the cost of any analysis that may be required to satisfy the conditions of this Discharge Permit.

E. Prior to the discharge of industrial wastewater as "industrial septage" a Discharge Permit Request form must be submitted to the Town of Milford. The Town of Milford and the State of New Hampshire Department of Environmental Services must review and approve the request before discharging can commence.

Section II Specific Limitations

A. Any commercial or industrial waste that may cause a pass through of pollutants or interference with the wastewater treatment facility operations or that violates Federal, State, or local restrictions shall not be discharged to the wastewater treatment facility.

B. No person, firm, corporation, municipal subdivision or institution shall discharge any toxic, poisonous, or radioactive solids, liquids or gases; the contents of grease, gas, oil and/or sand interceptors; or industrial wastes via septage tank truck into the Town's wastewater treatment facility without specific authorization of the Director.

C. The permittee is prohibited from discharging wastes with the following characteristics:

1. Having a pH less than 6.0 Standard Units or greater than 11.0 Standard Units.

2. Containing any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquids, solids or gases.

3. Having a temperature greater than 150°F (65°C), or that will inhibit biological activity in the wastewater treatment facility resulting in interference, but in no case wastewater that causes the temperature at the introduction into the wastewater treatment facility to exceed 104°F (40°C).

4. Solid or viscous substances including water or wastes containing fats, wax, grease, or oils, whether emulsified or not, or containing substances that can solidify or become viscous at temperatures between 32°F and 150°F (0-65°C), in amounts that could cause obstruction of the flow in the wastewater treatment facility resulting in interference; such as, but not limited to, ashes, bones, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails, any form of offal, and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.
5. Pollutants, including oxygen-demanding pollutants (*e.g.,* BOD, COD), or chlorine demand requirements released in a discharge at a flow rate and/or pollutant concentration that, either singly or by interaction with other pollutants, will cause interference with the wastewater treatment facility, constitute a hazard to humans or animals, create a public nuisance, or cause pass through.
6. Wastewater causing, alone or in conjunction with other sources, the wastewater treatment facility's effluent or biosolids to fail a toxicity test.
7. Wastewater containing such concentrations or quantities of pollutants that its introduction to the wastewater treatment facility could cause a treatment process upset and subsequent loss of treatment ability.
8. Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through.
9. Any hazardous waste listed or designated by the NHDES under Env-Hw 400.

Section III Monitoring and Records

A. Prior to the discharging of septic tank waste to the Milford Wastewater Treatment Facility, the hauler must provide a sample of the septage to the Milford Water Utilities lab for pH analysis and a tracking slip with the following information: the date, time, name of the septage company and driver, the property owner's name, address and phone number from where the load originated and gallons of septage.

B. In the event the septage receiving facility is unable to measure septage, the septage hauler must maintain a clean sight tube as determined by facility personnel. The septage tank shall be graduated, at a minimum, in 500 gallon increments. In the event that the permittee has either a defective sight level, no sight level attached to the truck, and/or no access to the contents of the truck for depth measurement, the permittee shall be charged according to the full tank capacity at the time of discharge or by other method as determined by the Director.

C. This Septage Hauler Discharge Permit is non-transferable.

D. The hauler shall be responsible to see that septage or holding tank wastewater does not leak on the ground near the discharge point, and that all exposed areas were washed to remove traces of septage or holding tank wastewater.

E. Any waste identified as industrial waste, as defined in Article I, Section 1.4, of the Town of Milford's Sewer Use Ordinance must be pre-sampled prior to pick-up by the waste hauler and the results of that sampling submitted to the Town of Milford's Water Utilities Department.

Section IV Standard Conditions

A. Duty to Comply

The permittee must comply with all conditions of this permit. Failure to comply with the requirements of this permit may be grounds for administrative action, or enforcement proceedings including civil or criminal penalties as found in Article X of the Town of Milford's Sewer Use Ordinance.

B. Non-Payment of Discharge Fees

Non-compliance with terms of payment may be grounds for the permittee to lose their discharge privileges. Payment terms are strictly net 30 days from date of invoice.

C. Permit Modification

This permit may be modified for good cause including, but not limited to the following:

1. To incorporate any new or revised Federal, State, or local standards or requirements.
2. A change in any condition in either the septage hauler or the wastewater treatment facility that requires either a temporary or permanent reduction or elimination of the authorized discharge.
3. Information indicating that a permitted septage hauler discharge may pose a threat to the wastewater treatment facility, its process, personnel, residuals or the receiving stream.
4. Violations of any terms or conditions of the permit.
5. Misrepresentation or falsifying of any information required by this permit.

Signatory Requirements:

I, Larry Boisvert Portable Services, understand the requirements of this Discharge Permit fully and will abide by the rules and regulations as stated in the Permit. I agree to discharge domestic septage only to the Milford Wastewater Treatment Facility.

Septage Hauler

Laurent Boisvert II
Print Name

Laurent Boisvert II
Signature

4/24/18
Date

Milford Water Utilities Department

Kevin J Stetson
Print Name

Director

4/24/18
Date

3-13-18 2018

STATE OF NEW HAMPSHIRE
2018 TOWN WARRANT
LYNDEBOROUGH, NEW HAMPSHIRE

To the Inhabitants of the Town of Lyndeborough, in the County of Hillsborough in said state qualified to vote in Town affairs; You are hereby notified to meet at Citizens' Hall, 9 Citizens' Hall Road, in said Lyndeborough on Tuesday, the thirteenth (13th) day of March 2018, at ten o'clock in the morning until seven o'clock in the ~~evening, for ballot~~ Voting of Town Officers and all other matters requiring ballot ~~vote~~; and, to meet at Citizens' Hall, 9 Citizens' Hall Road in said Lyndeborough, on Saturday, the seventeenth (17th) day of March 2018, at ten o'clock in the morning, to act upon Articles 4 through Article 14:

Article 1: Selection of Officers and Other Matters

Voting of Town Officers and all other matters requiring ballot vote.

Article 2: (Question 1)

To see if the Town will vote to amend the following section of the Town of Lyndeborough Zoning Ordinance which refer to Section 200.02 Accessory Dwelling Unit Ordinance to read as follows:

(Explanation: This will bring Section 200.02 in compliance with State Statute.)

200.02 Accessory Dwelling Unit means a residential living unit that is within or attached to a single-family dwelling, and that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking, and sanitation on the same parcel of land as the principal dwelling unit it accompanies.

Delete Sections 503.00 d, 703.00 b, 803.00 b, from Special Exception to new additions to Section 200.02 above as follows;

200.02 I. An Accessory Dwelling Unit shall be allowed as a matter of right by the Building Inspector pursuant to RSA 674:21 in all zoning districts that permit single family dwellings. One accessory dwelling unit shall be allowed without additional requirements for lot size, frontage, space limitations, or other controls beyond what would be required for a single family dwelling without an accessory dwelling unit.
Not more than one accessory dwelling unit for any single family shall be allowed.

II. An interior door shall be provided between the principal dwelling unit and the accessory dwelling unit, but shall not be required to remain unlocked.

III. Regulations applicable to single family dwellings shall also apply to the combination of a principal dwelling unit and an accessory dwelling unit including, but not limited to lot coverage standards and standards for maximum occupancy per bedroom consistent with policy adopted by

the United States Department of Housing and Urban Development. Adequate parking to accommodate an accessory dwelling unit shall be provided.

IV. The applicant for a building permit to construct an accessory dwelling unit shall make adequate provisions for water supply and sewage disposal for the accessory dwelling unit in accordance with RSA 485A:38, but separate systems shall not be required for the principal and accessory dwelling units.

V. The owner must demonstrate that one of the units is his or her principal place of residence.

VI. A familial relationship between the occupants of an accessory dwelling unit and the occupants of a principal dwelling unit shall not be required.
VII. An accessory dwelling unit may be deemed a unit of workforce housing for purposes of satisfying the town's obligation under RSA 674:59 if the unit meets the criteria in RSA 674:58, IV for rental units.

(Recommended by the Planning Board and Board of Selectmen) (Majority vote required)

Article 3: (Question 2)

To see if the Town will vote to replace section 1200.00 of the Town of Lyndeborough Zoning Ordinance to read as follows:

(Explanation: This Section, 1200.00, differentiates Home Occupation from Home Business.)

1200 Home Occupation and Home Business

A. General Requirements

1. Home Occupations and Home Businesses shall be conducted in accordance with all town, state and federal laws, regulations and licensing requirements.

2. The business activity shall take place within a residence or an accessory building and must be incidental and secondary to the residential use of the dwelling unit.

3. The business activity will not change the character of the surrounding neighborhood, nor will it provide window displays or other characteristics associated with retail or commercial use.

4. Signs may not exceed four square feet in surface area, may not be internally lit, and may not be placed within the town or state highway right of way.

5. No noise, vibration, dust, smoke, electrical disturbances, odors, heat or glare shall be produced by a Home Occupation or a Home Business, nor shall there be any discharge of hazardous material into the air, ground or surface water.

6. Motor vehicles and equipment used for the Home Occupation or Home Business shall be parked or placed as inconspicuously as possible.

7. Sufficient off-street parking shall be provided for any non-resident employees, customers and suppliers who may normally be expected to need parking spaces at one time. Where additional parking is required, the spaces shall not be located in the front yard or within the side or rear setbacks. Parking spaces shall be a minimum of 9 by 18 feet. On-street parking is prohibited.

8. Traffic generated by the home business shall not create safety hazards or be substantially greater in volume than would normally be expected in the neighborhood.

9. Whenever a Home Occupation or Home Business exceeds any requirement of this Ordinance, it must relocate into an appropriate zoning district and will be subject to Site Plan Review by the Planning Board.

10. A Home Occupation or Home Business legally operating under the provisions of Section 1200 as amended in 2017 of the Zoning Ordinance on the date of the enactment of this Ordinance may continue unless and until the following:

a. The occupation or business expands in size, scope or purpose.

b. The ownership of the property is transferred

B. Home Occupation

1. A Home Occupation shall be permitted in all districts of the town as a matter of right. No Site Plan Review or Special Exception by the Zoning Board of Adjustment is required for a Home Occupation.

2. The business activity shall occupy less than one-fourth of the floor area of the residence or an equivalent area in an accessory building.

3. The business shall be carried on by the resident owner, the resident owner's family, a resident tenant, or a member of a resident tenant's family.

4. The business may have no more than one non-resident employee.

5. Exterior storage of materials and equipment is prohibited.

C. Home Business

1. A Home Business shall be permitted in all districts of the town and is subject to Site Plan Review by the Planning Board. A formal application is required.

2. The business activity shall occupy less than one-third of the floor area of the residence or an equivalent area in an accessory building

3. The business shall be carried on by the resident owner, the resident owner's family, a resident tenant or a member of the resident tenant's family.

4. The business may have no more than two non-resident employees.

5. Exterior storage of materials and equipment must be screened from view from any public road or abutting property.

D. Exclusion: Food articles produced within a residence or on the surrounding property such as vegetables, fruit, maple syrup, etc. may be sold seasonally from roadside stands and are excluded from the requirements of this Ordinance.

(Recommended by the Planning Board and Board of Selectmen) (Majority vote required)

Article 4: Town Operating Budget

To see if the Town of Lyndeborough will vote to raise and appropriate the sum of, **Two Million, Forty Two Thousand and Thirty Two Dollars ($2,042,032)**, representing the Operating Budget for fiscal year 2018, as prepared by the Budget Committee. Said sum is exclusive of all special or individual articles addressed; or to take any other action relative thereto.

The Board of Selectmen and Budget Committee Recommend this Article.
(Majority Vote Required)

Article 5: 1994 Fire Department Pumper Capital Reserve Fund

To see if the Town of Lyndeborough will vote to raise and appropriate the sum of **Nineteen Thousand Dollars ($19,000)** to be added to the Repair and Replacement of the 1994 Fire Department Pumper Capital Reserve Fund previously established for that purpose; or to take any other action relative thereto.

The Board of Selectmen and Budget Committee Recommend this Article.
(Majority Vote Required)

TOWN OF LYNDEBOROUGH
Zoning Board of Adjustment
9 Citizens' Hall Road, P.O. Box 6 • Lyndeborough, NH 03082
Phone (603) 654-5955

Notice of Decision

Case 2018-2

You are hereby notified that the **Administrative Decision, dated 3/22/2018, by the Code Enforcement Officer** for **Laurent Boisvert d/b/a Feel Good Farm, Inc., Portable Privies on Lot 237-13 and 237-14. Street Address: 52 and 54 Johnson Corner Road, Lyndeborough, NH and has been:**

- **Conditionally Vacated.**

Mr. Boisvert's request for a **Home Business under section 1200 C.** of the Lyndeborough Zoning Ordinance must be heard by the Planning Board with the following **conditions applied**:

1) Laurent Boisvert shall submit a completed application to the Lyndeborough Planning Board which shall be heard by the Planning Board no later than the September 2018 meeting.

2) Any action by the Planning Board under their Site Plan Review authority shall include the following requirements:

   a) Portable toilets must be stored out of public view.
   b) Portable toilets must be thoroughly cleaned off site prior to the return to this property.
   c) On-site cleaning of the portable toilets is strictly limited to the outside shell of the unit.
   d) No chemicals are to be used on the portable toilets on the property.
   e) The Portable Privies, Inc. business truck must not be washed on the premises.
   f) The number of portable toilets allowed on this property is restricted to the current supply of 80 units.
   g) The business shall not be expanded to exceed the 80-unit limit.
   h) This conditional approval is only to be applied to Laurent Boisvert and is not transferable with this property and /or the sale thereof.

Karen Grybko, Chair
Lyndeborough Zoning Board of Adjustment

May 29, 2018
Date

Note: Motion for rehearing by the Board of Adjustment shall be filed in accordance with RSA 677:2.

The application submitted by Laurent Boisvert and the record in this matter, shall be a part of this approval. Copies of this notice will be distributed to: the applicant, Planning Board, Board of Selectmen, Town Clerk, Property File and Building Inspector.