

## **LONDONDERRY, NH PLANNING BOARD MINUTES OF THE MEETING OF FEBRUARY 9, 2022, AT THE MOOSE HILL COUNCIL CHAMBERS**

### **I. CALL TO ORDER**

Members Present: Art Rugg, Chair; Al Sypek, Vice Chair; Jake Butler, Secretary; Lynn Wiles, Assistant Secretary; Giovanni Verani, Ex-Officio – Town Manager; Jeff Penta, member (arrived 7:02 p.m.); Deb Paul, Town Council Ex-officio; Jason Knights, alternate member; Roger Fillio, alternate member; and Ted Combes, alternate member

Also Present: Town Planner Colleen Mailloux; Associate Planner Laura Gandia; José Lovell, Assistant Director of Engineering and Environmental Services; and Beth Morrison, Recording Secretary

Chairman Rugg called the meeting to order at 7:00 PM, explained the exit and emergency procedures, and began with the Pledge of Allegiance. Chairman Rugg appointed R. Fillio to vote for A. Chiampa and T. Combes to vote for J. Penta until he arrived.

### **II. ADMINISTRATIVE BOARD WORK**

#### **A. APPROVAL OF MINUTES:**

**Member A. Sypek made a motion to approve the minutes of January 5, 2022, as presented.**

**J. Butler seconded the motion.**

**The motion was granted, 5-0-3, with J. Penta, L. Wiles and J. Butler abstaining. The Chair voted in the affirmative.**

**Member A. Sypek made a motion to approve the minutes of January 12, 2022, as presented.**

**J. Butler seconded the motion.**

**The motion was granted, 5-0-3, with A. Sypek, J. Butler and T. Combes abstaining. The Chair voted in the affirmative.**

#### **B. REGIONAL IMPACT DETERMINATIONS: Town Planner Mailloux informed the Board that she had two projects for their consideration this evening.**

**1. Application for design review of a site plan for the construction of a proposed 7,200 SF warehouse and wholesale building, exterior racking and**

other associated site improvements, Three Enterprise Drive, Map 15 Lot 62-3 Zoned C-II, 3 Enterprise Drive, LLC (Owner) and Northeast Nursery, Inc. (Applicant)

**Member A. Sypek made a motion that this project is not a development of regional impact.**

**J. Butler seconded the motion.**

**The motion was granted, 8-0-0. The Chair voted in the affirmative.**

2. Application for a conditional use permit per Londonderry Zoning Ordinance section 6.3.11.C and Use Table 4.1.2 to allow a multi-family residential use in the Route 28 Performance Overlay District, 215 Rockingham Road, Map 15 Lot 23-2, Zoned C-II and RTE 28 POD and 217 Rockingham Road, Map 15 Lot 22-1, Zoned C-II and RTE 28 POD, V&W Investment Group, LLC (Owner & Applicant)

G. Verani recused himself from this regional impact case. Chairman Rugg appointed T. Combes to vote for G. Verani.

**Member A. Sypek made a motion that this project is not a development of regional impact.**

**J. Butler seconded the motion.**

**The motion was granted, 8-0-0. The Chair voted in the affirmative.**

C. Discussion with Town Staff:

G. Verani came back to the Board. Town Planner Mailloux informed the Board that they have one extension request this evening from 213 Rockingham Road Site Plan (Map 15 Lot 23-1) that was approved in October of 2021. She said that they are requesting an additional 120-days to comply with the conditions of approval, which would be June 3, 2022.

**Member A. Sypek made a motion to grant the 120-day extension request to meet the conditions of approval on an October 6, 2021 conditionally approved site plan amendment for a change of use from an existing spa to a professional office, and for a 672 SF building addition and associated site improvements, 213 Rockingham Road, Map 15 Lot 23-1, Zoned C-I & RTE 28 POD, Gagne Family Trust (Owner & Applicant) until June 3, 2022**

**J. Butler seconded the motion.**

**The motion was granted, 7-0-1, with G. Verani abstaining. The Chair voted in the affirmative.**

Town Planner Mailloux informed the Board that she has an update regarding the Braeburn subdivision drainage situation. She said that the property owner is working with the third-party reviewer to schedule a meeting to review the different scenarios that have been drafted for the water concerns. D. Paul mentioned that the big rain the town recently had would be a big test for this situation. Chairman Rugg asked if J. Trottier can come update the Board at the first meeting in March. Town Planner Mailloux replied that once the property owner meets and discusses the different scenarios with the third-party reviewer, Steve Keach, the Board will be updated.

Chairman Rugg informed the Board that this Friday evening is the school deliberative session.

### **III. Public Hearings**

#### **A. Public hearing on proposed changes to the Londonderry Zoning Ordinance:**

1. Section 5.15.1 Portable Storage Structures in the AR-1 District as it relates to establishing that the ZBA has the authority to regulate the length of time that such structures may be permitted by Special Exception.
2. To correct section references, scrivener's errors and organizational updates.

Town Planner Mailloux suggested that these be taken up separately and be two amendments presented to the Town Council. She explained that this amendment is to add a bullet to Section 5.15.1 that clarifies "the applicant shall state what length of time the portable storage structure will remain on the property and the Zoning Board of Adjustment (ZBA) may approve or limit the length of time a portable storage structure may remain on the property". She pointed out that the ZBA can impose additional conditions to protect the character of the neighborhood, but N. Codner wanted to make sure that the ZBA understood they had the authority to impose time limit.

Chairman Rugg brought the discussion to the Board. The Board's consensus was that they are okay with the proposed language.

Chairman Rugg opened up the discussion to the public.

Marc Fortin, 574 Mammoth Road, addressed the Board. M. Fortin said that he has attended some ZBA meetings and he believes that the ZBA already discusses the time frame. He stated that he believes that the proposed language is redundant.

Chairman Rugg brought the discussion back to the Board as there was no further public input.

**Member A. Sypek made a motion to recommend to the Town Council that Section 5.15.1 Portable Storage Structures in the AR-1 District as it relates to establishing that the ZBA has the authority to regulate the length of time that such structures may be permitted by Special Exception.**

**R. Fillio seconded the motion.**

**The motion was granted, 8-0-0. The Chair voted in the affirmative.**

Town Planner Mailloux moved on to the second part of the public hearing, noting it was regarding updating the correct section references, scrivener's errors and organizational updates. She said that two years ago the zoning overhaul took place and they have found some section references or table numbers were incorrect and this amendment would fix those. She pointed out when the Board eliminated the elderly housing ordinance, there was a provision that still remained in the R-III zone that stated that single-family dwellings were allowed provided 75% of those units be restricted to older persons. She suggested that this should be struck, as this should have been eliminated when the elderly housing was rescinded.

Chairman Rugg brought the discussion to the Board. D. Paul asked if the table should be noted under 4.2.2.2 Uses under B. Town Planner Mailloux replied that she would change that to include the table number.

Chairman Rugg opened the discussion up to the public and there was none.

**Member A. Sypek made a motion to recommend to the Town Council To correct section references, scrivener's errors and organizational updates.**

**R. Fillio seconded the motion.**

**The motion was granted, 8-0-0. The Chair voted in the affirmative.**

Chairman Rugg informed the public that this now moves to the Town council for two public readings to be determined.

#### **IV. New Plans/Public Hearings/Conceptual Discussions**

#### **V. Other**

##### **A. Zoning Discussion**

##### **1. Poultry**

Town Planner Mailloux informed the Board that she received input from some agricultural users in town that are larger than two acres, who wanted to make sure that they would not be impacted. She went on stating that she made it clear for

residents that have an existing property larger than two acres, that these restrictions do not apply. She reviewed the proposed language with the Board. She asked if the Board would like to change the word "poultry" and just have chickens on lots smaller than two acres. She mentioned that there was a suggestion from Code Enforcement to require that the chickens be properly enclosed at all times, and there be fencing adequate to prevent trespassing on public/private property. She pointed out that there is an email from a concerned citizen regarding his neighbor's chickens that were trespassing on his property causing a problem. She noted that they did not set a number of chickens, as there was not a best management practice recommendation on how many chickens are appropriate on a one acre lot. She reviewed the proposed language instead which reads: "A minimum of 3 square feet of sheltered coop and 10 square feet of enclosed outdoor run shall be provided per chicken" which is from the state's best management practices on agriculture.

Chairman Rugg opened up the discussion to the Board. He asked if there are municipalities that limit the number of chickens. Town Planner Mailloux replied that Goffstown limits it to 12 chickens and Windham has a limit that is lower than Goffstown's. She added that the proposed language before the Board this evening is similar to the town of Derry. She stated that the Board can add a limit, but she cannot give the Board the science behind limiting of poultry in relation to acreage. T. Combes commented that a number might be helpful for the Code Enforcement Officer if there is a problem with neighbors. Town Planner Mailloux replied that counting chickens is going to be a challenge for Code Enforcement versus having the chickens contained to the owner's property or they are in violation. T. Combes asked if there have been a lot of calls to Code Enforcement about free ranging chickens. Town Planner Mailloux replied that she is not aware of an influx of chicken complaints, as they are not permitted on lots that are less than two acres. She added that there have been a number of calls from residents that want to have chickens, but are not on two acres. D. Paul mentioned that she likes changing the word from poultry to chickens, as there is more to taking care of ducks and turkeys. She suggested that under two acres, the chickens should be in a coop versus just having a fence, as the chickens could fly over the fence. Town Planner Mailloux replied that the coop would be an enclosed space, but if the owner wanted a run that is why the fence language is included. D. Paul proposed the language be changed to a coop and a run and to eliminate fence. Town Planner Mailloux reviewed the wording for number 1 with the Board to be as follows: "all chickens shall be properly enclosed at all times. The enclosure shall be adequate to prevent escape or trespassing." She reiterated that the Code Enforcement Officer asked specifically that the chickens not be able to free range. D. Paul suggested that the word minimum should be taken out, as someone on a smaller lot might only want two or three chickens. Town Planner Mailloux replied that it is a minimum of three feet per chicken. G. Verani mentioned that there are suggested guidelines on the University of New Hampshire (UNH) cooperative extension website regarding poultry. Town Planner Mailloux remarked that these numbers came from the state's agricultural best management practices and Staff decided to insert the numbers instead of referring residents back to a website. D. Paul thanked Town Planner Mailloux for taking Kit Plummer's suggestion as chickens were a big part of



Londonderry in the past and that Merrill's Farm raised chickens for Campbells soups. J. Penta asked where the word poultry would be stricken in the proposed language. Town Planner Mailloux reviewed where the language would change with the Board. G. Verani interjected stating that he is not in favor of replacing poultry, as he has raised turkeys and they are very easy to raise. J. Butler agreed with G. Verani. J. Penta asked if no free ranging across property lines could be added for clarity or if that was redundant. Town Planner Mailloux replied that can be added. L. Wiles commented that he thinks poultry should be changed to chickens, as peacocks and geese can be problematic. He went on stating that agrees with a density for the number of chickens someone can have on their lot, but would like to have the enclosure be covered on top. Town Planner Mailloux said that the enclosure in item number 1 should be fully enclosed. A. Sypek asked if someone could make this commercial. Town Planner Mailloux replied that someone can do this for a home occupation as long as they meet the requirements. She reviewed the criteria for a home occupation. A. Sypek mentioned that he would add the word vermin to item C. G. Verani appreciated separating this ordinance for parcels over two acres. He commented that he believes residents are either going to do this responsibly or not, and all other species of poultry should be included. J. Knights remarked that he thinks that poultry should be changed to chicken. R. Fillio voiced his opinion, that he felt leaving out turkeys was discrimination when he has wild turkeys roaming his lawn all the time. J. Butler suggested a compromise, with suggested language to include chickens, ducks and turkeys, as people are very interested in growing their own food these days. He agreed with L. Wiles suggestion for more clarification on the top of the enclosure being covered. A. Sypek suggested including the best management practices from UNH for each specific animal for people to reference. R. Fillio added that turkeys do not make a lot of noise. Town Planner Mailloux voiced her concern in identifying which species of poultry should be included. She asked the Board for a consensus on the poultry language and then she will research each species and get back to the Board. The Board had six members that want the language to be chicken, turkeys and ducks, excluding roosters. J. Penta asked if there could be something added to the town's website for more educational references when the new language rolls out. Town Planner Mailloux replied that this can be done. G. Verani mentioned that it is going to be very hard to get only females turkeys from a turkey provider. Town Planner Mailloux said that she will bring updated information back to the second meeting in March.

## 2. Groundwater Protection

Town Planner Mailloux told the Board that the map attached to the ordinance has some formatting issues that will be fixed, but she wanted to be able to review it this evening. She noted that there is an organization concern, as you have to go three pages in to see what is a permitted, prohibited and conditional uses, so it will be reorganized to be more logical. She asked if the Board had any issues or concerns before there are final tweaks and posted for a public hearing.

Chairman Rugg opened the discussion up to the Board. G. Verani asked what will happen to gas stations or other businesses that are in the proposed zone. Town Planner Mailloux replied that they would be grandfathered in as they are pre-existing. G. Verani asked what would happen if these businesses need to resubmit plans. Town Planner Mailloux replied that if they were to expand their use, that would trigger a change which is subject to review under this ordinance. G. Verani asked if the current property owners in the proposed zone have been notified of the proposed change. Town Planner Mailloux responded that would be the next steps for a public hearing to make them aware and to be able to come to a meeting and address any concerns or issues. G. Verani explained that things change, such as the economy or the way a business services the public and gave an example of how gas stations have changed recently. Chairman Rugg mentioned that the Board should be reviewing the ordinances in a timely manner. Town Planner Mailloux commented that this proposed ordinance does restrict certain uses for aquifer protection or that could have the potential to contaminate ground water resources. She went on noting that there might be someone in this district that is doing something lawfully by right and they are permitted to continue that, but this ordinance would discourage expansion of uses that are in conflict with the protection of the underlying ground water resources. She gave an example that storage of bulk petroleum products are not uses that they want to encourage within areas that have ground waters protecting source water. She explained that by statute when a public hearing is posted they do not have to notify each individual property owner whose is affected. She asked for input from the Board on which property owners or abutting property owners they would like notified regarding the public hearing. Chairman Rugg said that the commercial property owners might be best to notify. Town Planner Mailloux advised against targeting one type of user, such as commercial businesses, because the input will be related to the restriction on their business, versus reaching out to commercial and residential property owners. G. Verani reiterated that his concern is with a business that might expand and now they are no longer in compliance and would have to turn it into another use. He asked if a gas station would be allowed to increase from four pumps to five pumps under this ordinance. Town Planner Mailloux replied that she did not think it would be allowed, as it was an expansion of a use that is prohibited. G. Verani asked if this ordinance would affect an existing non-conforming business evaluation or their ability to obtain working capital or refinancing. Town Planner Mailloux replied that it would not as they are an existing non-conforming use prior to the adoption of the ordinance. L. Wiles commented that he hears G. Verani's concerns, but such an ordinance is needed. G. Verani expressed his opinion that the ordinance is needed, but noted that there should be some thought regarding how it could affect pre-existing uses. J. Penta agreed that there should be further thought on how pre-existing uses might be affected by the ordinance. He voiced his opinion, that in the spirit of transparency, everyone in the affected zones should receive a notification. Town Planner Mailloux read the language in Section 4.6.8.11 on Existing Non-Conforming Uses stating: "Existing non-conforming uses may continue without expanding or changing to another non-conforming use, but must be in compliance with all applicable state and federal requirements." She said that if the Board wants to allow a percentage of expansion, this can be done, but it will dilute the intention of the ordinance on protecting ground water. D. Paul agreed with the other Board

members comments. She asked if there could be water samples from the New Hampshire Department of Environmental Services (NHDES) around certain areas to make sure that gas stations are up to standard. She added that she would like surface water to be included, as this is a real issue in the state. Town Planner Mailloux replied that she can research and see if there is any information from NHDES on monitoring water, but did not know if the Town has an authority on the issue. D. Paul asked for ordinances to protect surface water. Chairman Rugg stated that he believes that would be separate from this proposed ordinance. T. Combes asked if gas stations are mainly affected by this. Town Planner Mailloux read the prohibited uses language of the ordinance noting that a solid waste landfill, storage of road salt or other deicing chemicals in bulk, development or operation of a junkyard, development or operation of a now dump, wastewater or septage lagoon, petroleum bulk plant or terminal and gasoline stations are all prohibited uses. T. Combes commented that for the town it is primarily gas stations, which would be the Exit 5 area. He added that the airport district is exempt. He asked for a circle on the map to delineate the airport district. Town Planner Mailloux explained that they did not include any delineation of a proposed zone in the airport district. T. Combes expressed his concern about this as F.W. Webb has major tanks and if they wanted to expand what would happen. Town Planner Mailloux replied that an expansion would not be permitted and they would need to apply for a variance. She added that if they meet the definition of a petroleum bulk plant or terminal that is not permitted. T. Combes asked what is bulk petroleum storage definition. Town Planner Mailloux read the definition to the Board. T. Combes asked if there was a volume number attached to the definition. Town Planner Mailloux replied there is not. T. Combes stated that the language for this definition is vague in his opinion. He mentioned that he believes the airport area needs to be relooked at. Town Planner Mailloux explained that this was reviewed by the Town Attorney, as this would violate the intermunicipal agreement that applies to the airport relating to their aeronautical uses. She added that the Town cannot regulate the deicing chemicals or jet fuel storage on the airport as that is considered aeronautical uses. T. Combes asked about a specific area on the map, as he does not remember a stream there. Town Planner Mailloux reviewed the map noting that this is for aquifers and streams underground. R. Fillio asked if it would be considered expansion if a gas station was able to go from two pumps to four pumps with the same underground tank. Town Planner Mailloux replied that the language in the ordinance states: "without expanding or changing." She pointed out that the Board can further define what is an expansion for better clarity. R. Fillio asked what would happen if a gas station wanted to change the tank to an upright tank if it was the same size. Town Planner Mailloux replied that in her opinion, this is an in-kind change, but it should be written in clear language. G. Verani reiterated that he sees the importance for a ground water ordinance and asked if all the pre-existing companies can be exempt from the ordinance. He went on stating that going forward the ordinance will help prohibit any future changes to these protected areas. Town Planner Mailloux responded that she would take these issues and discuss this with the Town Attorney, but reiterated that she did not think it would make the ordinance as strong. J. Butler voiced his opinion that the existing business could have a different set of rules. He added that he believes the farms might have holding tanks for gas and asked if they would be affected. Town Planner



Mailloux said that she can reach out to NHDES on better definitions from them on petroleum bulk plant or terminal and clarify that the language is for larger operations. D. Paul asked Town Planner Mailloux to talk to the Town Attorney about Portsmouth, as she does not believe that the airport should be excluded. Town Planner Mailloux replied that she does not know the circumstances of Portsmouth, but that there is a longstanding intermunicipal agreement the town has with the airport that exempts them from zoning. T. Combes pointed out that the airport in Portsmouth is a military airport. D. Paul expressed her opinion that the airport is a huge contaminate of ground water and should not be excluded just because they are an airport. Town Planner Mailloux interjected that the airport is subject to NHDES regulations and best management practices, but are exempt from local zoning per the intermunicipal agreement. J. Knights asked if there could be a limit of expansion on a current business that would exempt them from this ordinance. Town Planner Mailloux replied that she needs to discuss all the concerns the Board has raised with NHDES and the Town Attorney and get back to the Board. J. Knights voiced his opinion that he believes this is an important ordinance, but has hesitations on exempting a large company such as F.W. Webb over a local, small business. D. Paul noted that Sunnycrest and Mack's have a platform for mixing chemicals for pesticides and asked if this can be added. Town Planner Mailloux replied that this might fall under agricultural uses.

Chairman Rugg opened up the discussion to the public.

Marge Badois, Chair of Conservation Commission. M. Badois told the Board that she is in favor of approaching all the property owners with education about what they can do to protect the water. She added that a couple of years ago there was testing of surface water and a plan was presented, of which this ordinance was part of it. She asked if there can be a written in component for a variance or a waiver for pre-existing businesses that are addressed on an individual basis instead of blanket approval for everyone.

### 3. Commercial Kennels (update only)

Town Planner Mailloux informed the Board that she has been reviewing other communities' regulations, as well as researching, so there will be more information coming in the near future.

### 4. Signage (update only)

Town Planner Mailloux told the Board that there was only one proposal that was submitted for approximately \$64,000, which was more than anticipated for a reasonable scope of work. She said that they will go back to the drawing board and try to find another solution. T. Combes asked if the scope of work needed to be changed. Town Planner Mailloux replied that the feedback from local consultants was that they are busy right now and do not have time to take on a project right now.

Chairman Rugg informed the Board that at the first meeting in March there needs to be the election of officers, as well as CIP appointments and liaison to the Heritage Commission.

## **VI. Adjournment**

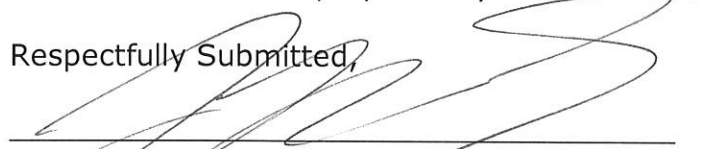
**Member A. Sypek made a motion to adjourn the meeting at approximately 8:52 p.m. Seconded by J. Penta.**

**The motion was granted, 8-0-0.**

**The meeting adjourned at approximately 8:52 PM.**

These minutes were prepared by Beth Morrison.

Respectfully Submitted,

  
\_\_\_\_\_  
Name: Jake Butler  
Title: Secretary

These minutes were accepted and approved on March 9, 2022, by a motion made by A. Sypek and seconded by J. Butler.