

**PLANNING BOARD
RINDGE, NEW HAMPSHIRE
November 5, 2019**

DATE: November 5, 2019 TYPE: Public Hearing APPROVED: December 3, 2019
TIME: 7:00 pm

CALL TO ORDER: 7:00 PM

ROLL CALL MEMBERS: Jonah Ketola, Sam Bouchie, Dennis Casey, Kim McCummings, Holly Koski

ROLL CALL ALTERNATES: Katelyn Smith (arrived at 7:38 p.m.)

ABSENT: Jason Paolino, Cheves Walling

EX OFFICIO: Roberta Oeser

PLANNING DIRECTOR: Kirk Stenersen

APPOINTMENT OF ALTERNATES:

OTHERS PRESENT: Deni Dickler, Jeff Dickler, Kelen Geiger, Phil Simeone and Judy Unger-Clark

Call to order and Pledge of Allegiance

Roll call by Chairperson

Appointment of alternates.

None appointed at this time. The Board had six members present with no alternates available to appoint.

Announcements and Communications

Roberta Oeser announced that the tax bills are going out today and on time. Jonah Ketola inquired if there have been any new applications submitted. Planning Director Kirk Stenersen indicated that there are no new applications in the Planning Office.

Approval of Minutes

1. Approval of October 15th, 2019 minutes.

MOTION: Roberta Oeser moved to approve the minutes of October 15, 2019. Dennis Casey seconded the motion. Vote: 6-0-0

Planning Office Report

1. **DISCUSSION** on 2020 Planning Board budget.

Planning Director Kirk Stenersen went over the report of monies spent through September 30th compared to the proposed budget. A brief discussion took place on the proposed budget.

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- Planning Director Kirk Stenersen said that although the Planning Dept. wages line shows that 75% of this has been spent, most of this was donated time. Roberta Oeser said that the donated time reduces the town's liability in other departments but is still debited to the Planning Office.
- Roberta Oeser reminded the Board that there will be 53 pay periods next year.
- Chairman Jonah Ketola said that the numbers may need to be addressed next year once the Board determines what it is going to have to pay for the new Planning Secretary salary. Planning Director Kirk Stenersen said that once the Board determines what the budget is, that is what they will have to work with for a new secretary.
- Kim McCummings asked for clarification on when the new budget would take place. Departments are asked to spend at last year's budget rates until such time in March when the voter's either approve or deny a new budget.
- Dennis Casey asked about a possible membership to Southwest Regional Planning. The Board discussed the pros and cons of joining this organization. Roberta Oeser reminded the Board that the townspeople had voted not to join Southwest Regional Planning.
- Kim McCummings asked if the postage was going to increase next year. Chairman Jonah Ketola said that we are in the green on that line item at this time. Although the applicant actually pays for the postage, it does not show up in our budget.

Board members decided to keep the budget level this year.

2. FOLLOW UP on Planning Secretary position.

Planning Director Kirk Stenersen informed the Board that multiple applications have been received now that the position is posted on indeed.com. He is hoping to begin reviewing the applications when in the Planning Office tomorrow.

3. FOLLOW UP on Map 2 Lot 41-2 and unpermitted site plan activities occurring on the property located on the northwest corner of the intersection of Rand Road and U.S. Route 202.

Planning Director Kirk Stenersen stated that he did receive a phone call from Carl Hagstrom at the end of last week indicating that he is working with Richard Drew on getting an existing conditions plan / site plan for the property. Tim Halliday indicated that in a joint effort with Jamie VanDyke the construction materials stored on the property have begun to be moved out today. The goal is to have all of the materials removed by mid-day tomorrow. In the meanwhile, Code Enforcement has been advised to move forward with court proceedings. Tim Halliday will contact Dave DuVernay to let him know that things have been moved.

4. FOLLOW UP on Route 202 Truck and Equipment site plan.

Planning Director Kirk Stenersen stated that he did receive a phone call from Carl Hagstrom at the end of last week indicating that he is working with Richard Drew on getting an existing conditions plan / site plan for the property.

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5. FOLLOW UP on 58 U.S. Route 202 Site, Map 10 Lot 28, and previous approvals.

Planning Director Kirk Stenersen reviewed the notice of decisions and plans that he was able to find from both Planning Dept. and from the Zoning Board of Adjustment (ZBA). The original blueprint from 1985 appears to have been amended (by hand) after the originally submitted plan.

Planning Director Kirk Stenersen said that the Notice of Decision from the ZBA was to allow for a commercial use in a zoning district (which was allowed by Special Exception at that time).

Planning Director Kirk Stenersen said the 1985 Planning Board decision had 18 conditions on it; some of which were taken from the ZBA Notice of Decision. Sam Bouchie asked if there was an underground tank on the premises. Tim Halliday said there is one and it is documented with the state. It is there but it is empty and not in use. Chairman Jonah Ketola said he believes there is a yearly permit if it is in use. Roberta Oeser said that, reviewing this case makes her hope that the decisions this Planning Board makes in the year 2020 are looked upon favorably in the year 2050.

Sam Bouchie said that driving by this site, it is clear that nothing had been enforced in the past years.

Planning Director Kirk Stenersen read through the conditions of the approval from 1998 which was for an auto dealership for Peterson. The plan shows a parking area.

Planning Director Kirk Stenersen said that Van Dyke Construction, an auto body shop, an auto dealership, and commercial garage, storage and construction had all been approved previously for the site.

Jeff Dickler, 97 Old Jaffrey Road said that, at one point, there had been discussion regarding the zoning of this area. According to records at Cheshire County, this area had been zoned Residential-Agricultural. He said there is no record that this is zoned Light Industrial. Mr. Dickler asked who is in charge here and where is the clear delineation of where this zoning line is. Mr. Dickler is asking the Planning Board to fix this. He said he is of the understanding that there will be a Site Plan. Mr. Halliday said that he has no plans to do a Site Plan for this property but that he intends to continue using it the same way it has been used for many years.

Jeff Dickler said the ZBA decision was for Mr. Van Dyke and that this goes with the owner, not the property. He said when Mr. Van Dyke passed away, Mr. Halliday should have asked for approvals. He said there needs to be a Site Plan and there also needs to be enforcement of the conditions that were never adhered to. He said that there is nothing at Cheshire County Registry of Deeds showing these approvals and he is asking the Planning Board to rectify this. Mr. Dickler says he has serious concerns about the groundwater in this area. Jeff Dickler asked what the Planning Department is planning to do to fix this.

Planning Director Kirk Stenersen said that in regards to the Zoning lines and maps, they have researched this back to the time period in question and it has been Business Light Industry since that time.

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Planning Director Kirk Stenersen said that, when this was first approved, a Special Exception from the ZBA was required (and granted). Since that time, this has been considered an allowed use and no special exception is needed. The issue of whether the Special Exception goes with the land or with the owner has no impact here, as a Special Exception is no longer required for this allowed use.

In regard to a Site Plan being filed with Cheshire County Registry of Deeds, Planning Director Kirk Stenersen said that Site Plans are not registered with Cheshire County; only Notices of Decision for Site Plans are recorded.

Planning Director Kirk Stenersen said that if the use changes in the future, it will require a Site Plan. If the use is similar to what was done before, it does not require a Site Plan.

Planning Director Kirk Stenersen said he believes that there were other plans that he has not located at this time. If someone else would like to do that, he welcomes them to. He has not had the time to go through the archives downstairs to see if the plans are misfiled. He is not convinced that the plans he has at this time are everything that was submitted. One of the Notices of Decision refers to Plan One and Plan Two and he has no plans marked one or two.

Dennis Casey asked for clarification on the ZBA decision. Mr. Casey said this doesn't sound like what is going on now. Is this a change of use? Planning Director Kirk Stenersen said a commercial garage with storage is an allowed use. The only part of the original decision that is not now allowed is the metal recycling facility which has not gone on for a long time. The decision as to whether or not this is a change of use would be something the Planning Board needs to decide. There have been multiple uses on that site for many years.

Tim Halliday read a recent e-mail from Code Enforcement stating the many uses that have taken place on this property and that Code Enforcement has no issues at this time.

Chairman Jonah Ketola said there is something in the NH RSA that says if a use has ceased to be active for a period of one year or more, it ceases to be an allowed (grandfathered) use. Tim Halliday said that what he is doing on this property has been taking place here for many years. Chairman Jonah Ketola asked about the assembly of Mi-Boxes. Tim said it would be considered storage and if it is a problem, he will have the boxes assembled elsewhere.

Alternate Katelyn Smith asked about Mi-Boxes and if it is a retail operation? Mr. Halliday said these are being stored on his site until another site is approved for this operation. He expects they will not be there in six months. He may change over to boat storage. Roberta Oeser read from the list of allowed uses. Katelyn Smith said that cars are not a structure but storage boxes are, and wouldn't this put this over the 1,000 square foot requirement for a Site Plan. Chairman Jonah Ketola said the Mi-Box thing is new and the Planning Board needs to discuss how this fits in with our allowed uses.

Kelen Geiger said this piece of property has changed hands. She asked what business is up there now, what is the change, who is up there now, what is going to be there. The Planning Board should know what is going on.

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Kim McCummings asked what should be on this site based on prior decisions. Roberta Oeser said that the Board of Selectmen signed off on the occupancy permit for this operation, which has many uses.

Chairman Jonah Ketola read from the Planning Board decision and the requirements which included privacy fencing which has not been utilized. Chairman Ketola said that the Board needs to determine what is approved on this site, what is happening now, what are the intentions for the future, who is enforcing the requirements.

Chairman Jonah Ketola said that Tim Halliday purchased this site and now he is being held accountable to things that have been ignored for years. Tim Halliday said this has been difficult. He also apologized for assembly that took place on this site which was not an approved use.

Roberta Oeser said commercial garage, storage, construction and metal recycling was approved years ago. It also said only two or less unregistered motor vehicles may be stored on this site and the ZBA approval speaks to a privacy fence. Roberta Oeser said the plans show a huge parking area. Roberta Oeser said this whole situation is confusing. She said there are many business changes that have taken place in this town without new Site Plans. We have not made people come for a Site Plan if the change was an allowed use in that district.

Judy Unger-Clark said when you look at google maps and compare to these plans, the thing is that you are going back to 1985. When you are looking at these regulations from 1985, you need now to advance to 2020 and put some regulations on this property now. We have no idea what might be in the ground from this property over the last 30 years. Judy does not agree with the e-mail that Dave wrote with the conclusion that because VanDyke did something on the property allows Halliday to do the same. The Planning Board needs to tighten up what is happening on this property and meet the conditions from 1985. The Planning Board needs to require Mr. Halliday to come forward with a plan of what he wants to do with this property.

Katelyn Smith said that she thinks it is unclear whether Mr. Halliday needs to submit a plan at this point but she thinks it would be a dangerous precedent to set that Mr. Halliday doesn't have to come forward with a plan because other businesses have not come in for a change of use.

Planning Director Kirk Stenersen clarified that the Planning Board has no enforcement authority in regards to compliance or non-compliance. If a site is in non-compliance it is up to the Selectman or their agent, the code enforcement officer, to enforce the regulations and non-compliances with the approvals. The Planning Board issues the notices of decision, approves the site plan and makes sure the conditions precedent are met prior to final approval, once the plan is approved and the building is under construction enforcement of the site plan falls to the Selectman and their agents.

Planning Director Kirk Stenersen pointed out that if the Mi-Boxes were being assembled on-site and being rented out from there then he believes it is a change of use. How the Board sees it with it the Mi-Boxes being stored there temporarily is up to the Board to decide. If the previous use is a construction company and the new use is a different construction that is not a change of use and clearly no site plan is required. As an example in Cheshire Marketplace it was approved as retail. It makes no difference whether it is Rite Aid, a card store, Olympia Sports or any other retail use they

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are not required to return to the Planning Board. If the use falls under a different use category in Zoning, unless it is something very similar, it is a change of use and requires site plan review. As an example if approved for a coffee shop and the owner wants to change to a fireworks store it is a change of use and they must come back to the Planning Board. If it is a coffee shop and the owner wants to change it to a bakery there is no change of use as the uses are more or less the same. Interior renovations that may be required would require a building permit. In regards to the Mi-Boxes, Dave Duvernay in his e-mail made an “administrative decision” that the use is similar and the bottom line is that is Dave’s jurisdiction.

Deni Dickler inquired on the junkyard permit that VanDyke had for the site previously and the fact that the property was not used for some time and now is being used again. Doesn’t that qualify as a change of use? Planning Director Kirk Stenersen pointed out that the uses that were approved with the site plans are still valid. He clarified that the 1-year lapse is for non-conforming uses and does not apply to allowed uses that have been approved through the site plan process. He pointed out how for years Ed’s Auction house would once a year have an auction to maintain the grandfathered non-conforming status. In this case the uses are allowed uses so the 1-year expiration does not apply.

Phil Simeone pointed out that until Tim Halliday decides what he is going to use the property for the Board cannot make a determination of whether it is a change of use. Tim Halliday stated the proposed uses are similar to those that were there before under previous ownership.

Deni Dickler inquired about the location of the Zoning District line between the Business-Light Industry Zoning District and the Residential-Agricultural Zoning District. Planning Director Kirk Stenersen went and got the Zoning Map. The Board and the audience reviewed the Zoning Map and the line location and how the location is determined. There was a concern of the enforcement of any commercial activities occurring outside of the Business-Light Industry District. Jonah Ketola pointed out that the Zoning Map is the official map. It is up to the Selectman or their agent to enforce non-compliance with an approved site plan or non-approved uses on a property. Deni Dickler inquired as to whether the previous conditions of approval are still applicable. Chairman Jonah Ketola stated that they are still applicable and it is up to code enforcement to police it.

Deni Dickler asked why a special exception was required back in 1985. Planning Director Kirk Stenersen pointed out that at that time the proposed use was only allowed by special exception. Currently it is an allowed use and a special exception is not required. Planning Director Kirk Stenersen read from the 1985 Zoning Ordinance showing that a special exception was required for the use proposed at that time for a construction company.

Going from a newspaper article in the Zoning Ordinance book Planning Director Kirk Stenersen indicated that it appears that it was in March of 1982 that the subject parcel was changed to the Business-Light Industry District. The zoning article referred to the official Zoning Map at the Rindge town offices.

Chairman Jonah Ketola stated that back in 1985 and probably for a number of years after that there was no code enforcement officer to chase non-compliances. Roberta Oeser added that for a long time there was no building department either and the selectman did the inspections.

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Tim Halliday asked that the board look at the big picture. This parcel was more or less neglected for a number of years and was more or less a junk yard for construction equipment and materials. Since purchasing the property he has done a lot of cleanup of the site and there is more to come but he thinks it looks great and is a huge improvement over what was there previously. He has done a lot of interior renovations to the building to make it water tight and improve the safety of the building. There is four full time employees in the building so it is creating jobs. The taxes will be paid on time. In the big picture it is in a better situation than it has been in a number of years. Let's focus on the benefits of the property.

Deni Dickler stated that she has no problem having a business at this site as long as it is not contaminating wetlands and groundwater. She is also concerned about the additional noise from the site since Tim has taken over the property. She would like some noise reduction measures.

Jonah Ketola asked for any addition comments from the Planning Board. There was no additional input.

Adjourned: 8:33 PM

Respectfully submitted,
Kirk L. Stenersen
Planning Department