

**TOWN OF LUDLOW PLANNING BOARD  
MINUTES OF THE MEETING OF  
July 12, 2018**

**PLANNING BOARD MEMBERS**

Joseph Queiroga – Chairman (Present)  
Raymond Phoenix – Vice Chairman (Present)  
Christopher Coelho (Absent)  
Kathleen Houle (Present)  
Rafael Quiterio (Present)

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Meeting began at 7:00 p.m. in the Selectmen's Conference Room

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**APPOINTMENT – Rebecca Thibault, Esq., Doherty Wallace – 236 West Street complaint (mail item #36 from June 14, 2018 meeting)**

*Mail item #37 included - Letter from Cynthia Kawie, New England Pallets & Skids – re: 236 West Street (agricultural use vs. home office permit)*

*Mail item #38 included - Letter of concern from Gene Surprenant re: tree removal & erosion at 236 West Street*

*Rebecca Thibault, attendees were present for the appointment.*

Atty. Thibault began the appointment by saying that it was her understanding that the Planning Board has a specific issue about complaints regarding someone's special permit and being out of compliance to the extent that someone is requesting enforcement of the special permit. She remarked that that enforcement request needs to start with the Building Inspector and needs to be made preferably in writing by the person complaining, and, basically, they're requesting enforcement of the special permit. She suggested, so that the Building Inspector knows what to do and what to look at, that the request for enforcement be as specific as possible; highlighting what the alleged violations are and asking for relief. Atty. Thibault noted that the Building Inspector has primary authority to either determine whether or not the permit holder is in compliance with the permit, and also has the authority to issue a cease and desist letter or impose fines against the permit holder. She added that if the Building Inspector takes a position of enforcement that the person who complains disagrees with, that person can then appeal that decision, and the appeal then comes before the permit granting authority, and with regard to this specific issue with 236 West Street, that would be the Planning Board due to the fact that they issued the special permit. She said that only in the case of an appeal in the Building Inspector's determination would it come before the Planning Board, for them to then determine whether or not the permit holder is out of compliance with the permit, if that is, in fact, what the person complaining is saying.

Mr. Queiroga read mail items number 37 (Letter from Cynthia Kawie, New England Pallets & Skids – re: 236 West Street (agricultural use vs. home office permit)) and 38 (Letter of concern from Gene Surprenant re: tree removal & erosion at 236 West Street) which stated concerns



about violations for the home occupation at the property rather than the agricultural use, tree cutting, and excavating concerns.

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Mr. Queiroga advised the attendees there are steps that need to be followed, the first being a written complaint to the Building Commissioner/Enforcement Officer. Mr. Phoenix noted that some of the issues such as tree cutting and traversing other people's property, should be handled outside of the Town's purview. Atty. Thibault agreed. She also noted one other enforcement related provision in the Town's General Bylaws, under The Right to Farm Bylaw (for agricultural use) and explained that the Board of Selectmen is the board that can provide assistance with helping resolve disputes relating to farming and agricultural issues. Mr. Queiroga also remarked that the DPW should be involved if there are drainage issues involved. Mr. Phoenix explained that some of those drainage concerns also fall under the criteria of the special permit, where it specifically talks about stormwater. Mr. Phoenix also stated that we have the issue of the agricultural use on an agriculturally zoned parcel that's over 5 acres, and then we have the landscaping business as a home occupation. He noted that under the criteria for the home occupation there are things that say you can't change the nature of the property to make it look less residential, and that would need to be criteria that still needs to be upheld even if there's other things happening on the property, that if they've applied for and gotten the special permit they still need to meet all of those criteria. Atty. Thibault said that because the agricultural use is allowed by right, there's a requirement that the Town needs to make a determination to distinguish whether the activity being complained of relates to the agricultural use and any activity that is associated with that, or the home occupation use. She remarked that it will be a question of fact finding, such as; is the vehicle used for an agricultural purpose or is it used for the home business, and then does that vehicle put the business out of compliance with the special permit.

Atty. Thibault said that what qualifies as agricultural use can be production, cultivation, growing, harvesting of plants and animals, and gets pretty broad, but that it's about producing something on site. She went on to explain that if there is a nursery on site, if those plants aren't grown or cultivated on site, then that's not an agricultural use of a property. She said the same applies to vehicles and equipment, that if they are incidental to, and essential to, the agricultural use, then it is allowed. Atty. Thibault remarked that under the Right to Farm Bylaw, it basically says that any person having a complaint about a farm activity or practice is encouraged to seek an amicable resolution by talking directly with the farmer, and/or may request resolution assistance from the Board of Selectmen.

Attorney Patrick Markey, representing New England Pallets, remarked that there is recorded video of landscaping debris being dumped at the property at 236 West Street, and said that now that he knows how to proceed, he will do his best to create a really strong record and send a letter of complaint to Justin Larivee, the Building Inspector, requesting an enforcement action, and will attach the videos and the photographs so that it's clear to him that there is a violation. He also said that if Mr. Larivee does not find any violations, that they will be back before the Planning Board to ask the Board to override Mr. Larivee's decision and enforce the terms of the special permit for the home office. Atty. Markey explained that they will simultaneously seek the guidance of the Board of Selectmen regarding the agricultural use.

Cynthia Kawie of New England Pallets and Skids said that in regard to the agricultural issue versus the landscaping business, there's been no tending to the "farm" of nine bushes that were planted, that the property cannot be accessed without going through their property, and that Mr. Allen has traversed on Clean Septic property to access the rear for dumping of logs. She also said that the DPW has not returned her calls in reference to the drainage problems, and that she will do the formal complaint with the Building Inspector. Ms. Kawie mentioned that she isn't concerned about any agricultural use on that property, she just doesn't want anyone cutting through her property for access.

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Mr. Phoenix suggested that if one of the avenues that if they choose to pursue is to go through the Board of Selectmen, that they best way to go about that is to put something in writing to the Board requesting a meeting with them to discuss the issue.

The Planning Board agreed that everything will be kept on file, and if the complaint comes back to Planning, it will be handled at that time.

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**ANR – 202 Cady Street (Assessors' Map 1C, Parcel 137) – Antonio V. Aleixo  
(divide existing parcel into 5 parcels)**

*Antonio Aleixo was present for the appointment.*

Mr. Aleixo explained that he bought the property a few months ago and would like to subdivide it for future building lots. Mr. Queiroga noted that the property is zoned Residence A.

*Mr. Phoenix read the ANR checklist:*

- 1. Property owner's name, date of plan, and scale of plan.*
- 2. A space for endorsement by the Planning Board.*
- 3. The names of all abutters.*
- 4. The lines of existing streets, ways, property lines, and easements. Indicate whether streets and ways are public or private.*
- 5. The approximate distance from the property to the nearest street intersection, town line, or other definable physical feature.*
- 6. Sufficient data to determine the location and length of every property boundary line in the new parcel and to establish these lines on the ground. Indicate the area of the new parcel.*
- 7. The location of all property corner monuments and whether they were found or set.*
- 8. The location, frontage, and area of the land remaining in the original parcel after establishing the new parcel.*



9. The north arrow for bearing system used on the plan and whether it is true, magnetic, or assumed north.
10. The location of all existing buildings and the distance from the existing buildings to the new property lines.
11. If a building lot is intended, the frontage requirement at the setback line must be shown.

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SUBMISSION: Two (2) Mylar's plus four (4) sets of prints (dark line on white background) shall be submitted to the Board for endorsement.

Mr. Phoenix: Since the checklist is complete, unless somebody has something else they'd like to add, I'd make a **MOTION** to endorse the ANR using our standard form.

**SECOND** Ms. Houle.

**4-0 in Favor.**

**Roll call vote: Mr. Quiterio – yes; Mr. Phoenix – yes; Ms. Houle – yes; Mr. Queiroga – yes.**

*Documents included: Master application; Subdivision Approval Not Required Plan, Cady Street, Focosi Lane, Ludlow, MA - owned by Antonio V. & Yvette M. Alexo (June 4, 2018)*

**Mail Item #39 - Invitation to Accept Offers to Purchase Land – 0 River Street – Atty. Vincent Delgado**

Mr. Phoenix: I **MOVE** to find that we are not interested in the property at this time.

**SECOND** Ms. Houle.

**4-0 in Favor.**

**File Mail Item #40 - Certificate of Assessment from Pioneer Valley Planning Commission (7/1/18-6/30/19)**

Mr. Phoenix mentioned that he went to the Boundless Playground in Belchertown today, and that there was a sign there that noted that the single largest donor for the playground was Belchertown's Community Preservation Committee. He said that people that are looking to have decent playgrounds in the Town of Ludlow should consider the Community Preservation Act as a resource that could have been tapped if it wasn't turned down in Ludlow twice.

**Mail Item #41 - Request for site plans/surveys for McDonald's – 0 East Street, MA Turnpike Eastbound location, from Control Point Associates, Inc.**

Mr. Phoenix said that he doesn't remember anything ever coming in for the service plazas other than something regarding a sign, probably 20 years ago. Ms. Urban stated that there was nothing in the files for this property. Ms. Houle remarked that she was in the Building Department when a lot of these things were done, and that they (the Building Department) were told that that's

property owned by the State, and that the Town had no oversight on any of the building permits. She noted that the State should have some sort of plans for that location.

Mr. Phoenix **MOVED** to notify Control Point Associates Inc. that we do not have anything on file, and they would probably be well served by contacting the State.

**SECOND** Ms. Houle.

**4-0 in Favor.**

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### *Consent Agenda:*

Mr. Queiroga explained that the Change of Occupancy for Triunfo Imports is located behind Pizza Corner, and that the property has had a warehouse use for the past 30 years. He noted that there was not any information in the file, but that a site plan was acquired for the property, along with property card information and prior use from the Assessor's Office.

*The Board approved the Consent Agenda under unanimous consent.*

- ◆ FILE Mail Item 42. - Legal Notices from surrounding communities
- ◆ APPROVE/SIGN Minutes of June 14, 2018
- ◆ SIGN Special Permits:
  - Marineh Kirakosyan – 24 Edison Drive (teach piano lessons)
  - Manuel Moreno – 146 Vienna Avenue (burring)
- ◆ APPROVE Change of Occupancies:
  - Gillespie Car Care (add Meghan Hewitt to business name) – 407 West Street
  - Triunfo Imports (warehouse use) – 60 East Street

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Mr. Phoenix: With that done, I'll make a **MOTION** to adjourn.

**SECOND** Ms. Houle.

**4-0 in Favor.**

Meeting adjourned at 8:00 p.m.

APPROVED:

  
Kathleen Houle, Secretary

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(All related documents can be viewed at the Planning Board Office during regular business hours.)

