

**TOWN OF LUDLOW PLANNING BOARD
MINUTES OF THE MEETING OF
September 13, 2018**

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PLANNING BOARD MEMBERS

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

The meeting began at 7:01 p.m. in the Selectmen's Conference Room.

PUBLIC HEARING – ZONE CHANGE – 1322 Center Street (Assessors' Map 33, Parcel 45) – Justin Dias (Agriculture to Residence A)(to bring the conflicting setbacks for the existing permitted structure into compliance)

SEE ATTACHED MINUTES

PUBLIC HEARING – SPECIAL PERMIT / HOME OCCUPATION & SITE PLAN – 38 Lyon Street (Assessors' Map 24, Parcel 42) – Kenneth Butts (Home Office – processing firewood, and Site Plan – firewood processor)

SEE ATTACHED MINUTES

Mr. Phoenix **MOVED** to take a five-minute recess.

Mr. Queiroga: ---?

Mr. Phoenix: Because I need to go down the hall.

Mr. Queiroga: --- ok, he made a motion, is there a second?

SECOND Mr. Quiterio.

3-0 in Favor.

The Planning Board took a recess from 8:02 p.m. to 8:04 p.m.

PUBLIC HEARING – ZONING BYLAW – Proposed zoning bylaw revision to include the following: Delete in its entirety Section XI. Temporary Moratorium on the Sale and Distribution of Recreational Marijuana; Delete from 3.0 General Regulations 3.0.5 Private Swimming Pools a. “, but in no case shall the pool be located nearer than ten (10) feet to any side or rear lot line. A pool must be located at least ten (10’) from any and all structures. Exception: Pool Decks.”; Add to Section 5.1. Business in the Agriculture Moderate Density Overlay District 5.1.3 Site Design j. The Planning Board may waive up

to 25% of the required parking spaces under Section 6.4 PARKING REQUIREMENTS in the Agriculture Moderate Density District.

SEE ATTACHED MINUTES

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SITE SKETCH – 19 Carmelinas Circle (Assessors' Map 26, Parcel 9A) – Ludlow Construction / Crocker Building Company, David Mathes (Add new addition to the southeast corner of the existing building; comprised of 3 offices, 1 bathroom, 1 conference room)

David Mathes & Scott Pio were present for the appointment.

Mr. Stefancik noted that none of the waivers were done since there were only three Board Members present at the last meeting on August 23, 2018.

Mr. Queiroga remarked that the plan wasn't approved at the last meeting because the structure was shown too close to the property line on the plan. The applicants said that they changed the plan (to conform to the setbacks).

Mr. Phoenix read the comments from the other Boards/Departments; Department of Inspectional Services – no comment; DPW – no concerns; Fire – Comply with NFPA 13 Fire Protection Systems, comply with 527 CMR 1.00, no issues noted.

Mr. Stefancik confirmed that the only correction that was needed on the plan was to show the 25 foot for the front yard setback. He also said that the waiver is needed for the fee, the public hearing, and a waiver of the full registered site plan in favor of a site sketch.

Since there are only three Board Members present, the Site Sketch approval and waivers will need to be voted on at the next meeting on September 27, 2018.

Documents included: Master application; Request for waivers; Site Plan – 19 Carmelinas Circle Ludlow, MA owned by Pio Real Estate, LLC (August 7, 2018, Revised: 9/4/18)

Planning Board Member needed for Task Force for Future of Veterans Park School
(Mail item #50 continued from August 23, 2018 meeting)

The letter said that a member of the Planning Board is needed for the Task Force for Veterans Park School.

Mr. Phoenix **MOVED** to nominate Ralph as our designee to the Future of Veterans Park School Task Force.

Mr. Quiterio: Can I second it?

Mr. Queiroga: You can second your own, yeah, because I can't.
SECOND Mr. Quiterio.

3-0 in Favor.

Notice to appeal to Planning Board from Building Commissioner's denial of request for enforcement of building permit by failure to act upon the same within 14 days – Peter Kawie and New England Pallets & Skids, Inc., petitioners v. Leonard J. Allen, III, Michael M. Aguilar and L.J. Unlimited Landscaping, Inc. (250 West Street, Ludlow)

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Mr. Phoenix asked if we had heard anything back as to what direction to go with this. Mr. Stefancik said that he notified Peter Kawie's attorney that they have to resubmit the appeal to the Zoning Board of Appeals, which they have done.

Mr. Phoenix **MOVED** that we put this in the file since it's not for us to handle anyway, and we've already notified the appropriate parties that where it needs to go. Is there a second on that?

SECOND Mr. Quiterio.

3-0 in Favor.

Mr. Phoenix commented on the inefficiencies of the Building Department regarding the Zone Change for 1322 Center Street, the Zoning Bylaw changes, and the Notice of Appeal for 250 West Street. He said that there are three issues in the same night that are direct result of lack of communication and lack of accountability within that office. He said that he thinks it might be appropriate, since the Planning Board oversees making a lot of these recommendations and handling a lot of these situations, to ask the Board of Selectmen to have their liaison meet with the Planning Board to discuss these issues because it is impacting the Town and the residents of Ludlow in a negative way.

Mr. Phoenix **MOVED** that we ask the Board of Selectmen to have our liaison come in and meet with us formally to discuss how we can move forward with zoning and land use in this town in a way that is effective and in a way that is fair, in a way that is predictable, and in way that has accountability where we actually are serving the people of this town. I hear nothing, so I guess that's that.

Mr. Queiroga: What's ---?

Mr. Phoenix: Well, I made a motion.

Mr. Queiroga: ---

Mr. Quiterio: Can you repeat it again please? I just ...

Mr. Phoenix: I can paraphrase, I can't repeat.

Mr. Quiterio: Yeah, just ---

Mr. Phoenix: To paraphrase, it's to ask the Board of Selectmen to have our liaison come in and talk to us because we can't be dealing with these zoning issues, trying to create and make recommendations about the Zoning Bylaw and how that's gonna be worded, trying to deal with

situations where we're doing zone changes as a direct result of a problem where something didn't get caught in the Zoning Enforcement Office, in the Building Department, and where we have failure to act; not a denial, not a refusal, but a failure to act on an issue that someone in Town brought up to that department. So, we have a Building Inspector who couldn't be bothered to show up or write a letter about the words that go into the Bylaw, who can't be responsible for, in making sure that the building permits are being issued appropriately by the zoning. And then after somebody's doing something that a neighbor finds to be nonconforming, doesn't, I'm not gonna say he needs to go after the neighbor but should at least be able to give them something saying that I'm refusing to do this. It shouldn't be by failure to act. So, he's absent in the crafting, there's no accountability on the execution, and there's failure to follow through on the enforcement.

Mr. Queiroga: I thought you were gonna shorten it?

Mr. Phoenix: I said I could paraphrase, I didn't ---

Mr. Quiterio: Your motion would be for him to come here for us to ask him those questions?

Mr. Phoenix: Is for us to have the Board of Selectmen send our liaison to talk with us.

Mr. Queiroga: Who is the liaison?

Mr. Stefancik: I'd have to check, because it usually rotates every election.

Mr. Queiroga: Can you?

Mr. Quiterio: I'll **SECOND** that.
3-0 in Favor.

Payment of Turley Publications invoice for Kevin Brown, 16 Duke Street (SP-0589)

Mr. Stefancik explained that Mr. Brown has paid his past due invoice for Turley Publications (\$77.78) for the advertising of his public hearing held on March 22, 2018, after he was told that his special permit would be revoked for nonpayment.

File Mail Item #53 - Ludlow Conservation Commission - Legal Notice - Eversource transmission right-of-ways

Consent Agenda:

The Board approved the Consent Agenda under unanimous consent.

- ◆ FILE Mail Item 54. - Legal Notices from surrounding communities
- ◆ APPROVE/SIGN Minutes of August 9, 2018 & August 23, 2018
Minutes of September 13, 2018

- ◆ APPROVE Change of Occupancies:
 - Lori Marta (Marta Law Offices) – 77 Winsor Street, Suite 202
 - James Chenier (Dry Cleaning Drop Off) – 190 East Street
 - ◆ APPROVE/SIGN Bills – Turley Publications (Zoning Bylaw public hearing)
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Mr. Phoenix **MOVED** to adjourn.
SECOND Mr. Quiterio.

Mr. Queiroga: Not debatable.
3-0 in Favor.

Meeting adjourned at 8:45 p.m.

APPROVED:



Kathleen Houle, Secretary

su

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

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**TOWN OF LUDLOW PLANNING BOARD
PUBLIC HEARING – ZONE CHANGE
1322 Center Street (Assessors' Map 33, Parcel 45)**

**Justin Dias
(Agriculture to Residence A)
September 13, 2018**

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PLANNING BOARD MEMBERS

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

Hearing began at 7:02 p.m. in the Selectmen's Conference Room.

In attendance: Justin Dias, Attorney Bradford Moir, attendees

Mr. Queiroga read the legal notice, gave Mr. Dias a copy of the invoice from Turley Publications, and reviewed the application. The legal notice included the description of: Zone Change Requested from Agriculture to Residence A; To bring the conflicting setbacks for the existing permitted structure into compliance. He also read Mail Item #51 from the Board of Selectmen re: receipt of zone change application.

Mr. Queiroga: Ok, I think I know some of the facts here, why don't you...

Mr. Moir: Sure, my name is Bradford Moir. I'm an attorney from Westfield and I represent Justin. A little bit of background here; Justin's family bought this, this was a tax taking lot years ago from the Town, and Justin started to, at the time, they knew it was a little too small and so they hired an engineer to do certain things, and they applied for a special permit from the Zoning Board of Appeals because it was a nonconforming lot, ok. And that's where this whole thing started to break down. The engineer, for some reason, thought it was a Residence A zone. So, when he designed the plan for the lot, for the house, he initially showed a thirty, this plan was submitted with the first thing, to the Board of Appeals, and it showed front yard thirty, and side yard it showed, it was not a great plan. So, at that point in time, because he thought it was a Residence A and it wasn't. It was Agriculture. The house plan showed this, and so the Board actually approved thirty, ok, as nonconforming, but they thought they were approving, they thought they needed more on the side, they needed the twenty, ok. So, when the house, so he, when the house was built, this is what happened, is he ended up with the front porch being twenty-five feet, and the side yard being ten. Again, this was still ---, this --- was a Residence A zone where you need twenty and ten, wasn't. So, we got a little relief from the Zoning Board of Appeals with the front, we'd agreed to take the porch down so we could have thirty, and they'd approve that. But then we realized that we didn't have the ten on the side yard. I mean, we didn't have the twenty on the side yard. Went back to the Zoning Board of Appeals to amend our special permit for the nonconforming structure on the lot, and they felt it was just really a bad precedent, that we really should be trying to get a zone change, and they felt really

uncomfortable. When we looked at the Residence A zone, and this is a map of what's Residence A, and I can give this to you, this is Justin's house lot. It shows that Residence A actually abuts the back. It's all Residence A here, Residence A here. And so, when we looked at the size of the lots, since Justin's lot is now over, it's 22,950 feet including an old private way in the back that he now owns part of. That's as big or bigger than a lot of the lots that are in the subdivision there. And so, and those are all Residence A. So, we felt the most appropriate thing would be to ask for a zone change because it's certainly not spot zoning because it abuts a Residence A district and it conforms with lot size. This would then cure, you can see the as-built, well, did I give you the as-built?

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Mr. Phoenix: This one?

Mr. Moir: Yeah, that's the as-built. You can see the as-built, it shows that Justin, he still has to take the porch off, and the porch has been taken off. As you can see, the porch was 25.2, so with the porch off, he now is more than 30 feet in the front, and his garage is more than ten feet. And the one we had is, in front of the ZBA is, we said look, we can take the porch off, but the problem with the garage is that it's actually part of the structure. You know, in other words ---.

Mr. Dias: ---

Mr. Queiroga: I've gone by it, I understand.

Mr. Moir: So, you can't do that. So, in this case, the lot's more than large enough in Residence A zone. The setbacks conform, and it abuts a Residence A zone, it just, it makes a, it changes a horrific situation for him, and the engineer who, obviously, if we couldn't get relief, we'd have to bring a claim against him, and in this case, we think this is a good resolution.

Mr. Phoenix: And it's something that slipped by when getting the building permit too, that nobody ---.

Mr. Moir: It slipped by, right. I think the building inspector relied on the engineer who had to, you know, so it's just a whole travesty that led to all this.

Mr. Queiroga: And it seems to be enough blame to go around here.

Mr. Moir: There's enough blame, and it's cost Justin money because he had to, the porch was solid concrete.

Mr. Dias: Yeah, we had like a wine cellar underneath, so it was a little more work than just taking the porch down for sure, but we took it down regardless. We just want this thing to conform.

Mr. Moir: And this is a tough lot anyways, if you've ever seen it. It has wetlands, it's got ledge, it's got, you know. So, that's the request for a zone change.

Mr. Queiroga: The, I was briefed on, as I said, not to be sarcastic, but when you hired the, did you hire a surveyor or an engineer?

Mr. Dias: Well, I had the lot initially surveyed long before I started the process years ago.

Mr. Queiroga: By?

Mr. Dias: By, who was it actually by? I don't know if I have it. That was just to get the overall boundary survey, and then this is, and then from there on out I used Innovative Engineering, John Kopinsky from Ludlow, and then he, he established the setbacks, and I worked with Mike Pietras to get the wetland setbacks, and then from there I used John to give me all the pins and pin the house. So, this was, I mean this is the plan we submitted for the permit. That, you can actually see there's a note that says Res A setback on there.

Mr. Queiroga: Yup.

Mr. Dias: But, you know, nobody got that.

Mr. Queiroga: So, you hired a surveyor first?

Mr. Dias: Right.

Mr. Queiroga: Did he check the zoning?

Mr. Dias: I'm not sure ---.

Mr. Queiroga: He didn't identify it.

Mr. Dias: Yeah I just got the pins.

Mr. Queiroga: And I know Joe is a qualified engineer.

Mr. Dias: Right.

Mr. Queiroga: Did you notice that it was a different zone?

Mr. Dias: I think that's kind of where we're all a little bit confused. I mean, it was a lengthy process. This has been, you know, since we got it, the boundary survey, that was 2015. So, it's been a little while. So, I've worked with John, you know, perc tests, and, you know, we've had a lot of conversations about different aspects of the site. So, I'm sure he was aware that it was Agriculture, or he should have been aware, I mean, and then once he prepared that plan.

Mr. Queiroga: And then the, because Innovative Engineering usually does a good job, he must have relied on that, the inspector, and not checked to make sure there was a compliance with the zoning.

Mr. Moir: Yeah, I think once somebody put down it was Residence A ---...

Mr. Dias: ---

Mr. Moir: Everybody else relied upon it. It's just, you know, mushroomed, but it became a crazy situation, you know, so.

Mr. Quiterio: I have a question. Now if it was to change to Residence A, to the ten feet on the side of the garage, would that be legal?

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Mr. Queiroga: That's within, I believe, correct Doug?

Mr. Stefancik: ---

Mr. Moir: Yeah, Residence is thirty frontage, is thirty front yard, and ten feet side yard. Yeah, so this would make it.

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Mr. Quiterio: ---.

Mr. Moir: That would solve it, yeah.

Mr. Queiroga: I'm just sorry that along the way, it didn't get caught, and then really I'm sorry that the Board of Appeals didn't see fit to amend the plan ---.

Mr. Phoenix: It's probably better that it comes this way, 'cause otherwise he's gonna be in a situation where he's gonna be going back to them every time he wants to do anything on the property.

Mr. Moir: That's right, that's exactly right.

Mr. Phoenix: This cleans it up as a once and for all, which is, I think, long term that's the much better relief for him to get. It's already built as a Res A, the Town, and at least the capacity of one of its officials, already treated it as Res A. It's already built. It's gone to the ZBA, it got relief once. There's a lot of factors going on with what's there now. But what I'm more concerned with, because this is a zone change, is typically, what are we looking at in the future as far as possible uses, which certainly going from Agriculture to Res A restricts the uses more than it does anything else. It gives you a little bit more leeway on some of the setbacks, but you lose a lot of potential uses. So, the neighborhood loses the capacity for a lot of different things that would be more intense than just having a single-family home.

Mr. Queiroga: Which you see as a plus ---?

Mr. Phoenix: Well I'm not saying it's necessarily a plus, I'm saying it's lighter use...

Mr. Queiroga: It's easier for us.

Mr. Phoenix: ...you know, so it's hard to imagine much less of an intense use than what we allow in Res A 'cause the most that could go in there is maybe put a home occ in there or something. But, projecting down the road, let's say somebody comes in twenty years down the line, razes the house right down to the ground and wants to do something else, they're putting up another single-family home. So, we're essentially in the same situation except, if anything, it's gonna be deeper into the lot than what is currently there, which would put it more in line with conforming now. It's not like it's gonna be able to get any farther away from what it's currently zoned, and certainly not from what we'd be switching it to. I'd be interested to hear if the neighbors have any feedback on it. But, I don't really see any way where the Town loses by doing this, and I think the fact that it does about other Res A land, is certainly a huge mark in its favor. Because if that wasn't the case, I'd probably have a different mindset for it.

Mr. Queiroga: Ralph, do you have any questions or comments?

Mr. Quiterio: Nope, I do not.

Mr. Moir: Actually what you said was really important, was the fact that ZBA's biggest stumbling block at the end, you know, we were coming back for another bite at the apple, was look, if we keep it nonconforming, which means if you want to come in and put a shed, if you want to put anything, you got to come back to us because it's a nonconforming lot and you're making it more nonconforming, or whatever, and so that was a major reason they said 'cause we don't want you, we don't want it coming back for all these little things that you're gonna have to get our approval for. So, that was a good point, that was a major reason they said look go here. Now we still, we kept our public hearing open with them, ok, till sometime in October because there's two more steps here, you know what I mean? Your recommendation and then the Town Meeting, but this does solve it, I think, in everyone's best interest.

Mr. Queiroga: Just to let everybody know, this is a public hearing, and I do advise you that there are cameras recording. And at this time, I'm going to...

Mr. Phoenix: I know you were looking at Ralph if he had anything to add. If he doesn't, there's one thing I'd like to say before you go to the public.

Mr. Queiroga: Shoot.

Mr. Phoenix: I'd just like to make mention, and you kind of touched on it also, whatever decision we make here tonight, is simply a recommendation to Town Meeting. Town Meeting is certainly free to agree or disagree with us as they see fit. They've done both in the past. So, the decision that we make tonight is not binding, it's just a recommendation. There's not much that changes either way. Based on our recommendation, we have to make one, and if we recommend against, then Town Meeting takes that recommendation and puts a zoning freeze on. That's about the only real-world defect that it has aside from letting Town Meeting know what our thoughts are on this issue. But, it certainly, if anybody disagrees with our decision tonight, they're free to go to Town Meeting and argue there as well.

Mr. Queiroga: Ok, at this time I'm gonna open it up to anybody who would like to comment or have any questions. If you do, go through the Chair here and identify yourself and your address if you're a town member. Who would like to speak on this issue?

Ms. Hodgman: Elaine Hodgman, and what else did you want for information?

Mr. Queiroga: Your address.

Ms. Hodgman: 1475 Center.

Mr. Queiroga: Ok.

Ms. Hodgman: You said something about this is not spot zoning that you were talking about. The house on one side is Residential A, the other side is Agricultural. So, isn't that spot zoning, and you're changing it?

Mr. Queiroga: You can see the majority, probably 80% on his side of the street, they're all Residency A. We do have areas, and...

Ms. Hodgman: Say that again sir?

Mr. Queiroga: The side of the street that he built his home on, in that area is predominant Residence A.

Ms. Hodgman: That's the development on Westerly.

Mr. Queiroga: Yes. Westerly and some of the houses in the front.

Ms. Hodgman: What about the rest of Center?

Mr. Queiroga: Pardon me?

Ms. Hodgman: What about the rest of Center Street?

Mr. Queiroga: There's...

Mr. Phoenix: There's abundance of agriculturally zoned land along Center Street, but this piece of property does directly abut Residence A zoned property.

Mr. Queiroga: Actually, yeah.

Ms. Hodgman: It abuts both, doesn't it?

Mr. Phoenix: Yes.

Ms. Hodgman: So, you can't say one or the other that it abuts majority Residence A or Agriculture. It's 50/50 isn't it?

Mr. Phoenix: If I had to say what it primarily abuts, I'd say it primarily abuts Agriculture. The minority of its linear feet of perimeter borders Residence A.

Ms. Hodgman: So, wouldn't you be setting a precedent if you decided to, because this building's already been there, mistake after mistake has been made, changing it now to make it work?

Mr. Phoenix: It's not setting a precedent, it's changing it to match abutting land. That's not spot zoning, that's kind of the opposite. Spot zoning would be if it doesn't have any Residence A touching it, and it's less than five acres, and somebody was looking to have it rezoned to something it doesn't touch.

Ms. Hodgman: What about leaving it Agricultural and getting a variance?

Mr. Phoenix: It's theoretically possible, but it's not really a good way to go about doing things, not for the resident and not for the town realistically.

Ms. Hodgman: Not for the town how?

Mr. Phoenix: Because if the property owner wants to do anything, they're gonna have to keep going to the ZBA, which is gonna mean that the neighbors are gonna keep getting notified of public meetings that then they're gonna have to go for doing anything, for a shed, a pool, anything that the owner wants to do. That's not really in anybody's best interest as a use of the ZBA's time, a use of the neighbor's time having to go to those meetings, or the property owners time.

Ms. Hodgman: What can be done to prevent this miss of zoning next time?

Mr. Phoenix: I would talk to the Board of Selectmen about oversight of the Building Inspector and his department. That's what I would recommend.

Ms. Hodgman: This has been a snowball of a mess from beginning, and it's...

Mr. Phoenix: If it's something where the Town...

Ms. Hodgman: It shouldn't have happened to begin with.

Mr. Phoenix: ...if the Town dropped the ball in the Building Department office, then that's, I think, who needs to be spoken to, and his department is directly overseen by the Town Administrator and the Board of Selectmen.

Ms. Hodgman: Didn't the legal aid to the, legal counsel for the town say it was ultimately the responsibility of the homeowners to make sure everything was right?

Mr. Phoenix: I don't know what any lawyers have said on the matter.

Ms. Hodgman: ---

Mr. Phoenix: Ultimately, my question here isn't so much about what's been done in the past, my concern is, is the use that being suggested, not even the house in question, but the zoning in question, appropriate for the area of where it's being asked to be put, and I don't see anything as far as use that would be disadvantageous to the town by having it be Res A there. And it's certainly not spot zoning. I don't see any real reason why Residence A wouldn't be appropriate on that piece of property.

Mr. Queiroga: The Town...

Ms. Hodgman: --- see your side of it, I just would like to have zoning remain as it has been. There's a lot of changes have been made and it's not pleasant to me, simple as that.

Mr. Queiroga: You live on the other side?

Ms. Hodgman: I can't hear you.

Mr. Queiroga: You live on the other side of the street? How far from your address?

Ms. Hodgman: I live past the Villa Rose.

Mr. Queiroga: Past the Villa Rose. Ok.

Ms. Hodgman: I'm done.

Mr. Queiroga: You're done.

Ms. Hodgman: Thank you.

Mr. Queiroga: You're welcome. Anybody else like to speak on this issue? That being said, I'm looking for a motion.

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Mr. Phoenix: I will make a **MOTION**...

Mr. Queiroga: Before you do, I just want to, one more thing, we're very sensitive about what you said, and here's a gentleman who relied on a surveyor, an engineer, a building inspector to do what they're trained to do, and now he's stuck with the home that he's going to have to cut, or has already cut the porch off, correct?

Mr. Dias: Correct.

Mr. Queiroga: A concrete porch, ok?

Mr. Dias: Correct.

Mr. Queiroga: You know, there's, and in Residency A, what Ray said is absolutely true, we have a lot more control over Residency A than in Agriculture, ok?

Mr. Phoenix: All we lose is some of the control over density because it's able to be more densely built, but we're dealing with a single lot. We're not dealing with multiple lots where something else could be carved out. It's gonna still stay a single-family home, one home on that lot. There's no additional use that's gonna be added on.

Mr. Queiroga: And not having a lot of acreage that you can do things on it by law, by right, that some people might not like, but this side of town is predominately Agricultural, I grant you, ok. A lot to the back is all kinds of homes, as you know, just right behind the Villa Rose, and across from the Villa Rose are single family homes.

Ms. Hodgman: It's just dangerous pulling out of that driveway to say the least. It's gonna be ---.

Mr. Queiroga: You mean Mr. Dias?

Ms. Hodgman: Yes.

Mr. Phoenix: Well, I think that's the same regardless of whether it gets a zone change or not.

Mr. Queiroga: Yeah, that's true.

Ms. Hodgman: It is true, it's just, I fear for them, I really do.

Mr. Queiroga: Thank you for your comments. Be looking for a motion.

Mr. Phoenix: Ok, I'm gonna, since we don't make this one very often, I'm gonna make the motion in the standard form, but I'll read it out. I **MOVE** to recommend approval to Town Meeting of the zone change at 1322 Center Street from residence, from Agriculture to Residence A, because it's in the best interest of the Town, is consistent with any Master Plan of the Town, and it is not spot zoning.

SECOND Mr. Quiterio.

3-0 in Favor.

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

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Mr. Phoenix: I **MOVE** to close the public hearing.

SECOND Mr. Quiterio.

3-0 in Favor.

Hearing ended 7:23 p.m.

APPROVED:



Kathleen Houle, Secretary

su

Documents: Master application; abutters list; Plan View - Building Dept. As-Built Plan, Justin Dias, Lot #45 – Center Street Ludlow, MA 01056 (04 OCT 17); Mail Item #51 - Letter from Ellie Villano, Town Administrator re: Zone Change application – 1322 Center Street; Assessor's Map 33

(Documents pertaining to this hearing are available for viewing in the Planning Board Office during regular business hours).

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TOWN OF LUDLOW PLANNING BOARD
PUBLIC HEARING – SPECIAL PERMIT / HOME OCCUPATION & SITE PLAN
38 Lyon Street (Assessors' Map 24, Parcel 42)
Kenneth Butts
(Home Office – processing firewood, and Site Plan – firewood processor)
September 13, 2018

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PLANNING BOARD MEMBERS

TOWN OF LUDLOW

Joseph Queiroga - Chairman (Present)
Raymond Phoenix - Vice Chairman (Present)
Christopher Coelho (Absent)
Kathleen Houle (Absent)
Raphael Quiterio (Present)

Hearing began at 7:25 p.m. in the Selectmen's Conference Room.

In attendance: Kenneth Butts, attendees

Mr. Queiroga read the legal notice, gave Mr. Butts a copy of the invoice from Turley Publications, and reviewed the application. The legal notice included the description of: Home Office – processing firewood, and Site Plan – firewood processor.

Mr. Phoenix: Mr. Chairman.

Mr. Queiroga: Mr. Phoenix.

Mr. Phoenix: We're in kind of an awkward situation on this one. It's a special permit, so we need to have four members and we do not.

Mr. Queiroga: And our stand-by is not around?

Mr. Stefancik: No. You do have site plan with this as well.

Mr. Phoenix: Yeah, the best that we can probably do is hear the discussion on it, and possibly, maybe, get through the site plan and then handle the special permit / home occ once we have another member that's able to review the video or the minutes, so that we can at least make some forward progress on it for tonight, but obviously we're not gonna be able to get all the way to the finish line in regardless of any circumstances tonight.

Mr. Queiroga: Yeah, I'm sorry about that Mr. Butts.

Mr. Butts: Not a problem.

Mr. Queiroga: We had a...

Mr. Phoenix: Unfortunately, special permits are one of the few things where we need to have four members instead of three.

Mr. Butts: ---

Mr. Queiroga: Do you have, do you have a site? Do you have that picture from above?

Mr. Quiterio: I'm trying to look right now.

Mr. Queiroga: Why don't you tell us what your plans are. You're doing it right now?

Mr. Butts: Currently?

Mr. Queiroga: Yeah.

Mr. Butts: No sir.

Mr. Queiroga: No?

Mr. Butts: No sir, not for the last two months or so.

Mr. Queiroga: Ok, you, how big is your lot?

Mr. Butts: 8.3, I believe it is.

Mr. Queiroga: 8.3 acres?

Mr. Butts: Yes sir.

Mr. Queiroga: The, you have any employees, or are you, do you have any employees?

Mr. Butts: No sir, not for that business.

Mr. Queiroga: Not for that business.

Mr. Butts: No, sir. I run another home-based business, my construction company, out of there, J Bentley Construction d/b/a KB Carpentry.

Mr. Phoenix: This would be sharing the same office space?

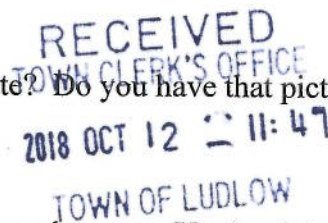
Mr. Butts: Correct.

Mr. Phoenix: So, what, if any, operations would be added to the site as part of this going in?

Mr. Butts: There's no additional operations that could be added to it. What you see is what you get. It's a pretty straight forward operation.

Mr. Queiroga: So, you have no employees.

Mr. Butts: No sir.



Mr. Queiroga: You already have an office in the home?

Mr. Butts: Yes sir, past 13 years.

Mr. Queiroga: Ok, and I'm assuming it's not a big gigantic office?

Mr. Butts: No, no.

Mr. Queiroga: Ok.

Mr. Phoenix: There is a note in the file from DPW...

Mr. Queiroga: Yes.

Mr. Phoenix: ...38 Lyon Street, are they proposing a new driveway, or tying into the existing driveway? I understand there's no curb along the frontage.

Mr. Butts: No curb along the frontage. It's all existing. Everything that's there is existing.

Mr. Phoenix: And then in the notes that we have from our office, Doug noted that for parking, parking space in accordance with Section 6.4.2, no use exists for a lumbering operation, owner has ample room in driveway, the owner is the only employee. And the only other comment as he was going through the checklist appears to be regarding o.1-5 that those would need to be waived which is another thing that we can't do with only the three of us. But, that would be asking, I don't know if we have the signed waiver request on that? But, if we are being asked for that waiver for o.1-5, if that would be the lighting plan with luminaire schedule. Are you looking on putting any lighting up to support the operation?

Mr. Butts: No sir.

Mr. Phoenix: Elevations showing the front, rear, and sides of the building design. You're not looking to do anything to change the home or anything else, right?

Mr. Butts: No sir.

Mr. Phoenix: Signage design with dimensions and locations. Any signage that you're contemplating?

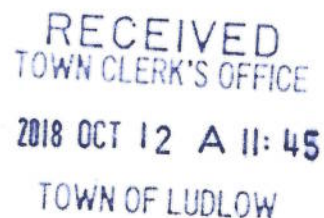
Mr. Butts: No.

Mr. Phoenix: Area where...

Mr. Butts: Excuse me, there was a for sale sign that I had out front. It went from rickety like painted to something I had made up.

Mr. Phoenix: Ok, and then to keep that in line with the home occupation, it would be two square feet in area?

Mr. Butts: Yes sir.



Mr. Phoenix: Ok. So, we don't necessarily need to waive three as long as it's called out on the plan as to where that sign is. But, being that it's part of the home occ, I don't know how we feel about that. Four is area where snow will be stored. I'm assuming no?

Mr. Butts: Not applicable.

Mr. Phoenix: And traffic study, and you're not, how many trips, let's say, per week would you say this is gonna be?

Mr. Butts: Busy season, it could go every day, a couple trips a day to a couple trips a week, to Saturday's probably being busiest this time of year. Being that this is a part time operation, I do a lot of this stuff after 4:00, in regards to deliveries, transporting, what have you.

Mr. Phoenix: Ok, so that's what we have on the comments on the checklists from what I can see.

Mr. Butts: There's a little bit of an overlap between the two, the existing business and this, because it's some of the same equipment that's used for my construction company that's used for this operation, so.

Mr. Queiroga: And the vehicle used is the one that's in the picture there, 9,800 gross weight?

Mr. Butts: Oh, that's on there, yes sir, yup.

Mr. Queiroga: Alright, any other comments or questions from anybody on the Board?

Mr. Butts: No sir.

Mr. Phoenix: Not at this...

Mr. Quiterio: I don't have any questions.

Mr. Phoenix: Have you gotten copies of all of our checklists for the special permit and home occupation? I know you must have seen them when you came in for the last one.

Mr. Butts: Yup.

Mr. Phoenix: Did you get copies with this?

Mr. Butts: Yes, I have them here.

Mr. Phoenix: And you don't have any problem with meeting all of those criteria in connection with the business as far as no changes to the nature of the property as a residence, that sort of a thing?

Mr. Butts: Right. None whatsoever. Zoned agricultural, this has been an ongoing thing, you know, since I've been there 13 years last April. I did a business change with my construction company, but nothing that affected the property, so.

Mr. Phoenix: Ok.

Mr. Queiroga: Why don't you, why don't you sign that.

Mr. Butts: Would you like this one?

Mr. Queiroga: Is it already signed?

Mr. Butts: Yes sir.

Mr. Queiroga: What I see in the picture, that's pretty far in the back of the property, correct?

Mr. Butts: Yes sir.

Mr. Queiroga: --- is that a...?

Mr. Butts: Power line and gas easement.

Mr. Queiroga: ----

Mr. Butts: It's that piece that looks like solar panels.

Mr. Queiroga: That's where it is?

Mr. Butts: Yeah, that's actually a like a lean to, it's a roof structure. It's all my storage on the left. Property's cut up a little bit weird, I go behind multiple properties, then I have the easement as well, and then it's all just state land.

Mr. Queiroga: That's your house on the lower left?

Mr. Butts: Nope, that is Meghan, and she is here.

Mr. ---: ----

Mr. Butts: Yeah, lower left. I'm like directly in their backyard.

Mr. Queiroga: Directly in their backyard.

Mr. Butts: Oh yes.

Mr. Queiroga: Ok, I should have told you, I don't know if you have any checks.

Mr. Butts: Yup, I do sir.

Mr. Queiroga: That'll be your copy. Ok, while you're doing that --- some other questions here, I'm gonna open it up for public comment.

Mr. Butts: To the Town of Ludlow?

Mr. Phoenix: Turley Publications.

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Mr. Queiroga: To Turley Publications, yeah.

Mr. Phoenix: The Town will never turn down a check, but Turley's till gonna come looking for their money.

Mr. Queiroga: And again, anybody who would like to speak on this issue, identify yourself. --- through the Chair, and just state your name and your address.

Mr. Jacobs: Rick Jacobs, 951 Center Street.

Mr. Queiroga: Yes.

Mr. Jacobs: I'd like to show you some pictures from, this is from my house looking at his property, and he does have more than one person working for him out there, cutting firewood on a daily basis, we're talking 12 to 14 hours a day, 7 days a week, right through the year. And he has still been delivering firewood even though he has a cease & desist on the business.

Mr. Butts: I was told that that was not an issue as long as I wasn't producing a product it was not a problem.

Mr. Jacobs: I cannot sit in my yard when they're out there cutting their wood.

Ms. Jacobs: It's been a very noisy neighborhood. This summer of course not, because the cutting of the firewood has not been happening in the last six months or so. But, last fall and all summer long was all day every day, saws and truck noise and fuel aromas. Definitely feeling like we're in an industrial area, not in a neighborhood.

Mr. Jacobs: Not in an established residential neighborhood.

Ms. Jacobs: Yeah.

Mr. Jacobs: I would have never purchased my home.

Mr. Butts: You shouldn't have.

Mr. Jacobs: If I had known you had a business like this I wouldn't have.

Mr. Butts: Gotta come knocking on my door before you purchased. I have two businesses there.

Mr. Jacobs: You didn't have that business when we bought.

Ms. Jacobs: The lean-to was about two years ago.

Mr. Jacobs: He built that like two years ago.

Mr. Butts: --- that operation sir for like 13 years.

Mr. Jacobs: That business has not been there for 13 years.

Mr. Butts: 13 years.

Ms. Jacobs: --- two years ---.

Mr. Jacobs: Two or three years.

Mr. Phoenix: Mr. Chairman. We got a lot of cross talk.

Mr. Jacobs: He's another neighbor. Are you a neighbor too?

Ms. Lacus: I'm the neighbor to the left of him.

Mr. Queiroga: Can you identify yourself?

Ms. Lacus: Meghan Lacus, and I am at 48 Lyon Street. My backyard is only about three behind my house and the rest is Ken's yard. I've lived there about 15 years, and aside from seeing two or three guys at a time, they rotate, they change, guys work for him for a year or two and move on. I had to go out back to see what he was building because there was no indication. It has not been that loud, and especially in the summer it's all covered by trees, you can't see it. You can see a little from my house, you can't see it, barely.

Ms. Jacobs: --- especially, I don't know if it was the power company, or I'm sorry.

Mr. Queiroga: I'll get back to you.

Ms. Jacobs: Ok.

Mr. Queiroga: ---

Ms. Lacus: He, I have almost never in the 13 years he's been there, seen him work on a Sunday, even when it was his other job. The guys don't come, the guys all have Sundays off. Works very reasonable hours, he never starts before like 7:00, and always finishes up, sometimes he'll be delivering in the dark, but he goes to the left and around to be able to get out. He doesn't go around though his house by the other neighbor. Pretty much the only neighbor he goes by is me and the gentleman next to us, and then turns and goes out onto street. The noise, I have never noticed noise that has bothered me. It's never been that loud, aside from a truck driving around. It's no different than his construction equipment driving around and putting it away.

Mr. Quiterio: Excuse me, what was your address sir?

Ms. Jacobs: 951 Center Street.

Mr. Jacobs: 951 Center Street.

Ms. Jacobs: Our backyards abut.

(multiple people talking)

Mr. Jacobs: Here's a letter from my other neighbor. He is out of the country for two weeks.

Ms. Jacobs: I'm not sure --- where we're located on Center Street, we hear a lot of noise. That's a big concern for us. That's one of the major reasons that we're here.

Mr. Jacobs: That's our yard right there. Can I show you? This is my yard right here. All I hear is noise ---. All you hear is chainsaws running, his --- running back and forth in the back with the beeping, the dump truck.

Mr. Queiroga: And your driveway goes out to Center Street?

Mr. Jacobs: Yes, those are our cars parked there next to the house.

Mr. Queiroga: So, he's really in your backyard?

Mr. Jacobs: Yes, --- that's all we see.

Ms. Jacobs: We can see the lean-to.

Mr. Jacobs: You can see the pictures we gave you, what we see is the mess in his backyard.

Ms. Lacus: Sir, I thought you put a big fence up about a year ago?

Mr. Jacobs: --- six years ---.

Mr. Jacobs: --- six years ago, a regular size stockade fence, but that lean-to is about 20 feet tall.

Mr. Hogan: Yeah, but we took our light off, 48 Lyon Street, with Meghan, we took our light off here 'cause that was bothering you.

Mr. Jacobs: It was lighting up the back of my home.

Mr. Phoenix: Mr. Chairman, point of order. We have people speaking that haven't identified themselves.

Mr. Hogan: Jeff Hogan, 48 Lyon Street. Same address as Meghan, 48 Lyon.

Ms. Lacus: I mean, we took a flood light down that was this big to accommodate you.

(multiple people talking)

Mr. Queiroga: Address yourself through the Chair ok, I don't want this going back and forth. Anybody else out there have any comments on this?

Mr. Phoenix: Well, there's this letter that they delivered from this property owner here.

Mr. Jacobs: He's out of the country for two weeks.

Mr. Butts: Which property owner is this sir?

Mr. Phoenix: 955, it says on the envelope.

Mr. Butts: Center? Can I make something duly noted? The easement has had a tremendous amount of work going on, on it for the last three years, the powerline easement, they put up all the high tension poles.

Mr. Queiroga: Right.

Mr. Butts: I have a very good working relationship with them, I have a very good working relationship with the gas company because they're on my property. They came through, unfortunately, a little over a year ago, and widened the easement almost 20 feet, left everything there 'cause I asked them to. You know, it's not just what I produce, it's what, you know, WMECO produces, it's what the gas company produces. It's an easement. It's a wide open swath of land going through my property. It is what it is.

Mr. Queiroga: I'll just read this from Mr. Gregory Asadoorian. *(Mr. Queiroga read the letter which stated concerns about noise pollution and requesting a sound ordinance if the special permit is granted.)* Ok, anybody new who hasn't, yes? Identify...

Mr. Vital: Mark Vital, 971 Center Street. I'm on the same road as them, on the opposite site. I certainly don't want to get between neighbors, or get in a dispute, I just wanted to see what the project was. I'm out there quite often. So, where you go along his easement, I share that same easement with the gas company, and the power line company, but I'm on the opposite site, so I don't hear any noise, but again...

Mr. Queiroga: You're on the opposite side of Center Street?

Mr. Quiterio: Center Street?

Mr. Vital: Yeah, I'm, so, where my backyard, where his yard ends, my backyard begins, keep going, keep going, keep going, then you'll see a pond in the front yard, ---. So, that's my pond. And if you keep going up past, where those three, the actual power line ---. My property actually goes up through here, but because of, as he said, the trucks or the power line company getting access, I told them to go ahead and just keep that stone wall and just cut it short so the power line companies aren't constantly breaking that apart or putting a fence in. I don't hear the noise --- that everyone else hears. I'm far away from his property. All I see is a lot of equipment, but it's all organized in a way where it's not a mess or a junkyard. The property's pretty well maintained although that's somewhat of a personal and subjective comment. I go back there and I get access to the woods with my kids and I go for hikes, so having some access back there, and having a neighbor that maintains that property is functional for us, and we do the same. But, I didn't realize until coming here that there was a noise, you know, just two or three houses down, so I certainly don't want to get between neighbors, but, you know, I don't see any of that. I see it quiet, but I don't get home until 6:00 at night, and on the weekends I don't hear anything on that property, so.

Mr. Queiroga: Thank you for your comments. We are, we'll keep these, alright? We are in a position of only having three people on the Board today, therefore we can't act on a special permit.

Mr. Phoenix: I just, I'd like to just clarify something quickly, as far as timeline goes, I believe, it looks like 2006 was when you went in?

Mr. Butts: I believe that's right.

Mr. Phoenix: And you've been there since 2003?

Mr. Butts: Yeah, more or less, yeah.

Mr. Phoenix: So, you've been there since before he moved in and through that whole time, and you haven't noticed any real difference as far as noise level from where you live?

Mr. Vital: I can't count on the noise level, because I'm way farther than they are ---.

Mr. Phoenix: I understand, I'm just saying from where, just from where you are, not necessarily...

Mr. Vital: Yeah, I mean, every once in a while, I hear the trucks back there, but that doesn't bother me.

Mr. Phoenix: Ok.

Mr. Vital: That could be anywhere on Center Street, for all that matters. All I see visually is all the clearing that's been done, because it was a disaster. I'm sure a lot of that's related to the power line company going and clearing all that out. So, it's a lot more functional back there than it was in the past. But again, I, you know, just being three houses down seems like a world of difference compared to the other neighbors.

Mr. Butts: On a separate note, the power company put in a gate on my easement.

Mr. Queiroga: They what?

Mr. Butts: They put in a gate that I have full use of because there was a tremendous amount of road traffic coming off of Lyon Street onto my easement which has drastically helped because when I first moved there, unfortunately, there was a bunch of illegal dumping because it was such a secluded location. It was presented to me, you know, this is what they wanted to do. They said I'll have full access to it, what have you. A little bit of a separate thing, but with that said, that gate has drastically reduced the amount of unwanted traffic of that easement.

Mr. Vital: So, I actually initiated that because there was trucks off-roading, and they were dumping plastic swimming pools, just garbage --- access. Their accessing his backyard because now it's all open, so people --- jeep in the middle of the night, and where we were, that's where the roundabout was, and it scared the hell out of us. Then you wake up in the morning, there's trash there.

Mr. Butts: We even took it to a level of getting a hold of the gas company and the power company, and that they supersede anything that I can say with the easement in regards to somebody trespassing and getting hurt. And basically, lack of a better term, they said someone would be crazy to come after us because we'd bury them, for lack of a better term. You know, they're like, you don't need to post it, you don't need to worry about it, it's our easement that's on your property. We, we're in charge of it. We're responsible for it. We take the liability for it, so. So, therefore I never posted anything.

Ms. Jacobs: Can I say something else? The delivery of the wood that's being processed is a pretty good size load. I'm sure some of those photos actually may show a little bit of that, and the amount of wood. So, I strongly, want to strongly say, this is not a part time business. It seems to me like it's a pretty significant business.

Mr. Jacobs: --- pictures.

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Ms. Jacobs: It's a good amount of wood and there's a lot of safety issues. I'm concerned with having the wood so close to some of the properties. It's close to my fence. You know, above and beyond all of the noise and...

Mr. Jacobs: As you can see, there's a road that goes behind our fence. That's where the trucks used to come in, and then he cut a line coming in from his easement to get there.

Ms. Jacobs: So that's changed. But, prior to any of this happening, that's where all the traffic was coming, all along that dirt path which is right along our fence.

Mr. Jacobs: And his huge fork truck went through our fence. The forks came through the fence. One of his workers didn't the emergency brake on.

Mr. Queiroga: They don't do that anymore?

Mr. Jacobs: He still has the --- back there, that's what he moves all the wood with.

Mr. Queiroga: Do they use that driveway coming?

Mr. Jacobs: He uses it when he moves wood in and out with his trailer.

Mr. Butts: Doug, could pan up to the easement, please?

Mr. Jacobs: As you can see in one of those pictures, he's loading it up. That was just a couple weeks ago.

Mr. Butts: Pan to the left please. That easement comes all the way out to the street. A log truck comes in that easement to come in the back, log truck does not come into my residential acre.

Mr. Jacobs: Not any more.

Mr. Butts: It doesn't happen. It's never happened. The log truck wouldn't fit there. It's 80,000 pounds loaded. It wouldn't fit there. My pickup truck with my trailer goes through there, which is a truck and a trailer. There's no major disruption with a truck and a trailer. It's not a boom box. And then if we could pan down please to see their property line to mine. That pile of logs that's right there, those are 24 feet long. The, a truck that brings in firewood logs, for lack of a better term, for everybody that doesn't know, it's basically a telephone pole, really straight, small diameter, you know, what have you. It goes on a machine. Those are 24 feet long. That pile sitting right there, I am significantly a greater distance than the length or diameter of that log to their property line. I have my barn between them. I have a wooded area between them. I'm not even close. That's 200 plus feet.

Mr. Queiroga: What hours do you normally operate?

Mr. Butts: When I can. I used to back in the day when I first started this operation. This was all part time after hours. I'd be out there with the lights of my truck with a wood splitter. So, to put this in perspective, 13 years ago, I was doing 30 cords with a splitter by myself, burning 5 of them myself. Today, I have about a hundred customers, and 150 cords of wood that go out. On average, again, it could be two loads a day, it could be four loads a week. I don't know how much wood is right there. There's probably, could you pan to the east a little bit, Doug, please? There's probably about 75 cords of wood on the ground right now, processed, in that picture. So, as my business has progressed, and I've brought in the wood processor, which is significantly quieter than an actual residential wood splitter, which I used to do right in the middle of my yard, production has gone up, but the noise has gone down significantly. It's just on a much greater scale.

Mr. Quiterio: What would be, I guess my question would be the hours?

Mr. Butts: So yeah, so hours, I don't think I've ever been out there before 7:00 in the morning. Prior to five years ago, I can say in a handful of times, that I was out there past 8:00, and typically, that's because something broke. So, literally grab a truck, throw some lights on it, and fix something so I don't have to do it the following morning.

Ms. Jacobs: I would agree with the 7:00 a.m. He's definitely not first thing in the morning out there, but I don't agree with the evenings. The evenings, are definitely going late, specifically last fall, there were, I don't know if it was just like a rush at the end to try to get things done before winter came, but was till 8:00, 9:00 till dark.

Mr. Jacobs: We have a three year old, and we were trying to put him to bed at night, and that's all we could hear in the house was chainsaws.

Ms. Jacobs: And I can't, I mean, we've been there six years, right ---?

Mr. Jacobs: Right, six years. ---

Ms. Jacobs: And prior to two years ago, I didn't hear any firewood going on. I knew he had a home business with his construction, but I didn't hear any firewood processing going on in the three years prior, four years prior to the last two.

Mr. Queiroga: Ok, we're not going to, at this point, we're going to take these comments...

Mr. Phoenix: Can I see the folder for a minute?

Mr. Queiroga: As you know, we're not gonna resolve it today because we don't have a fourth member to take a vote, and I'm sure that this issue of hours is gonna come up again.

Mr. Butts: Yup, normal business hours, you know, and I'm not opposed to that. With that said, normal business hours with a Saturday because this time of year is the busiest time of my year. It's not producing wood, it's actually delivering product which makes very minimal noise. I don't run on Sundays. And I would like to just, for the record, state that I've made an effort to go to all my abutters and let them know that if there's ever any issue, you know my number, you know where I live, with a --- of a doorbell that works, so you know how to get a hold of me. If

you're having a party, if you're having, you know, a child going to sleep, if you're having family from out of town, come and talk to me. You know, it's kind of funny how people complain, but they don't complain when you do things for them.

Mr. Phoenix: Mr. Chairman.

Mr. Queiroga: Ray.

Mr. Phoenix: Just to go through a couple of pertinent details here, the zoning for the property is AMD, correct?

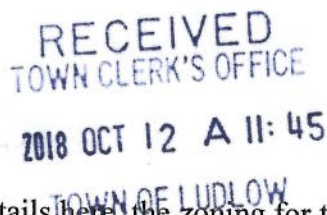
Mr. Stefancik: Agriculture, yes.

Mr. Phoenix: And, AMD, I think, clearly the only thing that really seems to be appropriate as far as the property use for doing this work would be lumber mill, which is allowable with site plan approval and special permit Planning Board, which is why we have the special permit and site plan in front of us. I'm not even sure that we necessarily need the home occ if we're doing, if he's already got the home occ, or we're doing the special permit, but it's all in the same thing anyway, and regardless, he's using the home for his office. The criteria that we have in our checklist, which end up being the conditions attached to the special permit, I'm not gonna read all of them, but just to hit some of the highlights, if this does get approved, the, some of the conditions that would be on the permit, which would then be able to be enforced through the building inspector, the zoning enforcement officer, some of those would be: proposal would not constitute a nuisance to the air and water pollution, flood, noise, dust, vibrations, lights, or visually offensive structures and accessories; proposal would not be a substantial inconvenience or hazard to abutters, vehicles, or pedestrians; proposal reasonably protects the adjoining premises against any possible detrimental or offensive uses on the site, including unsightly or obnoxious appearance; and let's see, the use will not constitute a nuisance by reason of an unacceptable level of air or water pollution, excessive noise, or visually flagrant structures and accessories; and the use is not a serious hazard to abutters, vehicles, or pedestrians. And I think there's a few more without reading all of them that touch on the same basic concept. So, even if we go forward after tonight, once we have four members present, even if we do approve this, there are conditions that we can put on the special permit that would restrict the amount of noise and other things that can be done in connection with the property and in connection with the business. And so, there are those protections, we have to kind of look at, is it reasonable that those are able to be met by the proposal, but we have to assume that if it is reasonable that they're met or can be met, that they will be met, and then it would up to enforcement to happen afterwards if they are not being met. So, that's kind of where we're at, is we have to figure out is it, you know, we're hearing some people are hearing noise, some people aren't hearing noise. So, when we finally make our decision, I think we're gonna be trying to take all of that into account. But even if we approve it, the people that are experiencing issues, there are still other avenues as far as making sure that your quality of life is maintained. So...

Ms. Jacobs: And who would be enforcing that?

Mr. Phoenix: That would be Justin Larivee. He's the Building Inspector, the Zoning Enforcement Officer.

Mr. Jacobs: How do you judge the noise level?



Mr. Phoenix: That's up to him as the enforcement officer. I'm not, I wish I could tell him how to do his job sometimes, but I can't. He's not our employee. He reports to the Town Administrator and the Board of Selectmen. But that's, just so you know, even if this does get approved, and I don't know if it will or not at this point, but even if it does, there are those protections that are in place, right in those criteria attached to the special permit.

Mr. Jacobs: This will affect our property values, no doubt. Anybody that walks in my backyard, looks at that, is not gonna want to buy my house if I try to sell it.

Mr. Phoenix: Ultimately, it's a use that is allowable in the AMD District.

Mr. Butts: With all due respect, I took a \$280,000 house and turned it into \$700,000. Every abutters value went up \$100,000 because of me, so I don't want to hear property values. Seriously, it makes no sense.

Mr. Queiroga: Ok, alright, we're not going to resolve this issue today, and we've got, we're running half an hour behind. I'm, make it quick if you...

Ms. Lacus: I just wanted to say, I've been there longer in that neighborhood than any of the other neighbors. There's nobody closer to Ken's backyard. The only noise that is ever been a problem, is the people speeding up and down Lyon Street. So, I can only imagine Center Street. And all the quads riding up in the back by his yard, also, at midnight, 1:00, 2:00 in the morning. Dirt bikes ---. I've never felt a need to put a fence up. My view is his entire backyard. The only fence I have is around my pool, and it's never been an issue, and he has been more than helpful in the neighborhood, and he's always let the neighbors know what was going on around his house, but.

Ms. Jacobs: Can I ask, are you right next door to Ken?

Ms. Lacus: Yes, I am.

Ms. Jacobs: You are. Ok, so, you're the one with the very short backyard that abuts his property going behind your yard?

Ms. Lacus: Yes, apparently our light went across a couple of properties into your property, and your fence went up as soon as you guys moved in, and I think it's beautiful.

Mr. Jacobs: We have two dogs and we have to keep them in.

Ms. Lacus: I have a son who I've never had an issue with either.

(multiple people talking)

Mr. Phoenix: On the interest of moving forward for today, we have a meeting in two weeks. I will probably be able to be here for that, but it's iffy, 'cause there is another commitment on my plate for that night. I don't want to leave us in a situation where we're possibly gonna be short as far as a quorum on a second night in a row. So, the next meeting after that, what do we have available for time slots?

Ms. Urban: You're looking at October?

Mr. Phoenix: Yeah, the first meeting there.

Ms. Urban: The 11th would be 7:15.

Mr. Phoenix: Ok, I'm gonna make a **MOTION** to continue till October 11th you said, Sue?

Ms. Urban: Yes.

Mr. Phoenix: At 7:15 p.m.

Mr. Butts: Could I add one more thing to this?

Mr. Phoenix: There's a motion.

SECOND Mr. Quiterio.

3-0 in Favor.

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

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The Public Hearing is continued until October 11, 2018 at 7:15 p.m.

APPROVED:



Kathleen Houle, Secretary

su

Documents: Master application; abutters list; comments from Town Departments/Boards; Site Plan: 38 Lyon Street Ludlow, MA owned by Kenneth A. Butts (August 7, 2018); Letter from Gregory Asadoorian re: 38 Lyon Street (9/5/2018); photos of 38 Lyon Street submitted by abutter

(Documents pertaining to this hearing are available for viewing in the Planning Board Office during regular business hours).

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TOWN OF LUDLOW

**TOWN OF LUDLOW PLANNING BOARD
PUBLIC HEARING
PROPOSED ZONING BYLAW REVISIONS
Town of Ludlow**

Delete in its entirety Section XI. Temporary Moratorium on the Sale and Distribution of Recreational Marijuana. Delete from 3.0 General Regulations 3.0.5 Private Swimming Pools a. “, but in no case shall the pool be located nearer than ten (10) feet to any side or rear lot line. A pool must be located at least ten (10’) from any and all structures. Exception: Pool Decks.” Add to Section 5.1. Business in the Agriculture Moderate Density Overlay District 5.1.3 Site Design j. The Planning Board may waive up to 25% of the required parking spaces under Section 6.4 PARKING REQUIREMENTS in the Agriculture Moderate Density District.

September 13, 2018

PLANNING BOARD MEMBERS

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

Hearing began at 8:04 p.m. in the Selectmen’s Conference Room.

The were not any attendees from the public present for the public hearing.

Mr. Queiroga read the legal notice which included the description of: Delete in its entirety Section XI. Temporary Moratorium on the Sale and Distribution of Recreational Marijuana. Delete from 3.0 General Regulations 3.0.5 Private Swimming Pools a. “, but in no case shall the pool be located nearer than ten (10) feet to any side or rear lot line. A pool must be located at least ten (10’) from any and all structures. Exception: Pool Decks.” Add to Section 5.1. Business in the Agriculture Moderate Density Overlay District 5.1.3 Site Design j. The Planning Board may waive up to 25% of the required parking spaces under Section 6.4 PARKING REQUIREMENTS in the Agriculture Moderate Density District.

Mr. Queiroga: That’s a lot of words. Ok, comments? Ray?

Mr. Phoenix: I don’t know if we just want to handle things one at a time. But, I guess, the overall header on the whole thing would be that, much like the zone change that we looked at earlier tonight, the decisions that we make on these are in the form of recommendations to Town Meeting, they are not decisions on the Bylaw changes themselves, and Town Meeting may or may not act in accordance with what we think is appropriate. They’ve certainly disagreed with us on some things in the past. But we have, I think, what is it, four separate items?

Mr. Queiroga: Yes.

Mr. Stefancik: Three.

Mr. Phoenix: Three?

Mr. Queiroga: Three.

Mr. Phoenix: So, in the interest of just expediting things, the first one is essentially just removing the temporary moratorium on the sale and distribution of recreational marijuana. It's quoted in its entirety as the section of the Bylaw. This is just being removed because it's expired. The Town's already taken other action on this anyway, but bottom line is, it's expired, so it doesn't matter anymore. Makes sense to take it out. Unless there's any other discussion on that, I would make a **MOTION** to recommend approval of that Bylaw change to Town Meeting. **SECOND** Mr. Quiterio.

Mr. Phoenix: Did you want to check with the public before we actually took the vote?

Mr. Queiroga: I don't think, anybody out there interested in this? Ok.

Mr. Phoenix: So, with that said, aye.

**Roll call vote: Mr. Phoenix – yes; Mr. Quiterio – yes; Mr. Queiroga – yes.
3-0 in Favor.**

Mr. Queiroga: Article 2; **To see if the Town will vote to amend the Zoning Bylaws of the Town of Ludlow Section 3.0 General Regulations 3.0.5 Private Swimming Pools a. “, but in no case shall the pool be located nearer than ten (10) feet to any side or rear lot line. A pool must be located at least ten (10’) from any and all structures. Exception: Pool Decks.”**

Mr. Phoenix: This is another thing where we're cleaning up the Bylaw. The reasoning that we're specifically giving is the ten feet is confusing when all dimensional requirements have to be met. If dimensional requirements cannot be met, then the applicant has to go to the ZBA. I think that's more reasoning than we really need again. But, ultimately, what it comes down to is it's stuff that's in the Bylaw that doesn't need to be there, they just need to meet the letter of the law.

Mr. Stefancik: Just to clarify a little bit further on this, talking, after we had talked about this in general at one of our last meetings, I did talk to the Building Commissioner, and he still would like to have “a pool must be located ten feet from any and all structures”. So, I'm just asking if we could just postpone action on this Bylaw at this point in time.

Mr. Phoenix: I'm not inclined to. If he wants to talk about it, he can come in to the public hearing and talk to us.

Mr. Stefancik: Well, you know, he isn't here so, I'm just gonna reiterate that he would like this to be postponed. He doesn't want people to be jumping off their roofs of structures into the pool. It becomes a hassle if people hurt themselves. I mean, people do foolish things. Someone ends up --- themselves.

Mr. Phoenix: People have the right to be foolish in this country. We've proven that time and again.

Mr. Stefancik: I just don't want to take it out at this point, so I just ask respectfully if the Board could postpone that.

Mr. Phoenix: Do we have anything in writing from the Building Inspector asking us to postpone action on this article?

Mr. Stefancik: No.

Mr. Phoenix: Thank you.

Mr. Queiroga: So, again, this is a recommendation to the Town Meeting, correct? All of these actions, all these votes.

Mr. Stefancik: Well, unless you want to postpone action on it.

Mr. Phoenix: I think that we had a discussion about it previously. We published legal notice that we were having this meeting. The Building Inspector not only couldn't be bothered to show up but couldn't be bothered to actually write us a letter explaining what he's thinking and why. Ultimately, I think if it's a question of clearing up Bylaw versus doing something that I don't think is necessary and restricting what people can and cannot do on their property when it's not a matter of what's legally required. I think it's...

Mr. Stefancik: But out of ---. The way this was originally written, it did not include taking out a pool must be located at least ten feet...

Mr. Phoenix: When it was published in the Register and circulated around Town Hall, it was written this way.

Mr. Stefancik: Correct, 'cause that's what you...

Mr. Phoenix: Justin had as much time, if not more...

Mr. Stefancik: ...wanted it written that way.

Mr. Phoenix: ...to respond to it, then every other member of the community. If Justin has an issue with it, maybe he can be bothered to show up to Town Meeting and talk about it then. But he couldn't even give us a letter.

Mr. Queiroga: Did he reach out to you?

Mr. Stefancik: He did. I'm relaying that to you that he did ask that at least we postpone action on this because he did not think that was correct to take that out. You know, he's gonna end up dealing with people arguing with him about where the pool's gonna be in the yard if it's not ---.

Mr. Phoenix: Why would he be arguing with them? If they're legally able to put it somewhere, then why does he need to argue?

Mr. Stefancik: Well, then they can put it a foot away from the house. There's nothing that says that.

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Mr. Phoenix: If it's restricted by the State Building Code, it's restricted by the State Building Code. That's what the change was that he wanted, was for the Bylaw to reflect that people to meet the State Building Code. That's exactly what we're doing. If people want to do something that is within the letter of the law but that he thinks is stupid, I'm ok with them doing stupid things if they're legal and it's not gonna hurt somebody else. I said it originally when we had looked at doing this years ago when part of this Bylaw went in. If somebody wants to do something where they put up a structure, and then they jump off of it, it doesn't matter whether they're jumping into a pool or they're jumping into a sandbox, or they're jumping onto the dirt, people can do stupid things for stupid reasons and we can't protect people from being stupid.

Mr. Queiroga: Ok, we're not...

Mr. Phoenix: And it's not the job of government to tell somebody that something that can't even harm their neighbor, that isn't going to be a risk of fire spreading, which is a big part of the purposes of zoning control, which isn't gonna affect their neighbor's quality of life, is something they can't do.

Mr. Queiroga: Ray, I mean Ralph.

Mr. Quiterio: I don't think it's fair also that people that built pools before, they had to go ten feet away, and now anybody can just put a pool anywhere. I don't think that's fair, you know. I know a few people, they just built their pools, and they had to be ten feet away from their homes, their decks, not a pool deck, but the deck in the back of their home, and now the law changes, now anybody can just put whatever they want, on the side of the house, back of the house. I don't think that's fair either.

Mr. Phoenix: Well, what we're taking out is "in no case shall the pool be located nearer than ten feet to any side or rear lot line". It doesn't change anything as far as where the pool can be in relation to the house itself. And what it's doing is deferring to the State Building Code as far as how close the pool can be. And that's what Justin originally wanted. And we're giving him what he wants.

Mr. Queiroga: He inserted those words? We didn't participate?

Mr. Phoenix: He wanted that change made. We're making it. We're just not making it the exact way that he wanted. But again, we're doing what he asked, and he can't be bothered to show up or write a letter in support of disagreeing what he wanted and ---.

Mr. Quiterio: I agree with you, but...

Mr. Phoenix: I can't stress enough that it's great to have a building inspector, and if we have to have one that's part time, we have to have one that's part time. That's not my call. But, when it comes to what the letter of the law is going to be that changes the dynamic of things in his department, he's gotta show up. When we have people that come in for meetings, where the building inspector should show up, and historically, with the last several building inspectors, they would have, and he still doesn't, what is the point of that?

Mr. Queiroga: So, as I read it, as I read it, a pool must be located at least ten feet from any and all structures.

Mr. Quiterio: Structures, yeah.

Mr. Queiroga: Exception, pool decks. Is that...

Mr. Quiterio: Well if you have a deck attached to your house, you still have to be ten feet away from the deck ---.

Mr. Queiroga: Yeah.

Mr. Quiterio: If the deck belongs to the house, it's not a pool deck.

Mr. Phoenix: It still needs to meet all of the requirements of Zoning. It still needs to meet all the requirements of the Building Department.

Mr. Queiroga: But are we --- a possible problem here?

Mr. Phoenix: The problem that was originally being attempted to be addressed...

Mr. Queiroga: Who proposed this?

Mr. Phoenix: The language going in, that was, I think that was Brien Laporte that came in when the ten feet was put in. The specific reason that was put in, was people putting in like a changing room for their pool, or some other similar structure, and putting it near the pool, and then them jumping from the roof of that into the pool. And I believe my words at that meeting were, if someone's crazy enough to do that then let a gentle Darwinism brush them aside. And I still kind of stand by that.

Mr. Quiterio: Yeah, I wasn't here back then, so I don't know.

Mr. Queiroga: Ok, I...

Mr. Phoenix: We published this. We did our due diligence. We put it in the paper. We put it up in Town Hall. You're gonna tell me that Justin has that strong enough of an opinion on something, but he can't take five seconds to put out a letter or an email?

Mr. Quiterio: What's the reason to change it? He's the one who wanted to change it, you said?

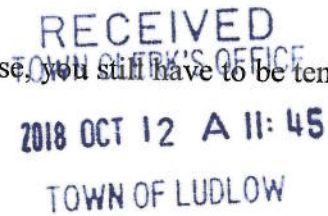
Mr. Queiroga: I don't...

Mr. Stefancik: You know, he did have a conversation with me, I'm just relaying it to you. If you wanted, if you want him here ---...

Mr. Phoenix: Maybe it's just mismanagement of his time. Instead of talking to you, he could have written a letter. A conversation is not part of the record of this public hearing, a letter would be.

Mr. Stefancik: He did want that kept in there.

Mr. Queiroga: Kept?



Mr. Stefancik: A pool must be located at least ten feet from any and all structures. He still wanted that in there.

Mr. Queiroga: So...

Mr. Phoenix: I'm gonna make a MOTION to recommend approval of the Bylaw change at Town Meeting.

Mr. Quiterio: That's what, that's...

Mr. Queiroga: If you second it...

Mr. Phoenix: To make the change we published as legal notice.

SECOND Mr. Quiterio.

Mr. Queiroga: Ok, I just don't like, for discussion, I just don't like us creating these problems between different departments here.

Mr. Phoenix: It's not us creating a problem if he just doesn't ever show up. That's part of his job Joe.

Mr. Quiterio: One of the things I would like to discuss would be if he could come here. If he's the one who asked for it, and then he wants to change it again, and doesn't come to the meeting.

Mr. Phoenix: We tweaked his original version.

Mr. Queiroga: --- today.

Mr. Stefancik: He did not vote to have that, a pool must, that was in the original Bylaw. The only, we took that out because Ray did not want that in there. He wanted that coming out, and his argument was to take it out because it didn't need to be in there.

Mr. Phoenix: Right.

Mr. Stefancik: Justin relayed to me ---.

Mr. Phoenix: ---.

Mr. Quiterio: Then I'll take it back ---

Mr. Phoenix: Justin wanted the ten feet taken out, the part that I changed is "exception pool decks". That's the only part that I changed, I do believe, or vice-versa.

Mr. Stefancik: And that we took out, but you didn't want "a pool must be located at least ten feet from any and all structures, and when we moved forward I took that out and we simplified it to just this is what the new section would read: a pool, the location of pool and its appurtenant structures on a lot shall conform to the minimum front, side, and rear requirements of the respected zoning district. That ten feet being away from any structures would be removed from it. That's what he wants in there. He never wanted that taken out ---.

Mr. Phoenix: Ok, here's the bottom line, 'cause I'm not planning on going anywhere for quite a while, and if he wants that change made, he's gonna make the whole change. Otherwise, he's gotta have the rest of the Board going along with it. And that's the way it's gonna have to go.

Mr. Queiroga: Ok.

Mr. Phoenix: I'm not willing to make the change with him not having the respect for our time to even write a letter, without being willing to correct the Bylaw more so than what he was asking for. We're giving him everything that he asked for, and correcting another change, which is completely within our purview.

Mr. Stefancik: I agree, but I would again request that you postpone action, and the next time this comes up, he needs to be here before this Bylaw gets changed. Before you will take up this pool bylaw again, he needs to come in, and this is his baby, and he needs to run with it if he wants any changes to the pool bylaw.

Mr. Quiterio: That's probably our best way to do it.

Mr. Phoenix: I not, I'm tempted and I'm gonna be very honest here, I'm not going to stand behind a hard line stance on something like what I'm thinking, but what I'm tempted with this, is to say that any time he wants a bylaw change if he doesn't come in, I'm gonna vote to postpone it for here on out. He needs to physically show up, or I don't want to hear it.

Mr. Quiterio: Yup.

Mr. Phoenix: That's what I'm tempted to say, but that's not necessarily in the best interest of the Town. If there's a change that needs to be made, I'm not gonna hold the Town hostage just because we have an absentee building inspector.

Mr. Queiroga: Ok, I understand what you're saying. I understand your reasoning. I think for a lot of reasons I'd like to see a postponement for this, but I can't make any motions, because, and see if we can get it right with everybody aboard. And I agree with you, he needed to be here. Ok, so...

Mr. Phoenix: That last, what's the last thing we have in writing from him?

Mr. Queiroga: I don't...

Mr. Phoenix: Do we have anything in writing from him ---?

Mr. Stefancik: He has commented on the plans that have been...

Mr. Phoenix: On this issue?

Mr. Stefancik: I don't have any, I have only verbals that he spoke to me about.

Mr. Phoenix: Fine, if we don't even have anything in writing that he wanted the change in the first place, then I'm gonna recommend that we postpone action, or I'll make a **MOTION** to recommend postponement ---.

SECOND Mr. Quiterio.
3-0 in Favor.

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

Mr. Phoenix: And since he doesn't seem to like letters, just do me a favor and let him know that this is not acceptable behavior.

Mr. Queiroga: Article 3, ---, yes, Article 3; To see if the Town will vote to amend the Zoning Bylaws of the Town of Ludlow, **SECTION V: OVERLAY DISTRICT REGULATIONS. 5.1 BUSINESS IN THE AGRICULTURE MODERATE DENSITY OVERLAY DISTRICT 5.1.3 Site Design by adding j. The Planning Board may waive up to 25% of the required parking spaces under Section 6.4 PARKING REQUIREMENTS in the Agriculture Moderate Density District.** So, the new section will read, is adding that particular highlighted section, correct? *(j. The Planning Board may waive up to 25% of the required parking spaces under Section 6.4 PARKING REQUIREMENTS in the Agriculture Moderate Density District.)*

Mr. Stefancik: Correct, the plan...

Mr. Phoenix: It gives us the ability to grant a waiver when the situation is a little bit tight.

Mr. Stefancik: Right.

Mr. Phoenix: It doesn't mean that people automatically get it. It means that we have the ability to grant it if we feel that's in the best interest of the neighborhood and the total town, standard waiver requirements apply.

Mr. Queiroga: I think it gives us more juice so to speak, and I think it's a good idea.

Mr. Phoenix: I think it certainly helps with some uses that might otherwise be vastly improved over what we get, to be able to come in, to just have a slightly higher parking demand, but are still very reasonable for the neighborhood. My one thing that I have with this, have we already sent this over for inclusion in the warrant?

Mr. Stefancik: Yes.

Mr. Phoenix: Including the reasoning, or is that still not sent over?

Mr. Stefancik: The reasoning as well. Everything was sent out and also the background information went out as well.

Mr. Phoenix: Ok, 'cause I was gonna suggest a tweak on it, but it doesn't change the content of the change, it's just in the reasoning.

Mr. Stefancik: Ok.

Mr. Queiroga: What was the word?

Mr. Phoenix: Developer, changing developer to property owner. I think it makes it explain more of what it's looking to do without attaching the word developer. People see developer they're thinking big projects. People hear property owner they're thinking that's somebody exercising their rights of the property owner. And I think that would have probably made it a little better and made it a little bit easier to sell at Town Meeting.

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Mr. Queiroga: But nothing can be changed, it's either up or down, ~~2018~~ 2018 OCT 12 A 11:45

Mr. Stefancik: Yes.

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Mr. Phoenix: If it's already gone over, then it is the way it is.

Mr. Stefancik: I can add that into Town Meeting, I mean, they don't have to, that doesn't have to be, the reasoning doesn't have to be read in, it can be substituted out.

Mr. Queiroga: Ok. Based on that am I hearing a motion?

Mr. Phoenix: I'll **MOVE** to recommend approval to Town Meeting.

SECOND Mr. Quiterio.

3-0 in Favor.

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

Mr. Phoenix: **MOVE** to close the public hearing.

SECOND Mr. Quiterio.

3-0 in Favor.

The public hearing closed at 8:25 p.m.

APPROVED:



Kathleen Houle, Secretary

su

Documents: Draft Zoning Bylaw Changes 2018 October Town Meeting

(Documents pertaining to this hearing are available for viewing in the Planning Board Office during regular business hours).

