

**Town of Dorset Planning Commission
Special Meeting
August 14, 2012 Minutes**

Members Present: B. Breed (Chairman), B. Herrmann, D. Pinsonault, G. Squire, T. Dee, C. Ferguson, B. Beavin, D. Lawrence, H. Coolidge

Members Absent:

Also Present: Tyler Yandow (Zoning Administrator), Mike Connors, Lee Jones, Steve Jones, Robert Menson, Joan Menson, Marilyn Hand, Jim Hand, Brad Tyler, Kyle Lawrence, Don Door

B. Breed, Chairman, opened the meeting at 7:00 p.m.

Public Hearing ~ Site Development Plan Review for Parcel #14-00-021.3 (Steve & Leslie Jones), East Side Route 30, Just North of Hasgas (South Dorset General Store)

S. Jones read a statement giving an overview of the history of the Route 30 barn. He stated that he was unaware that they needed a permit and, after it was brought to their attention, they applied for one. Since 1972, hay storage and other landscape company trucks/equipment have used this barn. The property was purchased by the Jones' on January 2003 and the barn was used to store tractors, mulchers, mulch hay and anything that needed to be kept from the elements. In 2005, S. Jones and a partner started a lawn mowing business (A Touch of Grass) and the business is based at the partner's house in Rupert, but the equipment for the business is stored in the barn. Since the barn was previously used for equipment storage, S. Jones and his partner did not believe this was a change of use. The zoning at this location at that time was A & RR and is currently VC. S. Jones stated that no one had ever questioned the barn use and thought, especially in light of the change of zoning district, they could continue using it for storage. S. Jones was informed in June 2012 that he needed a Site Development Plan review due to a change of use. The barn uses the existing access onto Route 30 with two people arriving in the morning, leaving the premises all day and returning in the late afternoon to store equipment (truck, mowers & trailer). The building has no signs, toilets, phones, desks or customer traffic. Two employee vehicles are parked on site between 8:00 a.m. and 4:30 p.m., five days a week for 32 weeks a year.

B. Breed explained that based on the Village Commercial zoning (VC), different uses are allowed ~ some permitted and some requiring a Site Development Plan review. ZBL Section 6.3.4(b)(9) was read and the analysis was that a Touch of Grass used the location for its home base. L. Jones stated that it was just used for equipment storage and the phone was at the partner's house in Rupert. T. Yandow clarified that the PC's purpose is to regulate land use and this issue has nothing to do with amenities such as telephones, desk, etc. and so is not relevant to the conversation. B. Breed asked if this was a contracting business and S. Jones responded that it was a service business. B. Breed asked if the business could fit any of the allowed uses and S. Jones replied that they have applied for a permit and he was just giving the history of the property. B. Breed read ZBL Section 6.3.4 asking if contract/service business was the best description. S. Jones agreed with the category.

B. Breed reviewed ZBL Section 3.8.2 ~ Requirements (Site Development Plan) with the following items required for submission in order to complete the review/approval:

#6 ~ *Location of all existing buildings and structures on adjacent lots within a distance of 200 feet from the subject lot*

#10 ~ *Location highlighting any slopes 20% or greater*

#12 ~ *Proposed vehicular circulation and parking within the subject lot and with all parking spaces dimensioned*

#23 ~ *Location of all water sources or sewage disposal systems and areas in relation to natural drainage ways and watercourses, wetlands, springs, flood hazard areas, ponds, or other watercourses on the property or adjacent property within 50 feet, in accordance with Special Regulations Section 10*

#24 ~ *Existing contours and proposed grading*

#26 ~ *Existing and proposed exterior lighting*

#27 ~ *Location of all existing and proposed utilities on the subject lot and within a distance of 200 feet from the subject lot*

Under #23 (location of all water sources), it was noted that the West Branch of the Battenkill River was located near the property and Section 10 was reviewed. It was stated that there must be a 50 foot buffer zone from the river maintained on this property. This buffer zone is to be shown on the map.

Review of ZBL Section 3.8.3 ~ Site Development Plan Review was completed with S. Jones needing to check with the State regarding Section 3.8.3(4)(i)(c) Traffic Access and Safety regarding driveways and curb cuts.

B. Breed read the lighting requirements and S. Jones noted that there was one switchable motion light mounted outside which was not always on.

H. Coolidge asked about the parking area and the setback for the main road and B. Breed noted that it could be a requirement that they park out of the right-of-way. D. Pinsonault asked what would happen if the number of people and vehicles increased for the location and B. Breed responded that S. Jones proposed a certain amount of people, trucks, etc. and, if this changes, he will need an amendment to the original permit.

T. Yandow asked if there was any gasoline storage and S. Jones answered that there may be five gallon cans on the back of the truck on occasion. T. Yandow asked if there would be the sale of Christmas trees from this location and S. Jones replied that he grows the trees there, but has not decided to sell the trees from the barn location.

C. Ferguson moved and G. Squire seconded to approve the Site Development Plan for Steve & Leslie Jones for parcel #14-00-021.3 as presented, contingent upon the receipt of the outlined items listed above in bold and italicized print. Motion carried 9-0

The Public Hearing was closed at 7:36 p.m.

Continuation of Discussion of Snow Plowing Services by Mettowee Mill Nursery

B. Breed gave a short description of the Mettowee Mill Nursery operations: nursery business which is exempt from permitting as it is considered agricultural; along with a retail operation which was permitted previously. The question under consideration is the expansion of the business to include snowplowing and caretaking which is not an allowable use in the A & RR district (B. Breed read T. Yandow's July 19, 2012 letter – attached). S. Jones asked if the PC had found a bylaw which stated that snowplowing and caretaking was not allowed and B. Breed answered that there were a number of allowable and conditional uses listed, but if the use was not listed, it is not allowed.

S. Jones explained that the property was purchased in 1972 and the nursery business opened in the fall of 1973. Snowplowing was first started in 1985 and S. Jones believes that this is an accessory/complementary use to his business. The same trucks are used in the summer and winter and this has a low impact on the property. S. Jones noted that there is less intensity, traffic and employees in the winter months. The Town Plan, in its purpose statement, says that the *"purpose of the bylaws are to encourage appropriate development of the lands in the Town of Dorset in a manner that will promote the public health, safety and general welfare"* and S. Jones noted that the Mettowee Mill Nursery has done this along with providing a service to the Town and employing 30-40 people.

B. Breed reiterated that there were certain allowable uses and suggested reviewing ZBL Section 4.2.1 (Permitted Uses in A & RR Districts). He noted that the majority of the nursery business falls under Section 4.2.1.4. The definition of Customary Home Occupation was also read along with ZBL Section 4.2.2 (Conditional Uses Permitted in A & RR Districts) and ZBL Section 4.2.3. B. Breed stated that snowplowing and caretaking, according to the majority of the PC Board, does not fall under any of these categories as a permitted use.

M. Hand asked where in the ZBL's does it show that it is an allowable use and T. Yandow replied that contracting businesses are allowable in the CI-1, CI-2 and VC districts. M. Hand said that with the topography and climate in this area, snowplowing should be mentioned somewhere in the ZBL's and that the PC needs to be logical and practical in the enforcement of the bylaws as some uses are more intense than others. She also mentioned that these services have been offered since 1985 and no one else has questioned them. B. Breed explained that the PC members have tasked T. Yandow to find businesses in Dorset that are not in compliance with the bylaws.

M. Hand quoted *Title 24: Municipal and County Government; Chapter 117: Municipal and Regional Planning and Development; 24 V.S.A. § 4454. Enforcement; limitations* (attached). It was noted that the snowplowing business started in 1985 and this statute seems to say that no action can be taken as the business has been in operation for fifteen years or more. B. Breed stated that it is a necessary business, but the majority of the Board felt it is not allowable in an A

& RR district and the subject needed to be discussed. D. Pinsonault asked how the Board is supposed to draw the line when enforcing bylaws ~ what would happen if someone had bulldozing/excavating equipment on their property to run their business in an A & RR district. M. Hand remarked that S. Jones only snowplows as dictated by the weather and it is not a frivolous business. D. Pinsonault said that they were not trying to outlaw snowplowing, but just trying to make sure businesses were permitted. M. Hand felt the PC was nitpicking as it is not listed as a prohibited business. B. Breed suggested consulting with the Town Attorney regarding the fifteen year enforcement limit and B. Beavin mentioned that Section §4454 was a valid point, but just because a business is useful, does not mean it is allowable under the ZBL's. M. Hand expressed that there is no traffic or impact on the area, is an accessory use to the nursery and that S. Jones' mother still lives at the location. H. Coolidge noted that it is a contracting business which is not allowable in the A & RR district unless it is a customary home occupation. M. Hand asked that the PC be practical and rational with regard to the ZBL's and D. Pinsonault said that they were trying to treat everyone equally.

B. Breed mentioned that there have been enforcement issues in the past with businesses not getting permits. B. Tyler expressed that Dorset is a hard place to do business. There are things not listed in the ZBL's that should be, but all businesses should be brought to the same playing field where permits are applied for and approved in the appropriate zoning district. S. Jones stated that he has been through the permitting process previously and has tried to comply with Town regulations. M. Hand felt that the PC should be looking at the 1985 ordinances, not the current regulations, as the ordinances keep changing. B. Breed stated that when the PC tried to allow flexibility, they were "ridden out on a rail." M. Hand said that if the Board goes after people without permits and they lose their income, it would have a big impact on the Town. B. Beavin noted that the Board is making an effort to go through the ZBL's to make it easier for businesses and B. Herrmann commented that the Board spent a whole meeting discussing this issue to see if they could make it work. B. Breed, referring to the 1985 bylaws, noted that the language is very similar to today's regulations and there were not many changes. M. Hand commented that it was a different Board fifteen years ago and they may have allowed it.

D. Pinsonault moved and D. Lawrence seconded to move to Deliberative Session at 8:10 p.m.
Motion carried 9-0.

Deliberative Session ended at 8:50 p.m.

It was the consensus of the PC Board members that if the use were being proposed today, and even in 1985, the requirement of the ZBL's would be that it should be located in the CI-1, CI-2 or VC districts. G. Squire moved and C. Ferguson seconded to have T. Yandow consult with the Town Attorney regarding Title 24: Municipal and County Government; Chapter 117: Municipal and Regional Planning and Development; 24 V.S.A. § 4454. Enforcement; limitations to give an opinion on the fifteen (15) year non-enforcement clause. Motion carried 8-1 (D. Pinsonault)

Public Comments Taken

B. Breed stated that the bylaws are a dynamic document and it would be important to address snowplowing/caretaking services in the future.

Other Business

None

C. Ferguson moved and T. Dee seconded to adjourn the meeting at 8:55 p.m.

Respectfully submitted,

Nancy Aversano

Town of Dorset ~ Planning Commission

Date 8/14/12
Regular Meeting _____
Special Meeting X

(Please Print) Name	Address	Representing	Testifying (Yes or No)
Mike Connors	Dorset		
Lee Jones	Dorset		
Steve Jones	Dorset		
ROBERT MENSOR	DORSET		
JOAN MENSOR	DORSET		
Marilyn Hand	Dorset		
Jim Hand	Dorset		
Brad Tyler	Dorset		
Kyle Lawrence	Dorset		
Don Son	man.		

Zoning Office
Ph: (802) 362-4571 x 5
Fax: (802) 362-5156
dorsetza@gmail.com
Hours: Tues. Wed.
Thurs.: 11am-4pm



Town Offices
112 Mad Tom Rd
PO Box 715
East Dorset, VT 05253

July 19, 2012

Steve Jones
Mettowee Mill Nursery
PO Box 264
Dorset, VT 05251

Re: Snow plowing and caretaking services at Mettowee Mill Nursery
Parcel #20-20-002, 4977 Route 30, Dorset, VT

Dear Steve,

I have been directed by the Planning Commission to send this letter.

It is the consensus of the majority of the members who attended the July 10, 2012 Planning Commission meeting that snowplowing/caretaking services are not an allowable use at the above referenced parcel.

This issue will be discussed further at the August 14, 2012 Planning Commission meeting which you will be attending.

Sincerely,

Tyler W. Yandow A.I.A., Zoning Administrator

Cc: Bill Breed, Chairman, Dorset Planning Commission

The Vermont Statutes Online

Title 24: Municipal and County Government

Chapter 117: MUNICIPAL AND REGIONAL PLANNING AND DEVELOPMENT

24 V.S.A. § 4454. Enforcement; limitations

§ 4454. Enforcement; limitations

(a) An action, injunction, or other enforcement proceeding relating to the failure to obtain or comply with the terms and conditions of any required municipal land use permit may be instituted under section 1974a, 4451, or 4452 of this title against the alleged offender if the action, injunction, or other enforcement proceeding is instituted within 15 years from the date the alleged violation first occurred and not thereafter, except that the 15-year limitation for instituting an action, injunction, or enforcement proceeding shall not apply to any action, injunction, or enforcement proceeding instituted for a violation of subchapter 10 of chapter 61 of this title. The burden of proving the date the alleged violation first occurred shall be on the person against whom the enforcement action is instituted.

(b) No action, injunction, or other enforcement proceeding may be instituted to enforce an alleged violation of a municipal land use permit that received final approval from the applicable board, commissioner, or officer of the municipality after July 1, 1998, unless the municipal land use permit or a notice of the permit generally in the form provided for in subsection 1154(c) of this title was recorded in the land records of the municipality as required by subsection 4449(c) of this title.

(c) Nothing in this section shall prevent any action, injunction, or other enforcement proceeding by a municipality under any other authority it may have, including a municipality's authority under Title 18, relating to the authority to abate or remove public health risks or hazards.

(d)(1) As used in this section, "person" means any of the following:

(A) An individual, partnership, corporation, association, unincorporated organization, trust, or other legal or commercial entity, including a joint venture or affiliated ownership.

(B) A municipality or state agency.

(C) Individuals and entities affiliated with each other for profit, consideration, or any other beneficial interest derived from real estate.

(2) The following individuals and entities shall be presumed not to be affiliated with a person for the purpose of profit, consideration, or other beneficial interest within the meaning of this section, unless there is substantial evidence of an intent to evade the purposes of this section:

(A) A stockholder in a corporation shall be presumed not to be affiliated with a person solely on the basis of being a stockholder if the stockholder owns, controls, or has a beneficial interest in less than five percent of the outstanding shares in the corporation.

(B) An individual shall be presumed not to be affiliated with a person solely for actions taken as an agent of another within the normal scope of duties of a court-appointed guardian, licensed attorney, real estate broker or salesperson, engineer, or land surveyor, unless the compensation received or beneficial interest obtained as a result of these duties indicates more than an agency relationship.

(C) A seller or chartered lending institution shall be presumed not to be affiliated with a person solely for financing all or a portion of the purchase price at rates not substantially higher than prevailing lending rates in the community. (Added 2003, No. 115 (Adj. Sess.), § 101; amended 2009, No. 93 (Adj. Sess.), § 3a.)
