

1
2 MINUTES OF THE MEETING
3 OF THE
4 CANTERBURY PLANNING BOARD

5
6 June 25, 2019
7

8 BOARD MEMBERS PRESENT: Jim Snyder (Chairman), Tyson Miller, (Vice-
9 Chairman), Joshua Gordon, Hillary Nelson, Art Rose, Lucy Nichols, Alternate, Scott
10 Doherty, Alternate.

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12 ABSENT: Kent Ruesswick, Cheryl Gordon (BOS Representative)

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14 OTHER: John Snyder
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16 **Review of June 11, 2019 Minutes:** Tyson Miller moved the Minutes, second by Art
17 Rose. Tyson made a motion to amend the Minutes at line 60 to correct the word “zone”
18 to “use”, second by Hillary Nelson. Vote to amend Minutes: Unanimous. Vote to
19 approve Minutes: Unanimous – 6/11/19 Minutes approved.
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21 **Preapplication Conceptual Consultation with Gary Anderson.** Gary was unable to
22 attend and will reschedule. Jim Snyder informed the Board he spent a little time
23 reviewing this application in preparation for the meeting and suggested the Board
24 review RSA 674:41. Jim will also check with lawyers at NHMA relative to the
25 interpretation of that RSA relative to discontinued roads.

26 **Board Discussion of Ordinances:**

27 **Nuisance Ordinance:** Hillary Nelson created a draft Nuisance Ordinance for the Board's
28 review and discussion. She was looking to find a reliable and objective process that
29 provided a way to resolve a problem for residents affected by nuisances. The Select
30 Board is the enforcement agency and this document would provide guidance to them
31 when a nuisance does occur. The Board discussed the reasonable person standard
32 versus the use of a decibel meter for noise. Hillary felt it becomes too expensive and
33 difficult for the complainant to address issues if we rely on a decibel number. The
34 reasonable person standard has been held up by courts across the county. No special
35 training is required.

36 Art Rose looked at this draft ordinance from a developer's perspective and believes he
37 and his attorneys could beat the reasonable person standard all day long. They can't
38 beat an instrument that measures the loudness of the noise. That would be clear cut. If
39 he exceeds a decibel limit, he has to adhere to the required number. Hillary and Art will
40 research case law supporting each of their views.

Art discussed light meters and setting criteria for projects that involve outdoor lighting. Jim mentioned the greenhouse in Loudon that lights up the clouds. The boards in Loudon should have looked further into the lighting issue. It doesn't appear that they required a light study and took the applicants word it wouldn't be a problem. Hillary said they requested a light study, but it only applied to exterior lighting, this problem is with the interior lighting that is so bright it lights up the sky. The applicant was supposed to put material above the lights to eliminate the problem. They haven't done that and are now moving on to build additional greenhouses. Jim pointed out that if a board does their job right, they anticipate the problems, how much light can light the sky, noise level, etc., which are enforceable issues. When there's a failure in the process, or something doesn't have Planning Board approval, that's when the reasonable person standard could come into play.

There was discussion about agricultural uses that are reasonable in Canterbury that may not be reasonable in Concord. Roosters could be normal in Canterbury, but not Concord. Lucy Nichols discussed the frequency of a use that could be considered obnoxious and whether that means a one or two time use, or a constant use. The reasonable person standard is flexible and would work in most cases where someone isn't determined to go to court. She also sees the benefit of quantifiable limits and felt a two tiered process could work.

The Board talked about enforcement, court action, and fines. Tyson referred to RSA 676:17 regarding penalties.

Art is going to coordinate a lighting expert to come discuss these issues with the Board in the future.

Joshua will give Hillary revisions, adding language about measurable levels, consequences and RSA's. Hillary will bring an updated draft to a future meeting.

Short term rentals: Tyson Miller talked about the Portsmouth court case that is now in Supreme Court which will hopefully clear up some of the questions we have relating to short term rentals. Lucy's understanding of the Portsmouth case is that they will have oral arguments at the end of the year.

Hillary discussed meals and room tax and whose job it is to collect the funds. Jim said this isn't our job. The Board discussed a resident in town who has never gotten a special exception for the rental he has and is now building more. Nobody is cracking down on this. We need to be writing up short term rental rules that also state you need a special exception for them. Tyson thinks we should wait for the State to come out with their RSAs first. Lucy believes the \$2/night tax idea was tabled by the State and doesn't think we'll get cover from the State any time soon. She thinks the state agreement with Air BNB is that Air BNB needs to collect room/meals tax from all hosts

but the agreement is secret. Lucy will email Joshua some information on the Air BNB/State agreement and he'll look into a 91-A letter.

Campground Ordinance: Tyson reminded the Board that in 2015 we had a campground ordinance that incorporated our town attorney's comments. The attorney for Mourning Dove, Attorney Fitzgerald, came to a meeting with a letter outlining a list of problems he saw with the proposed ordinance. At that meeting we all decided not to move forward with an ordinance and to make campgrounds illegal in the whole Town. At the following meeting we discussed it again and reversed that decision. Right now we have nothing in place. Tyson asked that Joshua look at Fitzgerald's letter in comparison with what Tyson drafted. Joshua agreed.

Land Growth Ordinance: Tyson mentioned that the Land Growth Ordinance will sunset in 2020 if we don't act on it. It was brought to Town Meeting in 2015 and voted on. It was agreed we would bring it to next Town Meeting again.

The items the Board would like to complete this year are the Nuisance Ordinance which is 1/3 done; A Noise Ordinance; A Campground Ordinance which is ¾ done; The Growth Ordinance, which is easy; and the revision of the Commercial and Industrial Uses in the Table of Uses. These will be discussed again at the 2nd meeting in August, which is the Board's work session.

Other Business:

- Tyson discussed House Bill 2 and a proposed land use board that would be made up of State employees who would look at cases and try to settle them outside of court. The opinions could be appealed to the Supreme Court. Joshua likened it to a BTLA type of situation.

Motion to adjourn by Joshua, second by Tyson. Vote: Unanimous.

Submitted by Lori Gabriella, Secretary
Canterbury Planning Board