

**MINUTES  
GILFORD PLANNING BOARD  
MONDAY  
JULY 17, 2017  
CONFERENCE ROOM A  
7:00 P.M.**

The Gilford Planning Board met in regular session on Monday, July 17, 2017, at 7:00 p.m. in Conference Room A of the Gilford Town Hall.

Vice Chair Carolyn Scattergood the Pledge of Allegiance, welcomed everyone, read the rules of procedure and introduced Board members and staff.

Planning Board Members in attendance were Vice Chair Carolyn Scattergood; Secretary Richard Vaillancourt; Selectmen's Representative Richard Grenier; Regular Members Richard Egan, William Johnson and Jack Landow; and Alternates Emily Drake and Isaac Howe.

Member absent were Chair Wayne Hall.

Also present was John Ayer, Planning Director and Sandra Hart, Technical Assistant.

Isaac Howe was asked to step in as a voting member and if he has to step down then Emily Drake will step in.

**1. PUBLIC HEARINGS**

- 1.1 STONE BROOK HILLS, LLC** - Applicant proposes to amend the existing site plan allowing Outdoor Special Events to also allow "indoor special events" and to make other related plan changes for property located at 123 & 128 Glidden Road on Tax Map & Lot #271-007.000 & #271-008.000 in the Limited Residential (LR ) Zone. Amended Site Plan Review. Application #2017000255.

On this item, I. Howe recused himself and E. Drake sat in on it.

J. Ayer said that the application was complete and could be accepted. Motion made by R. Vaillancourt, seconded by R. Grenier, to accept the application as complete. Motion carried.

**Presentation**

Steven Smith of Steven J. Smith & Associates, Inc. represented the applicant and posted the amended plan for everyone. He explained they would like to be allowed to use the two existing accessory buildings on the property. They want approval of the amendment, but do not seek to change any of the conditions. Those would stay the same. The special events won't change and there won't be any physical changes to the site. They have been to the Fire Department and received a list of the things that they will need to do.

C. Scattergood said that the site is approved for outdoor special events and now we are talking about some events that are indoors – does that change the category of uses. S. Smith said that he doesn't think so whether they are using the tents or the buildings.

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Mary Balsamo, applicant, said that she runs the farm and from the beginning the Board came out and there were some questions but she recalls that the biggest issue was to get the Fire Department's approval. She said after this spring they realized that because of it being so wet that using the barns would be helpful. The buildings aren't heated and restrooms would remain outside. She said they just want to give clients the option of more of a pavilion type feel with the use of the barns. She explained how the buildings would be used.

J. Landow said that he thought that this would be used more on an emergency basis but it sounds more like it could be a combination to use the facilities at any time. M. Balsamo explained that she just wanted to give the option of a more protective space. The original approval was for outdoor events and now it's a combination of indoor and outdoor.

M. Balsamo said that the cooking equipment etc. would be outside, but they could serve the food inside. C. Scattergood said that what they are asking for is just the use of the buildings. Yes, replied M. Balsamo.

J. Landow asked what the latest time of year is they would have an event. M. Balsamo said the events are from May through October, but they are mostly confined to the summer months.

### Public Input

C. Scattergood asked if there were any members of the public who wished to speak. Hearing none, C. Scattergood closed the public hearing.

I. Howe returned to the table and E. Drake returned to serving as an alternate.

**1.2** PEM REAL ESTATE, LLC – Applicant proposes to expand four (4) office areas from 24' x 24' each to 24' x 30' each, and to add two (2) parking spaces to the site at 332 Hounsell Avenue on Tax Map & Lot #204-003.013 in the Industrial (I) Zone. Amended Site Plan Review. Application #2017000256.

J. Ayer said that the application was complete. Motion made by R. Vaillancourt seconded by R. Egan, to accept, the application as complete. Motion carried.

### Presentation

Steven Smith of Steven J. Smith & Associates, Inc. represented the applicant. He said that they were before the Board in March for a site plan approval. He reminded the Board that this project will be built in two phases, which he explained on the site plan for everyone. He said it was approved with an office space of 24' x 24' which wouldn't allow for much use, so 24' x 30' would work better. They have also added additional parking spaces to meet the requirements and have gone back to the business park for approval. No change will be made to the design work on site.

### Public Input

C. Scattergood asked if there were any members of the public who wished to speak. Hearing none, C. Scattergood closed the public hearing.

**1.3** DGET REALTY, LLC – Applicant proposes to make a 60' x 125' addition (7,500 square feet) to the rear of the existing building at 25 Waterford Place on Tax Map & Lot #214-012.000 in the Industrial (I) Zone and Airport Overlay District. Amended Site Plan Review. Application #2017000257

J. Ayer said that the application was complete. Motion made by R. Vaillancourt seconded by W. Johnson, to accept, the application as complete. Motion carried.

Presentation

Steven Smith of Steven J. Smith & Associates, Inc. represented the applicant. He said that the lot was the last lot on Waterford Place. The original site plan was approved in 1988 and the existing building was shown on the plan and it has 24 parking spaces with a loading dock, a storage shed that sits in the corner and that storage building was there when these owners purchased the property. He said that when he went out there he noticed that it was in violation. S. Smith said that apparently they got approval for it on the other lot, but at some point they moved it over to this property, but he said they are proposing to get rid of it. He said the proposal is to put a 60' x 125' addition on the back of the existing building. They will put a new stormwater treatment facility near the corner of the addition. The parking will remain the same.

S. Smith said that an existing underground fuel tank will be moved inside so there will no longer be any outdoor storage of fuel on site. J. Landow asked what type of fuel was in the tank. S. Smith said it is a fuel oil tank. E. Drake asked if the state required them to clean out the site in that area once the tank is removed. No, replied S. Smith.

J. Ayer asked if the height of the new building would be taller than the older one. D. Lambert said it would be.

Public Input

C. Scattergood asked if there were any members of the public who wished to speak. Hearing none, C. Scattergood closed the public hearing.

**1.4 PAUGUS BAY MARINE CENTER & STORAGE FACILITY, LLC** – Applicant proposes phased construction of a 3,500 square foot Marine Light Repair Shop and an indoor Boat Storage facility consisting of four (4) 12,000 square foot buildings at 26 Gilford East Drive on Tax Map & Lot #213-043.001 in the Commercial (C) Zone and the Aquifer Protection District. Site Plan Review. Application #2017000258

J. Ayer said that the application was complete. Motion made by R. Vaillancourt seconded by R. Egan, to accept the application as complete. Motion carried.

Presentation

Steven Smith of Steven J. Smith & Associates, Inc. represented the applicant and explained that this proposal is on a lot approved last month with a subdivision application. He said they are proposing a light marine repair shop and four boat storage buildings for this lot. He said he submitted a Special Exception application to the Zoning Board of Adjustment for the project as well. He explained that this would be a phased project.

S. Smith said that the plan proposes a boat cleaning area with an oil separator, a private well and 14 parking spaces. He said they have received FAA approval for the Form 7460, and the Alteration of Terrain permit is under review at this time by the State of NH. He said the drainage design plans are in the package, and he went over them for everyone.

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S. Smith explained that the site is behind the Gilford Home Center and the buildings will be set down into the ground so that visually you might only see a roof top here or there. He said they have mapped the wetland and they will be staying out of that area. He said they have a limited amount of lighting and it will all be downcast lighting at the doorways and a camera system will be installed.

R. Egan asked about outside boat storage. S. Smith said they will be asking for approval of that from the ZBA, but you won't be able to see the boats. So, some boats will be outside waiting for light repair and some will be there for storage.

Greg Keenan, applicant, explained that the light repair shop would be built in phase 2 and what light repairs would be. He said the repair shop will be used in the winter so they don't have to bring boats all the way to the marina.

R. Vaillancourt asked if the outside boat storage will it be stacked storage. S. Smith said it will not be stacked outside because that is not allowed. G. Keenan said it will be stacked inside. They will be fully enclosed rack buildings 4 levels high.

C. Scattergood asked if the run off ever goes to the pond. S. Smith said that the pond drains by a pipe and has been there for a long time. He said no runoff from this site will go to the existing pond. S. Smith explained the drainage and the treatment facility. He said the stormwater drainage and treatment system is being reviewed by the state. J. Ayer said he reviewed the drainage system at length and said it appears to be a very good, thorough system that is well thought out.

### Public Input

C. Scattergood asked if there were any members of the public who wished to speak. With no public input C. Scattergood closed the public hearing.

**1.5**     **ANDREW HOWE** – Applicant proposes to host “farm-to-table dinners” and Agritourism activities at 285 Gunstock Hill Road on Tax Map & Lot #225-001.100 in the Single Family Residential (SFR) Zone. Site Plan Review. Application #2017000259.

I. Howe recused himself on this item and E. Drake stepped in as a voting member.

J. Ayer said that because the applicant already has an approved site plan for this site that is still in litigation, he spoke with Town Counsel to see if there was a problem with taking up this application while that application is still being litigated. He said Town Counsel did not have an issue with the previous application still being in litigation, but did have an issue related to Fisher v. City of Dover which is a court decision that prohibits an applicant to submit the same application a second time. He said the Planning Board needs to make a determination that the new application is materially different from the previous application. He said the burden of this proof is on the applicant, but he said that he provided some ideas in the staff report based on what is evident at first glance. He said the Board will need to make a determination as to whether it is a materially different application from the earlier application before it decides if it is complete.

C. Scattergood invited the applicant to explain how this application is a different application.

Andrew Howe, applicant, posted the 2015 site plan that was approved by the Planning Board and is currently the subject of a court appeal and highlighted the differences between the applications.

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He said two of the lots that were part of the original application are not part of what the Board will see tonight. He said he is asking for a approximately 8 acres of the 180 acre lot to be used for this proposal.

He then displayed the current site plan which shows a barn and the area to be used for the agritourism use on the 8 acre "Gully Field" portion of the 180 acre lot.

R. Egan said looking at the plan it appears that the barn is still in the same location that it was in before. A. Howe said that is correct.

A. Howe explained that they are also coming in under the new Zoning Ordinance as well. He said there are also new state laws that went active almost a year ago including the state's new definition of Agriculture which now has includes a definition of Agritourism. He also referred to RSA 674:32 d. He said another difference is that they are not including parking with this application, so he submits that this application is significantly different.

J. Ayer said that it is appropriate to discuss it and have someone make a motion. C. Scattergood asked the Board if they thought this was different.

J. Landow said that he would agree that it is different with regard to the location, and there are some surface differences, but the intent and what can take place as farm-to-table is the same as what was approved before.

J. Landow asked what other activities are proposed? He sees the change of proposing no parking so there is less impact, but there is still a limit of 250 people and it's still farm-to-table. He said also that alcohol and music will be provided by A. Howe if there is no 3<sup>rd</sup> party. A couple is married in a church downtown, those people want to come here and have a farm-to-table wedding reception. He said call it what you will, but he sees a lot of similarities. The use on whatever property you decide to put it on is still the same use.

A. Howe said that he is coming in under the ordinance changes and the use appears to be allowed and so his responses are the physical responses that are significantly different. He said we are discussing whether the application is materially different.

R. Egan said that originally the approval was for a year or two of temporary site operation with the intent going into the future of using a barn to be built. He said this is to go into the same spot of the barn that was previously approved with a temporary tent on that location until the barn is built there. He said that he really didn't see much of a difference of the end result, but just a change in how A. Howe has packaged how to accomplish it. He said it is in the same spot.

A. Howe said that the prior application was for a tent site on the adjacent lot temporarily with the barn site permanently, and they are now going directly to the barn site. He said the intent was to reduce their impact to the neighbors, and to mitigate the impacts to the neighborhood such as noise and traffic, etc.

C. Scattergood said that she concurred with A. Howe as far as the parking is concerned, but what happens to the parking will be reviewed at the next stage during the application review.

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R. Grenier said that his first experience on the Planning Board was when he substituted for Chan Eddy on one night when the original proposal was under review. He said his opinion is that this is a new application and to him it is different. C. Scattergood said that she tended to agree with R. Grenier's opinion on that.

R. Vaillancourt asked about the parking. C. Scattergood said that is beyond what they are deciding right now, but said that to her it is a huge reduction in impact.

R. Egan wanted to know if public input would be needed on this. W. Johnson said at this point we are just voting on whether this is a different application or not. C. Scattergood said that it would be up to the Board to decide whether to take public input on the issue.

C. Scattergood asked J. Ayer to explain the Fisher v. Dover court decision from 1980. J. Ayer said the case determined that an applicant cannot submit the same application a second time and a board must make a determination that the new application is materially different from the first application. He said the burden of proof is on the applicant.

C. Scattergood said if the Board determines that it is a different application, what happens to the old application and its approval – does it go away. A. Howe said that it is pending in court. C. Scattergood said that we can't have two approvals on the same property – doesn't the new one override the old one. R. Grenier asked J. Ayer if the original application would have to be withdrawn first. C. Scattergood noted the original application is already approved. R. Grenier said that can't he withdraw it still. A. Howe said it is not approved until the courts are finished with it.

I. Howe said point of order and asked if he could read the first two sentences of the staff report under "Legal Note" which stated, "The site plan approved in 2016 for this property is still in litigation. After checking with Town Counsel on the matter, however, I was advised that that is not a problem." J. Ayer pointed out that the follow up comment to that was that this application could make the litigation over the earlier application go away. J. Landow asked if approving this application would automatically negate the previous application. J. Ayer said he did not know if it would be automatic. J. Landow said the Board should know the answer to that question before it goes much further. C. Scattergood said that is still a question for down the road. The Board must first determine if this new application differs from the first one.

### Motion

R. Grenier said for the purposes of moving the matter forward, he moves that this application is substantially different. Seconded by W. Johnson. Discussion ensued.

J. Landow asked if "materially different" relates to how the application is presented or written, or does it relate to what the application intends to do. W. Johnson asked if the contents of the application outweigh intent of the final use. J. Ayer said he doesn't think it has to have a different objective for the use and he used an example that if he were proposing an ice cream stand that was denied originally because it had outdoor seating and the outdoor seating were eliminated with the resubmittal, that would be a materially different application in his opinion. W. Johnson said so the contents being different would be enough. J. Ayer it seems materially different to him.

R. Egan said so the fact that Application A and Application B have the same desired end result, the make up of each can determine if it is a different application or not. W. Johnson said if you suspend the elements that are in contention, the applications are not the same.

C. Scattergood said a Board member wanted to know what the case is that requires that the second application be different. J. Ayer said it is Fisher v. City of Dover. R. Egan said he doesn't know what the case says. C. Scattergood said J. Ayer has summarized it. J. Ayer confirmed that he had summarized the case but acknowledged that he does not answers to some of the questions the Board is asking.

J. Landow said that it would be good to know the rationale or decision of that case. C. Scattergood said the Board has to determine whether it's a different application. Is it substantially different. C. Scattergood said there is a motion on the table and she asked R. Grenier if he would consider withdrawing it so the Board can review the case more than what has been presented by J. Ayer.

R. Grenier said that he does not want to withdraw it but would like to call the question. He said he thinks the Board got a good synopsis of the case. He said he thinks Board members already have a sense if the application is different or not. He would like to move forward with a vote.

C. Scattergood called for a vote. The motion to find that the new application is substantially different from the previous application was approved with J. Landow and E. Drake opposed.

C. Scattergood said she now needs a motion to accept the application as complete. J. Ayer said before the Board does that, he would like to remind the Board that once the application is accepted as complete, it has 65 days to act on the application, so it should be sure that the application is complete. J. Ayer also went over the request for waivers. He said there may also be a need to waive checklist item 4, legend. He said his wording under Possible Action is for the Board to "Accept the application as complete subject to review and approval of waivers." C. Scattergood asked if there is anything that needs to go to the ZBA for any reason. J. Ayer said that no off-street parking has been provided and the applicant will need a variance for that. He also pointed out that there is now a statute that prohibits the Planning Board from requiring an applicant to go to another board first, so if the Planning Board is inclined to approve the application, it would need to approve the application subject to the applicant obtaining a variance for parking.

J. Ayer said that he thinks the application is complete in that the Planning Board has enough information with this application to conduct a thorough discussion in a public hearing. Motion made by W. Johnson, seconded by R. Grenier, to accept the application as complete subject to review and approval of waivers. Motion carried.

### Presentation

A. Howe reviewed the proposed site plan that he had displayed. He explained the layout of the property and explained that the entire property is zoned Single Family Residential and it is encumbered by a conservation easement which allows only farming. He said the Society for the Protection of New Hampshire Forests owns the easement and they have approved what we are proposing at this time. He explained the farm road that provides access to the area where the use will be conducted, and he pointed out the stonewalls on that plan that define the different fields. He said all of the property is farm, vegetables, and hay and some of it gets pastured with cattle. The proposal is to use the "Gully Field" that is shown in a heavy gray outline and add a barn as shown. He said there is a proposed pond and retaining wall in the area for the change in grade. He said this field is the most remote part of the property and lends a lot of privacy and the noise will be contained in that area. He pointed out the setback requirement of 500 feet is shown.

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A. Howe explained that the Conservation Easement does not allow for parking. He said that they asked the Society of NH Forests if they could park on this property and they said no. He said they propose that people be bused in or use another form of transportation to be dropped off and picked up. The Society of NH Forests said that we are allowed to have a few parking spaces for the caterers.

A. Howe said that they have been working with the Police Department and Fire Department on the operations of the site. He said Gilford Fire & Rescue will need to be able to go right up to the front of the barn and so they are still working on that. They will be putting in a dry fire hydrant at the pond per the request of the Fire Department.

A. Howe explained that they meet the conditions of the new Zoning Ordinance which includes the 500 foot setback. They will have a maximum of 250 people, the hours will be 8 a.m. to 10 p.m., with one event per week, a maximum of 20 events per year, with no third party music or alcohol. They will also have no external lights but that's safety issue for the Fire Department and they would like the opportunity to address that issue with the Fire Department. It will be downcast and the glow and will be minimum. Restrooms are not allowed, so there will be portable toilets located adjacent to the barn area. There will be a generator there and they will work with an electrician for that to determine where it should be located. He said they will prepare an as-built to show all of these details and where they are.

A. Howe explained that for waiver #4 they weren't able to have a legend because they had to put all of the lots on one plan and they had to use 3 different plans to come up with this one plan. There was no consistent legend.

A. Howe said that is all that they have and their intentions are to have farm-to-table events as described, and to do what is allowed by the Zoning Ordinance.

### Discussion

W. Johnson said where the farm road is there is a bad line of sight at that corner. A. Howe explained it is a problem on the road and said they have to cut down some trees in that area. He said that if it continues to be a problem then they would have to do something about the farm road. He said the bus services in the area aren't really sure about driving on a farm road.

R. Vaillancourt said if they are going to use the road for buses, where will people park. A. Howe said that it won't be on their property, but attendees can leave their cars at their hotels or wherever, and the buses will pick them up and drop them off. A. Howe said they have to allow, per federal law, that people with disabilities be dropped off by the building.

R. Grenier asked if the irrigation pond will be protected so that nobody falls into it. A. Howe said that they will have fencing placed around it and it will be more of a permanent structure so that they don't have to take it down and put it up all the time.

J. Ayer said that putting the generator and portable toilets on the as-built plan makes sense since placement of those items will need to be determined as the site is developed and the layout evolves. He said regarding the legend that the tree line symbol is perhaps the only symbol on the plan that isn't explained and providing a note on the plan explaining that symbol would be helpful. He said regarding lighting that and the Fire Department is entirely right and that there should be some type of lighting available and maybe that was a restriction put into this ordinance that wasn't

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well thought out as there should be the ability to provide lighting for emergency purposes and for exiting the venue and to help protect visitors from stumbling outside while at the venue.

A. Howe said that he wanted to address the buffer that was mentioned to be located along 299 Gunstock Hill Road which is roughly 1500 feet away from the proposed barn. He said that the distance of where the proposed location is somewhat of a buffer in itself but he also drew a line from the house to the barn to show that the view would be obstructed by one of their hedge rows which would be an effective buffer. J. Ayer said that it is a good point and supports the argument that that distance and the plant life within it provide an adequate buffer.

C. Scattergood said that her only reservation when she thinks of agritourism is people choosing the site to enjoy the site and the meal or getting educated and it appears that this is not a site where any of the public can choose to go because it will be private events only. She was hoping that somehow the applicant could do farm-to-table activities for those people who choose to go there for that. A. Howe said that we would like to do that, but the parking issue is a problem. He said that is more of a fun event in their opinion and they would like to do something like that, but the logistics and monetary value make it difficult.

J. Landow asked if the events proposed will be catered. A. Howe said they will. J. Landow asked what percent of the food would be coming from the farm? A. Howe said that they had an event from the farm yesterday and it was 100 % from the farm, but it depends on the time of year and what is available and also what the customer wants. J. Landow stated so the vast majority of the food would come from the farm. A. Howe said as much of the food as possible comes from their farm. J. Landow asked if the caterers prepare the applicant's food. A. Howe said that is correct.

### Public Input

C. Scattergood asked if any members of the public wished to speak.

Jerry Gagnon, Gilford resident, said that his opinion is that the applications were the same. He said that this application is no different from the one that was submitted before. I. Howe said point of order and noted that the Board had already said it was a different application. C. Scattergood said the Board had voted on this being a different application and asked J. Gagnon to address the application itself.

J. Gagnon said that it seems to be the same issues and concerns. He said that Mr. Howe owns 340 acres and he can move this somewhere else to another zone. It is not a good location and the road is not a safe road for people and there will still be a noise issue and it will be a nuisance. J. Gagnon expressed a number of other concerns and C. Scattergood asked him to contain his comments to the current application itself.

Ryan Crawford of 232 Gunstock Hill Road said that he has four children and that he grew up here in Gilford and just came back here and has many years left on his mortgage. He says he didn't think that this application could be approved based on his reading of the new law. R. Crawford said that one requirement is that the use be an accessory use but this is not an accessory use. He said he was at the State building and hear I. Howe say that this was not an accessory use, and that negates it from being an allowed use. R. Crawford said this application should be looked at the same way as if a homeowner wanted to start having weddings in their own backyard in a residential zone. He also said this is not materially different from the earlier application and it is even on the same exact same site. He said that every time this proposal comes up they will be at

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the hearing with their complaints. He said he doesn't know when it will click in, but this is a residential neighborhood, and where it was before in the tent the noise was unbelievable and they could hear it all including the music in their home.

A. Howe said that it is not the same thing, it will be in a barn and it has never been in a barn before. The tents he said the noise came from last year, were much closer than the barn which will be over 1400 feet away in the woods. The new state law and the new town ordinance both speak to farm-to-table dinners. The state law speaks to special events and these are special events. The state and the town both agreed to that and passed laws to allow it.

Stephen Legro of 299 Gunstock Hill Road said that he would be against a buffer being added in this area because it is one of his favorite views and he wouldn't want that blocked. He said he's worried about what happens if the farming industry isn't able to adapt and if Mr. Howe isn't able to go on working the land, will the field grow over and his view disappear. S. Legro said there is a Conservation Easement there and they need to move forward and earn an income on that land.

Bob Pomeroy of 231 Gunstock Hill Road said that he didn't have a huge problem with it because he's about 1500 feet away. His main concern is with the alcohol and the loud music which was irritating when this use was conducted here before. He echoed Mr. Crawford's concerns and asked how Board members would like to have weddings relatively close to their houses. He said nobody would and this use isn't agritourism in his opinion. He said this is not agritourism.

Attorney Joseph Driscoll of Martin, Lord & Osman, P.A., said that he was representing Monique Twomey of 255 Gunstock Hill Road. He said that they have been before the Board several times and because there are new faces on the Board, he encourages the Board to review the prior record that exists regarding not only the site plan but when the Board was crafting the ordinance that is being talked about. J. Driscoll said he believes that this is the same plan and disagrees that adding two pages of conditions of approval changes the application. He said those were conditions that were added by this board.

I. Howe said point of order and reiterated that the Board has already determined that this is a different application. C. Scattergood asked J. Driscoll if he thinks the Planning Board made a mistake in choosing to hear this application. She said if so, the Board is beyond that and had already decided not to take testimony from the public about it. J. Driscoll that he was getting to the point of what is not present in the application and needs to be for a site plan to be approved. C. Scattergood said that J. Driscoll may speak to that, or if he identifies something that he feels is needed on the plan, but the Board may not agree with him. J. Driscoll said the ordinance is very clear that parking needs to happen here. He said they could go to the ZBA for a variance, but if the parking is deemed necessary then they would need to return to the Planning Board for another site plan review. C. Scattergood said to J. Driscoll that if he thinks this plan needs parking he should say so, otherwise the application will stand as it is at least for now. He should not be talking about parking on a prior plan. J. Driscoll said that the Board can't approve the application because it doesn't address parking which is required by the ordinance. C. Scattergood said that will be determined by the Board of Adjustment.

J. Driscoll said there have been discussion and questions about agritourism and the Superior Court has overturned the ZBA's decision on the previously submitted application and it's now pending before the Supreme Court. He read the statutory definition of agritourism and he said he doesn't think the proposed events do what the definition says. He said the point of going to the proposed

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events is irrespective of the farm, but rather the point is the wedding, the people you know and you're going to their life event. The farm is merely the venue for the event, not the focus of the event. He said agritourism is supposed to be about the farm with education on farm operations being a part of those activities.

J. Driscoll said the Town zoning ordinance that was passed was championed by his client and it addressed all of the issues she had. He said that she is not against agriculture or agritourism, but it appears there are certain things being circumvented with this proposal. First, he said nothing has been said about the serving or consumption of alcohol. He said in May the Board considered an informal inquiry into what "third party" meant. He said he thinks it is very important how that third party aspect is being addressed with regard to alcohol and playing of amplified music.

J. Driscoll also said another important issue is the first condition in the definition regarding use of artificial lights. If the application goes before the Planning Board, the Board cannot allow the application to go forward if the requirement dealing with artificial lights is breached. The ordinance says if there is a conflict with other regulations, these regulations shall prevail. So, although the Fire Department is concerned about outside safety, there still can't be any artificial lighting allowed unless the ordinance is amended by Town Meeting. It cannot be deviated from unilaterally by a board acting by itself.

J. Driscoll said he would like to clarify a point made by the applicant. The prior application failed in court not because of proximity to neighbors. It had to do with definitions within the Town's zoning ordinance. There is still a definitional problem. As for the parking, this is now basically going to be a bus stop until 10 at night and this is a residential road. It shouldn't be a commercial bus stop. He still thinks that there are significant concerns with the plan and an explanation should be given regarding third party service of alcohol and playing amplified music which was not addressed in the presentation.

A. Howe said that the new ordinance contemplates an event lasting until 10 p.m. and it is dark at that time any time of year. It is not reasonable and what is the point of the ordinance to have an event until 10 p.m. without lighting. He said now they do not like the fact that we aren't proposing parking and before they argued about the problem with traffic and parking. He said they need to make up their minds. They can't have it both ways. They are arguing for the sake of arguing.

Chan Eddy, Chestnut Drive, said that there is confusion and said we are not dealing with weddings which can be held anywhere. Permission is not required to hold a wedding ceremony anywhere. This is dealing more with the reception and what goes on after the wedding ceremony.

J. Driscoll said that there is no distinction between weddings and wedding receptions for purposes of this board's deliberation. That was an issue raised in court by Superior Court Judge O'Neil who said these are all facets of the wedding, not separate events.

J. Landow said that there seems to be a consensus that we are talking about weddings. There is already an application in and he would like to have an answer to the question if we can have two applications at the same time. If we approve this and if it turns out the original application gets approved, what happens.

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A. Howe said that if this passes and it is not appealed we will go with this approval and we go on our merry way. C. Scattergood said that she doesn't know if that's the case, so that's something they will have to find out.

R. Egan read the definition of Agritourism for everyone. He said the applicant is not going to be in the business of attracting visitors because parking is a problem. A. Howe said that they are certainly trying to have people there, but visitors will have to park elsewhere. R. Egan said that A. Howe is not trying to attract people to this spot. A. Howe said that they could have something like kids day on the farm. A. Howe said that parking is not allowed on this property because of the conservation easement. If he is able to provide public events, he would love to be able to park people there because if they have an event and they bring in a lot of people, that is to their advantage. J. Landow said that A. Howe said it was not possible because of a parking restriction. A. Howe said that he can't have the parking so it would be a challenge to make that happen.

Isaac Howe of 264 Old Lake Shore Road said that he was confused about this, because nowhere in the Zoning Ordinance related to agritourism is the word "public" used. It does say something about attracting visitors to the farm but not the public. These visitors will only stay for the event. In the definition itself the number one thing is eating a meal.

R. Crawford said that an accessory use would not provide the primary income and this was not an accessory use. When they say that they are attracting the public then they need to have parking.

With no further input, C. Scattergood closed the Public Hearing.

### 2. **ACTION ON ABOVE**

#### 1.1 **STONE BROOK HILLS, LLC**

##### Motion

Motion made by R. Vaillancourt, seconded by J. Landow, to approve the application subject to the applicant obtaining any other federal, state, or local approvals that may be required. Motion carried with all in favor.

I. Howe returned to the Board and E. Drake returned to participating as an alternate member.

#### 1.2 **PEM REAL ESTATE, LLC**

##### Motion

Motion made by R. Egan, seconded by W. Johnson, to approve the application subject to the applicant obtaining any other federal, state, or local approvals that may be required. Motion carried with all in favor.

#### 1.3 **DGET REALTY, LLC**

W. Johnson said he realized he should recuse himself on this item and apologized for not realizing that earlier. E. Drake stepped in as a voting member.

##### Motion

Motion made by R. Vaillancourt, seconded by I. Howe, to approve the application subject to the applicant obtaining any other federal, state, or local approvals that may be required. Motion carried with all in favor.

W. Johnson returned to the Board and E. Drake returned to participating as an alternate member.

#### **1.4 PAUGUS BAY MARINE CENTER & STORAGE FACILITY, LLC**

##### Motion

Motion made by R. Vaillancourt, seconded by J. Landow, to approve the application subject to the applicant obtaining any other federal, state, or local approvals that may be required. Motion carried with all in favor.

I. Howe stepped down from the Board and E. Drake returned to being a voting member.

#### **1.5 ANDREW HOWE**

C. Scattergood said it is her opinion that this is less impact than the earlier application but it still doesn't fit into her definition of agritourism.

W. Johnson said that it is cost prohibitive to have a farm-to-table event open to the public and hope enough people sign up. Having it completely open to the public would leave it too at risk of not enough people attending to make it worthwhile.

J. Landow said that the question boils down to are these types of events appropriate in a residential area. It is a stretch to say it is agritourism. If it is legal doesn't mean it is right. It is a back door to doing what he wanted to do in the first place, just another way around it.

C. Scattergood said that at this same farm, the owner decided to have a children's petting day but they did it along the road and you can park on both sides of the road and using the farm land for children meeting animals from the farm. It is where the farm is located and there are plenty of farms in the Single Family Residential zone. The location in the zone doesn't matter to her since there are plenty of agritourism activities in residential zones or any zone the farm is in.

J. Landow said that he has no issue with how Ramblin' Vewe Farm operates and that is an agritourism use. There is no alcohol, no music, and it's during the day so it is a different scenario altogether. C. Scattergood said that at farm-to-table events there is music and there is alcohol. She said she objects to a use that doesn't belong on a farm, but she said she doesn't have a problem with what zone it is in. If it's allowed on a farm, it can happen wherever the farm is located. She said she as a problem with a tourist not being able to stop in as a tourist at an agritourism site. J. Landow said maybe the question is is a wedding agritourism.

W. Johnson said that a farm-to-table can take on a bunch of different themes whether it's a family event, a business lunch, or some other theme.

R. Vaillancourt said that he is one of those that supported the original application and he does see some improvements with this application and he is still in favor of approving this application.

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R. Grenier said that most of the original conditions would have to be modified for this application. What would happen to those? C. Scattergood said they would have to be applied to this application. Do we need to table this and review those original restrictions. R. Grenier said that he doesn't normally like to do that, but we do need to review those and we did do a lot of work to develop those restrictions, but we need to change those to meet this new application. J. Ayer said he reviewed the earlier conditions of approval and modified or excluded conditions because the application is different and the law has changed. Discussion ensued.

C. Scattergood asked for an explanation on the restriction on lighting and where that is. J. Ayer said that it is in the definition of Agritourism in the first bullet which he said is provided on page 10 of 12 in the Staff Report. C. Scattergood said that is not required for Outdoor Special Events. One could not go to the porta-potties without some sort of outside lighting. J. Ayer said this is more restrictive than for Outdoor Special Events. J. Landow said that it looks like you cannot have lighting outside of the barn or the tent. He said if you have artificial lighting outside of that you are in violation.

W. Johnson stated that if the requirements for life safety are in opposition to the ordinance wouldn't that prevail. J. Ayer said the ordinance states these requirements prevail. J. Landow said that we have to vote with what's in the ordinance.

R. Egan said that he was still hung up on the definition. People are not going to the reception for the farm. They are going for the reception or the person being honored. People will go anywhere because they are going to a wedding reception, not because of the farm. Discussion ensued.

R. Egan disagrees with having buses coming and going home at another point in that it elevates traffic. He said with every wedding people have to specifically be told that they can't park there. They won't be able to prevent people from driving on the public road to at least attempt to park there.

C. Scattergood said that it is not appropriate to approve something with no outside lighting.

### Motion

Motion made by J. Landow, seconded by E. Drake, to table the application to the August 7, 2017 meeting, to allow getting answers to questions whether lighting can be provided and if it cannot, will it be required anyhow; what is the procedure with two site plans approved for the same property; what were the conditions of approval of the original application compared to the current one; what concerns does the Town have with visibility at that corner in Gunstock Hill Road where buses will enter and exit the farm road; and does the state law mean to include public events in agritourism, or public and private events.

J. Ayer said that he could get information from the Fire Department, and Town Counsel and he'll compare and make the conditions for then and now, and look into the visibility of that corner.

Motion carried with R. Vaillancourt opposing.

### **3. OTHER BUSINESS**

J. Ayer has an applicant who wants to go before the Board for a small addition to the Winter Harbor Yacht Club building. They would like to be on the agenda at the next meeting, which is

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the August 7, 2017 workshop. C. Scattergood said that it would be fine, since they already have a tabled application for that meeting.

Motion made by R. Egan, seconded by R. Grenier, to continue past the 10 p.m. time limit of this meeting. Motion carried with all in favor.

J. Ayer said that there had been discussion with Doug Beane who said and that his recently approved application was a condominium. He said there was a small notation to that effect on the application form, but no other indication. However, J. Ayer said it doesn't change the effect of the application. The Board agreed to allow the application to be processed as a condominium. C. Scattergood said we will need condo documents. J. Ayer said they are already drafted. J. Ayer said the plan will need to have some labeling fixed on it but it would be an easy addition. C. Scattergood said that she would go ahead and say yes to expedite the application.

J. Ayer said that the selectmen have created a sign committee and they would like to have someone from this board to serve on it. E. Drake volunteered to join the sign committee.

#### 4. MINUTES June 19, 2017

Motion made by R. Vaillancourt, seconded by R. Grenier, to approve the minutes of June 19, 2017. Motion carried.

#### 5. ADJOURNMENT

Motion made by R. Vaillancourt, seconded by R. Egan, to adjourn the meeting at 10:05 p.m. Motion carried.

Respectfully submitted,

Sandra Hart, Technical Assistant