

**TOWN OF LOUDON
ZONING BOARD OF ADJUSTMENT
MINUTES OF
JULY 26, 2007**

REGULAR HEARING

Chairman Dave Powelson called the Loudon Zoning Board of Adjustment meeting of July 26, 2007 to order at 7:30 PM at the Loudon Community Building.

ROLL CALL:

The following members were present: Roy Merrill, Chairman Dave Powelson, George Saunderson, and Alternate Jonathan Huntington. Mr. Huntington was appointed to be a voting member in the absence of Ned Lizotte.

I. ACCEPTANCE OF MINUTES:

George Saunderson made a motion to accept the minutes of May 24, 2007, June 28, 2007, and July 2, 2007; seconded by Jon Huntington. All were in favor.

II. MOTION FOR REHEARING: Chairman Powelson stated that there would be no public input allowed on the motion for rehearing filed by Septic Disposal Solutions. He asked the applicants if they were agreeable to a four-member board hearing the case. SDS attorney, Brandon Giuda, said they would be agreeable to that. The chairman stated that the ZBA had suspended their decision in June. ***Roy Merrill made a motion to deny a rehearing; seconded by George Saunderson.***

Mr. Merrill said that he does not believe that SDS presented overwhelming evidence that there would be no odor. Referring to a statement in the motion for rehearing, he said that processing comes under special requests and not every processing plant would be allowed if they cannot prove there would be no odor. Mr. Merrill said the Zoning Ordinance requires them to be very strict on odor. Jon Huntington asked what the next step would be if the Board denies the motion for rehearing. Chairman Powelson explained that the applicant can appeal the decision to superior court if they choose to as that is their right. He said he believes if the applicant was to reapply with the same application and same configuration, the Board could deny it. He said if they were to reapply with a similar application and different configuration, the Board could rehear that.

George Saunderson said that he feels it is a gallonage issue, noting that the application presented at the end was not what was being discussed. Jon Huntington referred to a letter from DES with questions for SDS to answer and that all Board members received. He asked if that would make anyone feel any differently once SDS provided further information to DES. Chairman Powelson said it might as some things have happened and changed since the application was presented and the motion was denied. He said he was not sure how that would play in a new hearing. Mr. Huntington asked to clarify if the motion is denied tonight then the matter goes to court. Mr. Powelson explained that the court would decide if the Board made their decision properly or made an error in the decision-making. Mr. Huntington asked to clarify if the court feels there was an error made, the Board would hear it again. The chairman said that was correct.

Roy Merrill said that Mr. Giuda mentioned in the motion that Board members had solicited comments from abutters in Pittsfield. Mr. Merrill said that Mr. Gosse had told the Board that they were welcome to come to Pittsfield for verification of their reputation. Mr. Merrill said that the motion referred to an issue of going to Steve at the dump. He said that Mrs. Johnson had forwarded an email with regard to the septage situation so, just prior to

the vote, he spoke with Steve about the gallonage. Mr. Merrill said he thought that point was null and void.

Chairman Powelson said it would be good practice to go through Mr. Giuda's points and comment. He read from the first paragraph of the motion for rehearing. Mr. Powelson said he does not believe that there were any illegal meetings. He said the Board has had a meeting with the town attorney, there was a special meeting where Jon Huntington was nominated and elected as an alternate member, and the town does have regular Board of Permit meetings. Mr. Powelson said there are minutes available for all with the exception of the meeting with the attorney as that was attorney/client privileged.

Chairman Powelson read from comments from the town attorney. Attorney Giuda asked for a copy of what Mr. Powelson was reading. Mr. Powelson said he could provide a copy to Mr. Giuda after the meeting. The chairman continued, saying that the Board did make an error when it stated that an application for storage tanks was not received and that the Board apologizes for that error. Mr. Powelson went on to address the disqualification of members. He said Board members were invited to look into the Pittsfield operation and it is the intent of the ZBA to know what is going on in order to make informed decisions.

Roy Merrill stated that the state expert said that offensive odor is tough to control. Mr. Merrill said that the Ordinance is clear and that the Board is not permitted any degree of leniency. Chairman Powelson stated that there are allegations in the SDS statement that the Board never defined odor and that the Ordinance is vague and the decision is void under the NH Constitution. He said that the Board asked SDS and DES for definitions of odor but they were not provided. Mr. Powelson stated that on page three of the motion the applicant is looking for the Board to abandon their decision because of odor and then he referred to page six, section (h), numbers 8 (the Town of Pittsfield and DES have received zero complaints from abutters of the Pittsfield plant) and 9 (the DES expert has never smelled an offensive odor at the Pittsfield plant). Mr. Powelson said it is unfortunate that the DES expert was unable to define odor in reference to operations in Loudon. Roy Merrill said the Ordinance is very clear that **no** odor is permitted.

Chairman Powelson read from the attorney's remarks: The Board is convinced that it is entirely appropriate to consider the current use and condition of the property which may have a bearing upon the application, or solicit information from the Department of Environmental Services, when the applicant has referred to that information. The board members took a view, and this assisted the Board in reaching its decision. The Board is satisfied that its decision addresses the balance of the issues raised in the Motion for Rehearing.

The chairman said that some of what has been said is his comments and some is from prepared statements from the town attorney. He asked if the rest of the Board agrees with what has been said or if there are any differing opinions.

Jon Huntington said that he thinks that the existing conditions with the open lagoon and dump would be a way to measure smell and odors. He said there are odors there now. Mr. Huntington said the Board has to look down the road. He said this project has been developed and improved on and it would only be improving the town's condition. Mr. Huntington said it is a shame that it cannot be worked out. He said that the town, in the long run, would benefit. He said there are pros and cons, and no matter what was said or not said, the town is going to have sewage. He noted that the town is growing and there is an opportunity here to improve the situation. He said the Board can put restrictions on it, suggesting the gallons first presented, go for a year or so and increase it if there are no problems. Mr. Huntington said he feels denying this is going in the wrong direction.

Roy Merrill said one thing that is very bad for public input is that this somehow ties into the lagoon. He said this is a private entity and has nothing to do with it. Mr. Merrill said this comes off as beneficial to the town lagoon but the two should not be confused.

Chairman Powelson said the Board could be in an awkward position because they need three consistent votes to carry a motion. He said that he agrees with Mr. Huntington for the most part and feels this is a good project and could be made to fit within the town's zoning. The chairman said he is not sure they could get three votes from the Board to overturn it. Jon Huntington asked what happens if they do not get the votes. The chairman said if they cannot get three to deny or approve, they would reconvene when they have five members.

George Saunderson said he was ready to vote. The chairman said that he has covered the points of the town attorney and stated that the Board has a motion to deny the application for rehearing. **A roll vote was taken: Jonathan Huntington – No; George Saunderson – Yes; Dave Powelson – Yes; Roy Merrill – Yes. Yes – 3, No – 1. Motion for Rehearing DENIED.**

III. DISCUSSION:

Robert Bigwood – Mr. Bigwood stated that he plans to build a 24' x 24' garage in place of the shed that is currently at the back of his property. He said up until this year the setbacks were not a concern but with the passage of a corner lot rule in March, he now may have to seek a special exception. There was discussion of measuring from the stonewall and the right-of-way. Mr. Bigwood said it was his understanding that Bee Hole Road would be moved easterly as part of the Loudon Woods Estates subdivision project. He asked if he would still measure from the stonewall. It was agreed that stonewalls are the typical property boundary that would be used for measurement. It was suggested that Mr. Bigwood move the location of the garage to meet the 50' setback or come in with a special exception application.

IV. PUBLIC HEARINGS:

Case # 07-08, Matthew & Edith Benton – Special Exception for Reduced Setback, Map 41, Lot 10. Chairman Powelson stated that a site walk was done at this property and minutes were presented earlier in the meeting. He explained that there was discussion with the neighbor at the site walk and Mr. Garcia had agreed with the plan. The chairman stated that Mr. Benton had gone through the points of the application at the June meeting. He asked if there was anyone who wished to speak in favor of the application. Hearing none, he asked if there was anyone who wished to speak against the application. Hearing none, he closed the hearing, to be taken up under Unfinished Business.

Case # 07-10, Friedrich K Moeckel, Esq for Joseph T Bohi – Special Exception for Wetlands Buffer, Map 12, Lot 4. Shane Stewart represented the applicant and Gary Spaulding attended in the absence of Web Stout. Mr. Stewart stated that there were two conditions that held this over from the June meeting. One was the 30-day review/comment period for the Planning Board and Conservation Commission and the other was to meet with the Conservation Commission. He said that the Conservation Commission signed off on the state application. Donna presented a letter to the chairman from the Planning Board chairman that said the Planning Board has seen the site and has no concerns with the proposed project.

Chairman Powelson asked if there was anyone wishing to speak in favor of the application. Hearing none, he asked if there was anyone wishing to speak against the application. Hearing none, he closed the hearing, to be taken up under Unfinished Business.

Case # 07-13, Debra Rattee – Special Exception for Wetland Crossing, Map 38, Lot 7. Mark Sargent of Richard Bartlett & Associates represented the applicant. There were no abutters present. Mr. Sargent stated that this parcel is 179 acres on the south side of School Street. Mr. Sargent said they are seeking a special exception for a driveway crossing. He stated that the applicant is before the Planning Board for a four-lot subdivision. Mr. Sargent said the impact

would be 1,038 SF and that they applied to the Wetlands Board under expedited review two months ago.

Mr. Sargent read through the points of the application. Dave Powelson said there is a single wetland crossing proposed and he asked if every lot has access. Mr. Sargent said yes. Roy Merrill asked about a red box on the plans. Mr. Sargent explained that it was the 180' x 240' box required by the development regulations. He said that the Planning Board and Conservation Commission have done a site walk of the property. George Saunderson also attended that site walk.

Chairman Powelson asked if there was anyone wishing to speak in favor of the application. Hearing none, he asked if there was anyone wishing to speak against the application. Hearing none, he asked Board members if they wanted to schedule a site walk. Mr. Sargent said the driveway is staked out and flagged. A site walk was scheduled for 7:00 a.m. on Saturday, July 28, 2007. Mr. Sargent said he will not be able to attend but will send Dave Collier in his place. The chairman stated that the hearing would be continued to the August meeting, with the site walk set for Saturday.

Case # 07-14, Loudon Woods Estates – Special Exception for Wetland Crossing, Map 2, Lot 23. Bernie Temple of Holden Engineering represented the applicant. He stated that there would be approximately 7,000 SF of impact with the construction of the new road in the subdivision. Mr. Temple read through the points of the application and he reported that they have received the DES permit for the crossing.

Roy Merrill asked about a couple of driveway markings on the plan and if they are the ones that were mentioned at the Planning Board meeting. Mr. Temple stated that those driveways are shown in their full length because that is the location where they must be constructed. George Saunderson asked if any of the road has been constructed. Mr. Temple said it has not. Jon Huntington asked if the Conservation Commission approves of the road plan. There was no Conservation Commission representative in attendance. Roy Merrill suggested doing a site walk between 7:30 a.m. and 7:45 a.m. on Saturday after the site walk on School Street.

Chairman Powelson asked if there was anyone wishing to speak in favor of the application. Hearing none, he asked if there was anyone wishing to speak against the application. Hearing none, he stated that this is an application for crossing two small wetlands and the hearing would be continued to the August meeting, with the site walk set for Saturday.

V. UNFINISHED BUSINESS:

Case # 07-08, Matthew & Edith Benton – Special Exception for Reduced Setback, Map 41, Lot 10. **Roy Merrill made a motion to approve the application; seconded by Jon Huntington.** Chairman Powelson stated that the applicant went through the points last month and asked if there was any discussion. Roy Merrill said they have seen it all a couple of times. The chairman stated that this application is for a special exception to reduce the side setback from 30' to 15' for the construction of a garage. **A roll vote was taken: Jon Huntington – Yes; George Saunderson – Yes; Dave Powelson – Yes; Roy Merrill – Yes. Unanimous-APPROVED**

Case # 07-10, Friedrich K Moeckel, Esq for Joseph T Bohi – Special Exception for Wetlands Buffer, Map 12, Lot 4. **Roy Merrill made a motion to approve the application; seconded by George Saunderson.** Chairman Powelson said that the Board has seen this property several times and stated that this is an application to allow a road in the wetland buffer. **A roll vote was taken: Jon Huntington – Yes; George Saunderson – Yes; Dave Powelson – Yes; Roy Merrill – Yes. Unanimous – APPROVED**

VI. DISCUSSION:

Alternate – Chairman Powelson stated that Mrs. Pearl has resigned from the ZBA Alternate position. He said the Board will miss her and appreciated her service. Roy Merrill said he would like to thank Mrs. Pearl for her help and service.

Building Permit Extension – Steve Jackson said he would like to discuss a second extension on a building permit held by Dana and Christine Eldred. Roy Merrill recused himself as he is an abutter. Mr. Jackson stated that in December of 2006, the Board extended the permit on Lower Ridge Road through August of this year. He said due to a life-changing event, the owners are now required to sell the lot that they purchased in hopes of building a new home. He asked that Mr. Eldred be allowed to explain the situation. Mr. Eldred said that his wife was diagnosed in May of this year with a rare illness that requires ongoing radiation and treatment. He said that the added stress of trying to build, pack, and move along with the treatments is not feasible. Steve Jackson stated that the property is on the market and is priced for quick sale. He said they are asking that the permit be extended through the end of the year. Chairman Powelson asked if there is a legal issue with selling a lot with a permit. Steve Jackson said there is not. He said this permit is part of the allocation of 2006 that was extended into 2007. Roy Merrill said most extensions have been for a year, noting that last fall the Board chose to give them until August. Chairman Powelson referred to the minutes of December 28, 2006 where the Board inferred that they might consider extending further. Roy Merrill said he feels that the Board should extend it to a year. ***George Saunderson made a motion to extend the building permit to the end of 2007; seconded by Jon Huntington. All were in favor.*** Roy Merrill returned to the Board.

VII. ADJOURNMENT:

Roy Merrill made a motion to adjourn the meeting at 8:45 p.m., seconded by George Saunderson. All were in favor.

Respectfully submitted,

Donna White
Administrative Assistant