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LONDONDERRY, NH PLANNING BOARD MINUTES OF THE MEETING OF May 3, 2023, AT THE MOOSE HILL COUNCIL CHAMBERS

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I. CALL TO ORDER

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Members Present: Art Rugg, Chair; Al Sypek, Vice Chair; Jake Butler, Secretary; Lynn
Wiles, Assistant Secretary; Ann Chiampa, member; Ted Combes, Ex-Officio – Town

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Councilor Deane, Vice Alternates member, Clement Mervin, Ex-Officio – Town



44 **Member A. Sypek made a motion for Chairman Rugg to sign the**
45 **application.**

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47 **J. Butler seconded the motion.**

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49 **The motion was granted, 9-0-0. The Chair voted in the affirmative.**
50 **Chairman Rugg signed the application.**

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52 J. Butler asked for clarification about continuances. On the April 5, 2023
53 meeting, three plans requested a continuance. He asked why they were
54 scheduled to be heard at the May 10, 2023 meeting instead of this evening.
55 Chairman Rugg replied that per the Board's rules and procedures state that
56 continuances are heard on the second Wednesday of the month. K. Caron
57 stated that the board must vote to continue to a date certain, they may
58 choose a date so long as the applicant is agreeable and available. J.
59 Trottier stated that they try to maintain this schedule so that the Board
60 doesn't need to push back the new applications. Chairman Rugg stated that
61 the system has worked well to this point.

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63 Chairman Rugg shared that the planning conference the prior Saturday had
64 gone well and more information about it will be forthcoming, including
65 recordings on YouTube. On Thursday in two weeks, there will be a
66 noontime webinar from the Office of Planning and Development.

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68 **III. OLD BUSINESS - None**

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70 **IV. NEW PLANS/CONCEPTUAL PLANS**

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72 a. Conceptual review and non-binding discussion of a proposed building
73 addition, garage bays, and two parking lot expansion areas in the
74 Commercial II (C-II) zoning district, 1 Action Boulevard, Map 10, Lot 51,
75 Windham Realty Inc. (Owner & Applicant).

76 Chairman Rugg read the case into the record noting that this is a conceptual and non-
77 binding discussion only this evening.

78 Matthew Routhier of TFMoran introduced himself as representing the applicant. He then
79 introduced Steven DeLuca, General Manager of Auto Auction of New England. M.
80 Routhier stated that the proposal is an expansion of the existing business, including
81 approximately 7560 square feet onto the main building on the property and an additional
82 2944 square foot seven-bay structure north of the main building. They are also looking to
83 expand storage lot capacity for additional vehicles as indicated on the plan. The area to
84 the north currently houses larger vehicles and a temporary fence, which they want to
85 make permanent by paving. In the middle of the plan, they want to pave an area that is
86 currently grass to create fenced-in secure storage. The expansion of the storage lot to the
87 south along the wetlands would be for vehicles. They would replace the aboveground
88 pond with underground systems to increase capacity. They have reviewed the permitting
89 history on the property. He has calculated parking to ensure that they meet or exceed
90 parking requirements for all uses on the property, including the bank, the strip mall, and

the Auto Auction itself. M. Routhier stated that the auction employs most of its people on Thursdays, which currently requires some of their staff to park at the Park and Ride, which has worked well.

Chairman Rugg asked for staff input.

J. Trottier stated that the applicant had met with K. Caron. J. Trottier had provided information on technical information on parking space sizes and future needs to make sure the needs do not need to be revisited in the future. He stated that the applicant was willing to assume responsibility for the underground drain storage. Chairman Rugg asked if this would be a site plan amendment. J. Trottier replied yes. K. Caron stated that they would follow the standard procedure for a site plan amendment, and preliminary discussions had been productive.

Chairman Rugg asked for Board input.

A. Chiampa asked if staff had seen any issues with the plan regarding the wetlands in the area. J. Trottier indicated that all the work they have indicated is outside the 50-foot buffer. G. Verani asked if the plan complied with lot coverage ratio for impermeable surfaces. M. Routhier replied they were required to provide 33% and they have provided 42%. J. Penta had no comments. L. Wiles stated that if staff was satisfied with the underground stormwater storage, then he was. A. Sypek asked if they routinely had any hazardous materials on site. M. Routhier replied no. T. Combes stated that he looked forward to seeing them expand business. R. Fillio had no questions. B. Hallowell had no questions. J. Butler thought making a big parking lot bigger made sense. Chairman Rugg stated that the plan had undergone several expansions in the past and the concern had been maintaining the buffer from Interstate 93. M. Routhier stated that J. Trottier had expressed some concerns about the building expansion foundation in regards to the sewer easement. He believes that the angle of repose from the footing should be below the pipe, which means that there will be no issue. Chairman Rugg stated that it looks straightforward to him, with sufficient parking and a uniform look. M. Routhier stated that the normal size for a parking space is 9'x20', but the storage spaces will be smaller to provide the ability to fit more vehicles. The spaces for the public on the east side of the lot will conform to requirements. Chairman Rugg encourage them to work with staff and abutters, and continue to work out the details.

V. OTHER BUSINESS

a. Work Session

K. Caron made a presentation about the Subdivision & Site Plan Review Process. She stated that design review, preliminary and conceptual discussions are governed by RSA 676:4 II(a) and Town regulation. They are non-binding reviews and discussions. Formal applications are governed by RSA 676:4 I as well as through the Town's regulations. A formal application is complete information that allows the Planning Board to proceed with a decision. A checklist may be used as a reference for completeness. J. Trottier added that these statutory requirements are all included in the Town's regulations.

K. Caron reviewed the steps of the design review process. Design review is a non-binding and optional process, but staff recommends applicants go through that process. Applicants submit a design review application inclusive of items listed in the regulations,

135 which include an application, a checklist, traffic studies, environmental studies as
136 applicable, and fees. Once staff receives the application and associated items, they
137 review it for completeness and send it out for third-party review for a cost estimate. When
138 they receive the cost back, the Planning Department reviews that cost and sends it to the
139 applicant to establish an escrow account. That fund is used to pay the third-party
140 reviewer through the entirety of the project. The applicant provides that fee. The 30-day
141 review period begins when that fee is received, and it cannot start until then. If the Town
142 does not have the proper funds from the applicant, it is a potential liability for the Town as
143 the Town is responsible for contractual obligations with third party. Applicants often
144 misunderstand the start date. During the 30-day review period, the application is sent to
145 the design review committee, including third party. The design review committee is
146 determined by Town regulations and consists of the Heritage Commission, the
147 Conservation Commission, the Zoning Board, and all municipal departments. Comments
148 are provided to the planning department and compiled with the third-party comments. K.
149 Caron and J. Trottier review the comments and send them to the applicant. When the
150 comments are compiled, staff encourages the applicant to schedule a meeting and most
151 applicants choose to have one. These meetings usually lead to a more successful and
152 streamlined process.

153 G. Verani asked what component of the design review happens in the 30-day period. K.
154 Caron replied that time period was only for the third party, municipal departments and
155 boards to complete their review, provide their comments, compile the comments, and
156 send them to the applicant. G. Verani then asked what happens if the applicant does not
157 have comments within 30 days. K. Caron replied that the applicant can choose to
158 continue without the comments. G. Verani asked when the recommended meeting
159 happens. K. Caron replied that after receiving the comments, the schedule is in control of
160 the applicant. J. Trottier stated that while some comments are straightforward, others
161 require some interpretation and that he has expertise in this area, so that he can direct
162 them. The comments are based on how well the plan meets the Town's regulations. K.
163 Caron stated that they are typically good at hitting that 30-day mark. J. Penta asked if
164 staff usually sees a lag between when the initial application is submitted and the escrow
165 is paid. K. Caron replied that there is sometimes a lag if the applicant has questions, but
166 most of the time it is within a week. J. Trottier stated that the quality of the work impacts
167 the size of the escrow fee. J. Penta then asked if the cost of the escrow is different for
168 each applicant. K. Caron replied that it starts from the size of the project, small, medium,
169 or large, and then on past experiences of the third-party reviewer and the quality of the
170 plans. The estimate will include all reviews from design review to Planning Board
171 approval. J. Penta asked if the escrow fee process is documented. K. Caron replied that it
172 is a formalized process that requires her signature. L. Wiles clarified what the escrow fee
173 includes. K. Caron replied that it includes all reviews needed from design review to
174 planning board signature. L. Wiles asked if the other boards involved in the review
175 process are held to the same 30-day standard as the engineering review. K. Caron
176 replied that these boards usually have meetings during the review process and then
177 immediately provide their comments to staff on a form that is sent to the planning
178 department and included in the review comments. J. Trottier stated that ZBA review is
179 separate, but is mentioned if necessary by staff during design review. L. Wiles asked how
180 disagreements between the Planning Department and the developer are resolved during
181 design review. J. Trottier replied that the Board makes the determination. K. Caron stated
182 that staff comments are a recommendation only, and the Planning Board is the

183 jurisdictional body and the applicant is made aware of that. T. Combes asked how often
184 applicants decline to review the comments in a meeting. K. Caron stated only a few. J.
185 Trottier stated that usually happens when the applicant is behind schedule or
186 inexperienced. T. Combes asked how often all escrow funds are used up. K. Caron
187 stated that it is rare to have a large sum returned to the applicant because the estimates
188 are usually accurate. T. Combes asked what happens if the escrow is used up. K. Caron
189 replied that she tracks the escrow funds and they request additional from the applicant if
190 needed. T. Combes asked if they knew how often that happened. K. Caron replied that
191 she doesn't have an exact number but that recently two projects required a request for
192 additional funds. B. Hollowell asked how the Town chooses who the third-party consultant
193 is. J. Trottier replied quality-based selection, which means the Town evaluated their
194 abilities and experiences to meet criteria through an RFP. K. Caron replies that they have
195 two consultants currently. B. Hollowell asked how often they sent out an RFP for third-
196 party reviewers. K. Caron replied that there is no established frequency because it is
197 based on the quality and satisfaction of the work. B. Hollowell asked how often the third-
198 party reviewers were accurate. Staff replied that they are consistently accurate and
199 provided quality review based on the Town's regulations. B. Hollowell asked if the
200 applicant could end up with the consulting firm working for them. J. Trottier replied no,
201 because the Town does not use consultants for third-party review who do development-
202 based work. B. Hollowell asked how long these two firms had been used by the Town. K.
203 Caron replied for about 10 and 20 years. B. Hollowell clarified that these firms are making
204 money off of the applicant, and not the Town. J. Trottier affirmed. B. Hollowell asked if the
205 applicant's engineer gets to address the third-party reviewer. K. Caron replied no, but the
206 third party reviewer and applicant's engineer are usually present for the recommended
207 follow-up meeting. B. Hollowell asked for some examples of comments the Planning
208 Department gets from the design review board. K. Caron replied that, for example, the
209 Fire Department would comment on issues affecting hydrant placement and access, the
210 Conservation Commission would comment on wetland areas, etc. However, these are
211 recommendations and the Planning Board determines what constitutes conditions for
212 approval. B. Hollowell asked about impacts on Town resources and services. K. Caron
213 replied that it depended on the size of the project, but not all projects require that level of
214 analysis. J. Trottier stated that the Board has the ability to request a fiscal impact study,
215 and that during the design review, major impacts are addressed. K. Caron said that the
216 Planning Department relies on other departments to comment on potential impact to
217 them, and sometimes identifies them on their own. B. Hollowell asked if staff thought that
218 a third-party should study the impact on the community for each project. K. Caron replied
219 that she doesn't see the need for that every project, but when a project is large, she
220 would recommend review of impact and potentially making an agreement with the
221 developer to cover fiscal impact if necessary. Chairman Rugg added that at a certain
222 size, Town Council and the Town Manager get involved to develop those agreements
223 with the attorney. B. Hollowell expressed concern that under these agreements, the
224 impact has to happen before it is funded by the development. K. Caron offered to go
225 through the agreement process in the future to clarify how these decisions are made and
226 enforced, because impact must be proved and not assumed. The Town established an
227 agreement and then both sides are held to it. B. Hollowell expressed concern that the
228 cost of expansion and development should not disproportionately fall to existing
229 taxpayers. J. Butler asked how often the state needs to review a project coming to
230 Londonderry. J. Trottier replied that it is based on DOT regulations and permitting. K.

231 Caron stated that there can often be some sort of state review in an application, which
232 can take much longer, but approval can be conditioned upon final approval of the state. J.
233 Butler asked if the third-party consultant reviews the state regulations too. J. Trottier
234 points out that the Town's requirements are sometime different than the state. J. Butler
235 clarified that the escrow provides for two rounds of review. K. Caron stated that the goal
236 is, at a second meeting, everyone is comfortable with formal submission. J. Butler asked
237 if new issues ever come up at a second review. K. Caron stated that they can, if there are
238 substantial changes made based on the first round of comments. J. Butler asked what
239 makes a response to a design review comment not satisfactory. J. Trottier replied that
240 engineering standards have to be met. K. Caron stated that they have the option to
241 request a waiver in advance. J. Butler stated that one third-party review company is
242 Stantec and asked who the other was. K. Caron replied Hoyle, Tanner & Associates, and
243 that they do all of the Woodmont reviews. J. Butler asked if the Heritage Commission's bi-
244 monthly meetings are sufficient for the review process. K. Caron replied that the Heritage
245 Commission will hold special meetings if needed, but the bi-monthly meetings are
246 generally sufficient. J. Trottier points out that they can tell the applicant about the meeting
247 schedules in advance. J. Butler asked if the design review process should be a
248 requirement. K. Caron replied that the state law mandates it be non-binding and optional,
249 and applicants can legally go straight to the Board if they would like. But, design review
250 typically makes the process more efficient. Chairman Rugg stated that from his
251 experience, design review makes the process smoother and less prone to conflict. J.
252 Butler asked if the applicant and the engineer are both included in communication. K.
253 Caron replied yes to make sure everyone has the same information. Chairman Rugg
254 emphasized the importance of this communication. T. Combes asked how often the
255 Planning Department looks at third-party reviewer pricing. J. Trottier believes that the
256 current pricing is fair. G. Verani suggested the Planning Board ask for proposals from
257 potential third-party reviewers on a regular basis, and that when they ask for the fee
258 evaluation, they submit to multiple firms so that the applicant gets a choice of plan. K.
259 Caron stated that staff does not have a practice of getting two different review estimates
260 for the same project. J. Trottier stated that this allows for the consulting firm to plan their
261 workload. Staff and Board members discussed the relative merits of allowing the
262 applicant to choose between design review firms based on cost or other factors. G.
263 Verani asked about the impact of Woodmont having a separate master plan and what
264 size a development needed to be to have one. K. Caron stated that it a PUD requires 100
265 acres. G. Verani suggested reducing the acreage needed to make a separate master
266 plan. Staff and Board members discussed the merits and potential benefits of putting
267 more developments through the PUD process, and how that could be evaluated in the
268 future. B. Hallowell asked how projects are assigned to a reviewer. K. Caron stated that
269 she uses her professional expertise and discretion to decide where each project is
270 assigned. Chairman Rugg added that Town Council had been involved in selecting HTA
271 for Woodmont. J. Penta asked if the third-party reviewer firms were paid by retainer or
272 per review. K. Caron replied per review. J. Penta suggested that three third-party review
273 firms could make sense. K. Caron replied that she understands the Board is asking for
274 more information on choosing third-party consultants and that can be addressed in the
275 future.

276 K. Caron discussed the steps of the formal review process. The formal review process is
277 a formal and binding review process that requires a public hearing with the Planning
278 Board. Formal applications are required to comply with published application deadlines in

the regulations, which correspond with the first- and second-week meetings of the month. The formal application is submitted in accordance with regulations to include the application and applicable documents and studies. It involves the same documentation as design review. It is submitted and reviewed by the planning department for initial completeness. It is then sent to the third-party review and any applicable municipal staff for formal review. Staff compiles those comments and includes them in the staff memorandum to the Planning Board. Town regulations do not specify a specific time frame for that review and memo, but the time from submission to the Board meeting is generally 20 days. The Town has been in the practice of providing the staff memorandum at the meeting, and not to the Board or applicant in advance, but staff is looking to provide the information to all parties the Monday before the meeting at close of business. Staff thinks it is feasible, provided that the Board understands that on occasion of an unfavorable staff recommendation in the memorandum, staff will not be reviewing anything new for the applicant between the memorandum and the hearing. J. Trottier expressed the concern that the applicant may come to the hearing with new plans that have not been reviewed by staff. K. Caron would recommend the Board not to act on anything new that is submitted by the applicant at the hearing in response to that memorandum. She does believe this will help with applicants' concerns about not seeing the memorandum before the hearing. T. Combes thinks this will help developers formulate a response in advance of the hearing. Chairman Rugg asked staff to get the input from the Town attorney due to the issue of board bias, which had been a concern of previous counsel. K. Caron stated that there was no legal reason the staff memorandum couldn't be provided in advance. J. Butler stated that this issue has come up frequently, and providing the memorandum in advance would be a good business practice. T. Combes asked if the applicant could request a continuance based on the feedback in the memorandum. K. Caron replied yes. J. Penta agreed that getting a memorandum out in advance is good, but asked where the best time to get that information to the applicant is. K. Caron replied in design review, which is why it is always recommended. The staff and Board members discussed the ways in which the advance memorandum could help both the Board and the applicant make better use of their time. K. Caron clarified that the Board has the ability to continue an application to a date certain, and the Board has discretion over that date, which can be chose in consultation with the applicant.

K. Caron reviewed completeness of the application. The staff uses a checklist in their staff memo to determine completeness. She read RSA 676:4 I(b) to the Board, which provides the state statutory requirements as to how a town develops their regulations for application completeness. The RSA emphasizes that the application must have sufficient information included to allow the Board to make an informed decision on the application. The Board has the ability to make its own decision on completeness separate from the staff recommendation. T. Combes noted that K. Caron provided information on how Derry and Merrimack conduct their process, and he asked if she could get information on some other large municipalities in the state. K. Caron replied that she chose those because their regulations are similar but she can find more. The staff and Board members discussed what might be considered reasonable guidelines on determining completeness, providing waivers, and the checklist to determine completeness. K. Caron emphasized the Board's jurisdictional authority over completeness.

K. Caron reviewed the waiver process. Staff makes waiver recommendations based on professional judgement and expertise as well as historical recommendations. Waivers are

also governed by the statute. K. Caron read RSA 674:44 and Town regulation 7.04 to the Board. Staff can provide a recommendation, but it is up to the Board by a majority vote to grant waivers. The Board should provide specific reference to the criteria in the state statute and/or regulations when acting on a waiver request. Chairman Rugg concurred. The Board members discussed hypothetical examples of what would constitute enough proof to meet the criteria of a waiver under Board authority, and what needs to be documented in regards to cost in relation to the size of the project. K. Caron stated that it is important that the Board have these conversations for the record, but that not everyone has to agree in order to bring it to a vote.

K. Caron reviewed the approval process. Staff compiles comments and puts them into a document, which are the conditions for approval. Staff provides a blanket condition of approval to address all outstanding design review comments, which is meant to ensure that all comments from the design review committee are called out. This has not always happened in the past. K. Caron will add it going forward so the Planning Board can evaluate and decide if they should be included as conditions of approval.

K. Caron asked the Board to think about the information presented it this evening and suggested they convene another work session in a few months to review and possibly amend the process. Chairman Rugg suggested that they observe the process and revisit in July. G. Verani asked the staff for any other recommendations they have on the process at that time. J. Butler asked if the Planning Board could see other parts of the process to better understand that. K. Caron stated that design review meetings are public and Board members could observe provided they did not participate, which would then require the board member to be recused. R. Fillio stated that he believes that the staff is doing a good job and that they do well guiding poorly formatted plans into ones that can be approved.

VI. ADJOURNMENT

A. Sypek made a motion to adjourn the meeting at 9:27 p.m. Seconded by T. Combes.

The motion passed, 9-0-0.

The meeting adjourned at 9:27 p.m.

These minutes were prepared by Kirsten Hildonen.

Respectfully Submitted,

Name: Jake Butler

Title: Secretary

These minutes were accepted and approved on June 7, 2023, by a motion made by

A. Sypek and seconded by Jake Butler

