



TOWN OF WEATHERSFIELD

LAND USE ADMINISTRATOR'S OFFICE

(802) 674-2626

P.O. BOX 550 ASCUTNEY, VT 05030

landuse@weathersfield.org

Planning Commission Agenda

Martin Memorial Hall – 5259 Route 5, Ascutney, Vermont 05030

Monday, 10 August 2020 – 7:00 PM

-
1. Call to Order
 2. Agenda Review – 10 August 2020
 3. Comments from the Chair and Land Use Administrator
 4. Comment from Citizens regarding items not on the agenda
 5. Approval of Meeting Minutes – 27 July 2020
 6. Sketch Plan Review for Carl Wyman Subdivision on Route 131.
 7. Discussion of interim bylaws
 8. Discussion of noise ordinance bylaw change
 - a. Review and consider approval of proposed draft bylaw change
 9. Discussion of approved “Definitions” section
 - a. Status of Planning Commission Hearing for these – Adding these to the August 24, 2020
 10. Zoning Bylaws Update-
 - a. Review and consider approval of proposed Conservation of Natural Resources bylaws for the August 24, 2020 Hearing
 - i. Aquifer protection bylaw
 - ii. Riparian buffers
 11. Discuss timeline for “Town Plan” review and update. What sections to work on first.
 12. Changes to the Zoning Map
 - a. Review results from past survey results collected from Town Revitalization and Outreach surveys and meetings.
 - b. Review the proposed changes to the Village Designation
 - c. Review designations and boundaries for –
 - i. Hamlets
 - ii. Highway Commercial
 - iii. Industrial
 13. Status Spreadsheet review –
 - a. Review bylaws that have been completed, approved and that have had Planning Commission Hearings. These will need to be sent to the Select board next.
 - b. Review status on non-completed bylaws.
 14. Discussion of Items for Future Agendas
 15. Any other business that can be legally discussed
 16. Adjourn



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The next regularly scheduled meeting of the Planning Commission will be **Monday, August 24, 2020 - 7 PM**, Martin Memorial Hall.

You can join my meeting from your computer, tablet or smartphone.

<https://global.gotomeeting.com/join/611025853>

You can also dial in using your phone: +1 (872) 240-3212; Access Code: 611-025-853

Planning Commission
Martin Memorial Hall
5259 Route 5, Ascutney VT
DRAFT Planning Commission Meeting Minutes
Monday July 27, 2020 7:00 PM

Planning Commission Members Present:

Paul Tillman
Fred Kowalik
Howard Beach
Chris Whidden, Zoning Administrator

Planning Commission Members Absent:

Tyler Harwell

Online attendees: Nikita Lenahan

1.) Call to Order by Chair, Paul Tillman at 7:00 pm

2.) Agenda Review – July 27, 2020

No changes

3.) Comments from the Chair and Land Use Administrator

Chris Whidden wanted to make the Planning Commission aware that a petition has been started regarding the noise ordinance. There have been multiple complaints around Town.

4.) Comments from Citizens regarding items not on this agenda:

Michael Todd spoke as a citizen regarding the issues with internet across Town.

5.) Approval of Meeting Minutes –

Minutes from 7-13-20

Michael Todd made a motion to approve the minutes from 7-13-20

Howard Beach -- 2nd

No Discussion

Vote – unanimous

6.) Discussion of noise ordinance standards and enforcement:

Paul Tillman noted that the noise ordinance is not on the Town website. He had to Google “Weathersfield, VT noise ordinance” to get a copy. The most recent revision is 12-18-08.

Chris Whidden included his recommendation of changes for the Zoning Bylaw to the Planning Commission and submitted to the Selectboard for review.

“The questions presented are: 1.) What is required for enforcement of a Notice of Violation related to a violation of the performance standards governing noise; and 3)

what can the Town of Weathersfield do to remedy the issue of numerous noise complaints?

1. What is Required for the enforcement of a Notice of Violation?

Notices of Violation are a civil enforcement measure, not criminal. Thus, only a preponderance of the evidence that a violation has occurred is required for enforcement. The bylaw needs to be sufficient to put the public on notice of the proscribed behavior or performance standard. The maximum fine for a noise violation is \$200 per violation under 24 VSA 4451. The Town of Woodstock has also added a bylaw that each time a police officer is called to the scene of a noise complaint it is a separate violation.

Zoning Administrators are qualified to conduct decibel readings for Notices of Violation. See *In Re Laberge NOV*, Docket #2016 VT 99 (VT 2016). In *Laberge*, the Hinesburg ZA took a noise measurement with a complaining property owner using the property owner's personal decibel reader. Using the reading from the device as supporting evidence, the ZA issued a NOV to Laberge. The noise was created by a motocross track that Laberge was operating on his property. At trial, the court enforced the NOV. LaBerge appealed to the Vermont Supreme Court, who affirmed the lower court's enforcement of the NOV. The Court explained that in such cases, the Court's practice was to allow a property owner who had purchased and used a sound meter to explain how well they know how to operate it, how they operated it during a time of concern, and what results the meter showed. The court noted that it would afford the readings the appropriate weight based upon the credibility of the testimony.

Commercial decibel readers are sufficient to provide evidence of a noise violation. See, i.e. Docket # 45-3-12 - *In Re Big Rock Gravel Quarry Act 250 Permit*. (VT Superior Court, Environmental Division 2012). In *Big Rock*, the applicant for a quarry permit provided evidence from a commercially purchased decibel reader, which the court accepted to show that the operation of the quarry was in conformance with the performance standard. However, the court commented on the applicant's lack of training in the use of the reader, citing his inability to distinguish between db and dbA readings.

To bolster the likelihood of meeting that burden, devices can be purchased that have audio recording of the sound that is being measured. Opponents of recordings in court would argue that it is hearsay. However, the argument fails because an audio recording is not hearsay because hearsay requires declarant to be a human. The recordings would be from a machine, and most likely be recording mechanical noises rather than human voices. Because the recording would be taken from a position on the abutter's property line, the ZA need only show that he had permission from the abutter to take the reading on his property, which can be shown by affidavit or testimony.

Therefore, to enforce a notice of violation, the ZA must provide a noise reading paired with testimony showing familiarity with the surrounding circumstances and the procedure of sound measurement, that the measurement was taken from a location where the ZA presence was authorized by the complainant, and the reading on the device. This would

likely result in a court finding that a violation has occurred by a preponderance of the evidence, and thus make the NOV enforceable.

2. What can the Town of Weathersfield do to remedy the issue of multiple noise complaints?

Here, the Zoning Administrator has a duty under the 2017 Weathersfield Bylaws to enforce the regulations found therein. When a complaint is received, the ZA is required to investigate. Since taking office on April 7, 2020, the ZA has responded to multiple noise complaints and has been unable to enforce the bylaws. The ZA's first contact with the citizens of Weathersfield was a noise complaint. Further, the ZA has received messages from citizens expressing their disappointment in the Town's inability to ensure enjoyment of their property because of the lack of enforcement. These bylaws contain a noise performance standard that limits the number of decibels that can be emitted from a parcel based on the zoning of the parcels involved. The Court has held that a plainly audible standard is not unconstitutionally vague. Further, this noise ordinance is sufficient to put the public on notice of the performance standards applicable to their parcels and the proscribed behavior because it gives a numeric standard (decibels) rather than a vague or subjective standard. Because the Bylaws provide a numeric standard, the only way to enforce the bylaw and to establish proof of a violation by a preponderance of the evidence is by the use of a decibel reader paired with the testimony of the user. Thus, without a decibel reader, the ZA is unable to establish evidence to support or enforce a NOV, and the bylaw fails because it is completely unenforceable.

Further, the Bylaws require a "trained and certified professional" to measure noise levels. This standard is found in the criminal context, where proof beyond a reasonable doubt is required, rather than a preponderance of the evidence standard required in civil matters. The facts in *LaBerge* clearly show that the standard is that the individual operating the device need only explain how well they know how to operate it, how they operated it during a time of concern, and what results the meter showed. The court would then afford the readings the appropriate weight based upon the credibility of the testimony.

3. Conclusion

Therefore, I request the Planning Commission recommend a change to the bylaw in which "trained and certified professional" is replaced with "the Town Manager, Zoning Administrator, Town Health officer, or the Weathersfield Police Officer or Constable" to the Selectboard. I further request that the Planning Commission recommend the purchase of a decibel reader that has audio recording technology at a price not to exceed \$800 to the same, and that the Planning Commission begin the conversation as to the definition of noise producing activities that are exempted from the noise performance standards and include them in the Bylaw updates."

Respectfully Submitted,
Chris Whidden, Esq.
Weathersfield Zoning Administrator

Paul Tillman requested that Chris Whidden make a draft to give to the Planning Commission.

7.) Discussion on approved definitions section:

Chris Whidden to review if we need a hearing for the definitions. Will review with Town Manager. Chris will also draft up changes he would like to make to the sound ordinance bylaw.

8.) Zoning Bylaws:

a.) Conservation of Natural Resources – Riparian Buffer

i. Consider a vote to accept Riparian Buffer bylaw

Howard Beach made a motion to send the Riparian Buffer bylaw to the Selectboard with the minor change “designated of only named streams.”

Michael Todd 2nd

Discussion – Howard Beach amended his motion “to send the Riparian Buffer bylaw to the Selectboard for a a hearing with the minor change “designated of only named streams.”

Vote – Unanimous

Paul Tillman requested that Howard Beach supply a clean copy of the Riparian Buffer bylaw. hearing was set for Monday, August 24. 2020 at 7:15 pm for the review of the Riparian Buffer bylaw.

ii. Consider a vote to accept the Aquafer protection bylaw

Howard Beach made a motion to adopt the map labeled Vermont Geological Survey Open File Report VG 017-5, by Stephen Wright dated 2017 as the official protection overlay map for the Town of Weathersfield.

Michael Todd 2nd

Vote – Unanimous

Howard Beach made a motion to adopt the Town of Weathersfield, VT aquafer protection ordinance as presented 7-27-20.

Michael Todd 2nd

Vote – Unanimous

Paul Tillman set the hearing date for Monday, August 24. 2020 at 7:30 pm for the review of the Aquafer Protection bylaw.

161 9.) Changes to the zoning map

- 162
- 163 a. Review the proposed different Village designations
- 164 b. Look at RR1 and RR35 designations
- 165

166 Paul Tillman brought up a map with overlays to review the various designations for review.

167

168 10.) Status Spreadsheet Review

169

- 170 a. Review by laws that have been completed and status of non-completed bylaws

171 Chris Whidden reviewed and all items marked in “red” are done and have gone to the

172 Selectboard. Items marked “green” need to go to the Selectboard.

173 11.) Discussion of items for Future Agendas

174

- 175 a. Chris Whidden to follow up on the following:
- 176 i. Create a draft of the noise ordinance with changes for the Planning Commission
- 177 to review.
- 178 ii. Review if the Planning Commission needs a hearing for the definition section. To
- 179 be discussed with Brandon Gulnick, Town Manager.
- 180 b. Howard Beach to provide a clean copy of the Riparian Buffer bylaw for the Planning
- 181 Commission.
- 182

183 12.) Any other business that can legally be discussed –

184 Not everyone on the Planning Commission is receiving their packets in time for the meeting.

185 Chris Whidden will send packets out via email and mailed USPS by Tuesday for anyone that

186 would like a paper copy.

187 13.)Adjourn

188

189 Michael Todd made a motion to adjourn the meeting.

190 Howard Beach 2nd

191 Meeting adjourned at 9:00 PM

192

193 Next Planning Commission Meeting is scheduled for Monday August 10, 2020 at 7:00 pm at

194 Martin Memorial Hall.

195

196

197 Respectfully,

198 Chauncie Tillman

199 Recording Secretary

Town of Weathersfield

Subdivision Application

Town of Weathersfield, ATTN: Land Use Administrator, P.O. Box 550, Ascutney, VT 05030
(802) 674-2626 | landuse@weathersfield.org

Property Information

Address 7409 Rt 131
Town, State, Zip WEATHERSFIELD VT 05059
Parcel ID & Zoning District 030207
Lot Size (acres) 7.04
Road Frontage (ft) 516' on Rte 131
Existing Principal Use of Land Office & Two 1 Bed Room Apt
3 unit Building

Applicant

Name(s) CARL E Wyman
Name(s)
Mailing Address 473 Plains Rd.
Town, State, Zip WEATHERSFIELD VT
Telephone # 802 738-5343 0505
Mobile # same
E-mail Address Wyman Farm@gmail.com

Subdivision Details

Total Number of Parcels to be Created: 3

Parcel 1: <u>2.27</u> acres	Parcel 7: _____ acres
Parcel <u>6</u> : <u>2.74</u> acres	Parcel 8: _____ acres
Parcel <u>7</u> : <u>2.03</u> acres	Parcel 9: _____ acres
Parcel 4: _____ acres	Parcel 10: _____ acres
Parcel 5: _____ acres	Parcel 11: _____ acres
Parcel 6: _____ acres	Parcel 12: _____ acres

If more than 12 parcels, attach information on separate sheet

Landowner (if different)

Name(s) _____
Name(s) _____
Mailing Address _____
Town, State, Zip _____
Telephone # _____
Mobile # _____
E-mail Address _____

Road Access Information – by Parcel

	EXISTING			NON-EXISTING		
	State	Local	Easement/Right-of-way	State	Local	Easement/Right-of-way
Parcel 1:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parcel <u>6</u> :	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parcel <u>7</u> :	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parcel 4:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parcel 5:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parcel 6:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parcel 7:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parcel 8:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parcel 9:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parcel 10:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parcel 11:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parcel 12:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Permit Details – by Agency (if multiple, list all)

Wastewater Permit # : WW-2-1510-3
(ALWAYS applicable, call Regional Permit Specialist, (802) 279-4747 or john.fay@vermont.gov)
Act 250 Permit # : None
(If applicable, call Act 250 District Coordinator, (802) 289-0597 or stephanie.gile@vermont.gov)

Is the subdivision for **ten lots or more, or cumulatively ten lots of more in a five year period**? ☐ Yes ☒ No

If yes, you must obtain an Act 250 permit for the subdivision. Contact Stephanie Gile, Natural Resources Board, Act 250 District Coordinator, District 2 at stephanie.gile@vermont.gov or (802) 289-0597

Description

In the space provided below, please provide a description of how the proposed subdivision will likely reflect the district settlement pattern where it is located (see Section 330 of the Subdivision Regulations for district settlement pattern descriptions), and how the proposed subdivision will reflect the goals and objectives set forth in the Town Plan, with particular emphasis on the Land Use section. If additional space is required, attach additional sheets to this page.

7.04 Existing lot, to be subdivided into 3 lots
Lot 1 to include A building with one office and two, 1 Bed Room Apartments
Lot 6 to be vacant land, sold to owner (Pending subdivision) of log cabin @ 4400 Rt 106, housing ARE mechanical. JAM Properties, LLC
They will allow using there Rt 106 Access.
Lot 7 to be vacant lot.

Landowner & Applicant Acknowledgements

By signing this form, the landowner(s) and applicant(s) described in this application (and their agents, assigns, and successors in interest) hereby apply for a permit to develop the project described in this application and accept the following:

- ◆ Applications will not be considered properly filed and vested for rights to review under any applicable laws until fees are paid in full and all items necessary to determine compliance with this bylaw are complete and submitted;
- ◆ Vermont law allows the Land Use Administrator 30 days to act on this application;
- ◆ All submissions are public record available for inspection and copy;
- ◆ All representations made in this application and the materials accompanying it are true and accurate to the best of my knowledge. Omission or misstatement of any material fact on this application (which would warrant refusing the permit or approval) shall be grounds for revoking the permit or approval;
- ◆ Private agreements (such as covenants, deed restrictions and easements) may apply, be more or less restrictive than Weathersfield's bylaws and may affect this project. By signing, I acknowledge that it is my responsibility to disclose and comply with these agreements;
- ◆ State and Federal regulations may apply, be more or less restrictive than Weathersfield's bylaws, and may affect this project. By signing, I acknowledge that it is my responsibility to obtain all required State and Federal permits;
- ◆ No development or work may commence until receipt of all applicable permits and approvals;
- ◆ If this application is approved, I must post the Zoning Permit within view of the public right-of-way most nearly adjacent to the subject property until the period in which an appeal may be filed has expired; and
- ◆ Reasonable access to the subject property is to be granted to the Land Use Administrator, Planning Commission, designees, and the Listers Office for the purpose of establishing compliance with this permit and for the purpose of determining what, if any consequence the development will have on the property's assessment.

Landowner Signature

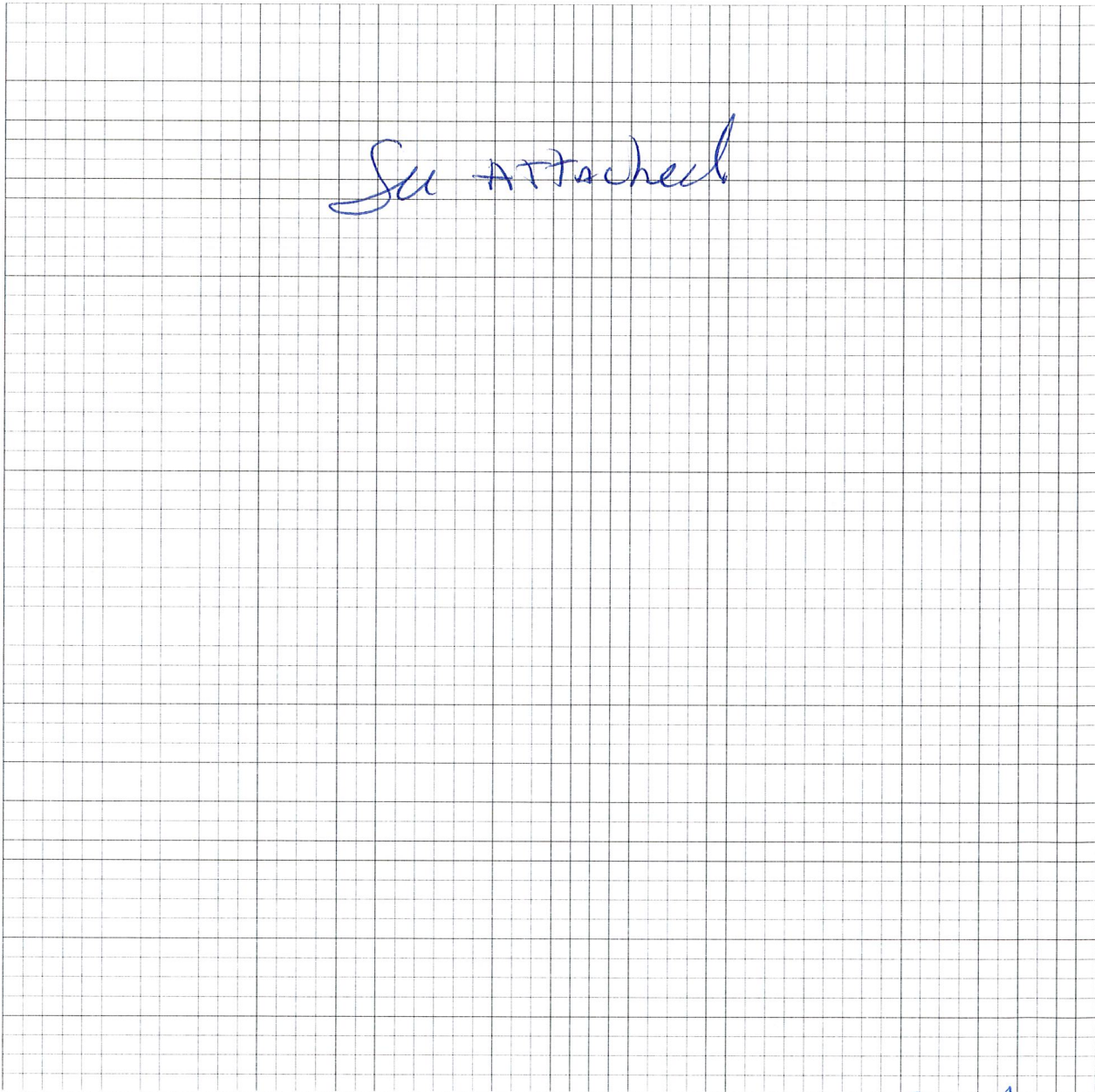
Date

Applicant Signature

Date

Sketch Plan Drawing

Draw an aerial view of the property described in this application showing the actual shape, property lines, and dimensions of land. Include the shape, size and location of all **existing and proposed structures** (principal and accessory) on the property with measurements to the front, side and rear property boundary lines (setbacks) and distances between each structure. Identify the existing and intended uses and areas of the use of and all buildings, and the existing and intended location of **septic/sewer, electric, telephone, cable and water utilities**. It is strongly recommended that you review all of Article III: Subdivision Standards from the Subdivision Regulations prior to completing this sketch.

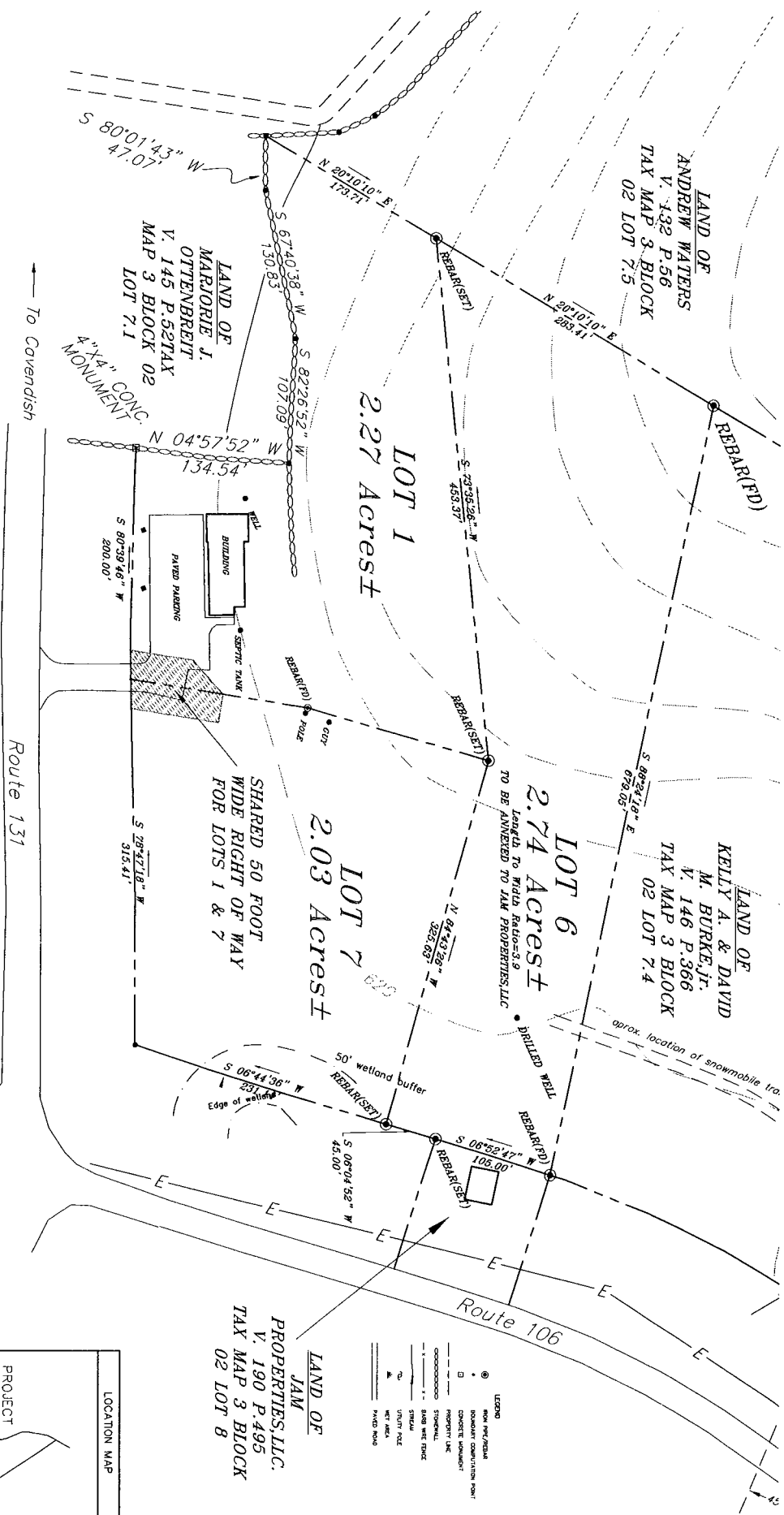


Land Use Administrator Signature

See attached
Plot plan

Applicant Signature

Carl by



I hereby certify to the best of my knowledge that the boundaries shown on this plan are consistent with physical evidence as found in the field, deeds and plans of record and other sources shown on this plan.

VT. L.S. #531

FINAL PLAT#

for a complete list of findings and conditions applicable to this plant.

Other documents pertaining to this subaction are:

☐ _____ _____ _____ _____ _____
Waste/air Disposal Permit (State)

☐ _____ _____ _____ _____ _____
Emission Control Plans

☐ _____ _____ _____ _____ _____
Other _____

Signatures of the Planning Commission in conformance that all of the conditions of approval for this subaction have been completed and approved by the Commission are:

☐ _____
Signature _____
Completion within one (1) year of the date of signature _____

1

1. The parcel shown was plotted from a closed theodolite and EDM survey that meets the requirements for a subsection survey as set forth by the State of Vermont.
2. The bearings shown on this plan refer to observed magnetic north 2002 and serve only to define angular relationships between the courses shown.
3. The stonewalls and wire fences that are shown on this plan may have minor irregularities between the principal courses shown.
4. The parcel shown will be conveyed to Carl E. Wyman by Charles P. & Juliette Rilling
5. The parcel shown is subject to existing utility easements of record.
6. Refer to a survey entitled "State of Vermont, Agency Of Transportation" dated 7/8/85, Map # 102, in the land records.
7. Refer to a survey entitled "Carl E. & Deborah L. Wyman", by Gary Rapaport, L.S., drawing 02-666, dated 7/11/03.

NOTES

1. The parcels shown were plotted from a closed theodolite and EDM survey that meets the requirements for a suburban survey as set forth by the State of Vermont.
2. The bearings shown on this plan refer to observed magnetic north 2002 and serve only to define angular relationships between the courses shown.


3. The stonewalls and wire fences that are shown on this plan may have minor irregularities between the principal courses shown.

4. The parcel shown will be conveyed to Carl E. Wyman by Charles P. & Juliette Rilling

5. The parcel shown is subject to existing utility easements of record

6. Refer to a survey entitled "State of Vermont , Agency Of Transportation" dated 7/8/86 . Map # 102 in the land records.

7. Refer to a survey entitled "Carl E. & Deborah L. Wyman", by Gary Raponotti L.S., drawing 02-666, revised 9/11/03.

	<p>Subdivision Form</p>
<p>CARL E. WYMAN</p> <p><i>Weatherfield Vermont</i></p>	<p>DATE: JULY 24, 2020</p> <p>SCALE: 1" = 60'</p> <p>PLOTTED NO.: 20-666A</p>

GARY RAPANOTTI L.S.

CARL E. WYMAN

Weathersfield Vermont

DATE	SCALE	PROJECT NO.
11/11/24	1" = 50'	20 5554

09=1	0707'47	1700
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CANDILLI & SONS

VERSION

PRIVATE ROAD MAINTENCE AGREEMENT

WHEREAS, Main Street is a private road situated in Weathersfield, County of Windsor, State of Vermont, herein "the Roadway Property" , and

WHEREAS, describes as follows:

Being a right of way 50 feet in width commencing at the Northern side of Route 131, and proceeding in a generally West direction as now exists and as depicted on the plan entitled "subdivision plan of Carl Wyman" dated July 24, 2020.

WHEREAS, the parcel owners of lots 1 & 7 enter into an agreement regarding costs of maintenance and improvements to the Roadway Property; and

WHEREAS, it is agreed that the successors in interests and assigns to all of the abutting parcel owners shall be benefitted by and bound to the obligations set forth herein.

NOW THEREFORE, the parcel owners agree as follows:

1. Vehicles and Pedestrian Access Easement. The Roadway Property shall be subject to a perpetual, nonexclusive with ingress, installation of utilities, egress, utility occupants, agents, employees, guest services and emergency vehicles. Recreational uses of the Roadway Property that do not adversely affect other parcel owners is permitted including such matters as signage, and uses by motorcycle and bicycles. This provision is a fundamental Provision of the Agreement and can be changed only with both parties in agreement and their heirs, successors and assigns.
2. Utility Easement. The Roadway Property is subject to a perpetual, non-exclusive public utility easement to allow the continuing use, repair, maintenance, expansion and replacement of existing underground, for the benefit of all parcel owners and their heirs and assigns. The non-exclusive utility easement further allows the installation, use, repair, maintenance, expansion and replacement of additional utilities underground, to and for the benefits of the parcels. The cost of extending the utilities beyond the existing utility lines shall be the sole cost of the parcel owners whose parcel owners benefit from such extensions. Those parcel owners who do not extend the utility installation to their parcels will not be subject to contributing to the cost of the utility installation

3.

Road Agent. A road Agent shall be elected by a majority of the parcel owners, will serve until a successor is elected to by the parcel owners, and can be replaced at any time by a simple written request by either of the parcel owners. The new Road Agent must be agreed by both parcel owners. The initial Road Agent shall be Carl Wyman.

4. Parking. For the safety of the residence, no machinery, trailers, vehicles or other property may be stored or parked upon the Private Road. Exception may be made by the Road Agent for temporary parking of machinery or maintenance equipment serving those parcels undergoing remodeling or reconstruction.
5. Annually, on or before a date specified the Road Agent, each parcel owner will contribute his or her pro-rated share of the estimated annual cost for road maintenance, road improvements, and annual snow removal. The Road Agent shall send each parcel owner a two week notice of the annual payment due.
6. Future Parcels. No parcel owner shall grant an easement across their parcel allowing a parcel not subject to this agreement access to the Roadway Property.
7. Snow Plowing. The Private Road shall be snowplowed so as to permeant year around access from Route 131. The cost shall be shared by each parcel owners who access Main Street Rd. Individual snow plowing, shall be invoiced directly to each parcel owner.
8. Checking account. The road agent shall establish and maintain a bank account checking account with a local bank. An annual balance sheet shall be provided to each parcel owner.
9. Effective Term. This agreement shall be perpetual and shall encumber and run with the land of each signature hereto as long as the road remains private.
10. Binding arbitration. All claims related to Main Street Rd. Agreement, shall be addressed and resolved through binding arbitration.
11. Notices. Parcel owners under this agreement shall be notified by mail to the address to which the property owner's property tax bills are sent.
12. Invalidity. Should any portion of this Agreement be deemed invalid, the remainder of the agreement shall not be affected and each term and condition shall be valid and enforceable to the extent permitted by law.
13. Insurance and Indemnification. Each party to this agreement shall be responsible to maintain their own insurance insuring themselves as against liability that may occur as a result of the use, access or repair of Main Street Rd, by such party, invitees, heirs and assigns and each party waives any claim that may have or right to sue the Road Agent or any action or inaction pursuant to this agreement as long as such action is undertaken in good faith.

The Vermont Statutes Online

Title 24 : Municipal And County Government

Chapter 117 : Municipal And Regional Planning And Development

Subchapter 007 : Bylaws

(Cite as: 24 V.S.A. § 4415)

§ 4415. Interim bylaws

(a) If a municipality is conducting or has taken action to conduct studies, or has held or is holding a hearing for the purpose of considering a bylaw, a comprehensive plan, or an amendment, extension, or addition to a bylaw or plan, the legislative body may adopt interim bylaws regulating land development in all or a part of the municipality in order to protect the public health, safety, and general welfare and provide for orderly physical and economic growth. These interim bylaws shall be adopted, reenacted, extended, or amended by the legislative body of the municipality after public hearing upon public notice as an emergency measure. They shall be limited in duration to two years from the date they become effective and may be extended or reenacted only in accordance with subsections (f) and (g) of this section. An interim bylaw adopted under this section may be repealed after public hearing, upon public notice by the legislative body. The legislative body, upon petition of five percent of the legal voters filed with the clerk of the municipality, shall hold a public hearing for consideration of amendment or repeal of the interim bylaws.

(b) An interim bylaw adopted, extended, or reenacted under this section may contain any provision authorized under this chapter.

(c) Interim bylaws shall be administered and enforced in accordance with the provisions of this title applicable to the administration and enforcement of permanent bylaws, except that uses other than those permitted by an interim bylaw may be authorized as provided for in subsection (d) of this section.

(d) Under interim bylaws, the legislative body may, upon application, authorize the issuance of permits for any type of land development as a conditional use not otherwise permitted by the bylaw after public hearing preceded by notice in accordance with section 4464 of this title. The authorization by the legislative body shall be granted only upon a finding by

the body that the proposed use is consistent with the health, safety, and welfare of the municipality and the standards contained in subsection (e) of this section. The applicant and all abutting property owners shall be notified in writing of the date of the hearing and of the legislative body's final determination.

(e) In making a determination, the legislative body shall consider the proposed use with respect to all the following:

- (1) The capacity of existing or planned community facilities, services, or lands.
- (2) The existing patterns and uses of development in the area.
- (3) Environmental limitations of the site or area and significant natural resource areas and sites.
- (4) Municipal plans and other municipal bylaws, ordinances, or regulations in effect.

(f) The legislative body of the municipality may extend or reenact interim bylaws for a one-year period beyond the initial two-year period authorized by subsection (a) of this section in accordance with the procedures for adoption in that subsection.

(g) A copy of the adopted, amended, reenacted, or extended interim bylaw shall be sent to adjoining towns, to the regional planning commission of the region in which the municipality is located, and to the Agency of Commerce and Community Development. (Added 2003, No. 115 (Adj. Sess.), § 95.)

The first part of the paper discusses the importance of the study of the history of the English language. It is a branch of linguistics which deals with the changes in the language over time. The study of the history of the English language is important for many reasons. It helps us to understand the development of the language and the influence of other languages on it. It also helps us to understand the social and cultural changes that have taken place in the English-speaking world.

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TOWN OF WEATHERSFIELD

LAND USE ADMINISTRATOR'S OFFICE

(802) 674-2626

P.O. BOX 550 ASCUTNEY, VT 05030

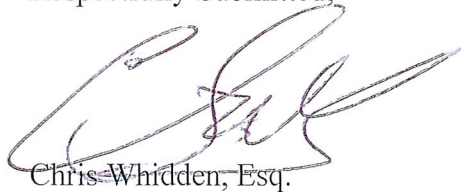
landuse@weathersfield.org

TO: Weathersfield Planning Commission
FROM: Chris Whidden, Esq.; Weathersfield Land Use Administrator
RE: Noise Performance Standard Bylaw Amendment
DATE: 7/28/2020

The Land Use Administrator requests the Planning Commission to amend Section 6.13(B)(1)(a) of the Weathersfield Town Bylaws in which “a person conducting sound measurements shall have been trained in techniques and principles of sound measuring equipment and instrumentation” is stricken and replaced with “The Town Manager, Land Use Administrator, Town Health officer, Weathersfield Police Officer, Constable, deputies, or other Town enforcement officer is authorized to conduct sound measurement.”

Support for this request can be found in the memorandum from my office to the Planning Commission regarding noise performance standards, attached hereto and submitted to the Planning Commission on July 27, 2020.

Respectfully Submitted,



Chris Whidden, Esq.
Weathersfield Zoning Administrator



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(802) 674-2626

P.O. BOX 550 ASCUTNEY, VT 05030

landuse@weathersfield.org

TO: Weathersfield Planning Commission
FROM: Chris Whidden, Esq.; Weathersfield Land Use Administrator
RE: Noise Ordinance/Performance Standard Enforcement
DATE: 7/27/2020

The questions presented are: 1.) What is required for enforcement of a Notice of Violation (NOV) related to a violation of the performance standards governing noise; and 3) what can the Town of Weathersfield do to remedy the issue of numerous noise complaints?

1. What is Required for the enforcement of a Notice of Violation (NOV)?

NOVs are a civil enforcement measure, not criminal. Thus, only a preponderance of the evidence that a violation has occurred is required for enforcement of an NOV, rather than beyond a reasonable doubt as used in criminal matters. The bylaw in which an NOV is grounded needs to be sufficient to put the public on notice of the proscribed behavior or performance standard. The maximum fine for a noise violation is \$200 per violation under 24 VSA § 4451. The Town of Woodstock has also added a bylaw that each time a police officer is called to the scene of a noise complaint it is a separate violation.

Zoning Administrators (ZA) are qualified to conduct decibel readings for NOVs. See *In Re Laberge NOV*, Docket #2016 VT 99 (VT 2016). In *Laberge*, the Hinesburg ZA took a noise measurement with a complaining property owner using the property owner's personal decibel reader. Using the reading from the device as supporting evidence, the ZA issued a NOV to Laberge. The noise was created by a motocross track that Laberge was operating on his property. At trial, the court enforced the NOV.



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LaBerge appealed to the Vermont Supreme Court, who affirmed the lower court's enforcement of the NOV. The Court explained that in such cases, the Court's practice was to allow a property owner who had purchased and used a sound meter to explain how well they know how to operate it, how they operated it during a time of concern, and what results the meter showed. The court noted that it would afford the readings the appropriate weight based upon the credibility of the testimony.

Commercial decibel readers are sufficient to provide evidence of a noise violation. See, i.e. Docket # 45-3-12 - In Re Big Rock Gravel Quarry Act 250 Permit. (VT Superior Court, Environmental Division 2012). In *Big Rock*, the applicant for a quarry permit provided evidence from a commercially purchased decibel reader, which the court accepted to show that the operation of the quarry was in conformance with the performance standard. However, the court commented on the applicant's lack of training in the use of the reader, citing his inability to distinguish between db and dbA readings.

To bolster the likelihood of meeting that burden, devices can be purchased that have audio recording of the sound that is being measured. Opponents of recordings in court would argue that it is hearsay. However, the argument fails because an audio recording is not hearsay because hearsay requires declarant to be a human. The recordings would be from a machine, and most likely be recording mechanical noises rather than human voices. Because the recording would be taken from a position on the abutters property line, the ZA need only show that he had permission from the abutter to take the reading on his property, which can be shown by affidavit or testimony.



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Therefore, to enforce a notice of violation, the ZA must provide a noise reading paired with testimony showing familiarity with the surrounding circumstances and the procedure of sound measurement, that the measurement was taken from a location where the ZA presence was authorized by the complainant and in conformity with the 2017 Weathersfield Bylaws, and the reading on the device. This would likely result in a court finding that a violation has occurred by a preponderance of the evidence, and thus make the NOV enforceable.

2. What can the Town of Weathersfield do to remedy the issue of multiple noise complaints?

Here, the ZA has a duty under the 2017 Weathersfield Bylaws to enforce the regulations found therein. When a complaint is received, the ZA is required to investigate. Since taking office on April 7, 2020, the ZA has responded to multiple noise complaints and has been unable to enforce the bylaws. The ZA's first contact with the citizens of Weathersfield was a noise complaint. Further, the ZA has received messages from citizens expressing their disappointment in the Town's inability to ensure enjoyment of their property because of the lack of enforcement. These bylaws contain a noise performance standard that limits the number of decibels that can be emitted from a parcel based on the zoning of the parcels involved. The Court has held that a plainly audible standard is not unconstitutionally vague. Further, this noise ordinance is sufficient to put the public on notice of the performance standards applicable to their parcels and the proscribed behavior because it gives a numeric standard (decibels) rather



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than a vague or subjective standard. Because the Bylaws provide a numeric standard, the only way to enforce the bylaw and to establish proof of a violation by a preponderance of the evidence is through using a decibel reader paired with the testimony of the user. Thus, without a decibel reader, the ZA is unable to establish evidence to support or enforce a NOV, and the bylaw fails because it is completely unenforceable.

Further, the Bylaws require a “trained and certified professional” to measure noise levels. This standard is found in the criminal context, where proof beyond a reasonable doubt is required, rather than a preponderance of the evidence standard required in civil matters. This standard is also used by individuals who are attempting to refute the evidence against them by way of expert witnesses in a court proceeding. The facts in *LaBerge* clearly show the standard is that the individual operating the device need only explain how well they know how to operate it, how they operated it during a time of concern, and what results the meter showed. The court would then afford the readings the appropriate weight based upon the credibility of the testimony, and determine if the matter has been shown by a preponderance of the evidence.

3. Conclusion

Therefore, I request the Planning Commission recommend a change to the bylaw in which “trained and certified professional” is replaced with “the Town Manager, Zoning Administrator, Town Health officer, or the Weathersfield Police Officer or Constable” to the Selectboard. I further request that the Planning Commission recommend the purchase of a decibel reader that has audio recording technology at a



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price not to exceed \$800 to the same, and that the Planning Commission begin the conversation as to the definition of noise producing activities that are exempted from the noise performance standards and include them in the Bylaw updates.

Respectfully Submitted,

Chris Whidden, Esq.
Weathersfield Zoning Administrator