**Minutes of the Town of Lee Planning Board**

**January 8th, 2024**

**6:00 pm Lee Town Hall Courtroom**

**Present**: Buck Donovan (Chairperson), Peter Bluhm, David Forrest, Conrad Decker, Daniel Blaisdell (alternate).

Select Board Member Gordon Bailey, Building Commissioner Matt Kollmer, Town Administrator Chris Brittain, Resident Kathy Hall, Resident Marilyn Wyatt, Matthew Puntin (SK Designs), Resident William Burnell, Resident Jim Harding, Resident Pete Sorrentino, Robert DellaMarco and Resident Mauricio Rubio.

**Absent**: Peg Biron

**Call to Order**: Meeting was called to order, and a quorum was declared at 6:00pm on January 8th, 2024, by Chairperson Buck Donovan.

**Public Comment:** Resident Hall discussed the need for volunteers for the Lee Youth Committee to set up the ice-skating rink in the park near the Town Hall this upcoming Sunday, January 14th at 9am.

**Minutes:** D. Forrest moved to accept the minutes from December 18th as written. P. Bluhm seconded. The motion passed unanimously (5-0).

**Update – Open Meeting Law:** Brooke Healy, the Land Use Assistant, gave a refresher about the Open Meeting Law to the committee.

**Update – Greylock Federal Credit Union:** The building commissioner, Matt Kollmer, was present and gave the committee a memo about the concrete berm that was removed from the drive thru at the 43 Park Street location. C. Decker would like Greylock to come before the committee for a minor site plan modification. D. Forrest and B. Donovan prefer the removal of the berm and want no further action. C. Decker explained the origin of the issue, and that the berm was a condition of the special permit from 2007. B. Donovan reiterated that he believed that the berm is more dangerous. D. Forrest preferred the painted section. C. Decker mentioned pedestrian safety. P. Bluhm agreed with C. Decker, and made a motion for Greylock to come before the board for a minor site plan modification. D. Forrest seconded. Motion passed unanimously (5-0).

**There was no CPA update as Peg Biron was absent.**

**Update – Master Plan:** P. Bluhm gave an update. The plan is currently delayed. The next meeting will be this coming Thursday, January 11th. During this meeting, the economy, transportation and outdoor space and recreation sections will be discussed again, and hopefully have a final vote. The final goal is to have the last meeting in the end of February. P. Bluhm is going on a vacation March 1st, so he would like to be done beforehand. There will be a public meeting regarding the master plan hosted by either the Master Plan Committee or the Planning Board. After that meeting, the plan will be turned over to the Planning Board.

**6:15 – Special Permit Hearing – 125 Center Street:** Robert DellaMarco and Resident Mauricio Rubio were present to present this application. Resident Rubio purchased the property, and needs to bring the building up to code by building a secondary egress. This egress would go off of the west side of the building, down stairs around 6-7 feet from the property line. However, during the application process, the wrong bylaw was cited. The applicants were asked to come back once the application is republished in the paper, citing the correct bylaw. They were also asked to bring photographs of the property, detailed maps with dimensions of what is being proposed to be build, as well as existing maps now.

**Discussion – Zoning Enforcement:** P. Bluhm asked for this item to be on the agenda. He has been chairing the master plan committee, where the question of zoning enforcement has been brought up. He believes that the zoning bylaws are very long and detailed in some ways. There is a bylaw regarding landscaped strips, and no definition of what landscape is. Resident Marilyn Wyatt, who is also a member of the Master Plan Committee, has been in correspondence with P. Bluhm for several weeks regarding general zoning questions and zoning enforcement questions. A downtown business, in P. Bluhm’s opinion, does not have landscaping in the landscaping strip, only wood chips. There were also wrapped pallets that had a label spray painted on the pallets, which P. Bluhm believed to be a sign. P. Bluhm reached out to the building commissioner, who disagreed with P. Bluhm. This led to a discussion in the Town Administrator, Chris Brittain’s office. After meeting with P. Bluhm, C. Brittain wrote an email addressing 6 different points. The email was read to the committee;

“Hi Peter,

Nice speaking with you earlier.   Below are some clarifications we discussed.

Thanks!

Chris

1.            The board should feel free to obtain opinions from the building commissioner for the purpose of zoning changes/amendments.

2.            The board may bring up any concerns related to issues with special permits/site plan review conditions that have not been adequately met.  Matt is happy to attend meetings related to these issues so long as they are posted on the agenda.

3.            The board (through the Land Use assistant) should share all reviews/permits with the commissioner so he can assure the conditions of the permit are met.

4.            While discussing the topic of zoning enforcement in general may sometimes be appropriate, I would recommend that the board refrain from discussing specific zoning enforcement issues/complaints at their meetings.  Since the board does not have authority to enforce zoning complaints, it would set a bad precedence to discuss certain enforcement actions and not others.  By selectively bringing up certain enforcement complaints it may also create the appearance of a member(s) acting in a self-serving manner.   Any individual member can formally request enforcement as any other resident of town would be able to do.   If they disagree with the ruling this can be appealed to the ZBA.   It is especially important to note that discussion on a particular enforcement action cannot turn into a “performance review” of the inspector/commissioner.  They have a legal right for this to be done in executive session with the select board.   If the board feels a pressing need to discuss enforcement in any form, it would be best to have the commissioner/inspector present at these discussions.

5.            Any topic the board discusses at their meeting shall be posted on the agenda according to the OML.

6. We do anticipate a greater emphasis on zoning enforcement in the future.  As you may know, we recently joined with GB, Stockbridge and Lenox for a shared building department due to the lack of certified staff.   Currently, the new department has posted openings for additional staff.  They are currently operating with only 50% of staff planned for the department.  Once fully staffed enforcement should improve.  In addition, the proposed job description for a town planner includes “Monitors implementation of zoning and reports issues to the zoning enforcement officer” which should also help the situation.”

P. Bluhm thanked C. Brittain for explaining and discussing this.

P. Bluhm yielded the floor to Marilyn Wyatt. M. Wyatt discussed how Lee is a ‘hot’ place, and gaining attraction. She believes that these issues with zoning enforcement are relevant to opportunities that Lee is facing, regarding enhancing the image of Lee and bringing money into town. She believes that the bylaws are very specific regarding certain provisions of what can and can’t be done. She worked with M. Kollmer last year regarding the Starbuck’s drive-thru lighted signs, and that was fixed. However, she does not know what is reasonable to expect in the way of enforcement, and what extent Lee wants to enforce things. The bylaws say clearly that no area in Lee will have billboards, yet there are billboards as soon as you get off of 90. She questions if enforcement is up to the individuals in town to provide in a “very piece-meal basis”, and who to bring up concerns and complaints to, as the building inspector “clearly does not have a lot of capacity” to handle enforcement. She believes that issues, such as the ones that she has seen, would not be seen as a high priority to the building inspector. She asks what the Planning Board would recommend. Chairperson Donovan responded regarding the billboards that it was “beyond” the town. Select Board Member Gordon Bailey added in that there is a state mandate for signage, and that those billboards are a part of that. B. Donovan also repeated what C. Brittain said in his letter, that the building department is operating at 50%, and asked for everyone to “bear with them” until they are functioning at full capacity. P. Bluhm mentioned that after discussing with C. Brittain, he realized that the staff tasked with zoning enforcement is quite busy with building code enforcement in Lee and other towns. He asked if the town’s current approach with enforcement should be more active, as it seems that zoning is a collateral duty of the building department, and asks if the town waits for complaints instead of actively seeking out enforcement. M. Kollmer said that that was correct. He feels that if he goes out looking for enforcement, that he is targeting people. When there are complaints, he looks through the actual language of what the complaint is versus what the zoning bylaw is, and if he agrees with the complaint, he takes action. M. Kollmer mentioned the Starbuck’s sign, and how he handled that situation. He did not agree with the complaint regarding the signage down the road, of spray-painted pallets. P. Bluhm said that he was not criticizing M. Kollmer, and said that he believed that he made a determination of what the bylaw requires, which is his job, as well as communicated that to the person who made the complaint, which is also his job. P. Bluhm, however, disagrees with the general process of waiting for a complaint before enforcement is enacted. P. Bluhm mentioned that the definitions of landscape may need to be amended in the bylaws. He asked for counsel to come speak to the board to get their advice.

**6:45 – Special Permit Hearing – 35 Limestone Road:** Matt Puntin with SK Design Group came in to present for Bill Burnell’s project located at 35 Limestone Road. This lot is roughly 4.8 acres, and are originally two lots that are being combined into one. Bill Burnell is looking into doing a storage and warehouse facility, similar to what he has done in East Lee. There will be storage units, where people can rent and store items, a larger building, more of a warehouse where people can store vehicles, boats or RVs, and an office space for staff. They are here because of the zoning bylaw 199-4.2 (k) (c), as warehousing requires a special permit. This property is a previously developed commercial property from the late 90s or early 2000s, where some lots have been developed. There is sewer, water, drainage and all of the underground utilities needed. There will be lights around the perimeter of the property, similarly to the East Lee facility. There have been conversations with the nearest neighbor about light screening with different trees and other methods. M. Puntin and B. Burnell asked for any questions.

B. Donovan asked about conservation commission. M. Puntin said that they had a meeting last week, but had not yet gotten approval.

C. Decker asked several questions regarding the requirements for a major site plan. One is of a dumpster enclosure. B. Burnell responded that, if there was a dumpster, it would have proper enclosures and follow all requirements.

C. Decker asked about the buffer zone regarding the wetlands.

C. Decker asked about signage. M. Puntin responded that currently there is not any specific plans for signage, but that the bylaws are very specific and would follow them.

C. Decker asked for a lighting plan. There was brief discussion between the board, B. Burnell and M. Puntin regarding different lighting options for the property.

There was discussion regarding expanding the size of the office building. C. Decker asked for there to be a definitive size of the building when they return to the board.

D. Forrest mentioned that the development was well planned and there are not many concerns. The East Lee property that Bill Burnell is running is a nice property as well, and if this is to echo that there are no worries. The one question he had was about lighting, and he wanted to see a lighting plan.

P. Bluhm mentioned that, because of the lack of a known office size and the lack of a lighting plan, that the special permit hearing should be continued for a later date. B. Donovan agreed, also adding that he wants to hear the decision of the Conservation Commission regarding the property as well. The special permit hearing will continue the at the next meeting, January 22nd.

**Continued – Discussion – Zoning Enforcement:** P. Bluhm “remains to be convinced that there is a police power being exercised by an enforcement officer, who cannot act except when a complaint is received”, and would like counsel to come in to confirm this. P. Bluhm asked M. Kollmer if this was also the policy with building code violations. M. Kollmer responded that he treats building codes differently, for example if he were to see someone building a structure without a permit he would stop and talk to them. However, in the past, when he worked in the field as a contractor, he knew that people would not pull permits in Lee because they felt that they would often be targeted.

Both C. Brittain and M. Kollmer mentioned that the proposed job description for the town planner has zoning enforcement as a duty. B. Donovan said that it sounds like “we are moving in the right direction.”

P. Bluhm asked if there should be a definition of landscaping in the bylaws. C. Brittain mentioned that he and Brooke Healy (Land Use Assistant) can accumulate examples from other towns of definitions of landscaping, in order to help brainstorm possibilities.

C. Decker asked for clarification on if he sees violation, either as a civilian, as he did with the Greylock Federal Credit Union, or on the Board of Assessors or on the Planning Board, if these complaints should be brought to the Planning Board or the Zoning Enforcement Officer (ZEO). M. Kollmer replied that complaints should be brought to the ZEO. SBM Gordon Bailey further explained the laws regarding enforcement.

Dan Blaisdell asked for clarification if the conversation was based around the definition of landscaping, or enforcement. B. Donovan clarified that it was mainly regarding enforcement, but that the definition of landscaping was a question that was created due to the conversation.

P. Bluhm believed that, because the town was sued once, that enforcement of the bylaws is currently too lax, but that he appreciates how having a Town Planner will improve matters. He also said he would like to pursue the definition of landscaping, and he would like to get any further clarification from town counsel about enforcement roles.

SBM Bailey also asked that the board ensure that they gather as much information up front as possible from applicants before approval. Also, having additional conditions could be helpful for future enforcement officers.

The board thanked M. Kollmer and C. Brittain for coming in to discuss enforcement.

**Adjourn:** D. Forrest made a motion to adjourn. P. Bluhm seconded. Motion passed unanimously (5-0). Chairperson Donovan declared the meeting adjourned at 7:55 pm.