DECISION OF TOWN OF WARREN PLANNING BOARD

IN RE: SWEET WATER FARM, LLC: APPLICATION FOR AN EVENT CENTER

HEARING COMPLETED ON JUNE 27, 2019

TAX MAP R 08 LOT 098

This matter came before the Warren Planning Board after a withdrawal of a prior application for the same site. The pending Application was dated April 25, 2019 and was filed by Michael and Nancy McKeon, doing business as Sweet Water Farm, LLC. The Proposed Use listed on the application was "Events". The scope of intended uses as testified to by the applicant is an event center doing business during the months of May through October for such gatherings as weddings, birthday parties, lectures, conferences and music events with controlled noise levels. The hours of operation would be from 11:00 am until 10:00 pm, and mostly on weekends. The events would take place inside an existing barn, attached deck and within the footprint of a boat barn (hoop style with plastic tarp at present). Additionally, a temporary tent may be placed on the property of up to 125 feet in length, but no foundation will be poured under the tent site. Mrs. McKeon stated that she and her husband have used this property as their primary residence, and that residential use will continue.

The Planning Board Members sitting for the Application review were Joseph Berkenbile, Chairman, Albert Overlock, Lorilee Reuillard, Jason Tuorila and Shawn Saindon. Meetings took place on May 9, June 13 and June 27, 2019. A site walk was conducted on June 27, which served as a "redo" of a prior site walk when there was confusion over the extent of public access to the site.

Melody Sainio Code Enforcement Officer & Planning Board Secretary Sara K. Davis were present for all meetings, and Town Attorney William Kelly, representing the Planning Board, was present for the June 13 and 27, 2019 meetings.

Evidence in the form of testimony and documents was submitted on all three meetings. The minutes from the meetings of May 9, June 13 and June 27, 2019 are attached hereto, and incorporated herein as if fully set forth. The meetings were also audio recorded.

At the meetings resident Christopher Schneider, who has standing in this matter as he lives immediately across the street from the Applicant's

property in a home that is approximately 30 feet from the edge of the Finntown Road pavement, testified as to his concerns that the proposed use will create unsafe traffic and unreasonable noise and glare.

Berkenbile reminds him that the Board is using the Land use ordinance. Schneider questioned how far the bathrooms would be, size and square footage to be used, and requested a traffic study be done.

The McKeons made clear that, the previous application was rescinded which served to remove the proposed uses of a coffee shop, retail shop, a B&B and camp sites – all of which were NOT part of the uses approved by the Planning Board. All events will be catered and no food or liquor would be sought by the Applicant to be served as part of their offered amenities. The Applicants stated that up to 10 caterers could be on site for an event.

The McKeons further stated that they propose a 6 foot high fence of approximately 130 feet long running from their westerly bound to the south side of the southerly drive, which said drive shall be used exclusively as an entrance, which should serve to diminish glare onto the Schneider home, which sits directly opposite from said southerly drive entrance. There will be a new Leach field in the location depicted in drawing. Restrooms are in the Little Barn. Little barn in 36'x33' with a 16'x12' L shaped side. Big Barn is 43'x33' and upstairs 2/3 is to be used. The proposed deck will be approximately 33'x16' and will not be covered. The Boat structure is approximately 19'x40'. The L from the house to be used for the bathroom is approximately 360-400 square feet. Dimensions of the parking area is an acre and a half to two acres, 100-150' x 300'. At the meeting on July 27th, the Applicants supplemented the site sketch they had previously submitted with a detail of the plan showing distances and measurements on the buildings, road frontage, location of septic field and the parking area.

Attorney Patrick Mellor on behalf of the Schneider's stated that a traffic study and a Site Plan review were required and therefore the Application was incomplete, and he stated that the proposed use would make the traffic conditions on Finntown Road unsafe and that the use would produce additional traffic.

Dan Davey read his previously submitted letter, dated March 14, 20019, to the Board. A previous letter dated February 14, 2019 was also accepted as part of the record. His testimony was that the Finntown road was unsafe for the volume of traffic to be generated, and he addressed the history of accidents and fatalities. The McKeons submitted testimony that the Maine Department of Transportation lists one fatality on the Finntown Road as

measured from 1975. Additionally, newspaper articles were submitted by Attorney Mellor at the request of another resident not in attendance, and the Planning Board read through them in detail, which supported a finding that there had been 4 fatalities on the Finntown Road in Warren, the last one being in 1999. The consensus of the Planning Board on this issue of inquiry about accidents and fatalities was that the Finntown Road is no more of a danger than any other road in Warren, it is wide, paved, well maintained and generally a good road.

On June 27, 2019, the Planning Board finished the public testimony portion of the hearing and moved on to its deliberations. During this time, clarifying questions were asked of the Applicant and abutters, as needed. All persons were afforded a full and fair opportunity to present evidence.

The Board turned its attention to the jurisdictional question of which ordinances applied, and in particular the applicability of the Site Plan Review Ordinance. The Board turned its attention to the Purpose (Article I) and Applicability (Article III) sections of the Site Plan Review Ordinance. In summary, the Board found that Site Plan review was not triggered by any of the requirements as found in Article III, subsections a through h, for the following reasons:

> The Board first considered subsection Article III subsection c:
>
> *Existing uses (conforming and non-conforming) which seek to expand by either 1,500 square feet within any five (5) year period, with regard to floor-space, parking area, seating capacity, or outdoor storage area, and the addition of weeks or months to a business's operating seasons which exceeds 20%.*
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> The Board found that it did not apply, as there is not a request to expand an "existing use." This Application involves a new use.
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> Motion by Overlock, second by Reuillard that c. Existing uses (conforming and non-conforming) which seek to expand by either 1,500 square feet within any five (5) year period, with regard to floor-space, parking area, seating capacity, or outdoor storage area, and the addition of weeks or months to a business's operating seasons which exceeds 20%, does not trigger a Site Plan review. **Vote: 5-0**
>
> The Board next considered subsection e: "*New Proposal to pave, strip, grade, fill or remove earth materials from areas of more*

than 10,000 square feet within a five (5) year period. Applicant is not doing anything to the land, and therefore it did not apply.

Motion by Overlock, second by Saindon that e. New Proposal to pave, strip, grade, fill or remove earth materials from areas of more than 10,000 square feet within a five (5) year period, does not trigger a site plan review. **Vote: 5-0**

The Board next considered subsections a, b, g, and h:

Proposals for new construction of non-residential buildings or structures and of multi-family dwellings, including accessory buildings and structures, having a total area for all floors of more than 1,500 square feet. b. Resumption of conforming and non-conforming uses which have been discontinued for at least one (1) year.

b. Resumption of conforming and non-conforming uses which have been discontinued for at least one (1) year.

g. Existing pits and quarries whether approved or grandfathered shall require Planning Board review under the Site Plan Review Ordinance if any of the following apply: 1. Existing permitted pits/quarries that are sold or there is a transfer of ownership or operation shall be subject to review before the anniversary date of the original Site Plan approval to determine that they are operating within the previous permitted use guidelines by Site Plan Review. 2. A change of use as defined in the Land Use Ordinance. 3. If the approved pit exceeds five (5) acres. 4. There is a change of the reclamation plan. 5. There is a change in business plan, which increases the activity in the pit or the number of yards removed by 25% (twenty-five) or more. 6. Gravel pits shall be limited to a maximum of less than five (5) acres. The amount to be reclaimed shall be determined per the new Site Plan Review Ordinance before any additional contiguous area can be opened up or topsoil removed.

h. Quarries, quarrying or quarry type activities shall be reviewed under this ordinance. This section does not apply to single-family or two-family dwellings and/or accessory buildings, to home occupations, or to agricultural and forest land management practices. ALL other uses not excluded herein will require Site Review. All are not applicable.

Motion by Reuillard, second by Saindon that a.b.g. & h. are non-applicable. **Vote: 5-0**

The Board then considered subsection d:

Existing uses (conforming and non-conforming) which seek to expand by the addition of hours to a work day which creates a negative impact on the surrounding area.

Reuillard made the comment that this section does not apply, as there is no existing use which is seeking to expand; so similar to subsection c, subsection d does not apply.

Motion by Reuillard, second by Saindon that subsection d does not trigger a Site Plan review. **Vote: 5-0**

The Board then considered subsection f:

Any additional proposal of sufficient size and complexity and potential impact as to warrant review by the Planning Board.

The Board discussed the nature of the use on weekends, the amount of noise, which they expected to be minimal with this owner occupied property, and did not believe it will have as big of an impact as the abutters. Board Chairman Berkenbile likened this to being next to a Church which has functions on the weekend like this one, or other such intermittent business uses abutting rural properties in the Rural district. Tuorila, disagreed and stated that with subject property being approximately 138 feet from the neighbor, he believes the noise and use would sufficiently impact neighbors as to require Site Plan review. Berkenbile, referenced the cars driving by are quite loud as was heard on the site walk, and does not believe the use would be louder from the home of the abutter. Reuillard and Saindon both agreed that they did not think the noise or traffic would be a problem. The Board discussed that a project of "complexity" would have to be a much larger project. The board discussed that the road was a good road that was in good shape and there was conflicting evidence that there were unusually unsafe conditions on this road in the past, and therefore there was no convincing evidence that glare, noise and road safety impacts from the application would be of "sufficient ...potential impact" to warrant Site Plan review.

Motion by Reuillard, second by Overlock that subsection f. would not trigger a Site Plan review. **Vote: 4-1; Tuorila opposed.**

The Board then turned its attention to Section 13, the land use Tables, of the Land Use Ordinance. The Board looked at the permitted uses within the Rural District and considered several of the listed uses to determine if the Applicants proposal was the same as, or sufficiently similar to, any of the listed permitted land uses. The Board considered and eliminated the possibility that the use was a "Public Building" or a "semi-public Building, as the property was to be used for profit for a private entity. The Board consensus was that the best similar use permitted in the Table was for "Retail & Wholesale Business Services, Business & Professional Offices." There are no definitions "business services" or the word "business" in the Land Use Ordinance. The Board felt that the proposed event use was a service and certainly a form of business, and the proposed event use was reasonably permitted under that section of the Table of uses.

Motion by Saindon, second by Reuillard that the District to be used is Retail & Wholesale, Business Services, Business & Professional Offices. **Vote: 5-0**

The Board next considered Section 11(B) which requires adequate sewage treatment for the proposed use. The CEO, Melody Sainio had testified, and approved her part of the application regarding her finding that the submitted HHE 200 septic system design plan was sufficient for the proposed use. However, she supplemented that finding at the hearing as she recognized that the propose use best fit the State of Maine subsurface wastewater guidelines as a "Dance Hall", and therefore the septic design plan would have to be amended to provide for up to 635 gallons per day to meet the shared use of the bathrooms in the "Little Barn," as depicted on the sketch plan, for the combined event use and the apartment in the Little Barn.

Motion by Saindon, second by Overlock that the septic plan and the soil meet requirements of subsection 11, upon submission of an amended septic design plan as approved by the CEO to demonstrate capacity of 635 gallons per day. **Vote: 5-0**

The Board then considered Section 14. Dimensional Requirements, and as the lot is approximately 25 acres, with approximately 600 feet of frontage, and all set back requirements met as depicted on the plan, and considering that the Little Barn, the structure closest to the road at approximately 50 feet from the edge of the pavement, it was evident that all lot size, coverage, space and setback requirements had been met.

Motion by Overlock, second by Reuillard that all requirements for Dimensional Requirements as outlined in section 14 have been met, ad demonstrated on the sketch provided. **Vote: 5-0**

The Board then considered the General Standards as found in Section 15, and reviewed subsection 15 (B) regarding Landscaping. The Board adopted the following conditions of approval so as to meet the requirements of the Land Use Ordinance, Section 15, B. Landscaping: As the sketch identifies, and as the McKeons also testified, a 6 foot stockade fence shall be installed for a distance of 130 feet along the Finntown Road so as to provide screening to the site and the parking area. The Applicant shall also add additional screening in front of the Little Barn to help as an added noise buffer, which shall be 60 feet in length and 6 foot high arborvitae trees, at sufficient density so as to meet the requirements of Section 15(B). Motion by Tuorila; second by Saindon that the application approval is contingent on the conditions of approval in this paragraph regarding the installation of the 130 foot x 6 foot high stockade fence and the 60 feet long x 6 foot high arbitrative trees for screening. **Vote: 5-0**

The Board made the following finding of a condition relating to fire safety: Motion by Overlock; second by Reuillard that the application approval is contingent on the State Fire Marshal's approval and the premises shall conform to all state statutes as overseen by the fire marshal. **Vote: 5-0**

Pursuant to Section 15 (E), the Board made the following findings of conditions relating to Noise: Noise from the use in question shall be muffled and contained so as not to be objectionable due to the intermittence, beat frequency, or shrillness, as measured from the property line, which shall not exceed 55 decibels from the hours of 7 a.m. to 8p.m., and shall not exceed 45 decibels from the hours of 8 p.m. to 7a.m.. Motion by Overlock, second by Saindon that the application is contingent that above described maximum noise requirements shall be met, as measured at the boundary line. **Vote: 5-0**

Pursuant to Section 15 (F), Odor Control, the ordinance provides that *No person, wherever located, shall cause or allow the emission of odorous air contaminants from any source such as to result in detectable odors at the lot line of the source which are measured in excess of the following limits: a. For areas used for residential/rural or commercial purposes within 500 feet of the lot line of the source, it is a violation if odors are detected after the odorous air has been diluted with seven (7) or more volumes of odor free air. b. In all other land use areas, it is a violation if odors are detected after the odorous air has been diluted with fifteen (15) or more volumes of odor*

free air. Motion by Overlock, second by Reuillard that the application is contingent on all Odor control requirements being met. **Vote: 5-0**

The Board then turned to Section 16 (J). Off-Street Parking and Loading Requirements, which provides: *In any District where permitted, no use of premises shall be authorized or extended, and no building or structure shall be constructed or enlarged unless there is provided for such extension, construction or enlargement, off-street automobile parking space within three hundred (300) feet of the principal building, structure, or use of the premises, in accordance with the following schedule of parking requirements. An area of two hundred (200) square feet appropriate for the parking of an automobile, exclusive of maneuvering space, shall be considered as one (1) off-street parking space.*

No required parking space shall, for the purpose of this Ordinance, serve more than one (1) use. No non-commercial off-street parking facility shall have more than two (2) curb cuts on the same street, and no curb cut shall exceed 26 feet in width. Commercial off-street parking shall have no more than two (2) curb cuts on the same street, and no curb cut shall exceed 40 feet in width. Parking areas with more than two (2) parking spaces shall be so arranged that vehicles can be turned around within such areas and are prevented from backing into the street.

The Board discussed the large size of the property in excess of 25 acres and the two to three acres of open space upon which parking could occur. Motion by Saindon; second by Tuorila that all requirements for off-street parking per Section 16 (J) have been met based on the site walk, testimony and plan submitted. **Vote: 5-0**

The Board considered the second paragraph of subsection 16(J), as cited above. As there is at least 2 acres of cleared land available for parking at 10'x20, up to 100 cars can park on just one acre. Clearly there was sufficient parking over 2 or 3 acres. Motion by Reuillard; second by Saindon that all of subsection 2 has been met, parking exceeds the 120 parking spaces required. **Vote: 5-0**

The Board then considered Section 16 (S), which applies to Retail and Wholesale Business, Services, Business and Professional Offices. This section provides: *Where located adjacent to residential lots, retail and wholesale businesses, services, business and professional offices shall conform to the following: 1. Side and rear yard setbacks shall be not less than 30 feet, of*

which not less than ten (10) feet shall be maintained as yard space. 2. No parking or outdoor storage shall be located within ten (10) feet of any lot line. 3. All outdoor storage of material, goods, or vehicles shall be screened from view from adjacent residential lots, as required for off-street parking and loading areas. 4. The Planning Board may require other conditions to fit the facility harmoniously into its neighborhood. Motion by Saindon; second by Overlock that S. 1, 2, and 3 have been covered within previous findings as to setbacks and the screening of the fence and arborvitae trees. **Vote: 5-0**

Further discussion was had upon Reuillard mentioning that vehicles swinging toward the road to exit the site may shine lights toward the neighbor and this should be addressed and minimized. Motion by Tuorila; second by Saindon as a condition of approval so as to best eliminate glare, parking shall be arraigned in the least obtrusive manner to best seek to eliminate headlight glare towards the neighbors across the street, so as to reduce glare. **Vote: 5-0**

Additionally, to address reasonable control of glare to avoid exiting vehicles shining headlights on the abutter's home which is located directly opposite the southerly drive, an additional condition of approval was made: Motion by Tuorila; second by Saindon that all incoming traffic will enter one-way into the South driveway and all vehicles shall exit one-way from the North driveway. **Vote: 5-0**

The Board then addressed Section 17(A). Signs, which provides: *Signs related to goods and service sold on the premises, or the name of the business, shall be permitted provided that such signs do not exceed 32 s.f. on Route 90 and Route 1 and 20 s.f. on all other roads. A maximum number of three (3) signs will be allowed per premises, two (2) free standing signs and one (1) sign on the building. A free standing sign shall be defined as a nominal two (2) dimensional structure with a common support at a maximum of two (2) faces for lettering.*

Motion by Overlock; second by Saindon that the applicant shall meet all requirements for signage; in order to avoid any impact as to visibility of vehicles going into or by the site, signage shall be placed no closer than 10 feet from the pavement of the Finntown Road. **Vote: 5-0**

The Board then discussed that since all the review criteria of the Land Use ordinance had been met, the Permit should be granted. Motion by Overlock; second by Saindon to approve Sweet Water Farm, LLC, owned by Michael &

Nancy McKeon, for an event venue 615 Finntown Road (Map R08 Lot 098).
VOTE: 5-0

The Board had relied on the representations provided by the Applicant in this matter as being true and correct.

Any party aggrieved by this decision may file an appeal to the Knox County Superior Court pursuant to 30-A MRS 2691 and 4353, and MRCivP Rule 80B, within 45 days of the date of the vote of the decision, which occurred on June 27, 2019.

Chairman, Joseph Berkenbile

Albert Overlock

Shawn Saindon

Jason Tuorila

Lorilee Reuillard