

**TOWN OF CHESTER**  
**DEVELOPMENT REVIEW BOARD**  
**MINUTES**

*June 12, 2017*

**BOARD MEMBERS PRESENT:** Carla Westine, Amy O'Neil, Phil Perlah and Ken Barrett.

**STAFF PRESENT:** Michael Normyle, Zoning Administrator, Cathy Hasbrouck, Recording Secretary.

**OTHERS PRESENT:** Randy Miles, Mary Jane Miles, Barre Pinske, Cynthia Prairie, Kelly Arrison, Huzon J. Stewart, Gail Stewart, Mark Foley, Julie Foley, Suzanne Jaquith, Mary Semones, John Cummings, Josh Rourke, David Hambright, John Knisley, Lee Gustafson.

**CALL TO ORDER**

The meeting was called to order at 6:00 P.M. by Chair Carla Westine. She introduced the members of the Development Review Board and staff. DRB alternate Ken Barrett joined the board for the meeting, taking Don Robinson's unfilled position. The board and audience members recited the Pledge of Allegiance. Carla Westine stated that there had been site visits that afternoon to 926 Vermont Route 103 South at 5:00 PM and to 284 Elm Street at 5:25 PM. Carla Westine then read the meeting agenda.

**Agenda Item 1 Review minutes from the May 8 and May 22, 2017 meetings**

The Board reviewed the minutes for the May 8, 2017 meeting. Cathy Hasbrouck confirmed that at the May 8, 2017 hearing for the Vermont Cannoli conditional use permit, there was no specific oral testimony that the business would be strictly takeout. Amy O'Neil moved to accept the minutes. Ken Barrett seconded the motion. A vote was taken and the motion passed.

The Board reviewed the minutes for the May 22, 2017. Amy O'Neil moved to accept the minutes. Phil Perlah asked about the discussion in the minutes of the make and model of the proposed wood processor, the size of the lot, and the Noise regulations in the bylaws. Amy O'Neil and Carla Westine both observed that the minutes are an account of what was actually said at the meeting, though it is not intended to be a transcript. Phil Perlah agreed that the minutes should be accepted as written. Phil Perlah seconded the motion. A vote was taken and the motion passed.

**Agenda Item 2 Comments from Citizens**

Randy Miles asked if there was a time frame for the decision on his Conditional Use application that was before the Board. Carla Westine explained that the hearing was closed on May 22, 2017 and the Board had 45 days from that date to issue a decision. The decision would be due around July 4, 2017, and the decision would definitely be issued by then. She said the Board did deliberate on May 22 and would continue deliberations that evening, June 12th. Randy Miles asked if there were any points of information to be cleared up. Amy O'Neil and Carla Westine stated that the hearing had been closed and no more information could be presented.

### **Agenda Item 3 Continuation of the Foley Final Plat Review**

Carla Westine stated that the Board had received copies of the Wastewater System and Potable Water Supply Permit issued by the Vermont Department of Environmental Conservation which was needed to close the hearing. Mark Foley said he was waiting for his surveyor to finish making changes to the mylar. Michael Normyle passed around copies of an updated plat from the surveyor, Chris Paton, with a revision date of June 2, 2017. The Board went over the updated plat and the list of conditions from the preliminary plat hearing. They found that all the conditions had been corrected in this copy of the plat.

Michael Normyle pointed out specific language in Section 1.9 of the Wastewater Permit. He thought it needed to be added to the Plat. Closer inspection of the words showed the language needed to be included in the deed, not the Plat.

Amy O'Neil moved to accept the Wastewater permit number WW-2-3819R from the Vermont Department of Environmental Conservation as Exhibit E. Phil Perlah seconded the motion. A vote was taken and the motion passed.

Amy O'Neil moved to accept the updated plat with a revision date of June 2, 2017 as Exhibit F. Phil Perlah seconded the motion. A vote was taken and the motion passed.

Amy O'Neil moved to close the hearing for the Foley Subdivision. A vote was taken and the motion passed.

### **Agenda Item 4 Continuation of Conditional Use Application #500, Hugh and Nancy Pennell**

Chair Carla Westine asked if anyone was representing the Pennells for this part of the hearing. Michael Normyle said he did not expect anyone to attend the meeting in order to represent them. Randy Miles asked to give testimony and was sworn in. He said he felt the project would be an important business for the town in a good location. No one in the surrounding area opposes the business and he thinks it should be allowed.

Chair Carla Westine said that the hearing had been recessed to wait for a letter from Chester's Fire Chief. The letter had been handed out at the meeting that evening. The letter is dated June 6, 2017 and is addressed to Nancy and Hugh Pennell. Fire Chief Matt Wilson indicated in the letter that he saw Little Impact to the Chester Fire Department based on the information provided.

Amy O'Neil move to accept the letter as Exhibit J. Phil Perlah seconded the motion. A vote was taken and the motion passed.

There being no further information needed or testimony to be taken, Amy O'Neil moved to close the hearing. Phil Perlah seconded the motion. A vote was taken and the motion passed.

### **Agenda Item 5 Conditional Use Application #501 284 Elm St. Jerry & Gail Stewart**

Carla Westine opened the hearing by asking if any member of the board had had any ex-parte communication in this matter or any conflict of interest. No member did. Carla Westine then asked the if any citizens present would like to give testimony, comment or ask questions and would therefore need to be sworn in. Five people were sworn in: Kelly Arrison, Jerry and Gail Stewart, and Mary Jane and Randy Miles.

Michael Normyle gave the history of the application as follows. The application was received on March 21, 2017 and was finalized on April 22, 2017. Notices of the hearing were posted on May 16, 2017, sent to the newspaper of record and mailed to the applicant and the abutters on that day.

At the start of the meeting, Michael Normyle had distributed copies of a letter from Prescott Warren dated May 21, 2017. Carla Westine noted that a letter from Marilyn Mahusky had been hand delivered to her at the site visit. She had made copies and distributed them to the Board members. Michael Normyle also said that he had drawn the outline of the building on the site plan by connecting dots that represented stakes for the corners of the building.

The first document examined was a Town of Chester application for a hearing before the Development Review Board. The Project Number is 501, the date is March 21, 2017, the Appellants are Huzon J. and Gail Stewart. The location of the property is 284 Elm St., the description of the project is animal boarding kennel – day care. It is signed by Gail and Huzon Stewart and Michael Normyle. Amy O’Neil moved to accept the application as Exhibit A. Ken Barrett seconded the motion. A vote was taken and the motion passed.

The second document presented was a Notice of Public Hearing Before the Development Review Board dated May 16, 2017. The property owners are Gail and Jerry Stewart, the location is 284 Elm St. and the action requested is open an animal boarding kennel-day care. The district is Commercial – Industrial. It is signed by Michael Normyle, Zoning Administrator. Amy O’Neil moved to accept the notice as Exhibit B. Ken Barrett seconded the motion. A vote was taken and the motion passed.

The third exhibit presented was a letter dated October 30, 2016, addressed to Whom it may concern and signed by Stacia Anderson, giving her perception of a need for a dog kennel and day care in Chester. She also states her support for Gail Stewart as a reliable and caring dog sitter. Amy O’Neil moved to accept the letter as Exhibit C. Ken Barrett seconded the motion. A vote was taken and the motion passed.

The fourth document presented was a project review sheet from the Vermont Department of Environmental Conservation and Natural Resources Board. The date initiated was December 23, 2015. The applicant is Gail Stewart. The project description is: Applicant would purchase the existing +/- 3-acre property with an existing residence and construct a commercial boarding kennel. The sheet indicates an Act 250 permit is not required and is signed by Jacqueline Carr, Stephanie Giles and Terry Shearer. Amy O’Neil move to accept the project sheet as Exhibit D. Phil Perlah seconded the motion. A vote was taken and the motion passed.

The fifth document presented was a letter on Town of Chester stationery from Chester Police Chief Richard Cloud dated June 6, 2017, addressed to Michael Normyle, Zoning Administrator. The letter states that traffic safety and parking will not be an issue for this project. Amy O’Neil moved to accept the letter as Exhibit E. Ken Barrett seconded the motion. A vote was taken and the motion passed.

The sixth document presented is a letter dated June 6, 2017 from Water, Wastewater superintendent Jeff Holden, to the Development Review Board. The letter indicates that the property at 284 Elm Street has its own septic system as the town wastewater lines do not pass by that location. The project does have town water. The indicated water usage will be less than the former use for the property and will not adversely affect the town water system. Amy O’Neil

moved to accept the letter as Exhibit F. Ken Barrett seconded the motion. A vote was taken and the motion passed.

The seventh document presented was a print out of a 5-page article from acoustiblok.com about the Acoustifence noise-reducing fence. Amy O’Neil move to accept the article as Exhibit G. Phil Perlah seconded the motion. A vote was taken and the motion passed.

The eighth document presented is a site plan entitled Property to be conveyed to Huzon J. III and Gail R. Stewart, dated July 13, 2016, created by DiBernardo Associates. Amy O’Neil moved to accept the plot plan as Exhibit H. Ken Barrett seconded the motion. A vote was taken and the motion passed.

The ninth document presented was a double-sided page of excerpts from different websites discussing the economy and popularity of boarding kennels in the U.S. and various aspects of the noise created by barking dogs. The document was prepared by Barre Pinske. Barre Pinske was sworn in to give testimony about the document. Barre said he wanted to give a frame of reference with which to compare decibel levels. Barre testified that the first portion of the document came from the APPA and the rest of the document came from the American Boarding Kennels Association. Amy O’Neil moved to accept the document as Exhibit I. Ken Barrett seconded the motion. The applicants, Gail and Jerry Stewart did not object to the exhibit being included in the hearing. A vote was taken and the motion passed.

A second copy of the site plan was examined. Amy O’Neil confirmed that this copy is the one that she had moved to accept as evidence. This copy did not have lines drawn in connecting nine circles with crosses through them. Amy O’Neil said the Board was compelled to require a to-scale site plan that included the location of the buildings on the lot. The Board questioned Jerry Stewart about the stakes to be sure they understood their purpose. He testified that when the survey was made stakes had been set to mark the planned location of the building and the stakes were included on the plat. Jerry Stewart testified that the nine stakes did represent the outline of the building and the placement of the kennel area within the building. A stake that was a few feet closer to Elm Street represented the 30’ buffer required by the bylaws.

The tenth document presented was a multiple page booklet prepared by the applicant. The contents of the booklet are as follows:

1 page	Mission statement of the proposed business, Gussie’s Place, written by Gail Stewart.
4 pages	Outline of the specifics of the business written by Gail Stewart.
1 page	Additional Notes, addressing the size of the proposed kennel, the reasons dogs bark and how the applicants will be able to prevent barking written by Gail Stewart.
1 page	A letter from Graham Morris, a Research and Development Engineer for Morton Buildings, the manufacturer of the building, discussing the amount of noise a typical dog makes, the amount of noise the different materials used in the building would absorb and the change of intensity the sound would have over a distance of 50 feet.
2 pages	a discussion of the sound absorbing qualities of Acoustical Steel, the material used on the building’s interior, written by Morton Buildings, Inc.

1 page	a list of commonly heard noises and their typical decibel level
5 pages	A discussion of Acoustifence, a material attached to chain link fencing that absorbs sound, giving measurements of sound absorbing and deflection qualities and other specifications. The company that makes Acoustifence is Acoustiblok, Inc. The article is copyrighted by LJ Avalon, LLC.
2 pages	An article by Sharon Peters for USA Today about an invention named PowerLoo which will flush dog feces into a an in-ground receptacle that may be attached to a sewer line or septic tank. The article has a copyright of 2010 by GreenDog, LLC.
3 pages	An article by 3 members of the Department of Pathobiology at the Purdue College of Veterinary Medicine: Morgan Garvey, Judith Stella and Candice Cronney, entitled Keneled Dog Welfare
Brochure tucked in back cover	Morton Buildings brochure describing proposed building's characteristics

Phil Perlah asked about the inspection report on the septic system mentioned in the booklet. Gail Stewart located the report in papers she brought with her and gave it to Michael Normyle.

Amy O'Neil noted that the decibel levels of barking dogs mentioned in the Perdue University article on Keneled Dog Welfare were the same as the figures in the article by the engineer Graham Morris.

Gail Stewart explained that Graham Morris had gone to a Morton building in Virginia which is the same size as the one at 284 Elm St. in Chester and did the testing outlined in the report included in the booklet. She did not know whether more than one barking dog was part of the test. Phil Perlah stated that the letter from Graham Morris appears to be an academic analysis of sound reduction with a Morton building. It does not mention a specific facility.

Amy O'Neil moved to accept the booklet as Exhibit J. Ken Barrett seconded the motion. A vote was taken and the motion passed.

Amy O'Neil asked if the wall in the Chester building will be the same as the wall described in the brochure included in the booklet. Jerry and Gail Stewart both testified that it would be. The walls in the Chester building are 9 inches thick. Amy O'Neil read the wall specifications under the Superior Efficiency section of the brochure. Jerry and Gail Stewart affirmed that their buildings walls had the same structure.

The eleventh document considered was a letter dated June 12, 2017 addressed to Carla Westine, Chair of the Development Review Board from Marilyn Mahusky. In the letter Marilyn Mahusky asserts interested party status and asks questions about the number of animals to be keneled, how they will be managed, what the noise levels will be and how the feces will be disposed of. Amy O'Neil move to accept the letter as Exhibit K. Phil Perlah seconded the motion. A vote was taken and the motion passed.

The twelfth exhibit considered was a letter dated May 21, 2017 from Prescott Warren, addressed to Michael Normyle and speaking in support of the proposed kennel. Amy O'Neil moved to accept the letter as Exhibit L. Michael Normyle confirmed that the original letter has Joan

Warren's signature on the back. Phil Perlah seconded the motion. A vote was taken and the motion passed.

The thirteenth exhibit was two samples of the Acoustifence material. Amy O'Neil asked what the difference between the two samples was. Gail Stewart said the only difference was color. Amy O'Neil said she found one sample to be thicker than the other. Amy O'Neil moved to accept the material as Exhibit M. Phil Perlah seconded the motion. A vote was taken and the motion passed.

The Board then evaluated the application using section 4.8 of the 2017 Chester Unified Development Bylaws.

## 1. General Standards

These general standards shall require that any conditional use proposed for any district created under these Bylaws shall not result in an undue adverse effect to:

a. The capacity of existing or planned community facilities;

The Board noted that it had received letters discussing the project's impact from Jeff Holden, the Water/Wastewater Superintendent and Richard Cloud the Chief of Police, but they had not received a letter from Fire Chief Matt Wilson. Michael Normyle said he would check on the missing letter. Gail and Jerry Stewart did not see that their project has any effect on community facilities. Jerry Stewart pointed out that the leach field is shown on the site plan and it is on the higher part of the lot, above the lower area which is in a flood zone. The flood zone is not marked on the site plan,

Michael Normyle referenced research done for a previous application and said the floodway covered most of the lowest tier of the property, and the flood plain comes about half-way up the middle tier. Amy O'Neil asked if the applicants had testified that they might locate some of the dog play area in the lowest tier. Jerry and Gail Stewart said they did not initially plan to do anything in the lowest tier, except, perhaps, walking the dogs. Amy O'Neil said that if any structure such as fencing or a building was built in the flood hazard area a special flood permit would be required. Michael Normyle said he can find a map of the flood hazard area on this property and bring it to the next meeting. Amy O'Neil said she believed it was important to establish that the owners and the Board know where the flood hazard area was.

Michael Normyle presented the septic inspection report from Best Septic Service dated June 6, 2016, performed by Justin Ruggerio. Amy O'Neil moved to accept the inspection report into evidence as Exhibit N. Phil Perlah seconded the motion. A vote was taken and the motion passed.

b. The character of the area affected, as defined by the purpose or purposes of the zoning district within which the project is located;

Carla Westine noted that the property is in the Commercial-Industrial District and asked the applicants to describe the neighborhood in their own words. Jerry Stewart testified that across the street is a storage rental facility owned by Norm Wright. To the east is land owned by the State of Vermont. Diagonally across

the street is a residence owned by John Knisley. The lower part of the property borders land owned by Brian and Kim Benson and Benny's Garage. On the north side of the property is Prescott Warren's residence.

Barry Pinske said that, from the appearance, that area is the most commercial-industrial in Chester. There is not much residential density and it was an appropriate spot for the project. Kelly Arrison said there were fourteen residences on the street. Amy O'Neil asked how many businesses there were. Kelly Arrison said there were six. Carla Westine asked if Kelly agreed it would be a mix of commercial and residential uses. He said he did.

c. Traffic on roads and highways in the vicinity;

Jerry Stewart said that no deliveries would be made to the facility. Deliveries would be received at their residence on Main Street. Carla Westine asked if pets would be picked up and dropped off between the hours of 7:00 AM and 7:00 PM. Gail Stewart said a boarded animal could be picked up or dropped off later in the evening, but she would rather not disrupt the dogs by having strangers at the kennel outside the hours specified. She would prefer to meet the customers somewhere else and bring the dog to the kennel herself. It was agreed after some discussion that the kennel would be closed to pet owners outside the 7:00 AM to 7:00 PM hours. Mary Jane Miles said she didn't see how the kennel traffic could be significant given the traffic from Benny's Garage, the State Highway Garage and Suburban Propane, all on the same street.

d. Bylaws and ordinances then in effect; and,

In reference to the flood hazard area, Carla Westine asked Jerry Stewart where he was planning to build his fences. Jerry said he was going to build them on the second tier of the property. Amy O'Neil pointed out that the survey map had contour lines. Looking at the map Jerry Stewart estimated that elevation of the fence will be at 486 – 490 feet in elevation. Amy O'Neil reviewed with Jerry and Gail Stewart that they would only be walking the dogs below that line and any dog feces produced will be removed.

Carla Westine noted that animal kennel is a conditional use in the Commercial Industrial District. Amy O'Neil read the Supplemental Standards of the Commercial Industrial section and pointed out that screening could be required between incompatible uses. She asked if there would be Acoustifence between the dogs and the Warren residence. Jerry and Gail Stewart said there would be Acoustifence along the property boundary from the street to the fence line to be built across the back of the property at the 486 – 490-foot elevation.

e. Utilization of renewable energy resources.

The Stewarts said they did not plan on using any renewable energy resources.

## 2. Specific Standards

Specific standards will include consideration with respect to:

- Minimum lot size;

This lot is a pre-existing lot and is not required to meet this standard.

- Distance from adjacent or nearby uses;

Jerry Stewart said the building is 53 - 54 feet from the road, 800 – 900 feet from the back of the property, 51 feet from the Warren side of the property and over 100 feet from the other side.

Carla Westine noted that the lot coverage is less than the 50% maximum. Jerry Stewart said the building is 19 feet high, which is less than the 35-foot limit.

- Minimum off-street parking and loading facilities;

Carla Westine said she saw the parking spaces staked out at the site visit, but they were not delineated in on the site plan. Jerry Stewart worked on amending the site plan to include the parking spaces. Five parking spaces are planned, plus one handicapped space. Jerry Stewart asked the Board to confirm the required size of a handicapped parking space. Amy O'Neil quoted Section 3.20.D of the bylaws, "each handicap parking space must be at least thirteen feet in width and eighteen feet in length, with a minimum 3-foot wide accessible route connecting to the building".

The Board discussed the number of spaces required under the Other designation of the Minimum Parking Standards as described in Section 3.20.A. Gail Stewart said it generally took dog owners 5 minutes to drop off their dogs and longer to pick them up, as they would need to pay before leaving. She thought there would normally be 2 or 3 customers dropping off dogs at the same time. The Board concluded that 5 spaces should be adequate for parking and noted that there was space on the lot to expand parking if proves necessary. Jerry Stewart said the parking surface will be Shurpak. Phil Perlah asked how dog food will be brought in. Gail Stewart said she will be bringing the dog food in herself.

- Landscaping and fencing;

Jerry Stewart said 6' chain link fencing will run from the kennel (north) side of the building to the Warren property, east along the property boundary to the top of the hill (second tier of the property), across the lot and back up the hill to the building. The portion of the fence that runs from the building to the Warren property will be vinyl. The portion of the fence parallel to the road and along the Warren property line will be lined with Acoustifence material. Gail said she was thinking about adding some more vinyl fencing with the Acoustifence liner on the south corner of the lot near the street. Kelly Arrison asked which portions of the fencing would be covered in the Acoustifence material. Jerry Stewart confirmed that the portion along the Warren property line and along Elm Street will have Acoustifence lining. Gail Stewart said if the barking can be heard in other places they will add the Acoustifence liner to more of the fence.

- Design and location of structures and service area;

Jerry Stewart said the customers will enter through the front door. Gail Stewart said that, once inside the front door the utility room and handicapped bathroom will be to the left and to the right is a meet and greet area and office. The door to the kennel area is past the bathroom door. Further back in the building is a large living room area and at the back of the building will be a grooming room, a storage area for cleaning tools and storage and a small room for food prep. The side door is only

for the kennel staff to use. The back doors are used to let the dogs out to their play area.

Kelly Arrison asked if the only acoustic material will be in the ceiling. After some discussion to clarify the question, Jerry Stewart said that the dog kennel area of the building will have acoustical steel material in the walls and ceiling. He said that some of those walls have not been built yet. Mary Jane Miles asked if she was correct in thinking that, in addition to the interior walls having acoustical steel, the exterior wall had some sound insulating properties as well. Jerry Stewart said that was correct.

- Size, location and design of signs;  
The Stewarts said they have not made plans for a sign yet and that they were aware of the Chester sign regulations.
- Performance Standards under Section 4.9 and,
- Other such factors as these Bylaws may include.

#### **4.9 PERFORMANCE STANDARDS**

In accordance with §4414(5) of the Act, the following standards must be met and maintained by all uses in all districts that are subject to a permit under these Bylaws.

**A. Noise:** noise volume shall be limited to the specified decibel levels listed below measured at the property line. (The sidebar is shown only as a reference to illustrate the decibel levels of typical activities.) Noise levels or frequencies which are not customary in the district or neighborhood or which represent a repeated disturbance to others shall not be permitted. Limited exceptions are allowed for incidental and customary activities, such as the occasional use of lawn mowers and snow blowers for regular property maintenance.

1. Noise shall not exceed 60 dB between 8:00 p.m. and 7 a.m.;
2. Noise shall not exceed 70 dB during the day between 7 a.m. and 8:00 p.m.

Gail Stewart said that the exterior yard will have acoustical fencing and the building will also have thick insulation and acoustical steel in the walls and ceilings. The steps that will be taken to keep the dogs calm in the kennel are aroma therapy, CD's of dog music playing at night, and special toys such as peanut butter bones. The dogs will not be allowed to go out at will, they will always be supervised. Gail told the Board about a successful kennel in Castleton that had 99 dogs the day of her visit and there was no barking. The kennel owner said that the kennel did not keep dogs that needed to bark, and when the dogs' needs are met, they don't bark.

When asked about supervision at night, Gail said she plans to have a camera at the kennel linked to her phone which would allow her to monitor the kennel.

Amy O'Neil discussed the letter from Graham Morris in the booklet. She verified that the letter predicted a decibel level of 49 at the property line if the noise at the source in the building is a maximum is 115 decibels. Kelly Arrison stated he found several places on the internet that said the peak noise in a dog kennel is 135 decibels. Amy O'Neil asked the Stewarts if they could have their engineer calculate the decibel level at the property line given a decibel level of 135. She also questioned the reasonableness of a noise

level of 135 decibels created by dogs, which is louder than a stock car race or jack hammer.

Kelly Arrison said he would print out the places where he saw the 135-decibel level. He questioned whether the letter from Graham Morris is discussing component testing and not the assembled building. Michael Normyle pointed out that the Morris letter did not include the impact of the Acoustifence, which can absorb up to 80% of the sound that strikes it.

Numerous people then spoke, including Michael Normyle, Many Jane Miles, Barre Pinske, Phil Perlah, Randy Miles, Amy O'Neil and Carla Westine. The following points were raised:

- Is it credible that a dog or dogs barking create 135 decibels of noise?
- Is it reasonable to ask the applicant to respond to an unsubstantiated assertion?
- The engineer's letter addressed the noise level on the north boundary of the property, which is the closest residence. It should also document the expected noise level on the south boundary of the property, even though the boundary is more than double the distance from the kennel building.
- Hiring a civil engineer to prepare a report which analyzes the sound characteristics of a proposed business and predicts the noise levels at the property boundaries is the most reliable way the DRB has to judge whether the Performance Standard in Section 4.9.A Noise has been met. It would be like hiring a surveyor for a lot subdivision or an engineer for a curb cut.
- Is the cost of hiring a sound engineer (said to be about \$2,000) a reasonable burden to impose on a small business?
- Is a reasonable to go to another, similar business in the area and measure the sound coming from that business as a way to predict how loud the proposed business would be?
- Should the DRB or the Town of Chester invest in a decibel meter?

The Board decided to ask Graham Morris, the applicant's engineer, to calculate the decibel level at the north, south and east property lines for a 135-decibel noise made in the kennel building. If the calculated decibel level is higher than the bylaw limits of 70 dB in the daytime and 60 dB at night, the applicant may present evidence that refutes the 135-decibel measurement of the peak noise in a dog kennel.

**B. Air Pollution:** no use shall create emissions, such as dust, fly ash, fumes, vapors, gases and other forms of air pollution, which:

1. Constitute a nuisance to other landowners, businesses or residents;
2. Endanger or adversely affect public health, safety or welfare;
3. Cause damage to property or vegetation; or,
4. Are offensive or uncharacteristic of the area.

Outdoor wood-fired boilers are exempt from this provision.

The Stewarts said they did not expect the kennel to generate any air pollution.

**C. Glare, Light or Reflection:** illumination from lighting fixtures or other light sources shall be shielded or of such low intensity as not to cause undue glare, reflected glare, sky glow or a nuisance to traffic or abutting properties. Lights used to illuminate parking areas and drives shall be so arranged and designed as to deflect light downward and away from adjacent residential areas and public highways. Lights shall be of a "down shield luminaire" type where the light source is not visible from any public highway or from adjacent properties. Only fixtures which are shielded to not expose a light source, and which do not allow light to "flood" the property, are permitted to be attached to buildings. Searchlights are not permitted. The Development Review Board may require a lighting plan under conditional use or planned unit development review procedures.

The Stewarts planned to have downward shielded lights at each of the three doors, but no other lights, as the street light is close by.

**D. Safety Hazards:** Fire, explosive and similar safety hazards which would substantially increase the risk to an abutting property, or which would place an unreasonable burden on the Fire Department, shall be prohibited.

The Stewarts did not anticipate any safety hazards from the project.

**E. Electromagnetic disturbances:** any electromagnetic disturbances or electronic emissions or signals which will repeatedly and substantially interfere with the reception of radio, television, or other electronic signals, or which are otherwise detrimental to the public health, safety and welfare, beyond the property lines of the property on which it is located, except as specifically licensed and regulated through the Federal Communications Commission.

The Stewarts did not anticipate any electromagnetic disturbances from this project.

**F. Underground Storage Tanks, Ground/Surface Water Pollution:** No use shall result in burying or seepage into the ground of material which endangers the health, comfort, safety or welfare of any person, or which has a tendency to cause injury or damage to property, plants or animals. Commercial, industrial or institutional facilities having underground fuel storage shall maintain all tanks and related equipment with leak detection and spill control systems incorporating the best available safety practices and technology, consistent with government and industry standards.

The Stewarts said that there were no underground storage tanks on the property. The dog waste would be picked up daily so they did not anticipate any surface water pollution.

Kelly Arrison said that the flat land at the river's edge was classified as prime agricultural soil by the State of Vermont and that the land on the slope, being too steep for machinery, was classified differently. He was concerned that rain water passing over the dog feces not picked up would run down the steep slope and pollute the Williams River. Amy O'Neil asked Kelly Arrison where he obtained this information about the agricultural soils. He replied that he had consulted state maps.

Gail Stewart responded that the dogs would always be supervised when they were outside the kennel. Amy O'Neil said the permit will allow an officer of the town to inspect

for the presence of dog feces. There were no other comments about storage tanks or water pollution.

Carla Westine then proposed to recess the hearing until June 26, 2017, so the following information and documents could be obtained: a letter from the Fire Chief evaluating the impact of the project on his department, information about which portion of the property is in the flood hazard area, and data from Graham Morris about the noise level at all boundaries of the property if, at the source of the noise, the decibel level is 135.

### **Agenda Item 6 Drew's All Natural Conditional Use application**

Carla Westine polled the board to see if any member had had any ex-parte communication on this matter or if any member had a conflict of interest. No member did. John Cummings, Josh Rourke and David Hambright were sworn in to give testimony in this matter. Josh Rourke then gave a history of the application. As Drew's started the construction authorized by their previous permit (#477) they realized that their operation would be hamstrung by a lack of warehouse space. Rather than wait a few years and disrupt their shipping area a second time with a second round of construction, they decided to ask the Board now for an amended permit in order to build the larger space as one project

The documents presented as evidence were then entered as exhibits. The first exhibit was a one-page narrative dated April 26, 2017 from Josh Rourke of ID3 Designs, addressed to Michael Normyle. The narrative describes the amendment sought to Permit #477 and the impact the amendment would have. Amy O'Neil moved to accept the narrative as Exhibit A. Phil Perlah seconded the motion. A vote was taken and the motion passed.

The second document was two pages of laboratory results from Endyne Inc marked Before and After. The sheets are dated 3/8/16 and 4/12/17 and refer to work orders 1603-04518 and 1704-07505. Amy O'Neil moved to accept the lab results as Exhibit B. Phil Perlah seconded the motion. A vote was taken and the motion passed.

The third document was a Town of Chester Application for hearing before the Development Review Board dated May 9, 2019. The Project number is 502, the appellant name is Drew's and it is signed by Josh Rourke and Michael Normyle. Amy O'Neil moved to accept the application as Exhibit C. Ken Barrett seconded the nomination. A vote was taken and the motion passed.

The fourth document was a Town of Chester Notice of Public Hearing Before the Development Review Board, dated May 9, 2017. The Property Owner is Drew's All Natural, the location is 926 VT Route 103 South. Amy O'Neil moved to accept the Notice as Exhibit D. Phil Perlah seconded the motion. A vote was taken and the motion passed.

The fifth document was double sided. One side had a letter from Josh Rourke to Chief of Police Richard Cloud regarding traffic safety for the proposed amendment. The other side was a letter on Town of Chester letterhead from Chester Police Chief Richard Cloud to Zoning Administrator Michael Normyle, dated May 31, 2017. Chief Cloud states that traffic safety and parking will not be an issue for this project. Amy O'Neil moved to accept the letter as Exhibit E. Ken Barrett seconded the motion. A vote was taken and the motion passed.

The sixth document is a letter from Jeff Holden, Water/Wastewater Superintendent addressed to the Development Review Board, dated June 6, 2017. It states that the proposed expansion will

not require an additional allocation of water or discharge that is currently allotted for the facility. Jeff Holden asks to be notified of any plans to increase the waste produced at the facility. He also noted that his department requires as-built drawings of the water and wastewater installations when the project is complete. Amy O'Neil moved to accept the letter as Exhibit F. Ken Barrett seconded the motion. A vote was taken and the motion passed.

The seventh document is a letter from Jeff Holden, Water/Wastewater Superintendent addressed to the Development Review Board, dated June 1, 2015. It states that the town has the capacity to handle the proposed volumes. Jeff Holden asks that the proposed Membrane Bioreactor pretreatment system will be in place and operating prior to any more increase in high strength discharge into the wastewater system. Amy O'Neil moved to accept the letter as Exhibit G. Phil Perlah seconded the motion. A vote was taken and the motion passed.

Michael Normyle explained that the 2015 letter was included to document the fact that as-built drawings had been requested in 2015 and still had not been received by 2017.

The eighth document is a letter on Drew's stationery from John Cummings dated May 11, 2017, addressed to Committee Members, and accompanied by eight pages of laboratory reports documenting the favorable change in BOD levels discussed in the letter. The letter states that Cedarwood Engineering Services has created a solution to the relatively high concentration of biochemical oxygen demand in the waste water. This solution was implemented in August, 2016 and monthly WR-43 reports have been acceptable since then. Amy O'Neil move to accept the letter as Exhibit H. Ken Barrett seconded the motion. A vote was taken and the motion passed.

The ninth document is seven pages of blueprints, drawings and site maps. The first six sheets are titled A-001, A-101, A-103, A-104, A-201, and A-202 and dated 5/17/17. The last sheet is entitled Drew's Warehouse Sketch 4/27/17. Amy O'Neil moved to accept the sheets as Exhibit I. Ken Barrett seconded the motion. A vote was taken and the motion passed.

Chair Carla Westine asked the applicants about the as-built drawings for the water and wastewater systems. The original permit had required that those drawings be filed with the Town of Chester Water/Sewer Superintendent (Jeff Holden). Jeff Holden stated in his June 6, 2017 letter that he had not yet received those drawings. The applicants responded that there had been a misunderstanding about the drawings and they would be sent to Jeff Holden immediately. Carla Westine asked whether the current proposed warehouse expansion would impact the level of biochemical oxygen demand (BOD) in the plant's wastewater. John Cummings said it would not. He said that he understood Chester was nearing the full capacity of the Wastewater Treatment plant and that the town would require as much advance warning as possible of an increase in demand. He said that, when Drew's made a decision that would increase the wastewater volume, the town of Chester would be the first to be told about it.

Carla Westine asked if the larger warehouse still met the setback requirements for the Residential-Commercial District and the lot coverage requirements. The applicants testified that it did. Carla Westine asked if there would be an increase in traffic as a result of the expansion. John Cummings said that traffic would decrease because currently daily trips are being made to off-site storage locations in Claremont. Those trips would no longer be necessary. Amy O'Neil asked if trucks would still be able to turn around on the property and not have to back out onto a town road. John Cummings said they would.

Carla Westine asked if the applicants had requested a letter from the Chester Fire Chief asking for his evaluation of the project. The applicants said they had. Carla Westine asked what steps

would be taken in the new warehouse to insure fire safety. Josh Rourke said sprinklers will be installed everywhere and the width of the fire lane was being increased to allow fire truck access around the entire building. He said the building was compliant with NFP101 code. Amy O'Neil asked the Board if they thought it would be OK to close the hearing without a letter from the Fire Chief. Carla Westine said perhaps the Board could make obtaining a letter from the Fire Chief a condition of the permit. Amy O'Neil asked Josh Rourke if the sprinklers were being installed because of the size of the warehouse. Josh Rourke said that new regulations required sprinklers for every new project.

Phil Perlah asked about Section 4.9 Performance Standards. The applicants testified that there would be less noise on the property because there would be fewer truck trips daily. There would be no new flood lights. All lights would be downward facing. There would be no electromagnetic interference generated. Landscaping specified in the original permit is still to be done, as the construction is not complete. The company plans to maintain the natural buffer of trees around the building on the land they own.

The applicants said the exterior of the building, including the proposed new warehouse, were finished in the "Vermont vernacular" style, with a mixture of vertical wood and metal in barn red. The Board looked at Section 4.8.C.3.d of the Unified Development Bylaws which require elements of "New England Architectural Character" in new buildings in parts of the Residential Commercial District. It was determined that the planned buildings had several of the desired features listed in the bylaw and met the requirement of four.

The applicants asked if the Board could be polled on how they expect to vote. All four members said they were inclined to approve the amendment. Carla Westine said she regretted not having a letter from the Fire Department, but given that the building would be sprinklered and Drew's was working with the state Fire Marshal she did not think this was a dangerous decision.

Amy O'Neil moved to close the hearing. Phil Perlah seconded the motion. A vote was taken and the motion passed.

The agenda then being complete the meeting was closed.