

# **Zoning Board of Appeals Meeting Minutes**

**Jeffrey Demers, appellant**

**Town of Lyman**

**July 13, 2021**

***Note: These are summary minutes. A recording of the meeting is on file at the Lyman Town Hall. Minutes are not verbatim. Minutes may be paraphrased for clarity. Minutes are draft until approved by the Board of Selectmen.***

**Members Present:** Chairman Tom Larned, Arthur Dumas, Bruce Fearon, and Russ Outhuse (1<sup>st</sup> alternate)

**Others Present:** Planning Board Chairman Roderick Tetu, Vice Chair Donald Herson, and interim CEO Richard Lambert; David Alves, Joseph Lenkowski (attorney for Mr. Alves); Jeffrey Demers

**The Chairman called the meeting to order at 6:01 pm.**

Welcome to the July 13th, 2021 hearing of the Town of Lyman Zoning Board of Appeals. My name is Tom Larned, Chair. Members of the Board, from my left, are Art Dumas, Russ Outhuse and Bruce Fearon

Donna Richard is our clerk and Rod Tetu and Don Herndon are present from the Planning Board. Richard Lambert, Code Enforcement Officer.

Appellant Jeff Demers was introduced by the Chairman and Mr. Demers advised that he is representing himself and other members of Wadleigh Pond. He also advised that to his right was Greg Chetkins, licensed State of Maine engineer.

This hearing will come to order. This is a public proceeding and, unless the Board specifically votes to go into executive session, you have the right to hear everything that is being said and to look at all the exhibits that are offered. Please notify the Chairman if you are unable to hear or see. At this time, please silence all cellphones or any other noise-making devices.

The Board works from a prepared agenda and will be considering the administrative appeal of Jeffrey Demers to overturn a Planning Board decision to approve a medical marijuana growing facility on Revere Way/ Raegan Lynn Road proposed by David Alves.

The burden of proof is upon the applicant to demonstrate compliance, or, in this case, non-compliance with the provisions of the applicable ordinance or ordinances.

After the Board votes on the merits of the application, it will prepare a written opinion.

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Appeals from adverse decisions must be filed with Superior Court within 45 days of the Board's decision. Also, to be certain that you preserve your individual right to file any such appeal, you must be certain that this Board's record evidences your appearance this evening and the basis for your support or opposition. Please record your attendance on the sign-in sheet by printing and signing your name. Remote attendees will be recorded by the meeting moderator.

Again, remember this is a public proceeding and you have the right to hear and see what is happening. All persons speaking will be asked to first state their name and address or affiliation.

Are there any questions?

**Preliminary business:**

Quorum: A quorum of the ZBA shall consist of three members. As only three members and one alternate observer are present for this meeting, I must advise you that you may request the meeting be postponed to a later date in the hope of a full board.

***Appellant Jeff Demers asked what would happen if the decision ended in a tie. Chairman advised that it is not permissible and that a decision would be made before the meeting would be able to adjourn. They would continue to deliberate." at that point.***

Timeliness of appeal. Planning Board decision May 19, 2021 – appeal filed June 17, 2021. (less than 30 days from the decision)

A quick summary of this appeal: Wadleigh Pond Road will not support the increased traffic, erosion control and storm water runoff issues are not certified by a professional engineer, and the water supply for fire protection is not addressed.

Section 8.3.9 of the Zoning ordinance states: The Zoning Board of Appeals shall be on an appellate basis and shall be limited to a review of the record developed before the Planning Board. Any appeal from a decision of the Zoning Board of Appeals under this section shall be made to Superior Court within 45 days after the date of that decision.

Do any of the Board members have a direct or indirect pecuniary interest in the subject matters of the application?

**No board members had any direct or indirect interest.**

As an abutter, and with financial responsibility for road maintenance, the applicant has standing to appeal.

After the preliminary business meets the satisfaction of the Board it can proceed with its substantive review.

Presentation by the applicant and his/her attorney and witnesses, without interruption;

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Planning Board member Don Hernon submitted memos to the Board for review. He also gave copies to appellant and to Mr. Alves.

He referenced under memo that it contained background material from the original submittal and appeal.

He advised that there was a notice of decision on the original application and that this was a new application, not a revised application.

The memos will be attached to the end of the minutes but pertained to “standing” of an appeal.

Reference material and background information on the memos along with comments. Don referenced page 2. Notice of decision was for a new application and not a revised. Date submitted by applicant on May 19<sup>th</sup> was a new application and not a revised application as the original was appealed and overturned.

He referred to the MMA Planning Board Manual which states that actual participation in Proceedings is required. Anyone wishing to appeal must attend the local hearing process. The appellant was only present briefly. He entered the room, took a picture and did not sign in. Therefore, the Planning Board agrees that Mr. Demers did not participate and therefore does not have standing to appeal the Planning Board.

He requested that the ZBA is requested to clarify the standing of both the Planning Board members and Mr. Demers regarding this project.

Zoning Board of Appeals reviewed the MMA Manual section referenced. Planning Board chair advised that if they allowed this appeal to go through, it would inadvertently allow anyone to appeal a planning board decision even if they never attended a hearing.

Planning Board does not even believe the appellant is an actual abutter of the project. ZBA chair asked the appellant if he was an abutter. Mr. Demers explained that he owns land that is a direct abutter to the project but it not yet built on. Mr. Demers went on to say that he wanted to comment on the Planning Board’s argument that he did not attend the meeting. Mr. Demers showed the registered letter arrived on Tuesday May 4<sup>th</sup> and that the meeting was on the 5<sup>th</sup>. He already had a commitment. He also said that the meeting on May 18<sup>th</sup> had no agenda posted and he did not have any idea it was going to be on the agenda.

The Zoning Board of appeals felt that Mr. Demers technically had standing being an abutter. Mr. Demers was asked to show on the map where in relation to the project his property was.

Mr. Demers showed where his property and that of his family was located. Mr. Demers advised that he disagrees that he is not an actual abutter.

Mr. Alves then approached the map and showed that the project is off the map being used.

Mr. Larned, from ZBA asked that as an abutter, they would be personally affected due to increased traffic but asked if the appellant would have standing since he did not attend the hearing. He asked other members of the board their thoughts. The original decision that was voted on following the ordinance was voted on but still questioning whether or not he has standing or not.

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They do not believe he is an actual abutter, but would be affected by it. Mr. Larned believed they should move forward with the hearing despite what the MMA policy said that appellant should attending public hearing. Audience member accused them of making up their own rules.

Planning board member does not believe Mr. Demers did not even need to be notified as he was not an actual abutter. Chapter 4 of the Manual for local land use was cited. It states that if a citizen can demonstrate has or will suffer from a decision, that citizen has standing to appeal. Person must show how they would be personally affected.

He asked if Mr. Demers would suffer more than the general public by this project. There is no road association that would be affected. Wadleigh Pond Rd may see extra traffic or storm water issues, but not more so than the general public.

ZBA Chair Tom asked if they are ready to vote on standing. Mr. Demers asked about the five reasons for appeal. Chair asked Mr. Demers why he would have more standing than anyone else for an appeal as a non abutter.

He advised he walked the road, excessive traffic. He believes the odor would affect his family's enjoyment of his back yard. Odor controlled was addressed.

Mr. Demers mentioned issues with blue baby syndrome, nitrates and the water supply. Drainage issues would come in to affect water supply in his opinion. He is very nervous about water supply.

Edward Titcomb came forward to discuss the standing issue. He said they shouldn't lose site of the fact that the public hearing held on 5/18/21 prior to the site walk was held. The appellant may not have received the correct date on time, but he did show up and take a picture. If he was able to be there, he could have objected at that point that did not allow him to plan ahead. The situation now with exhibits and information are the kind of evidence that should be heard at a public hearing.

Mr. Larned, chairman once again said we are back to standing. If appellant does not have abutting property and can't demonstrate any more hardship than any other member of the public and he was not at the hearing to object at that point, he asked again if they are ready to vote.

**Chair asked all those in favor of continuing hearing:                      Vote 3-0 with 1 abstaining**  
**Chair asked all those opposed to continuing say Nay:                      Vote 3-0 with 1 abstaining**

Mr. Demers addressed the board and said that the Planning Board should never have approved the 2<sup>nd</sup> application while the 1<sup>st</sup> application was being appealed. He said a permit with condition should not have been approved since there was no significant change.

Chair advised that Mr. Demers appealed the planning board decision and without standing a public hearing was not being held.

If someone were appealing and had standing they would be hearing those arguments. With no case, there was no hearing.

Mr. Demers continued to argue that he was not notified and therefore did not have time to prepare. He was given the wrong date and it was never on the agenda.

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Mr. Demers said he was ready to move on and was fine with their decision.

Some continued audience comments were stated but unable to be heard well enough to be able to transcribe.

Mr. Demers once again said he was fine with their decision and had processes he would continue to do.

Motion to adjourn at 6:51

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Tom Larned, ZBA Chairman