



**Town of Hermon**  
**Public Safety Meeting Room**  
**January 20, 2022**  
**Town Council Meeting**  
**7:00 PM**  
**MINUTES**

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\*\*\*ALL ITEMS ARE SUBJECT TO APPROPRIATE COUNCIL ACTION\*\*\*

**I. CALL TO ORDER BY CHAIRPERSON**

**II. PLEDGE OF ALLEGIANCE**

Chair Thomas led those in attendance in the Pledge of Allegiance

**III. ROLL CALL**

- Members Present:** Ronald “Ron” Murphy, Charles Lever IV, Steven “Steve” Thomas, Phillip “Phil” Richardson (arrived at 7:06pm.), John Snyder III, and Anthony “Tony” Reynolds
- Members Absent:** G. Stephen “Steve” Watson - excused
- Others Present:** Town Manager Howard Kroll, Town Clerk Kristen Cushman, Timothy Pease and Stephen Wagner; Town Attorneys, Scott Perkins and 5 guests

**IV. REVIEW CONSENT CALENDAR: REGULAR BUSINESS, APPOINTMENTS, SIGNATURES, And APPROVAL OF MINUTES:**

- SIGNATURES. –APPROVE**
- MINUTES. –APPROVE**                      **1/6/2022 Minutes**
- WARRANTS. –SIGN**                         **1/21/2022 Warrant**
- RESOLVES. –SIGN**

**Councilor Murphy moved to approve the Consent Calendar as presented. Councilor Snyder seconded the motion. Motion passes 5-0.**

**V. NEWS, PRESENTATIONS AND RECOGNITIONS:**



VI. PUBLIC ITEMS OR COMMENTS: *(Items Not Already on Agenda)*

VII. PUBLIC HEARINGS:

VIII. COMMITTEE REPORTS:

IX. SCHEDULED AGENDA ITEMS:

A. OLD BUSINESS:

**Councilor Reynolds made a motion to waive the rules and add to the agenda a presentation from Stephen Wagner regarding Fuel Storage in Village District. Councilor Murphy seconded the motion. The motion was accepted unless doubted. Motion carries.**

**Stephen Wagner, Town Attorney:**

**QUESTION PRESENTED**

**This memorandum responds to the Council’s request for a legal opinion as to whether the Board of Appeals erred when it determined a proposed 8,000 square foot convenience store with fuel stations is allowed in the Village Commercial District.**

**SHORT ANSWER**

**The Board of Appeals did not err. The C&K Variety proposal is an allowed use in the Village Commercial District.**

**ANALYSIS**

**I. Background**

**The C&K Variety Application for Site Plan Review proposes to “construct a new single story, 8,000sf, C-Store with fuel stations” on the existing 5.24-acre parcel identified as Map 27, Lot 20, and zoned as Village Commercial. In approving this application, the Planning Board concluded, inter alia, that the proposal complied with the Town of Hermon Land Use Ordinance. This means the Planning Board implicitly concluded the use is allowed in the Village District. Various abutters timely appealed the Planning Board’s decision. The application for appeal raised four discrete issues, one of which was that the Planning Board erred in approving the application because “Fuel Storage” is not allowed in the Village Commercial District. On this issue, the Board of Appeals concluded the Appellants did not meet their burden to prove the Planning Board committed clear error in determining the use is allowed because the proposed use is not “Fuel Storage” and it meets the definition of “Retail Store Class 2.”**



## II. The Board of Appeals Did Not Err

For the following reasons, the Board of Appeals did not misinterpret the Ordinance and did not err in concluding the proposed use is a Retail Store Class 2 and not Fuel Storage. The Board of Appeals correctly identified that the parties appealing a decision of the Planning Board have the burden to prove the Planning Board committed an error in any order, requirement, decision, determination, action or failure to act involving an interpretation of the provisions of the Ordinance or a findings of fact. Land Use Ordinance, §§ 154.279, 154.281(B). Opponents of the C&K Variety proposal primarily argued on appeal that the proposed use was not allowed in the Village Commercial District because it involves the storage and sale of fuel and “Fuel Storage” is a use not permitted in the Village Commercial District.

The interpretation of what an ordinance provision means is a question of law, which must be answered by examining the “plain language” and construing it “reasonably in light of the purposes and objectives of the ordinance and its general structure.” *Stewart v. Town of Sedgwick*, 2002 ME 81, ¶ 6, 797 A.2d 27. Regardless of its plain meaning, however, an ordinance must be construed “to avoid absurd, illogical or inconsistent results.” *Kurlanski v. Portland Yacht Club*, 2001 ME 147, ¶ 9, 782 A.2d 783. Further, as a derogation of the common law principle that one is entitled to use their own land for any lawful purpose, ambiguities in zoning ordinances must be strictly construed in favor of the property owner. *Forest City, Inc. v. Payson*, 239 A.2d 167, 169 (Me. 1968). This is especially true when an ordinance, like Hermon’s Land Use Ordinance, does not say that any use not *specifically* allowed is prohibited. See Land Use Ordinance, § 154.046(C). An appellate board or court does not defer to the lower body’s interpretation of ordinance because it is a question of law. *Id.* But the characterization of whether a proposed use falls within the scope of the definition of an allowed use is a mixed question of law and fact, which a court or appellate board must uphold unless it is entirely unreasonable. *Lamarre v. Town of China*, 2021 ME 45, ¶ 16 n. 6, 259 A.3d 764.

- A. A convenience store with gasoline sales in not inconsistent with the stated purpose of the Village Commercial District.

Opponents of this proposal argue the description of the Village Commercial District does not explicitly list a convenience store with gas pumps as an allowed use. That is true. But that does not mean this purpose statement prohibits a convenience store with gas pumps. The stated purpose of the Village Commercial District is as follows:

This district is established for new commercial development in the form of mercantile and service businesses which draw their markets locally rather than regionally. This district is intended for the conversion of many of the existing dwellings in the area into a mix of home/offices for professionals who need access to the motoring public (e.g. real estate, insurance, family practice physicians, psychologists, dentists, chiropractors, etc.) and conversions into retail or service businesses (such as restaurants, beauty/barber shops, specialty stores, etc.), with one or two shopping plaza projects. In order to continue the traditional village mix of uses, new residences shall be permitted in these areas.



Land Use Ordinance, § 154.041(E).

This description appears in a section entitled “purpose of districts.” Purpose sections of ordinances are at most rough guides for interpreting ambiguous definitions; a purpose section alone has no legal effect and cannot be grounds for a decision to conclude a use is not permitted. *Stewart*, 2002 ME 81, ¶ 12, 797 A.2d 27. Further, the argument that this purpose statement prohibits a convenience store that includes some gasoline sales is contrary to the plain language. The district is established for the purpose of “new commercial development in the form of mercantile and service businesses.” Land Use Ordinance, § 154.041(E). This is plainly broad. “Commercial use” is defined as “[t]he use of lands, buildings, or structures, other than a ‘home occupation’, defined below, the intent and result of which activity is the buying and selling of goods and/or services, exclusive of rental of residential buildings and/or dwelling units.” A convenience store with gasoline sales, a use that primarily consists of the sale of goods to consumers for profit, is inarguably a mercantile business that constitutes a “Commercial Use.” The second sentence of this section is not applicable to this situation. It lists examples of certain service establishments, which are unlike a convenience store with gasoline sales. But the examples do not modify or limit the scope of the types of commercial uses allowed generally. Rather, they illustrate the limited types of uses anticipated in residential dwellings that are converted to commercial use. Here, the proposed use at issue concerns a new commercial structure replacing an existing commercial structure, not the conversion of a residential dwelling to an entirely new commercial structure and use. Therefore, the second sentence does not in any relevant way limit the types of commercial uses allowed generally in the Village Commercial District.

B. A convenience store with gasoline sales is not “Fuel Storage”.

It would have been reversible error for the Board of Appeals to agree with Appellants that the proposed use constitutes “Fuel Storage,” a use not allowed in the Village Commercial District. “Fuel Storage” is not defined in the Ordinance, resulting in an ambiguity. But when reviewed in light of the entire Ordinance, it is clear the meaning of “Fuel Storage” is narrow and not so broad as to mean that any business that includes any degree of fuel storage must be characterized as “Fuel Storage” for purposes of zoning.

“Fuel Storage” is characterized in the table of uses as an “Industrial Use.” Land Use Ordinance, § 154.046. “Industrial” is narrowly defined as “[t]he assembling, fabrication, finishing, manufacturing, packaging or processing of goods, or the extraction of minerals.” *Id.*, § 154.009. A convenience store that sells fuel is not engaging in the activities of packaging, processing, or manufacturing. Further, the categorization of certain other uses as industrial—such as Recycling Facilities, Sawmills, Storage of Pulpwood or Logs for Shipping, etc.—implies that industrial uses include bulk storage for wholesale but not the individual sale of certain goods in small quantities direct to consumers. *Id.*, § 154.046; *State v. Ferris*, 284 A.2d 288, 290 (Me. 1971) (“when words of enumeration are immediately followed by words of general import the general words, when their use is unclear, should be governed by the specific.”). Put in this context, “Fuel Storage” must be interpreted to mean the wholesale or bulk storage of fuel as the primary business activity. Other sections of the Ordinance support this interpretation. For example, the sale and incidental storage of gasoline is explicitly



allowed as part of a number of uses allowed in the Village Commercial District, such as “Automotive Service Stations” and “Neighborhood Grocery Stores.” Land Use Ordinance, § 154.009. This undermines the argument that fuel storage of any kind may only be located where “Fuel Storage” is allowed.

Board members also permissibly looked to real-world examples of fuel storage in Hermon and nearby communities to understand the scope of this undefined use. They reasonably concluded that “Fuel Storage” means uses consisting of large above-ground tanks that store fuel for delivery by home heating companies or for shipment by rail, such as Dysart’s and Maine Energy. Further, the Board found that gas stations lawfully exist and operate in the Village Commercial District, some as close as 100 yards away, and reasonably considered this evidence that “Fuel Storage” is not so broad as to include gas stations.

After concluding the proposed use was not “Fuel Storage,” the Board reviewed what other allowed uses would encompass a convenience store with a limited number of fuel pumps. It correctly concluded that because the proposed structure exceeds 2,000 square feet, it is not a Neighborhood Grocery Store. It determined that this proposed use met the definition of Retail Store Class 2 because gasoline is a “good” and this use allows the sale of goods in small quantities (i.e. not bulk sales). “Good” is not defined. The common meaning of good in this context, as supplied by Merriam-Webster, is “something that has economic utility or satisfied an economic want” and also as “something manufactured or produced for sale.” <https://www.merriam-webster.com/dictionary/good> (last visited Jan. 20, 2022). In light of this broad common understanding of the word, the Board did not err in concluding fuel to be a type of good. Again, Maine law provides that ambiguities must be resolved in favor of the applicant, especially when the ordinance states that uses substantially similar to an allowed use must also be interpreted as allowed. Further, if the drafters of Hermon’s Land Use Ordinance intended for gasoline to be sold only at Neighborhood Grocery Stores or Automobile Service Station, it could have so stated. See *Oakland Mfg. Co. v. Lemieux*, 98 Me. 488, 490, 57 A. 795, 796 (1904) (“It is fair to presume that if the legislature had intended such a result it would have expressed that intention in unmistakable terms.”).

While one could argue gasoline sales are prohibited at Retail Stores by implication because gasoline sales are specifically allowed as part of a Neighborhood Grocery Store or Automobile Service Station, such logic is contrary to the long-established common law of zoning that forbids the extension of limiting language by implication, absent language authorizing such liberal construction of an ordinance. 6 Zoning and Land Use Controls § 36.03 (2021) (“Zoning regulations should not be extended by implication to cases not clearly within their scope and purpose.”) Based on the site plan and testimony about the physical layout and anticipated volume of gasoline sales, the Board made a factual determination that this proposed use was a Retail Store Class 2.

Even though it is possible others may reasonably disagree with this determination, no court would likely reverse this decision because it is a factual determination based on substantial evidence in the record. *Town of China*, 2021 ME 45, ¶ 16 n. 6, 259 A.3d 764. Moreover, it would not matter if the Board of Appeals erred in concluding the use was a Retail Store Class 2 because the Appellants arguably raised only the issue of whether the proposed use



constituted “Fuel Storage” or not and, therefore, the Board arguably did not even have to identify an applicable allowed use in order to lawfully deny the appeal.

In short, the Board did not err when it determined the proposed use was not “Fuel Storage” and is allowed use in the Village Commercial District. That being said, we acknowledge the Land Use Ordinance is ambiguous on this point and it would be prudent for the Council to resolve this. Prospectively, the Council could define Fuel Storage and amend the Ordinance to state that gasoline sales are prohibited except as part of certain uses or that the sale of goods may include the sale of a limited volume of fuel directly to consumers.

## B. NEW BUSINESS:

**Scott Perkins:** Present (2) TIF district creation projects: Hermon Family Dental P.A. and Bouchard & Sons Towing, Inc

Hermon Family Dental is located at Danforth’s Plaza-2402 US Route 2, Suite E, Hermon, Maine 04401. The owner, Dr. Ben Phillips, DDS, operates a family dentistry practice including a wide and varied list of cosmetic and preventive services. Hermon Family Dental has outgrown its space at Danforth’s Plaza and intends to complete a project at Map 35, Lot 003 on the Hermon Tax Maps. Company goals include maintaining ten current positions in Hermon and to grow their current business by adding eight future employees in administrative support, executive and technical fields.

It is proposed that the Town of Hermon create a tax incremental finance district for Hermon Family Dental at Map 35, Lot 003 on the Hermon Tax Maps. The Town of Hermon and Hermon Family Dental propose that Hermon agrees to capture 100% of the new value created for 30 years and return 40% of the paid real estate taxes generated by captured new value to the owner, Ben Phillips for a period of 7 years beginning with the tax year 4-1-2023.

Bouchard & Son’s Towing is located at 12 Southgate Drive, Hermon, Maine 04401 on Map 8, Lot 2 on the Hermon Tax Maps. The owner, Wayne Bouchard has a growing auto service center and towing business that recently experienced significant fire damage on February 16, 2021. Reconstruction at the new facility included substantial increases in new assessed value. Founded in 1998, the company has grown its services to include 24-hour light and heavy vehicle towing, roadside emergency calls for lockouts, jump starts and accident recovery. The auto repair division covers both foreign and domestic car repairs and offers a full range of body work and paint services. Company goals include maintaining ten current positions in Hermon and to grow their current business by adding four future employees.

Additionally, the company contributes a substantial amount of excise tax and personal property equipment taxes to the Town of Hermon annually totaling \$25,879. It is proposed that the Town of Hermon create a tax incremental finance district for Bouchard Towing, Inc. at Map 8, Lot 2 on the Hermon Tax Maps. The Town of Hermon and Bouchard & Son’s Towing propose that Hermon agrees to capture 100% of the captured new value created for 30 years and return 40% of the paid real estate taxes related to the captured new value to the owner, Wayne Bouchard, for a period of 10 years beginning with the tax year 4-1-2022.



**R21-22-11** Consider and review proposed TIF & Credit Enhancement Agreement for Hermon Family Dental P.A. and schedule a Public Hearing on March 3, 2022

**Councilor Reynolds moved to approve R21-22-11. Councilor Murphy seconded the motion. The motion was accepted unless doubted. Motion carries.**

**R21-22-12** Consider and review proposed TIF & Credit Enhancement Agreement for Bouchard and Sons Towing Inc. to schedule a Public Hearing on March 3, 2022

**Councilor Reynolds moved to approve R21-22-12. Councilor Snyder seconded the motion. The motion was accepted unless doubted. Motion carries.**

**C. WORKSHOPS:**

**D. OTHER ITEMS: (from Table Package)**

**X. APPOINTMENTS:**

Appoint personnel to various positions as required by Charter and State Statute.

**XI. MANAGER STATUS REPORT:**

**Manager Kroll thanked Mr. Wheeler for showing his property along with the easement area behind his property. The Town has reached out to Kiser and Kiser who has done other drainage projects within the town. We are waiting for a price and a timeline.**

**Jessefa Murphy has been hired for Code Enforcement Officer and Health Officer. Over the next year he will work towards obtaining certifications.**

**Thanked Gardner Construction and Public Works for their work this winter with the challenging storms.**

**Manager Kroll touched upon socially related challenges going on in the town. There are some segments of our population that probably need our help, but they're not going to come forward and seek it. He personally thanked Steve Thomas and his help in this matter.**





**XII. FINAL PUBLIC ITEMS OR COMMENT:** *(Items Not Already on Agenda)*

**Ernest Wheeler 20 Billings Rd: I know several of you people have been by the corner. I encourage all of you to stop in and see what's going on. I'm still going to continue to harp about gasoline, because that's a very important issue to me at 60 feet from my property line. Both FMHA and HUD, we still have considerations about 11 to 14 buildings being devalued for the benefit of one business. Construction on the site again, the soil is being moved greatly from one side of Hermon corner to the other. That creates a whole lot of dump truck traffic. Again, I'm concerned about the site plan, and we haven't seen any full site plans. And I appreciate the comments tonight.**

**XIII. COUNCIL ITEMS:**

**Tony Reynolds: Has the state been contacted regarding the pond?**

**Howard: No, but they will be involved in the process.**

**Phil Richardson: A resident reached out and asked about the plowing and sanding of the fire hydrant on the York Road. Scott Perkins will look into.**

**XIV. EXECUTIVE SESSION:**

Consider entering Executive Session for consultations with legal counsel per 1 M.S.R.A. § 405(6)(E)

**Councilor Murphy moved to enter Executive Session to discuss a legal matter per 1 M.S.R.A. 405 (6)(E). Councilor Richardson seconded the motion. The motion was accepted. Motion passes 6-0.**

**Executive Session started at 7:30 p.m.**

**XV. ADJOURNMENT:**

**Councilor Snyder made a motion to end executive session at 8:30 pm. and adjourn the council meeting. Councilor Reynolds seconded. With no objection the council meeting was adjourned at 8:30 pm.**

**Respectfully Submitted,  
Kristen Cushman, Town Clerk**

**Explanatory note #1:** All items in the CONSENT CALENDAR are considered routine and are proposed for adoption by the Town Council with one motion without DISCUSSION or deliberation. If DISCUSSION on any item is desired, any member of the Council or public may request the removal of an item for it to be placed in the regular agenda prior to the motion to approve the Consent Agenda.

**Explanatory Note #2:** In the interest of effect decision-making: At 10:00 p.m., the Chairman shall poll the Council and Town Manager to identify remaining items which shall be carried forward to the next Regular Meeting.

**Explanatory Note #3:** A Councilor who feels the need for the Council excusing his/her absence will make the request to the Town Manager or the Town Clerk prior to the meeting.