

Submitted by:

Approved by Select Board:

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Adele M. Suggs  
Admin Asst

**TOWN OF PHIPPSBURG  
SELECT BOARD MEETING MINUTES  
September 29, 2021**

*The Select Board convened at 5:00 p.m. at the Town Hall with Chairperson House, Board Members Mixon and Levene, and Administrator McLellan present.*

**I. Adjustments**

**Vote: Chairperson House motioned to move #1 under New Business, 30 Fuller Mountain Road, to the first item on the agenda which was seconded by Board Member Levene and passed by a vote of 3-0.**

**II. Unfinished Business**

**1. 30 Fuller Mountain Road.**

*The Board of Appeals (BOA) has given this situation back to the Select Board for them to decide on how to deal with the BOA decision regarding the noise nuisance. Board Member Levene has been doing some research and wanted to share her thought process going forward.*

*Chairperson House stated that this matter is for the Board to discuss with no more input so they can discuss what they are going to do.*

*Board Member Levene distributed some notes she prepared. She acknowledged that this is a difficult issue and reviewed her notes aloud to those present. (Reference 1 attached). Board Member Levene feels the Board needs to follow points outlined in Reference 1. It's an unusual case and quite complicated. She asked Chairperson House if she could ask Mr. Gurney some questions. Chairperson House allowed it. Board Member Levene proceeded with her questions (Reference 2 attached). Mr. Gurney asked after 30 years the Board wants him to come into Town Hall and fill out a permit to cut firewood on his own property? Board Member Levene stated she was not interested in answering Mr. Gurney's question she is interested in Mr. Gurney answering her questions. She would have preferred Mr. Gurney to engage in this process in a way that advocated for what he wanted. Mr. Gurney responded by saying that if he had the right information he would have; there was a lot of information that he didn't receive. Mr. Gurney also replied to Board Member Levene's question 2 and 3 of Reference 2, by saying that he is not willing to sign anything.*

*Again, Chairperson House reminded that the discussion was to be between the Select Board Members only. The Select Board has received all the information and needs to determine how to proceed.*

*Board Member Levene shared with the Board her opinion from the answers she received from Mr. Gurney and from the research she has done (Reference 2).*

*Chairperson House stated Board Member Levene is worried about the precedent that would be set by ignoring the CEO (Codes Enforcement Officer) and Board of Appeals decision, but Chairperson House's concern is the precedent that will be set if the Board signs a Consensual Agreement dictating hours of operation. Between the contractors in town and the fishing industry, it would go against the*

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*Comprehensive Plan which supports the fishing industry. The Board of Appeals directed the CEO, and the Board of Appeals is not supposed to direct the CEO; they do not have that authority. Board Member Levene responded with what she understands the legal process as when this decision came down to the Selection Board also had 45 days to take the Board of Appeals to court even though she would not have voted on it at the time if she was on the Board. When she read the MMA Code Enforcement Manual, she did not see anything that said it was inappropriate for the Board of Appeals to make that kind of direction to the CEO. Since it's a land use issue usually the complaint is about the Planning Board, but there can also be a complaint about the CEO which this complaint was. Their decision to direct the CEO seemed in line with how they explain the process in the CEO Manual. Board Member Levene is willing to speak with the Town Attorney about more detailed questions.*

*Chairperson House stated that if the Board were going to sign a Consent Agreement, they should have all been involved in the whole process. She did not like the way the process went.*

*Board Member Levene continued by stating the time for the Board to argue that is too late. Chairperson House agreed.*

*Board Member Levene does not want to take Mr. Gurney to court and would like to him make a deal that works for the CEO.*

*Select Board Member Mixon stated he believes he is coming from a third direction. He had a written statement prepared, his opinion, that he read aloud focusing on the violations (Reference 3 attached).*

*Chairperson House said she is glad the Board did an onsite visit. She believes Mr. Gurney has tried by waiting until after 7:00 a.m. When the Town doesn't have a Noise Ordinance, it's within reasonable hours; 7 a.m. to 8-9 p.m. is within reasonable hours. She did some homework and spoke to a Bath*

*Policeman and asked about the City of Bath Noise Ordinance; they do not have one and the policeman stated any hour after 7 a.m. to 9 p.m. is reasonable hours to them. Select Board Member Mixon added that it's difficult because it's subjective. What's reasonable to me may not be reasonable to you or*

*reasonable to someone else. Board Member Levene stated that this is something the Board needs to work out. She hears what Board Member Mixon is stating but what concerns her about his opinion is that the*

*Board is doing what the State Statute says the Board shouldn't override the decision of the CEO. Select Board Member Mixon stated that they are not overriding the decision of the CEO, but that the violation*

*has been addressed with the new configuration of the equipment and the way the business is being operated. Board Member Levene stated that if the CEO agrees with Board Member Mixon she would*

*agree but cannot until the CEO agrees that the violation that was stipulated by the Board of Appeals decision has been complied with. If he doesn't agree she is worried about the liability of our Town by*

*overstepping the authority of the State Statutes. She is not comfortable with it. If Chairperson House and Board Member Mixon are, it will be a 2-0 vote. Chairperson House has spoken with Jessica, the*

*Town Attorney, and her response was that it is up to the Select Board on how to proceed, uphold the appeal and how. Board Member Levene feels that should be the CEO's decision and not the Select*

*Board.*

**Vote: Board Member Mixon motioned that the current configuration has addressed the violation as stated in the Home Business Ordinance and as long as Mr. Gurney continues to**

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*[Handwritten signatures and initials]*

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**operate in a manner that does not put him outside that reasonable threshold, then he's abated the situation.**

*Chairperson House added "and operates within reasonable hours".*

**Motion was seconded by Chairperson House. Vote passed by a favorable vote of 2-1.**

*Steve Clark who was present asked if he could hear the motion as it was stated again, so that he can understand what is actually in the motion. Board Member Mixon explained that he is assuming there was a violation because the Board of Appeals found the violation in February. Based on his conversations held at Select Board Meetings and his observations at the site visit to the Gurney home, he believes Mr. Gurney has currently abated the violation and is not in violation of the Ordinance as of today. Board Member Mixon continued by saying that he doesn't find noise generated passes the threshold from reasonable to unreasonable, and his motion is to state that Mr. Gurney has corrected the violation, as of today, and he is no longer in violation of the Ordinance. Mr. Clark further asked if that rescinds the CEO findings of 8/18? Chairperson House responded that it is up to the Select Board to decide. Again, Mr. Clark asked if that rescinds the CEO actions, the violation notice to Cease-and-Desist that Mr. Gurney received? Chairperson House responded "yes." Select Board Member Mixon offered to make a specific motion to do that if Mr. Clark would like a second motion. Mr. Clark said that wasn't necessary that he was just trying to understand the details of what the motion meant.*

*Mr. Gurney will need to continue to work within reasonable hours and keep his current configuration. Mr. Clark said if that if the motion is to rescind the CEO order of 8/18 than he is asking that to be part of the official motion if that's what the Board's intent is. Mrs. Clark added that they would like to re-raise their request to have Chairperson House recuse herself due to a conflict of interest and bias and would like to have this request on the record to memorialize it. This conflict of interest was stated in a letter that the Clark's sent on 9/8 or 9/9. Chairperson House added that she didn't understand why the Clark's thought she was being bias, because if she was bias, it would be throughout the whole town as she feels she is looking out for the town; she is worried about the precedent this will set.*

*Mrs. Clark continued by saying from the day they filed this complaint last year, not one town official, other than the meeting with Jessica, has ever spoken with them about this situation. None of you ever asked us what was going on there, none of you ever asked us if the issue was abated. Lee Rainey to this day has never contacted us to talk to us about this, and she feels they are the ones that are being shut out of the process. You (Chairperson House) stated on September 1 that you told Mr. Gurney not to sign the Consent Agreement, that we came in good faith to the Town and was willing to work with, and that is a conflict of interest. Mrs. Clark has read the MMA guidelines, the Codes Enforcement guidelines, and the Town's Ordinances. She feels they have not been given the opportunity to speak with anyone and there wasn't any investigation that was done. She is raising it for the record to preserve it for an Appeal. Chairperson House stated that this issue never came to the Board until this summer. Select Board Member Levene added that the Board is rescinding his notice of violation without an investigation; just Select Board Member Mixon's investigation on a visit, one day. Select Board Member Mixon responded that his motion is based on his limited personal knowledge and interactions and the Board of Appeals meeting which the Clark's spoke to at length and the recent meetings at Town Hall.*

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*Mr. Clark interrupted by saying he respects the Select Boards decision, and he respects the Board as a whole, but without asking the key questions of the four complainers' present and not including that information in the process, you don't have any clue frankly whether Mr. Gurney has been in compliance when he said he was in compliance since August 18<sup>th</sup>. There is information that the Board doesn't know that they prepared for tonight and it's obviously not going to be heard at this meeting because that decision has been made. However, that information is relevant and critical to this decision. We have to avail ourselves on a quorum to have that heard. Mr. Clark reiterated what he said to Mr. Mixon if it is in fact going to be part of the motion that Lee Rainey's letter of August 17<sup>th</sup> was rescinded than that be part of the motion.*

*Select Board Member Mixon commented that without the letter being in front of him, he would not make that motion blindly. He doesn't take this lightly.*

*Chairperson House doesn't feel she is bias. She continued by saying if anyone thinks she is bias with Dan she feels she would have to step down as she would be bias with a lot of other people in town.*

*Mrs. Clark says they are dealing strictly with their complaint and the fact that they do not believe, throughout this whole process, that anyone in the town has taken the time to actually speak with them. You (the Select Board) did a site visit, but did you ask us if that is how he operates on a regular basis; he could have done that just for you, it could have just been a show.*

*Select Board Member Mixon stated that in his conversations during the Select Board meetings he specifically asked if the Clark's and Trebilcock's had witnessed some of what Mr. Gurney was saying and the answers at that point, not necessarily tracking it back to the February meeting, but that they had noticed a difference in the business, in the start time, where the machinery was from the side of the road to the center of the property and suspended burning.*

*Richard Quimby who was present wanted to say that the only guideline to go by for nuisance noise would be the State law, which is 70 decibels after 10 p.m. There is nowhere on Dan's property, at the edge of his property, that he exceeds 70 decibels at any time of the day with his chainsaw going or with his wood splitter going. He does not reach that threshold, Dan's decibel levels, at the most, were 60 at the edge of his property then there is a 50' barrier. So how can Lee Rainey find Dan Gurney a nuisance noise when he does not reach that threshold? Mr. Quimby's second point is the letter Lee Rainey sent to Dan said no internal combustion engines after 4 p.m. on Sunday, or something to that affect. That means that Dan cannot even drive his truck up his driveway.*

*Chairperson House wishes the Board had been more involved in this process. Board Member Levene totally agrees and feels this process is not a process that works for the town. Chairperson House continued that if she is going to sign something, she wants to be involved more than one day.*

*Mr. Quimby feels that Mr. Gurney is not in violation of any nuisance noise by any law in this town or the State, so where is the noise violation? Select Board Mixon added that he read the noise violation for the State, and it left him with more questions than answers. Select Board Member Levene stated that it is complicated and that is why they hire Lee to figure it all out.*

*Select Board Member Mixon asked Mr. Clark if he was referring to the Notice of Cease-and-Desist that was dated August 17<sup>th</sup>? Mr. Clark responded, "yes we are." To be clear, for the record, Select Board Member Mixon read the letter aloud (Reference 4 attached).*

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**Vote: Board Member Mixon motioned to rescind the Cease-and-Desist dated August 17, 2021, for the record, which was seconded by Chairperson House.**

*Board Member Levene highly recommends asking the Town Attorney what the potential liability is personally, to the Board and the Town if the Board rescinds the notice. She is very uncomfortable doing this without the advice of an attorney.*

*Chairperson House said personally the Board is not responsible and she has spoken with the Town Attorney about this as well. Her response was that the Board didn't enforce it so they Board doesn't have to vote to rescind it, but Mr. Clark has asked them to, so we can; it's our decision. Board Member Levene feels they are opening the town to legal liability and a potential lawsuit if the Board rescinds that violation. Select Board Member Mixon has also spoken with Jessica about this because of his perspective on things and although he didn't specifically ask her about the liability of rescinding this letter, but he did discuss what latitudes the Select Board have in a situation such as this. He feels comfortable maintaining his motion to rescind the order.*

**Vote passed by a favorable vote of 2-1.**

*30 Fuller Mountain Road is currently in compliance, will stay compliant, and will work within reasonable hours of operation.*

*Mrs. Clark asked when they could get something in writing about this. Board Member Mixon stated that the minutes are usually approved the following week. Mrs. Clark added that doesn't always happen; they have an appeal period, and they need to have the minutes. Chairperson House stated that she will get the Admin Asst to work on these minutes for approval next week.*

*Mr. Quimby asked about reasonable noise in the evening, if the Board would be using the State guideline of 70 decibels after 10 p.m. Chairperson House stated that if a town doesn't have a Noise Ordinance than it falls back on the State just like fireworks.*

*Mr. Gurney said that some of these people have lived here 10 years and some 5 years. He's been doing his business for 30 years and all of a sudden, this past year, raise this question. He doesn't understand it. Mr. Clark has been listening to this since he's lived there. Something should be said for that.*

*Chairperson House reminded Mr. Gurney to operate within reasonable hours. Select Board Member Mixon stated to Mr. Gurney that he could find himself in the same situation if he is found working within unreasonable noise levels. He's adjusted the way he is doing business to bring himself into compliance; but he needs to make sure he keeps that in mind while working. Mr. Gurney responded by saying he's going to have to move his wood splitter to some other pile on the property. Chairperson House told Mr. Gurney to be mindful of his neighbors and where he points the exhaust.*

### III. **New Business -**

1. Consider approval of Assessing Field Inspector job description.

*Back in February of 2020 the Board started reviewing the Personnel Manual which included the Assessing Field Inspector job description. The board worked with Contracted Assessor Wilson to bring this description up to date and it never got approved. Administrator McLellan provided the Board with a highlighted version so they could see the differences. Administrator McLellan does have the final copy for approval. Your employee, Julie, has been working with it very effectively, very comfortably, very*

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*productively on behalf of the Board and the taxpayers. It has proven itself; doing great within the hourly budget.*

**Vote: Board Member Levene motioned to accept the above job description, which was seconded by Chairperson Mixon.**

*The CAD Technician description had once sentence removed. This description was not produced for the workshop. It referenced loading the photographs taken in the field and that was never done by the CAD person. The CAD person just does the sketching. Assessor Wilson loads the photos. Her comfort level would be if both the job descriptions, in their final format after the workshop, were approved to go into the manual. The Board does not have the CAD job description. The CAD Technician description will be put on next week's agenda for approval.*

**Motion passed by a vote 3-0.**

#### **IV. Department and Committee Reports**

*Chairperson House met with Maine DOT, Road Commissioner - Curtis Doughty, and Fire Chief - Andrew Hart. It was a gentleman that Mr. Doughty used to work with years ago and if he says he's going to do something, he does it. He came down last week, drove around, and agrees that the Town needs grading. They don't have anyone to drive a grader right now, but they have something different that they use behind a truck; that will be down here in about two weeks. He also noticed all the trees and a lot of them that need to be cut down and back. He was going back to his office, prepare all the paperwork so he knows the right-of-way all down through, will call Mr. Doughty to set up an appointment, and get something going on tree cutting before winter. The gentleman from DOT thinks the overlay might be out to 2023. It was a good meeting.*

*Administrator McLellan had a conversation with Matt Craig from the Casco Bay Estuary about the Route 216 Feasibility Study that was done last year. They would like to re-kick start the energy level for this project as the draft of the study is complete and in draft form. Will need to figure out what to do with that information, get public input, look into grant funding, talking with Maine DOT. It was a productive conversation.*

#### **V. Administrator/Members of the Select Board Comments and Announcements:**

1. Sunray Rabies Clinic - Sunday, October 17<sup>th</sup> - 9AM to 12PM - Town Hall (Face masks are required). Dog registrations will be available.

*The Sunray Rabies Clinic will now be on Sunday, October 17<sup>th</sup> which is a change from Saturday, October 16<sup>th</sup>. The time is the same, 9-Noon, here at Town Hall. It is \$15 for the rabies vaccine. This information is available on the Town's website.*

2. Open committee positions.

*Administrator McLellan reminded of the open committee positions; he didn't read them aloud, but it is listed under Town Notices on the website and as an attachment to last week's meeting minutes.*

3. Transfer station winter hours: Monday, Wednesday, Saturday - 8AM-4PM.

*Last reminder of the transfer station winter hours listed above.*

*Select Board Member Mixon announced that archery season is upon us, and the full hunting season is*

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*coming; start thinking orange.*

*Chairperson House stated that this Saturday, October 2<sup>nd</sup>, there is going to be a Blood Drive at the Fire Department from 9 a.m. to 2 p.m. Appointments are preferred. There is a sign in front of the Fire Department with all the pertinent information. There is a link on the website with a phone number or you can look up American Red Cross on the Internet.*

**VI. Review and/or Sign:**

1. Payroll and Accounts Payable Warrants

**Vote: Board Member Mixon motioned to approve Payroll Warrant #30 & Accounts Payable Warrant #31 which were seconded by Board Member Levene and passed by a vote of 3-0.**

2. August 2021 Treasurers Report

*Board Member Levene has further questions about this report and would like it tabled once again.*

**Vote: Board Member Levene motioned to table the above Treasurers Report which was seconded by Board Member Mixon and passed by a vote of 3-0.**

3. Select Board Meeting Minutes September 8<sup>th</sup>

**Vote: Board Member Levene motioned to approve the above meeting minutes which was seconded by Chairperson House and passed by a vote of 2-0.**

4. Municipal Election Warrant

*This warrant is signed by the Select Board posting the time and place of the RSU election.*

**Vote: Board Member Mixon motioned to approve and sign the above warrant which was seconded by Board Member Levene and passed by a vote of 3-0.**

**VII. Public Forum**

*Planning Board Chair, Marie Varian, was present and stated that she had provided a copy of the Performance Guarantee for the proposed 14-lot subdivision off Parker Head Road to the Administrator. She is asking the Board to look it over and give their opinion on the wording of the document and that it is ok; there is no amount filled in. It was prepared by the Town Attorney. She does not need the Board's input prior to the Planning Board Meeting tomorrow night. Eventually they will have to settle for an amount. If the Board has any concerns, they can contact Ms. Varian directly.*

**Adjournment**

**Vote: At 6:06 p.m. Board Member Mixon motioned to adjourn which was seconded by Board Member Levene and passed by a vote of 3-0.**

Notes for Gurney Issue – Select Board meeting 9/29/2021

**Background**

Review prior decisions that can no longer be appealed:

1. Feb 23<sup>rd</sup>, 2021 – Board of Appeals unanimous decision (45 days to court)
  - a. Mr. Gurney's firewood business is a grandfathered home-business, and a business permit is not required.
  - b. Mr. Gurney is violating the nuisance clause of the home business land use ordinance.
  - c. BOA directed CEO – to initiate a consensual agreement process to resolve the violation of the land use ordinance
2. Aug 3<sup>rd</sup>, 2021 (30 days to BOA)
  - a. CEO issued a written notice requiring Mr. Gurney to sign the attached consent agreement by Aug 17<sup>th</sup> or else he could no longer operate his business without a business permit from the planning board.
3. Aug 17<sup>th</sup>, 2021 (30 days to BOA)
  - a. CEO issued a notice of violation and an order to cease and desist the operation of Gurney's business on his property

Review current decisions (still within statutory appeal time limit)

1. Sept 23<sup>rd</sup>: From BOA Chair: The appeal is without merit, because the appeals board can't hear the case there is nothing to hear because all avenues have been exhausted. This means that the appeals board is out of the, Clark/Treblicock case. (45 days to appeal at court)

Review Town Ordinance language that references legal action:

1. From Land Use Ordinance pg. 28 – Legal Action: When the above action does not result in the correction or abatement of the violation or nuisance condition, the Board of Selectmen, upon notice from the CEO, is hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of The Town of Phippsburg.

Review MMA code enforcement manual language that references state statutes:

1. Note Authority of Municipal Officers on pg. 85:
  - a. Authority of Municipal Officers - The municipal officers do not have the authority to hear appeals and override a decision of the CEO unless an ordinance or statutory provision expressly gives them that authority. However, where a decision is made by the municipality's plumbing inspector (LPI) pursuant to the Maine Subsurface Wastewater Disposal Rules, section 2100.1 of those rules states that any appeal from a decision made by the Local Plumbing Inspector is made through the municipal officers. 10 CMR 241 (June 1, 2000)



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**Reference (2)**

Questions for Dan Gurney:

1. Is there any action besides taking you to court that would get you to abide by our CEO's order to stop operating until you have successfully gotten a business permit from the planning board?
2. Would you be willing to sign the consent agreement today that our CEO approved and has sent you?
3. Are you prepared to provide an alternative consent agreement that our CEO will approve and you are willing to sign?

My opinion:

1. Our CEO, and members of our BOA have all acted appropriately during this process.
2. We are directed to act to enforce the decisions of our CEO and BOA by our town's land use ordinance.
3. I believe that we can choose an equitable action that the CEO agrees removes the violation.
4. We shouldn't set a precedent that ignoring the decisions of our CEO and BOA are rewarded with the ability to continue actions deemed in violation of our ordinances by our CEO/BOA.
5. We should affirm the standard that the appropriate place to determine land use issues and code enforcement violations are with the planning board, CEO and BOA, not at the Select Board
6. Filing a lawsuit should only happen when there are no other better options.
7. My preference is to make a decision that approves filing an 80K lawsuit to uphold the August 17<sup>th</sup> notice of violation and cease and desist order, while giving Dan one last chance to effectively engage in this process and remove the determined violation.

Preferred motion: (unless Dan's answers give a better path)

Authorize our town attorney to start the filing process of an 80K lawsuit to uphold our CEO's notice of violation and cease and desist order dated Aug. 17<sup>th</sup>, on 11/7/2021 if none of the following conditions exist:

1. Our CEO has determined that the violation no longer exists
2. There is another pending appeal or lawsuit filed on this matter.

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**Reference (3)**

First off I would like to say that I will be staying focused on the violations outlined in the:

**Town of Phippsburg Board of Appeals Decision Clark and Trebilcock Fuller Mountain Road Appeal of Code Enforcement Officer Interaction on Complaint dated February 23, 2021 Section E. Conclusion** bullet #2. Which reads: ***To find there is some violation as to alleged violation No. 2 as outlined in the Appellants' appeal dated December 9<sup>th</sup> 2021 (2020 typo), because of the evidence presented showing that Mr. Gurney's firewood business is causing offensive noise and smoke pollution to Appellants. As a result of that finding the Board of Appeals instructs the Code Enforcement Office to investigate the Appellants' nuisance noise/smoke complaint and initiate the process of reaching a consensual agreement with the parties that will address the finding of the investigation.***

The BOA directed the CEO to ***initiate the process of reaching a consensual agreement with the parties that will address the finding of the investigation*** which he did, albeit unsuccessfully. Mr. Gurney has stated outright that he does not intend to sign any consent agreement that applies only to his business and not all other wood businesses in town so continuing to attempt a consensual agreement seems a futile effort.

I did not have the benefit of visiting the property when the complaint was made so I am basing my decision primarily on conversations held with all parties in recent Selectmen's meetings, the watching of the recorded Appeals Board meeting of February 23, 2021, and the site visit conducted by the Selectmen on September 13<sup>th</sup>, 2021.

By all accounts there has been a change in the way Mr. Gurney has operated his business since the February appeal hearing. As I understand it, the hours of operation for gas powered saws and splitters have been adjusted to 7 a.m. or later, which makes it not typical for any weekday morning operation due to Mr. Gurney's fulltime employment at Bath Iron Works. It seems all gas powered equipment is not used until after 4 p.m. on those days.

Additionally the physical location of the "commercial" log splitter has been moved closer to the center of the Gurney property and its exhaust system directed away from all adjacent structures to allow for greater distance between the machinery and neighboring homes and an effort to redirect noise toward a wooded area. Current configuration puts approximately 70+/- feet between the motor and the edge of the Gurney property, plus 50+/\_ feet between the east and west sides of the Fuller Mountain Road, plus 50+/- feet from the east edge of the road to side of the Clark house. It is important to note that if you were to draw a straight line between the splitter and the Clark home you would be also cross a 6 foot fence and a small patch of woods in that 170+/\_ span. I would estimate the distance to the Trebilcock home to be about the same with a more significant wooded area between the 2 points. All measurements are approximate as estimated by me.

All work areas have been moved to the north and west further from the road and Road association's legal setback and the shared property line with the Trebilcocks which increases the distance from work sites to neighboring domiciles.

Also all burning associated with the woodcutting business have been suspended.

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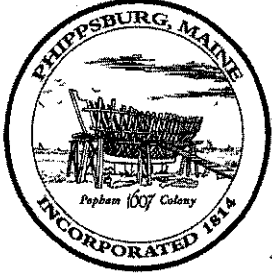
Having witnessed the operation being conducted in this manner and standing at the end of the Clark property and the shared Gurney/Trebilcock property line at the point where the Trebilcock home is closest to that line, and running all machinery in its current configuration, I feel that the noise level does not exceed reasonable threshold established for a Home Business. The ordinance in question states that ***no unreasonable nuisance, traffic congestion, waste discharge, offensive noise, vibration, smoke, dust, odors, heat, glare or radiation shall be generated.***

Based on my personal observations of the newly configured equipment, conversations with all parties and the lack of being able to personally witness the conditions at the time the BOA violation determination, I can only conclude the violation has been corrected with the changes to the home business stated above.

I will add that even if Mr. Gurney is found to have no violation today, only he has the power to stay in compliance and I would urge him to continue to operating with his neighbors' concerns in mind. Any changes to the way he conducts business should do so with impact on his neighborhood considered first.

aml

Reference (4)



**CODE ENFORCEMENT OFFICER**  
**E-911 Addressing Officer**  
**Health Officer**  
Town of Phippsburg  
1042 Main Road

**Phippsburg, Maine 04562**

Phone: (207) 389-2653 / Fax: (207) 389-1522

E-Mail: [Codes@Phippsburg.com](mailto:Codes@Phippsburg.com)

August 17, 2021

Dan Gurney  
30 Fuller Mtn. Rd.  
Phippsburg Me. 04562

**NOTICE OF VIOLATION**  
**ORDER TO CEASE AND DESIST**

Dear Dan

In a letter dated August 3<sup>rd</sup> 2021 you were asked to sign the consensual agreement that the Town of Phippsburg has drafted on or before 5pm. August 17, 2021. Entering into this consent agreement is required in order for you to abate the violation as described in the Board of Appeals findings of fact dated 3/22/2021, specifically item #2, issued following a Board of Appeals hearing on February 23, 2021.

You have chosen to not sign the consent agreement that when adhered too would have brought you into compliance with what the Board of Appeals has deemed a violation of the standards of a home business.

By not signing the agreement and implementing the changes in your wood cutting business as outlined in the consent agreement your business is operating outside of the standards of a home business and a violation of the Land Use Ordinance Section 9 L. 2 Home Business.

**At this time, you are required to stop all activity associated with your wood business at your residence at 30 Fuller Mountain Road until such time as you apply for and receive all permits required for the business.**

Continued operation of this business contrary to this Order can result in legal action including fines and penalties.

Leighton Rainey  
Code Enforcement Officer  
E-911 Addressing Officer  
Health Officer  
Town of Phippsburg