

# Shapleigh Planning Board

## *Minutes*

January 12, 2021

This evening's meeting was conducted via Zoom due to Covid-19.

Members in attendance: Roger Allaire (Chairman), Steve Foglio (Vice Chairman), Madge Baker, Maggie Moody, Roland Legere, and Alternate Ann Harris. Code Enforcement Officer Mike Demers was also in attendance.

Note: Steve Foglio chaired part of the meeting due to Zoom connection issues at the Town Hall.

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**The minutes from Tuesday, December 22, 2020 were accepted as read.**

**The Planning Board meeting started at 6:30 p.m.**

Minutes are not verbatim, unless in quotes "" – If the name of a citizen making a comment was not requested by the Planning Board Chairman, the reference to their name will be known as 'Citizen' or 'Abutter' depending on whom is speaking.

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**Conditional Use Permit – Replace Patio & Wall Removed 10/5/2020 – Map 40, Lot 50 (50 Loon Lane) – Nancy Lightbody, Property Owner & Applicant; Mr. Tom Kinney, Representing**

Mrs. Lightbody was present for the review of the application via Zoom, along with the contractor, Nick, who did the work on the project.

At the previous meeting it was established that Mrs. Lightbody was before the board for the replacement of a patio and wall that was removed on October 5<sup>th</sup>, 2020.

Provided along with the application, was a sketch plan of the property which depicted the lot dimensions, the location of the existing structure(s), patio area (2 patios & walls), and wellpoint in relation to the lot lines and waterline of Granny Kent Pond; a sketch plan which depicted in addition to the structure(s), patio and wellpoint, the area that was disturbed and the notation that the area will be graded, loamed and seeded; a copy of the Permit by Rule & Notice of Intent Acceptance Date of 11/12/2020, as reviewed by Lucien Langlois; a copy of the Subsurface Wastewater Disposal System Application, dated 12/6/1991, SE #121, Mark Truman; and a letter dated December 14, 2020 whereas Nancy Lightbody gave permission for Tom Kinney of Property Essentials LLC to discuss the project with the Planning Board and represent her in her absence.

The detailed description of the project was as follows: *Finish 18' x 24' patio with retaining wall at the rear of 50 Loon Lane adjacent to the home. Property had two patios and two retaining walls which extended from the home to the shoreline of Granny Kent Pond. They were removed on or about 10/05/2020.*

In addition, the following letter, dated December 14, 2021 was written to the board from Mrs. Lightbody. The letter reads as follows:

Respectfully, I would like to submit the following with regards to the work being done at 50 Loon Lane in Shapleigh. As the current owner, I purchased the property in 2014. At the time of purchase, there were two patios and retaining walls in place. Based on the wear, condition of the patio (it was disintegrating) and how the wall was leaning, they had been in place for some time. However, there is no record with the Town as to the exact date of their installation.

The intent of the project was to replace the existing patio in its existing location on the south side of the home (with minor modification for safety / leveling) and replace the retaining wall – to stop the leaning and to make the area safe before it fell into disrepair.

The work being done is not adding any new structures or expanding the existing structures. In fact, we removed the stone patio that extended all the way to the water's edge. Once the work is complete, the yard will be brought back to a natural state including some minor landscaping work to help with the current runoff issue (from the top of the hill/road) caused by the slope of the land.

Our belief was that since we are replacing an existing patio – not adding a new patio – that we had the ability to replace what was existing without a permit. Once we were made aware of the towns concerns, we took immediate action to resolve the issue:

- Silt fencing was placed around the perimeter of the property
- We requested and were granted a Permit by Rule from DEP
- We are currently seeking an 'after the fact' permit from the Town due to the scope of the project

We are requesting a permit be issued so that the work can be completed. Not doing so would:

- make the lakefront side of the property unusable due to the slope
- increase the likelihood of erosion – given a retaining wall is necessary to stop dirt and other material from entering into the lake
- make the rear egress from the home difficult (the stairs landed on the patio) and caused a possible safety issue
- decrease the property value of the camp

Our family has been part of the Granny Kent and Shapleigh community for over 30 years. In addition to our camp, we have other family members in the area and on the lake. It has always been our intention to protect the land and not diminish the lake's natural beauty. We feel that the work being done will enhance the property, protect the natural resource and allow it to be enjoyed for years to come.

This evening presented to the board was a letter dated January 4, 2021, written by Mrs. Lightbody, it read in part as follows:

We met with the Planning Board on December 22<sup>nd</sup> to review the work being done at 50 Loon Lane. As a result of that conversation, there were several requests for additional information / documentation. The information requested included:

1. Additional Fee – It was unclear on the application that the additional fee was needed at the time of submission. The additional \$750 fee was mailed on 12/31/20 and should be in your possession
2. Pictures of the property prior to and current state including the height of the current wall – see attached
3. Vegetation Plan – See attached
4. Engineering Certification if the proposed wall is over 4 ft. – The design and plans will be approved prior to the continuation of work – once the Conditional Use Permit is granted
5. DEP Shoreline Certified Contractor – A DEP Certified contractor will be on site for the remainder of the project – verified by CEO

Admittedly, there have been several missteps with this project. However, I submit that we have worked hard to come into compliance and to meet all requirements that have been asked by the Board.

I again respectfully ask that the Board issue the Conditional Use Permit so that the work can be completed. Approving the existing plan will benefit the lake by removing the stone, minimizing the run off and bringing it back to a natural state; creating a usable space for our family and ultimately increasing the value of the property for both us and the town.

Along with the above letter there were the following pictures:

‘Existing Lower Patio’ with this description: ‘As you can see, the lower patio on the property extended all the way to the water’s edge and was severely sloping towards the lake. The stone has been removed, the area leveled and will be replaced with sand/grass (see vegetation plan)’.

‘Retaining Wall’ with description: ‘Only a portion of the prior retaining was above grade. The wall consisted of 8” high blocks – 3 rows or 24” were above grade. 4 rows or 32” were below grade. The bottom row (footing) remains visible in the ground in the picture below. The wall that was removed was 56”. The new wall is 54” from the footing with an additional 3” finished cap – total height 57”

‘Upper Patio’ with description: ‘The exterior dimensions of the replacement patio are 24’ x 18’. It is supported by a 57” retaining wall. The retaining wall construction includes: Geogrid every 18 inches, all blocks are core filled and glued in place, the area was backfilled with  $\frac{3}{4}$  crushed stone and the wall step back is 1 inch per level. The bottom two levels of the wall will be below grade. Details are outlined in the vegetation plan.

‘Vegetation Plan’ – The vegetation plan will include grading, adding loam and seed to the area to the right of the house (used to access the rear of the property). Waterbars will be added to help reduce runoff. The lower undisturbed area to the left includes crushed stone to help runoff and drainage. The area where the prior patio was removed will be covered with 6-8 of site fill and top dressed with 4 inches of beach sand. It will cover the bottom two courses of the wall. The use of sand is preferred as it will improve drainage and run off – if anything, it will be less impactful to the lake (no chemicals or fertilizer from soil/grass). See attached vegetation plan.

The attached vegetation plan depicts the existing camp and attached 18’ x 24’ patio, an area to the left of the camp from the water side with a notation ‘Add 4-6 inches of  $\frac{3}{4}$ ” crushed stone over existing undisturbed grade – approximately 10 yards’; an area in front of the new patio with a notation ‘Replace previous patio with 6-8 inches of fill from the site. Add approximately 4 inches of screened beach sand or loam and seed.’; an area to the right of the new patio with a notation ‘Disturbed area from equipment – Regrade to remove track marks and other disturbances, -Add 4-6 inches of loam where necessary, -Add seed to grow grass back to its original state.’; and an area alongside the existing camp with a notation ‘Waterbar – 6 inches of  $\frac{3}{4}$  crushed stone’.

Provided by the Code Enforcement Officer were pictures of the existing conditions and prior patio areas.

Received by an abutter within 500 feet of the property was the following letter:

In reference to letter received as an abutter to application for a Conditional use Permit for Shapleigh Tax Map 40, Lot 50 (Loon Lane). Nancy Lightbody, Applicant; John Lightbody.

I have several concerns regarding this application, first of which is the letter states applicant requests the ‘replacement of existing patio and retaining wall’ that were removed in October 2020.

The information provided in this letter is incorrect because as an abutter, I know they are requesting permit after the fact. This work was already done and completed at this site all at the same time removal was done in October 2020 (see enclosed pictures).

Work began approximately sometime late September with excavation done with backhoe and skid steer from street side to the shoreline of the property.

This replacement is completely different from the original patio and retaining wall (see enclosed pictures). Enough earth was removed to allow for the cement replacement of wall with top patio to be much larger in width, depth and height.

Maine Erosion and Sedimentation Control a concern as no silt barrier was placed at the shoreline during wall/patio removal and earth excavation for placement of new one.

I would also ask if the Planning Board will be considering the Standards Applicable to Conditional Uses regarding this application.

Thank you for notification of this application and allowing me to express my concerns and comments.

Attached to the letter was the follows:

- A copy of the Town's assessing dimensions of the existing camp, patio on road side, and patio on water side (which is depicted as 10' x 24' in size).
- Picture of the existing camp and what the prior patio looked like.
- 2 pictures of the new patio.
- Google picture of the existing camp and patio area prior to removal.

*Prior to this evenings meeting Roger Allaire and Roland Legere did a site inspection of the property.*

Roger A. opened the meeting by stating he was able to go to the site and look around, and he noticed much of the silt fence is down on the ground. He stated that this needed to be rectified as soon as possible. Mrs. Lightbody stated that she was there over the weekend and realized it was down, so she is making arrangements to have it fixed, but they haven't been up since. Roger A. stated that within 2 weeks the silt fence needs to be addressed or CEO Demers should do some enforcement.

Roger A. stated that the new wall is greater than 4 feet in height, so it will have to be engineered. Mrs. Lightbody said, "Yup, we can, yes".

Roger A. stated that looking at the wall it appears it is closer to the lake than it was before. Mrs. Lightbody said, "No, if you recall, ...did you look at the photos that I sent"? Roger said, "Yup". Mrs. Lightbody said, "There was a patio and wall that was closer to the water. That's been removed and the wall that is there is the old...it has been pushed back". She said, "It's the old wall". She said the wall that was near the water has been removed.

*Roger's internet connection went out at this point in time.*

Ann H. stated, "The only thing I can see on the pictures Roger, its looks like the old wall, those are 8 x 8 blocks, maybe three courses high. What do you guys think"?

Steve F. asked Mrs. Lightbody what the dimensions of the new patio were, how far was it from the house, 18 feet? Mrs. Lightbody said, "Ya, its 18 feet". She noted that she didn't measure it personally, but yes, it was 18 feet. She said if the board looked at the photos that she sent, the third photo is the big dirt mound, you can see the footing of the old wall that is still in the ground. She said you could see it is significantly taller. Steve F. asked if those were the photos in the email? Mrs. Lightbody said, "Yes".

Madge B. said that the photo she was looking at, it said the old wall was 56 inches. Mrs. Lightbody said, “Yes”. Madge asked if the new wall was 56 inches? Mrs. Lightbody said the new wall was 54 inches with a 3 inch cap, to get to 57. Madge said that brings it back as to whether or not it can be 57 inches, when the old one was 56. Mrs. Lightbody said it was one inch. She said she could remove the cap but again its one inch.

Ann H. asked if the board was looking at the same pictures that were on CEO Demers link? Steve F. said that was what he was looking at. Ann asked what type of blocks they are? Madge said she was looking at the pictures that Mrs. Lightbody sent. Ann, looking at the photo that CEO Demers sent, said it looked like 3 cinder blocks but she couldn't tell how high they were. Mrs. Lightbody said that was the just the portion above grade. Steve said it appeared to go a row or two below the windows. He thought the wall was about the same height but because the earth between the wall and the lake had been removed it looks different, and its why the new wall is so much taller. Ann said she understood.

Steve F. asked CEO Demers about this project, had this been brought to him to change the height of the wall in the front, would that have been permitted or not permitted? CEO Demers stated that it would have been a Planning Board procedure. CEO Demers stated that they would have been able to replace what they had potentially. He felt that was what the board was trying to figure out, to reconstruct what was there and let them replace that to the best we can figure.

Ann H. asked Mrs. Lightbody if she was going to put another wall where the fire pit was? Mrs. Lightbody said, “No”. She said if you look at the very last photo under the vegetation plan, you will see all the patio blocks and retaining wall have been removed. She said there was no intention to put it back. Ann said her concern was the runoff going into the lake. Ann said she lived on Granny Kent Pond as well, and it is the worst lake in York County according to the DEP. She said she was trying to figure out how to keep all the dirt, etc. from going into the lake. Mrs. Lightbody said it was in the vegetation plan, but one of the things they had talked about was adding waterbars to the right side of the house to try to stop any runoff from coming down. She said the lower level, looking up from the lake, they would add crushed stone on the left, and then sand in the front area on top of the replaced fill, which might help because the sand is more porous so it could drain better. She said they had also talked about doing something at the top of the property but it had not been done. She said currently there was a railroad tie at the top for parking and they thought they could do something there.

Ann H. stated that sand was not a good idea, but she asked what about rip rap, she thought that is what the DEP was recommending now. Mrs. Lightbody said she didn't know what riprap was. Ann stated it was crushed big rocks and wondered if they had seen it used for runoff. Mrs. Lightbody did not know if Tom Kinney, the General Contractor or the contractor who did the project, Nick, could speak to that, she could not but said she was open to other suggestions to help with the runoff. She said it was in part why they removed the patio blocks in front and leveled the area. The contractor, Nick, stated he could speak on riprap. He said it was essentially a larger version of crushed stone, where the average size rocks in riprap are 6, 8 to 10 inches. He said it was really zagged stuff and it is used to help with runoff on steep grades. He said this would not be a steep grade. He said if they put riprap down there, it would make the lower area unusable. He thought sand would be a good choice because you don't necessarily need to put sand that has any chemicals or anything, you can get beach sand or septic sand, stuff that is made to go into the ground. He said it wasn't treated with any chemicals, its not going to hurt the environment, a little bit of it gets into the water but with the finish grade of the land there will be almost no slope toward the lake, so there should be minimal runoff.

Mrs. Lightbody stated that the bigger issue with runoff is coming down from the top of the property. She stated they were addressing that with the waterbar and the crushed stone on the side of the house.

Ann H. asked about the meeting the board attended which talked about people having catch ponds to hold the water runoff. Roland L. stated that it was called a rain garden. Roland said it would catch the runoff, hold it somewhat in place, allow it to percolate through the ground, filtration would take place, and it would support vegetation around it which would also help with the runoff. Roland asked if ‘Nick’ was the installer of the wall? He stated that he was. Roland said that they asked Mrs. Lightbody at the last meeting who installed the wall, and Mr. Kinney mentioned he was the General Contractor and he had a subcontractor doing a wall install. Roland said the question was raised about DEP certification to be able to work in a shoreland zoning area. Roland asked him if he possessed a DEP certification. Nick stated that he did not but that he was in the process of obtaining that certification. Roland asked if anyone on his crew had certification? Nick stated that no, he was unaware that he needed that certification and noted it was an oversight on his part. He stated that no more work would be done until he was certified or had someone who was certified was on site.

*Roger A. came back on line to the Zoom meeting.*

Roger A. asked if someone would be going over to the site to be sure it as stabilized? Mrs. Lightbody said they could have someone go over. She said they could have someone there within the next 2 weeks.

Roland L. stated that like Roger, he had an opportunity to go the site. He said he shared Roger’s concern about the lack of maintenance on the silt fence and he was disappointed that there was a whole area, while facing the water from the cottage on the right hand side, an area that has been disturbed. He said that some type of equipment, either a skid steer or tractor had been down there and the area had been turned over, and there wasn’t even any silt fence in place. He said, “Not only was the silt fence that was there not doing its function because it was down, but there was an area from the cottage, looking at the water on the right hand side, that is just waiting to wash in to the lake”. He said there is rain anticipated, should the ground thaw, that top area is going to go down into the water. He said that he hoped it didn’t take two weeks to stabilize the area. He said it needed to be addressed sooner rather than later. Mrs. Lightbody said she would address it immediately, but noted it would not be her putting it back, so that was why she saying within 2 weeks. She said she would get it done immediately.

Roger A. was concerned that the staking for the silt fence would not be able to be driven in, so he felt at present they should use hay bales in a line all the way across the site. Steve F. stated that they could also use erosion control mulch. Ann H. stated the issue was that the person doing it had to be DEP certified. Roger agreed and said they had to do it as soon as possible. Ann said if they were certified they would know that the entire area had to be blocked off. Roger said that the contractor who started the process was very delinquent at present.

Steve F. said his concern, beside addressing erosion, are the changes from what was there. He noted that he asked CEO Demers opinion while Roger was having Wi-Fi issues, if the application wasn’t after-the-fact but had come before the board, the short answer was that the applicant would be able to replace what was existing on site. He said from what he could tell it looks like there have been a lot of changes to the landscaping both in height and grade, removing what was towards the water. He thought the removal wasn’t bad, but if they are trying to change the topography out front, he didn’t know if the board could approve that. Roger A. stated that on the left hand side while looking at the water, some of that hadn’t been disturbed, and there are some patio blocks tilted toward the water for four to five feet from the water’s edge coming back toward the camp. He said

you can see the patio blocks but they are all tilted toward the water. He said something needs to be done, either level the area or put a reverse crown. Mrs. Lightbody stated “Those are gone. All of that material you are talking about is gone. The patio blocks that were leaning towards the water is what are in the first two photos I sent you and all of that has been removed. That was the patio and retaining wall, the one that had been removed”. Roger stated, “I was there today and the patio blocks were there that I saw. If they have been removed then someone went right after I left.” Roland L. stated, “I was there this morning and saw them.”

The contractor, Nick, asked what patio blocks he was referring to that were leaning four or five inches down towards the water? Roger stated, “Right at the waters edge”. Nick stated, “That was part of the existing patio that was there, that is in the process of being removed, and part of the cleanup process of finishing the job was to remove the rest of those, right down to the water’s edge”. Roger said, “Right”. Nick stated, “But that’s what we were dealing with prior and that’s the problem we are trying to rectify”. Ann H. pointed out the blocks on her computer and pointed to the ones that are still there. Nick stated that there are some along the edge that he didn’t want to remove until he was doing his finish grade down there. Mrs. Lightbody noted that the work stopped immediately. Roger said he understood that, but best management practices to stabilize the property were not done. Roger said that was one of the biggest issues at this time, along with the height of the wall which is greater than 4 feet, so it needs to be engineered. Roger did not believe the double wall was sufficient. Nick stated that the engineering is in process.

Roger A. wanted to know if there would be some replanting or mulch on both sides that need to be stabilized. Mrs. Lightbody wasn’t sure if he looked at the revegetation plan she presented, which speaks to this. She said there were waterbars on the right side, much of the left side was not disturbed only where the backhoe turned around and any section that was disturbed will be stabilized as per the vegetation plan. Mrs. Lightbody stated where the stones have been removed and will continue to be, is also addressed in the vegetation plan.

Roger A. believed the application should be tabled until the board gets the engineered plan. Ann H. stated that the bales of hay or straw need to be put across the lakeside of the property quickly before it rains or snows, or all the disturbed area will wash into the lake. She noted that the lake was not frozen. Roger agreed.

Mrs. Lightbody stated that she wanted to be clear about what the board was asking because she felt every question by the board was answered, maybe not to the boards satisfaction, but she has attempted to answer the questions. She stated they will put in the bales of hay or the fencing, whatever is necessary to stabilize the area. She stated, “The engineering of the wall. To be honest, I have to pay to have the engineering done on the wall because the wall is over four feet and I understand that, but I don’t want to go through that process frankly, if you are then going to turn around and tell me that, um, that if the engineering comes back positively, that you are not going to give me a permit to continue. So, my feeling on that is that we should resolve if I can move ahead, under the conditions that it meets the engineering standards. Because why would I go through all of that exercise for you to then turn around and say to me, ‘I’m sorry but you still can’t move ahead’.”

Ann H. added that when a DEP person who knows what they are supposed to do is on site, she didn’t believe sand would be allowed. She believed someone that understood what the DEP required would help Mrs. Lightbody, so she would know what to use for stormwater. She said in addition, the board needs to know that the height of the wall that she is replacing is what was originally there. She wondered if there was a permit to put the original wall there or is it grandfathered in.

Roger A. asked that the document given to the board, showing where the patio comes out from the camp 18 feet, is that where the original patio was? Mrs. Lightbody said, “Correct”. Ann H. stated that on the vegetation drawing it does say 18 feet. Ann asked if when he was out there if he measured from the house to the new wall? Roland L. stated that he did not. He said he counted the number of blocks but didn’t have his tape measure with him. He said there were 11 blocks from the cottage corner to the front corner but said again he did not measure it.

Roger A. stated that looking at Town information, the wall for the first patio was 10 feet away from the camp, not 18 feet. Roger asked where the additional 8 feet comes from? Mrs. Lightbody stated that they put the patio back in the same location outside of the home. She said you can see from the photo that the footing goes down further and they built up from there. Roger said from the camp, toward the waters edge, it was only 10 feet in width. Roger said that is what is in the Town file. Mrs. Lightbody said she would like to see that because there is no record of any of this (the patio or walls) being put in. Roger felt that the new wall will have to be pulled back to 10 feet. Mrs. Lightbody said again that there were no records on file, she said she had spoken with CEO Demers and asked about records for what was there and there was nothing. She said there were no records of whether the wall did or didn’t exist, the patio didn’t exist. Roger said that it exists. Mrs. Lightbody said there were no records of the lower patio, every photo or conversation, no one knew the lower patio existed until she produced a photo. She said her point was she didn’t believe the records were accurate. She said she can tell the board what was there as a property owner, and she is telling the board that there were two patios, two retaining walls, one has been removed and we have rebuilt the other one. She said she wasn’t trying to do anything that wasn’t there. She said to the point, the height of the wall is about an inch taller than the old one. She said there were blocks that went well below grade, you can see in the photo the footing is still there, so we are putting back what was there in a much better position because the wall was falling down and the patio was in disarray, and you can see from the other photos the one closest to the water is tilting into the lake. She said, “So we are trying to make the property better and have less impact on the lake, on the surrounding land, and I feel like I am working really hard to do that and to meet all the requirements”.

Roland L. stated, “Nancy, you said there were two retaining walls, correct”. Mrs. Lightbody said, “Correct”. Roland asked, “And the retaining wall that was closest to the water, was that 50 something inches tall”? Mrs. Lightbody said that no, it was below grade but a larger portion was above grade, so it was probably chest high. She thought roughly 4 feet above grade. She noted that that wall is the one that was totally removed, because they wanted to make that area more useable and have less impact to the lake.

Roland L. stated, “So you did not put, the replacement wall is not where that wall was”. Ann stated, “You didn’t put the replacement wall down by where the water is, the replacement wall is by the house”. Mrs. Lightbody stated, “Correct”. Ann said that the fire pit and the wall next to the water is gone. Mrs. Lightbody said, “Correct”.

Roger A. held up several pictures trying to show the original wall, which appeared to be 3 ½ to 4 feet tall. In the next picture it depicted the wall around the fire pit. He thought that wall was perhaps 18 to 22 inches tall. Mrs. Lightbody stated that no, that wall is taller. She said if you stand by the fire pit it is much taller than 18 inches. Roger said that that wall is all gone now. Mrs. Lightbody stated, “Correct”. Roger believed in order to level the area to where the wall was closest to the water, the new wall is higher than what was there. Roger believed based on the pictures he had of the old wall; the new wall is larger than what previously existed. Roger also did not think the patio went all the way to the side of the house on the left when facing the cottage, based on the photo he had. Mrs. Lightbody did not agree. She believed the only gap on the left side was where the stairs



were, otherwise the patio went from corner to corner of the house. Nick stated that he was the one that removed the wall and it ran corner to corner, there was no gap. Mrs. Lightbody stated again that the gap that Roger was referring to was where the stairs were, otherwise the patio ran corner to corner. Ann H. stated that using the photos CEO Demers provided it did appear the patio went all the way from the left side to the right side by the stairs. Mrs. Lightbody stated, “Correct”.

Roger A. held up the Assessing information on file with the Town and it depicts the patio as being 10’ deep by 24 feet wide. Steve F. asked Mrs. Lightbody what the blocks were that made the patio originally? He asked if they were 8 x 16 patio blocks? Mrs. Lightbody was not sure. Nick asked if he was referring to the new blocks or the old ones? Steve said the old ones. Nick thought they were cheap 12 x 16 cheap Home Depot concrete blocks for the patio blocks. Steve said they were rectangles, which is why he was asking.

*Roger lost the internet connection again.*

Steve F. stated that while the board was waiting for Roger to return, he wanted to express his concern. Steve said, “That whether it’s an application that has come before us or an application that comes after-the-fact, the Planning Board only has the authority under our rules and regulations, to allow you to replace what’s there. The fact that you wanted to take out the front patio I think is ok, you would be allowed to do that. OK, that’s not the issue. The issue at hand is that you would only be allowed to replace what was existing. And so, I understand sometimes people don’t know they need permits and work gets done. I get it. But in this case, we can’t set a precedence by allowing you to modify that wall, whether it be taller, bigger, closer to the water, the State is actually the one who set that regulation and its inch for inch. I’m not too concerned if it’s an inch higher, that is what it is, but we need to determine that what you are putting back in is what was there”. Mrs. Lightbody stated, “Understood”. Steve stated, “And the fact that the patio is coming out in front of that wall is not much of an issue to me. I don’t know exactly and I won’t speak for the board, as far as what is going to happen with the grade in front of that wall. I understand that you feel we are kind of in limbo but we are dealing with a few different moving pieces here.” Mrs. Lightbody stated, “Understood”.

Mrs. Lightbody stated, “I’ve tried to show you what is there and I understand that I took out the existing and I needed a permit. I understand that and I already apologized for that, and I am trying to rectify that”. She said that the walls that are being discussed, from the Town, are not truly representative of what was there. She said that she was showing the board, that the wall that was there, a portion of the wall, was above the ground which is above grade, and you can see it in the photos. She said that the wall was actually significantly bigger than that. She stated that that was what she was attempting to show the board. She stated that all she was trying to do was put it back to the main level that it was, coming from the cottage, she did not make it any higher or lower. She said there is a staircase coming down the side that landed on the patio and it is to the exact height that it was before. She stated that she totally understood the engineering of the wall, that the wall needs to be verified by an engineer. She said that the new wall fits the same footprint. She said at present she realized the wall looks bigger but when they are finished it will not because none of the fill has been put back in front of the wall, closer to the water. She thinks because of this it looks more imposing than it really is.

Steve F. said there are probably ways the board can figure that out. He said there is vinyl siding and using that it can be figured out the height of the patio is still the same. He said his concern was the discrepancy of what the Town is showing on the tax card and 18 feet coming out from the house. He asked Mrs. Lightbody if she had any existing photos of the patio. Mrs. Lightbody said she would have to look, the only photos she might have

would be from social events. Steve said that he had a photo from what was there and he believed they looked like they were 8” x 16” patio blocks. Mrs. Lightbody stated that she did not have the photo and she didn’t know.

Roland L. asked both Steve F. and CEO Demers, was he correct in assuming that the diagram that Roger is showing was done by an Assessor on site; someone that physically went there and that’s how they come up with those dimensions. He asked if this was correct? CEO Demers stated that yes, the Assessor has recorded 10 feet on the patio. Steve said that he wouldn’t hang his hat on the 10 feet vs 9 feet or 11 feet. He said there is not always a tape measure in hand, its no different than you didn’t have one tonight. Roland asked if they would see that much of a discrepancy from 1 to 8 feet? Steve said, “No, 10 to 18 feet, that would be a hard pill to swallow for sure”.

Steve F. stated that at this point it probably made sense to see the site. He apologized for not getting out there and he said he could not speak for the board, but he felt like the site needed to be stabilized, and then table this unless the board feels differently, until such time that the engineering comes back. He said, “If that the five foot will stand, and we are able to approve the grade change in the front of the wall, then I don’t have a problem with issuing a permit for what was there dimension wise, and that front portion being changed, so long as there are no other provisions in the ordinance that would deny that”.

Mrs. Lightbody asked if she could clarify what she thought she heard Steve F. say? She said that obviously they had to stabilize the property, she understood that. She said that the board was looking for the engineering verification that the wall as is, is suitable. Steve said, “The construction of the wall would be up to the engineering standards”. She said, “And then you would then discuss the grade in front, so, that’s where the patio was taken out closer to the water, then issue a permit”. She said she her point was, if she goes through the exercise of getting the wall engineered, she wanted some level of comfort knowing that the rest of it will be workable because she wouldn’t want to come back to the board, tell them that is workable, and then they tell her that no, the wall has to be moved another 20 feet to the right, then she would have to go through the whole exercise again. Steve said he wouldn’t speak for the board, but his personal thought is he wouldn’t have a problem voting in favor of allowing you to continue with replacing your wall and patio at the dimension and height they were before. He said at that point she would be removing the front portion, unless the ordinance prohibits it or the board felt otherwise; I don’t have a problem with that coming out and being replanted. He said a non-impervious surface would be better for the lake. He wanted to look further into whether or not the board can allow the height change in front of the wall and verifying that the wall is no closer to the water than it was before.

Ann H. said they don’t know if it is a 10 foot patio or an 18 foot patio. Steve F. agreed. Ann said, “Because if it is a 10 foot patio, she’d have to redo the wall to what was existing, so there wouldn’t be any sense in getting an engineered drawing until we knew for sure if it was a 10 or 18 foot. For that piece of it”. CEO Demers stated that if it gets cut back to 10 feet, arguably the height of the wall gets reduced probably down to somewhere around 4 feet. Ann said, “Then she wouldn’t have to have it engineered”. CEO stated, “Correct”. Steve said, “So we are all clear, the height of the wall is measured from the lowest point in the front to the top, correct Mike?” CEO Demers said, “Ya”. Steve said, “Ok”. CEO Demers said, “Lowest point of finished grade and obviously with these walls they vary one or two courses”. Ann asked how Mrs. Lightbody would find out if it was a 10 or 18 foot patio? CEO Demers stated that that was what they were trying to determine.

Mrs. Lightbody wanted to know how to move this forward. CEO Demers asked if this meeting was going to be open to public comments? Steve F. said he was open to that at this point. Roland L. said the point he was going

to raise or ask, is if there was anyone participating in this meeting, because he could see individuals' names that aren't on the agenda, is there anyone out there who would like to speak to this particular project? He noted this was their opportunity, had the meeting been as usual, as abutters or people of interest, you are invited to comment in writing or in person. Ann H. said she just got a text from Barbara F. asking Steve to run the meeting because they were having internet issues, but according to Roger the deck is 10' x 24' unless CEO Demers says something different.

Steve F. said he believed he expressed his concerns with the project. He wanted to know if anyone had anything else to say. Ann H. stated she believed the buffer had to go all the way across the lot. She said she would not want Mrs. Lightbody to waste money on engineering if the wall needs to be redone. She thought a person certified in the DEP guidelines would help her out a lot, because they would know what was needed down by the water and they would know what to do where the patio was taken out. Ann said the grade was taken out as well, so that also had to be addressed.

Steve F. asked Mrs. Lightbody if she intended to not replace the wall and patio closest to the water. She stated this was correct.

Madge B. said that Roger A. stated that the original patio was 10' x 24'. Ann H. stated, "Yes". Madge said, "So the wall was 10 feet from the house". Ann said, "Yes". Madge said if this is the case there is no point in getting an engineer for the wall that she has put up, because we are going to make her move it back to 10 feet.

*Roger A. returned to the Zoom meeting.*

Roger A. stated, "Even if the board has her move it back 10 feet, the wall will still be at the same height, so the wall will have to be engineered". Madge said she thought it would not have to be as high if it got moved back. CEO Demers thought with the slope of the property, as you get further away from the water, the wall will shrink in height a little bit, and there is a lot of material there that is behind the wall. He said if the finish grade were so that the resulting wall was four foot, he thought that would be ideal. Steve F. thought the next step was that Mrs. Lightbody would have to decide if she wanted to spend money on engineering if the board is allowed her to leave the grade down below five feet, then she would have to have it engineered. He wasn't sure the board could allow the original grade to be changed in the front of the wall.

Roger A. stated that from the waters edge, approximately 15 to 20 feet back, that is where the second wall was. He said if you keep it at the level of the wall closest to the water, going all the way back to the new wall, that is why the new wall is so tall. Steve F. added that they are kind of combining two walls into one. Roger agreed, and noted that is what put her into the wall that needs to be engineered.

Mrs. Lightbody stated she had no problem getting an engineer to confirm the size of the wall if she isn't being asked to take the wall down. Roger A. stated that he believed the wall had to come back toward the camp, back to the 10 feet. Roger said that the wall would have to be taken down to be pulled back. Mrs. Lightbody stated that she was debating, but not debating, she would like to see why it should be 10 feet, she did not believe it was 10 feet. She said she would like to see the document Roger held up. Roger noted that Steve also had some pictures for the board, showing a picnic table on the patio at an earlier date. Roger said based on the picture he saw, the patio appeared to be only about 10 feet in depth. Steve said he thought it was closer to 11 feet. He said that is why he asked Mrs. Lightbody what the patio blocks were. He said it does not appear to be 18 feet in width. Roger said correct, so the wall will have to be brought back to the original location.

Roger A. asked Mrs. Lightbody what she would like to do moving forward? Mrs. Lightbody said she would like to see the wall stay in its existing location and height, because she felt the impact, right or wrong, tearing it down will be more detrimental to the property and lake than to leave it as is. She said her view was not to move it at all. She felt the work that was done, and she can get it engineered, it was quality work and it is putting the property and the lake in a better position, along with taking out all the cement down by the lake. She felt it was beneficial. She believed if they were going to go through this exercise, she wanted to make sure that if the wall has to be taken down and the patio changed size, and she didn't believe it should be, she wanted confirmation as to what it was. She did not believe it was 10 feet, she didn't think it was the size it was, there is no clear record as to what it was. Ann H. said she had an old photo that showed 8 paver blocks wide. Mrs. Lightbody asked for the date of the photo? Ann said, "2014". Mrs. Lightbody said, "Ok".

CEO Demers stated, "Roger, during your absence, we were talking about public comment. I don't know if this is going to be the meeting that we have, to allow public comment on this or not". Roger A. said, "Yes". CEO Demers said that no one said anything, but perhaps Roger should give them the opportunity. Roger stated that if anyone wanted to speak, they could. An abutter, Diana Garry, stated she would like to speak. She said she was there because she received a letter in the mail because she is an abutter and she thought she would come to a meeting to see what the board does, because she never had been to a meeting. She wished Mrs. Lightbody good luck with her project. She said one thing she heard everyone talk about, which concerned her, was the condition of the lake and the water runoff. She wanted to ask if the Planning Board came out to your property if you think you have an issue with water runoff, and directs you? Roger stated that the Planning Board does not, but anytime you want to disturb soil in the shoreland zone and you are moving greater than 10 cubic yards, then you need to have a Planning Board permit. He said you also have to notify the DEP, stating you will complete the project according to the specifications of the DEP. Roger noted this is called a Permit by Rule. He said at this time Mrs. Lightbody has filled out a Permit by Rule stating that she will be putting in the wall at the same location, same size and comply with the DEP regulations. Roger stated that upon visiting the site today, he believed she was in violation, she is not completing the wall in the way that it was originally, in the same place. He said this was his opinion.

Mrs. Garry stated that she heard Mrs. Lightbody say that she thought a lot of the problem was up on the road, that was causing more of a problem with the runoff. She said with her place she felt the runoff was coming from the road causing a great problem to the lake. She was concerned with the quality of the water. Mrs. Garry asked where she could go to get help with this? Roger A. stated, York County Soils and Water Conservation. He said they have a group that will actually assist homeowners on the lake with their property, with the issue of trying to contain any erosion that is going into the lake. Mrs. Garry asked about the Conservation meeting that they had once a month? Roger said that was something different. Mrs. Garry asked if it has anything to do with water runoff? Roger said, "No". Mrs. Garry thanked the board and said it was very interesting to see how the board operates.

Roger A. asked if there was anyone else that wanted to voice their opinion? No one came forward.

Roger A. asked Mrs. Lightbody how she would like to proceed? Mrs. Lightbody stated that she wanted to continue with the project as is. She wanted to know what the next steps are. Mrs. Lightbody stated that what she had to do was shore up the property with the hay bales, and she understood that. She said the next steps were to determine what the correct size is, or what the belief is, what the permit will be for, the patio size, stating that she did not want to go through the engineering exercise to then be told it has to be made differently. She said

she showed the board it is in the same spot, and close to the exact same size, perhaps a foot or so bigger than it was and she said she mentioned it in the original conversation when she spoke about leveling it. She said based on the photos it is in the same section corner to corner of the house, the stairs land on the same patio, its not any taller. She said she replaced it with a significantly better structure and she feels its in the same spot, same size and the height of the wall is about an inch taller than it was prior. She stated she would like to leave it. She stated if the board was telling her she needed some other verification of what the wall was, she didn't know what else she could give the board. She said she needed direction from the board as to whether they were going to allow the patio size to stay as is, and then she will get the wall engineered, and then talk in more detail about what vegetation has to be in place to make sure there is no runoff. She said, "Or we need to agree or come to resolution on the size of the patio before I got off and have that engineering exercise done". Roger said he agreed with her on her viewpoint regarding that. Roger said with respect to the Assessing paperwork that the board has, and that he had in front of him from the Town Hall, and the pictures he had as well, pictures provided by Steve, he didn't see how the board could allow the patio to be any wider than 10 feet, coming from the camp.

Roger A. stated that the wall would need to get pulled back unless she can prove that it was out 18 feet. Mrs. Lightbody said that Steve said that the exact size was not 10 feet. She said that Steve believed it to be somewhere around there . Steve F. stated that when he needed historical photos on any property he went to Redfin, an independent 3<sup>rd</sup> party website that he (as a Realtor) uses all the time. He stated that her home was on that website, and if you go there you can see fairly clear photo. He said it appeared there were 8 sections coming away from the camp with an 8" cap on the wall. He said it looked like 8" x 16" patio blocks. He noted this was the best he had. Steve stated he didn't know exactly what was there when she started; he said he only knew what he could see from historical photos on line. He told her he could send her the photos if she would like. Mrs. Lightbody did not know it was an accurate way to determine what was there. She said they were real estate photos; they are not plot plans. Ann H. and Roger stated that their documentation was the Assessor's information. Roger said the Assessors plan showed 10 feet. He said if she were asking for 11 feet, he would go with the benefit of the doubt and let her leave it at 11 feet. He said with Assessing showing 10 feet, he felt personally he couldn't allow an additional 8 feet. Mrs. Lightbody asked when the assessing was done? Roger said he didn't know, but noted this is what she was getting taxed for, so this is what the board is looking at. Mrs. Lightbody stated that she understood that, but she wondered when the assessment was done? Roger said he didn't have that information, but he said when she said that when she came in for a permit, there was no record of the patio, if someone did the patio without a permit, the board can't look at that (adding the 8 feet). Mrs. Lightbody said that her point was, that if there is no date on the assessing information, how does she know when it was done. She did not feel it was a fair assessment because unless he can give her the date of it, she didn't know what happened prior to owning the property, whether they were or were not in compliance. Steve F. stated that he was looking at Mrs. Lightbody's assessment, Dana Berube was the Assessor that measured the property on 10/16/2018. Mrs. Lightbody stated, "Ok". Roger said that based on this, he felt the wall needed to get pulled back. Mrs. Lightbody asked what the maximum would be that the board would allow. Roger did not feel the board could allow anything additional beyond where it was yesterday. Roger said this was the DEP regulation as well.

Mrs. Lightbody stated, "So there is no opportunity for a variance, again I go back to my earlier statement which is you are going to make me disrupt all of that again, and have an impact again potentially to that lake and to the surrounding area in order to take this back". Roger A. stated, "We didn't create the problem, you created the problem". Mrs. Lightbody stated that she understood that, but what she was asking was for now, is if the board is looking at the best interest of the lake and the land, is that in the best interest of the lake and the land. She

said to have her take it down again and to push it back. Roland L. stated that she needed to have that argument with the DEP, that was not in their domain. Mrs. Lightbody stated that they issued her a permit. Roger stated that it was issued based on the fact the applicant will follow all the regulations, otherwise you are in violation. Roger noted that he was DEP certified. Ann H. added that you can get fined for what was done, moving the dirt, etc. and the person who did it can get fined.

Mrs. Lightbody stated that the next step was, there is no opportunity for a waiver or whatever you want to call it. Roger A. stated, “No”. Mrs. Lightbody stated that then the next step would be to put the wall back to the 10 foot mark, regardless of height. Roger said that was correct. He said he didn’t think the height would change, because looking at the pictures it is no higher than it was. He said with removing the wall closest to the lake, and trying to level that area between the removed wall toward the camp, that is what created the new walls height. The contractor who did the job, Nick, stated that the old wall was only 1 inch shorter than the new wall. He said that because you could only see 3 feet of wall in the pictures, there was another 2 and a half feet at least below grade. Steve F. stated, the board measured from, looking at the topography to the top of the wall, looking from the water toward the camp; they look at it from finished grade. Nick stated that if he put fill in, and got up to the finished grade which he was not able to due because the project was shut down, his intended finish grade was not going to be over 4 feet tall. Steve said that if he mislead them, he was sorry, the wall in its entirety, if it is over 4 feet tall, it needs to be engineered. Steve said what the board saw before, they could not tell what was in the ground and its gone, so they don’t have that option to know what was in the ground before. Nick said the knowledge of what was in the ground before was in the photo he provided, you can see the existing footing which is still there and you can see the excavator up on the hill. He said it was clearly more than 4 feet. He stated that he started building from the footing. Ann asked if Nick took any photos when he was working there? Nick stated he took some progress photos for his portfolio. Ann asked if he had any ‘before’ photos? He stated he had the same photos that the board had.

Roger A. stated that his point was, using the photo provided, was that when the wall by the lake was removed, and the area was leveled, it created the height of the new wall, that being greater than 4 feet. Nick stated that he understood that, but when he was leveling back was when he found the rest of the wall that was below grade because it was covered in dirt. He said the upper wall was roughly 56 inches in height from the footing to capping. Steve F. to Roger stated that the contractor was saying there was a very deep foundation to it. Roger said, “Right”. Nick stated that when he was removing the wall there were 6 foot rebar posts driven into the ground that were holding the wall up. Roger stated that while on site, he noted that the height of the patio is the same now as it was before. Nick agreed. Roger said the issue is that the new height of the ground in front of the wall creates the wall being 5 feet. Mrs. Lightbody stated that they understand that the original wall was greater than 4 feet, the new wall is greater than 4 feet, so they will need to have it engineered if this is the size of the wall they are keeping. She felt everyone was in agreement with respect to that. Roger and Steve agreed.

Mrs. Lightbody stated that she thought everyone was in agreement, that the lower patio and wall that came out do not need to be replaced because that would be worse for the environment and the lake, she did not think she would have to put back cement. She felt the board agreed. Roger A. thought if she was going to keep the grade as it is, there will need to be some measures taken to prevent soil erosion into the lake. Mrs. Lightbody stated that she could put soil back so what you see, the height of the wall, is not more than 4 feet, she didn’t see that as an issue. She said as long as it can be level, she did not want a slope. She said she had no issue burying the bottom two or three chords of walls, so you only see 4 feet. Roger thought the area would have to be tapered from the water to the new wall in order to get the earth up, so you only have 4 feet showing. He believed it

would be a 2 foot rise. Roger said the reason the 2<sup>nd</sup> wall was there was to keep the area flat. Mrs. Lightbody thought what the board was talking about was worse than leaving everything as is. She said that bringing in fill and things that were potentially going to run into the lake; she thought the intent was to make it better as well as to keep the health of the environment. She said she didn't want to continue to do things that may be on the books, check the box, but don't help the situation. She said the only reason she offered to bury the chords was if that was what they were fighting about, the height of the wall, she can bury part of it and make it appear to be a 4 foot wall. She said in reality the wall 'was' bigger, it 'is' bigger, and whether you keep it at the lower grade or she puts fill in, she didn't think it was the biggest issue. She said she would prefer the area to be lower and flat, so she could get in and out of the lake easier, but its not the biggest issue.

Roger A. asked the board if they would take a vote to move the wall back to the original location of 10 feet. Roger also asked if the board wanted the 2<sup>nd</sup> wall put back in in order to get less than the 5 foot height of the new wall. Roger thought the 2<sup>nd</sup> wall would help stabilize the area and keep things level, otherwise there will be an incline. He said if there is an incline the area should be mulched.

Madge B. stated that she didn't understand why the board would require the wall to be less than 5 feet high. Roger A. stated that the board wasn't asking that it would be, the board doesn't know what it will be when it is pulled back to 10 feet. He said if when its pulled back, and it is greater than 4 feet, than it needs to be engineered, if it's less than, then they can continue on. Madge thought they could do the calculations. Roger agreed. Madge thought that is what the board wants, a new plan to see what happens when the wall is moved back. Madge said that her common sense says that the board requires her to move the wall back and then they do the calculations to see how high it will be. Roger thought that was fine.

Mrs. Lightbody asked if she left the wall, because the area is level, and cut the patio blocks back to 10 feet, and fill the rest with grass, or whatever was approved, does that work? Ann H. stated that she had to take the existing wall out because its greater than 10 feet from the camp. Mrs. Lightbody stated, "No, but what I just said was if, because there has been talk just now about adding a second wall to sort of keep the runoff. Right now, with that wall in place, that ground above it where the patio is is flat and level and there should be no runoff in that area. If I were to move the patio blocks back to 10 feet". Ann stated, "And you have to push the wall back to 10 feet too". Mrs. Lightbody stated, "Couldn't I put a strip of grass? Let's just assume that's appropriate". Ann stated, "No because the wall is still in the wrong place". Madge B. thought that was still in question because the contractor says it is where it was. Mrs. Lightbody agreed. Ann H. stated that the only proof the board has on paper is the Assessors size unless there is something else. Madge said that she believed it told them how big the patio was, but does it tell the board where the wall was. Steve F. stated that the wall was at the edge of the patio. Ann stated that it was attached. Madge stated that she didn't realize that, so if she makes the patio smaller there is still going to be an issue.

Steve F. asked CEO Demers and the board, lets pretend the wall goes back to the 10 or 11 foot mark, where we think it was before, are there provisions in the ordinance that would prohibit us from allowing her to leave that grade in front of the wall lower than it was previously? Roger A. thought if you keep the grade as it is, level, the area would just have to be stabilized and the wall engineered, because the wall would be greater than 4 feet. Steve said if the board is trying to move forward, if he could propose anything, it would be that the wall comes back to what he calculates to be 11.3 feet to the front of it, off the building, and the board could allow her to leave the grade from the front of the wall to the water at the height she has now, so its flatter. He said he wasn't sure if he would use the word compromise but he felt it was the best he could come up with at this time. He

noted, that providing it doesn't violate anything else that anybody sees. Roger and CEO Demers thought it was fine.

Mrs. Lightbody stated there was piping under the ground that runs under the patio, she needed to make sure that that was still under grade. She didn't think the wall could go 10 feet back, go straight, and then be flat. She said there were things under the ground that needed to stay under the ground, so there may need to be another small wall. Steve asked if it was water piping for the well? Mrs. Lightbody stated, "Yes". He said he understood. She said that she knew the water piping was under the patio but she wasn't sure how far out. She said if they push the wall back to 10 feet, the piping has to stay under the ground. Roger agreed. She thought it might require a small retaining wall to step it down to meet the lower grade, which she did to make the yard useful.

The contractor, Nick, stated that when he took out the existing wall, the pipe for the well was approximately 2 inches in front of the existing wall. He said it was almost touching the front side of the wall he removed. He said now the pipe is running on the backside, touching the backside of the wall. He believed that spoke to the fact that the patio is not much bigger than the existing one. He thought if it was, it was only by the width of a block which is 12 inches. He believed that was the distance from the house to the front of the wall. Roger A. noted there was a big difference between 10 feet and 18 feet, and it wasn't one block. Nick stated it was against the front of the old wall and is against the back of the new wall. He thought perhaps the Assessor's report was not correct. Roger added that the board has pictures showing it as 11 feet.

**Roland L. stated that he would like to make a motion that the wall be moved, returned to its original location; and that the applicant comes back before the board with the new proposed height of the wall, and whatever adjustments they feel are necessary if they do run into plumbing; and also, a revised landscaping or replanting stabilization plan. His said this was his motion.** He said the board needs to move ahead and it's the applicants responsibility to bring back the information. Ann H. wanted to add to the motion to be sure that the DEP buffer was put into place. Maggie M. thought there needed to be a condition that if you don't have a contractor that is certified, nothing can be done until one is on site, which includes tearing down the wall. **Steve F. 2<sup>nd</sup> Roland's motion.**

Mrs. Lightbody stated that she had a question. The contractor, Nick, asked if that included putting up the hay bales or fixing the silt fence? Roger A. stated that the hay bales have to be put into place 'yesterday'. Roger said he didn't care who put down the hay bales, because it needs to get done to prevent any erosion into the lake. Roger stated that any additional work being done to the wall, or any of the other areas, there needs to be a certified person that is licensed by DEP on site or working at the site. Roger said the removal and reinstallation, needs someone certified.

Mrs. Lightbody stated that the motion was to move the wall and move it to its original location. She asked the board to define was that was. Roland L. stated the only formal documentation we have is from the Assessor, and the Assessors report states 10 feet. He asked what else the board could go by, unless they have other documentation to the contrary. Steve F. stated he was looking at the patio from the Redfin photos, unless it was changed from 2014, doing simple math with 8" x 16" patio blocks, giving the benefit of the doubt, he felt it was actually 11 feet and change. Roger A. stated he would go with no wider than 11 foot 3 inches. Steve said he could send Roland the pictures. Roland stated he could only see one screen at a time, and that he felt the board had an obligation to enforce the ordinances before them. He said that if the board wanted to go 11 foot 3 inches and then have somebody dispute that, and say its only 10 feet 8 inches, that's fine. He said everyone agreed the wall needs to be moved, if everyone agrees to 11 foot 3 inches, fine.



Roger A. asked CEO Demers what he thought. CEO Demers thought Steve F. calculations seemed reasonable.

Roland L. asked what if when the contractor, Nick, gets his certification and goes to redo it and he finds out, 11' 3", he has to cut every other block now, because its 11' 3". CEO Demers stated that it can be no more than 11' 3", so if he has to plan out and it will be 10' 11", then that is what it can be. Roland said he understood, but was making a point. The contractor, Nick, asked if 11' 3" was the edge of the patio? Is that how wide he could make the patio off the edge of the house or is that the front of the wall? Steve F. stated that was the front of the wall off the house. Roland asked if the wall was stepped back? Nick stated, yes, it is stepped back 1 inch per course, every single course. Nick stated from the bottom of the wall, to the top of the wall, as it sits right now there are 9 courses and its 6 inches tall per course, so it steps back 9 inches from the bottom to the top. Roland said his question to the board is, are we talking up to 11' 3" to the bottom, the furthest course out? Maggie M. thought, yes. Mrs. Lightbody stated that if she were to believe the board, and they are telling her from the photos that the patio blocks themselves measure 11' 3" and she can put it back to what it was, why would the outside bottom edge of the wall be 11' 3"? She said if she believed the board and they are telling her from the house out to the end of the patio block is 11 feet 3 inches, if you say it's the end of the wall, then it makes her patio 9 feet or whatever the math works out to be. Roger A. asked CEO Demers how he would enforce the width? CEO Demers stated if Steve F. was measuring the patio blocks from the building to the front of the wall on the top level, that is where he would get his 11' 3". He said the wall goes 1 inch per course, so there would be another 9 inches. Roger said, "So it would be 12' 3" on the bottom and 11' 3" on the top. CEO Demers agreed.

CEO Demers stated that what we were trying to accomplish this evening is to re-construct this because there isn't something solid to go on. He said we are taking all available evidence, photographs, testimony, and Assessor's records, merging it all together and reconstructing to the best of our ability what was there. He believed this was a good compromise.

**Roland L. asked to move the motion he made to a vote. Steve F. previously 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion to move the wall and return it to its original location; that the applicant comes back before the board with the new proposed height of the wall, and whatever adjustments they feel are necessary if they do run into plumbing; and also, a revised landscaping or replanting stabilization plan, passed unanimously.**

Mrs. Lightbody asked if the measurement was to the top of the wall? Roger A. stated, "Yes".

Roger A. stated that it was unanimous that the distance be 11' 3" to the widest point across the top from the camp to the edge of the wall. Roger stated at the bottom would probably be around 12 feet. He said the height would have to be determined, and if it is going to be greater than 5 feet tall it will have to be engineered.

The contractor, Nick, asked if they would be able to keep the height of the wall, as long as it is engineered, so they can keep the grade at the bottom of the wall relatively level? Steve F. stated, "Yes". Roger A. agreed, as much as it can be. Nick stated, "Ok".

Roland L. stated that the motion also did request a revegetation or whatever will be placed to stabilize the area. He said whether it will be mulch or a combination of vegetation, where there were patio blocks. He said it should not be sand. He did not believe the board or the DEP would support the idea of sand, or to bring sand to

the site. Roger A. agreed it definitely had to be stabilized and sand is not an alternative to go from the wall out toward the lake. Mrs. Lightbody stated that she would mention, even though she new it wouldn't get her anywhere, that there were several other camps in the area that have sand on the waterfront side. Ann H. stated the board was trying to crack down on it to keep the lake clean, she noted again the lake was in pretty bad shape.

Roger A. stated they have the motion and approval that the wall was going to get pulled back. He said there will need to have Best Management Practices put into place as soon as possible to stabilize the area, and with any work on the wall including removal and reinstallation, there will need to be someone certified by the DEP in BMP on site when the work is being done.

Mrs. Lightbody asked if she had permission to move forward if she meets these requirements? She asked if she had the permit based on this information? Steve F. didn't have a problem with it if she got an engineered plan and submitted it to CEO Demers. Mrs. Lightbody stated, "In a perfect world if I could snap my fingers and start this tomorrow, do I have the ability to do that, assuming I meet the shoreline certification of a DEP contractor, and have the engineering depending on the size of the wall"? Maggie M. did not think the board could approve without knowing who the contractor is first and that he is certified. Maggie thought they only approved that engineering may be required. Roger stated that in order to work on the wall, Mrs. Lightbody would have to come to see CEO Demers. Mrs. Lightbody stated she was confused at the next step.

Roger A. stated the next step is to put all the hay bales down. She said, then she needs to acquire a person with a DEP license to do the work. Roger stated the construction of the new wall will be permitted by CEO Demers in the approved location. Roger stated a permit from the CEO is required first, then a contractor can get started to pull the wall down and move it back. CEO Demers asked if she had to come back to the Planning Board?

Barbara F. read Roland's motion before the board. She stated, "***Roland stated that the wall be moved, returned to its original location; and that the applicant comes back before the board with the new proposed height of the wall, and whatever adjustments they feel are necessary if they do run into plumbing; and a revised landscaping or replanting stabilization plan.***" Barbara stated that Roland's motion was not to approve the application, so if something has changed you will need a new motion. Madge B. stated she was in favor of Roland's motion. Maggie M. stated she was as well, because she felt that was what the board intended. Steve F. agreed. ***Roger A. asked again if everyone was in favor of Roland's motion? All members were in favor. Roger stated that Roland's motion stands.***

Roger A. stated again that the hay bales need to be put in. He stated that the wall will get pulled back, so Mrs. Lightbody will need to come back before the board to let the board know the height of the new wall and plans for the wall. Mrs. Lightbody stated that she needed to come back to the board with the height of the new wall at the 11 foot mark. Roger added, "And Landscaping". Mrs. Lightbody asked if that was it? Roger stated that the board would also need to know the date of completion. Mrs. Lightbody stated, "Ok".

Nothing further was discussed.

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**Conditional Use Permit – Earth Moving in the Shoreland District to Replace Retaining Wall – Map 28, Lot 9 (126 17<sup>th</sup> Street) – Kenneth Sawaya, Property Owner; Matt Colton, Jr., Applicant**

Mr. Colton was present for the review of the application via Zoom.

Provided along with the application, was a copy of an email from Mr. Ken Sawaya that gave Matt Colton permission to replace his retaining wall, to do any measurements, removals and any construction on the property. Also provided was a picture of the existing retaining wall from the water side, with a notation that the wall was 4 feet in height and 56 feet in length; and a sketch plan which showed the location of Mr. Sawaya's home which was noted as being 23' 8" from the retaining wall to be replaced, the length and width of the existing retaining wall that being 56' long x 4' in height, along with the adjacent property of Mr. Richard Brady.

The detailed description of the property is as follows: *Replace existing retaining wall on lake side of property.*

Roger A. asked Mr. Colton to let the board know what he intended to do. Roger noted that the board would be looking at both walls at the same time, since they are side by side and being done by the same contractor, both on Lot 9 and Lot 10. Roger asked if that was ok with Mr. Colton? He said, "Perfect".

Roger A. asked Mr. Colton if he knew when he wanted to get started? Mr. Colton stated, "As soon as we get this permit". Roger asked about the Permit by Rule? Mr. Colton stated that it was all signed off.

Roger A. asked if the wall located at 126 17<sup>th</sup> Street would be approximately 4 feet in height? Mr. Colton stated, "Correct. He has an existing failing railroad tie wall". Roger agreed. Roger said the wall would not be any taller than 4 feet. Mr. Colton stated, "Correct".

Roger A. stated that on 120 17<sup>th</sup> Street, that wall will not be at the same height as 126, because it is quite a bit lower. Mr. Colton stated, "Correct, it steps down between the properties". Roger agreed. Mr. Colton stated they would do the walls at the same time as soon as the permit was approved.

Steve F. asked if the board would be doing a site inspection together? Roger A. stated he had seen the walls today and noted that the wall on 126 was leaning, it was 8 x 8 railroad ties and leaning toward the water. Mr. Colton agreed. Roger stated that other members were welcome to go take a look at the walls.

**Roger A. stated there would be notification to the abutters, and the final review would be at the meeting on Tuesday, January 26.**

Maggie M. asked if the road was clear to get through to the lots? Roger A. stated that it was icy going down, but after the rain coming on the weekend things could change.

Roland L. asked if all the work would be done from the land side? He didn't think they would use the barge. Mr. Colton stated from land and that it was a nice flat lot, so they try to schedule lots like this for the wintertime. Roland asked if there was a silt fence down into the water, or is there shoreline between the wall and the water. Mr. Colton stated, "Right now the water is going down, its currently about 6 to 8 inches away from the wall. We plan on drilling and putting in silt fence through the ice on the lake side. You take a one inch drill bit, and pound in stakes and we do our silt fence that way". He added, "If that's what you guys want. We can't do hay because of this year, where its so dry, nobody has access to hay". He believed silt fence would be sufficient.

Roland L. asked if the two walls connect at any point? Mr. Colton stated that yes, they were going to do one continuous wall, with just a height difference and the property maker is going to change. He stated that they would be replacing exactly what is there, so if the board gets a chance to go and see it it will make sense.

Roland L. asked what size blocks they would be using? Mr. Colton stated they would be using the Pepin engineered blocks, the 1000 pound blocks. He stated he was told they withstand the water for years to come. He stated they were 16 inches tall, 4 feet wide and 26 or 28 inches deep. He stated it was a 2000 pound face block, similar to blocks he has used on the other side of the lake.

Roger A. asked about the time frame for completion, and noted the board will need to know that answer for the next meeting. Mr. Colton stated from the time he receives his permit, they have 2 to 3 weeks of work to complete from the start date to finish. Mr. Colton noted that come spring there may need to be some touch up on the loam.

Roland L. asked if any vegetation was being removed, trees or shrubs? Mr. Colton stated that on 126, on the lake, facing the camp on the left, there is a tree cut off at 10 feet, that will be coming out. He added that the tree is dead.

Roger A. asked if there were any other questions for Mr. Colton? Mr. Colton asked, “Other than you guys getting out there to get a chance to look at it, is there any chance I can get a permit sooner”? Roger said, “No”. Roger said the board has to notify the abutters, that is required by law to give a 10 day notification and the next Planning Board meeting is in 14 days. Mr. Colton asked if in the future he sent out a notice prior to the meeting, could we have a permit issued sooner? He believed it was a lengthy process. He noted that he had a lot of work coming up on Treasure Island and time would be an issue, with permitting. CEO Demers stated that if he started the Permit by Rule process at the same time as the Planning Board, it all would have lined up. CEO Demers stated that he should apply to the Planning Board prior, to allow the one month lapse. Mr. Colton stated that he should allow for a month for a permit. CEO Demers agreed. Mr. Colton asked if the permit was good for two years? Roger said, “Right”.

Roger A. stated the board would see Mr. Colton on January 26 and members will drop by and take a look at the site on an individual basis. Mr. Colton thanked the board.

Nothing further was discussed.

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**Conditional Use Permit – Earth Moving in the Shoreland District to Replace Retaining Wall – Map 28, Lot 10 (120 17<sup>th</sup> Street) – Richard Brady, Property Owner; Matt Colton, Jr., Applicant**

Mr. Colton was present via Zoom for the review of the application.

Provided along with the application, was a copy of a letter from Richard & Barbara Brady which stated that as property owners of 127 17<sup>th</sup> Street, they gave Mr. Colton permission to demolish their retaining wall and replace it with a new one, and Mr. Colton could conduct all other activities necessary to complete this project. Also provided was a picture of the property from the water side which showed the existing retaining wall with a notation that it was 2 feet in height and 40 feet in length across the front and the wall section along the stairs was 20’ x 2’ with an adjoining section being 8’ x 2’ in height. An attached sketch plan depicted the location of the Brady house, the several distance markers from the house to the waterfront and stairs, and the length of the walls along the water, those again being 40’ x 2’ and 20’ x 2’, along with the section of stairs.

The project description was as follows: *Replace existing retaining wall on lake side of camp.*

- *See review above for Map 28, Lot 9.*

**Growth Permits**

**Growth Permit #22-20 – Map 41, Lot 33 – Incorrect Documents Provided for Approval**

Roger A. stated that GP #22, approved in 2020, the board granted the permit based on incorrect information / paperwork provided by the applicant, Ted Theriault of Waters Edge Land Development. Roger stated because of this, the Planning Board will have to rescind the approval.

**Madge B. moved the Planning Board rescind Growth Permit #22-20 which was issued in error. Steve F. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, GP #22-20 was rescinded.**

**Map 25, Lot 12 – Sachems Way – New Home**

**GP #01-2021**

Roger A. stated the contractor is Lee Dezan, and the lot was a buildable lot.

**Map 42, Lot 23-1 – 1 Royal Coachman Way – New Home**

**GP #02-2021**

Roger A. stated the lot is in Pine Springs Development, a lot of record and the contractor is Ted Theriault.

Roger A. asked Mr. Theriault if he had any questions for the board? Mr. Theriault said he had a question regarding Map 41, Lot 33 – GP #22-20. He stated that he had put in the wrong Book and Page which was his fault. He asked if the Growth Permit fee would be able to be re-applied to the correct permit? Roger stated that the money went with the application and is non-refundable, per the Growth Ordinance.

Roger A. noted that the board was still waiting for a legal opinion regarding Map 41, Lot 33 and whether or not it was legal to split a merged lot. Mr. Theriault wanted to know if the board wanted to hear the story about the lot in question. Roger stated that until the board gets the lawyers recommendation, they were not. Roger did add that when a land owner merges two properties, likely for tax purposes, you do not then separate it in his opinion. Mr. Theriault stated that Paul Bennett at O'Donnell's disagrees. Roger said again that is why it is being reviewed by a lawyer.

Nothing further was discussed.

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**The Planning Board meeting ended at 8:35 p.m.**

**NOTE: The winter hours are in effect as of November 1<sup>st</sup>; the meetings now begin at 6:30 p.m. and any scheduled public hearing begins at 6:00 p.m.**

**The next Planning Board meeting scheduled will be via Zoom on Tuesday January 26, 2020 at 6:30 p.m. See the Town website, [www.shapleigh.net](http://www.shapleigh.net) to obtain the link details, or use the information below.**

To attend the meeting, you may connect via the following:

• **Join Zoom Meeting**

[https://us02web.Zoom.us/j/84895865996?pwd=R0tBZE5ENFVLSGRibFRFaWFVQmEvZz09](https://us02web.zoom.us/j/84895865996?pwd=R0tBZE5ENFVLSGRibFRFaWFVQmEvZz09)

• **If calling in:** Find your local number: <https://us02web.Zoom.us/u/kekLm2hxR2>

**Zoom Meeting ID: 848 9586 5996 Password: 479754 (For all links)**

- You may send an email by noon on the day of the meeting to [planningBoard@shapleigh.net](mailto:planningBoard@shapleigh.net) and the link to the meeting will be emailed to you, or you can find that link on [www.shapleigh.net](http://www.shapleigh.net) under Planning Board

The Planning Board meets the 2<sup>nd</sup> and 4<sup>th</sup> Tuesday of each month unless it falls on a holiday or Election Day. Should there be a cancellation due to a storm event, holiday or Election, the meeting will typically be held the following Wednesday, also at 7:30 p.m. Please contact the Land Use Secretary if there is a question in scheduling, 207-636-2839, x4.

Respectfully submitted,  
Barbara Felong, Land Use Secretary  
Town of Shapleigh  
[planningBoard@shapleigh.net](mailto:planningBoard@shapleigh.net)