

## Shapleigh Planning Board

### *Minutes*

**August 10, 2021**

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

*Ann Harris sat in as a regular member this evening due to the absence of Madge and Maggie.*

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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 who is speaking.

**Public hearing began at 7:08 pm.**

**Minor Subdivision – 3 Lots (2 new lots plus remaining) – Map 10, Lot 22A (State Route 11) – Philip Chabot, Applicant, Gray Area Farm Trust, Property Owner; LinePro Land Surveying, Authorized Agent** Joseph Stanley of LinePro Land Surveying was present to represent the applicant. Family member Christ Cabot was also present.

Roger A. opened the public hearing by stating this was a minor subdivision application from Philip Chabot. Roger asked Mr. Stanley to brief the Board and anyone in the audience as to what they plan to do.

Mr. Stanley introduced himself and stated he represent the Chabot family and Gray Area Farm Trust, known to many as the blueberry plains and what was the alpaca farm. He said they were creating 2 lots out of Lot 22A, and a 50 foot wide private way. He stated one of the lots would be on both State Route 11 and the proposed ROW known as Chabot Ranch Way. He said the second lot would be accessed further into the ROW.

Mr. Stanley stated it was a very flat to mildly sloping area, there are no wetlands, no flood zone. He said the plan shows the detail of what the construction of the private way might look like. He noted that several hours prior to the meeting they were issued a DOT entrance permit which deemed the entrance location as safe.

Mr. Stanley felt this division was straight forward. They would have private wells and septic systems, and the homes on the two lots will be fire protected with sprinklers. He asked if anyone had any questions? There were none.

Roger A. stated the only issue from the last meeting was that the paperwork had to show Philip Chabot instead of Chris Chabot, since Philip is part of the Trust that owns the property, and Chris at present is not and has no legal interest in the property. Mr. Stanley stated that he was aware and did address that, as Barbara F. let him know what the Board was looking for. He said they changed the name on the plan to the Gray Area Farm Trust and used Philip Chabot’s address. He added that he also presented an application to Barbara that was signed by Philip Chabot. Roger said this was fine.

Roger stated because there are no other questions he will close the public hearing.

The public hearing closed at 7:12 pm.

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**The minutes from Tuesday, July 27, 2021 were accepted by members as read.**

**The Planning Board meeting started at 7:30 p.m.**

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**Conditional Use Permit – Replace Retaining Walls – Map 28, Lot 45 (31 Carpenters Cove Road) – Mainly Barge LLC (Matt Colton, Jr.), Applicant; Sean White, Property Owner**

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

Presented along with the application, was a letter dated June 13, 2021 from Sean & Karen White which read as follows: We have contracted with Mainely Barge LLC and/or Matt Colton to replace retaining walls on our property located at 31 Carpenters Cove Road, Shapleigh, ME 04076. This letter authorizes Mainely Barge LLC and/or Matt Colton to apply on our behalf for whatever permits may be required to perform this work.

Presented was a picture of the existing retaining walls and stairs, and superimposed on the picture were highlighted areas of the walls, with measurements. One area was depicted as 4' x 67', one area 4' x 6', one area 4' x 67', and a final area as 70' x 32". Also on the plan depicted were 5 trees to be removed.

The detailed description of the project is as follows: *Replace existing retaining walls to same height, length and location.*

This evening Mr. Colton provided the Board with documentation for Large Size Landscape Block Engineering from R. Pepin & Sons. Roger A. reviewed the documentation and stated that there was no engineer's signature on the paperwork, which was required for a wall this size. Mr. Colton stated he would get that to the Board.

Roger A. asked Mr. Colton to let the audience know what he was doing. Mr. Colton stated he was removing the existing retaining wall, leaving it the same height and length as the existing wall. He stated that as discussed at the last meeting, they would be replacing the vegetation to be removed with junipers and blueberry bushes. He said the new wall would be made of precast concrete from Pepin's.

Roger A. stated the reason he was before the Planning Board was because under §105-39 'Earth removal and filling for activities other than mineral exploration and extraction', Section D, requires any movement of material in the Shoreland District, in excess of 10 cubic yards, to have a Conditional Use Permit. Roger read the following:

- D. Earthmoving in Shoreland District. Any filling, dredging or excavation of land above or below the normal high watermark, except earthmoving of less than 10 cubic yards which shall require a permit from the CEO (except as provided above) to ensure proper erosion and sedimentation, shall require a conditional use permit from the Planning Board.
- (1) When an excavation contractor will perform an activity that requires or results in more than one (1) cubic yard of soil disturbance, the person responsible for management of erosion and sedimentation control practices at the site must be certified in erosion control practices by the Maine Department of Environmental Protection. This person must be present at the site each day earthmoving activity occurs for a duration that is sufficient to ensure that proper erosion and sedimentation control

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practices are followed. This is required until erosion and sedimentation control measure have been installed, which will either stay in place permanently or stay in place until the area is sufficiently covered with vegetation necessary to prevent soil erosion. The name and certification number of the person who will oversee the activity causing or resulting in soil disturbance shall be included on the permit application. This requirement does not apply to a person or firm engaged in agriculture or timber harvesting if best management practices or erosion and sedimentation control are used; and municipal, state and federal employees engaged in project associated with that employment.

**Roger A. reviewed §105-39, Section G, 'Conditions of Permit', which read as follows:**

- G. Conditions of permit. The Planning Board may issue a permit, provided that the following conditions shall be met:
- (1) The smallest amount of bare ground shall be exposed for the shortest time feasible. The Planning Board shall set a specific date after which bare ground shall not be exposed. *The Planning Board conditioned that the wall will be completed by December 15, 2021. BMP to be used until project is completed in its entirety, including revegetation.*
- (2) Temporary ground cover (such as mulch) and temporary runoff filter (such as hay bales in swales) shall be used as required to prevent stream sedimentation. The Planning Board shall set a specific date by which permanent ground cover shall be planted. *The Planning Board conditioned that all vegetation will be completed by June 30, 2021.*

- (3) Diversions, silting basins, terraces and other methods to trap sediment shall be used.
- (4) Lagooning shall be conducted in such a manner as to avoid creation of fish trap conditions. The applicant shall submit written approval from the Department of Marine Resources or Department of Inland Fisheries and Wildlife, as applicable, prior to consideration by the Planning Board. *N/A with this project.*
- (5) The extent and type of fill shall be appropriate to the use intended. The applicant shall specify the type and amount of fill to be used. *The fill to be used is what is specified in the engineering details from Pepin for Large Size Landscaping Blocks.*
- (6) Fill shall not restrict a floodway, channel or natural drainageway. *The fill to be used is what is specified in the engineering details from Pepin for Large Size Landscaping Blocks, and it will help stormwater drain properly on site.*
- (7) The sides and bottom of cuts, fills, channels and artificial watercourses shall be constructed and stabilized to prevent erosion or failure. Such structures are to be designed and built according to the Maine Soil and Water Conservation Commission, Technical Guide, Standards and Specifications.
- (8) Where activities carried out under this article require the removal of existing ground cover, revegetation should be carried out. *Revegetation shall be carried out per the plans provided.*
- (9) (Reserved)
- (10) Specific plans are established to avoid hazards from excessive slopes or standing water. Where embankment must be left upon the completion of operations, it shall be at a slope not steeper than one foot vertical to four feet horizontal. *N/A for this project, the replacement wall is to hold the existing embankment in place.*
- (11) No excavation shall be extended below the grade of an adjacent street, except for drainageways, unless 100 feet from the street line. No excavation below the grade of the surrounding land shall be allowed within 100 feet of any side or rear lot line. However, removal of earth material deposits from hills or knolls may be allowed within 50 feet of a side or rear lot line if no excavation below the grade of abutter's properties occurs. *N/A for this project.*

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- (12) Sufficient topsoil or loam shall be retained to cover all areas, so that they may be seeded and restored to natural conditions. *The area shall be re-established per the revegetation plan provided.*
- (13) No existing rock, gravel or sandpit will be extended or expanded until the operator has complied with the provisions of this chapter and obtained a permit therefore. *N/A for this project.*

**Roger A. reviewed §105-73.G ‘Standards applicable to conditional uses’ findings of fact are as follows:**

*Standards applicable to conditional uses. It shall be the responsibility of the applicant to demonstrate that the proposed use meets all of the following criteria. The Board shall approve the application unless it makes written findings that one or more of these criteria have not been met.*

- 1) The use will not have an adverse impact on spawning grounds, fish, aquatic life, birds, or other wildlife habitat. ***Roger stated, it will not, the new retaining wall will help protect fish and aquatic life.***
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. ***Roger stated replacing the failing wall will help to conserve shore cover and access to the lake, by stabilizing the area.***
- 3) The use is consistent with the Comprehensive Plan. ***Roger stated it is, the Comp Plan is in favor of protecting the health of the lake.***
- 4) Traffic access to the site is safe. ***Roger stated it is safe for the proposed use.***
- 5) The site design is in conformance with all municipal flood hazard protection regulations. ***Roger stated it is, the project is not in the flood zone.***
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. ***Roger stated the existing wall material will be taken out of Shapleigh and disposed of at the proper facility. It will not go to the transfer station.***
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. ***Roger stated the existing creosote railroad ties will be taken out of Shapleigh and disposed of properly.***
- 8) A stormwater drainage system capable of handling fifty-year storm without adverse impact on adjacent properties has been designed. ***Roger stated the new wall will be constructed per Pepin's engineering plans. This is a replacement wall, they are not exposing a new location.***

- 9) Adequate provisions to control soil erosion and sedimentation have been made. ***Roger stated best management practices will be in place during the project and until all revegetation is completed.***
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. ***Roger stated there was but it is N/A for this application.***
- 11) The provisions for buffer strips and on-site landscaping provide adequate protection to neighboring properties from detrimental features of the development, such as noise, glare, fumes, dust, odors, and the like. ***Roger stated there is existing vegetation, the trees being removed will be replaced per the revegetation plan. The only noise is during the project. There is no glare, fumes, dust and odors associated with this project.***
- 12) All performance standards in this chapter applicable to the proposed use will be met. ***Roger stated they will with conditions.***

**Roger A. stated the condition of approval are as follows:**

- 1) Best Management Practices shall be kept in place until the project is completed which includes revegetation and complete stabilization of the area. There must be a person certified by the MDEP in erosion control practices on site during the project, and the person's MDEP certification number shall be given to the CEO during the permitting process.

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- 2) The railroad ties shall not go to the Shapleigh Transfer Station, they shall be disposed of at a proper facility.
- 3) The wall construction shall begin when the lake water drops and will be completed by December 15, 2021; the revegetation and stabilization of the area shall be completed by June 30, 2022.

Roland L. stated that in the pictures provided it showed wooden stairs coming down. He asked if the stairs would be built into the wall? Mr. Colton said, no, they are going to be wood again. Mr. Colton explained the existing stair configuration. Roland thanked him for his explanation. Mr. Colton stated that if he did the stairs back into the land they would have to dig farther back and move more vegetation and would create more disturbance. Roland said that is why he asked.

Mr. Michael Roberts, Map 23, Lot 10 (37 Starboard) asked if the Board allowed questions? Roger A. stated that he could speak. Mr. Roberts asked if this was on Mousam Lake? Roger stated that it was. Mr. Roberts stated, "And the requirement of having someone DEP certified is this something new"? Roger said, "No". Mr. Roberts asked if the other sites they did previously had someone on site from DEP certified? Roger said, "Someone licensed by DEP". Mr. Roberts said, "So then the practice of not having silt fencing and dredging out of the lake was approved by DEP certified on site?" Roger said this was probably regulated by a PBR (Permit by Rule). Mr. Roberts said, "So you don't have to have any silt fence up to protect the lake"? Roger said, "You do". Roger stated that the contractor was responsible or the person overseeing the project is responsible for it. He said if there is no silt fence, then the CEO (Code Enforcement Officer) needs to take action. Mr. Roberts stated that it was not done last year, so that is why he brought it up at the previous meeting, and those are the pictures he provided to the Board. He said that if this isn't new, needing the DEP certified person, who is going to do it now and who is going to police it. Roger said, "The CEO".

Mr. Roberts asked how high the wall was now, the existing? Mr. Colton asked if this was a public hearing, or for abutters? Mr. Roberts stated that it was concerned people who live on the lake and worry about the environment. Mr. Roberts stated that he was not opposed to Mr. Colton's business, he just wants to make sure good practices are done. He stated that he has done this twice on the lake since 2004, and he followed the rules and had someone on site. He said that he had silt fencing up and hay bales, especially in 2006 with the floods. He stated that he even had the CEO at that time, Steven McDonough, come out and help him with it, because it is important to the lake, and the residents on the lake. He said again, "I'm not opposed to your business, thrive, and do well, because it is good for our lake. I just want to make sure that the practices done previously, no silt fence, no hay bales, dredging out of the lake to backfill the wall is not a part of the practice, and is not allowed by DEP." Steve F. stated that the Board had no option to oversee the project. Mr. Roberts stated that he understood that.

Roland L. said he did not know what Mr. Roberts was referring to, which project, but he wanted him to remember the activity on Mousam Lake is driven by in some cases Shapleigh and in some cases Acton. He said if something happens on the Acton side, it's outside of our purview of review or supervision. Mr.

Roberts said he understood, but noted DEP isn't Acton / Shapleigh, DEP is Maine. Roger A. agreed, but noted that a Permit by Rule is just a matter of submitting a form, if they don't have any issues, you will never hear back from them. Mr. Roberts said he understood that, he had been through the process. He said they are not addressing his concerns. Roger stated that the DEP is not watching the site. Mr. Roberts said that was his point, and wanted to know who was? Roger said, "The CEO". Mr. Roberts said whether it was Shapleigh or Acton and he didn't care what body of water, it needs to be watched over. Mr. Roberts said he was happy they were repairing the walls

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and if they need help he is retired and can help with the silt fencing, he just wants things done right. He only wanted them to follow the rules, that is his concern.

Mr. Roberts stated the other issue is long term, whether it was Mr. Colton's company or any other company, he wanted to be sure it was done right, because the height of the wall and using these blocks, no matter who supplies them, they are designed to be set up the correct way and over a certain height a geogrid system is required. He said if they are doing it, let's do it right, which is why he asked about the height of the wall. He said he liked how they were going to handle the stairs, the least amount of disturbance to the property and lake, the better we are. He said again he had nothing against the applicant's, he didn't know them, he was only going by what he saw taking place last fall.

Mr. Roberts said that the Board was going to give them until December 15<sup>th</sup> to finish. He said as a lake owner he knows that there were activities that take place on the lake year round. He said last year there was a disturbance of the ice. He noted that they had ice far later in the year than they typically have it. He said people have activities on the lake, such as ice fishing, snowmobiling, ice skiing, etc. He would like the applicant to take that into consideration. He said he realized this was minor but would like the applicant to give thought to the people who do these activities on the lake. Steve F. thanked Mr. Roberts for his information.

Roger A. stated that there was no engineer's signature on the documents for the engineered wall documentation from Pepin's, and there is a section that states the owner's engineer has to make sure the soils are correct. Mr. Colton stated he would obtain the signature.

**Steve F. made the motion to approve the Conditional Use Permit to replace the retaining wall per the plans provided and with the stated conditions on Map 28, Lot 45. Roland L. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 4 – 0, the motion to approve the replacement of the retaining wall was unanimous.**

**The conditions of approval are as follows:**

- 1) Best Management Practices shall be kept in place until the project is completed which includes revegetation and complete stabilization of the area. There must be a person certified by the MDEP in erosion control practices on site during the project, and the person's MDEP certification number shall be given to the CEO during the permitting process.**
- 2) The railroad ties shall not go to the Shapleigh Transfer Station, they shall be disposed of at a proper facility.**
- 3) The wall construction shall begin when the lake water drops and will be completed by December 15, 2021; the revegetation and stabilization of the area shall be completed by June 30, 2022.**

Nothing further was discussed.

**The Findings of Facts**

1. The owner(s) of Shapleigh Tax Map 28, Lot 45 (31 Carpenters Cove Rd) are Sean and Karen White, mailing address P.O. Box 1024, Westborough, MA 01581, per YCRD Warranty Deed, Joint Tenancy, BK 8557, PG 142, registered 12/10/1997.

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2. Provided was a picture of the existing retaining walls and stairs, and superimposed on the picture were highlighted areas of the walls, with measurements. One area was depicted as 4' x 67', one area 4' x 6', one area 4' x 67', and a final area as 70' x 32". Also on the plan depicted were 5 trees to be removed.

3. Provided was documentation for Large Size Landscape Block Engineering from R. Pepin & Sons. Because there was no engineer's signature on the documents for the engineered wall documentation from Pepin's, and there is a section that states the owner's engineer has to make sure the soils are correct, Mr. Colton was told he needed the document signed and he stated he would provide the signature.
4. Provided was a revegetation plan that consisted of low ground bearing bushes such as blueberry and juniper, as the existing tree growth is substantial.
5. The detailed description of the project is as follows: *Replace existing retaining walls to same height, length and location.*
6. The application as presented met the Standards under §105-39 'Earth removal and filling for activities other than mineral exploration and extraction' per the documentation provided and as presented.
7. The application as presented met the performance standards under §105-73 'Conditional Use Permits' as per the documentation provided and as presented with three conditions.
8. A notice was mailed to all abutters within 500 feet of the property on June 23, 2021. Meetings were held on Tuesday, June 22, 2021 via Zoom due to Covid-19, Tuesday July 13, 2021, July 27, 2021 and August 10, 2021 in person at the Town Hall. A site inspection was done by members prior to the meeting on July 13th.
9. The Planning Board unanimously agreed to approve the Conditional Use Permit to replace the existing railroad tie retaining walls on Map 28, Lot 45, per the documents provided and as presented with three conditions.
10. The conditions of approval are as follows:
  - 1) Best Management Practices shall be kept in place until the project is completed which includes revegetation and complete stabilization of the area. There must be a person certified by the MDEP in erosion control practices on site during the project, and the person's MDEP certification number shall be given to the CEO during the permitting process.
  - 2) The railroad ties shall not go to the Shapleigh Transfer Station, they shall be disposed of at a proper facility.
  - 3) The wall construction shall begin when the lake water drops and will be completed by December 15, 2021; the revegetation and stabilization of the area shall be completed by June 30, 2022.

**Decision:**

**The Conditional Use Permit to replace the existing railroad timber and concrete block wall(s) with precast blocks, per the engineering specification provided by R. Pepin & Sons, the same length and height as the existing, and revegetate the area per the plan, on property known as Tax Map 28, Lot 45 with three conditions, was approved.**

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**Conditional Use Permit – Temporary Boat Ramp for Barge – Map 22, Lot 1 (84 Wardens Way) – Matt Colton, Jr., Applicant; Sean Dumont, Property Owner**

Mr. Colton was present for the review of the application, along with Cole Arey, both from Mainely Barge.

Provided along with the application was an email dated June 9, 2021 from Sean F. Dumont, which stated the following: I, Sean Dumont, owner of 84 Wardens Way, Shapleigh Maine 04076, give Matt Colton permission to pull a permit on my behalf.

Provided was a copy of part of Town Tax Map 22, depicting Lot 1. On the map was the general location of the proposed boat ramp, with the notation 'Proposed Ramp 10' Wide'.

The detailed description of the project is as follows: *Excavating a temporary ramp 10 feet wide to load and unload barge. Silt fence and erosion control in place.*

Provided was a revegetation plan, which depicted the vegetation that will remain in place, 3 small Oak trees to be removed in order to create the ramp, and it was noted they will be replaced after the work is completed; the location of the existing roadway and location of the new ramp. In addition, the area where vegetation will be removed for the ramp and will be replaced when the ramp is no longer used was on the plan.

This evening the Planning Board received word from Road Commissioner Jeff Goodwin via a discussion with Barbara Felong, that he had no issue with Mainely Barge using 23<sup>rd</sup> Street Loop to access 84 Wardens Way. He also stated that he did not feel he had the right to restrict the use of 23<sup>rd</sup> Street Loop as it is a public access way.

Roger A. asked Mr. Colton to brief everyone in attendance with what he would like to do for the record. Mr. Colton stated they are going to use 84 Wardens Way as a temporary loading and unloading access for retaining wall materials. He said they would also use it for construction equipment, a small excavator, and a small skid steer. He said he uses the barge for walls where there is no feasible access to get to them from land without destroying a lot of trees and vegetation. He said they use the barge to get the difficult walls done.

Roger A. stated at the previous review the Board stated they wanted a legal opinion regarding the right-of-way access for passage to the ramp. He said they did receive a legal opinion from Durward Parkinson today. Roger read the email the Board received as follows:

In response to your inquiry from the Planning Board, I have reviewed the documents which were provided and offer the following:

The access easement contained within the Dumont deed ("Easement") is broadly worded as "a fifty foot road easement."

There are no restrictions on the types of vehicles allowed on the road or frequency of use.

There is nothing in the Easement that prevents Dumont's lessee, Colton, from enjoying rights to use the easement. The Easement was not granted exclusively to Dumont.

Leasing is essentially a subdivision of the land which Dumont is entitled to do, with proper approvals from the State and Planning Board.

By presenting the Easement to the Planning Board, Dumont has demonstrated sufficient right, title and interest for the Planning Board to proceed with its review.

If the owners of the burdened property believe the proposed use exceeds the limits of the Easement, they have the right to pursue a civil action in court to enforce the rights.

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Generally the Planning Board should not involve itself with civil matters involving property disputes between landowners.

Holders of easement rights like Dumont have the ability to maintain and make repairs to the easement. This would include grading and drainage work within the 50 foot wide area. The right to pave is not so clear.

As part of its review, the Planning Board should evaluate testimony involving safety issues and the effect of the traffic on neighbors.

In its decision, the Planning Board has the ability to impose restrictions on the applicant which, in its discretion, are necessary to mitigate any traffic and safety issues resulting from the project.

The Planning Board may require an independent engineer, at the applicant's expense, to review what improvement or repairs to the Easement might be needed.

Hope that this is responsive. Please let me know if you need anything further.  
Durward Parkinson

Roger A. asked if there were any comments?

Mary Peterson, Map 3, Lot 3 (Shapleigh Corner Road) and owner of the right-of way to be used by the applicant – Can I have a copy of the email? Barbara F. provided her with several copies.

Mr. Tom Snowe, 75 Wardens Way – Are you open for comment and concerns? Roger A. stated the Board was.

Mr. Snowe stated that he was afraid the letter would come back somewhat vague. He said that easements have a tendency to be lost in time, they come out as common law, and you don't have the exact wording. He said often the easements were done before cars. He said he was not certain with this easement, because he looked for it himself at the courthouse and could not find the actual verbiage. He stated the easement was granted for access to the properties, for camps. He said with the exception of the mill at the foot of the lake, Emery Mills, there was no other commercial venture, again it was to access camps. He said, "To put a commercial venture, no matter how needed it is, in a residential area, through a very dangerous for heavy equipment road, there are a lot of safety concerns on that road, is kind of reckless. The vaguerity, I'm calling the lawyer's comments vague, because it is specific in the Maine law review, Volume 48, 197, Page 257, Section 1, Paragraph 1 - Grants by the Dominant Estate. Grants by the dominant estate, the dominant estate being Mr. Dumont, this is more specific for Mr. Dumont trying to give right to the 3<sup>rd</sup> party, and as I mentioned at the last meeting, he can't do it based on the statute. The right there says 'In some cases, the dominant estate ineffectively attempts to extend the use of an appurtenant easement to other persons or property. For example, an easement cannot be granted by the dominant estate (Mr. Dumont) to benefit non-appurtenant parcels. The extension of the easement to other persons or property requires the permission of the servient estate', which would be Jagger, Mary. We have a short section of that in front where you turn on Batchelders. So I don't understand that he is ignoring this when that was written. So I think you might be getting into a gray area, which he may not want to stand behind."

Roger A. stated, "He'll stand behind it." Mr. Snowe stated that he was ignoring this statute, and noted he found 3 statutes, but this one stated that it must be approved by us.

Mrs. Snowe stated she had a question for future years. She said, "Let's say somebody else wants to have a commercial venture, and in order to have that commercial venture they have to have the people cross private property, which this is. This man is going to have a business, which we all want him to have, and to be successful and it is nothing personal. So once you start allowing people to have businesses using private land, I wonder about what kind of precedent that will set for the Town?" Roger A. stated that the court will decide.

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Mrs. Snowe stated, "So basically what you are telling us is you deal with it with Dumont. Basically." Steve F. stated that was what the Town's attorney said, we are not attorneys.

Mr. Snowe stated, "You called it a property dispute, it is not a property dispute." Steve F. stated, "Number 6 on this email says 'If the owners of the burdened property believe the proposed use exceeds the limits of the Easement', which you are clearing saying it does, 'they have the right to pursue a civil action in court to enforce the rights'." Ann H. stated that number 7 states that the Planning Board doesn't get involved. Mrs. Snowe asked if they wanted to do that (civil action), what is the next step? She said the Board is going to give the conditional permit, the applicant is going to start doing work and then they have to litigate or whatever it is. Steve said the Board didn't have the option not to do that. Roland L. stated that if the applicant meets the criteria of the ordinance, then regardless of how we feel, we have no choice but to approve it. Mr. and Mrs. Snowe stated that they understood. Mr. Snowe stated that was why he was trying to bring the real law into this. He felt the rights of the easement were being granted to a 3<sup>rd</sup> party. He stated the rights of the easement were to access the camp, and he added that the easement may have been written before trucks were invented. Roger A. stated that when anyone else bought property on the easement, and they built their structure, they had building materials and cement trucks, and the trucks were coming until the structure was done. Roger felt this was a longer term with the walls vs a home. Mrs. Snowe stated that this wasn't residential it was a commercial venture. Mrs. Snowe stated that the public was now accessing their road, because the applicant is using their road to provide a public service. Roger stated that the wording that was given to the attorney was the wording in Mr. Dumont's deed.



Mary Peterson stated that she had the original deed that was the right-of-way, there is not anything that mentions a 50 foot ROW down the road for an easement. She said there was just the right to pass on to her uncle, who left it to her mother, then to her. Mr. Snowe stated that what he read, the 50 feet is coming off of Maine State property, not towns, so if it is coming off a State road then it has to be 50 feet wide. Mary Peterson thought a town road was 30 feet. Roger said that all town roads have a 50 foot width. Mr. Snowe said they were speaking of an easement not a road. Mary Peterson agreed, this was a private easement, not a town road. Roger stated that most private ways are 32 feet wide.

Mary Peterson wanted to be sure she understood what was being said, that the permit goes for two years. She asked if this was correct? She also asked about December 15<sup>th</sup>, the project he was doing can go to December 15<sup>th</sup>. Steve F. said that this permit hadn't been decided yet. She stated that he had to go back and forth across the property to do the December 15<sup>th</sup> project. Steve stated that if this permit doesn't get approved, then he cannot do that project. Mrs. Snowe stated that the Board already approved it. Steve stated that the Board approved a retaining wall, separate application.

Mr. Snowe said his other issue is safety. He felt it was inevitable there would be an accident on one of the visible points or pinch points that he brought up at the last meeting with a delivery truck or the increased traffic flow. He said that it was an issue currently, as well as pedestrians having to jump out of the way. He wanted to know who was responsible if there is an accident? Is it Mrs. Peterson, or was it him if it was on his section of the ROW, or was it the Town who permitted it? Roger A. stated that a driver is supposed to have his vehicle under control at all times. Mr. Snowe was concerned about the blind spots. Mrs. Snowe asked if they would be liable if it happens on their property? Mr. Snowe asked if the Board wanted to approve a dangerous area? Roger said that if the Board looked at the road and felt that how fast they would be traveling, and noted they were not going to be going fast with 10 tons of delivery material, then he didn't see an issue. Roger asked to what extent the Board was to suppress the project? Mrs. Snowe said, "How about he finds another spot. How about the Town buy a piece of land on the lake and have the foresight to take care of the lake." Mr. Snowe asked Mr. Colton if he searched for other areas? Mr. Colton stated that he had. Mr. Snowe asked Mr. Colton how coming a half mile through the woods was a safe access? Mr. Colton stated it was flat, it was a good piece of land, they

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were not disturbing any of the trees. Mr. Snowe agreed it was a beautiful location, they can swing around and there is plenty of storage. He said the issue was access to the site. He said it was narrow, people walking it during the summer. Mr. Colton stated that he saw Mr. Snowe about every other morning running down Route 11 and 109, which has much more traffic than where we are discussing. Mr. Snowe stated there were places to jump and noted he has had to.

Steve F. asked if there was something that could be done, besides the Snowe's and Mrs. Peterson getting an attorney, and Mr. Dumont getting his attorney, and duking it out in court and spending a bunch of money. Is there something that can be done to this access to make it safer for the next 2 years, for Mr. Colton to be able to use the road? Is there a way to do that? In your opinion? Mr. Snowe said, "In my opinion there would be." Steve asked him what that was? Mr. Snowe said the points of concern had to be addressed. He said it was something the landowners and Mr. Colton would have to work out, and he would like it worked out before he uses it. Steve said he was looking for an alternative. Mr. Snowe said that was him speaking, Mary Peterson may have a different position. He felt Bob Torno is not going to be happy, because the asphalt that he has done will be destroyed with heavy trucks coming in over it. He said there wasn't a proper base because it's an easement for a right-of-way for small vehicles. Mr. Colton thought if Mr. Torno was going to be upset he would be at the meeting. Mr. Snowe stated that Mr. Torno had some health issues. Mr. Colton stated that Mr. Torno liked him and his neighbors and was staying out of it. Mr. Snowe said that Mr. Colton claims he spoke with Mr. Torno but he didn't. A gentlemen in the audience stated that Mr. Torno said he never spoke with Mr. Colton. Mrs. Snowe mentioned Mr. Torno's recent health issue, which is why he didn't attend.

Ann H. added that the Board has to uphold the ordinance which was voted on by the citizens of Shapleigh. The Board does not get into civil matters. She said the Board is also concerned with preserving the shoreline, and instead of being upset with each other, let's come up with some alternatives that might work. Mrs. Snowe

stated that there probably wouldn't be any anger if Mr. Colton hadn't started the way that he did. She said that it started out with Mr. Colton starting with no permission. She wondered if he thought they wouldn't see all the trucks coming by her house with tons of stuff on them. Ann said she understood, but that has already happened, so let's try to fix it. Mrs. Snowe said she understood, she just wanted her aware of why the anger is there. She agreed it would have been nice to start out differently.

Mrs. Snowe said they built a home, realizing they would have to dig themselves out because it is not Town maintained, which they are willing to do. She said now you are saying they can have heavy equipment come down, businesses, etc. Mr. Snowe said they built a house for his daughter and grandson, and her husband, and he could not see his grandson riding his bike down there with these big trucks coming through. Ann H. stated that she understood. Mr. Snowe said that is where the personal aspect comes in. Ann said she could see liability law suits, but as a Planning Board there are only so many things they have to control that.

Michael Roberts stated that he had two things to bring up. He said there is a section of the road that is Town maintained and at the last meeting it was mentioned that the Board would check with the Road Commissioner to see if there was any impact, as some of it was newly paved. He asked if the Road Commissioner had any concerns or comments. Steve F. stated that there were no concerns or comments. Mr. Roberts said, cool. He said the other question was the fact it was mentioned at the last meeting, that once this was granted to the land owner, it stays with the land if the landowner sells. He said based on this, it is not a 2 year project or grant, if it is approved; it is staying with the land forever. Roger A. agreed it stays with the land, but if it is a 2 year permit, it is only a 2 year permit. He said it didn't matter who owns the land. Mr. Roberts said, "But the easement stays with the land forever." Roger said, "Any conditional use permit goes with the property, it does not belong to the person." Roger said the person that submitted it, may be the applicant, and it may be granted for them, but the permit stays with the property. Mr. Roberts said, "Forever". Roger said, unless there is an end date. Ann H. said, "It's on a time frame". Roger said for example, if it's a gravel pit it's going to be for 3 years, then every 3

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years you have to renew it. Mr. Roberts asked if the easement stays forever as it was mentioned at the last meeting? Roger said the applicant is asking for 2 years. Ann said they were speaking of two different things.

Mr. Roberts said the easement is granted forever, so if Mr. Dumont sells it, it goes to whomever. Ann said, "There are 2 things here, there is an easement and there is a conditional use permit." Mr. Snowe thought he was getting confused with the two. Mr. Roberts said the easement paves the way for other concerns, all the landowner has to do is if they own the land with the easement, another person can come in and file for another process to continue with a business. Ann agreed, but noted it did not mean they would get approved. Mr. Roberts said he understood but felt the easement made it easier. Mrs. Snowe said the easement is always going to be there, they would need a new permit. Mr. Roberts asked if the easement was there now? Mr. Snowe stated that it was. Mr. Roberts asked if the temporary boat launch access was not going to stay there, in theory, forever? Steve F. said, "No". Mr. Roberts said, "Ok, thank you". Steve said as part of the conditional use, the property will have to be returned to its original state when the permit expires. Roger added that normal conditional uses run with the property unless there is an end date. Mr. Roberts thanked the Board.

Roger A. asked if there were any other questions? There were none.

Roger A. reviewed §105-39 'Earth removal and filling for activities other than mineral exploration and extraction', Section B 'Earth moving not requiring a conditional use permit'. Roger stated this permit does not meet any of the criteria in this section, therefore they needed a permit. Roger stated that anything in the Shoreland district needs a permit, less than 10 cubic yards, you need a permit from the Code Enforcement Officer, greater than 10 yards, a permit from the Planning Board.

Roger reviewed §105-39, Section D 'Earthmoving in the Shoreland District'. The section reads in part, 'When an excavation contractor will perform an activity that requires or results in more than one (1) cubic yard of soil disturbance, the person responsible for management of erosion and sedimentation control practices at the site must be certified in erosion control practices by the Maine Department of Environmental Protection.'

**Roger A. reviewed Section G, ‘Conditions of Permit’, which read as follows:**

G. Conditions of permit. The Planning Board may issue a permit, provided that the following conditions shall be met:

- (1) The smallest amount of bare ground shall be exposed for the shortest time feasible. The Planning Board shall set a specific date after which bare ground shall not be exposed. *The Planning Board conditioned that revegetation shall be completed by the time the 2 year permit has expired which is August 10, 2023. Mulch shall be used to prevent erosion at the lake access point at all times until the area is revegetated.*
- (2) Temporary ground cover (such as mulch) and temporary runoff filter (such as hay bales in swales) shall be used as required to prevent stream sedimentation. The Planning Board shall set a specific date by which permanent ground cover shall be planted. *The Planning Board conditioned that revegetation shall be completed by the time the 2 year permit has expired which is August 10, 2023. Mulch shall be used to prevent erosion at the lake access point at all times until the area is revegetated.*
- (3) Diversions, silting basins, terraces and other methods to trap sediment shall be used.
- (4) Lagooning shall be conducted in such a manner as to avoid creation of fish trap conditions. The applicant shall submit written approval from the Department of Marine Resources or Department of Inland Fisheries and Wildlife, as applicable, prior to consideration by the Planning Board. *N/A with this project.*

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- (5) The extent and type of fill shall be appropriate to the use intended. The applicant shall specify the type and amount of fill to be used.
- (6) Fill shall not restrict a floodway, channel or natural drainageway.
- (7) The sides and bottom of cuts, fills, channels and artificial watercourses shall be constructed and stabilized to prevent erosion or failure. Such structures are to be designed and built according to the Maine Soil and Water Conservation Commission, Technical Guide, Standards and Specifications.
- (8) Where activities carried out under this article require the removal of existing ground cover, revegetation should be carried out. *Revegetation shall be carried out per the plans provided.*
- (9) (Reserved)
- (10) Specific plans are established to avoid hazards from excessive slopes or standing water. Where embankment must be left upon the completion of operations, it shall be at a slope not steeper than one foot vertical to four feet horizontal. *N/A for this project, there are no steep slopes.*
- (11) No excavation shall be extended below the grade of an adjacent street, except for drainageways, unless 100 feet from the street line. No excavation below the grade of the surrounding land shall be allowed within 100 feet of any side or rear lot line. However, removal of earth material deposits from hills or knolls may be allowed within 50 feet of a side or rear lot line if no excavation below the grade of abutter’s properties occurs. *N/A for this project.*
- (12) Sufficient topsoil or loam shall be retained to cover all areas, so that they may be seeded and restored to natural conditions. *The area shall be re-established per the revegetation plan provided.*
- (13) No existing rock, gravel or sandpit will be extended or expanded until the operator has complied with the provisions of this chapter and obtained a permit therefore. *N/A for this project.*

**Roger A. reviewed §105-73.G ‘Standards applicable to conditional uses’ findings of fact are as follows:**

*Standards applicable to conditional uses. It shall be the responsibility of the applicant to demonstrate that the proposed use meets all of the following criteria. The Board shall approve the application unless it makes written findings that one or more of these criteria have not been met.*

- 1) The use will not have an adverse impact on spawning grounds, fish, aquatic life, birds, or other wildlife habitat. **Roger stated, it will not, there is MDEP approval of the Permit by Rule and a revegetation plan was provided for when the permit expires on 8/10/2023.**
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. **Roger stated the business will help to conserve shore cover by rebuilding failing retaining walls.**
- 3) The use is consistent with the Comprehensive Plan. **Roger stated it is, the Comp Plan is in favor of businesses that help to maintain water quality on the lake. The barge will be used to replace failing**

**retaining walls.**

- 4) Traffic access to the site is safe. **Roger stated it is safe, provided the speed limit is adhered to.**
- 5) The site design is in conformance with all municipal flood hazard protection regulations. **Roger stated it is, the project is not in the flood zone.**
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. **Roger stated materials removed from existing retaining walls, such as rotting timbers, shall be taken out of Shapleigh and disposed of at the proper facility. No materials will be taken to the Shapleigh Transfer Station.**
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. **Roger stated all wall materials will be disposed of at the proper facility.**
- 8) A stormwater drainage system capable of handling fifty-year storm without adverse impact on adjacent properties has been designed. **Roger stated the ramp area will be covered with mulch to prevent erosion,**

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**and the mulch will be added to as needed. When the project is completed the area will be restored per the revegetation plan provided.**

- 9) Adequate provisions to control soil erosion and sedimentation have been made. **Roger stated the MDEP is aware of the project, they have been on site, and there is no issue with the proposed project as planned.**
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. **Roger stated this is not applicable.**
- 11) The provisions for buffer strips and on-site landscaping provide adequate protection to neighboring properties from detrimental features of the development, such as noise, glare, fumes, dust, odors, and the like. **Roger stated there is existing vegetation, no major changes are being made to the site. No additional lighting is being added, no fumes, dust or odors from this activity.**
- 12) All performance standards in this chapter applicable to the proposed use will be met. **Roger stated they will with conditions.**

**Roger A. stated the conditions of approval are as follows:**

- 1) Best Management Practices shall be kept in place until the project is completed which includes revegetation and complete stabilization of the area. There must be a person certified by the MDEP in erosion control practices on site during the project, and the person's MDEP certification number shall be given to the CEO during the permitting process.
- 2) Start date of the permit shall be upon approval. The permit date of expiration shall be August 10, 2023.
- 3) The revegetation of the area per the plan provided shall be by August 10, 2023.

Steve F. asked about the hours of operation. Mr. Colton stated he would like 7:30 am to 5:00 pm, Monday through Friday. He said he would like half a day on Saturday if he was busy and the water was low. There was a collective sigh, so Mr. Colton asked what the neighbors would like? Mrs. Snowe said she would prefer they did no business on Saturday, wanting to have the weekend safe for pedestrians and people trying to enjoy the weekend. Mary Peterson said there were two different things. She said we can't stop them from granting the permit but the issue is whether or not the applicant can use the private road in order to do their business. Mr. Colton said again he was asking what hours they would prefer. Mrs. Snowe said that if they have any say, they would like the business restricted to weekdays, if they had any say. Mrs. Peterson didn't think they did.

A gentleman asked if he could bring up the issue of some sort of guarantee for Mr. Colton, that if anything is done to effectively damage the road, to make it less than the good thing that it is now, because Bob Torno has it in good shape. He said that it was brought up before, that Bob Torno has about 600 yards of blacktop in there, and he was wondering, because he had no idea about the axle loading of the truck, if the blacktop gets busted up, who is going to take care of it?

Mr. Snowe asked if the cleanup by 8/2023 included the road and regular maintenance during his time there? Roger A. said anything that has to be done has to be done by 8/20/2023. Mr. Snowe said that when spring hits, and we get mud season, noting that there are no heavy loads at present so mud season isn't an issue, but it will be; he didn't think they could wait until the end of the season to fix the road. He asked if there could be a condition that he has to maintain it? Steve F. asked if that is when the roads are posted? Mr. Colton stated that the Road Commissioner posts part of 23<sup>rd</sup> Street, but it is for 23,000 pounds. He said his vehicle is under that, they only have 1 ton trucks. He said because of this, postings don't apply, but for Pepin's delivery truck, then yes, during posted road season they cannot come in. He said it has to be below 32 degrees so the road is frozen to take deliveries, or you have to get the road commissioners permission.

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Mr. Snowe stated that the road still would get beat on from the traffic flow. Roger said that at that time of the year they would not be there because the water will be too high and they won't be able to work. Mr. Snowe said that during regular season Mr. Torno is constantly maintaining it for potholes from rain and such. He said that nothing is properly ditched because it is an easement and not a road.

Steve F. stated, "I have a strong concern about putting a condition on, that says that Mr. Colton or Mr. Dumont is going to be responsible for maintenance that is potentially caused by his activity but potentially due to rain, spring, everybody else driving on it as well. I don't know if a bond is something we should do here, or some sort of guarantee." Mr. Snowe said he understood where Steve was coming from. Mr. Snowe asked what the Board has done in similar situations?

Mr. Colton stated that Roland L. came to their site last fall and it was fairly muddy, on 17<sup>th</sup> Street, and he asked Roland how they left that project? Roland said that from all reports from the applicants that he has spoken with, they said it was better than before they started.

Mrs. Snowe asked if the Board had ever done this before, having someone work on a private road? Roland L. stated that he remembered Kato's Nose, the road going into the project up there. He didn't recall what the language was, but there was a condition in place on the individual doing the work on a tear down and rebuild of a cottage. He said there was language put in place, that the road be returned to at least as good as it was, if not better. Mr. Snowe asked if something could be put in like that, but because it is a 2 year project, ongoing maintenance. Ann H. thought that the only thing the Board could do is to be sure the road is as was at a certain date, prior to the work starting. She thought they could take photos, and if he doesn't do it, then it will become a civil matter.

Roger A. stated that if it is ongoing today, it is weather and personal traffic. Ann H. thought what the Board could do is put a condition that the road be as good as it is now when he is done, again take photos, and if he doesn't do it then it will be a civil matter. Roger asked if he was speaking about what was ongoing today, he was asking if it was a weather issue? Mr. Snowe said he was picturing that when Pepin delivers, when he's got that wheeler and he turns to go in between the gate, that rear wheel pulling that asphalt up. He said they will have to sit on that for 2 years, bumping over that or can that be repaired until the next time Pepin comes through. Mr. Snowe said this was his point, it's an ongoing problem. Ann said there could be a condition that whatever condition the road is in at the start of the project, when the project is finished then it's brought to where it was at the start. Roger did not think Mr. Colton would continue using the road if he created a washboard, he would want to make it smooth for himself for 2 full years. Mr. and Mrs. Snowe said they had an issue with Mr. Colton's word, based on how this project started, with no permitting. He said then there was the discussion with Torno which didn't exist. He would like something in writing. Roger said the Board can condition it, but noted the Board could not enforce it, only the CEO can enforce it. Roger said the CEO can bring the applicant to court if they do not follow the conditions of approval. Roger said when the Planning Board gives the condition, the CEO has to enforce it. Roger said the CEO has the authority to take it to court and the judge can tell the applicant to fix the road and they will set a date that it has to be completed.

Roland L. said that he could not believe that Mainely Barge would want to do anything other than the right thing, because they are in it for the long haul. He said if you go on Mousam Lake you can see the number of deteriorating walls that are approaching a state of collapse, and all of that deteriorates water quality. He believed everyone could agree on that. He felt it would be short sided of them to do anything but the best to maintain that road, your access road, because if it is a 2 year project / agreement, they are going to be looking

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for some other place on the lake. He felt what worse advertisement than having them ruin someone's road, leaving it in a state of disrepair, and then coming before a Board in Shapleigh or Acton, asking for another opportunity to service the lake. Mrs. Snowe understood what Roland was saying, it would not be good for their business. She said essentially what he is doing is carrying out a business on what is their driveway. She said that Roland is telling them 'oh he's going to do the right thing'. Mr. Snowe said that if he doesn't, what is their recourse? Roger A. said that if it is an actual condition of the permit, the CEO has full enforcement and can bring him to court. Roger said the Planning Board places the conditions and the CEO enforces the conditions. He said if there is a violation on the conditions than the Town goes to court to rectify it. Mr. Snowe said that if in six months the road is a wreck and he is done for the season, what do we do? Steve F.

stated, "File a complaint with the CEO". Mr. Snowe said it's not in his contract, the cleanup is in 2 years. Roland asked if it can be ongoing maintenance? Roger said the Board can ask him to fix any damage he has done, but if it is the weather or something else, he shouldn't have to be responsible for that. Mrs. Peterson said that they cannot stop his business because of the weather. Steve said that they need to keep in mind that they are working off a boat, so from ice in to ice out no action. Mr. Roberts asked who would determine when ice was in, noting that last year the ice was busted up twice. Steve said, "The boat can't move" Mr. Roberts said that it was a big barge that busted up the ice twice last year. He said he had pictures of it. He added that ice out is God taking it out, not a barge breaking it up. He said that was his point about consideration for others.

Mary Peterson said she wanted to make a clarification, that she felt was important. She said when they spoke about Katos Nose, her sister and her own the ROW across to the new camp that was built. She said the road was repaired, and it is unsafe. She said it is at a height of 3 or 4 feet of railroad ties where anyone could go over the edge of and into the lake. She said that she went to the Town about it, and she was told there was nothing the Town can do about it, it's a private ROW, you need to get a lawyer. She asked, "Where does that leave the landowner?" She said that was what she was not understanding here. What recourse does the landowner have? She said that she had to go to court, and she had to pay for it. She said she didn't want to do it twice, fool me once, shame on me. She said there is something that doesn't work in the interest of the property owner. She said you try to do things right, be good to your people and not make problems, then you get slapped with 'you can't do anything about it, its private property, it's a private road'. She said she didn't want to wind up in that place again.

Mr. Snowe said he would appreciate it if the Board could put something that the road would remain passable, he would appreciate it. Steve F. said the only wording he would like to see is going to be that it is at the discretion of the CEO. Mr. Snowe said, "So if we have a complaint, call him." Steve agreed, and said there has to be before pictures, and during pictures as proof.

Mrs. Snowe asked if she could add one thing with the operating hours. She said that on Saturdays in the summer and fall there are a lot of people walking their dogs, walking with children, children riding their bikes on the road. She felt Saturday should be a day of rest, it's a camp road, and people are trying to enjoy the lake without having trucks coming down the road disturbing the peace. Steve F. asked if there was a compromise? Mr. Colton stated that he said noon, half a day on Saturday because sometimes he just needs one or two more things to finish up the job. He thought Sunday was the day of rest. Ann H. asked if they were going to do Saturday can it only be their truck and not Pepin's truck. Mr. Colton said sometimes it's hard to get Pepin to deliver on a weekday. Mrs. Snowe said those on the camp road are not going to be happy.

Steve F. asked how many deliveries they got on average for a job? Mr. Colton said 2 deliveries per job typically. He said it take about month to do a wall. Steve asked how many walls he could do in the next two

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years? He said last year they had 4, this year they have 6 by ice in. Steve said they were talking about 15 deliveries over the next few months. Steve said he was trying to point out that it was not going to be constantly 3 trucks a day. Mrs. Snowe said she understood. Mr. Snowe said there is still the 1 ton truck, skid steer, etc.

Mr. Roberts asked if the permit could be extended beyond 2 years if they run into difficulties, because as Roland pointed out there are far more walls than 6 that needed to be repaired. Roger A. stated that it could, they would need to come back before the Board. Roger said if everything goes sour, whoever is on the Board at that time will know. Mr. Roberts asked, "Like Roland said, if they are practicing good business, is it going to be extended beyond 2 years, because we have lots of walls on this lake that need to be repaired?" Steve F. said they would start over with a new application. Roland said it may be at a different location.

Mrs. Snowe stated that she knew this wasn't the Board's idea and she knew where they were coming from, and she understood they were volunteering their time. Steve F. said he understood where they were coming from and was doing his best to figure it out.

Steve F. stated that as a condition, there would be ongoing maintenance as needed as determined by the Code Enforcement Officer. Roger A. agreed. Steve stated work would be paused December 15<sup>th</sup> and started again when ice is out. Mr. Roberts thought ice out was May 1<sup>st</sup>, when there is no longer ice fishing based on the

State regulations. Mr. Colton stated that if there is a mild winter there may be no ice on January 20<sup>th</sup>. Roland L. agreed, some years he was out in February trolling. Mr. Roberts said he understood but according to Maine State Law you cannot ice fish after May 1<sup>st</sup>. Ann H. stated the longer a project is delayed the longer he will use the road, and the outcome is taking care of the lake because the walls need to be replaced by someone. Mr. Colton stated that he gets the projects that you have to do by the barge. He said there are other companies that do the walls from the land side, but they came up with the business for those walls that need to be accessed from the water.

Mr. Snowe asked if the hours were Monday through Friday only? Roger A. stated they have asked for half day on Saturday. Mr. and Mrs. Snowe requests that the Board say no, the weekends are a time to exhale, no smell of diesel, or whatever. He asked what the Monday through Friday hours were? Roger said, "7:30 to 5:00". Mr. Snowe stated that was fine, it wasn't late into the evening. Roger added that the water level of the lake would dictate when they worked as well, if it's too high they are done. Mr. Arey stated there were using an old barge and there are times when something broke down at the end of the day and they are trying to get back home. He said if they drive out at 6 or 7 at night, are they going to call the CEO? Mr. Snowe said his concern was he gets up at 3:30 am for work and he was in bed at 8 pm, so he didn't want to see them dragging out of there at 9 pm. Ann H. said if someone calls the CEO and they are broke down, that will be a topic of conversation at that time. She said that they cannot predict the future. Steve felt the Board could leave the normal operating hours and if something breaks down its different. Mr. Snowe agreed and said if he sees them working late at night he will give the CEO a call.

**Roger A. stated the conditions of approval are as follows:**

- 1) Hours of operation are 7:30 am to 5:00 pm, Monday through Friday.
- Roger asked the Board if they wanted Saturday? Mr. Snowe asked if it could be stated from July 1<sup>st</sup> through August 31<sup>st</sup>, no Saturday hours. He thought this was a good compromise. He said the camp owners and themselves have 2 months of full weekends. Mr. Colton said if it will make them happy. Ann H. thought it was a good compromise. Roland L. thanked Mr. Snowe for offering it.*

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- 1) Hours of operation 7:30 am to 5:00 pm, Monday through Friday. Saturday hours 7:30 am to noon, excluding July 1<sup>st</sup> through August 31<sup>st</sup>, where there shall be no hours of operation on Saturday.
- 2) Work shall not be permitted when there is visible ice on the lake.
- 3) The need for ongoing maintenance of the private right-of-way by Mr. Colton, shall be at the discretion of the Code Enforcement Officer.
- 4) Best Management Practices shall be kept in place until the project is completed, which includes revegetation and complete stabilization of the area. There must be a person certified by the MDEP in erosion control practices on site during the project, and the person's MDEP certification number shall be given to the CEO during the permitting process.
- 5) Start date of the permit shall be upon approval. The permit date of expiration shall be August 10, 2023.
- 6) The revegetation of the area per the plan provided, shall be by August 10, 2023.

**Roland L. made the motion to approve the Conditional Use Permit for a temporary boat ramp on Map 22, Lot 1 per the plan provided and with the stated conditions. Steve F. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 4 – 0, the motion passed unanimously.**

Mary Peterson stated she was seriously considering pursuing #6 of Durward Parkinson's decision for the Board which stated, 'If the owner's of the burdened property believe the proposed use exceeds the limits of the Easement, they have the right to pursue a civil action in court to enforce the rights.' She asked if this impacted the application or approval? The answer by Board members was no.

Mr. Snowe asked when the old retaining wall was removed, and the material is brought back, would it be stored on site? Mr. Colton stated that the Planning Board said it has to be removed from Shapleigh. Mr. Snowe hoped Mr. Colton would be sure that nails or spikes don't fall out. Mr. Snowe hoped if a timber falls off into the road, Mr. Colton would retrieve it.

Nothing more was discussed.

### The Findings of Facts

1. The owner(s) of Shapleigh Tax Map 22, Lot 1 (84 Wardens Way) are Sean F. Dumont of 11 Edmund Street, Springvale, ME 04083, and Willian P. Dumont, of 8 North Street #4, Sanford, ME 04073, Quitclaim Deed recorded at YCRD BK 17795, PG 27, dated 9/6/2018.
2. Provided was a revegetation plan, which depicted the vegetation that will remain in place, 3 small Oak trees to be removed in order to create the ramp, and it was noted that they will be replaced after the work is completed; the location of the existing roadway and location of the new ramp. In addition, depicted was the area where vegetation will be removed for the ramp and will be replaced when the ramp is no longer used.
3. Provided was a copy of part of Town Tax Map 22, depicting Lot 1. On the map was the general location of the proposed boat ramp, with the notation 'Proposed Ramp 10' Wide'.
4. The detailed description of the project is as follows: *Excavating a temporary ramp 10 feet wide to load and unload barge. Silt fence and erosion control in place.*

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5. The Planning Board received word from Road Commissioner Jeff Goodwin, that he had no issue with Mainely Barge using 23<sup>rd</sup> Street Loop to access 84 Wardens Way. He also stated that he did not feel he had the right to restrict the use of 23<sup>rd</sup> Street Loop as it is a public access way.
6. The Planning Board received council from Attorney Durward Parkinson stating in part that the applicant had demonstrated sufficient right, title and interest for the Board to proceed with its review of the application, and the applicants right to use the private right-of-way, as there were no restrictions on the types of vehicles allowed on or over the easement / road or frequency to use it. In addition, the Planning Board's review should be with respect to possible safety issues and the effect of the traffic on neighbors, not any possible civil matters on the right to use the private way easement.
7. The application as presented met the performance standards under §105-39 'Earth removal and filling for activities other than mineral exploration and extraction' as presented with conditions.
8. The application as presented met the performance standards under §105-73 'Conditional Use Permits' as presented with conditions.
9. A notice was mailed to all abutters within 500 feet of the property on June 23, 2021. Meetings were held on Tuesday, June 22, 2021 via Zoom due to Covid-19, and Tuesday July 13, 2021 & August 10, 2021 in person at the Town Hall. A site inspection was done by members prior to the meeting on July 13th.
10. The Planning Board unanimously agreed to approve the Conditional Use Permit to place a temporary boat ramp on Map 22, Lot 1 (84 Wardens Way), per the information provided, with six conditions.
11. The conditions of approval are as follows:
  - 1) Hours of operation 7:30 am to 5:00 pm, Monday through Friday; 7:30 am to noon on Saturday, excluding July 1<sup>st</sup> through August 31<sup>st</sup>, where there shall be no hours of operation.
  - 2) Work shall not be permitted when there is visible ice on the lake.
  - 3) The need for ongoing maintenance of the private right-of-way by Mr. Colton, shall be at the discretion of the Code Enforcement Officer.
  - 4) Best Management Practices shall be kept in place until the project is completed, which includes revegetation and complete stabilization of the area. There must be a person certified by the MDEP in erosion control practices on site during the project, and the person's MDEP certification number shall be given to the CEO during the permitting process.
  - 5) Start date of the permit shall be upon approval. The permit date of expiration shall be August 10, 2023.
  - 6) The revegetation of the area per the plan provided, shall be by August 10, 2023.

### **Decision:**

**The Conditional Use Permit to place a temporary ramp for a period of 2 years, and revegetate the area upon expiration of the permit, which is August 10, 2023, on property known as Map 22, Lot 1 (84 Wardens Way) with six conditions, was approved.**



**Minor Subdivision – 2 Lots + Remaining Land – Map 10, Lot 22A (State Route 11) – Chris Chabot, Applicant; Gray Area Farm Trust, Property Owner; LinePro Land Surveying, Authorized Agent**

Mr. Stanley was present for the review of the application, along with Chris Chabot.

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**The sketch plan application for the 3-lot subdivision contained the following information:**

Name of Property Owner: Gray Area Farm Trust, Philip Chabot & Glenn Armell, Trustees)

Mailing Address: 385 Town Farm Road, Shapleigh ME 04076

Name of Applicant: Chris Chabot

Mailing Address: 1 Oak Hill Road, Shapleigh ME 04076

Name of Authorized Agent: Joseph Stanley of LinePro Land Surveying

Mailing Address: 455 Main Street, Springvale ME 04083

Name of Land Surveyor: Joseph Stanley of LinePro Land Surveying, LLC.; PLS #2453

Email Address: [jstanley@lineprosurveying.com](mailto:jstanley@lineprosurveying.com)

**Land Information:**

Location of Property: YCRD Book 17598, Page 213

Shapleigh Tax Map 10, Part of Lot 22A

Current Zoning: General Purpose

No part of the property lies within 250 of the high-water mark of a pond or river.

Acreage to be

Developed: 4.5 Acres

Property is not part of a prior subdivision.

There have been other divisions within 5 years.

Restrictive

Covenants: None

Existing Use: Residential

The parcel does not include a waterbody.

The parcel is not within a special flood hazard area.

Proposed Name of

Development: Chabot Ranch

Number of Lots: (2) Plus Remaining Land – *Total of 3 Lots*

Date of Construction: Fall / Winter 2021

Date of Completion: Fall / Winter 2021

Infrastructure

Required: No

This property currently has access on State Route 11.

Method of Water

Supply: Individual Wells

Method of Sewer

Disposal: Individual Septic Systems

Method of Fire

Protection: None listed.

There are no Proposed: Streets

## Recreation Areas

## Common Land

Requested Waiver(s): §89-29.A – Underground Utilities  
§89-30.A (1), (2), (3) – Stone Monuments  
§89-36.M – Sidewalks.  
§89-36 – Paved Road Surface

Provided was a copy of the Town Tax Map 10, which depicts Lot(s) 22A & 22B. *Note, these lots on the Town Tax Map are currently not depicted correctly.*

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Provided was a copy of the Subsurface Wastewater Disposal System Application, dated 9/21/2020 for Chris Chabot, provided by Kenneth Gardner, SE #73, which is for a 3 bedroom home. This application is for the proposed new lot, indicated on the plan provided as Lot #2. Also provided, was a Test Pit, provided by Kenneth Gardner, SE #73, dated 2/26/2021 for proposed Lot #1.

Provided was a copy of the York County, Maine Soil Map for the proposed subdivision. The Web Soil Survey, dated 7/1/2021 indicated Adams loamy sand (AdB), 0 to 8 percent slopes; Adams loamy sand (AdD), 15 to 60 percent slopes to make up the majority of the property.

Provided was a preliminary plan dated July 1, 2021, drafted by Joseph Stanley, PLS #2453, entitled ‘Plan Showing a Proposed Minor Subdivision “Chabot Ranch” for Chris Chabot, 2 Oak Hill Road, Shapleigh, Maine 04076, of Property Located on State Route 11 (Shapleigh Corner Road) in Shapleigh. The plan depicts Map 10, Lot 22B, which abuts the proposed division, along with Lot 22A, in which Proposed Lots #1 & #2 will be created. Lot #1 is depicted as 80,000 SF or 1.83 Acres, to be conveyed to a family member; Lot #2 is depicted as 2.00 Acres and is to be conveyed to a family member. Lot #2 and the ‘remaining land’ of Lot 22A which consists of 57.7± Acres are accessed via a proposed 50 foot wide right-of-way, entitled “Chabot Ranch Way”. The plan also depicts a ‘Road & Ditch Section’ for the proposed ROW, the location of a Fire Pond located on the adjoining property; the notation that ‘Chabot Ranch Way’ is to remain a private road, and that the Town of Shapleigh will not be responsible for the maintenance, repair, plowing or similar services for the private way shown hereon.

Provided was an amended plan dated July 23, 2021, drafted by Joseph Stanley, PLS #2453, entitled ‘Plan Showing a Proposed Minor Subdivision “Chabot Ranch” for Chris Chabot, 2 Oak Hill Road, Shapleigh, Maine 04076, of Property Located on State Route 11 (Shapleigh Corner Road) in Shapleigh. The plan depicts Map 10, Lot 22B that is 10 Acres in size, which abuts the proposed division, along with Lot 22A, in which Proposed Lots #1 & #2 will be created. Lot #1 is depicted as 80,000 SF or 1.84 Acres, to be conveyed to a family member; Lot #2 is depicted as 2.00 Acres and is to be conveyed to a family member. Lots #2 and the ‘remaining land’ of Lot 22A which consists of 57.7± Acres are accessed via a proposed 50 foot wide right-of-way, entitled “Chabot Ranch Way”. The plan also depicts a ‘Road & Ditch Section’ for the proposed ROW, the location of a possible Fire Pond located on the adjoining property; the notation that ‘Chabot Ranch Way’ is to remain a private road, and that the Town of Shapleigh will not be responsible for the maintenance, repair, plowing or similar services for the private way shown hereon. Plan notes were amended as follows: Note 1 (c.) was added under Deed references; Note 9 Soils, the Septic Design notation was now noted along with the Test Pit logs; and Note 11 Fire Protection, Sprinkles are the proposed fire protection instead of a fire pond on the neighboring property.

Provided was a final amended plan dated August 10, 2021, drafted by Joseph Stanley, PLS #2453, entitled ‘Plan Showing a Proposed Minor Subdivision “Chabot Ranch” for Gray Area Farm Trust, 41 Oak Hill Road, Shapleigh, Maine 04076, of Property Located on State Route 11 (Shapleigh Corner Road) in Shapleigh. The plan depicts Map 10, Lot 22B that is 10 Acres in size, which abuts the proposed division, along with Lot 22A, in which Proposed Lots #1 & #2 will be created. Lot #1 is depicted as 80,000 SF or 1.84 Acres, to be conveyed to a family member; Lot #2 is depicted as 2.00 Acres and is to be conveyed to a family member. Lots #2 and the ‘remaining land’ of Lot 22A which consists of 57.7± Acres are accessed via a proposed 50 foot wide right-of-way, entitled “Chabot Ranch Way”. The plan also depicts a ‘Road & Ditch Section’ for the proposed ROW, Plan Note 13 states that ‘Chabot Ranch Way’ is to remain a private road, and that the Town

of Shapleigh will not be responsible for the maintenance, repair, plowing or similar services for the private way shown hereon.

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Other plan notes state that each house will have a private well, all houses will have private subsurface waste water disposal systems, with a test log for Lot #1 & septic design for Lot #2, done by Kenneth Gardner SE #73, CSS #61, dated February 26, 2021 & September 21, 2020. Note 11 states that sprinklers are proposed for fire protection for any homes constructed on the 2 newly-created lots.

Provided was a copy of the Maine Department of Transportation Driveway/Entrance Permit, Permit #29978 – Entrance ID: 1, dated 8/10/2021, for Chabot Ranch Way.

Also provided was an amended minor subdivision application, changing the applicant from Chris Chabot to Philip Chabot, mailing address 41 Oak Hill Road, who currently has a legal interest in the property via Gray Area Farm Trust.

**The following waivers were approved on July 27, 2021:**

*Madge B. moved for approval of the waiver for paving the private right-of-way, Article 89-36.I & 89-37.A, ‘street design standards – pavement requirement for a private way’; based on the fact that in this location pavement would not provide a better road surface due to the location and how the roadway will be utilized.*

*Maggie M. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion to approve the waiver was unanimous.*

*Madge B. stated the applicant agreed to the use of an in-home sprinkler system in lieu of a pond and dry hydrant for fire protection, and the Board had agreed this was adequate. (§89-30.B(2)(c))*

*Madge B. moved for approval of the waiver for the requirement for underground power, Article 89-29.A ‘Utilities shall be installed underground except as otherwise approved by the Board’; based on the fact this is for 2 lots only and the short length of the private ROW, the Board will allow overhead utilities. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion to approve the waiver was unanimous.*

*Madge B. moved for the approval of the waiver for stone monuments, Article 89-30, ‘stone monuments shall be set at all street intersections and at all corner and angle points’; based on the fact pins have been set at angle points, which is adequate in this location, noting there was one stone monument in place. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion to approve the waiver was unanimous.*

*Madge B. moved for the approval of the waiver for sidewalks, Article 89-36.M, ‘sidewalks shall be installed within all subdivisions within the urban compact area’; based on the fact this is a minor subdivision, it is in a rural area, it does not fall within an Urban Compact Zone, and no one has put them in. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion to approve the waiver was unanimous.*

Roger A. started the review by stating that a minor correction was that this was a 3 lot subdivision, 2 lots are being taken out of the mother lot. Mr. Stanley had applied for 2 lots plus remaining land, but Roger said the correct verbiage was that it was a 3 lot minor subdivision.

Roger A. asked Mr. Stanley to let the Board and audience know what they are applying for. Mr. Stanley began by introducing himself and stating he was representing the Chabot family and Gray Area Farm Trust. He stated this was located on State Route 11 in the area most know as the blueberry plains and what was the alpaca farm. He stated the owners of roughly 60 acres are looking to break 2 lots off the property, for two members of the

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family. He said the proposal is to access the property via a 50 foot private way to be named Chabot Ranch Way. He said that basically they were proposing a gravel road with a ditch leading to a ditched area on the southerly edge of the private way. He noted that the entrance was approved today by the MDOT via an entrance permit. He said the plan was straight forward, it was an open and flat area. They are proposing

private wells and private septic systems. He said the applicants wanted the plan set up so potentially another family member could get a lot, so they decided to do the subdivision now rather than later. He said, therefore, the proposal is 2 new proposed lots and the remaining land is the 3<sup>rd</sup> parcel, as Roger noted earlier. He said there was no septic review on the 3<sup>rd</sup> parcel (remaining land) because there is already a structure and septic system on that piece of property.

Mr. Stanley stated the only changes from the last review was the applicant was changed from the person who will be gifted the lot (Chris Chabot) to the people who are creating the lot (Gray Area Farm Trust – Philip Chabot). Mr. Stanley asked if there were any questions? There were none.

Roger A. stated that the Board approved the waivers at the last meeting. One was for ‘underground utilities’ Article 89-29.A; Article 89-30, ‘stone monuments’ noting there were stone monuments in the front but rebar with caps are allowed for the rest of the markers; Article 89-36.M, no ‘sidewalks’; Article 89-36.I & 89-37.A, ‘street design standards – pavement requirement for a private way’, the Board agreed to the road and ditch section on the plan for crushed gravel. He added that all homes will be sprinkled for fire protection, which is also on the plan.

Roger A. said he saw no issues with the plan. The other members agreed the plan was straight forward with no issues.

Roger A. began to go through the checklist for a minor subdivision.

Sketch Plan submission.

Sketch Plan (recommended drawn on copy of Tax Map) **The Board had received it, plan dated 7/1/2021.**

Lot and street layout. **The lots and street layout are on the plan.**

Significant natural features: ponds, streams, wetlands, etc. **There are no ponds, streams or wetlands.**

Supporting data:

Application form completed. **The application has been completed and submitted, and amended on 8/9/2021.**

Copy of U.S.G.S. Topographical Map indicating development area. **Topo of the area was submitted.**

Planning Board comments:

Assign file number to application. **Shapleigh Subdivision #94.**

Conformity with Zoning and Comprehensive Plan. **Final plan dated 8/10/2021 meets all requirements.**

General observations.

Site inspection. **Site inspection held on July 27, 2021.**

Subdivision classification and contour determination:

Planning Board classifies plan as major or minor subdivision. **Planning Board classifies this as a minor subdivision.**

Planning Board determines contour elevation intervals to be used. **Contour intervals were not required due to near flat elevation of the property.**

**Roger began the final plan review as follows:*****Shapleigh Planning Board – August 10, 2021 Page 24 of 33***

Two original recording plans and 3 paper copies of subdivision plan. **Multiple copies of the plan were provided. Mr. Stanley will bring a Mylar and 3 paper copies back to the Board once the plan is recorded.**

Subdivision name; municipality; Tax Map and Lot numbers. **These have been provided. (Chabot Ranch, Map 10, Lot 22A, Town of Shapleigh)**

Perimeter survey; monumentation; bearings and distances; surveyor's or engineer's seal. **There is a waiver request for monuments, the other information here has been provided on the plan along with the surveyor's seal.**

Scale: written and graphic; date, North point. **Provided on the plan.**

Owner and applicants' names and addresses; abutters. **These have been provided.**

Lot lines, numbers and sizes; building setback lines. **Provided on the plan.**

Contour elevation; soil test pit locations. **Soil test pit locations were provided, the contours were minimal as the property is relatively flat, so the typical contours were not needed.**

Base flood elevation. **This location is not located in any located flood area in Shapleigh.**

Supporting documentation:

Copy of deed from which survey based; deed restrictions; easements or other encumbrances. **The deed was provided; there are no deed restrictions, 50 foot ROW is noted on the plan for Chabot Ranch Way.**

Soils report from licensed site evaluator on test pits or statement from local sewer district. **Soils test pits and septic design was provided.**

Statement of water supply suitability from local water district. **There is no water district, water will be supplied by individual wells.**

Copy of County Soil Survey. **This has been provided.**

Verification of ownership or legal interest. **This has been provided via Warranty Deed.**

Application fee. **Preliminary and final application fee have been provided.**

Dated receipt issued to applicant. **Receipt was provided for the prelim application fee.**

Determination whether submission complete. **Submission is complete as of this review.**

Notification to applicant of completeness of submission. **Completeness of submission will be provided.**

Public hearing scheduled within 30 days of complete submission. **Public hearing was held on July 21, 2021.**

Written notice to applicant of Board's decision and findings that the development meets or fails to meet the following applicable guidelines:

1. Will not result in undue water or air pollution.

2. Will have sufficient water available for the foreseeable needs of the subdivision.
3. Will not cause an unreasonable burden on an existing water supply.
4. Will not cause unreasonable soil erosion or reduction in the capacity of land to hold water so that a dangerous or unhealthy condition results.
5. Will not cause unreasonably unsafe traffic congestion or result in unsafe conditions on existing or propose roads.
6. Will provide adequate sewage waste disposal.
7. Will not unreasonably burden on municipal solid waste disposal.
8. Will not have an adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas.
9. Will conform to local regulations, ordinances, development land and comprehensive plan.
10. Will not adversely affect the quality of surface water or shoreline of ponds, rivers, streams or tidal areas.
11. Will not alone or in conjunction with existing activities, adversely affect groundwater quality or quantity.
12. Will demonstrate adequate technical and financial capacity to meet the above.
13. Will have all buildings one foot above the base flood elevation.
14. Will have freshwater wetlands, rivers, streams and brooks identified on maps.
15. Will have the subdivider provide for adequate stormwater management.
16. Will not have spaghetti lots.
17. Will not unreasonably increase a great pond's phosphorous concentration.

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**Steve F. made the motion to approve the 3-lot subdivision to be known as Chabot Ranch, located on Map 10, Lot 22A, per the plan provided. Roland L. 2<sup>nd</sup> the motion. All were in favor. By a vote of 4 – 0, the motion to approve was unanimous.**

*Board members signed the plans. Roger A. noted the applicant has 90 days to register the plan with York County Registry of Deeds and return it to the Planning Board or the approval becomes null and void.*

Nothing further was discussed.

**FINDINGS OF FACT AND APPROVAL FOR CHABOT RANCH**

**A Three-Lot Minor Subdivision**

**Location: Map 10 Lot 22A – State Route 11**

Shapleigh Subdivision #94

Property Owner(s): Gray Area Farm Trust Applicant: Philip Chabot  
385 Town Farm Road 41 Oak Hill Road

Shapleigh, Maine 04076 Shapleigh, Maine 04076

Authorized Agent: Joseph Stanley, LinePro Land Surveying

455 Main Street

Springvale, Maine 04083

**BACKGROUND INFORMATION**

Gray Area Farm Trust / Philip Chabot, have demonstrated a legal interest in the property by Warranty Deed, recorded at the York County Registry of Deeds in book 17720, page 672, dated 5/29/2018.

The applicant proposes to create a 3-lot subdivision on Map 10, Lot 22A. Lot #1 is depicted at 80,000 SF or 1.84 Acres, to be conveyed to a family member; Lot #2 is depicted as 2.00 Acres and is to be conveyed to a family member. Lot #2 and the 'remaining land' of Lot 22A which consists of 57.7± Acres are accessed via a proposed 50 foot wide right-of-way, entitled "Chabot Ranch Way" which is to remain a private road, and the final plan states that the Town of Shapleigh will not be responsible for the maintenance, repair, plowing or similar services for the private way. The entrance location was approved by the Maine Department of Transportation Driveway/Entrance Permit, Permit #29978 – Entrance ID: 1, dated 8/10/2021, for Chabot Ranch Way. The minimum lot size, street frontage and setbacks are in compliance with Shapleigh Zoning Ordinance 105-18 "Dimensional Requirements". The property is located in the General Purpose District. No part of the property lies within 250 feet of the high-water mark of a pond or river. There are no deed restrictions imposed.

Water is to be supplied by individual private wells. Sewage is to be disposed of by individual subsurface disposal systems. Site evaluations for each lot, meeting the requirement of the Maine Plumbing Rules were completed by Kenneth Gardner SE #73, CSS #61, Test Pit Log for Lot #1 dated February 26, 2021 & Subsurface Wastewater Disposal System Design dated September 21, 2020. Fire protection shall be the installation of sprinkler systems in residences built on Lots #1 & #2.

### ***Shapleigh Planning Board – August 10, 2021 Page 26 of 33***

The review of this application took place on July 13, 2021, July 27, 2021 and August 10, 2021. The preliminary plan was accepted on July 27, 2021. The Planning Board determined the application was completed and the final plan was accepted on August 10, 2021. A site inspection was held on Tuesday, July 27, 2021, and a Public Hearing was held on Tuesday, August 10, 2021. Notification was sent to the Road Commissioner's and Fire Chief.

The application for a 3 lot minor subdivision was approved on Tuesday, August 10, 2021.

### **WAIVERS REQUESTED**

The Applicant has requested that the Board waive the requirement for **Article 89-29.A**, Utilities (underground); **Article 89-30.A**, Stone monuments; **Article 89-36.M**, no 'sidewalks', and **Article 89-36.I & 89-37.A**, 'street design standards – pavement requirement for a private way'.

### **Preliminary Findings**

As a preliminary finding of fact, the Board finds that the proposed Subdivision falls under the provision of the Shapleigh Subdivision Code, which relates to Minor Subdivision, this being "Subdivision of Land, Chapter 89, Town of Shapleigh".

### **Specific Findings**

Based on the preliminary findings set forth above, the Board makes the following specific findings in accordance with Shapleigh Subdivision Ordinance 4404 "Review Criteria".

The Board finds that Chabot Ranch Subdivision:

1. Does not result in undue water or air pollution.
  - ***The soils on site will adequately support waste disposal per the Subsurface Wastewater Disposal System Design provided by Kenneth Gardner SE #73, CSS #61, for Lot #2 dated September 21, 2020.***
  - ***A Test Pit Log was provided by Kenneth Gardner SE #73, CSS #61, for Lot #1 dated February 26, 2021 showing the soils on site will adequately support a subsurface waste disposal system per the test pit location.***
  - ***There is no air pollution being generated.***
2. Does have sufficient water available for the foreseeable needs of the subdivision.

- ***Two house lots / new homes will not adversely affect the underground water supply. The new homes will have a drilled well, no dug wells are allowed.***
3. Does not cause an unreasonable burden on the existing water supply.
- ***There is no existing municipal water supply at this time.***
4. Does not cause unreasonable soil erosion or reduction in the capacity of land to hold water so that a dangerous or unhealthy condition results.
- ***Soil erosion should not be an issue, the location is relatively flat with highly permeable soils on each proposed lot.***
5. Does not cause unreasonable traffic congestion or result in unsafe conditions on existing or proposed road.
- ***The proposed private way location was approved by the Maine Department of Transportation per Driveway/Entrance Permit, Permit #29978 – Entrance ID:1, dated 8/10/2021, for Chabot Ranch Way.***
  - ***The remaining land – Lot #3 already has an approved entrance from the State of Maine.***
- Shapleigh Planning Board – August 10, 2021 Page 27 of 33*
6. Does provide adequate sewage waste disposal.
- ***The soils on site will adequately support waste disposal per the Subsurface Wastewater Disposal System Design provided by Kenneth Gardner SE #73, CSS #61, for Lot #2 dated September 21, 2020.***
  - ***A Test Pit Log was provided by Kenneth Gardner SE #73, CSS #61, for Lot #1 dated February 26, 2021 showing the soils on site will adequately support a subsurface waste disposal system per the test pit location.***
7. Does not cause an unreasonable burden on municipal solid waste disposal.
- ***Each property owner will be responsible for handling his or her individual waste.***
  - ***This subdivision is subject to the Growth Ordinance and therefore, shall not unreasonably burden the municipal solid waste facility.***
8. Does not have an adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat as identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas.
- ***This is not a scenic or historic site nor is it in the vicinity of one recognized by the Town of Shapleigh.***
  - ***The building of two additional single family homes in this location will not adversely affect the aesthetics of the area.***
9. Does conform to local regulations, ordinances, development plan and comprehensive plan.
- ***The final approved plan shall meet all zoning and subdivision regulations.***
  - ***Any changes to the final approved plan shall have to come back before the Planning Board and/or Code Enforcement Officer regarding all zoning or subdivision issues.***
10. Does not adversely affect the quality of surface water or shoreline of ponds, rivers, streams or tidal areas.
- ***This subdivision is not in the Shoreland District.***



- ***There shall be no building or waste disposal system set within the 75' setback of a stream or wetland per the plan provided.***
11. Does not alone or in conjunction with existing activities, adversely affect groundwater quality or quantity.
- ***Two additional homes at this location will not adversely affect groundwater quantity in this area.***
  - ***The Test Pit Log and Subsurface Wastewater Design application indicated soils are adequate to support a State approved septic system.***
  - ***A State approved septic system must be installed and approved by the Code Enforcement Officer prior to the granting of an occupancy permit.***
12. Has demonstrated adequate technical and financial capacity to meet the above.
- ***There is no infrastructure being created that requires a performance guaranty.***
13. Does have all buildings one foot above the base flood elevation.
- ***No portion of the property is within the 100-year flood plain per the Flood Insurance Rate Map for the Town of Shapleigh.***
14. Does have freshwater wetlands identified on maps.
- ***There are no freshwater wetlands identified on the plan for Chabot Ranch provided by Joseph Stanley, PLS #2453, dated August 10, 2021.***
- Shapleigh Planning Board – August 10, 2021 Page 28 of 33*
15. Does have rivers, streams and brooks identified on maps.
- ***There are no waterbodies identified on the plan for Chabot Ranch provided by Joseph Stanley, PLS #2453, dated August 10, 2021.***
16. The applicant has provided an adequate stormwater management plan.
- ***A stormwater management plan was not required by the Planning Board.***
  - ***Any required stormwater mitigation will be dictated by the Code Enforcement Officer during the permitting process.***
17. ***Chabot Ranch*** shall have no spaghetti lots.
18. Does not unreasonably increase a great pond's phosphorous concentration.
- ***This subdivision is not located in the Shoreland District / near a great pond.***

#### **FINDING ON THE REQUESTED WAIVER(S)**

The Planning Board finds that the request to waive the requirement, Article 89-29.A, 'Utilities shall be installed underground except as otherwise approved by the Board'; ***shall be granted*** for Lots 1 & 2. Based on the fact there are existing utility poles within site of the parcel and the private way length is minimal to access Lot 2.

The Planning Board finds that the request to waive the requirement, Article 89-30.A, 'stone monuments shall be set at all street intersections and at all corner and angle points'; ***shall be granted.*** Based on the fact that the iron rods and caps have all been set for the proposed subdivision.

The Planning Board finds that the request to waive the requirement, Article 89-36.I & 89-37.A, 'street design standards – pavement requirement for a private way', ***shall be granted.*** Based on the fact that in this location pavement would not provide a better road surface due to the location and how the roadway will be utilized.

The Planning Board finds the request to waive the requirement, Article 89-36.M, 'sidewalks shall be installed within all subdivisions within the urban compact area', ***shall be granted.*** Based on the fact this is a minor subdivision, it is in a rural area, it does not fall within an Urban Compact Zone, and no one has put them in.

**PLANNING Board ACTION**

The Planning Board hereby approves the application of Gray Area Farm Trust, including the requested waivers, for Chabot Ranch a Minor 3-Lot Subdivision, located on Tax Map 10, Lot 22A, with the following conditions:

1. The Applicant shall get all required permits from the Code Enforcement Officer prior to beginning any construction.
2. Any subdivision not recorded at the York County Registry of Deeds *within ninety days* of the date upon which the plan is approved and signed by the Planning Board shall become null and void, unless an extension is granted by the Board in writing.
3. No changes, erasures, modification, or revisions shall be made in any final plan after approval has been given, unless the revised final plan is first submitted to the Planning Board and the Board approves any modifications.

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**Conditional Use Permit – Shoreland District Setbacks in General Purpose District for Garage with Single Dwelling Above – Map 36, Lot 27 (Indian Village Road) – Raymond Cadott, Applicant & Property Owner** Mr. Cadotte was present for the review of the application.

Provided along with the application was a copy of a Maine Statutory Trustee's Deed, Registered at the YCRD as BK 18028, PG 343, dated 8/23/2019, showing Raymond T and Deborah Cadotte as owners of the property.

Provided was a sketch plan depicting the location of the existing foundation. The distance dimensions shown from the existing foundation to the lots lines are 120± to the rear lot line, 80' from Indian Village Road, 54' from Map 37, Lot 34 (Joyce Knappe), and 18' from Map 36, Lot 28 (Donna & Richard Arcand). The foundation itself is depicted as 30' x 50' in size.

The detailed description of the project is as follows: *Garage with single dwelling above.*

*Board members did a site inspection prior to this evenings meeting.*

Roger A. asked Mr. Cadotte to let the Board know what he intended to do. Mr. Cadotte stated he wanted to build a 28' x 48' garage with a single family dwelling on top. He said it would end up being 30' x 50' with the eaves. Steve F. stated that was what the plan provided showed.

Roger A. said the reason Mr. Cadotte is before the Board is because the setback requirements for the General Purpose District were more strict for side setbacks, so it was better to go with the Shoreland setbacks because of the buildings location. Mr. Cadotte agreed. Roger stated that is why he is before the Board for a conditional use permit to be able to use the Shoreland setbacks. Mr. Cadotte stated he believed he was 7 feet too close to the property line if using General Purpose setbacks.

Roger A. read §105-13 'Division of lots by district boundaries'. Section A, 'Where a zoning district boundary line divides a lot or parcel of land of the same ownership of record at the time such line is established by adoption or amendment of this chapter, the regulations applicable to the less-restricted portion of the lot may be extended, except when the more-restricted portion lies in the Shoreland District, the Resource Protection District or the Stream Protection District, not more than 50 feet into the more-restricted portion of the lot subject to the provisions of Subsection B Below'. Section B, 'Extension of use shall be considered a conditional use, subject to approval of the Planning Board and in accordance with the criteria set forth in §105-73G, Standards applicable to conditional uses'.

**Roger A. reviewed §105-73.G 'Standards applicable to conditional uses' findings of fact are as follows:**

*Standards applicable to conditional uses. It shall be the responsibility of the applicant to demonstrate that the proposed use meets all of the following criteria. The Board shall approve the application unless it makes written findings that one or more of these criteria have not been met.*

- 1) The use will not have an adverse impact on spawning grounds, fish, aquatic life, birds, or other wildlife habitat. ***Roger stated, it will not, the structure is not located adjacent to the shoreline, and will have to have a State approved septic design prior to occupancy.***

- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. **Roger stated this is not applicable. The structure is not adjacent to the shoreline and has no affect to access of the lake.**

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- 3) The use is consistent with the Comprehensive Plan. **Roger stated it is.**
- 4) Traffic access to the site is safe. **Roger stated it is safe for the intended use.**
- 5) The site design is in conformance with all municipal flood hazard protection regulations. **Roger stated it is, the project is not in the flood zone.**
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. **A State approved septic design and installation approved by the CEO shall be done prior to occupancy.**
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. **Roger stated there are no hazardous materials associated with this project.**
- 8) A stormwater drainage system capable of handling fifty-year storm without adverse impact on adjacent properties has been designed. **Roger stated that at the site inspection members noted there needed to be something put in place, a design, to make certain stormwater would remain on site. There was concern with the slope of the land.**
- 9) Adequate provisions to control soil erosion and sedimentation have been made. **Soil erosion needs to be addressed.**
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. **This is located near the lake.**
- 11) The provisions for buffer strips and on-site landscaping provide adequate protection to neighboring properties from detrimental features of the development, such as noise, glare, fumes, dust, odors, and the like.
- 12) All performance standards in this chapter applicable to the proposed use will be met.

Barbara A. asked how they are going to address stormwater? Steve F. stated the applicant is here because he is going from the roof being a certain height, to now another height. He didn't think the stormwater changed whether the Board approved the application or not. He did think it made sense to have something in place for stormwater. He did not think it would be difficult to get a stormwater management plan, that would show gutters, drains and how to retain water on site. He believed this is what the Board discussed at the site inspection. Ann H. and Roland L. stated their only issue with the project was the stormwater.

Mr. Cadotte asked where he would get a stormwater management plan? Steve F. stated the best thing to do was to talk to an engineer and they would draft it for him. He said it would be a few bucks but it would be worth it. Steve thought CEO Demers could get him some names. Roland stated they may create a detention pond area and possibly a suggested slope for the finish coat of material going up to the garage. He said you want the stormwater to end up where you want it to, the object being you don't want it to end up on your neighbor's property. He said when the Board was on site, it was clear that was where the stormwater was going to go with a heavy rainfall onto the neighboring property. Ann H. said that they will address the whole property, so the water stays on site. Mr. Cadotte asked what it was called? Board members stated, storm water management plan.

Mr. Cadotte asked if anyone knew of anyone? Steve F. stated he did and he would pass the information on to CEO Demers. Mr. Cadotte noted he was not from around here, so any information would be helpful.

Roger A. stated that the Board will table the application until he has the information. He asked him to contact Barbara F. when he was ready to come back.

Nothing more was discussed.

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**Best Practical Location – Replace Existing Structure(s) – Map 18, Lot 19 (7 1<sup>st</sup> Street) – Jan & Linda Rajchel, Trustees, Applicant; Rajchel Family Revocable Trust of 2014, Property Owner**

Mr. & Mrs. Rajchel were present for the review of the application.

Roger A. asked the applicants to let the Board know what they wanted to do. Mr. Rajchel stated a week and a half ago he visited the Code Officer for approval of building plans. He said that he advised them that because

they did not pull the building permit within 6 months of the meeting they had two years ago, that they had to go back before the Planning Board again and start the process over again. He said they were here for a best practical location.

Mr. Rajchel said they were still proposing to tear down Map 18, Lot 19 on 7 1<sup>st</sup> Street in Shapleigh, and rebuild it with a similar structure. He said it would be substantially in the same building footprint, having a roof drip edge, plus decks, excluding stairs. He said there were a couple of changes since the last time they were before the Board. He said to get a decent slope on the roof they proposed to increase the lowest ground grade adjoining the building by no more than 30", which will require at least 10 yards of fill. He said they would also like to replace a wood retaining wall that was there with a concrete foundation still within the footprint.

Mr. Rajchel stated that what was new is that they want to install a precast concrete erosion control wall, approximately 6 feet closer to the lake than the building currently is, with an exposed face of no more than 24 inches and a length of probably 34 feet. He added that it could be as long as 51 feet. He said again it was for erosion control purposes.

Mr. Rajchel stated that he asked the Code Enforcement Officer if they could put a set of stairs from the lake side of the house toward the lake. He said the CEO did not like his proposal. The CEO instead wanted 3 sets of stairs, so two of the steps will be on top of the erosion control wall and one from the erosion control wall down toward the existing grass level.

Mr. Rajchel said they also proposed to put in a flag pole close to the lake. He said they talked to the Code Officer about two changes that would go outside of the building envelope. He said the first one would be a cover over the front set of stairs, so they can get into the building without getting poured on. He said the second one would be an extension of the roof on the northeast corner of the property. He said they are proposing no more than 25 sq. ft. of additional space, that is outside of the building envelope. He noted it would allow for a cleaner roof line.

**Roger A. stated a site inspection would be on Tuesday, August 24<sup>th</sup> at 6:30 pm. A notice to abutter will be mailed as well.**

Nothing further was discussed.

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**Conditional Use Permit – Replace Retaining Wall – Map 26, Lot 21 (265 16<sup>th</sup> Street Loop) – Matt Colton, Jr., Applicant; Barry Pierce, Property Owner**

Mr. Colton was present to review the application. He also is representing the property owner below – both walls are adjacent and will be reviewed simultaneously. See below.

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**Conditional Use Permit – Replace Retaining Wall – Map 26, Lot 22 (256 16<sup>th</sup> Street Loop) – Matt Colton, Jr., Applicant; Deborah Churchwell, Property Owner**

Mr. Colton was present to review the application(s).

Roger A. asked Mr. Colton to let the Board know what he wanted to do. Mr. Colton stated they were replacing the existing retaining walls on 16<sup>th</sup> Street, the Barry Pierce property and Deborah Churchwell's property. He said they had an old railroad tie retaining wall, which was connected between the two properties. He said it will

be constructed of the same precast block material that they have been using for the other walls. He said there was a revegetation plan because there were a few trees that had to come out.

Mr. Colton said on Mr. Pierce's property the trees are causing his wall to fail. He said he is taking his wooden deck off and replacing it after the retaining wall is completed. He said the large pine between the two properties is the corner marker, they are having it cut before he gets on site.

Mr. Colton said they would be replacing Mrs. Churchwell's wall and a set of stairs. He said that her wall was a one tier wall. Mr. Colton stated Barry Pierce is on the left and Mrs. Churchwell is on the right, when looking at the photos.

Roland L. asked if it was all to be accomplished from the water. Mr. Colton stated it depended on the timing because it doesn't have to be completed by barge. He said depending on how work comes in, he could do the wall from the yard and depending on weather, it could be a mid-winter project or when the lake drops project. Ann H. asked if he could get his equipment down there and Mr. Colton stated that he could. Roland said that was why he asked. Ann asked which tree had to go. Mr. Colton stated it was a 24 to 36 inch pine. Mr. Colton asked if the Board wanted a better site plan? Ann said the Board likes to see revegetation on the same plan. Mr. Colton stated sometimes there is so much vegetation they can't write on the picture because it doesn't show up.

Roger A. said this wall is the same as the last, the Board needed the engineered plan. Mr. Colton asked if the engineer signed off, if it would work universally? Ann H. noted this wall was 8 feet high. Mr. Colton stated it recommends 48" deep blocks and over 6 feet it recommends they use geogrid. Steve F. didn't see the sense in re-engineering the same thing as long as the engineered plan covers the height you are putting in. Roger A. agreed. Roger said they just need one signed by an engineer.

**Roger A. stated a site inspection would be held on Tuesday, August 24<sup>th</sup> after the previous application, approximately 7:00 pm. A notice to abutters will be mailed as well.**

Nothing more was discussed.

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### **Growth Permits**

#### **Map 9, Lot 1C (Lot 2 West Shore Drive Private Way) – New Home GP# 23-2021**

Board members did a site inspection prior to this evenings meeting to see that the private way had been put in, less the top coat. Mr. Reinken was present (the applicant). Roger A. stated there was no issue approving the growth permit but there will be the condition that there will be no occupancy until the road is complete and the power is put in. Mr. Reinken said, "Sounds good".

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**The Planning Board meeting ended at 9:30 p.m.**

**The next Planning Board meeting scheduled will be August 24, 2021 and the meeting will be held IN PERSON at the Town Hall.**

**NOTE: The summer hours are in effect through October 30th; the meetings will begin at 7:30 p.m. and any scheduled public hearing begins at 7:00 p.m.**

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)