

# Shapleigh Planning Board

## Minutes

### December 14, 2021

Members in attendance: Roger Allaire (Chairman), Steve Foglio (Vice Chairman), Madge Baker, Roland Legere, Maggie Moody & Alternate Ann Harris. The Code Enforcement Officer Mike Demers was also in attendance. *Note: Alternate Ann Harris and CEO Demers were unable to join the public hearing but were present for the regular meeting.*

\*\*\*\*\*

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 6:10 pm**

### **Review proposed amendments to both the Zoning & Subdivision Ordinance**

Sections to be reviewed:

Chapter 105 Zoning

§105-15 'Definitions (amend & add); §105-3 'Basic requirements' (two additions);

§105-17 'Land uses' (two amendments); §105-19 'Notes to table on dimensional requirements' (amend);

§105-34 'Access control on Routes 109 and 11' (addition);

Chapter 89 Subdivision

§89-6 'Terms defined' (amend); §89-15 'Submissions (Minor Subdivision-add); §89-19 'Submissions (Major-add); §89-30 'Required improvements' (amend); §89-36 'Street design standards' (Amend Section I & M) and

§89-37 'Street construction standards' (amend)

Roger A. opened the public hearing at 6:10 pm to wait to see if anyone would attend. There were no citizens present for the public hearing other than the applicant to be heard, Brad Davis.

Roger read the proposed ordinances. The final amendments to the Zoning and Subdivision Ordinance to be voted on by the townspeople are written below. There were 3 changes to the original proposed amendments as follows:

Medical Marijuana Caregiver

Cultivating, processing and/or storing of medical marijuana by a qualifying ~~patient~~ **person** at their own residence or a medical marijuana caregiver at their own primary year-round residence for use by a qualifying patient. ~~This use shall be considered an accessory use.~~

*When the regular meeting began, Ann H. stated that you did not have to be a 'patient' to qualify as a medical marijuana caregiver, therefore, the word 'person' would be more appropriate for the definition. The other Board members agreed to the change.*

§105-19. Notes to table on dimensional requirements.

D. Front yards. Whichever of the two methods for determining front yard setbacks (specified in the table in **§105-18**) yields the greater distance shall apply. When a lot fronts on the shore and on a road or right-of-way, both the Shoreland setback of 100 feet and the front setback as defined in **§105-18** shall be met, ~~or a variance must be obtained. If a legally existing structure which does not meet the required front yard standard is located on the property, any new structure may be set back the same distance from the right of way as the existing structure, so long as all other performance and dimensional standards of this chapter are met.~~ **Except on non-conforming lots of record, in which case the setback may be no less than twenty-five (25) feet from the property line or road. This reduction shall be considered require a conditional use permit from the Planning Board. All conditional uses approved relating to setbacks shall require conformation in writing by a licensed surveyor that the placement of the structure is correct and the plan shall be recorded in the York County Registry of Deeds within 90 days of the date of the Planning Board approval. If the plan is not recorded within this time period, the approval of the Planning Board shall be null and void.**

*Steve F. stated that when he read the sentence 'This reduction shall be considered a conditional use permit from the Planning Board', it seemed like the Board could 'consider' whether or not to review it as a conditional use permit. He felt the intention was to require a conditional use permit if someone requested to reduce the front yard requirement from 50 to 25 feet from a road. Steve suggested having it read 'shall require' instead of 'shall be considered'. The other Board members agreed changing the wording as Steve suggested, made the requirement clear to both the applicant and the Board.*

-----  
**Below are the proposed ordinance changes for Town Meeting 2022.**

Chapter 105 – Zoning Ordinance

§105-15. Definitions.

Medical Marijuana Caregiver

Cultivating, processing and/or storing of medical marijuana by a qualifying person at their own residence or a medical marijuana caregiver at their own primary year-round residence for use by a qualifying patient. ~~This use shall be considered an accessory use.~~

Building Height: **See Height of Structure.**

Height of Structure: The vertical distance between the mean original (prior to construction) grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances that have no floor area. *(No change to this definition.)*

Driveway – A vehicular access way ~~serving two dwelling units or less.~~

**Shapleigh Planning Board Minutes – 12/14/2021 Page 3 of 20**

**Tiny House – State definition: “Tiny house” means a dwelling that is less than 400 square feet in floor area, excluding the area of any floor level located above the main floor.”**

~~~~~

New Requirement from the Dept. of Environmental Protection:

Place it under §105-3 'Basic requirements'

**Proposed New Section 'E'**

**Photographic record required. An application for a permit for development within the Shoreland District must provide preconstruction photographs at the time of application, of the shoreline vegetation and development site to the reviewing authority of the permit, and post construction photographs no later than 20 days after completion of the development. If the reviewing authority is both the Planning Board and the Code Enforcement Officer, both shall receive a copy of before and after picture documentation.**

~~~~~

Place it under §105-3 'Basic requirements'

**Proposed New Section 'F'**

**An application for a nonconforming structure, required to be reviewed by the Planning Board, shall require a full survey be provided at the time of application. Retaining walls shall be exempt from a full survey.**

~~~~~

§105-17. Land Uses

Commercial

RP SD GP FD SP

Premises selling alcoholic beverages ~~NO~~ ~~NO~~ **CU** CU NO NO

beverages

Eating establishments ~~NO~~ ~~NO~~ **CU** CU CU NO

~~~~~

§105-19. Notes to table on dimensional requirements.

D. Front yards. Whichever of the two methods for determining front yard setbacks (specified in the table in **§105-18**) yields the greater distance shall apply. When a lot fronts on the shore and on a road or right-of-way,

**Shapleigh Planning Board Minutes – 12/14/2021 Page 4 of 20**

both the Shoreland setback of 100 feet and the front setback as defined in **§105-18** shall be met, or a variance must be obtained. ~~If a legally existing structure which does not meet the required front yard standard is located on the property, any new structure may be set back the same distance from the right of way as the existing structure, so long as all other performance and dimensional standards of this chapter are met.~~ **Except on non-conforming lots of record, in which case the setback may be no less than twenty-five (25) feet from the property line or road. This reduction shall require a conditional use permit from the Planning Board. All conditional uses approved relating to setbacks shall require conformation in writing by a licensed surveyor that the placement of the structure is correct and the plan shall be recorded in the York County Registry of Deeds within 90 days of the date of the Planning Board approval. If the plan is not recorded within this time period, the approval of the Planning Board shall be null and void.**

~~~~~

§105-34. Access control on Routes 109 and 11.

- A. Land lying on Routes 109 and 11 may be divided into lots, but all vehicular movements to and from the highway shall be via a common driveway or entranceway serving adjacent lots or premises. All lots of record existing at the time of the ordinance amendment shall be allowed direct access to Routes 109 and 11, provided that minimum safe sight-distance standards can be met.
- B. All lots accessing Route 109 and 11 must obtain an MDOT Entrance Permit. All conditional use permits requiring access, applicant shall provide proof of MDOT Entrance Permit prior to obtaining approval.**

~~~~~

Chapter 89 – Subdivision of Land

Article III ‘Definitions’

§89-6 ‘Terms defined’

Street Classification

Arterial Street

A major thoroughfare which serves as a major traffic way for travel between municipalities and through the municipality.

Collector Street

A street servicing at least 15 lots or dwelling units, or streets which serve as feeders to arterial streets, and collectors of traffic from minor streets.

Industrial or Commercial Street

Streets servicing industrial or commercial uses.

Minor Street

A street servicing fewer than 15 lots or dwelling units.

~~Private Right-of-Way~~

~~A vehicular access way serving no more than two dwelling units.~~

**Private Way**

**A category of road not owned or maintained by the Town of Shapleigh or the State of Maine which provides frontage to a lot or lots.**

***Shapleigh Planning Board Minutes – 12/14/2021 Page 5 of 20***

§89-15. Submissions. (Minor Subdivision)

B. The application for approval of a minor subdivision shall include the following information:

**(11) Proof that the developer coordinated the mail delivery system per post office specifications.**

§89-19. Submissions. (Major Subdivision)

B. The application for approval of the final plan shall include the following information:

**(14) Proof that the developer coordinated the mail delivery system per post office specifications.**

~~~~~

§89-30. Required improvements.

**A. Monuments:**

~~(1) Stone monuments shall be set at all street intersections and points of curvature, but no further than 750 feet apart along street lines without curves or intersections.~~

~~(2) Stone monuments shall be set at all corners and angle points of the subdivision boundaries where the interior angle of the subdivision boundaries is 135<sup>o</sup> or less.~~

~~(3) Stone monuments shall be a minimum of four inches square at the top and four feet in length, and set in the ground at final grade level. After they are set, drill holes, 12 inches deep, shall locate the point or points described above.~~

~~(4) All other subdivision boundary corners and angle points, as well as all lot boundary corners and angle points, shall be marked by suitable monumentation.~~

**A. Monumentation.**

**1) All subdivision boundary corners and angle points, as well as all lot boundary corners and angle points, shall be marked by suitable monumentation prior to approval.**

~~~~~

§89-36. Street design standards.

I. The following design standards apply to street classification:

Description Arterial Collector Minor P-ROW Industrial/Commercial

**Private Way**

~~Sidewalk Width 5 5 5 N/A 8~~

**M. Sidewalks:**

~~(1) Bituminous sidewalks.~~

~~(a) The gravel aggregate subbase course shall be no less than 12 inches thick.~~

~~(b) The crushed aggregate base course shall be no less than two inches thick.~~

~~(c) The hot bituminous pavement surface course shall be no less than two inches after compaction.~~

~~(2) Portland cement concrete sidewalks.~~

~~(a) The sand base shall be no less than six inches thick.~~

~~(b) The Portland cement concrete shall be reinforced with six-inch square, Number 10 wire mesh and shall be no less than four inches thick.~~

**Shapleigh Planning Board Minutes – 12/14/2021 Page 6 of 20**

§89-36. Street design standards.

I. The following design standards apply to street classification:

Description Arterial Collector Minor P-ROW Industrial/Commercial

**Private Way**

Min Pavement 44 24 20<sup>2</sup> 12<sup>1</sup> 44

<sup>1</sup>Pavement requirement for a **private right-of-way private way** in a minor subdivision may be at the Board’s discretion.

<sup>2</sup>**Pavement requirement for a minor subdivision street may be at the Board’s discretion.**

~~~~~

§89-37. Street construction standards.

A. Minimum thickness of material after compaction shall be as follows:

Type of Street Minimum Requirements

Street Arterial Collector Minor P-ROW Industrial/Commercial

**Private Way**

Hot bituminous

Pavement (inches)

Total Thickness 3 ¼ 2 ½ 2 ½ <sup>1</sup> 3

Surface course 1 ½ ¾ ¾ <sup>1</sup> 1 ¼

Base course 1 ¾ 1 ¾ 1 ¾ <sup>1</sup> 1 ¾

Note: <sup>1</sup>Pavement requirement for a minor subdivision street may be at the Board’s discretion.

\*\*\*\*\*

The minutes from Tuesday, November 23, 2021 were accepted as written.

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

\*\*\*\*\*

**Conditional Use Permit – Earth Moving in the SD – Map 21, Lot 42 (17 Hollon Way) – Gallo Construction, Applicant / Contractor; Hollon Way LLC (c/o Kevin LaPierre), Property Owner**

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

Provided along with the application, was a document dated May 13, 2021, from Kevin Lapierre and David Dorwart, owners of the property, that stated the following in part: Hollon Way LLC (Kevin Lapierre and David

***Shapleigh Planning Board Minutes – 12/14/2021 Page 7 of 20***

Dorwart) authorizes Michael Gallo to act on our behalf for the purpose of obtaining the necessary permits and approvals for the retaining walls, additions, tree cutting, septic system, and assorted site work.

Provided was a copy of the DEP Permit by Rule, dated July 20, 2021. The application Brief Project Description is as follows: Remove stone retaining walls & replace with Loc-blocks.

Provided was a copy of the Subsurface Wastewater Disposal System Application, drafted by Hope Hampton, SE #427, dated 8/19/21, for a replacement system for a single family dwelling unit for up to 4 bedrooms.

Provided was a plan dated 8/26/2021, drafted by Jo-Ann Cropley Cavanaugh, Licensed Architect from J.C. Cavanaugh Architecture LLC, located in Springvale, Maine. The plan is entitled ‘Renovations and Additions at 17 Hollon Way, Shapleigh, ME for Kevin Lapierre, 1611 Wood Song Court, Sugar Land, TX 77479’. The plan depicts the location of direct abutters, located on Map 21, Lot 44, Map 21, Lot 43A & Map 21, Lot 40. It also depicts the existing house, along with the proposed addition. The plan shows the 75 foot setback to the normal high water line and the 100 foot setback to the normal high water line. The addition is almost entirely outside of

the 100 foot setback. The following notes are on the plan: 1) Remove Ex. Stone Retaining Wall; Proposed 3.5’ Retaining Wall; New 6’ Wide Stair w/ 6- 14” Treads, Center on House; Proposed 3.5’ H. Retaining Wall; Remove Ex. Conc. Stair; Remove Ex. Shed; Replace Ex. Deck & Stairs; Relocate Ex. Shed Out of Setback; Proposed 4’ H. Retaining Wall; Proposed Location New Septic Field, Existing Leach Field to be Replaced w/20’ x 35’ Chamber Bed for 4 Bedrooms; Existing Septic Tank to be Replaced w/ 1000 Gal. Heavy Duty Conc. Tank. Other notations include the existing driveway location and relocation, boundary markers, and wetland area.

Also on the plan provided are the following calculations:

Existing Building Footprint = 725 SF

Existing Porch = 302.5 SF

Existing Entry Deck = 64 SF

Total Footprint Ex. Structure within Shoreland Setback = 1091.5 SF

30% Expansion = 327.45 SF

New Entry Deck = 115 SF

New Addition = 369 SF (Portion of new addition in Shoreland setback = 69.4 SF)

Total New Structure Footprint within Setback = 184.4 SF

Total New Structure Footprint = 484 SF

Lot Coverage 10% of 29.493 SF = 2,949.3 SF

Lot Coverage Ex. & New Structure = 1.575.5 SF

The application detailed project description is as follows: *Earth moving in the Shoreland Zone*

Provided this evening was a copy of the revised plan entitled 'Renovations and Additions at 17 Hollon Way, Shapleigh, ME for Kevin Lapierre, 1611 Wood Song Court, Sugar Land, TX 77479' drafted by Jo-Ann Cropley Cavanaugh, Licensed Architect from J.C. Cavanaugh Architecture LLC, located in Springvale, Maine, revision date of 12/2/2021. This plan depicted the location of 9 trees that will be removed during the project that are within 100 feet of the water. Six are located in the vicinity of the wall to be replaced, which is approximately 30 feet from the high water mark, 2 are located next to the deck that will be replaced, and 1 next to the addition going onto the house. A plan note was added that states 'Existing Trees to be Removed and Replaced (New Trees in General Vicinity of Removed Trees)'.

### **Shapleigh Planning Board Minutes – 12/14/2021 Page 8 of 20**

Mr. Gallo began by asking if the Board had a copy of the new plan depicting the trees to be removed, he also noted that he had a copy of the signed ROW agreement between Kevin Lapierre and the abutter Donald Rawnsley. Barbara F. stated she had just provided a copy of the agreement to the Board members, as she had received it prior to the meeting from Larry & Cherrie Moody.

Mr. Gallo stated that he marked many of the trees for this project, and those within 100 feet are marked with blue ribbons. He said if the Board looks at the note on the plan, it states that he is taking the trees down and replanting in the general vicinity, the same number of trees that he is taking down. He said he didn't know the type of trees, because he was leaving it up to the owner. He stated that he usually works with Springvale Nurseries and they are closed for the season, but the owner of Springvale Nurseries did call him after he left them a note, and they said they would do it in April when they return. He said that they provide the trees, and his men dig the holes and plant them.

Mr. Gallo stated that the abutter situation has been resolved to his knowledge. He said that basically two people own the land he is working on; Rawnsley is one of them, and Lapierre, the person who hired him, is the other. He said they are using 16 feet of Rawnsley's right-of-way, and they are taking roughly 4 feet off of Lapierre's and making a 20 foot right-of-way. He stated he was upgrading it with less gravel than he originally told the Board, because of a concern that Rawnsley had that he was putting too much gravel on the ROW, and it would shed too much water onto his land. He said

together, using a transit, they laid it out and on the far end of the road he will cut the grade down, and it will get the water to go to the marsh and not onto Mr. Rawnsley's land. He said in doing this he would only have to put 8 to 12 inches of gravel on his side, which doesn't add to water going onto Rawnsley's land, rather than bringing it up 2 to 2.5 feet, as he was going to do before and shedding the water down. Mr. Rawnsley did not like the idea that he was at the end of a hump. Mr. Gallo said it was never really a hump, it would have been gradual, and in his opinion, Mr. Rawnsley would not have noticed it, but now it is non-existent.

Mr. Gallo stated that Mr. Rawnsley signed the Right-of-Way Specifications that Mr. Gallo drafted. He stated that he and Mr. Rawnsley did the lengths together, off of Mr. Rawnsley's deed. He said he used his wheel tape measure to measure everything off.

Roger A. asked if they were going to record the document at the courthouse? Mr. Gallo asked Roger if he wanted him to? Roger stated it is not required, but he felt it would protect those involved. Steve F. asked what Roger wanted recorded? Mr. Gallo stated the ROW agreement and asked him if he had seen it? Steve said that yes, they had just received it this evening. Mr. Gallo said that he would leave it up to the owner, but he agreed with Roger, it probably would not be a bad idea. Roger felt this would help with any civil issues down the road. Mr. Gallo agreed and said he would recommend it to the owner. He then decided and said that as an interested party, he would record it, and wanted it noted in the minutes that he would do it.

The document to be recorded read as follows:

To the Town of Shapleigh Planning Board

Subject: Improvement of Hollon Way Right of Way (ROW). Work to be done by Gallo Constructions Company

**Right of Way specifications for section being improved over Rawnsley land**

Preparing road: Remove poor material from top of existing road. Remove rocks and broken wooden post at outer iron pipe property marker (may temporarily remove property marker to be replaced at grade

***Shapleigh Planning Board Minutes – 12/14/2021 Page 9 of 20***

level when road work is done). Dig down existing ROW approximately 7 inches at outer property marker to help drainage to low lying area.

Length of road to be repaired: 160 feet over the land of Don Rawnsley (from Rawnsley driveway to marsh, 125 feet between the iron pipe property markers and 35 feet to feather it off going towards the green camp).

Width of road to be 20 feet: 16 feet from the Rawnsley property line and 4 feet onto the land of Kevin Lapierre (Hollon Way LLC).

Gravel to be from Lapierre (Hollon Way LLC) land: 12 inches of gravel from Lapierre land applied on new road and compacted with 10-ton roller. Supply and install 4 inches of processed crushed gravel and compact.

Crushed gravel to be supplied and installed in Rawnsley driveway and compacted.

The finished road will drain from the Rawnsley property line to the low marsh land.

The document was signed on 12/9/2021 by Kevin Lapierre, Mike Gallo, and Donald Rawnsley.

Mr. Gallo asked if Roland L. had gone down to see his ribbons? Roland stated that he had not, but he would now. He said he hadn't been there since the previous meeting.



Mr. Gallo stated that Roland would find there was one more ribbon on site than before, because when they went to measure the area to order the blocks for the wall, after looking at the site, they realized that when digging they would be killing the roots of one other tree, so there was one more tree added to be taken down.

Steve F. asked if the sheds were straightened out, what was being removed or relocated? Mr. Gallo stated that he was following what was shown on the original plan, which the Board has, shed to be moved and it will be. He said the 2 sheds are being moved and noted he went over it with Rawsley, because one was right on his line. He said one shed he is pushing 7 feet, and the other one will be moved to a spot where he is excavating near the retaining walls. He said he put that in the contract with the excavator to move the shed. He said the shed is in good shape and it will be well beyond the 100 feet. He said it was actually 130 feet after measuring it from the water.

Steve F. asked if that was all the Board was looking for, he thought that was all that was left?

Roger A. asked if there were going to be any blueberries or mulch behind the new wall, or was it going to be grass? Mr. Gallo stated that he was correct, that it would be grass, or a putting green as it was told to him.

Roger A. thought Mr. Gallo provided everything the Board asked for at the last meeting on October 26<sup>th</sup>. He said the shed is going to be beyond 100 feet. Madge B. asked about the new deck, she wanted to know how far it was from the side lot line? She said the plan was very small and it was hard to see. Steve F. thought it said 11.5 feet. Madge said in other places it says 10 feet. Board members looked at the plan and noted the 10 feet was the minimum setback line. Madge said if that is the case, she was concerned with what she saw on the plan, because it appeared the new deck was going to be closer than 10 feet to the lot line. Steve said it can't be closer than 10 feet. Steve asked Mr. Gallo if he could look at his plan as it was larger?

Madge B. said it looks like it is closer than 10 feet. Steve F. thought perhaps it was a step. Madge said that it wasn't shown as a step. Steve showed Mr. Gallo what they were speaking about. Steve asked if the deck

### ***Shapleigh Planning Board Minutes – 12/14/2021 Page 10 of 20***

extends into the 10 foot setback area? He didn't want the Board to permit something that would have to be removed. Mr. Gallo said the deck they were speaking about was being removed and the new deck was smaller

than the existing. He said he wouldn't even call it a deck, it was more like a walkway with new steps that come from the parking lot to get into the house. Madge asked why it said new deck? Mr. Gallo said the deck is being removed along with the 3 trees, because it's the only way to get a machine to the wall being replaced. Mr. Gallo said a new deck would be going there, but it will conform to the 10 foot, and he noted the CEO already pointed it out that it had to conform. CEO Demers said as long as he maintains the 10 feet it was great. Madge was concerned with approving a plan that shows 11.5 feet. Mr. Gallo stated that was the existing deck, not the new deck. He said he hadn't turned in a plan for the new deck yet, as that comes under the building permit, which he won't apply for until after this is done.

Steve F. asked if there was something in the ordinance that states the trees cannot be any further from the water? Roger A. agreed. Steve said the plan states the trees will be in the general vicinity but the ordinance calls for the trees to be no further from the water than the existing are now. Mr. Gallo asked what could be no further? Steve stated, "The trees". Ann H. stated that if the trees are 20 feet from the water, then the new trees have to be 20 feet from the water. Mr. Gallo stated the trees would be beyond the new wall he was putting in, they would not be near the water. He said they

would be on the grassy area, the plateau on the left and right side. He said their idea is to get trees that do not grow tall, so they will not block their view, but at the same time meet the code. He said that he usually uses 1.5 to 2 inch stock, so it will survive. Roger A. said upon planting they can be no less than 6 feet in height. Mr. Gallo stated that Springvale Nurseries picks the trees out, and they are between 2 and 2.5 inches. Steve asked 2 and 2.5 what? Mr. Gallo said in diameter. Steve said that the Board cares about the height, not the diameter. Mr. Gallo said that the Board was saying he couldn't plant them on the beach and he didn't know why anyone would. Roger said that they cannot be any closer to the water than what they are today. Mr. Gallo stated they would be further from the water, because half are in the middle of the wall, so the new ones will be beyond the wall. Roger agreed that often the wall fails because of trees that are too close. Mr. Gallo noted that some towns have a grid and in Acton you have to replant very few trees compared to what you take out. He felt Shapleigh had a very strict interpretation. Steve said that it didn't always have to be a tree, the Board was looking after soil retention.

Roger A. read from §105-4.D(7)(b)[1][a] which read as follows: *Trees removed in order to relocate a structure (which he noted was the wall) must be replanted with at least one native tree, six feet in height, measured from the base of the trunk to the top of the tree, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed. Trees shall be planted greater than five feet from the side lot lines, and shall create a well-distributed stand of trees. These trees shall be flagged with fluorescent tape no less than 18 inches in length which shall not be removed except by the Code Enforcement Officer upon inspection.*

CEO Demers asked if Springvale Nurseries was doing the revegetation plan? Mr. Gallo stated that some of the trees he planted two years ago still have the tape on them. CEO Demers told him to call him for an inspection. Mr. Gallo stated that he had called him and he inspected them, but he left the tape on them. CEO Demers asked if Springvale Nurseries was doing the replanting plan and if they were aware of Shapleigh's Ordinance and works within it. Mr. Gallo said that they would be doing it if they were still in business, they are trying to sell the business, they want to retire. Mr. Gallo said that they told him if they were in business they would take care of the trees, otherwise they would tell him what to do.

### **Shapleigh Planning Board Minutes – 12/14/2021 Page 11 of 20**

Steve F. said he had no further questions. Roger A. asked when he expected to have it completed? Mr. Gallo stated that for everything he expected to be done by June. He said the gravel and the wall would be done this year, the planting of the trees would be done in the spring. He said he was scheduled to go on site the day after Christmas, he thought he would have it done in four days. Mr. Gallo thought he would be planting the trees in May. Roger asked if July 31, 2022 would be a good date for the completion of the project including the trees? Mr. Gallo said, "Yes, definitely".

Roger A. stated that BMP would be used, best management practices for protection of the water when the wall is removed. CEO Demers stated, "Erosion control". Mr. Gallo stated that he wasn't sure what he would use, he was going to leave it up to Levesque (contractor). He said Mr. Levesque had a license for that. He thought they would likely use the silt fence, because there was a lot of live sand and he noted if they use the bark it is hard to clean up after. He said they were finishing a job in Kittery where they would be rolling up about 500 feet of fencing, so they likely could bring it to this site.

Roger A. stated the conditions of the project were:

Best Management Practices shall be used during the project.

A person licensed by the DEP in erosion control will be on site to oversee the project.

Mr. Gallo agreed there would be a licensed contractor on site.

Roger A. asked if there were any additional questions or comments? Sherrie Moody said she had a question. She said the check dams were not mentioned, she wanted to know if they were still going to be there. Mr. Gallo said there were no check dams. Mr. Gallo said that because he no longer will have a 2 foot slope, it is almost level now, they are not required. Mrs. Moody asked if anything that runs off would go directly into the marsh? Mr. Gallo stated that by the way of the land that it runs over, that is correct. He said check dams don't stop anything, they slow it down, but the water that hits the check dam would hit the marsh, and it will now too.

Mr. Moody stated that the last correspondence he had with Lapierre was last weekend and it was agreed upon that Mr. Gallo would not be doing work on Sherrie's property, unless there was a need to get rid of gravel that was being excavated. He asked if this was correct? Mr. Gallo asked Mr. Moody if he was asking if he was going on Sherrie's property? Mr. Gallo said the trucks were, it was a ROW. Mr. Moody said he did not understand what he was asking. Mr. Moody said that previously he was going to get rid of the excavated fill as far as he could go. Mr. Gallo said that was correct, but it is no longer the case. Mr. Moody said Kevin Lapierre told them it would be addressed later on. Mr. Gallo stated that when he found out they owned the land and because he did not get along with them, he told Mr. Lapierre that he did not intend to work on their land. He felt no matter what he did it would be wrong. Mr. Gallo said he wasn't touching their land, but when their trucks beat it up, which they will coming in and out, he will bring it back to where it is today. He said that is what he agreed to with Rawnsley and Mr. Lapierre. He said that Mr. Lapierre wanted a price to upgrade the ROW because there are tons of gravel coming off the property and he has nowhere to put it, but Mr. Gallo told Lapierre he didn't want to put it on the ROW. He stated he didn't feel comfortable working with the Moody's. Sherrie Moody stated that Mr. Lapierre did not share that with them. Mr. Gallo said that Mr. Lapierre was a nice guy and he got upset. Mr. Gallo said that she saw the email that he sent Mr. Moody; he was ticked off and he called him a name, which he apologized for, but he said he didn't work for people he didn't like. He said he didn't have to and felt they would be nothing but trouble on the whole job. Mrs. Moody said they were only looking out for the best interest of the whole ROW. Mr. Gallo stated the paper he created addressed the whole ROW but they refused to

### ***Shapleigh Planning Board Minutes – 12/14/2021 Page 12 of 20***

sign it. Mrs. Moody stated, "I didn't refuse to sign it". Mr. Gallo said that she didn't sign it because she had no rights on the ROW other than to use it. Mrs. Moody said that was not what was said. Mr. Gallo said he didn't want to deal with this this evening, he only wanted his approval.

Mr. Moody stated they received an email saying that Mr. Gallo wouldn't go on the property. He said then they got an email that was good news, as they were trying to answer the previous email while waiting for a description of what was going to take place, about what was given to Mr. Rawnsley which he approved, which said there was more than enough gravel so they could do more. Mr. Moody said they thought that was a good idea. He said after that, it got changed again (that they wouldn't go on their property). Mr. Gallo said the reason was him. Mr. Moody asked if he would let him finish? Mr. Gallo allowed it. Mr. Moody read from an email he received from Mr. Lapierre, he read it as follows:

*As discussed with all (I had a call with all 3 parties yesterday), along with planned improvements to our cottage, we will execute the attached ROW improvements in front of the cottage and to Rawnsley ROW. As construction progresses and if possible, we (Lapierre and Gallo construction) will execute improvements to the Moody ROW area but this will occur only after Lapierre approves a quote from Gallo construction and the Moody's approve the improvements in writing.*

*In speaking with the Moody's yesterday there were two specific items discussed. One, they felt no need to sign the document since the proposed ROW improvements are to the Rawnsley areas only. If the town asks for their signature they can sign it at the next scheduled meeting.*

Mr. Moody stated the reason they were at the meeting was to sign any document as needed, they did not come to the meeting to fight. Mr. Gallo asked why they were bringing any of this up, it was holding up his approval. Mr. Moody asked him to wait a second, and continued reading from the email.

*They did ask that, regardless of whether or not we (Lapierre and Gallo Construction) make improvements to Moody ROW as construction progresses, Gallo Construction makes sure the muddy area section of their ROW (near turn off 24th St to Hollon Way) be repaired prior to completion of the job. I agreed to their request to repair, if needed, prior to completion of the job.*

Mr. Moody noted that this was Mr. Lapierre agreeing to this.

*Larry suggested it may be beneficial to fill the muddy area before the start of the job. I agreed. I discussed this with Mike Gallo and he found no issues with the request.*

Mr. Moody stated that this evening he was getting issues with the request. Mr. Gallo said that he was told that the Moody's would not sign the agreement he put together with Rawnsley and so he had a problem, and he said the problem was dealing with them. Mrs. Moody said the contingencies that Mr. Lapierre agreed to with them, they were all in agreement, she came to the meeting to sign the agreement.

Roger A. and Madge B. stated that the Board did not need a signature. Mr. Gallo stated that they had no rights to it. Madge felt this was a civil matter. Ann H. said they did not need their signature. Mr. Gallo said that he felt the Board had everything they needed from him. Madge agreed. Mr. Gallo said that he didn't like to walk away and have people pissed off at him, which he said they were, and he said in part it was likely because he was pissed at them and he still was. He said if they can resolve it, he would prefer to do it after the meeting. Madge agreed. Mr. Gallo went on to say that now he has to truck his gravel off site at Lapierre's expense, when he

### ***Shapleigh Planning Board Minutes – 12/14/2021 Page 13 of 20***

would rather put it on their road. Mrs. Moody said they came with the thought that they wanted the betterment of the ROW and that was their concern. She said they were not pissed off at Mr. Gallo.

Roger A. said again they did not need a signature. Madge B. said this had nothing to do with the Planning Board. Roger said this lead to another question for Mr. Gallo. He asked where the additional yardage was going? Mr. Gallo said he was hauling it out. Ann H. asked Mr. Gallo if he was hauling it out, where would it go? Mr. Gallo said he did not know, perhaps he could sell it. Roger said that if it goes to another area in Shapleigh, it will need a Conditional Use Permit. Ann said he needs to take it out of Shapleigh. Mr. Gallo said that most likely it will go to a job he was doing in South Berwick. He asked if he hauled it to a building he was building in town, did he have to get a permit to bring it in. Roger said that if it was incidental to construction of a home, no, but if he was relocating it to dump it or stockpile, then yes he needs a permit. Mr. Gallo said he would put it to use, such as for a road or a lawn. Roger said that if for example he was bringing 325 yards of gravel to his house, then Roger would have to get a permit to accept the gravel. Mr. Gallo said that he understood. Mr. Gallo said that his excavator would have plenty of places to bring it and noted they would not be breaking any rules. He said he thought he was going to be using it all for the job, and now the job requires less.

Mr. Moody said again that they came to the meeting to hear Mr. Gallo say that their ROW was part of the agreement, now the Board is saying it isn't so. Roger A. stated that the agreement between them and Mr. Gallo has nothing to do with this conditional use permit. He said the agreement is between the parties involved and that is a civil matter. Roger said he did advise earlier, for their protection, they should record the document they signed at the registry of deeds. Mr. Gallo said he would be doing it tomorrow morning.

**Roger then reviewed §105-73.G 'Standards applicable to conditional uses' as follows:**

- 1) The use will not have an adverse impact on spawning grounds, fish, aquatic life, birds, or other wildlife habitat. ***It will not, the new retaining wall will help protect fish and aquatic life. Trees removed within 100 feet of the water will be re-established.***
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. ***The wall near the water will remain in the same place with trees behind it, so it will remain much the same as it is now.***
- 3) The use is consistent with the Comprehensive Plan. ***The Comp Plan is in favor of protecting the health of the lake and improving the wall will help the lake.***
- 4) Traffic access to the site is safe. ***It is safe for the proposed use, and part of the access is being improved with the gravel being placed on part of the ROW. The remainder of the ROW will be returned to original condition when the project is finished if need be.***
- 5) The site design is in conformance with all municipal flood hazard protection regulations. ***The project is not in the flood zone.***
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. ***The existing wall material and other demo will be taken out of Shapleigh and disposed of at the proper facility. It will not go to the transfer station. A State approved Septic Design has been drafted for this site.***
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. ***There are no hazardous materials being transported or stored.***
- 8) A stormwater drainage system capable of handling fifty-year storm without adverse impact on adjacent properties has been designed. ***The new wall(s) will be constructed per the specifications of the manufacturer, stormwater is being mitigated per the plans provided and as discussed.***

***Shapleigh Planning Board Minutes – 12/14/2021 Page 14 of 20***

- 9) Adequate provisions to control soil erosion and sedimentation have been made. ***Best management practices will be in place during the project and until the area is completely stabilized, which includes revegetation of the area.***
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. ***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. ***There is existing vegetation, the area behind the wall will be stabilized with grass. Trees removed shall be replaced within 100 feet of the high water mark. 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. ***They shall with conditions.***

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

- 1) **The project, including soil stabilization / revegetation plan shall be completed by July 31, 2022. If this date cannot be met a new date of completion must be established with the Code Enforcement Officer.**

- 2) **Best Management Practices shall be kept in place until the project is completed which includes 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.**
- 3) **A licensed surveyor shall confirm in writing to the Code Enforcement Officer that the placement of the new wall closest to the high water mark is in the exact location as the existing wall being removed.**
- 4) **Existing wall and demo shall not be taken to the Shapleigh Transfer Station, it will be disposed of at the proper facility.**

Mr. Moody asked where the old septic would go? Mr. Gallo stated it would get buried. He said first it gets pumped out, then it is crushed and buried. Mrs. Moody asked if there was a leachfield. Mr. Gallo stated that he did not know, which is why he is putting a new system in. He stated there was nothing on file at the town hall. Mrs. Moody thought Dick Goodwin put it in and not that long ago. Mr. Gallo said there were no plans on file. He said the simplest thing was to design a new system which he did.

**Steve F. made the motion to approve the Conditional Use Permit for earth moving in the Shoreland District per the plans provided and as presented for Map 21, Lot 42, with the stated conditions. Madge B. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

Nothing more was discussed.

~~~~~

**Findings of Fact**

***Shapleigh Planning Board Minutes – 12/14/2021 Page 15 of 20***

- 1. The owner(s) of Shapleigh Tax Map 21, Lot 42 (17 Hollon Way) are Hollon Way, LLC, Kevin R. Lapierre and David Dorwart, mailing address of 1611 Wood Song Court, Sugar Land, TX 77479 per Warranty Deed, BK 17696, PG 716, recorded 4/18/2018.
- 2. The property is located in the Shoreland District, and according to the Assessor’s office, it contains .5 Acres.
- 3. Provided was a copy of the DEP Permit by Rule, dated July 20, 2021. The application Brief Project Description is as follows: Remove stone retaining walls & replace with Loc-blocks.
- 4. Provided was a plan dated 8/26/2021, drafted by Jo-Ann Cropley Cavanaugh, Licensed Architect from J.C. Cavanaugh Architecture LLC, located in Springvale, Maine. The plan is entitled ‘Renovations and Additions at 17 Hollon Way, Shapleigh, ME for Kevin LaPierre, 1611 Wood Song Court, Sugar Land, TX 77479’. The plan depicts the location of direct abutters, located on Map 21, Lot 44; Map 21, Lot 43A & Map 21, Lot 40. It also depicts the existing house, along with the proposed addition. The plan shows the 75 foot setback to the normal high water line and the 100 foot setback to the normal high water line. The addition is almost entirely outside of the 100 foot setback. The following notes are on the plan: 1) Remove Ex. Stone Retaining Wall; Proposed 3.5’ Retaining Wall; New 6’ Wide Stair w/ 6- 14” Treads, Center on House; Proposed 3.5’ H. Retaining Wall; Remove Ex. Conc. Stair; Remove Ex. Shed; Replace Ex. Deck & Stairs; Relocate Ex. Shed Out of Setback; Proposed 4’ H. Retaining Wall; Proposed Location New Septic Field, Existing Leach Field to be Replaced w/20’ x 35’ Chamber Bed for 4 Bedrooms; Existing Septic Tank to be Replaced w/ 1000 Gal. Heavy Duty Conc. Tank. Other notations include the existing driveway location and relocation, boundary markers, and wetland area.
- 5. Provided was a copy of the revised plan entitled ‘Renovations and Additions at 17 Hollon Way, Shapleigh, ME for Kevin Lapierre, 1611 Wood Song Court, Sugar Land, TX 77479’ drafted by Jo-Ann Cropley Cavanaugh, Licensed Architect from J.C. Cavanaugh Architecture LLC, located in Springvale, Maine, revision date of 12/2/2021. This plan

depicted the location of 9 trees that will be removed during the project that are within 100 feet of the water. Six are located in the vicinity of the wall to be replaced, which is approximately 30 feet from the high water mark, 2 are located next to the deck that will be replaced, and 1 next to the addition going onto the house. A plan note was added that states 'Existing Trees to be Removed and Replaced (New Trees in General Vicinity of Removed Trees)'.

6. Provided was a copy of the 'Right-of-Way specification of section being improved over Rawnsley land', signed by Kevin Lapierre, property owner; Mike Gallo, applicant/contractor; & Donald Rawnsley, abutting property owner, dated 12/9/2021. This document provided details of the improvement of the ROW work being done on Hollon Way by Gallo Construction Company.
7. Provided was a copy of the Subsurface Wastewater Disposal System Application, drafted by Hope Hampton, SE #427, dated 8/19/21 for a replacement system for a single family dwelling unit for up to 4 bedrooms.
8. The application detailed project description is as follows: *Earth moving in the Shoreland Zone*
9. The application as presented met the performance standards under §105-73 'Conditional Use Permits' as per the documentation provided and as presented with four conditions.

***Shapleigh Planning Board Minutes – 12/14/2021 Page 16 of 20***

10. A notice was mailed to all abutters within 500 feet of the property on October 13, 2021. Meetings were held on Tuesday, October 12, 2021, Tuesday, October 26, 2021 and Tuesday December 14, 2021. A site inspection was done by members on an individual basis prior to the meeting on October 26<sup>th</sup>.
11. The Planning Board unanimously agreed to approve the Conditional Use Permit for earth moving in the Shoreland District on Map 21 Lot 42 per the documents provided and as presented, with four conditions.
12. **The conditions of approval are as follows:**
  - 1) **The project, including soil stabilization / revegetation plan shall be completed by July 31, 2022. If this date cannot be met a new date of completion must be established with the Code Enforcement Officer.**
  - 2) **Best Management Practices shall be kept in place until the project is completed which includes 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.**
  - 3) **A licensed surveyor shall confirm in writing to the Code Enforcement Officer that the placement of the new wall closest to the high water mark is in the exact location as the existing wall being removed.**
  - 4) **Existing wall and demo shall not be taken to the Shapleigh Transfer Station, it will be disposed of at the proper facility.**

**Decision:**

**The Conditional Use Permit for earth moving in the Shoreland District, on Map 21, Lot 42 (17 Hollon Way), per the plans provided and as presented with four conditions, was approved.**

**Conditional Use Permit – Scrap Metal Business – Map 10, Lot 10A (1416 Shapleigh Corner Road) – Brad Davis, Applicant & Property Owner**

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

Provided along with the application was a copy of the Town Tax Map 10, depicting Lot 10A. There is an asterisk with a red circle around it on the lot, and a notation pointing

to the asterisk which states 'Scrap Metal Drop off Site'.

Provided was a sketch plan entitled South East Corner of Lot #10A. The sketch depicts State Rte. 11, a 26' wide entrance from Rte. 11 onto the lot, and from there a 12' gravel drive. At the end of the gravel drive is a gravel pad which is noted as being 'Drop off Area for Scrap Metal'. The gravel pad area is approximately 90 feet off of Rte. 11, and 34' x 46' in size.

The detailed description of the project is written as follows:

*Scrap Metal Recycling Drop-off area at the Southeast Corner of Lot 10A in Shapleigh.*

**Shapleigh Planning Board Minutes – 12/14/2021 Page 17 of 20**

*Creation of a No-fee Scrap Metal Recycling Drop-off area that is open to the public, serving both Shapleigh and surrounding communities, encouraging responsible recycling to lessen the land fill burden in Maine. Accepted materials include all metal items but excludes refrigerators, freezers, propane tanks, chemicals, paint cans, gas cans, oil tanks, e-waste, tv's, tires.*

*All material will then be separated and removed from the site on a weekly basis in order to maintain a tidy drop site.*

Roger A. asked Mr. Davis to let the Board know what he wanted to do. Mr. Davis said that as stated in his application, he would like to develop a scrap metal recycling drop-off area. He said the location is on the southeast corner of Lot 10A, which is about 200 feet north of his farm entrance. Ann H. asked if it was the property with the big red barn? Mr. Davis said it was.

Mr. Davis stated that he started metal recycling in L.A. and it became a passion of his, and since he moved to Shapleigh last summer, he wanted to do the same here. He stated he brought the material up to the barn and micro scraps it, so instead of just tossing out the washing machine, there is wire you can strip out, there is a brass motor, etc. He said he strips it out and then hauls it off to sell. He wanted the Board to know he did not want the area to look like a big ugly scrap yard. He said he pulls once a week and gets it ready to take to the scrap yard.

Mr. Davis said with lawnmowers he would take the gas out and bring it to Knox, because he has a waste oil burner. He said that he hadn't had it yet, but in anticipation of leaks, his plan was to put a heavy tarp down with grommets and spike it into the gravel, and put a separate sign to put lawnmowers and snow blowers in that area, so they are on an impervious surface, so gas and oil cannot leak down into the ground.

Mr. Davis asked if the Board had any questions? Barbara F. asked if he took air conditioners that had refrigerant in them or refrigerators? Mr. Davis said he would not take refrigerators or freezers, because the scrap yard he goes to does not take them. He said he did take air conditioners and there is a man he takes them to in New Hampshire, who is an HVAC guy who removes the refrigerant. He said he didn't get too many of them.

Mr. Davis said it would be open 7 days a week and it was the honor system. He said some people have already dumped trash there, which he had to bring to Simpsons to dump it. He said it costs him money, but for the most part, people have dumped the appropriate stuff. He said there is a sign designating what you can and cannot drop off.

Roland L. asked if there would be a gate at the entrance? Mr. Davis stated that he had a chain, but he never put it up, unless he goes on vacation. He said then he will chain it with a sign.

Ann H. asked if a tarp would be ok to use to protect the ground? She said she wasn't sure about Shapleigh, but some towns you have to have pavement or concrete to



protect the ground. She said at another construction site the Board reviewed, where there was a logger and a gas tank, it had to be concrete. Steve F. stated, "Encapsulated". Roger A. stated that it should be on an impervious area. Mr. Davis asked if that could be a tarp or should it be asphalt. Roger said he did not consider a tarp impervious, it is easy for it to rip and then it is not impervious. Ann asked if there was an ordinance for this. Madge B. stated that there were standards. Madge said the problem with the location is the area is sand and it is over the aquifer.

### ***Shapleigh Planning Board Minutes – 12/14/2021 Page 18 of 20***

Ann H. said she wished more people would recycle like this.

Steve F. asked if the Board would do a site inspection? Madge B. said that he already put the area in, so it is easy to see. Madge B. asked about the sign, did he have a permit for the sign? Mr. Davis stated that he had not, and he would get one. He said the sign is down now but he would get a permit through the CEO. Madge said the site was easy to see, so she did not feel the Board had to go together. Steve agreed.

Roger A. was not sure if a DEP permit was required for storage of metal? CEO Demers said it was a drop-off site and he was storing it in his facility. He said he wasn't storing it outside for any period of time. He said based on this, he did not think it would qualify for any DEP permit.

Steve F. asked about a DOT entrance permit? CEO Demers said for the curb cut he should get one, as he shouldn't get denied. He told Mr. Davis he would get him the information on it. Ann H. asked what this meant? Steve stated that it was a State road, it's not a Town road, so it needs an entrance permit from the State. Ann said that he already had an entrance. Roger A. said he had an entrance to the farm, but this was a separate entrance. Ann didn't realize that. Mr. Davis agreed this entrance was north of the existing entrance. CEO Demers added that this is a separate lot as well. Roger noted that he had been to the site, because he saw the sign, and he was concerned with what was and was not accepted. He said he was concerned about refrigerant, etc.

Madge B. asked if this metal goes into his barn, does he need a permit for the barn? Roger A. stated that if he wants to collect junk in his barn he didn't think the Board could regulate it. Mr. Davis stated that it goes into the truck, the truck sits in the barn. Ann H. thought he could do whatever he wanted in the barn. Madge thought if it were automobiles, then the Board would be concerned. CEO Demers thought if he kept the automobiles inside it would not be an issue. Roger said that even with automobiles the Board would be concerned with fuel only. Madge said no one is supposed to fill their yard with more than 3 unused vehicles, then it becomes a junk yard. She said she didn't think the Town was enforcing it. She said the Board did care about how much hazardous waste is stored.

Roger A. said what the Board is going to be concerned with is water quality and refuse disposal. Madge B. agreed that the water quality was a huge concern, especially because it is over the aquifer. Roger agreed.

CEO Demers asked how large an area would be required to be impervious to store the material? Mr. Davis thought a 10' x 10' area. He said he could do asphalt. He said that would hold a couple snow blowers and lawn mowers. CEO Demers asked if it was on a daily basis? Mr. Davis said that no, it was not a lot. He said they are not accumulating long term. Steve F. asked if there should be a berm to contain the fluids, so it would not run off. CEO Demers was concerned with rainwater draining. Steve agreed that is a problem. CEO Demers thought an impervious service without a berm was better. He thought gas would evaporate and oil would dissipate over time, and you can use kitty litter to clean it up. CEO Demers thought if it were to fill with rainwater, it would wash off and it would defeat the purpose. Roland L. didn't think asphalt was best, because gasoline breaks it down. CEO Demers asked if concrete would be better? Ann H. said

that concrete would crack. Mr. Davis wondered if some type of sheet metal device would work, such as a catch basin underneath a heater. Madge B. said, then it goes back to CEO Demers' concern with rainwater building up. Madge said then you would need a lean-to to cover it. Steve thought there should be something the Board could come up with to achieve the goal. Mr. Davis said if the Board recommends concrete or asphalt he could have someone do it, and he could put up a

### **Shapleigh Planning Board Minutes – 12/14/2021 Page 19 of 20**

sign that anything containing gas or oil goes in that area. Roger thought that this time of year it would have to be concrete because the asphalt plants are shutting down. Roger added that there shouldn't be a large quantity of gas or oil stored at any one time, the tanks are not that large. Steve asked if you could put a concrete sealant on it? Mr. Davis thought concrete would be best.

**Roger A. stated a public hearing will be held on December 28<sup>th</sup> at 6:00 pm, and a notice to abutters will be mailed as well. Members will go to the site on an individual basis.**

Nothing further was discussed.

### **OTHER:**

Roger A. asked if everyone saw the letter from Attorney Brad Morin regarding the bond for the Solar project on 987 Back Road? The Board members said they had. In the letter Attorney Brad Morin stated he had a concern with the provision allowing for cancellation of the bond. Attorney Morin suggested two paragraphs be added, along with several other provisions. The information was passed along to the applicant's representative, Stephen Barrett for his review. The applicant has until January 11, 2022 to present the Planning Board and Selectmen with a bond that meets the Planning Board requirements. Mr. Barrett is aware of this deadline through email notification from Barbara F.

The two paragraphs Attorney Morin proposed are as follows:

***NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS that, if the Principal shall well and truly carry out the covenants, terms and conditions of this agreement, as set forth in the Town's permits, ordinances and other applicable law, then this obligation shall be void; otherwise, it shall remain in full force and effect.***

***Surety may cancel this bond by giving at least 90 days' advance written notice to Obligee, by certified or registered mail. Such notice shall not discharge the liability of the Surety for any default prior to the effective cancellation date. Further, if the Principal fails to provide the Obligee with replacement security acceptable under the terms of the Town's permits, ordinance or other applicable law, then the Surety, at its sole discretion, shall 1) rescind its cancellation notice by registered or certified mail or 2) promptly arrange for the decommissioning of the solar facility in accordance with the decommissioning obligations or 3) pay the Obligee for any out of pocket costs incurred for decommissioning of the solar facility minus any salvage collected. In no event shall the liability of the Surety exceed the penal sum of the bond. Otherwise, the bond shall only be canceled upon signed release of the Planning Board and Chairman of the Board of Selectmen.***

Ann H. stated that she writes bonds and agrees with the attorney's advice. She wasn't sure the bond company would agree to this, however. Roger A. stated that was the applicant's issue, if they do not agree, then they have to find another way to come up with the money. Ann asked if the person doesn't pay for the renewal of the bond, the

bond will cancel, what would happen then? Roger said that the conditional permit will be no longer valid. The Town can then ask them to dismantle it. Ann stated that since the bond is in the Town’s name, the Town will be notified. She said the bond company could decide not to write anymore solar decommissioning bonds, so they would have to find another bond company. Roger said that was up to the applicant.

**Shapleigh Planning Board Minutes – 12/14/2021 Page 20 of 20**

Roger A. noted the original bond was vague and didn’t talk about decommission, the new one will have it noted, so there will be more protection. Ann H. said the bond company will put in what they are bonding, and the applicant’s lawyer should have known that. Roland L. asked who accepts the bond? Roger stated if they present a bond that meets what the Planning Board asked for and what Attorney Morin requested, it will then go

back to Attorney Morin for a final review. He said the attorney will look it over, return it to the Planning Board who will give it to the Selectmen to sign off that they accept it. Ann stated that looking at what was presented, the bond form did not come from a bond company, it came from the applicant’s attorney. Roger said it would come from a bond company when it is done. Roger said this was preliminary. Ann thought they should have provided an actual bond form, it appeared to be something the attorney made up. Barbara F. stated that as long as the Town attorney ok’s the final form, the Town will be ok. Roger agreed and said it will be backed by a bond company.

Nothing further was discussed.

\*\*\*\*\*

**Growth Permits**

There are still several Growth Permits available.

\*\*\*\*\*

**The Planning Board meeting ended at 7:55 p.m.**

**The next Planning Board meeting scheduled will be December 28, 2021 and the meeting will be held IN PERSON at the Town Hall.**

**NOTE: The winter hours are in effect through March 30th; the meetings will begin at 6:30 p.m. and any scheduled public hearing begins at 6:00 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)