

**Shapleigh Planning Board**

***Minutes***

**December 22, 2020**

This evenings meeting was conducted via Zoom due to Covid-19.

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

Steve Foglio (Vice Chairman) was unable to attend, therefore Ann Harris sat in as a regular member.

\*\*\*\*\*

**The minutes from Tuesday, November 24, 2020 were accepted as read.**

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

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

\*\*\*\*\*

**4 Lot Minor Subdivision ~ Grammar Ridge II – Preliminary Review - Map 11, Lot 10 (Newfield & Grey Road) – David Dubois & Linda Chadbourne, Property Owner(s); Corner Post Land Surveying, Inc., Authorized Agent**

Mr. Michael Dubois was in attendance along with Davis Bartlett of Corner Post Land Surveying.

**The sketch plan application for the 4-lot subdivision contained the following information:**

- Name of Property Owner: David P. Dubois and Linda B. Chadbourne
- Mailing Address: 80 Sand Pond Road, Sanford, Maine 04073
- Name of Applicant: David P. Dubois and Linda B. Chadbourne c/o Michael Dubois
- Mailing Address: 1204 Main Street, Sanford, Maine 04073
- Name of Authorized Agent: Davis Bartlett of Corner Post Land Surveying, Inc.
- Mailing Address: 600 Main Street, Springvale, Maine 04083
- Name of Land Surveyor: Dana Libby of Corner Post Land Surveying, Inc.; PLS #1350
- Email Address: [dana@mainesurveyors.com](mailto:dana@mainesurveyors.com)

**Land Information:**

- Location of Property: YCRD Book 7632, Page 212
- Shapleigh Tax Map 11, Lot 10
- 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: 55.46± Acres
- Property is not part of a prior subdivision.
- There have been other divisions within 5 years.
- Restrictive Covenants: No dug wells will be allowed.

*Page 1 of 16*

***Shapleigh Planning Board Minutes – 12/22/2020 Page 2 of 16***

- Existing Use: Wood Lot
- The parcel does include a waterbody.
- The parcel is not within a special flood hazard area.
- Proposed Name of Development: Grammar Ridge II
- Number of Lots: (4) Four
- Date of Construction: Spring / Summer 2021
- Date of Completion: Unknown
- Infrastructure Required: No
- The property currently has possible road access on Grey & Newfield Road.
- Method of Water Supply: Individual Wells
- Method of Sewer Disposal: Individual Septic Systems
- Method of Fire Protection: Sprinklers in individual homes.
- There are no Proposed: Streets
- Recreation Areas
- Common Land

Requested Waiver(s): 89-30.A – Request waiver to set concrete monuments instead of stone.  
89-30.B.2(c) – Request waiver to install individual sprinkler systems instead of a fire pond.

Also provided with the application was a copy of the Town Tax Map 11, depicting the location of Lot 10; a copy of the Warranty Deed between Santo A. and Mary T. Sullo, property owners, to Grammar Ridge, Inc, Book 6913, Page 074, dated received at YCRD on January 21, 1994; and a copy of a document entitled ‘Significant Sand and Gravel Aquifers’ and it appears this parcel does not lie over a significant aquifer.

Provided was a copy of the soils map for Lot 10, which depicts AdB adjacent to Grey and Newfield Road which refers to Adams loamy sand, 0 to 8 percent slopes (11.7% of area), as well as HmC along Newfield Road and in a large area in the center of the lot, which refers to Hermon sandy loam, 8 to 15 percent slopes (33.4% of area). Along the upland wetland interface and toward the center and then back of the property lies Na, which refers to Naumburg sand (8.2% of area) and SrC, which refers to Skerry fine sandy loam, 8 to 15 percent slopes, very stony (23% of area). To a lesser extent and along the boundaries of the property depicted is also AdB (see above); CrB, which refers to Croghan loamy fine sand, 0 to 8 percent slopes (1.6% of area); CoB, which refers to Croghan loamy fine sand, 0 to 8 percent slopes, wooded (2.9% of area); BsB, which refers to Brayton and Westbury very stony fine sandy loams, 0 to 8 percent slopes (2.6% of area); HmB, which refers to Hermon sandy loam, 0 to 8% percent slopes, very stony (4% of the area); LyC, which refers to Lyman-Rock outcrop complex, 8 to 15 percent slopes (1.1% of area); HmC (see above); HnE, which refers to Hermon sandy loam, 15 to 60 percent slopes, extremely stony (3.1% of the area); and LyE, which refers to Lyman-Rock outcrop complex, 15 to 80 percent slopes (12% of the area).

Provided was wetland information from Chris Coppi CWS, LSE, Independent Wetland Scientist from Albert Frick Associates, Inc. The letter entitled ‘Wetland Delineation, Newfield Road, Shapleigh’. The letter reads as follows:

**Shapleigh Planning Board Minutes – 12/22/2020 Page 3 of 16**

*On October 12, 2020, I completed a wetland delineation at the above-mentioned property. The investigation area contains a DEP stream that traverses west to east and a forested wetland. Wetlands (blue flagging), the DEP stream (pink flagging) and drainage (pink flagging) were labeled alphanumerically and were located by Corner Post Land Surveying, Inc. The water course, shown as a Blue-Line stream according to the USGS map, was inspected in its entirety. As shown on my attached sketch, a portion of this blue-line stream in the area between the wetland and Newfield road, did not exhibit a scoured mineral. As such, I flagged these areas in pink and labeled them “Drainage”. No vernal pools were observed within the investigation area.*

*The DEP stream starts west of the investigation area and then proceeds easterly across the investigation area. The stream exhibited a scoured mineral between a defined bank and contained aquatic vegetation (aquatic mosses).*

*Shortly after the existing pedestrian crossing and forested wetland, the stream appears to dissipate, and becomes a seasonal drainage all the way to the Newfield Road culvert. At that point, the drainage did not exhibit a scoured mineral and channel. It is my opinion that the stream becomes more of a sheet flow-type drainage after depositing sediment in the forested wetland. Afterwards, the blue-line stream is essentially intermittent flow and is not persistent enough to scour a channel consistent with the DEP stream definition under the Natural Resources Protection Act. As such, the drainage section of the blue-line stream does not meet the DEP stream definition because it does not have a scoured mineral.*

*Per your survey, you have showed the entire water course as a stream. If development is affected by this resource designation as a stream all the way to Newfield Road, then perhaps this warrants a reclassification of the drainage portion of the blue-line stream as a possible non-jurisdictional water course for DEP purposes. The blue-line stream designation also has ramifications for subsurface wastewater disposal as the state plumbing code requires a 100 foot setback from a blue-line stream to a disposal field. A reclassification of this water course in the drainage areas discussed above may require state concurrence of these findings with both DEP and if necessary, DHHS (Subsurface Wastewater Group).*

*Wetland impacts on the property will require a DEP and Army Corps wetland permit in accordance with the Natural Resources Protection Act (NRPA) and Maine General Permit (Maine GP) respectively. Wetland impacts located within 25 feet of a DEP stream, do not qualify for the normal Tier review process and therefore, would require an Individual NRPA permit; Individual permits are not a guaranteed approval. However, if the wetland impact occurs only within 25’ of the stream and is associated with a stream crossing (e.g., driveway or utility crossing), then the activity would qualify for a Permit by Rule (PBR) under that process. The PBR program is a 14-day review process.*

*A DEP-regulated stream requires a 75-foot setback to an activity, such as clearing of vegetation, filling or soil disturbance. A DEP permit is necessary if that activity encroaches into the 75-foot setback. However, the activity may be eligible for the Permit by Rule process provided the activity maintains at least a 25’ setback to the DEP stream and is justified within the 75’ foot setback.*

*According to Shapleigh WEB GIS, the property does not contain a shoreland zone.*

Provided was a ‘Boundary Survey for David P. Dubois & Linda B. Chadbourne for Property Located on Newfield Road & Grey Road in Shapleigh, Maine’, drafted by Dana Libby, PLS 1350, dated November 30, 2020, labeled Sheet 1. This survey contained the location of the proposed lots, abutting properties, location of Grey and

**Shapleigh Planning Board Minutes – 12/22/2020 Page 4 of 16**

Newfield Road, overhead utility lines and poles, existing stonewalls on the property, building setback lines for each property, approximate upland/wetland interface; soils boundary and type; contour lines (both 2’ and 10’ intervals), and survey markers found.

Provided was a sketch plan showing ‘Grammar Ridge II, a 4 Lot Subdivision by David P. Dubois & Linda B. Chadbourne of 80 Sand Pond Road, Sanford, Maine 04073 of Property Located on Newfield Road, Grey Road & Abbott Mountain Road in Shapleigh, Maine’, drafted by Dana Libby, PLS 1350, dated November 30, 2020, labeled Sheet 2. This sketch plan depicted the entire parcel consisting of 55.46 acres. Proposed lot areas are depicted as follows: Lot #1 = 2.40 acres with 318’ of road frontage on Grey and Newfield Road; Lot #2 = 49.38 acres; Lot #3 is 1.84 acres; and Lot #4 is 1.84 acres in size. Also depicted on the plan were contour intervals, stream delineation, wetland area, building envelope, soils, and abutting properties.

Roger A. opened the meeting asking Mr. Dubois if this was in fact an amendment to the original subdivision, making this a major subdivision. Mr. Dubois asked Mr. Bartlett to speak on this question. Mr. Bartlett stated that this was a new minor subdivision, they were not revising anything. He stated, “The previous minor subdivision is done and over with, we are asking to do a new one right next to it, that’s all”. Roger stated that when you have a minor subdivision, and there is a piece of property left over and you go to redevelop that piece of property, that is an amendment to the subdivision. Roger stated that this makes this a major subdivision. Mr. Bartlett disagreed, that that is only the case if it was a numbered lot and he noted this was not a numbered lot on the previous subdivision. Roger stated this was leftover land from 2001. Mr. Bartlett agreed it was remaining land but not a lot in the subdivision, the subdivision was a separate piece of land. He said he wasn’t sure, but he believed the lot was sold out of the parent lot then subdivided.

Mr. Dubois noted that the lot was under a different ownership. Roger A. stated that any time you change from a minor and make an adjustment by adding to it, it creates a major subdivision, which is what this is doing at the present time. Mr. Bartlett stated that they were not changing anything from the minor subdivision. He stated again that the four lots before (the previous subdivision) were sold out to a different name, then subdivided. He said this is not part of that subdivision at all. Roger stated that of the 4-lot subdivision previously, lot 1 was the only one that was sold out prior to the subdivision being signed as approved in 2002. He stated the other three lots were waiting for approval. Mr. Dubois stated that they were not owned by David and Linda. Mr. Bartlett agreed.

Madge B. asked if the four initial lots, which she believed were sold, weren’t they cut out of the original parent lot? Mr. Bartlett stated there was a lot cut out and subdivided by a different owner. He stated it was all one parcel at one point, but he wasn’t sure how it was conveyed out. Madge said she believed that was what Roger was referring to, was that as long as it started as one lot owned by one person, then it gets more complicated. Mr. Bartlett said he understood, but noted the previous subdivision was not done by these owners.

Roger A. asked if Grammar Ridge I was not done by the Dubois? Mr. Bartlett thought it was done by Grammar Ridge Corporation. Mr. Dubois stated there was roughly seven acres that Grammar Ridge owned, sold off all the land to David and Linda, except for what was the minor subdivision in 2002. Mr. Dubois stated that David and Linda have owned this land for 18 years. Madge B. stated that she felt the board should get a legal opinion because of her understanding that as long as it came out of the original piece its more complicated. She stated that she was not willing to state whether it was a major or a minor. She said that because it started as one piece, that the board normally counts every lot in the piece. Roger agreed. Madge said she also saw their point, so she recommended a legal opinion. Mr. Bartlett said the board was welcome to do that, all they were saying is that

**Shapleigh Planning Board Minutes – 12/22/2020 Page 5 of 16**

this piece was not part of the original subdivision, it was sold out prior to the subdivision of the land and it was not a numbered lot in the subdivision. He said he realized at one point it was one piece, but it was not under these owners and it was not part of the previous subdivision. Madge said that she saw his point, but we are dealing with what was a contiguous parcel at some point, and she admitted to not knowing the answer and again thought the board should get a legal opinion. Mr. Bartlett stated that if the board needed more information from him, to please contact him with any questions.

Mr. Dubois stated that back in 2002, anything over 40 acres was not considered a lot in the subdivision. Roger A. stated that it was counted in Shapleigh. He stated that Shapleigh always considered all lots, Shapleigh never accepted the Maine ruling of anything greater than 40 acres was exempt. Mr. Dubois stated that he knew it was like that now, but he thought it was different in 02. He stated that regardless, we sold the land to my brother and sister for what we are doing today. Roger said again that Shapleigh always counted lots greater than 40 acres. Mr. Dubois stated that this was not counted as a lot number in that minor subdivision; it wasn't considered as a fifth lot when we did it in 02.

Roger A. asked if there was a vote to table this application until the board gets a legal opinion?

Madge B. stated that she went to subdivision law where it states, 'A tract or parcel of land means all contiguous land in the same ownership' and it does not matter when that was true. She said again she did not have the answer. Mr. Bartlett stated that generally this would be considered a fresh subdivision just because of the change of ownership but again he said the board was welcome to get a legal opinion, because he did not want the board to do anything they were not comfortable with. Mr. Dubois agreed.

Madge B. believed Roger A. agreed with her with respect to getting a legal opinion. Roland L. concurred that given the circumstances and questions raised that the board should get a legal opinion to help the board proceed in the right direction.

**Roland L. made the motion to table the application until the board receives legal advice to help guide any future action that the board takes. Maggie M. 2<sup>nd</sup> the motion. By a vote of 5 – 0, all members were in favor to table the application.**

Madge B. asked if the board could discuss the application further? Roger A. stated that some of the other areas that will be reviewed will be whether or not there is any flora or fauna in this location that the Dept. of Inland Fisheries will have to review to be sure there are no endangered species in this location. Driveway cuts will have to be done by the Dept. of Transportation.

Roger A. asked if there were any trees greater than 24 inches on the property? Mr. Dubois asked how this was measured? Roger stated it was diameter at breast height. Mr. Dubois did not believe so; David Dubois had a company out of Cornish do a timber harvest on the property last winter. He said there could be some but didn't think so. Roger said if there were they would have to be depicted on the map. Ann H. asked if this was true even if they were not in the shoreland zone? Roger stated there was one area that may have the large trees. Mr. Dubois asked Mr. Bartlett if they already did the wetland mapping? Mr. Bartlett stated that yes, Albert Frick did the wetland mapping. Madge said the issue with the flora and fauna is the fact the State already has identified this area as having a couple of rare species and the board does not know if they are actually on the property or just off the property. Mr. Bartlett stated that he had letters into all the State agencies about this, but they haven't gotten a response back.

**Shapleigh Planning Board Minutes – 12/22/2020 Page 6 of 16**

Roger A. asked regarding Lot 1, was the wetland area subtracted from the overall lot size, so the lot still meets the minimum lots size requirement? Mr. Bartlett stated that after subtracting for wetlands, they made sure every lot was conforming, so yes. Mr. Bartlett stated that after subtracting for wetlands and steep slopes, they made certain everything still conforms. Roger said, 'Ok'.

Madge B. said she was curious about the discussion of whether or not it was a blue brook that went all the way through the first lot, does it matter or did the applicant care. She said there was an indication that they might get the designation changed. Mr. Bartlett said it does matter and it was part of the wetland's delineation. It was determined what was a brook, stream and what was just drainage. He said it affected the setbacks on the property, where you can build. Madge asked if he received an answer? Mr. Bartlett stated that yes, it was a stream running into the wetland area, and then drainage running out of that. Madge said, 'Ok'. Roger A. said this would give a building envelope. Mr. Bartlett said that yes, and they are already marked on the plan. He stated the building envelope was on both Sheet 1 and Sheet 2 of the plans provided.

Roger A. said another question would be for land set aside for conservation, there would need to be 10% set aside because there is greater than 35 acres. Mr. Bartlett stated that he was under the impression that this was only for a major subdivision. Roger stated that no, it was for a minor as well. Mr. Bartlett said he would need to discuss this with the owners prior to making any promises. He stated that if it was a requirement, they will make it work. Mr. Dubois asked, "10%?" Roger said, "Yes".

Roger A. asked if the driveway for Lot 1 would go onto the Grey Road or Newfield Road? Mr. Bartlett stated that he assumed the Grey Road, otherwise it would be right at the intersection, which would be dangerous. He believed the driveway would be close to the neighbor's lot on Grey Road. Roger agreed, as did Mr. Dubois.

Roger A. stated that those were his questions. He stated until the board got the information back from the attorney as to whether or not to proceed as a minor or major subdivision. He noted that test pits would also have to be done and the information provided. Mr. Bartlett was surprised he did not have them, typically they are done at the same time as the wetlands, but he didn't see them.

Roger A. stated that the board would get back to Mr. Bartlett as soon as they had the legal opinion. Mr. Bartlett stated again if the board needed any additional information to let them know they would be happy to provide it.

Nothing more was discussed.

**Conditional Use Permit – Replace Patio & Wall Removed 10/5/20/20 – Map 40, Lot 50 (50 Loon Lane) – Nancy Lightbody, Property Owner & Applicant; Mr. Tom Kinney, Representing**

Mrs. Lightbody was present for the review of the application.

Roger A. stated that she was before the board for the replacement of a patio and wall that was removed on October 5<sup>th</sup>, 2020. Mrs. Lightbody stated that was correct. Roger asked her to give the board information about the project.

Mrs. Lightbody stated she was looking to get a Conditional Use Permit to finish a patio that was removed. She stated there was actually 2 existing patio's and 2 retaining walls that ran from the house all the way down to the waters edge. She said that she removed both of them and was replacing one of them with a retaining wall, and

**Shapleigh Planning Board Minutes – 12/22/2020 Page 7 of 16**

bringing the rest of the property back to a natural state. She stated that the wall was in disrepair, the patio was in disrepair, and so the belief was at the time that she could replace an existing structure, which is why it came down in October. She stated that they began the work to do it, but came to realize that they needed a Conditional Use Permit. She stated that they have received the permit from the DEP, and now she is asking for this permit to finish the work. She stated she wasn't sure how much more detail the board needed.

Roger A. asked if there were pictures of the patio's and walls, prior to removing them? Mrs. Lightbody stated that yes, there would be pictures of them. Roger asked if she was trying to put the same walls and patios back in, one for one? Mrs. Lightbody stated less than that, there were two patio's and walls. One abutted the house and came out and there was a retaining wall, and then it ran all the way out to the waters edge. She said the one that ran out to the waters edge, they were not going to replace, they were going to revegetate and do some landscaping and make sure it was usable. She said they were putting in the other retaining wall and patio.

Roger A. asked CEO Demers since this was an after-the-fact permit, shouldn't the fee be four times that of the original? CEO Demers stated this was an after-the-fact permit. Roger stated that before proceeding the board would need another \$750. Mrs. Lightbody stated that the application didn't specify that, but she would be happy to do that. She said the application only stated \$250. Roger said yes, but an after-the-fact is four times the application fee. She said she understood.

Ann H. asked about the existing patio and retaining wall, if there were records of when that was put in? CEO Demers stated the file does not detail this; it was an old camp. He said there were a few pictures he had that he could send to members. Ann asked if this was the pictures of the original wall and patio? CEO Demers stated he would send any pictures that he had. Mrs. Lightbody stated that she had other pictures that were better, because she had seen the pictures that CEO Demers had and they don't really show the property in its entirety. She said she could show the board other photos.

Roger A. said the board would need a revegetation plan for what she would be putting in. Mrs. Lightbody stated that her contractor, Mr. Kinney, would have that information, she wasn't sure if it was in the packet to members or not. Ann H. asked if Mr. Kinney was DEP certified? Roger said that Maine requires licensing for working in the shoreland zone as a contractor, the DEP certifies that the contractor is familiar with best management practices in the shoreland.

Roger A. stated that on one of the submittals it talks about a revegetation plan and says grade loam and seed at the very bottom, but there are no details. Mrs. Lightbody stated she was just going to be putting it back to grass. Roger said if there are going to be any plantings put in to help slow down the stormwater due to the slope, they should be on there.

Roger A. stated the board will also need to have a time frame of when she anticipates it will be completed. Mrs. Lightbody said she could come up with a time frame.

*Roger A. said the application at this time should be tabled until the board gets the additional fee and information discussed, which includes the pictures of what it looked like prior to the patios and walls being removed, and a more detailed revegetation plan.*

Madge B. asked if the board needed to know if the contractor was certified? Roger A. stated that CEO Demers would get that information during the permitting process.

#### **Shapleigh Planning Board Minutes – 12/22/2020 Page 8 of 16**

Ann H. asked about the new wall that is going in, does the board need a schematic of the wall, the size and length? Roger A. stated that depending on the height of the wall. Ann said the board can't tell because we don't know what the existing wall was. Ann asked what kind of wall will be put back up, locking blocks? Mrs. Lightbody said it would be locking blocks. Mrs. Lightbody asked Mr. Kinney to comment on the wall. Mr. Kinney stated that the wall would be the geogrids. Roger asked what the height of the wall would be? Mr. Kinney stated that if he had to guess, and noted CEO Demers was on site, he believed it was five feet high. Roger said for five feet it would have to be an engineered wall. Mr. Kinney stated that he did not know exactly what the height of the wall was. Roger stated that if the wall was greater than four feet, then it needs to be engineered. Mr. Kinney stated, OK, I can double check on the height on that. Roland L. asked Mr. Kinney, if the five feet was the old wall or the replacement wall? Mr. Kinney stated that it was the new wall. He said the old wall was excavated out and he was replacing what was there. Roland stated that his question was, 'how tall was the original wall that was removed'? Mr. Kinney stated, "I honestly don't know that, I have an installer that is doing the project. That's something that I would have to find out".

Roland L. asked Mr. Kinney if he was certified by the State of Maine to do work in the Shoreland Zone? Mr. Kinney stated that as a general contractor he is not. Roland stated, "You are aware however, that that is a requirement and that someone who is certified has to be on site during all of the construction activities there"? Mr. Kinney stated that he was now aware of this. Roland stated that they will need to know who that person is. Mr. Kinney asked, "Are you asking for the installer"? Roger A. stated, "The DEP contractor". Mr. Kinney stated that he had the installer who he subbed the project out to, he as a general contractor is just overseeing the project. Ann H. asked if the installer is DEP State certified? Mr. Kinney stated that he was assuming so, but he did not know for sure, so he could not comment on that.

Roger A. stated that any work being done on this wall needs to have BMP, Best Management Practices to keep any erosion out of the lake during the process. Mr. Kinney stated, "Correct". Roger stated that any time work is being done on this project, a person with a DEP certification in BMP must be present to oversee the project. Roger said he needs to know that the person working on the project is DEP certified, and if he isn't, then someone who is certified has to be present on site. Mr. Kinney said, "Ok".

Madge B. stated that it seems whoever has been working on this project doesn't know the rules. Roland agreed. Roland stated, "Quite honestly Nancy, I am always concerned when we have an after-the-fact application, especially given the circumstances. Now we are here during the winter months. Any other time of the year we would actually go out and see the sight. We would see what is currently there. We would see a well-defined plan of what's going to take place, what is going to replace it, what have you. We can't do that right now and we clearly have an individual who should be aware, who should have been aware that you don't proceed in a shoreland zoning area with this kind of activity without dotting all the I's and crossing all the T's, which clearly that hasn't happened. I am going to want to see some photographs of what was there. We don't know what you've taken out. I don't know if what you are planning is encroaching on the lake even more than what you had originally. You have to understand that our intent is to enforce the ordinance and to protect the water quality. Unfortunately, a lot of property owners don't share that particular philosophy. They want what they want."

Ann H. noted that the other thing was the meeting the board attended on the waterbodies, where Granny Kent was one of the worst ponds or lakes in York County because of all the activity going on in that area. Ann stated that Mrs. Lightbody could email the before pictures to CEO Demers, and when she finds out what would

#### **Shapleigh Planning Board Minutes – 12/22/2020 Page 9 of 16**

be done for the vegetation plan to send that along with the person who will be certified to do the work. Roger A. stated that the board would also need the height of the wall. He said that if the contractor realizes the wall needs to be engineered, he or she may decide to keep it at 4 feet. He said if they decide on 5 feet in height, it has to be an engineered wall.

Roland L. asked, "What if the wall was only three feet, are they able to increase the height of the wall"? Roger A. stated, "No". Mrs. Lightbody stated, "Not even to level the property"? Roger said, "No, it has to stay the same height as what it was yesterday, and yesterday we don't know what it was because its been removed". Ann H. thought the board might be able to tell by the photos. She thought the board could tell if it was three feet or five feet. Roger agreed and believed the board needed to see the photo's to be able to get this resolved. Mrs. Lightbody stated, "Ok".

Madge B. asked Roger when she applied for a DEP permit and got one, what did she send to them? Roger stated that it was a Permit by Rule and it probably stated they were going to do a replacement. He said if he looked at the application and he worked for the DEP, if the applicant stated they were going to replace an existing and comply with the rules, he probably wouldn't have questioned it unless something stood out when he was looking at it. He would likely let the 14 days run and say it's a go. Roger noted that when you sign that permit, you state that you will follow all the provisions in Chapter 1000. Roger said you are subject to fines if you don't follow the rules as outlined by the DEP. Ann H. stated that the DEP probably didn't know she didn't come to the Planning Board

first, because she had to file two DEP Permit by Rules herself, and they never asked her if she had already gotten any other permits yet. She said it was not a question on their application. Roger agreed. Ann said they believe the person will comply with the ordinance because that is what you sign off on. Ann added that Mrs. Lightbody would not have known that.

Mrs. Lightbody said she did not know, and if she had realized she would have done this in reverse order. She stated that it was never her intent to do anything that would damage the lake in any way, that she had been there for over 30 years. She said that at this point she did want to try to make it usable, and she thought making it better by taking away patio that was there and putting the original patio back up in the same footprint. She said the wall may be slightly higher but that is to level the patio to make sure its usable. She said she had a grandson and didn't want him falling off and she wanted it to be usable for the next 50 years. She stated that she did not intend to do this again.

Ann H. thought the State certified person would make sure the water didn't run from the top of the property into the lake. Mrs. Lightbody stated that they had spoken about several different ideas on how to fix that issue but hadn't gotten to a final plan. She said the intent while doing the work was to keep the runoff from the street from going into the lake. Ann stated that the board looks at that. Mrs. Lightbody stated she was happy to do more work to make sure that doesn't happen.

Roger A. stated that with respect to the DEP regulation, the new wall cannot exceed what it was prior to being removed. Roger said the board will not be able to allow it being higher than what it was, but of course the board doesn't know what that was, so the pictures will help. Ann H. asked what kind of a patio it was? Mrs. Lightbody stated it was pavers, there was a large retaining wall, then a paver patio all to the waters edge. She said that one was slowly falling in toward the water, which is what started this project to keep that from happening. Ann asked if she was going to put pavers back for the patio? Mrs. Lightbody said they would be using pavers again, the old ones were disintegrating.

#### ***Shapleigh Planning Board Minutes – 12/22/2020 Page 10 of 16***

Roland L. asked about the material that was removed, where has it been taken? Mrs. Lightbody said it was still there. She thinks the intent is to push it around to level where the lower patio was removed. No dirt will be removed from the property. Ann H. thought they would haul off the stone? Mrs. Lightbody said yes, the stone is hauled off, but the dirt remains.

Roger A. stated that there was a 2 tiered patio, so that is what is being replaced with a 2 tiered patio. Mrs. Lightbody asked if the board wanted her to put pavers all the way to the water's edge? Roger said it wasn't required but because it was two tiered, it appears it came out 18 feet, then dropped, and the second patio was 16 feet. He asked if this was true? Roger asked Mr. Kinney if this was true? Mr. Kinney stated that it was. Roger said that if that was the case you can't fill from the camp all the way to the water. Mr. Kinney said on the lower tier, all the pavers and the wall has been removed. He said there was a big pile adjacent to the patio, but the pavers themselves have been taken out. Roger said "Ok". Ann said, "So instead of them putting in another patio down by the water, she could vegetate there instead, can't she". Roger said, "Yes". Mrs. Lightbody said that was her intention. She said she wanted it to be more natural.

Roger A. stated that the board would need the additional information. Mrs. Lightbody wanted to be sure she was clear, she would need to provide the additional \$750, pictures of the lower patio, a more detailed vegetation plan, and who the person is that is shoreland certified that will be doing the work. Roger stated that the information can be sent to Barbara F. Ann H. added that the height of the new wall needs to be provided. If the new wall is greater than 5 feet it has to be engineered. Roger stated, "Greater than 4 feet it needs to be engineered". Mrs. Lightbody asked what that meant. Roger stated an engineer would actually be stamping the plan and stating the wall at five feet will hold up the embankment and survive a storm. Mrs. Lightbody stated that otherwise it would have to be 4 feet. Roger stated, correct. Ann noted that the maximum would be what had been there existing prior to removal. Roger agreed.

Mrs. Lightbody asked if once this is submitted, does the board meet again? Roger A. stated that yes, we will. Roger stated if this information will be provided by January 12<sup>th</sup> then the board can notify abutters, but if it will not be ready, we will meet at the following meeting. Mrs. Lightbody believed she would have the information by January 12<sup>th</sup> to bring it to resolution. She said then once spring arrives, she will have a date and be able to move forward. Roger stated that when the board grants the permit, they will need to have a date of completion. Mrs. Lightbody thought she could pick a date. Roger said she could pick a date, such as August 15, 2021.

Roland L. asked Mrs. Lightbody if he could visit the site? Mrs. Lightbody did not have an issue with it, she just wasn't sure what he could see. She noted she wasn't trying to hide anything. Roland thanked her.

***Roger A. stated that the board would await her information and then proceed from there. If she will be ready by January 12<sup>th</sup>, she will notify Barbara F. and a notice to abutter will be mailed prior to the meeting.***

Nothing further was discussed.

-----

Roland L. wanted to speak about a discussion with the Board of Selectmen (BOS) regarding property improvement along the lake(s). Roland began by stating he and Carol had taken a boat ride along the shore of Mousam and they noticed the number of deteriorating walls both along the Acton and Shapleigh side. He said he mentioned it to the BOS and asked if there was any way possible that they could make a financial incentive available to the Shapleigh property owners that might motivate them to consider doing something to improve their property, and in the process improve the water quality of Mousam Lake. He said what he threw out was

#### ***Shapleigh Planning Board Minutes – 12/22/2020 Page 11 of 16***

the idea of a tax break, set a certain number of opportunities aside, so if an individual went thru the application process and successfully got permission to do a project, they could possibly have a tax break. He said the BOS quickly dismissed it, it is against State Statutes, it is a nice idea but it cannot be done. He said he didn't know if it was the case but admitted to not being an authority on it.

Roland L. said that spawned a conversation that maybe there were other things that could be done as a town, that wouldn't be a violation. The conversation came around that maybe the town would be able to waive the application fee; maybe be able to help an individual get through more comfortably the application process, and those kinds of things.

Roland L. stated that after the conversation took place, they suggested that this should be brought up to the Planning Board to see what the board thought of the idea. He said one other side note was that maybe this could be an economic stimulus to the community, because if projects were approved and business owners were appraised, they could get the work, and that sort of thing. He said this is what he discussed and they encouraged him to speak with the board.

Roland L. asked for feedback to share with the BOS at an upcoming meeting. He said they didn't seem to feel that it would be something that would require a vote from the taxpayers, like at the upcoming town meeting. He said he would report back to them with the boards feedback.

Roger A. said the only thing that he could comment on, was the Acton and Shapleigh Youth Corp. that assists people in repairing walls and assisting the homeowner with grants. He did not believe the town, from what he knew about municipalities, he didn't think any tax breaks could be done because of Maine State law. Roland said the BOS made that point clear. Roland said they were looking for any idea that would create an incentive for the property owner do something and what that might entail.

Roger A. said there was a possibility that Southern Maine Regional Planning could assist in getting a grant to do some of this work. Madge B. thought it might be possible, it was worth looking into. Roger said this was similar to brownfield projects, and downtown revitalization projects. He said they are awarded monies. Roger mentioned Number 1 Pond in Sanford, putting up a wall under a grant. Roland L. thought it was from the Oscar Emery Trust Fund? Roger stated it was both private monies (Emery Foundation) and government money. You had to spend so much to get more money. Roger said again he would contact Southern Maine Regional for direction of where to go.

Roland L. asked if he contacts SMRPC if the board would be ok with him doing it as a representative of the Shapleigh Planning Board, or would the board rather he does it as a resident taxpayer in Shapleigh? Roger A. said he would have no issue either way. Madge B. also stated she would have no issue, but she thought it might make sense to get help from the Town Hall because they may want to know if Roland has any authority to speak with them. Roland said he would ask the BOS their opinion. Roland noted that he tried the project of dredging between Goose Pond and Mousam Lake and got blown out of the water on that one.

Roland L. said as he was going around the lake there were a lot of walls falling apart. Ann H. asked about the meeting they had about the water quality, she wanted to know if the person that spoke had access to any grant money. She asked if perhaps Barbara F. could ask the gentlemen what, if anything, the property owners could do to fix or replace things that are making the water worse. Barbara stated she would send an email to the gentlemen.

#### **Shapleigh Planning Board Minutes – 12/22/2020 Page 12 of 16**

Maggie M. said at any given time there are lots of grants out there. She thought if someone would search for a grant, maybe Southern Maine Region Planning could help right the grant request. She said that would be a big assistance. Roger A. agreed and that is why he said contacting SMRP would be the way to go. He said Shapleigh is a member town with them, so perhaps they can assist the town to get money. He noted sometime it is a combination of public and private money. Maggie thought it could be a grant coming from anywhere.

Roland L. said he would speak with the BOS about the discussion, will see if he can speak with Southern Maine Regional and he asked the board if they come up with any ideas as to what else as a town or as a board they could do, please share that with him. Madge B. said speaking with the Mousam Lake Association possibly would be a help, especially if people need help doing applications, they should be able to provide some help. Roland thought it was a great point. Roland asked if the lake association has their annual meeting, would CEO Demers be willing to go and do a brief presentation on the application process. Roland said the BOS and he agreed, that people are intimidated by the process, even if it is not as bad as they believe it is. He said some said they wouldn't even begin it because they think its too much. Roland asked again if CEO Demers would speak on it. CEO Demers said he did not do well in crowds but he thought he could do that. Roland noted that there was not a huge turnout at the meetings, so it should not be an issue. He added that those that go are typically inquisitive and have questions. Roland said he mentioned this to the Chairman of the BOS, who happens to have a finger on what is going on in Acton, that Acton has issues at least as bad as Shapleigh, if not worse. Roland said he would like to see both communities support the property owners to get them to do something and improve the water quality in Mousam Lake.

Roland thanked the board for their time.

CEO Demers regarding Growth Permit 22-20 approved by the Planning Board for Map 41 Lot 33 on October 13, 2020, sent the following to the board on December 1, 2020, which read in part:

**MICHAEL DEMERS <CEO@SHAPLEIGH.NET>**

to Roger, me, Ann, Steve, Maggie, Madge, Roland

to: Planning Board  
cc: Board of Selectmen

re: Two lots of record in Pine Springs Subdivision

Recently the Planning Board approved a growth permit application for [map/lot\\_041-033-000-000](http://map/lot_041-033-000-000). This lot is a product of two lots being unbuilt and joined together as outlined in [105-4 E \(4\)\(a\)](#).

After the growth permit was issued the owner explored the possibility of splitting this lot back into its two original lots. I am sending this application back to the Planning Board for consideration.

The lot has now in fact been restored back to two lots and the growth permit requested is for only one of the two lots. Because this original lot does not meet today's minimum lot area the Planning Board should consider this and determine if reverting this lot back into two is consistent with the ordinance.

In review of [105-4 E \(4\)\(b\)](#), it is apparent the original two lots are not subject to the contiguous vacant lots provision. Each separate lot is greater than 20,000 sf and can accommodate a subsurface sewage disposal system. This situation will set a precedent and needs to be thoroughly explored.

Thanks, Mike

#### **Shapleigh Planning Board Minutes – 12/22/2020 Page 13 of 16**

*(Note: The lot recently was restored back to two lots by O'Donnell's, who currently does Shapleigh's assessing and mapping, at the request of the lot owner; we assume using the deed description at YCRD.)*

CEO Demers said this was presented to him, and he noticed an issue when the owner came in for his building permit, after his Growth Permit, the owner said he got a Growth Permit for one of his two lots. CEO Demers said he saw one lot, and after conversation the owner explained the two lots were unchanged since the 60's and they appear on one deed, and at one time there were three lots in that subdivision all transferred on one deed, which was common practice back then and is still sometimes today.

CEO Demers said the question became, is it one lot or is it two lots. CEO Demers said he did not have the authority to make the determination, it's the applicant that has to present that to him, and if he feels there is something wrong that's his opportunity to question it. He said he can either approve or deny the application, so he denied it because he knew the Planning Board considered it to be one lot, so he said if you've got a Growth Permit for one lot, you are going back to the Planning Board to get them to issue you your permit for one lot. He said that is how its gotten tossed back to you guys (the Planning Board).

CEO Demers stated that the owner did his due diligence and figured out it was combined in the 90's by the Assessor's office. He said it was never recorded at York County as one lot, it didn't go through an amendment to a subdivision to become one lot, so to his best knowledge it still remains two lots.

CEO Demers said "Section 105-4.E(4)(b) I think would apply. It talks about the contiguous vacant lots, the Section B says this provision shall not apply to two or more lots, contiguous lots, at least one of which is non-conforming owned by the same person or persons on the effective date of this chapter and recorded in the York County Registry of Deeds and it goes on to say, if its at least 20,000 sf or it can be reconfigured to be at least 20,000 sf. Both the two lots are over the 20,000 sf, so the mechanism that is in place to merge these shoreland zoning lots does not apply in this scenario. Again, it is something for the Planning Board to consider". He said he was up in the air on which way to go. He believed legally the owner had two lots.

Roger A. stated that in Section 105-4.E(4), under (a), two or more vacant contiguous lots, single or joint ownership of record at the time of the adoption of this, if both of those lots do not meet the criteria as stated in 105-18 (Dimensional Requirements), then they can be merged by the Town and nothing more is needed. He said you cannot separate the lots after-the-fact. Roger did not believe 20,000 sf pertained at this time.

CEO Demers said if you look at the definition of non-conforming lot of record, 'a single lot of record which at the time of the effective date of this adoption or amendment of this chapter does not meet the frontage, width or depth requirement'. He said it doesn't reference area. CEO Demers believed the area was not considered. The only minimum area that is referenced in the ordinance pertaining to these contiguous vacant lots is the 20,000 sf minimum. CEO Demers said that is the way he sees it but its up to the board if they are going to issue him the Growth Permit for the one lot or whether you believe he's got two lots. He said, "If the board believes he has just the one lot, then I would suggest you deny the Growth Permit or rescind it since it has already been issued and give him the reason. This gives the owner the opportunity to challenge it legally".

Roger A. stated that the owner put in the application for the one lot and we granted it with that knowledge. CEO Demers said, which happens to be the lot number that the Assessor broke out, the board did not have all the information in front of them. CEO Demers said based on this, the permit should be rescinded.

**Shapleigh Planning Board Minutes – 12/22/2020 Page 14 of 16**

Ann H. asked if the property was in one name and one deed, the whole piece? CEO Demers said, “It was described as two lots and matter of fact in the 60’s it was three lots owned by the same person, one of which was not contiguous, it was in another part of the subdivision”. Ann said, “So now there is one deed that says two lots located at blah blah blah blah”. CEO Demers said, “Correct”. Ann said, “Ok”.

Roland L. asked if the applicant receives more than one tax bill from the town? CEO Demers said that since the Assessors office merged the lot, I believe they receive one tax bill. He said there is the way the Town views it, but again there is the legal status of the lot which is recorded at York County Registry to Deeds. He said, “If the applicant comes back to me with the Growth Permit, I am going to deny it, stating it is not for the half-lot”. He said that is what he intends to do is put in two houses. He said the board either has to deal with this today or next year when he comes for the second Growth Permit. CEO Demers believed if the board needs an opinion on it, they have the resources to get the information, but with the information he has, he denied the building permit application. CEO Demers felt the owner did not have a legitimate Growth Permit if he is doing it as two lots.

Ann H. thought if the deed says two lots the board needs to look at it to see if the lots are conforming or non-conforming and eligible for a Growth Permit. Roger A. said just because the deed says it is two lots, if they are undersized or are non-conforming the municipality has every right to join them. Roger stated that once the non-conforming lots have been joined, there is no separating them. Ann believed that is what the Assessor’s office has done. Roger agreed.

Roger A. said sometimes people do not want two tax bills, so the owners will ask the town to merge the lots so they get one tax bill. Roger said this can be done whether they are conforming or non-conforming. Roger noted it can be beneficial to have one tax bill and one assessment. Roger believed at the time this lot was joined by the Assessor’s office, it was because it was two non-conforming lots.

CEO Demers stated that the Assessors office has recently split it into two separate lots. Roger A. asked when this took place? CEO Demers stated in the past few weeks. Roger did not believe they can pick and choose when to join and when to divide.

CEO Demers stated that the board was under the assumption it was one lot (based on the town map), the applicant wants it as two lots. CEO Demers stated that he can’t deny the building permit if he has a legitimate Growth Permit and plan, if he can put the house in to meet dimensional setbacks, he can put the house where he wants it. CEO Demers stated that if he puts it on Lot A and leaves Lot B open, then next year comes to you for Lot B, the board will have to deal with it then. Roger A. agreed. CEO Demers said the board can get an opinion now or deal with it in the future. Ann H. thought the board should get a legal opinion now. Roger stated that the board will be speaking with the attorney on the subdivision issue, so we can also ask this question at that time.

Maggie M. stated that she viewed the original deed, and she saw where there were sometimes three lots and sometimes two lots, but there was one place where it referred to the rules of the Pine Springs Subdivision. She wondered if there was something in the rules that could prevent someone from joining the lots, which might make a difference. Roger A. stated that the lots approved in the subdivision would be a non-conforming lot today. He stated that being a non-conforming lot today, that would have been why the Assessor would have joined them, since they were abutting properties. He said the only way they would not be able to do that is if one of them was jointly owned and one was in single ownership for example. He said if the ownership of both lots were the same, the Town had the right to join them. Roger said the Town would do that and note it on the

**Shapleigh Planning Board Minutes – 12/22/2020 Page 15 of 16**

tax bill that the lots were combined as one lot. He said if the people did not agree, they could contest it. Roger said that since they did not contest it, then the lot cannot be split. Roger said the board will get a legal opinion. The board agreed that the legal opinion was warranted.

Madge B. stated that she agreed with Roger A. that the Assessor has no legal authority to decide one day it is one lot and then the next day it is something else. She said it is the Zoning Ordinance that controls the decision, not the Assessor. Roger agreed and said again once the lot is joined, they cannot separate it.

\*\*\*\*\*

**Growth Permits****• Map 3, Lot 5 (299 Shapleigh Corner Road) – 2-Family GP #29-20**

On March 10, 2020 this Growth Permit for a multi-family dwelling was denied because the lot did not have enough acreage to hold the existing residence, business, as well as an additional living accommodation, such as an in-law apartment. The board stated that the application could be resubmitted when the existing business was moved from the property to a new location. Mr. Boisse’ provided a letter to the board this evening that read as follows:

*Town of Shapleigh; Planning Board; Code Enforcement,*

*Our business, The Whole Nine Yards, is beginning the transition from our present address at 299 Shapleigh Corner Road to our new facility in Acton, Maine. Our sign has been removed and equipment is being relocated.*

*We are also relinquishing our CU for our home business. This will resolve the conflict in getting our Growth Permit for a multi-family residence. Please advise how we move forward.*

*Sincerely, Marc & Cara Boisse*

Roger stated that there is no longer an issue with having two residences on the two acre lot, per the Zoning Ordinance. Madge B. asked if the lot had enough frontage. Roger stated that it did. Using the tax map, it appears the lot has at least 300 feet of road frontage. *Based on the information provided, the Growth Permit was approved.*

**• Map 3, Lot 19A (Simon Ricker Road) – New Home**

CEO Demers stated that the property belonged to Roger Berube, who was in CEO Demers office. CEO Demers stated the board was considering a back lot (Lot 19A), but there is also a front lot that connects to it. Roger A. asked if there was enough road frontage. CEO Demers stated yes, there was 400 feet of road frontage. CEO Demers stated that Mr. Berube wanted to fill out a new application for Map 3, Lot 17F instead. Roger asked if the deed was different? CEO Demers said the deed is different but it was all acquired at the same time. He said it was a Frasier owned property, and there is a Private Way plan recorded for Lot 19A but it was never developed. He added that Mr. Berube was the only one who would have access over the right-of-way. He asked how

**Shapleigh Planning Board Minutes – 12/22/2020 Page 16 of 16**

this right-of-way would affect the back lot? Ann H. asked if he could take the right-of-way off the deed? CEO Demers thought it could be taken off the deed but he wasn’t sure how to deal with the recorded Private Way plan since it was never built. He thought other than the null and void Private Way he didn’t see any issue with permitting a Growth Permit because he had the required road frontage. Roger believed the board just needed the new deed and the board could process it.

Madge B. asked if this was an approved subdivision? Roger A. stated that no, the road was actually for an approved gravel pit, on a whim that they might put more houses in at a later date. He said they were going to put one house in the back, so they needed private way access. The board remembered the location. Roger said because it was granted in 2007 and nothing was done, the Private Way was never built to standards, he believed now it was null and void.

CEO Demers stated that Mr. Berube would resubmit the application at the next meeting. Roger A. stated the only issue might be if there was no meeting, but if it is the only thing on the agenda it will be quick. Roger did not see any other issue regarding giving a growth permit to Lot 17F as long as the board received the deed.

Nothing further was discussed.

\*\*\*\*\*

The Planning Board meeting ended at 8:05 p.m.

NOTE: The winter hours are in effect as of November 1<sup>st</sup>; the meetings now begin at 6:30 p.m. and any scheduled public hearing begins at 6:00 p.m.  
The next Planning Board meeting scheduled will be via Zoom on Tuesday January 12, 2020 at 6:30 p.m. See the Town website, [www.shapleigh.net](http://www.shapleigh.net) to obtain the link details, or use the information below.

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

• **Join Zoom Meeting**

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

• **If calling in:** Find your local number: [https://us02web.Zoom.us/j/84895865996?pwd=R0tBZE5ENFVLSGRibFRFaWFVQmEvZz09](https://us02web.zoom.us/j/84895865996?pwd=R0tBZE5ENFVLSGRibFRFaWFVQmEvZz09)

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

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

The Planning Board meets the 2<sup>nd</sup> and 4<sup>th</sup> Tuesday of each month unless it falls on a holiday or Election Day. Should there be a cancellation due to a storm event, holiday or Election, the meeting will typically

be held the following Wednesday, also at 7:30 p.m. Please contact the Land Use Secretary if there is a question in scheduling, 207-636-2839, x4.

Respectfully submitted,

Barbara Felong, Land Use Secretary

Town of Shapleigh [planningBoard@shapleigh.net](mailto:planningBoard@shapleigh.net)