

## ***SHAPLEIGH PLANNING BOARD MINUTES***

**Tuesday, January 13, 2009**

Members in attendance: Roger Allaire (Chairman), Roland Legere, Diane Srebnick, Maggie Moody and Barbara Felong (Secretary). Code Enforcement Officer, Steven McDonough was also in attendance.

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**The following words are not verbatim unless accompanied by quotation marks “ ”.**

### **Public Hearing Began at 7:05 p.m.**

#### **Conditional Use Permit – Construct a Telecommunications Facility (190' Tower) – Map 7, Lot 31 (State Route 11) – KJK Wireless (US Cellular) Applicant; Randy Kafka, Owner**

Robert Gashlin, a representative for US Cellular and Dick Trafton, an attorney for US Cellular were present for the public hearing.

Mr. Gashlin began by distributing a new copy of the application and plans, which had corrections requested by board members at the last meeting on December 9, 2008.

Mr. Gashlin stated US Cellular was in Shapleigh Maine because they had an FCC license to provide cellular service and at this time they were not doing an adequate job in this area.

Mr. Gashlin showed their existing coverage which came from an antenna on the Emery Mills site, which is located on Rte 109 at the foot of Mousam Lake. Mr. Gashlin showed the areas with the best possible coverage for in-building coverage where he said, you need the strongest signal. He noted areas of in-vehicle coverage as well. Mr. Gashlin showed the area of Rte. 11 north where there was no existing coverage at this time.

Mr. Gashlin stated their objective was to get both in-building and in-vehicle coverage along Rte. 11 in Shapleigh. Mr. Gashlin noted that US Cellular was in direct competition with Fairpoint telecommunication (land lines). He believed once people had adequate cellular coverage they would no longer need land lines.

Mr. Gashlin spoke of the newly approved tower owned by Industrial Tower and Wireless and showed the coverage area. Mr. Gashlin stated their coverage area did not extend as far north on Rte. 11 as US Cellular needed. He stated there were two reasons this site did not work for US Cellular, first there was an overlap of existing coverage by US Cellular and it did not extend far enough up Rte. 11.

Mr. Gashlin read a letter from Dan Guilette, their radio frequency engineer on this project. The letter addressed why the Owl's Nest Road tower was not feasible, it read in part:

US Cellular is currently seeking to expand its 1900 MHz PCS CDMA service in more rural areas in Maine to enable connection to their existing network coverage in Sanford, Alfred, Waterboro and Limerick. This expansion plan includes the Towns of Shapleigh and Newfield. US Cellular service currently exists in the southern part of Shapleigh near Mousam Lake. This coverage is being provided by US Cellular from the existing Global Tower site referred to as Emery Mills. US Cellular currently has inadequate service in the area of Rte. 11 and the residential areas around Mousam Lake and Square Pond. To address these coverage areas, US Cellular is proposing the facility at Map 7, Lot 31.

As demonstrated during the December 9<sup>th</sup> meeting, the proposed site is the best location to meet the coverage objectives. Coverage from the proposed 190 foot tower extends as far north on Rte. 11 to within .3 miles of the Shapleigh/Newfield town line and as far south on Rte. 11 as needed to meet the existing coverage from the Emery Mills site.

As discussed in the December 9<sup>th</sup> meeting, US Cellular evaluated the site being proposed by Industrial Tower and Wireless on Owl's Nest Road. This site is over 2.25 miles south of US Cellular's proposed site and it doesn't meet the proposed coverage objective for Rte. 11 as evidenced on the previously reviewed coverage plot plans. In addition the proposed Industrial Communications site provides a significant amount of redundant coverage to pre-existing coverage already available to US Cellular from the Emery Mills site but leaves major gaps along Rte. 11 north to Newfield.

US Cellular has approved network design and associated funding for three sites to cover Shapleigh, Newfield and Limerick which will subsequently provide interconnectivity to the rest of their network. Use of the Industrial Communications tower in place of the proposed US Cellular tower would necessitate the need for an additional tower to the region, transforming a three tower network design plan into a four tower plan.

Mr. Gashlin reviewed this once again with the plot plans, showing the redundant areas and lack of coverage to the north. Mr. Gashlin stated this was the summary of why US Cellular was before the board and why they proposed this location on Tax Map 7, Lot 31.

Mr. Gashlin noted again the letter from Industrial Communications Industrial Tower and Wireless, LLC which stated the following:

“Industrial Tower and Wireless, LLC presently has an application for a communications facility at Owl's Nest Road before the Planning Board and US Cellular has an inquiry before you for a communication facility utilizing town owned property at the Town Gravel Pit on Town Farm Road.

This letter is to clear up any confusion the board may have. Due to the distance between the two locations, these proposed sites would provide different distinct coverage objectives and should be reviewed individually and judged on their own merits.”

Mr. Gashlin briefly reviewed the plans presented. The plans were as follows:

- G-1 – General Notes - This included General Construction Notes, Code Specifications, Structural Steel Notes, General Foundation Notes, Erosion and Sediment Control Plan, Seeding and Revegetation Plan, and Concrete and Reinforcing Steel Notes
- C-1 – Abutter Plan - This plan included the surrounding property owners names, addresses and map and lot designations as well as the location of the tower and the area to be leased for the tower.
- C-2 – Site Plan - This plan gives more detail of the site which included the topography and erosion control plan.
- C-3 – Detailed Site Plan & Elevation - This plan describes the Tower Base Elevation, Antenna Orientation Key, as well as future tower antenna locations on the proposed tower along with the proposed equipment shelter locations for each antenna.
- C-4 – Construction Details I – This plan described the Ice Bridge Detail; Joint Service Trench Buried Conduit plan; Gravel Yard Detail; Underground Conduit Stub-up Detail; GPS Antenna Mount; Gate & Fence Detail and Antenna and Coaxial Cable Schedule
- C-5 – Construction Details II – This plan describes the Road Cross Section with Swales; Meter & Disconnect Mounting Rack, Cell Site Cabinet Detail, Haybale Installation Detail, Low Profile T-Frame
- C-6 – Shelter Foundation Details - Concrete Pad Foundation, Concrete Stoop Section, Outdoor Pad for Minor Equipment, Foundation Wall & Slab Detail, Foundation Slab Detail & Bedrock
- C-7 – Shelter Elevations - Exterior Elevation Walls A thru D
- E-1 – Schematic Grounding Plan
- E-1 – Grounding Details

Mr. Gashlin noted that the existing vegetation on site would remain undisturbed except for the area cleared for the tower and parking. Mr. Gashlin also noted that the driveway was not straight in from the road, there was a bend to it so the bottom of the tower would not be seen easily from the road.

Roland L. asked if there would be a gate at the road to prevent unwanted traffic. Mr. Gashlin stated it was not shown on the plan but he said they do put gates on their roads. Roger A. stated without a gate it would end up being a party spot.

Mr. Gashlin reviewed the previously submitted letter, dated 11/25/07. (I believe the 07 was a typo.) This letter read in part:

Applicant conforms to the following standards:

1. The tower will be 190' tall
2. The Facility will not be lighted
3. The tower will have a galvanized steel finish to reduce visual obtrusiveness
4. The tower and accessory facilities will meet minimum General Purpose district setback requirements including 75' front, 25' side, and 30' rear
5. US Cellular agrees to allow other future wireless service carriers and public agencies to collocate at the Facility pursuant to practices commonly accepted within the wireless industry
6. The Facility is designed and will be constructed and maintained in conformance with applicable federal, state, and town codes. This is noted on page 2 of the attached site plan (see "General Construction Notes") and evidenced by an engineers stamp (Bradford Mills, State of Maine engineer license #5052)
7. US Cellular proposes a 12" x 16" sign that will provide FCC identification and emergency contact information
8. US Cellular agrees to the Facility removal provisions contained herein including a performance guarantee to the extent they are relevant
9. The minimum lot size of the Facility is 127,662 square feet. (Mr. Gashlin noted the zoning requirement was 80,000 square feet.)

Mr. Gashlin provided an example of a removal bond. Mr. Gashlin stated this was a standard bond US Cellular provided and he added that it had been accepted by all the other towns they have presented it to. Mr. Gashlin read several sentences from the bond, they are as follows:

"Whereas, Principal has entered into a lease agreement with the property owner(s) and has made application to the Obligee for a building permit for the following purposes: Construction of a wireless telecommunications tower at the site located at"

"Whereas, as a condition of the lease, Principal is required to provide a bond guaranteeing the removal of the tower structure when the lease expires or is terminated or the site is abandoned, as more fully specified by the terms or the permit or by local zoning ordinance."

Mr. Gashlin stated the amount for the bond was \$15,690 and he noted that figure was based on the cost estimate they provided. He stated the removal of the tower was an easy process, using a crane, unbolting the tower and removing it on a flat bed trailer. He said it was a day or two process at most.

Roger A. stated the bond would have to be reviewed by the town attorney.

Attorney Dick Trafton gave a brief review. He reminded the board it was an unmanned site for the most part. He stated that typically the visits would be once a month and none during the winter months, unless there was an emergency situation. He said the sites don't normally generate any degree of traffic.

Attorney Trafton stated they do understand that because Rte. 11 is a state route they would have to apply for an application to the State for a curb cut. Attorney Trafton stated they understood they could not proceed with the facility until they got the approval for the curb cut.

Attorney Trafton stated they understood they had to comply with all the current codes the town has adopted and he understood that was a building permit issue. He noted the plans provided and said that they would comply with all the federal, state and local codes.

Attorney Trafton stated that he believed they met all the requirements of the zoning ordinance and he said they were prepared to answer any questions the board may have.

Attorney Trafton concluded with stating they were asking for approval at this evenings meeting. Roger A. thanked him for his presentation.

A citizen in the audience asked what the height of the tower would be and if it required a light? Roger A. stated the tower was less than 200' so no light would be required.

Roger A. asked if there were any additional questions. There were none. The Public Hearing was closed.

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**The Planning Board meeting started immediately after the public hearing.**

**The minutes from Tuesday, December 9, 2008, were accepted as read.**

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**Conditional Use Permit – Construct a Telecommunications Facility (190' Tower) – Map 7, Lot 31 (State Route 11) – KJK Wireless (US Cellular) Applicant; Randy Kafka, Owner**

Robert Gashlin, a representative for US Cellular; Dick Trafton, an attorney for US Cellular were present for the final review of the application.

Roger A. spoke about having a fence at the end of the roadway to prevent unwanted visitors. Roger stated the other item needed was the bond and the amount of the bond which had to go through the town attorney.

Roland L. asked if the board could still take action even though the bond wasn't yet approved? Roger A. stated yes, it was a condition of approval.

**Roger A. reviewed the following ordinance standards:**

**105-17 – Land uses. *The tower requires a Conditional Use Permit which is why the application is before the Planning Board.***

**105-20 – Applicability of standards; prohibited uses. *This application is a permitted use within the General Purpose Zone and it meets all state and federal law regulations.***

- 105-21 – Traffic. *Traffic will have safe access. The entrance to the business exceeds the minimum required for 50 m.p.h. which is 350 feet, the site distance is 500+ feet.*
- 105-22 – Noise. *There is no noise other than the generator starting on occasion.*
- 105-23 – Dust, fumes, vapors and gases. *There will be none generated.*
- 105-24 – Odors. *There shall be none generated.*
- 105-25 – Glare. *There shall be no lighting on the tower, there will be only one security light next to the service building which reflects inside the facility and it is downward reflecting.*
- 105-26 – Stormwater runoff. *There is an erosion control plan provided, engineering done by Bradford Mills, State of Maine Engineer #5052.*
- 105-27 – Erosion control. *There is an erosion control plan provided, engineering done by Bradford Mills, State of Maine Engineer #5052.*
- 105-28 – Setbacks and screening. *Per the plan there will be minimal vegetation removed. Only enough for the facility and parking area. The rest will remain and the driveway will be curved to hide the facility from the roadway.*
- 105-29 – Explosive materials. *There are no explosive materials other than one propane tank which will be installed per the code.*
- 105-30 – Water quality. *There is nothing associated with this business to affect water quality.*
- 105-31 – Preservation of landscape; landscaping of parking and storage areas. *There shall be no disturbance to the surrounding landscape outside of the area to be cleared for the facility and parking area. The parking area will be set over 100 feet from the road and the existing vegetation between the parking area and road will not be disturbed.*
- 105-32 – Relation of proposed building to the environment. *The building and tower shall be painted in such a way to help it blend in with the existing environment.*
- 105-33 – Refuse disposal. *There is no refuse generated by this business.*
- 105-34 – Access control on Routes 109 and 11. *The curb cut shall be approved by the State of Maine D.O.T. prior to construction.*
- 105-39 – Earth moving and filling. *Roger A. stated the only earth moving would be associated with the driveway.*

*Roger A. noted that the ordinance stated 12" of base material was required for a road and he was concerned 12" wasn't noted on the plan. Roger said he understood they were using filter fabric, etc. but he still wanted to see a 12" base. Mr. Gashlin stated, using the plan provided, there would be greater than 12" of base. He said it just wasn't noted but viewing the drawing it was shown that there was at least 12" of base material. Mr. Gashlin stated the plan noted 6" of compacted gravel but there was at least another 6" of gravel in addition to what was indicated.*

*Roger A. read from the ordinance governing Private Ways, which required the 12" of base. Attorney Trafton pointed out that technically this entrance was not a private roadway but it was a driveway. He did not believe the Town of Shapleigh required a 12" base for a driveway. Roger stated correct. Attorney Trafton stated that if in fact this is a driveway into the use, then the 12" base does not apply.*

*Roger A. stated that if this is considered a driveway, they only needed permission from the road commissioner. Attorney Trafton stated correct.*

*Mr. Gashlin stated that they do provide at least a 12" base. Roger A. stated his reason for the 12" was in case of an emergency, and if fire trucks needs to access it, it ensures no matter what*

time of the year they could get in. Mr. Gashlin stated that he understood their entrances to have 18" of gravel on them.

**105-43** – Offstreet parking and loading. *There is adequate parking for the facility which has a minimal amount of traffic, averaging one service vehicle per month.*

**105-47** – Signs and billboards. *The only signage shall be a 12" x 16" sign placed on the facility to provide FCC identification and an emergency contact number.*

**105-52** – Water quality protection. *There is nothing to be stored on site to affect water quality.*

**105-61.2** – Telecommunications facilities. All telecommunications facilities requiring a conditional use permit shall conform to the following standards:

- 1) No telecommunications facility, tower or antenna shall exceed 190 feet in height.

*The US Cellular tower shall be 190 in height.*

- 2) No telecommunications facility shall be lighted.

*There shall be no lights on the telecommunications tower. Only one motion detecting security light on the storage building.*

- 3) Towers shall have a galvanized steel finish or be painted a neutral color so as to reduce visual obstructiveness.

*The tower will have a galvanized steel finish to reduce visual obtrusiveness.*

- 4) Towers, guys and accessory facilities shall meet the minimum zoning district setback requirements.

*The tower shall be more than 100 feet from any lot line which exceeds all the minimum zoning requirements.*

- 5) The owner shall allow other future wireless service carriers, including providing space to public agencies, etc.

*US Cellular agreed to allow other future wireless service carriers and public agencies to collocate at the Facility.*

- 6) The owner shall provide evidence to the P.B. that the telecommunications facility is designed, constructed and maintained in conformance with applicable federal, state and town building, electrical and safety codes.

*This is noted under General Construction Notes on page 2 of the Site Plan and evidenced by Bradford Mills, State of Maine engineer license #5052.*

- 7) No advertising or signage is permitted on the telecommunications facilities.

*The only sign shall be a 12" x 16" sign that will provide FCC identification and an emergency 1-800 number for contact information.*

- 8) The owner of the telecommunications facility shall be required to remove the tower should it not be used for the use or uses approved for a period of 12 consecutive months. An applicant shall post a performance guaranty with the Town prior to obtaining a permit that is equal to 125% of the cost of removing the structure.

US Cellular will work with the town attorney on an acceptable performance guaranty.

*No building permit shall be issued until an acceptable bond is received, one that is approved by both the Board of Selectmen and the Town's attorney.*

*Attorney Trafton pointed out that the lease US Cellular uses promises to the landlord that US Cellular is required to remove the tower if it is abandoned for a certain number of months. Attorney Trafton stated that not only does the town have the ability to require removal at US Cellular's cost but so does the landlord.*

*Attorney Trafton stated he would be happy to talk to the town's attorney to get a bond that would satisfy the town. Roger A. told Mr. Gashlin and Attorney Trafton they were welcome to contact Attorney Ron Bourque.*

(Note: The amount to remove the tower was documented by US Cellular as being \$15,690. Per the ordinance the guaranty must be 125% of the cost to remove.)

- 9) The minimum size of the lot with a telecommunications facility more than 70 feet in height shall be 80,000 square feet.

***The lot size for the facility is 127,662 square feet.***

**Roger A. reviewed Shapleigh Zoning Ordinance 105-73.G “Standards applicable to conditional uses”.**

- 1) The use will not have an adverse impact on spawning grounds, fish, aquatic life, birds or other wildlife habitat. ***It will not.***
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. ***N/A***
- 3) The use is consistent with the Comprehensive Plan. ***It is, the Comprehensive Plan encourages the upgrade of utilities.***
- 4) Traffic access to the site is safe. ***It is, the site distance of 500+ is greater than the minimum required at 50 m.p.h. which is 350 feet and the curb cut must be approved by the Maine Dept. of Transportation prior to receiving a building permit.***
- 5) The site design is in conformance with all municipal flood hazard protection regulations. ***It is, the proposed structure is not in a flood zone.***
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. ***N/A.***
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. ***There will be no hazardous materials stored on site.***
- 8) A stormwater drainage system capable of handling twenty-five-year storm without adverse impact on adjacent properties has been designed. ***There is an erosion control plan provided, engineering done by Bradford Mills, State of Maine Engineer #5052.***
- 9) Adequate provisions to control soil erosion and sedimentation have been made. ***There is an erosion control plan provided, engineering done by Bradford Mills, State of Maine Engineer #5052.***
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. ***There is, the property is in close proximity to the water holding tank on Rte. 11.***
- 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. ***The existing vegetation shall be kept, except for the area to be cleared for the Facility and the driveway/parking area. There is only one downward facing motion detecting light on the Facility and there will be no noise, glare, fumes, dust, odors, etc. generated.***
- 12) All performance standards in this chapter applicable to the proposed use will be met. ***They shall.***

Roger A. asked if there were any additional questions. There were none.

Roger A. asked what, if any conditions, should be added to the approval for this permit.

- **Roger A. stated the performance guaranty must be approved by the Town’s attorney and Board of Selectmen prior to any construction taking place.**
- **Roland L. noted that at least 12” of gravel should be placed on the driveway leading into the tower for safety reasons.**
- **Diane S. stated there needed to be approval from the Maine D.O.T. for the curb cut onto Rte. 11.**

- **Roland L. stated a gate needed to be required and it would be in everyone's best interest. Roland noted the proximity of the tower to the transfer station and if there were no gate he could envision some people who didn't want to pay for a disposal fee, unloading the items at the tower. Mr. Gashlin agreed. Attorney Trafton stated gates are standard at their facilities.**

**Roland L. made the motion to approve the application with the conditions outlined above. Diane S. 2<sup>nd</sup> the motion. All board members approved, the motion passed 3 – 0.**

*Note: Because Maggie Moody was a direct abutter to property to be leased, she abstained from the voting process.*

Nothing further was discussed.

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Barbara F. discussed the Floodplain Ordinance received recently by the Board of Selectmen. Barbara stated that Madge B., after reading the instructions for the ordinance, as well as reviewing the ordinance itself, believed it should be the Planning Board that holds the public hearing. Barbara suggested, due to time constraints, that the floodplain ordinance be placed on the next agenda, January 27<sup>th</sup>, so it can go into the town warrant. The other board members agreed.

Roger A. stated the other proposed changes to the ordinance should have their final public hearing the first PB meeting in February. Barbara F. stated she would post the notices.

Members were given a checklist for the Basic Performance Standards and 105-73.G the Standards for a Conditional Use Permit. This checklist will be used for the final review process of all CUP's.

Nothing further was discussed.

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***The Planning Board meeting ended at 8:30 p.m.***

Respectively submitted,

Barbara Felong, Land Use Secretary  
[planningboard@shapleigh.net](mailto:planningboard@shapleigh.net)



## ***SHAPLEIGH PLANNING BOARD MINUTES***

**Tuesday, January 27, 2009**

Members in attendance: Roger Allaire (Chairman), Madge Baker (Vice Chair), Roland Legere, Maggie Moody, Diane Srebnick and Barbara Felong (Secretary). Code Enforcement Officer, Steven McDonough was also in attendance.

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The following words are not verbatim unless accompanied by quotation marks “ ”.

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### **Public Hearing Began at 7:00 p.m.**

#### **• Floodplain Management Ordinance**

**Note: Copies of the Floodplain Management Ordinance can be obtained at the Town Hall.**

Board members received a copy of the Floodplain Management Ordinance from the Maine State Planning Office. After careful review, members agreed it was best to adopt the ordinance in its entirety rather than try to make changes to Shapleigh's existing floodplain ordinance. The existing ordinance, Chapter 29, will be eliminated.

Madge B. thought the only part of the ordinance that members may want to change would be the first paragraph in Article IV – Application Fee and Expert's Fee. The paragraph read as follows:

“A non-refundable application fee of \$25.00 for all minor development and \$50.00 for all new construction or substantial improvements shall be paid to the Town Clerk and a copy of a receipt for the same shall accompany the application.”

Madge B. thought the fees could be changed and probably should be. Madge stated she assumed these fees were for administering the floodplain application, not the other usual fees such as the building permit fee. Madge stated these are in addition to the regular fees.

Roger A. explained how the fees are usually set, by a committee made up of a Selectman, Code Enforcement Officer, the Planning Board Chairman and a Budget Committee member. Madge B. thought the fees for this ordinance should be set in the same way as with other applications. She said that way you don't have to change the ordinance each time a fee changes. Madge thought the fee schedule in the Zoning Ordinance would work. The other board members agreed.

CEO McDonough noted that § 105-65 “Fees” addressed the issue. Roger A. agreed. Madge B. thought perhaps the board should just take the language under § 105-65 and put it into the ordinance. § 105-65 reads as follows:

- A. No permit shall be issued by the Code Enforcement Officer or the Planning Board without payment of a fee according to the schedule set forth by a committee comprised of a Selectman, Code Enforcement Officer, Planning Board Chairman and Budget Committee member. Fees are to be set by majority vote of the committee and will become effective 30 days from the date of the

vote. Any person who shall commence any work for which a permit is required by this chapter without first having obtained a permit therefore shall, if subsequently permitted to obtain a permit, pay the after-the-fact permit fee fixed by the schedule.

- B. All fees collected by the Code Enforcement Officer shall be turned over to the Town Treasurer at the end of each week to be deposited to the General Account of the Town.

**Madge B. made the motion that the Planning Board has reviewed the Floodplain Management Ordinance written by the Maine State Planning Office, in its entirety and accepted it as written; and it shall be forwarded to the Selectmen for placement on the town warrant, with the only change being under Article IV, the first paragraph shall read:**

**“A non-refundable application fee will be established per Shapleigh Zoning Ordinance §105-65.”**

She added, “This makes the fee schedule in compliance with other applications.”

**Diane S. 2<sup>nd</sup> the motion. All board members were in favor, the motion passed 5 – 0.**

Madge B. asked if the floodplain map at the town hall was the latest version. Barbara F. stated yes, the Maine State Planning Office sent an email stating there would not be a new floodplain map until the spring of 2010.

There were no further comments.

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

**The minutes from Tuesday, January 13, 2009 were accepted as read.**

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**Minor Subdivision – Map 12, Lot 32A-1 (Newfield Road) – Patrick Frasier, Applicant**

Pat Frasier was present for the review of his application.

Roger A. began by reading all the waivers requested on the plan received, they are as follows:

- A) Setting of Granite Monuments
- B) Paving of Roadway
- C) Topographic Survey
- D) Traffic Study
- E) Sidewalks
- F) As-built Plan
- G) Hydrogeological Study
- H) Existing Conditions Plan
- I) Preliminary Plan
- J) Subdivision Plan

K) Soil & Erosion Control Plan

Madge B. stated with regard to “A”, Setting of Granite Monuments, this was a fairly standard request. She said, in the past the board did allow pipes in the ground as markers.

Regarding “B”, Paving of Roadway, Mr. Frasier stated the lots were already on a paved road (Newfield Road).

Mr. Frasier stated he had given the board members a copy of the USGS map at the last meeting he attended. He stated it was in color. Roger A. looked for a copy but he did not have it and Barbara F. stated there was no copy of it in the application file. Madge B. asked if the board normally required the Topographic Survey? Roger stated the USGS map was required of the area. Mr. Frasier stated it was wet, but most important very flat in the area.

Madge B. asked about “D” Traffic Study. Roger A. stated if required it would be to study the impact on the Newfield Road.

Madge B. and Roger A. agreed the waiver for “Sidewalks” was a standard waiver.

Madge B. asked what the “As-built” plans would be for. Mr. Frasier stated for a road design which wouldn’t be required here.

Madge B. didn’t believe a “Hydrogeological Study” would be required in this case. Roger A. stated the board usually required a soils report, showing exactly what types of soils were on each lot.

Because the applicant also requested a waiver to the Preliminary Plan, Subdivision Plan and Soil and Erosion Plan, Roger A. stated in his opinion the plan shouldn’t be reviewed as presented. Mr. Frasier stated that at the last meeting he was told to put in as many waivers as he might want then the board would decide which ones wouldn’t be allowed. Roger stated they asked him which waivers he would like to have. Roger said they also asked for the soils test for each lot and those haven’t been received. Roger said nothing has been received that is asked for under minor subdivision outside of the preliminary plan.

Roger A. stated the board cannot tell the developer what they are supposed to request. The developer is supposed to give the information required under “subdivision”. Roger said if the board were to say only certain things were required then the applicant would hold the board to that and the board may have missed something. Roger said it is not until the board goes through the subdivision requirements during the review process do they know what should be required.

Mr. Frasier asked if the board could look at the waivers and state what would not be allowed.

Madge B. told Mr. Frasier he should read the subdivision requirements for a minor subdivision.

Madge B. read § 89-53 “Waiver of submission requirements or standards”. It read as follows:

“Where the Board makes written findings of fact that there are special circumstances of a particular lot proposed to be subdivided, it may waive portions of the submission requirements or the standards, unless otherwise indicated in the regulations, to permit a more practical and economical development, provided that the public health, safety and welfare are protected, and provided that the waivers do not

have the effect of nullifying the intent and purpose of the Official Map, the Comprehensive Plan, Chapter 105, Zoning or these regulations.”

Barbara F. stated that in the past subdivision reviews, during the “Findings of Facts”, the board listed the waivers requested and why the waiver was approved or denied.

Roger A. stated that because at this time all the board has received is the preliminary plan, more has to be submitted for further review of the application.

Barbara F. stated at a previous meeting members agreed that certain waivers would be allowed; she asked what those waivers were? Diane S. stated the waiver for sidewalks and the traffic study should be fine. Roger A. said the waiver for granite monuments and paving of the roadway would probably be allowed. Madge B. agreed to the above and anything to do with a road could be waved, the Newfield Road is in existence. Roger A. stated that “Underground Utilities” should also be listed because there wouldn’t be a need in this location.

Madge B. looked at the requirements for a minor subdivision. Barbara F. gave members a copy of the checklist for a minor subdivision. She gave Mr. Frasier one as well.

Diane S. noted Mr. Frasier would need to have a name for his subdivision. She also asked if the board had a copy of the deed for the property. Barbara F. looked in the file and could not find a copy of the deed. Diane also noted that contour lines would be required on the plan, “showing elevations in relation to mean sea level”.

Diane S. asked if any of the property was in a flood zone? Diane reviewed § 89-15(10). Barbara F. stated after looking at the floodplain map, this area was not in a flood zone.

Roger A. stated Mr. Frasier needs to review the criteria for a minor subdivision and bring the information required back to the board.

Nothing further was discussed.

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**Best Possible Location – Replace Existing Dwelling – Map 26, Lot 37 (114 21<sup>st</sup> Street) – Stephen Singlar, Applicant**

Mr. Singlar was present for the review of his application.

Mr. Singlar presented the board with a plan. The plan showed the existing structures on the property, the property setbacks to each structure, and the proposed changes to the site.

Mr. Singlar said several existing sheds would be removed, he showed the location of the existing well and the proposed location of the new septic system, along with the dimensions for the proposed new home. Mr. Singlar noted that the existing structures take up 2005.5 square feet on site and the proposed dimensions would be 1,802 square feet. Mr. Singlar said the new home would be beyond the 100’ high water mark setback.

Mr. Singlar provided the board with a copy of the Subsurface Wastewater Disposal System Application done by Albert Frick, SE # 168, dated 1/22/2009. The new system will be a concrete chamber system, designed for a 3 bedroom home.

Roland L. asked if the concrete system was going to be used so vehicles can be parked on top of it? Mr. Singlar stated yes.

Roland L. asked if there would be a full foundation. Mr. Singlar stated yes and showed on the plan where it would be located.

Board members agreed individual site inspections would be best at this time of the year. Mr. Singlar stated they could go anytime. He said the doors were open. He thought it would be plowed out enough for members to see the site although most of it was covered with snow. He stated he wanted to begin the project as soon as possible.

**Roger A. stated a Notice to Abutters will be mailed and the site inspection will be done on an individual basis. The final review will be on Tuesday, February 10<sup>th</sup> and it will be held at the Shapleigh Memorial School after the scheduled public hearing for ordinance changes.**

Nothing further was discussed.

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**Other:**

Patrick Frasier presented some plans for a proposed subdivision on the Garland Road. He had several different plans for the same property to try to get the boards input on what would be the best way to divide it and if he could have some lots access the Garland Road with a shared driveway, eliminating the need for a long internal road.

Board members gave their input and they agreed that a major subdivision requires an internal road. Diane S. thought a cul-de-sac would be best to get him the largest number of lots. Roger A. noted he should think about fire protection. Mr. Frasier stated it would most likely be an in-home sprinkler system. The board again suggested Mr. Frasier review the requirements for a major subdivision.

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Barbara F. gave board members a copy of the sign ordinance which had mandatory changes she received from Mike Morse with the DEP. The changes are as follows:

**§ 105-47. Signs and billboards.**

- A. General. Billboards are prohibited in the Town of Shapleigh in all zones. The following provisions shall apply to signs in all districts where permitted:
- (1) Freestanding signs with conditional use permit.
    - (a) With an approved conditional use permit, ~~one~~ two freestanding signs shall be permitted per lot. The freestanding signs may not exceed 32 square feet in area. The sign may be double-sided with equal and parallel sides which would be counted as a single sign, each face having no more than 32 square feet in area.
    - (b) ~~Only one freestanding sign is allowed per lot, regardless of the number of approved conditional use permits for the lot.~~

With one additional conditional use permit allowed per lot, one additional 32 square foot freestanding sign shall be permitted. The total of all freestanding signs per lot shall not exceed 96 square feet.

**In the Shoreland Zone, the total area may not exceed 32 square feet in the aggregate, and may not exceed 16 square feet individually.**

- (2) There shall be one sign attached to the building allowed per approved conditional use, each sign not to exceed ~~six~~ 24 square feet in area. ~~The combined size of all attached signs shall not exceed 25% of the total frontal façade area of the building or storefront.~~
- (a) Signs in the **Shoreland Zone** and Stream Protection Districts relating to goods and services sold on the premises shall be allowed, provided that such signs shall not exceed six (6) square feet in area and shall not exceed two (2) signs per premises. Signs relating to goods or services not sold or rendered on the premises shall be prohibited.

Roger A. stated the problem is some of the current signage issues fall in the Shoreland Zone, i.e. people wanting the sign ordinance changed so they can have more signage. Madge B. asked if Mr. Morse was stating this was what the town had to have? CEO McDonough believed that was true. Madge said in that case, the board doesn't really have a choice other than to make the changes.

**Diane S. made the motion to accept the recommendations of the DEP for the outlined changes to the sign ordinance. Madge B. 2<sup>nd</sup> the motion. All board members approved the recommendations, the motion passed 5 – 0.**

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Barbara F. asked board members to do a final review of the water extraction ordinance. There were some suggested language changes that would keep the terms used for water extraction the same throughout the document, changes to the document so wording is consistent with DEP terminology, changes in the order of wording for clarification, and additional information provided under H.(2) for clarity for the board. Also, there were several typographical errors corrected.

The board agreed the document should be consistent throughout. Board members agreed the final document was ready for the town warrant and the public hearing on February 10<sup>th</sup>. Any further changes would need to be addressed in the future. The Shapleigh Town Attorney has been emailed a copy of the document and the Board of Selectmen received a copy.

*Citizens can review the document at the town hall during regular town office hours.*

Nothing further was discussed.

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**There are currently Growth Permits available.**

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***The Planning Board meeting ended at 9:15 p.m.***

Respectively submitted,

Barbara Felong, Land Use Secretary [planningboard@shapleigh.net](mailto:planningboard@shapleigh.net)

## ***SHAPLEIGH PLANNING BOARD MINUTES***

**Tuesday, February 10, 2009**

Members in attendance: Roger Allaire (Chairman), Madge Baker (Vice Chair), Roland Legere, Lauren Meek (Alternate), Maggie Moody, Diane Srebnick and Barbara Felong (Secretary). Code Enforcement Officer, Steven McDonough was also in attendance.

***The following words are not verbatim unless accompanied by quotation marks “ ”.***

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**Note: Copies of all ordinances can be viewed at the Shapleigh Town Hall during regular office hours.**

### **Public Hearing Began at 7:15 p.m.**

#### **• Large-Scale Pumping or Extraction of Groundwater, Spring Water and/or Water from Aquifers within the Municipality of Shapleigh, Maine**

Roger A. read the water extraction ordinance in its entirety. Roger A. stated the ordinance would be on the warrant at the Town meeting in March. Roger said he hoped it would be accepted by the citizens.

Roger A. asked if there were any questions?

**Pat Baldwin** read from Section 2, Purpose, it read as follows: “To protect the short-term and long-term quality and quantity of groundwater, spring water and freshwater resources within aquifers and the recharge areas for these water bodies and related surface water, including but not limited to lakes, ponds, wetlands, rivers and streams as may be located wholly or partially within the Town of Shapleigh.”

Ms. Baldwin asked if any water were to be extracted on the State owned land, would this ordinance apply to the State? Roger A. stated yes, under the home rule authority under M.R.S.A. it would allow Shapleigh to be more stringent and the State would have to comply with Shapleigh’s standards.

**Liz McMahon** reviewed H.(3), Discontinuance of Permit, which states in part, “Existing Water Extraction Activities in operation before the date of this ordinance is adopted may continue such operations for three years from such date.”. She asked, “Would this grandfather the test wells already used by the State?” Roger A. stated no, these were test wells only; there has been no pumping of water.

Ms. McMahon referred the board back to the definition of Water Extraction Activities, which read as follows: “The withdrawal, removal, diversion, taking or collection of groundwater by any means from aquifers, springs, wells or other groundwater resources through the use of wells, pumps, piping apparatus, catchments, weirs or other extractive devices, methods or technologies.”

Roger A. stated, as he has in the past, that this ordinance was not created for Poland Spring; it was for anyone wanting to extract more than 5000 gallons of water per day. Roger said he realized Poland Spring has done testing on the Vernon Walker parcel on the State land and they have also discussed being able to pump water from that property. Roger believed that Poland Spring and the State could not agree to a monetary figure so that is why Poland Spring is asking the Town of Shapleigh to allow them onto town owned property, using the same aquifer. Roger stated the board has no idea whether or not the citizens will allow this to happen. Roger stated that at this time, if Poland Springs were to sign a contract with the State of Maine, they would be able to go forward with a three year time limit prior to a vote or if this ordinance gets enacted.

**Eric Davis**, regarding Section 5.C, Water Extraction Activities Not Requiring a Permit, such as agricultural, domestic water supplies, schools, public water utilities, etc. Mr. Davis asked why wouldn't "commercial" agricultural activities need a permit if they were extracting over 5000 gallons of water a day? Mr. Davis thought perhaps this area should be looked at closer.

Roger A. stated agricultural activities are normally exempt from most regulations. *Note: Under M.R.S.A. Title 7, Chapter 6, Maine Agricultural Protection Act, there are provisions for agriculture which exempt it from regulation unless the municipal ordinance is submitted to the State for approval prior to enactment. The State highly promotes agriculture and does not want over regulation of the industry.*

Mr. Davis, referring to Section D(1)(b), read the last line: "References to purchase price and specific business sensitive financing terms may be redacted from the documentation provided." Mr. Davis wanted to know if the word "redacted" was the correct term to use. Barbara F. stated that she had looked up the word redacted and had concluded it was proper in this sentence. She did not have the meaning with her at this meeting. *Note: The word redacted in the Merriam-Webster's Dictionary means: "To obscure or remove (text) from a document prior to publication or release."*

Mr. Davis, referring to Section D(1)(f), read the last line: "Related applications and documents filed after the date of the application but before any permit is issued by the Planning Board shall be submitted to the board within 10 days of filing such related applications and documents." Mr. Davis stated the sentence began and ended with the words related applications and documents, did this refer to the same documents? Roger A. stated there were multiple amounts of permits a water extraction company such as Poland Spring would have to obtain. Permits from the DEP, EPA, etc. Roger stated that if they submit documentation to the Planning Board and further documentation is required from other departments, the board needs to have copies of those permits as well, prior to approval. Roger said that if there are any new regulations prior to the approval they would need to submit those applications, so it's any related documents. Mr. Davis did not feel the sentence was easy to follow. *Note: The sentence was drafted by an attorney that has worked for the Maine DEP.*

Mr. Davis, referring to Section D(1).g(b)(i) which reads: "(Map 1) Water table contours and their range under ambient conditions as determined over at least a two (2) year period prior to any water extraction," he asked what "ambient conditions" meant? Roger A. stated a contour water table would be used which reflected the type of precipitation over a two year period. *Note: The word "ambient" as defined in Merriam-Webster's Dictionary functions as an adjective meaning encompassing. Other usages are "ambient temperature" or "ambient music".*

Mr. Davis, referring to Section H(3) "Discontinuance of permit." discussed the language which talked about pulling the permit if there were violations of the Conditional Use Permit and asked if there were any penalties for a company if they go against the terms of the permit. Mr. Davis felt that the last sentence was vague. The sentence reads: "In addition, after notice and hearing the Conditional Use Permit for Large Scale Water Extraction Activities may be discontinued by the Planning Board in consultation with the Town Attorney during the three-year term of the permit for significant violations and/or variations of the Conditions of Permit described in this document."

Roger A. stated that if the permit was pulled it would be like a stop work order. Roger said the three year period would still be in effect. Mr. Davis said it doesn't state what the penalties would be other than discontinuing the permit so they can't pump anymore water.



Barbara F. asked CEO McDonough to explain the process of penalties, how he addresses them. CEO McDonough stated that penalties are addressed in the Zoning Ordinance and they are State law. CEO McDonough stated it is a minimum fine of \$100 a day per violation upon conviction. He said again any rule in any ordinance regarding penalties is governed by State law.

Mr. Davis asked who determines how high the fine can go up and if there was a maximum? CEO McDonough stated there was a maximum amount set by the State and it would be his call depending on how egregious it was and whether or not they were willing to comply. CEO McDonough stated there was a maximum amount, he thought it was \$500 a day and then if there was a subsequent violation in the same manner then its \$2500 a day. He said State law says “upon conviction” so a town cannot start imposing fines without actually going to court and having a judge say yes you can impose a fine. Mr. Davis thanked CEO McDonough for his information.

**John Roberts**, referring to page 9, (vi), which reads: “prediction of the effects of long-term water extraction on the Water Table and the impacts on any and all nearby water bodies including, but not limited to, springs, lakes, ponds, rivers, streams, wetland areas, Town wells, and private wells or other existing extraction locations within the zone of contribution.” Mr. Roberts stated that the “zone of influence” was excluded from this sentence and he didn’t know why. Mr. Roberts said that from the extraction point if the zone of contribution was upgradient and the zone of influence was down gradient why wouldn’t we include the zone of influence as being impacted. Roger A. stated it was a good question; he had no answer at this time. Mr. Roberts stated it was an important point to consider.

**Clint Daggett** wanted to know if the extraction ordinance was going to cover private property as well as town property. Roger A. stated the ordinance was for any groundwater extraction of 5000 or more gallons a day anywhere in Shapleigh.

**A citizen**, referring to D(g) “Hydrogeologic Investigation.”, spoke of the sentence stating the report must be “prepared, signed and sealed by a Maine Certified Hydrogeologist, Geologist or Engineer”. He asked why the board wouldn’t want the document signed by a “hydrogeologist” only. Roger A. stated the hydrogeologist would be the one doing the study and he/she would sign it.

The same citizen, referring to H(3) “Independent Monitoring”, which reads “Applicant shall pay the Town of Shapleigh for on-going independent monitoring of extraction operations”, stated he thought this was a good idea. He also thought after reading the ordinance it seemed it was geared to have all the research done ahead of approval. He asked if after the permit is approved, and if they are not doing as they were permitted to do, are they shut down? Roger A. stated yes they are. Roger stated that if a well no longer functions as it should, the well is shut down. Roger said that because this ordinance governs a large sum of water, greater than 5000 gallons a day, there would be many limitations on how the water is obtained and how the well has to be maintained and this is monitored frequently (monthly).

Roger A. went on to explain if they do not comply with the conditions of the permit, a stop work order is placed on the property by the CEO.

**Pat Baldwin** asked if at the town meeting in March this ordinance gets voted in, and the other ordinance that will be voted on at a town meeting in February, not sponsored by the Board of Selectmen also passes, does that mean this ordinance is no longer valid? Roger A. stated that if this gets voted in at Town meeting this becomes an ordinance and will be part of the Zoning Ordinance. Roger said that if at the POWWR groups meeting their ordinance passes, it will stop the extraction of groundwater in the Town of Shapleigh. Roger stated that the town has been told by Maine Municipal Association and the Town

Attorney that the POWWR ordinance is unconstitutional and it will most probably go to court with someone fighting their ordinance. Roger said if the POWWR ordinance is voted in it will cost the town money but he had no idea how much. Roger stated that the Planning Board wants this ordinance (PB ordinance) in place for the future.

**Charles Gruber** stated he had a comment regarding the concern earlier with respect to agricultural activates being exempt from the water extraction ordinance. Mr. Gruber stated he felt it didn't matter how much water a farm might take out in a day, the purpose is to put it back onto the ground. Roger A. agreed it partially recharged the aquifer. Mr. Gruber stated yes, and some would evaporate and some would be taken up by the plants. Mr. Gruber stated that in Shapleigh the water would not be shipped off to grow some grapes in a neighboring state like out west. Mr. Gruber and Roger both agreed there was minimal impact from farming in Shapleigh.

Maggie M. referring back to a violation of the permit and the penalty being a minimum of \$100 a day, she asked if the fine would be for the whole extraction process or per well point per day? Madge B. thought it would depend on what the violation was. Maggie asked if there was ground subsidence around several wells, would it be a charge per well point? Madge and CEO McDonough didn't think so.

CEO McDonough stated this ordinance would be part of the Zoning Ordinance. He said the violation would be enforced the same way you would any part of the Zoning Ordinance regardless of how big or small the violation might be. CEO McDonough stated the first thing that would take place would be to send the business a Notice of Violation to notify them they are now in violation of the Town's ordinance and they must stop. He said next you give them a deadline to stop that is reasonable; you cannot give them a deadline of tomorrow for something that cannot be stopped tomorrow, especially if it is something that is out of their control. He said for example, you might ask that they stop the violation within one week and if they do they have now complied with your Notice of Violation. CEO McDonough stated if they don't comply, then once you get to court over the issue and they continually do not comply, you have the right to acquire fines that have accumulated from the date the letter of violation was written, assuming the judge ruled that the Town is correct.

CEO McDonough stated that usually, almost always, there is more than one violation involved. He said to say that each well point is a violation would be a stretch and he believed the courts would look upon that (fining per well point) as trying more to collect fines than trying to correct the problem which is what they have done wrong. CEO McDonough as Maggie M. if this answered her question? She said yes.

Roger A. asked if there were any additional questions regarding the groundwater extraction ordinance? There were none.

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#### **• Residential Growth Ordinance**

Roger A. read the ordinance in its entirety. Roger noted that it was mandatory that the Planning Board review the Growth Ordinance every three years and enact any changes necessary. Roger stated the Planning Board, after looking at the information provided by Southern Maine Regional Planning Commission, decided to increase the number of permits allotted by one, making the number of permits available 35, not including the two permits allowed for Habitat for Humanity.

Roger A. asked if there were any questions regarding this ordinance.

**Eric Davis** stated that under the definition of “Mfg. Housing Unit” it described the structures as “transportable in one or two sections”; he stated many come in more than two sections. Roger A. agreed it should say multiple sections but he felt as a definition it still worked because it speaks of a structure “constructed in a manufacturing facility and transported to the building site”, so the number of pieces isn’t an issue.

**A citizen**, referring to Section 1.8(a), which reads: “There will be a \$200 non-refundable application fee for each Growth Permit Application submitted”; and then under (h) “All applicants that wish to remain on the waiting list must mail a non-refundable \$50 administration fee for the next calendar year.” The citizen asked why there was the additional fee? Roger A. explained that in some years the waiting list goes into the next year and because of this the people on the list need to be re-notified to see if they still wish to be on the list. Roger stated this cost money to do the mailings. Roger added that in the past people have submitted a Growth Permit Application and then could not follow through and build a home and people get moved up the waiting list and sometimes they aren’t ready. This also leads to more paperwork to make the changes necessary when the people moved up the list are not ready to build. *Note: There have been instances where applicants have had to have multiple certified notifications, at a cost of over \$5 each, not including the cost of processing the paperwork.*

Roger A. stated that the ordinance is the same as it has been for the past three years. The only change is adding one permit to the allotment.

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

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**• § 105-71 Board of Appeals & § 105-72 Appeal Procedure**

Roger A. read the ordinances. Roger noted that § 105-70 was being repealed and replaced with § 105-71 and § 105-72.

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

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**• § 105-47 Signs and billboards**

Roger A. read the proposed changes to the ordinance only which were in sections: A.(1)(a), A.(1)(b), A.(2), A.(2)(a), A.(5), and A.(7)

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

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**• Chapter 57 Planning Board Ordinance**

Roger A. read the proposed addition to the existing ordinance which was titled: **§ 57-1.1. Purpose.**

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

• **Floodplain Management Ordinance**

Roger A. stated the changes to the existing Floodplain Management Ordinance were mandated by the State (Maine State Planning Office).

Roger stated the only change made to the ordinance proposed by the State was under the fee section, “Article IV – Application Fee and Expert’s Fee” the paragraph that reads: *“A non-refundable application fee of \$25.00 for all minor development and \$50.00 for all new construction or substantial improvements shall be paid to the Town Clerk and a copy of a receipt for the same shall accompany the application.”*

This will be replaced with: **A non-refundable application fee will be established per Shapleigh Zoning Ordinance §105-65.A.**

Roger A. asked if any member of the audience wanted him to read the rest of the ordinance which consisted of 19 pages? No one asked for a reading of the ordinance.

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Roger A. stated each of the ordinance changes would be individual articles on the warrant. Roger said if one ordinance doesn’t pass it will not affect the other ordinances.

With no further questions on the ordinances changes the public hearing was closed at 8:45 p.m.

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**The Planning Board meeting started at 8:46 p.m.**

**The minutes from Tuesday, January 27, 2009, were accepted as read.**

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**Best Possible Location – Replace Existing Dwelling – Map 26, Lot 37 (114 21<sup>st</sup> Street) – Stephen Singlar, Applicant**

Mr. Singlar was present for the review of his application. Board members did individual site inspections of the property.

At the previous meeting on January 27<sup>th</sup>, Mr. Singlar stated the existing structures take up 2005.5 square feet on site and the proposed dimensions would be 1,802 square feet. The board once again reviewed Mr. Singlar’s plan. Mr. Singlar noted that the proposed new structure would be beyond the 100’ high water mark. The plan, drafted by Albert Frick Associates, Inc. of Gorham, Maine depicted the proposed new structure to be 101’ from the high water mark.

The board noted the existing structures that would be removed. Roland L. asked if the proposed structure met the side lot setbacks. CEO McDonough stated no, he said it meets the minimum of 10’ but doesn’t meet the cumulative of 30’. CEO McDonough noted it was better than what was existing, centering the building on the lot. Mr. Singlar stated that yes he wanted to center it leaving more room between the building and the neighboring property. CEO McDonough asked what the width of the new building was? Mr. Singlar stated 28’. This leaves 11’ on either side of the structure (the lot is 50’ in width).

Mr. Singlar stated he would be removing the existing fence, which as he noted was falling down in several places at this time. He said he wanted to make the area look more open and natural. The board agreed this would look better.

Madge B. asked if there would be any trees removed during the reconstruction? Mr. Singlar stated he didn't want to remove any trees but there were two trees that were near the existing structure that may have to be removed. Mr. Singlar noted one of the trees on site was imbedded with old electrical cable that the tree engulfed. He stated he had disconnected all the power going to the tree. Roger A. thought this tree would need to be removed because it would be disturbed when the new foundation was put in. Mr. Singlar stated the tree was partially dead at this time, probably because of the imbedded wiring. Mr. Singlar stated the rest of the trees on site should be able to remain.

CEO McDonough stated that he would like to see a landscaping plan. He said that after the area is disturbed due to the construction it would need to be re-established with vegetation. Mr. Singlar stated that he hope the project would be completed with minimal disturbance. He said that he was going to have his builder come in and speak with CEO McDonough to decide what to do so there would be minimal disturbance to the landscape. Mr. Singlar stated he was not opposed to adding additional trees. He said he did not want any lawn, he wanted minimal maintenance. He also wanted to leave as much of the existing vegetation as possible. He was not sure what else he should do at this time.

CEO McDonough stated that often people say that they do not want to remove any more vegetation than they have to but more often than not the amount of vegetation removed is more than expected. CEO McDonough stated that a year later, after the job is done, there needs to be a plan to replace the vegetation. He said there doesn't need to be a landscape plan by an architect, just something on paper to show how vegetation will be replaced. Roger A. agreed and stated this also lets the applicant know what is expected upon completion of the project.

Mr. Singlar asked if he was supposed to show what he wanted to remove? CEO McDonough stated yes, what will be removed and how it will be replaced. Roger A. noted that when a foundation goes in a lot of material is disturbed on site and the area needs to be stabilized. Diane S. stated that it would be good to contact York County Soil and Water Conservation; they would give him some ideas on how to re-establish the area. Madge B. stated they had a new office in Springvale. Diane said that they have done a lot of work around Square Pond and Mousam Lake. CEO McDonough stated he would like to see the Planning Board make the landscaping plan a condition of approval.

Roland L. asked where the demolition debris was going? Mr. Singlar stated into a dumpster. He said he was using Dumpster Depot out of Concord NH.

Mr. Singlar asked again what the landscaping plan needed to entail? Barbara F. stated it just needed to be a "sketch plan", which showed existing vegetation and what will be used to replace it. CEO McDonough stated it did not have to be as detailed as the plan he presented this evening. Barbara said he could create the plan himself. Diane S. agreed stating he could get suggestions from York County Soils as to what vegetation would work best in that area to control runoff, etc. Diane added that they may even go to his house to see the site and give their recommendation. Barbara stated that if the board didn't require a plan the applicant does not have to follow through with the replanting because the town has no recourse without a plan in place. CEO McDonough stated that he would like a plan prior to occupancy. Madge B. stated a plan could be required before getting a building permit. CEO McDonough stated they could but that would slow down the project and he felt comfortable giving the building permit at this time. Roland L. stated it would be hard to see what the existing vegetation was at this time. Roland said he agreed

with CEO McDonough that if the plan wasn't in place it wouldn't get done. He said he realized people have the best of intentions but don't always follow through. He added that the applicant usually ends up disturbing more area than what was intended, citing a project he did on his property, and so this area needs to be addressed. Mr. Singlar stated he would do whatever the board asked. Diane again said York County Soils should be contacted because there were several invasive plants in this area, like bamboo, that he should not use and they would be able to tell him what those plants were.

Roger A. stated he thought the new structure was in the best place possible on site.

Madge B. stated she was concerned with roof runoff, she asked what direction the runoff would go. Mr. Singlar stated it currently went toward the lake but his design would put it toward the side lot lines. Madge thought the runoff still needed to be controlled.

Roger A. reviewed 105-4.D "Nonconforming structures." Roger noted that Mr. Singlar would be replacing the existing wastewater system. Mr. Singlar provided the board with a copy of the Subsurface Wastewater Disposal System Application done by Albert Frick, SE # 168, dated 1/22/2009. The new system will be a concrete chamber system, designed for a 3 bedroom home.

Roger A. explained 105-4.D.(7)(c), which reads: *All approved plans shall require confirmation in writing by a licensed surveyor that the placement of the structure is correct per the specifications approved by the Planning Board.* Roger said that the survey shows where the side lot line is and this assures the location of the foundation per the approved plan. Roger said if the foundation cannot meet the approved side lot designations, then Mr. Singlar would have to come back before the board for a change to the plan. Roland L. stated the surveyor will also tell the contractor where to set the forms for the foundation and then after the foundation is in they will come back to verify the foundation is where it is supposed to be. CEO McDonough noted that this is to protect the applicant so that down the road. He said should the place get sold, the bank representative will come into the town hall and look at the property file and will see that the planning board approved the structure to be 11 feet from the property line then a quick bank survey could show its only 9 feet which is a violation of approval, now the bank will not finance it. Roger said that also there are disputes among neighbors where the property line is actually located. He said a survey will show where the actual line is, this way the board is assured the house is being set in the correct location on the face of the earth.

**Roger A. listed the conditions of approval:**

- 1) Landscaping Plan to restore the area after construction to prevent soil erosion. This plan must be received by the Code Enforcement Officer prior to the issuance of an Occupancy Permit.**
- 2) Best Management Practices shall be used during the entire construction project to control soil erosion.**
- 3) A licensed surveyor must place the structure per the approved plans.**
- 4) Erosion control measures shall be put into place for the roof runoff; these can be done by way of the landscaping plan. These measures must be approved by the Code Enforcement Officer.**
- 5) The structure shall be a minimum of 101' from the high water line; and 11' from the side lots lines, per the plan presented, dated 1/16/09.**
- 6) Debris shall be removed from the site and not brought to the Shapleigh Transfer Station.**
- 7) The structures depicted to be removed shall be removed from the site per the plan presented, dated 1/16/09.**

**Madge B. made the motion to approve the application with the above conditions. Roland L. 2<sup>nd</sup> the motion. Four (4) members voted for approval, one (1) member abstained. (Maggy M. stated she was unable to do the site inspection so she did not feel comfortable voting on the application.) The application was approved with a vote of 4 - 0.**

Nothing further was discussed.

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

Respectively submitted,

Barbara Felong,  
Land Use Secretary  
[planningboard@shapleigh.net](mailto:planningboard@shapleigh.net)

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**February 25, 2009**

Members in attendance: Roger Allaire (Chairman), Madge Baker (Vice Chair), Roland Legere, Maggie Moody and Barbara Felong (Secretary). Code Enforcement Officer, Steven McDonough was unable to attend.

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

**The minutes from Tuesday, February 10, 2009, were accepted as read.**

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The following words are not verbatim unless accompanied by quotation marks “ ”.

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### **Best Possible Location – Replace Existing Dwelling – Need to Amend Plan After Survey - Map 26, Lot 37 (114 21<sup>st</sup> Street) – Stephen Singlar, Applicant**

Mr. Singlar was unable to attend due to a business trip.

Barbara F. showed the board members the plan Mr. Singlar’s contractor left in her office for the board to review. She stated that during the survey it was discovered that the property was narrower than originally thought so Mr. Singlar could not meet the side lot setbacks approved at the last meeting. (These being 11 feet from the side lots lines.) The new plan also showed the proposed roof overhang as being 16”.

The new plan depicted the side lot line as being 10.02 feet at the closest point. The board noted that the roof overhang would make this figure less than that by the 16” depicted on the plan.

Madge B. asked what the side lot line was on the original plan? Barbara F. stated it was depicted as 11 feet from the side lot line to the new structure.

Roland L. asked if one lot line was abutting a family members home? Barbara F. stated yes.

Barbara F. stated the new structure would still be centered on the property. Roger A. stated that because of the 16” roof overhang he thought the width of the house should be reduced to 26 feet.

Roland L. asked what the minimum combined width was for the side lot lines? Roger A. stated the combined width is 30 feet. Madge B. stated there was no way he could meet the minimum. Roger explained it was 10 feet on one side as a minimum but he couldn’t make either side lot setback because of the 16” roof overhang he requested. Roger said the lot line would now be 8 foot 8 inches.

Madge B. did not think the board should allow the minimum side lot lines as depicted. She said Mr. Singlar could challenge the board through the Board of Appeals if he did not agree with the Planning Board. Madge did not think the board could let Mr. Singlar go closer to the side lots lines than what was there now.

The board members looked at the original plan, but it was noted the original plan was not correct. The existing home appeared to be 11 feet from one lot line and it was less than 11 feet on the other side but the figure was not on the plan.



**Madge B. moved that the board reduce the width of the proposed house to 26 feet in width. All board members were in favor of the reduction from 28 feet to 26 feet in width. Vote was 4 – 0.**

Board members noted the side lot lines would be 9 foot 8 inches with the roof overhang. Roger A. stated the board could reduce the size of the overhang from 16 inches to 12 inches which would give more room to the side lot lines, changing the side lot line to 11 feet as originally approved.

**Board members moved to reduce the size of the roof overhang from 16 inches to 12 inches. All board members were in favor. Vote was 4 – 0.**

Nothing further was discussed.

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**Conditional Use Permit – Daycare – Map 12, Lot 28B (18 North Shore Road) – Beverly Lam, Applicant**

Mrs. Lam was present for the review of her application.

Roger A. began the review by asking Mrs. Lam to explain to the board exactly what she wanted to do. Mrs. Lam stated she wanted to open an in-home daycare that was affordable and also provide quality day care. Mrs. Lam stated she had four children of her own and she knew the cost of daycare and besides the children being loved and cared for she wanted to provide stimulating things for them to do such as circle time, crafts, outdoor play, and learning sign language. She did not want the children sitting in front of a television doing nothing. She believed there were many daycares that charged too much for child care without providing quality care.

Mrs. Lam stated her sister would be working with her and she was a Certified Nurses Assistant. She said he had a large backyard which had a shaded area, as well as a swing set.

Roger A. asked how many children she would be providing her service for? Mrs. Lam stated the maximum allowed would be determined by the State's Health and Human Services Dept. but she believed the most she could care for would be 12 children. Mrs. Lam stated she would only have 12 children if her sister was going to work with her full time, otherwise she thought the ratio of child to adult would be too high. She wanted to have as much hands on as possible.

Maggie M. asked if the 12 children included her children as well? Mrs. Lam stated the first two years the State did not count her children but after two years they will. She said after two years there would only be one of her own children at home, the others would be attending school.

Roger A. asked if there was enough area near the home to turn cars around? Mrs. Lam stated yes, there is a turnaround area there now. Roger said it was not depicted on the plan; it would be best to have a parking plan for the next meeting. Mrs. Lam stated there is enough room for a two-car turnaround now and in the spring her husband would be expanding the width of the driveway.

Mrs. Lam stated that at this time bushes and plantings separated the play area from the parking area but she did plan on putting up a fence.

Mrs. Lam stated she had her first aid and CPR qualifications. She said she was going to a class that teaches the basics of running a business out of your home such as a child care facility. She said the class also

teaches you about how to process paperwork and how to be certain you get paid for your services. She said it also discusses childhood immunizations as well as how to deal with State aid and how to process the necessary forms.

Mrs. Lam stated she would also be taking a sign language class to further her knowledge because after previously working at a day care she saw how babies respond very well to sign language; she wants to be sure this is part of her day care services. She said even small babies can communicate through sign language and tell you they are hungry, that they miss their parents, etc. She said by using sign language babies are much less frustrated as are the caretakers. She said she planned on teaching sign language during circle time and through books, showing them numbers, and some songs.

Mrs. Lam stated she would also like to be able to do nature walks with the parents' permission and possibly have a small garden. She said again that she wanted a hands-on daycare, keeping it lots of fun for the children and a learning experience.

Mrs. Lam stated that she would be accepting children from the Shapleigh bus route, which is another reason she wanted her sister to work with her. She said one person will stay with the children at the house while the other person goes to the bus stop. She said in the summer they can bring the other children to the bus stop, it can be like a nature walk. She said she would not do this during the winter when it is cold.

Roger A. asked what the hours of operation would be? Mrs. Lam stated 6:00 a.m. thru 6:00 p.m., Monday through Friday. She said she wanted to be open long enough so parents would not be worried about getting out of work and to the daycare by 5:00 p.m. as with many other daycares.

Mrs. Lam stated there would be two snacks and two meals offered every day.

Madge B. noted that there has to be parking spaces available and there should be a plan for those. Madge asked who did the site distance, the applicant or the board members? Roger A. stated that when he did the home inspection he always measured the site distance. Roger explained to Mrs. Lam what a site distance measurement was so she could do it as well. Roger also explained about the number of parking spaces required. One parking space is required for her and her employee and then spaces for the parents to use to drop off the children. Mrs. Lam stated there would be at least four available on site.

Madge B. asked if there would be any outside lighting? Mrs. Lam said at this time she does have two motion detection lights that light up the driveway. Roger A. asked if she would be having any additional lighting? Mrs. Lam stated she could add some if the board wanted her too. Madge stated she did not have to add any, the board just wanted to see if she was going to have lighting because it cannot glare onto the adjacent property. Madge stated the light cannot affect people driving by either.

Madge B. stated the board would also ask about refuse disposal. Madge said Mrs. Lam would need to think about signage. Madge said signage would actually be done through the Code Enforcement Office. Madge said she needed to have a permit for a sign.

Roger A. stated the board would be looking at the play area during the site inspection. He said they would look at where the fencing will be.

Roger A. asked if the State Fire Marshall had been contacted? Mrs. Lam stated she sent in her application to the State. Roger asked if it was to the Dept. of Human Services? Mrs. Lam stated yes. Mrs. Lam stated she filled out an application that said it was for the Fire Marshall as well. Mrs. Lam stated she didn't know if any additional applications were necessary. Roger said in the past the Fire Marshall and State have

permitted the daycare prior to the board's approval. Roger said if these approvals are not in hand, the board will make that a condition of approval that the daycare cannot open until the State approvals are in place.

Barbara F. stated the board will require a copy of the State permits for the file to be assured you have State approval. Mrs. Lam stated he understood. She added that she has had her water test done as well. She asked if she should call the State to be sure the Fire Marshall's office is being contacted? Roger A. stated that would probably be a good idea.

**Roger A. stated a Notice to Abutters would be mailed and a Public Hearing held on March 10th. Board members agreed to do the site inspection on Saturday, March 7<sup>th</sup>. The board members will meet at the town hall at 8:30 a.m.**

Nothing further was discussed.

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**Construct Private Way – Map 10, Lot 6B (16 Fowler Way, off Town Farm Road) – Carl and Barbara Fowler**

The applicants were not present at the meeting.

Barbara F. stated she tried calling the applicants and did not get an answering machine. She said she had mailed them a copy of the agenda which showed the snow date was Wednesday evening.

Barbara F. stated she mailed them a letter on February 17<sup>th</sup> which stated they would need to bring in their after-the-fact application fee of \$300 prior to the board reviewing their application. She has not received a response to date.

Nothing further was discussed.

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**Growth Permit(s)**

- **Map 8, Lot 26C (12 Newfield Road) - Miller**

Barbara F. stated that Mr. Miller's check did not clear so she spoke with him on the telephone and told him the town would need a new check along with an additional \$25 prior to being able to review his application. Mr. Miller stated he would look into it and get back to the board as soon as possible. He apologized for the inconvenience.

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**OTHER:**

Barbara F. gave board members a copy of the Statewide Standards for Timber Harvesting to review and proofread. Barbara stated these were the standards CEO McDonough wanted the town to adopt instead of revising the existing standards.

Roger A. stated he believed the new State standards were not as strict as what the town currently has. He said he did not have a problem with adopting these new standards but wanted the board to be aware of the fact there were differences.

Madge B. stated that on the new Shoreland Zoning Map Acton had, it showed steep slopes that could be put into Resource Protection. Madge didn't see that this was addressed on our new draft copy of the Shoreland Zoning Map. Madge wasn't sure why Acton would have this on their new map and we would not. Barbara F. did not know. She stated she would contact John Hutchins of Cornerpost who drafted it and would ask him the question.

Madge B. asked if Mike Morse of the DEP approved the new Shoreland Zoning Map. Barbara F. believed he had approved it. Madge thought as long as the new map has DEP approval it would be fine.

Barbara F. will contact John Hutchins to see if he has heard from the DEP with respect to the map. Barbara also said she would make all the changes to the zoning ordinance that Mike Morse has presented and try to have them to the board members within the next month.

Nothing further was discussed.

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***The Planning Board meeting ended at 8:30 p.m.***

Respectively submitted,

Barbara Felong,  
Land Use Secretary  
[planningboard@shapleigh.net](mailto:planningboard@shapleigh.net)

# ***SHAPLEIGH PLANNING BOARD***

## **MINUTES**

**March 10, 2009**

Members in attendance: Roger Allaire (Chairman), Madge Baker (Vice Chair), Roland Legere, Maggie Moody, Diane Srebnick and Barbara Felong (Secretary). Code Enforcement Officer, Steven McDonough was also in attendance.

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The following words are not verbatim unless accompanied by quotation marks “ ”.

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### **Public Hearing Begins at 7:00 p.m.**

#### **Conditional Use Permit – Daycare – Map 12, Lot 28B (18 North Shore Road) – Beverly Lam, Applicant**

Mrs. Lam was present for the public hearing.

Roger A. asked Mrs. Lam to explain to everyone present what she wanted to do. Mrs. Lam stated she wanted to open a child day care in her home for up to the maximum children allowed by the State, which is 12. She stated she would always have another helper for any amount of children above 6. She said that this number may sound ambitious but the amount of time there would actually be 12 children in her care would be very short and again it would never be without another helper for two reasons. One being it is illegal and two it would be overwhelming. She stated the total of 12 children would likely be transitional, when you have some children getting on a bus, at that time you would probably have 12 children but again there would be a helper. Mrs. Lam said when children are coming home there would be a helper. She expected to have both part and full time children.

Mrs. Lam stated she wanted good quality day care for children. A place that doesn't put them in front of a television all day and have the television watch them. She wants to provide mental stimulation, having many activities.

Roland L. asked about the parking plan, did she bring one with her this evening? Mrs. Lam presented a parking plan to the board. She also provided the board with the Fire Marshall's report, dated 3/4/09. She stated the parking plan the area that is available at this time; she noted there is a lot of snow on the property and once it's gone, the area will be enlarged. Mrs. Lam stated the turnaround will be ten feet wider. She said on the right side it will be two feet wider. She said her husband was going to bring in a truck load of recycled asphalt to make the road and turnaround wider. Roger A. asked Mrs. Lam to modify the plan to depict what it will be once the day care opens. She did so.

Madge B. stated after reviewing the ordinance she believes it is up to the Planning Board whether or not a fence is required. Roger A. agreed. Madge stated that during the site inspection, she saw no reason to fence in the yard. She said given the fact it is on a very low traveled road, she did not see the need. Roland L. agreed and said the house was set far back from the road as well. Madge said that she believed Roland and Maggie M. concurred as well, after the site inspection a fence was not necessary. Maggie said that because the house was far from the road she did not feel a child would wander into the road.

CEO McDonough asked if there was anything that divided the back yard of Mrs. Lam's home and the property behind her? Mrs. Lam and Roger A. stated there were trees and a hill. Mrs. Lam stated she did not have a fence.

Roger A. reviewed §105-40.1 “Child day care.” and noted that it was only under (C) Day-care centers, where it talks about a buffer, it reads in (D) “Outside play areas shall be buffered from adjoining uses, including neighboring properties, and parking area(s), by appropriate fencing or plantings.”

Roger A. stated that this section was for 13 or more children. Roger said Mrs. Lam would have to comply with Sections A and B only which does not address fencing. Roger said with several other day care approvals a fence was required because of the proximity to a busy road. Diane S. also noted one day care had a swimming pool and the board wanted to be certain no children wandered into the pool. Roland L. and Roger noted that one day care required a fence because of the considerable drop off from the play area into a rocky area, so for the protection of the children the yard had to be fenced. Roger stated that all the day cares that required a fence were on busy roads or there was a hazard near the play area.

Madge B. added that there is the possibility with children climbing on a fence they could get hurt, so if there isn't one needed maybe the board shouldn't require it.

Mrs. Lam stated that she called the State Dept. of Human Services to ask if they required fencing and they stated that natural plantings are o.k. She said the State said it was up to the Planning Board if they thought one was necessary.

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

The Public Hearing was closed at 7:17 p.m.

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

**The minutes from Tuesday, February 25, 2009, were accepted as read.**

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**Conditional Use Permit – Daycare – Map 12, Lot 28B (18 North Shore Road) – Beverly Lam, Applicant**

Mrs. Lam was present for the review of her application. Note: Planning Board members did a site inspection of the property prior to the meeting.

Roger A. stated that because during the public hearing Mrs. Lam presented her application request clearly, the board could move forward with the review of the Zoning Ordinance.

Roger A. stated the following ordinance standards have been met:

- 105-17 - Land Uses. *This business is a permitted use in the General Purpose district with a Conditional Use Permit.***
- 105-19 – Notes to table on dimensional requirements. *The building meets the required road frontage and the required setbacks as approved through the building permit process.***
- 105-20 – Applicability of standards; prohibited uses. *This application is a permitted use within the zoning ordinance and will not cause any health and safety concerns.***
- 105-21 – Traffic. *Traffic will have safe access. The site distances are within the minimum required and there will be a turnaround area on site so no traffic will back out onto the road.***
- 105-22 – Noise. *This business shall not create excessive noise; the children's outdoor play area is buffered from the neighbors by a hillside and vegetation.***

- 105-23 – Dust, fumes, vapors and gases. *There will be no emissions created by this business.*
- 105-24 – Odors. *The will be no odors emitted from this business.*
- 105-25 – Glare. *There will be no additional lighting added to the existing building.*
- 105-26 – Stormwater runoff. *There will be no change to the existing landscape other than the removal of three trees to expand the turn-around area. The vegetation surrounding the parking spaces shall remain in place.*
- 105-27 – Erosion control. *There will be no change to the existing landscape other than the removal of three trees to expand the turn-around area. The vegetation surrounding the parking spaces shall remain in place.*
- 105-28 – Setbacks and screening. *There is vegetation in existence to screen from the neighboring properties.*
- 105-30 – Water quality. *There is no change to the existing property that would affect water quality. A new septic system is on site.*
- 105-31 – Preservation of landscape; landscaping of parking and storage areas. *The surrounding landscape, which is trees and shrubs, shall not be disturbed.*
- 105-32 – Relation of proposed building to the environment. *The existing home fits in well with the surrounding area.*
- 105-33 – Refuse disposal. *All waste shall be removed by the applicant and it should be minimal.*
- 105-40.1 – Child day care. *The single-family dwelling does meet the minimum lot size requirement and has all town building permit approvals, and the home will hold all legally required licenses and approvals by the Town and State prior to beginning operation. No more than 12 children shall be cared for without additional approval. The parking / turnaround area is adequate for the number of patrons and employees of this business.*
- 105-47 – Signs and billboards. *Any signage shall be obtained through the Code Enforcement Office.*

Roger A. noted that on the Fire Marshall's report they required a Plan of Correction prior to the operation of the day care. Mrs. Lam said, right. Roger stated the report said that the "vertical openings must be protected"; the "Door between level of exit and the story below requires a 20 minute door", and the "Outlets and Switches must have proper protective covers" on them.

Roger A. asked if the children would be sleeping in the living area? Mrs. Lam said yes, there would be mats and the children can bring sleeping bags with them. She stated there would be a room down the hall for those children who do not want to sleep so they can remain active. Either she or her sister would be in the playroom and the other person with the napping children.

Roger A. asked if the hours of operation would be 6:00 a.m. to 6:00 p.m., five days a week? Mrs. Lam replied, yes. Roger said the only issue of concern for him was with having 12 children on site, he would like a condition that there is no greater than six children per one adult. Mrs. Lam said she understands, that was State mandated as well. She said the number of children per adult is also dictated by the ages of the children. Roger said it was up to the board if it became a condition. Madge B. stated it certainly was a good issue but there was no way the board could in fact enforce it.

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

**Roger A. reviewed Shapleigh Zoning Ordinance 105-73.G "Standards applicable to conditional uses".**

- 1) The use will not have an adverse impact on spawning grounds, fish, aquatic life, birds or other wildlife habitat. ***It will not.***
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. ***N/A***
- 3) The use is consistent with the Comprehensive Plan. ***It is, the Comprehensive Plan encourages home occupations.***
- 4) Traffic access to the site is safe. ***It is, the site distances meet the minimum requirement in the ordinance and there shall be an area to turn around on site so no vehicle will back out onto the road.***
- 5) The site design is in conformance with all municipal flood hazard protection regulations. ***It is, this property is not in the flood zone.***
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. ***A state approved septic system has been installed and is large enough to accommodate the day care. Solid waste shall be brought to the transfer station by the applicant.***
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. ***There is no hazardous waste associated with this business.***
- 8) A stormwater drainage system capable of handling twenty-five-year storm without adverse impact on adjacent properties has been designed. ***There are no changes being made on site to affect stormwater drainage and the home has all the necessary permits by the town through the building permit process.***
- 9) Adequate provisions to control soil erosion and sedimentation have been made. ***There are no changes being made on site to affect stormwater drainage or cause erosion.***
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. ***There is, this property is located a short distance from Silver Lake.***
- 11) The provisions for buffer strips and on-site landscaping provide adequate protection to neighboring properties from detrimental features of the development, such as noise, glare, fumes, dust, odors and the like. ***This business will not produce anything detrimental to the neighboring properties. Lighting on the building is in existence and is minimal. There will be limited noise generated by this activity and the area is surrounded by vegetation.***
- 12) All performance standards in this chapter applicable to the proposed use will be met. ***They shall.***

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

- 1) **Adherence to the Fire Marshall's Report and License from the Department of Health & Human Services must be obtained prior to operation.**
- 2) **The daycare cannot open until the parking area is enlarged per the plan provided and approved by the Code Enforcement Officer.**
- 3) **The hours of operation shall be 6:00 a.m. thru 6:00 p.m., Monday through Friday.**
- 4) **Any signage shall be permitted through the Code Enforcement Office.**

**Roland L. made the motion to approve the Conditional Use Permit to open an in-home child day care for up to twelve children, with the above noted conditions. Madge 2<sup>nd</sup> the motion. All voting members were in favor. Vote 4 – 0. (Diane S. abstained because she was not present for the initial review or the site visit.)**

Nothing further was discussed.

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**Best Possible Location – Replace Existing Dwelling – Need to Amend Plan After Survey - Map 26, Lot 37 (114 21<sup>st</sup> Street) – Stephen Singlar, Applicant**



Mr. Singlar was present to discuss the changes from the original application approval. He was unable to attend the Planning Board meeting on Wednesday, February 25<sup>th</sup> due to a business obligation.

Mr. Singlar began by giving board members a copy of the final site plan with the correct measurements for the original structure as well as the proposed structure. He said his plan was to replace the existing structure, making the new structure four feet narrower than what existed and center the new structure on the lot. He stated that the original plan presented was inaccurate not knowing exactly where the property lines were. He said that after meeting with CEO McDonough the decision was made to center the new structure providing more compliance with the side lot line requirements.

Mr. Singlar stated that when looking at the original plan it looked like the existing home was 11 feet from the side lots line when in fact it was not. The existing home was 7 feet from the lot line to the east, (the left side on the plan) and the existing eave was 16" wide. He stated with the 16" eave the structure was actually 5.8 feet from the east lot line.

Mr. Singlar stated with respect to the westerly lot line, the measurement to the foundation was 9 feet, and with the 16" eave it was 7.8 feet from the lot line. He said the original structure was very close to the side lots lines.

Mr. Singlar stated that during the initial survey the stake marking the property boundary by the road was not found. When the survey for the new foundation was done, the stake was found and it reduced the width of the property by two feet, making the lot approximately 48 feet wide. This made the new foundation closer to the side lot line than the original plan.

Mr. Singlar noted the new surveyed plan still keeps the proposed structure in the center of the property and it is still farther from the side lots lines than the original structure. He said that originally he said he was going to have 16" eaves not knowing what the stormwater runoff plan was going to be. He stated now he is going to have 8" eaves.

Mr. Singlar stated that the correct plan places the new structure at the closest, 10.02 feet from the side lot line. He said he was before the board to get approval, based on the new survey plan.

Roger A. asked if the new foundation was in? Mr. Singlar stated, yes it was. Mr. Singlar stated when he found out about the new distance, the footings were in, and everything was set to go the day after the last meeting, which didn't take place. (The meeting on Tuesday was moved to Wednesday due to a snow storm.)

Roger A. stated that the footings could have been moved after the planning board's last decision. Mr. Singlar stated that the problem happened because he had to leave on a business trip on Wednesday, the foundation got poured, then he found out about the board's decision on Thursday. Mr. Singlar stated he realized the problem was his, being a poor general contractor on this project.

Mr. Singlar asked some advice, and didn't get a definite answer, with respect to how the board might move on the application based on the new information and he believed that because the new structure was more conforming than the old structure, the board was likely to approve the change. But he did state again he got no definite answer.

Mr. Singlar guided the board members to a page he submitted showing where the project was at this time. It listed in part, that the silt fences have been put into place; the survey placed the foundation on the surveyed

plan; erosion controls are ongoing, with French drains being used around the perimeter of the foundation with additional controls added in the future by way of the completed landscaping; the original structure has been removed; debris has been removed by the company called, “Dumpster Depot”; and the applicant is seeking approved of the new side lot line measurements based on the completed survey.

Mr. Singlar noted that the new structure will still be placed beyond the 100 foot high water line as on the original plan. Mr. Singlar also noted the structures on the original plan that were slated for removal, have in fact been removed from the site.

Mr. Singlar concluded that the new structure will still be more in compliance with the zoning ordinance than the original structure.

Roger A. stated Mr. Singlar, not knowing what the boards’ decision with respect to the new side lot line designation, should have stopped the project. Mr. Singlar stated he agreed the foundation should not have gone in but all work did stop as soon as he knew what the boards’ decision had been. He said the lumber has been canceled and any other deliveries. Roger stated the board had reduced the size of the home to keep it 11 feet from the side lot lines as originally approved, now the new home is 10 feet from the side lots lines. Barbara G. noted that the original 11 foot side lot line designation was not correct; there hadn’t been a survey yet. Mr. Singlar stated correct. Roger said yes, the reduction in the size of the house was based on the original side lot line designations.

CEO McDonough asked how much smaller is the width of the lot from the original plan? Roger A. stated it is actually two feet smaller than noted initially. Roger said the existing building was actually two feet closer to the side lots lines than originally depicted.

CEO McDonough stated erosion is one of the issues with encroachment on the neighbors and he said Mr. Singlar has already done extension erosion control measures around the foundation not only at the normal level but also at the grade level, using pipes that go down to the lower level and he is going to shrink the size of the overhang.

Mr. Singlar stated that one home on one side of him was approximately 50 feet from the high water line and the other 75 feet, so there are no homes directly adjacent to the new structure.

Roland L. asked if to be in compliance with the ordinance the board is looking for 30 feet combined width to the side lot lines? CEO McDonough stated yes. Mr. Singlar stated that he was looking to be more conforming than the original home.

Madge B. asked CEO McDonough to explain the drainage system put in by Mr. Singlar. He did and Madge thanked him because she noted that runoff is one of the big issues in the Shoreland district.

CEO McDonough apologized for not being able to attend the last board meeting, stating he could have helped to address this issue. Roger A. stated that was the reason the board made the decision to reduce the size of the overhang and reduce the width of the home because of worry about stormwater draining onto neighboring properties.

CEO McDonough stated the overhang is always an issue and an oversight by the surveyors. CEO McDonough stated it seems to be a problem every time. He said every survey he receives shows the plot plan of the foundation, never is the overhang included. He said contractors are seldom aware of the overhang issue, the homeowner is never aware. CEO McDonough stated that it isn’t always brought up

clearly at a meeting. CEO McDonough said sometimes after he points out there is a problem because the overhang wasn't included in the plan, then the homeowner has to come back to the planning board to change the approval. He said again, the issue is always a problem but he wasn't sure how to address it clearly so this doesn't continue to happen.

Madge B. said the two biggest concerns with Best Possible Location was stormwater runoff going onto the neighboring property and placing the new home closer to the existing side lot line.

CEO McDonough stated another problem which shows up with many of the waterfront lots are inaccurate lot lines. The homeowner, in this case Mr. Singlar, can spend thousands of dollars to try to get the two feet back he believes he has, and may or may not find he has that two feet. Or he can just go with the new survey lines presented to him which is what many people do because of the cost involved. CEO McDonough stated that because of this, the potential with waterfront property owners to find they do not have the side lot line distance they believed they had is high, and he believes the board will see more and more people having to come back before the board with different side lot line measurements.

Mr. Singlar stated that his surveyor told him just what CEO McDonough explained, that he could in fact spend a lot of money to try to gain the two feet he lost but the surveyor did not promise after all the money is spent, the two feet would be there. Mr. Singlar said that what disturbed him with this is the stake that now shows the lot to be two feet narrower is bent over and he believes it's clear it has been disturbed. He did think of possibly having the entire area surveyed but again the cost was the deciding factor.

Mr. Singlar stated in conclusion the old house was four feet wider than the proposed house and there was no drainage around it. And the overhang was much greater than what he is proposing at this time. Mr. Singlar noted that he put in a French drain instead of utilizing a gutter system for two reasons; one being he was told by the contractor French drains work better than a gutter system and second, gutters would void the warranty on the new roof.

Roger A. stated the main concern of the board members was stormwater runoff. He said because the foundation is already in and with the placement of the French drain system, he thought the board could accept the new plan as presented.

**Diane S. made the motion to accept the new survey plan and change the original approval as follows:**

- 1) The structure shall be a minimum of 101' from the high water line; and 10' from the side lots lines, having an 8" overhang on the new structure, per the amended plan presented March 10, 2009.**
- 2) All other conditions of the original approval remain in effect.**

**Madge B. seconded the motion.**

Roland L. stated he was in favor of the motion but he wanted it noted he was not happy that the foundation went in prior to approval. He said that was why one of the conditions is you get a survey for this very reason. He said more times than not it turns out what a person believed they have for lot lines they do not. Roland said he did not want the board to establish precedence for someone to put in a foundation then come back to the board and say "hey I was wrong but the foundation is in place". Diane S. stated that she wanted to thank Mr. Singlar for bringing it to the boards' attention whereas someone else might not have. Roland agreed. Madge B. stated she believed Mr. Singlar knows the board isn't happy about this, she said

Roger has been very clear about it. Mr. Singlar stated he was sick about this for the last two weeks and yes he understood.

**All members voted to approve the placement of the foundation per the new plan provided and with the above conditions. Vote was 5 – 0.**

Note: The original conditions were as follows:

- 1) Landscaping Plan to restore the area after construction to prevent soil erosion. This plan must be received by the Code Enforcement Officer prior to the issuance of an Occupancy Permit.
- 2) Best Management Practices shall be used during the entire construction project to control soil erosion.
- 3) A licensed surveyor must place the structure per the approved plans.
- 4) Erosion control measures shall be put into place for the roof runoff; these can be done by way of the landscaping plan. These measures must be approved by the Code Enforcement Officer.
- 5) **The structure shall be a minimum of 101' from the high water line; and 11' from the side lots lines, per the plan presented, dated 1/16/09.**
- 6) The structures depicted to be removed shall be removed from the site per the plan presented, dated 1/16/09.
- 7) The debris removed from the site shall not be brought to the Shapleigh Transfer Station.

Nothing further was discussed.

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**Conditional Use Permit – *Earth Moving* – Map 10, Lot 22 – Robert Ferrera, Jr., Applicant**

Mr. Ferrera was present for the review of his application.

Mr. Ferrera had been asked by the Planning Board to get all the necessary State permits prior to further review. (Mr. Ferrera's application is for the removal of 40 feet of material initially with the end result being a permanent farm pond.) Mr. Ferrera stated that he had been working with the Dept. of Inland Fisheries and Wildlife as well as the D.E.P. to obtain the State's approval for his project. Note: Mr. Ferrera's property is known to be within the vicinity of a breeding ground for three threatened wildlife species, those being the Sleepy Duskwing Butterfly, Twilight Moth, and the Pine Barrens Zanclognatha Moth; as well as an endangered species known as the New England Cottontail. Mr. Ferrera stated that after the various reviews by both departments over the last several months it was concluded by both the D.E.P. and MDIFW that Mr. Ferrera's project did not require an Incidental Take Permit if he removed gravel from the existing blueberry field on his property.

In a letter from MDIFW, written by Judy Camuso, Assistant Regional Wildlife Biologist, it was noted that "any additional clearing beyond the nonforested footprint of the existing blueberry field will include a high likelihood for take and/or harassment of the Endangered and Threatened species" on Mr. Ferrera's property. The letter goes on to state "As discussed during our site visit, Mr. Ferrera has two options as he plans for the future development of his property. Mr. Ferrera could hire a professional biologist to conduct butterfly and cottontail surveys (protocols and biologists must be preapproved by MDIFW). Based on the results of those surveys, MDIFW will reevaluate the need for any additional habitat protection, including the need for an ITP. Mr. Ferrera could also proceed without conducting these surveys and assume there will be impacts to the above species, and develop an ITP accordingly."

Mr. Ferrera stated based on the information received from the D.E.P. and MDIFW he will forgo excavating pod A and B at this time and proceed with excavating pod C to be followed by pod D (see the plan provided). Mr. Ferrera stated by doing this he will be able to stay out of the tree line as required by MDIFW. Mr. Ferrera stated once an ITP is developed, then pods C and D will be used as mitigation areas, they will be reforested to suit the species that are endangered.

The board members reviewed the new plans provided. Madge B. asked if he had all the State approvals at this time? Mr. Ferrera stated yes, but only for the open field. Madge asked what an ITP was? Mr. Ferrera stated it was an Incidental Take Permit. He said he either has to set aside the same amount of land that is available now for the threatened and endangered species or spend a lot of money on surveys to see exactly what species are there. He said by excavating the open field he avoids all the issues associated with the threatened or endangered wildlife.

Madge B. asked if the project is to put in a pond? Mr. Ferrera stated correct. Madge asked where the board members were on his property when they did the site visit? Mr. Ferrera stated they went to pod A.

CEO McDonough asked from the surface how deep the excavation would be? Mr. Ferrera stated approximately 40 feet. CEO McDonough asked why the pond was going to be 40 feet deep? Mr. Ferrera said the pond wasn't going to be 40 feet deep; there was 40 feet of material being removed to get to the water level needed to create the pond. Mr. Ferrera expected 10 feet of water based on the water level of his well.

Madge B. asked if he was going to sell the 40 feet of sand? Mr. Ferrera stated, correct.

Roger A. asked what the time limit was going to be to stabilize the area? Mr. Ferrera did not have a set time. He hoped the project would be completed within two years. Mr. Ferrera said the State requires the first pod to be revegetated before moving on to the next area. He said an exact date wouldn't be known until he found out who would actually be moving the material and then he would get a time table from them. Roger noted that a mining permit was only valid for three years and then he would have to re-apply.

CEO McDonough asked if the State wanted revegetation within six months of the excavation? Mr. Ferrera wasn't sure he said he has been working with Mark Stebbins of the D.E.P., he is in charge of mining, so he would ask him.

Roger A. asked if he was looking for approval for just pod C or both C and D? Mr. Ferrera stated both C and D. Mr. Ferrera stated he has to do one at a time because you cannot do over 5 acres at a time and you cannot have two active spots at one time. Madge B. said therefore, she did not feel the board should approve more than one pod at a time. Roger agreed. Roger stated Mr. Ferrera would have to come back before the board when he was ready to excavate pod D.

Roland L. asked about the process of the two pods. Mr. Ferrera stated after pod C is completed it has to be revegetated prior to beginning pod D. Roger A. stated he would like to see the re-vegetative plan as well as the actual slopes of the excavation to be sure it complies with the ordinance. Mr. Ferrera stated the plan is to have 33% slopes. He said when the ITP's are complete the excavation is going to be sloped up to the outside of the lot. Mr. Ferrera stated it would be 33% initially then after D.E.P. approval, it will be graded up to the lot line.

Mr. Ferrera stated initially the revegetation will be hydroseed and mulch until an ITP is created which will determine what needs to be planted.

Mr. Ferrera stated he would not be able to do pod A and B unless he received approval from the D.E.P. and MDIFW.

Roger A. reviewed § 105-39 "Earth removal and filling.", he read Section F(4) and (5), which pertains to the Application for Permit, it read as follows:

- (4) The proposed provisions for drainage and erosion control, including drainage calculations.

- (5) Other information necessary to indicate the physical characteristics of the proposed operation, including existing topography and the proposed horizontal and vertical limits of the excavation or filling and proposed reclamation measures (grading, loaming, seeding, mulching, planting, etc.).

Roger A. then read §105-39.G “Conditions of permit.”

Roland L. asked what pod C and D will be used for in the future? Mr. Ferrera stated a mitigation area, it will be reforested for the threatened and endangered species so he could then excavate the area he wants to. Mr. Ferrera stated the reason to remove gravel from C and D is to sell the gravel to fund the actual project. Roland asked, “The intent isn’t to create a trout pond or swimming area?” Mr. Ferrera said that when he put in his irrigation pond then that may be an option but right now the excavation is to pay for the fees to be incurred by having to hire a biologist.

Mr. Ferrera said that pod A is where the pond will eventually go because he believes that is the area that he thinks the water is at a consistent level.

The board asked how much gravel would be removed from the site? Mr. Ferrera stated he wouldn’t know until he had a yardage calculation done. He guessed it to be approximately 230,000 yards for the first pod.

Roger A. noted §105-39.G(12) which read: “Sufficient topsoil or loam shall be retained to cover all areas, so that they may be seeded and restored to natural conditions.” Mr. Ferrera stated he understood and was going to push all the topsoil off into one area for future use.

The board asked Mr. Ferrera how many trucks he expected would move gravel per day? Mr. Ferrera stated that he would need to talk to a high volume person. He said he had a company in mind but that was months ago, he dropped negotiations when he realized it would take him months to get the necessary State approvals.

CEO McDonough asked how he was going to keep the dust down? Mr. Ferrera stated he was thinking of purchasing an old fuel truck and converting it into a water pumping truck to wet the sand down. Mr. Ferrera said he lived near the excavation site and didn’t want sand blowing toward his home.

Roger A. stated that during construction the slopes cannot be anymore than 1 foot vertical to 4 feet horizontal which equates to 25%. Mr. Ferrera stated he thought it couldn’t be more than 33%. Roger said at the conclusion of the project it could be 33% but during the project for safety reasons it couldn’t be more than a 4 to 1 slope.

Mr. Ferrera stated he would revise the plot plan to show the 25% grade.

Roger A. stated another requirement of the ordinance is the requirement that “No permit shall be issued without a surety bond or other equivalent security to ensure compliance with such conditions as the Planning Board may impose. The bond or surety shall be in an amount recommended by the Code Enforcement Officer and approved by the Planning Board, as sufficient to guarantee conformity with the conditions of approval, taking inflation into account.” [§105-39.I(1)]

Roger A. also read §105-39.I(2), which read as follows: “No permit shall be issued for a period to exceed three years, although such permits may be renewed for additional periods in the same manner.”

Roger A. thought the board should review one phase, one pod at a time. When that one is completed then the applicant comes back before the board to have the second pod approved. Mr. Ferrera had no problem with this suggestion.

CEO McDonough, with respect to the surety bond, stated he had no idea what the amount of the bond should be. CEO McDonough suggested the applicant find out what the amount of the bond should be and then the planning board could either accept his suggestion or look into it further. CEO McDonough stated he did not have the authority to hire an outside expert to come up with the figure. Roger A. and Madge B. agreed Mr. Ferrera should get the estimate for the bond.

Roger A. read §105-39.H(9), which falls under “Optional conditions of permit.” which read as follows: “The need for written approval of the soil and erosion and sedimentation plan by a licensed civil engineer selected by the applicant or the Planning Board.” Roger said a detailed plan must be received for the reclamation of the area which at the present time the board does not have. Mr. Ferrera stated his plan was to put the topsoil back and hydroseed the area until he gets an ITP plan from the biologist.

Mr. Ferrera asked what the bond had to cover? He asked if it was for the cost of the hydroseed and revegetating? Roger A. said yes but he said it would also include any other reclaiming that would need to take place such as if the project wasn’t finished or if there was gravel that had to be removed because it wasn’t removed and is piled up, etc. Roger said the area along the roadway has to remain clean and if the project stops and it hasn’t been done then the town would have to hire someone to do it.

Mr. Ferrera asked what the board thought would be a ballpark figure? Mr. Ferrera asked if there was a list of things he should look for? CEO McDonough suggested Mr. Ferrera go to the Town of Acton and ask what type of bond they asked for with respect to the new gravel pit that is on Rte. 109. CEO McDonough stated any new gravel pit would have had to go through the CUP process and provide a reclamation bond. (Currently the only operating gravel pit in Shapleigh is owned by the Town which did not have to provide a bond.)

Roger A. said the board would need to know the amount of trucks per hour, per day. He asked what the hours of operation would be? Roger asked if the gravel removal will be year round or only seasonal? Mr. Ferrera thought the project would have to go year round because of the amount of fill that is going to be removed. Roger said these are questions that would have to be answered at the final review.

Roger A. said the board needs a reclamation plan and where the gravel is going. Madge B. said also the size of the trucks had to be documented. Mr. Ferrera stated he believed they would be 18 wheel dump trucks. The board gave Mr. Ferrera a copy of §105-39 “Earth removal and filling.”

Roger A. said it would be best to have an estimate of the number of yards so the board would have an idea the length of time of the project. Roger said under §105-39.H, the board would want information under (1), (2), (4), (8) and (9) and the bond requirement is under §105-39.I(1).

Madge B. asked if a road was needed? Mr. Ferrera showed on the plan the new entrance that would be used for the trucks. He stated it was located away from the entrance to the ball field and it provided the site distance needed at 50 m.p.h.

Roland L. asked if he would need the State permit for access onto Rte. 11? Madge B. stated yes and the new entrance would need to be wide enough for the trucks to have easy access.

Mr. Ferrera wanted to know if for a reclamation plan the board wanted the ITP plan? Madge B. said no. Roger A. asked, just how you are going to reclaim the first pod prior to the ITP? Mr. Ferrera stated that he could not have the ITP until two years worth of studies are done on the endangered species of cottontail rabbits by the biologist, and then they will sign off so the ITP can be created.

CEO McDonough asked who drafted the ITP? Mr. Ferrera stated a biologist and he said it was a very costly plan. CEO McDonough asked if the biologist that had to be hired for the study was just for the ITP plan. Mr. Ferrera said yes. Mr. Ferrera said they would come in and do the studies, surveys, and then they would create a plan. Mr. Ferrera stated the money from the gravel extraction on the first two pods will pay for the biologist and the ITP plan so he can create the pond he wants to on pod A.

Roger A. reviewed §105-39.C, reading the last line, “In either case, all relevant performance standards below shall be observed, including binding agreements to guarantee proper reclamation of the site after operations cease.” Madge said the plan had to be done in such a way that it is something that would be enforceable in the future. Diane S. said it needed to be done by a licensed civil engineer. Mr. Ferrera stated he would have Albert Frick write the plan. CEO McDonough stated that would be perfect, he has done them before and knows what the board would want. Madge stated that Mr. Frick should also do the erosion and sedimentation plan. Roger said the project was all self contained so that plan would not be necessary.

Roger A. told Mr. Ferrera once he had all the information the board requested, he should contact Barbara F. and she would schedule the public hearing.

Nothing further was discussed.

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**Conditional Use Permit – Telecommunications Tower – Map 6, Lot 44 (248 County Road ) - N. William Kostis, Applicant**

Mr. Kostis was present to review his application.

The board members received a copy of a plan depicting the location of the proposed tower along with abutting properties to Mr. Kostis’s land. On the plan also depicted was the existing 50 foot right-of-way leading to an existing telecommunications tower and building. The plan showed the area around the existing tower was cleared for fire protection purposes, so no additional area needs to be cleared for the new tower.

A plan was also provided showing the tower details. The new tower will allow for up to 9 carriers. Also provided were the foundation details for the tower.

Mr. Kostis explained the existing tower was not built for cellular service; it was for two-way radio antennas. He stated this new tower would allow up to nine independent carriers’s to place their equipment on site, as well as their equipment shelters. He said the area was already cleared for the tower and the equipment shelters. He did not believe the tower would be very visible.

Mr. Kostis thought the location of the tower was such that it would reduce the need for a lot of additional towers in the area due to of the height, the signal would not be interfered with by hills or vegetation. Mr. Kostis talked about the new cellular frequency and that this required more and more towers spaced closer together, but he thought because of the height of his tower it might help eliminate a few towers.

Mr. Kostis stated that because his tower was privately owned any cellular company could put their antenna on the tower. He stated that most companies only put up a tower that will carry four antennas’, this tower is designed for nine. He thinks as more and more cellular companies come into the area there will be room for them on his tower.

Roger A. noted that he had been contacted by AT & T about possibly putting up a tower on County Road. Mr. Kostis stated they had contacted him and if he puts up the tower by August, they will use his tower.



Mr. Kostis stated there will probably be a time in the future when everything is relayed through a tower.

Roland L. asked how tall the existing tower was? Mr. Kostis stated 300 feet. Mr. Kostis said the new tower will be 190 feet in height. He stated that with the original CUP for the 300 foot tower, there needed to be a 300 foot perimeter around the tower. He said the 190 feet required to the lot line for this tower will be within that 300 foot area, and the new tower will be greater than 190 from any side lot line.

Mr. Kostis stated that presently he is being taxed commercially on six acres for the original tower. This tower will be erected within those six acres. Roger A. smiled stating the taxes have nothing to do with the Planning Board.

Mr. Kostis stated the equipment shelters are not included with the application because each carrier will have to provide their own equipment shelter.

Roger A. asked for a plan for the power to the site. Mr. Kostis stated there was already power to the site because it was put in for the first tower. Mr. Kostis stated there would be a compound brought to the site for the new tower which consists of a concrete building that sits on a gravel base. He said power will be fed underground to this building via the existing power box on site. He said all buildings on site are not permanent, they can be moved at any time.

Mr. Kostis stated as carriers come in, as part of their plan will be their electrical service plan. Roger A. stated a condition of the permit is that they comply with the NEC codes. Mr. Kostis stated he understood.

Roger A. stated they would need a bond for the removal of the tower. Mr. Kostis said he had already contacted his insurance company and they had no issue with providing the bond. Roger said the last bond the town accepted was for \$20,000.

**Roger A. stated a site inspection would be held on Tuesday, March 24<sup>th</sup>. Members will meet at the Town Hall at 6:00 p.m. Roger said a Notice to Abutters will be mailed and a Public Hearing held at 7:00 p.m. prior to the planning board meeting.**

Nothing further was discussed.  
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**OTHER:**

Member agreed to wait until after Town meeting to begin the final review of the Shoreland Zoning changes.

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***The Planning Board meeting ended at 9:15 p.m.***

Respectively submitted,

Barbara Felong,  
Land Use Secretary  
[planningboard@shapleigh.net](mailto:planningboard@shapleigh.net)

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**March 24, 2009**

Members in attendance: Roger Allaire (Chairman), Roland Legere, Maggie Moody, Diane Srebnick and Barbara Felong (Secretary). Code Enforcement Officer, Steven McDonough was also in attendance.

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The following words are not verbatim unless accompanied by quotation marks “ ”.

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### **Public Hearing Began at 7:00 p.m.**

#### **Conditional Use Permit – Telecommunications Tower – Map 6, Lot 44 (248 County Road ) –**

##### **N. William Kostis**

Mr. Kostis was present for the public hearing.

Roger A. asked Mr. Kostis to tell the audience and board members what his application was for. Mr. Kostis stated he had been approached by some cellular companies asking if they could put antennas on the existing tower that Mr. Kostis owned. Mr. Kostis stated that because the tower was built in the 1980's it won't accommodate cellular antennas. Therefore, Mr. Kostis stated he wanted to build a smaller tower, 190 feet in height, adjacent to the existing tower. This tower could accommodate any cellular carrier's that want to use this location.

One audience member asked what the location of the new tower would be? Mr. Kostis stated it would be adjacent to the existing tower on County Road.

Mr. Ferguson, who owns land directly abutting the Kostis land, asked exactly where on the property the new tower would be, in relationship to the existing tower? Mr. Kostis stated about 100 feet away from the existing tower, going in a northerly direction. Mr. Kostis stated this location was chosen so it wouldn't interfere with the existing guide wires of the 300 foot tower.

An audience member asked if it would cover the Granny Kent area, off the Mann Road? Mr. Kostis stated he knew of one carrier that was going to be doing the Rte. 11 area by the transfer station, he thought they may cover that area. Roger A. stated coverage for people would depend on what carriers chose to be on the new tower, whether it be AT & T, US Cellular, etc. and what company the individual subscribed to.

Mr. Kostis stated that originally the State was going to fund some towers in rural areas but that never materialized so it is up to individual private carriers to fund the towers. Mr. Kostis stated that the cellular companies preferred private individuals to put up towers so then they don't have to have the burden of the cost of the tower in rural areas.

An audience member asked what the height of the tower would be? Mr. Kostis stated 190 feet.

Mr. Ferguson stated he was an abutter of the Kostis property and he felt that this location was an ideal place for a cellular tower. He thought the location would be the least disruptive to the surrounding area.

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

The Public Hearing was closed at 7:10 p.m.

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

The minutes from Tuesday, March 10, 2009, were accepted as read.

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**Conditional Use Permit – Telecommunications Tower – Map 6, Lot 44 (248 County Road ) – N. William Kostis**

Mr. Kostis was present for the final review of his application. Several board members did a site inspection prior to the meeting.

Mr. Kostis reiterated that he was before the Planning Board with a request to put up a 190 foot cellular tower, next to the existing approved 300 foot tower on his property. Mr. Kostis stated the tower would be available for any cellular company and the new tower would house up to nine carriers.

Roger A. asked if there were any questions for Mr. Kostis. There were none.

Roger A. stated the following ordinance standards have been met:

- 105-17 - Land Uses. *This business, telecommunications, is a permitted use in the General Purpose district with a Conditional Use Permit.*
- 105-19 – Notes to table on dimensional requirements. *The tower will meet the required setbacks and the lot size exceeds the minimum required.*
- 105-20 – Applicability of standards; prohibited uses. *This application is a permitted use within the zoning ordinance and will not cause any health and safety concerns.*
- 105-21 – Traffic. *Traffic will have safe access. The site distances were approved on the original CUP for the existing tower. In the addition the traffic to the site will be minimal.*
- 105-22 – Noise. *The telecommunications facility will not create any noise after the tower is erected.*
- 105-23 – Dust, fumes, vapors and gases. *There will be no emissions produced.*
- 105-24 – Odors. *The will be no odors emitted.*
- 105-25 – Glare. *There will be no lighting added to the new tower.*
- 105-26 – Stormwater runoff. *There will be no change to the existing landscape. The area was already cleared for the original 300 foot tower. The new tower will be erected within the 300 foot perimeter of the existing tower.*
- 105-27 – Erosion control. *There will be no change to the existing landscape. The area was already cleared for the original 300 foot tower.*
- 105-28 – Setbacks and screening. *There is vegetation in existence to screen from the neighboring properties.*
- 105-30 – Water quality. *There is no change to the existing property that would affect water quality.*
- 105-31 – Preservation of landscape; landscaping of parking and storage areas. *The surrounding landscape, which is trees and shrubs, shall not be disturbed. There is an area cleared which is large enough to accommodate the minimal vehicle traffic on site.*
- 105-32 - Relation of proposed building to the environment. *The portable buildings for the cellular companies will blend in well with the existing building on site. In addition, they will set over 1000 feet from County Road.*
- 105-33 – Refuse disposal. *There is no waste associated with this business.*
- 105-39 – Earth moving and filling. *The road is already in place and the area for the tower was cleared for the first tower.*

105-47 – Signs and billboards. ***The only signage will be the existing FCC signage which is for identification and an emergency contact number.***

105-52 - Water quality protection. ***There is nothing to be stored on site to affect water quality.***

105-61.2 – Telecommunications facilities. All telecommunications facilities requiring a conditional use permit shall conform to the following standards:

- 1) No telecommunications facility, tower or antenna shall exceed 190 feet in height.  
***The tower shall be 190 feet in height.***
- 2) No telecommunications facility shall be lighted.  
***There shall be no lights on the telecommunications tower.***
- 3) Towers shall have a galvanized steel finish or be painted a neutral color so as to reduce visual obstructiveness.  
***The tower will have a galvanized steel finish to reduce visual obstructiveness.***
- 4) Towers, guys and accessory facilities shall meet the minimum zoning district setback requirements.  
***The tower shall be more than 190 feet from any lot line which exceeds all the minimum zoning requirements.***
- 5) The owner shall allow other future wireless service carriers, including providing space to public agencies, etc.  
***The tower will accommodate up to nine independent carriers.***
- 6) The owner shall provide evidence to the P.B. that the telecommunications facility is designed, constructed and maintained in conformance with applicable federal, state and town building, electrical and safety codes.  
***The tower and any future communications buildings shall be permitted through the Code Enforcement Office.***
- 7) No advertising or signage is permitted on the telecommunications facilities.  
***There is one sign in existence and it provides FCC identification and an emergency 1-800 number for contact information. No additional signage shall be added.***
- 8) The owner of the telecommunications facility shall be required to remove the tower should it not be used for the use or uses approved for a period of 12 consecutive months. An applicant shall post a performance guaranty with the Town prior to obtaining a permit that is equal to 125% of the cost of removing the structure.  
***No building permit shall be issued until an acceptable bond is received, one that is approved by both the Board of Selectmen and the Town's attorney.***
- 9) The minimum size of the lot with a telecommunications facility more than 70 feet in height shall be 80,000 square feet.  
***The lot size for the facility is 47.8 acres.***

Roger A. reviewed Shapleigh Zoning Ordinance 105-73.G “Standards applicable to conditional uses”.

- 1) The use will not have an adverse impact on spawning grounds, fish, aquatic life, birds or other wildlife habitat. ***It will not.***
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. *N/A*
- 3) The use is consistent with the Comprehensive Plan. ***It is, the Comprehensive Plan encourages the upgrade of utilities.***
- 4) Traffic access to the site is safe. ***It is, there will be minimum traffic entering or exiting the site once the new tower is put into place.***
- 5) The site design is in conformance with all municipal flood hazard protection regulations. ***It is, the proposed structure is not in a flood zone.***
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. *N/A.*

- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. ***There will be no hazardous materials stored on site.***
- 8) A stormwater drainage system capable of handling twenty-five-year storm without adverse impact on adjacent properties has been designed. ***There are no changes to the site since the first tower was approved. The new tower will be within the 300 foot cleared radius of the existing tower.***
- 9) Adequate provisions to control soil erosion and sedimentation have been made. ***There are no changes to the site since the first tower was approved. The new tower will be within the 300 foot cleared radius of the existing tower. No additional vegetation will be removed.***
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. ***The area around the tower has been cleared of trees and shrubs, having nothing combustible near the towers.***
- 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. ***The existing vegetation shall be kept; the area cleared around the permitted tower will remain unchanged. No additional lighting shall be added and there will be no noise, glare, fumes, dust, odors, etc. generated.***
- 12) All performance standards in this chapter applicable to the proposed use will be met. ***They shall.***

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

- 1) **There shall be a performance guaranty provided for 125% of the projected removal costs of the tower, made payable to the Town of Shapleigh. The amount to be approved by the Board of Selectmen.**
- 2) **No building permit shall be given by the Code Enforcement Office until the performance guaranty is provided.**

Roger A. asked if there were any additional comments. Several abutting land owners stated they had no problem with Mr. Kostis's proposal. Roland L. stated he worked with an abutting property owner who asked that Roland pass on his unconditional support for the new tower.

**Maggie M. made the motion the board approve the application with the above stated conditions. Diane S. 2<sup>nd</sup> the motion. All members were in favor. Vote 4 – 0.**

Nothing further was discussed.

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**Conditional Use Permit – Sewing Machine Repair Business – Map 10, Lot 20A (1529 Shapleigh Corner Road) – Michael Cote, Applicant**

Mr. Cote was present for the review of his application.

Mr. Cote stated he wanted to open a sewing machine sales and repair business out of his existing garage. Mr. Cote presented to the board, along with his application, a sketch plan depicting the size of his lot, the location and size of the house and garage, the location of the septic system, existing shed, and driveway and parking area.

Roger A. asked what the hours of operation would be? Mr. Cote stated 8:00 a.m. thru 6:00 p.m., six days a week. Roger asked, no Sundays? Mr. Cotes stated, correct.

Roland L. asked what brand of sewing machines he would be carrying? Mr. Cote stated he didn't know at this time. He was going to start with the repair business and then solicit franchise options.

Diane S. asked if there would be any other employees. Mr. Cote stated it would be just himself. Board members reviewed pictures of the existing garage, home and parking area. Diane S. asked what the size of the garage was? Mr. Cote replied, 28' x 24'. Diane asked if he would be using the entire garage? Mr. Cote stated the entire first floor.

**Roger A. stated there would need to be a site inspection. It will be held April 14<sup>th</sup> prior to the Public Hearing. Board members will meet at the town hall at 6:00 p.m. A Notice to Abutters will be mailed.**

Nothing further was discussed.

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**Conditional Use Permit – Pet Grooming – Map 4, Lot 43 (59 Walnut Hill Road) – Robin Learned, Applicant**

Ms. Learned was present for the review of her application.

Ms. Learned stated she wanted to open a pet grooming shop in her home. Roger A. asked what the hours of operation would be? Ms. Learned stated 8:00 a.m. thru 4:00 p.m., Monday through Saturday.

Ms. Learned provided the board with a mortgage survey which depicted the existing home, garage, shed, and paved driveway / parking area. In addition, provided was a copy of the Subsurface Wastewater Disposal System Application, dated 4/17/85, done by Albert Frick, SE #163.

Roger A. asked if anyone had any questions? There were none.

**Roger A. stated the site inspection for Ms. Learned would be at approximately 6:30 p.m. A Notice to Abutters will be done and a Public Hearing held on April 14<sup>th</sup>.**

Nothing further was discussed.

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**OTHER:**

**Discuss Timber Harvesting Ordinance**

Barbara F. had given members a copy of the State of Maine Timber Harvesting Ordinance. During 2008 it was discussed that the Town of Shapleigh would recommend the State of Maine take over the regulation of local timber harvesting. In the meantime, it was believed the town would need to adopt any changes to its existing ordinance to be in compliance with any new State mandates. Because both the Planning Board members and Code Enforcement Officer were unsure whether or not changes need to be made to the existing ordinance it was agreed that Barbara F. would contact Mike Morse of the D.E.P. and ask him what if any changes are necessary at this time.

*Note: Code Enforcement Officer Steven McDonough spoke with Mike Morse, Friday, March 27<sup>th</sup>, regarding this matter and Mr. Morse stated the Town of Shapleigh could keep their existing ordinance at this time with no further changes if they so chose until such time it is decided whether or not the State will in fact take over timber harvesting regulation.*

**State Mandated Shoreland Zoning Changes**

Barbara F. gave board members copies of the Shoreland Zoning changes, along with Mike Morse's recommended changes, to review for further discussion. Barbara noted that the board would need to hold public hearings on final changes in the near future in order to be able to present the mandated changes at a town meeting scheduled in June or July.

Nothing further was discussed.

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***The Planning Board meeting ended at 8:25 p.m.***

Respectively submitted,

Barbara Felong,  
Land Use Secretary  
[planningboard@shapleigh.net](mailto:planningboard@shapleigh.net)

# ***SHAPLEIGH PLANNING BOARD***

## **MINUTES**

**April 14, 2009**

Members in attendance: Roger Allaire (Chairman), Madge Baker (Vice Chairman), Roland Legere, Maggie Moody, and Barbara Felong (Secretary). Code Enforcement Officer, Steven McDonough was unable to attend.

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The following words are not verbatim unless accompanied by quotation marks “ ”.

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### **Public Hearing Began at 7:00 p.m.**

#### **Conditional Use Permit – Sewing Machine Repair Business – Map 10, Lot 20A (1529 Shapleigh Corner Road) – Michael Cote, Applicant**

Michael Cote was present for the Public Hearing.

Mr. Cote stated he was before the Planning Board because he wanted to open a sewing machine sales and service business.

Roger A. asked what the hours of operation would be? Mr. Cote stated he would like 7:00 a.m. thru 7:00 p.m., six days a week. Roger asked if he would be closed on Sunday. Mr. Cote replied, yes.

Roger A. asked if there were any additional questions for Mr. Cote? There were none.

The Public Hearing for Mr. Cote was closed at 7:05 p.m.

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#### **Conditional Use Permit – Pet Grooming – Map 4, Lot 43 (59 Walnut Hill Road) – Robin Learned, Applicant**

Ms. Learned was present for the Public Hearing.

Ms. Learned stated she wanted to open up a pet grooming service for dogs and cats in her home.

Roger A. asked what the hours of operation would be? Ms. Learned stated 8:00 a.m. thru 4:00 p.m., Monday through Saturday.

Roger A. noted that during the site inspection there was a room in the basement that was large enough to be used for the grooming business.

Ms. Learned asked how she could get a permit for a sign? Barbara F. stated that after her approval she would go to the Code Enforcement Officer for a sign permit.

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

The Public Hearing for Ms. Learned closed at 7:10 p.m.



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

The minutes from Tuesday, March 24, 2009, were accepted as read.

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**Conditional Use Permit – Sewing Machine Repair Business – Map 10, Lot 20A (1529 Shapleigh Corner Road) – Michael Cote, Applicant**

Mr. Cote was present for the final review of his application. *Note: Board members did a site inspection prior to this evenings meeting.*

At the previous meeting Mr. Cote presented to the board, along with his application, a sketch plan depicting the size of his lot, the location of the house and garage, and the size of the garage to be used for the business; the location of the septic system, existing shed, driveway and parking area.

Mr. Cote once again stated he was before the board to open a sewing machine sales and service business at 1529 Shapleigh Corner Road. A citizen asked Mr. Cote exactly where his business would be located. He explained the location in relationship to the roads that intersected near his property.

Roger A. stated that board members noted at the site inspection that the location did have an adequate parking area with room to turn around on site.

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

Roger A. reviewed the following ordinance standards:

- 105-17 - Land Uses. *This business is a permitted use in the General Purpose district with a Conditional Use Permit.***
- 105-19 – Notes to table on dimensional requirements. *The existing building meets the required setbacks and the lot size exceeds the minimum required.***
- 105-20 – Applicability of standards; prohibited uses. *This application is a permitted use within the zoning ordinance and will not cause any health and safety concerns.***
- 105-21 – Traffic. *Traffic will have safe access. The site distances are in excess of the minimum required in this location which is 350 feet.***
- 105-22 – Noise. *There is minimal noise created by this business and it will all be contained inside the building to be used.***
- 105-23 – Dust, fumes, vapors and gases. *There will be no emissions produced.***
- 105-24 – Odors. *The will be no odors emitted.***
- 105-25 – Glare. *There will be no additional lighting added to the existing building.***
- 105-26 – Stormwater runoff. *There will be no change to the existing landscape which would cause an issue with stormwater runoff. All buildings and parking areas are in existence and were permitted through the building permit process.***
- 105-27 – Erosion control. *There will be no change to the existing landscape which would cause an erosion problem. All buildings and parking areas are in existence and were permitted through the building permit process.***
- 105-28 – Setbacks and screening. *There shall be no outside storage areas that need to be screened from neighboring properties.***
- 105-30 – Water quality. *There is no change to the existing property that would affect water quality.***

- 105-31 – Preservation of landscape; landscaping of parking and storage areas. *The surrounding landscape, which is trees and shrubs, shall not be disturbed. No additional parking area is required.*
- 105-32 - Relation of proposed building to the environment. *The existing building to be used for the business is similar to any other garage in the local area, blending in well with the neighboring properties.*
- 105-33 – Refuse disposal. *There is minimal waste associated with this business. Mr. Cote stated any sewing machines that are no longer functioning and are not returned to the customer will be disposed of at the transfer station after the appropriate fee to the town is paid.*
- 105-40 – Home occupations. *Mr. Cote meets the provisions of a home occupation. The building used is an accessory structure to the principal building; Mr. Cote shall be the only employee; any signage shall be through the Code Enforcement Office; nothing unhealthful or offensive to neighboring properties shall be produced by this business; there is an adequate parking area, and an area to turn around, on site for this business.*
- 105-43 – Off-street parking and loading. *The parking area meets the criteria for the size of the building and number of employees. There is also ample room to turn around on site.*
- 105-46 – Sanitary Provisions. *There is an existing approved wastewater disposal system on site and there is a bathroom facility in the adjacent home for Mr. Cote's use.*
- 105-47 – Signs and billboards. *All signage shall be permitted through the Code Enforcement Office.*
- 105-52 - Water quality protection. *There is nothing to be stored on site to affect water quality.*

Roger A. asked if there were any additional questions or comments for Mr. Cote? Madge B. wanted to be certain no vehicle would back out onto Shapleigh Corner Road. Roger stated there was ample room to turn around on site but it could be made a condition of approval. There were no other questions or comments.

**Roger A. reviewed Shapleigh Zoning Ordinance 105-73.G “Standards applicable to conditional uses”.**

- 1) The use will not have an adverse impact on spawning grounds, fish, aquatic life, birds or other wildlife habitat. *It will not.*
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. *N/A*
- 3) The use is consistent with the Comprehensive Plan. *It is, the Comprehensive Plan encourages small businesses and home occupations.*
- 4) Traffic access to the site is safe. *It is, the minimum and maximum site distance requirement can be met. There is an adequate area to turn around on site so no one has to back out onto Shapleigh Corner Road.*
- 5) The site design is in conformance with all municipal flood hazard protection regulations. *It is, the proposed structure is not in a flood zone.*
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. *There is an existing permitted wastewater disposal system on site for the existing bathroom facilities.*
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. *There will be no hazardous materials stored on site.*
- 8) A stormwater drainage system capable of handling a twenty-five-year storm without adverse impact on adjacent properties has been designed. *There will be no changes to the site that would affect stormwater drainage. There are no existing problems with stormwater drainage.*
- 9) Adequate provisions to control soil erosion and sedimentation have been made. *There are no changes being made to the site that would create soil erosion.*
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. *The location of the existing home and garage allow for easy access by the Fire Department. The business does not create or store anything that is easily flammable.*

- 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. ***The existing vegetation shall be kept in place; there is no noise, glare, fumes, dust or odors created by this business.***
- 12) All performance standards in this chapter applicable to the proposed use will be met. ***They shall.***

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

- 1) **There shall be no vehicles allowed to back out onto Shapleigh Corner Road (State Route 11) at any time.**
- 2) **The hours of operation shall be 7:00 a.m. thru 7:00 p.m., Monday through Saturday.**
- 3) **Any signage shall be permitted through the Code Enforcement Office.**

**Madge B. made the motion the board approve the application with the above stated conditions.**

**Maggie M. 2<sup>nd</sup> the motion. All members were in favor. The application was approved by a Vote 4 – 0.**

Nothing further was discussed.

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**Conditional Use Permit – Pet Grooming – Map 4, Lot 43 (59 Walnut Hill Road) – Robin Learned, Applicant**

Ms. Learned was present for the final review of her application. *Note: Board members did a site inspection prior to this evenings meeting.*

At the previous meeting Ms. Learned provided the board with a mortgage survey which depicted the existing home and shed on the property. In addition, provided was a copy of the Subsurface Wastewater Disposal System Application, dated 4/17/85, done by Albert Frick, SE #163.

Ms. Learned stated she wanted to open a pet grooming shop in her home for cats and dogs. She said she was located at 59 Walnut Hill Road. She stated her hours of operation would be 8:00 a.m. thru 4:00 p.m., Monday through Saturday.

Roger A. asked if anyone had any questions or comments. There were none.

Roger A. reviewed the following ordinance standards:

- 105-17 - Land Uses. *This business is a permitted use in the General Purpose district with a Conditional Use Permit.***
- 105-19 – Notes to table on dimensional requirements. *The existing building meets the required setbacks.***
- 105-20 – Applicability of standards; prohibited uses. *This application is a permitted use within the zoning ordinance and will not cause any health and safety concerns.***
- 105-21 – Traffic. *The minimum site distance is 315 feet in this location and it cannot be met. Therefore, a condition of approval shall be no automobile shall back out onto Walnut Hill Road at any time.***
- 105-22 – Noise. *There is minimal noise created by this business because the animals shall be contained inside the building at all times.***
- 105-23 – Dust, fumes, vapors and gases. *There will be no emissions produced.***
- 105-24 – Odors. *The will be no odors emitted outside of the home.***

- 105-25 – Glare. *There will be no additional lighting added to the existing building. One light is on the building at this time.*
- 105-26 – Stormwater runoff. *There will be no change to the existing landscape which would cause an issue with stormwater runoff. All buildings and parking areas are in place and were permitted through the building permit process.*
- 105-27 – Erosion control. *There will be no change to the existing landscape which would cause an erosion problem. All buildings and parking areas are in place and were permitted through the building permit process.*
- 105-28 – Setbacks and screening. *There shall be no outside storage areas that need to be screened from neighboring properties.*
- 105-30 – Water quality. *There is no change to the existing property that would affect water quality.*
- 105-31 – Preservation of landscape; landscaping of parking and storage areas. *The surrounding landscape, which is trees and shrubs, shall not be disturbed. No additional parking area is required.*
- 105-32 – Relation of proposed building to the environment. *The existing home to be used for the business is similar to homes in the area.*
- 105-33 – Refuse disposal. *There is minimal waste associated with this business. Any refuse shall be disposed of at the transfer station by the applicant.*
- 105-40 – Home occupations. *Ms. Learned meets the provisions of a home occupation. The building to be used is the principal building on site; Ms. Learned shall be the only employee; any signage shall be through the Code Enforcement Office; nothing unhealthful or offensive to neighboring properties shall be produced by this business; there is an adequate parking area and an area to turn around on site for this business.*
- 105-43 – Off-street parking and loading. *The parking area meets the criteria for the size of the building and number of employees. There is also ample room to turn around on site.*
- 105-46 – Sanitary Provisions. *There is an existing approved wastewater disposal system on site which is adequate for the proposed business.*
- 105-47 – Signs and billboards. *All signage shall be permitted through the Code Enforcement Office.*
- 105-52 – Water quality protection. *There is nothing to be stored on site to affect water quality.*
- 105-56 – Animal breeding or care. *There shall be no boarding, breeding or care outside of grooming done on site.*

Roger A. asked if there were any additional questions or comments for the applicant? There were none.

Roger A. reviewed Shapleigh Zoning Ordinance 105-73.G “Standards applicable to conditional uses”.

- 1) The use will not have an adverse impact on spawning grounds, fish, aquatic life, birds or other wildlife habitat. *It will not.*
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. *N/A*
- 3) The use is consistent with the Comprehensive Plan. *It is, the Comprehensive Plan encourages small businesses and home occupations.*
- 4) Traffic access to the site is safe. *It shall be with the condition no vehicles shall be allowed to back out onto Walnut Hill Road. There must be an area provided to turn around on site at all times.*
- 5) The site design is in conformance with all municipal flood hazard protection regulations. *It is, the proposed structure is not in a flood zone.*
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. *There is an existing State and Town approved wastewater disposal system on site.*

- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. ***There will be no hazardous materials stored on site.***
- 8) A stormwater drainage system capable of handling twenty-five-year storm without adverse impact on adjacent properties has been designed. ***There are no changes being made to the site that would affect stormwater drainage. There are no existing problems with stormwater drainage.***
- 9) Adequate provisions to control soil erosion and sedimentation have been made. ***There are no changes being made to the site that would create soil erosion.***
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. ***There is a fire pond located within a 1/4 mile of the home, on Cross Road. The business does not create or store anything that is easily flammable.***
- 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. ***The existing vegetation shall be kept in place; there is no noise, glare, fumes, dust or odors created by this business. The animals shall be kept inside the home.***
- 12) All performance standards in this chapter applicable to the proposed use will be met. ***They shall with the condition that no vehicles shall be allowed to back out onto Walnut Hill Road.***

Roger A. asked if there were any additional comments or questions? There were none.

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

1. **There shall be no vehicles allowed to back out onto Walnut Hill Road at any time.**
2. **The hours of operation shall be 8:00 a.m. thru 4:00 p.m., Monday through Saturday.**
3. **Any signage shall be permitted through the Code Enforcement Office.**

**Madge B. made the motion the board approve the application with the above stated conditions.**

**Maggie M. 2<sup>nd</sup> the motion. All members were in favor. The application was approved by a Vote 4 – 0.**

Nothing further was discussed.

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**Amendment to a Subdivision, Single Division of Lot – Originally 9 Lot Subdivision of Mario Nicosia Subdivision #24 – Map 11, Lot 33-6 (156 Newfield Road) – Janet Junkins, Applicant**

Ms. Junkins and her Realtor Cathy Smith were present to review the application. Ms. Junkins had been before the board in September of 2008 but decided to wait for further review until such time she could get her land surveyed as required by the Planning Board.

Ms. Junkins stated she wanted to break off 3.7 acres to sell to her neighbor and keep the remaining land which totaled 14.3 acres. Ms. Junkins presented the board with a surveyed plan, done by Thomas Bullard, Licensed Surveyor #1066. The plan showed the location of Ms. Junkins existing home, boundary lines, and the lot lines of the acreage to be conveyed to the neighbor. Also presented was D.E.P. approval to break off the lot. The original subdivision required D.E.P. approval and that no further division could take place without further approval from the D.E.P.

Roger A. asked board members if they had any questions for Ms. Junkins at this time? There were none.

**Based on the information received, Roger scheduled a Public Hearing for Tuesday, April 28<sup>th</sup> at 7:00 p.m. He stated a Notice to Abutters would be mailed as well.** The board members did not feel a site visit was necessary because they all knew the location of the property.

Nothing further was discussed.

**Conditional Use Permit – Wants a Business Sign on the Property – Map 19, Lot 11 (55 Emery Mills Road) – Roger Berube, Applicant**

Mr. Berube was present for the review of his application.

Mr. Berube stated he was before the board because he wanted to put up a sign to advertise his business. The sign would read “Roger Berube Builders – Carpentry Service – Remodeling – 324-8102”.

The board members had no questions for Mr. Berube. Because members knew the location of Mr. Berube’s home they did not need to schedule a site inspection.

**Roger A. stated a Public Hearing would be held on April 28<sup>th</sup>, following Ms. Junkins, and a Notice to Abutters would be mailed.**

Nothing further was discussed.

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**Conditional Use Permit – Upholstery Business for Autos & Boats – Map 5, Lot 21 (709 Shapleigh Corner Road) – David Dyer, Applicant**

Mr. Dyer was present for the review of his application.

Mr. Dyer stated he wanted to open an upholstery business for automobiles and boats.

Roland L. asked if he was also going to make new covers, tops, etc. Mr. Dyer stated he would if there was a call for it.

Roger A. asked if he was going to be doing upholstery only or would he also be doing engine repairs etc. Mr. Dyer stated upholstery only.

Mr. Dyer stated he would eventually want his hours of operation to be 7:00 a.m. thru 7:00 p.m., six days a week. He said the service would be provided only on a part time basis to begin with as he was still working a full time job currently.

Roger A. asked if there were any further questions at this time? There were none.

**Roger A. scheduled a site inspection for 6:30 p.m., members to meet at the town hall. A Public hearing will be held on April 28<sup>th</sup>, following Mr. Berube, and a Notice to Abutters would be mailed as well.**

Nothing further was discussed.

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**OTHER:**

Members reviewed the changes made to the shoreland zoning after Mike Morse of the DEP made his recommendations after reviewing what the board presented to his department. The only change the board questioned was Mr. Morse’s suggestion to remove the review of handicap access from the Planning Board, placing it under the review of the Zoning Board of Appeals only, as depicted in §105-71. At Town Meeting March 2009 changes were approved under §105-71, Zoning Board of Appeals, and one of these changes gave the ZBA authority to review handicap access. It is written as follows:

- (1) Notwithstanding Section 105-71(D)(3)(b) above, the Board of Appeals may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term “structures necessary for access to or egress from the dwelling shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

Mr. Morse noted that the Planning Board also has the review of handicap access under § 105-4, and he thought it should be removed, it reads as follows:

- (a) Permission granted under this subsection is restricted solely to the installation of equipment or the construction of structures necessary for access to or egress from the ~~property~~ **dwelling** by the person with the disability, and such installation or construction must be built according to the BOCA National Building code and Life Safety Code. The term “structures necessary for access to or egress from the ~~property-dwelling~~” is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

Roger A. believed the legislature passed a bill that gave the review of handicap access to the Planning Board. The other board members were not sure of what the State Statute on handicap access was. In light of this, Barbara F. was asked to contact Mike Morse to get his opinion as to why he felt it should be reviewed by the Zoning Board of Appeals.

Nothing further was discussed.

***The board will begin to hold the necessary public hearings on the shoreland zoning changes beginning on May 26th.***

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**NOTE: Mr. Morse was contacted on Tuesday, April 21, 2009. Mr. Morse said the State’s guidelines for handicap access puts the review of handicap access under the review of the Zoning Board of Appeals. Mr. Morse did not care what Shapleigh chose to do, but he added that disability access for a non-conforming structure is a form of a variance and again he believed this was the function of the Zoning Board of Appeals. See M.R.S.A. Title 30-A, Section 4353.**

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**Approved Growth Permits:**

1. Map 11, Lot 23B-1 (Gray Road ) – Permit #01-09
2. Map 12, Lot 32 (Kara’s Way) – Permit #02-09

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***The Planning Board meeting ended at 9:00 p.m.***

Respectively submitted,  
Barbara Felong,  
Land Use Secretary  
[planningboard@shapleigh.net](mailto:planningboard@shapleigh.net)

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Wednesday, April 29, 2009**

Members in attendance: Roger Allaire (Chairman), Madge Baker (Vice Chairman), Roland Legere, Maggie Moody, Diane Srebnick and Barbara Felong (Secretary). Code Enforcement Officer, Steven McDonough was unable to attend.

Note: Due to a power failure at the Town Hall on Tuesday the meeting was postponed until Wednesday evening. A notice of the change was placed on the front door telling of Tuesday's meeting cancellation and rescheduling the meeting to Wednesday evening.

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The following words are not verbatim unless accompanied by quotation marks “ ”.

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### **Public Hearing Began at 7:00 p.m.**

#### **Amendment to a Subdivision, Single Division of Lot – Originally 9 Lot Subdivision of Mario Nicosia Subdivision #24 – Map 11, Lot 33-6 (156 Newfield Road) – Janet Junkins, Applicant**

Ms. Junkins was present for the Public Hearing as was Cathy Smith, the Realtor working with Ms. Junkins to accomplish the property division.

Ms. Junkins explained she was before the board members to break off a piece of property from her lot in order to sell it to an abutting property owner. Ms. Junkins stated she would still own over 14 acres of land and she would continue to meet all the zoning requirements including setbacks and road frontage.

Roland L. asked if all the requirements had been met that were required by the Planning Board at the previous reviews? Roger A. stated yes, Ms. Junkins had presented a surveyed plan, DEP approval for the division and Ms. Junkins understands that it is required that the 3.7 acres to be divided from her lot will have to be joined by way of a deed when transferred to the abutting property owner (Map 11, Lot 32-1).

Roger A. asked if there were any questions for Ms. Junkins. There were none. The Public Hearing for Ms. Junkins was closed at 7:04 p.m.

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#### **Conditional Use Permit – Wants Business Sign on Property – Map 19, Lot 11 (55 Emery Mills Road) – Roger Berube, Applicant**

Mr. Berube was present for the Public Hearing.

Mr. Berube stated he was before the Planning Board because he wanted a business sign for his construction business on his property.

Roland L. asked where the sign would be located? Mr. Berube stated it would be off the road, 20 feet or so. Roland asked if it was going to be a double sided sign and lighted? Mr. Berube stated it would be double sided but not lighted. He said this wasn't a business that went on at night so he didn't feel it was necessary to have a lit sign.

Madge B. asked if the review of the size and location of the sign was a Code Enforcement function? Roger A. stated yes.



Roger A. asked if there were any additional questions for Mr. Berube? There were none. The Public Hearing for Mr. Berube closed at 7:06 p.m.

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**Conditional Use Permit – Upholstery Business for Autos & Boats – Map 5, Lot 21 (709 Shapleigh Corner Road) – David Dyer, Applicant**

Mr. Dyer was present for the Public Hearing. Note: Board members did a site inspection prior to this evenings meeting.

Mr. Dyer stated he was before the board to get approval for an upholstery business for automobiles and boats. He said initially he would be working part time but when business improved he would be working full time six days a week.

Roger A. stated that at the site inspection board members noted that the business set well off the road, it was a great distance from neighboring lot lines and there was plenty of parking on site.

Roger A. asked if there were any additional questions for Mr. Dyer? There were none. The Public Hearing closed at 7:08 p.m.

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

**The minutes from Tuesday, April 14, 2009, were accepted as read.**

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**Amendment to a Subdivision, Single Division of Lot – Originally 9 Lot Subdivision of Mario Nicosia Subdivision #24 – Map 11, Lot 33-6 (156 Newfield Road) – Janet Junkins, Applicant**

Ms. Junkins was present for the final review of her application. Realtor Cathy Smith was also in attendance.

Roger A. asked if there were any additional questions for Ms. Junkins? There were none.

**The Finding of Facts are as follows:**

1. The owner of the property is Janet Junkins.
2. The property is located at Shapleigh Map 11, Lot 33-6 (156 Newfield Road), in the General Purpose district.
3. The applicant is Janet Junkins, and has demonstrated a legal interest in the property by Title Reference of Deed Book 13178, Page 182, registered at the York County Registry of Deeds on 7/21/03.
4. The applicant proposes to create one additional lot; being 3.7± acres. This lot shall be joined with the abutting property, Tax Map 11, Lot 32-1 and no further division of this new lot shall be allowed.
5. Ms. Junkins lot shall be 14.3 ± acres in size after the division. Currently there is a home on the property that meets all the zoning requirements. Ms. Junkins property shall meet the zoning for the required road frontage, having approximately 365 feet of road frontage after the division.
6. There are no new roads required for the property division.

7. A final plan was presented on April 29, 2009 and a Public Hearing for the final plan was held on that date.
8. A Site Law Minor Revision Application was approved for the division by the Dept. of Environmental Protection, dated March 2009, DEP #L-6338-L3-B-M.

Roger A. stated the requirements of the Subdivision Ordinance for the lot division had been met. Roger asked the board members if they wanted to make a motion on this application?

**Maggie M. made the motion to approve the single division of Map 11, Lot 33-6 with the following conditions:**

- 1. The lot to be divided off of Map 11, Lot 33-6, containing 3.7 ±, shall be joined to the abutting property known as Map 11, Lot 32-1.**
- 2. A registered copy of the new deeds for both properties, Lot 33-6 and 32-1, shall be given to the Planning Board within 90 days of the date of approval.**
- 3. All conditions from the original subdivision of Maria Nicosia, dated May 1977, YCRD Book 87, Page 33, referred to as Greenview Acres by the Dept. of Environmental Protection, shall remain in effect.**
- 4. There shall be no further division of either lot created by this approval.**
- 5. Any subdivision not recorded at the York County Registry of Deeds *within ninety days* of the date upon which the plan is approved and signed by the Planning Board shall become null and void, unless an extension is granted by the Board in writing.**
- 6. No changes, erasures, modification, or revisions shall be made in any final plan after approval has been given, unless the revised final plan is first submitted to the Planning Board and the Board approves any modifications.**

**Roland L. 2<sup>nd</sup> the motion. All board members were in favor. The application was approved by a Vote of 5 – 0.**

Roger A. noted that the original DEP approval was dated 12/12/1979.

Nothing further was discussed.

**Conditional Use Permit – Wants Business Sign on Property – Map 19, Lot 11 (55 Emery Mills Road) – Roger Berube, Applicant**

Mr. Berube was present for the final review of his application.

Roger A. stated Mr. Berube was before the board in order to have a business sign on his property. Roger asked Mr. Berube if he was going to be doing any work on site, adding any equipment to the location, or making any changes to his home? Mr. Berube stated no changes, he is only adding a sign. He said he wanted to be sure in this economy people knew there was a local contractor in the area. The business sign shall read, “Roger Berube Builders, Carpentry Service, Remodeling, 324-8102”.

Roger A. asked if there were any questions for Mr. Berube? There were none.

Roger A. reviewed the following ordinance standards:

- 105-17 - Land Uses. *This business is a permitted use for the purpose of erecting a sign on the property. There shall be no patrons to the business, no changes to the landscape, and no business activity on site. The applicant is requesting a business sign which requires a Conditional Use Permit.*
- 105-20 – Applicability of standards; prohibited uses. *This application for a sign is a permitted use within the zoning ordinance and will not cause any health and safety concerns when permitted through the Code Enforcement Office.*
- 105-21 – Traffic. *Traffic will have safe access based on site distance calculations of the area. There will be no additional traffic on site associated with the carpentry business.*
- 105-22 – Noise. *There is no noise associated with this approval.*
- 105-23 – Dust, fumes, vapors and gases. *There will be no emissions produced.*
- 105-24 – Odors. *The will be no odors emitted.*
- 105-25 – Glare. *There will be no lighting added to the sign.*
- 105-26 – Stormwater runoff. *There will be no change to the existing landscape which would cause an issue with stormwater runoff.*
- 105-27 – Erosion control. *There will be no change to the existing landscape which would cause an erosion problem.*
- 105-30 – Water quality. *There is no change to the existing property that would affect water quality.*
- 105-31 – Preservation of landscape; landscaping of parking and storage areas. *The surrounding landscape, which is trees and shrubs, shall not be disturbed. No additional parking area is required.*
- 105-43 – Off-street parking and loading. *There shall be no employees for this business on site, nor any business activity which would require parking or loading.*
- 105-47 – Signs and billboards. *All signage shall be permitted through the Code Enforcement Office.*

Roger A. reviewed Shapleigh Zoning Ordinance 105-73.G “Standards applicable to conditional uses”.

- 1) The use will not have an adverse impact on spawning grounds, fish, aquatic life, birds or other wildlife habitat. *It will not.*
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. *N/A*
- 3) The use is consistent with the Comprehensive Plan. *It is, the Comprehensive Plan encourages small businesses and home occupations along Rte. 109. Signage is allowed as long as it does not violate State or Local Ordinances.*
- 4) Traffic access to the site is safe. *It is, the minimum and maximum site distance requirement can be met. There shall be no additional traffic to this location associated with the business.*
- 5) The site design is in conformance with all municipal flood hazard protection regulations. *It is, the proposed sign is not in a flood zone.*
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. *N/A, sign approval only, no business shall be conducted at this location for the carpentry business.*
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. *N/A, sign approval only no business shall be conducted at this location for the carpentry business.*
- 8) A stormwater drainage system capable of handling a twenty-five-year storm without adverse impact on adjacent properties has been designed. *There will be no changes to the site that would affect stormwater drainage.*

- 9) Adequate provisions to control soil erosion and sedimentation have been made. *There are no changes being made to the site that would create soil erosion.*
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. *There is a fire hydrant in the near vicinity but it should not be required for an unlit sign, which is the only change to the property.*
- 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 will be no noise, glare, fumes, dust or odors associated with this approval, no work for this business shall be done on site.*
- 12) All performance standards in this chapter applicable to the proposed use will be met. *They shall.*

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

- 1) **There shall be no work done on site associated with the business.**
- 2) **There shall be no hours of operation; the only business conducted shall be via telephone.**
- 3) **There shall be no employees for the carpentry business, conducting business on site.**
- 4) **There shall be no changes done to the site associated with the business other than placing a business sign on the property.**
- 5) **Any signage shall be permitted through the Code Enforcement Office.**

**Madge B. made the motion the board approve the application with the above stated conditions. Diane S. 2<sup>nd</sup> the motion. All members were in favor. The application was approved by a Vote 5 – 0.**

Nothing further was discussed.

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**Conditional Use Permit – Upholstery Business for Autos & Boats – Map 5, Lot 21 (709 Shapleigh Corner Road) – David Dyer, Applicant**

Mr. Dyer was present for the final review of his application.

Roger A. stated Mr. Dyer's application was for an upholstery business for boats and automobiles. The Board received along with the application a sketch plan depicting the location of the house and garage in relation to the lot lines, as well as the building to be used for the proposed business and pictures of the building. A parking / turnaround area was depicted on the plan as well. Roger noted that the existing home, garage and building to be used were all over 400 feet from the nearest lot line. The building and parking area were also over 1000 feet from Route 11.

Roger A. asked if there were any questions for Mr. Dyer? There were none.

Roger A. reviewed the following ordinance standards:

- 105-17 - Land Uses. *This business is a permitted use in the General Purpose district with a Conditional Use Permit.***
- 105-19 – Notes to table on dimensional requirements. *The existing building to be used meets the required setbacks and the lot size exceeds the minimum required.***
- 105-20 – Applicability of standards; prohibited uses. *This application is a permitted use within the zoning ordinance and will not cause any health and safety concerns.***
- 105-21 – Traffic. *Traffic will have safe access. The site distances are in excess of the minimum required in this location which is 315 feet, as noted on the site inspection.***

- 105-22 – Noise. *There is minimal noise created by this business and it will all be contained inside the building to be used.*
- 105-23 – Dust, fumes, vapors and gases. *There will be no emissions produced. No chemicals are used.*
- 105-24 – Odors. *There will be no odors emitted.*
- 105-25 – Glare. *There will be no additional lighting added to the existing building.*
- 105-26 – Stormwater runoff. *There will be no change to the existing landscape which would cause an issue with stormwater runoff. All buildings and parking areas are in existence and were permitted through the building permit process.*
- 105-27 – Erosion control. *There will be no change to the existing landscape which would cause an erosion problem. All buildings and parking areas are in existence and were permitted through the building permit process.*
- 105-28 – Setbacks and screening. *There is vegetation between the building / parking area and the lot lines, which are over 400 feet from the building. Also Rte. 11 is over 1000 feet from the building and parking area, with more than adequate vegetation between the road and the business / parking area.*
- 105-30 – Water quality. *There is no change to the existing property that would affect water quality.*
- 105-31 – Preservation of landscape; landscaping of parking and storage areas. *The surrounding landscape, which is trees and shrubs, shall not be disturbed. No additional parking area is required.*
- 105-32 – Relation of proposed building to the environment. *The existing building to be used for the business is similar to other buildings of its kind in the area.*
- 105-33 – Refuse disposal. *There is minimal waste associated with this business. Mr. Dyer shall remove any refuse from the property.*
- 105-43 – Off-street parking and loading. *The parking area meets the criteria for the size of the building and number of employees, which is the applicant himself. There is also ample room to turn around on site.*
- 105-46 – Sanitary Provisions. *There is an existing approved wastewater disposal system on site and there is a bathroom facility in the adjacent home for Mr. Dyer's use.*
- 105-47 – Signs and billboards. *All signage shall be permitted through the Code Enforcement Office.*
- 105-52 – Water quality protection. *There is nothing to be stored on site to affect water quality.*

Roger A. asked if there were any additional questions or comments for Dyer? There were none.

**Roger A. reviewed Shapleigh Zoning Ordinance 105-73.G “Standards applicable to conditional uses”.**

- 1) The use will not have an adverse impact on spawning grounds, fish, aquatic life, birds or other wildlife habitat. *It will not.*
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. *N/A*
- 3) The use is consistent with the Comprehensive Plan. *It is, the Comprehensive Plan encourages small businesses and home occupations on Rte. 11.*
- 4) Traffic access to the site is safe. *It is, the minimum site distance requirement can be met. There is an adequate area to turn around on site so no one has to back out onto Rte. 11.*
- 5) The site design is in conformance with all municipal flood hazard protection regulations. *It is, none of the property is in a flood zone.*
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. *There is an existing permitted wastewater disposal system on site for the existing bathroom facilities.*

- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. ***There will be no hazardous materials stored on site.***
- 8) A stormwater drainage system capable of handling a twenty-five-year storm without adverse impact on adjacent properties has been designed. ***There will be no changes to the site that would affect stormwater drainage. There are no existing problems with stormwater drainage.***
- 9) Adequate provisions to control soil erosion and sedimentation have been made. ***There are no changes being made to the site that would create soil erosion. The building and parking area are in existence.***
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. ***The location of the existing home is within one half mile of an existing fire hydrant and water holding tank. The business does not create or store anything that is easily flammable.***
- 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. ***The existing vegetation shall be kept in place; there is no noise, glare, fumes, dust or odors created by this business. The business is over 1000 feet from State Rte. 11 and 400+ feet from any lot line.***
- 12) All performance standards in this chapter applicable to the proposed use will be met. ***They shall.***

Diane S. asked how many boats would be stored on site? Roger A. stated that because the business is far from the neighboring lots line, roadway, and has vegetation for screening, he did not feel a limit was required for the number of boats on site. Mr. Dyer said that people usually wanted their boats returned as soon as possible so he didn't expect a lot of boats stored in his yard.

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

- 1) **The hours of operation shall be 7:00 a.m. thru 7:00 p.m., Monday through Saturday.**
- 2) **Any signage shall be permitted through the Code Enforcement Office.**

**Roland L. made the motion the board approve the application with the above stated conditions. Madge B. 2<sup>nd</sup> the motion. All members were in favor. The application was approved by a Vote 5 – 0.**

Nothing further was discussed.

**Conditional Use Permit – Earth Moving – Review new information received - Map 10, Lot 22 – Robert Ferrera, Jr., Applicant**

Mr. Ferrera was not present for this evenings discussion. He provided the board with information regarding his application and the board discussed it and the conclusion of the board was as follows:

Members reviewed Mr. Ferrera's figures for reclamation and agreed that combining both the figure for the seeding (\$6,000) and loam reclamation (\$10,000), would be sufficient for the bond, for a total of \$16,000.

Members also read the letter from Mark Stebbins of the DEP, along with a copy of M.R.S.A. Title 38 490-A & 490-B and they agree that as long as each project is kept under five acres in size, Mr. Ferrera did not need further DEP approval.

Members noted that they will also want to know where the gravel will be going, number of trucks, etc., as well as hours of operation. There was concern with large trucks going by the Shapleigh School during hours when the children are dropped off in the morning and when they leave at night.

Roger A. noted that it was likely the number of months the gravel will be removed will be limited due to the fact the economy isn't strong at this time and it is likely it will be removed only six months out of the year and several of those months will be when the children are out of school.

Barbara F. will inform Mr. Ferrera of this evenings discussion.

Nothing further was discussed.  
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***OTHER:***

**Shoreland Zoning – Disability Access**

The board members concluded, after reading Mr. Morse comments with respect to disability access, where he noted the State's guidelines for handicap access puts the review of handicap access under the review of the Zoning Board of Appeals, agreed to remove disability access from §105-4 and keep the review with the Zoning Board of Appeals under § 105-71. The board also reviewed M.R.S.A. Title 30-A, Section 4353 prior to making the decision.

Barbara F. will make the necessary changes to the Zoning Ordinance and *all the Shoreland Zoning changes will be presented to the townspeople on Tuesday, May 26<sup>th</sup> at 7:00 p.m.*

Nothing further was discussed.  
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***The Planning Board meeting ended at 8:30 p.m.***

Respectively submitted,  
Barbara Felong,  
Land Use Secretary  
[planningboard@shapleigh.net](mailto:planningboard@shapleigh.net)

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, May 12, 2009**

Members in attendance: Roger Allaire (Chairman), Madge Baker (Vice Chairman), Roland Legere, Maggie Moody, Diane Srebnick and Barbara Felong (Secretary). Code Enforcement Officer, Steven McDonough was also in attendance.

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The following words are not verbatim unless accompanied by quotation marks “ ”.

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

**The minutes from Wednesday, April 29, 2009, were accepted as read.**

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**After-the Fact Application for the Construction of a Private Way – Map 10, Lot 6B (Fowler Way, off of Town Farm Road) – Charles Fowler, Applicant**

Mr. Fowler was present for the review of his application.

Mr. Fowler stated that he was providing a copy of the Road Maintenance Agreement and an engineered plan done by Civil Consultants of the proposed private way as requested by the Planning Board.

Note: At the meeting on November 1, 2006, Mr. Fowler was told he would need the following prior to further review:

- 1) **A street plan, cross section and drainage plan would need to be added to the existing ROW plan drawn up by Middle Branch Surveyors.**
- 2) **A note shall be placed on the final plan noting that the Town of Shapleigh will not be responsible for the maintenance, repair or plowing of the private way and that further lot divisions utilizing the private way are prohibited without prior approval of the Shapleigh Planning Board.**
- 3) **A maintenance agreement shall be required and recorded in the York County Registry of Deeds.**
- 4) **An additional \$300 shall be paid to the Town of Shapleigh due to the fact this application is an after-the-fact permit. The ROW has already been put in.**

Roger A. stated that prior to any further review Mr. Fowler needed to pay the after-the-fact fee of \$300. Mr. Fowler provided a check for the full amount.

Board members reviewed the plan provided by Mr. Fowler. The plan appeared to be a surveyed plan of the properties to be accessed by the private right-of-way, as well as the location of the 50 foot right-of-way.

Roger A. noted that there was no notation on the plan regarding the fact that the Town of Shapleigh would not be responsible for the maintenance, repair or plowing of the private way. Mr. Fowler stated that the notation was on the original preliminary plan drawn by Middle Branch Land Surveyors. Roger stated it needed to be on the final plan to be approved by the Planning Board.



Mr. Fowler asked about the original preliminary plan he submitted to the Planning Board, and the fact the notation was on that plan. Roger stated that unless both plans were recorded then the notation has to be on the final plan to be recorded.

Roland L. asked if there was enough detail on the plan provided by Civil Consultants to satisfy the ordinance requirements for a Private Way (§105-60.1)? Madge B. noted there was no cross section on the plan provided or drainage plan as required in the ordinance.

Members reviewed the ordinance and both plans provided by Mr. Fowler.

Barbara F. noted that a Notice to Abutters still had to be mailed before approval.

Diane S. asked how many homes would be accessed from Fowler Way? Mr. Fowler stated four homes.

Roland L. noted a signature box also had to be placed on the final plan.

Roger A. stated that all the board was looking for was a road cross section not a full survey which was what Mr. Fowler and Civil Consultants have provided. Roger stated there were no slopes, grading, or road contours on the plan. Roger said Civil Consultants would need to add to this plan the road design, the signature block and the notation which states the town is not responsible for the road maintenance. Roger showed Mr. Fowler what a signature block looked like on another plan. Roger said the final plan isn't recorded until the Planning Board signatures are on it.

Roger A. stated that the cross section of the road would actually show how many inches of gravel are on the roadway. Roger said the board had stated at the last review that the amount of gravel depth had to be on the plan so in the future it would be recorded that the road was done to the town's standards in the ordinance. Roger said he didn't know what the grade was of the roadway, it may or may not need drainage swales for proper drainage so no surface water enters someone's property. Also it needs to be designed so the road does not wash out. Roger said it may in fact be to the town's standards but it has to be shown that it is on the plan.

Madge B. provided a copy of the ordinance, §105-60.1 Private Ways, for Mr. Fowler to take to Civil Consultants so they would know what is required on the plan.

Board members noted that if the private way was greater than 500 feet in length a turn-around area must be provided per the ordinance. Mr. Fowler stated there was an area to turn around at this time.

Mr. Fowler was concerned about the cost to adjust the plan. Roger A. stated the majority of the work was completed, the road is completed, so the expense should not be excessive. Mr. Fowler asked about the check he had given to the board this evening. Roger stated that was the application fee and it was the only fee required by the town.

Barbara F. noted that the applicants are given a copy of the private way ordinance with their application and she believed Mr. Fowler had also received an additional copy.

Nothing further was discussed.

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**Amendment to a Conditional Use Permit – Lawn Mower Race Track – Map 8, Lot 26C (12 Newfield Road) – Susan Miller, Applicant**

Mr. and Mrs. Miller were present for the review of the application.

Mr. Miller stated they were approached by a group that call themselves Southern Maine Lawnmower Racing Association. He stated they were a group that splintered off from a racing group in Saco Maine. He said they have raced in Saco and they used the Acton Fair Grounds show ring but it didn't go over well. He said they were looking for a new home to hold their races.

Mr. Miller stated he spoke with his adjacent neighbors about setting up a racetrack for the group to race on Saturday afternoons. Mr. Miller said there was a US Racing Lawnmower Association and they have bylaws, rules and regulations. He said the national group has five different levels of racing. He said the group using his track only had one level of racing but they have adopted the safety rules from the National Assoc. He said they have applied some of the most stringent regulations to their club such as riders must wear a neck brace and they are also required to wear a full face helmet, long sleeve shirts, pants, and boots. He said all the tractors are inspected at every race instead of monthly and all tractors have to have a kill switch so if the driver falls off the tractor shuts off. He said the gearing is changed in the machines to get a little more speed, which allows for a top speed of approximately 28 mph.

Mr. Miller stated he was providing a facility for the club to use. The track, parking area, a fenced off spectator area, and food would be out of his existing business.

Roland L. asked exactly where the property was located? Mr. Miller stated right at Ross Corner. Roger A. said it was the junction of Ross Corner Road and the Newfield Road.

Diane S. asked how noisy the lawnmowers would be? Mr. Miller stated they were required to carry the stock mufflers, so they are no louder than a standard lawnmower riding in someone's yard. Diane asked how many race at one time? Mr. Miller said 10 mowers to a race. He said there would be two heats and then a feature race.

Roland L. asked if it would be Saturday's only? Mr. Miller stated yes. Roland asked how long the racing season would last? Mr. Miller stated the racing season lasted thru October 31<sup>st</sup>. He said the season began in June. Mr. Miller stated the organization prefers to get 17 races in a season but a season of 14 races is adequate. He said you have to take rain dates out of the number of weekends during the season and he said again if they get in 14 races they are happy. Mr. Miller added that he would prefer to end the season in mid-October.

Diane S. asked about restroom facilities, what would be on site? Mr. Miller said he would have at least one porta-potty, more if needed. Diane stated the location of the portable toilet should be depicted on the plan.

Roger A. asked how big the area for the parking would be? Mr. Miller stated he had an area beside the existing building which is 60' x 75' and he showed another area that could be used which was approximately 50' x 300'. Roger said the board would need to know the number of parking spaces that would be on site and how traffic would enter and exit the premises. Roger said the number of parking spaces should be on the plan.

Roger A. said the board would also need to know where the people coming to race would be parking, along with their trailers. What will be the number of spaces provided?

Roland L. asked if Mr. Miller would have any paramedics on site or if he knew whether or not any were required by law? Mr. Miller stated he did not believe there was a requirement to have a paramedic but he wanted to have at least one on hand during the event. Roger A. stated Mr. Miller could speak with Fire Chief Duane Romano; he may know whether or not paramedics would be required.

Roland L. asked if Mr. Miller would be serving food out of the existing bakery trailer? Mr. Miller stated yes.

Mr. Miller asked how many square feet was required for each parking space? Roger A. stated 200 square feet per space.

Diane S. asked Mr. Miller if he was going to charge admission? Mr. Miller stated yes. Diane wanted to know where the spectators would be located? Mr. Miller showed her the area on the plan. She asked if there was going to be a fence between the racing area and the spectators? Mr. Miller stated yes, there would be snow fencing and hay bales.

Roland L. asked how many laps constitute a race? Mr. Miller stated the heats were 10 laps and the feature race is 35.

CEO McDonough wanted to know how big the track would be? Mr. Miller stated 40' x 80'. Mr. Miller stated the club wanted 100' x 50' but he didn't have a large enough area.

Madge B. asked if there would be much earth moving when creating the track? Mr. Miller stated he would be pulling from the existing embankment to create the track.

CEO McDonough asked if there was going to be a site inspection by the board? Roger A. stated yes.

CEO McDonough asked what would be done for dust control? Mr. Miller stated there would be a water wagon on site. Mr. Miller stated he was also speaking with a gentlemen regarding what worked best for the tracks. He thought tilling in clay with the sand then adding water should help with the dust. Again he was going to ask an expert in the field to gather more information.

Diane asked what the hours of operations would be? Mr. Miller stated the drivers would arrive at 2:00 p.m., the first race would be at 4:00 p.m. and the event should be concluded by 6:30 p.m. Mr. Miller stated he did not want it into the late evening hours; there would be no additional lighting on site.

Roger A. asked about refuse, who would take care of it? Mr. Miller stated he would be removing it from site.

Roland L. asked approximately how many spectators did Mr. Miller expect to have? Mr. Miller stated he thought around 250 people. Roland asked if it was people from out of town that would come or were they locals? Mr. Miller stated mostly locals come to the events. Mr. Miller said it wasn't an overly expensive sport and just about anybody can do it. Mr. Miller stated they do keep points but for the most part it is to have fun. Madge B. asked if there was any money involved. Mr. Miller said no, there are points and a trophy at the end of the year.

It was noted to Mr. Miller that he owed the Town of Shapleigh \$25 for a returned check for his Growth Permit application. Mr. Miller wanted to know who provided the check to the town. Barbara said she would get a copy of the check to Mr. Miller. *NOTE: Barbara F. made a copy of the returned check from the Treasurer; the check was made out by Mr. Miller. Barbara mailed a copy of the check to Mr. Miller along with a note that this debt has to be paid as soon as possible.*

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

Roger A. stated a site inspection would be scheduled prior to the next meeting on Tuesday, May 26<sup>th</sup>, at 6:15 p.m. A Notice to Abutters would be mailed as well and a Public Hearing would be held.

**Election of Officers**

Diane Srebnick nominated Roger Allaire for Chairman.

Madge Baker 2<sup>nd</sup> the motion.

Roger Allaire accepted the nomination.

All members were in favor. ***Roger Allaire will remain Chairman of the Planning Board.***

Diane Srebnick nominated Madge Baker as Vice Chairman.

Maggie Moody 2<sup>nd</sup> the motion.

Madge Baker accepted the nomination.

All members were in favor. ***Madge Baker will remain Vice Chairman of the Planning Board.***

Roger Allaire appointed Barbara Felong as Secretary.

All members were in favor of the appointment.

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***The Planning Board meeting ended at 8:40 p.m.***

Respectively submitted,

Barbara Felong,

Land Use Secretary

[planningboard@shapleigh.net](mailto:planningboard@shapleigh.net)

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, May 26, 2009**

Members in attendance: Roger Allaire (Chairman), Madge Baker (Vice Chairman), Roland Legere, Maggie Moody, Diane Srebnick and Barbara Felong (Secretary). Code Enforcement Officer, Steven McDonough was also in attendance.

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The following words are not verbatim unless accompanied by quotation marks “ ”.

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### **Public Hearing Began at 7:00 p.m.**

#### **Amendment to a Conditional Use Permit – Lawn Mower Race Track – Map 8, Lot 26C (12 Newfield Road) – Susan Miller, Applicant**

Mr. Miller, Susan Miller's husband, was present for the Public Hearing.

Mr. Miller stated they were proposing to put in an oval racetrack for garden tractors for a local group to race on Saturday afternoons. He stated the track would be approximately 100' x 65' and it would be fenced in. The races would begin at 4:00 p.m., people would begin to show up two hours earlier and the event would last until approximately 6:00 p.m. There would be 2 heats and an event race.

Mr. Miller stated it was all run under the guidelines of the US Lawnmower Racing Association, Sportsman Class. The tractors are stock tractors; they are required to have stock exhaust and turf tires, although he said they do change the gearing for racing purposes. He said the driver's safety is included in the rules of conduct; a neck brace is required, helmets, long sleeve shirts, pants, and boots up over the ankles.

Mr. Miller asked a gentleman in the audience, Mr. Charlie Gassett, how long the local association had been racing? Mr. Gassett stated the group in Saco has been in existence since 2006. Mr. Miller stated he just wanted to provide another facility for the group to use.

Roger A. asked if there were any questions? Mr. Tim Boucher, an abutter within 500 feet of Mr. Miller's property, stated he had a copy of Mr. Miller's application. Mr. Boucher stated that on the application it said the race track was going to be 80' x 40' and this evening Mr. Miller stated it would be 100' x 65', he wanted to know about the discrepancy? Mr. Miller stated it was his mistake on the application, the 80' x 40' was the inside dimension of the track.

Mr. Boucher asked Mr. Miller if there would be any alcohol served during the event? Mr. Miller stated no alcohol would be allowed on the premises.

Mr. Boucher stated the application said lawnmowers would be used, which he said he did not object to, but he wanted to know how the board and Mr. Miller would prevent four wheelers from meeting on site. Mr. Miller stated the area would be fenced in with a snow fence and he would also have tires and hay bales used as barriers during the event. When the event was finished they could be distributed across the track itself to make it less inviting.

Mr. Boucher asked who would remove the trash? Mr. Miller stated he would. Mr. Boucher stated again he was not opposed to the application but he wanted to be certain it would not affect his property.

Mr. Charles Beach, a direct abutter to Mr. Miller's property, asked if next year Mr. Miller wanted to change to another kind of racing, would it be allowed? Roger A. stated Mr. Miller would have to come back for an amendment to his Conditional Use Permit if he wanted to make any changes to the approved permit. Mr. Beach was worried it would be a dusty noisy mess but he said he didn't object to the application. Mr. Miller stated there would be a water truck on site to water down the track. Mr. Miller said they would be adding clay to the sand to create a better track. He said between each heat water would be added to the track if necessary. The track is also inspected for any objects that may have fallen off the tractors.

Mr. Boucher asked Mr. Miller what the maximum number of people would be on site? Mr. Miller stated 200. Mr. Boucher asked where everyone would park? Mr. Miller stated there was a designated parking area between the building and the track area, along the front driveway area, on the lawn on the Ross Corner Road side and Herman Abbott (Map 8, Lot 30C, 1785 Gore Road) said vehicles could park on his property as an overflow.

Mrs. Donna Beach asked if there would be any parking next to her property? Mr. Miller stated no, there would be no parking on the hill. Mr. Boucher asked if there would be any parking on Ross Corner Road. Mr. Miller stated there would be no parking on the street, Roger A. concurred.

Mr. Boucher asked what Mr. Miller would do in case there was a fire? Mr. Miller stated Ross Corner Fire Company has agreed to attend. Mr. Miller stated he would also like to see if he could provide a paramedic.

Mrs. Beach asked about the hours of operation again. Mr. Miller stated the drivers would start to arrive at 2:00 p.m., the spectators around 4:00 p.m. Mr. Miller stated there would be driver warm-ups from 2:00 to 4:00 p.m. He said there would be 10 tractors running per heat.

Mr. Miller provided the board members with a new sketch of his parking area and the race track.

Madge asked how the tractors lined up on the track? Mr. Miller stated two by two and there was a pace tractor in the front to start. Charlie Gassett stated whoever crossed the finish line first was the winner. Madge didn't understand how the starting positions worked. Members explained, it was like a stock car race. You received your position prior to the start of the race.

Mrs. Beach was still concerned with the level of dust on site, especially after the race was finished. Mr. Miller explained the type of material he would be using for the track and again stated the track would be watered as often as necessary to prevent dust because he had an eating establishment on site and did not want dust blowing toward it. Mr. Miller went on to say that one of the drivers suffers from hay fever and asthma, so dust is a concern for the drivers as well as the spectators.

Mr. Boucher asked if the months on the application were the correct months the races would be held? Mr. Miller stated yes, June through October, with a maximum of seventeen races.

Mr. Boucher asked about toilet facilities, what would be on site? Mr. Miller stated there would be either one or two portable toilets.

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

The Public Hearing was closed at 7:10 p.m.

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**State Mandated Shoreland Zoning Changes to Chapter 105, Zoning for the Town of Shapleigh**

Roger A. stated the changes made to Shapleigh's Zoning Ordinance with respect to Shoreland Zoning were mandated by the State of Maine. All towns would have to make the necessary changes by July 1, 2009.

Roger A. asked the audience members if they would like him to read all the changes, and said he would be happy to answer any questions anyone might have with respect to the changes. No person asked Roger to read the changes. One citizen asked for a copy of the changes, which were provided for her.

A citizen stated she had two homes, one on 32<sup>nd</sup> street the other on 33<sup>rd</sup> street and both were located within the Shoreland zone. She wanted to know how the new changes might affect what she could or could not do. She said she might want to replace one existing garage and asked if she still would be able to with the new changes. CEO McDonough stated the same rules still apply; it would be a Best Practical Location through the Planning Board. He said he did not believe any rules had changed with respect to replacing an existing structure in the Shoreland zone.

Madge B. stated the setbacks for structures in the Shoreland zone have not changed. CEO McDonough stated the amended Zoning Map had changed from the existing Zoning Map with respect to Shoreland zoning. CEO McDonough stated that there are some places on the map that were previously Shoreland zoned and are now Resource Protection. CEO McDonough stated the setback in Resource Protection will be 250 feet, whereas now it is 100 feet. CEO McDonough said that the places he is referring to are not necessarily on the lakes, the designation is more around the existing wetlands that the State has determined are areas of high significance. He showed the citizen a spot on the existing zoning map that currently list an area as Shoreland zoning. He noted now on the new zoning map the area has not only changed shape but it is now designated as Resource Protection. Roland L. stated that this is now more stringent than the Shoreland designation. CEO McDonough stated correct.

CEO McDonough explained the changes in the Zoning Ordinance briefly to the citizen, and noted what she should look for in the handout she was given. He stated again he did not believe it would affect the project she wanted to do. Madge B. stated the best thing to do is to go to CEO McDonough with her plans and he can help her with them.

Roger A. explained the new Resource Protection designations were to help the wildlife and plant species in those areas. Roger noted that some wetland areas have been eliminated and some increased in size based on Inland Fisheries & Wildlife's new studies in the area. The citizen understood.

Roger A. asked if there were any additional questions. There were none. The public hearing was closed at 7:15 p.m.

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

**The minutes from Tuesday, May 12 2009, were accepted as read.**

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**Amendment to a Conditional Use Permit – Lawn Mower Race Track – Map 8, Lot 26C (12 Newfield Road) – Susan Miller, Applicant**

Mr. Miller was present for the review of the application. Note: Board members did a site inspection prior to this evenings meeting.

Roger A. began by stating the board received a letter by fax today from one of the abutter's, a Mr. Edward Norton of 710 Ross Corner Road. Roger read the letter to the board members and audience, it read as follows:

“Dear Board Members:

I am responding to the recent notice pursuant to the application for an Amendment to a Conditional Use Permit to hold Lawn Mower Racing Events on Saturday afternoons at the property known as Shapleigh Tax Map 8, Lot 26C (12 Newfield Road) submitted by Susan Miller.

I have been a resident of Shapleigh for over 20 years. I purchased this property because it offered a quiet, picturesque and restful rural environment. I believe that approval of this application for the purpose of lawn mower races would create an undesirable noisy and intrusive violation of the local environment. The impact on the environment, even one day a week, could threaten the animal life, the air quality and, possibly, the surface water quality in the immediate area. This would create increased traffic in the area which is also nuisance.

The result would be, at the least, inconvenience due to noise and noxious odors and, at worst, health risks to nearby residents and wildlife. Furthermore, this would have a serious negative impact on the property values of the homes in the area, thus causing irreparable financial damage to the residences. I will be unable to attend the Public Hearing on May 26, but I would like to have my opposition to this application formally entered for the record.

Respectfully Submitted

Edward W. Norton”

Mr. Charlie Gassett, the announcer for North Saco Racing Association, asked if he could address the concerns in the letter. He stated the dust is minimal, perhaps rising 2 feet from the ground. The drivers do not want a track that creates a big dust cloud. He said it doesn't create the dust most people think it might create. He invited anyone to come to the next race on Friday night in Saco to see for themselves.

Mr. Gassett said as far as the noise issue, a lawnmower is much noisier once you engage the mowing deck. There are no mowing decks on these machines. These mowers are 15 to 18 hp mowers and are not as loud as a little 4 hp, they make a humming noise. He said a two-stroke lawnmower is very loud, this organization does not run two strokes and they do not use hydrostatic lawnmowers either because of the noise factor. The mowers used are belt driven mowers.

Mr. Gassett said they run two sets of 10 mowers for warm-ups, each lasting approximately 12 minutes each. He stated the final feature event never last longer than 18 minutes. He said the most these mowers are running are a total of 3/4 of an hour.

Mr. Gassett said it is mostly people having a good time. It is run like NASCAR. He said they have the National Anthem and there is a 50 / 50 drawing. He said it was a good family fun day.

Roland L. asked if he, as an announcer, uses a P.A.? Mr. Gassett stated, yes, he does a blow by blow of what is taking place. He said there are two speakers aimed downward at the spectators and mowers. Mr. Miller stated if you look at the plan the speakers are situated behind the hill, toward the spectators, facing the cemetery and Church, not toward anyone's home. Mr. Gassett said the speakers were 50 watts each.

Diane S. asked if Mr. Miller had provided the board with a check for \$25 to cover the returned check to the town, mentioned at the last meeting? Barbara F. stated she had not received the check. Mr. Miller stated he had not had the opportunity to come to the town office. Barbara said the Town Hall is open Thursday night and anyone could put documents in the mail slot in her door at any time. Note: Mr. Miller stated once again



the check was not his. The copy of the check has his name written in the upper left hand corner but the signature is illegible. Regardless the returned check was for his application for a Growth Permit and the issue must be corrected by Mr. Miller.

Mr. Gassett wanted to address the issue of safety. He said that if the dust gets to the point that he feels its dangerous and the drivers will have a hard time to see, he will throw out the black flag and red, so the drivers can go to the pit while they wet the track. He added that his son races and he has asthma and he wouldn't want it to affect him. He said also, the spectators would not want to stand around watching a race while being covered in dust. Mr. Gassett stated that it was up to him to keep an eye on the track for safety and health issues.

Mr. Gassett also explained about the tether switch which goes from the dash to the driver's belt and that it kills the ignition if someone falls off the machine stopping the machine automatically. He said before each race each machine is tested to make sure each kill switch works, if it doesn't they cannot enter the race.

Mr. Miller stated he has read the rules and he found them very clear and concise. He said no one wants to see anyone getting hurt.

Maggie M. was concerned with who would inspect coolers for alcohol? Mr. Miller stated he would be inspecting them on the way in. He stated that if any alcohol was found on site people would be asked to leave. Mr. Garrett stated again it was a family event and the drivers understood no alcohol is allowed. Roger A. stated no alcohol would be allowed on site.

Roger A. asked if there were any additional questions at this time? There were none.

Roger A. reviewed the following ordinance standards:

- 105-17 - Land Uses. *This business is a permitted use with a Conditional Use Permit and falls under the category of commercial outdoor recreation.***
- 105-20 – Applicability of standards; prohibited uses. *This application is a permitted use within the zoning ordinance and will not cause any health and safety concerns when permitted through the Planning Board.***  
Roger read 105-20 in its entirety to Mr. Miller.
- 105-21 – Traffic. *Traffic will have safe access based on the fact there are stops signs adjacent to the entrance to the site which will keep traffic moving slowly. The site distance calculations appear to be well within the limits. Mr. Miller shall provide the board with the site distances in writing prior to holding the races.*** Madge B. wanted to be sure the site distance was adequate for both parking areas so she asked for the calculations for both locations. Roger A. agreed stating there will be much more traffic for a period of time than there was for the donut shop so it is important it is safe for people to exit.
- 105-22 – Noise. *Based on the information gathered, it was concluded the noise will not be excessive at unreasonable hours.*** Mr. Gassett stated they measured the sound on a sound level meter in Saco and the most noise was measured at 73 dB(A) and that included road noise adjacent to the track. Madge B. asked if the board needed to further address this issue. Roger A. stated because the board has a measurement and as long as it does not bother the surrounding neighbors, with the limited length of time it is not an issue. If the sound should create an issue, the Sheriff's Department has a sound meter and they will come and measure the sound and steps may have to be taken to try to diminish the noise.
- 105-23 – Dust, fumes, vapors and gases. *The dust shall be addressed by use of watering down the track, there shall be no excessive fumes produced because the machines shall have a***

- muffler to arrest the odor.* Mr. Gassett noted the machines have a governor on them and they cannot exceed 36 rpms. He said they are tested on a regular basis.
- 105-24 – Odors. *The machines shall have a stock muffler.* Mr. Gassett stated no additives are allowed in the gasoline.
- 105-25 – Glare. *There shall be no additional lighting added to the existing buildings or around the race track.*
- 105-26 – Stormwater runoff. *The changes made to the existing hill will help to prevent the existing runoff by lessening the current pitch of the land. The overall area is very sandy and water currently drains into the earth without leaving the property. The changes to the property will not change that condition.*
- 105-27 – Erosion control. *There will be mulch added to the North facing embankment after the race track is complete to prevent future erosion.*
- 105-28 – Setbacks and screening. *There shall be no exposed storage areas associated with this business, no machinery installation, no discarded lawnmowers, or lawn mower parts or salvage of any kind on site.*
- 105-29 – Explosive materials. *There shall no explosive materials stored on site.* Mr. Garrett noted that each driver has a fire extinguisher on their mower. Mr. Miller noted that a representative of the Ross Corner Fire Company will attend each event at well.

Mr. Garrett stated with respect to an EMT as talked about earlier in the evening, in Saco it is a much larger crowd in attendance and the State does not require an EMT on site. He said the club has the phone number of the State Police and Rescue at hand. He said in all the years he had attended these events there has only been one broken thumb and one bruised butt.

- 105-30 – Water quality. *There is no change to the existing property that would affect water quality. There shall be two portable toilets on site. Oil changes for the mowers shall not be allowed on site, mowers shall be ready to race when brought onto the site, no additional maintenance will be allowed.*
- 105-31 – Preservation of landscape; landscaping of parking and storage areas. *The surrounding landscape, which is trees and shrubs, shall not be disturbed. No additional parking area is going to be created that would require screening. There are no outside storage areas for this application.*
- 105-33 – Refuse disposal. *The waste shall be removed from site by the applicant no later than the Sunday following each event. There shall be enough waste barrels provided so no trash is left on the ground.* Mr. Garrett stated it was the policy of those in the club that anything you bring to an event you take out, including all refuse. Mr. Garrett stated the club does not allow for oil changes during an event. He said that if they try to change the oil on site they are not allowed to race. Mr. Miller noted that he had a food business on site and he did not want the area unsanitary.
- 105-39 – Earth removal and filling. *After earth is removed from the embankment to create the race track, mulch shall be placed on the exposed earth to prevent erosion and stabilize the area.* Madge was concerned with the amount of earth to be removed and asked that the area be covered with some type of mulch. Madge asked about the existing slope. Mr. Miller stated the slope would be much reduced when he removed the soil for the track. He said during the process it would be sloped to a lesser degree than what it is now. He said there may be a snow fence placed at the top of the hill to keep people off that area because it is very sandy soil. Madge stated she wanted a condition that the area exposed would be covered to prevent erosion.

Roger A. stated that during the Public Hearing Mr. Miller stated the total area would be fenced; he wanted to know exactly what that area was. Mr. Miller stated the track itself would be fenced and the spectator area would be fenced.

Roger A. concluded the slope outside of the track area should be mulched and no one should park or walk in that area to prevent erosion of the slope. All members agreed.

- 105-43** – Off-street parking and loading. *Mr. Miller must provide site distances for both parking areas prior to running the first race. If the site distance is inadequate then this must be addressed with the Planning Board prior to the first race. Also, a letter shall be provided to the board by Mr. Abbott stating Mr. Miller has permission to use part of his property as a parking area.* Diane S. read 105-43(g) and noted 66 parking places must be provided. Diane stated that on the plan there are not enough spaces provided on Mr. Miller's property. Mr. Miller stated that Herman Abbott's parking area would provide the extra spaces. Diane had no issue with that but felt the board needed to have it in writing that Mr. Abbott would allow it to take place. Mr. Miller stated he would get a letter from Mr. Abbott. Diane also noted that there needed to be 19 spaces available on Mr. Abbott's property. The board members agreed and that site distances for both parking areas must be established.
- 105-46** – Sanitary Provisions. *Board members agreed two portable toilets would be placed on site. If it appears more are necessary Mr. Miller and the board would re-address the issue.* Diane S. stated she contacted a business that rents portable toilets and they felt 4 to 5 would be necessary for 250 people. Diane thought 4 would be adequate. Mr. Miller stated he was told one was required per 100 people. Based on the fact that there were very limited hours of operation and Mr. Gassett stated they only have two portable toilets in Saco where more people attend, and there were no problems in Saco, board members agreed two would be adequate at this time. If it appears more were necessary Mr. Miller would need to address it.
- 105-47** – Signs and billboards. *All signage shall be permitted through the Code Enforcement Office.* Roger A. asked if there would be any additional signage. Mr. Miller stated possibly a banner on the hill. Roger stated this would be thru the CEO's office.
- 105-52** - Water quality protection. *There is nothing to be stored on site to affect water quality.* Roger A. stated an adequate number of portable toilets would be on site and additional would be added if necessary.

Mr. Garrett stated that Saco racing had approximately 300 people attend and they were required to have two portable toilets. And he said it was enough. Diane S. had spoken with Stoney Road Septic and they suggested four portables for 250 people. Mr. Miller stated he spoke with Stoney Road Septic as well and they did not believe more than two were necessary based on the number of people and the hours the event took place.

Mr. Ferrera noted that at the ball field in Shapleigh there was only one portable toilet and it was adequate. He stated at times very large crowds were in attendance at the games.

Roger A. asked Mr. Miller if the portable toilet would just be delivered for the event or if it would remain on site for the season? Mr. Miller stated for the entire season and it includes a service contact.

Diane S. asked if there was a setback requirement for the race track? She said the track would be within 25'

of the Newfield Road? CEO McDonough stated only structures had setback requirements and the track was not a structure. CEO McDonough stated that it is on Mr. Miller's personal property so again it isn't an issue but if it were on DOT property than it would be an issue. Maggie M. asked if the fence around the race track was an issue. CEO McDonough stated that any fence less than six feet in height is exempt from permitting.

Roger A. asked if there were any additional questions or concerns? There were none.

**Roger A. reviewed Shapleigh Zoning Ordinance 105-73.G “Standards applicable to conditional uses”.**

- 1) The use will not have an adverse impact on spawning grounds, fish, aquatic life, birds or other wildlife habitat. ***It will not, the area used is a cleared gravel area at this time and the re-sloping and mulching of the embankment will help to prevent erosion and run-off issues that currently exist.***
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. ***N/A***
- 3) The use is consistent with the Comprehensive Plan. ***It is, the Comprehensive Plan doesn't address this activity specifically but it does promote outdoor recreation.***
- 4) Traffic access to the site is safe. ***It is, during the site visit it was noted by several board members the minimum site distance requirement should be met. Mr. Miller shall provide the information in writing supporting that prior to holding the first race.***
- 5) The site design is in conformance with all municipal flood hazard protection regulations. ***It is, none of the property is in a flood zone.***
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. ***Two portable toilets as a minimum shall be on site for all events and all trash shall be removed from the site no later than the Sunday following the event.***
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. ***There shall be no hazardous materials stored on site.***
- 8) A stormwater drainage system capable of handling a twenty-five-year storm without adverse impact on adjacent properties has been designed. ***There will be no changes to the site that would affect stormwater drainage. The existing stormwater issue on the steep slope on the North side shall be addressed by reducing the degree of slope and adding mulch to the embankment. No persons attending the events shall be allowed to travel on the embankment. In addition, the type of sandy soil on site percolates extremely well so no stormwater shall leave the site.***
- 9) Adequate provisions to control soil erosion and sedimentation have been made. ***The only area on site which presently has an erosion problem shall be addressed by reducing the slope of the North facing embankment as well as placing mulch down. No persons shall be allowed to travel over this area.***
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. ***The location of the racetrack is within several hundred feet of Ross Corner Fire Company and a member of the fire company shall be on site at each event.***
- 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. ***The existing vegetation shall be kept in place; the maximum run time of the lawnmowers at any one heat shall be 18 minutes and there shall be no more than two heats and one feature run; there shall be no additional lighting add; only lawnmowers / tractors shall be allowed, there shall be no four wheelers / ATV's on site; all lawnmowers must have a stock muffler to reduce noise and fumes; the track shall be watered as often as necessary to prevent any dust from leaving the property lines; and the speakers for the announcer shall be directed downward and toward the cemetery/church to reduce the amount of noise that travels toward a household.***

- 12) All performance standards in this chapter applicable to the proposed use will be met. *They shall with the conditions imposed.*

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

- 1) The events shall take place Saturday's only from 2:00 p.m. to 7:00 p.m.
- 2) A maximum of 200 people shall be on site at any one time, otherwise the application must be re-addressed between the Planning Board and the applicant.
- 3) The maximum number of racing events shall be 17 per season and the racing season shall take place between June and October of each year.
- 4) There shall be two portable toilets on site at all times. If this is deemed unsatisfactory then an additional toilet must be added.
- 5) There shall be no alcohol allowed on site at any time. If alcohol is present the event shall be canceled and the application must be re-addressed between Mr. Miller and the Planning Board prior to any additional races.
- 6) There shall be no oil changes allowed on site.
- 7) Trash shall be removed by the applicant no later than the Sunday following the event.
- 8) The North slope behind the race track shall be mulched once the race track is complete. No persons shall be allowed to travel or stand in that area during the racing events.
- 9) Site distances for both properties to be used for parking shall be provided to the Planning Board prior to the first race, the properties being Tax Map 8, Lot 26C and Herman Abbott's property, Map 8, Lot 30C. A plan depicting the number of parking spaces on Mr. Abbott's property must also be provided to the Planning Board prior to the first race.
- 10) The Planning Board must receive a letter from Mr. Herman Abbott stating the applicant has permission to use his property for parking, prior to the first race.
- 11) The \$25 returned check fee must be paid to the Town Clerk prior to the first race.
- 12) Any signage must be permitted through the Code Enforcement Office.
- 13) If any of the above conditions are not followed the approval for the race track shall become null and void.

**Madge B. made the motion the board approve the application with the above stated conditions. Maggie M 2<sup>nd</sup> the motion. All members were in favor. Vote 5 – 0.**

Nothing further was discussed.  
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**Amendment to a Conditional Use Permit – Lawn Mower / Farm Utility Vehicle Race Track & Snack Bar – Map 10, Lot 22 (2 Oakhill Road – Off Rte. 11) – Robert Ferrera, Applicant**

Mr. Ferrera was present for the review of his application.

Mr. Ferrera stated he was applying to hold the same type of events as Mr. Miller. He said no permanent buildings would be erected for the events. He stated he had more than adequate parking available at this time without making any changes to his property. He provided a plan to the board. On this plan it was also noted that additional parking areas were on site if necessary. Mr. Ferrera stated at present there was parking for 50 vehicles and an area for an additional 100 more to the left of the proposed racetrack location. He stated that he too would hold events on Saturday's only and drivers would be allowed on site at 2:00 p.m. and spectators 4:00 p.m. All persons would be off site by 8:00 p.m.

Mr. Ferrera stated at present no additional lighting would be added but if in the future he wanted lighting he would come back before the Planning Board. He also wanted it noted that there may be extended hours in the future and additional days. Madge B. stated he may want to present those hours at the final review.

Roger A. asked exactly where the racing and parking would be. Mr. Ferrera stated behind the existing blueberry barn. He explained the amount of parking already on site and how it was more than adequate with additional area if necessary but he did not foresee having to expand it based on what was available.

Mr. Ferrera noted he had no near neighbors. (Currently abutters within 500 feet of Mr. Ferrera's property are the recreation fields, community forest, Davis Farm and land own by Inland Fisheries and Wildlife.)

Madge B. asked if this area was already cleared for pasture? Mr. Ferrera stated yes. Madge asked if he was going to have to move any earth? Mr. Ferrera stated there was little to be done. Roger A. stated it just needed fencing. Mr. Ferrera stated that's correct, and placing a few tires around the track.

Diane S. wanted it noted that under 105-31.A, Preservation of landscape; landscaping of parking and storage areas., the last sentence reads, "Large parking lots shall be provided with at least one tree (of two-inch caliper) for every 35 car spaces (four trees per acre), to be located at representative points throughout such lots." She asked if the board might want to re-address this because in a case such as Mr. Ferrera's, planting more trees would not provide a benefit based on the location, i.e. the middle of a field. Mr. Ferrera stated that he could meet that criterion at this time. There are enough established trees around the parking area to exceed that requirement.

Barbara F. asked if maybe the word *shall* should be changed to *may*, leaving it up to the discretion of the board members based on the location. Roger A. stated it could be addressed through a definition for a parking lot. Roger felt this application was for an event, not an actual parking lot used on a daily basis. Roger thought the tree requirement was for a parking lot such as a store, mall, school area, etc. He thought it was for an area used every day of the year. Roger said this was just an "event" then no one would be there the rest of the week.

Madge B. liked the idea of using *may* instead of *shall*. CEO McDonough was not in favor of using *may* because he felt too many times the restriction wasn't imposed because of the word "may". CEO McDonough would prefer a subsection that addressed temporary parking areas for events. Diane S. asked if perhaps it should just be for large paved parking lots?

The board decided to re-address this issue prior to the end of the year and perhaps make a change for Town Meeting in 2010.

Roger A. asked if there were any additional questions for Mr. Ferrera? There were none.

**Roger A. stated a site inspection would be held on Tuesday June 9<sup>th</sup> prior to the meeting. Board members would meet at the town hall at 6:15 p.m. There will also be a Public Hearing at 7:00 p.m. and a Notice to Abutters will be mailed.**

Nothing further was discussed.

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

Respectively submitted,

Barbara Felong, Land Use Secretary [planningboard@shapleigh.net](mailto:planningboard@shapleigh.net)

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, June 9, 2009**

Members in attendance: Roger Allaire (Chairman), Roland Legere, Maggie Moody and Barbara Felong (Secretary). Code Enforcement Officer, Steven McDonough was also in attendance.

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The following words are not verbatim unless accompanied by quotation marks “ ”.

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### **Public Hearing Began at 7:00 p.m.**

#### **Amendment to a Conditional Use Permit – Lawn Mower / Farm Utility Vehicle Race Track & Snack Bar – Map 10, Lot 22 (2 Oakhill Road – Off Rte. 11) – Robert Ferrera, Applicant**

Mr. Ferrera was present for the public hearing.

Mr. Ferrera began by stating he was going to put in a small oval dirt track to race lawn tractors. He said they take the mower decks off the tractors, place numbers on the tractors, add a kill switch and race them. Currently they are holding these races in Saco.

Mr. Ferrera stated it was a family oriented business. He said it was an affordable form of recreation. And he added that it wasn't extremely noisy like regular stock car races.

Roger A. asked Mr. Ferrera about the details of the farm utility tractor race track as noted on his application. Roger said there were no details for this other type of racing so he would like to see this type of racing reviewed as a phase two once more information was provided. Mr. Ferrera didn't mind waiting for approval for the utility tractors. He showed the board a copy of what a utility tractor looked like.

Roger A. asked if he would be racing the six wheelers? Mr. Ferrera didn't believe so. Mr. Ferrera stated he would lay out the track for the utility vehicles and when finished would come back before the board.

Roger A. asked if there were any additional questions. There were none. The public hearing was closed at 7:05 p.m.

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#### **State Mandated Shoreland Zoning Changes to Chapter 105, Zoning for the Town of Shapleigh and Changes to Shapleigh's Zoning Map**

Pat Baldwin and Wayne Pillsbury, citizens of Shapleigh were present for the public hearing.

Roger A. begin the public hearing by stating the changes made to the Zoning Ordinance were changes mandated by the State of Maine. Roger said there would be a special town meeting to vote on these changes on June 30<sup>th</sup>. This was due to the fact the changes had to be voted on by July 1, 2009. Roger noted that he was not in favor of voting on changes to the ordinance at a special town meeting but in this case the changes were to be adopted statewide and the towns had a July 1<sup>st</sup> deadline to adopt them, thus the need for a meeting by the end of June. Roger also noted that the changes made did not ultimately change the ordinance substantially. Many changes were in verbiage so the Town's language mirrored what the State used with respect to Shoreland zoning.

Roger A. stated that when the Planning Board initially reviewed the changes the State was requesting and what the town currently had for Shoreland zoning, the board members did not feel any changes to what exist at this time was necessary, outside of the change with respect to Resource Protection.

Roger A. explained the board reviewed the State's changes, made the changes throughout the Zoning Ordinance so language was consistent with the State, and made the changes with respect to Resource Protection both in the ordinance and on the new Zoning map.

Barbara F. stated Mike Morse of the DEP had reviewed the changes made, making a few additional notes, and at this time the ordinance should comply with the State's mandates.

Roger A. asked if anyone wanted him to read the changes? Pat Baldwin stated no, she said she just wanted to know if there had been any major changes that would affect the waterfront. CEO McDonough stated most of the changes were to the mapping. He said the wetlands in the middle of the town at present were Shoreland zoned; with the State's mandated changes they will be Resource Protection, which requires a larger buffer zone. He stated the buffer changes from 100 feet to the high water mark to 250 feet in Resource Protection.

Roger A. agreed that was the biggest change. He noted that some of the high value wetlands increased in size and several wetlands were no longer on the map.

Ms. Baldwin asked if the State supplied the new map? CEO McDonough stated the Town had to purchase the map and the company that provided the map, downloaded the information from the State's website.

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

Roger A. told Ms. Baldwin and Mr. Pillsbury that the vote for the changes would be June 30<sup>th</sup>.

The Public Hearing was closed at 7:15 p.m.

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

**The minutes from Tuesday, May 26 2009, were accepted as read.**

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**Amendment to a Conditional Use Permit – Lawn Mower / Farm Utility Vehicle Race Track & Snack Bar – Map 10, Lot 22 (2 Oakhill Road – Off Rte. 11) – Robert Ferrera, Applicant**

Mr. Ferrera was present for the final review of his application. Mr. Charlie Gassett was also present. He is a member of the Saco Lawn Mower Racing Club as well as the announcer for the competitions. NOTE: Board members did a site review prior to this evenings meeting.

Roger A. asked if there was a racing season? Mr. Ferrera stated it was based on the weather. Mr. Gassett stated the events usually begin around the first week in May and go through end of October.

Roger A. asked about the hours of operation. He said it was listed on the application as 7:00 a.m. thru 10:00 p.m. Monday thru Sunday. Roger said that the racing currently is only listed as being on Saturday. Roger



wanted to know if Mr. Ferrera still wanted the hours of operation 7 to 10, seven days a week? Mr. Ferrera stated yes because he wanted the flexibility to be able to hold them on another day in the event of rain, or if there is a holiday, etc.

Roger A. said initially the hours would be 2:00 p.m. thru 8:00 p.m. and on Saturday, correct. Mr. Ferrera stated yes that is the plan. But again he wanted to be able to change those hours without coming back to the board if need be. Because of the location of the race track and parking area, board members did not have an issue with his request. Board members also noted that at the site inspection it was obvious the location was well suited with respect to both the race track and parking areas for Mr. Ferrera's proposal.

Roger A. asked if there were any additional questions at this time? There were none.

Roger A. reviewed the following ordinance standards:

- 105-17 - Land Uses. *This business is a permitted use with a Conditional Use Permit and falls under the category of commercial outdoor recreation.*
- 105-20 – Applicability of standards; prohibited uses. *This application is a permitted use within the Zoning Ordinance and will not cause any health and safety concerns when permitted through the Planning Board.*
- 105-21 – Traffic. *In February 2002, during the approval process for the existing Alpaca business, the site distances were approved, being over 500 feet in either direction.*
- 105-22 – Noise. *Based on the location of the race track, the existing vegetation and the fact no residence is within 500 feet of Mr. Ferrera's property, noise will not be an issue. In addition, the lawn tractors have to have stock exhaust and measured rpm's that meet the clubs standards, thus reducing the noise level.* Roger A. read the noise standards to Mr. Ferrera should there be an issue in the future.
- 105-23 – Dust, fumes, vapors and gases. *The dust shall be addressed by use of watering down the track and there shall be no excessive fumes produced because the machines are required to have a stock muffler to help with both noise and odor.* Roland L. asked Mr. Ferrera if dust became an issue would he be watering the track? Mr. Ferrera stated yes, he would have a truck on site for that purpose.
- 105-24 – Odors. *The machines shall have a stock muffler.*
- 105-25 – Glare. *There shall be no additional lighting added to the existing buildings or around the race track.* Mr. Ferrera was told if he wanted additional lighting he would have to come back before the board.
- 105-26 – Stormwater runoff. *There are no changes being made to the existing property that will create a problem with stormwater. The area is very flat and the existing vegetation outside of the parking area will remain in place. In addition the area has very sandy / permeable soil.* Board members noted at the site inspection the area was very well drained.
- 105-27 – Erosion control. *There will no stripping of the existing vegetation and the area to be used is a great distance from the lot lines.*
- 105-28 – Setbacks and screening. *There shall be no exposed storage areas associated with this business, no machinery installation, no discarded lawnmowers, or lawn mower parts or salvage of any kind on site.*
- 105-29 - Explosive materials. *There shall no explosive materials stored on site.*
- 105-30 – Water quality. *There is no change to the existing property that would affect water quality. There shall be two portable toilets on site. Oil changes for the mowers shall not be allowed on site, mowers shall be ready to race when brought onto the site, no additional maintenance will be allowed.*

- 105-31 – Preservation of landscape; landscaping of parking and storage areas. *The surrounding landscape, which is trees and shrubs, shall not be disturbed. No additional parking area is going to be created that would require screening. There are no outside storage areas for this application.*
- 105-33 – Refuse disposal. *The waste shall be removed from site by the applicant no later than either Tuesday or Wednesday following the Saturday event. There shall be enough waste barrels provided so no trash is left on the ground.*
- 105-34 – Access control on Routes 109 and 11. *The site distance from the access point onto Rte 11 is well in excess of the site distance requirement.*
- 105-43 – Off-street parking and loading. *There is an existing large area for parking which is currently surrounded by vegetation which shall not be removed.*
- 105-46 – Sanitary Provisions. *There shall be a minimum of two portable toilets on site for each event.*  
Mr. Ferrera stated the company providing the toilets stated they would monitor the use and would provide additional toilets as needed.
- 105-47 – Signs and billboards. *All signage shall be permitted through the Code Enforcement Office.*
- 105-52 - Water quality protection. *There is nothing to be stored on site to affect water quality.*

Roger A. asked if there were any additional questions or concerns? There were none.

Roger A. reviewed Shapleigh Zoning Ordinance 105-73.G “Standards applicable to conditional uses”.

- 1) The use will not have an adverse impact on spawning grounds, fish, aquatic life, birds or other wildlife habitat. *It will not, the area used for the track and parking area is a cleared level area at this time.*
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. *N/A*
- 3) The use is consistent with the Comprehensive Plan. *It is, the Comprehensive Plan doesn't address this activity specifically but it does promote outdoor recreation, as well as businesses along Route 11.*
- 4) Traffic access to the site is safe. *It is, the site distance is in excess of the minimum required as documented on the approved for the original Conditional Use Permit in February 2002.*
- 5) The site design is in conformance with all municipal flood hazard protection regulations. *It is, none of the property is in a flood zone.*
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. *Two portable toilets as a minimum shall be on site for all events and all trash shall be removed on a weekly basis.*
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. *There shall be no hazardous materials stored on site.*
- 8) A stormwater drainage system capable of handling a twenty-five-year storm without adverse impact on adjacent properties has been designed. *There will be no changes to the site that would affect stormwater drainage. The type of sandy soil on site percolates extremely well and the area is flat. Also the parking area and race track are a great distance from the neighboring lots lines.*
- 9) Adequate provisions to control soil erosion and sedimentation have been made. *There are no changes being made to the site to create soil erosion. The existing vegetation surrounding the race track and parking area shall remain in place.*
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. *There is a water holding tank located near to this location.*

- 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. *The existing vegetation shall be kept in place; the location of the parking area and race track is a great distance from the nearest residence; no additional lighting shall be added without board approval; only lawnmowers / tractors shall be allowed at this time; all lawnmowers must have a stock muffler to reduce noise and fumes; and the track shall be watered as often as necessary to prevent any dust from leaving the property lines.*
- 12) All performance standards in this chapter applicable to the proposed use will be met. *They shall with the conditions imposed.*

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

- 1) The maximum hours of operation are 7:00 a.m. thru 10:00 p.m., seven days a week.
- 2) Racing events shall take place between May and November of each year.
- 3) There shall be a minimum of two portable toilets on site at all times. If this is deemed unsatisfactory then an additional toilet must be added.
- 4) There shall be no alcohol allowed on site at any time.
- 5) There shall be no oil changes allowed on site at any time for the racing participants.
- 6) Trash shall be removed by the applicant in a timely manner. For a Saturday event, trash shall be removed no later than the following Tuesday or Wednesday; it will depend on the hours the Transfer Station is in operation.
- 7) Any signage must be permitted through the Code Enforcement Office.

**Roland noted that for a similar application there was a discussion limiting the number of people in attendance but he felt based on the site review, where it was noted there was ample room for additional parking if necessary without making any changes to the property, no attendance limitation was necessary. The other board members agreed.**

**Roland L. made the motion the board approve the application with the above stated conditions. Maggie M 2<sup>nd</sup> the motion. All members were in favor. Vote 3 – 0.**

Nothing further was discussed.

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A couple from Shapleigh came before the board as the meeting was closing to ask about the Shoreland zoning. Roger A. explained the public hearing had been earlier in the evening. Barbara F. gave them a copy of the changes and noted the biggest change was with respect to Resource Protection. Roger stated that the actual Shoreland zoning changes were minimal and the setbacks were still the same in the Shoreland zone, noting that land on Mousam Lake or Square Pond etc. would not be affected by the changes. He said the permitting process would be the same as it is today. They thanked the board.

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

Respectively submitted,  
Barbara Felong, Land Use Secretary  
[planningboard@shapleigh.net](mailto:planningboard@shapleigh.net)

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, July 14, 2009**

Members in attendance: Roger Allaire (Chairman), Madge Baker (Vice Chair), Roland Legere, Maggie Moody and Barbara Felong (Secretary). Code Enforcement Officer, Steven McDonough was also in attendance.

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The following words are not verbatim unless accompanied by quotation marks “ ”.

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

**The minutes from Tuesday, June 9, 2009, were accepted as read.**

Note: Meeting scheduled for June 23rd, was canceled due to no applications for the agenda.

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### **Amendment to a Subdivision – Single division of lot – Map 7, Lot 5C (Blandings & Evergreen) – Fred Reynolds, Applicant**

Mr. Reynolds was present for the review of his application.

The board members received a copy of Mr. Reynolds application to divide his lot into two lots, one being 2.60 acres in size and the second lot being 1.86 acres in size. Board members also received a copy of Mr. Reynolds surveyed plan done by Philip Reed of Reed Surveying & GPS, Inc., LS #1208.

Mr. Reynolds stated he currently owned a house lot just under five acres and wanted to be able to sell part of the lot for financial reasons.

Roger A. stated this lot had originally been on the Goose Pond Overlook Subdivision plan but was not part of the subdivision because it was divided from the parent lot by a road, so was not reviewed as part of the subdivision. Madge B. asked if there was anything in the Goose Pond Overlook Subdivision approval that did not allow this lot to be further divided? Roger A. stated no, this was one of two lots across the road from the subdivision.

*Note: During the review process for Goose Pond Overlook it was clearly cited by the Planning Board during a public hearing that this lot was included in the plan as “reference only”, because it is a separate piece of land on a separate tax bill due to the division from the parent lot via a road, the developer did not need permission to sell this parcel and it was not actually part of Goose Pond Overlook, see the minutes from June 25, 2002. The notation that this lot was not part of the parent lot is also cited in minutes of several other board meetings in 2003.*

Roger A. briefly discussed the water issues that occur on Blanding’s Lane in spite of the developer adding gravel and a culvert to try to divert the runoff. Roger said the developer did more than was required by the Planning Board to try to help with the stormwater runoff in that area.

Madge B. asked why a building site was not depicted on the plan, as depicted on the approved six lots of

Goose Pond Overlook. Barbara F. stated that was because lots 1 thru 6 have designated areas to build due to the resource protection area and the Blandings turtle cited by Inland Fisheries and Wildlife. Barbara noted again that lots A & B on the plan were not actually part of the subdivision so were not reviewed only noted.

Madge B. asked if there were test pits for the lots. Barbara F. stated there were test pits and a septic design for the lot Mr. Reynolds will retain for himself. Madge asked which lot he will retain? Mr. Reynolds stated the lot that is on Evergreen Road, 2.60 acres in size.

Roger A. stated test pits were needed for both properties. Barbara F. stated there was test pit data and a septic design for the property Mr. Reynolds would retain. A copy of the test pit for lot B2 will be provided, it has been done by John Large. Roger said all information needed to be mailed to board members. Barbara stated she has never asked the applicant for an amendment to a subdivision to mail more than the application and the plan. Madge concurred. Barbara stated the information was in the file.

Roland L. asked if this lot had a right-of-way to Goose Pond? Mr. Reynolds stated he was told he did by the seller but he did not see it in his deed. Roland L. stated he thought Joe Anderson from York County Soil and Water and some people on Totte Road and other residents of Goose Pond are continuing to have an erosion problem on Totte Road. Mr. Reynolds stated he thought it was at the intersection of Blandings, Totte and Evergreen. Roland said this has been a long standing problem for years.

Roger A. stated that was why the developer for Goose Pond Overlook tried to keep access to Blandings to a minimum because of the water issue. Madge B. asked where the driveways would be? Mr. Reynolds stated there was over 700 feet on Evergreen so he wanted to have his driveway on Evergreen. Mr. Reynolds stated he spoke with an engineer and asked where would be best to put the driveway for the new lot and he said his reply was it should go onto Blandings because it would be the only driveway on that road.

Roger A. and Madge B. stated they would like to do another site inspection because they hadn't been to the site in several years. Roger said he had concerns with the roads.

Roger A. stated he also wanted Inland Fisheries and Wildlife contacted to be certain they did not have an issue with the division of this lot because it was in the vicinity of the protected area for the Blandings Turtle. *Note: Barbara F. contacted IF&W. Phillip DeMaynadier will review the original subdivision and relay his opinion to Barbara as soon as possible. He is on vacation the week of July 20<sup>th</sup>.*

Barbara F. asked if the waivers for sidewalks, underground utilities etc. need to be on the final plan? Roger A. stated yes.

**Roger A. scheduled a site inspection for Tuesday, July 28<sup>th</sup>; board members will meet at the town hall at 6:15 p.m. A Public Hearing will also be scheduled for 7:00 p.m. on July 28<sup>th</sup> and a Notice to Abutters will be mailed as well.**

Roger A. stated the applicant should wait to do additional changes to the final plan until after the public hearing in case more issues are brought up at the meeting. This will save additional expenses for the applicant.

Nothing further was discussed.

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**Growth Permit(s)**

**Map 40, Lot 27 (251 Granny Kent Pond Road) – Season Conversion – Trent Mutchler, Sheryl Read – Permit #04-09**

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**Roger Allaire Discussed Information from the FEMA Meeting on the New Floodplain Maps.**

Roger A. stated he attended the meeting to gather information for the Planning Board because it appears the Planning Board will have to review many of the issues that come about on the flood plain. He explained how in the past it was the job of the Code Enforcement Office but now there is Planning Board involvement.

Roger A. stated there were new plans being produced for each town. He said at this time Shapleigh does not have their new plans, no field studies have been done yet in Shapleigh. Right now the USGS map is used and FEMA plugged in the area they felt was in the flood plain.

Roger A. stated he was told Shapleigh's map would not be ready until December of this year or January 2010. Roger said that by March Town Meeting the Flood Plain Ordinance would have to be changed to reflect the new maps. Barbara F. asked if the board would be notified? Roger said yes, they would notify the towns of the changes necessary to the ordinance. Roger said if necessary the town would have to hold a special town meeting if the information was not provided in enough time to hold a public hearing on the mandatory changes prior to the March meeting.

Roger A. concluded that as soon as he had additional information he would provide it so Barbara could make the necessary changes to the ordinance. He noted that Board of Selectman Ruth Ham also attended the meeting and was aware of the upcoming changes required.

Nothing further was discussed.

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***The Planning Board meeting ended at 8:07 p.m.***

Respectively submitted,  
Barbara Felong, Land Use Secretary  
[planningboard@shapleigh.net](mailto:planningboard@shapleigh.net)

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, July 28, 2009**

Members in attendance: Roger Allaire (Chairman), Madge Baker (Vice Chair), Roland Legere, Maggie Moody, Diane Srebnick and Barbara Felong (Secretary). Code Enforcement Officer, Steven McDonough was also in attendance.

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The following words are not verbatim unless accompanied by quotation marks “ ”.

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**Public Hearing started at 7:05 p.m.**

### **Amendment to a Subdivision – *Single division of lot* – Map 7, Lot 5C (Blandings & Evergreen) – Fred Reynolds, Applicant**

Mr. Reynolds was present for the public hearing.

Roger A. opened the meeting by asking Mr. Reynolds to briefly explain why he was before the board. Mr. Reynolds stated that he owned just under five acres of land that bordered Blanding's Lane and Evergreen. Mr. Reynolds explained he had over 600 feet of road frontage for the existing lot and that he wanted to divide the lot to create two lots. The lot he would retain would be 2.6 acres in size and the remaining lot 1.86 acres.

Eric Davis, an abutter asked the board what were the original stipulations for this lot? Barbara F. stated there weren't any; it was not part of the Goose Pond subdivision. Roger A. and Diane S. concurred.

Mr. Davis asked Mr. Reynolds why he wanted to divide his property? Mr. Reynolds stated for financial reasons. He said he didn't really want to sell the property and may not but wanted to have the option to do so.

Mr. Davis asked Mr. Reynolds if he had any deeded access to any water? Mr. Reynolds stated he had been told by the seller that he did, but it is not in his deed. Mr. Reynolds stated a neighbor had told him he could use his right-of-way to access the water and park his boat but he said again he had no deeded access.

Mr. Perreault, an abutter, stated he lived on the corner where Evergreen, Tote and Blandings came together and he said there was a serious erosion problem in this location. He said he was worried with more people having access to the area it might increase the problem.

Roland L. and Diane S. both knew this location well and concurred there was a significant erosion problem and the problem has been in existence for many years.

Mr. Reynolds stated that he was willing to try to help solve the problem; he agreed the problem seems to have gotten worse. He wasn't sure if it was all the rain this year or if the drainage measures put in on Blandings increased the problem.

Mr. Davis asked if Mr. Reynolds deed included a right-of-way on Evergreen Trail? Mr. Reynolds stated he was told he owned to the center of Evergreen. Mr. Reynolds stated when he bought the property in order to get the loan the owner had to sign a form stating he had a right-of-way to get to his property. He said no one

actually knows who owns Evergreen. Mr. Davis asked if anyone did the research to find out who actually owns the road. Mr. Reynolds replied, not that he was aware of; it did not matter to him as long as he could access his property. Mr. Davis said usually a person owns up to the camp road but they do not own the camp road. Roger A. stated that in Mr. Reynolds's deed, Evergreen is described as a camp road and it has a book and page number.

Roland L. said that regardless of who owns the road, the fact is there is an erosion problem in the area. Roland explained the path of the stormwater and that it eventually goes down to the water. He believed there would have to be some type of serious abatement to control the problem and he felt an increase in traffic would only add to the problem.

Madge B. asked if the YCC (Youth Conservation Corps) could help with the problem? Diane S. believed they would because the water was going into the watershed of the pond. Madge told Mr. Reynolds that both Acton and Shapleigh have a program that provides labor and sometimes materials to help serious erosion problems and it is administered thru the YCC. CEO McDonough agreed, stating that if Mr. Reynolds contacted them, at the very least, they would come to the site and give technical assistance to develop a plan to stop the problem.

Mr. Davis stated the DEP looked at the area but gave no determination what could or should be done. Mr. Reynolds stated before Blandings Lane was upgraded the water problem was not as bad. He believed the water is being diverted differently with the drainage that was put in and it has made the problem worse.

Roger A. asked when Lot A got divided (to create lot B, Mr. Reynolds lot). Barbara F. stated 2001 is when the former owner created lots A & B. She stated Mr. Reynolds purchased lot B in April of 2003.

Roger A. asked if there were any additional questions for Mr. Reynolds at this time? Mr. Davis said when a house is put on the new lot he would like to see the driveway come out onto Blanding's Lane instead of Evergreen. The board members agreed that would be best.

Roger A. asked if there were any additional questions? Mr. Perreault said that he would like to see the issue of erosion addressed for Evergreen and Tote Road. Roger stated the board would discuss it during the regular meeting. Mr. Perreault asked if the contractor who built Blandings put any money aside for maintenance of the road? Roger stated no, once the road was completed per the engineered plan, any money the town held for the road was released. Roger noted that Inland Fisheries and Wildlife were involved with the road, dictating the width and keeping it gravel because of the endangered species in the area. Roger also pointed out that this lot was not part of the subdivision but was looked at during the review process for Goose Pond Overlook. The developer added additional stone to the intersection that wasn't required to try to stem the water problem but apparently it was not enough. Also, Evergreen was not reviewed because the lots being reviewed for the subdivision were not going to access Evergreen.

Roger A. asked if there were any additional questions? A couple asked the board to show them where their parents' property was located in relation to Mr. Reynolds lot. The board, using the town maps, located the property and noted that the property would not be affected by this division. They agreed. Barbara F. stated they were notified because they were within 500 feet of Mr. Reynolds property line, she said often it doesn't affect distant abutters but per the ordinance everyone within 500 feet must be notified.

There were no more questions. The public hearing was closed at 7:30 p.m.

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**The Planning Board meeting started at 7:35 p.m.**



**Amendment to a Subdivision – Single division of lot – Map 7, Lot 5C (Blandings & Evergreen) – Fred Reynolds, Applicant**

Mr. Reynolds was present for the review of his application. *Note: Planning Board members did a site inspection prior to the public hearing this evening.*

Madge B. began by stating that she did not believe the application before them was a subdivision. She said a subdivision has to be a division of land into three lots in a five year period. She stated two lots were created in 2001, and one of those two lots Mr. Reynolds currently wants to divide. She said this lot has been a lot for more than five years, therefore, in her opinion, this division does not make a minor subdivision. She said based on this it should not be before the board because the board does not have jurisdiction over this matter. CEO McDonough concurred stating that in light of this, Mr. Reynolds is here for the courtesy of the town and the town would act in an advisory capacity only.

Roland L. asked if the only thing Mr. Reynolds had to do at this point was go to an attorney and have a deed drawn up? Madge B. stated yes, he already has the surveyed plan. She added that when the buyer wants to come for a building permit, that person would go to the CEO.

Mr. Reynolds wanted to be clear what happened, he asked that because it was not part of the Goose Pond Overlook subdivision that it isn't subject to certain criteria? Madge B. stated yes, it has become quite clear it was not part of the original subdivision. She said based on the evidence it was a parcel of land divided into two lots in 2001, according to the record. She said a subdivision has to be a division into three lots within a five year period. So this third division, being longer than five years, makes it clear that it isn't a subdivision.

Madge B. stated the board didn't consider the numbers of years between divisions originally, but now that it is known, it is clear that this isn't a subdivision. She stated she wanted the board to consider her opinion and address this first before continuing. She said that if the board concurred it wasn't a subdivision then nothing further had to be addressed.

Roger A. agreed it wasn't part of the Goose Pond Overlook subdivision; it was only looked at because of its location. Madge stated that because the original division was in 2001 and that it wasn't part of Goose Pond Overlook subdivision, the board should find that no further review is required.

Roland L. stated that because Mr. Reynolds was kind enough to come before the board and has the best interest of Shapleigh and the surrounding waterbodies in mind, he wanted to go on record as saying that he is concerned with the erosion on the intersection of Evergreen, Totte and Blandings. He said the erosion problem has been there for the last 15 years and is accelerated by vehicular traffic. Roland said he hoped that when Mr. Reynolds planned the access to the new lot that the best interest of the area would be taken into consideration. Mr. Reynolds said absolutely. *Madge B. stated it should go on record that the board suggested the access to the new lot be onto Blanding's Lane and not onto Evergreen.*

Madge B. said as far as curing the private road problem she believed it was everyone's problem on that road. She said it wasn't only Mr. Reynolds problem. Diane S. agreed, stating it was not technically anybody's road. She said it was the private landowner's road. Diane suggested those at the meeting tonight with concern for the road should get together with Mr. Reynolds to try to help solve the problem. She said she lived on Square Pond and had a similar issue and so she contacted the YCC and they gave them gravel to help fix the problem. Diane said sometimes they provide the material and you do the labor and other times it is the other way around. She said she is also on a private road and only her and her neighbor provides upkeep, the others living on the road haven't been willing to do so.

Mr. Reynolds stated that he has had plans to work on that section of the road and would love to have others work with him if possible. Diane S. said again that calling the YCC would be worth his time. All board members concurred it would be best for all the abutting landowners to contact the YCC to enlist their expertise to try to solve the issue. Roger A. and Diane S. also mentioned how getting an easement for the town could be accomplished and if they considered that, it was a good idea to do it while all landowners concurred, noting that all abutting landowners must agree and sign the easement otherwise it would not get approved.

**Madge B. made the motion to dispense with the application because the board had no jurisdiction over this division of property. Diane S. 2<sup>nd</sup> the motion. All members were in favor.**

Nothing further was discussed.

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**After-the-fact Conditional Use Permit – Earth Moving – Map 11, Lot 28F (41 Newfield Road) – Nicholas Richardson, Applicant**

Mr. Richardson was present for the review of his application.

Roger A. asked Mr. Richardson to explain why he was before the board. He asked him to tell the board how much earth has been moved and where it was going to be placed.

CEO McDonough stated that it had come to his attention that Mr. Richardson was processing gravel on his property. CEO McDonough stated when he notified Mr. Richardson, Mr. Richardson noted that the Planning Board approved a private way on his property for a minor subdivision. CEO McDonough realized it was true and said he never considered the gravel for the road would come from Mr. Richardson's land. CEO McDonough stated there is a considerable amount of gravel on site and the area being cleared is very dramatic when you look at it. CEO McDonough said Mr. Richardson stated that he was also building another road on his property to access the back of his lot and that is when he told Mr. Richardson he would need to go to the Planning Board to get approval for earth moving greater than 150 yards. He said that is why Mr. Richardson is before the board, for the large amount of gravel being process in addition to what was used on the road.

Roger A. asked Mr. Richardson how much gravel he would be processing? Mr. Richardson showed the board members a plan which depicted his lot and where the road would be located that he would be placing the gravel on. Mr. Richardson noted where he parked his equipment and that he was building a road to it for better access.

CEO McDonough pointed out the approved roadway that was being built and he stated that there was more than enough gravel being processed to do the approved road, he said it was "an excessive amount of gravel". CEO McDonough asked Mr. Richardson if it was for his own use? Mr. Richardson stated yes, that is why he didn't know he needed a permit.

Madge B. asked why it was an after-the-fact permit? CEO McDonough said the board would understand when they went to the site visit.

Roger A. asked again how many yards would be processed for the road? Mr. Richardson stated it was already processed. Mr. Richardson said he would use about 1000 yards for the approved road and would have enough left over to do the other surfacing he wanted to do. He thought there was 3000 plus yards processed. Roland L. asked exactly what that meant. Mr. Richardson said it was crushed rock, processed

road spec gravel. Roland asked if he was going to be selling it? Mr. Richardson stated no, it was for his own use. He stated he did not know how long it would take for him to use all the gravel because he was putting it on the road when he had the time to do so.

Roger A. noted that an earth moving permit was only valid for three years, then he would have to come back before the board to renew it if he wanted to continue to process gravel. Madge B. reviewed the ordinance and noted that Mr. Richardson would need an erosion control plan as well as a reclamation plan for a project of this scale. Mr. Richardson stated he had 100 yards of mulch stored to be used as needed. CEO McDonough noted that he gave Mr. Richardson a copy of the §105-39 “Earth removal and filling”. *Note: Barbara F. also mailed Mr. Richardson a copy of the ordinance on July 29th.*

**Roger A. scheduled a site inspection on Tuesday, August 11<sup>th</sup>, members to meet at the town hall at 5:45 p.m. A Notice to Abutters would be mailed as well.**

CEO McDonough told Mr. Richardson that he needed to spell out on paper how he would prevent erosion and he also needed a written reclamation plan. Roger A. stated the board would tell him what else was needed after the site inspection.

Nothing further was discussed.

**After-the-fact Conditional Use Permit – Earth Moving – Map 28, Lot 16 (82 17<sup>th</sup> Street) – Isabel Hickey, Owner; Bryon Miklin & Robert McGovern, Applicants**

Mr. McGovern spoke on Isabel Hickey’s behalf.

Roger A. asked Mr. McGovern to tell the board what he was applying for. Mr. McGovern stated he was a general contractor and that he was hired to build a deck at 82 17<sup>th</sup> Street. He said he received a permit from the CEO for the deck. He stated there was soil alongside the house and Ms. Hickey had it removed so he could build the deck alongside the house. He said after the soil was removed, there is an area roughly 60’ x 3 1/2’ of just sand now. He stated a mason was hired by Ms. Hickey, a Mr. Miklin, to build a retaining wall. Mr. McGovern stated Mr. Miklin started to build the wall and was interrupted by a Mr. Anderson of York County Soil Conservation, Chris Coppi of the Dept. of Environmental Protection and CEO McDonough. He said CEO McDonough called him to inquire about the wall because he had the permit for the deck. Mr. McGovern stated there was no permit for the retaining wall.

Mr. McGovern stated they wanted to build a 60 foot retaining wall 3 1/2 feet away from the house. He said they were not aware that anything within 100 feet of the water had to have a special permit, with respect to the soil that was removed. He said the soil has already been removed from the building. He is now applying for an after-the-fact permit since Mr. Anderson, Chris Coppi and CEO McDonough have told him the requirements and what he could and could not do with respect to grade / slope and that the frost wall needed to be protected. He said that because he has a permit to build the deck, he proposed to move the retaining wall they were building closer to the house, to protect the frost wall. He said it wouldn’t affect the distance to the water because it would be in line with the structures in place at this time. Mr. McGovern stated CEO McDonough was in agreement with his plan. He said after speaking with the CEO, he spoke with Amanda of the YCC and she made the computer sketches on how the property should be reclaimed. Mr. McGovern showed the board members the information received from Amanda.

CEO McDonough stated there were two problems that had to be dealt with. The first is they removed a lot of soil and that isn’t allowed. Second, all the earth they removed exposed the footing so now there is no frost

wall / frost protection for the house. CEO McDonough stated he agreed that by moving the wall, creating a four foot wall and putting soil behind it, would give the owner four foot frost protection and it would be no closer to the water than the house. CEO McDonough stated the applicant would also revegetate the area.

Roger A. noted that the applicant would need an after-the fact DEP Permit by Rule. He said it was mandatory. CEO McDonough agreed but noted that Chris Coppi of the DEP had been on site with him and is in agreement with the reclamation plan. Roger explained to Mr. McGovern it was a 14 day notification so he should get the application in the mail a.s.a.p. He noted fines could be imposed if he were to proceed without the proper DEP paperwork. Mr. McGovern stated he would mail the application out on Wednesday.

Mr. McGovern showed the board the area where trees needed to be replaced and noted why. He also stated new stairs would need to be created because the original tire stairs were removed and the tires were to be removed from the site.

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

**Roger A. scheduled a site inspection for 6:30 p.m. A Notice to Abutters would be mailed as well.**

Nothing further was discussed.

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**The minutes from Tuesday, July 14, 2009, were accepted as read.**

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OTHER:

Barbara F. told members Mr. Ferrera was ready to come back before the board with respect to his earth moving application. She said the Board of Selectmen approved his Performance Guaranty for \$16,000 as required by the Planning Board. **She said she scheduled the Public Hearing for Mr. Ferrera for 7:00 p.m. on August 11<sup>th</sup>. A Notice to Abutters will be mailed as well.**

Nothing further was discussed.

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***The Planning Board meeting ended at 8:30 p.m.***

Respectively submitted,  
Barbara Felong, Land Use Secretary  
[planningboard@shapleigh.net](mailto:planningboard@shapleigh.net)

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, August 11, 2009**

Members in attendance: Roger Allaire (Chairman), Madge Baker (Vice Chair), Roland Legere, Maggie Moody, and Barbara Felong (Secretary). Code Enforcement Officer, Steven McDonough was also in attendance. Note: Diane Srebnick was unable to attend.

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The following words are not verbatim unless accompanied by quotation marks “ ”.

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**Public Hearing started at 7:00 p.m.**

**Conditional Use Permit – Earth Moving – Map 10, Lot 22 (2 Oakhill Road off of Rte 11) – Robert Ferrera, Jr., Applicant**

Mr. Ferrera was present for the public hearing.

Mr. Ferrera explained to the audience that he was before the board to excavate a farm pond and the material dug from the property would be removed from the site and sold. He stated at the present time he did not have a contractor lined up because the project has taken a year to get to this point so the company he was going to use is unavailable currently.

Mr. Ferrera provided a new engineered plan to the board. He stated the new plan depicted the slopes for the excavation will be at a grade of 25%; the plan showed the entrance onto Rte. 11 that would be used initially and a proposed entrance as the project progressed. It also depicted the travel path on the property for the trucks hauling the earth off site and that the proposed area to be excavated would be 4.9 acres in size.

Roger A. asked Mr. Ferrera where he would be storing the loam that was removed? Mr. Ferrera pointed out the location on the plan and stated it was a level area which would help to prevent any loss of loam. The loam would also be protected from the wind by the trees on site.

Roland L. asked approximately how many yards of gravel Mr. Ferrera expected to remove from the site? He stated approximately 200,000 yards. Madge B. asked how many truckloads this would entail per day? Mr. Ferrera didn't know because he didn't have a contractor to truck the material at present.

Mr. Ferrera stated he understood there was concern with going by the Shapleigh Memorial School during drop-off and pickup times and because of this he planned to have the first trucks go by the school before the school opens at 8:30 a.m.

Roger A. wanted Mr. Ferrera to know that any earth being moved to a location in Shapleigh would require a Conditional Use Permit from the Planning Board if the amount was over 150 cubic yards. Mr. Ferrera stated he understood.

Roger A. was concerned with stone dust and gravel being left on the road where the trucks came out onto Rte. 11. Mr. Ferrera stated he would keep the area clean. Madge B. asked if there was a requirement to pave the entrance into Mr. Ferrera's property? Roger did not believe so unless Mr. Ferrera was going to put in a culvert then the State (because Rte. 11 is a State road) would need to be informed. Mr. Ferrera stated he spoke with the Dept. of Transportation to discuss his project and the entrance onto Rte. 11 and they had no

issue with it. Roger agreed it was a D.O.T. issue stating that because Rte. 11 is a State road they would be the ones to require something of Mr. Ferrera but the board also had to be concerned with the safety issue if dust were to accumulate on the road. Again Mr. Ferrera stated he understood and would make sure it didn't become a problem.

Eric Davis asked if the trucks would be covered to protect people traveling on Rte. 11? Mr. Ferrera stated no trucks would be allowed on site that did not have the appropriate covers. He said it was a State law that the material would have to be covered. Roger A. agreed and said the local Sheriff and State Police monitor the transportation of sand and gravel pretty closely from what he has observed.

Roland L. asked if the sand and gravel would be transported year round? Mr. Ferrera stated, yes. Mr. Ferrera stated he wanted the hours of operation to be five days and week and one half a day on Saturday.

Eric Davis asked if the trucks would interfere with traffic from the ball park on Saturday? Mr. Ferrera stated it should not.

Roger A. asked how the project would be accomplished? Mr. Ferrera stated they would begin in one area and gradually expand, hoping to find water at about 40 feet. Madge B. asked if they would be moving the material during daytime hours only? Mr. Ferrera stated yes, he planned on having the hours 6:00 a.m. through 5:00 p.m. Monday thru Friday but he thought the last trucks would probably be loaded at 3:30 p.m. He said Saturday would only be from 7:00 a.m. thru 12:30 p.m. He stated there would be no commercial trucking at night.

Eric Davis asked how the Dept. of Transportation would control the weight of the trucks? Mr. Ferrera stated the State Police and Sheriff were often parked across the street monitoring traffic. He said if they believed there was an issue then the D.O.T. would be notified. Roger A. agreed stating again they watch the truck traffic closely.

Roger A. asked if there were any additional questions for Mr. Ferrera? There were none.  
The public hearing was closed at 7:20 p.m.

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

The Minutes from July 28<sup>th</sup> were accepted as read.  
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**Conditional Use Permit – Earth Moving – Map 10, Lot 22 (2 Oakhill Road off of Rte 11) – Robert Ferrera, Jr., Applicant**

Mr. Ferrera was present for the review of his application. Note: Board members did a site inspection at a prior review of this application.

Mr. Ferrera opened the final review by stating he was before the board to excavate 40 feet down, creating a farm pond, then he would be replanting the excavated area with blueberries and trees and would like to eventually have camp sites on his property. He said the money made from excavating the earth would be used to pay to dig the pond, replant the area, landscape, etc.

Roger A. reviewed the following ordinance standards:

- 105-17 - Land Uses. *This business is a permitted use with a Conditional Use Permit for the extraction and removal of earth greater than 150 cubic yards.*
- 105-20 – Applicability of standards; prohibited uses. *This application is a permitted use within the Zoning Ordinance and will not cause any health and safety concerns when permitted through the Planning Board.*
- 105-21 – Traffic. *In February 2002, during the approval process for the existing Alpaca business, the site distances were approved, being over 500 feet in either direction. In addition, Chairman Allaire paced off the site distance during the site inspection for this application and stated the site distance exceeded 500 feet in both directions at either entrance to the property.*  
*Madge B asked if it was a concern of the Planning Board as to how the trucks will travel to and from the excavation site? Roger A. stated no because the entrance to the property exceeds the site distance requirement, the equipment on the property will not affect any residents, and it will be buffered by the line of trees between the on site activity and Rte. 11.*
- 105-22 – Noise. *Based on fact there is existing vegetation along the roadway and along the property lines and the fact no residence is within 500 feet of Mr. Ferrera's property, noise will not be an issue. In addition, the hours of operation are limited to 6:00 a.m. thru 5:00 p.m. Monday through Friday and 7:00 a.m. thru 12:30 p.m. on Saturday.*
- 105-23 – Dust, fumes, vapors and gases. *The dust shall remain on site due to the vegetative barrier along the property lines. In addition, Mr. Ferrera stated he did not want a dust issue at his home or current business so he would water the area down if dust becomes a problem. Mr. Ferrera stated at a meeting on March 10, 2009 that he would water down the area if needed.*
- 105-24 – Odors. *There is no odor created by this business that would extend beyond the property lines. The only odor would be from the exhaust of the equipment and trucks.*
- 105-25 – Glare. *There shall be no additional lighting added for the excavation activities.*
- 105-26 – Stormwater runoff. *The area is very flat and the existing vegetation along the property lines will remain in place. In addition, Soil Scientist Albert Frick stated "The proposed excavated pit is designed to be internally draining, so there will be no opportunity for off-site erosion or runoff from the excavated pit area, as required by Maine Department of Environmental Protection".*
- 105-27 – Erosion control. *Soil Scientist Albert Frick provided an erosion control plan for the stockpiled loam for closure in a letter dated March 2009.*
- 105-28 – Setbacks and screening. *There is existing vegetation along all property lines to a depth of at least 100 feet that will screen the project from neighboring properties and State Rte. 11.*
- 105-29 - Explosive materials. *There shall no explosive materials stored on site.*
- 105-30 – Water quality. *There is no change to the existing property that would affect water quality.*
- 105-31 – Preservation of landscape; landscaping of parking and storage areas. *The surrounding landscape, which is trees and shrubs, shall not be disturbed. There is a reclamation plan for the excavated pit after the work is completed provided by Soil Scientist Albert Frick. There are no outside storage areas for this application.*
- 105-33 – Refuse disposal. *There is no waste associated with this business.*
- 105-34 – Access control on Routes 109 and 11. *The site distance from the access point onto Rte 11 is well in excess of the site distance requirement which is a minimum of 350 feet and recommended at 500 feet.*
- 105-43 – Off-street parking and loading. *The parking and loading of trucks shall be along the excavation pit and shielded from State Rte. 11 by the existing buffer strip of vegetation.*
- 105-46 – Sanitary Provisions. *N/A*
- 105-47 – Signs and billboards. *All signage shall be permitted through the Code Enforcement Office.*

**105-52** - Water quality protection. *There is nothing to be stored on site to affect water quality.*

Roger A. asked if there were any additional questions or concerns?

Madge B. asked if there was anything on record stating what the site distance actually is? Roger A. stated at the site inspection he paced off the distance and stopped at 500 feet. He said the site distance exceeded that.

*Note: The site distance was approved for two other applications on this property.*

Madge B. asked if the board needed to get involved with the routes to be used and times of travel once Mr. Ferrera had a contractor? Roger A. stated the only route he could use from his property was Rte. 11. Mr. Ferrera stated it was likely the trucks would use State Rte. 11 then State Rte. 109. He thought the board would prefer the use of State roads vs. local roads. He added that he wanted his hours of operation to begin at 6:00 a.m. so the trucks could load early and go by the grade school prior to the children being dropped off in the morning.

The board asked Mr. Ferrera to find out exactly what time the drop-off and pickup of the children was and provide it for the board because this is the time frame to prevent large trucks from passing by the school. Mr. Ferrera stated he would do so.

Madge B. asked if Mr. Ferrera's property abutted any residences that might be bothered by the noise of the trucks at 6:00 a.m. Barbara F. stated there was no residence within 500 feet of Mr. Ferrera's property according to the notification she mailed. The abutters within 500 feet are the town forest, recreation fields, the Davis blueberry farm and land owned by Inland Fisheries and Wildlife. Roger A. stated again the property has a very good vegetative buffer so he was doubtful even if there was a residence much would be heard or that it would exceed the noise requirement.

CEO McDonough stated it would be best if the Planning Board asked Mr. Ferrera to obtain a letter from the Principal of Shapleigh Memorial School stating exactly what the hours were that the children were dropped off in the morning and picked up in the afternoon during the school season. The board members agreed.

Mr. Ferrera requested that up to three trucks be allowed to pass the school during the hour of drop-off and pickup. He said this would equate to only about one truck every 15 minutes and he did not feel this was excessive in light of the amount of traffic that currently passes by the school at this time, including cement trucks, construction vehicles, etc. CEO McDonough stated he did not feel it was excessive to ask for two one half hour periods of time that no large trucks go past the grade school. Board members agreed.

Madge B. asked if the board should address any needed repair or resurfacing of State Rte. 11? Mr. Ferrera stated he had contacted D.O.T. and because it is a State road he would have to work out any issue with the road with that department. Roger A. agreed. Roger said again that dust could be an issue and he did want Mr. Ferrera to address that on an as needed basis. Madge stated that because this permit was only valid for a period of three years, the board could at that time address any problems with the road prior to Mr. Ferrera beginning the next excavation project.

Barbara F. noted that the Town of Shapleigh did receive an Escrow Agreement from Mr. Ferrera that was accepted by the Board of Selectmen in the amount of \$16,000 as required by the Planning Board at the previous review.

Roger A. asked if there were any additional questions or concerns? There were none. Roger reviewed §105-39, "Earth Removal and Filling", 105-61, "Mineral Exploration and Extraction" and **Shapleigh Zoning Ordinance 105-73.G "Standards applicable to conditional uses" which read 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 area to be excavated has been reviewed by both the Dept. of Environmental Protection and Inland Fisheries and Wildlife.***
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. *N/A*
- 3) The use is consistent with the Comprehensive Plan. ***It is, the Comprehensive Plan doesn't address this activity specifically but does promote businesses activity along Route 11.***
- 4) Traffic access to the site is safe. ***It is, the site distance is in excess of the minimum required as documented on the approval for the original Conditional Use Permit in February 2002 and noted by the Planning Board Chairman during the site inspection for this application.***
- 5) The site design is in conformance with all municipal flood hazard protection regulations. ***It is, none of the property is in a flood zone.***
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. *N/A*
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. ***There shall be no hazardous materials stored on site.***
- 8) A stormwater drainage system capable of handling a twenty-five-year storm without adverse impact on adjacent properties has been designed. ***Soil Scientist Albert Frisk stated no stormwater plan was necessary due to the fact the excavation shall be internally draining.***
- 9) Adequate provisions to control soil erosion and sedimentation have been made. ***Soil Scientist Albert Frisk provided an erosion control plan for the stockpiled loam for closure, in a letter dated March 2009.***
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. *N/A*
- 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. ***The existing vegetation shall be kept in place to provide an adequate buffer for noise, dust or odor; no additional lighting shall be added.***
- 12) All performance standards in this chapter applicable to the proposed use will be met. ***They shall with the conditions imposed.***

Roger A. stated the conditions of the approval are:

- 1) The hours of operation shall be 6:00 a.m. through 5:00 p.m. Monday thru Friday, 7:00 a.m. through 12:30 p.m. Saturday.
- 2) There shall be no 18 wheel trucks traveling past the Shapleigh Memorial School at the time of children drop-off in the morning or during children pickup in the afternoon throughout the school season operating hours.
- 3) A letter from the Shapleigh Memorial School principal shall be given to the Planning Board stating the hours of children drop-off and pickup, prior to the transport of gravel.
- 4) It is the applicant's responsibility to make certain the entrance onto State Rte. 11 is clean of all sand and stone dust to prevent a hazardous situation.
- 5) The Planning Board must approve any additional borrow pits on site.

It was noted to Mr. Ferrera that this approval was only good for a period of three years.

Madge B. made the motion the board approve the application with the above stated conditions.

Roland L. 2<sup>nd</sup> the motion. All members were in favor. Vote 4 – 0.

Nothing further was discussed.

**After-the-fact Conditional Use Permit – Earth Moving – Map 11, Lot 28F (41 Newfield Road) – Nicholas Richardson, Applicant**

Mr. Richardson was present for the review of his application. Note: Board members did a site inspection prior to this evening's meeting.

Board members reviewed the road plan from Mr. Richardson's prior subdivision approval. In addition, Mr. Richardson pointed out on the subdivision plan the general location of his proposed road and the area in which he parked his equipment for this logging business.

Madge B. asked Mr. Richardson if he removed trees from his property to sell or if he brought them to his property from other locations? Mr. Richardson stated the trees were from other locations. Mr. Richardson bought the property in 2006. Mr. Richardson had stated that his father also used the property in the past for his logging operation.

Madge B. wanted to know how the board members should address the logging business on site? CEO McDonough stated because the board is aware Mr. Richardson has a business on the property they would have to follow the zoning ordinance that is in place now. CEO McDonough said the board does not know what was in place at the time any previous owner used the property but there is no Conditional Use Permit for this property for a business on file. *Note: The only CUP for Map 11, Lot 28F is for a farm pond, the applicant was Roger Ridley. The approval was in 1990.*

Madge B. asked Mr. Richardson if the current business was family operated only or if they hired others to work for them? Mr. Richardson stated they normally have others working for them but at this time, because of the economy, it is only family.

CEO McDonough stated it appeared Mr. Richardson's Conditional Use Permit should be for both §105-39 "Earth removal and filling", and for a business. He believed Mr. Richardson could do both items on one application because the earth moving is to build a road and parking area for the equipment used for his business. Roger A. stated it was up to Mr. Richardson as to how he wanted to proceed. Steve told Mr. Richardson that if he had the board review both the business and earth moving on one permit he would not have an additional application fee. Roger agreed.

The board members, getting back to the application for earth moving, reviewed the ordinance. Roger A. stated that the board would need a plan which showed the location of the proposed road and how the slopes on the property would be treated to prevent soil erosion. Roger said the board needed it in writing from Mr. Richardson just how this would be accomplished, even though the board did note at the site inspection Mr. Richardson was already starting to reclaim the area. Roger said how the spillway was going to be handled also had to be on the plan.

Barbara F. noted that she had given Mr. Richardson a copy of 105-39, as had CEO McDonough. Roger A. also gave Mr. Richardson a copy of the ordinance and told him to review it and it would show him the requirements for the plan that he would need for the next meeting.

Attorney Ken Keating was present representing Marjorie Thompson, a direct abutter of Mr. Richardson. He stated his clients concerns were as follows:

- 1) The noise of the excavation and rock crusher was extreme, Ms. Thompson would ask that Mr. Richardson move the operation farther away from her lot line should he resume the project.
- 2) Ms. Thompson believed Mr. Richardson's excavation was within 100 feet of her property line, she asked that any further activity be moved farther from her property. *Mr. Keating noted that the*

*ordinance states the earth moving activity is to be located 100 feet from any lot line. He also stated he went on the site inspection and he believed the activity was close to being 100 feet from her line but he did not get an exact measurement.*

- 3) Ms. Thompson requested a time frame be given for the completion of the entire project.
- 4) In the application it states that Mr. Richardson is building a road on his property for business purposes, Ms. Thompson would like to know what type of business he has and is it a permitted business?

Attorney Keating thanked the board members for their time.

Mr. Richardson stated he could obtain an engineered plan for the project, and he noted that there would be no further rock crushing on site.

Roger A. stated Mr. Richardson could provide either an engineered plan or do one himself but a plan had to be provided. He said again that Mr. Richardson should read §105-39 and it would tell him what needed to be on the plan.

Roger A. also stated that he should have a Conditional Use Permit for his business and that it would be valid for as long as he had the business. CEO McDonough stated again that the board could review both earth moving and the business at the same time.

Nothing further was discussed.

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**After-the-fact Conditional Use Permit – Earth Moving – Map 28, Lot 16 (82 17<sup>th</sup> Street) – Isabel Hickey, Owner; Robert McGovern, Bryon Meklin, Applicants**

Mr. McGovern and Mr. Meklin were present for the final review of the application. Note: Board members did a site inspection prior to this evening's meeting.

Mr. McGovern stated they were before the board to move a new retaining wall back parallel to the house to be able to place earth behind it to create a frost wall for the house, using the earth that had been moved from along the house. He stated they would be doing a revegetation plan provided by Amanda Loomis of the Acton-Shapleigh Youth Conservation Corp. to replace the vegetation that was removed from the site. He stated he mailed the DEP Permit by Rule on Wednesday, July 30<sup>th</sup> and had not heard back to date but added that Chris Coppi of the DEP was aware of what was to take place because he had been out to the site and was in agreement with the recommended reclamation plan prepared by Ms. Loomis.

Roger A. asked why the stairs were going to be placed on the side of the deck toward the water and were not alongside the garage? Madge B. stated the stairs could not go any closer to the water than the existing structure. Roger A. reviewed §105-4.D(5)(a) and D(7)(b) and stated this was why the stairs must be along the garage agreeing with Madge that a non-conforming structure cannot be made more nonconforming, therefore no structure can be closer to the high water mark than what exists. Mr. McGovern stated he understood.

Roland L. asked Mr. McGovern if at any time during the project had anyone contacted him? Mr. McGovern stated that Eric Davis and the ASYCC spoke with him and asked if he had a permit for the project. Mr. McGovern stated he had a permit to build the deck and did not know a permit was required to move the soil on site. He said he was hired to remove all the trash that was on site, which was substantial and to restore the house which had been vandalized by a former tenant.

Roland L. stated that he could not imagine why no one realized a permit should have been required. He stated that he felt under these conditions, based on the activity that took place, he requested the homeowner make a \$1000 donation to the YCC. He stated that Mousam Lake was a sensitive body of water and the YCC along with area residents work very hard to make sure the lake is protected. Roland was clearly upset by the activity that took place on site as was the rest of the board members.

Roger A. added that as a contractor it should have been realized there were permits required. Mr. McGovern stated he received a permit to build the deck he didn't know others were needed and he added that some of the things that took place were done by another. It was noted that no one would take responsibility for all the actions that took place on the property but Roger stated that it was the responsibility of both the homeowner and contractor(s). Mr. McGovern stated that he understood which was why he was before the board. He also added that he understood why they were upset.

While board members reviewed the replanting plan it was pointed out by Roger A. that many of the trees that were removed from the site did not have to be for the construction taking place on the property. There were 6" Maples in perfect health that were removed likely just so the owner could get a better view of the lake.

Madge B. stated it was important a time line be established for the work to be completed including the revegetation plan. Madge asked Mr. McGovern if he had a date in mind? He stated that he would have to speak with Amanda Loomis again. CEO McDonough noted that the YCC would be finishing up their work for the season soon so he may have to complete the project himself per the plan that was provided.

Mr. Meklin was asked how long it would take to build the retaining wall? He stated 10 days at most, then added that that figure was weather dependent.

Board members reviewed the replanting plan and the time frame for the retaining wall, they felt a completion date of September 30, 2009 was adequate. Roger A. told Mr. McGovern if he believed he would not have everything completed by that date he would need to come back before the board to set a new date.

Roland L. stated again that he would like to see a donation made to the YCC. He noted that the taxpayers of Acton and Shapleigh underwrite the cost of the work they do and believed because the damage done to the site was due to the negligence of the homeowner, a donation should be made to offset the cost for the help the homeowner is receiving.

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

Madge B. made the **motion to approve** the after-the-fact Conditional Use Permit to replace the vegetation that was removed per the plan provided, erect a locking block retaining wall parallel to the home no closer to the water than the existing structure, and move the excavated earth back against the foundation behind the new wall for frost protection, with the following conditions:

- 1) **The restorative landscaping plan provided by Amanda Loomis of the ASYCC, the new wall and deck stairs must be completed by September 30, 2009, if not the applicant must come back before the Planning Board for a new completion date.**
- 2) **Best Management Practices shall be used during the entire construction project to control soil erosion.**
- 3) **The stairs to be place on the deck shall be no closer to the high water mark than the existing structure.**

**Maggie M. 2<sup>nd</sup> the motion. All members were in favor. Vote 4 - 0**

Nothing further was discussed.

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**Best Possible Location – New Foundation – Map 39, Lot 19 (177 Granny Kent Pond Road) – David & Monique Miller, Applicants**

Mr. & Mrs. Miller were present for the review of their application.

Mr. Miller explained that they were before the board in order to put a 3 foot foundation under the existing camp. He stated that currently the building was starting to have a sagging issue and he showed the board pictures of the existing building. He pointed out that the floor in the bathroom was extremely slanted, much of the home was placed on a cement block with a piece of wood between the home and block and the blocks were sinking into the ground. The pictures also showed the roof sagging and parts of the home sitting directly onto the ground at this time.

The Miller's provided the board with a surveyed plan which showed the location of the building on the lot and it was noted that the building was very close to one lot line. Mr. Miller added that the septic was located between the house and the road.

Roland L. asked if they were going to change the size of the home? Mr. Miller stated, no. He said again they might be raising the home 3' but it was not for living space, it was just to create a crawl space under the house that they would use for storage of their kayaks and things of that nature.

Roger A. noted that the home could not be greater than 3' higher than it exists now. He said even one inch higher was an issue so he said it was very important the contractor measure correctly and that he tell the contractor the importance of the height issue. Mr. Miller stated he understood.

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

**Roger A. scheduled a site inspection for 6:30 p.m. A Notice to Abutters would be mailed as well.**

Nothing further was discussed.

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**Best Possible Location – Replace Mobile Home – Map 21, Lot 10 (13 Village Circle) – Judith Marhak & Jenn Quinton, Applicants**

Judith Marhak and Jenn Quinton were present for the review of their application.

The applicants stated they wanted to replace the existing 1971 mobile home with a new structure. Ms. Quinton's husband stated that based on the square footage of the mobile home he believed they could have a footprint of at least 800 square feet. CEO McDonough did the calculation based on the footprint of the existing structure and stated with an expansion they could have 914 square feet.

The board members explained that they also had to take volume into consideration. The fact was the volume of the existing structure could not be expanded more than 30% as well. Barbara F. told the applicants to contact CEO McDonough and he would sit down with them to figure out exactly by how much they could expand. She also point out that it was very important they know the exact footprint because that would be what the board approved and they could not deviate from that figure without coming back before the board to amend their approval.

Roger A. also told the applicants they would have to have a surveyor place the location of the new home on the property and this information would have to be provided for the CEO.

Ms. Quinton provided the board with a copy of the purchase and sale agreement and she noted the closing on the property was scheduled for August 14<sup>th</sup>.

Roger A. asked if there were any additional questions at this time? There were none.

**Roger A. scheduled a site inspection for 7:15 p.m. A Notice to Abutters will be mailed as well.**

Nothing further was discussed.

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**OTHER:**

CEO McDonough asked the Planning Board their opinion regarding the regulation of putting up a windmill at this time. He said that someone had inquired as to whether or not they could erect a 45 foot windmill on their property. He stated that after reviewing the existing zoning ordinance he was not certain what would apply to a windmill.

Board members reviewed the ordinance, looking at the definition of a “structure”, “height of a structure” and §105-18 ‘Dimensional requirements’. Members also looked at exceptions to the height limitation and Madge B. and Roger A. did not feel the windmill was similar to a chimney, tower (see definition of tower in the ordinance), ventilator, spire, or a fence. Madge noted that a windmill created noise, air disturbance, and a visual disturbance.

CEO McDonough asked about §105-61.2 ‘Telecommunications facilities’, could the windmill be addressed under this chapter? Roger A. stated that this chapter was strictly for telecommunication towers only. A windmill is a different type of structure that has to be looked at based on its use and how that use affects the area. Madge B. agreed that the impact to the area would be different.

Planning Board members concluded after reviewing the existing ordinance that whether a windmill falls under the category of a structure or accessory structure the height can be no greater than 35 feet as the ordinance is written at this time. CEO McDonough thanked them for their time and opinion. He agreed it appeared a windmill would be allowed but it can be no greater than 35 feet in height.

Nothing further was discussed.

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Barbara F. provided board members with a copy of two small scale wind power ordinances from Maine and two from New Hampshire. She also gave them some information provided by the State with respect to wind energy ordinances. Members agreed they would like to draft a wind energy ordinance in time to have it on the warrant for Town Meeting in March 2010.

Nothing further was discussed.

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***The Planning Board meeting ended at 9:45 p.m.***

Respectively submitted,

Barbara Felong, Land Use Secretary [planningboard@shapleigh.net](mailto:planningboard@shapleigh.net)

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, August 25, 2009**

Members in attendance: Roger Allaire (Chairman), Madge Baker (Vice Chair), Roland Legere, Maggie Moody, Diane Srebnick and Barbara Felong (Secretary). Code Enforcement Officer, Steven McDonough was also in attendance.

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The following words are not verbatim unless accompanied by quotation marks “ ”.

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

The Minutes from August 11<sup>th</sup> were accepted as read.

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**Public Hearing started at 7:00 p.m.**

**Best Possible Location – New Foundation – Map 39, Lot 19 (177 Granny Kent Pond Road) – David & Monique Miller, Applicants**

Mr. & Mrs. Miller were present for the review of their application. *Note: Board members did a site inspection prior to this evening's meeting.*

During the preliminary review Mr. Miller provided the Planning Board with a boundary survey plan done by Daniel Dalfonso LLC of South Portland, Maine which depicted the lot lines and the existing shed and camp in relation to the lot lines. Also received was a sketch of the property showing the location of the camp, shed, septic tank and driveway, as well as pictures of the camp which showed the current conditions of the camp which included a sagging roof, sagging floors and the fact the structure does not have an adequate foundation. Note: The board did not receive a septic design and the Code Enforcement Officer does not have one on file.

Roger A. began by reviewing Zoning Ordinance §105-4.D(3) ‘Foundations’, and §105-4.D(7) ‘Relocation’ in their entirety. Roger noted that at the site inspection it was agreed upon that the existing location of the structure is the best possible on site. He stated there was very little existing vegetation in the area of the project so there would be only a minor disturbance to the area. Roger noted that the required foundation certification by a licensed surveyor would also determine that the height of the structure would be meet the height requirement which is that the camp cannot be raised greater than 36 inches.

Roger A. asked if there were any questions? Madge B. stated that currently according to the applicant there is a holding tank on site. She wanted to know if it met state standards? Madge was reviewing § 105-4.D(7)(a) which reads in part, “A nonconforming structure may be relocated within the boundaries of the parcel...provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of state law and the State of Maine Subsurface Wastewater Disposal Rules, or that a new system can be installed in compliance with the law and said Rules.” CEO McDonough stated it could be considered a grandfathered situation, but the Town of Shapleigh does not allow a new holding tank. Madge agreed. CEO McDonough stated the town could possibly adopt the rule in the future to allow a holding tank but it isn’t allowed at this time and he was doubtful it could ever be done in the shoreland zone.

Madge said, “So the existing holding tank meets the ordinance requirement.” CEO McDonough asked if a design was provided and if in fact the board knows what is in the ground. Roger A. and Madge stated they do not have a design nor is it known exactly what is on site.

Mr. Miller stated that he had spoken with CEO McDonough prior to buying the camp and he had told CEO McDonough he had a 750 gallon holding tank. CEO McDonough asked him how he knew what he had. Mr. Miller stated that the company that pumps his tank once or twice a summer stated it was a 750 gallon tank. Mr. Miller stated while speaking with CEO McDonough several years ago it was discussed that if there was an old leachfield on site it could be replaced. He said there was in fact an old pipe coming out of the existing tank but it was plugged solid and not functioning. He said a septic inspector tried to find out where the pipe went to but without digging with an excavator it was impossible to tell what had been there at one time. Mr. Miller stated it had been 2 ½ years and he didn’t recollect the name of the person. CEO McDonough stated if a pipe was coming out of the tank then he did not think it was actually a holding tank but a septic tank with a plugged leachfield.

CEO McDonough looked in his files to see if he had a plan on file for this property but he did not. He said there was a form filed by a previous owner that stated what the owner thought they had. They thought there was a 1000 gallon concrete holding tank.

CEO McDonough stated that it was his opinion the applicants needed a septic system designer to go to the site and determine what is there. If it is a tank and plugged leachfield it should be able to be replaced. He said that the town wants failed systems to be replaced if possible as opposed to continuing to use a failed system. Mr. Miller stated again that when he spoke with CEO McDonough 2 ½ years ago he was told that if there was system on site that had fail it would be grandfathered. CEO McDonough stated, “Grandfathered in the sense it could be replaced.” Mr. Miller said, “Right”.

Mr. Miller stated he bought the camp under the understanding he had a holding tank and would have to have it pumped regularly. He said he keeps an eye on it and checks it because he doesn’t want it backing up into the house. Mr. Miller stated again the company they hired to look at the tank could not find any concrete evidence there was a leachfield on site looking at the tank. He said they were hoping they would because that would open the possibility of replacing the leachfield. CEO McDonough stated that because there is a pipe coming out of the tank, it seems there was a leachfield. Mr. Miller stated the company had tried putting a snake down thru the pipe but kept hitting something solid.

Madge B. stated that because the house wasn’t going to be relocated she didn’t think it was a requirement to ask for a new system. Roger A. stated that under §105-4.D(3) it stated the Planning Board is to base its decision on the criteria specified in Subsection D(7) which requires a new system.

CEO McDonough asked if a new leachfield would affect the location of the home? Roger A. stated he did not believe it would because there was enough room between the home and the road for the leachfield. Mrs. Miller thought if the leachfield was present it would be toward the road based on the location of the pipe. CEO McDonough stated that perhaps the problem is the perforated pipe is crushed.

CEO McDonough stated that it sounded like the applicant had the ability to put one in. It could be part of the approval. Roger A. agreed. CEO McDonough stated the board could wait to see if the applicant could in fact have a new leachfield put in or it could be a condition of the approval that one is put in. Roger thought it would be best to put it as a condition to have a new system put in. Diane S. did not see any reason why one couldn’t be put in. CEO McDonough agreed, he said it just had to be designed to get the exact location on the property.



Mr. Miller stated the camp was advertised and sold to them as having a holding tank and that it didn't have a leachfield. He said there are no records on file. The board agreed that because there is a pipe coming from the tank that it is highly likely it is a failed system that could and should be replaced. CEO McDonough agreed because a holding tank does not have any pipes coming out of it.

Diane S. stated that it was an opportune time to address this because the equipment used to excavate the foundation could most likely be used to excavate the leachfield area.

**Roger A. listed the conditions of approval:**

- 1) Best Management Practices shall be used during the entire construction project to control soil erosion.**
- 2) A licensed surveyor must place the new foundation in the same location as the existing camp and make certain the camp is raised no greater than 36 inches in height.**
- 3) A State of Maine approved septic system shall be permitted through the Code Enforcement Office and installed.**

CEO McDonough noted that a State of Maine DEP Permit by Rule was required for any excavation within 75 feet of the water. He said to the applicants that a Permit by Rule is as it sounds, you get a rule book as to how to excavate and maintain the area. He added that it was not a difficult process and the rule book would explain all the best management practices. Roger A. added that after they mail in the application if they don't hear from the department within 14 days their project is approved.

- 4) A Permit by Rule must be filled out and mailed to the Maine Dept. of Environmental Protection prior to any work taking place.**

CEO McDonough asked Mr. Miller when the project would begin. Mr. Miller stated he wanted to do it during the fall but the contractor was presently busy so it may not be until spring.

**Roland L. made the motion to approve the Best Possible Location to raise the existing camp no greater than 36" and placing a foundation underneath it, leaving it in the existing footprint, with the above stated conditions. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. Vote 5-0**

Nothing else was discussed.  
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**Best Possible Location – Replace Mobile Home – Map 21, Lot 10 (13 Village Circle) – Judith Marhak & Jenn Quinton, Applicants**

Judith Marhak and Jenn Quinton were present for the review of their application. *Note: Board members did a site inspection prior to this evening's meeting.*

The applicants are before the board to replace the existing 1971 mobile home with a new structure. At this evening's meeting the board received a boundary survey which showed the lot lines, existing location of the mobile home and shed and the fact the lot is 8,382 square feet in size.

Madge B. noted the location of the proposed structure was not on the plan and she stated the board would need a final plan showing the location of the new structure prior to any approval. Roger A. explained what he learned of the new location at the site inspection. He said they also wanted to relocate the shed, moving

it farther away from the high water line. CEO McDonough stated what they were proposing sounded fine but there would need to be a final plan to approve. The applicants understood and stated there was a final plan they just did not have it in hand this evening.

The board members wanted the applicants to be sure by moving the location of the new structure it would not interfere with the existing septic system. The board gave the applicants a copy of the septic design that the town had on file for the property. CEO McDonough told the applicants to show the design to the surveyor so they could plot it on the boundary survey and make sure the home would not be too close to the septic.

Board members noted a few trees would be removed from the site but they had nothing to do with the excavation, they were dead or dying along the power lines. Madge B. said a couple of the trees to be removed were not dead. CEO McDonough explained the point system for the trees on site and noted it wasn't very often you did not have to replace a tree on site in the shoreland zone. Whether or not there needs to be a replanting plan will be discussed at the final review.

**Roger A. stated the application would be tabled until September 8<sup>th</sup>, where at that time the applicants can bring the final plan for the board to review.**

Nothing further was discussed.  
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**Amendment to a Conditional Use Permit – Pave an 84' x 74' Area for Tennis Court – Map 10, Lot 10-1 (Shapleigh Corner Road) – Shapleigh Recreation Dept.**

Annette Brown and Cindy Labbe were present to represent the Shapleigh Recreation Dept.

The board members reviewed a copy of the plan for the existing recreation fields and on that plan was the location of the proposed paved area for a tennis / basketball court. The ladies explained one half of the paved area will be for a tennis court the other half a basketball court. Both sides would be marked appropriately. Ms. Labbe stated it would be located adjacent to the playground.

Roland L. asked if it would be fenced in? Ms. Labbe stated no, they didn't want children jumping over the fence to go get the ball.

Roland L. asked if the area would be lighted? The applicants replied no. Ms. Brown stated possibly very far in the future but not at this time.

Roland L. asked if it was a grass area at this time? The applicants stated it was just a grubby area that will be graded, sloped, and then they will bring in crushed gravel and place the pavement on top.

**Roger A. scheduled a public hearing on September 8<sup>th</sup> at 7:00 p.m. A notice to abutters will be mailed and a site inspection was scheduled for 6:30 p.m.**

CEO McDonough asked if there was an issue with respect to the wildlife on site for this location, referring to the endangered species located on the adjacent parcel of land. Barbara F. stated in this location there is no issue, the area is on the back side of the adjacent lot.

Diane S. asked if there were any building restrictions for the proposed courts? CEO McDonough stated no, as long as there was not going to be a building placed on the paved area.

Nothing further was discussed.

**Growth Permit(s)**

Map 30, Lot 13 (39 Totte Road) – Seasonal Conversion – Growth Permit #05-09

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**OTHER:**

Letter received on August 25<sup>th</sup> from Robert Ferrera, Jr., regarding the trucking restrictions imposed on his Conditional Use Permit for earth removal.

Roger A. read the letter in its entirety. It read as follows:

“To the Shapleigh planning board, could you please reconsider the trucking restrictions imposed on 18 wheeled trucks during school pick-up and drop-off. It has come to my attention that the Back Road is posted to no through traffic and is also posted in the spring for heavy loads; this would prevent my customers from having access to any alternate route south during school pick-up and drop-off. This would also make it impossible to compete with other pits in Alfred and Acton; no company is going to want their trucks sitting on the side of the road for ½ of an hour which is cost prohibitive and a safety issue in itself. As a member of the Shapleigh business community and a tax payer I would hope you would give me the same access to Rte. 11 that the other trucking companies that don’t support the Shapleigh school system such as I, my parents and in-laws do. I believe that the 15 mph speed limit imposed during pick-up and drop-off was implemented to protect the children from all forms of traffic contingences and do not expect an excessive amount of such travel during these times, as stated at the meeting I will do everything possible to keep 18 wheeled traffic to a minimum during the hours at issue and would hope you would give me permission to travel Rte. 11 with the stipulation we would review the situation next August. Thank you for your time and consideration.”

Maggie M. stated that he had a point about the 15 m.p.h., it was imposed to protect the children from all traffic. Roland L. stated that in the minutes Mr. Ferrera said he would keep the trucks from the school during pick-up and drop-off. Maggie stated that Mr. Ferrera learned about the fact he would not be able to use Back Road and the fact that other trucks are allowed to go by the school at those times. Roland didn’t remember the conversation about Back Road. Barbara F. said it was on tape that the board did not have an issue with him using the Back Road if he chose to do so. Roger A. agreed.

Madge B. stated that if the conditions of approval are changed she wanted to know if someone would be upset. Maggie M. did not think all the yardage was going to be passing by the school for the two half hour periods of time. Diane S. did not see how the board could regulate the use of State Route 11 and because Back Road is posted she did not have any issue with his request. Barbara F. agreed stating how would anyone know the trucks going down Rte. 11 were from Mr. Ferrera’s property or any of the other gravel pits in the area.

Roland L. stated the approval was with the condition. Maggie M. agreed but the applicant is asking the board to reconsider based on the fact the Back Road is not open to large trucks. Madge B. stated the board could reconsider but it should be at another meeting where it is on the agenda so if anyone wanted to attend the discussion they can. Board members concurred no decision should not be made unless the item is placed on the agenda, so it will be reviewed on Tuesday, September 8<sup>th</sup>. Barbara F. will notify the applicant.

Nothing further was discussed.

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Board members agreed to review the information on wind generation and existing wind ordinances provided at the last meeting and to begin discussion on creating a wind generation ordinance for the Town of Shapleigh. Members would like to have it prepared so it can be on the Town Warrant in March 2010.

Nothing further was discussed.  
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***The Planning Board meeting ended at 8:45 p.m.***

Respectively submitted,

Barbara Felong,  
Land Use Secretary  
[planningboard@shapleigh.net](mailto:planningboard@shapleigh.net)

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, September 8, 2009**

Members in attendance: Roger Allaire (Chairman), Madge Baker (Vice Chair), Roland Legere, Maggie Moody, Diane Srebnick and Barbara Felong (Secretary). Code Enforcement Officer, Steven McDonough was also in attendance.

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The following words are not verbatim unless accompanied by quotation marks “ ”.

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**Public Hearing started at 7:00 p.m.**

**Amendment to a Conditional Use Permit – Pave an 84' x 74' Area for Tennis/Basketball Court – Map 10, Lot 10-1 (Shapleigh Corner Road) – Shapleigh Recreation Dept.**

Annette Brown and Stephanie LaCourse were present to represent the Shapleigh Recreation Dept. *Note: Planning Board members conducted a site inspection prior to this evening's meeting.*

There were no citizens in the audience other than the representatives for the Recreation Dept.

Roger A. asked if the new court was going to be next to the existing playground? Ms. Brown stated yes, it was adjacent to the playground. Ms. LaCourse noted that the court was now going to be reduced in size and would only be used for basketball at this time.

Roger A. said that if it were going to be a tennis court the board thought it would have been best to have fencing around it. Ms. LaCourse stated one of the Selectmen agreed so that is why they decided to go smaller at this time and just use it for basketball. In the future they may expand into tennis.

Roland L. asked what the new dimension would be for the court? Ms. Brown stated Cindy Labbe had those figures and she would call her prior to the regular meeting. Ms. LaCourse stated the court would be directly abutting the playground fence so if in the future they expand they would add onto that existing fence.

Roland L. asked what the surface of the court would be made of? Both ladies stated it would be hot top (asphalt).

Diane S. asked if there would be any additional lighting on site? Both ladies stated no.

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

The Public Hearing was closed at 7:10 p.m.

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

The Minutes from August 25th were accepted as read.

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**Best Possible Location – Replace Mobile Home – Map 21, Lot 10 (13 Village Circle) – Judith Marhak & Jenn Quinton, Applicants**

Judith Marhak and Jenn Quinton were present for the review of their application.

The applicants provided a surveyed plan of the proposed new home and new shed, done by Corner Post Land Surveying, Inc., dated 9/8/09. The plan depicted a 24' x 30' home and an 8' by 10' shed. The distance from the foundation to the high water mark of the proposed home is 48.36' and the distance to Village Circle which is the back lot line is 17' to the foundation. The proposed shed was moved farther from the high water mark now being placed approximately 58' from the high water mark (the existing shed at its closest point is 37' from the high water mark).

Madge B. asked how many trees would be removed? The applicants stated they did not want to have to remove any trees but were not sure if during the building process the tree next to Village Circle would be damaged. The applicants stated they did not have any issue with replacing damaged vegetation.

Board members compared the plan showing the existing structures on site to the final plan which depicted the proposed location of the new home and shed. Board members noted the existing mobile home, after measuring the foundation to the high water mark appeared to be 46' from the high water mark to the foundation. The proposed structure will be 48.36' to the high water mark, moving it farther from the water.

Board members noted the new structure would be approximately 1 foot farther from the rear lot line than the existing.

Madge B. reviewed §105-4.D(7).b which requires the replanting of vegetation to replace any destroyed vegetation if it is within the water or wetland setback (which is 100 feet from the high water mark). Also, any trees removed in order to relocate a structure must be replanted with at least one native tree, three feet in height, for every tree removed. Madge wanted it stated for the record any trees removed needed to be replaced per the ordinance. CEO McDonough stated he agreed.

Madge B. asked if hay bales were required? Roger A. stated Best Management Practices should be followed which could include hay bales or a silt fence. He noted that the area was relatively flat but earth moved for the foundation could become an erosion issue, so for that possibility there needed to be some protection during the project. He thought they probably would not be able to go deeper than 3 feet for the foundation due to the water table in the area. Roger also added that there should not be much vegetation disturbed as there wasn't much on site to disturb.

Madge B. asked when a replanting plan was needed? CEO McDonough stated that he would not issue an occupancy permit without the replanting plan. He said most often during the building permit process the replanting plan is discussed.

Roger A. reviewed § 105-4.D(3) Foundations., (5) Removal, reconstruction or replacement., and (7) Relocation.

Roger A. noted the following as conditions to the approval:

- 1) **A replanting plan to restore the area after construction and replace any trees removed during construction, must be received by the Code Enforcement Officer prior to the issuance of an Occupancy Permit.**
- 2) **Best Management Practices shall be used during the entire construction project.**
- 3) **A licensed surveyor must place the structure per the approved plan and certify the foundation location.**

Madge B. asked if the board needed to be concerned with where the demolition materials of the existing structures were going? Roger A. stated they would have to take them to Turnkey or Simpsons, the Shapleigh Transfer Station would not accept it. Barbara F. agreed stating that was a town policy. Roland L. asked if there needed to be anything in writing stating this fact? Roger said no, he had just discussed this with the Board of Selectmen and it would not be accepted by the town so it wasn't an issue.

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

**Roland L. made the motion to approve the Best Possible Location to replace the existing mobile home and shed with a 24' x 30' home and an 8' x 10' shed per the final plan provided, dated 9/8/09.**

**Madge B. 2<sup>nd</sup> the motion. All members were in favor. Vote, 5-0.**

Nothing further was discussed.

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**Conditional Use Permit – Earth Moving – Map 10, Lot 22 (2 Oakhill Road off of Rte 11) – Robert Ferrera, Jr., Applicant**

Mr. Ferrera was present to discuss a letter he presented to the Planning Board on 8/25/09. The letter asked the Planning Board members to reconsider the trucking restrictions imposed on 18 wheeled trucks during school pick-up and drop-off.

Roger A. asked Mr. Ferrera to state to the board why he wanted the change to the restrictions. Mr. Ferrera stated that he learned that the Back Road was posted as "No Thru Trucks" so it could not be used as an alternative route during school hours or in the spring when all of Shapleigh's roads are posted until the frost is no longer an issue. He stated because of this he wanted the option to be able to pass by the school so no trucks would have to sit and wait, losing an hour a day of travel time. He said that Route 11 was his only southern exit and the fact the school has the 15 m.p.h. speed limit, he believed if there was an issue with this the State Police or Sheriff's Dept. could be notified.

Roland L. asked Mr. Ferrera if he had the opportunity to meet with the Principal of the Shapleigh Memorial School, Miss Kostis. Mr. Ferrera stated that yes he did. He stated she was happy that he came to talk to her and was thrilled that he would try to reroute and/or limit traffic during drop-off and pick-up times. He said again he didn't realize at the time he could not use Back Road.

Mr. Ferrera stated he felt his business would be at a disadvantage that for an hour a day his trucks couldn't pass through while all other trucks from other businesses could use Route 11.

Roger A. stated that his personal opinion was that they could hold that truck back for one half hour in the morning and afternoon, because it would only affect one or two loads maximum a day. He didn't see where it was going to impact the removal based on the amount they could move in a day. Mr. Ferrera stated he was going to ask them to try to avoid the school during those hours but in case it happened he didn't want it to be an issue. He stated in reality no one would be there to watch or regulate it and it was a state road. Madge B. concurred it was almost impossible to regulate it. Diane S. believed that because it was a state road she didn't feel the board members could regulate commerce on a state road, that he had the right to use the road.

Roland L. stated that besides the fact Ms. Kostis was appreciative of Mr. Ferrera approaching her, did she have any additional concerns? Mr. Ferrera stated her concern was with cars parked along the street because the parking lot was not big enough to house all the vehicles used to pick up the children. Roger A. stated that it is always an issue in this location. During the ball games people have been asked not to park

along the road and they still do. He said it's a hazard and has been for a long time. Roger said he addressed it with the Business Manager, Bill Brockman, and it is was agreed that if the school is able to acquire more money it needs to be taken care of.

Roland L. asked if the board was within its rights to prevent the movement of Mr. Ferrera's trucks during school drop-off and pick-up hours or does it defer to the State? Roger A. said he believed it was well within the board's rights to put in stipulations to protect the citizens by putting a condition on a Conditional Use Permit, even though it is a state road. He said one of the board's responsibilities was to protect the safe and healthful conditions and general welfare of the public (See §105-2. Purpose). He said because the board is dealing with a state road it doesn't preclude the board from imposing conditions they feel are necessary. Roger stated he felt sorry that Mr. Ferrera was the first applicant where trucks needed to be addressed through the permit process. He said there were no other businesses at this time that have come before the board with a high volume of trucks. Roger said other large trucking companies using Route 11 have not had to be permitted through the town, so the board had no control over them.

Roland L. asked Mr. Ferrera how many vehicles he believed would be going by the school during the two half hour periods of time? Mr. Ferrera didn't know because he had no contractor at this time. Mr. Ferrera thought approximately 15 trucks a day would be leaving his location so he didn't think there was going to be a problem but he wanted to address it so it wouldn't be a problem.

Roger A. stated one way to address it was if it did become a problem, on the third year during the renewal process, traffic problems would be addressed at that time. Roger noted the third year would come up quick. Maggie M. stated she did not see why the trucks can't be loaded and just wait until the time frame passed; all the while other trucks could be loaded so time wasn't lost. Mr. Ferrera was concerned that if the trucking company found out there were certain times they couldn't operate that they would not want to work with him because any time a truck isn't on the road they are losing money. Mr. Ferrera stated an alternative was trucking later at night but he didn't think he would find the drivers to do it. Maggie M. and Diane S. thought there would be more complaints if there was heavy truck traffic at night. Mr. Ferrera agreed.

Madge B. stated that Mr. Ferrera was correct in that the board would be putting a condition on him that they could not enforce. Madge stated it was a concern to her but she still would like to see no truck traffic by the school 15 minutes before the school started and 15 minutes after school let out. Madge said the Planning Board wasn't going to call the Sheriff and say "Enforce our condition.". Roger agreed and added that the CEO couldn't sit and wait for a truck and tell them they can't go through. Madge stated that all the board could do is ask that he abide by the condition for the safety of the children. Mr. Ferrera stated if there was a problem the State Police should be contacted to take care of the problem. Madge agreed that was probably the only way to take care of any problem.

Diane S. stated that in reality a child could get hit by one of the busses going to the school or another passing vehicle. CEO McDonough stated he would rather the town not get sued because they didn't address the issue. Madge B. agreed. CEO McDonough stated that by adding the condition it is documented the town tried to address the potential problem.

The Board members reviewed the original approval which read as follows:

- 1) The hours of operation shall be 6:00 a.m. through 5:00 p.m. Monday thru Friday, 7:00 a.m. through 12:30 p.m. Saturday.**
- 2) There shall be no 18 wheel trucks traveling past the Shapleigh Memorial School at the time of children drop-off in the morning or during children pickup in the afternoon throughout school season operating hours.**



- 3) A letter from the Shapleigh Memorial School principal shall be given to the Planning Board stating the hours of children drop-off and pickup, prior to the transport of gravel.
- 4) It is the applicant's responsibility to make certain the entrance onto State Rte. 11 is clean of all sand and stone dust to prevent a hazardous situation.
- 5) The Planning Board must approve any additional borrow pits on site.
- 6) As a note, this permit is valid for a period of three years from the date of approval per the ordinance.

Barbara F. noted no hours were restricted because the board was waiting for Mr. Ferrera to ask Principal Kostis her opinion. Roland L. asked what the hours of drop-off and pick-up were. Barbara believed it was 8:30 to 9:00 in the morning and 3:00 to 3:30 in the evening. Members of the Recreation Dept. concurred.

Roger A. and Diane S. spoke about the option of removing #2. Madge B. stated as it is written it is not helpful so it should be changed.

**Diane S. made the motion to remove condition #2.** Diane asked if #3 should be removed as well. Barbara F. stated he had already done #3 so there was no need to remove it.

Roger A. asked if there was a 2<sup>nd</sup> on Diane's motion. Roland L. asked if removing it still gave the board the option to add something else. Diane S. stated yes, Barbara F. agreed. Madge B. stated she would prefer it be amended in one motion.

Roger A. stated that because there was no second, he would entertain another motion. He asked the board what they would like to do?

**Maggie M. made the motion that condition #2 be amended to state no trucks would drive by the school between 8:30 and 9:00 a.m. and between 3:00 and 3:30 p.m. during school hours. Madge B. 2<sup>nd</sup> the motion. Four members were for the motion. One member opposed (Diane S.). The motion passed, 4 to 1.**

Roger A. stated the condition would read as follows:

**There shall be no 18 wheel trucks traveling past the Shapleigh Memorial School between 8:30 a.m. and 9:00 a.m. or between 3:00 p.m. and 3:30 p.m. throughout the school season operating hours.**

Madge B. told Mr. Ferrera he could always come before the board again. Madge said he shouldn't come back until he gets a contractor that says he cannot work around those hours.

Mr. Ferrera asked how he could appeal the decision? Barbara F. asked if he could go to the Zoning Board of Appeals for an administrative appeal? Board members were not sure at this time.

Nothing further was discussed.

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**Amendment to a Conditional Use Permit – Pave an 84' x 74' Area for Tennis/Basketball Court – Map 10, Lot 10-1 (Shapleigh Corner Road) – Shapleigh Recreation Dept.**

Annette Brown and Stephanie LaCourse were present to represent the Shapleigh Recreation Dept.

Roger A. stated this was an amendment to their Conditional Use Permit to be able to have a basketball court for the children. Ms. LaCourse stated the court would be 45' x 75' in size.

Roland L. stated for clarification, the area was going to be downsized from the original proposal to 45' x 75' and would be used only for basketball, it would not be a tennis court. The applicants stated correct.

Madge B. asked how much earth would be moved on site? Ms. Brown stated there would be some of the grubby soil removed and some crushed gravel put down. Ms. LaCourse stated the shifting sand would be moved and the crushed gravel packed down then the asphalt would be put down. Madge asked how much gravel would be brought to the site? Ms. Brown stated that with the original size of the court it was going to be 10 truckloads carrying 14 yards of gravel. She said now it would be less because they reduced the size of the court. CEO McDonough noted that anything under 150 yards would not have to be reviewed by the Planning Board. Roger A. added that the gravel moving was incidental to construction as well, so it was not a Planning Board issue.

Roger A. asked if the area would be paved this year? Ms. Brown stated yes.

The board looked through the ordinance and noted the issues associated with the amendment were reviewed during the initial application such as traffic, noise, odors, glare, etc. There were no changes with the addition of the basketball court that would affect the public any differently than what is permitted.

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

**Roger A. reviewed Shapleigh Zoning Ordinance 105-73.G “Standards applicable to conditional uses”.**

- 1) The use will not have an adverse impact on spawning grounds, fish, aquatic life, birds or other wildlife habitat. ***It will not, the area affected will be similar to what is currently permitted for similar recreational activities on site.***
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. *N/A*
- 3) The use is consistent with the Comprehensive Plan. ***It is, the Comprehensive Plan addresses both business development and permits that would allow for high volumes of activity and traffic to be along Route 11.***
- 4) Traffic access to the site is safe. ***It is, the site distance is in excess of the minimum required and was approved on the original Conditional Use Permit in April 2000.***
- 5) The site design is in conformance with all municipal flood hazard protection regulations. ***It is, none of the property is in a flood zone.***
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. ***There are existing portable toilets on site.***
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. ***There shall be no hazardous materials stored on site.***
- 8) A stormwater drainage system capable of handling a twenty-five-year storm without adverse impact on adjacent properties has been designed. ***There will be no changes to the site that would affect stormwater drainage. The type of sandy soil on site percolates extremely well and the area is flat. There are no changes being made that are inconsistent with the original approved plan in April of 2000.***
- 9) Adequate provisions to control soil erosion and sedimentation have been made. ***There are no changes being made to the site to create soil erosion. The existing vegetation surrounding the property shall remain in place which includes irrigated soccer fields. There is no change being made to the approved parking area.***
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. ***There is a water holding tank located near to this location, as well as an inground sprinkler system on the soccer fields.***

- 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. ***The existing vegetation shall be kept in place; the parking area is not being changed from the original approval; there is no additional lighting being added.***
- 12) All performance standards in this chapter applicable to the proposed use will be met. ***They shall.***

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

**Roland L made the motion to approve the Amendment to a Conditional Use Permit to add a 45' x 75' paved basketball court in the location noted on the plan provided. Madge B. 2<sup>nd</sup> the motion. All members were in favor. Vote 5 – 0.**

Nothing further was discussed.

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**Conditional Use Permit – Remove Existing Wall & Replace with Rip-Rap & Vegetation – Map 32, Lot 7 (45 Dahlia Road) – Carl & Jen Roediger, Applicants**

Mr. Roediger was present for the review of his application.

Mr. Roediger began by stating he and his wife own a seasonal cottage on Dahlia Road on Square Pond. He said he wasn't sure how old the camp was or the wall he wanted to replace. He said the wall has no drain holes in the base so over time there has been significant erosion and the wall itself is cracking. He stated he is currently working with Joe Anderson of York County Soil and Water Conservation District to figure out what the best course of action would be.

Mr. Roediger stated they were contemplating replacing the wall but after seeing the cost involved they decided they needed another alternative. He added that at this time taking manmade structures and moving them away from the waterfront is the direction Planning Boards are going in. (Mr. Roediger has been a member of the Planning Board in Portsmouth, NH.)

Mr. Roediger stated while working with Mr. Anderson they decided a rip rap wall at the appropriate slope of 2 to 1, and a vegetative buffer would be best. He said some earth is going to have to be removed in order to get the proper slope.

Mr. Roediger stated he wanted to do the project when the water is lowered in the fall. He didn't believe the wall would survive another winter. He stated the problem was the water level to the top of the wall is 40". If the wall falls it would allow a substantial amount of soil and material to wash into the lake. Board members reviewed a picture of the existing wall that was provided along with the application.

Mr. Roediger noted the footings are eroding underneath. He said in order to replace the wall new footings would be required so again he would prefer to go with a natural wall and vegetation. He believed once it was in place there would be little maintenance required.

Roger A. asked where the material that was removed would be placed? Mr. Roediger did not know at this time. He said he was working with Mr. Anderson because he had no experience in this area so he would defer to Mr. Anderson's suggestions.

Mr. Roediger stated he had applied for a DEP Permit by Rule. He said it was returned to him for further information and he mailed it once again to the DEP about 10 days ago and has not had a reply to date.

Mr. Roediger noted that the Red Pine nearest the wall had been severely damaged by the ice storm of last winter and the roots of the pine had pushed through the wall as well. He believed it would have to be removed during the project. He stated when replanting he would use the recommended list of native plants provided by YCSWCD.

Mr. Roediger stated this project qualified for the Square Pond Water Rehabilitation Program so again Mr. Anderson's group would be in charge of the project which he said he welcomed because he wanted the project done correctly.

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

**Roger A. stated a site inspection would be held at 7:00 p.m. Members would meet at the Town Hall at 6:45 p.m. A Notice to Abutters will be mailed as well.**

Nothing further was discussed.

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Board members will hold discussion on a proposed wind ordinance at the next scheduled meeting. Barbara F. will try to gather more information for the board with respect to power and noise levels.

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***The Planning Board meeting ended at 8:45 p.m.***

Respectively submitted,

Barbara Felong,  
Land Use Secretary  
[planningboard@shapleigh.net](mailto:planningboard@shapleigh.net)

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, September 22, 2009**

Members in attendance: Roger Allaire (Chairman), Madge Baker (Vice Chair), Roland Legere, Maggie Moody, Diane Srebnick and Barbara Felong (Secretary). Code Enforcement Officer, Steven McDonough was also in attendance.

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The following words are not verbatim unless accompanied by quotation marks “ ”.

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

The minutes from Tuesday, September 8, 2009 were accepted as read.

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### **Conditional Use Permit – Remove Existing Wall & Replace with Rip-Rap & Vegetation – Map 32, Lot 7 (45 Dahlia Road) – Carl & Jen Roediger, Applicants**

Mr. Roediger was present for the final review of his application. Mr. Tim Hardy, an abutter was also present. *Note: Planning Board members did a site inspection prior to this evening's meeting.*

Board members reviewed the planting schedule provided. Madge B. asked if there was a plan for the removal and replacement of the existing wall? Roger A. showed Madge the plan provided which was drafted by Joe Anderson of York County Soils & Water Conservation District.

Roger A. read a letter received by the Planning Board from Mr. Tim Hardy. The letter read as follows:

“Dear Ms. Felong,

I own the brown cabin immediately south of Roediger's cabin. The masonry wall they propose to remove is connected to a masonry wall in front of my cabin.

I reviewed their application and was concerned that there isn't any detail of how they plan to deal with the southern terminus of their riprap embankment. While a properly ballasted (riprap) 2:1 sloped embankment can provide sufficient stabilization in the direction of slope, it offers very little perpendicular support. Once their structure is removed, the northern end of the remaining wall may be subject to erosion and weakening.

Additionally, there is a large birch and a fairly large (~12 inch caliper) pine within 10 feet of the wall that aren't shown on the plan. I expect that the construction will most likely damage the root systems of these 2 trees.

I called Mr. Roediger (Carl) to discuss these issues. He said he was aware of both issues. He acknowledged that they will have to do something to accommodate the exposed end of the adjoining wall. He also said they were considering modifying the slope from 2:1 to 1:1 or steeper if necessary to miss the tree roots.

While there is some comfort knowing that Carl is aware of the issues and he does plan to address them, I think it would be beneficial to the planning board and me if he submitted a definite plan that the board could review before final approval.

I understand this will be discussed at the planning board meeting scheduled for Tuesday, Sept. 22<sup>nd</sup>. I would appreciate it if these issues could be considered at that time.

If you have any questions or require any clarifications, you can call me at 603-424-7148 (H) or 603-493-9801 (C). Thank you for your assistance with this matter.”

Roger A. spoke about what members viewed at the site inspection. He talked about the slope and that there was a large pine that needed to be removed because it was completely dead. He also talked about the dying hardwood trees on site but added that the project itself would not be affecting these trees. Mr. Roediger stated he was worried about the fact the oaks on site seemed to be dying.

Roland L. pointed out the fact that the plan shows the existing stairs and that they would be left for water access but he noted that there was talk about them coming out and being replaced with granite at the site visit. Mr. Roediger stated that the existing stairs as they are today are going to be removed along with the wall. He stated there would be another stairwell put into place that would be much smaller than what exists at this time. He said it would be built into the rocks / rip/rap and it wouldn't be formal in nature, most probably stepping stones that would allow access to the water. It would be designed in such a way that the rip/rap wouldn't be disturbed by the use of the stairs.

Roland L. stated that the proposal as written states, "leave existing stairs...". He said it was contradictory with what was stated at the site inspection. Mr. Roediger stated that he made the note for stairs so the board would know there are stairs at this time, and he wanted to replace the stairs. He said he did not want to find out after he removed the existing stairs that he couldn't replace them so he noted their existence on the plan.

Roland L. asked Mr. Roediger if the plan should actually state, "leave space for replacement stairs"? Mr. Roediger said, yes.

Roger A. asked Mr. Roediger if he had a size in mind? He said presently the stairs are 7 ½ feet wide. Mr. Roediger stated the new stairs would need to be about half that size. Roger and Madge B. stated there needed to be a size written on the plan. Mr. Roediger stated that a 36" wide staircase would be adequate. Roger wrote 36" on the final plan. Mr. Roediger said he only needed an area that was a transition from the sand, over the rip/rap to the water, and to do it in a way that was safe that didn't disturb the rip/rap, etc.

Madge B. stated that the plan didn't address Mr. Hardy's concern about what would happen on the corner of his property where his wall met Mr. Roediger's. Mr. Roediger stated the plan was created by Joe Anderson and after he drew the plan they talked about Mr. Hardy's property and how to address it, including the slope. Mr. Anderson stated that while 2:1 or 3:1 are the approved slopes, 1:1 is sometimes allowed. He stated that as you go closer to Mr. Hardy's property the slope will go from 2:1 to 1:1. Madge stated she understood what was going to take place, her concern was that it wasn't written on the plan. She said that Mr. Hardy asked that it be put on the plan and she agreed it was a good idea. Madge asked if a plan could be submitted to CEO McDonough for his approval prior to construction. Roger A. stated the board could do that. Roger said he was concerned with this area as well. He said that he was concerned with erosion because of the lay of the land. He thought once the wall was removed there may be more erosion on the corner so a plan should be presented to CEO McDonough to be certain this issue is taken care of.

Diane S. asked if Mr. Anderson was going to be supervising the project? Mr. Roediger stated, yes.

Madge B. and Diane S. stated the new plan should address the new stairs as well, at the corner of Mr. Hardy's property. Roger A. asked Mr. Roediger if he knew who the contractor would be for the project? Mr. Roediger stated he did not, but Mr. Anderson had several names for him, people that have done this type of work before. He would contact Mr. Anderson once he had approval from the board.

Roger A. stated another issue to address was the replanting schedule. Madge B. asked if the project was going to be done this fall? Mr. Roediger stated, correct. Madge thought based on this, June 1, 2010 would be an appropriate deadline for planting.

Roland L. asked if the board should be concerned with where the material would be going, i.e. the existing wall. Roger A. stated it would be up to the contractor. He said because of the minimal amount of yardage, as long as it doesn't remain in the shoreland zone, it was not a problem. Roger didn't think there would be more than 20 yards of material removed. CEO McDonough asked if it was just stone to be removed? Roger said it was mostly fine sand plus the wall itself. He added that there would also be one stump. Roger said they would be bringing in rip rap for the reconstruction.

Roger A. reviewed 105-4.D(5), Removal, reconstruction or replacement (of a non-conforming structure). Roger noted that the dead tree really wasn't an issue tied in with the removal of the wall but because it was dead and while equipment was on site it would be in Mr. Roediger best interest to removed the tree at this time. Mr. Roediger agreed and would like to tie the tree removal in with this permit rather than having to come back another time to address the tree alone. Madge B. asked if the tree removal was permitted through the Planning Board or the CEO. CEO McDonough stated it was thru his office.

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

Roger A. stated the following were conditions of approval:

- 1) **Best Management Practices shall be used.**
- 2) **An additional plan to show in detail how the south side of the wall will be removed and the area stabilized in order to prevent any damage to the abutting landowners wall, location Map 32, Lot 4, shall be provided to the Code Enforcement Officer prior to any work commencing.**
- 3) **The revegetation of the area shall be completed by June 1, 2010.**
- 4) **Any tree removal shall be permitted through the Code Enforcement Office.**

**Madge B. made the motion to approve the Conditional Use Permit to remove the existing retaining wall and replace with rip rap and vegetation with the above stated conditions. Diane S. 2<sup>nd</sup> the motion. All members were in favor. Vote 5 – 0.**

Nothing further was discussed.

**Growth Permit(s)**

**Map 5, Lot 20-6 (White Tail Lane) – Patco Construction, Inc. / North Country Land – Permit #06-09**

**Other:**

**Letter from FEMA, dated September 10, 2009, received at the Town Hall September 18<sup>th</sup>, regarding the new Flood Insurance Study and Rate Maps.**

Board members reviewed the latest information provided by the State with respect to changes to the State's Flood Plain Ordinance which Shapleigh has adopted. Members noted that the State did not do a study of Shapleigh and was using existing information they had on file. Members were not concerned because there were very limited areas in Shapleigh that were actually in the flood plain or would be affected. The board will wait for the State's imposed changes to the existing ordinance, hopefully they will arrive in time for Town Meeting in March 2010.

**Small Wind Energy Ordinance**

Board members reviewed ordinances from several towns in Maine and New Hampshire. They also read information provided by both the State and Unity College which is studying wind energy as part of their curriculum. Members discussed the fact they preferred the York Maine ordinance because it seemed to be geared toward single windmills instead of a commercial operation. Because Shapleigh is not in a high wind corridor, the board believes applications would be for the homeowner or small business owner vs. a commercial operation.

Board members did agree York needed several changes which included a section for definitions, a greater setback requirement from a neighboring lot line and allowing a higher rated capacity based on information Roger A. discussed.

Barbara F. will draft a preliminary ordinance and members will review it at the next meeting.

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***The Planning Board meeting ended at 8:45 p.m.***

Respectively submitted,

Barbara Felong,  
Land Use Secretary  
[planningboard@shapleigh.net](mailto:planningboard@shapleigh.net)



# ***SHAPLEIGH PLANNING BOARD***

## **MINUTES**

**Tuesday, October 13, 2009**

Members in attendance: Madge Baker (Vice Chair), Roland Legere, Maggie Moody and Barbara Felong (Secretary). Code Enforcement Officer, Steven McDonough was also in attendance.

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The following words are not verbatim unless accompanied by quotation marks “ ”.

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

The minutes from Tuesday, September 22, 2009 were accepted as read.

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**After-the-fact Conditional Use Permit – *Earth Moving* – Map 11, Lot 28F (41 Newfield Road) – Nicholas Richardson, Applicant**

Mr. Richardson was present for the review of his application. Also in attendance was abutter, Margery Thompson (Map 11, Lot 29-4); and her Attorney, Kenneth Keating of Roberts & Shirley Law Offices, Springvale, Maine.

Mr. Richardson brought to the meeting a preliminary engineered plan showing the proposed road on his property, along with erosion control measures.

CEO McDonough asked Mr. Richardson to give a brief explanation of what his intent was. Mr. Richardson said he wanted to build an access road from one side of his property to the other side where he parked his equipment for his business. He added that it would also provide access to the back of his lot.

Roland L. asked how long of a distance the road would be? Mr. Richardson stated approximately 2,400 feet. Roland asked if he was going to encroach on the wetland area? Mr. Richardson stated he did not think so.

Maggie M. asked how far the excavation and road needed to be from the neighboring lot lines? Attorney Keating stated, 100 feet. Members reviewed ordinance §105-39.G ‘Conditions of permit.’, (11), which reads in part, “No excavation below the grade of the surrounding land shall be allowed within 100 feet of any side or rear lot line. However, removal of earth material deposits from hills or knolls may be allowed within 50 feet of a side or rear lot line if no excavation below the grade of abutter’s properties occurs.”

Mr. Richardson pointed out that on the plan there was depicted a berm he wanted to build and there would be trees placed on top of it, so the neighbor would not be bothered by the proposed road. Roland L. asked if there was a steep bank in this location? Mr. Richardson said yes but it would be sloped up to the berm.

Attorney Keating, reviewing the ordinance, reminded the board that the excavation below grade next to the abutting landowner should not be any closer than 100 feet to the property line. Mr. Richardson stated that this application was an after-the-fact and the excavation had already taken place. Attorney Keating asked Mr. Richardson if he knew how close the excavation was to the property line of Ms. Thompson? Mr. Richardson stated it was about 75 feet to the proposed roadway. Attorney Keating asked about the existing ribbons on the property, had Mr. Richardson’s surveyor placed them? Mr. Richardson stated, yes. Attorney Keating stated that Ms. Thompson had measured from the ribbons to the excavation and it measured 26 feet.

Mr. Richardson pointed out the fact he would be placing a berm with Christmas trees on top between her property and the excavation. There would be a 3:1 slope up to the berm.

CEO McDonough asked again about the distance to the excavation. Ms. Thompson stated from the existing pin in the ground to the excavation she measured 26 feet. CEO McDonough asked if the project before the board was the road? The board stated correct. CEO McDonough asked how close the road would be to the nearest property line? Board members looked at the proposed plan to try to determine the distance to the proposed road. CEO McDonough stated that the road was the issue, along with what would be done between the road and the lot line, what will be done to mitigate what has already taken place.

Madge B. tried to determine whether or not §105-39.G(11) applied for the road? It was determined by members it applied because the after-the-fact permit was for earth moving in excess of 150 yards.

Attorney Keating noted that Ms. Thompson's concern was to protect her property from erosion. He said that even though this is after-the-fact she wants assurance that the erosion possibility is taken care of. CEO McDonough agreed. Mr. Richardson stated that was what the proposed berm would be for, as well as the 3:1 slope. Ms. Thompson asked when the berm and sloping would take place? Mr. Richardson stated he had three years to do it; he would do it whenever he had the money. CEO McDonough stated that the planning board determines the amount of time which according to the ordinance needs to be a minimal amount of time. He believed in this case erosion control was the biggest issue. Madge B. stated, correct.

Madge B. said, what the ordinance states is, "the smallest amount of bare ground to be exposed for the shortest time feasible. Temporary ground cover shall be used." Madge stated the board can require a ground cover to be placed by a certain date. Mr. Richardson stated again that money was an issue. Madge said that the board understood. Madge asked if he had placed any stabilization down at this time? Mr. Richardson stated, not in this area (next to the abutter).

Roland L. asked Ms. Thompson if she was concerned with an erosion problem if there were to be heavy rains? Ms. Thompson replied, definitely. Mr. Richardson stated that there have been heavy rains since the excavation took place and there hasn't been a problem.

CEO McDonough believed the ordinance states that the area of excavation could be reduced to 50 feet if the excavation isn't below grade of the abutter's property. Madge B. stated, correct. CEO McDonough asked Mr. Richardson if the grade was lower than the neighbor's property? Mr. Richardson stated, yes approximately 6 or 7 feet below grade. CEO McDonough stated his suggestion would be that there would be immediate stabilization of the area next to the abutter's lot line. He pointed out the area on the plan noting it would not be the entire length of the property, just between the excavation and Ms. Thompson's property line. Mr. Richardson stated there was an existing tree line between his property and Ms. Thompson's still in place. CEO McDonough stated it was 26 feet from the excavation and Ms. Thompson's property line. He said he did not see a reason why Mr. Richardson could not put in a 3:1 slope and stabilize that area between the proposed road and the 26 feet to her property line. Mr. Richardson stated he had a gravel pile in that area. CEO McDonough said he would need to move the gravel pile so it would be 50 feet from the property line. He added that he didn't think it would be too difficult to move it to a new location. It should only take one half a day. Mr. Richardson agreed. CEO McDonough stated Mr. Richardson knew more about grading and sloping because he was in this type of business, but he didn't think creating a 3:1 slope so he was 50 feet from the property line would be a difficult process. Then add mulch on top so the area was stabilized. CEO McDonough pointed out the area to be stabilized on the plan and did not believe it was a lot to ask of the applicant. CEO McDonough asked Mr. Richardson if he felt it was unreasonable? Mr. Richardson replied, no.

Roland L. asked Ms. Thompson if that sounded reasonable to her? She stated yes, all she cared about was protecting her property. Ms. Thompson stated that she did have an issue with what would be happening with all the mounds of gravel on site. She was also concerned with the noise that has taken place (there was a rock crusher on site at one time) and what activity would be taking place in the future. She was also concerned with when the gravel would be moved, the noise generated by the equipment and what hours the equipment would be operating. She asked if there would be a time frame for the earth moving? Mr. Richardson stated he could work from 6:00 a.m. to 7:00 p.m. at 60 decibels. He stated that he could run his chipper all day if he wanted to. He said he could pull his trucks on site all the time if he wanted to. Mr. Richardson stated the only reason Ms. Thompson was before the board was to cause trouble. Ms. Thompson replied that was not true she was concerned with her land and home. Madge B. had to ask both parties to stop arguing or she would close the meeting and they would have to come back to another meeting. She stated she did not want neighbors arguing. She said everyone was here to solve a problem. She pointed out that what was done was without a permit and the board needed to find a way to get Mr. Richardson's project legal. Mr. Richardson agreed.

Madge B. once again reviewed §105-39, noting this was earth moving in excess of 150 yards in the general purpose zone. Madge noted that the applicant did apply for a permit and was required to submit specific information. Madge stated that Mr. Richardson did bring in an engineered plan so now the board would review the "conditions of permit".

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

- (1) The smallest amount of bare ground shall be exposed for the shortest time feasible. The Planning Board shall set a specific date after which bare ground shall not be exposed.

Madge noted the fact this is a huge project and it cannot be done all at once, but in order to protect the neighbor's property, the board wants Mr. Richardson to stabilize the bank between the proposed road taking in all the excavated area up to the tree line. Madge asked CEO McDonough what the distance was which needed to be stabilized immediately? CEO McDonough stated according to the ordinance 100 feet would have been required in the first place if it was going to be below grade and at grade it would have been 50 feet. He stated currently it is 26 feet to the property line. CEO McDonough stated he did not believe it was a great distance before he was 50 feet away from the abutter's property line. CEO McDonough asked Mr. Richardson what the distance was that wasn't disturbed at this time. Mr. Richardson stated that there were trees along Ms. Thompson's property line at this time but he was going to remove them and add a dirt berm and add trees on top of it. The board looked at the plan and the area they would like to have immediately stabilized. CEO McDonough noted that it was not an unreasonable request for the amount of area. Madge asked if CEO McDonough was requesting that any area within 50 feet of Ms. Thompson's property line be immediately stabilized. He stated yes.

Roland L. asked what the purpose was of removing the existing trees to the lot line of Ms. Thompson? Mr. Richardson stated this was so Ms. Thompson would not have to view what was taking place on his property. Madge B. stated that at this time the board wanted to stabilize the exposed bank. CEO McDonough asked Mr. Richardson if he was going to cut all the trees to the property line. Mr. Richardson stated yes, that was his land. Board members asked him why? They thought it would be best to leave them in place. Madge did not see why he couldn't stabilize from the tree line out to the road. Mr. Richardson said he wanted to have a berm as a buffer between his property and the neighbor. CEO McDonough stated there was 26 feet of a buffer currently. Mr. Richardson stated, yes hardwood trees. He wanted evergreens. Attorney Keating was worried that clearing more of the land to the back of the property would increase the chance of erosion. Madge B. agreed. Madge believed it would be best to request Mr. Richardson stabilize from the 26 foot

existing buffer out to the road. Roland L. thought if the board allowed anymore disturbance between the existing excavation and the property line it would be endorsing further non-compliance. CEO McDonough asked Mr. Richardson if he was planning to do more excavation toward the neighboring property line? Mr. Richardson stated that when he put the berm in place he would be, then he would create a 3:1 slope from the berm toward the road. CEO McDonough stated that Mr. Richardson was not supposed to do any excavating 100 feet from the neighbor's property line. He explained cutting and planting is not excavation but any type of earth moving is.

Attorney Keating noted the outer limit was for sub-grade excavation. He stated it was currently 26 feet before Mr. Richardson started to go below the grade. Attorney Keating said that it wasn't 50 feet but with the 3:1 slope it was 50 feet to the property line, but the top of the excavation was still going to be 26 feet. Attorney Keating stated he realized this was an after-the-fact permit and the board may not require more than the 50 foot distance but he did not feel that Mr. Richardson should be able to disturb anything closer to the property line. Madge B. agreed.

CEO McDonough asked if sloping and stabilizing the excavated area to 50 feet from the property line would be acceptable to the Ms. Thompson? Attorney Keating asked if he was talking about 50 feet to the grade or 50 feet to the bottom of the slope? CEO McDonough stated the excavation is already there. Ms. Thompson asked why Mr. Richardson could not put the gravel back from where he took it from. Ms. Thompson said Mr. Richardson did not get a permit to do it correctly; she stated that he was supposed to be 100 feet away from her property line. She was also concerned with the proposed road, what would it be used for over time? She stated that she would have to bear the burden of what he did. She said the law states it is suppose to be 100 feet from her property line. She said, "Now he's done and so now it's going to be 50 feet".

Madge B. stated that it seemed to make more sense to leave the existing vegetation and build out from it and stabilize the area. CEO McDonough asked if she was talking about leaving the tree buffer? Madge said yes, leave the tree buffer as it is now and then build a 3:1 slope out to the road. CEO McDonough stated this would be the simplest thing to do but the abutters do have a point that it doesn't meet the 100 foot requirement. Madge stated she agreed it doesn't meet the ordinance. The ordinance states you cannot go closer than 100 feet below grade. Mr. Richardson stated he had an approved permit to put in a road on his property. (On 11/13/07, Mr. Richardson was granted approval by the Planning Board to build a road to create road frontage for a new lot. The plan shows the new road to be 50 feet wide by 301 feet in length.) Mr. Richardson went on to say he should be able to use the gravel on his property to build his new road. Madge stated it was fine to use his own gravel but the fact was he went too close to the abutting property owner's property. He replied it was because that is where the gravel was. Madge stated that may be but you cannot do whatever you want to do when there could be consequences to someone else's property. Mr. Richardson stated he was not hurting their property, he was 26 feet away. Madge replied that according to the ordinance he was not allowed to do what he did. She added the fact he came to the board after he already did the work didn't help the situation.

Madge B. stated that she didn't think the board could use the preliminary plan as drafted at this time. Madge stated that Mr. Richardson needed a new plan. CEO McDonough asked if the new plan had to show the road to be 100 feet from the property line? Madge stated, yes. Mr. Richardson stated that more dirt would have to be moved. CEO McDonough stated that was true which was why he thought the simplest thing to do was to stabilize what was there at this time.

Madge B. asked if the board needed to hire an engineer to go out and look at the situation? CEO McDonough thought to move the road to 100 feet is going to do more excavation than what has already been done. The least amount of disturbance is to immediately stabilize from the existing road to the abutters.

Barbara F. noted that this would keep the proposed road closer to the abutter than what it should be. CEO McDonough stated that was correct, it would be closer than it should have been. Barbara was concerned for the neighbor with the future use of the road, any noise from the road was a concern and the closer it was to her property line the noisier it would be. Mr. Richardson stated the road was sub-grade from her property so she shouldn't get a lot of noise. He added that most of the time his trucks would be coming in from another entrance.

Madge B. stated this was another issue, there is no Conditional Use Permit for his business at this time. Mr. Richardson stated that he wanted to address this along with the gravel extraction. Mr. Richardson asked what more he needed.

Madge B. stated with respect to the excavation issue she didn't know if it would accomplish anything to ask Mr. Richardson to move the road to 100 feet from the property line. CEO McDonough agreed moving more gravel would be more destructive to the area but he believed the abutters would need to agree to any concession, including leaving the road where it is at this time and stabilizing the area. Otherwise, he needs a new plan. Maggie M. believed approving an after-the-fact permit is a compromise in and of itself for further concessions she agreed the abutter would need to agree as well. Madge noted the board had the right to say move it to the 100 feet but wondered if it was the best choice for the area.

Mr. Richardson asked what he needed for his Conditional Use Permit? CEO McDonough asked where the CUP would be? CEO McDonough asked where the equipment would be stored on site. Mr. Richardson pointed out the area on the plan which showed the fact that the equipment would be running along the new road. Madge B. noted that the CUP application should note where on site the equipment would be stored, how it will be accessed, and exactly what he planned to do on site. Mr. Richardson stated he did not know exactly what was expected on the application. Barbara F. stated that he would need to put on paper exactly what his business entailed. She said that the board would need hours of operation, what takes place on site, would there be additional employees, and she also noted that if he believed the business would be expanding in the next few years he should note that as well so he wouldn't have to come back before the board to request the changes. Mr. Richardson stated he had written something up on his computer. Barbara stated that was what was needed.

Madge B. stated that the board would go through the conditions of approval for a CUP, and in order to do that they needed to know exactly what he would be doing on site. Barbara F. stated that it was important to have a site plan showing where his equipment would be located, any proposed buildings, etc. Anything that was part of the business needed to be on a plan. She noted that the more details the better not only for the review process but anything approved by the board would be an allowed use, so if there were questions in the future, the board or CEO could answer those questions.

Madge B. asked Attorney Keating if he had any questions or comments? Attorney Keating thought it was difficult for Ms. Thompson to separate the erosion control issue from the noise issue. He believed the further the road was from her property line the better. He stated with respect to erosion control, if Mr. Richardson could stabilize the bank within 50 feet of the property line that would be acceptable for erosion control. Attorney Keating thought he could deal with the noise issue with conditions with respect to the proposed business.

Madge B. stated the board needed to get back to reviewing the plan. She said the board did not want Mr. Richardson's proposed berm, nor did they want him cutting any additional trees between the excavation and the abutting property line. CEO McDonough stated with respect to the erosion issue at a minimum mulch needed to be placed after the earth is replaced and the area should be seeded. Madge asked about the slope.

CEO McDonough stated a 3:1 slope from the road to the buffer strip was needed and after it is completed it will be permanent.

Madge B. stated with respect to the noise issue, she wondered if you move the road father away, would you really reduce the noise on site? She didn't think so. She believed the hours of operation would be an issue to look at during the CUP process.

Madge B. asked what needed to be on the final plan. CEO McDonough stated that from the road and whatever drainage is required for the road, a 3:1 slope up to the existing grade and a buffer strip. He added that this condition should be imposed until he is at least 100 feet away from the property lines which puts him in compliance with the ordinance.

Mr. Richardson asked exactly what the board wanted on the plan. CEO McDonough stated the board wanted the plan to leave the road where it is, because moving it would be detrimental to the environment. The plan will show the road with any required drainage, and from that a 3:1 slope until you are up to what was the natural grade on the property. Mr. Richardson thought that was 8 or 9 feet from the excavated area. CEO McDonough showed Mr. Richardson on the plan what the board had discussed.

Mr. Richardson stated he would be back before the board at their next meeting.

Nothing further was discussed.

**Amendment to a Conditional Use Permit – An Additional Building to be Added for the Business / Weaver Marine – Map 5, Lot 18F (20 – 21<sup>st</sup> Street) – Richard Weaver, Applicant**

Mr. Weaver was present for the review of his application.

Mr. Weaver stated he was before the board to put up a new building on site, to be 28' x 40' in size. He showed board members a plan showing the location of the new building. He said it was going to be an extension of the existing service area. The building would be behind the shop he has now.

Roland L. asked if the two buildings would be physically connected? Mr. Weaver stated no, he had talked to CEO McDonough and because the existing building was on a slab it was not possible. Mr. Weaver stated it was not extremely important that it be connected because it won't be a primary workshop.

Mr. Weaver stated the driveway would not change. He noted that there would be an additional area cemented for ease of turning the boats but because of the lay of the land it wouldn't affect stormwater flow. He explained how the water drained at this time and it should remain the same. It primarily drained into the ground at one location on site. He pointed the area out on his plan. He said that he also discussed this with Richard Goodwin who would be doing some excavating and he did not foresee a stormwater issue. Madge B. asked if there was going to be any drainage system put in around the new building? Mr. Weaver stated he did not plan on it as it would pool the water into one location and he didn't feel this would be helpful. It would be best to have it drain naturally. Madge B. asked if there might be a DEP issue. CEO McDonough stated no, this was not a DEP concern in this area. He also noted that a 28' x 40' building was a typical house size. Madge asked if the grass area would remain? Mr. Weaver stated it would.

Board members looked at the plan for the new building and had no concerns.

Madge B. asked if there should be concern with stored fuel? Mr. Weaver stated this was a work area only; this was not going to be boat storage so fuel was not an issue. It was an area to work on a boat that is warm instead of working on it outside.

**Madge B. stated there would need to be a site visit. Members agreed to do the site visit on an individual basis because of light constraints. Also a public hearing will be held at 7:00 p.m. on October 27<sup>th</sup> and a Notice to Abutters would be mailed.**

Mr. Weaver noted that the only two days that would not be good were Wednesdays and Sundays.

Nothing further was discussed.

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**Growth Permit(s)**

**Map 8, Lot 55A (Garland Road) – Patrick Frasier – Permit #07-09**

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**OTHER:**

**Review / discuss a proposed small wind energy ordinance.**

Board members reviewed a proposed small wind energy ordinance. After reviewing the proposed ordinance and adding additional information the following ordinance was agreed upon for a preliminary public hearing.

**§105-61.5. Small Wind Energy Systems.**

A. Purpose. The purpose of the Small Wind Energy Systems Ordinance is to allow for small windmills, producers of alternative, renewable energy, to be erected in the Town of Shapleigh, with rigorous provisions for their potential impacts on abutters and the surrounding environment.

B. Definitions:

METEOROLOGICAL TOWER (Met Tower) – The tower, base plate, anchors, guy wires and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment for anemometers and vanes, data loggers, instrument wiring and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resources at a given location. For the purposes of this ordinance, met towers shall refer only to those whose purpose are to analyze the environmental factors needed to assess the potential to install, construct or erect a small wind energy system.

SHADOW FLICKER – The visible flicker effect when rotating blades of the wind generator cast shadows on the ground and nearby structures causing a repeating pattern of light and shadow.

SMALL WIND ENERGY SYSTEM – A wind energy conversion system consisting of a wind generator, a tower, associated control or conversion electronics, which has a rated capacity of 50 kilowatts or less and will be used primarily for onsite consumption.

TOWER – The monopole, guyed monopole or lattice structure that supports a wind generator.

TOWER HEIGHT – The height above grade of the fixed portion of the tower, excluding the wind generator.

C. Submission requirements. The applicant shall provide the following along with a completed Conditional Use Permit application:

- (1) Location of the proposed small wind energy system and associated equipment.
- (2) Setback requirements as outlined in this ordinance.
- (3) The right-of-way of any public road that is contiguous with the property.
- (4) Any overhead utility lines.
- (5) Small wind energy system specifications, including manufacturer, model, rotor diameter, tower height, tower type (freestanding or guyed).
- (6) If the small wind energy system will be connected to the power grid, documentation shall be provided regarding the notification of the intent with the utility regarding the applicant's installation of a small wind energy system.
- (7) Tower foundation blueprints or drawings.
- (8) Tower blueprint or drawings.
- (9) Sound level analysis prepared by the wind turbine manufacturer or qualified engineer.
- (10) Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code (usually provided by the manufacturer).
- (11) Estimated cost of physically removing the small wind energy system to comply with surety standards.

D. Capacity. A small wind energy system shall have a maximum rated capacity of 50 kW.

E. Location and dimensional standards. Small wind energy systems shall not be permitted in Shoreland District or in the Resource Protection District. In all other districts, small wind energy systems are subject to standards regulating accessory structures.

(1) Lot requirement. A small wind energy system shall be permitted only on a conforming lot.

(2) Setbacks. A small wind energy system shall be set back a minimum horizontal distance of 1.5 times its total height from:

- (a) all surrounding property lines, except when the adjacent lot is held in common ownership;
- (b) overhead utility lines (these do not include a small wind energy system's associated electrical collection and supply equipment); and
- (c) public roads.

(3) Height.

- (a) Tower height shall not exceed 80 feet to the center of the turbine on lots under 3 acres in size.
- (b) Tower height shall not exceed 100 feet to the center of the turbine on lots equal to or greater than 3 acres in size.
- (c) The allowed total height shall be reduced if necessary to comply with Federal Aviation Administration Requirements (FAA).
- (d) The height limits of this section supersede other building and structure height standards in the Town of Shapleigh's Zoning Ordinance.

F. Performance standards.

- (1) Noise. A small wind energy system shall not exceed 50 dBA, as measured at the neighboring property lines. The sound level, however, may be exceeded during short-term events such as severe windstorms. In the event of a conflict between this standard and the Town of Shapleigh's Noise Ordinance, the more restrictive of the two shall prevail.
- (2) Color. To minimize visual disruption, the small wind energy system's tower and blades shall be a non-reflective color that blends into the surrounding environment to the greatest extent possible.
- (3) Signs. Small wind energy systems shall not display any signs except for manufacturer identification or appropriate warning signs. Writing, symbols, logos, or graphic representation of any kind shall not be visible beyond the lot on which it is located.



- (4) Lighting. Small wind energy systems shall not be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the applicant shall provide a copy of the FAA determination to establish the required markings and/or lights for the small wind energy system.
- (5) Preservation of landscape. Placement of a small wind energy system shall recognize existing topography and vegetation. Clearing of natural vegetation and grade changes to the site shall be limited to the minimum necessary for the construction and maintenance of the small wind energy system.
- (6) Safety.
  - (a) All ground mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
  - (b) Horizontal axis small wind energy towers shall be designed and installed such that public access via step bolts or a ladder is prevented for a minimum of 12 feet above the ground.
  - (c) Vertical axis small wind energy towers shall be designed and installed such that public access via step bolts or a ladder is prevented for a minimum of 9 feet above the ground.
  - (d) Blade clearance. For all horizontal axis small wind energy systems the minimum distance between the ground and any protruding blades shall be 15 feet as measured at the lowest point of the arc of the blades.
- (7) Negative visual impact. Efforts shall be made to minimize visual prominence of small wind energy systems.
  - (a) The applicant shall demonstrate through project site planning and proposed mitigation that the small wind energy system's visual impacts will be minimized for surrounding neighbors and the community. This may include, but not be limited to information regarding site selection, wind generator design or appearance, buffering, and screening of ground mounted electrical and control equipment. All electrical conduits shall be underground, except when the financial costs are prohibitive.
- (8) Electromagnetic interference. The system shall be operated and located such that no disruptive electromagnetic interference with signal transmission or reception is caused beyond the site. If it has been demonstrated that the system is causing disruptive interference beyond the site, the system operator shall promptly eliminate the disruptive interference or cease operation of the system.
- (9) Shadow flicker. Small wind energy systems shall be sited and designed in a manner that minimizes shadow flicker impacts. Significant shadow flicker is defined as more than 30 hours per year on abutting occupied buildings. The applicant has the burden of proving that the shadow flicker will not have significant adverse impact on neighboring or adjacent uses. Potential shadow flicker will be addressed either through siting or mitigation measures.
- (10) Structural integrity. A professional engineer (PE) shall certify structural integrity of design before any small wind energy system is constructed. The property owner shall be responsible for having structural integrity of the system re-evaluated a minimum of every 5 years, and shall retain records of such as long as the small wind energy system is standing.
- (11) Structure type. A small wind energy system shall be designed as a self-supporting structure without guyed supports.
- (12) Other uses. A small wind energy system shall be used exclusively for the production of electrical power, and shall not include mounting of equipment for any other use, including but not limited to the collocation of wireless communication facilities equipment.
- (13) Number per lot. There shall be no more than one small wind energy system per lot.
- (14) Off-site consumption. Excess electrical power generated and not immediately needed for on-site use may be used by the utility company.

- (15) Met towers shall be permitted under the same standards, permit requirements, restoration requirements, and permit procedures as a small wind energy system.
- G. Abandonment of use. A small wind energy system which is not generating electricity for 18 consecutive months shall be deemed abandoned and shall be dismantled and physically removed from the property at the expense of the property owner within 3 months of determination of abandonment. Determination of abandonment shall be made by the Code Enforcement Office. "Physically remove" shall include, but not be limited to:
  - (1) Removal of the wind generator and tower and related above-grade structures.
  - (2) Restoration of the location of the small wind energy systems to its natural condition, except that any landscaping, grading or below-grade foundation may remain in its same condition at initiation of abandonment.
- H. Violation. It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this chapter or with any condition contained in the site plan review issued pursuant to this chapter. Small wind energy systems installed prior to the adoption of this chapter are exempt.
- I. Penalties. Any person who fails to comply with any provision of this chapter or a building permit issued pursuant to this ordinance shall be subject to enforcement and penalties as stipulated in Section 105-68 of this ordinance.

**Board members agreed to hold a Public Hearing on Tuesday, November 10<sup>th</sup> at 7:00 p.m. on the Small Wind Energy Ordinance.**

Nothing further was discussed.

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***The Planning Board meeting ended at 9:15 p.m.***

Respectively submitted,

Barbara Felong,  
Land Use Secretary  
[planningboard@shapleigh.net](mailto:planningboard@shapleigh.net)

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, October 27, 2009**

Members in attendance: Roger Allaire (Chairman), Roland Legere, Maggie Moody, Diane Srebnick and Barbara Felong (Secretary). Code Enforcement Officer, Steven McDonough was also in attendance.

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The following words are not verbatim unless accompanied by quotation marks “ ”.

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**Public Hearing began at 7:00 p.m.**

**Amendment to a Conditional Use Permit – An Additional Building to be Added for the Business / Weaver Marine – Map 5, Lot 18F (20 – 21<sup>st</sup> Street) – Richard Weaver, Applicant**

Mr. Weaver was present for the public hearing. Mr. Bill Mageary (Map 5, Lot(s) 16A & 16B) and Mr. Robert Stocker (Map 5, Lot 18) also attended the meeting on Mr. Weaver's behalf.

Mr. Weaver began by stating he wanted to build an extension to his workshop area. He said it would be a 28' x 40' building which would not be attached to the existing workshop but would set in close proximity. Mr. Weaver provided the board with a letter from Carl Beal, PE, of Civil Consultants, which concluded the project would have no impact with respect to stormwater drainage.

Mr. Stocker, an abutter, stated he had submitted a letter to the board which said his family had no issue with the proposal. He stated Mr. Weaver had always been a good business man and neighbor; this was also addressed in the letter.

Mr. Mageary stated that he was also a neighbor, although not a direct abutter. He said Mr. Weaver ran a good business and was a good neighbor, and the business was clean and quiet and he had no objection to him adding another building.

Mr. Stocker stated that his parents were the ones who sold the property to Mr. Weaver. Mr. Stocker stated that Mr. Weaver's property was financed through his parents and he has always paid all his bills on time and he said again Mr. Weaver ran a good operation.

Roland L. stated he had done a site visit and he felt the placement of an additional structure on site would be fine. Maggie M. also did a site visit and agreed with Roland.

Roger A. asked if there were any additional questions or comments? There were none. The public hearing closed at 7:07 p.m.

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

The minutes from Tuesday, October 13, 2009 were accepted as read.

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**After-the-fact Conditional Use Permit – Earth Moving – Map 11, Lot 28F (41 Newfield Road) – Nicholas Richardson, Applicant**

Mr. Richardson was present for the review of his application. Also in attendance was Attorney Kenneth Keating of Roberts & Shirley Law Offices, Springvale, Maine, representing an abutter to Mr. Richardson's property, Margery Thompson.

Roger A. stated that after he read the minutes of the meeting for October 13<sup>th</sup>, it was his understanding Mr. Richardson was to bring in a new set of plans. Mr. Richardson stated he was going to but the board misread the original plans. He stated the board assumed he had done work 26 feet from the property line of Ms. Thompson but he has not. Mr. Richardson stated that Ms. Thompson had used ribbons that were put up for clearing limits but they were not the property line. Mr. Richardson had the board review the existing plan to see how far his excavation was from the property line. He thought it was over 65 feet which is why he didn't change the plan until the board re-reviewed the existing plan.

Board members, CEO McDonough and Attorney Keating, reviewed the map. It appeared it was 60 feet from the property line to the area that was excavated.

Attorney Keating stated he would not dispute what the plan depicted but he wanted it noted again that the ordinance requires 100 feet from the property line to the area of excavation. He thought it was less of a problem since it now appears to be 60 feet away instead of 26 feet but he wanted to reiterate what he had written in his letter to the board, dated 10/15/09, that he did not feel the board had the ability to relax the standards in the ordinance. Attorney Keating thought if Mr. Richardson wanted to stay within 60 feet of the lot line, he would then need to go before the Zoning Board of Appeals to apply for a variance. Roger A. agreed stating that if Mr. Richardson had not gone below grade he would have been able to go as close as 50 feet with Planning Board approval but he has in fact gone below grade.

Roger A. explained to Mr. Richardson about his being below grade from Ms. Thompson's property line. Mr. Richardson said he understood but it was after-the-fact. Roger said that the board was aware of that and the board wanted to remedy it as best possible but they had to follow the ordinance. Mr. Richardson did not believe he made any impact on Ms. Thompson's property. He said there were still trees remaining between his property and her property. Roger said that he understood but the board had to go by the Zoning Ordinance. He explained that the board could table the application and Mr. Richardson can apply to the Appeals Board but no one can predict whether or not the Appeals Board will grant the variance. Roger stated that if they did not grant the appeal the application would come back before the Planning Board and the board has to follow the ordinance.

Mr. Richardson stated he had over \$1000 in an engineered plan and he didn't believe his road would impact Ms. Thompson. Roger A. explained that had Mr. Richardson come before the board for the gravel extraction and road work, he still would have needed an engineered plan, showing the slopes, drainage, reclamation plan, etc. Mr. Richardson stated he had a town approved road that he was building. (Note: On 11/13/07, Mr. Richardson was granted approval by the Planning Board to build a road to create road frontage for a new lot, the new road to be 50 feet wide by 301 feet in length. The approved road was over 1600' from the area in question.)

Roger A. stated the approved road was over on the other side of his lot. Mr. Richardson stated that it was still on his property. Roger said that the location did not matter because the road he was putting in now was not an approved road. Roger said the approved application should have showed the road extending to this area if that was his intention. Roger stated that where the gravel is taken doesn't matter for the approved road but the ordinance does not allow for below grade excavation within 100 feet of a neighboring property line. Roger added that there was no way for the board to know at the time of the Mr. Richardson's private way approval that he would be disturbing the amount of area he has disturbed on his property so it was up to him to come to the town to ask for the correct permit.

Mr. Richardson asked what it was he had to do at this time to rectify the situation? Roger A. stated one option was for the board to table the application and send him to the Appeals Board. If the Appeals Board approved his request for a 100 foot variance then the application would come back to the Planning Board for them to review the slopes, drainage, etc. The other alternative is to draft a new plan that complies with the ordinance. Roger believed it would cost Mr. Richardson too much to move the amount of gravel necessary. Mr. Richardson stated half of the gravel removed has already been moved to create a flat area, he agreed with Roger he did not want to move the gravel removed.

CEO McDonough asked how far the road needed to be moved to meet the 100 foot setback to the property line? Mr. Richardson stated the road was almost at 100 feet at this time so he didn't think it would take much to move it to the 100 foot line. CEO McDonough also asked what it would take to restore the area to get the 100 feet required by the ordinance. Roger A. thought in order to meet the 100 foot setback, taking into consideration the sloping required, he believed the road would have to be moved to approximately 125 feet. CEO McDonough also asked if the slope had to be at the existing grade for the entire 100 feet then you create a slope? Roger A. said yes, according to the ordinance. Attorney Keating stated that because the board didn't know the grade of the earth that was removed and if you apply the ordinance in its strictest sense you would have to bring the grade up level to the existing property line. He stated that in all likelihood it wasn't all at that level but we have no way of knowing what it was. Attorney Keating stated he wasn't sure the board had the authority to relax the ordinance but practically speaking what is the best way to deal with the situation after-the-fact. Attorney Keating stated it would go a long way to address Ms. Thompson's concerns if the road was 100 feet from her property line with some of the material put back to stabilize the area. But he stated again he didn't know if the board had the authority to make the adjustments.

CEO McDonough stated that following the ordinance it has to be brought back to original condition but we don't know what original condition is. He added that to say to bring the highest grade point straight across for 100 feet he believed was above and beyond restoration. Roger A. explained again that you can't excavate below the existing property line height for 100 feet. CEO McDonough agreed. Mr. Richardson asked what if the original grade sloped? Roger stated that it didn't matter, for 100 feet he was not supposed to go below the grade at her property line.

Roland L. asked if the board had to table any further action in order for Mr. Richardson to be able to go before the Appeals Board if that was his intention? CEO McDonough stated that before the board sends Mr. Richardson to the Board of Appeals, it has to be determined he cannot comply with what the ordinance dictates. Roger A. agreed.

Barbara F. wanted it noted that Madge B. was in favor of having the town's attorney review the application and the ordinance and have him render an opinion. No other members felt it was necessary at this time.

Roger A. believed Mr. Richardson should go to the Appeals Board to have them approve the 65 feet to the road and then send the application back to us to have the board put conditions on the approval with respect to the road, sloping / restoration, etc.

Attorney Keating noted that under 105-73.E, the procedure is for the Planning Board to table further action then Mr. Richardson can apply to the Appeals Boards.

CEO McDonough asked what Mr. Richardson's option was to comply with the ordinance and not have to go to the Appeals Board? Roger A. stated he would have to move the gravel back into place and he didn't believe Mr. Richardson wanted to do that. Roger said with the way the ordinance reads, having to go to the height of the property line, then sloping the property, he didn't feel he could afford to do it. Mr. Richardson

added that he would be too close to the water because he would have to move the road more than 100 feet from the property line. Roger thought it would be best to stabilize the area as it is right now, but he thought it still needed to go to the Appeals Board to have them agree this is what should be done.

Roger A. and Roland L. weren't sure the road could be moved because of the existing wetland. CEO McDonough asked if the wetland was on the engineered plan? Roger replied, no.

Attorney Keating believed the reasonable outcome would be that the road is moved 100 feet from the property line, and the area is tapered from the edge of the excavation and sloped to the road. He believed the Board of Appeals was the proper forum to decide this.

Roger A. stated that moving the road to 100 feet would push it toward the wetland another 20 feet. He said during the site visit he had concerns with the existing wetland area. CEO McDonough stated the wetland was Lake Sherburne. Roger stated the road had to be 100 feet from the high water mark. §105-59.C

CEO McDonough asked if Mr. Richardson moved the road 100 feet from the property line, was it for the Appeals Board to determine what happens between the property line and the road? Roger said, correct. Attorney Keating stated the area that needed to be addressed was the 40 feet between the undisturbed land adjacent to Ms. Thompson's property and the road. Roger said, right.

Attorney Keating, CEO McDonough and board members reviewed the plan before them again to determine the 100 foot mark. Attorney Keating noted again the area to be rectified was not as big as was thought at the last meeting. Roger A. stated that the area affected was 220 feet in length along Ms. Thompson's property line. Mr. Richardson stated that moving the road to the 100 foot mark was not an issue but moving material back to the banking was an issue. He said that he would need to move thousands of yards of material because the gravel he has already moved was going to be used for his road so he would have to remove more gravel from the site. Roger stated that was why he would go to the Zoning Board of Appeals to request they allow the area disturbed to be sloped, mulched and replanted.

CEO McDonough stated at this time Mr. Richardson needs a new plan showing the road to be 100 feet from the property line and 100 feet from the wetland area. Diane S. stated he could go to the Zoning Board with the existing 65 feet and they could make a decision to let that stand as is. She thought they could grant that variance. She therefore, thought it was up to Mr. Richardson to decide how to proceed, either changing his plan or keeping it as it is and presenting it to the Zoning Board. Roger A. agreed stating he would go to the ZBA to get a variance for the 65 feet. Roger also noted that the board members could waive the 100 feet to the water, actually reducing that requirement to 50 feet. Roger said that if Mr. Richardson goes closer to the water, then the plan will have to show further details about how the stormwater will be dealt with, using silt basins, drainage, etc. Barbara F. wanted members to realize that when applying to the ZBA the applicant has to be able to meet all four criteria and the fact that "the hardship cannot be the result of action taken by the applicant or prior owner". CEO McDonough stated correct and if he was Mr. Richardson he would go to the ZBA with the road 100 feet from the property line and request a variance for the restoration factor. CEO McDonough stated the wetland should also be depicted on the plan and he agreed with Roger that if the road isn't 100 feet from the high water mark the Planning Board has the authority to allow a waiver to 50 feet. CEO McDonough noted that from his experience and code enforcement training, Mr. Richardson should not be granted a variance from the Planning Board today and if he is it would be easily overturned in court. He said again that Mr. Richardson's best course of action would be to have a plan showing the road to be 100 feet from the property line and showing what the distance to the road will be to the wetland. Diane asked why then would Mr. Richardson need to go the ZBA because he would meet the criteria in the ordinance? CEO McDonough stated Mr. Richardson still did not meet the requirement for below grade excavation within 100 feet of a property line so he may need the variance for that. Attorney Keating agreed.

Roland L. made the motion to table the application pending the Board of Appeals decision regarding a variance on the excavation criteria in §105-39.G(11). Diane S. 2<sup>nd</sup> the motion. All members were in favor. Vote 4 – 0.

Nothing further was discussed.

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**Amendment to a Conditional Use Permit – An Additional Building to be Added for the Business / Weaver Marine – Map 5, Lot 18F (20 – 21<sup>st</sup> Street) – Richard Weaver, Applicant**

Mr. Weaver was present for the final review of his application. Note: Board members did individual site inspections of Mr. Weaver's property.

Roger A. began the discussion by stating Mr. Weaver was present for an amendment to his conditional use permit to be able to add an additional 28' x 40' building on site. Roger noted the letter received from abutter Robert Stocker, which stated his family had no objection to Mr. Weaver's proposal. Roger also noted the letter received by Carl Beal, PE, of Civil Consultants which stated the additional building would have no impact on the property with respect to stormwater drainage.

Board members reviewed the site plan once again and the building plans.

Roger A. stated Mr. Weaver was before the board because under §105-73.B "Existing conditional use of structure", (1)(a) "floor space increase of 25%" had to be reviewed by the Planning Board. In addition, under (2) "No changes shall be made in any approved conditional use without approval of the change by the Planning Board".

Roger A. stated lot coverage was not an issue; it did not exceed the 10% allowed. He said the traffic would be the same; no additional noise would be generated, work now being done outside would be done inside the new building; only one additional light would be on the building and it would not shine toward neighboring properties; there is a stormwater / erosion control report on file done by Carl Beal, PE, of Civil Consultants; and no additional storage of hazardous materials, the area would be used for boat repair and not boat storage.

**Roger A. reviewed Shapleigh Zoning Ordinance 105-73.G "Standards applicable to conditional uses".**

- 1) The use will not have an adverse impact on spawning grounds, fish, aquatic life, birds or other wildlife habitat. ***It will not, the building will be located adjacent to the existing building and there will be minimal disturbance on site.***
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. *N/A*
- 3) The use is consistent with the Comprehensive Plan. ***It is, the Comprehensive Plan addresses small business and encourages their growth.***
- 4) Traffic access to the site is safe. ***It is, the site distance was approved on the original application in 1987, amended in 1992 & 1998.***
- 5) The site design is in conformance with all municipal flood hazard protection regulations. ***It is, none of the property is in a flood zone.***
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. ***The disposal of waste has been approved during the previous approvals, there is no additional waste generated by the additional building.***
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. ***The storage of hazardous materials was approved on the previous applications. No changes are made with the additional building.***

- 8) A stormwater drainage system capable of handling a twenty-five-year storm without adverse impact on adjacent properties has been designed. *A stormwater study was done by Carl Beal, PE, of Civil Consultants. A letter from Mr. Beal dated 10/22/2009 was received by the Planning Board which stated the project would have no impact on site with respect to stormwater drainage.*
- 9) Adequate provisions to control soil erosion and sedimentation have been made. *A stormwater study was done by Carl Beal, PE, of Civil Consultants. A letter from Mr. Beal dated 10/22/2009 was received by the Planning Board which stated the project would have no impact on site with respect to stormwater drainage, and that all stormwater would remain on site.*
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. *There is a water holding tank located near this location on Rte. 11.*
- 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. *The existing vegetation shall be kept in place; the parking area is not being changed from the original approval; there is one additional light being added to the building which shall be directed toward the ground.*
- 12) All performance standards in this chapter applicable to the proposed use will be met. *They shall.*

**Roland L. made the motion to approve the Amendment to a Conditional Use Permit to add an additional 28' x 40' building on site per the plans provided. The building shall be used for an additional workshop only. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. Vote 4 – 0.**

Nothing further was discussed.

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**Amendment to a Subdivision – Turkey Crossing I – Adjust Lot Lines – Map 6, Lot(s) 29, 29A & 29B (Owl's Nest Road) – Thomas & Barbara Worster, Applicants**

Mr. Worster was present for the review of his preliminary plan.

Mr. Worster began by stating he was before the board to change the size of three of the approved lots in Turkey Crossing I. Lots 29, 29A & 29B on Shapleigh's tax map. Lots 29A & 29B will be reduced in size and lot 29 will increase in size per the plan presented. (Lot 29 will go from 18.21 acres to 21.273 acres; lot 29A will go from 3.317 acres to 2.019 acres and lot 29B will go from 3.767 acres to 2.059 acres.)

Mr. Worster noted that he stayed within the minimal lot size and road frontage. He stated that his oldest son, Mathew, currently owned lot 29B and he is going to deed them back the difference in acreage. Mr. Worster stated he was currently selling the home on lot 29A and noted his invisible dog fence ran thru the lot line on A, so he decided to reduce the size of the lot. (His mother-in-law once lived in the home on lot A.)

**Roger A. stated there needed to be a Notice to Abutters. Board members did not feel they needed a site inspection, all members knew the location of the property and the fact this was a minimal change to the subdivision.**

Roger A. told Mr. Worster he would need two Mylar's for the final approval and the board required two paper copies as well. Mr. Worster stated he would have the new legal descriptions for the board. The final review will be on November 10<sup>th</sup> unless Mr. Worster tells the board otherwise.

Nothing further was discussed.



**After-the-Fact Best Possible Location – Retaining Wall – Map 17, Lot 15 (28 Old Loop Road) – Robert Dean Harris, Applicant**

Mr. Harris was present for the review of his application.

Roland L. asked Mr. Harris if the wall was completed, based on the fact the application was ‘after-the-fact’. Mr. Harris stated it was not totally completed. He said it would have been but the Code Officer stopped by his home and told him he needed a permit for the new wall. He believed it would take another one or two days to complete the project.

Mr. Harris stated he believed he had all the necessary permits. He provided a copy of the DEP Permit by Rule, which was dated as accepted on September 17, 2007. He stated he had also spoken with a woman named Heather at York County Soil and Water Conservation and she helped him with what type of plantings would work on site to stop the erosion that was taking place. He stated Heather was the person who gave him the application for the DEP Permit by Rule. He said he filled out the Permit by Rule and mailed it in. He thought that was all he needed to do. He said again CEO McDonough told him recently that he also needed a permit from the Planning Board.

Roger A. reviewed the Permit by Rule and noted that the Permit by Rule was out of date. He told Mr. Harris that he had two years from the approval date to complete the project and the date of his approval was September 17, 2007. He therefore, needed a new permit. Mr. Harris stated he understood. Roger said that it would take 14 days to get the approval so he needed to do it as soon as possible.

Diane S. asked Mr. Harris if he had been before the board before? He said that yes he had been before the board for an after-the-fact permit for bringing fill into the shoreland zone. Diane stated that she hoped from now on he would come to the town before beginning any projects.

Note: Mr. Harris did not provide board members with pictures of the previous wall prior to replacement.

**Roger A. stated a Notice to Abutters would be mailed and members could do a site inspection on an individual basis due to light constraints.** Mr. Harris asked members to call before coming so he would have his dog inside his home.

Nothing further was discussed.  
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**Growth Permit(s)**

**Map 3, Lot 43 (Hooper Road) – Southern Maine Homes – Permit #08-09**  
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**OTHER:**

Barbara F. reminded members there would be a public hearing on the Wind Energy Systems Ordinance at the next meeting, Nov. 10th.  
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***The Planning Board meeting ended at 8:45 p.m.***

Respectively submitted,  
Barbara Felong, Land Use Secretary [planningboard@shapleigh.net](mailto:planningboard@shapleigh.net)

# ***SHAPLEIGH PLANNING BOARD***

## **MINUTES**

**Tuesday, November 10, 2009**

Members in attendance: Roger Allaire (Chairman), Madge Baker (Vice Chair), Roland Legere, Maggie Moody, Diane Srebnick and Barbara Felong (Secretary). Code Enforcement Officer, Steven McDonough was also in attendance.

.....

The following words are not verbatim unless accompanied by quotation marks “ ”.

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**Public Hearing began at 7:00 p.m.**

### **Proposed Addition to Chapter 105, Zoning, entitled “Small Wind Energy Systems”**

Madge B. opened the meeting at 7:03 p.m., stating the public hearing was to review a new ordinance entitled ‘Small Wind Energy Systems’. She said it would be part of the Zoning Ordinance and an applicant would also need to apply for a Conditional Use Permit along with complying with the new ordinance.

Madge B. began by reading the ordinance. Chairman Roger A. arrived at the hearing at approximately 7:12 p.m. and he read the last half of the ordinance to the audience. It read as follows:

#### **§105-61.5. Small Wind Energy Systems.**

A. Purpose. The purpose of the Small Wind Energy Systems Ordinance is to allow for small windmills, producers of alternative, renewable energy, to be erected in the Town of Shapleigh, with rigorous provisions for their potential impacts on abutters and the surrounding environment.

B. Definitions:

METEOROLOGICAL TOWER (Met Tower) – The tower, base plate, anchors, guy wires and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment for anemometers and vanes, data loggers, instrument wiring and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resources at a given location. For the purposes of this ordinance, met towers shall refer only to those whose purpose are to analyze the environmental factors needed to assess the potential to install, construct or erect a small wind energy system.

SHADOW FLICKER – The visible flicker effect when rotating blades of the wind generator cast shadows on the ground and nearby structures causing a repeating pattern of light and shadow.

SMALL WIND ENERGY SYSTEM – A wind energy conversion system consisting of a wind generator, a tower, associated control or conversion electronics, which has a rated capacity of 50 kilowatts or less and will be used primarily for onsite consumption.

TOWER – The monopole, guyed monopole or lattice structure that supports a wind generator.

TOWER HEIGHT – The height above grade of the fixed portion of the tower, excluding the wind generator.

C. Submission requirements. The applicant shall provide the following along with a completed Conditional Use Permit application:

- (1) Location of the proposed small wind energy system and associated equipment.
- (2) Setback requirements as outlined in this ordinance.
- (3) The right-of-way of any public road that is contiguous with the property.
- (4) Any overhead utility lines.

- (5) Small wind energy system specifications, including manufacturer, model, rotor diameter, tower height, tower type (freestanding or guyed).
- (6) If the small wind energy system will be connected to the power grid, documentation shall be provided regarding the notification of the intent with the utility regarding the applicant's installation of a small wind energy system.
- (7) Tower foundation blueprints or drawings.
- (8) Tower blueprint or drawings.
- (9) Sound level analysis prepared by the wind turbine manufacturer or qualified engineer.
- (10) Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code (usually provided by the manufacturer).
- (11) Estimated cost of physically removing the small wind energy system to comply with surety standards.

D. Capacity. A small wind energy system shall have a maximum rated capacity of 50 kW.

E. Location and dimensional standards. Small wind energy systems shall not be permitted in Shoreland District or in the Resource Protection District. In all other districts, small wind energy systems are subject to standards regulating accessory structures.

(1) Lot requirement. A small wind energy system shall be permitted only on a conforming lot.

(2) Setbacks. A small wind energy system shall be set back a minimum horizontal distance of 1.5 times its total height from:

- (a) all surrounding property lines, except when the adjacent lot is held in common ownership;
- (b) overhead utility lines (these do not include a small wind energy system's associated electrical collection and supply equipment); and
- (c) public roads.

(3) Height.

- (a) Tower height shall not exceed 80 feet to the center of the turbine on lots under 3 acres in size.
- (b) Tower height shall not exceed 100 feet to the center of the turbine on lots equal to or greater than 3 acres in size.
- (c) The allowed total height shall be reduced if necessary to comply with Federal Aviation Administration Requirements (FAA).
- (d) The height limits of this section supersede other building and structure height standards in the Town of Shapleigh's Zoning Ordinance.

F. Performance standards.

- (1) Noise. A small wind energy system shall not exceed 50 dBA, as measured at the neighboring property lines. The sound level, however, may be exceeded during short-term events such as severe windstorms. In the event of a conflict between this standard and the Town of Shapleigh's Noise Ordinance, the more restrictive of the two shall prevail.
- (2) Color. To minimize visual disruption, the small wind energy system's tower and blades shall be a non-reflective color that blends into the surrounding environment to the greatest extent possible.
- (3) Signs. Small wind energy systems shall not display any signs except for manufacturer identification or appropriate warning signs. Writing, symbols, logos, or graphic representation of any kind shall not be visible beyond the lot on which it is located.
- (4) Lighting. Small wind energy systems shall not be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the applicant shall provide a copy of the FAA determination to establish the required markings and/or lights for the small wind energy system.

- (5) Preservation of landscape. Placement of a small wind energy system shall recognize existing topography and vegetation. Clearing of natural vegetation and grade changes to the site shall be limited to the minimum necessary for the construction and maintenance of the small wind energy system.
- (6) Safety.
  - (a) All ground mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
  - (b) Horizontal axis small wind energy towers shall be designed and installed such that public access via step bolts or a ladder is prevented for a minimum of 12 feet above the ground.
  - (c) Vertical axis small wind energy towers shall be designed and installed such that public access via step bolts or a ladder is prevented for a minimum of 9 feet above the ground.
  - (d) Blade clearance. For all horizontal axis small wind energy systems the minimum distance between the ground and any protruding blades shall be 15 feet as measured at the lowest point of the arc of the blades.
- (7) Negative visual impact. Efforts shall be made to minimize visual prominence of small wind energy systems.
  - (a) The applicant shall demonstrate through project site planning and proposed mitigation that the small wind energy system's visual impacts will be minimized for surrounding neighbors and the community. This may include, but not be limited to information regarding site selection, wind generator design or appearance, buffering, and screening of ground mounted electrical and control equipment. All electrical conduits shall be underground, except when the financial costs are prohibitive.
- (8) Electromagnetic interference. The system shall be operated and located such that no disruptive electromagnetic interference with signal transmission or reception is caused beyond the site. If it has been demonstrated that the system is causing disruptive interference beyond the site, the system operator shall promptly eliminate the disruptive interference or cease operation of the system.
- (9) Shadow flicker. Small wind energy systems shall be sited and designed in a manner that minimizes shadow flicker impacts. Significant shadow flicker is defined as more than 30 hours per year on abutting occupied buildings. The applicant has the burden of proving that the shadow flicker will not have significant adverse impact on neighboring or adjacent uses. Potential shadow flicker will be addressed either through siting or mitigation measures.
- (10) Structural integrity. A professional engineer (PE) shall certify structural integrity of design before any small wind energy system is constructed. The property owner shall be responsible for having structural integrity of the system re-evaluated a minimum of every 5 years, and shall retain records of such as long as the small wind energy system is standing.
- (11) Structure type. A small wind energy system shall be designed as a self-supporting structure without guyed supports.
- (12) Other uses. A small wind energy system shall be used exclusively for the production of electrical power, and shall not include mounting of equipment for any other use, including but not limited to the collocation of wireless communication facilities equipment.
- (13) Number per lot. There shall be no more than one small wind energy system per lot.
- (14) Off-site consumption. Excess electrical power generated and not immediately needed for on-site use may be used by the utility company.
- (15) Met towers shall be permitted under the same standards, permit requirements, restoration requirements, and permit procedures as a small wind energy system.

- G. Abandonment of use. A small wind energy system which is not generating electricity for 18 consecutive months shall be deemed abandoned and shall be dismantled and physically removed from the property at the expense of the property owner within 3 months of determination of abandonment. Determination of abandonment shall be made by the Code Enforcement Office. "Physically remove" shall include, but not be limited to:
- (1) Removal of the wind generator and tower and related above-grade structures.
  - (2) Restoration of the location of the small wind energy systems to its natural condition, except that any landscaping, grading or below-grade foundation may remain in its same condition at initiation of abandonment.
- H. Violation. It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this chapter or with any condition contained in the site plan review issued pursuant to this chapter. Small wind energy systems installed prior to the adoption of this chapter are exempt.
- I. Penalties. Any person who fails to comply with any provision of this chapter or a building permit issued pursuant to this ordinance shall be subject to enforcement and penalties as stipulated in Section 105-68 of this ordinance.

Roger A. asked if there were any questions?

Bob Ferrera, a resident of Shapleigh, stated he was at the meeting to see if there were any plans to allow for a larger wind generator. One that could be as high as a cellular tower which is approximately 190 feet.

Roger A. stated that for larger systems 100 kW or greater, a person would have to work with the State of Maine. He said they had guidelines in place at this time for larger commercial systems and those guidelines would have to be followed. Roger stated that he did not believe you would see a larger system in Shapleigh because Shapleigh was not in a wind corridor. There would not be enough wind for a larger system to operate. He spoke of the large system that went up in Saco Maine, and noted that it is currently being dismantled because of a lack of wind and that area has a greater wind flow than the Shapleigh area. Roger stated the Saco project was \$250,000 and it fell thru because the turbines could not generate electricity based on the lack of wind velocity.

Mr. Ferrera asked if the State were to o.k. a large wind project, would Shapleigh allow it? Roger A. stated that if the ordinance didn't address a large wind energy system and the State allowed it, it could go in. Barbara F. asked about the height restriction in the ordinance. Roger agreed the height would not comply. Mr. Ferrera asked why can a cellular tower go up to 180 feet and not a wind tower? Madge B. stated that a wind tower could go up 180 feet. The tower could be 100 feet and the blades could extend the additional 80 feet. CEO McDonough stated there was a blade limit in the ordinance of 15 feet from the ground. So according to the ordinance, if the tower is 100 feet and the blades were 15 feet off the ground, straight up, that is a total height allowed of 185 feet. CEO McDonough stated the 100 foot limitation was for the tower only. Roger agreed. CEO McDonough stated anything higher than that would go into airplane air space and it would become an issue. Roger stated the highest point would have to have lighting, which would be to the tips of the blade. Madge agreed but added that the blades would not necessarily have to be lit but there would have to be some type of apparatus at the blade height that is lit.

Madge B. stated she had several concerns. One was under F(13), which states: "Number per lot. There shall be no more than one small wind energy systems per lot." Madge questioned whether or not it was a good idea because a person could buy a large lot, for example one 70 acres in size, divide it into 30 lots and put up 30 towers. Barbara F. asked if she had a suggestion on how she felt it should be worded. Madge said she was thinking of using 'per acres'. CEO McDonough stated it could be done per owner but in reality he felt that to subdivide a 70 acre lot to put up numerous windmills wouldn't be rational because you would

first of all have to have road frontage for each lot and build a road, it would be a regular subdivision. Barbara F. agreed, there is no exemption for lots without a home on it. The person would have to follow all the criteria for a major subdivision which would include a road.

Eric Davis, a resident of Shapleigh, asked if someone owned a 70 acre farm if they could only put up one wind tower? Roger A. stated correct. Roger said another way to address the possibility that Madge spoke of was to state there could be no wind farms and have a definition of a wind farm as being three or more windmills.

Mr. Ferrera stated that he believed many farmers would want to have two or three wind towers, so if the board limits the number of towers it would negate the purpose of saving energy. Mr. Ferrera did not believe one wind tower would be sufficient for a farm. Roger A. stated the only reason for someone to put in a wind farm in Shapleigh would be to say they are “green”. He said there were no financial benefits in this area. Mr. Ferrera stated that if someone had a dairy, one wind tower would not be able to handle all the energy needed. Roger agreed.

Diane S. stated that many farms do not want a wind tower. She stated there was a recent article published that stated many farmers do not want the wind towers because it interferes with the bats. She said the bats eat the bugs off the crops and they are finding the wind turbines are killing the bats. She said the farmers are worried that the wind turbines on their property would cause them to lose their crops because in fact the bats protect their crops. She said many have concluded the gain in electricity does not offset the loss in crops.

Roger A. added that there are studies being done with respect to dairy farms that the wind turbines affect the cattle’s milk production because of the electro-magnetic field it produces. Mr. Davis wanted to know how far from the 50 kW wind mill did the electro-magnetic field reach? Roger stated that they do not know at this time, the studies are still being conducted. Mr. Davis thought this was being voodoo, restricting some farms not giving an equal opportunity to everyone.

Roger A. stated that he did not believe it was in a persons ‘financial’ best interest to use a large amount of wind generators because of the lack of wind power in the area. He again said all that they would accomplish was to be able to say they were ‘green’ because finically there would be no benefit long term. He believed it would cost them money to run it. Roland L. noted that this was not the boards issue with respect to the ordinance. Roger agreed, it was just his opinion. Mr. Ferrera stated there were some small energy systems that were very small so you needed several on site. He said the reason they were small was to keep the cost down. He went on to say how some people build their own units, which are usually small, and they would need three or four. It was noted that a small system was approximately \$15,000 to purchase so again in this area, because of the lack of wind, having a wind farm of any size was not feasible.

CEO McDonough asked Mr. Ferrera what he was proposing. Mr. Ferrera believed two or three should be allowed on site. CEO McDonough asked if he had a proposal for the ordinance? Mr. Ferrera stated, no. Diane S. stated that the board had to consider the neighboring properties to the person constructing the windmill. How would it affect them with respect to the flicker, noise, and all the things that go along with a windmill? It may not bother Mr. Ferrera but it may bother his neighbor. Mr. Ferrera asked, couldn’t they come to the Planning Board and complain? CEO McDonough stated the Planning Board couldn’t do anything if it was allowed. Barbara F. agreed, if it is allowed in the ordinance then their objection would be heard but not acted on as long as the applicant met the criteria of the ordinance. Mr. Davis stated that the board needed to figure out what amount of acreage would be needed so it wouldn’t be close to a neighboring property but still allow more than one per lot. He felt on a larger lot you should be able to have more than one windmill. Diane asked what he was proposing. She said a conforming lot in Shapleigh was about 2

acres in size. She asked if he wanted one allowed for every two acres of property? Barbara reminded the board there was a setback of 1.5 times the height of the structure so even though a lot might be four acres in size it may not be able to have two windmills because of its configuration.

Madge B. proposed that if you had 2 acres you could have one, if you had 10 acres you could have 2 and if you had greater than 25 you could have three. Madge thought that you could also increase the setbacks to the lots lines with the additional windmills allowed, moving them farther from abutters.

CEO McDonough asked Barbara F. if she knew of any other towns that allowed multiple windmills at this time. Barbara stated that the ordinances she has reviewed of surrounding towns and several in New Hampshire are regulating the towers to one per lot. She believes it's partly because the studies are not conclusive at this time whether or not large scale wind operations affect the wildlife as well as people living near multiple wind generators. She said the towns are being conservative at this time until more is known about the affects. She said several universities are doing studies on wind generation. It needs to be determined that effects such as wiping out a bat population will not happen when you have large and multiple turbines. Diane S. agreed stating in the mid-west although they have the wind to power the generators the loss of the area bats increases the pests on the crops which could be devastating. CEO McDonough agreed it was best to begin with a slow conservative approach then as studies come out the board can re-assess. Madge B. agreed, she said the ordinance can always be changed as the board learns more in the future.

Roger A. noted that the ordinance allowed for up to 50 kW so multiple systems might exceed that amount so they wouldn't be allowed because of that limitation. Barbara F. stated that 50 kW was almost twice what many towns are allowing at this time, the average is 20 kW. Roger and Diane S. noted the larger systems would have to also be regulated by the State; IF&W would be involved along with the DEP. Roger said bird migration gets reviewed. Roger said again that the wind corridor is not shown to run through Shapleigh and that Saco was nearer the ocean which has a more sustained wind current and they didn't have enough wind to power a large windmill.

Madge B. stated another issue was under H, where it states in part "with any condition contained in the *site plan review* issued pursuant to this chapter." Madge thought the more appropriate wording would be "in the conditional use permit issued pursuant to this chapter." The other board members agreed. Barbara F. will make the change.

Roger A. asked if there were any other suggestions. Mr. Ferrera began again to talk about multiple systems and that perhaps the setbacks could be increased from the wind generator for multiple generator systems. CEO McDonough stated that to go from addressing single wind generators to multiple wind generator systems would take a lot of study. He stated that as you increase the numbers you increase noise and other possible issues that the board isn't aware of at this time. Barbara F. believed a large scale wind farm should be addressed under a separate ordinance. CEO McDonough was not certain the board had the capability to address it, outside help would most probably be needed.

Madge B. was also concerned with the wording under E(2) Setbacks. "A small wind energy system shall be set back a minimum horizontal distance of 1.5 times its total height from:". She said the board was requiring 150% clearance from the lot line. She reviewed the definition of Tower Height, which reads: "The height above grade of the fixed portion of the tower, excluding the wind generator." She was worried the blade could possible land on a neighboring property.

Barbara F. stated there were two definitions of tower height for the board to choose from and the other definition talked about the total height being to the top of the blade. The board chose the definition which

speaks to the fixed portion of the tower only. Madge believed it was now a problem. She thought the existing definition was fine but the board would need to increase the setback to adjust for it. CEO McDonough thought if the board wanted it clearer the wording could read, “1.5 times its total height including all components from.”. Mr. Davis thought it went against the definition. CEO McDonough stated it wasn’t speaking of tower height but total height.

Mr. Davis stated he was looking at the definition of ‘small wind energy system’, which reads: “A wind energy conversion system consisting of a wind generator, a tower, associated control or conversion electronics, which has a rated capacity of 50 kilowatts or less and will be used primarily for onsite consumption.” He noted it did not include the blades. CEO McDonough stated E.2 was going to say “including all components”. CEO McDonough stated that he believed if he were to go to court the judge would be convinced “including all components” included the blades. Roger A. agreed and noted without the blades there was no wind generation. Roger believed the blades were part of the generator.

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

The public hearing closed at 7:45 p.m.

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The Planning Board meeting started at 7:46 p.m.

The minutes from Tuesday, October 27, 2009 were accepted as read.

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**After-the-fact Conditional Use Permit – Earth Moving – Map 11, Lot 28F (41 Newfield Road) – Nicholas Richardson, Applicant**

Mr. Richardson was not in attendance for the review of this application so the application was tabled until the next meeting.

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**Amendment to a Subdivision – Turkey Crossing I – Adjust Lot Lines – Map 6, Lot(s) 29, 29A & 29B (Owl’s Nest Road) – Thomas & Barbara Worster, Applicants**

Mr. Patrick Frasier was representing the applicant this evening. Mr. Frasier brought the required Mylar’s for board members to sign and the paper copies.

The Planning Board acted on the Worster application for an Amendment to a Subdivision, known as Turkey Crossing I, as follows:

**Findings of Fact**

1. The property is located at Shapleigh Map 6, Lot(s) 29, 29A & 29B (Owl’s Nest Road), and is in the General Purpose district.
2. The owner(s) of the Map 6, Lot 29 and 29A are Thomas and Barbara Worster. The owner of Map 6, Lot 29B is Matthew J. Gagne, son of Thomas and Barbara.
3. The applicant(s) are Thomas and Barbara Worster and they have demonstrated a legal interest in the property by Title Reference of Deed Book 312, Page 31, registered at the York County Registry of Deeds. Lot 29B, is owned by Thomas and Barbara Worster’s son, Mathew Gagne,



whose legal interest in the property is demonstrated by a Warranty Deed, Title Reference of Deed Book 13830, Page 342.

4. The applicant proposes to do the following: Lots 29A & 29B will be reduced in size and Lot 29 will increase in size per the plan presented. Lot 29 will go from 18.21 acres to 21.273 acres; Lot 29A will go from 3.317 acres to 2.019 acres and Lot 29B will go from 3.767 acres to 2.059 acres.
5. A final plan was presented on November 10, 2009.
6. The Findings of Fact for Turkey Crossing I as approved on June 22, 2006 shall remain in effect.
7. Any further division shall have to come back before the Planning Board.
8. Any subdivision not recorded at the York County Registry of Deeds ***within ninety days*** of the date upon which the plan is approved and signed by the Planning Board shall become null and void, unless an extension is granted by the Board in writing.
9. No changes, erasures, modification, or revisions shall be made in any final plan after approval has been given, unless the revised final plan is first submitted to the Planning Board and the Board approves any modifications.

### **Conclusions**

The standards of the Town's Subdivision Ordinance have been met.

### **Decision**

Based on the above facts and conclusions, on November 10, 2009, the Planning Board approved the application for an amendment to the subdivision known as Turkey Crossing I per the final plan presented known as 'Second Amended Subdivision Plan of Turkey Crossing I', done by Robert T. Yarumian II, PLS of Maine Boundary Consultants, dated October 16, 2009.

Nothing further was discussed.

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### **After-the-Fact Best Possible Location – Retaining Wall – Map 17, Lot 15 (28 Old Loop Road) – Robert Dean Harris, Applicant**

Mr. Harris was present for the review of his application. Roger A., Roland L., and Diane S. did a site inspection of the property.

Mr. Harris provided the board with a copy of his recently submitted DEP Permit by Rule Notification Form, dated as accepted on 11/2/09.

Roger A. began the meeting by asking Mr. Harris if he had any pictures of the retaining wall that was removed. Mr. Harris stated that the only pictures he had he mailed to the DEP but he had a copy of the pictures he mailed in. He said when he mailed in his permit to renew it he mailed a copy of pictures because the DEP had the originals.

Barbara F. provided a copy of the survey of Mr. Harris's property from 2003 and it did not depict the wall being as long as his replacement wall.

Diane S. didn't think that extending the wall was a bad idea due to the lay of the land. Roland L. stated that the point wasn't whether the new wall was good or bad but if it was allowed. Madge B. stated the question was whether or not they put up a new wall where there wasn't one.

Roland L. stated there were two things he would like. First, he would like to see photographic evidence of the previous wall and second, he would like to ask Mr. Harris if there was a wall in the lower section in question. Mr. Harris stated there was a wall. He said most of the rocks for the new wall were from the old wall. Diane S. stated the board had a report from a neighbor that the wall didn't extend as long as Mr. Harris has made the new wall. Mr. Harris stated again there was a rock wall there. Diane noted the surveyed plan and it did not depict the wall to the extent Mr. Harris has built it. Diane asked if there were rocks on the property or was there a wall? Mr. Harris stated it was a rock wall.

Mr. Harris showed the board a copy of the pictures of the pre-existing wall but the area in question could not be seen in the photographs. Madge B. asked if the abutters had any photographs. Barbara F. stated, no. Mr. Harris stated he knew one person on 31<sup>st</sup> Street that said he would testify there was a wall in the area in question.

Roger A. stated, based on what he saw on the site inspection, he wouldn't ask Mr. Harris to remove the area of wall in question because he believed it would create more erosion. He said he would rather see it completed. Diane S. agreed.

Roland L. wanted it to be on the record, that he had a long standing opposition to after-the-fact activities. He believed that by approving what they do the board is condoning the activity. He stated that if there was documentation that showed that in fact there was a wall in the area in question he would be more comfortable supporting it. Diane S. agreed but she felt removing it would cause more harm than good. Diane stated that she would like to see Mr. Harris ask for permission before he does anything in the future instead of asking for forgiveness after he's done it. (This is the second time Mr. Harris has been before the Planning Board for an after-the-fact permit for activity on his property.) Madge B. asked if he gets fined for this activity? Roger A. stated the application fee is four times the normal fee. Diane thought some type of fine should be levied against an after-the-fact permit. Roger stated the Planning Board did not have that authority. Roger said that the CEO would have to go through the court system to get the fine which would cost the town additional expenses. Roland stated again if the board approved this, they would be endorsing a dangerous precedence and he was not going to support it.

CEO McDonough asked Roland L. what he would like to propose? Roland stated he did not have a proposal, he just did not support approving the wall. He did not know what an alternative would be. CEO McDonough asked Roland what he did not support, leaving the wall in place? He believed if that was the case then the alternative was to have the wall removed or the portion he felt should not be allowed. Roland said again he would like to see some documentation that the wall was in the location in question. CEO McDonough stated he would as well but it appeared it was not going to happen. CEO McDonough stated therefore, the issue is, was there a wall in the area in question, and whether or not the existing wall should stay in place. Diane S. stated she would like to see it stay in place; she felt it would be worse to remove it than to keep it in place. CEO McDonough stated that technically if the board believed there was a wall in place previously then the board has the authority to say it could approve the after-the-fact wall but if the board didn't believe there was a wall then Mr. Harris would need to get a variance for the area in question.

Roger A. had wondered whether or not there was a wall in this location based on the lay of the land and the beach front. He thought there was some type of material in place probably loosely laid rocks but probably not a wall setting on the banking. Roger believed there was rip rap prior to the retaining wall. He thought the new wall was dressing up the area so it would look better and would match other areas on the property. Roger said this is was the second time Mr. Harris was before the board and he had a problem with this fact. Mr. Harris stated that he thought he was all set because he sent in his DEP Permit by Rule and had discussed the project with Heather from York County Soils and Water District.

Roger A. stated that the last time Mr. Harris was before the board Mr. Harris stated he thought he didn't need a permit so at this time he could not believe what Mr. Harris was stating. Roger said he knew the contractor that had worked with Mr. Harris the last time he needed an after-the-fact permit and the contractor knew better as well.

CEO McDonough did note that Mr. Harris did contact the DEP in order to replace the wall. Diane S. noted that he also contacted York County Soils and Water. Roland L. asked if the DEP application stated the length of the wall? CEO McDonough stated that that was the problem, it did not. He said the Permit by Rule was a formality so the State could send the homeowner a 'rule book' knowing they are going to go to the town for the proper permits. Roland could not believe the DEP didn't request more information about an intended project.

Madge B. asked if the rest of the wall was just a pile of rocks? Roger A. stated it appeared to be from the pictures. Madge asked why he didn't replace the rocks with additional rip rap like what was in place instead of building a concrete wall? Roland L. stated that it looked fine aesthetically, but he felt some material had been brought in to place behind the new wall. Madge asked why DEP would allow someone to go from loose rocks to a wall? Roland believed it could be how the application was phrased, if it was phrased you wanted to replace the existing wall with a new wall then it probably would be approved. He wasn't sure that if you stated you would replace rip rap with a new wall, if that would be approved. Roland stated in this area on the lake, now that the water is low, you can see most people have rip rap along their shoreline not a wall. CEO McDonough stated a retaining wall had to retain something. He believed it was apparent that the previous wall was retaining earth; therefore, it is a retaining wall which you can replace. CEO McDonough believed the issue at hand was the length and height of the previous wall and the new wall.

Roger A. did not think the new wall was much higher than the previous wall looking at the slope of the land. Roland L. stated that the board didn't know what was behind the previous wall. Roger said the new wall wasn't encroaching further into the water. Diane S. added that no abutters came to the meeting to speak their concerns so the board can only act on the evidence before them.

Roger A. asked if anyone wanted to make a motion on the application? **Diane S. made a motion to approve the after-the-fact application.** She added that she hoped this would be the last time Mr. Harris was before the board for an after-the-fact permit. CEO McDonough asked if the board was going to require a height limitation on the new wall? Roger believed the wall was almost completed at this time. Mr. Harris said the wall was approximately 18 inches in height. Roger asked if anyone would second the motion?

Maggie M. asked if the board could make a condition that any future permit Mr. Harris puts into the DEP has to be closely examined? She believed if someone does an after-the-fact twice, perhaps they need more guidance in the future.

Madge B. asked about a replanting plan? Diane S. stated there were already plantings in place, there was nothing left to do with respect to replanting. Diane stated that there was only layer left to put on the wall and it would be completed. Roger A. concurred.

**Diane S. thought a condition would be that the finished wall would be no more than 20 inches in height.**

Roger A. asked if anyone wanted to second the motion? Because no one did, he asked if anyone had a different motion they would like to present.

Roland L. stated he would like to see a photograph or some verification there was a wall in place previously the entire length of the replacement wall. Mr. Harris stated there were no pictures of the previous wall in that location. He asked if neighbor verification would suffice? Mr. Harris stated that Heather from YCSW had come to the site. Diane S. that Heather no longer worked for YCSW. Mr. Harris stated again that he told the CEO that he thought he had gone through the right channels, he wasn't trying to sneak something through. Mr. Harris stated he was just trying to make his property better and protect the lake. Roland stated that he too was trying to protect the lake from unnecessary intrusion and he believed the entire board was charged to do so through the ordinance.

Roland L. asked if the Planning Board ever went into executive session to have a discussion? Roland stated that at other board meetings he has attended they have gone into executive session. Madge B. believed in order to go into executive session as a Planning Board you needed an attorney present. Maggie M. noted the Board of Selectmen go into executive session about once a month. Madge read from the Planning & Land Use Laws of 2010, Title 1 §405 "Executive Session". After reading the State's rules, she believed it concluded what she believed and that in her experience Planning Boards and Boards of Appeals can only go into executive session to discuss an issue with an attorney. Roger A. added that the two times he has been in executive session it was to discuss the zoning ordinance and how it was worded, not to discuss an applicant.

Madge B. stated that she had not seen the wall and she believed there was a quorum of people who had seen the wall. Maggie M. had not seen the wall either. Madge said she would be happy to table the application and go see the wall if the board felt it would be helpful to the discussion.

Diane S. asked Roland L. if he would like to table the application until Madge could see the wall. Roland L. asked what the alternatives would be? He said if there were no alternatives what would be the point at continuing the discussion. Roger A. stated the only alternatives are either the board allows the applicant to complete the wall or ask him to remove the part of the wall in question. Diane added that if the Planning Board could levy a fine they would but they cannot.

Roland L. asked if the Chairman could make a motion. Roger A. stated that he usually did not make the motion in case there was a tie, he would cast the deciding vote. Madge B. agreed that is best.

Roland L. did not see if anything would be accomplished by tabling the application and having Madge go to the site. Diane S. said the choice before the board was to either second her motion or someone make a new motion.

**Diane S. made the motion to approve the after-the-fact permit with the condition the new wall be no higher than 20 inches. Madge B. 2<sup>nd</sup> the motion. Vote 3 – 1, Maggie M. abstained. Motion passed.**

Nothing further was discussed.

**Best Possible Location – Full Foundation Under Existing Structure – Map 24, Lot 21 (65 Channel Circle) – James Phinney, Applicant**

Mr. Phinney was present to review his application.

Mr. Phinney stated he was before the board in order to be able to place a full foundation under the existing structure, leaving the structure in the same location. Mr. Phinney provided a surveyed plan done by Corner Post Land Surveying in May of 1995 which depicted the existing camp, shed and artesian well on the property.

Roger A. asked how high the camp would be raised? Mr. Phinney asked if there was a maximum it could be raised, he did not plan on raising it more than another foot from the existing. Barbara F. stated the maximum it could be raised was 36 inches. Mr. Phinney stated he would not be raising it that high.

Roger A. noted there was a screen porch noted on the survey; he asked if the foundation would be under the porch as well. Mr. Phinney stated yes.

Roland L. asked if he was going to put in a daylight basement or just use a bulkhead. Mr. Phinney stated a bulkhead. Roland asked if there would be access to the basement from the camp? Mr. Phinney stated not at this time. Roger A. asked what the height of the foundation would be upon completion? Mr. Phinney thought it would be eight feet in height.

Roger A. asked for the location of the septic system and leachfield. Mr. Phinney had penned the location on the survey he provided. Board members noted that Mr. Phinney did not have a septic design on file, only a registration form from the previous owner. Mr. Phinney had a copy of a form from Stoney Road Septic which stated the septic tank had to be pumped on a regular basis and he was not certain the leach field was working properly. CEO McDonough noted that a new septic design was required if there wasn't one on file with the town, per the ordinance. CEO McDonough gave him a copy of §105-4, "Removal, reconstruction or replacement" of a non-conforming structure.

Mr. Phinney wasn't sure what the board was looking for. Roger A. and CEO McDonough explained he needed a new septic design for the site. They told Mr. Phinney he would need to contact a site evaluator and the evaluator could tell if he needed a new system. Mr. Phinney was concerned with the size of his lot, he didn't know if there was a location for a new system. Roger stated that that was the evaluator's job to find the right location. He added that they worked with small lots on the water all the time and told Mr. Phinney they would do the same for his property.

**Board members decided to do a site inspection on an individual basis and a Notice to Abutters would be sent out.** Roger A. told Mr. Phinney to contact Barbara F. when he had his septic design ready for the board because he would need the design prior to approval.

Roger A. also told Mr. Phinney he would need a foundation certification per the ordinance to be certain the camp was in fact placed in the same location as the board approves. Mr. Phinney asked if he could use the same person that did the original survey? Roger said yes, they would depict on a new plan exactly where the camp sits after the new foundation is put into place and it would have to be in the same location as the existing.

Nothing further was discussed.

**Conditional Use Permit – Mineral Extraction Operation – Map 7, Lot 28 (State Rte. 11) – Hissong Development Corp., Applicant**

Mr. Stephen Stearns, P.E., of Pinkham & Greer, represented the applicant.

Mr. Stearns stated the applicant, Hissong Development Corporation (HDC), would like to purchase the property on the corner of Rte. 11 and Square Pond Road for the purpose of mining sand for their own use. Mr. Stearns stated they had a quarry in Lyman Maine to make a redi-mix concrete but they needed sand to add to the stone aggregates in order to make the concrete.

Mr. Stearns stated a lot of research had gone into the site. Maine Dept. of Inland Fisheries and Wildlife was contacted and although they did not find any endangered wildlife, there is habitat for several endangered species on site (see the report on file). Therefore, MDIFW gave Hissong three choices for the site to help to protect the Pitch Pine and Scrub Oak. The first option was to hire a MDIFW approved biologist to conduct butterfly and cottontail surveys (two of the endangered species that have been spotted near this locality) who could re-evaluate the need for additional habitat protection. The second option would be to apply for an Incidental Take Permit. And the third option would be to proceed with the proposed gravel pit with an agreement that the area on the western side of the stream be put into a permanent conservation easement or deed restriction, and that the area to be mined be allowed to revert back to a Pitch Pine / Scrub Oak community once the mining project is completed. Upon completion the entire parcel would be subject to the same conservation easement/deed restrictions as the westerly side. Mr. Stearns stated the third option is what HDC was opting to do. They would like to mine approximately 8 acres, restore the area with the Pitch Pine and Scrub Oak and then upon completion offer it to the Town so they can add it to the acreage they already own at this time.

Mr. Stearns stated the property was bounded by Town owned property and State property for the most part. He said there wasn't a lot of development in the area so what they were proposing was not out of character for the area. He stated the purchase and sale agreement was contingent upon whether or not the Town would allow this type of activity on the site.

Mr. Stearns stated he did not know how long this project would take. He said they estimated there was approximately 425,000 cubic yards of sand and gravel to be removed from the site. The intention isn't to dig it all out in a year. He believed on average it would be five trucks a day for their own personal use.

Mr. Stearns stated the Maine Historic Preservation Commission was also contacted, it is a requirement. He said the area was thought to be a possible site for prehistoric civilization so a study was done on the site. A company called Tetra Tech, hand dug approximately 60 pits on site, and sifted through the sand to try to see if there were any artifacts and nothing was found. The recommendation was that no further study was warranted. It was concluded it was not part of a prehistoric Indian site. Copies of the studies / results were submitted with the application.

Mr. Stearns stated that nothing further had been done with MDIFW with respect to easements because at this time there was only a purchase and sales agreement. Once the property is owned by the applicant the easements will be addressed.

Mr. Stearns stated an entrance to the site has been proposed after working with John Hutchins of Corner Post Land Surveying. He believed the entrance permit has been submitted to Maine DOT.

Mr. Stearns stated a wetland expert was hired to delineate the wetlands area so they would be certain to meet the wetland setbacks. Madge B. knew of the area he was speaking and stated it was a very acidic wetland and very interesting.

Roland L. asked how big the area would be that they would be exposing? Mr. Stearns replied, 8.3 acres. He pointed out the finished contours on the preliminary plan he provided members. Roland asked if the total acreage was 21 acres? Mr. Stearns replied, 21.53 acres.

Roland L. asked if he would be excavating below grade? Mr. Stearns stated the area was a plateau that dropped off sharply. He said the area would be below grade because they have to keep the excavation 100 feet from the road as a buffer. Roland asked if you would be able to see the site from the road? Mr. Stearns didn't believe so because of the 100 foot buffer. He said you may be able to see the excavator and loader.

He said they were willing to flag the 100 foot buffer so the board could see what vegetation is in place now and decide if they wanted more vegetation for a buffer.

Mr. Stearns wasn't sure what the status was of Great Hollow Road. He knew ATV's were using it but it appeared to be abandoned by the Town.

Mr. Stearns stated with respect to the depth of the excavation, going by State law they would have to stay approximately 5 feet above the high water table. He said as they proceed they would put in test wells to be certain they met the criteria. He said they were allowed to dig up to five acres before they have to file for permits with the State. He said they would start the project and file their intent to comply with the State so they would have approval by the time they go over the five acre requirement. By starting soon they would be have all their permits before they were necessary.

Mr. Stearns stated they would stockpile their stumps and loam. He said the loam would move on the site as they changed the location of the excavation. He explained some of the processes that would be taking place as the project expanded.

Mr. Stearns stated the board was welcome to look into HDC and in doing so will see they have a good reputation for doing things by the book.

CEO McDonough asked what the total drop was between Rte. 11 and the bottom of the excavation? Mr. Stearns stated the top of the grade is approximately at 560 feet and the stream is at approximately 490 feet. The bottom of the excavation will be just above that at around 500 feet. The hole will be approximately 60 feet deep when completed.

Roland L. asked if there would be a stone crusher or screen on site? Mr. Stearns stated, no. He said each section of the ordinance is addressed in the application, which includes addressing the noise issue.

Mr. Stearns asked board members to read through the application and he believed many of their questions would be answered. Barbara F. agreed citing that from what she had read it was very organized and easy to follow.

Roger A. stated the only other thing HDC needed to be aware of is they would need a security bond for the reclamation of the area. Mr. Stearns stated that would not be an issue, they can discuss it at the next meeting.

Roland L. wanted it noted that there are many ATV's that use that area. The applicant might want to be aware someone could fall into the pit. Mr. Stearns said for this reason a few years ago the State changed the law so the gravel pit owner isn't responsible for injuries if the parcel is gated and someone trespasses.

Mr. Stearns noted there wouldn't be much equipment left on site; all the processing would be done offsite at another location.

**Roger A. stated a Public Hearing would be held on November 24<sup>th</sup> at 7:00 p.m. A Notice to Abutters will be mailed as well. Members will do a site inspection on an individual basis.** Mr. Stearns stated he was willing to meet anyone on site if they would like him to.

Nothing further was discussed.

**Growth Permit(s)**

**There are permits available.**

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**OTHER**

Darren Stevens asked the board what type of permit he would need to restore an existing patio for an applicant. CEO McDonough gave him a Conditional Use Permit for earth moving based on the explanation of his project and his past projects. Mr. Stevens had been before the board for a similar application in the past. Nothing further was discussed.

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***The Planning Board meeting ended at 9:35 p.m.***

Respectively submitted,  
Barbara Felong,  
Land Use Secretary  
[planningboard@shapleigh.net](mailto:planningboard@shapleigh.net)



# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, November 24, 2009**

Members in attendance: Roger Allaire (Chairman), Roland Legere, Maggie Moody, Diane Srebnick and Barbara Felong (Secretary). Codes Enforcement Officer, Steven McDonough was also in attendance.

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The following words are not verbatim unless accompanied by quotation marks “ ”.

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**Public Hearing began at 7:00 p.m.**

**Conditional Use Permit – Mineral Extraction Operation – Map 7, Lot 28 (State Rte. 11) – Hissong Development Corp., Applicant**

Mr. Craig Burgess of Pinkham and Greer Consulting Engineers, Springvale Maine, represented the Applicant.

Mr. Burgess stated Pinkham and Greer were doing the site design for the project. He said the project was for a gravel pit that would be located between Square Pond Road and State Rte. 11. He spoke of their correspondence with Maine Dept. of Inland Fisheries and Wildlife and that MDIFW determined there was a Pitch Pine / Scrub Oak barren on the site. He said these plants are threatened in the State of Maine and they serve as a host to several endangered moths and butterflies. In order to protect the habitat MDIFW came up with a plan which included three options for the site. (See application for the letter from MDIFW).

Mr. Burgess stated the Applicant is choosing to do the third option laid out by MDIFW which is to place the area on the western side of the stream into a permanent conservation easement and the easement will be placed into the deed to prevent future development or disturbance. The eastern side of the property will be mined. When the mining is done, this area will be reclaimed and put into the same deed restrictions as the western portion of the property. This prevents any future disturbance and the area will be allowed to revert back to its original condition.

Mr. Burgess pointed out the area to be mined on the plan. He said the mined area will be 8.2 acres on a 21.5 acre parcel. He stated there would be a loader on site and trucks would remove the material from the site. The material will be used at other facilities, one site being a redi-mix concrete facility in Eliot Maine.

Mr. Burgess spoke of the letter that was sent to the Maine Historic Preservation Commission. He stated the MHPC requested that the Applicant have an archaeological study done to determine whether or not there was any prehistoric (Native American) or historic (European-American) artifacts on site. A study was conducted on site (results are documented with the application). Mr. Burgess said a letter was received by the Applicant which stated that nothing on site was found to be of any importance.

Mr. Burgess stated that Hissong was estimating there would be five truck loads of material removed a day. He didn't believe this was a significant amount of traffic. He stated that Hissong estimated they would be mining roughly 425,000 cubic yards of material from the site.

Mr. Burgess asked if there were any questions?

**Citizen** – Is this for their (Hissong) use only?

**Mr. Burgess** – Yes, none will be sold.

**Citizen** – Not even to the Town of Shapleigh if they want some?

**Mr. Burgess** – It will all be removed from the site for processing for Hissong's use.

**Citizen** – How deep will the pit be?

**Mr. Burgess** – The elevation at the top of the pit is approximately 550 feet. The elevation at the bottom of the pit is approximately 500 feet, so about 55 feet deep. He explained it was dependant on the results of the monitoring wells; you have to stay five feet above the high water table per the DEP requirements.

**Mr. Burgess** – Pinkham and Greer are in the process of finalizing where the access road will be located with the MDOT. The access road is going to be moved north from the original location at the request of the MDOT. It will be 62 feet north of pole number NT48. MDOT believed there was a better site distance at this location looking in the northwest direction.

**Roland L.** – I noticed while on site there were two different colors of flagged tapes? What is the significance of the two? One had numbers on it. They were pink and blue.

**Mr. Burgess** – I believe one was used to mark boundaries and the other may be the markers for the archeological society. Also, there was someone marking the wetland areas on site. Were the markers inside the site?

**Roland L.** – Yes they were, they appeared to bisect the site at different locations. One did say property line on it and was located at the farthest point. The others bisected all over the property.

**Mr. Burgess** – It seems they were for the archeological study because three foot test pits were dug in plotted 20' x 20' square areas.

**Maggie M.** – When I was on the location the access road didn't match on the plan from what was seen on the picture of the site. She pointed out the plan and the aerial picture of the property noting the location was not accurate on the plan.

**Mr. Burgess** – The access location sent to MDOT was approximately 400 feet from the intersection of State Rte. 11 and Square Pond Road.

**Maggie M.** – I walked down an access road to the pit and it wasn't what was shown on the plan.

**Mr. Burgess** – The location on the plan is no longer correct because MDOT is requiring Hissong to move the entrance.

**Roland L.** – Does the plan depict the ATV / Snowmobile trail?

**Mr. Burgess** – It depicts the right-of-way for the trail.

**Roland L.** – When I was walking the trail, the property line crossed over the trail. If in fact the trail does go onto the property is the Applicant going to have the trail relocated or are you going to allow the ATV / Snowmobile club to continue to be able to use it?

**Mr. Burgess** – The trail is on the property.

**Roland L.** – I am sure the people currently using the trail will be concerned whether or not they will be able to continue to use it because it has been there for them to use for as long as I can remember.

**Mr. Burgess** – It is my understanding Hissong is going to leave the area open, the only thing Hissong is going to do to restrict access to the site is to put a gate across the access driveway.

**Mr. Burgess** – I forgot to mention that once this site is mined and reclaimed and put under the deed restrictions is it going to be offered to the Town for conservation purposes. The town can leave the area open to the public if they desire to do so.

**CEO McDonough** – The entire lot?

**Mr. Burgess** – Yes, the entire lot would belong to the Town.

**CEO McDonough** – Will the deed restriction cover the entire lot, not just the 8 acres being mined?

**Mr. Burgess** – Yes, MDIFW and MDEP both want the site to grow back to a Pitch Pine / Scrub Oak stand.

**CEO McDonough** – So the entire 21+ acres will be deed restricted after the mining is finished.

**Mr. Burgess** – Yes, initially the westerly corner of the property will have a deed restriction but once the area is mined then reclaimed the entire site will be under the same deed restriction.

**Roger A.** – Is the DEP involved because the gravel pit is greater than five acres?

**Mr. Burgess** – The DEP will be involved mainly because of the 2:1 side slopes they don't allow them.

**Roger A.** – We can't allow 2:1, the ordinance states 2.5:1.

**Mr. Burgess** – DEP only allows 2.5:1. And because the entire area to be mined is under 10 acres we don't have to develop a plan for the second five acres, we just have to notify them of the fact the pit is greater than five acres.

**Roger A.** – The Board doesn't always approve an application until they see that the DEP has no concerns with the project.

**Mr. Burgess** – Is this something the Town requires?

**Roger A.** – No, the Board requires it to make sure all the proper permits are applied for with the State. It is my concern. The other concern is the slope must be 2.5:1 according to the Ordinance.

**Roger A.** – Another issue is under #12 in the General Notes on the plan. Under §105-39 'Earth removal and filling' the setback is 100 feet from the property line. Under #12 it states 75 feet from the property line, that will have to be changed on the plan. Roger noted that §105-61 'Mineral exploration and extraction' must be followed but the Board also reviews §105-39.

**Mr. Burgess** – We will have to go back and review the Ordinance again. Is section 105-39 where they mention the 2.5:1 side slopes?

**Roger A.** – No that is under §105-61. B(4)(b).

**Mr. Burgess** – That will reduce the amount of material removed from the site, changing the side setback and the slopes.

**Roger A.** – Yes, you will lose about 25 feet.

**Mr. Burgess** – Is the setback 100 feet for all lot lines?

**Roger A.** – Yes.

Mr. Burgess explained the setbacks to the wetland area and Great Hollow Road. Roger A. agreed with the setback to Great Hollow Road. He felt it was an abandoned road and the Town should do it correctly and abandon the road on paper. He didn't believe it was officially abandoned so the setback to a road is 100 feet but he thought in this case it was the Town's fault for not removing the status of the road.

**Citizen** – Are you going to strip the existing loam?

**Mr. Burgess** – Yes, and it will be stockpiled on site.

**Citizen** – You are going to use it afterwards? You will need to haul more in.

**Mr. Burgess** – Yes. We are going to look to MDIFW to advise us how to best reclaim the site. They may have additional requirements that must be met. I am still waiting for the Regional Biologist, Judy Camuso, to supply us with more information. This will allow us to put together a cost analysis for the reclamation of the site.

**Roger A.** – The Board will need this information for the bond to determine if the amount of the bond is sufficient. The Board will also need to know if they are starting in a certain area, how long before an area is reclaimed, will it be seeded temporarily.

**Mr. Burgess** – The reclamation plan will be placed on the site plan.

**CEO McDonough** – How soon will you have the information from MDIFW?

**Mr. Burgess** – Hissong wants to use the site as soon as possible and as soon as Judy Camuso gets in touch with me the information from her along with a typical reclamation plan will be put together to come up with a plan. I want to be sure I speak with Judy Camuso before creating a final plan. I did email her two weeks ago but haven't gotten a response so I will call her.

**Roger A.** – The Purchase and Sale reflects it is no longer valid based on the dates in the document so there is nothing to show the Board that Hissong has any interest in the property.

**Mr. Burgess** – Hissong closed on the property last week. I will get you a copy of that paperwork.

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

The public hearing closed at 7:23 p.m.

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

**The minutes from Tuesday, November 10, 2009 were accepted as read.**

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**Best Possible Location – Full Foundation Under Existing Structure – Map 24, Lot 21 (65 Channel Circle) – James Phinney, Applicant**

Mr. Phinney was present to review his application. Board members did individual site inspections of the property.

Mr. Phinney presented the Board with a copy of a Subsurface Wastewater Disposal System Application, dated 11/17/09, done by Kenneth Gardner, SE #73, as requested at the last meeting. Attached to the application was a Replacement System Variance Request.

Roland L. asked if the red flags on the property were the location of the existing septic system or the replacement system? Mr. Phinney stated the red flags were where the new system would be located.

Roger A. noted that one Pine tree would be lost because of its location. Mr. Phinney stated the contractor agreed, he didn't believe it would survive because of its close proximity to the foundation.

Roger A. stated he would ask that Mr. Phinney's neighbor be contacted because of the proximity to the property line. There is a probability there would be some disturbance on his property. Mr. Phinney stated that neighbor put in a new foundation last year and some of his property was pushed up against Mr. Phinney's fence. Barbara F. noted that the neighbor was notified of the project by way of the Notice to Abutters. Mr. Phinney stated that he did tell the neighbor of his plans.

Roland L. asked what the distance was between the well point and the new system? Mr. Phinney believed it was 62 feet looking at the plan. Roland asked if it was a drilled well? Mr. Phinney stated that was what he was told when he purchased the property.

Roger A. asked if Mr. Phinney knew where the excavated material would be moved to? Mr. Phinney stated he did not know. CEO McDonough asked who the contractor was? Mr. Phinney stated it was Steven's. CEO McDonough knew the contractor.

Roger A. reviewed § 105-4.D 'Nonconforming structures' in its entirety. Roger noted that the area was lawn at this time and that Mr. Phinney could revegetate with lawn or a ground cover. Roger stated that if the foundation certification showed the building is not in the location as presented in the plan, Mr. Phinney would have to come back before the Board. Roger stated that Best Management Practices would need to be used. He asked Mr. Phinney if he knew when the project would be completed. Mr. Phinney believed by late

spring. Roger thought he could have it replanted by the end of July. Mr. Phinney stated it would be completed before the contractor left.

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

- 1) Best Management Practices shall be used during the entire construction project to control soil erosion.**
- 2) A licensed surveyor must place the new foundation in the same location as the existing camp and make certain the camp is raised no greater than 36 inches in height.**
- 3) Revegetation of the disturbed area shall be completed by July 31, 2010.**
- 4) A State of Maine approved septic system shall be permitted by the Codes Enforcement Officer and installed.**
- 5) A Permit by Rule must be filled out and mailed to the Maine Dept. of Environmental Protection prior to any work taking place.**

Roland L. wanted it noted that he appreciated the fact that Mr. Phinney came before the Board prior to beginning any work on his project.

**Maggie M. made the motion to approve the application for Best Possible Location to place a new foundation under the existing camp with the above stated conditions. Roland L. 2<sup>nd</sup> the motion. All members were in favor. Vote 4 – 0, motion passed unanimously.**

Nothing further was discussed.

**Amendment to a Conditional Use Permit – Wellness Center – Map 14, Lot 15C (191B Emery Mills Road) – Diane Laitres, Owner/Applicant; Marianne Normand, Applicant**

Diane Laitres and Marianne Normand were present for the review of the application.

Ms. Normand stated she wanted to provide massage therapy at the One Earth Wellness Center.

The application states that Ms. Laitres wants to open a Wellness Center which will provide such things as massage therapy, Reiki, polarity, yoga, dance, Tai Chi, nutrition and herbal advice. One modality would be operating at a time.

Roger A. asked what the hours of operation would be? Ms. Laitres stated between 8 a.m. and 10 p.m., Monday through Saturday.

Diane S. asked if the massage would be in the barn next to the store? Ms. Laitres stated that eventually it would but at this time there is room above the store which was an apartment at one time. She said at this time they were renovating that area which is where Ms. Normand will be working and then in the future the Wellness Center will be located in the barn.

Diane S. asked Ms. Normand if she was going to offer anything else besides massage? Ms. Normand stated that her work would be massage therapy.

Diane S. provided the square footage of the existing parking area. She did not have the individual parking spaces mapped out. Roger A. stated the Board would need that for the next meeting.

**Roger A. stated a Notice to Abutters would be mailed and a Public Hearing held on December 8<sup>th</sup> at 7:00 p.m.** Members may do a site inspection but all are familiar with the property.

Nothing further was discussed.

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**Conditional Use Permit – Mineral Extraction Operation – Map 7, Lot 28 (State Rte. 11) – Hissong Development Corp., Applicant**

Mr. Craig Burgess of Pinkham & Greer, represented the Applicant.

Roger A. reviewed the application. With reference to §105-21 'Traffic', Hissong states they will have a maximum of five trucks per day hauling loads from the site. Hissong also notes that they will restrict truck traffic past the Shapleigh Memorial School during student drop-off and pick-up times on school days. Roger stated this would be a condition of approval.

Roger A. stated that under §105-27 'Erosion control' Hissong states that silt will not be allowed to accumulate, he wanted to know how they propose to do this. Roger said that he would like it addressed. How many days of accumulation would there be before it was take care of, three days, a week?

Roger A. stated that also under §105-27, under D it speaks of the revegetation plan. He stated the Board would need to see what the plan would be. Also in this section, under B it states the duration of exposure of the disturbed area would be kept to a practical minimum. Roger asked that Hissong state how long the area would be exposed before it is reseeded. And what would be the size of the area exposed before a temporary cover is put down. Roger stated that usually the time allowed was seven days but if Hissong is only taking five truckloads a day he wondered whether or not this time frame will be practical for this area. Mr. Burgess stated the company may be held to the seven days under the N.O.I. (Notice of Intention) for erosion control for the DEP.

Roger A. noted that under the N.O.I., where they were going to ask the DEP to allow a 2:1 slope for the project, the Town of Shapleigh cannot allow it per the Zoning Ordinance. It cannot be anymore than a 2.5:1. CEO McDonough noted that all Shoreland Zoning changes would be state wide, which included the change in the allowed slope.

Roger A. stated that with respect to §105-34 'Access control on Rte 109 and 11' the board needs to have a copy of the MDOT approval for the entrance onto the property. Mr. Burgess stated they should have a copy of the permit by the next meeting.

Roger A. stated that after reading the historic preservation letter from the Maine Historic Preservation Commission, the letters states that their office must approve any proposal for archaeological fieldwork. Also in the letter entitled 'Contract Archaeology Guidelines' it states that if the work is done according to their guidelines they will accept the results. Roger said the board would like to see a letter which states that the MHPC did in fact accept the work done and the results of work. Mr. Burgess stated they just received the letter from MHPC. He will bring a copy to the next meeting.

CEO McDonough reminded the board that a bond was required. Roger A. agreed and stated he mentioned it at the last meeting. He told Mr. Burgess he would find reference to the bond under §105-39 'Earth removal and filling'. CEO McDonough stated that the Applicant would want to see how MDIFW wants the area revegetated prior to coming up with a figure. Roger agreed. Mr. Burgess stated that was why they didn't have a figure at this time; they are waiting to here from Judy Camuso for her recommendation.

Roger A. reviewed the plan received. Roger stated that under the General Notes, item 13 and item 18 were identical, only one would be needed. He stated under item 16(b) this would have to be changed to a slope of 2.5:1 instead of 2:1. Also, whether you keep item 13 or item 18, the slope would have to be changed to 2.5:1. He stated under item 12, property lines, this would have to be changed to 100 feet from 75 feet.

Roger A. asked board members if they had any other questions? Diane S. asked if the board was going to receive a new Purchase and Sale Agreement? Roger stated that Hisson purchased the property so they would provide the paperwork showing this at the next meeting.

Roger A. stated that on a project of this size, being greater than five acres, the MDEP needs to be notified of the project. Roger stated the Board would like to see that in fact the DEP was notified. Mr. Burgess stated that the DEP process should be accomplished fairly quickly because they will not be asking for a variance on the slope requirement since the Town of Shapleigh would not allow a 2:1 slope which is what they would have requested from the DEP. So a simple N.O.I. would be all that was required.

Roger A. noted that the Applicant had done a good job presenting the process to date and showing how they would comply with the Zoning Ordinance.

Nothing further was discussed.

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**Growth Permit(s)**

**There are permits available.**

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***The Planning Board meeting ended at 8:10 p.m.***

Respectively submitted,  
Barbara Felong,  
Land Use Secretary  
[planningboard@shapleigh.net](mailto:planningboard@shapleigh.net)

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, December 8, 2009**

Members in attendance: Roger Allaire (Chairman), Madge Baker, Roland Legere, Maggie Moody, Diane Srebnick and Barbara Felong (Secretary). Codes Enforcement Officer, Steven McDonough was also in attendance. Note: Madge B. was unable to attend the public hearing or hear the first applicant.

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The following words are not verbatim unless accompanied by quotation marks “ ”.

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**Public Hearing began at 7:00 p.m.**

**Amendment to a Conditional Use Permit – Wellness Center – Map 14, Lot 15C (191B Emery Mills Road) – Diane Laitres, Owner/Applicant; Marianne Normand, Applicant**

Diane Laitres and Marianne Normand were present for the public hearing.

Ms. Normand began by stating she wanted to provide massage therapy in the room located above the One Earth store. Ms. Laitres stated she would be renovating the existing barn and in the barn would be room for a massage therapist as well as the services listed on the application. (The application states provided would be massage therapy, Reiki, polarity, yoga, dance, Tai Chi, nutrition and herbal classes.)

Roger A. asked if anything would overlap time wise? Ms. Laitres stated some services would, such as there could be two massage therapist working at a time or a massage therapist and someone doing polarity. Also, there might be someone getting a massage at the same time a yoga class is being run. Both use a different room. She said therefore, some would overlap. Diane noted that with massage therapy, clients would come in and out at different times on different days. And she added that there might be days when there were no massage clients. Ms. Normand agreed. Diane also stated that all classes would be run one at a time.

Roger A. asked how many people would be in a typical yoga or dance class? Ms. Laitres did not believe the class would exceed more than eight people based on the size of the room. Nine people including the instructor. Roger asked if that was a definite number. Ms. Laitres stated she was not an instructor so was not completely certain of the number. She said she was offering the space and the instructors would determine the class size. She said at this time she has one interested instructor and she told Ms. Laitres that her classes never exceed eight students. Ms. Laitres decided a total of twelve students would be sufficient.

Roger A. stated the number would dictate the number of parking spaces needed. CEO McDonough stated in the ordinance the number of spaces was determined by the square footage of the area to be used.

Members reviewed §105-43 ‘Off-street parking and loading’, B ‘Schedule of minimum off-street parking requirements’. Diane S. read what was applicable as follows:

- (1) Off-street parking spaces shall be provided as follows:
  - (f) One space for each 150 square feet or fraction thereof of floor area of any retail, wholesale or service establishment or office or professional building.
  - (h) One space for each person employed or anticipated to be employed on the largest shift for all types of commercial, industrial or other permitted uses.



The number of spaces were calculated based on the square footage of the barn, as well as the number of employees. In addition, added were two parking spaces for the apartment on site. Ms. Laitres asked, because the apartment was a studio apartment, would two parking spaces be needed? The board concluded yes, two people could live in it or there could be a visitor.

Ms. Laitres asked if the number of employees had to include her and her daughter (they operate the store) because they both park in her daughter's yard? Barbara F. stated yes because the permit is for the land not her as an individual, therefore, if she sold the store there would need to be parking for the new owners.

On the plan provided were 25 parking spaces drawn to scale. This covered the square footage of the existing store, proposed area to be provided in the barn, the room to be used by Ms. Normand over the store, employees and two spaces for the apartment. It was noted that five additional spaces could be easily added to the plan but were not required.

Barbara F. asked if there would be only one instructor at a time for a class? Ms. Laitres stated yes, she did not believe someone would want to run, for example, a yoga class at the same time as a dance class. She stated the room was going to be an open concept.

Roger A. asked with respect to the apartment, if there was a growth permit for it, he didn't have that information in front of him at this time. Barbara F. stated yes, Mr. Rodrigue the previous owner obtained the permit from the Planning Board. Ms. Laitres stated she saw the approval for the apartment on file in the town hall. (On July 10, 2002, Mr. Rodrigue obtained a Growth Permit for the apartment.)

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

The public hearing closed at 7:12 p.m.

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

**The minutes from Tuesday, November 24, 2009 were accepted as read.**

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**Amendment to a Conditional Use Permit – Wellness Center – Map 14, Lot 15C (191B Emery Mills Road) – Diane Laitres, Owner/Applicant; Marianne Normand, Applicant**

Diane Laitres and Marianne Normand were present for the final review of their application.

Roger A. reviewed the following ordinance standards:

- 105-20** – Applicability of standards; prohibited uses. *This application is a permitted use within the zoning ordinance and will not cause any health and safety concerns.*
- 105-21** – Traffic. *The entrance was permitted with the original store on site. There is sufficient area to turn around on site. Although this location is not optimal with respect to site distance the speed limit is reduced in this area for the safety of both residences and businesses.*
- 105-22** – Noise. *There will be no noise being generated on the exterior of the building.*
- 105-23** – Dust, fumes, vapors and gases. *There will be no emissions produced.*
- 105-24** – Odors. *The will be no odors produced by this activity.*

- 105-25 – Glare. *There will be no additional lighting added to the existing building. There is existing lighting permitted at this time.*
- 105-26 – Stormwater runoff. *There will be no change to the existing landscape which would cause an issue with stormwater runoff. All buildings and parking areas are in place.*
- 105-27 – Erosion control. *There will be no change to the existing landscape which would cause an erosion problem. All buildings and parking areas are in place.*
- 105-28 – Setbacks and screening. *There shall be no outside storage areas that need to be screened from neighboring properties.*
- 105-30 – Water quality. *There is no change to the existing property that would affect water quality.*
- 105-31 – Preservation of landscape; landscaping of parking and storage areas. *The surrounding landscape, which is trees and shrubs, shall not be disturbed. No additional parking area is required.*
- 105-32 – Relation of proposed building to the environment. *The existing buildings are in place and have been for many years. They fit well with the surrounding area.*
- 105-33 – Refuse disposal. *There is minimal waste associated with this business. Any refuse shall be disposed of at the transfer station by the applicant.*
- 105-43 – Off-street parking and loading. *The parking area meets the criteria for the size of the building and number of employees. There is also ample room to turn around on site.*
- 105-46 – Sanitary Provisions. *There is an existing approved wastewater disposal system on site which is adequate for the proposed business. Any additional bathrooms will be permitted thru the Code Enforcement Office.*
- 105-47 – Signs and billboards. *All signage shall be permitted through the Code Enforcement Office.*

Roger A. noted that the reason this application was before the board was because under §105-73, a change in floor space of 25% or more or a new process not previously associated with the existing use had to come before the Planning Board as an Amendment to a Conditional use Permit. Roger stated this application was a new use, therefore required Planning Board review.

**Roger A. reviewed Shapleigh Zoning Ordinance 105-73.G “Standards applicable to conditional uses”.**

- 1) The use will not have an adverse impact on spawning grounds, fish, aquatic life, birds or other wildlife habitat. *It will not.*
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. *N/A*
- 3) The use is consistent with the Comprehensive Plan. *It is, the Comprehensive Plan encourages businesses along Rte. 109.*
- 4) Traffic access to the site is safe. *This location has always had a traffic issue for residences and business alike which is why the State reduced the speed limit in this area.*
- 5) The site design is in conformance with all municipal flood hazard protection regulations. *It is, the proposed structure is not in a flood zone.*
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. *There is an existing approved wastewater disposal system on site.*
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. *There will be no hazardous materials stored on site.*
- 8) A stormwater drainage system capable of handling twenty-five-year storm without adverse impact on adjacent properties has been designed. *There are no changes being made to the site that would affect stormwater drainage. There are no existing problems with stormwater drainage and the buildings have been on site greater than 50 years.*

- 9) Adequate provisions to control soil erosion and sedimentation have been made. ***There are no changes being made to the site that would create soil erosion.***
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. ***There is a fire hydrant located within 500 feet of the property.***
- 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. ***The existing vegetation shall be kept in place; there is no noise, glare, fumes, dust or odors created by this business.***
- 12) All performance standards in this chapter applicable to the proposed use will be met. ***They shall.***

Roger A. asked if there were any additional comments or questions? There were none.

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

- (1) **The hours of operation shall be Monday thru Saturday, 8:00 a.m. to 10:00 p.m.**
- (2) **The number of students to attend a class shall not exceed twelve (12).**

**Diane S. made the motion to approve the Amendment to a Conditional Use Permit to allow massage therapy over the store known as One Earth and open a wellness center in the attached barn with the above conditions. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. Vote 4 – 0, the motion to approve the application was unanimous.**

Nothing further was discussed.

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### **Small Wind Energy Systems Ordinance**

Madge B. had a few questions with respect to the new ordinance. She asked other members how in fact Section F(15) would be applied. F(15) reads as follows: Met towers shall be permitted under the same standards, permit requirements, restoration requirements, and permit procedures as a small wind energy system.

Madge B. asked if the MET tower would need to apply for a CUP and fulfill all application requirements? Would it have to be certified by an engineer? Would it be limited to 100 feet in height or could it be higher? Would any cables need to be underground?

Roger A. believed it would need to fulfill the application requirements under a CUP. He also thought it would need to be certified by a licensed engineer. Roger said depending on the height, the structural integrity would be very important. CEO McDonough stated that there were many small units being offered by companies such as in Northern Magazine. They are much smaller than 100 feet and sell for only several thousand dollars. He said according to the ordinance you couldn't put one up without an engineered stamp. He thought this was extreme. Barbara F. asked if he was talking about the MET tower or the wind tower? CEO McDonough stated wind tower. She said that at this time they were discussing MET towers.

Roland L. asked if the wind towers already came with a P.E. approval. He gave an example of buying roof trusses, stating they come with a certificate. CEO McDonough did not know, he had not purchased one. He believed you could ask for engineered specs but he did not know how easy that would be.

Roger A. gave an example of the existing Kostis tower. That Mr. Kostis had wanted to add a

telecommunications device on the existing tower and needed an engineer to make certain that the tower would be able to withstand a 100 mile-an-hour wind. It was determined by an engineer that even though Mr. Kostis tower had many guyed wires to support it, the addition of another 60 or 70 pounds could not be allowed. This is why Mr. Kostis had to put up a second tower. Roger believed engineering approval was important.

Madge B. stated it seemed that not all of the standards for the Wind Tower needed to be applied to the MET Tower. CEO McDonough agreed, he did not believe everything would apply. Barbara F. thought that it was important that the MET Tower be engineered. Madge agreed. She didn't think things like Shadow Flicker would apply. Board members agreed. Barbara noted that the State when regulating MET Towers adds "as applicable" under the requirements. Madge believed that would make more sense. She thought only the standards would need "as applicable" applied to it. Therefore, F(15) would be revised as follows:

- (15) Met towers shall be permitted under the same standards, as applicable, permit requirements, restoration requirements, and permit procedures as a small wind energy system.**

Roger A. stated with respect to the question of whether or not a MET tower could be greater than 180 feet, it could not according to the ordinance. The same limits for a wind tower would be applied to a MET tower. CEO McDonough thought that under MET tower if a height limitation was to be applied it should be spelled out under F(15). Maggie M. asked if §105-61.2 "Telecommunications" could be applied? CEO McDonough stated no, that is for telecommunications only.

Board members reviewed and discussed the existing definition of MET Tower and the definition proposed by the State of Maine Model Wind Energy Ordinance. CEO McDonough believed the State's version was better because it addressed other types of towers. He said as it stands now the other towers would be limited to 35 feet in height. Roland L. agreed citing perhaps the National Weather Service might want to put up a weather tower.

Board members concluded the State's definition was a more broad definition and agreed they would prefer to use it. The definition reads as follows:

**METEOROLOGICAL TOWER (MET TOWER) – A tower used for the measurement and collection of wind data that supports various types of equipment, including but not limited to anemometers, data recorders, and solar power panels. MET towers may also include wildlife related equipment such as ANABAT detectors, bird diverts and wildlife entanglement protectors.**

Madge B. had asked if any cables would need to be underground? Roger A. believed the answer would be yes for safety reasons.

**Board members agreed to hold a public hearing on the Small Wind Energy Ordinance on Tuesday, January 12, 2010.**

Nothing further was discussed with respect to the wind ordinance.

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**Growth Permit(s) - There are permits available.**

**OTHER:**

Barbara F. noted the following changes to the Zoning Ordinance would need to be reviewed at the public hearing scheduled for January 12<sup>th</sup>.

- **§ 105-39. Earth removal and filling for activities other than mineral exploration and extraction.**

This change is to clarify the difference between the guidelines for mineral extraction and all other earth removal activities. At this time citizens do not always know which ordinance applies to their application.

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- **§ 105-61.5. Small Wind Energy Systems.**

This is an addition to the Index page which adds the new ordinance should it get passed by the voters.

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- **§ 105-18. Dimensional requirements.**

**NOTES:**

- 1 No portion of any lot created after effective date of adoption of this chapter and lying within the Resource Protection District may be used to meet the dimensional requirements.
- 2 Dimensional requirements in the underlying zoning district shall apply. However, no construction or filling shall be allowed unless the applicant can demonstrate that the specific property is not in fact either subject to flooding or unsuitable for the proposed use because of hydrological/topographical conditions. Land within the Floodplain District may be used to meet the area and yard requirements, provided that the portion in this district which is so used does not exceed 30% of the minimum land area required per dwelling unit.
- 3 Yard dimensions for accessory structures may be found in § 105-35 of this chapter.
- 4 For more than one dwelling unit per building see § 105-19 ~~42~~.

IMPORTANT: See also notes to this table in § 105-19.

This is a typographical error that needs to be corrected.

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- **§ 105-17. Land uses.**

<b>LAND USES</b>	<b>RP</b>	<b>SD</b>	<b>GP</b>	<b>FD</b>	<b>SP</b>
<b>RURAL</b>					
Open space	YES	YES	YES	YES	YES
Timber harvesting	CU	YES	YES	YES	YES
<b>Clearing or Removal of Vegetation for Activities Other than Timber Harvesting</b>	<b>CEO</b>	<b>CEO</b>	<b>YES</b>	<b>CEO</b>	<b>CEO</b>

This is clarification for the public with respect to the clearing of vegetation in the shoreland zone. Although it is addressed under §105-51, it had not been listed in the land use table.

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***The Planning Board meeting ended at 8:15 p.m.***

Respectively submitted,

Barbara Felong, Land Use Secretary     [planningboard@shapleigh.net](mailto:planningboard@shapleigh.net)