

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, January 12, 2010**

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.

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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.**

- **Proposed Addition to Chapter 105, Zoning Ordinance for the Town of Shapleigh;  
Titled “Small Wind Energy Systems”**

- **Changes to the following:**

- Chapter 105 Zoning Index,

- Title Line of §105-39,

- Typographical Error in §105-18,

- Addition to §105-17, Land use table.

Roger A. began by reading the proposed addition to the Zoning Ordinance known as Small Wind Energy Systems, 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) – 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.

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.

WIND TOWER – The free-standing structure on which a wind measuring or energy conversion system is mounted.

TOWER HEIGHT – The height above grade of the fixed portion of the tower, to the center of the turbine or 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, wind 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) Wind tower foundation blueprints or drawings.
- (8) Wind 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 the 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 including all components 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) Wind tower height shall not exceed 80 feet to the center of the turbine on lots under 3 acres in size.
- (b) Wind 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, as applicable, 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 wind 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 Conditional Use Permit 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.

Madge B. wanted it noted that the reason the Planning Board was presenting this new ordinance was because at this time there is nothing in Shapleigh's ordinance that allows these structures because of the limitation on structure height. Roger A. concurred stating that the building height restriction in the town is 35 feet; this new ordinance would allow higher towers to be erected.

Citizen Dan Lavigne asked if he heard correctly that lakefront properties would not be allowed to have a wind tower? Roger A. stated, right. Mr. Lavigne asked why that was? Roger stated that most properties on the water, because of their small size, could not meet the setback requirements for the tower. Mr. Lavigne asked why the ordinance couldn't just contain the setback requirement without the Shoreland restriction? Roger believed the only property owner that could meet the setback requirements was the Town. Mr. Lavigne thought his lot might meet the setback requirement. Roger added that another reason for the restriction was because the lakefront property owners want their views to be pristine. He did not feel they would want to be looking at wind towers. He added that he did not feel the cost to erect the wind tower was offset by the amount of energy it produced so the only reason to put one up was to go green because there was no benefit to having a small wind tower. Mr. Lavigne agreed that at this time that was true but the prices were coming down and he believed at some point in time the wind tower would be a benefit and people that lived in Shapleigh year round might want to invest in wind energy. He thought he might want to do so. He didn't think it was fair that people who owned property on the lake couldn't have a wind tower even if their land could meet the side setbacks.

CEO McDonough stated that technically the Shoreland Zone was 250 feet from the high water mark. He stated because of the setback restrictions to the water it was unlikely someone could put up a new structure of any kind. It wasn't just a problem with side setbacks. CEO McDonough stated that if a person has a large piece of property they likely have land extending beyond the 250 foot mark and therefore if they met the side setback requirements they could put up the wind generator. Mr. Lavigne asked if he had land across the street from his shorefront lot if he could put up a wind tower? CEO McDonough stated yes, if it was beyond 250 feet from the water. Diane S. concurred that being in the Shoreland zone came with many more State mandated restrictions.

Roger A. stated if you looked at the map of Shapleigh, most lots in the Shoreland District were small lots, 50 feet on the water and they do not meet the minimum lot size. None of these could support a tower. Mr. Lavigne thanked the board for their time and added that he could possibly put up a tower on his back lot.

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

Roger A. reviewed the other changes to the ordinance. Roger stated one change was to the Zoning Index, the first was a title change to §105-39, Earth removal and filling, the new title would read ‘Earth removal and filling **for activities other than mineral exploration and extraction.** CEO McDonough stated that over the past several weeks he reviewed §105-39 and §105-61 ‘Mineral exploration and extraction.’ and he believed the board needed to review both ordinances in depth before making the above change. He stated there were some conflicting issues between the ordinances so that using both to review earth moving is a problem but separating them both entirely at this time might not be best. He believed there were things in 105-39 that the board might want to add to 105-61. He did not think they should be separated without further review and he thought the board should table this suggested change until further review. He added that there was a conflict between the two with slopes and setbacks, the three year review, etc. He stated that if the two were separated the three year review wouldn’t apply to mineral exploration. He said whether the board wants that out of mineral exploration or not isn’t the issue, the board just needs to take a look at both and decide. Roger agreed that it would be best to have a more in-depth review before separating the two. Roger asked if the other members agreed to table this change? Madge agreed it was best to table this change. All members were in agreement that this change would be tabled at this time, there would be no change to the title line of §105-39, it will remain as it stands now which is **§105-39. Earth removal and filling.**

Roger A. stated that the next change was to the Zoning Index and it would be to add **§105-61.5. Small Wind Energy Systems.** to the index. This will be added if in fact it gets voted in as a new chapter in the ordinance at Town Meeting.

Roger A. stated there is a typographical error in §105-18 that has to be changed, it is as follows:

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-~~49~~ **42.**  
 IMPORTANT: See also notes to this table in § 105-19.

Roger A. stated the last change was to §105-17. Land Uses. The following would be added to the table.

LAND USES	RP	SD	GP	FD	SP
<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>

Madge B. stated that this is what the CEO does at this time based on the Zoning Ordinance. CEO McDonough stated correct. Barbara F. stated it just wasn’t listed in the Land Use table.

Roger A. stated that this was all the changes the board had to present this evening. He asked if there were any 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, December 8, 2009 were accepted as read.**

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**Conditional Use Permit – Mineral Extraction Operation – Map 7, Lot 28 (State Rte. 11) – Hissong Development Corp., Applicant**

Stephen Stearns, P.E. and Craig Burgess of Pinkham and Greer Consulting Engineers, located in Springvale, Maine were present to represent the applicant.

Mr. Stearns presented the board members with the revised Reclamation Plan as required by the board at the previous review on December 8, 2009. Also given to members was a copy of the Warranty Deed showing Hissong has title, right and interest in the property; a copy of the MDEP Placard that shows the gravel pit is licensed with the State, this Placard must be posted at the job site; a copy of the required Deed restrictions for the area to be mined as well the area that is not going to be mined, as required under Option 3 from the MDIFW letter regarding the protection of the endangered species that could be on site (Mr. Stearns noted that the deed restriction had not been reviewed by MDIFW for their approval as of today, the document was just completed today. Mr. Stearns stated the document would be sent to the MDEP on Wednesday, 1/13/10); the letter dated 8/27/09 from MDIFW so board members could review Option 3; a copy of the MDOT entrance permit; and a copy of the Maine Historic Preservation Commission letter dated 11/16/09, stating they agreed there was nothing of significance found on site with respect to prehistoric archeology.

Mr. Stearns stated that the setbacks were as required to the property lines, being 100 feet. He stated they also regraded the slopes on the plan to 2.5 to 1, which reduced the volume of material to be mined. The amount of material to be mined is approximately 343,200 cubic yards and the area would be 7.7 acres instead of 8.3 acres. Mr. Burgess stated that a silt fence was added to the drawing as recommended by Biologist Judy Camuso of MDIFW. Mr. Stearns stated the reclamation details were on the plan as asked for and they were looked at by MDIFW. He stated that instead of loam and seed being used within a year of completion, the existing topsoil would be retained to cover the disturbed areas. He said this was the recommendation of MDIFW, to use only the earth that was on site at this time, they do not want four inches of loam because that isn't what supports the Scrub Oak / Pitch Pine. So basically they were asked to take off the material that exists at this time then put it back when they reclaim the area.

Mr. Burgess noted that the brook centerline was on this revised plan and the setback to the brook was indicated. Mr. Stearns stated that the Notice of Intent to Comply was sent to the MDEP and the Placard is their approval. Mr. Stearns added that the original plan was sent to the MDEP and he noted that this revised plan is more restrictive than the previous plan so he did not think the MDEP would have an issue with the more restrictive plan.

Mr. Stearns stated MDOT approved the entrance onto Rte. 11. He stated that their traffic engineer, Brian Keezer, P.E. is the person who signed the permit.

Mr. Stearns stated there was a question at the last meeting from Chairman Allaire asking how long an area would be exposed? Mr. Stearns stated the MDEP standards for borrow pits are they require an area to be reclaimed within two years from the final grade. He said they also allow up to 10 acres to be exposed at one time. Mr. Stearns said therefore, it cannot stay active and open for a period longer than two years. Roger A. stated that under 'Conditions of permit' in Chapter 105-39 'Earth removal and filling,' of the ordinance it states that "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." Roger then read (2) under Conditions which read, "Temporary ground cover (such as mulch) and temporary runoff filter (such as hay bales in swales) shall be used as required to prevent stream sedimentation. The Planning Board shall set a specific date by which permanent ground cover shall be planted." Roger stated this was the reason he brought this subject up at the previous meeting. Mr. Stearns asked if this was under the chapter for mining or if it was under erosion control. Mr. Stearns stated the mining is not an erosion hazard, it is internally draining. He said with the access road there was a chance of erosion but that would be stabilized within seven days. He said anything that wasn't part of the mining operation would need to be stabilized within seven days. He did not understand that this would be part of the mining operation. How could you cover everything while mining? Roger stated that as long as an area was being mined, it did not have to be covered. But if the area was moved to another location on site, then yes it would have to be stabilized. Mr. Stearns noted that there were many gravel pits as large as 10 acres that remain open with MDEP approval. He did not know where any borrow pits were required to restabilize on the open face of the pit while working in the pit. Roger felt that if they moved from one area to another they needed to stabilize the previous area.

Mr. Stearns noted that the restrictions in the deed on the area that isn't going to be mined will be transferred to the entire site once the project is completed as required by MDIFW.

Roger A. asked how many trucks would be moving from the site on a daily basis. Initially Mr. Stearns had stated that there would be up to five trucks a day but at this time he wanted to make that figure up to ten trucks a day. Roger did not feel that would be a problem and its best to state the intended number in case anyone called to question the number of trucks, then there wouldn't be an issue.

Diane S. noted that with respect to the noise ordinance, §105-22, there could be people on site at 6:00 a.m. but they couldn't start their equipment before 7:00 a.m. The Reclamation Plan stated that the hours of operation would begin at 6:00 a.m. Mr. Stearns stated he understood, he would change the plan to read 7:00 a.m. thru 10:00 p.m., Monday through Friday. CEO McDonough agreed with Diane, stating that he has received telephone calls about loud equipment starting up early in the morning in the past.

Mr. Stearns stated there had been a question regarding the sediment. He said they intended if any sediment accumulates at the bottom of the pit, it will be accumulated, added to top matter removed and used to put back on the top when the project is done.

Roger A. stated the reason the applicant was before the board was under §105-39, Earth removal and filling, along with the Conditional Use Permit that is required due to the number of yards being removed from the site. Roger stated a surety bond was required based on the Reclamation Plan and the applicant needed to get the figures to the Town based on the plan provided. Roger reviewed §105-39 in its entirety. The ordinance reads in part as follows:

- F. Application for permit. Application for a permit from the Planning Board for excavation, processing and storage of soil, loam, gravel, rock and other mineral deposits shall be accompanied by a plan which shall show:

- (1) The name and current address of the property involved. **This was provided by the applicant on their application, Hissong Development Corp., 48 York Street, Suite 2, Kennebunk, Maine**
- (2) The location and the boundaries of the lot or lots for which the permit is requested. **This information is drafted on the Reclamation Plan, dated 1/13/2010, done by Stephen Stearns, P.E. of Pinkham and Greer.**
- (3) The location of all proposed access roads and temporary structures, and the sight distances from all entrances and exits. **This information is provided on the Reclamation Plan and was approved by the MDOT, Permit #9703, dated 11/30/09. There are no temporary structures on site.**
- (4) The proposed provisions for drainage and erosion control, including drainage calculations. **This information is provided on the Reclamation Plan, the borrow pit is internally draining so no erosion measures are needed for the borrow pit while it is being excavated.**
- (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.) **This information is provided on the Reclamation Plan along with the Declaration of Restrictions that must be approved by MDIFW.**

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.
- (2) Temporary ground cover (such as mulch) and temporary runoff filter (such as hay bales in swales) shall be used as required to prevent stream sedimentation. The Planning Board shall set a specific date by which permanent ground cover shall be planted. **Stabilization and reclamation shall be carried out per the recommendations given by MDIFW. These are on the Reclamation Plan. This shall be done as soon as possible when operation of the project ceases. Re-review shall take place when the three year permit expires.**
- (3) Diversions, silting basins, terraces and other methods to trap sediment shall be used. **Sediment shall be trapped within the borrow pit then placed with the topsoil removed to be used in the Reclamation Plan as suggested by MDIFW.**
- (4) Lagooning shall be conducted in such a manner as to avoid creation of fish trap conditions. The applicant shall submit written approval from the Department of Marine Resources or Department of Inland Fisheries and Wildlife, as applicable, prior to consideration by the Planning Board. **N/A with regard to the fish trap conditions. The MDIFW was notified as required.**
- (5) The extent and type of fill shall be appropriate to the use intended. The applicant shall specify the type and amount of fill to be used. **This information is provided on the Reclamation Plan.**
- (6) Fill shall not restrict a floodway, channel or natural drainageway. **This has been addressed on the Reclamation Plan.**
- (7) The sides and bottom of cuts, fills, channels and artificial watercourses shall be constructed and stabilized to prevent erosion or failure. Such structures are to be designed and built according to the Maine Soil and Water Conservation Commission, Technical Guide, Standards and Specifications. **This application is for a borrow pit, the cuts and erosion measures for the site are on the Reclamation Plan.**
- (8) Where activities carried out under this article require the removal of existing ground cover, revegetation should be carried out. **This is to be carried out per MDIFW standards. This is addressed both on the Reclamation plan and the Declaration of Restrictions which is to be approved by MDIFW.**
- (9) (Reserved)



- (10) Specific plans are established to avoid hazards from excessive slopes or standing water. Where embankment must be left upon the completion of operations, it shall be at a slope not steeper than one foot vertical to four feet horizontal. **There shall be no excessive slopes left on site after the Reclamation Plan has been completed.**
  - (11) No excavation shall be extended below the grade of an adjacent street, except for drainageways, unless 100 feet from the street line. No excavation below the grade of the surrounding land shall be allowed within 100 feet of any side or rear lot line. However, removal of earth material deposits from hills or knolls may be allowed within 50 feet of a side or rear lot line if no excavation below the grade of abutter's properties occurs. **There is no excavation being done within 100 feet of any lot line or street line per the plan provided.**
  - (12) Sufficient topsoil or loam shall be retained to cover all areas, so that they may be seeded and restored to natural conditions. **All existing topsoil shall be retained on site for the reclamation of the area, per the plan provided. This plan has been designed by MDIFW.**
  - (13) No existing rock, gravel or sandpit will be extended or expanded until the operator has complied with the provisions of this chapter and obtained a permit therefore.
- H. Optional conditions of permit. The Planning Board may impose other reasonable conditions to safeguard the neighborhood and the municipality, which may include those relating to:
- (1) Methods of removal or processing. **This has been addressed in the application.**
  - (2) Days and hours of operation. **Hours of operation are 7:00 a.m. thru 10 p.m., Monday through Friday, 7 a.m. thru 5:00 p.m. on Saturday.**
  - (3) Type and location of temporary structures. **None on site.**
  - (4) Routes for transporting material. **State Route 11 to Route 109.**
  - (5) Area and Depth of excavations. **Provided on the Reclamation Plan.**
  - (6) Provision of temporary or permanent drainage. **None is needed for the borrow pit, the stream is being protected per the plan provided.**
  - (7) Disposition of stumps, brush and boulders. **The area is noted on the plan, all materials will be retained on site.**
  - (8) Cleaning, repair and/or resurfacing of streets used in removal activity which has been adversely affected by said activity. **The applicant shall make certain Route 11 is clear of all sand and stone dust to prevent a hazardous condition.**
  - (9) The need for written approval of soil and erosion and sedimentation plan by a State of Maine licensed civil engineer selected by the applicant for the Planning Board. **A State of Maine licensed engineer provided the plan, Stephen Stearns, P.E. #4437, of Pinkham and Greer Consulting Eng.**
- I. Surety and terms of permit.
- (1) 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. The surety bond will be to assure the reclamation plan is completed. **No work shall begin until a surety bond is presented to the CEO and approved by both the CEO and the BOS.**
  - (2) 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.

Roland L. asked if there were any notes that referenced the 30' x 30' refueling pad. Mr. Stearns stated that there were no notes on the plan. He said that the State standards require any refueling has to be done on an impervious surface. Roland asked if it was going to be concrete? Roland also asked if when the operation ceases the pad would be removed? Mr. Stearns stated, yes. Mr. Burgess stated that it was noted in the Declaration of Restrictions.

Mr. Stearns noted the M.R.S.A., Article 7, Section 490D addressed the refueling issue. Mr. Stearns read from the ordinance, "The following products and other substances that may contaminate ground water must be stored and handled over impervious surfaces that are designed to contain spills. The spill prevention control measures plan must be posted at the site." He stated that this would be done. He stated it was required and permitted by the State. Roger A. asked where the pad would be located? Mr. Stearns pointed it out on the Reclamation Plan. Mr. Stearns added that they were not restricted to material. He believed it would be concrete but there were other methods allowed such as using a poly liner and putting gravel over it.

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

Roger A. reviewed §105-61, Mineral exploration and extraction, noting much of it was redundant with §105-39. The applicant complied with all conditions of this chapter per the Reclamation Plan provided, which included the requirements from MDIFW for the reclamation of the area.

**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 per the Reclamation Plan provided and by following Option 3 as written in the letter from MDIFW, dated 8/27/09.***
- 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. 11.***
- 4) Traffic access to the site is safe. ***The entrance to this location has been approved by the MDOT, permit #9703, dated 11/30/09.***  
**Mr. Stearns asked if Hissong could use Back Road if they chose to do so? Barbara F. stated Back Road was posted for no heavy trucks year round. Mr. Stearns asked about Owl's Nest Road? CEO McDonough didn't believe it was posted year round but did not believe it was a road they would want to use. Roger A. stated Mann Road would be allowed except during the time it's posted in late winter.**
- 5) The site design is in conformance with all municipal flood hazard protection regulations. ***It is, the site is not in a flood zone.***
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. ***There is no wastewater being produced, all rocks and tree stumps shall be kept 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, all stormwater will drain into the borrow pit.***
- 9) Adequate provisions to control soil erosion and sedimentation have been made. ***There are no changes being made to the site that would affect erosion, all stormwater will drain into the borrow pit.***
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. ***There are provisions not far from this location but there should not be any need for fire protection based on the operations on site.***

- 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 within 100 feet of all property lines; there is no noise allowed between 10:00 p.m. and 7:00 a.m. seven days a week; there shall be no glare, fumes, or odors created by this business. Any stonedust or gravel on Rte. 11 shall be removed by the applicant to prevent a hazardous condition.***
- 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 would be as follows:

- 1) **The hours of operation shall be 7:00 a.m. thru 10:00 p.m. Monday through Friday, 7:00 a.m. thru 5:00 p.m. Saturday.**
- 2) **There shall be no 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. (Drop-off, 8:30 a.m. thru 9:00 a.m., pick-up, 3:00 p.m. thru 3:30 p.m.)**
- 3) **It is the applicant's responsibility to make certain the entrance onto State Rte. 11 is clear of all sand and stone dust to prevent a hazardous situation.**
- 4) **Documentation showing MDIFW approved the deed restrictions submitted to the Planning Board on 1/12/09, required to satisfy option three of MDIFW's letter dated 8/27/09, for the protection of the endangered species in the project area. This documentation must be provided prior to any earth moving on site.**
- 5) **A security bond or equivalent security to guaranty the reclamation plan required by the Town of Shapleigh and MDIFW is carried out. The surety bond must be submitted to the Code Enforcement Officer along with the documentation to support the amount being offered. The bond shall be approved by both the CEO and Board of Selectmen prior to any earth moving on site.**
- 6) **Reclamation shall be done upon ceasing of operations.**
- 7) **As a note, this permit is valid for a period of three years from the date of approval per the ordinance.**

Roger A. noted that some of the surety bond can be used to clean Rte. 11 should the applicant fail to do so and the entrance becomes a hazard. Mr. Stearns believed this was also a State requirement under the MDOT Entrance Permit approval that they keep the road clear of debris.

**Diane S. made the motion to accept and approve the application with the above listed conditions. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. Vote 5 – 0, the motion to approve the application was unanimous.**

Roger A. reminded Mr. Stearns that he needed to bring the surety bond and get approval prior to operation. Mr. Stearns stated he understood.

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. In addition, Attorney Kenneth Keating was present representing Margery Thompson, a direct abutter to Mr. Richardson's property.

Mr. Richardson provided a survey plan for the board members to review. On this new plan the proposed private road was shown to be 100 feet from the high water mark of Lake Sherbourne and the wetlands are delineated.

Roger A. asked if Mr. Richardson knew what the time frame was for moving the pile of gravel onto the new road? Mr. Richardson stated he started to move the gravel putting it on the road but the ground froze so he probably won't be doing anything else with it until late spring.

Mr. Richardson provided the board with a second plan that was for his proposed business which he stated showed storage areas for stockpiling stumps and loam, the storage of logs and equipment. Attorney Keating reviewed the plan along with board members.

Roland L. asked what the required setback was from a wetland? Mr. Richardson said, 50 feet. (Under §105-59, 'Roads, driveways, and water crossings', under C. the board can determine that if no reasonable alternative exists the setback can be reduced to 50 feet from the wetland area.)

Madge B. asked if part of the area (adjacent to Ms. Thompson's property) had been excavated and if so if it was going to be filled back in. Roger A. stated yes. Mr. Richardson stated it would be resloped to prevent erosion. Madge noted that the zoning ordinance required that any excavation below grade must be 100 feet from any side or rear lot line. She asked if it had to be done now? Roger stated it should be done as soon as possible to prevent erosion.

Roger A. reviewed § 105-59, Roads, driveways and water crossing, he read the following:

- B. The following requirements shall apply to construction and maintenance of roads other than skid roads:
- (1) All cut or fill banks and areas of exposed mineral soil outside the roadbed within 100 feet, horizontal distance, of a flowing or standing body of water shall be revegetated or otherwise stabilized so as to prevent erosion and sedimentation of water bodies.
  - (2) Road and driveway banks shall have a slope no steeper than a slope of two horizontal to one vertical.
  - (3) Drainage ditches shall be provided so as to effectively control water entering and leaving the road area. Such drainage ditches will be properly stabilized so that the potential for unreasonable erosion does not exist.
  - (4) In order to prevent road and driveway surface drainage from directly entering water bodies, tributary streams or wetlands, roads, driveways and their associated drainage ditches shall be located, constructed and maintained so as to provide an unscarified filter strip, of at least the width indicated below, between the exposed mineral soil of the road or driveway and the normal high-water mark of a surface water body. This requirement shall not apply to road approaches to water crossings.

*Roger noted there were no water crossings associated with Mr. Richardson's Road.*

Average Slope of Land Between Exposed Mineral Soil and Normal High-Water Mark (percent)	Width of Strip Between Exposed Mineral Soil and Normal High-Water Mark (feet along surface of ground)
0	25
10	45
20	65
30	85
40	105
50	125
60	145
70	165

- (6) Ditch relief (cross drainage) culverts, drainage dips and water turnouts will be installed in a manner effective in directing drainage onto unscarified filter strips before the flow gains sufficient volume or head to erode the road, driveway or ditch.

*Roger A. noted on the plan where this has already taken place and where the rip rap will still need to be located.*

- (c) Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road or driveway at intervals no greater than indicated in the following table:

Grade (percent)	Spacing (feet)
0 to 2	250
3 to 5	200 to 135
6 to 10	100 to 80
11 to 15	80 to 60
16 to 20	60 to 45
21+	40

*Roger A. noted on the plan the areas designed to meet this requirement.*

Roger A. asked if there were any questions?

Attorney Keating stated that he understood Mr. Richardson was also looking for a business permit and he wanted to know if the board was going to inquire what the nature of his business would be and what the hours of operation would be? Roger A. believed the mineral excavation was what was before the board to review. Mr. Richardson stated he wanted to also hold his trucking business on site, he owned 10 trucks and they would be parked on site. Barbara F. asked if it was written on the plan what the business would be? Mr. Richardson stated the plan was for Richardson Trucking and Logging. Barbara stated the board requires the applicant write their business plans down somewhere, either on paper or on his surveyed plan.

Roger A. stated the board needs to know where on the plan the equipment will be parked. Attorney Keating asked Mr. Richardson if his trucks would be using the proposed road on a regular basis? Mr. Richardson stated yes, he pointed out where the proposed shop would be and where his house is located.

Barbara F. asked if any of the business was going to be in the Shoreland Zone and if so are there any restrictions for a business in the Shoreland Zone. Mr. Richardson stated the road was 100 feet from the high water mark. Roger A. asked where the actual business would be taking place and would it be beyond the

Shoreland Zone? Mr. Richardson stated it would be beyond the Shoreland Zone. Mr. Richardson stated the only business conducted in the Shoreland Zone would be driving through it on his roadway. Barbara F. asked if this was an issue? CEO McDonough stated that it was up to the board as to whether or not they considered using the road as part of the business. Roger asked if most of the traffic would enter the property from the main road and not the new private road? Mr. Richardson stated he would only need the new road on an as needed basis. Maggie M. asked Mr. Richardson if he were going to make it a routine to use the private way to access his house on a regular basis? Mr. Richardson replied, no, but he did not want to limit himself and not to be able to use the private way. Maggie was concerned that part of the road was in the Shoreland Zone. Mr. Richardson stated he was over 100 feet from the shoreline. CEO McDonough stated the Shoreland Zone was 250 feet. Barbara asked if this business would be listed under the land use table? CEO McDonough didn't believe any business was allowed in the Shoreland Zone other than flea markets or home occupations.

Madge B. asked Mr. Richardson what his business was going to entail? Mr. Richardson replied, logging, trucking, excavation, firewood, tree farm. Diane S. noted timber harvesting was allowed in the Shoreland Zone, earth removal with a CUP, mineral extraction with a CUP, she said those were the things Mr. Richardson stated he would be doing. Barbara F. asked him if there would be any other activities taking place? Diane noted that motorized traffic was allowed on roads in the Shoreland District.

CEO McDonough stated that Mr. Richardson was currently a home occupation with many trucks coming and going on his property. Diane S. noted that a home occupation was allowed in the Shoreland District. Maggie M. did not feel what Mr. Richardson was doing would qualify as a home occupation. The board members read the definition of home occupation, it read as follows: HOME OCCUPATION – An occupation or profession which is customarily carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit; carried on by a member of the family residing in the dwelling unit; clearly incidental and secondary to the use of the dwelling unit for residential purposes. Real estate office and resale of purchased merchandise will not be considered as home occupations.

The board was not certain that Mr. Richardson's business could be classified as a home occupation based on the definition.

Roger A. asked exactly where the business would take place? Mr. Richardson showed him where he intended to build a garage but also noted he would be storing logs and equipment in various locations on the property. Note: At this time Mr. Richardson has not left the board with a copy of his plans so there is no record in his file to view at this time.

Diane S. asked Mr. Richardson if all vehicle on site were registered? Mr. Richardson stated he had 20 or so vehicles and trailers registered but there were about four or five on site that were not. Diane asked CEO McDonough if that could be classified as a junk yard? Diane did not believe you could have more than three unregistered vehicles on site. Roger A. agreed. Mr. Richardson stated they were used to repair work vehicles. Maggie M. asked if the repair of vehicles was part of his business because if so it was not allowed in the Shoreland Zone. Madge B. stated everyone repaired their vehicles. Maggie agreed but it couldn't be part of his business activity. Madge said that very little of the area to be used appeared to be in the Shoreland Zone. She said it would be helpful to the board members to know exactly where the Shoreland Zone was. Maggie stated that it looked like there was enough land that he could keep his business away from the Shoreland Zone altogether. CEO McDonough did not believe the board could say he couldn't drive his equipment over the road that is in the Shoreland Zone but all his business would have to be conducted out of the Shoreland Zone. CEO McDonough stated it appeared his business absolutely involved storage of equipment and logs. If any storage is part of the business it cannot be allowed in the Shoreland Zone.

CEO McDonough did not believe the board could stop Mr. Richardson from parking his dump truck in his yard by his house. He also did not feel they could say he couldn't drive his equipment from his house to his garage over his private road. Diane agreed, she felt this would be considered commuting.

Barbara F. stated that the board needed a list of all the activities that would take place for his business. Madge B. agreed and where the activities would take place on site.

CEO McDonough asked the board if they were finished with the review of the road? Roger A. believed the road as presented on the plan would be o.k. He stated the road was designed with the appropriate culverts and rip rap and with Mr. Richardson moving it 100 feet from the high water mark it should be fine. Attorney Keating has no issues with the road plan as presented. CEO McDonough asked if the board was fine with the restorative measures of the excavation? CEO McDonough noted Mr. Richardson was before the board for an after-the-fact earth moving permit. Perhaps the board should review that section and close that out before moving on to a business permit.

Roger A. reviewed §105-39, Earth removal and filling. Roger read the following:

- C. Earthmoving in the General Purpose District. Movement of material in excess of 10 but not more than 50 yards is permitted. Movement of materials from 50 cubic yards to 150 cubic yards requires the approval of the Code Enforcement Officer. Movement of materials in excess of 150 cubic yards requires the approval of the Planning Board. In either case, all relevant performance standards below shall be observed, including binding agreements to guarantee proper reclamation of the site after operations cease.
- D. Earthmoving in Shoreland District. Any filling, dredging or excavation of land above or below the normal high watermark, except earthmoving of less than 10 cubic yards which shall require a permit from the CEO (except as provided above) to ensure proper erosion and sedimentation, shall require a conditional use permit from the Planning Board.

*Roger noted the Shoreland District is the area where the problem was first noted.*

- F. Application for permit. Application for a permit from the Planning Board for excavation, processing and storage of soil, loam, gravel, rock and other mineral Deposits shall be accompanied by a plan which shall show:
  - (1) The name and current address of the property involved. **This is on the plan presented.**
  - (2) The location and the boundaries of the lot or lots for which the permit is requested. **This is on the plan presented.**
  - (3) The location of all proposed access roads and temporary structures, and the sight distances from all entrances and exits. **The private way plan has no structures and the entrance and exits are through Mr. Richardson's primary driveway.**
  - (4) The proposed provisions for drainage and erosion control, including drainage calculations. **Roger A. stated he presumed these calculations were done due to the fact the proper culverts and erosion control measures were on the plan. Mr. Richardson stated the calculations were on another plan that he did not have with him this evening. He stated he had it at the last meeting he attended.**
  - (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. told Mr. Richardson the board needed to know what the time frame was for the loaming, seeding and mulching for stabilization of the area of concern.**

*Diane S. asked if the board had a copy of the plan that showed the erosion control measures and drainage calculations. Roger A. stated no, just the plan showing the grading and where they proposed to place the culverts but the actual calculations were not on file.*

- 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.
  - (2) Temporary ground cover (such as mulch) and temporary runoff filter (such as hay bales in swales) shall be used as required to prevent stream sedimentation. The Planning Board shall set a specific date by which permanent ground cover shall be planted.
  - (3) Diversions, silting basins, terraces and other methods to trap sediment shall be used. **These have been engineered and are shown on the plan.**
  - (4) Lagooning shall be conducted in such a manner as to avoid creation of fish trap conditions. The applicant shall submit written approval from the Department of Marine Resources or Department of Inland Fisheries and Wildlife, as applicable, prior to consideration by the Planning Board. **Roger A. noted there was no lagooning to be done.**
  - (5) The extent and type of fill shall be appropriate to the use intended. The applicant shall specify the type and amount of fill to be used. **The fill / crushed gravel to be used for the road was manufactured on site.**
  - (6) Fill shall not restrict a floodway, channel or natural drainageway. **Roger A. stated that he did not believe any natural drainageway had been inhibited.**
  - (7) The sides and bottom of cuts, fills, channels and artificial watercourses shall be constructed and stabilized to prevent erosion or failure. Such structures are to be designed and built according to the Maine Soil and Water Conservation Commission, Technical Guide, Standards and Specifications. **These have been designed and are shown on the plan.**
  - (8) Where activities carried out under this article require the removal of existing ground cover, revegetation should be carried out.
  - (9) (Reserved)
  - (10) Specific plans are established to avoid hazards from excessive slopes or standing water. Where embankment must be left upon the completion of operations, it shall be at a slope not steeper than one foot vertical to four feet horizontal. **This is addressed on the plan.**
  - (11) No excavation shall be extended below the grade of an adjacent street, except for drainageways, unless 100 feet from the street line. No excavation below the grade of the surrounding land shall be allowed within 100 feet of any side or rear lot line. However, removal of earth material deposits from hills or knolls may be allowed within 50 feet of a side or rear lot line if no excavation below the grade of abutter's properties occurs. **Roger A. noted that this was why the proposed road had to be re-designed so it met this requirement.**
  - (12) Sufficient topsoil or loam shall be retained to cover all areas, so that they may be seeded and restored to natural conditions.
  - (13) No existing rock, gravel or sandpit will be extended or expanded until the operator has complied with the provisions of this chapter and obtained a permit therefore.

Roger went on to read sections H, 'Optional conditions of permit', as well as, I, 'Surety and terms of permit'.

Madge B. asked if the board had an erosion and sedimentation plan? Roger A. stated the board did not have the calculations. Madge stated the board would need these.

Attorney Keating asked if the board was going to set a date for re-vegetation? Roger A. stated, yes.

Roger A. read §105-59, 'Roads, driveways and water crossings'. Roger noted that on the site inspection a silt fence had been placed on site to help prevent erosion but some attention is needed in a few areas.

Roger A. stated that at this time for the roadway, the board needed the calculations for the drainage. Mr. Richardson asked if that was the stormwater calculations? Roger stated, yes for the area where the rip rap is



needed as well as the culvert. Roger stated the board also needed a time frame for when the excavated area will be stabilized.

Attorney Keating stated that it was his understanding that this was not an ongoing thing, that what was done was done (earth moving) and now he is going to revegetate, put the road in, the culvert, and then we are done with the earth moving. Therefore, there is no need to talk about hours of operation regarding the earth moving. Roger A. replied, stating there would be hours of operation due to the fact there are piles of earth still to be moved. Attorney Keating asked if the hours of operation would be addressed when Mr. Richardson came back with the drainage calculations? Roger stated it could be addressed now. Mr. Richardson stated the hours allowed in the ordinance are 7:00 a.m. to 10:00 p.m.

Roger A. asked if there were any other questions with respect to the road? There were none.

Roger A. stated the board needed the stormwater calculations for the stabilization plan. He said Mr. Richardson stated the hours of operation were from 7:00 a.m. to 10:00 p.m. Diane S. asked if these hours of operation were for the business or the road? Barbara F. stated these hours were for his earth moving permit in order to be able to move the material onto his road. Diane asked if he had to pay additional money for the review of his business because that is another issue? Right now we are reviewing an after-the-fact permit for the road. She believed he needed a separate permit for his business. She stated it was two separate issues dealing with an after-the-fact permit and a new business.

Attorney Keating asked if a bond was required? Roger A. stated yes, a bond was required for the reclamation of the area. Mr. Richardson asked if the bond was for the gravel pit? Roger said it was to be certain the area would be restabilized per the plan. Roger added that there would be a time frame placed on the re-stabilization plan and if in that time frame it wasn't completed the Town would use the bond money to do it themselves. Roger said that is why it's important that Mr. Richardson have a good idea when the re-stabilization would be completed. Mr. Richardson stated the permit was good for three years. He felt if he had to put up bond money then he should have three years to complete the project.

Attorney Keating stated that he had sat through several reviews of different applicants applying for earth moving and gravel extraction permits. He stated that there was much discussion regarding opening minimal amounts of ground and then covering up the exposed area quickly. He said that it seemed to him that with an operation of this size, a small piece would be opened up and then covered up and then another area opened up and then covered up over a three year period to prevent erosion. Roger A. agreed and noted that under §105-39.G(1) it stated that "The smallest amount of bare ground shall be exposed for the shortest time feasible." He believed some of the excavated area would need to be covered as soon as possible and as the project progressed other areas would need to be restabilized as the project went along. Roger noted that in one area Mr. Richardson had already begun to restabilize it with pine chips. Roger told Mr. Richardson it was important he had a time frame for the road and that he needed to restabilize the embankments as he went along.

Diane S. stated that with respect to his business she wanted it noted that Mr. Richardson wasn't to have more than 3 unregistered vehicles on his property. Barbara F. stated they were not reviewing an application for a business right now. Mr. Richardson stated that he did not see how the Town could limit the number of unregistered vehicles on his property, they are out of sight. Diane stated that it was the law or it would be classified as a junkyard and would have to be reviewed as such. Mr. Richardson stated he would then file for a junkyard permit. He asked if the law pertained to three unregistered business vehicles or three personal vehicles? Maggie M. stated it did not matter. Diane said it was referring to motor vehicles. Mr. Richardson stated his vehicles were 1000 feet from the street. Maggie noted a junkyard was not allowed in the Shoreland Zone. CEO McDonough gave the board a copy of the State's junkyard laws to review. It

addressed that there could be no more than two unregistered vehicles on site or it would need a permit and there were very strict regulations that one had to meet through the State as well as the Town.

Roger A. getting back to the subject of earth moving / roadway stated Mr. Richardson needed the erosion and sedimentation plan calculations. Madge B. stated there also needed to be the distance to the wetland area. Roger said a security bond would be needed and Mr. Richardson would need to get a figure as to how much it would cost to restabilize the area. Attorney Keating wanted the restabilization plan addressed, showing the least amount of time for the exposed areas to remain uncovered. Roger agreed and stated that would be readdressed at the final review. Roger said without a time frame as a condition the Town would not be able to enforce the re-stabilization plan. Roger reminded Mr. Richardson the silt fence along the waterway would have to be maintained to protect the area.

Roger A. asked with respect to the proposed business, what would the actual business entail? Mr. Richardson stated the business name is Richardson Trucking and Logging. He said he does logging, excavation, trucking, foundations, fire wood and tree farming. Roger asked if it was being conducted in one area or on the entire property? Mr. Richardson stated his entire property.

Mr. Richardson stated he wanted to add junkyard to his business. Roger reminded him that if he applied for a junkyard he would have to abide by all provisions for a junkyard. Roger said there would have to be an impervious area so the oil didn't go into the ground. There would have to be a plan for waste products. Roger said there was a lot that was required of a junkyard and wanted Mr. Richardson aware of that. Mr. Richardson stated he could not have a condition that he could only have three unregistered vehicles on his property. Maggie M. stated that it was actually more than two. She said that three or more would constitute an automobile graveyard.

CEO McDonough stated there were two definitions under the State guidelines, automobile graveyard and junkyard. A junkyard means a junky yard. Automobile graveyard means, 'Yard, field or other outdoor area used as a place to store three or more unregistered vehicles.' He stated that it said an automobile graveyard does not include an area used for temporary storage of vehicles or vehicle parts by an establishment or place of business that primarily makes repairs to render a motor vehicle serviceable. Maggie felt that would be an autobody shop. Maggie thought it would be easier for Mr. Richardson to register his vehicles. Diane stated he could just move any of the vehicles in excess of two. Mr. Richardson stated he had three pieces of property so he would just move them around so he could have six vehicles, two on each. Diane said that that would work, two on each. Diane said that she was concerned with the fact that now he has four unregistered vehicles which could lead to six which could lead to eight. She wondered if the board should be concerned. Mr. Richardson replied that boys needed their toys. Diane said that that was fine but he just should register them so it wouldn't be a problem. Mr. Richardson said he believed he had enough property that if he had to move them around that was what he would do. Mr. Richardson started accusing his neighbor of having unregistered vehicles.

Roger A. read an exemption listed in the State's Statutes regarding automobile graveyards. It read as follows: "An area used for storage of operational farm tractors, related farm equipment, log splitters, log tractors or other vehicles exempted under Title 29A, Chapter 5." Mr. Richardson asked if that meant excavator, dozer, front end loader and all that type of equipment. Diane thought those would be exempt. She said that he had said he had trucks that were unregistered. Mr. Richardson stated he did have trucks unregistered. He said he had two large trucks he used for parts. Diane stated that two were fine. Mr. Richardson stated he had more than that. He said he had three lots and he could move them around to each lot to keep the board satisfied. Diane said that she was just telling him what the law said and what was and was not allowed.

Roger A. stated there was a provision that he could keep them on site providing after 180 days they are moved. Madge B. thought the first thing the board needed to know was the number of vehicles for the business, where are they stored, what happens to the oils and fuels when the vehicles are serviced. She said what the board normally requires is a sketch plan showing where they will be parked. She said the plan before the board didn't show Mr. Richardson's home and it was her understanding that some of the vehicles are stored near the house. Mr. Richardson stated he worked on all of them at the house. Madge believed the board needed a sketch plan that included the location of Mr. Richardson's home, the garage used to service them, where they are parked, etc. Maggie M. stated that Mr. Richardson had stated that the shop to work on the vehicles was at his house at this time, she wanted to know if that would change in the future. Mr. Richardson stated yes, if the economy gets better he is going to build a new garage. Maggie believed that would make the new garage part of the business so it should also be on the plan.

Attorney Keating stated the primary reason he and his client, Ms. Thompson, were at the meetings was initially because of the earth moving operations and rock crushing which was causing excessive noise for much of the day. Ms. Thompson's concern is to avoid excessive noise behind her house. He stated that was why they have come to all the reviews. Attorney Keating stated they were not trying to make life difficult. Mr. Richardson loudly stated he could make noise from 7:00 a.m. to 10:00 p.m. He stated he worked from 7:00 a.m. to 4:00 p.m. Attorney Keating stated he and his client were not concerned with most areas on his property and what he was going to do, they were only concerned with the area directly abutting Ms. Thompson's property. They would like to know what if anything was going to be done in that area but it seemed Mr. Richardson was reluctant to state what was going to be done and where. Attorney Keating was not sure how the board was going to address it but that area was his clients only concern which would be a steady flow of heavy equipment back and forth behind her house all the time. Mr. Richardson stated again that he believed he could go back and forth all he wanted from 7:00 a.m. to 10:00 p.m. Attorney Keating also stated there was a question if this area was in the Shoreland Zone and if so what could take place in that area. Attorney Keating stated that all the businesses Mr. Richardson was proposing did not qualify as a home occupation by definition. He believed that if only home occupations were allowed in the Shoreland Zone then the one thing that was precluded was heavy traffic. He did not see where occasional traffic would be an issue but a constant back and forth of trucks he believed would be an issue. He said that if there were 15 vehicles a day driving over that road creating a lot of noise and dust it would be an issue for Ms. Thompson.

CEO McDonough thought that once Mr. Richardson's business intentions were addressed and the board reviewed the ordinance that a condition could be place on the permit such that all business would be conducted wholly outside of the Shoreland Zone. He believed that would eliminate a constant back and forth in the area in question. He said to eliminate any high volume of traffic it should state vehicular traffic would be conducted wholly out of the Shoreland Zone except for what is normally considered commuting to work. Mr. Richardson did not agree, he believed he could do his business between the hours of 7:00 a.m. and 10:00 p.m. Ms. Thompson stated this was the problem, she did not feel Mr. Richardson was willing to work with the board with respect to her concerns with the possible noise produced by his business. Mr. Richardson stated he may use the road only occasionally and maybe not at all in the winter but he did not feel he had to be limited to what Ms. Thompson wanted. Mr. Richardson added that he could make noise up to 60 dB if he wanted to. Ms. Thompson stated that was equivalent to loud laughter, she said she got this information from OSHA. Mr. Richardson and Ms. Thompson continued to discuss loudly and Mr. Richardson used some inappropriate language.

Madge B. and Roger A. were trying to figure out the distance from the road to the wetland noted on the plan. CEO McDonough said that behind Ms. Thompson's house was the Shoreland Zone so in his opinion Mr. Richardson could not conduct his day to day business in this area because it wasn't allowed. CEO

McDonough pointed out what area on the plan the business would be allowed. Roger A. agreed. CEO McDonough did not believe the board could stop all traffic in the Shoreland Zone. Roger A. thought that a condition of the permit would be no heavy traffic in the area behind Ms. Thompson's house on a daily basis. Mr. Richardson stated that CEO McDonough stated he could use the road unrestricted. CEO McDonough stated that they could not restrict regular commuting traffic. Roger stated the board could restrict heavy traffic. Mr. Richardson asked what would be considered heavy? He thought Ms. Thompson would consider two vehicles a day heavy and he might consider two vehicles an hour heavy. Barbara F. asked why the board could restrict vehicular traffic on a road such as Rte. 11 but then couldn't restrict it on a road such as this? CEO McDonough stated the board could not stop it. Barbara agreed but again stated they had the ability to restrict the number of vehicles which they did on the previous mineral extraction permit approval. CEO McDonough stated common sense had to be used. He felt that if all of a sudden Mr. Richardson is driving a dump truck up and down the road to tick off neighbors and he goes out and documents that and it ends up in court in front of a judge, the judge would say it looks like a duck, it walks like a duck, it is a duck. Or the judge could say it was all part of a normal commute. The judge will use his common sense. Roger agreed, he felt like 15 trucks a day would be considered heavy traffic and would not be allowed. Mr. Richardson said what if he had 15 loads he needed to move one day and then none for two days. CEO McDonough stated that was conducting business, it was not commuting, and he would have to use the main road to enter his property. Mr. Richardson asked what if he was doing a maintenance day and every truck he had was going in and out of his shop? CEO McDonough stated that his maintenance will be taking place in the new building that he just received a permit for. Mr. Richardson stated yes, eventually. CEO McDonough stated again the maintenance was part of his business so it should be accessed from the main road. Mr. Richardson noted that the main road was closer to Ms. Thompson's house than his new road would be. Maggie M. stated that that might be the case but then nothing would be in the Shoreland Zone if he used the main road, so the traffic he generated wouldn't be restricted. CEO McDonough asked if where Mr. Richardson currently parks his equipment is in the Shoreland Zone? Madge stated they didn't know at this time. Roger thought looking at the plan that the house would be greater than 250 feet from the high water mark.

CEO McDonough stated if his home and the new garage are not in the Shoreland Zone then he didn't feel the location for his business would be a problem. He said the fact that the new road is in the Shoreland Zone and Mr. Richardson wants to use it for business purposes, that was a problem. He thought he would have to conduct anything associated with his proposed business out of the Shoreland zone. Mr. Richardson stated the purpose of the new road was for the business. CEO McDonough stated that is a problem. Mr. Richardson stated he did not see why there is a problem for the road now? Barbara F. stated because he didn't come in for a permit from the Town prior to beginning the road the Town had no way of knowing that there might be a problem. Diane S. said there were very few businesses that are allowed in the Shoreland Zone. CEO McDonough stated that Mr. Richardson's grandfather operated his business out of the existing home so that could be considered a grandfathered use but he was not conducting business in the Shoreland Zone. You cannot conduct business in the Shoreland Zone. Mr. Richardson stated he could commute through the Shoreland zone. CEO McDonough stated absolutely but anything more than a normal commuting use will be a problem. Barbara F. asked how this could be established. CEO McDonough thought it wouldn't be hard to do. He said when it becomes obnoxious I will agree it isn't a normal commute.

Roger A. stated that he wanted to hold a Public Hearing for the business at the next meeting. A Notice to Abutters would be mailed as well. Diane S. reminded Mr. Richardson that an automobile graveyard or junk yard was not allowed in the Shoreland Zone. Mr. Richardson laughed and stated it was not a problem. He pointed out where his vehicles were stored and noted that it looked like Jolly John's.

Madge B. asked if there was a building permit for the new garage? CEO McDonough stated yes. She

thought the board should have the location of the new garage on the plan. CEO McDonough stated his plot plan didn't show much of what the board needed so he agreed it would be best to have a sketch plan showing all the business. CEO McDonough explained to Mr. Richardson what the board was asking for with respect to the location of the proposed garage and existing home.

Roger A. asked Mr. Richardson if he would have all the information requested for the next meeting. Mr. Richardson stated that he believed he would. Mr. Richardson asked if there was anything else that was needed. Diane S. stated an application should be filled out for the business. Barbara F. stated she would mail him an application. Roger stated that Mr. Richardson could bring in a sketch plan that he drew for his business; he didn't need an engineer to place the buildings on a plan.

**A Public Hearing for the business will be held on Tuesday, January 26<sup>th</sup> at 7:00 p.m. A Notice to Abutter shall be mailed as well.**

Nothing further was discussed.  
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**Best Possible Location – Replace Existing Structure – Map 44, Lot 31 (206 Silver Lake Road) – Alan & Linda Durant, Applicants**

Randy Couch is representing the applicants and was present for the review of their application.

Mr. Couch stated the applicants wanted to replace the existing structure, keeping it in the same location, using the existing foundation. He provided the board with a sketch plan of the proposed building and a copy of the Subsurface Wastewater Disposal System Application, done by John Large, SE #7, dated 4/24/92.

Mr. Couch stated the existing camp was 20' x 22'. Roland L. asked if the existing foundation was a full foundation. Mr. Couch stated yes. Madge B. asked the location of the well and septic system. Mr. Couch pointed out both on the plan, noting the leachfield were across the road and the well was in the basement.

**Roger A. stated a Notice to Abutters would be mailed. A site inspection will be conducted on an individual basis due to time constraints this time of year.**

Nothing further was discussed.  
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**OTHER:**

Diane S. believed Mr. Richardson needed to fill out an application for his proposed business. The existing review should only be for the after-the-fact earth moving permit. She thought he should have to pay the CUP fee as well. She said they were two separate issues. He paid for his after-the-fact permit, this is a new permit.

Roland L. stated he did not disagree with that. He did state that he felt Diane made harassing comments to the applicant. He did not feel it was what she said but the tone she used. Diane stated that Roland was entitled to his opinion. Diane pointed out that she did not like the fact Mr. Richardson was allowed to speak to Ms. Thompson in the manner he did, using the F word. Maggie M. and Barbara F. both found Mr. Richardson's behavior very inappropriate.

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**Growth Permit(s) - There are permits available.**

***The Planning Board meeting ended at 10:05 p.m.***

Respectively submitted, Barbara Felong, Land Use Secretary

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

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, February 9, 2010**

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.

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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.**

**Minor Subdivision – Split parent lot within five years of last division – Map 8, Lot 55A (Garland Road) – Patrick Frasier, Applicant**

Mr. Frasier was before the board for the review of his application. Nancy Wakefield of Real Estate 2000 was also in attendance for the review.

Mr. Frasier began by reviewing the final plan for the property split. The new lot, shown as Lot #3, will be 80,590 square feet in size and have 200 feet of road frontage on the Garland Road. He noted that the side lot line had been adjusted from the preliminary plan so it would follow the existing drainage ditch on the property.

He stated the existing home is almost completed. Mr. Frasier pointed out the test pit locations on Lot 2 and noted that Lot 1 has an existing home and leach field. Mr. Frasier had a copy of the soils report for the test pits. Roger A. said a copy needed to be submitted to the board members.

Roger A. stated the contour intervals needed to be put on the plan for Lot 2. Barbara F. stated that she believed Roger had told Mr. Frasier he only needed the contours for Lot 3. Madge B. agreed and reviewed the minutes from the previous meeting. Madge read from the minutes, “Mr. Frasier asked about the topography. Roger A. stated the 7 ½ was all that was required. Mr. Frasier asked if he needed the topo for the entire 14 ½ acres or just the new lot. Roger thought just the new lot at this time.”

Roger A. stated a U.S.G.S. was needed for the entire lot as well. He said that he meant to have Lot 2 done as well. He knew Lot 1 has been in existence for some time so that one did not need any additional information. He also needed the County Soils Survey for the subdivision.

Roger A. asked about the easement for the septic. He said it specifically stated it was for “the construction and maintenance of a leach field serving up to three (3) single family, four (4) bedroom residences on said remaining land of Grantors.” Roger asked if this was for one leachfield that served three single family four bedrooms homes? Mr. Frasier pointed out the area it was describing, it was the gravel driveway. Mr. Frasier stated he could put up to three leachfields for a four bedroom home in different areas along the easement. Roger stated it was confusing because it stated the construction and maintenance of “a” leachfield serving up to three. He believed this meant one system serving up to three homes. Mr. Frasier stated it is his understanding it was for individual systems. He said this will only be used if he needs it because of the soils. He said because he didn’t the soils on the property when he bought it, he added the easement to be sure he would be buying a buildable lot. He said this is why he had the lawyer create the easement. He stated that he recently found out the soils were no problem. For him, this was an insurance policy at the time to make sure the area was buildable.

Roger A. stated the board would have to know the easement would not be located on Lot 3. He said there wasn't enough area for the lot to house an easement. He explained the easement is subtracted from the acreage and at this time the lot is at the minimum required for a buildable lot in Shapleigh. Mr. Frasier stated the easement isn't located on new lot, it is located on the abutting property, Lot 1. Roger said there needed to be a note stating the easement is not located on Lot 3. Mr. Frasier stated again the easement is on a different lot. Roger said it did not state this in the easement. Mr. Frasier stated that was incorrect, he read from the easement which stated, "an easement for the benefit of remaining land of Grantors to be conveyed this date to Patrick Frasier. Said easement shall encumber that portion of the above-described premises *which abuts the easterly sideline of said remaining land of Grantors and which includes the existing driveway running from the Garland Road along the easterly sideline of said remaining land of Grantors*" Mr. Frasier pointed out the area it described on the final plan.

Mr. Frasier stated again it was not part of Lot 3. Mr. Frasier asked if a note should be placed in the deed? Madge B. thought if it was noted on the plan any board would see it. She said a board does not always see the deed but they do review the plan. Mr. Frasier stated the information will also be placed in the deed.

Roger A. was also concerned with using one system for three homes. He would like to know what type of system would be used. Mr. Frasier stated that technically this could happen but that was not his plan. He said he also wanted the easement in case he had a drainage issue or any other issue he could access or use the road to take care of the problem. Roger said he understood but he had an issue with one system for three homes, it would have to be extremely large. CEO McDonough agreed he would have a problem with one system for three homes. He said he would be concerned with if the system failed and you had three homes on it, no one would want to pay to have it fixed so it could stay failed for a long time until the town did something about it. He said if this type of system was allowed he would want an agreement, similar to a road agreement to cover the cost of repair.

Mr. Frasier stated he would have the lawyer reword the document to state it was for three separate systems, not a single system. Diane S. stated she believed some banks would not want to finance a shared system, she noted that banks do not want to finance homes with a shared well either. She noted an experience she had trying to sell a home she owned, it was hard to sell because of the shared well. She thought Mr. Frasier should check with the local banks if he planned on putting in a shared system.

Nancy Wakefield stated that she believed the lawyer wrote it incorrectly and she would speak to him to make the correction so talks about separate leachfields. Mr. Frasier stated to correct the easement would be less costly for him than adding something to the plan. Roger A. stated again the easement could not be part of Lot 3, he read from §89-26, "Land not suitable for development", C. "Land which is part of a right-of-way or easement, including utility easements." Mr. Frasier stated he understood but said again it was not on Lot 3. Roger felt that if he put a system in large enough for three homes it would encroach into Lot 3.

Mr. Frasier stated he would reword the easement. Diane S. asked again if he planned on using separate systems? Mr. Frasier said yes, he wanted each lot to have its own septic system. He said the easement was a backup plan in case the soils were not adequate to hold a leachfield. Mr. Frasier stated that if his engineer believes the soils are good and he doesn't need the easement he will not use it. He pointed out the existing test pits and at this time he thought worse case scenario would be one leachfield on the property where the easement is.

Mr. Frasier asked exactly what additional information needed to be on the plan and he wanted to know if the board had a problem with the engineer writing it on the mylar instead of creating a new mylar? Roger A. had no issue with this because there was no way to change a recorded mylar.

Diane S. asked about the waivers. She did not see them on the plan. Mr. Frasier stated he would place them on the plan as well.

**The public hearing closed at 7:28 p.m.**  
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**After-the-Fact Conditional Use Permit – *Earth Moving* – Map 11, Lot 28F (41 Newfield Road) – Nicholas Richardson, Applicant**

Nothing further was discussed.

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

**The minutes from Tuesday, January 26, 2010 were accepted as read.**

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Mr. Frasier had a preliminary plan showing a division of ‘Lot 2’ of the parent lot. Lot 2 currently consists of 14.66 acres. Mr. Frasier is cutting out a lot which will be 80,644 square feet, with 200 feet of road frontage on the Garland Road.

Board members reviewed the preliminary plan.

Mr. Frasier noted there was a fire hydrant across the street with a cistern. Mr. Frasier stated he had spoken with Fire Chief Duane Romano and he had no issue with Mr. Frasier using the hydrant for fire protection. He stated in the future he could put sprinkler systems in any additional divisions, whatever the board preferred. Roger A. wasn’t sure because no one currently inspected in-home sprinkler systems but with a cistern the Town inspected them or was supposed to. Mr. Frasier stated he would donate money to help manage the cistern if the board wanted him too.

Madge B. noted there were no test pits on the plan. Mr. Frasier stated he did have the test pits and they would be on the final plan.

Mr. Frasier asked about the topography. Roger A. stated the 7 ½ was all that was required. Mr. Frasier asked if he needed the topo for the entire 14 ½ acres or just the new lot. Roger thought just the new lot at this time.

Roger A. stated the soils were needed for the lot.



Mr. Frasier asked Roger A. if he wanted him to talk to Duane Romano regarding the cistern? Roger read §89-30.B. He said as long as Mr. Romano is o.k. with this lot using the cistern he had no problem with it.

Roger A. noted he probably wanted to waive underground utilities in this location. Mr. Frasier stated he wanted to waive stone monuments as well.

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

**A Notice to Abutters will be mailed and a Public Hearing held on Tuesday, February 9th at 7:00 p.m.**

Roger told Mr. Frasier that the board needed a copy of the final plan seven days prior to the next meeting.

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**Growth Permit(s) - There are permits available.**

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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**

**Tuesday, February 9, 2010**

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.

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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.**

**Minor Subdivision – Split parent lot within five years of last division – Map 8, Lot 55A (Garland Road) – Patrick Frasier, Applicant**

Mr. Frasier was before the board for the review of his application. Nancy Wakefield of Real Estate 2000 was also in attendance for the review.

Mr. Frasier began by reviewing the final plan for the property split. The new lot, shown as Lot #3, will be 80,590 square feet in size and have 200 feet of road frontage on the Garland Road. He noted that the side lot line had been adjusted from the preliminary plan so it would follow the existing drainage ditch on the property.

He stated the existing new home on the new lot is almost completed. Mr. Frasier pointed out the test pit locations on Lot 2 and noted that Lot 1 has an existing home and leach field. Mr. Frasier had a copy of the soils report for the test pits. Roger A. said a copy needed to be submitted to the board members.

Roger A. stated the contour intervals needed to be put on the plan for Lot 2. Barbara F. stated that she believed Roger had told Mr. Frasier he only needed the contours for Lot 3. Madge B. agreed and reviewed the minutes from the previous meeting. Madge read from the minutes, “Mr. Frasier asked about the topography. Roger A. stated the 7 ½ was all that was required. Mr. Frasier asked if he needed the topo for the entire 14 ½ acres or just the new lot. Roger thought just the new lot at this time.”

Roger A. stated a U.S.G.S. was needed for both new lots. He knew Lot 1 has been in existence for some time so that one did not need any additional information. He also needed the County Soils Survey for the subdivision.

Roger A. asked about the deed easement for future septic systems. He said it specifically stated it was for “the construction and maintenance of a leach field serving up to three (3) single family, four (4) bedroom residences on said remaining land of Grantors.” Roger asked if this was for one leachfield that served three single family four bedrooms homes? Mr. Frasier pointed out the area it was describing, it was the gravel driveway. Mr. Frasier stated he could put up to three leachfields for a four bedroom home in different areas along the easement. Roger stated it was confusing because it stated the construction and maintenance of “a” leachfield serving up to three. He believed this meant one system serving up to three homes. Mr. Frasier stated it was his understanding it was for individual systems. He said this area will only be used if he needs it because of the soils. He said because he didn’t know the soils on the property when he bought it, he added the easement to be sure he would be buying a buildable lot. He said this is why he had the lawyer create the easement. He stated that he recently found out the soils were no problem. For him, this was an insurance policy at the time of purchase to make sure the area was buildable.

Roger A. stated the board would have to know the easement would not be located on Lot 3. He said there wasn't enough area for the lot to hold an easement. He explained the easement is subtracted from the acreage and at this time the lot is at the minimum required for a buildable lot in Shapleigh. Mr. Frasier stated the easement isn't located on the new lot; it is located on the abutting property, Lot 1. Roger said there needed to be a note stating the easement is not located on Lot 3. Mr. Frasier stated again the easement is on a different lot. Roger said it did not state this in the easement. Mr. Frasier stated that was incorrect, he read from the easement which stated, "an easement for the benefit of remaining land of Grantors to be conveyed this date to Patrick Frasier. Said easement shall encumber that portion of the above-described premises *which abuts the easterly sideline of said remaining land of Grantors and which includes the existing driveway running from the Garland Road along the easterly sideline of said remaining land of Grantors*". Mr. Frasier pointed out the area it described on the final plan.

Mr. Frasier stated again it was not part of Lot 3. Mr. Frasier asked if a note stating it is not located on Lot 3 should be placed in the deed? Madge B. thought if it was noted on the plan any board would see it. She said a board does not always see the deed but they do review the plan. Mr. Frasier stated the information will also be placed in the deed.

Roger A. was also concerned with using one system for three homes. He would like to know what type of system would be used. Mr. Frasier stated that technically this could happen but that was not his plan. He said he also wanted the easement in case he had a drainage issue or any other issue he then could access or use the road to take care of the problem. Roger said he understood but he had an issue with one system for three homes, it would have to be extremely large. CEO McDonough agreed he would have a problem with one system for three homes. He said he would be concerned with if the system failed and you had three homes on it, no one would want to pay to have it fixed so it could stay failed for a long time until the town did something about it. He said if this type of system was allowed he would want an agreement, similar to a road agreement, to cover the cost of repair.

Mr. Frasier stated he would have the lawyer reword the document to state it was for three separate systems, not a single system. Diane S. stated she believed some banks would not want to finance a shared system, she noted that banks do not want to finance homes with a shared well either. She spoke of an experience she had trying to sell a home she owned, it was hard to sell because of the shared well. She thought Mr. Frasier should check with the local banks if he planned on putting in a shared system.

Nancy Wakefield stated that she believed the lawyer wrote the easement incorrectly and she would speak to him to make the correction so it describes separate leachfields. Mr. Frasier stated to correct the easement would be less costly for him than adding something to the plan. Roger A. stated again the easement could not be part of Lot 3, he read from §89-26, "Land not suitable for development", C. "Land which is part of a right-of-way or easement, including utility easements." Mr. Frasier stated he understood but said again it was not on Lot 3. Roger felt that if he put a system in large enough for three homes it would encroach onto Lot 3.

Mr. Frasier stated he would reword the easement. Diane S. asked again if he planned on using separate systems? Mr. Frasier said yes, he wanted each lot to have its own septic system. He said the easement was a backup plan in case the soils were not adequate to hold a leachfield. Mr. Frasier stated that if his engineer believes the soils are good and he doesn't need the easement he will not use it. He pointed out the existing test pits and at this time he thought worse case scenario would be to have one leachfield on the property where the easement is.

Mr. Frasier asked exactly what additional information needed to be on the plan and he wanted to know if the board had a problem with the engineer writing it on the Mylar instead of creating a new Mylar? Roger A. had no issue with this because there was no way to change a recorded Mylar.

Diane S. asked about the waivers. She did not see them on the plan. Mr. Frasier stated he would place them on the plan as well. He said he would have the Mylars remade to include the waivers. Diane noted that the three waivers listed were for no sidewalk, granite monuments, and underground utilities. Mr. Frasier stated correct.

Mr. Frasier asked again what additional information the board needed. Diane S. asked about fire protection. Is there a fire pond in the area? Mr. Frasier stated he had spoken to the Fire Chief and he had no issue with him using the existing cistern that was across the street. He believed it was a 20,000 gallon tank. Diane asked if he had a letter stating it was o.k. for him to use it. Mr. Frasier stated he could get a letter. Roger A. stated that under §89-15 it stated that a written statement of approval from the Fire Chief be submitted.

Madge B. asked if the stream crossed the lot? Roger A. stated it did cross the lot and ran along the deep ditch on the Garland Road. Mr. Frasier stated there were two new culverts on the road to handle the runoff from the stream and high water. He added that he put in an oversized culvert for the driveway because of all the water. He said he spoke with the Road Commissioner before putting the culvert in and he said the volume of water was like a 50 year storm so he put in something that would handle it. He said it cost three times more than the normal culvert but it is handling the water runoff no problem, even during heavy rain.

Madge B. asked if the water went in a culvert under the road onto the other side? Mr. Frasier said yes. He said the water went down a 6 to 8% grade and then ran along the road. He said whatever he did he would not increase the water volume. He said on one part of the property he would have to add stone to slow the flow of water down if he built in that area. Madge agreed. Mr. Frasier pointed out on the map how the water currently flowed on the property.

Roger A. stated the board members would need the following from Mr. Frasier:

- Under §89-10, “The sketch plan shall be accompanied by a copy of a portion of the U.S.G.S. topographic map of the area showing the outline of the proposed subdivision.”
- The soils report.
- Place the waivers on the plan.
- Redo the easement to address individual systems instead of a shared system.  
Note that the easement does not include part of the new Lot 3, which is 80,590 sq. ft.
- A letter from the Fire Chief regarding the allowed use of the cistern.
- Put the name of the subdivision on the plan.

Roger A. said that he had no problem with the requested waivers.

Mr. Frasier asked if he submitted the above if the board thought the plan could be approved at the next meeting? The board members did not see anything further that would be needed.

Mr. Frasier asked if the engineer could address the easement on the plan itself? The board had no problem with that.

Nothing further was discussed.

**The public hearing closed at 7:28 p.m.**

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

The minutes from Tuesday, January 26, 2010 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. In addition, Attorney Kenneth Keating was present representing Margery Thompson, a direct abutter to Mr. Richardson's property. Ms. Thompson was also in attendance.

Mr. Richardson provided the board with a Drainage Report for the relocated access road / earth moving permit. He also provided a Project Details Narrative that covered the erosion and sedimentation control plan for the acreage that has been and will be disturbed. In addition, plans were received prepared by Thomas Milligan, Jr. of Saco, Maine, PE #3544, engineering stamp dated 2/8/10. The plans are entitled, Plan & Profile Access Road for Richardson Trucking & Logging (RT&L) in Shapleigh Maine (Sheets 1 and 2); Plan Access Road for RT&L in Shapleigh, ME (Sheet 3); Site Plan Access Road for RT&L in Shapleigh, ME (Sheet 4); Details & Erosion Control Notes Access Road, Shapleigh Maine for RT&L; Details & Erosion Control Notes Access Road, Shapleigh, ME for RT&L; General Notes, Private Way, Shapleigh, Maine for RT&L. Board members took the time to review the entire package of materials presented.

Members determined where the Shoreland Zone was located to be certain no activity took place in this area that wasn't allowed in the Zoning Ordinance. Madge B. noted that no commercial or industrial activity is allowed in the Shoreland Zone. She stated he would be able to use his access road to travel on but he would not be allowed to process any earth in the Shoreland Zone.

Roger A. asked if there was any additional excavation to be done? Was additional excavation taking place just to take care of the sloping? Mr. Richardson stated yes, to create the grade that needs to be there.

Roger A. noted that the Project Details Narrative covered both the earth moving application as well as the stockpile areas for the business.

Diane S. told Mr. Richardson to be aware that no fertilizer was allowed in the Shoreland Zone. She was referring to the fact that in the reclamation plan it talks about the use of fertilizer. Mr. Richardson stated that he would not be fertilizing in that area. He said the plan was just a computer generated plan that everyone used. Madge B. asked if any fertilizer could be used in the Shoreland Zone? CEO McDonough stated within 100 feet of the high water mark nothing could be used. Diane thought he might be able to use something natural. CEO McDonough stated no, nothing can be used within 100 feet. He said natural fertilizer is just as bad as man made if it goes into the lake.

Roland L. asked if the narrative described what he could not do, as well as what he was going to do? Mr. Richardson said yes, the Project Details Narrative covered anything that might take place.

Roger A. stated that in the narrative, on the 9<sup>th</sup> page, #1 read "Those areas undergoing actual earth removal/construction will be left in an untreated or unvegetated condition for a minimum time." He said that these areas needed to be stabilized as soon as possible. Mr. Richardson stated that after the snow melted, in the spring, he would begin to stabilize the area.

Roger A. read #2 on the same page, "Upon clearing and grubbing the roads, hay bales and/or silt fences will be installed and staked across the ditch lines at 100 foot intervals on all grades greater than 3 percent."

Roger A. asked if there were any comments? Attorney Keating, looking at the plan said he believed the storage of material would be at the other end of the property, not behind Ms. Thompson's home. Roger pointed out the 2 ½ acre area on the plan. Mr. Richardson also pointed out the storage areas on the plan.

Attorney Keating stated he had several issues he wanted addressed. One was the location of the storage areas which are on the new plan. Another is to be sure no further processing of materials is done behind Ms. Thompson's home. He said the third thing is he felt the language was vague with respect to a time table to restabilize the area excavated behind Ms. Thompson's home.

Roger A. did not feel it was vague based on the fact that it says when any area is completed it needs to be stabilized as soon as possible. CEO McDonough pointed out #8 on page 9 which states in part, "If final seeding of the disturbed areas is not completed by October 15<sup>th</sup> of the year of the completed construction, then these areas will be graded and smoothed and prepared to be seeded to a winter cover crop of rye...." CEO McDonough stated it did not specify a year but the board could. Roger said it specifies the year of construction. Roger also read #10 of the same page which reads, "All disturbed areas and side slopes which are graded with no further construction to take place shall be seeded (or mulched if during winter months) using the specified final seed mixture as soon as possible." Roger felt that this addressed the reclamation of the area.

Attorney Keating stated the reason he thought it was vague was because the area behind Ms. Thompson's home was excavated last summer and assuming there is no further disturbance of soil does that mean it has to be reclaimed. Roger A. stated if the slope behind Ms. Thompson's home is complete, if nothing further is being taken from that area, then the area needs to be reclaimed as soon as possible. Roger thought the end of May would be a good date. Mr. Richardson didn't feel it could be done by that time due to the spring mud season. Roger noted that according to the plan Mr. Richardson presented it states even if it is winter the area will be stabilized with hay immediately. Mr. Richardson stated he did not have all this information until today (speaking of the plans he provided). Roger understood, citing this was an after-the-fact permit and if the permit gets approved today, the board will decide a date at which time the area behind Ms. Thompson's house will be reclaimed.

Roger A. stated it is definitely going to be taking place this year. Mr. Richardson thought the best he could do was the end of the year. Roger said it was up to the board what the date would be. Mr. Richardson said he couldn't promise making an earlier date. He spoke of the road he had to build, the piles of earth he had to move, etc. Roger reminded him he could not process the existing material in the Shoreland Zone so if it needed further processing it would have to be moved. Mr. Richardson didn't understand why he would have to move the earth two more times. Roger said the reason is because this is an after-the-fact permit and if he had come before the board initially he wouldn't have the piles in the Shoreland Zone because it isn't allowed. Roger told Mr. Richardson he would abide by the dictates of the Ordinance or he would end up going to court. Roger said again that the Ordinance prohibits any commercial activity in the Shoreland Zone, so gravel will not be processed in the Shoreland Zone. Mr. Richardson stated that the road had to be made. Roger agreed but said again there would be no processing of material in the Shoreland Zone. Mr. Richardson didn't see what the difference was between the activity it took to put the road in and processing gravel. CEO McDonough thought the gravel was already processed. Mr. Richardson stated he needed further stone for pools and drainage. CEO McDonough agreed with Roger that it would have to be done in the General Purpose Zone.

Roger A. stated per the plan Mr. Richardson gave the board it speaks of stabilizing the area as soon as possible. Roger noted that the plan had several options to stabilize, he didn't have to seed the area. Bark mulch could be used. Madge B. asked if silt fences were in? Roger A. said there were some up. Mr. Richardson stated he was going to remove them and put in bark mulch instead.

Roger A. read from the Erosion and Sediment Control Plan, #2, “Those areas undergoing actual construction will be left in an untreated or unvegetated condition for a minimum time. Areas shall be permanently stabilized within 15 days of final grading and temporarily stabilized within 15 days of initial disturbance of the soil. If the disturbance is within 100 feet of a stream or pond, the area shall be stabilized within 7 days or prior to any storm event (this would include wetlands).” Roger said this has to be done a.s.a.p. Mr. Richardson thought this was unreasonable. If he has to move 1000 yards of earth to get rock then move it back it would take time. Roger reminded him again this was after-the-fact and the pile of soil wouldn’t be where it is if he had come to the board first. Mr. Richardson stated there is no runoff on site at this time. Roger said Mr. Richardson created the problem for himself, if he had come in prior to doing it he would have known the limitations on the property. Mr. Richardson stated he got a stop work order back in July of 2009. Roger agreed and said if he had this information to the board prior to now, the areas would already be stabilized. Mr. Richardson agreed.

Roger A. stated the only washed out area he saw was on the road going into the site. The embankments seemed to be in place at this time. Roger noted the area washing out on the plan.

Mr. Richardson talked again about the cost to reclaim the area. Roger A. stated that was not the board’s issue. He should have come to the board before he started the project and it wouldn’t be an issue today.

Roger A. also noted that in the plan it talks about the time period between October 1 through April 15. Under #2, on page 14, it reads “Winter excavation and earthwork shall be done such that no more than 1 acre of the site is without stabilization at any one time.” Roger read #3, “Exposed area should be limited to that which can be mulched in one day prior to any snow event.” Roger said this is best management practices and is standard.

Roger A. asked if there were any concerns or comments with the Project Details Narrative. Attorney Keating stated he was still concerned with deadlines for the reclamation. Roger thought it was pretty specific in the plan that even under winter conditions the areas in the Shoreland Zone needed to be stabilized within 7 days of completion. Mr. Richardson stated the entire area was stabilized with snow. Roger said not according to the plan presented to the board by Mr. Richardson. Roger said he understood that the soil isn’t moving underneath the snow at this time. Roger said an engineer created the stabilization plan, and snow was not listed as one of the things you can use to stabilize an area. Roger read the different ways soil erosion could be stopped at this time. Diane S. read #5 under Mulch Anchoring, “An area shall be considered to have been stabilized when exposed surfaces have been either mulched with straw or hay at a rate of 100 lb. per 1,000 sq. ft. (with or without seeding) or dormant seeded, mulched and adequately anchored by an approved anchoring technique. In all cases mulch shall be applied such that the soil surface is not visible through the mulch.”

Roland L. asked if all this referred to if you were excavating the surface at this time. Diane S. stated the board was dealing with after-the-fact. Roger said there needs to be a final date for the area behind Ms. Thompson’s house, which is adjacent to the Shoreland Zone. Roger said the area needed to be protected during the spring runoff. Madge B. agreed. She said the board was looking at two stages, one is to put in temporary mulch and/or hay bales. Mr. Richardson stated he could not stabilize straight up. He said the embankment was straight up so at this time no matter how much mulch you put on it it won’t stay in place. Madge said she understood. She said Mr. Richardson kept saying he didn’t have the time or money to do the stabilization. Mr. Richardson said there is snow now, it is frozen. Then he said he had to wait until the mud dried up. Madge said she would like to have it completed by June 15<sup>th</sup>. Mr. Richardson didn’t know if he could do that. Madge said if he couldn’t finish the project by June 15<sup>th</sup> he would at least need to have some hay or mulch down. Maggie M. agreed, what if there were heavy downpours in April. Mr. Richardson stated the area has remained stable since last July.

Madge B. said, “Then perhaps it doesn’t have to be done in two stages. Maybe the area needed to be stabilized by October 15<sup>th</sup>?”

Roger A. felt that July 15<sup>th</sup> should be the deadline in the Shoreland Zone. He was not concerned with the other areas. CEO McDonough asked how the board would document the area they wanted stabilized by July 15, 2010. Madge B. said all the land area in the Shoreland Zone. Roger felt the board could use the road benchmarks on the plan. Roger said he did not feel that setting a date of July 15 to stabilize the embankment was asking too much. Madge agreed it should be done as soon as possible.

Mr. Richardson asked if he could leave the piles of earth where they are? Roger A. didn’t have an issue with that, he could move it as he used it on the road. Roger reminded him again they could not be processed where they are at this time. Attorney Keating asked if the stockpiled earth would be removed and used on the road and once the road is completed there will be no piles there. Mr. Richardson said yes. Roger said he believed the timescale for the road was going to be three years. He said that he thought most of the material would be used farther up the road from where it is currently stockpiled, so it would be moved.

Attorney Keating asked if the piles of earth were going to be stabilized using mulch? Mr. Richardson said you mulch around them but the piles themselves don’t get mulched. Roger A. stated loam piles get mulched but not gravel piles. Madge B. agreed.

Attorney Keating asked if the road was being moved per the plan. Roger A. stated right. Mr. Richardson stated he was going to use the gravel piles to make the new road. Attorney Keating asked again if the road which moved on paper would also be moved on the ground? Madge B. stated yes. Roger said again that the gravel won’t be processed in the Shoreland Zone.

Roger A. reviewed §105-39, “Earth removal and filling”. It read in part as follows:

- C. Earthmoving in the General Purpose District. Movement of material in excess of 10 but not more than 50 yards is permitted. Movement of materials from 50 cubic yards to 150 cubic yards requires the approval of the Code Enforcement Officer. Movement of materials in excess of 150 cubic yards requires the approval of the Planning Board. In either case, all relevant performance standards below shall be observed, including binding agreements to guarantee proper reclamation of the site after operations cease.
- D. Earthmoving in Shoreland District. Any filling, dredging or excavation of land above or below the normal high watermark, except earthmoving of less than 10 cubic yards which shall require a permit from the CEO (except as provided above) to ensure proper erosion and sedimentation, shall require a conditional use permit from the Planning Board.
- F. Application for permit. Application for a permit from the Planning Board for excavation, processing and storage of soil, loam, gravel, rock and other mineral deposits shall be accompanied by a plan which shall show:
  - (1) The name and current address of the property involved. **This was provided by the applicant on the application, Nickolas Richardson, 41 Newfield Road, Shapleigh, ME 04076.**
  - (2) The location and the boundaries of the lot or lots for which the permit is requested. **This information is provided on the Site Plan Access Road, done by Thomas Milligan, Jr., P.E. #3544, of Saco, Maine.**
  - (3) The location of all proposed access roads and temporary structures, and the sight distances from all entrances and exits. **This information is provided on the Site Plan for the Access Road done by Thomas Milligan, Jr., P.E. #3544. Site distances seen on the site inspection.**



- (4) The proposed provisions for drainage and erosion control, including drainage calculations. **This information is provided on the Project Details Narrative and Drainage Report, as well as the Details & Erosion Control Notes Access Road Plan and General Notes Private Way Plan provided by Thomas Milligan, Jr., P.E. #3544.**
- (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.) **This information is provided on the Plan & Profile Access Road, Site Plan Access Road, Details & Erosion Control Notes Access Road Plan and General Notes Private Way Plan provided by Thomas Milligan, Jr., P.E. #3544.**

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

- (1) The smallest amount of bare ground shall be exposed for the shortest time feasible. The Planning Board shall set a specific date after which bare ground shall not be exposed. **The area between road benchmark -1 and 4, beginning at the southerly end of the proposed road shall be reclaimed by July 15, 2010 and done per the plans provided. The remaining areas shall be reclaimed per the plans provided and shall be completed within three years of the day of this approval.**
- (2) Temporary ground cover (such as mulch) and temporary runoff filter (such as hay bales in swales) shall be used as required to prevent stream sedimentation. The Planning Board shall set a specific date by which permanent ground cover shall be planted. **The area between road benchmark -1 and 4, beginning at the southerly end of the proposed road shall be stabilized and reclaimed by July 15, 2010. The remaining areas shall be reclaimed per the plans provided and shall be completed within three years of the day of this approval.**
- (3) Diversions, silting basins, terraces and other methods to trap sediment shall be used. **This information is provided on the Plan & Profile Access Road, Site Plan Access Road, Details & Erosion Control Notes Access Road Plan and General Notes Private Way Plan provided by Thomas Milligan, Jr., P.E. #3544.**
- (4) Lagooning shall be conducted in such a manner as to avoid creation of fish trap conditions. The applicant shall submit written approval from the Department of Marine Resources or Department of Inland Fisheries and Wildlife, as applicable, prior to consideration by the Planning Board. **N/A**
- (5) The extent and type of fill shall be appropriate to the use intended. The applicant shall specify the type and amount of fill to be used. **The earth used has been processed from the site and is currently on site for the proposed road.**
- (6) Fill shall not restrict a floodway, channel or natural drainageway. **It shall not as seen on the site plans provided as well as witnessed during the site inspection.**
- (7) The sides and bottom of cuts, fills, channels and artificial watercourses shall be constructed and stabilized to prevent erosion or failure. Such structures are to be designed and built according to the Maine Soil and Water Conservation Commission, Technical Guide, Standards and Specifications. **This information is detailed on the plans provided.**
- (8) Where activities carried out under this article require the removal of existing ground cover, revegetation should be carried out. **This information is provided in the Project Details Narrative provided by Thomas Milligan, Jr.**
- (9) (Reserved)
- (10) Specific plans are established to avoid hazards from excessive slopes or standing water. Where embankment must be left upon the completion of operations, it shall be at a slope not steeper than one foot vertical to four feet horizontal. **There is no standing water and the excessive slopes are addressed on the plans provided and shall be sloped in accordance with the provisions of this Ordinance.**

- (11) No excavation shall be extended below the grade of an adjacent street, except for drainageways, unless 100 feet from the street line. No excavation below the grade of the surrounding land shall be allowed within 100 feet of any side or rear lot line. However, removal of earth material deposits from hills or knolls may be allowed within 50 feet of a side or rear lot line if no excavation below the grade of abutter's properties occurs. **The area excavated below grade, within 100 feet of a lot line, shall be reclaimed by July 15, 2010. The proposed road has been moved so it is not within 100 feet of the adjacent property line.**
  - (12) Sufficient topsoil or loam shall be retained to cover all areas, so that they may be seeded and restored to natural conditions. **There was very limited topsoil prior to excavation. Topsoil used during reclamation shall have to be brought in from off-site.**
  - (13) No existing rock, gravel or sandpit will be extended or expanded until the operator has complied with the provisions of this chapter and obtained a permit therefore. **N/A**
- H. Optional conditions of permit. The Planning Board may impose other reasonable conditions to safeguard the neighborhood and the municipality, which may include those relating to:
- (1) Methods of removal or processing.
  - (2) Days and hours of operation. **Hours of operation are 7:00 a.m. thru 10 p.m., seven days a week.**
  - (3) Type and location of temporary structures. **None.**
  - (4) Routes for transporting material. **Material for road is on site and shall be used on site.**
  - (5) Area and Depth of excavations. **There shall be no additional depth.**
  - (6) Provision of temporary or permanent drainage. **Per the plans provided.**
  - (7) Disposition of stumps, brush and boulders. **The information is provided in the Project Details Narrative and the areas of storage shown on the Site Plan for the Access Road.**
  - (8) Cleaning, repair and/or resurfacing of streets used in removal activity which has been adversely affected by said activity. **N/A, all activity taking place on site.**
  - (9) The need for written approval of soil and erosion and sedimentation plan by a State of Maine licensed civil engineer selected by the applicant for the Planning Board. **A State of Maine licensed engineer provided the plan, Thomas Milligan, Jr., PE #3544, of Saco, Maine.**
- I. Surety and terms of permit.
- (1) 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. The surety bond will be to assure the reclamation plan is completed. **The Applicant shall present a surety amount for approval prior to the commencement of any further work on site.**
  - (2) 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. reviewed §105-59, 'Road, driveways and water crossing.' The applicant will meet the criteria after adhering to the plans provided.*

**Diane S. made the motion to approve the after-the-fact permit per the plans provided with the following conditions:**

1. **The Applicant provides the town with a bond for the reclamation plan in the Shoreland Zone. The stop work order shall not be lifted until the bond is received by and approved by the Board of Selectmen, as well as approved by the Code Enforcement Officer.**
2. **There shall be no processing of material in the Shoreland Zone.**
3. **The area in the Shoreland Zone shall be reclaimed /restabilized by July 15, 2010.**

Diane asked if the remaining area in the General Purpose district should be reclaimed by October 15, 2010? Mr. Richardson stated his road permit was good for three years in the General Purpose Zone. Roger A. said he had no problem with the three years as long as he reclaimed the area as he moved along building the road. Maggie M. asked if Mr. Richardson had to restabilize the areas per the plans he provided. Roger said yes. Maggie asked if he would have to adhere to the erosion measures in the plan which state ‘Those areas undergoing actual construction will be left in an untreated or unvegetated condition for a minimum time. Areas shall be permanently stabilized within 15 days of final grading...’ Roger noted that he won’t be in the Shoreland Zone once that area is restabilized. He will only have the pile of gravel to move but he can’t process it in the Shoreland Zone.

Diane S. asked if the board could set the three year limit from the date of his application which was July of last year? Roger A. stated no, the permit was good for three years from the date of approval.

**Diane S. stated additional conditions of approval are as follow:**

4. **Hours of Operation, 7 a.m. to 10:00 p.m., seven days a week.**
5. **Best Management Practices at all times, per the Project Details Narrative provided by Thomas Milligan, Jr., PE #3544, dated 2/8/10.**

Madge B. stated it would be a good idea to use markers on the plan provided to show where the area was located that needed to be stabilized in the Shoreland Zone. Roger A. agreed. Condition #3 would read as follows: *Using the Plan & Profile Access Road for Richardson Trucking & Logging, Shapleigh Maine, the area between road markers -1 and 4, on the southerly end of the proposed road would need to be stabilized by July 15, 2010.* All board members agreed.

**Roland L. 2<sup>nd</sup> the motion. All members were in favor. Vote 5 – 0, the motion to approve the application was unanimous.**

Members reminded Mr. Richardson he would need a bond prior to operation. He stated he would talk to Road Commissioner Goodwin to see what he believed would be the correct figure. Barbara F. stated that the area the board was concerned with was the area that needed to be reclaimed by July 15<sup>th</sup>. CEO McDonough stated no work could commence until the town had the bond. Members agreed.

Mr. Richardson did not agree with the Board’s condition of no processing of material in the Shoreland Zone. Roger A. and Madge B. both stated that it was in the ordinance and the board did not have the ability to waive anything in the Zoning Ordinance.

Nothing further was discussed.

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**Conditional Use Permit – Richardson Trucking and Logging Business – Map 11, Lot 28F (41 Newfield Road) – Nickolas Richardson, Applicant**

Mr. Richardson was present for the review of his application. In addition, Attorney Kenneth Keating was present representing Margery Thompson, a direct abutter to Mr. Richardson’s property. Ms. Thompson was also present.

Board members reviewed the plans presented which depicted the property, the storage areas, proposed road, parking areas, proposed tree farm location, sawmill location and proposed new building location.

Diane S. asked if there was a sawmill on the property at this time or if one would be coming? Mr. Richardson stated that there was a firewood processor in the sawmill location. Diane asked what a processor was? Mr. Richardson said it cut, split and loads firewood by the use of hydraulic levers.

Diane S. asked how many lots he owned? Mr. Richardson stated four. The lot being approved, the lot his home was on, the lot he rented a house on and he just purchased an abutting lot for a total of four.

Diane S. asked if he knew how many employees he would have? Mr. Richardson said he never knew, it depended on the economy. Madge B. didn't think it was relevant. Diane asked why the board asks others for the number of employees? Madge said that was to determine if there was enough parking on site. Madge said this isn't an issue in this location. There is no space issue. Roger A. agreed, there was plenty of space for parking.

Roger A. pointed out the area that the new building would be going in. Madge B. asked if he was going to put up a barn for cattle? He said yes eventually or for horses. Madge understood that this wasn't part of the business.

Diane S. asked if the business was being permitted on Map 11, Lot 28F? Mr. Richardson stated yes. Diane asked if the grandfathered business was on his house lot? Madge B. said yes.

Diane S. asked what the excavation materials would be that he stored on site? Mr. Richardson stated anything. She asked if he could be more specific. He said no, he didn't want to be limited. She asked if he could give some examples? He said stumps, loam, rocks. She read from the plan where it stated the stockpile area would be for loam, gravel, wood, wood products, logs, firewood, excavated materials. This is why she wanted to know what 'excavated materials' were. She said she was not a logger / excavator so she didn't know what he was referring to. She asked if excavated materials were all of the above or if there was anything else? She mentioned that he had stated he stored granite on site so was this an excavated material? He replied yes. Diane S. asked if sheetrock would be considered something stored on site? Mr. Richardson asked if that was an excavated material.

Roger A. said under General Notes, #18, needed to be addressed. It read, 'The contractor shall take all appropriate precautions to prevent any potential pollution caused by his/her activities, including vehicle fueling, storage of fertilizers or chemicals, etc. The contractor shall have identified procedures for handling potential pollutants and have identified spill prevention and response procedures prior to any activities at the project site.' Roger stated this needed to be complied with. Mr. Richardson stated he would comply with this.

Madge B. pointed out #38 which reiterated what the board had been discussing from the Project Details Narrative. She read it to the board, "Soil disturbance is to be kept to a minimum and all disturbed areas shall be stabilized (with permanent or temporary measures) as quickly as possible."

Roger A. also pointed out #2 which reiterates that *the contractor is solely responsible to see that the work being done is in strict compliance with all codes and is done in accordance with the plans provided.*

Madge B. noted that Roger A. had spoken about asphalt and that he did not want it on site. Mr. Richardson stated he would not have it on site. Roger A. stated that the storage of asphalt was a haz-mat issue. Roger said it would have to be monitored by the DEP because of the oils that leach from it.

Diane S. asked about the unregistered vehicles on site? What was Mr. Richardson going to do with them? He said he would throw them into a trailer box so no one could see them if it was an issue. Diane noted that it wasn't an issue it was written in the Zoning Ordinance that no more than two unregistered vehicles could be on site. Mr. Richardson stated they would go in a trailer box. Diane asked what a trailer box was? Mr. Richardson said a storage trailer.

Madge B. asked if the board knew what the site distance was? Mr. Richardson thought it was on the plan for his original subdivision road, called Not-a-road. Maggie M. stated she noticed at the site inspection that you could see quite a distance in both directions. Madge said she agreed but it should be part of the record what the distance is.

Roger A. began to review the pertinent ordinance chapters.

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

- 105-20** – Applicability of standards; prohibited uses. *This application is a permitted use within the Zoning Ordinance in the General Purpose Zone; no business activity will take place in the Shoreland Zone.*
- 105-21** – Traffic. *The site distances were viewed to meet the minimum distance required in both directions which is 315' at 45 m.p.h., during the site inspection.*
- 105-22** – Noise. *There will be no construction noise between the hours of 10:00 p.m. and 7:00 a.m.*
- 105-23** – Dust, fumes, vapors and gases. *The only emissions shall be from the operating equipment and it shall not go beyond the lots lines.*
- 105-24** – Odors. *The will be no odors produced by this activity beyond the lot lines.*
- 105-25** – Glare. *There is light on the existing building and home. There shall be no additional spot lighting shining beyond the property lines.*
- 105-26** – Stormwater runoff. *The storm and erosion control measures for the new road will apply to this business as well. These can be read in the Project Details Narrative as well as the Details & Erosion Control Notes Access Road Plan and on the General Notes Private Way Plan provided by Thomas Mulligan, Jr., PE #3544.*
- 105-27** – Erosion control. *The storm and erosion control measures for the new road will apply to this business as well. These can be read in the Project Details Narrative as well as the Details & Erosion Control Notes Access Road Plan and on the General Notes Private Way Plan provided by Thomas Mulligan, Jr., PE #3544.*
- 105-28** – Setbacks and screening. *The business operation is well off the main road and there is sufficient screening of vegetation between the parking and storage areas on site.*
- 105-29** – Explosive materials. *None on site at this time, none proposed. Roger asked Mr. Richardson if there would be any explosive materials on site such as propane tanks or outdoor storage areas for fuel? Mr. Richardson stated he did not have a propane tank but he did have a double walled fuel tank but it was not on site at this time. It might be in the future.*
- 105-30** – Water quality. *There is no change to the existing property that would affect water quality. There shall be no commercial activity performed in the Shoreland Zone.*
- 105-31** – Preservation of landscape; landscaping of parking and storage areas. *The surrounding landscape, which is trees and shrubs, shall not be disturbed. Parking and storage areas are on the plan and are well off the road.*
- 105-32** – Relation of proposed building to the environment. *There are no existing buildings that can be seen from the neighboring properties. The proposed building will be set well off the road and will be similar to other garage / workshops in the area.*

- 105-33 – Refuse disposal. *There is minimal waste associated with this business. Any refuse shall be disposed in the existing dumpster on site. Any oil from the vehicles shall be stored in the appropriate containers then burned in a waste oil burner.*
- 105-43 – Off-street parking and loading. *The parking area is more than ample for equipment and employees and is well screened from road.*
- 105-46 – Sanitary Provisions. *There will be an approved wastewater disposal system on site in the future. All permitting shall go through the Codes Enforcement Office.*
- 105-47 – Signs and billboards. *All signage shall be permitted through the Code Enforcement Office.*

Roger A. reviewed §105-56, 'Animal breeding or care'. He told Mr. Richardson it was for his information only.

Roger asked if there were any additional comments or questions regarding the business?

Attorney Keating referred to the comments earlier regarding the scope of the grandfathered use of the lot Mr. Richardson lived on. Attorney Keating asked if the applicant could give some sense of what the grandfathering is for, for future reference. Roger A. stated it would be nice to know but no one actually has any idea of what took place on the property. He said the applicant could tell the board anything with respect to what has taken place. CEO McDonough asked Mr. Richardson what his father did on the property before he bought it? Mr. Richardson stated he had log trucks and did dirt work. He said at that time his father rented equipment. He also sold firewood. Mr. Richardson stated there was a sign out front for firewood but not for anything else.

Roger A. stated that if Mr. Richardson's business is approved for Map 11, Lot 28F he believed most if not all of the business would be taking place from that lot. Attorney Richardson wanted to know how the transition from one lot to another would take place. Roger stated that during the site inspection he noticed that most of the vehicles for Mr. Richardson's construction work were parked on the 80 acre lot. Roger said he couldn't park them all on his house lot.

Maggie M. talking to Mr. Richardson said that his father probably did the type of work that he was doing now. Mr. Richardson said the only thing his father didn't do was foundation work. Maggie asked why then the board couldn't say this activity is grandfathered and the additional work is not. Mr. Richardson did not want to do that because then if he lost the 80 acre lot he would not be able to do all that he will be approved for tonight. He said he didn't want to lose the right to do business on his house lot. CEO McDonough stated he would have to come back to the board for a business permit for the new activities he was doing on Lot 28F.

Roger A. stated that he did not believe Mr. Richardson could park all his existing equipment on his house lot. Mr. Richardson smiled and said, "It would be tight". Madge B. was concerned with the number of vehicles on the small lot but because the number varies there is really no way to enforce a number. Roger said again they were dealing with Map 11, Lot 28F, not Lot 29-2. Roger didn't believe legally they would stand a chance enforcing something on a grandfathered lot.

Roger A. said the issue before the board was Lot 28F. The Applicant has ample parking for the equipment, storage areas, and they won't be seen from the road. There wouldn't be lights seen. He didn't see any major concerns with this location.

**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 primary roadways.***
- 4) Traffic access to the site is safe. ***The site distances were viewed during the site inspection and were deemed in excess of the minimum required.***
- 5) The site design is in conformance with all municipal flood hazard protection regulations. ***It is, the site is not in the flood zone.***
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. ***The solid trash shall be placed in the existing dumpster. There is no wastewater at this time. Any new septic system shall go through the Codes Enforcement Officer.***
- 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. Any waste oil or fuels from the vehicles shall be removed from site in the appropriate containers.***
- 8) A stormwater drainage system capable of handling twenty-five-year storm without adverse impact on adjacent properties has been designed. ***There was a Drainage Report and Project Details Narrative submitted by Thomas Milligan, Jr., PE#3544, dated 2/8/10 that addressed stormwater measures.***
- 9) Adequate provisions to control soil erosion and sedimentation have been made. ***There was a Drainage Report and Project Details Narrative submitted by Thomas Milligan, Jr., PE#3544, dated 2/8/10 that addressed erosion control measures. In addition a Details & Erosion Control Notes Access Road Plan, Shapleigh, Maine was provided showing details of the erosion control measures.***
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. ***There is adequate water supply in the vicinity.***
- 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 glare, fumes, dust or odors beyond the property lines. There shall be no construction activities on the property between the hours of 10:00 p.m. and 7:00 a.m.***
- 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. thought one condition would be to comply with the erosion control plan for the stockpiling of materials per the plans provided. CEO McDonough wanted a condition that none of the stockpile areas encroach into the Shoreland Zone. Roger wanted it added that the storage areas on the plan do not change in the future. Mr. Richardson believed his stockpile area was at least 800 feet from the high water mark. CEO McDonough asked how big the stockpile area was? Roger said he believed two areas.

Roger A. stated the condition should read, ‘The storage areas do not encroach into the Shoreland Zone and remain placed on the site per the specifications in the site plan provided.’

Barbara F. asked if there was any issue with the roadway with respect to the Shoreland Zone. Madge B. stated you couldn’t restrict someone driving on a roadway in the Shoreland Zone. Barbara asked if there should be a condition for no business activity in the Shoreland Zone? Madge said there could be no commercial or industrial activity in the Shoreland Zone. Madge stated the activity in the Shoreland Zone was covered in the approval for the road. Madge said there was nothing for the business being done in the Shoreland Zone.

**Roland L. made the motion to approve the business with the following conditions:**

- 1. That the stockpiled material / storage areas do not encroach into the Shoreland Zone,**
- 2. The storage areas located on the plans provided are adhered to.**
- 3. The loam piles are stabilized per the plan presented.**

Madge B. wanted to add that no material be processed in the Shoreland Zone.

- 4. There shall be no commercial activity which includes the processing of material in the Shoreland Zone.**

**Maggie M. 2<sup>nd</sup> the motion. Four members were in favor; Diane S. was opposed. By a majority vote of 4 - 1, the motion to approve the business plans as presented, with the above conditions was granted.**

Roland wanted to say that he hoped that Mr. Richardson's business didn't become an antagonistic situation with his abutters. Roger A. noted that in the plan Mr. Richardson provided it said to *coordinate with your neighbors to prevent any conflict*. The engineer added this. Mr. Richardson wasn't aware of it and said if he had known the statement would not be on the final plan.

Madge B. asked Mr. Richardson if the next time he was going to do something that required permitting on site to please come before the board before starting.

CEO McDonough reminded Mr. Richardson about the bond for his earth moving permit. He told Mr. Richardson if he had any questions to contact him.

Nothing further was discussed.

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**Growth Permit(s) - There are permits available.**

\*\*\*\*\*

***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, February 23, 2010**

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

.....

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, February 9, 2010 were accepted as amended. They were amended as follows:** Page 4 of 15, the last sentence shall be changed to read, “Roger A. read #2 on the same page, “Upon clearing and grubbing the roads, hay bales and/or silt fences will be installed and staked across the ditch lines at 100 foot intervals on all grades ~~less~~ **greater** than 3 percent.” *This change will also be done to the Project Details Narrative of Mr. Richardson’s Business and Earth Moving applications, which is where the error first occurred.*

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**Minor Subdivision – Split parent lot within five years of last division – Map 8, Lot 55A (Garland Road) – Patrick Frasier, Applicant**

Mr. Frasier was before the board for the review of his application.

Roger A. began with a question regarding Test Pits #1 and #3. Test Pit #1 showed a restrictive layer of 27” and Test Pit #3 showed a restrictive layer of 17”. Roger asked what this indicated? Mr. Frasier stated he did not know, he would call Mr. Milligan if the board wished. CEO McDonough looked at the information and did not have an answer for the board. Roger stated he was bringing this up because in a subdivision there could be no variance granted for wastewater disposal systems. CEO McDonough stated that if a variance was required it would be requested on the front page by the Site Evaluator. Mr. Frasier noted that you only need 9 inches of depth for a leach field in Maine at this time whereas you used to need 12 inches. CEO McDonough concurred.

Mr. Frasier submitted the soils reports to the board.

Barbara F. asked if he received the letter from Fire Chief Romano regarding the use of the existing cistern for fire protection that is located across the street. Mr. Frasier said yes, and gave the board a copy of the letter for the file.

Roger A. asked if the deed restriction regarding the use of the existing driveway for future septic systems had been removed from the deed as required at the previous board review on February 9<sup>th</sup>. Mr. Frasier stated the easement had never been recorded with his deed so it was not an issue. Mr. Frasier stated that he spoke with his attorney regarding the matter and he stated Phoenix Title did the closing on the property and they never recorded the easement with his deed. Maggie M. stated that when researching the location of the property at the York County Registry of Deeds she found a copy of the easement on the web site. Mr. Frasier said he did not find the easement when looking up his deed. Mr. Frasier stated that the easement must be recorded with the deed for Lot 1, Kimberly & Stephen Reef? Maggie agreed stating that is the name she researched.

Mr. Frasier stated that he had done test pits on Lot #2 so he didn't need the easement. He asked if the board wanted him to have his attorney create a release deed for the easement? The board agreed this would be best so no one in the future could encroach on Lot 3, which only has the minimum lot size required for a building lot in Shapleigh. Roger wanted to be sure no easement would be allowed on Lot 3. Mr. Frasier didn't have an issue with this, he would contact his attorney in the morning and if there was a question he would advise his attorney to call Roger. Roger stated that would be fine. Note: Mr. Frasier faxed a copy of the release deed to Barbara F. on 2/26/09.

**Roger A. reviewed §89-2 “Criteria, findings of fact”. The conclusion of the findings for §89-2.A thru §89-2.R are as follows:**

1. Does not result in undue water or air pollution.
  - ***The soils on site adequately support waste disposal per the Subsurface Wastewater Disposal System Application for “Lot 3” by Thomas Milligan, SE #11 dated 2/10/10.***
  - ***The soils on site will adequately support waste disposal for a three bedroom home per the Test Pit Log and report for “Lot 2”, dated 2/9/10 by Thomas Milligan, SE #11.***
  - ***Lot 1 is in existence with an approved septic system on site.***
  - ***There is no air pollution being generated.***
2. Does have sufficient water available for the foreseeable needs of the subdivision.
  - ***The existing home on Lot 1 is supplied by a drilled well. The proposed Lot(s) 2 and 3 shall also be supplied by drilled wells, no dug wells shall be allowed.***
  - ***The two additional house lots / new homes will not adversely affect the underground water supply in this location.***
3. Does not cause an unreasonable burden on the existing water supply.
  - ***There is no existing municipal water supply at this time.***
4. Does not cause unreasonable soil erosion or reduction in the capacity of land to hold water so that a dangerous or unhealthy condition results.
  - ***There shall not be excessive soil or trees removed from the site to create a soil erosion problem.***
5. Does not cause unreasonable traffic congestion or result in unsafe conditions on existing or proposed road.
  - ***The driveway location for Lot 3 has been approved by the Road Commissioner and is on the Final Plan. Access to Lot 2 shall also be approved by the Road Commissioner.***
  - ***Lot 1 has an approved driveway in existence.***
6. Does provide adequate sewage waste disposal.
  - ***The soils on site adequately support waste disposal per the Subsurface Wastewater Disposal System Application for “Lot 3” by Thomas Milligan, SE #11 dated 2/10/10.***
  - ***The soils on site will adequately support waste disposal for a three bedroom home per the Test Pit Log and report for “Lot 2”, dated 2/9/10 by Thomas Milligan, SE #11.***
  - ***Lot 1 is in existence with an approved septic system on site.***
7. Does not cause an unreasonable burden on municipal solid waste disposal.
  - ***Each property owner will be responsible for handling his or her individual waste.***
  - ***This subdivision is subject to the Growth Ordinance and therefore shall not unreasonably burden the municipal solid waste facility.***
8. Does not have an adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat as identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas.
  - ***This is not a scenic or historic site nor is it in the vicinity of one recognized by the Town of Shapleigh.***
  - ***The building of two additional single family homes in this location will not adversely affect the aesthetics of the area.***

9. Does conform to local regulations, ordinances, development plan and comprehensive plan.
  - ***The final approved plan shall meet all zoning and subdivision regulations.***
  - ***Any changes to the final approved plan shall have to come back before the Planning Board and/or Code Enforcement Officer regarding all zoning or subdivision issues.***
10. Does not adversely affect the quality of surface water or shoreline of ponds, rivers, streams or tidal areas.
  - ***This subdivision is not in the Shoreland zone.***
  - ***The water flowing on site does not constitute a stream per the definition of stream in the Town of Shapleigh Zoning Ordinance.***
11. Does not alone or in conjunction with existing activities, adversely affect groundwater quality or quantity.
  - ***Two additional homes at this location will not adversely affect groundwater quantity in this area.***
  - ***A State approved septic system must be installed and approved by the Code Enforcement Officer prior to the granting of an occupancy permit for any new home built on Lot 2 or 3.***
  - ***Lot 1 has a State approved septic system on site.***
12. Has demonstrated adequate technical and financial capacity to meet the above.
  - ***The applicant has the financial ability to build two additional homes on this property.***
  - ***No additional infrastructure is required, therefore no bond is required by the Town of Shapleigh.***
13. Does have all buildings one foot above the base flood elevation.
  - ***No portion of the property is within the 100-year flood plain per the Flood Insurance Rate Map for the Town of Shapleigh. The elevation is approximately 560 feet above sea level.***
14. Does have freshwater wetlands identified on maps.
  - ***There are no wetlands depicted on the plan presented, nor on the Town of Shapleigh's wetlands map.***
15. Does have rivers, streams and brooks identified on maps.
  - ***A drainage ditch is depicted on site.***
  - ***No structures will be within 75 feet of any stream or brook.***
16. The applicant has provided an adequate stormwater management plan.
  - ***Per the plan presented, a culvert has been placed below the driveway for Lot 3, large enough to meet the 50 year storm requirement and as requested by the Road Commissioner.***
  - ***The property line of Lot 3 was adjusted so that no construction shall take place along the drainage ditch on site and all remaining vegetation in that area shall remain in place to prevent erosion.***
  - ***No changes are being made to the land on Lot 1.***
17. Deer Run shall have no spaghetti lots.
18. Does not unreasonably increase a great pond's phosphorous concentration.
  - ***This subdivision is not located in the Shoreland zone.***

Roger A. continued to review the subdivision ordinance in its entirety. Roger asked if the pins for the new lots had been set? Mr. Frasier stated not all the pins are set at this time. Roger stated Mr. Frasier would need to have the surveyor supply a letter stating all the pins were in once placed.

The board reviewed the final plan presented to make certain it contained all the required criteria in the ordinance. The board determined it did, including the waivers as requested at the previous review.

Roger A. noted the requested waivers were as follows: Article 89-29.A, "Utilities shall be installed underground except as otherwise approved by the Board"; Article 89-30.A, Stone monuments; Article 89-30.D, Surface drainage; and Article 89-36.M, Sidewalks.

Roger A. asked if the board would like to entertain a motion on the requested waivers.

**Madge B. made the motion to accept the requested waivers. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. Vote 4 – 0, the motion to accept the waivers was unanimous.**

The waivers were approved as follows:

The Planning Board finds that the request to waive the requirement, Article 89-29, “Utilities shall be installed underground except as otherwise approved by the Board.”; ***shall be granted*** for Lot 2 and 3 which have easy access to existing utility poles. The parcel known as Lot 1 is in existence and currently has partial underground utilities on site.

The Planning Board finds that the request to waive the requirement, Article 89-30, “stone monuments shall be set at all street intersections and at all corner and angle points”; ***shall be granted*** provided that all markers used to delineate property lines are placed deep enough into the earth that they are not easily removed by vandals.

The Planning Board finds that the request to waive the requirement, Article 89-30, “Surface drainage, where the Board feels that surface water runoff to be created by the subdivision should be controlled and a stormwater management system shall be designed”; ***shall be granted*** due to the fact the new lots have been created not to increase the water flowing on the property and a proper culvert has been put into place to divert stormwater at the capacity of a 50 year storm on Lot 3. Any culvert needed for Lot 2 shall be approved by the Road Commissioner.

The Planning Board finds that the request to waive the requirement, Article 89-36.M, “sidewalks shall be installed within all subdivisions within the urban compact area”; ***shall be granted*** due to the fact this subdivision will not have an internal road.

In conclusion:

Patrick Frasier has demonstrated a legal interest in the property by Deed Reference Book 15563, Page 955, recorded at the York County Registry of Deeds, 2/17/2009. The applicant proposes to create 2 lots from Map 8, Lot 55A. Because this is taking place within five years of the division of Lot 55A the need for a minor subdivision application is required. The area summary is as follows: Total Area = 14.66 Acres±; Proposed Lot 2 = 12.81 Acres; Proposed Lot 3 = 80,590 Sq. Ft. Lot 1 which is in existence at this time = 8.82± Acres and does not belong to Mr. Frasier. The minimum lot size, street frontage and setbacks are in compliance with Shapleigh Zoning Ordinance 105-18 “Dimensional Requirements”.

The Planning Board determined the preliminary application was completed on January 26, 2010. A Public Hearing was scheduled within 30 days of submission of the plan and was held on February 9, 2010. Notification was sent to the Road Commissioner and Fire Chief.

Water is to be supplied by individual private wells. Sewage is to be disposed of by individual subsurface disposal systems. Test pits were completed for Lot 2, and a Subsurface Wastewater Disposal System was designed for Lot 3, meeting the requirement of the Maine Plumbing Rules, by Thomas Milligan, Jr., Licensed Site Evaluator #11, dated February 10, 2010. Mr. Milligan’s report shows the soils are suitable for a three bedroom home.

Driveway access will be from the Garland Road. Fire suppression shall be via the use of the cistern located on Garland Road, as approved by Fire Chief Duane Romano in a letter date 2/18/10.

**Roger A. stated the conditions for the minor subdivision are as follows:**

- 1. A letter shall be provided by the surveyor to show that all the pins have been placed for the two new lots.**
- 2. The existing easement placed on Lot 1 for the construction of septic systems on the remaining land known as Lot 2 shall be removed.**

**Roland L. made the motion to approve the 3-Lot subdivision known as Deer Run, on the Garland Road per the plan presented with the above stated conditions. Madge B. 2<sup>nd</sup> the motion. Vote 4 – 0, the motion to approve the subdivision application was unanimous.**

Nothing further was discussed.

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**Growth Permit(s) - There are permits available.**

\*\*\*\*\*

***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**

**Tuesday, March 9, 2010**

Members in attendance: Roger Allaire (Chairman), Roland Legere, Maggie Moody, 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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**The Planning Board meeting started at 7:30 p.m.**

**The minutes from Tuesday, February 23, 2010 were accepted as read.**

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**Best Possible Location – New Foundation – Map 24, Lot 25 (11 Acorn Way) – J.P. Construction, Applicant; James Bates, Owner**

John Palmatessa from JP Construction was present to represent the applicant.

Roger A. began by asking Mr. Palmatessa what he was proposing in the application. Mr. Palmatessa stated Mr. Bales wanted to raise the existing camp approximately 36” and put a concrete foundation under it, leaving it in the same location. He said currently the camp was on blocks. He stated he also wanted to move the existing bathroom to the bedroom, put in a new set of stairs and move the bedroom to the basement. In addition, there is one tree in front of the existing outdoor stairs that would be removed.

Roger A. asked if the camp was being expanded by 30%? Mr. Palmatessa stated no, the application was for a new foundation only.

CEO McDonough asked if it would be a walkout foundation? Mr. Palmatessa stated it could be a walkout foundation. CEO McDonough stated all living space had to have egress. CEO McDonough also wanted Mr. Palmatessa to know that the Planning Board’s authority was to approve the location of the new foundation. CEO McDonough said that once approved for the foundation the applicant would then have to come to his office for a building permit for the stairs, new bedroom, etc. CEO McDonough stated his office would need to approve the new bedroom. Mr. Palmatessa said he understood.

Roger A. stated he was concerned with the statement that the camp would be raised approximately 36”. Roger wanted Mr. Palmatessa to know he could not raise the camp any greater than 36”. Mr. Palmatessa stated he understood that. He said the maximum elevation would be 36”. The camp would be raised somewhere between 30” and 36” maximum.

Roger A. pointed out that the sketch plan and septic design had different setback figures listed. Roger wanted Mr. Palmatessa to know that whatever setbacks the Planning Board approved would be what was allowed and if they differed from what the surveyor measures then the applicant would have to come back before the board for approval of the new setbacks. He said, therefore, it was important the figures listed be as accurate as possible. Mr. Palmatessa believed his sketch plan was a rough draft for the board to use to do the site inspection. Then the surveyor would have the concrete figures. Roger stated the figures have to be somewhat accurate because that is the numbers used for approval. Mr. Palmatessa believed his measurements were more accurate than the figures on the septic design. Roger stated the board would do a site inspection and get an idea of measurements as well.

Roland L. noted that on the septic design plan there was shown the existence of a 1 bedroom bunkhouse, but there was no bunkhouse on the sketch plan. Mr. Palmatessa stated that is because the applicant is not doing anything with the bunkhouse so he didn't put it on the plan. Roland asked if there would be a waste system tied into the bunkhouse? Mr. Palmatessa stated again that nothing would be done to the bunkhouse.

Roland L. asked what the reason for the tree removal was? Mr. Palmatessa stated the close proximity of the tree to the camp and stairs. He said the tree was only two steps away from the stairs. Roland asked if the root system would be damaged during the excavation process for the foundation? Mr. Palmatessa stated it was so close to the building he believed it was a hazard. Roland asked again if he believed the root system would be disturbed when the area was excavated? Mr. Palmatessa stated a retaining wall would be going in directly adjacent to the tree so he did not see how he would not disturb the root system.

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

**Roger A. stated a Notice to Abutters would be mailed and a site inspection held prior to the next meeting on March 23<sup>rd</sup>. Members will meet at the Town Hall at 6:45 p.m.**

Nothing further was discussed.

**OTHER:**

Roger A. noted that while reading the latest Shoreland Zoning Newsletter, there was an article that dealt with requiring detailed plans for a 30% expansion. Roger stated that at present the board approves the location of a non-conforming structure and the CEO calculates the 30% expansion with the applicant. Roger said he had no issue with continuing to follow this process but he believed during the Planning Board approval process a condition of approval should be that if the criteria for a 30% expansion is not met while going through the building permit process the application approval for Best Possible Location is be null and void. Barbara F. stated it would not be a problem for her to add this condition on a regular basis if the board members agreed.

Roger A. stated that he would also like to see with respect to a business approval that a line be added that states if the business does not operate for a period of one year, the application approval is null and void. Roger said that the ordinance does state this but he thought it would be a good idea to let the applicant know.

Roger A. asked if there was anything further members would like to discuss? There was nothing further.

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**Growth Permit(s) - There are permits available.**

\*\*\*\*\*

***The Planning Board meeting ended at 8:00 p.m.***

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

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, March 23, 2010**

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

.....

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, March 9, 2010 were accepted as read.**

\*\*\*\*\*

**Best Possible Location – New Foundation – Map 24, Lot 25 (11 Acorn Way) – J.P. Construction, Applicant; James Bates, Owner**

John Palmatessa from JP Construction was present to represent the applicant. Board members did a site inspection prior to this evenings meeting.

Mr. Palmatessa began by stating the owner of the property wanted to elevate the existing camp to the maximum height allowed of 36”. He stated the existing bathroom was to be relocated so a set of stairs could be put in to access the basement. A bathroom would be put into the existing bedroom and a new bedroom would be placed in the basement where there would be a daylight wall to the codes egress standards. He stated there was a tree at the foot of the stairs at the back of the house that would be removed because it is directly at the base of the stairs.

Members were looking at the sketch plan and noted that at the site inspection they saw an existing deck which was not drawn on the plan. Mr. Palmatessa sketched in the location of the deck and stairs on the sketch plan. He said the deck and stairs would remain in the same location after the camp was raised.

Madge B. asked if the stairs located by the tree to be removed were the primary entrance to the structure? Mr. Palmatessa stated no, he pointed out the location of the primary entrance on the sketch noting there are also several steps to enter the camp. He said there was a standard entrance door and on the back of the camp was a sliding glass door.

Roger A. asked if the camp was being increased by 30%? Mr. Palmatessa stated no, they were only shifting existing space.

Roland L. asked about the daylight entrance. Madge B. believed it was going to be on the lakeside of the camp. Mr. Palmatessa stated correct, he thought there would be two windows and a sliding glass door.

Madge B. asked how the applicant would get enough room for a bedroom because the camp was not very high. Would they be digging down into the ground? Roger A. stated yes, they have to go down. Roger stated that was one of his concerns because with a daylight basement they would have to trench an area lower toward the lake to get the level height needed to put in a door. Madge was also concerned with creating a trench closer to the lake. Mr. Palmatessa believed it would take approximately 20 feet of grading to get the level needed. Roger agreed looking at it at the site inspection that at least 18 feet would be required.



Roger A. stated that the retaining wall attached to the foundation could not be brought out closer to the lake. Mr. Palmatessa asked about using stone to retain the earth? He thought they would only need to bring it out four feet. Roger and Madge B. stated this was still encroachment of a structure toward the lake and that was not allowed.

Roger A. stated it would be difficult to obtain the daylight basement because you would not want to have the earth pitched toward the camp and creating a flat spot without a retaining wall could be a problem.

Roger A. reviewed 105-4.D(3) Foundations and 105-4.D(5) Removal, reconstruction or replacement and 105-4.D(7) Relocation. Madge B. asked if the board had a copy of the subsurface waste disposal system? Roger stated, yes.

Mr. Palmatessa asked if they eliminated the proposed retaining wall if the daylight basement would fit into the parameters of the ordinance. He believed they were allowed some excavation, as long as they replant the disturbed area. He asked that they be allowed the minimum of earth removal, perhaps 10 feet. He thought they could step the ground around the foundation down to achieve a sliding glass door.

Madge B. stated the structure couldn't be moved back because of the topography. Roger A. stated correct, he thought that putting in the new foundation still may mean they have to dig into the hillside somewhat. Mr. Palmatessa stated they would be staying as tight in that corner as possible so they would disturb that area as little as possible.

Roland L. asked if they raised the camp greater than the 3 feet allowed, would the 30% expansion rule kick in? CEO McDonough asked board members to look at the ordinance. Roland stated that if they could raise the camp more than the 36 inches then they wouldn't have to dig down in order to put in the new bedroom and there wouldn't be any further intrusion toward the lake. Roger A. stated in shoreland zoning the minute you go above the 36 inches it triggers the 30% expansion limitation. Board members, after realizing the size of the camp was 25' x 32', saw that raising the camp above the 36 inches would in fact be greater than the 30% allowed. Roger stated that if you wanted to raise the camp greater than the 36 inches you would have to limit the size of the foundation. Diane S. stated she didn't think he could do that, it would be too limiting. CEO McDonough agreed and stated the MDEP has stated from the beginning of creating the shoreland zoning rule that raising any structure above the 36 inches is an expansion. Roger concurred.

CEO McDonough stated you could get a bedroom with an egress window and eliminate the door. Mr. Palmatessa stated that if he could not put in a slider without disturbing more ground than is permitted, he would use the egress window.

CEO McDonough asked about the existing retaining wall, where was it located? Mr. Palmatessa showed on the plan where it was located, toward the embankment on the side of the camp away from the water. CEO McDonough stated the existing retaining wall had nothing to do with the proposed retaining wall that was discussed. Mr. Palmatessa stated no, he was going to put in a wall alongside the existing steps and existing tree. He wanted to put in a short retaining wall next to the stairs. CEO McDonough asked what the purpose of the retaining wall would be? Mr. Palmatessa stated to keep the stairs where they are and ground height. Mr. Palmatessa stated he wanted to dig down across the front to level off the area. Mr. Palmatessa believed a wall height of 12" would achieve what he needed to do. CEO McDonough asked if he needed a 12 inch depth to accomplish the egress he was trying to obtain? Mr. Palmatessa stated yes. CEO McDonough thought it could be done with sloping instead of a wall which isn't allowed.

Roger A. noted that in the middle of the camp there was a tree that had been recently cut on site and it was located under the picnic table. Mr. Palmatessa stated again that he wanted to also remove the tree blocking the steps because you have to walk to the side to get off the steps. Roger stated the steps could be moved.

CEO McDonough asked about the tree stump on site. Roland L. stated it was clear it was freshly cut because there was still chainsaw chips on the ground that were not brown at all on the ground. Roland stated the tree was at least 12 inches in diameter. CEO McDonough asked its location? Roland stated it was on the waterfront side of the property.

CEO McDonough asked about the tree that they wanted to remove at the base of the stairs. He wanted to know if it would be disturbed during the excavation of the foundation? Mr. Palmatessa believed so. CEO McDonough asked if the stump would be removed because it is too close to the building? Roger A. stated the roots would be affected. CEO McDonough asked how close to the foundation the tree was? Roger thought five or six feet.

CEO McDonough stated because of the area affected by the excavation he did not see a problem with removing the stump at the foot of the stairs. He did however have an issue with the stump under the picnic table that was cut without a permit. CEO McDonough stated it would definitely require replanting. He said because it was at least 12 inches it would be in a four to one ratio. He also did not see any reason why the tree they want to remove couldn't be replaced at a ratio of four to one as well. He explained to Mr. Palmatessa the saplings would need to be replanted between the camp and the lake.

Madge B. stated it appeared there may have been shrubs cut on site. She wondered if their thought was to put a lawn in which was not preferable to natural vegetation and she wasn't sure it was allowed. Mr. Palmatessa asked about the lawn, he believed you could revegetate with lawn but not fertilize. Roger A. stated there was a provision in the ordinance to revegetate. CEO McDonough stated you can revegetate when you are done with the excavation but to tear up shrubs and put down lawn, that is not allowed. Mr. Palmatessa knew you were not supposed to remove existing vegetation. Mr. Palmatessa stated the area was mostly gravel, pine spills and moss. Madge said she did see that and it didn't seem odd. She said what seemed odd was down by the lake. She said it looked like there had been blueberries or some other shrubs. Mr. Palmatessa stated he went there with snow on the ground so he had no idea. Maggie M. stated she didn't go down by the water and the rest of the area looked pretty bare. Madge said as you walk toward the lake you weren't walking on pine spills anymore or gravel but on something that was rough that appeared to be cutoff bushes.

Roger A. stated that under 105-4.D(7)(b) it states that the vegetation or ground cover must be consistent with similar native vegetation and/or ground cover that was disturbed, destroyed or removed. Roger said that because there was no lawn existing, no lawn will be allowed, only native vegetation. Mr. Palmatessa stated they would have to do research on what is natural vegetation. Roger said York County Soils and Water Conservation District could give him that information.

Mr. Palmatessa asked if the board wanted revegetation for the disturbed area, but not the entire lot? CEO McDonough stated the disturbed area, as well as the tree replacement for the tree to be cut and the one in violation. CEO McDonough stated that because the owner was not present, Mr. Palmatessa would have to address the issue for the owner. CEO McDonough thought it was best to address all the revegetation issues at this meeting as opposed to having a separate violation to deal with, with respect to the tree that was already cut and the possibility of native vegetation being disturbed. CEO McDonough did not feel a landscaping plan was too much to ask. He said the board was not requesting a landscaping architect draw the plan, he just needed a sketch plan showing what type of vegetation would be placed on the property and where. How revegetation would be addressed.

Madge B. asked Mr. Palmatessa if he wanted to speak with the owners about the tree planting and revegetation prior to the board making a decision? Mr. Palmatessa stated they would do a landscaping plan. He wanted to be able to move forward.

Roger A. stated the other issue would be that the approved sketch plan would require confirmation in writing by a licensed surveyor that the placement of the structure is correct per the specifications approved by the Planning Board. Mr. Palmatessa stated he was aware of that.

Roger A. noted that the existing deck would probably have to be raised up when the camp was raised. Mr. Palmatessa stated yes to create the proper transition, the deck would need to be raised. Roger stated that if the deck was raised to the point new stairs were needed he didn't see why the stair couldn't be off to the side instead of heading toward the lake. Mr. Palmatessa said he had no objection to that.

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

Roger A. stated the conditions would be:

- 1) Landscaping plan for the disturbed area and the replanting of trees for the cut tree and the one to be removed.
- 2) Best Management Practices for the excavation.

Roger A. asked about the fill to be excavated would it be removed from the site? Mr. Palmatessa said yes, it would be hauled offsite.

Roland L. asked Mr. Palmatessa if he understood correctly that there would be no slider in the basement, only egress windows? Mr. Palmatessa stated if there was any way he could have a slider he would like to. He didn't know if the disturbance in front of the door was allowed? CEO McDonough stated it could be done but not with retaining walls. Maggie M. asked about the steps Mr. Palmatessa mentioned instead of a retaining wall. Mr. Palmatessa stated he was talking about stepping down the foundation in two drops with a final step down where the slider would be, he wasn't talking about putting in actual steps. The area would be graded off from the door to create the pitch needed. He thought by doing this it would minimize the amount of earth disturbed. Roger A. believed it would still need a distance of 20 feet to accomplish this. He talked about starting with 3 ½ feet above the finished level of the basement and then they need another three feet and then tip the slope down to reach a flat spot. Mr. Palmatessa agreed the area disturbed would be between 12 and 18 feet. He wanted to go the minimal distance so they get the right pitch so nothing drains into the house. Mr. Palmatessa said they would then revegetate the area. It would be his preference to have the sliding glass door.

CEO McDonough stated what he felt would determine what could be done would be the type of revegetation plan the board received. Madge B. stated as long as the applicant wasn't putting in a structure closer to the water the ordinance doesn't say this project can't be done. Roland L. agreed but adding a six foot opening in the earth to be able to go in and out of the building with minimal obstruction can be a problem to the lake. He wanted to see a plan how the negative affects of the excavation and foot traffic would be addressed. CEO McDonough agreed a good revegetation plan should be presented to show how water runoff and traffic would be addressed.

Mr. Palmatessa stated the area between the septic system and driveway would be graded such that the water will go toward the driveway and not the camp or lake. Roland L. stated that he noticed there is presently erosion on the road so there is a less than desirable situation on site at this time. Roland said the goal was to

minimize the amount of water going into the lake. He said that if the applicant was the only person on the lake, the impact wouldn't be such a concern, but people are before the board regularly that have done extensive cutting and have created an erosion problem which dumps phosphates into the lake.

Madge B. didn't believe she could approve the application without a valid revegetation plan. Roland L. asked if the CEO could approve the plan? Madge didn't believe so because her decision to approve the new foundation was based on an adequate reclamation plan. Madge thought the only way the board could approve the application as presented was to remove the slider from the final plan. Roger A. agreed. Mr. Palmatessa could not make that decision for the applicant.

Madge B. stated the board could approve the application without the sliding glass door then if the applicant still wanted the door they would have to come back before the board with a plan showing how they would address erosion. Mr. Palmatessa asked if he could begin the project after tonight's approval if they didn't put in the sliding glass door? Madge said yes, after getting the proper permits from the CEO. Mr. Palmatessa thought that is what he would like to do and if the owner wants the door he will come back before the board.

**Roland L. made the motion to approve the new foundation as depicted on the sketch plan, leaving the camp in the existing location and raising it no greater than 36", with the following conditions:**

- 1) There shall be no sliding glass door in the basement, egress windows only. Should the owner decide they want to place a sliding glass door in the basement they shall have to come back before the Planning Board for approval.**
- 2) Best Management Practices shall be used during the entire construction project to control soil erosion.**
- 3) There shall be 8 saplings placed between the water and the camp to replace the tree that has been removed between the camp and lake, along with the tree to be removed by the stairs.**
- 4) There shall be a revegetation plan consisting of native vegetation and including the placement of the 8 saplings, presented to the Code Enforcement Officer for all areas disturbed on site prior to construction. The CEO shall set a date of completion for the plan.**
- 5) A licensed surveyor must place the structure per the approved sketch plan and certify the foundation location.**
- 6) The foundation of the structure shall be a minimum of 72 feet from the high water line; and no closer than 32 feet to the nearest lot line, per the plan presented.**

**Maggie M. 2<sup>nd</sup> the motion. All members were in favor. Vote 5 – 0, the motion to approve the best possible location application was unanimous.**

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

Nothing further was discussed.

**Best Possible Location – Replace Existing Structure – Map 34, Lot 3 (92 Cedar Drive) – Diane Bragdon, Applicant/Owner**

Ms. Diane Bragdon was present for the review of her application along with John Reeves.

Ms. Bragdon stated she wanted to remove the existing building and put up a year round home. The home would have a full foundation and be two stories in height.

Ms. Bragdon provided the board members with a surveyed plan showing the location of the existing camp and proposed new home. The new home will be located beyond the 100 foot high water mark.

Diane S. asked if the existing structure would be totally removed? Mr. Reeves stated yes. Diane asked why the new building wouldn't be centered more on the property? Mr. Reeves pointed out in a picture of the camp the terrain around the existing camp and the location of the trees. He believed it would be best to keep the new home where the camp is located at this time to make as little disturbance as possible.

Ms. Bragdon also presented the board with a copy a new subsurface wastewater disposal system application done by Bruce Pohopek, of Rochester NH, Licensed in the State of Maine, SE #101.

CEO McDonough reviewed the wastewater application noting that as presented it was not adequate for the State of Maine which requires the location of the new system to be placed on an 8 1/2 x 11 sheet of paper. (The application was presented as required in NH with a surveyed map attached to the application.) CEO McDonough showed the applicant what a Maine application would need. Mr. Reeves stated he would have Mr. Pohopek make the necessary corrections. CEO McDonough stated if there was a question Mr. Pohopek could call him and he would be happy to answer any questions. CEO McDonough also stated that Mr. Pohopek should have a handbook that states what the State of Maine requires since he is registered in Maine.

The board looked at the surveyed plan and noted that the distance from the newly designed system to the neighbors well was 60 feet. The plan stated there was a 60' protective well radius. CEO McDonough was not sure why this was placed on the plan because he stated that in Maine the distance from the neighbors well to the septic system was either 100 feet for a new system or no greater than the existing system. Mr. Reeves didn't know why it was 60 feet but would asked Mr. Pohopek. CEO McDonough also noted that the applicant's proposed new well was only 80 feet from the septic area. CEO McDonough, looking at the plan, thought the applicant could move the well to the 100 foot mark. He said Ms. Bragdon should discuss it with the drilling company. He did state that the State of Maine didn't care if the new septic system was closer than one hundred feet to the property owners well, they were more concerned with the neighboring property when putting in a new system. CEO McDonough noted that he did not know the location of the existing system so he could not determine if the proposed new system met the law requirements or not.

Roger A. asked what the size of the new home would be? Mr. Reeves stated 26' x 58'. CEO McDonough asked if the applicant had an approved Growth Permit? Mr. Reeves did not know. CEO McDonough stated that it would be best to get the Growth Permit because they are going to convert the home from seasonal to year round use. The applicants were given an application. CEO McDonough stated they could replace the existing home without the permit but they would not be able to register their car and vote without being a year round resident.

**Roger A. stated a site inspection would be held at 6:45 p.m. on April 13<sup>th</sup> prior to the meeting. Members will meet at the town hall. A Notice to Abutters would be mailed as well.**

Nothing further was discussed.

**OTHER:**

Barbara F. gave members a copy of § 105-39 Earth removal and filling and § 105-61 Mineral exploration and extraction, and asked them to review both ordinances to see how each could be better adapted to the intended use. Members agreed a Surety bond should be mandatory under mineral exploration and it isn't at

this time, except that a condition of a CUP can be a bond if the board thinks it's required. The board was not sure a bond should be required under earth moving because that ordinance covers many different types of earth moving and not all would require a bond to the town.

Another area looked at was the setback requirement for earth moving. Presently there is a 100 foot setback requirement, yet when looking at §105-27 Erosion control, there is only a 10 foot setback requirement to the adjoining property. It was agreed that under mineral exploration the distance should be greater than 10 feet but again because earth moving covers many areas the 10 foot minimum might apply under earth moving with anything greater than 10' being up to the board on a case by case basis.

Board members agreed to review the ordinances and at a future date discuss possible changes to each.

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 8:55 p.m.***

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

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, April 13, 2010**

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

Note: Madge Baker was acting Chairman for this evenings meet.

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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, March 23, 2010 were accepted as read.**

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**Best Possible Location – Replace Existing Structure – Map 34, Lot 3 (92 Cedar Drive) – Diane Bragdon, Applicant/Owner**

Ms. Diane Bragdon was present for the review of her application along with John Reeves. Note: Board members did a site inspection prior to this evenings meeting.

Mr. Reeves presented the board with a revised plan dated 3/26/10 that showed the proposed new septic system to be 100 feet from the neighbors well, as required at the last meeting. He also had a revised copy of the Subsurface Wastewater Disposal System Application which had all required information on an 8 ½ x 11” piece of paper as required by the State of Maine.

It was noted the Shapleigh Map designation was still listed incorrectly on the plan. Mr. Reeves stated Mr. Pohopek knew of the error and it would be corrected on the final plan drafted for the Code Enforcement Officer.

The board reviewed the plan noting the location of the existing camp and the footprint of the proposed new home. Members saw that the existing deck landing area was within the 100 foot mark but the proposed new home would be just beyond the 100 foot mark of the high water line.

Roland L. asked CEO McDonough at what time of the year the high water mark is measured? Roland stated that this year is unusual with respect to how high the water line is. CEO McDonough stated you don’t necessarily measure to where the water is no matter what time of the year it is. He said that commonly it is based on the vegetation as to where the normal high water line is. He noted that at present the vegetation could be under water. He said at certain times of the year the water is receded quite a bit. He said a soil scientist can actually dig a hole and tell you where the high water line is by soil type but normally a surveyor uses vegetation as determining factor.

Madge B. asked about the perimeter survey, would someone check the measurements for the foundation that are on the plan? Mr. Reeves stated yes, pins would be placed showing where the location is and he believed the CEO would need to go to the site to inspect the pins, prior to the foundation being poured.

Madge B. reviewed the setbacks. CEO McDonough stated the side setback requirement was 10 feet minimum on one side with a cumulative total of 30 feet. So if there is 10 feet on one side there should be 20 on the other. It was noted the existing structure did not meet the minimum setback requirements, however, the new home the cumulative setbacks are not more nonconforming.

Board members stated that it was noted on the site inspection the new home would be in the best possible location where it is proposed, using the existing footprint of the camp. The neighbors were relatively close to the lot lines and there is an existing natural boundary on one side. In addition, the existing septic tank would not need to be moved if the new home stayed in the same location.

Madge B. asked if the new foundation would be dug down into the earth and if the new building was being raised, how high would that be? Mr. Reeves stated he didn't know. He said it depended upon the frost requirement for the frost wall. He said the intentions were for a full foundation. Madge asked if the expansion was a concern because they were beyond the 100 foot high water mark? Mr. Reeves stated that he did not believe they were going to raise the home more than 3 feet, he did not see a benefit in doing so.

Madge B. read §105-4.D(3)(b), which read as follows, "If the completed foundation does not extend beyond the exterior dimensions of the structure; except for expansion in conformity with Subsection D(1) above, and the foundation does not cause the structure to be elevated by more than three additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure."

Madge B. stated she believed that as long as the structure was beyond the 100 foot high water mark the board didn't care about the expansion just that the new structure would not be more non-conforming. Mr. Reeves asked if the 3 foot height limitation was an issue? Madge said she didn't believe so. She said the board needed to be concerned with the non-conforming setbacks.

Madge B. revived §105-4.D 'Nonconforming structures.' She stated that as long as the applicant did not become more non-conforming they would not need a variance. Madge noted that the applicant was not relocating, just expanding the existing structure.

Madge B. stated the trees to be removed for the project were not within 100 feet of the water. Madge also reminded the applicant that the placement of the new structure would need to be confirmed by a licensed surveyor.

Madge B. stated the board needed to determine whether or not the new home was in the best practical location. She said the existing home would be extended front and back but the structure would still meet the front and rear setback requirements. The new structure was not going to be expanded such that it became more non-conforming with the side setbacks. Board members agreed the structure was in the best possible location.

Roland L. asked if the abutters were notified and if there was any feedback? Barbara F. stated all were notified within 500 feet of the property and she did not receive any comments by mail or telephone regarding this application.

**Diane S. made the motion that the board approve the application as presented with the location of the house being as depicted on the plan done by Pohopek Land Surveyors, dated as revised 3/26/20, with the following conditions:**

- 1. Best Management Practices to be followed throughout the project.**
- 2. The new home shall be placed on site by a licensed surveyor per the dimensions on the plan provided.**
- 3. There shall be no debris brought to the Shapleigh Transfer Station.**
- 4. Any excess soil not needed for restoration of the area shall be removed from site.**



**Roland L. 2<sup>nd</sup> the motion. All members were in favor. Vote 4 – 0, the motion to approve the best possible location application was unanimous.**

Nothing further was discussed.

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**Best Possible Location – New Foundation – Map 24, Lot 25 (11 Acorn Way) – J.P. Construction, Applicant; James Bates, Owner**

John Palmatessa from JP Construction Inc. was present to represent the applicant.

Mr. Palmatessa presented the board with a copy of a plan entitled “Existing Conditions & Planting Plan for John Palmatessa”, dated April 2010, prepared by Licensed State of Maine Land Surveyor, Stephen Everett, PLS 2161.

Mr. Palmatessa described the plans presented. He stated that they proposed an elevated berm along the shoreline that would be vegetated. It would be 4’ x 1’; consisting of 20 Juniper planted 4’ on center and mulch. The berm would be constructed using sandy loam, creating a well drained soil. He explained this would keep any runoff from entering into the lake.

Mr. Palmatessa also pointed out the location of the 8 White Pine trees to be planted to replace the two large trees being removed from site. Five would be planted along Hubbard Brook and three along the lot line on the opposite side of the lot.

Roland L. asked why five trees were being placed under an already existing large canopy of trees? Roland stated that although this does satisfy the requirement with respect to the number of trees required, why would they be placed where existing vegetation existed at this time? Mr. Palmatessa said he believed the owners wanted them in this location as a buffer to the brook and the boat traffic in that location.

CEO McDonough asked Mr. Palmatessa to explain the notation that stated, “Compacted gravel in this area” that was on the plan. Mr. Palmatessa stated this was the beginning of the berm. CEO McDonough asked if the berm ran the entire length of the waterfront (on Mousam Lake)? Mr. Palmatessa stated yes and it would be vegetated with Juniper. Diane S. wanted Mr. Palmatessa to be aware that with respect to mulch they couldn’t use the type that has dye in it, as it is toxic and would leach into the lake. It had to be a natural product. Mr. Palmatessa stated that he understood.

Mr. Palmatessa stated the plan was drawn up by a conservationist that works for the State. With this plan he was told that nothing would get into the water after the berm was in place. Roland L. agreed as long as the lake water didn’t rise above the berm. Mr. Palmatessa stated the lake would have to elevate quite a bit. Roland and Diane S. who both live on a local lake, stated it was very possible remembering water elevations of the past few years being above what was considered normal.

Roland L. stated that since the last meeting he had had the opportunity to view the site again to see if in fact vegetation had been removed from the waterfront and he believed it was very apparent that the owners did some serious removal of small plant material. Roland stated there were exposed stubs of some type of vegetation all over which looked like it was probably lopped off with shears. He added that some of the evidence was stacked between the trees on site. Roland said it was no reflection on Mr. Palmatessa. Roland added that the reason why he asked why the trees were being planted on the right hand side under an existing canopy was because he believed the new vegetation could be placed in the area where this vegetation was removed.

Roland L. also stated that he would assume the gentlemen that made the revegetation plan and erosion control plan is aware of how high the water actually gets in this area. He said that you could see at this time the water rose between two and three feet above what would be considered the high water mark. Roland concluded that he wanted it stated for the record that there was definitely more vegetation removed from the site than the one tree noted at the last meeting.

Mr. Palmatessa stated that it was his understanding after speaking with Mr. Everett that the berm would in fact keep any runoff on site and the lake would be protected.

Roland L. stated that from the last meeting it was his understanding that if the owner was going to put in a sliding glass door that there would need to be material excavated toward the lake. Mr. Palmatessa stated yes, that is why the berm was placed near the lake to prevent any rainwater from entering the lake. He said there would also be stone and mulch near the house. This would be in addition to the berm. Roland asked if the plan met the CEO's approval? CEO McDonough stated yes.

Madge B. read the approval from the last meeting, it read as follows:

- 1) There shall be no sliding glass door in the basement, egress windows only. Should the owner decide they want to place a sliding glass door in the basement they shall have to come back before the Planning Board for approval.*
- 2) Best Management Practices shall be used during the entire construction project to control soil erosion.*
- 3) There shall be 8 saplings placed between the water and the camp to replace the tree that has been removed between the camp and lake, along with the tree to be removed by the stairs.*
- 4) There shall be a revegetation plan consisting of native vegetation and including the placement of the 8 saplings, presented to the Code Enforcement Officer for all areas disturbed on site prior to construction. The CEO shall set a date of completion for the plan.*
- 5) A licensed surveyor must place the structure per the approved sketch plan and certify the foundation location.*
- 6) The foundation of the structure shall be a minimum of 72 feet from the high water line; and no closer than 32 feet to the nearest lot line, per the plan presented.*

Madge noted that the applicant has in fact returned before the board with a revegetation plan in order to be able to have the egress door.

CEO McDonough asked Mr. Palmatessa when the applicant could have the revegetation plan implemented? Mr. Palmatessa stated he wanted to start construction immediately. The board members, CEO, and Mr. Palmatessa agreed July 1<sup>st</sup> would be a reasonable date to complete the revegetation plan.

Mr. Palmatessa was concerned with approval condition #6. He believed under the guidelines and from the last meeting he only needed rough dimensions to get approval and then needed to get a surveyor in to get the exact dimensions. Barbara F. stated that was why Chairman Allaire explained to him how important having the exact numbers were because that was what he would be approved for. Mr. Palmatessa didn't believe that to be so. Barbara noted that the boards past practices has been to approve the best possible location with the figures provided by the applicant. If the figures were not accurate the applicant came back before the board to amend the approval. She said that if the board wishes to change this practice that is fine, the board just needs a consensus on how they want to address the approval of a best possible location.

CEO McDonough asked if the foundation was going to be in the exact same location? Mr. Palmatessa stated yes. CEO McDonough believed the board could approve in the existing location to be confirmed by a

licensed surveyor. Barbara F. stated that would be fine but the board would need to amend the prior approval. Madge B. agreed stated the approval should say, “A licensed surveyor must place the structure in the exact same location as the existing.”

Madge B. stated condition #6 should be removed. Roland L. wanted it noted that approving the application as above would be contrary to previous practice. Barbara F. stated correct. CEO McDonough didn’t see where approving the footprint in the same location as the existing would be a problem. He said it was just important the surveyor approve the location before construction begins.

Diane S. made the motion to repeal the original approval based on receiving a new plan from the applicant in order to be able to put in an egress door; plan entitled Existing Conditions & Planting Plan for John Palmatessa, dated April 2010, provided by Stephen Everett, State of Maine Licensed Surveyor, PLS #2161. Maggie 2<sup>nd</sup>. Vote 4 – 0, all in favor.

**Maggie M. made the motion to approve the new foundation, placing it in the exact location as the existing structure, as depicted on the plan entitled Existing Conditions & Planting Plan for John Palmatessa, dated April 2010, provided by Stephen Everett, State of Maine Licensed Surveyor, PLS #2161, with the following conditions:**

- 1) Best Management Practices shall be used during the entire construction project to control soil erosion.**
- 2) There shall be 8 saplings placed between the water and the camp to replace the tree that has been removed between the camp and lake, along with the tree to be removed by the stairs.**
- 3) The revegetation plan as presented, done by Stephen Everett, PLS #2161, shall be completed by July 1, 2010.**
- 4) A licensed surveyor shall certify that the footprint of the proposed foundation shall be in the same location as the existing building’s footprint, as depicted on the Existing Conditions & Planting Plan dated April 2010, prior to any construction taking place.**

**Diane S. 2<sup>nd</sup> the motion. Vote 4 – 0, the motion to approve the Best Possible Location application was unanimous.**

Nothing further was discussed.

**Amendment to a Conditional Use Permit – Add a 2000 Gallon Propane Tank & Fill Station for Smaller Tanks – Map 18, Lot 32 (112 Emery Mills Road) – Paul & Robert Muse, Owners**

Paul and Robert Muse were present for the review of their application.

Madge B. read from the application which stated the applicants were applying for a 2000 gallon propane tank along with a fill station to fill smaller propane tanks.

Board members reviewed the sketch plan provided. It was noted the adjacent property closest to the propane filling area was also owned by the Muse brothers.

Roland L. asked if there currently were pine trees in the proposed location? Mr. Muse stated there were four pine trees. He stated they would need to be removed.

Roland L. asked if there would be any visual barrier between the new tank and Rte. 109? Both brothers stated they wanted it to be seen from the road for business as advertisement. They also point out that any structure would have to be 25 feet back from the State road. CEO McDonough added “or no closer than the existing structure”, which is the office.

Roland L. noted that in the area where the storage tank is going, the land dips down so perhaps it wouldn't be seen from the road? CEO McDonough stated that the area would need to be brought up because the smaller tanks are gravity fed so the large tank can't be lower than the fill station. Mr. Muse stated the existing parking area will be expanded and the new tank will be level with the parking area.

Diane S. asked if the applicants had contacted the State for approval? Diane referred members to §105-29 'Explosive materials' which stated that all propane gas tanks shall comply with NFPA 58, Liquefied Petroleum Gas Code, 2001 Edition. Mr. Muse stated that they do need a permit from the State for the tank prior to it going in. They were also aware of the code she was referring to.

Roland L. asked if the fill station would have a shelter with three sides and a shed roof? Mr. Muse stated there would be protective tubes around it to protect it from vehicles. He said there may be a roof or a container that is like a large box that you set the smaller tanks in while filling them. The person filling the tank will not be under any type of structure.

The applicants believed after reviewing the State guidelines that they are able to put the large tank within 10 feet of the property line because they own the adjoining property, otherwise the tank would need to be 25 feet from the side lot line. They showed the board members a copy of the regulation.

Maggie M. was concerned with the possibility of the property changing hands. Mr. Muse said that a lawyer could put an easement in the deed for the new owner. Also, it was up to the purchaser whether or not they wanted to buy it based on the fact there was a propane tank near the property line. Maggie stated it could also affect property value. The Muse brothers were the property owners at this time, any devaluation would affect them as well. Again, they believed no one had to buy the property if it was for sale.

Mr. Muse stated the storage tank would be 5 feet wide by 14 feet long. He also said they would be putting up new trees to replace those they need to remove, possibly using spruce to provide a visual barrier for the hair salon on their adjacent property.

Madge B. asked if there were any other questions? There were none.

**Madge B. stated a Notice to Abutters would be done, a Public Hearing held at 7:00 p.m. on April 27<sup>th</sup> and a site inspection done prior to the meeting. Members will meet at the town hall at 6:15 p.m.**

Mr. Muse stated he was going to try to set up an inspection with Peter Holmes, the State of Maine Inspector within the next weeks. CEO McDonough stated he would like to be there. Mr. Muse stated he would let him know when an appointment was made.

Nothing further was discussed.

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**Conditional Use Permit – Timber Harvest on Town Forest, Part of 10 Year Plan, Stand #7 – Part of Map 7, Lot 9 (Off of Square Pond Road) – Shapleigh Town Forest, Applicant; Ralph Ridley, Representative**  
Mr. Ridley, Chairman of the Shapleigh Community Forest Trustees, was present to discuss the application.

Mr. Ridley stated the Forest Trustees hadn't done any cutting for 4 or 5 years so they contacted a Forester from Southern Maine Forestry Services to move forward with part of their 10 year plan.

The board reviewed the map Mr. Ridley provided. Mr. Ridley stated they had a contract with Southern Maine Forestry who recommended thinning Stand #7 which is approximately 41 acres. Mr. Ridley stated there was an existing landing and he believed they will use it for this harvest.

Roland L. asked what percentage of the timber did thinning involve? Mr. Ridley stated probably between 30 and 40%. He said a lot of the good oak and pine will remain. He added that they will allow some of the good oak and pine to be removed so some money can be made. Mr. Ridley stated the market has improved somewhat so the committee feel it is time to harvest some timber.

Roland L. asked how many cords of wood would be removed? Mr. Ridley had a chart showing the approximate board feet of each type of wood that might be on site and again said not more than 40% of it was going to be removed. He explained there was White Pine, Red and White Oak. Mr. Ridley said all the trees would be marked by the Forester prior to cutting.

Roland L. asked if the person doing the job was landscape friendly? Mr. Ridley stated they were using a very reputable firm, Southern Maine Forestry Service, run by a Peter Noel in Windham. Mr. Ridley explained that the Trustees were turned down by someone local to create the forestry plan and Southern Maine Forestry came in and did the plan within a few days and did a great job. So the board agreed to use them again to actually do the harvesting.

Madge B. asked if any of the property was in the Shoreland Zone? Mr. Ridley did not believe so. Board members reviewed the town maps and Mr. Ridley was correct, the property was at least 500 feet from the nearest water body.

Mr. Ridley asked the board if they thought it would be o.k. to return the signed contract to Southern Maine Forestry to line them up early? Madge B. stated she did not see a problem with that but she did not want any cutting until the application was approved. Mr. Ridley stated there would be no cutting until September at the earliest to avoid the summer traffic. Mr. Ridley stated it was also better for the area to have it done in the winter; less land is disturbed when the ground is frozen.

Roland L. asked if they would biomass all the slash? Mr. Ridley stated yes, there would be a chipper on site. Roland said he was concerned with there being a quality job. Mr. Ridley stated that was why they used this company because they were very reputable.

Madge B. asked if there were any vernal pools on site or wet areas? Mr. Ridley stated not that he was aware of. Madge asked if there were any streams on site? Mr. Ridley stated no. Madge asked if Mr. Ridley had a topographic map of the area? Mr. Ridley stated no, what he gave the board was what was provided to him by the Forester. Maggie M. stated that she used this forestry company and they would provide a report after harvest which was very detailed including if they found artifacts, vernal pools, what type of animals were on site, etc. She said they were very thorough. Madge stated she knew the property because she walks it but she still wishes she had a topographic map. Maggie stated before they cut they will mark the area showing what is there and act accordingly. The board reviewed previous files and a topographic map was never required. Google Earth was mentioned as a way to view the topography of the lot.

**Madge B. stated there would be a Public Hearing held on April 27<sup>th</sup> at 7:00 p.m. A Notice to Abutters would be mailed as well.**

Mr. Ridley stated if anyone wanted to walk the lot just give him a call and he will walk it with them.

Nothing further was discussed.

**Other:**

Madge Baker nominated Roger Allaire for Chairman.

Diane Srebnick 2<sup>nd</sup> the motion.

Roger Allaire stated at the previous meeting he would accept the nomination if board members chose him.

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.***

Diane Srebnick nominated Barbara Felong as Secretary.

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

All members were in favor. ***Barbara Felong will remain Secretary of the Planning Board.***

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**Growth Permit(s) –**

**Map 5, Lot 20, Sub, Lot 8 –** (White Tail Lane, off State Rte. 11) - Received Growth Permit #01-10

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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**

**Tuesday, April 27, 2010**

Members in attendance: Roger Allaire (Chairman), Madge Baker (Vice Chairman), Roland Legere, Maggie Moody, 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 “ ”.

**Public Hearing began at 7:00 p.m.**

**Amendment to a Conditional Use Permit – Add a 2000 Gallon Propane Tank & Fill Station for Smaller Tanks – Map 18, Lot 32 (112 Emery Mills Road) – Paul & Robert Muse, Owners**

Paul and Robert Muse were present for the public hearing.

Roger A. began by asking the applicants to tell the board and audience members what they would like to do.

The applicants stated they would like to put in a propane filling station next to the existing office. It will be used to fill small cylinders. The tank filling station will be 25 feet from the road as required and the tank will set 10 feet from side property line. CEO McDonough asked if board members reviewed the NFPA rules? He stated there was a 25 foot requirement from the property line unless both properties were in single ownership. Mr. Muse stated that he had presented a copy of this rule at the previous meeting. Board members found the document and there was a section entitled “Formal Interpretation LFP-5”, which read in part “It is the Committee’s opinion that the minimum distance limitation is from the tank to the property line where that property line is common to plots of ground of different ownership and would also apply between the tank and the property line of the far side of a street or other public right of way”. CEO McDonough asked Mr. Muse if he had talked to the State Inspector? Mr. Muse stated yes and he did not have an issue with the tank being within 10 feet of the adjoining property line. In light of this, the board felt the tank could in fact be within 10 feet of the side lot line because the applicant owned both properties.

Mr. Muse asked about a retaining wall and if they could place one along the property line? CEO McDonough stated any structure had to be 10 feet from a property line.

Mr. Muse asked if there was an issue with removing the tree line between their two properties? CEO McDonough stated no. Madge B. stated she thought there would be an issue if there was a residence next door but at this time it is a business so she wasn’t sure if a buffer was required. CEO McDonough stated the board should review §105-28 ‘Setbacks and screening.’. Roger A. agreed the board needed to review that section of the ordinance.

Madge B. stated that the ordinance didn’t differentiate between residential and business, it talked about a buffer required made up of evergreens. She stated the existing trees could still be removed but there would need to be a buffer planted to replace them. CEO McDonough asked if the existing trees were on the property line? Mr. Muse stated they were approximately 15 to 20 feet from the property line. Roger A. agreed.

Roger A. asked members to review §105-31 ‘Preservation of landscape; landscaping of parking and storage areas.’ Roger noted that this chapter requires shrubbery around all lot lines.

Roger A. asked if there were any questions from the audience. An abutter, Mrs. Parker from Parker’s Boathouse, who is within 500 feet of the property, asked if there would be any odor from the new tank

and/or fill station? Mr. Muse stated there was an additive put into the propane so in case of a leak you would know. Mr. Muse stated that when anyone was filling a propane bottle there was a slight discharge upon the disconnect.

Mrs. Parker stated they were not opposed to the idea, they just didn't want to be smelling propane if they were out on their deck having a BBQ. Mr. Muse thought the fill station would be approximately 300 to 400 feet from her property and did not believe she would get any odor. Roger A. agreed unless the wind was taking it and the atmospheric pressure was low, then perhaps there might be some. He also noted it would not last for more than several minutes before dissipating. Mr. Muse noted that Mrs. Parker's house was higher than the tank and propane was heavier than air so he thought it was unlikely she would ever notice it.

Mrs. Parker asked if the odor would be emitted during the filling of the small tanks or the filling of the large tank. Roger A. and Mr. Muse stated that during both processes some odor would be released upon the disconnect. Mr. Muse added that he had a 50,000 gallon tank next to his house and he did not smell any odor from it.

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

The public hearing for the propane filling station was closed at 7:12 p.m.

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**Conditional Use Permit – Timber Harvest on Town Forest, Part of 10 Year Plan, Stand #7 – Part of Map 7, Lot 9 (Off of Square Pond Road) – Shapleigh Town Forest, Applicant; Ralph Ridley, Representative**  
Mr. Ralph Ridley was present for the public hearing.

Mr. Ridley stated the Town Forest Committee would like to have a timber sale on Lot #7. It is located behind the Bicknell property, off of Cedar Drive.

Mr. Ridley pointed out the location of Lot #7, stating it consisted of 41 acres. He outlined the area on the plan he presented to the board.

Mr. Ridley stated they would be using the landing that exists on Lot #8. Mr. Ridley stated Lot #8 had been thinned during and after the ice storm.

Madge B. asked if it was mostly hardwoods? Mr. Ridley stated it had some Oak. They wanted to thin the lot at the recommendation of the Forester.

Mr. Ridley stated the Forester that created the 10 year plan for them would be the one hiring the person to do the job. Mr. Ridley stated they did not know how much money would come from the project but they were hoping for between 30 and 40 thousand. This money goes into the town forest fund.

Mr. Ridley stated again that Rene Noel, the Forester who originally designed the plan, would be the person to mark the trees and then he would hire the jobber.

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

The public hearing for the Town Forest ended at 7:23 p.m.

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

**The minutes from Tuesday, April 13, 2010 were accepted as amended.** On Page 7 of 8, paragraph two was changed in part to read “...who recommended thinning Stand #7 which is approximately 7 **41** acres.” Also on Page 7 of 8, paragraph four, the word ‘chord’ was changed to read ‘cord’.

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**Amendment to a Conditional Use Permit – Addition for Service Area – Map 3, Lot 16A (86 Emery Mills Road) – Mark Parker / Parker’s Boathouse, Applicant**

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

Roger A., after reviewing the file presented which included the existing structures on site, pointed out that it appeared that the current lot coverage by structures was at 10%. Roger told Mrs. Parker that 10% was all that is allowed per the Zoning Ordinance. He also reminded members that during a previous application for Parker’s Boathouse, the applicant had to purchase property from the neighbor in order to be able to meet the 10% restriction. Roger thought at that time only enough property was purchased to provide for the addition to the showroom. Roger thought the best approach was to table the application so Mrs. Parker could determine that the figures the town has on file are in fact correct. The board members agreed to table the application. Roger stated if they were incorrect and there appears to be additional coverage allowed on site they can call Barbara and have the application put on the next agenda. Mrs. Parker thanked the board for their time.

Nothing further was discussed.

**Amendment to a Conditional Use Permit – Add a 2000 Gallon Propane Tank & Fill Station for Smaller Tanks – Map 18, Lot 32 (112 Emery Mills Road) – Paul & Robert Muse, Owners**

Paul and Robert Muse were present for the review of their application. Note: Board members did a site inspection prior to this evenings meeting.

The Muse brothers began by talking about a necessary retaining wall to be able to build the land high enough to level the area for the new propane tank. They realized at this point that it had to be 10 feet from the property line. Both believed it would have to be at least 4 feet in height. Roger A. stated any wall greater than 4 feet would have to have an engineered stamp for the planned wall. Madge B. believed in this case the board would need a new plan showing the location of the proposed wall.

Mr. Muse asked if an engineer would have to draft the plan or did they only need an engineer to state their plan was adequate? CEO McDonough stated the retaining wall would have to be sketched on the plot plan, describing it, and the board would need some text from an engineer stating the plan was fine.

Madge B. asked if the board needed to know how much fill would be brought in or earth disturbed during the project? Madge thought the board would need some type of documentation to be able to approve the project. She also asked if it would be over 150 yards of fill moved? CEO McDonough asked if she was referring to §105-39, ‘Earth removal and filling’. Madge stated yes. CEO McDonough believed there would be over 150 yards of fill moved. Mr. Muse agreed there might be over 150 yards of earth moved. CEO McDonough stated that part of the Planning Board approval process would be to review the earth being moved. Madge B. agreed stating she wanted it part of the record that the amount of disturb earth would be greater than 150 yards.

Roger A. stated the board would table the application until the next meeting upon which time the applicants would bring in a new plan which would include the retaining wall. Roger said the next review of this application would be Tuesday, May 11<sup>th</sup>.

Nothing further was discussed.

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**Conditional Use Permit – Timber Harvest on Town Forest, Part of 10 Year Plan, Stand #7 – Part of Map 7, Lot 9 (Off of Square Pond Road) – Shapleigh Town Forest, Applicant; Ralph Ridley, Representative**  
Mr. Ralph Ridley was present for the final review of the application.

Madge B. began by stating she and a group of several others from the Conservation Committee went into the town forest recently to look at vernal pools. She showed several locations on neighboring tree stands to Stand #7 that had vernal pools but she didn't believe there were any on Stand #7.

Madge B. asked Mr. Ridley if he would have someone look into documenting the vernal pools prior to any tree harvesting to be certain they are protected. Madge said she had no evidence of any significant wildlife or vernal pools in this location. She said she could not demand that the information had to be provided but she would like the Town Forest Trustees to get a qualified individual to document the vernal pool locations. Mr. William Hutchins, Chairman of the Conservation Committee, was in the audience and agreed with Madge that this information should be documented by a qualified individual.

Mr. Ridley asked if Rene' Noel would know someone that could do this? Maggie M. stated on the plan she received for her property this type of information was in the plan. Mr. Ridley did not believe they had received information on the vernal pools in the 10 year plan he received. He said he would contact Mr. Noel and ask him about this information.

Madge B. stated she was not trying to hold up the application. She said for future reviews she will continue to request this information prior to the timber harvest. She said in this location there may be no vernal pools but it would be a good idea to get them all documented so the board and the Forest Trustees would have the information.

Roger A. reviewed §105-50 noting the sections regarding the shoreland zone were not applicable. Roger also noted there was no flowing water so there wouldn't be any bridges or culverts required. Roger read §105-50.B(7) in its entirety. It read as follows: Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting result in the exposure of mineral soil shall be located such that an unscarified strip of vegetation of at least 75 feet in width for slopes up to 10% shall be retained between the exposed mineral soil and the normal high-water line of a water body or upland edge of a wetland. For each ten-percent increase in slope, the unscarified strip shall be increased by 20 feet. The provisions of this subsection apply only to a face sloping toward the water body or wetland; provided, however, that no portion of such exposed mineral soil on a back face shall be closer than 25 feet to the normal high-water line of a water body or upland edge of a wetland. Roger stated it was important to prevent soil erosion especially in open areas using Best Management Practices to prevent it.

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

**Madge B. made the motion to approve the timber harvesting on Stand #7 as presented on the plan. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. Vote 4 – 0, the motion to approve the Conditional Use Permit was unanimous.**

Nothing further was discussed.

**Amendment to a Conditional Use Permit – Put an 18' x 44' Addition to the Shapleigh Public Library Map 5, Lot 23A (607 Shapleigh Corner Road) – Arthur Bryant, Applicant, Chairman of the Shapleigh Community Library Trustees**

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

Mr. Bryant began by stating the Library Trustees were proposing an 18' x 44' single story addition which would have a gable roof attached to the existing library. Mr. Bryant stated a structural engineer designed the building plans. A copy of the plans were provided for the board members to review.

Mr. Bryant explained where the new building would be located. It would be between the existing building and the parking lot. Mr. Bryant stated the engineer did come to the site to look at the existing structure. He added that even the existing insulation was tested and sent to the University of Maine in Gorham to make certain it was not hazardous and it is not.

Mr. Bryant stated existing windows would be removed and reused because they were fairly new. They also were going to salvage as much of the siding as well because it was also relatively new and was made of cedar. Mr. Bryant stated four contractors came for copies of the plans. Only two decided to bid on the plans for the job.

Mr. Bryant stated that he had come in to talk to the CEO prior to the start of this project. He stated the CEO's concern was the snow load on the roof so Mr. Bryant had him figure out what square footage would be allowed to satisfy the building code. Mr. Bryant had a copy of those figures attached to his application. The CEO had calculated the building could not exceed 1,109 square feet. The proposed addition would be 792 square feet.

Mr. Bryant also provided the board with a copy of the existing parking lot plan which also showed the location of the existing well and septic system. A copy of the Subsurface Wastewater Disposal System Application was also provided, done by John Large, SE #7 on 11/4/95.

Madge B. asked if they needed to change the septic system? Mr. Bryant stated no, the only thing that would be moved would be an existing outdoor faucet because its present location was where the addition would be placed.

Roger A. asked if there were any changes being made to the parking lot? Mr. Bryant stated that in order to put the new foundation in they may have to disturb part of the existing parking area. Roger stated that based on the size of the addition three additional parking spaces would be required. Madge B. concurred. Mr. Bryant stated there were additional parking spaces on the back of the building. Roger stated currently the plan showed 14 parking spaces and there would need to be 17 spaces per the Ordinance. §105-43.B(1)(f) "One space for each 150 square feet or fraction thereof of floor area of any retail, wholesale or service establishment or office of professional building."

Mr. Bryant believed there was room to add the three spaces at the end of the existing parking area. Roland L. asked if it had to be paved? Roger said it could be gravel. He believed it would be easiest to extend the existing parking area an additional four spaces. Mr. Bryant asked how big the spaces needed to be? Roger said 200 square feet, 10 feet x 20 feet approximately. Roger was concerned with being too close to the property line. Mr. Bryant was not concerned he believed there was enough room. He said he would add the parking spaces onto a new sketch plan.

Madge B. was concerned with stormwater runoff. Board members reviewed the existing plans. Madge

noted the parking area appeared to be higher than the surrounding area. Mr. Bryant said it was because of the ledge and location of the septic system. Madge asked if the ledge could be a problem? Roger didn't believe so because the area was surrounded by grass. Roger said there was only one area where the runoff would go toward the road but noted there was a grassed area between the runoff area and the road.

Madge B. thought it would help not to pave anymore area of the parking lot. Roger A. agreed that gravel would be best. Members did not think there would be a stormwater issue with the additional roofed area because it would be draining onto a grassy area prior to reaching any property line or roadway and because of its size would have a relatively small impact on the area.

Roger A. stated a new parking plan would be needed for the additional spaces.

Madge B. asked if there would be any additional lighting? Mr. Bryant stated no, the library was only open one night a week until 8:00 p.m.

**Roger A. stated a Public Hearing would be scheduled for Tuesday, May 11<sup>th</sup> at 7:00 p.m. A Notice to Abutters would be mailed as well.**

Nothing further was discussed.

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**Conditional Use Permit – Erect a Sand/Salt Facility – Map 7, Lot 5 (Shapleigh Corner Road) - Town of Shapleigh, Applicant**

Mr. James Lacadie, PE, from CES Inc. in Brewer Maine was present to discuss the sand/salt facility. In addition, Road Commissioner Richard Goodwin and Road Commissioner Dave Winchell were present along with Selectman Charles Mullins from the Town of Shapleigh.

Mr. Lacadie stated it was a two building concept. One building would hold the sand/salt mix and the other would house the salt. Mr. Lacadie pointed out the entrance to the buildings would be in the same location as the existing entrance to the property. It would be wider only. The plans showed an entrance of 30 feet in width.

Board members reviewed the plans as Mr. Lacadie gave more details of the site plan. He stated the proposed larger building would be 70' x 131' and was designed to hold 5000 cu yds of the sand/salt mix. He said the other building which is 32' x 40' was designed to hold 300 tons of pure salt.

Also on the plan, Mr. Lacadie pointed out an area where the general public could come onto the site to get sand/salt. Also there were depressions depicted on the site plan for stormwater drainage. He said currently they had an application in to the MDEP for the plan approval. He stated on the plan was the worse case scenario for the amount of stormwater diversion holding areas, he thought they would not have to go to this extent in reality. He said they were hoping to eliminate at least one of the detention areas. He said based on the soils and topography he did not see how any stormwater would be able to leave the site.

Mr. Lacadie pointed out the working areas on site which would be paved to help prevent salt from going into the soil. Not all areas would be done initially; it will be based on the cost to the townspeople.

Mr. Lacadie stated the smaller building is a typical framed building with trusses / sloped roof. The larger building is a three-pin arch with laminated wood beams. The beams are anchored at the bottom and tied together at the top which creates almost a semi-circular building. Roland L. asked if it was like a Quonset hut? Mr. Lacadie said it was similar too but where a Quonset hut was circular this building is parabolic, it has a point at the top.

Mr. Lacadie stated one issue that was brought forth at the Board of Selectmen meeting was there was a height restriction and the proposed building is 38 feet in height. Roger A. stated the height restriction was 35 feet. Roger said there was no way the Planning Board could waive that restriction. Roger said this measurement was from the highest point of the roof to the average grade on the downhill side of the structure.

Mr. Lacadie stated this would create a problem because they were at 38 feet. Mr. Lacadie asked if they could ask for a waiver? Roger A. stated they would have to go to the Zoning Board of Appeals to ask for the waiver. Madge B. agreed because it is a dimensional requirement that the Planning Board has no authority to waive.

Selectman Mullins asked if the Board of Selectmen could apply for the waiver? Roger A. stated yes. Selectman Mullins thought it would be less of a cost to the town if they did not have to have the Engineer present for the Zoning Board review.

CEO McDonough asked if the building was something that was prefabricated so it could not be re-designed to meet the code requirement? Mr. Lacadie said the arch components come in as fixed lengths. He said the engineer can adjust the sidewall height to some degree. Mr. Lacadie said three feet would be an issue because it compromised the utility of the building. He said you need to have a certain wall height for a push wall so you don't damage the superstructure. He said if you use only a two foot side wall you find the equipment hits the beams. Also functionality of the building is an issue, with 38 feet you can dump inside the building and drive out with the dump up without hitting the doors. He believed there were practical reasons for the 38 foot height.

Roger A. asked if there were areas to prevent salt from leaching into the soil? CEO McDonough stated it looked like much of the surrounding areas were paved. Mr. Lacadie said inside the building and the area surrounding the building was paved. MDEP requires that any area where you are doing loading and unloading has to be paved. There are also requirements for spring cleanup. Any areas where sand or salt was spilled have to be cleaned up and put back into the building. The loading and unloading areas were pointed out on the plan.

CEO McDonough asked about the notation for a manhole. Mr. Lacadie stated it took water from the collection area that collected water from uphill areas and piped it to the detention areas. He stated there would be very little salt once it went thru the collection area.

Roland L. asked if there was any concern that salt would contaminate the aquifer that is located in this area? Mr. Lacadie stated MDEP requires outside piles to go inside a building to prevent contamination of groundwater. Therefore, the building is the containment and any operation outside will be minimal. Madge B. stated that would be one more reason to want the higher building because the more you could do inside the better.

CEO McDonough asked if the trucks would be loaded inside the building? Road Commissioner Goodwin stated that as the winter goes on it will be possible but when the building is full of sand/salt and because of the height of the trucks, it wouldn't be possible without building some type of ramp to lower them. Madge B. said therefore, you can't really load inside so spillage is more of an issue. R. C. Goodwin said in the beginning of the winter yes it's an issue. Mr. Lacadie stated most of his clients are able to operate inside the building once they reach a certain point where some of the sand has been removed.

Mr. Lacadie stated with the building lit at night, it makes it easier to work inside the building. He also pointed out that the building was 70 feet wide so there was room for trucks to turn around inside.

Roland L. asked what type of a visual barrier there would be between the neighboring properties and the buildings. He stated he was disappointed to see that the Town has removed much of the existing vegetation leaving the area with lots of exposed earth. It was noted there have been complaints about sand blowing across Route 11 and into Boonies parking area on a windy day.

Roland L. asked if the plan before them had a landscaping plan? Road Commissioner Goodwin stated there would be a line of trees or shrubbery put up eventually. Roland asked if this information was on the current plan? R.C. Goodwin stated no.

Roland L. asked when he was looking at the building what would he be looking at? Mr. Lacadie stated it was a steel panel with a galvanized finish and then it's covered with a baked on enamel.

Board members discussed the height of the building. Mr. Lacadie noted that the building floor elevation was below the height of Rte. 11 so the building height would not have as much of a visual impact as it would if it were at the same grade or higher. Roger A. read from 105-19 'Notes to table on dimensional requirements', H. 'Building height. No building shall exceed 2 ½ stories or 35 feet in height, as measured between the mean original grade at the downhill side of the structure and the highest point of the structure.' Roger noted again this was all the Planning Board could approve; anything higher would have to go through the Zoning Board.

Roger A. stated the board would also need to see an erosion control plan. How all the water from impervious areas would drain. Roger said this information was probably going to be similar to what was required for the MDEP. How the drainage ponds would be created.

Roger A. stated a schedule would also have to be created for how often the pavement was going to be reviewed for cracks and how it would be maintained. Roger said a five year plan would probably work best.

CEO McDonough asked if the board would want to see a landscaping and buffering plan? Roger A. stated yes. Madge B. thought the landscaping plan was going to be done by someone else. Roger said regardless it was part of the project and needed to be presented. CEO McDonough asked what the ordinance required? The board reviewed §105-28 'Setbacks and screening,' and §105-31 'Preservation of landscapes; landscaping of parking and storage areas.' The board provided Mr. Lacadie a copy of the Zoning Ordinance. It appeared at a minimum a 15 foot wide landscaped buffer between Rte. 11 and the project area consisting of trees or evergreen hedges would be required.

Roger A. noted that in §105-27 'Erosion control', the stripping of vegetation was to be minimized to prevent erosion but in this case the vegetation had already been removed. Roger said the board will need to know how the area is going to be stabilized now and in the future.

Roger A. asked about the width of the road at the entrance, what were they proposing? Mr. Lacadie stated 30 feet. Roger stated the ordinance only allowed 26 feet, referring to §105-43.A 'Off-street parking and loading'. Mr. Lacadie asked if this would also need a waiver. Roger said yes, you need to go to the ZBA. Roger reminded them that they will also need a MDOT entrance permit because it is on Rte. 11. Mr. Lacadie asked why they would need one even though there was an existing entrance? Madge B. said she did not believe it was a permitted entrance at this time. Roger agreed.

Mr. Lacadie said upon reviewing the ordinance he noted the town requires a 50 year stormwater plan? Roger A. stated yes (See §105-26 'Storm water runoff.').

Maggie M. asked about the area where the public will have access to gravel in the future, would that area be landscaped now or sometime in the future? Road Commissioner Goodwin stated someone would be doing the landscape plan before the facility is put into use but CES Inc. wouldn't be doing this.

Roland L. asked what the time table was for the project? Mr. Lacadie stated the town hoped to have construction completed by the end of October. Roland asked if this were the case would the stockpile of sand from the across the road be moved into the new facility? Road Commissioner Goodwin stated they had not decided what they will do. He said they may use the sand they have now from that location until it is gone then move to the new facility. Roland asked if the existing gravel area would then be reclaimed? R.C. Goodwin stated he believed so but was not sure; they hadn't discussed it at this point in time. He said the area would become part of the Transfer Station so he was not sure exactly what would take place in this location. He said it would no longer be used as a gravel pit.

CEO McDonough asked if there would be any exterior lighting on the buildings? Mr. Lacadie stated there would be light for the entryways of the building. CEO McDonough asked if any would be shining onto Route 11. Mr. Lacadie stated no. Road Commissioner Goodwin agreed there might be a light on the end of the building but not at the road. CEO McDonough stated lighting was not a problem unless it was a bright light shining onto Rte. 11.

CEO McDonough asked Mr. Lacadie if he knew how long it was going to take to get MDEP approval? Mr. Lacadie did not know because he wasn't sure how much detail they would require for the stormwater retention. He said a full permit can take several months whereas a Permit by Rule would only take several weeks. CEO McDonough asked if they knew when they were going to meet with the MDEP representative? Mr. Lacadie stated he did not know at this time. He said he was waiting for a telephone call from them to see how they should proceed.

Roland L. asked if there would need to be a site visit and public hearing? Roger A. stated yes but not until after they have the information from MDEP as to what they will need to put on the final plan. CEO McDonough also noted that the board would need to know whether or not they were going to the ZBA to try to get a waiver on building height and the road entrance. CEO McDonough asked if the board was going to table the application until after the applicant went to the ZBA. Roger said yes. Road Commissioner Goodwin stated the reason for requesting the 30 foot entrance was because the blade of the plow trucks crossed over the centerline when leaving the facility using 26 feet and he wanted to avoid a dangerous situation. Board members agreed with his reasoning but stated again they could not waive anything in the ordinance.

**Roland L. made the motion to table the application until after the applicant goes before the ZBA to try to get a three foot waiver for building height and four foot waiver for width of entrance to the facility. Madge B. 2<sup>nd</sup> the motion. All members were in favor. Vote 4 – 0, the motion to table the Conditional Use Permit was unanimous.**

Nothing further was discussed.

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**Growth Permit(s) –**

**Map 23, Lot 10A – (Portside) - Received Growth Permit #02-10 for a Seasonal Conversion**

***Other:***

Board members discussed landscaping in the shoreland district and their lack of knowledge as to what is an appropriate landscaping plan with respect to the environmental impact of site work and how to rectify the damage done.

Roland L. made note of recent site work he witnessed and did not realize how much of an area is affected. CEO McDonough agreed and stated he sees this all the time. He asked how many new foundations are reviewed by the board in a year and pointed out they all create a large disturbance on site. He agreed fully that the board should enlist some outside assistance to learn more about how to mitigate the problems created on a construction site.

Members requested that Barbara F. contact York County Soils and Water District to see if a representative could attend a meeting to exchange information in this area. Madge B. thought perhaps meeting with someone at 7:00 p.m. might work, on an evening when there was no public hearing being held. Barbara will contact them and see if they can offer any assistance to the board.

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***The Planning Board meeting ended at 9:10 p.m.***

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



# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, May 11, 2010**

Members in attendance: Roger Allaire (Chairman), Madge Baker (Vice 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 “ ”.

**Public Hearing began at 7:00 p.m.**

**Amendment to a Conditional Use Permit – Put an 18' x 44' Addition to the Shapleigh Public Library – Map 5, Lot 23A (607 Shapleigh Corner Road) – Arthur Bryant, Applicant, Chairman of the Shapleigh Community Library Trustees**

Mr. Bryant was present for the public hearing. Barbara Britton, also on the Library Board of Trustees was present as well.

Mr. Bryant began by stating he was speaking with Mrs. Britton about the parking plan he was presenting this evening. He gave board members a copy of the proposed parking plan which showed the three additional parking spaces based on the square footage of the addition. The plan showed two parking spaces at the end of the existing parking area toward the rear of the property and one space placed next to the proposed addition.

Mr. Bryant stated he had talked to the direct abutters, the Clarks, about the property line designation. The Clarks stated the library property extends 20 feet beyond the existing trees near their boundary line. Therefore, Mr. Bryant stated the location of the additional spaces he is proposing will not disturb the Clark property.

Roger A., after reviewing the plan presented, asked Mr. Bryant how people using the proposed parking spots #16 and #17 would back out of their spaces? Roger was concerned that if the parking lot was full they would not be able to turn around because of their location. Mr. Bryant stated they would need to do a 2 to 3 point turn but he believed it was possible.

Roger A. asked if it would be easier if parking space #16 and #17 were placed adjacent to #10 and #11, this way backing out would not be an issue. Mr. Bryant reviewed Roger's idea and agreed this would be best. He added that he just hadn't thought of it.

Roger A. also noted that parking space #1 wasn't noted on the plan. Mr. Bryant stated #1 could be placed next to parking space #2. They would need to add some fill but there was room for it on site. Mr. Bryant would add that spot on the plan as well.

Roger A. asked if there was only one entrance/exit? Mr. Bryant stated yes, there was only one entrance/exit and that was not going to change.

Madge B. and Roger A. asked if there was going to be any additional lighting? Mr. Bryant did not envision adding lighting because very seldom did anyone come to the library on the night they are open. Mr. Bryant stated if the board wanted them to add a light they would be willing to do so, but it was not part of the plan at this time. Roger thought in the winter they may want a light to shine on the parking lot. Mr. Bryant said they could add the addition of a light to the bid request. Roger stated that the location of the light was important because it could not shine onto Rte. 11 to prevent someone from getting blinded by the light.

Mr. Bryant stated he understood. He added that it could be dangerous exiting onto Rte. 11 because of a blind spot along the road. He has hoped the State would reduce the speed in this location and monitor traffic or that perhaps the Town could put up a set of warning lights to warn people to slow down on the crest of the road.

Madge B. thought that at this time there was a light over the existing door. Mr. Bryant stated there may be a light but he never goes to the library in the evening so he isn't sure but he was sure there was not one in the parking lot. Madge said she didn't know if they needed additional lighting but if they add some just be sure to make it directional toward the back of the parking area.

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

The public hearing closed at 7:15 p.m.

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

**The minutes from Tuesday, April 27, 2010 were accepted as amended.** On Page 5 of 10, the last sentence in paragraph two was changed in part to read "...to make certain ~~he~~ it was not hazardous and it is not." On Page 9 of 10, paragraph six, the last sentence was changed to read "Vote 4-0, the motion to ~~approve~~ **table** the Conditional Use Permit was unanimous.

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**Amendment to a Conditional Use Permit – Put an 18' x 44' Addition to the Shapleigh Public Library – Map 5, Lot 23A (607 Shapleigh Corner Road) – Arthur Bryant, Applicant, Chairman of the Shapleigh Community Library Trustees**

Mr. Bryant was present for the final review of the application. Barbara Britton was also present.

Board members began by asking Mr. Bryant for the new sketch plan showing the location of parking space #16 and #17. Mr. Bryant sketched in parking space #16 and #17 as discussed during the public hearing as well as parking space #1. Parking space #15 was left unchanged.

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

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

- 105-17 – Land uses. *A Library requires a Conditional Use Permit and a change to a CUP must be approved by the Planning Board which is why the applicant is before the 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. *There is no change to the existing entrance/exit. It is acknowledged that the visibility to the South is limited and does not meet the recommended site distance.***
- 105-22 – Noise. *There is no noise other than that to be generated during construction.***
- 105-23 – Dust, fumes, vapors and gases. *There shall be none generated.***
- 105-24 – Odors. *There shall be none generated.***
- 105-25 – Glare. *Any additional lighting shall shine toward the back of the parking area, not toward Rte. 11.***

- 105-26 – Stormwater runoff. *The stormwater runoff toward the front of the building shall be stopped by the existing swale. The runoff to the back of the property shall be on top of the existing parking lot then onto the grass area which is part of the library property.*
- 105-27 – Erosion control. *This is the same as for stormwater runoff and Best Management Practices shall be using during the construction of the addition.*
- 105-28 – Setbacks and screening. *There shall be no changes to the existing vegetation with the addition of the building.*
- 105-30 – Water quality. *There is nothing associated with the addition of the building to affect water quality.*
- 105-31 – Preservation of landscape; landscaping of parking and storage areas. *There shall be no disturbance to the surrounding landscape which is already established.*
- 105-32 - Relation of proposed building to the environment. *The building addition has been designed to replicate the existing structure, using the same windows and siding.*
- 105-33 – Refuse disposal. *There is no additional refuse generated by adding onto the existing library. A dumpster shall be used during construction.*
- 105-34 – Access control on Routes 109 and 11. *The curb cut is in existence.*
- 105-43 – Off-street parking and loading. *Three additional parking spaces were added to the parking plan so it now meets the Ordinance.*
- 105-46 – Sanitary provisions. *No additional bathroom shall be added therefore no change is required to the existing State approved wastewater disposal system. .*

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 public facilities such as libraries and prefers places of public gatherings to be along Rte. 109 or Rte. 11.*
- 4) Traffic access to the site is safe. *The entrance is in existence and there are no changes being made to it. At this time visibility to the South is limited but the existing library has been in place for many years and there have been no problems to date.*
- 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 approved Subsurface Wastewater Disposal System on site at this time, designed by John Large, SE #7, dated 11/4/95. There shall be a dumpster used on site for any debris created during construction.*
- 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. *The building has been in existence for over 50 years and there have been no stormwater issues to date. The changes as proposed shall not adversely impact the site.*
- 9) Adequate provisions to control soil erosion and sedimentation have been made. *Best Management Practices shall be used during construction to control soil erosion.*
- 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 a fire hydrant.*

- 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 shall be no noise, fumes, dust, odors or the like generated and there shall be no lighting shining toward Rte. 11.***
- 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 or comments? There were none.

**Madge B. made the motion to approve the application for an 18' x 44' addition to the public library along with the parking plan for 17 parking spaces. Diane S. 2<sup>nd</sup> the motion. Vote 5 – 0, the motion to approve the Amendment to the Conditional Use Permit was unanimous.**

Roger A. told Mr. Bryant he must get a building permit from the Code Enforcement Officer prior to commencing with any work.

Nothing further was discussed.

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**Amendment to a Conditional Use Permit – Mobile Lunch Truck – Map 18, Lot 28 (146 Emery Mills Road) – Stephen Quartarone – Owner; Patrick Coyne, Applicant**

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

Mr. Coyne stated he wanted to set up a lunch truck on Stephen Quartarone's property to the left of the parking lot.

Roger A. asked if he would be using a deep fat fryer? Mr. Coyne stated yes. Roger asked where the grease would go? Mr. Coyne stated he provided a copy of a letter from Leon Knox stating that he would take the fryer oil and use it to make biodiesel. Note: Mr. Knox lives at 359 Shapleigh Corner Road, Shapleigh.

Roger A. asked about the waste water? Mr. Coyne stated John Gallant of Stoney Road Septic provided a letter stating that he would take the waste water from the mobile lunch truck on an as needed basis. CEO McDonough asked if this was grey water only, not waste from a bathroom facility? Mr. Coyne stated correct, from the sinks only.

Roland L. asked if there was already a permit for a mobile truck approved for this site? Roger A. stated yes, but the permit had expired.

Roger A. asked if Mr. Coyne would be on site year round? Mr. Coyne stated no, summer only, perhaps until mid October. Roger asked when he would open? Mr. Coyne thought perhaps in April.

Roger A. reviewed the description Mr. Coyne provided and asked if the hours listed were *exactly* what he wanted? Mr. Coyne had provided two options for operating hours, Option #1 = 11 a.m. to 8:30 p.m. Sunday, Tuesday, Wednesday; 11:a.m. to 9:00 p.m. Thursday and 10:00 p.m. on Friday and Saturday. Option #2 = 11:00 a.m. to 1 hour after dusk or sunset. Roger stated that if he was approved for 11:00 a.m. thru 10:00 p.m. it should cover the hours he proposed. Mr. Coyne stated yes. Mr. Coyne added that he would be closed one day a week; this was a requirement of approval from the State of Maine for a Mobile Food Service.

Roger A. asked if there would be only one picnic table? Mr. Coyne stated yes for people to use while waiting for service, it was not provided for people to use to eat on. Mr. Coyne stated he was not running a restaurant, it was a take-out food service only. He stated the table belonged to Mr. Quartarone and was there at this time.

CEO McDonough asked if there would be a trash receptacle? Mr. Coyne stated yes there would be a trash barrel and it gets tied to the front bumper of the truck.

Maggie M. asked if there should be a sign stating no eating on premises? Roger A. stated that would be impossible to police. Roger said the Planning Board should make it a condition of approval that no food is to be consumed on site then if someone complains it has been addressed and the CEO can try to enforce the condition. CEO McDonough stated it would most probably become a State issue because they are the ones making the restriction.

Roger A. made Mr. Coyne aware that any signage would go through the CEO.

CEO McDonough asked what prepared food meant as noted in his application? Mr. Coyne stated he bought the meat and had the patties made by someone local. He said the food was fresh daily.

Roland L. stated that in the application it said he would either run off a generator or 110. He asked when the truck is there which would he be using? Mr. Coyne stated he would be plugging into a 110 outlet Mr. Quartarone had on site. He said the generator is for backup for power failures. CEO McDonough asked if it was loud. Mr. Coyne did not believe so, he said he used the generator for fishing derby's and it was not too loud. CEO McDonough asked if it was a gas or diesel generator? Mr. Coyne stated gas.

Mr. Coyne told members that when he was not open the truck would be removed from site. He drove it home at night.

Roger A. asked if there were any additional questions? There were none. Mr. Coyne asked if there was anything additional he needed? Members did not think there was anything needed at this time.

***Roger A. scheduled a Public Hearing for 7:00 p.m. on May 25<sup>th</sup>. A Notice to Abutters will be mailed as well.*** Note: A site inspection would not need to be conducted due to the fact all members were well aware of the property Mr. Coyne would be using from past approvals.

Nothing further was discussed.

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

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

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, May 25, 2010**

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

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

**Public Hearing began at 7:10 p.m.**

**Amendment to a Conditional Use Permit – Lunch Truck – Map 18, Lot 28 (146 Emery Mills Road) – Stephen Quartarone - Owner, Patrick Coyne - Applicant**

Mr. Coyne was present for the public hearing.

Roger A. asked him to let the board know again what his application was for.

Mr. Coyne stated he wanted to place a self contained mobile lunch truck on Mr. Quartarone's property known as Potbelly Junction. He wanted to serve lunch and dinner and it would be take-out only.

Roger A. stated the hours of operation would be 11:00 a.m. thru 10:00 p.m., six days a week. The lunch truck would be closed on Monday. He asked if Mr. Coyne wanted any additional hours? Mr. Coyne stated, no.

Roger A. noted that the State permit said no food could be consumed on site. Mr. Coyne stated, correct.

Roger A. stated the lunch truck would be open from mid April to the second week in October. Mr. Coyne stated, yes.

Madge B. asked if trash was addressed? Roger A. stated yes, Mr. Coyne would have a trash barrel that he would take care of. The oil/grease would go to Leon Knox for the creation of biodiesel, and the waste water would be taken care of by Stoney Road Septic Service.

Roland L. asked if there was going to be a sign at the road? Mr. Coyne stated he would have to talk to Mr. Quartarone about the sign because currently the signage allowed was at its maximum, so he wanted to see if anything on the current sign could be removed so he could advertise. Mr. Coyne stated he would like to have a sign.

Madge B. asked if there was a parking plan? Roger A. stated yes, a parking plan was provided and it exceeds the minimum spaces required. Roger noted that there was a mobile truck in the same location previously and the parking spaces for it are still in existence. Diane S. stated that one of the approved businesses no longer exists on site so the spaces for that business are also available.

Madge B. asked if the mobile truck would have outside lighting? Mr. Coyne stated, no, there would be a light inside. Madge asked if the light would shine toward the road? Mr. Coyne stated, no.

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

The public hearing 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 11, 2010 were accepted as read.

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**Amendment to a Conditional Use Permit – Lunch Truck – Map 18, Lot 28 (146 Emery Mills Road) – Stephen Quartarone - Owner, Patrick Coyne - Applicant**

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

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

Roger A. reviewed the following ordinance standards:

- 105-17 – Land uses. *An eating establishment requires a Conditional Use Permit.*
- 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. *There is no change to the existing approved entrance/exit. The site distance requirement is met in both directions.*
- 105-22 – Noise. *There is no noise other than when the use of the generator is required. This will be limited to power outages only.*
- 105-23 – Dust, fumes, vapors and gases. *There shall be no dust generated, the only fumes shall be the food. The odor should not exceed the lot lines.*
- 105-24 – Odors. *There shall be none generated other than from the cooking of food. There had previously been a mobile food truck on site and there was no issue with fumes.*
- 105-25 – Glare. *The only additional lighting shall be inside the lunch truck. This light will not go beyond the lots lines.*
- 105-26 – Stormwater runoff. *The stormwater runoff has been addressed and approved on a previous approval for this location. There are no changes being made to the property that would affect stormwater runoff.*
- 105-27 – Erosion control. *This is the same as for stormwater runoff.*
- 105-28 – Setbacks and screening. *There shall be no changes to the existing vegetation. This is an approved business location.*
- 105-29 – Explosive materials. *None associated with this business.*
- 105-30 – Water quality. *All waste products are contained inside the mobile lunch truck and shall be removed per the plans provided.*
- 105-31 – Preservation of landscape; landscaping of parking and storage areas. *There shall be no disturbance to the surrounding landscape which is already established.*
- 105-32 – Relation of proposed building to the environment. *There are no changes being made to the existing approved buildings on site. The addition of a mobile lunch truck will not be an issue in this location.*
- 105-33 – Refuse disposal. *The applicant shall use a trash barrel and shall empty it as needed. Waste grease/oil shall be brought to Leon Knox of 359 Shapleigh Corner Road and waste water shall be removed by Stoney Road Septic Service as needed.*
- 105-34 – Access control on Routes 109 and 11. *The approved curb cut is in existence.*

- 105-43 – Off-street parking and loading. *There is sufficient parking at this location at this time to accommodate the mobile lunch truck. A parking plan was provided.*
- 105-46 – Sanitary provisions. *There are no bathroom facilities to be provided to the public. This is a take-out service only. Mr. Coyne has permission to use the bathroom facility for his personal use at Potbelly Junction which has a State approved septic system.*
- 105-52 – Water quality protection. *Waste water shall be removed from site by Stoney Road Septic Service on an as needed basis. Waste oil/grease shall be given to Leon Knox.*

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. *The previously approved entrance is in existence and there are no changes being made to it.*
- 5) The site design is in conformance with all municipal flood hazard protection regulations. *It is, the existing approved structures are not in the flood zone.*
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. *There are no bathroom facilities to be provided to the public. This is a take-out service only. Mr. Coyne has permission to use the bathroom. Wastewater in the mobile lunch truck shall be removed by Stoney Road Septic Service on an as needed basis. Waste oil/grease shall be brought to Leon Knox, 359 Shapleigh Corner Road, to be used to make biodiesel fuel.*
- 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 to affect stormwater. There is an approved stormwater plan on file for this location.*
- 9) Adequate provisions to control soil erosion and sedimentation have been made. *There is nothing taking place on site to create soil erosion and sedimentation. The approved buildings and parking lot are already in existence.*
- 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 a fire hydrant.*
- 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 shall be no fumes, dust, odors or the like generated beyond the lot lines and there shall be no lighting shining toward Rte. 109. The only noise shall be the generator on a limited basis.*
- 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 or comments? There were none.

Madge B. made the motion to approve the application to place a mobile lunch truck on Map 18, Lot 28, property owned by Stephen Quartarone, with the following conditions:

1. The hours of operation shall be 11:00 a.m. thru 10 p.m., six days a week. The mobile lunch truck shall be closed on Monday.
2. The mobile lunch truck can operate from mid April thru mid October each year.
3. No food shall be consumed on site; this is a take-out service only.



Maggy M. 2<sup>nd</sup> the motion.

Vote 5 – 0, the motion to approve the Amendment to the Conditional Use Permit was unanimous.

Roger A. reminded Mr. Coyne that any signage would be through the Code Enforcement Office.

Nothing further was discussed.

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**Best Possible Location – Replace Existing Structure – Re-review Application for Clarification Based on New Information – Map 34, Lot 3 (92 Cedar Drive) – Diane Bragdon, Applicant**

Mr. Ken Lobdell, owner of Map 34, Lot 2, a direct abutter of Ms. Bragdon was present. Mr. David Whatley, owner of Map 34, Lot 4 was also present.

Mr. Lobdell stated he hadn't received notice for the original meeting so he wanted to come before the board to voice a concern he had with the Bragdon application. He stated he had met several weeks prior with CEO McDonough and Land Use Secretary Barbara Felong and they showed him the plans the board had on file. He said they asked him to document the meeting and his concerns which he did in a letter which the Planning Board received a copy of.

Mr. Lobdell stated his biggest concern was the applicant had been caught dredging out the lake and using the sand to add to the beach. He said in doing this the high water mark location has been changed. Mr. Lobdell showed the board a picture of the new beach and existing camp.

Mr. Lobdell stated that previously he had a Code Enforcement Officer come to his property to delineate the high water mark and he noted the location in the photo. He talked about the filled in area. Mr. Whatley stated only one bucket of fill was brought in. Mr. Lobdell stated regardless, the high water mark had shifted because of the work that was done on site.

Madge B. stated that what was being said was the beach was added onto. Mr. Lobdell said yes, the sand brought onto the beach has pushed the high water mark further toward the lake than what it was previously.

Mr. Lobdell stated he had no problem with Ms. Bragdon replacing her camp. He just did not like how it was being done. He didn't like the fact they enlarged the beach and now are going to be allowed a larger building based on the location of the high water mark, which is no longer in the same location as it was not long ago.

Mr. Lobdell believed the CEO at one time had a stop work order for the beach but he didn't know what had become of that. Barbara F. stated she was unsure about what exactly the CEO had done but the MDEP had noted the work being done to the beach and required Ms. Bragdon to put up a silt fence. It also appeared a Permit by Rule had been applied for and received. *Note: CEO McDonough was unable to make this evenings meeting.* Barbara gave the board members the CEO's file on this property to look through.

Mr. Whatley stated he believed Ms. Bragdon received a permit to do the dredging. He said he was on the property when the excavator came to the site and until it left.

Roger A. stated that if the applicant moved greater than 10 yards of soil then they needed a permit from the town. Roger said what happens a lot is when people get a Permit by Rule from the DEP they think they are good to go. But it isn't the case they still need a permit from the town. Roger said he didn't know what happened in this situation.

Roland L. asked if Mr. Lobdell felt the building is too close to the water based on what he felt the high water mark should be? Mr. Lobdell stated it looked like they were going to push the building closer to the lake and he didn't think it was allowed if it fell within the 100 foot mark. He added that this was only his opinion.

Diane S. agreed that the beach had been changed significantly from what it had been. She knew the area and immediately noticed the new beach.

Board members looked at the plans provided by Ms. Bragdon. Members noted that the plans were done by a licensed engineer and showed the new building to be beyond the 100 foot mark.

Madge B. asked Mr. Whatley if he had an issue with what Ms. Bragdon was proposing? Mr. Whatley said, no.

Roland L. asked if demolition had begun yet on the camp? Mr. Lobdell stated, no. Roland asked if that was pending the outcome of this meeting? Barbara F. stated no, the applicant hasn't come for the building permit yet. Roland said he remembered the board trying to determine where the high water mark was on the site inspection.

Maggie M. asked what the difference was between what Ms. Bragdon showed to be the 100 foot mark and what Mr. Lobdell felt was the 100 foot mark? Mr. Lobdell thought it was a difference of between 15 and 20 feet.

Mr. Whatley disagreed; he thought the dock was in the same location as was the fire pit on site. He also didn't think the high water mark had been moved. Mr. Lobdell disagreed stating the fire pit had been moved; at one time it was underwater. Diane S. agreed.

Mr. Lobdell said he did not want to stop them from rebuilding their camp, he just felt the new building was going to be very large and it was being moved closer to the lake based on the normal high water line.

Mr. Whatley asked why didn't they have CEO McDonough determine the high water line? Barbara F. stated the CEO would have the owner hire a surveyor do it. Barbara asked if the plan they were using was done by a surveyor? Roger A. stated yes it was.

Madge B. did not feel there was anything more to be done by the board based on the plans received. Also Madge did not feel reconsideration was an option. Maggie M. agreed citing §105-73.D(2) which read in part, "Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing nor invalidate any action by the Planning Board."

Roger A. thought that if there was new information the board could reconsider. Madge thought reconsideration was addressed in the Planning Board By-laws. Madge read from the by-laws Article 6, 6.6 which read in part: "The Board may reconsider any decision at the same meeting or at a subsequent meeting within 30 days of its original decision, provided, however, that both a vote to reconsider and any action taken pursuant thereto shall occur and be completed within 30 days". She also read Article 6, 6.6, 6.6.1 which read: "Reconsideration should be used for a record which contains significant factual errors due to fraud or mistake regarding facts upon which the decision was based; or when the Board misinterpreted the ordinance, followed improper procedures, or acted beyond its jurisdiction." Madge believed based on the fact it has been beyond 30 days the board had no authority to reconsider.

Barbara F. stated that if the board were to reconsider they would most probably ask for a licensed surveyor to determine the high water mark and in fact the board now has plans drafted by a licensed surveyor. Diane S.

believed the board had to review what was before them now. She also noted that the existing location of the camp is the best possible on site to disturb as little of the area as possible. She did believe that if the applicant had been within the 100 foot mark she would probably not be able to expand as much as she is going to. Mr. Lobdell didn't think it would have made much of a difference with the size allowed; he just didn't think the camp should be allowed to move toward the lake.

Madge B. did not feel, based on the by-laws, that the board could take any further action. Mr. Lobdell stated that he understood but he felt it set a bad precedence to allow someone to be able to move the 100 foot mark by adding onto their property. Madge agreed and did not see why he was allowed to do it. She did not see why he didn't come to the town for a permit. Barbara F. said she would have to ask CEO McDonough, she did not have an answer. All the board members agreed Ms. Bragdon should not have been allowed to expand her yard to such an extent if in fact she did.

Roger A. concluded that the board has to rely on the surveyor or engineered plans to make their decision. They can only use the information they have before them at this time. They cannot go back in time to what might have been. Roger also noted that the foundation will have to be certified to be beyond the 100 foot high water mark prior to construction and that is determined by a licensed surveyor. Mr. Whatley stated that it would be determined based on what is there today. Roger said, yes.

Board members all agreed the application approval would stand as approved in April.

Nothing further was discussed.

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## **GROWTH PERMIT(S) -**

### **Map 7, Lot 42 (Owl's Nest Road) – Received GP #03-10**

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## **OTHER:**

Roland L. believed this was the second time the board reviewed an application when after-the-fact they discovered the applicant had in fact had a previous violation of some kind. He thought if someone on the board or CEO knows there is a prior violation, the board should be made aware of that fact. He felt he would give the situation greater scrutiny if he was made aware. Roland said he felt for the abutter who had legitimate concerns with the Bragdon application.

Madge B. understood what Roland was saying but said the board did not just make an arbitrary decision on where the new home would be placed. Barbara F. believed the decision was based on an engineered plan. The plan determined the location of the 100 foot mark regardless of what happened in the past.

Maggie M. thought the board still would have perhaps tried to find out more information had they known about the beach situation. Diane S. wondered if they should research every application to see what has happened in the past?

Roger A. thought the board could not use past history to deny or approve an application. He did not believe legally that was correct. He said the board had to actually put blinders on, only the material presented can be

used to determine the outcome. He did say that if an applicant came before the board and was approved with conditions and didn't fulfill those conditions, and then they came back before the board for another approval the board can ask them to fulfill their prior obligations prior to making a decision on the second application. Otherwise, he did not feel the board had any authority to use past history. Roger gave the example of earth moving where it requires a three year renewal. If the applicant did not follow the conditions of the original application the board would not have to grant renewal unless he/she fulfilled the conditions from the first application.

Roland L. disagreed, he felt he had the right to know about past violations prior to making a decision on an application. Barbara F. did not feel the board could require additional information based on past violations if in fact the property owner took care of the violation. She thought the only pertinent information was what is happening on or with the property at the time of the application. Madge B. agreed.

Roland L. said if you go to court before a judge for a traffic violation they are going to look at past history.

Roger A. asked if there was anything else to add. There was not.

Nothing further was discussed.

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**The Planning Board meeting was adjourned at 8:24 p.m.**

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

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, June 8, 2010**

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

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**Workshop began at 7:00 p.m.**

### **Joe Anderson of York County Soils & Water Discussed Shoreland Reclamation.**

Mr. Anderson spoke to the board about services his department provided for landowners. He stated that very often educating one land owner led to others in the surrounding neighborhood being made aware of why it was important to control erosion around the lakes for the protection of water quality.

Mr. Anderson provided the board with information on Construction Best Management Practices which described ways to minimize erosion by using sediment barriers and mulching. A handout was also given on an Erosion Control Mix that is used to stabilize and enrich the soil.

Board members asked if Mr. Anderson had information regarding what plant species work best in this area. Mr. Anderson gave handouts with examples of a Native Plant List for Shade, Moist to Wet Soils; Part Sun, Moist to Wet Soil; Part Sun, Dry Soils; and Full Sun, Dry Soil.

Mr. Anderson also discussed the fact that by January 2013 Contractors who excavate or disturb more than one cubic yard of soil in the Shoreland Zone will have to obtain certification from the DEP. He stated this certification is a one day long training program sponsored by the DEP's Nonpoint Source Training and Resource Center. He said those that have attended the one day seminar have stated it was very informative and they better understood why erosion control was important.

Mr. Anderson said that his department did have a fee for services and he would fax the board a copy of the fee schedule if they wanted one. Board members felt that it would be useful for land owners to have any and all information Mr. Anderson could provide.

Board members thanked Mr. Anderson for his time. Mr. Anderson stated he has done much work with CEO McDonough and that they work very well together. He said if in the future the board has any questions to feel free to contact him. He also stated the Acton-Shapleigh Youth Conservation Corp. who works in the area under Amanda Loomis's direction would also be a service for homeowners. This is usually a free service where the homeowner pays for materials only.

The workshop ended at 7:40 p.m.

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**The Planning Board meeting started at 7:45 p.m.**

**The minutes from Tuesday, May 25, 2010 were accepted as read.**

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**OTHER:**

Roger A. noted that the board had received an email from Craig Burgess, of Pinkham and Greer, of Springvale Maine. He was one of the engineers that represented Hissong's application for gravel extraction, property located at Tax Map 7, Lot 28 (State Route 11). The email read in part as follows:

"The gravel pit reclamation plan (Sheet C1) for Great Works Sand & Gravel was revised in accordance with Maine Inland Fisheries & Wildlife (IF&W) comments. IF&W approval was required to meet Condition 4 of the CU permit approval, dated January 15, 2010."

Judy Camuso, Wildlife Biologist from MDIFW sent the following email to Mr. Burgess on April 27<sup>th</sup>:

"MDIFW has reviewed your plan and the deed restrictions for the Great Hollow Sand and Gravel pit in Shapleigh, Maine. I have just a few minor comments.

1. Have the deed restrictions reference the DEP permit rather than my August letter.
2. Remove IFW as an enforcer, as we are really not equipped to enforce violations of this nature.
3. Under Restrictions on Restricted Buffer Area remove the option to modify in the future. Make sure needs are met and addressed in this version and leave it at that. Or make it DEP and IFW approval since DEP is permitting this.
4. Page 3, item 3, last paragraph. I believe that should be "maximum 2 feet clearance" not "minimum". The goal would be to keep motorized vehicles out."

Roger A. stated that Mr. Burgess had emailed Barbara F. asking her if he needed to present the new plans to the board or if the board just needed a copy of the revised plans? Roger felt that Mr. Burgess could give the board copies of the plans and the board could review them then vote to accept. He didn't think Mr. Burgess would need to be present because the changes were required by MDIFW which was one of the conditions of approval for Hissong, that they make any necessary changes required by the MDIFW prior to any excavation. The other board members agreed. Barbara will notify Mr. Burgess that he needed to bring in a copy of the plans for the board and a copy for the CEO.

Nothing further was discussed.

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CEO McDonough noted that at the ZBA meeting the Town of Shapleigh received a variance for the entrance onto Route 11 based on a safety concern. The variance request was for 4 feet from the 26 feet allowed in the Zoning Ordinance. CEO McDonough stated the board might want to review the ordinance and consider changing the maximum of 26 foot requirement if the applicant showed a clear necessity for an increased road width; the board could allow a distance up to a certain amount, perhaps 30 feet. He did not however want someone to be able to make their entire lot road frontage so he felt there should be a maximum width allowed. Madge B. stated she felt the board was trying to prevent a dangerous situation such as with a gas station, you want them to have an entrance and an exit so the vehicles just can't come in any way which could cause a problem.

Roger A. agreed there should be a distinct exit and entrance. He noted that Ted's Fried Clams put in curbs to prevent people from pulling in from any direction. He said Mildred's across the street exceeded 26 feet; it is now Cobbett's business which the board restricted to 26 feet, although Roger did not think the applicant complied to reduce the width. He said the church also put in a little island to try to divert vehicles into a certain direction and reduce the entrance width.

CEO McDonough stated he agreed there needed to be restrictions but when large vehicles are entering or exiting onto a main road, 26 feet can be difficult. He said he didn't want to remove the 26 foot restriction but perhaps add that upon a clear showing of necessity up to 30 or 32 feet is allowed. Board members stated they would consider his suggestion. CEO McDonough said otherwise the applicants have to go to the Zoning Board of Appeals and you never know how they will rule on the variance.

Nothing more was discussed.

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**GROWTH PERMIT(S) -**

**Map 7, Lot 1B (Shapleigh Corner Road) – Received GP #04-10**

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

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

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, June 22, 2010**

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

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

**The minutes from Tuesday, June 8, 2010 were accepted as read.**

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**Best Possible Location – Replace Structure with 30% Expansion – Map 17, Lot 6 (14 29<sup>th</sup> Street, Mousam Lake) – Sharon Herbert, Applicant**

Sharon and James Herbert were in attendance for the review of the application.

Roger A. asked Mrs. Herbert to explain to the board what she wanted to do. Mrs. Herbert stated she wanted to replace the existing camp with a new structure. Roger asked if the new structure would be relocated or was she only asking for the 30% expansion of the existing? Mrs. Herbert stated she planned to keep it in the same location, she didn't think she would be able to move it because of the location of the septic system. She said that if the board felt there was a better location she had no issue with moving the new structure.

The board members reviewed the plans presented. Madge B. stated the board would like to see if the building could be moved back. Mrs. Herbert stated again she had no problem with moving the building. She noted she had a copy of the new septic design and believed the location of the new home might be dependant on the location of the septic system. She said the septic design was done to push the septic system as far from the lake as possible. Because of this, she didn't know if the new building could be moved.

Roger A. noted that on the application it stated the residence was 25' x 40' but on the plan for the new structure it stated the building was 26' x 36'. He asked which was correct? Mrs. Herbert showed the plan for the existing structure along with the proposed. The proposed structure would be 4 feet shorter in length and one foot wider. She said the 25' x 40' was the dimensions of the existing structure.

Mrs. Herbert stated she didn't do anything with the existing shed. She didn't add it into any calculations because it wouldn't be staying. Roger A. stated the bunkhouse would show the existing lot occupied by structures at this time so it should be factored in. Mrs. Herbert asked if the shed had any bearing on the square footage for the new structure? Roger stated, no.

Roland L. asked if there was a foundation under the current structure? Mrs. Herbert stated it was sitting on cinder blocks in part. Mr. Herbert stated it was not a poured concrete foundation. Roland asked if it was a crawl space? Mr. Herbert stated one half of the basement is a walk-in but not the entire area and he reiterated there wasn't a poured concrete foundation. Roland said, "What's proposed is a full foundation underneath the structure." Mrs. Herbert stated, "Yes."

Roger A. asked if the new building would be raised any higher than the existing building? Mr. Herbert stated, no. Mrs. Herbert said there would be no second story. Roger said he wasn't asking about a 2<sup>nd</sup>



story. He asked if they were creating an area to walk under the house and would they be raising the new structure to do it? Mr. Herbert stated no, they would dig down into the earth to gain the additional few feet needed. Mr. Herbert said his wife had a picture to show the basic plan of the new structure. She showed board members.

Roland L. asked the applicant if she was going to rebuild the existing structure or tear it down and put up a new structure? Mrs. Herbert stated it would be a new structure. Mr. Herbert stated it was cost prohibitive based on the amount of work needed to rebuild the existing structure.

Mr. Herbert asked again if the existing shed could be counted toward square footage or volume of the proposed new structure because it would be removed from site? Roger A. stated no, it can only be used to calculate existing lot coverage. Roger added that if it was going to be removed from site he wasn't concerned that it wasn't added into lot coverage.

Roger A. noted that if the camp was raised greater than 3 feet in height then the volume of the basement would count toward the 30%. Roger asked if they would have a daylight basement? Mr. Herbert stated on the downhill side it would be a walkout. He said with the slope of the land it would not be hard to create a walkout basement without raising the structure. Mrs. Herbert showed Roger the plans of the proposed home, showing where the daylight basement would be located.

Maggie M. asked if she had it correct that as long as the new structure wasn't raised, lowering the basement to create living space didn't count toward the volume? Roger stated that was correct. Madge B. wasn't sure what the logic was with this. Barbara F. thought Madge might want to contact Mike Morse of the DEP because it was part of the State mandated Shoreland Zoning rules. Madge said she knew Shoreland Zoning went thru a lot of legal review prior to being mandated; again she just wanted to know the reasoning.

Roger A. read §105-4.D(3)(b), it read as follows: "If the completed foundation does not extend beyond the exterior dimensions of the structure; except for expansion in conformity with Subsection D(1) above, and the foundation does not cause the structure to be elevated by more than three additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure."

Roger A. stated that Best Management Practices must be used during the project. Roger said it would be a requirement of approval. Mr. Herbert stated he knew about the silt fence and/or hay bales, but he wasn't sure which his contractor was going to use. Mr. Herbert stated the contractor told him how the silt fencing needed to be done, so he knew the contractor was aware it was a requirement.

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

***Roger A. stated a site inspection would be scheduled for Tuesday, July 13<sup>th</sup>. The board members will meet at the town hall at 6:45 p.m. A Notice to Abutters will be mailed as well.***

Maggie M. stated she would be unable to attend the next meeting.

Roger A. told Mrs. Herbert that for lot coverage the board was looking from the sky down onto the structure so the roof overhang counted. He stated she needed to have the overhang included in the final plan. The lot line distance will be calculated from the roof overhang, not the foundation. Barbara F. noted that both the foundation location and roof overhang can be on the *final* plan, but the roof overhang is required. She told the applicants if they have any questions about the final plan to please contact CEO McDonough

and he would further explain because he is the one that looks at the final plan and whether or not the new structure complies with the plan.

Roland L. asked if a final survey would be required? Roger A. stated, yes. Roland asked if there would be a landscaping plan? Roger stated the applicants have provided one.

Nothing further was discussed.

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**Conditional Use Permit – Mineral Extraction – Review Final Plan – Map 7, Lot 28 (State Route 11) – Hissong Development Corp., Applicant**

Board members reviewed the final plan dated 6/7/2010, known as Great Hollow Sand & Gravel, Shapleigh, ME – Tax Map 7, Lot 28, RECLAMATION PLAN, C1, received by Craig Burgess of Pinkham and Greer, Consulting Engineers, on behalf of Hissong Development Corporation.

It was noted by members that Reclamation Notes #5 & #6 had been modified based on the request by MDIFW. The notes on the final plan read as follows:

5. If within one year after complete reclamation:
  - (a) Native vegetative cover has re-established over 75% of the reclaimed buffer area, no further plantings are recommended, as natural succession is allowed to take place.
  - (b) Native vegetative cover has not re-established at least over 75% of reclaimed buffer area, plant with a native herbaceous seed mix adapted to dry soils for the purpose of soil stabilization. Replant as necessary to achieve at least 75% vegetative cover.
6. Remove the access road when no longer in use and reclaim in accordance with reclamation Note #5(a). Remove bar gate and place 6 – 10 large boulders not less than 3 feet in smallest dimension, maintaining a minimum 2 feet clearance between boulders, across the reclaimed area and at least 5 feet inside the property line.

**Madge B. made the motion to accept the revised plan, known as Reclamation Plan, C1, dated 6/7/10. Roland L. 2<sup>nd</sup> the motion. All members were in favor.**  
**Vote 4 – 0, the motion to approve the revised plan was unanimous.**

Nothing further was discussed.

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**GROWTH PERMIT(S) - There are Growth Permits available.**

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**The Planning Board meeting was adjourned at 8:10 p.m.**

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

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, July 13, 2010**

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

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

**The minutes from Tuesday, June 22, 2010 were accepted as read.**

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**Best Possible Location – Replace Structure with 30% Expansion – Map 17, Lot 6 (14 29<sup>th</sup> Street, Mousam Lake) – Sharon Herbert, Applicant**

Sharon Herbert was in attendance for the review of the application, along with a friend, Bruce Albertelly. Board members did a site inspection prior to this evenings meeting.

Roger A. began by stating the applicant was before the board to replace the existing structure along with a 30% expansion. Roger said because the board did a site inspection they were more aware of what would be taking place on site. He said he would like to see a more detailed plan regarding how the height of the structure would be addressed and he wanted the landscaping plan to show how all the property affected would be reclaimed after the construction.

Roger A. stated also the board members noted the retaining walls on site and how they needed to be addressed due to the poor condition. He thought their reconstruction should be integrated with the reconstruction of the house. He said the DEP would need to be notified as well. He said the DEP has a 14 day wait period for the Permit by Rule, so if they applied to the DEP to replace the railroad tie walls if they don't hear from the DEP within 14 days they will be able to proceed with their reconstruction after they get their PB and CEO permits. He said they would get a booklet from the DEP on what would need to be adhered to during construction.

Roger A. stated his other concern was with respect to doing the foundation. He wanted to know how the earth would be retained for the daylight basement.

Mrs. Herbert asked who could provide her with the information for earth moving around the foundation? Would that be the person putting in the foundation? Roger A. stated the contractor should know what would be necessary to put the walls in and retain the soil.

Roger A. stated when redoing the retaining walls or the foundation it is possible the trees on site will be affected. The contractor should have an idea as to whether or not the excavation will impair the trees and if they will need to be taken down. Roger said the board needed to know whether or not any trees would be removed from site.

Roger A. reminded the applicant that whatever is on the approved plan must be adhered to. The location of the foundation, retaining walls, trees removed, etc. He said if the applicant deviated from the approved plan she would have to come back before the board prior to proceeding with anymore construction on site. Roger said the approved plan needed to be precise.

Roger A. noted that at the site inspection it was discussed that it would be possible to move the structure back from the high water mark 6 feet. Roger said this needed to be noted on the final plan.

Roger A. stated the landscaping plan the board received wasn't sufficient. The board needed to see a reclamation plan for all areas that would be disturbed, not just alongside the new foundation.

Mrs. Herbert said the location of the new retaining wall also needed to be on the final plan. Roger A. stated, yes. Mrs. Herbert asked where she would get the DEP Permit by Rule? CEO McDonough gave her the telephone number of the DEP and told her to ask for a Permit by Rule application (207-822-6300).

CEO McDonough asked if they had a General Contractor? Mrs. Herbert stated they would be using Shawn Woods but he was waiting to find out the outcome of the Planning Board ruling before he did anything. CEO McDonough explained to Mrs. Herbert that she needed to discuss the retaining wall placement along with the reconstructed home because he may have an idea that would work best for the placement of the new walls. If it isn't what was approved by the Planning Board it is going to be a problem. CEO McDonough thought she should get more concrete plans from the professionals that are going to do the job before the board's final approval.

Roger A. noted again the large pine tree on site, he thought the roots would be disturbed and tree will have to be removed. Roger said if the contractor agrees it needs to be noted on the final plan that the tree will be removed. Mr. Albertelly stated she didn't want to remove the tree. Roger said he understood but it might have to come down because of the construction on site so they needed to talk to the contractor and get his opinion.

Roger A. stated again the applicants need the exact location of the new home on the final plan. He said once the board approves the location there are no variables. The home has to go exactly where approved so it is important to discuss with the contractor where that final location will be.

Mrs. Herbert thought she had some leeway as long as she didn't come too close to the lot lines. She gave an example that if the board said she could be no closer than 23 feet to the side lot line, she could be 24 feet from the line but not any closer than the 23 feet. Roger said no, the final location is exact. Roger reminded Mrs. Herbert that the measurement of the roof overhang to the lots lines also counted so it needed to be on the final plan.

Mrs. Herbert asked if she understood correctly that she would need a surveyor to come in again to verify the location of the new home? Roger A. said yes, the surveyor had to get the exact location of the new home on the property and verify it was located where approved.

Mrs. Herbert asked if she needed to have the house plans for the new house before coming back to the board? Roger A. said she needed the footprint of the foundation, the exact dimensions, so they can place the exact location on final plan. The actual building plans go to CEO McDonough.

Mrs. Herbert gave the board a copy of a plan showing the location of the existing camp on the lot, using the roof overhang as the outside dimensions. Also on the plan were the square foot and volume calculations of the existing camp which included the roof.

Barbara F. asked if the board wanted the applicant to move the camp back? Roger A. stated it would be nice if the house was moved back six feet.

Mrs. Herbert asked if she needed a new survey plan done with the roof line? CEO McDonough stated no, he didn't see why the board could not use the existing plan; just state the location of the new home with respect to the lot lines in the final approval.

Roland L. believed the board should have the location of the new retaining walls shown on the final plan. The board members were concerned with soil disturbance with respect to the daylight basement. Because new walls are needed, perhaps the walls could be incorporated so they help to retain the soil around the daylight basement.

CEO McDonough asked if the surveyed plan was the existing home location or the proposed. Mrs. Herbert stated the survey showed the existing home but the new home was going to be in the exact same location. The footprint would be a little different. She showed CEO McDonough her sketch plans depicting the existing foundation and the proposed.

Mrs. Herbert noted the board spoke about moving the home back at the site inspection. Madge B. stated yes, normally you try to disturb as little area as possible but it was noted when the area is disturbed for the new foundation a large area would be affected causing some problems on site, requiring some relocation of the existing retaining walls, therefore, moving the home back might be a good idea. Roger A. pointed out on the plan where the existing walls are located. Roland L. noted the walls were ready to come down. Mr. Albertelly agreed stating they were listing quite abit.

Mrs. Herbert wasn't sure it was necessary to put a retaining wall in the area where the daylight basement would go. She thought the lay of the land was such that it could be gradually tapered. She asked who could tell her what was necessary; did she need a structural engineer? CEO McDonough stated no. He said the board noted that the existing walls were deteriorating at this time. They also noted that there would be a daylight basement going in. He believed they wanted her to consider integrating the repair of the walls, redoing the walls, to accept the daylight basement. Madge B. stated the concern is the area is going to be disturbed during construction so putting up new walls to retain the earth that will be disturbed might be best. She added that she did not feel the plans they have received addressed the amount of disturbance that is going to take place. Mr. Albertelly asked what they needed? CEO McDonough stated that they needed to show who would be doing the work. And considering the walls will need to be replaced, the contractor may want to integrate the new walls with the daylight basement. He said the board would also like to see the new home moved back six feet. If that happens there will be a lot of disturbance on site and therefore the new walls will help stabilize the area. Those walls need to be engineered in such a way they don't fail. CEO McDonough stated they need to talk to the person doing the job so they can present a more detailed plan as to how the walls will be replaced. He said when talking to the contractor about replacing the walls perhaps tell him it would be a good idea to integrate the new walls with the construction of the daylight basement. Mr. Albertelly stated they had no problem with this. He just wanted to know who should draft the plans, should it be the contractor, Shawn Woods? CEO McDonough stated yes, talk to Mr. Woods and ask him if the retaining walls should be replaced where they are or should they be integrated with the daylight basement because the new home will be moved back six feet. CEO McDonough stated the final plans may change somewhat once they consult with the contractor.

Mrs. Herbert asked if the home can be moved? CEO McDonough stated they could not go any closer to the high water mark but it can be moved back. Roger A. believed it would be to the applicant's advantage to move the home back due to the trees on each side of the existing structure. Mr. Albertelly stated he didn't want to lose any trees but if the large tree has to come down it would be o.k. with him. CEO McDonough stated the board needed to know if it was going to come down or not. Roger agreed, if the contractor decides the tree comes down and the board didn't approve that, all work would stop until they came back before the board for approval. That is why it's important that everything be presented to the board for approval that will take place on site, so you don't have to come back.

CEO McDonough stated the landscaping plan would need to be more detailed than the one presented. Barbara F. mentioned York County Soils and Water Conservation District with respect to a replanting plan. Coincidentally Joe Anderson from YCSWCD was in the audience so he gave the applicants his card.

Mrs. Herbert summarized where she thought she should go from here. She said she needed to talk to the house plan person so she knows exactly what she is building. Then go to the contractor/builder so she can have the plan laid out. CEO McDonough didn't think she needed a new set of plans, he thought they could work from what she has presented.

Madge B. noted that as long as the dimensions of the new building met the 30% rule, the board didn't care what the building looked like. Mrs. Herbert thought she needed to know what the building looked like so she would know where she was putting it. Madge said yes, she needed to know where she was putting it. Madge said she thought Mrs. Herbert had the footprint and the building she wanted? Mrs. Herbert stated she had a rough layout. Madge said that was fine as long as it met the 30% rule. Mr. Albertelly stated it did.

Mrs. Herbert stated she needed to have the outside dimension of the new home on the plan. Madge B. stated, correct.

Roger A. stated they also needed the location of the new septic system on the plan. CEO McDonough reviewed the septic design drawn up by Albert Frick; he said there were numbers on that plan showing its location on site. Mrs. Herbert wasn't sure if the plan she presented had the septic system depicted accurately. She said the surveyor did speak with Mr. Frick.

CEO McDonough stated there needed to be building plans to be able to calculate the 30% expansion. Then they need to talk to the contractor to create the site plan. Mr. Albertelly stated he spoke with the person creating the building plans and he already calculated the size of the building in order to be able to meet the 30% . He said that they then talked with the contractor who sent them to the Planning Board first. Mr. Albertelly stated the only thing not considered with the contractor was the retaining walls but they should be replaced. He said they were also unaware of the tree issue.

It was concluded that the board would wait to hear from Mrs. Herbert as to when she was ready to return. CEO McDonough noted that he did not feel the applicant needed a new survey plan, the board could approve the location of the new structure using the existing survey, moving it back six feet. He said that the surveyor would have to come back on site to establish that the new structure is exactly six feet back and that it meets all the side setbacks approved by the board.

Mrs. Herbert asked if the board approved her as moving back 6 feet from the high water mark and she went back 7 feet, would that be a problem? Roger A. stated yes, the building must be set exactly where approved. Roger said if she wants to move it back 7 feet, or turn the building on site, they can. But it must be on the final plan because the new structure had to be exactly where approved. CEO McDonough agreed, there is no envelope to play with. CEO McDonough stated again, if the new structure is going to be moved back six feet from where it is now, then they can use the existing plan. If they play on turning the building they would need to show that on a new plan.

CEO McDonough reminded the applicants how imperative the landscaping plan would be. He said with the amount of construction on site it would look like a bomb went off on the water front. The board again noted the expertise of YCSWCD and that they could help devise the landscaping plan.

Roger A. noted that the plan Mrs. Herbert presented this evening, showing the existing structure on site was fine. He said if she could create a new plan, such as this, showing the location of the proposed structure that would work. She did not need to have the surveyor redo the plan for the board.

Mrs. Herbert mentioned the DEP permit for the retaining walls. CEO McDonough said yes, call the DEP and they will send the information she needs. He said it was not a difficult permit to get.

Mrs. Herbert stated she would call Barbara F. when she was ready to come back before the board. Board members agreed this would be fine.

Nothing further was discussed.

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**Best Possible Location – Replace Existing Shed and Build Outdoor Cooking Area – Map 33, Lot 7 (34 Treasure Island) – Ronald Cote, Applicant/Owner**

Mr. Cote did not attend the meeting. Barbara F. will try to contact him to see if he will be ready to attend the next meeting.

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**Conditional Use Permit – Regrade, Resurface Parking Area, Establish Shoreline Buffer Area – Map 30, Lot 59 (63 Treasure Island Road) – YCSWCD, Applicant; TILOA, Owner**

Joe Anderson represented York County Soils & Water Conservation District; Kathy Morgan represented Treasure Island Land Owners Association.

Joe Anderson began by stating he, along with members of the Treasure Island Landowners Association, were proposing a project for the parking lot for the TILOA Ferry Parking Area. He said they were proposing a large scale project to correct a runoff problem on site and an engineered plan had been drafted. He said they would be raising the grade in one area, installing a rain garden in the median to get water to flow into it, and also buffer erosion control mix would be added to stabilize existing soils. He pointed out the areas on the plan presented.

He said the rain garden was engineered and the specs were on the plan. He said the soil was a filter medium and there was an overflow pipe.

Mr. Anderson provided the board with a copy of the stormwater calculations done by Will Savage, PE, which stated, “the rain garden shall infiltrate the rainfall for a 2 year storm event (3” in a 24 hour event). A larger storm event lets say a 25 year storm (5.4” in a 24 hour event) would both infiltrate and flow out of the overflow pipe.” Mr. Anderson stated he didn’t think they could engineer a perfect solution but he felt they could cure 80% of the existing problems.

Mr. Anderson also provided a planting plan for the Buffer Islands. There would be a total of five. He pointed out on the plan where they would be located and he said didn’t want to make a blanket planting due to the amount of traffic both in the summer and in the winter.

Mr. Anderson stated they were thinking about using reclaimed asphalt to help to stabilize the parking area. He said they didn’t have the budget for paving but he believed the reclaimed asphalt would prevent erosion. He pointed out the areas they would be placing the product down on.

The specs given to the Planning Board showed the detailed plans for the Rain Garden; Erosion Control Mix Slope Protection & Stabilization; Siltation Fence; Riprap Outlet; and Erosion Control Berm Mix.

Roland L. asked if there would be standing water in the Rain Garden? Mr. Anderson said it was designed for the water to infiltrate and the mix was designed to treat the rainwater. He said the plans were engineered for stormwater.

Mr. Anderson stated ponding should be eliminated in the parking lot during a big rain. He stated they did apply for the DEP Permit by Rule and he had a verbal o.k. and he believed the paperwork should be in the CEO's office shortly. (It was received by the CEO 7/21.) He said the DEP did have some specs that they wanted them to follow. The specs would be given to the contractor doing the job, Bob Daigle.

Mr. Anderson stated the parking lot is used heavily so it was important to address existing conditions to help mitigate the stormwater issues.

Roland L. asked when the project would be done? Mr. Anderson stated the project would be started right after Labor Day and it had to be completed, along with all the paperwork by the end of September in order to receive the Grant money. He said they would probably close one half of the parking lot at a time. He pointed out the area he would provide for parking and what area the project would begin in. He knew they had to allow for access and would have to do the project in stages. Mrs. Morgan noted that the ferry didn't run midweek after Labor Day.

Roger A. asked where the fill was coming from? Mrs. Morgan said there would be some fill taken from the site but wasn't sure how much extra they would need. Mr. Anderson concurred that some cut and fill would be done on site but he believed they would have to bring some in from off site. Roger said the board would like an estimate of the amount of fill to be brought in.

Mr. Anderson stated that he wanted to use erosion control berms instead of silt fence. He said they would be probably 3 feet in height by at least 12 inches wide. He said this soil would be kept on site after the project was completed.

Mr. Anderson said because the grant was from the DEP, they would be using native plants that were suggested from that department. Mr. Anderson stated Wendy Garland would be overseeing the project. He added that it was a 60/40 Grant. The DEP would be putting up 60% of the money and TILOA would be paying 40%. Mr. Anderson noted that this project has to have a measurable benefit/outcome in order for the DEP to provide the grant.

Mr. Anderson asked if there were any questions? Roger A. stated the slope on the plan was 3:1, he said the Zoning Ordinance only allows a 2 ½:1 slope (§105-61 Mineral exploration and extraction). Roger also noted that with respect to stormwater runoff, for a 50 year storm he believed it was 6" in 24 hours. Roger said in the ordinance the design period was for a 50 years storm (§105-26 Stormwater runoff).

Mr. Anderson stated they accommodated for 5.4" and then there is the overflow pipe to allow for over that amount. Roger A. stated that if he could get the engineer to state the specs would meet the criteria for the 50 year storm or that 6" is not correct for the 50 year storm, it is a lesser amount, then the plan would be fine. It can be addressed in a letter.

Madge B. stated that the engineer may have accommodated for the 50 year storm but it doesn't say so on the plan. Roger A. agreed, he said the board just needed something in writing that verified that fact.



Roger A. asked again how much fill would be brought in? Mr. Anderson was not sure but he could calculate it for the next meeting. Roger asked if they had a back lot they could pull fill from? Mrs. Morgan stated no, they rented the back lot, they didn't own it.

**Roger A. stated a Public Hearing would be held at 7:00 p.m. on Tuesday, July 27<sup>th</sup>. A Notice to Abutters will be mailed as well. A site inspection was scheduled for 6:00 p.m., Board members will meet at the town hall.**

Nothing further was discussed.  
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**Conditional Use Permit – Move Greater than 10 Yards of Material to Reconstruct Retaining Wall – Map 23, Lot 2-3 (27 Meaders Lane) – Robert Gore, Applicant; Linda LeBlanc, Owner**

Mr. Gore was present to review the application.

Board members began by reviewing the plan drafted by Mr. Gore, PE #3904. It was noted on the plan there were two plan options to replace the existing stone wall which has collapsed into Mousam Lake.

Madge B. asked what the applicant proposed to do? Mr. Gore stated one of the reasons he was before the board was to have the board help determine what would or could be done to replace the collapsed wall. He stated they have a section of wall, 17 feet in length, that has fallen into the lake. He said the owner was convinced that if they simply put the rock wall back up it would stay in place. He said in his opinion it would not stay in place, it would eventually collapse again. He said the DEP position is that if the wall is replaced as is, using the same material, it is permissible without any permit.

Mr. Gore showed a picture of the collapsed wall and the profile looking up the hill toward the cottage showing there were actually two tiered walls holding back the earth on site. He stated that because the surrounding camps all have limited frontage and have part of this retaining wall in front of their homes, anything done to the wall in front of the applicant's camp might also affect the neighboring walls.

Mr. Gore stated that he spoke to CEO McDonough and he said that whenever a wall was rebuilt the Planning Board required an engineered plan for anything over four feet in height if there is a slope behind it. He said therefore, he has provided a plan showing the repair of the 17 feet that has collapsed and another plan depicting the replacement of the entire wall in front of the LeBlanc home.

Mr. Gore noted the lines on the plan that depict the natural recline of the soil on site. He believed eventually everything on the slope would be moved downhill, including the existing retaining wall and camp. He said when looking at doing the excavation to repair the wall there was a serious risk of everything shifting down toward the lake. He said the other problem is, if nothing is done, there is a risk that will happen as well. He said the abutting walls are also in the process of failing.

Mr. Gore stated the optimum replacement would require a large unsightly wall and it would require moving the building or shoring it up so it isn't displaced and somehow anchoring the soil. He said in addition all the adjacent lots are in a similar situation.

Mr. Gore stated the engineered wall he would stand behind as working is a concrete wall and the DEP has stated no concrete or mortar can be put into the water. He said the options therefore are:

- 1) "The wall is replaced using the same material and hope it stays for some time in hopes that all the neighbors will get together to figure out a solutions to the problem that affects everyone along the retaining wall."

- 2) He thought another option is to move all the camps back from the water, let the soil settle and put in smaller retaining walls.

Mr. Gore noted that Plan Option 1 was not an engineered wall; he could not guarantee the wall would hold up. Mr. Gore stated that Plan Option 2, it was a designed wall and the contractor was responsible for means and methods, but he didn't know how it would be accomplished.

Mr. Gore told his client to get a mason on site a.s.a.p. to lift the stones into the hole to help prevent more erosion. Mr. Gore asked CEO McDonough if Ms. LeBlanc had contacted him and he stated, no.

Roger A. asked if the DEP would accept an earthen dam to be able to pour some concrete? Mr. Gore stated the only way to do it would be to do a coffer dam and he didn't see how you would be able to drive a coffer dam into the lake. Mr. Gore stated the DEP rule was you are not able to pour concrete in the water, you can only use aged concrete.

Mr. Gore stated in terms of executing the plans, the concrete wall would not be allowed. He said they can put the stones back into place that have fallen into the water. Mr. Gore wondered if the board could approve doing this with a condition that in five years something more would have to be done. He added that he didn't know if putting the existing wall back into place would last five years.

Roger A. asked about the blocks from Pepin's. Mr. Gore stated that he hadn't thought about that. And he asked if Roger was talking about just as a temporary fix? Roger said yes. Mr. Gore thought they could think about doing that temporarily. He thought it would work just as well to put the existing stones back into place and mortar the top ones that aren't in the water.

Roger A. asked if a machine would be able to place the blocks if they were used? Mr. Gore didn't think so because of the lay of the land. He worried it would shift the existing earth and it could move the camp. He said a crane was possible but you would have to drop the blocks over the top of the camp.

Mr. Gore thought the best solution was to lift up the existing camps, remove some of the soil to drop the elevation and move the camps farther back. He said that would surely take some coordination all along the retaining wall. He said repairing the deteriorating wall 45 feet at a time was not going to work from an engineering perspective. Roger A. agreed.

CEO McDonough asked what Mr. Gore was asking the board to approve? Mr. Gore stated at this point in time he wanted the board to say to go ahead and put the existing wall back into place and give the applicant a time limit to deal with the issue long term. Madge B. asked if there needed to be an engineered plan to put the wall back into place? CEO McDonough stated that was correct according to the building code. Madge said therefore, Mr. Gore would have to sign off that the replacement wall was engineered. Mr. Gore stated he could not state replacing the wall using the existing stones, using the same design, was engineered to specs. Madge did not see how the board could approve that plan if it wasn't engineered. Mr. Gore believed the CEO had the ability to approve the wall as designed if he felt there was no alternative. CEO McDonough believed that there was no way to put an engineered wall in this location without spending at least \$100,000. He thought if that were the case and he was the applicant he would leave the wall as is. Mr. Gore didn't disagree but the problem with that is there would be trees ending up in the lake, earth, more of the wall will collapse and eventually the camp could shift.

Madge B. stated that it looked like Mr. Gore was before the board to say, 'what do I do?'. Mr. Gore in his cover letter to the board basically states that, that he needs CEO and Planning Board input. Madge asked where the engineered requirement was noted? CEO McDonough stated it was in the building code, it was

not in zoning. Madge asked if the applicant needed a permit to just restack the existing walls? Mr. Gore stated, no.

Roland L. was very concerned about the wave action against the wall.

CEO McDonough read from the 2003 International Residential Code, Appendix J, Existing Structure, Section AJ102.7, Other alternatives, which read as follows: “Where compliance with these provisions or with this code as required by these provisions is technically infeasible or would impose disproportionate costs because of structural, construction or dimensional difficulties, other alternatives may be accepted by the building official. These alternatives may include materials, design features and/or operational features.”

Mr. Gore believed that it was important that anything CEO McDonough permitted he was comfortable with. CEO McDonough stated he agreed and he did not believe he would approve only replacing the stones by hand to rebuild the wall.

Roger A. did not think Mr. Gore would certify that the wall would hold up if rebuilt as it was in that area. Mr. Gore stated, correct, it does not currently comply with code and there was no way to design the wall the way it is and expect it to stay in place. He said the engineered numbers are not there.

Mr. Gore stated all he needed from the Planning Board was a permit to move more than 10 cubic yards of earth. He stated again the CEO needed to be comfortable with what was approved. Mr. Gore said if they were allowed to replace the existing wall as is, the applicant wasn't out of the woods because they need to have a long range plan to decide what would happen next.

The board members and Mr. Gore continued to go back and forth with ideas on what or what might not work, citing different ways to retain the earth but all the alternatives were very expensive and would be difficult to administer. Mr. Gore noted there were different things used at the big dig that would work but again the cost to set up was exorbitant.

Madge B. stated the board's job is to permit moving more than 10 cubic yards of earth and then the wall issue is for the CEO. Mr. Gore stated it would be between 10 and 20 yards. Madge said something has to be done for this wall but she wasn't sure exactly what.

Mr. Gore stated the wall actually required more time than they had before it became a big mess, with more wall and earth falling into the lake. Mr. Gore felt replacing the wall as is or dropping waste blocks into the water would both be a temporary fix. He stated both ideas didn't meet the qualifications for a professional temporary construction in the IBC. Roger A. stated he has seen the large blocks used and they have held up due to the weight of them. Roger agreed due to the steep grade they would only work temporarily.

**Roger A. stated they would do a site inspection on Tuesday, July 27<sup>th</sup> at approximately 6:30 p.m. A Notice to Abutter will be mailed as well.**

Nothing further was discussed.

**OTHER:**

Roger A. noted that it was brought to his attention by Barbara F. that the Subdivision Known as Deer Run, located on Map 8, Lot 55A, owned during the time of approval by Patrick Frasier, was never recorded at the York County Registry of Deeds within 90 days as required by the board as part of his approval. Therefore, a letter shall be drafted to Mr. Frasier stating that the subdivision is null and void as stipulated under Item #3

of Planning Board Action in the Findings of Fact. All board members agreed this is the course of action to be taken.

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Roger A. stated the board had received a copy of the Declaration of Restrictions from Hisson for the property on Map 7, Lot 28. He noted the document appeared to be in order with respect to the PB approval, stipulations mandated by both the DEP and MDIFW. His only suggestion was on Item 5 of the declaration he would like to see the Town of Shapleigh added as follows:

“Amendment. Any provision contained in this Declaration may be amend or revoked only by the recording of a written instrument or instruments specifying the amendment or the revocation signed by the owner or owners of the Restricted Buffer Area and/or Reclaimed Buffer Area and by the MDEP **and/or the Town of Shapleigh.**”

Madge B. reviewed the document and agreed the Town of Shapleigh should be listed to keep the document consistent with the approval for the Gravel Operation.

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Roger A. asked about the cell phone tower approved on Owl’s Nest Road. He wanted to know if a bond was ever issued to the Town for the cell tower and what was the approval date. He noted that if work on the cell tower was not commenced within two years of the date of approval then the permit would expire (see §105-73.F(2)). Barbara F. will review the application to see what the status is. She did note that she was certain a bond was never accepted by the Town to date. She remembers she made several attempts to contact the applicant on this issue but in the end the applicant stopped returning phone calls.

Roland L. asked if it was a policy to remind applicants that their permit was about to expire. Barbara F. stated no, it was the applicant’s obligation to follow thru with the process once permitted.

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**Review Zoning Ordinance §105-39 ‘Earth removal and filling’ and §105-61 ‘Mineral exploration and extraction’**

Madge B. began by stating at a previous meeting, it was Roger’s initial thought that the board could combine the two ordinances into one ordinance, but she did not agree. She believed §105-39 should be “Earth removal and filling” for moving earth on site and that §105-61 should be for “Mineral extraction, including sand and gravel”. Madge thought the board needed to strengthen §105-61.

Roger A. stated he believed §105-39 answers a lot of the criteria that the board needs to use. Roger thought if the board keeps §105-61 it needs to incorporate much of 39 and for that reason he was thinking of combining them into one ordinance. He thought whether you were moving earth from point A to point B, it is all earth removal whether staying on site or off site, so again he thought it could all be addressed under one ordinance.

CEO McDonough did not agree. He said he agreed moving earth is moving earth regardless of the distance and it needed to be addressed. He said §105-61 applied to a commercial operation whereas §105-39 applied to the homeowner on the lake. Madge B. agreed. Roger A. disagreed, the location in his mind didn’t matter. CEO McDonough stated when moving earth under §105-61, you had to be 100 feet from a property line, he noted that many landowners would not be able to move any earth on site with this criteria but he believed a commercial operation should be 100 feet from a property line. Madge agreed. CEO McDonough noted

under §105-27 ‘Erosion control’ you only have to be 10 feet to an adjoining property line. He believed this made much more sense to a lakefront lot.

Madge B. stated there were items in §105-39 that should be under §105-61 such as ‘Surety and terms of permit’. CEO McDonough agreed. Madge stated also the ‘Optional conditions of permit’ should be addressed in §105-61. Roger A. stated that is why he always applied both §105-39 and §105-61 to an earth moving permit. CEO McDonough stated he understood the theory but you can’t pick and choose when an ordinance will apply and when it will not and what sections will and won’t apply. He said that isn’t being consistent with each applicant. He believed it would be best to gear one ordinance toward the homeowner and one toward a commercial enterprise.

Roger A. stated that the Conditional Use Permit does not state that the board cannot apply both §105-39 and §105-61 at the same time, you can apply the entire ordinance to an applicant. Madge B. agreed stating that it can be written that if the Planning Board needs to apply both ordinances they can apply both. She said much of the time an applicant should be reviewed under one or the other. Roger agreed but he didn’t feel you should have a lot of duplication from §105-39 go into §105-61. Madge thought there may be some things in 39 that only belong in 61.

CEO McDonough didn’t see an issue with duplication. He noted that some of the conditions in §105-39 are also under §105-73 and that wasn’t a problem. Again he pointed out not all the criteria in one would be duplicated in the other. He felt a commercial operation should be different from everything else with respect to the review process. He didn’t see a need for a bond to be mandatory under §105-39, only optional, but it should be required under §105-61. He noted that you can’t pick and choose sections for each applicant, the board has to be consistent with everyone. Madge B. stated that she believed §105-61 should be for commercial operations whether they are using the earth for themselves or selling it to someone else.

Roger A. stated if both were combined there could be a sub-chapter stating that if it were a commercial operation then the distance to the property line must be 75 or 100 feet. CEO McDonough stated as long as the board is consistent with their review.

CEO McDonough stated there were three things that stand out as being different between the two:

#1 – Requiring a bond, this belongs in §105-61.

#2 - §105-39 should be titled, “Earth removal and filling for other than commercial mineral extraction and exploration.

#3 – The setbacks are an issue but if the two ordinances are separated then it isn’t an issue.

Roger A. and Madge B. agreed.

Madge B. stated that under §105-39.F ‘Application for permit’, she thought much of this section should be under 61 and not 39. She stated that the conditions here were geared toward a major operation. CEO McDonough agreed but he wasn’t sure you would want to take all of F out of 39. Madge said only some doesn’t seem to belong. CEO McDonough noted (4) which states, “The proposed provisions for drainage and erosion control, including drainage calculations”, he believed this must stay. Madge agreed.

CEO McDonough thought each member should really review the ordinance and cut and paste what they think would work.

Madge B. believed there might be occasional duplications in both ordinance but she still thought two separate ordinances were needed. CEO McDonough agreed.

CEO McDonough said under §105-27 “Erosion control” it addressed the top of a cut or the bottom of a fill section shall not be closer than 10 feet to an adjoining property line. Barbara F. asked if you couldn’t refer to §105-27 under 39? Madge B. said you could, she would like to think about it.

CEO McDonough reviewed §105-39.G (11), and said this should only apply under 61. Madge B. agreed.

In conclusion members will work on changes and the possible changes will be discussed again in the near future.

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Barbara F. brought up a concern she had with respect to time limits and bonds. She noted two applicants that have not presented a bond to date and their approval was over six months ago. She asked that perhaps in the future the board could put a time limit on when a bond needs to be presented and approved by the Planning Board and Board of Selectmen. Madge B. stated that was a good idea and perhaps she could remind the board during the approval process.

Roger A. and CEO McDonough stated it might be a good idea to address this under §105-73.I(1) which addresses the performance guarantee. This way the board members would not overlook a set time period. Roger and CEO McDonough thought a 90 day window was more than ample to acquire a bond. This will be addressed again in the near future.

Nothing further was discussed.

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**GROWTH PERMIT(S) – Map 12, Part of Lot 15 (Newfield Road), was issued G.P. #05-10**

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**The Planning Board meeting was adjourned at 9:50 p.m.**

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

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, July 27, 2010**

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

#### **Conditional Use Permit – Regrade, Resurface Parking Area, Establish Shoreline Buffer Area – Map 30, Lot 59 (63 Treasure Island Road) – YCSWCD, Applicant; TILOA, Owner**

Joe Anderson represented York County Soils & Water Conservation District; Kathy Morgan represented Treasure Island Land Owners Association; and Wendy Garland was present from the Maine Department of Environmental Protection. Note: Board members did a site inspection prior to this evenings meeting.

The application before the board is a request to be able to regrade and resurface the existing parking area, using methods to help to prevent stormwater from directly entering the lake and helping to stop the erosion problems on site. In order to do this there will be a buffer area established along the shoreline and a rain garden established in the middle of the parking area to divert stormwater.

Roger A. began the public hearing by stating board members and audience members alike, all of whom had gone on the site inspection, were aware of what the project would entail. He asked if there were any questions or concerns?

Roland L. began by stating he didn't know whether or not a decision had been made with respect to cutting trees in the corner where there might possibly be gravel removed. He didn't think environmentally it was a good idea. He wondered if there was another way to address fill being used, such as bringing fill in. He stated removing fill in the proposed location was close to the property line and it could possible damage the large pines on site. He said he understood the need for the project however, to help prevent the runoff into Square Pond.

Mr. Anderson stated that after the site inspection, looking at where the 10 foot lot line setback was located and estimating the amount of fill that could be removed, it was determined that it would not outweigh the cost of replanting the area, so bringing in fill would be the best idea.

Mr. Anderson stated the board had requested at the last meeting documentation stating the proposed stormwater plans did in fact meet the criteria for a 50 year storm as required in the Zoning Ordinance. Mr. Anderson provided documentation from William Savage, PE, of Acorn Engineering, Inc., Portland Maine which stated "For the 50 year storm event stormwater shall both infiltrate and flow into the overflow pipe." It was noted by Mr. Savage that infiltration and performance of the overflow pipe was directly affected by maintenance or lack thereof. The documentation provided also contained the actual stormwater calculations for the proposed rain garden.

Roger A. asked if they were still looking at the same window for completion, that the project has to be completed by September 30, 2010? Mr. Anderson stated, yes.

Roland L. asked if the rain garden had to be maintained and was there a point where sediment would build up and have to be removed? Mr. Anderson stated there was maintenance that needed to be done, there was a

blueprint for that maintenance and it was required in order to get the DEP Grant. He said there needed to be inspections done by YCSWCD; the stormwater measures are only good if they are maintained. He stated both YCSWCD & TILOA had to work together on this. Roger A. asked if the berms would also be maintained? Roger was concerned that they may start to get washed out eventually. Mr. Anderson stated yes, they would need to be maintained as well because he was concerned with snowmobile traffic affecting them. Mr. Anderson said there needed to be a springtime maintenance for certain and again in the fall. He said maintenance would certainly have to be done more than once a year.

Roger A. asked if the boat ramp would contribute to any erosion? He said there would be berms on each side of the boat ramp creating a tunnel affect to the boat ramp. Mr. Anderson stated the area around the boat ramp would be stabilized. Roger said he just thought with the grade of the land in that area there might be a problem. Mr. Anderson stated they understood and there might be some stone added to create an apron to slow the water down. Mr. Anderson said there was always a consequence when you close off one area you might open up another area to more stormwater, so they have tried to mitigate the problem as best possible. He said they do not want to have to keep going back and fixing the problem.

Roland L. asked Mr. Anderson if he received a copy of the letter that the Clark family, of 49 Treasure Island Road, sent to the Planning Board? Mr. Anderson stated no. Mr. Anderson was given a copy of the letter to read. Roland said in the letter there were concerns with setbacks to property lines being respected, and he believed that would not be an issue. Roland also noted that there was a concern with the Goodall right-of-way and that it not be blocked in any way.

Mr. Russ Caldwell, the son of Esther Caldwell an abutter to the property, stated that he thought the right-of-way in question ran thru the woods, it was not near the parking lot. He also wasn't sure if it was actually a deeded right-of-way. Diane S. knew of the area and she pointed out the location of the Clark's property. Kathy Morgan was not sure of the right-of-way's location but she did not believe it had been used for years and wasn't sure if it existed. Roger A. stated if it was recorded at the Registry of Deeds it would be able to be located but if it were to be contested it would be a civil matter and would be up to the courts to decide. Ms. Morgan stated that the proposed project was not going to change anything from what was there now. The parking area would be the same, only stormwater measures are being added. Mr. Anderson agreed that he did not believe the area in question was going to be affected by the project.

Mr. Caldwell spoke about the fact that a small triangular piece of his mother's property was part of the existing parking lot and he had spoken with members of TILOA about doing a land swap so they would in fact own the triangular piece of the parking lot and his mother would own a wooded piece. He believed this would be best for all concerned, that way TILOA could do what was necessary for storm erosion without affecting property they did not own. He said there could be a condition of approval that stated no work could be done on his mother's property until a quick claim deed was drafted for the land swap. Roger A. did not see why that would be a problem as long as it was done in a timely manner. Mr. Caldwell believed he could have it accomplished within a few weeks. (Mr. Caldwell is a licensed surveyor.)

Madge B. stated if the plan affected property owner Caldwell then the land problem should be solved before the plan was approved. Mr. Caldwell showed Madge the deeded right-of-way that allows vehicles to pass onto the Treasure Island Parking Area. He noted where the pins for his property are. Madge stated she noted them at the site inspection. Mr. Caldwell showed Madge the land that would be involved in the land swap he and TILOA had in mind. Mr. Caldwell said, because he was a licensed land surveyor, he would set the new pins for the land swap with his mother's permission and then he would create a quick claim deed.

Wendy Garland noted that the project was taking place with Grant money and it had to be finished completely by September 30, 2010, so construction had to be completed within the next 6 or 7 weeks. Roger



A. stated Mr. Anderson said they were not going to start construction until after Labor Day. Members spoke about approving the existing plan with no work taking place on Mrs. Caldwell's property until after the land swap took place. Ms. Morgan stated this would work so they could start preliminary work prior to Labor Day.

Mr. Caldwell did not see any reason why he couldn't have the pins set and the deed transferred within the next several weeks. Roger A. stated again that no work could be done on what is currently Mrs. Caldwell's property until the deed swap. Ms. Morgan stated she was aware of that as was the contractor doing the work, Mr. Daigle. He knew the grading would have to be in such a way that it wouldn't affect Mrs. Caldwell's property.

Roger A. asked if there were any additional questions or comments? 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, July 13, 2010 were accepted as read.**

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**Conditional Use Permit – Regrade, Resurface Parking Area, Establish Shoreline Buffer Area – Map 30, Lot 59 (63 Treasure Island Road) – YCSWCD, Applicant; TILOA, Owner**

Joe Anderson represented York County Soils & Water Conservation District; Kathy Morgan represented Treasure Island Land Owners Association; and Wendy Garland was present from the Maine Department of Environmental Protection.

Roger A. asked who would be doing the maintenance and was it twice a year? Mr. Anderson stated it would be ongoing from springtime following the thaw. He said it would happen at least once again over the summer. He said in the fall they want to put snow fence in front of the plantings and berms to protect them from snowmobiles and plows. He said maintenance would be addressed at a minimum of twice a year.

Madge B. asked if the maintenance plan was on the plan presented? Roger A. noted there was reference to maintenance on the plan, it read as follows:

- 1. The rain garden and erosion control mix slope protection shall be routinely inspected to confirm they are operating properly. Scarify and remove accumulated sediment when water ponds on the surface of the rain garden or adjacent to the slope protection for greater than 72 hours.*
- 2. Inspect the parking lot during and after storm events to verify stormwater is sheeting off the surfaces and draining as designed.*
- 3. Annually inspect the parking lot to determine if the surface material shall be regraded, compacted and whether additional asphalt reclaim or Maine DOT Type – A gravel shall be added.*
- 4. Annually inspect the condition of the plantings and replace as necessary.*

Madge B. was concerned with plowing in the winter with what it would do to the crushed asphalt and plantings. Ms. Morgan stated that was why there would be snow fence placed in certain areas but she did not see how she would keep people from plowing the area. She said the local ice fishermen were the ones that plowed the area.

Diane S. asked if TILOA would be responsible for maintenance but overseen by his department? Mr. Anderson said yes, for five years. Diane asked what happened after that, would TILOA be responsible? Mr. Anderson stated, correct. Ms. Morgan stated that she hoped within five years she and other members of the association would understand exactly what needed to be done to maintain the area.

Roger A. reviewed the Basic Performance Standards. He read from §105-20, “These standards shall apply to all new or expanded uses of land and buildings which are listed as permitted or conditional uses in Article IV of this chapter.” He continued to review the following chapters:

- 105-21 – Traffic. *There will be no change in traffic pattern due to the proposed changes.*
- 105-22 – Noise. *There will be no excessive noise created from this project. The project only improves the parking lot and the improvements shall not take place between the hours of 10:00 p.m. and 7:00 a.m. The project shall be completed by September 30, 2010.*
- 105-23 – Dust, fumes, vapors and gases. *Best Management Practices shall be used during the construction of the stormwater plan.*
- 105-24 – Odors. *The will be no odors generated.*
- 105-25 – Glare. *There will be no additional lighting added to the parking lot.*
- 105-26 – Stormwater runoff. *There are engineered plans drafted by William Savage, PE #11419, designed to mitigate the stormwater problems on site. This is the purpose of the application.*
- 105-27 – Erosion control. *Best Management Practices shall be used during the project. The erosion control measures are listed on page C-1 of the plan drafted by William Savage.*
- 105-28 – Setbacks and screening. *N/A*
- 105-29 – Explosive materials. *N/A*
- 105-30 – Water quality. *The changes being made to the existing property are to help to protect the water quality of Square Pond.*
- 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 being built. There will be additional shrubs added along the shoreline to help stabilize the area. This project is on a private way.*
- 105-32 – Relation of proposed building to the environment. *There are no new proposed buildings for the site, N/A.*
- 105-33 – Refuse disposal. *N/A*
- 105-39 – Earth removal and filing. *There is an engineered plan to address all earth moving on site. Best Management Practices shall be used during the project. No surety is necessary, the project is being funded through a DEP Grant as well as TILOA. It shall be completed by September 30, 2010 in order to get funding for the project.*
- 105-43 – Off-street parking and loading. *There are no changes being made to the existing parking area with respect to number of spaces. The reason for this application is to provide stormwater protection for the parking area.*
- 105-46 – Sanitary Provisions. *N/A for this application.*
- 105-51 – Clearing or Removal of Vegetation of Activities Other than Timber Harvesting. *There shall be no removal of vegetation for this project. Vegetation shall be added to help prevent erosion from stormwater runoff.*
- 105-52 – Water quality protection. *There is nothing to be done to affect water quality. The measures proposed are to protect water quality from stormwater runoff.*

Roger A. asked if there were any additional questions for Mr. Anderson? Mr. Caldwell asked if any trees would be taken down? Mr. Anderson replied, no. Mr. Caldwell stated his other concern was the triangle of

land owned by his mother noted earlier at the site inspection and during the public hearing. He stated he did not want to hold up the project but didn't think any work should be done on it until after the land swap took place. Roger A. agreed. Mr. Caldwell asked why the trees were flagged on site, he said he thought perhaps they intended to remove them. A member of the audience stated the trees were flagged when they were surveying for a septic system. He said they were not flagged for removal. Mr. Caldwell stated he is glad to hear they won't be removing gravel from the site because in his opinion it was a minimal amount but it would disturb the vegetation on site. Madge B. agreed. Mr. Caldwell concluded with the fact his mother did not want the hill on the right-of-way paved. Mr. Anderson stated there were no plans for pavement.

Roger A. reviewed §105-73 'Conditional Use Permits' sections A, B, C and F. **He then reviewed in detail §105-73.G "Standards applicable to conditional uses" as follows:**

- 1) The use will not have an adverse impact on spawning grounds, fish, aquatic life, birds or other wildlife habitat. ***It will not, the stormwater plans presented are to mitigate the current issues in the parking area that are impacting Square Pond.***
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. ***The existing vegetation shall remain in place and the creation of berms along the shoreline will help to preserve the shoreline while still allowing access to Square Pond.***
- 3) The use is consistent with the Comprehensive Plan. ***It is, the Comprehensive Plan encourages erosion control measures in the shoreland zone to help preserve the water quality in all the lakes and ponds in Shapleigh.***
- 4) Traffic access to the site is safe. ***The entrance is in existence and there are no changes being made to the entrance/exit.***
- 5) The site design is in conformance with all municipal flood hazard protection regulation. ***The site is in existence and the stormwater measures should help with high water issues. Square Pond is not in the FEMA flood zone.***
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. ***There is none generated from the activity proposed in the application.***
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. ***There no hazardous materials generated by this activity. All material being used are MDEP approved.***
- 8) A stormwater drainage system capable of handling twenty-five-year storm without adverse impact on adjacent properties has been designed. ***There is an engineered stormwater plan provided by Will Savage, PE #11419, of Acorn Engineering of Portland, Maine. Mr. Savage states thru hydraulic analysis of a 50 year storm event of the property, the plans provided shall meet the ordinance requirements.***
- 9) Adequate provisions to control soil erosion and sedimentation have been made. ***The engineered plan provides the necessary erosion control measures for the location.***
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. ***There is.***
- 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 per the plans provided.***
- 12) All performance standards in this chapter applicable to the proposed use will be met. ***They shall.***

Madge B. and Roger A. were concerned whether or not the creation of the berm would deny anyone with a handicap access to the boat ramp? Mr. Anderson stated no. Roger agreed that the ramp would still be accessible.

Roger A. reviewed §105-73.H ‘Conditions attached to conditional uses’. Roger also noted that under §105-73.I ‘Performance guarantee’, a bond was not required because the project was to be done with a Grant from the DEP and monies from TILOA. The project had a time table that had to be adhered to in order for the Grant money to be allocated, that being September 30, 2010.

**Board members noted the following conditions of approval:**

- 1) **There shall be no disturbance of the property owned by Esther Caldwell, Map 30, Lot 58, until the property is transferred to TILOA. A copy of the new deed showing the property swap between TILOA and Esther Caldwell, Trustee, shall be given to the Planning Board before September 30, 2010.**
- 2) **There shall no fill excavated or trees removed. All fill required for the project shall be brought to the site.**
- 3) **There shall be a completion date of October 30, 2010. *Note: Grant money requires a completion of the plans as presented by September 30, 2010.***
- 4) **A signed copy of the Letter of Agreement between YCSWCD & TILOA for the responsibilities of the landowners and YCSWCD with respect to project oversight, cost sharing, and future maintenance of the property after the project is completed, along with oversight for 5 years by YCSWCD with respect to maintenance shall be given to the Planning Board for the file prior to the completion of the project.**
- 5) **All maintenance shall be done according to the engineered plan provided and the Letter of Agreement.**

**Madge B. moved for approval of the application along with the above conditions. Maggie M. 2<sup>nd</sup> the motion. All members were in favor.**

**Vote 5 – 0, the motion to approve the Conditional Use Permit was unanimous.**

Nothing further was discussed.

**Conditional Use Permit – Move Greater than 10 Yards of Material to Reconstruct Retaining Wall – Map 23, Lot 2-3 (27 Meaders Lane) – Robert Gore, Applicant; Linda LeBlanc, Owner**

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

Mr. Gore began by stating he was before the board requesting to move more than 10 yards of fill in the shoreland zone. He stated they were requesting up to 25 yards of earth movement.

Board members wanted to know exactly which plan the applicant would be using to fix the existing retaining wall. Mr. Gore stated it would be similar to the existing wall but he would not guarantee it, as it would not be an engineered wall. Roger A. asked if he was going to use a crane to put large rocks into place? Mr. Gore stated that Owen Thyng, the mason doing the work, had talked about placing a crane behind the existing building. Roger didn’t see a good situation between the existing trees and power line. Mr. Gore stated that at this point in time he had not had a direct conversation with Mr. Thyng.

An abutter, Mr. Batson, stated he had spoken with Mr. Thyng and also observed the site. He said he was surprised at how small many of the rocks to be used are. He said Mr. Thyng believed using a block and tackle and pivoting material would work, using existing tree’s to work off from. He said Mr. Thyng had told

him about using a crane that would be in position, with no swing, for about four hours and using three men to place stones on the upper level.

Roger A. asked if a MDEP Permit by Rule was required? Mr. Gore stated it was his understanding that as long as they were replacing an existing structure with a similar structure and it's less than 50 % of the existing wall being reconstructed, then no permit was required. He said the project did have to be done after the water dropped down in the fall.

Roger A. asked if they were going to use any concrete? Mr. Gore believed some mortar would be used so it looks like the existing wall.

Roger A. asked about a time frame for the project? Mr. Gore thought mid October was when they dropped the water down. He believed it would be worked on into early November.

Mr. Batson stated Mr. Thyng had dry stacked some of the wall and it was protecting the embankment from the waves that slap on it with all the boat traffic on the lake, as well as breakers coming in from storms that slammed water against the shoreline. He thought it was amazing that what Mr. Thyng did protected the shoreline as it did, just with a dry stacked wall.

Roger A. reviewed §105-39 'Earth removal and filling', stating section D was why the applicant was before the board for earth moving in the shoreland zone. Roger noted the difficulty with this location and said the board members viewed the topography at the site inspection along with the difficulties involved due to the fact the section damaged was part of a larger problem. Roger stated with respect to reseeding, the area would be reclaimed as it was now with soil abutting the retaining wall.

Roger A. then read §105-39.G 'Conditions of permit'. Roger noted Best Management Practices need to be used. He asked if they would be using a temporary ground cover, like a filter mulch? Mr. Gore stated he didn't want mulch added because he didn't like organic matter being added to sand to reduce infiltration rates. He wasn't sure what would be used. The board reviewed the plans presented but it was noted neither plan was exactly what would take place on site. These were engineered plans. Roger A. specifically asked if Option 1 or 2 of the plan would be used and Mr. Gore stated, neither. He said the new wall would look like Option 1 but it would not be the engineered option, i.e. the new wall would be built similar to the old wall.

Diane S. asked what caused the wall to collapse, was it runoff issues? Roger A. stated it appeared the wall was undermined by wave action. Madge B. agreed and she wondered if the board should require a plan which shows exactly what would take place? Diane agreed more information should be required. Diane didn't understand why because the new wall was over 4 feet tall an engineered plan wasn't required. Madge noted that the CEO can approve the new wall as is, if the cost to repair using an engineered plan is too high or not feasible for some other reason. Mr. Gore agreed. Mr. Gore stated that he was before the board to get approval to move in excess of 10 yards of soil. Mr. Gore showed the board the plans again which depicted that 17 feet of wall would be replaced in similar fashion to Option 1 but not exactly. He stated Option 2 was the best plan but not economically feasible.

Mr. Batson stated the existing wall was almost 100 years old. He stated the wall was originally dry stacked vertically & backfilled. He said at some point someone added mortar on the lake side but no natural drainage could take place after that. He said even with that the wall lasted almost 100 years. He noted that the wall in the water where it wasn't mortared didn't blow out; it was the middle 2 feet of the wall that blew out from the back pressure. He said at the top of the wall, a bridge was still there for a time, but then collapsed. Mr. Batson had no concern with Mr. Thyng rebuilding the wall as he believed the man was

excellent in his field. He also wasn't concerned that the new wall would not be engineered, he said Mr. Thyng stood behind his work and again he was tops in his field. He said he would like to see the wall put up as it was for historic and esthetic reasons. CEO McDonough stated there was a proposed engineered design that would also look good but it was not economically feasible. Mr. Batson stated he understood there is a code and if rebuilt as it is, it cannot be engineered. He said, "Let the Mason stand behind it." He said the mason realizes the issues of the wall and how to reconstruct it.

Mr. Gore stated that he believed it was the responsibility of the board to review the earth moving and it was the CEO's job to approve the design of reconstructed wall. Roger A., stated, "Right". Madge B. stated that in light of that the board doesn't need a wall plan, the CEO does. Barbara F. asked if the board needed a plan for anything, earth moving? Roger said yes for 25 yards of earth, to be able to bring some in to build the area up behind the reconstructed wall.

Diane S. stated she would like to see the owner of the property address the issue of stormwater so the reconstructed wall won't collapse. She said the runoff in this area pours onto the shelf of dirt before the wall which probably helped to push the wall out. She thought perhaps mulch on the top might help. She realized the board could not make the applicant do that. Mr. Gore stated he has made that case to the applicant to describe to her the issues that created the problem. Mr. Gore stated cost was an issue. Diane didn't think a bag of mulch was too much to ask. Diane noted the steps to the water couldn't be used because they are washing down the hill. Mr. Gore again said he was not in favor of mulch. Diane stated that at the site inspection you could see where stormwater was just sheeting off the top of the wall, there were erosion pathways. She again believed the entire problem should be fixed, not just part of the problem.

Roger A. agreed everything should be addressed behind the wall. This might protect the rest of the wall? Mr. Gore stated the wall on either side of the collapse is now loaded more highly than before the collapse and rebuilding the 17 feet of wall will not relieve that pressure. But additional load sliding down will be relieved. Roger agreed.

Roger A. believed the board could approved up to 25 yards of fill to be brought to the site. He thought the wall itself would be permitted by the CEO. He stated there were many issues and that the whole wall needs to be addressed which would take all the neighbors working together.

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 help reduce the impact on the shoreline if the wall is repaired because at this time there is impact due to the collapse of the wall.***
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. ***The wall itself doesn't impact access, but the shoreline has been affected in a negative manner visually by the collapse of the wall, as has the remaining wall which runs along many abutting properties.***
- 3) The use is consistent with the Comprehensive Plan. ***It is, the Comprehensive Plan encourages any measures to protect water quality.***
- 4) Traffic access to the site is safe. ***N/A***
- 5) The site design is in conformance with all municipal flood hazard protection regulations. ***The reconstruction of the wall as presented without an engineered plan may or may not protect the area from excessive stormwater runoff or unusually high water from the lake.***

- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. ***There is nothing to be disposed of on site with respect to this proposed project.***
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. *N/A*
- 8) A stormwater drainage system capable of handling twenty-five-year storm without adverse impact on adjacent properties has been designed. ***For a 50 year storm the diversion of 6" of water in a 24 hour period has not been designed but as it is at this time any stormwater will affect the adjacent properties due to the collapsed wall. The rebuilding of the wall should at least minimize the current damage being done, even without an engineered plan.***
- 9) Adequate provisions to control soil erosion and sedimentation have been made. ***Best Management Practices shall be used during the project.***
- 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. There shall be no fumes, dust, odors or the like generated beyond the lot lines and the reconstruction of the wall shall benefit all neighboring properties.***
- 12) All performance standards in this chapter applicable to the proposed use will be met. ***They shall for the earth moving.***

Madge B. noted that many of the above standards didn't apply to this situation. ***She wanted the record to state the board was approving not more than 25 yards of fill at this time because from the information given there will be no further disturbance to the property with respect to the removal of trees or change in terrain. The purpose of this application is to rebuild the failed portion of the wall only. Any further work has to come back to the board.***

Maggie M. asked since the approval was for earth moving was the board able to require improvement at the top of the property to avoid future problems? Roger A. didn't think so because that would involve regulating the entire project and at this point the board is only regulating earth moving. Madge B. stated the applicant wasn't disturbing the upside of the property so you can't ask them to do something they are not disturbing. Roger said this application is only to restore the wall as it is at this time and to disturb as little of the area as possible.

Roger A. noted no plantings were required, only backfill for the wall.

**Roger A. stated the conditions were as follows:**

- 1) **Completion date of November 30, 2010.**
- 2) **Best Management Practices**

**Madge moved for approval with the above conditions. Roland L. 2<sup>nd</sup> the motion. All members were in favor.**

**Vote 5 – 0, the motion to approve the Conditional Use Permit was unanimous.**

Mr. Gore asked who was responsible for the completion of the project? Roger A. stated the owner was responsible, he was the contact person only. Mr. Gore stated that he believed this project would be back before the board in the future to replace the upper wall.

Nothing further was discussed.

**Best Possible Location – Replace Existing Shed and Build Outdoor Cooking Area – Map 33, Lot 7 (34 Treasure Island) – Ronald Cote, Applicant/Owner**

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

Mr. Cote began by stating he was going to replace his existing shed and he also wanted to put in an outdoor fireplace and cooking area. He said because he was replacing his existing shed he decided to move it to the other side of his property abt further away from the water and put the cooking area where the existing shed sits now. He said the new shed would be a wooden shed and the cooking area would be block and stone.

Madge B. believed the cooking area as presented was a structure. She asked if the new shed was best possible location? Roger A. stated yes.

Diane S. asked if the new shed was going to be the same size as the old shed? The old shed dimensions were not listed on the plan.

Barbara F. asked if the cooking area was within 100 feet of the water? Mr. Cote said yes. Barbara did not think a new structure could be placed within 100 feet of the water. Mr. Cote stated that was fine, he just thought he would ask.

Mr. Cote asked since he could not put in the cooking area, how could he modify his plan to put the new shed in the same location as the old shed? Madge B. stated that the board would do a site visit in order to determine the best possible location for the shed. Madge said he should decide what location he would think was best. CEO McDonough thought it sounded like Mr. Cote now wanted to replace the existing shed with a new one in the same location. Mr. Cote said right. Roger A. asked if the new one would be the same size as the existing? Mr. Cote said yes.

Mr. Cote asked if he should sketch a new plan. Madge B. stated that would good.

**Roger A. scheduled a site visit for Tuesday, August 10<sup>th</sup>. Members will meet at the Town Hall at 6:20 p.m. and then go to Diane S. house where she will take them by boat to the site visit. Any other people wanting to go on the site visit should take the Treasure Island Ferry to Mr. Cote's home. A Notice to Abutters will be mailed as well.**

Nothing further was discussed.

OTHER:

**Possible Ordinance Changes to the following:**

DRIVEWAYS – See § 405-46 ~~§105-60~~ and 105-60.1

The above proposed change is to correct a typographical error.

I. Performance guaranties.

- (1) At the time of approval of the application for conditional use, the Planning Board may require the applicant to tender either a certified check payable to the Town, an irrevocable letter of credit from a lending institution or a performance bond payable to the Town issued by a surety company in an amount adequate to cover the total costs of all required improvements, taking into account the time span of the



bond and the effects of inflation upon costs. The conditions and amount of the certified check or performance bond shall be determined by the **Planning** Board with advice from the Board of Selectmen. **The bond shall be presented to the Planning Board within 45 days of application approval and once approved must be rendered to the Town of Shapleigh no later than 90 days of approval or the application approval shall be null and void.**

The above proposed change is to place a time limit on how long an applicant can bring forward the bond. There has been an issue with applicants not presenting a bond for extended time periods, creating the possibility of making their application approval null and void and/or creating a liability for the town.

**Review Zoning Ordinance §105-39 ‘Earth removal and filling’ and §105-61 ‘Mineral exploration and extraction’**

Members discussed possible changes to both earth moving ordinances to gear one toward the homeowner and the other toward a commercial establishment. The following changes were discussed:

**§ 105-39. Earth removal and filling related to on site construction projects.**

- A. General. The following provisions shall apply to filling, grading, lagooning, dredging, excavation, ~~processing~~ and storage of soil, ~~earth~~, loam, sand, gravel, rock and other ~~mineral deposits~~ **types of earth**. Filling, grading, lagooning, dredging and other earth moving activity which would result in erosion, sedimentation or impairment of water quality, of fish and aquatic life are prohibited. **All activities conducted pursuant to this section must also comply with standards in Section 105-27 and/or Section 105-61 when deemed applicable by the Planning Board.**
- B. Earthmoving not requiring a conditional use permit. The following earthmoving activity shall be allowed without a permit:
  - (1) The removal and filling of less than 10 cubic yards of material from or on any lot in any one year, except within the Resource Protection District, the Floodplain District or the Shoreland District.
  - (2) The removal or filling of material incidental to construction, alteration or repair of a building, or in the grading and landscaping incidental thereto.
  - (3) The removal and filling or transfer of material incidental to construction, alteration or repair of a public road or essential services.
  - (4) Removal and fill or transfer of material for the repair of an existing private way in the General Purpose District.
- C. Earthmoving in the General Purpose District. Movement of material in excess of 10 but not more than 50 yards is permitted. Movement of materials from 50 cubic yards to 150 cubic yards requires the approval of the Code Enforcement Officer. Movement of materials in excess of 150 cubic yards requires the approval of the Planning Board. In either case, all relevant performance standards below shall be observed, including binding agreements to guarantee proper reclamation of the site after operations cease.
- D. Earthmoving in Shoreland District. Any filling, dredging or excavation of land above or below the normal high watermark, except earthmoving of less than 10 cubic yards which shall require a permit form the CEO (except as provided above) to ensure proper erosion and sedimentation, shall require a conditional use permit from the Planning Board.
- E. Earthmoving in Resource Protection and Floodplain Districts. Filling shall be prohibited in these two districts, but excavation or dredging may be permitted within the Floodplain District in accordance with the performance standards of this chapter, after review and approval as a conditional use by the Planning Board.

- F. Application for permit. Application for a permit from the Planning Board for ~~excavation, processing and storage of soil, loam, gravel, rock and other mineral deposits~~ **pursuant to this section** shall be accompanied by a plan which shall show:
- (1) The name and current address of the property involved.
  - (2) The location and the boundaries of the lot or lots for which the permit is requested.
  - (3) The location of all proposed access roads and temporary structures, and the sight distances from all entrances and exits.
  - (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~~ **activity**, 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.)
- 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.
  - (2) Temporary ground cover (such as mulch) and temporary runoff filter (such as hay bales in swales) shall be used as required to prevent stream sedimentation. The Planning Board shall set a specific date by which permanent ground cover shall be planted.
  - (3) Diversions, silting basins, terraces and other methods to trap sediment shall be used.
  - (4) Lagooning shall be conducted in such a manner as to avoid creation of fish trap conditions. The applicant shall submit written approval from the Department of Marine Resources or Department of Inland Fisheries and Wildlife, as applicable, prior to consideration by the Planning Board.
  - (5) The extent and type of fill shall be appropriate to the use intended. The applicant shall specify the type and amount of fill to be used.
  - (6) Fill shall not restrict a floodway, channel or natural drainageway.
  - (7) The sides and bottom of cuts, fills, channels and artificial watercourses shall be constructed and stabilized to prevent erosion or failure. Such structures are to be designed and built according to the Maine Soil and Water Conservation Commission, Technical Guide, Standards and Specifications.
  - (8) Where activities carried out under this article require the removal of existing ground cover, revegetation should be carried out.
  - (9) ~~(Reserved)~~
  - (10) Specific plans are established to avoid hazards from excessive slopes or standing water. Where embankment must be left upon the completion of operations, it shall be at a slope not steeper than one foot vertical to four feet horizontal.
  - (11) ~~No excavation shall be extended below the grade of an adjacent street, except for drainageways, unless 100 feet from the street line. No excavation below the grade of the surrounding land shall be allowed within 100 feet of any side or rear lot line. However, removal of earth material deposits from hills or knolls may be allowed within 50 feet of a side or rear lot line if no excavation below the grade of abutter's properties occurs.~~

- (11) **The top of a cut or the bottom of a fill section shall not be closer than 10 feet to an adjoining property, unless otherwise specified by the Planning Board.**
- (12) Sufficient topsoil or loam shall be retained to cover all areas, so that they may be seeded and restored to natural conditions.
- (13) ~~No existing rock, gravel or sandpit will be extended or expanded until the operator has complied with the provisions of this chapter and obtained a permit therefore.~~

H. Optional conditions of permit. The Planning Board may impose other reasonable conditions to safeguard the neighborhood and the municipality, which may include those relating to:

- (1) Methods of removal or processing.
- (2) Days and hours of operation.
- (3) Type and location of temporary structures.
- ~~(4) Routes for transporting material.~~
- (5) Area and depth of excavations.
- (6) Provision of temporary or permanent drainage.
- (7) Disposition of stumps, brush and boulders.
- (8) Cleaning, repair and/or resurfacing of streets used in removal activity which has been adversely affected by said activity.
- (9) The need for written approval of soil and erosion and sedimentation plan by a State of Maine licensed civil engineer selected by the applicant for the Planning Board.

~~I. Surety and terms of permit.~~

- ~~(1) 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.~~
- ~~(2) 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.~~

~~J. Existing operations. Any operation involving the excavation, processing or storage of soil, earth, loam, sand, gravel, rock or other mineral deposits in lawful operation at the time this chapter became effective (March 12, 1983) may operate for a period of three years from the effective date. Discontinuance of any existing operation for a period of more than one year shall require application for a new permit. Continuance of any existing operation for more than three years shall require a permit from the Planning Board.~~

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**§ 105-61. Mineral exploration and extraction, processing, and removal, including sand and gravel.**

- A. Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring or other methods which create minimal disturbance of less than 100 square feet of ground surface. A permit from the Code Enforcement Officer shall be required for mineral exploration which exceeds the above limitation. All excavations, including test pits and holes, shall be immediately capped, filled or secured by other equally effective measures, to restore disturbed areas and to protect the public health and safety.

B. Mineral extraction may be permitted under the following conditions:

- (1) A reclamation plan shall be filed with and approved by the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of Subsection B(4) **(15)** below.
- (2) No part of any extraction operation including drainage and runoff control features, shall be permitted within 100 feet, horizontal distance, of the normal high-water line of a great pond classified GPA, or a river flowing to a great pond classified GPA, and within 75 feet, horizontal distance, of the normal high-water line of any other water body, tributary stream or the upland edge of a wetland. Extraction operations shall not be permitted within 75 feet, horizontal distance, of any property line without written permission of the owner of such adjacent property.
- (3) Developers of new gravel pits along significant river segments shall demonstrate that no reasonable mining site outside the shoreland zone exists. When gravel pits must be located within the zone, they shall be set back as far as practicable from the normal high-water line and no less than 75 feet and screened from the river by existing vegetation.
- (4) ~~Within 12 months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than 100 cubic yards of minerals are removed in any consecutive twelve-month period, ground levels and grades shall be established in accordance with the following:~~
  - ~~(a) All debris, stumps and similar material shall be removed for disposal in an approved location or shall be buried on-site. Only materials generated on-site may be buried or covered on-site. (NOTE: The State of Maine Solid Waste Laws, 38 M.R.S.A. §1301, and the solid waste management rules, Chapters 400-419 of the Department of Environmental Protection's regulations may contain other applicable provisions regarding disposal of such materials.)~~
  - ~~(b) The final graded slope shall be 2 1/2 to 1 slope or flatter.~~
  - ~~(c) Topsoil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.~~
- (5) ~~In keeping with the purposes of this chapter, the Planning Board may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources.~~

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

- (4) 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.
- (5) Temporary ground cover (such as mulch) and temporary runoff filter (such as hay bales in swales) shall be used as required to prevent stream sedimentation. The Planning Board shall set a specific date by which permanent ground cover shall be planted.
- (6) Diversions, silting basins, terraces and other methods to trap sediment shall be used.
- (7) Lagooning shall be conducted in such a manner as to avoid creation of fish trap conditions. The applicant shall submit written approval from the Department of Marine Resources or Department of Inland Fisheries and Wildlife, as applicable, prior to consideration by the Planning Board.
- (8) The extent and type of fill shall be appropriate to the use intended. The applicant shall specify the type and amount of fill to be used.
- (9) Fill shall not restrict a floodway, channel or natural drainageway.

- (10) The sides and bottom of cuts, fills, channels and artificial watercourses shall be constructed and stabilized to prevent erosion or failure. Such structures are to be designed and built according to the Maine Soil and Water Conservation Commission, Technical Guide, Standards and Specifications.**
- (11) Where activities carried out under this article require the removal of existing ground cover, revegetation should be carried out.**
- (12) Specific plans are established to avoid hazards from excessive slopes or standing water. Where embankment must be left upon the completion of operations, it shall be at a slope not steeper than one foot vertical to four feet horizontal.**
- (13) No excavation shall be extended below the grade of an adjacent street, except for drainageways, unless 100 feet from the street line. No excavation below the grade of the surrounding land shall be allowed within 100 feet of any side or rear lot line. However, removal of earth material deposits from hills or knolls may be allowed within 50 feet of a side or rear lot line if no excavation below the grade of abutter's properties occurs.**
- (14) Topsoil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.**
- (15) Within 12 months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than 100 cubic yards of minerals are removed in any consecutive twelve-month period, ground levels and grades shall be established in accordance with the following:**
  - (a) All debris, stumps and similar material shall be removed for disposal in an approved location or shall be buried on-site. Only materials generated on-site may be buried or covered on-site. (NOTE: The State of Maine Solid Waste Laws, 38 M.R.S.A. §1301, and the solid waste management rules, Chapters 400-419 of the Department of Environmental Protection's regulations may contain other applicable provisions regarding disposal of such materials.)**
  - (b) The final graded slope shall be 2 1/2 to 1 slope or flatter.**
- (16) No existing rock, gravel or sandpit will be extended or expanded until the operator has complied with the provisions of this chapter and obtained a permit therefore.**

**C. Optional conditions of permit. The Planning Board may impose other reasonable conditions to safeguard the neighborhood and the municipality, which may include those relating to:**

- (1) Methods of removal or processing.**
- (2) Days and hours of operation.**
- (3) Type and location of temporary structures.**
- (4) Routes for transporting material.**
- (5) Area and depth of excavations.**
- (6) Provision of temporary or permanent drainage.**
- ~~(7) Disposition of stumps, brush and boulders.~~**
- (8) Cleaning, repair and/or resurfacing of streets used in removal activity which has been adversely affected by said activity.**
- (9) The need for written approval of soil and erosion and sedimentation plan by a State of Maine licensed civil engineer selected by the applicant for the Planning Board.**

**D. Surety and terms of permit.**

- (1) 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.**
- (2) 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.**

**E. Existing operations. Any operation involving the excavation, processing or storage of soil, earth, loam, sand, gravel, rock or other mineral deposits in lawful operation at the time this chapter became effective (March 12, 1983) may operate for a period of three years from the effective date. Discontinuance of any existing operation for a period of more than one year shall require application for a new permit. Continuance of any existing operation for more than three years shall require a permit from the Planning Board.**

The board will continue to work on the earth moving ordinances. Public Hearings for all ordinance changes shall be posted.

Nothing further was discussed.

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**GROWTH PERMIT(S) – There are growth permits available.**

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**The Planning Board meeting was adjourned at 9:35 p.m.**

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

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, August 10, 2010**

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

**The minutes from Tuesday, July 27, 2010 were accepted as read.**

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### **Best Possible Location – Replace Existing Shed and Build Outdoor Cooking Area – Map 33, Lot 7 (34 Treasure Island) – Ronald Cote, Applicant/Owner**

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

Mr. Cote began by stating his application was to replace an existing shed, keeping the new shed in the same location. He also wanted to build an outdoor cooking area. He said he had originally wanted to build it within 100 feet of the water but was told he could not, so now it will be behind the house and beyond the 100' high water mark.

Madge B. stated the board was to review the best possible location. She said the existing shed fits in between the existing trees and there is no impact to replace it where it is now. There will be no shrubs that need to be removed. She said she believed there would be no advantage to moving it. She said there would be no significant disturbance leaving it where it is. Diane S. agreed stating there would be more disturbance to the lot if it were moved.

Roger A., who was unable to attend the site inspection due to a meeting with the Selectman, asked if the new cooking area would be 100 feet beyond the high water mark? Board members said yes, much beyond the 100 feet. It was also noted it would be at least 20 feet from one side lot line and 40 plus feet from the other. CEO McDonough believed the cooking area was a separate issue from the best possible location. Madge B. agreed.

CEO McDonough asked about the setback to the back of the property from the proposed cook area? He noted that the setback was 75 feet to Treasure Island Road. Barbara F. noted that Mr. Cote was replacing an existing structure, this was not a new structure. CEO McDonough asked what was being removed? Board members noted it was an ice shack that is now used as a storage shed. CEO McDonough stated that because we are dealing with an existing structure being replaced it is a Planning Board issue for best practical location of a non-conforming structure.

Madge B. asked Mr. Cote if the cook area would be the same size as the existing shed? Mr. Cote stated within a few feet. He said he did not have the actual dimensions of the cook area, the frame was a kit that he would purchase from Canada. It looked like a pizza oven.

CEO McDonough stated it was important it did not encroach on the Treasure Island right-of-way.

Roland L. asked if the board needed the distance to the right-of-way prior to making a decision. Roger A. stated that the board knows that it is a non-conforming structure and it does not currently meet the setback to the right-of-way. Roger believed the board could act on it as long as the new structure did not further encroach on the right-of-way. It was noted it would meet the side setbacks.

Madge B. agreed, stating a condition could be that it could not encroach any further on the road. She believed if the new structure was longer it could be moved closer to the rear of the house. It still would not be within 100 feet of the water.

Roger A. stated the drawing depicted that the patio area would be 12 x 12 feet. Mr. Cote stated the existing is approximately 8 x 10 feet. He noted that the pizza oven itself would not be 12 x 12 but probably the same size as the existing shed.

Board members were concerned with lot coverage. They did calculations of the existing structures to determine if Mr. Cote's project would exceed the 10% lot coverage. It appeared with the new 12 x 12 foot pad for the pizza oven, the lot coverage would not exceed 9%. Based on the lot size 1,437 square feet was allowed and with the new cook area and the existing lot coverage the total square feet covered would be 1,120.

**Madge B. moved for approval of the new shed and the cook area with the following conditions:**

- 1) The new shed shall remain in the same location as the existing shed and it shall be the same size as the existing.**
- 2) The new cook area shall be constructed in the same location as the existing shed at the rear of the house and shall be no closer to the existing right-of-way / roadway.**
- 3) The footprint of the new cook area shall be no larger than 12' x 12' in size.**

**Diane S. 2<sup>nd</sup> the motion. All members were in favor.**

**Vote 5 – 0, the motion to approve the Best Possible Location was unanimous.**

Nothing further was discussed.

**Best Possible Location – Replace Structure with 30% Expansion – Map 17, Lot 6 (14 29<sup>th</sup> Street, Mousam Lake) – Sharon Herbert, Applicant/Owner**

Sharon Herbert was in attendance for the review of her application. Also in attendance was a friend, Bruce Albertelly and Shawn Woods, the Contractor doing the project.

Ms. Herbert brought a landscaping plan as asked for at the previous review. On the plan it showed the existing trees, showing which were dead and which were alive and it depicted two live trees and two dead trees would be removed. Ms. Herbert said that she hoped to get a wood chipper to chip up the trees to be removed and use them for mulch on the property.

On another sketch was the vegetation that will be placed around the new structure. The vegetation listed was Day Lilies, Northern Sea Oats, Maiden Grass and Hosta. In front of the new home would be a good size area of Blue Star Creeper, which is a ground cover that can withstand foot traffic and is good to prevent soil erosion. Ms. Herbert wanted this instead of a lawn and the board agreed grass is the board's last choice as a ground cover for many reasons.



Ms. Herbert showed the board a plan for replacing the two retaining walls on site. She stated the walls would be 14” higher than the existing in order to properly terrace the land.

The board wanted to know what the walls would be made out of? Ms. Herbert stated wood. The board asked what size they would use? Mr. Woods stated 8’ x 8’. Roger A. asked how high the walls would be. Mr. Woods stated the 1<sup>st</sup> wall would be 36” and the 2<sup>nd</sup> wall would be 30”.

Madge B. asked if there would be a walk-out basement? Ms. Herbert stated yes, and pointed out the location on the plan. Mr. Woods noted that the layout of the land was such there would be no issue with erosion once the juniper and mulch was put into place, as well as how the land will be sloped.

Roland L. asked if the existing walkway that was across the front of the house was going to be removed? Mr. Woods stated, yes.

Madge B. stated the board at the site inspection was concerned with erosion with respect to the area around the walk-out basement. She asked if the proposed landscaping would be enough? Mr. Woods stated that with creating a 2 to 1 slope, stepping the area down gradually and adding the junipers and mulch it should stop any possible issues.

Roland L. asked if the walls were going to be replaced prior to the construction of the house? Mr. Woods stated it would be done at the same time as they were excavating the foundation.

Roger A. stated his only concern was with the walls with respect to using 8’ x 8’ timbers due to the height of the walls. He wanted to know how they would get pinned to stabilize the soil behind them. Mr. Woods stated there would be 6 footers going back into the soil, stepping them down at the end of the walls. He stated there would be 6 to 8 inches of crushed stone behind the wall along with filter fabric so the area drained well. He said there are also steel stays. CEO McDonough noted the walls were less than 4 feet in height and there was a flat grade abutting them.

Roger A. asked if the stumps of the trees being removed were going to be taken out or ground up? Mr. Woods stated the stumps near the house will be removed. He said he could grind the other stumps if that is what the board wanted. Roland L. was concerned with damaging other trees if the stumps were removed. Mr. Woods said again the ones near the new foundation would be removed but he could grind the others.

CEO McDonough reviewed the plans presented and stated he agreed with the plan as presented.

Roger A. reviewed §105-4.D ‘Non-conforming structures’. Roger noted that the proposed structure would be moved farther from the water. He said that although it still would not meet setback requirements the proposed structure would now be more conforming than the existing structure.

**Madge B. moved for approval of the new location per the plans presented, expanding the new structure by 30%. The new structure shall be moved 6 feet back from the high water mark and the existing structures location. The conditions of approval are as follows:**

- 1) The plantings shall be established by June 1, 2011. If there is any change required to this deadline it must be approved by the Code Enforcement Officer.**
- 2) Best Management Practices shall be adhered to for the duration of the project.**
- 3) A licensed surveyor must place the structure per the approved plans.**

**Maggie M. 2<sup>nd</sup> the motion. All members were in favor.**

**Vote 5 – 0, the motion to approve the Best Possible Location was unanimous.**

Roland L. asked the applicant if when they were chipping the trees to be removed if they would also chip up the debris that is currently in the yard. Ms. Herbert stated that she was planning to do so.

Nothing further was discussed.

**OTHER:**

**Review Zoning Ordinance §105-39 ‘Earth removal and filling’ and §105-61 ‘Mineral exploration and extraction’**

CEO McDonough did not think the title of §105-39 was suitable because it was confusing. He noted the many different types of on site construction, including that which is incidental to the construction of a new home. That would not be regulated under this ordinance. He suggested the following and the board members agreed it was more appropriate. “§105-39. Earth removal and filling **other than activities regulated under §105-61.**”

Under §105-39, under F(3) the sentence “*The location of all proposed access roads and temporary structures, and the sight distances from all entrances and exits.*” shall now be under §105-39.H(4) and the words ‘and temporary structures’ shall be removed.

Under 105-61.B(5), the last sentence shall be moved to B.15(c), it reads as follows, “*The Planning Board shall set a specific date by which permanent ground cover shall be planted.*”

The board will continue to work on the above ordinances and shall hold a public hearing prior to the end of the year.

Nothing further was discussed.

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**GROWTH PERMIT(S) – There are growth permits available.**

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**The Planning Board meeting was adjourned at 8:10 p.m.**

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

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, September 14, 2010**

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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### **PUBLIC HEARING begins at 7:00 p.m.**

#### **The Board of Selectmen are proposing an Amendment to the Town of Shapleigh Zoning Ordinance; §105-19.H “Building Height”**

Representing the Board of Selectmen was Road Commissioner Richard Goodwin. Also in attendance was his wife, Brenda Goodwin; Town Clerk, Joanne Rankin; and Citizen William Mageary and Patricia Baldwin.

The following highlighted area is the proposed change by the Board of Selectmen.

- H. Building height. No building shall exceed 2 ½ stories or 35 feet in height, as measured between the mean original grade at the downhill side of the structure and the highest point of the structure. **Exception: In non-residential buildings, commercial (which does not include home occupations) or agricultural buildings, a height of 40 feet is allowed in the general purpose district.**

Features of building and structures, such as chimneys, towers, ventilators and spires, may exceed 35 feet in height but shall be set back from the nearest lot line a distance not less than the height of such feature or structure, unless a greater setback is required by other provisions of this chapter.

Roger A. asked if there were any questions or comments?

Ms. Baldwin stated that upon her first reading of the changes she had no problems with it but with a second review she believed that churches were not addressed under this change and that could be an issue in the future.

Barbara F. stated that she believed that “non-residential buildings” could also be a problem. She stated that CEO McDonough thought non-residential was too open ended, it could possibly include structures such as garages. They are not a residence. Barbara, after looking through the existing zoning ordinance, thought using “public, semipublic, institutional” would be preferable. These were clearly defined under §105-17 as church, municipal offices, library, town garage, fire station, schools, etc. CEO McDonough noted that non-residential buildings were not defined in the ordinance. He stated a garage could be argued to be a non-residential building because no one was living in it. He stated it could be an argument he did not want to go to court with.

Roger A. stated that he didn’t believe the aspect of commercial should be included because it was such a gray area. He felt the use of commercial in the ordinance should be limited.

Diane S., referring to Ms. Baldwin’s comment with respect to a church, referred everyone back to the ordinance which stated “Features of building and structures, such as chimneys, **towers**, ventilators and **spires**, may exceed 35 feet in height but shall be set back from the nearest lot line a distance not less than the height of such feature or structure, unless a greater setback is required by other provisions of this chapter.” She felt towers and/or spires would cover the height of a church. Ms. Baldwin stated that if public, semipublic and institutional was included then it was certain all types of churches would be covered. Barbara F. agreed stating some churches could exceed 35 feet the way they were constructed and not necessarily due to a spire.

Madge B. asked members if the board really wanted the building higher than 35 feet? She thought there was a reason building height was not over 35 feet. Roger A. believed surrounding towns didn't go over 35 feet except for Sanford, S. Berwick, York and Wells. He stated they have the fire fighting equipment to fight fires in buildings over 35 feet. He noted there were many old mills in S. Berwick and Sanford so they needed equipment to be able to take care of those buildings. He said that is why he would like to see NFPA 101 added to the ordinance to be sure fire safety was addressed in all structures over 35 feet. He said although the town garage may not be an issue, the board had to look at all proposed structures in the future. He stated that agricultural buildings do not need a CU permit but they do need a building permit and he wanted to be sure they would be constructed appropriately.

R.C. Goodwin stated he did not know what was going on with the fire department today but when he was on the fire dept. there was a 40 foot ladder they could use. Roger A. stated that Fire Chief Romano stated they didn't usually use it because it was too heavy to use. Roger wasn't sure if a ladder was acceptable for safety or if you needed a ladder truck. Safety of the fire fighter was important.

R.C. Goodwin stated that he did not believe NFPA had anything to do with building height. Barbara F. stated F.C. Romano spoke with her and he stated NFPA had nothing to do with building height. The height allowed was up to the Planning Board, Board of Selectmen and Code Enforcement Officer. He also said that if there was a fire at the town hall or church, he would call Sanford for their ladder truck. He would not attempt to go onto the roof without a ladder truck. R.C. Goodwin stated again that when he was in the fire department he would have been able to go on the roof of the town hall.

Roger A. stated again that the towns allowing 40 foot building all required compliance with NFPA 101. He was not certain why but he would feel more comfortable if it was added to the ordinance.

Ms. Baldwin felt that if there was a fire issue then it was up to the property owners to deal with it and their insurance company. Ms. Baldwin didn't know if there was a cost to calling in fire equipment from Sanford or not. Roland L. wanted to know that as well, if there was a cost to the Town of Shapleigh to bring in Sanford? Barbara F. didn't know. That would be a question for the fire department. Diane S. stated that was not a Planning Board concern. Roland stated it was a concern as a taxpayer. Diane said yes as a taxpayer but the board didn't look at cost when determining the relevance of an ordinance.

Ms. Baldwin stated that it would be best to use the changes Barbara suggested for the Zoning Board as well, in case of an appeal. She said the more clear it is the better and having a definition of institutional was much better than using non-residential which had no definition.

Madge B. noted that the Board of Selectmen's change would not cover what they wanted, i.e. the salt shed. She stated a town building was not commercial and she was not certain it could be considered non-residential. Diane S. agreed which is why the change Barbara suggested would work. Madge stated that she believed the Planning Board as a whole would not agree to using non-residential or commercial. CEO McDonough stated he agreed. He said in Shapleigh there was no commercial zone so even a small business such as "The Whole Nine Yards", who wants to rent equipment out of his garage, is now commercial. He added that anyone in town who wanted to open a business would be considered commercial.

The board asked Ms. Rankin if she had any questions or comments? She stated she was before the board to let them know that the wording must be clear before the end of the meeting because she needed to post the words for the ballot by Friday the 17<sup>th</sup>. After that there can be no changes.

Madge B. asked Barbara F. to read what the board had discussed so far. **Exception: In public, semipublic, institutional and agricultural buildings, a height of 40 feet is allowed in the general purpose district.** Madge read the definition of institutional which read as follows: “A non-profit or quasi-public use, or institution such as a church, library, public or private school, hospital, or municipally owned or operated building, structure or land used for public purposes.”

Diane S. stated she would like the word only added after ‘general purpose district’. All members agreed.

Madge B. wanted to know why the word institutional wasn’t used alone? Barbara F. stated she was using the words from §105-17 Land uses, which listed everything regulated under public, semipublic and institutional. Madge stated that was fine.

Roland L. asked if it should say “up to 40 feet” instead? Madge B. thought ‘up to’ or ‘not to exceed’ might be better. She thought ‘not to exceed’ was best.

Barbara once again read the suggested changes. **Exception: In public, semipublic, institutional and agricultural buildings, a height not to exceed 40 feet is allowed in the general purpose district only.**

Madge B. asked when a person went for a building permit if CEO McDonough would have to apply the NFPA code that Roger spoke of? CEO McDonough stated he applied the building code only. Roger said the CEO doesn’t do anything with fire protection. Roger said he wasn’t sure exactly what NFPA applied to but he stated again towns allowing taller buildings require NFPA be complied with.

Ms. Baldwin stated that it sounded like NFPA was for the fire department to deal with. Roger A. disagreed; he stated the ordinance dictates the Planning Board deal with the health, safety and welfare of the community. So it was up to the board to determine what was best, not leave it up to the insurance companies. Roger stated that is why he would like to add NFPA. If it becomes necessary that the town needs a truck to support these buildings, perhaps the developer would need to buy the town a truck or help pay for one. He said if the language was in the ordinance it would be up to the individual to make certain they complied.

Roger A. stated he would like the following added: **in compliance with NFPA 101.**

R.C. Goodwin noted all the existing buildings that probably wouldn’t comply. Roger A. stated that was not an issue, it would only apply to new building applications. He said this was all about safety. R.C. Goodwin asked CEO McDonough if when someone applied for a building permit if he had to review whether or not the applicant complied with NFPA? CEO McDonough stated no, he only used the building code. CEO McDonough stated he had the NFPA book but it was 10 years old. He didn’t know what changes have taken place in that time. And he said he hadn’t reviewed the book in depth so he couldn’t comment on it.

R.C. Goodwin asked if someone wanted to build a big house would they have to comply with NFPA 101? Diane S. said no, a residence can only be 35 feet in height. R.C. Goodwin didn’t see how building a higher structure would require more life safety because there were no people to protect as in a residence. CEO McDonough stated this ordinance would cover any public place. Roger A. stated there was life safety in any building you erect, such as with the new sand shed, what if the sand collapsed on someone. CEO McDonough agreed, stating someone could put up a 40 foot building that was offices with 100 people in it. Roger said it could be a building that housed tractor trailers or what about a school. Maggie M. asked if it should be spelled out somewhere that the Town of Shapleigh has the right to call for mutual aid? Roger said that would be a fire department issue. Roger noted again that he did not know why but the other towns, when they went to 40 feet, all required the NFPA compliance.

Madge B. asked if the board was here to determine the language? She believed the Board of Selectmen wanted the board's opinion on their language? CEO McDonough wasn't sure if they wanted the Planning Board opinion, they just wanted the board to hold the public hearing because it is required. Madge stated, therefore, what the Planning Board advises, the Board of Selectmen does not have to follow. Barbara F. stated, right.

CEO McDonough asked if there would be another public hearing if the Board of Selectmen make changes to what the Planning Board suggests? Roger A. stated yes there should be another public hearing. Barbara F. stated that normally yes there would be another hearing but the language for the ballot in November has to be determined by Friday and given to the town clerk. There can be no change after that. Then another public hearing can be held on the final language just to inform the public. Barbara said the BOS can use their original version, or what we have suggested this evening, or create something new. But they have to make a decision by Friday. Ms. Rankin, the Town Clerk agreed, she had to have the exact language by Friday. Diane S. asked what if the BOS didn't agree to the PB changes? Barbara stated that they can present their own version. But she felt it had to be listed on the ballot that the Planning Board was in opposition to their proposal if they use their own wording. Diane said that is should say "The Planning Board does not recommend." Barbara believed this to be the case.

Roland L. asked if the board should vote on their proposed change? Roger A. stated yes, because it is a change to the ordinance.

Barbara F. read the Planning Boards proposed language prior to the vote. It read as follows:

H. Building height. No building shall exceed 2 ½ stories or 35 feet in height, as measured between the mean original grade at the downhill side of the structure and the highest point of the structure. **Exception: In public, semipublic, institutional and agricultural buildings, a height not to exceed 40 feet is allowed in the general purpose district only, and must be in compliance with NFPA 101.**

**Madge B. moved that the Planning Board recommend the above stated language. Maggie M. 2<sup>nd</sup> the motion. All members were in favor.**

The Planning Board wanted it noted that as a board they did not recommend the proposal by the Board of Selectmen.

Barbara F. typed up Planning Boards proposed language and gave two copies to R.C. Goodwin to present to the Board of Selectmen at their meeting which was in session.

Nothing further was discussed.

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

**The minutes from Tuesday, August 10, 2010 were accepted as read.**

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**Best Possible Location – Replace / Repair Existing Foundation – Map 27, Lot 10 (132 16<sup>th</sup> Street) – Michael & Deborah Parkin, Owner**

Mr. and Mrs. Parkin were present for the review of their application.

Mr. Parkin stated his camp was located at 132 16<sup>th</sup> Street. The camp was built on a partial foundation and footing. He said part of the camp was on an unstable pile of sand in the basement. He said when it rained the sand would erode into the basement and he believed the integrity of the building is becoming an issue. Also the moisture from the sand was causing significant dampness in the camp.

Mr. Parkin stated he wanted to resolve the problem as follows:

1. Install silt fence outside of the building.
2. Install a temporary wood frame inside the basement.
3. Remove the 10 yards of sand via a conveyor belt bringing it out to the parking area.
4. Spread the sand onto the parking area.
5. Pour a 12 x 12 footing.
6. Build a cement block foundation in the area the sand is to be removed.
7. Repair the existing block foundation.
8. Pour a 5” cement floor in basement.
9. Replant any disturbed vegetation on the banking on the driveway side of the home, according to the Maine DEP Buffer Planting Handbook, received when applying for the MDEP Permit by Rule on September 1, 2010.

Mr. Parkin stated that he believed by moving the material up the hill via a conveyor belt there would be minimal disturbance to the existing vegetation. He stated he did intend to replant any vegetation harmed during the project. He showed the board members a picture of what the area looked like currently.

Mr. Parkin stated the house would be cribbed up during the project so it would not fall down and a footing would be poured at that time.

Madge B. asked if there would be any changes to the camp? She asked if there were any plans to raise the cottage? Mr. Parkin stated, no, 2/3 of the existing foundation would remain in place. Madge asked if it was the uphill side that would be replaced? Mr. Parkin stated, yes. The side furthest from the water.

Mr. Parkin believed with using the conveyor there would be minimal disturbance. He said he would replace anything disturbed, based on the MDEP recommendations.

Roger A. asked again if the camp would be lifted at all? Mr. Parkin stated no, the elevation will remain the same. He said a survey has been done and another will be done upon completion.

CEO McDonough noted that in the past he would have dealt with this issue in his office but with the new Shoreland Zoning changes, it now mandates the Planning Board review the new foundation. He pointed this out to the board members, asking them to review §105-4.D(3) “Foundations”, which required PB review for “new, enlarged or replacement foundations” and (5) which noted a PB review for “any structure which is located less than the required setback from a water body”. He stated these were additions to the ordinance with the state mandated changes in 2009.

Madge B. asked about a replanting plan, should the board have one for the next meeting? Roger A. asked how many yards would be removed? Mr. Parkin stated, 10 yards. Mr. Parkin stated no trees would be removed and he was hoping by using the conveyor belt there would be minimal vegetation disturbed.

Roland L. asked if the board needed to be concerned with runoff on the driveway and placement of the sand?

CEO McDonough asked Mr. Parkin if he needed the sand for his driveway? Mr. Parkin said he did not need the sand and he would have no issue with loading it onto a 10 yard dump and taking it offsite. CEO McDonough thought that would be best. CEO McDonough also noted that when the board did their site inspection they would see that it was very unlikely much area would be disturbed. Madge B. stated it sounded like a planting plan may not be needed. CEO McDonough agreed.

**Roger A. stated a site inspection would be scheduled for 6:30 p.m. on Tuesday, September 28<sup>th</sup>. Members will meet at the town hall. A Notice to Abutters will be mailed as well.**

Nothing further was discussed.

**Possible Location – Replace Structure with Expansion & Replace Retaining Wall – Map 26, Lot 14 (322 16<sup>th</sup> Street Loop) – John Mavrakos, Owner**

Mr. Mavrakos was present for the review of his application along with Carl Beal, PE, of Civil Consultants.

Mr. Beal began by stating that Mr. Mavrakos was the owner of Map 26, Lot(s) 13 & 14. The work to be done would take place on Lot 14. Mr. Beal, using plans he presented, showed the board members the existing property condition, which contains 2 seasonal residences, both within the 100 foot setback to the high water mark of Mousam Lake. See Plan C1 for existing conditions.

Mr. Beal stated that the 856 square foot cottage, closest to the water would be demolished and replaced with a 614 square foot concrete patio. He noted this was a reduction in floor area of 28% within the shoreland setback.

Mr. Beal stated that the 691 square foot cottage at the rear of the property would be replaced with a new home and garage. He noted that most of the new home would be beyond the 100 foot water setback. He stated the area within the 100 foot setback would be using 28% of the 30% area allowed for expansion of a non-conforming structure. See plan C2 for proposed residence site plan.

Mr. Beal stated the home would be 32' x 40' and the garage 36' x 36'. There will be a new septic system and well. A copy of the Waste Water Disposal System Application was provided, done by Thomas Harmon, SE#114, dated 7/31/10.

Mr. Beal stated that Mr. Mavrakos also wanted to replace the existing wooden retaining wall which was collapsing. Pictures of the existing wall were provided for members to review. The existing wall is approximately 100 feet in length; Mr. Mavrakos wants to replace it with a segmented concrete retaining wall. The new wall would be 160 feet in length. Mr. Beal stated a Permit by Rule was submitted to the MDEP on September 7<sup>th</sup>. See plan C3 for proposed retaining wall.

Mr. Beal stated that the project would require the removal of 21 trees within 100 feet of the high water mark. 12 trees have to be removed to construct the new retaining wall and 9 trees will be removed to construct the new house. Mr. Beal noted that 21 trees would be planted to replace those removed along the North Shore of the lake to stabilize the existing slope from future erosion. See plan C4 for proposed landscaping plan.

Roger A. asked about the height on the retaining wall? Mr. Beal stated it was 9 feet high. Roger stated the wall would need to be engineered. Mr. Beal stated yes, it would be. Mr. Beal stated there was a detail on the plan using large locking blocks but Mr. Mavrakos may use the smaller blocks so a new plan might need to be drafted and designed. Mr. Beal stated that with either wall they would need to go back into the embankment 6 to 8 feet. Therefore, the existing trees will need to be removed.



Roland L. asked besides replanting the trees, what other measures will be done to revegetate the area? Mr. Beal stated there would be disturbance associated with both the new wall and house. Mr. Mavrakos said that much of work done to the wall will be done from the water side. Mr. Beal stated there would be some grading and fill near the house. He said the existing driveway is the high point and runoff would go back toward 16<sup>th</sup> street. There won't be erosion problems going toward the lake.

Mr. Beal stated the camp in the front would be demolished and removed. He thought many of the shrubs would remain in place. CEO McDonough asked what type of foundation was under the camp to be torn down? Mr. Mavrakos stated much of it was just rocks. Mr. Beal thought some of it can be kept in place and used for the new patio area. Mr. Mavrakos thought only part of the camp had a foundation. Some of it was on posts.

CEO McDonough told Mr. Beal it would be in his best interest to expedite the project to have a detailed description of a landscaping plan. The area surrounding the old camp and along the new foundation, more details would be needed.

CEO McDonough also pointed out to Mr. Beal that he might want to devise a way to arrest the erosion problem on both sides of the existing wall. He did not believe the DEP would grant allowing a 160 foot wall to replace a 100 foot wall.

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

**Roger A. stated a site inspection would be conducted on September 28<sup>th</sup> at approximately 7:00 p.m. A Notice to Abutters will be mailed as well.**

Nothing further was discussed.

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**GROWTH PERMIT(S) – There are growth permits available.**

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**The Planning Board meeting was adjourned at 8:15 p.m.**

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

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, September 28, 2010**

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

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

**The minutes from Tuesday, September 14, 2010 were accepted as read.**

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**Best Possible Location – Replace / Repair Existing Foundation – Map 27, Lot 10 (132 16<sup>th</sup> Street) – Michael & Deborah Parkin, Owner**

Mr. and Mrs. Parkin were present for the review of their application. Board members did a site inspection prior to this evenings meeting.

At the meeting on September 14<sup>th</sup>, Mr. Parkin had stated the camp was built on a partial foundation and footing, and was also on an unstable pile of sand in the basement. Mr. Parkin stated to resolve the problem they wanted to remove 10 yards of sand from the basement via a conveyor belt and then remove the sand from the site. Footings would be poured, a concrete block foundation would be built in the area where the sand is removed and the existing block foundation would be repaired. Also a cement floor would be poured in the basement. Mr. Parkin stated any vegetation disturbed would be replaced with like kind and according to the MDEP Buffer Planting Handbook.

Roger A. stated the house was not being moved from its present location and it would be no higher in elevation. Roger noted again that at the last meeting Mr. Parkin stated the sand would be removed from site instead of being distributed in the driveway as originally suggested.

Roger A. reviewed §105-4.D(3) 'Foundations' in its entirety. He also reviewed §105-4.D(7) 'Relocation'.

Roger A. noted no trees would be removed from the site and he didn't believe any vegetation would be destroyed because of the use of the elevator to move the gravel. Mr. Parkin stated if any was destroyed by the elevator he would replace it. Roger stated that backfilling might be somewhat difficult but he didn't think it would pose a problem to the site.

Roger A. stated one condition would be to use Best Management Practices (BMP). Roger asked what the time frame was to complete the project? Mr. Parkin stated he would like to start the project at the end of October and work into November but he wasn't sure if the contractor would get to it this fall. He asked if he had a deadline? Roger said the permit was good for two years but the board usually sets a completion date. Barbara F. asked if Mr. Parkin thought the project would be completed by the end of June 2011? Mr. Parkin stated he believed that it would be without issue.

Madge B. asked if there needed to be a condition that the applicant uses the conveyor system to remove the fill? Barbara F. thought if the application was approved per the plan provided, which states that a conveyor would be used, that would assure the use of the conveyor. Madge agreed that wording was fine.

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

- 1. Best Management Practices are to be used until the project is completed.**
- 2. Any plants disturbed shall be replaced with plants of like kind.**
- 3. The project is to be completed by June 30, 2011.**

**Roland L. made the motion to approve the application per the plan presented with the above stated conditions. Maggie M. 2<sup>nd</sup> the motion. All members were in favor.**

**Vote 4 – 0, the motion to approve the Best Possible Location was unanimous.**

Nothing further was discussed.

**Possible Location – Replace Structure with Expansion & Replace Retaining Wall – Map 26, Lot 14 (322 16<sup>th</sup> Street Loop) – John Mavrakos, Owner**

Mr. Mavrakos was present for the review of his application along with Carl Beal, PE, of Civil Consultants. Board members did a site inspection prior to this evenings meeting.

Mr. Beal began by reiterating once again what the applicant proposed. He stated the applicant was applying for a Best Possible Location permit to construct a new home on his lot on Mousam Lake. The new home would be 32' x 40' in size. Mr. Beal stated part of the new home would set within the 100 foot setback to the water and the expansion within the 100 foot setback requirement would be 28% of the 30% expansion allowed. The rest of the new home is beyond the 100 foot setback.

Mr. Beal stated the front cottage would be demolished and replaced with a small patio. The existing cottage is 858 sq. ft. and the new patio will be 614 sq. ft.

Mr. Beal stated the other issue is replacing the retaining wall. The original wall proposal was not accepted by the DEP so a new Permit by Rule was submitted to replace 90 LF of retaining wall with segmented concrete block, the same height and length as the existing wall. He stated that after tonight's site inspection it was concluded that no additional rip rap would be placed on either side of the wall.

Mr. Beal stated reconstruction of the wall would require the removal of 12 trees due to the excavation behind the wall, placement of engineering geo-fabric as the wall is built up and backfilling the wall. He said the 12 trees would be replaced with 12 three foot trees as required by the ordinance with a mixture of fir, white pine, and birch. In addition, all the disturbed area will be replanted with 100 blueberry bushes to re-stabilize the area.

Mr. Beal stated 12 additional trees would need to be cut in order to build the new home. These will be replaced and they will be placed closer to the lake to provide more stability for the banking along the water. He said lawn would be placed around the new home and the land slopes away from the water so no stormwater should affect the lake.

Barbara F. asked if he had copies of his new plans? Mr. Beal stated he did and would provide them for the board. He said the new plans show the shorter wall and a new replanting plan.

Roland L. noted that on the original plan it showed an existing gravel circular driveway. Roland asked if this driveway would be continued to be used? Mr. Mavrakos stated that he would like to keep it in order to be able to drive around the house, unless it's a problem. Roland stated he was just curious whether or not it

would stay. Mr. Beal stated he thought it would be best to keep it to have more access to the property.

Barbara F. asked Mr. Beal if the new septic system would be entirely on Mr. Mavrakos property. She stated she had a telephone call from Frank Clark, a direct abutter, who was concerned with the location of the leach field. Mr. Beal stated that yes, the new system would be 15 feet from the property line which is a legal setback. Mr. Mavrakos stated he had spoken with Mr. Clark and said he seemed concerned and he didn't think Mr. Clark was aware of where the property line was.

Madge B. asked if Mr. Mavrakos or other board members considered moving the proposed patio area back farther from the lake? Mr. Mavrakos stated he had thought about it but looking at the area, he thought it would cause more disturbance moving it from the current location of the existing cottage. Roger A. stated the patio would need to be raised or the road dropped down if it were moved.

Madge B. asked what was under the cottage at this time, the one to be torn down and replaced with a patio? Mr. Beal stated, "A concrete pad on part of it, part is a rock foundation and some is a crawl space". Madge asked how much disturbance would take place to remove what is there? Mr. Beal thought everything existing at this time would need to be removed. CEO McDonough agreed. Maggie M. asked why the rock foundation couldn't remain? Mr. Beal stated the patio would be at ground level so the rock foundation would be too high.

Roger A. asked if on the road side there would be a wall along the patio? Mr. Mavrakos stated looking from the water there would be a small wall with a step. He said he believed as long as he kept what he was doing within the square footage of what exists now he would be fine. Mr. Beal stated there was a retaining wall in existence now and perhaps they could work with that. Barbara F. asked if Mr. Mavrakos just had to stay within the existing footprint? Roger A. and CEO McDonough stated correct.

Roger A. asked if the CMP pole near the proposed patio would stay in place? Mr. Mavrakos stated he would like to remove that one and just keep the other to feed the house. He also thought about putting all power underground. Roger asked if there would be any power to the patio? Mr. Mavrakos stated he didn't know if he needed a light or not. He also asked if he should put a light at the dock, did anyone know what people usually did? Mr. Beal and Roger suggested a solar light for the dock.

Madge B. didn't think the board wanted grass within the 100 foot shoreland zone? CEO McDonough agreed, he said there was specific wording in the ordinance with respect to the replacement of vegetation. Madge said that was what she was referring to. Board members reviewed §105-4.D(7), which read in part as follows:

**Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be established within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.**

Madge B. stated she understood the land would slope toward 16<sup>th</sup> street so there would be no stormwater issue but still it is clear grass isn't preferred. Mr. Beal asked CEO McDonough if the ordinance applied to the entire area or just what was within 100 feet of the water? CEO McDonough stated because they were dealing with a Best Possible Location in the shoreland zone he thought they could apply this section to the entire area but technically it was specific to the 100 foot mark.

Mr. Beal stated the portion in front of the house toward the deck could be a ground cover. Mr. Beal stated everything on either side of the camp sloped toward the road. Barbara F. asked exactly where the 100 foot line was? Mr. Beal point it out and it ran partly along the northerly side of the proposed new home which

currently was to be replanted with grass. The board felt this area would need to be revegetated with a ground cover native to the area.

Madge B. pointed out that this area would not work well for grass anyhow because of the existing soil and pines. Mr. Beal agreed.

Barbara F. asked CEO McDonough what types of vegetation he has seen that worked well? He suggested Mr. Beal contact Joe Anderson at York County Soils and Water Conservation District for his expertise. Barbara had copies of information on ground covers for this area that Mr. Anderson had provided to the board. She gave them to Mr. Beal. CEO McDonough stated at the site inspection he noted several different types of ferns on site that were doing well. Madge agreed, she said some local shrubs would work well too.

Madge B. asked which way the roof pitch would go? She was worried about runoff. Mr. Beal showed her which way it would drain and noted again it should go toward the road. Madge said she assumed there would be drainage around the house. Mr. Mavrakos stated, yes.

Barbara F. asked if they could put grass beyond the 100 foot mark? The board believed it would be fine. Madge B. also noted that often grass is planted over a leachfield.

Madge B. asked Mr. Beal to reconsider the existing planting plan and add more native vegetation instead of the grass. CEO McDonough asked if there were any walkways on the plan? He said commonly he doesn't want to see any new structures but pathways can keep people on a specific path otherwise people take a different route each time and destroy the vegetation. Mr. Mavrakos asked if he was talking about putting pathways along the plantings so there was an area to walk? Barbara F. said, yes. Roger A. agreed stating pathways direct people and noted existing pathways on site now. Maggie M. said that making it weave works best instead of a straight line to the lake. This helped with erosion.

Mr. Beal stated he could put additional vegetation within the 100 foot setback. Madge B. stated she would prefer a plan so the board knows what will take place.

Roger A. asked about a completion time table. Mr. Mavrakos stated he would like to get the wall done this fall while the lake is low. Then next fall put up the shell of the house and finish it the following summer. He believed it would be about 1 ½ years to complete the entire project.

Madge B. asked when the wall was done, would the existing structures also be removed? Mr. Mavrakos stated yes, the wall and structures would be removed along with the trees. He said in the spring the blueberry bushes and trees would be planted. The next year the house would be completed.

Mr. Beal asked if all the trees that needed to be cut would be done this fall? Mr. Mavrakos stated yes, so they would know what they were dealing with and everything that needed to be removed would be this fall.

CEO McDonough asked if after the trees were cut if he was going to do the new patio, before the house? Mr. Mavrakos stated he would like to do the patio before the house. CEO McDonough was concerned with this being a two year project and the 1<sup>st</sup> thing done would be to remove trees and demo the wall. He said he would like to see a text description of deadlines so he can be sure there won't be an erosion issue. If they could write down what was just expressed that would work. Again he wanted to be sure there wouldn't be a lot of exposed soil for an extended period of time. Mr. Beal and Mr. Mavrakos stated they would provide the information at the next meeting.

Barbara F. stated the items needed for the meeting on October 12<sup>th</sup> were:

1. A new replanting plan, showing what type of vegetation to be used. Removing the grass from the plan within 100 feet of the high water mark.
2. A timetable for completion of each part of the project.

Mr. Mavrakos asked how long he had to complete the project? CEO McDonough stated this permit was good for two years. He said his worry was that the wall and trees would be removed then you would walk away from the project for a time thinking you had two years to complete, leaving ground exposed to stormwater and erosion. Roger A. agreed and noted the ordinance required bare ground be covered as soon as possible. Roger said Mr. Mavrakos could hay the area until he was able to plant but something has to protect the area.

Roland L. asked if all the demo would be taken out of town? Mr. Mavrakos stated yes, all the material will be hauled off-site. He said the camps go to Simpson's. CEO McDonough asked that Mr. Mavrakos find out before the next meeting where the wall material would go as well. He said he wanted to be sure they wouldn't try to bring it to the transfer station, which was not allowed.

Mr. Beal asked when the deadline was for him to submit the changes? Barbara F. told him he would need to bring it to the next meeting. Roger A. concurred. Roger reminded him the board needed a copy of the revised version of the retaining wall.

CEO McDonough stated if the applicant was going to contact Joe Anderson of the YCSWCD, he might want to discuss the issue next to the retaining wall, the undercut area. Mr. Anderson may have some ideas on how to deal with it. Roger A. noted that while the water was down and the existing wall was being removed, it would be the prime time to address the issue.

Nothing further was discussed.

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**Best Possible Location – Replace Existing Structure – Map 37, Lot 5 (160 Apple Road) – Deborah Randall, Applicant; William & Judy Porreca, Owners**

Ms. Randall was present for the review of the application.

Ms. Randall provided the board with a proposed sketch plan for a new 4 bedroom home and 2-car garage. There was also a proposed design of the living space and views of what the outside of the structure would look like. The sketch plan also showed an overlay for existing structures which were listed as an existing 4 bedroom home, stairs, shed, and temporary structure all to be removed. The sketch also showed an existing retaining wall and stairs within 100 feet of the water.

On the application it is written that currently 15% of the lot is covered by structures. No increase in lot coverage was being proposed for the new structures.

Ms. Randall began by stating they were in the very early stages of preparing plans. She said they would be moving the proposed new home as far back from the water as possible. She said she did not want to proceed with the project until she knew she was going in the right direction with the proposal.

Board members reviewed the plans presented.

Ms. Randall stated that moving the house farther back would push the garage closer to the road setback. She also said the owners would not be exceeding the 30% expansion allowed. She noted that the ground coverage would remain the same.

Roger A. stated that the board had the ability to try to make the new home more conforming and in doing so could require less lot coverage, putting it closer to the 10% maximum allowed in the ordinance. Ms. Randall stated that she understood and she also was aware she could not go over the 15% lot coverage that existed at this time.

Roger A. asked Ms. Randall if the owners had any other ideas should the board require the lot coverage only be 10%? Ms. Randall stated yes, but the owners would like to make this their retirement home and so that is why they would like to have the 2-car garage.

CEO McDonough asked what created the 15% lot coverage at this time? Ms. Randall stated there was a house, a shed, 2 sets of stairs and a temporary garage. She was not certain if the temporary garage could be included in the lot coverage calculation. Ms. Randall said she knew all the items she just listed would have to be removed from site in order to get the new home and garage being requested. She noted that one set of stairs would remain on site, the set closest to the water. She said the YCC had worked on the stairs.

Madge B. asked if the retaining wall was in good shape? Ms. Randall stated she did not believe anything needed to be done to the wall. CEO McDonough asked if the owners would be replacing the wall in the near future, and if so, it probably should be looked at now.

Ms. Randall stated that this project would not be done until the year 2012 and this was in the very preliminary stages. She said she knew the owners wanted to move the house farther back from the water.

Ms. Randall stated that the owners thought that because the YCC (Youth Conservation Corp.) came to the site to do some work in the past that they would return to help with the site when the existing house was removed. CEO McDonough asked if she was talking about having the YCC do the work on the yard during the project? Ms. Randall believed so, she said they wanted to have all the work completed when they moved into the new home. CEO McDonough stated the YCC was a group of high school students that did small jobs during the summer to prevent erosion of current problems. He said they didn't fix properties after construction. He wasn't sure if they would get involved with this project or not. He said the homeowner would bear the burden of hiring a professional to re-vegetate the area. Ms. Randall stated the owners would do what they had to. She just wanted the board aware that they would do what was best for the area.

Roger A. asked when the owner was going to begin the project? Ms. Randall stated that she did not believe they would start the project until the fall of 2012. Roger A. and Madge B. both thought it was too soon for the board to be reviewing a project that was going to be done approximately two years from now. Ms. Randall stated the projected timetable was based on when they would be retiring. She said they currently live in Vermont. Roger said the permit from the planning board was only valid for two years. Roger said it had to be started substantially within the 1<sup>st</sup> year and completed in the 2<sup>nd</sup>. He thought if they were looking at a two year projection it is too early for the planning board to rule on the application.

Ms. Randall stated she was coming before the board to see if she was going in the right direction for a Best Possible Location. Roger A. said for this year it's possible as proposed it would be get approved but next years the ordinance could change and so he wouldn't know what would happen a year from now. Roger believed if they were not going to do anything until 2012 it is too pre-mature for the board to review the application in his opinion.

Ms. Randall asked if the proposed location appeared to be o.k. Roger A. said the board would need to do a site inspection in order to determine what the best possible location was. Roger said there was also a possibility the board could reduce the 15% lot coverage. Roger said that it is up to the applicant to have ideas in case the board reduces the lot coverage. Roger said if the board reviews the permit now and it expires the owner will have to start all over. Madge B. agreed and she felt it was too premature to be reviewing the application. Madge said the board did not deal with hypothetical situations and they did not determine what might work for the owners. The owner is to present something to the board and the board reviews what is presented. Ms. Randall said she was looking for direction. Madge didn't think the board did that. Roger agreed that it was not the board's job to direct the landowner as to what to do. The board works with the homeowner on what they envision and get it to comply with the ordinance.

Ms. Randall stated she was presenting what they want but the board would not look at it unless the owner is ready to get a permit. Madge B. stated correct. Roger A. stated it was a waste of time because the homeowner would have to come back before the board again when the permit expired and things may change so everything approved at this time may not get approved in two years. He said the homeowner may also decide in two years they no longer want to retire in this location.

Ms. Randall asked what a Best Possible Location Application was for? Roger A. stated to get a permit to replace the existing non-conforming structure with a new structure. CEO McDonough stated correct and once approved the owner has to get a building permit to build the structure and they have two years to complete it.

CEO McDonough noted that on a previous application reviewed this evening, one of the biggest concerns was the timetable of the project. The timetable is created to make sure there is the minimal amount of soil exposed for the shortest period of time to reduce the chance of erosion. He said if the applicant was permitted tonight, and they put in the foundation, they would have to revegetate the area as soon as possible to be certain there wasn't a stormwater issue. This would also require a re-vegetation plan for the board to review. Ms. Randall noted that on the previous project reviewed there was a lot more details presented than she had so she thought there was a lot more review for her to have to go through before she was given the permit. Board members noted that the previous applicant had only been before the board twice and on the third review would likely be permitted. This took approximately a months time only. Roger A. noted the first applicant reviewed this evening only needed two meetings to get his BPL application approved.

Roger A. stated that if Ms. Randall wanted to move forward the board would do a site inspection prior to the next meeting which is on October 12<sup>th</sup>. He said at that time they would review the site to see what the best possible location for the home would be and see what vegetation would need to be removed. The owner would have to decide what their replanting plan would be and when it would be completed. This information would need to be presented prior to approval. The board would also have to know when the existing home would be removed, etc. Again a time table would be required.

CEO McDonough stated that after the planning board approved the best possible location, then the owner comes to him for a building permit. Once the permit is pulled the owner must follow all the conditions of their planning board permit and complete the project within the time frame allowed. Barbara F. noted that the CEO would make certain the homeowner followed the "conditions" imposed by the planning board which included the timetable for removal of existing vegetation and the re-planting plan. Barbara said the owner needs to be fairly specific with their timetable because if they don't adhere to conditions imposed by the planning board, the Best Possible Location Application approval becomes null and void.

Roger A. explained again that the timetable with respect to the planning board's decision was relatively quick, taking between 2 and 3 meetings. Then the applicant goes to the CEO for building permits. In his



opinion the applicant needs to be ready to begin the project within a year of approval by the planning board. Normally the applicant is planning to begin the project within six months of planning board approval.

Ms. Randall asked if she felt she wouldn't get planning board approval for what she was proposing, should she prepare to go for a variance. Roger A. stated that in order to get a variance the homeowner had to show a hardship and where there is currently a home on the property with the ability to replace the existing structure, it would be hard to prove there was a hardship. Madge B. agreed she did not see the owner being able to prove hardship. Board members stated anyone can apply for a variance but they just wanted her aware it was not easy to obtain based on the criteria the owner must follow to obtain the variance.

*As a note the criteria to obtain a variance are as follows: #1 – That the land in question cannot yield a reasonable return unless the variance is granted. #2 – The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood. #3 – The granting of a variance will not alter the essential character of the locality. #4 – The hardship is not the result of action taken by the applicant or a prior owner.*

CEO McDonough wanted to reiterate that any planning board or code enforcement office was not going to act on any application unless all the information was presented. Roger A. agreed and he also noted that if this review was to continue on October 12<sup>th</sup> it was a very real possibility it would be approved and the owner would then have to act on it. And he said it appears they will not be ready to do so for a few years.

Ms. Randall stated at this time she felt she wanted to withdraw the application. Barbara F. stated that would be fine and she would make certain the application fee was refunded. Ms. Randall noted that when processing permits in other towns, they too would not suggest house location.

Nothing further was discussed.

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## **GROWTH PERMIT(S)**

- **Map 34, Lot 3 (92 Cedar Drive) – Seasonal Conversion – Granted – Permit #06-10**

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**The Planning Board meeting was adjourned at 8:37 p.m.**

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

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, October 12, 2010**

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

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

**The minutes from Tuesday, September 28, 2010 were accepted as read.**

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**Possible Location – Replace Structure with Expansion & Replace Retaining Wall – Map 26, Lot 14 (322 16<sup>th</sup> Street Loop) – John Mavrakos, Owner**

Mr. Mavrakos was present for the review of his application along with Carl Beal, PE, of Civil Consultants.

Mr. Mavrakos applied for a Best Possible Location permit to construct a new home on his lot on Mousam Lake. The new home will be 32' x 40' in size and will set within the 100 foot setback to the high water mark. The expansion of the new home that will be within the 100 foot setback requirement will be 28% of the 30% expansion allowed. The rest of the new home is beyond the 100 foot setback. In addition the front cottage will be demolished and replaced with a small patio. The existing cottage is 858 sq. ft. and the new patio will be 614 sq. ft. Also the existing 90 LF of retaining wall will be replaced with segmented concrete block, the same height and length as the existing wall. A new septic design was received, done by Thomas Harmon, SE #114, dated 7/31/10.

Mr. Beal began by handing out plans requested at the last meeting. One was a two-year construction schedule and the other a proposed landscaping plan which depicted the landscaping as well as all the proposed new construction. Mr. Beal noted the DEP did grant the Permit by Rule for a 90 foot replacement retaining wall. Mr. Beal said the wall would be started this fall.

Mr. Beal stated they contacted Salmon Falls Landscape Architecture and they came up with a list of seven ground covers to use. Mr. Beal said many of the ground covers they suggested were on the list the board had given him by York County Soils. He said he contacted YCSWCD but ended up going to Salmon Falls instead. Mr. Beal stated the ground covers would be a mix of the seven species, the species being Vaccinum, Carex-Sedge, Ferns, Comptonia, Kalmia, Hydrangea Arborescens, and Virginia Creeper. A sketch plan showing the names of the native species was also presented.

Roger A. asked about the other shoreline areas that were getting eroded, was anything going to be done with them? Mr. Beal stated nothing would be done at this time. Mr. Beal stated there were roots holding the bank in place at this time. CEO McDonough reviewed the trees to be removed and the replanting plan. CEO McDonough told Mr. Beal that the replanting plans would need to be presented to him when Mr. Mavrakos came for his building permit.

The board reviewed the time table presented. It read as follows:

October – December 2010      • Removal of trees within the new house, driveway and retaining wall construction areas. 24 of these trees are within the 100-foot setback.

- Demolish existing camps and disposal of material offsite.
- Remove existing retaining wall and construction of replacement concrete block wall.
- Install silt fence and winter erosion controls.

- April – May 2011      • Plant 24 replacement trees and install new groundcover behind retaining wall.
- June-October 2011      • Construct new patio within front camp footprint.
- March – May 2012      • Construct foundation for new house.  
• Install new septic system.
- May – October 2012      • Construct new house.  
• Backfill around house to finish grade.  
• Install new ground cover around house.

CEO McDonough stated that Mr. Beal needed to bring in another copy of his new plans for the file. He stated he would do so.

Madge B. noted that Mr. Beal had provided all the material requested. Provided this evening was a proposed Landscaping Plan (C4); a list of the ground covers to be used and a Probable Construction Schedule. Previously submitted was a plan for Existing Conditions (C1); Proposed Residence Site Plan (C2) and Proposed Retaining Wall (C3). As a note the wall approved by the DEP is depicted on the new Landscaping Plan, C4. Also provided was a copy of the Subsurface Wastewater Disposal System Application, dated 7/31/10, done by Thomas Harmon, SE #114.

**Madge B. made the motion to approve the replacement of the existing structures with a 614 SF concrete patio, a 32' x 40' home, a 36' x 36' garage and a 90 LF segmental concrete block retaining wall per the plans provided and the construction schedule. Maggie M. 2<sup>nd</sup> the motion. All members were in favor.**

**Vote 5 – 0, the motion to approve the Best Possible Location was unanimous.**

Nothing further was discussed.

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**Conditional Use Permit – Earth Moving / Replace Retaining Wall – Map 28, Lot 27 (18 17<sup>th</sup> Street) – C & D Landscaping, Applicant; Richard Foye, Owner**

Charles Starbird of C & D Landscaping was representing the owner, Mr. Richard Foye.

The application described the project as being a replacement of the three existing retaining walls on site due to deterioration. Provided along with the application was a sketch plan of the three walls and pictures showing the existing walls.

Roger A. asked, after reviewing the pictures, if they were before the board to replace two retaining walls? Mr. Starbird stated there were three walls to be replaced. He said the walls were U-shaped. He pointed them out in the photos. He said there was also a set of stairs that needed to be replaced.

Diane S. asked if the patio in the picture would be replaced. Mr. Starbird said, yes.

Roland L. asked if a roadway would have to be built in order to do the project because of the steep grade?

Mr. Starbird said it was a steep grade but that he was going to possibly build a ramp to remove the walls. He said he had gotten a permit from the CEO to remove two dead trees and he was able to get down into the area with a regular tractor so he believed he could use the tractor for this project as well.

Roland L. asked about what the wall would be replaced with. Mr. Starbird had given the board a picture showing the type of concrete blocks he would be using for the replacement wall along with a picture of the blocks for the new patio.

Diane S. asked if any of the walls were over 3 feet in height? Mr. Starbird stated, no.

Mr. Starbird stated the new walls would be going in the exact same location as the existing.

Roger A. asked about a planting schedule for the area to be disturbed? CEO McDonough asked Mr. Starbird to create a planting plan for the next meeting which would include a time line for completion of the project.

Madge B. asked if there were any trees that would be impacted? Mr. Starbird stated no additional trees. He stated he had removed two trees with the CEO's permission but no additional trees needed to be removed. CEO McDonough asked if the replacement trees for the two removed had been planted yet? Mr. Starbird stated, no. He reminded CEO McDonough that he had said to wait until after the Planning Board's approval for the walls and do it after the walls were replaced. CEO McDonough agreed but said the replacement trees should be noted on the replanting plan. Madge stated there should be a time put on the replanting plan because the board will require it. Mr. Starbird asked if it would be required this year? Madge stated, no. Roger A. agreed, not this late in the year.

Roland L. stated he would like to see something for erosion control put in this year, such as mulch. Roland asked where the material from the old walls would be taken? Mr. Starbird stated it would be taken to Simpson's in Sanford.

***Roger A. stated board members would be doing individual site inspections due to light constraints. A Notice to Abutter would be mailed as well.***

Roger A. told Mr. Starbird this would be reviewed again on Tuesday, October 26<sup>th</sup> at 7:30 p.m. He also stated that a DEP Permit by Rule must be applied for before the next meeting. Mr. Starbird stated he understood.

Nothing further was discussed.

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## **GROWTH PERMIT(S)**

- **Map 33, Lot 93 (Treasure Island Road) – New Home – Granted – Permit #07-10**

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## **OTHER:**

Board members discussed the Gravel Pit permit for Map 7, Lot 28, owned by Hissong Development Corp. A bond has not been provided to date. The approval for the gravel pit was granted on 1/2010. There has been no activity on site as yet. The board agreed the applicant has one year to begin and do something

substantial so at this time the permit is still valid. Roger A. stated the CUP may in fact expire in January 2011 if nothing takes place. Roland L. asked if a bond had been presented to the Board of Selectmen or if there had been any discussion on it? Roger A. did not know. *Note: Barbara F. asked Karla B. and she stated the Board of Selectmen have not had any communication with anyone from Hissong to date.*

**§105-43 Off street parking and loading.**

Board members at a previous meeting had discussed making a change to the parking ordinance with respect to entrance / exit width after the town had expressed a safety issue on Rte. 11 with large trucks entering a proposed gravel shed location. After reviewing what other towns similar in size to Shapleigh have in their ordinances and the fact the Zoning Ordinance is put into place for the health, safety and welfare of the residents of the Town, the board agreed to the following proposed change to the ordinance.

**§ 105-43. Off-street parking and loading.**

- A. Basic requirements. In any district where permitted, no use of premises shall be authorized or extended, and no building or structure shall be authorized or constructed or enlarged, unless there is provided for such extension, construction or enlargement, off-street automobile parking within 300 feet of the principal building, structure or use of the premises, in accordance with the following schedule of parking requirements. An area of 200 square feet appropriate for the parking of an automobile, exclusive of maneuvering space, shall be considered as one off-street parking space. No required parking space shall, for the purposes of this chapter, serve more than one area. No off-street parking facility shall have more than two entrances and exits on the same street, and no entrance or exit shall exceed 26 feet in width. **The Planning Board has the option upon clear showing of necessity by the applicant, to increase the maximum width, not to exceed 32 feet.** Parking areas with more than two parking spaces shall be so arranged that the vehicles can be turned around within such areas and are prevented from backing into the street.

A public hearing will be held on this proposed changed before the end of the year and the change will be presented to the voters of Shapleigh in March 2011.

Nothing further was discussed.

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**The Planning Board meeting was adjourned at 8:00 p.m.**

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

Thank you Diane S. for taking notes for me, it is greatly appreciated! ☺

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, October 26, 2010**

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

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

**The minutes from Tuesday, October 12, 2010 were accepted as read.**

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**Conditional Use Permit – Earth Moving / Replace Retaining Wall – Map 28, Lot 27 (18 17<sup>th</sup> Street) – C & D Landscaping, Applicant; Richard Foye, Owner**

Charles Starbird of C & D Landscaping was representing the owner, Mr. Richard Foye. Board members did individual site inspections of the property prior to this evenings meeting.

The application is for the replacement of three existing retaining walls, due to deterioration. There is also an existing patio and stairs that will be replaced as well. Pictures and a sketch plan were provided by the applicant at the previous meeting.

Roger A. asked if the fire pit was going to stay on site? Mr. Starbird stated yes, but it would be replaced with a new one.

Roger A. asked if the height of the front wall was in fact 41” or was it larger? Roger stated it looked like it might be a poured wall and perhaps there was a footing, which would make the wall more than 41” and he believed it might require engineering if it is greater than 4 feet in height. Roland L. asked if the plan was to remove the poured section? Mr. Starbird stated yes, but at this time he was not sure if it was poured wall or concrete blocks that were skim coated with cement. He had not dug down into the ground yet to determine what it was. He said he would need to hand dig it to see how deep it was.

Roland L. asked if where it extended under the building was it Mr. Starbird’s intention to cut it off at that point? Mr. Starbird stated, yes.

Mr. Starbird noted again that he didn’t know what the depth of the wall was underground and would not until he removed the existing wall. CEO McDonough stated to the board that it was his policy that the 4 feet of wall reference is to what is above ground only.

Roger A. wondered if replacing the wall would affect the large pine that is near the existing wall. He said the 6” pine that was adjacent to the wall would definitely be affected. Roger stated that the replanting plan showed six new trees to replace the two that were removed already but if additional trees would be removed more trees would be needed. Mr. Starbird stated that he could add additional trees but he didn’t want any near the new wall because he believe the reason the existing wall was failing was due to tree roots.

Roland L. asked if the new wall would run to the existing large pine tree? Mr. Starbird stated it would stop before the tree. Mr. Starboard stated the new walls were going to be in the exact same location as the existing walls. Roland stated that he was not advocating removing the tree. He noted that the area between

the corner of the wall and the tree was being supported by a rotted board at this time and he thought there was approximately 8” of exposed soil and he did not see how the existing wall can be removed without creating an issue where the soil will give way. He stated he was just expressing concern for the area. Mr. Starbird understood but he was not contracted to do anything but replace the existing block walls and patio. Roland added that it was not aesthetically appealing as it is at this time. CEO McDonough asked if the patio area to be replaced was existing at this time? Roland stated yes, it was in front of the fire pit. Roger A. agreed and stated it was all a 1 for 1 replacement. Roger said the only issue is whether or not the existing wall is poured or blocks. He said that was why he was concerned, he wanted to be sure whatever was used would allow water to penetrate into the soil so as not to cause an erosion problem. CEO McDonough asked if the existing patio was impervious and what would the new patio be? Roger stated the existing patio was impervious and the new one would be pervious in between the blocks used. Mr. Starbird noted that at this time it was pervious because of the existing cracks. Roger agreed but noted that at this time the water runs down the stairs. Roger stated that with the new wall there needed to be a filter fabric put in to create drainage so it won't run down the stairs in the future. Roger said his biggest concern was the patio area.

Roland L. asked if the stairway would be replaced? Mr. Starbird stated yes, but the handrails would stay.

Roger A. stated the other issue he had was with the grass that was suggested on the replanting plan. He stated the board preferred a native species of plant instead of grass. Roger noted that there were blueberry bushes on the plan adjacent to the grassed area which was a good idea. Mr. Starbird stated he put grass on the plan to help stabilize the embankment. He said plants could do that as well and he noted that at this time there was nothing growing in the area other than a few sprigs of grass. Roger agreed.

Barbara F. asked CEO McDonough if he had any concerns or comments with respect to the replanting plan? CEO McDonough stated that his biggest concern was that the six replacement trees that he required for the removal of the trees prior to this permit were supposed to be in the same area as the trees removed. He stated the six trees as noted on the plan were not in that same area. CEO McDonough showed the board, using the plan, where the existing trees had been.

CEO McDonough read the permit that had been issued to remove the two trees; it read in part “Six trees to be replanted in the same general area as tree nearest lake.” He stated that in the same general area, not where they are depicted on the plan is where the trees need to be. He said he would never deny someone the ability to remove a tree because he did not want the Town liable for a tree that fell but he is required to make sure people maintain a point system in a 25 foot by 25 foot square. What needs to be avoided is someone wanting to cut trees just for a view. Mr. Starbird stated he could put several trees where CEO McDonough wanted but he noted he was a licensed arborist in the State of Maine and he did not see how six trees would survive in that small area. CEO McDonough stated that was fine but several trees needed to go in the area. Mr. Starbird stated that could be done. Roger A. agreed two trees would survive. The board had Mr. Starbird place the location of two trees on the plan and initial it. Roland L. asked about an existing stump, what would be done with it. Mr. Starbird stated it would be left where it was.

Roland L. asked why the lower tree had to be removed? Mr. Starbird stated the top was split and dying. Roland asked if it was a birch? Mr. Starbird stated it was a spruce.

Roger A. stated his two concerns were the height of the wall and water infiltration and how it would be addressed. CEO McDonough asked how he wanted it to be addressed? Roger said he wanted a drainage system behind the new wall.

Roland L. stated that his reservation was not knowing how deep the existing wall was. Mr. Starbird stated that at this time he could not tell how deep it was. CEO McDonough asked what he wanted Mr. Starbird to do if the foundation is deep or the wall is poured? Roland stated that if the wall exceeded four feet he would expect an engineered plan. CEO McDonough agreed but he did not believe there was going to be more than four feet of wall above the earth.

Roland L. thought it would be difficult to bid a job such as this without knowing what you were getting into. Mr. Starbird stated that he has been doing this type of construction for years; he said you always have a rough idea of what you will run into. He said some jobs end up being more work and it does take away from the profit margin. Roland noted to Mr. Starbird that all existing materials would need to be taken off site. Mr. Starbird stated that yes, he understood that.

Roger A. stated that Best Management Practices must be used all the way through the project and until the ground cover is established. Roger said this included the silt fence. Mr. Starbird stated he understood.

Barbara F. reminded the board to establish a date for the replanting plan. Mr. Starbird stated the owners said they would have the project done by late spring. Roger A. asked what would be used over the winter months? Mr. Starbird stated the owners wanted to use hay instead of mulch. They thought that mulch would have to be removed in the spring whereas hay would not. Roger agreed that would be fine.

Roger A. read §105-4.D(5), Removal reconstruction or replacement. Roger noted that this application was for the replacement of existing non-conforming structures. Roger also reviewed §105-4.D(7), Relocation.

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

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

- 1) Best Management Practices shall be used until the project is completed and the new vegetation has been established. Hay shall be placed on all disturbed areas during the winter months.**
- 2) The replanting plan shall completed by June 15, 2011. The replanting plan shall be per the plans presented as well as the recommendations by the DEP.**
- 3) There shall be proper drainage placed behind the front wall, closest to the water. This drainage plan must be approved by the Code Enforcement Officer.**
- 4) All material from the existing walls, patio and stairs shall be removed from the property.**

**Maggie M. made the motion to approve the application to replace 3 existing retaining walls, a patio and one set of stairs per the plan presented, with the above stated conditions. Roland L. 2<sup>nd</sup> the motion. All members were in favor.**

**Vote 3 – 0, the motion to approve the Conditional Use Permit was unanimous.**

Nothing further was discussed.

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**Amendment to a Conditional Use Permit – Home Daycare, Increase the Number of Children from 6 to 12 – Map 8, Lot 41-2 (78 Garland Road) – Michelle Massey, Applicant**

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



Ms. Massey began by stating that she was changing from 6 to 12 children and she would like to increase her hours of operation to 5:30 a.m. to 6:00 p.m. due to the school bus schedule. She believed currently she was approved for 6:00 to 6:00.

Roland L. asked if at this time she had someone working with her? Ms. Massey stated, no. Roland asked if she would have additional help when she increased the number of children? Ms. Massey stated no, she said per the State's guidelines she was allowed to have up to 12 children, based on their age. These would be school aged children, not infants. She added that at this time she would be having 8 children but she wanted the opportunity to have up to 12 as allowed.

Barbara F. noted that both the State Dept. of Health and Human Services and the Fire Marshall's office had been to her home to re-inspect for the renewal of her Certificate of Approval.

Roger A. read the letter received from Ms. Massey. It read as follows:

Cathy Jenkins from the Dept. of Health and Human Services, Division of Licensing, came to the daycare site to do the annual inspection on Friday October 15, 2010. In order for her to renew the daycare license, she needed a copy of our dog's shot records. A copy was faxed to her on Monday, October 18, 2010.

Cathy also needed to send the Fire Marshall (Tony Murta) out to our site to do his inspection. Tony came Wednesday, October 20, 2010. He said everything is fine for my current license. To be licensed for twelve children, the door which leads from the kitchen area to the basement needs to be changed to a twenty minute fire door or a two and a half inch solid wood door. Tony is sending his paperwork to Cathy Jenkins.

Roland L. asked if the increase in the number of children impacted the septic system? Barbara F. noted that in the past the board has approved up to 12 children in a single family home. She asked CEO McDonough if he had any recommendations? She noted there was a copy of the Subsurface Wastewater Disposal System Application, dated 1/13/03 on file. CEO McDonough did not know what the State required for a home day care. He noted the application was a design for a three bedroom home. He stated that for other businesses such as a restaurant the disposal system would have calculations based on the business requirements. He again stated that he did not know of what, if any, additional requirements were for a home day care. Ms. Massey was not aware of any either. Barbara stated that Ms. Massey did have State approval for her in-home day care so perhaps there were no additional rules? Roland stated he was concerned with the impact on the system. He wondered if the additional activity would compromise the system. Ms. Massey stated there were not going to be 12 children there throughout the day. She stated it was only several hours' a.m. and p.m. and from what she has experienced there was not a lot of bathroom use. Maggie M. stated that the only thing she could think of was possibly the septic tank would need to be pumped more often? Maggie agreed that not having 12 children in the home all day would not have a great impact in her opinion. Roland noted that the application did not read that the children would only be there a few hours in the morning and evening, the application stated the hours of operation would be 5:30 in the morning until 6:00 at night. Ms. Massey stated that she could only have school aged children so that meant they were not in her home during school hours, otherwise she would need additional providers in her home. Maggie asked about summer hours, if she could have more? Ms. Massey did not believe so without additional help and she noted that she did not plan on hiring anyone and that she was not allowed to care for 12 children for 12 hours by herself.

Roger reviewed the Family Child Care Provider Assessment Criteria Checklist, dated 10/15/10.

Roger stated there were a few items listed that needed to be done. One was to turn the water in the bathroom

down to 120 degrees, he asked Ms. Massey if that had been done? She stated, yes. He said there also needed to be a thermometer placed in the freezer. Ms. Massey stated it had been done. Roger stated a fire drill emergency procedure and plan needed to be written and posted. She stated it has been written but isn't posted yet. Roger stated these were the only additional conditions for Ms. Massey's license renewal.

Roger A. noted that she needed the Town's approval prior to the number of children being increased on her license.

**Roger A. stated that a Notice to Abutters would need to be mailed to notify abutters of the requested changes. Roger said that the changes requested were very minor, an increase of hours of operations by one half hour a day and an increase in the number of children to the maximum allowed by the State.**

Roger A. told Ms. Massey the application would have its final review on Tuesday, November 9<sup>th</sup>.

*Note: Barbara F. reviewed the "Rules for Family Child Care Providers" written by the Dept. of Health and Human Services, Division of Licensing and Regulatory Services, and there was no provision in the rule book with respect to a septic system requirement.*

Nothing further was discussed.

**OTHER:**

**Conditional Use Permit to Construct a Telecommunications Tower and Construct a Private Way – Map 5, Lot 23 (Owl's Nest Road) – Industrial Tower and Wireless, Applicants**

Barbara F. asked members their opinion on the CUP approval for Industrial Tower. She stated that to date they did not have an approved Bond, therefore, they were unable to get a building permit for the tower. Below is a list of the conditions of approval:

- 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 determined and approved by the Board of Selectmen.**
- 2) No building permit shall be given by the Code Enforcement Office until the performance guaranty is provided.**
- 3) A locked gate shall be erected at the best possible location within 50 feet of Owl's Nest Road.**
- 4) A spot on the tower shall be made available for the Town of Shapleigh's Fire and Rescue Department. Note: This does not include the County Sheriff's Department.**
- 5) The Road Commissioner shall inspect and ensure the private way is built to the specifications provided and the driveway entrance shall be approved by the Road Commissioner.**

Barbara noted that after almost two years they once again presented the Board of Selectmen with a Bond proposal but to date they have not presented one that the Town's Attorney would approve. She was not certain but thought part of the problem was the fact the Bond could not have a termination date and in the past the Bond's presented by IT&W did have a date of termination. Barbara also said that Karla had had difficulty communicating with IT&W. When Karla tried to return their calls she had someone on the line state she had the wrong number, when in fact she did have the correct number. There were at least five occasions Karla said she had issue with trying to get in touch with someone from IT&W.

Barbara F. stated that she thought it had been at least a month since IT&W had communicated with the Board of Selectmen. CEO McDonough had received a telephone call from Lauren Groppi of IT&W in the past week, requesting a building permit form, but he stated he told her that he believed the CUP permit had in fact expired. Ms. Groppi stated that the Selectmen had told IT&W their CUP had not expired and they did not have to go back to the planning board for a CUP. CEO McDonough stated he discussed this with Karla and the Selectman and they said they never said any such thing.

Barbara F. stated that the board had approved their CUP on September 9, 2008 and the letter of approval went out on September 16, 2008. Barbara stated that according to §105-73 a CUP expires if the work is not commenced within two years of the date on which the CUP was approved. She said no building permit has been pulled because no approved bond was presented.

Roger A. stated that the board would need to vote as to the fact that the CUP was expired and a new CUP would need to be approved before any work was to commence on the Tower.

**Maggie M. made the motion that the Industrial Tower & Wireless Telecommunications Facility Conditional Use Permit approval, for Map 5, Lot 23, is in fact null and void because all the conditions of approval were not met within two years of the approval date of September 9, 2008 and a new Conditional Use Permit must be applied for. Roland L. 2<sup>nd</sup> the motion. All members were in favor.**

*CEO McDonough noted that the CUP was approved with conditions and these conditions were never met. In his opinion, in light of this, the CUP was never valid.*

Nothing further was discussed.

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Barbara F. asked the board if November 23<sup>rd</sup> would be acceptable as a date to hold the Public Hearing for the proposed ordinance changes. Members believed they would all be present on that date. Barbara noted that there would be an additional Public Hearing after the first of the year.

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## **GROWTH PERMIT(S)**

- **Map 26, Lot 14 (322 16<sup>th</sup> Street) – New Home – Granted – Permit #08-10**

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**The Planning Board meeting was adjourned at 8:15 p.m.**

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

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, November 9, 2010**

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

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**The Planning Board meeting started at 7:35 p.m.**

**The minutes from Tuesday, October 26, 2010 were accepted as read.**

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**Amendment to a Conditional Use Permit – Home Daycare, Increase the Number of Children from 6 to 12 & the Hours of Operation – Map 8, Lot 41-2 (78 Garland Road) – Michelle Massey, Applicant**

Mr. Massey was representing his wife for the final review of her application.

The amendment to the Conditional Use Permit is to change the hours of operation, which are currently 6:00 a.m. to 6:00 p.m. The proposed change is for 5:30 a.m. to 6:00 p.m. The other change to the CUP is the applicant would like the option of having up to 12 children, which is the maximum allowed by the State of Maine for one provider.

Roger A. began by stating that Mrs. Massey was looking for school age children only because prior to this she had infants. Mr. Massey stated this was incorrect, he believed she still wanted to be able to have several infants. Roger stated in the minutes of the last meeting Mrs. Massey stated it would be school aged children only under her supervision, otherwise she would need additional help. Mr. Massey agreed that she would need additional help if she exceeded the State's guidelines for a single provider.

Barbara F. provided a copy of the Rules for Family Day Care Providers from the Dept. of Health and Human Services. Roger A. reviewed the State guidelines. Staff-child ratios are as follows:

One provider, working alone, may care for:

- a) 4 infants and toddlers, or
- b) 3 infants and toddlers plus 3 preschool children, plus 2 school-age children.
- c) 8 preschool children plus 2 school age children, or
- d) 12 school-age children.

There was also a chart which explained the different options for a child care worker. This information is all listed under Section IX, Staffing Requirements.

Barbara F. stated Mrs. Massey was well aware of the guidelines. Mr. Massey agreed, she has all the regulations at home and meets the standards. Barbara asked if it could be a condition of approval that Mrs. Massey follow the State's guidelines with respect to the number of children allowed. Roger A. agreed that would be fine. Maggie M. noted that Mrs. Massey stated she didn't want the extra children at this time, but in the future.

Roger A. stated the original conditions of approval were for hours of operation and that signage would go through the CEO. He stated the condition for signage would remain the same for any sign changes.

Roger A. stated other conditions would be the Fire Marshall and Dept. of Human Services conditions would have to be met.

Roger A. asked if there were any questions. Diane S. asked regarding the Fire Marshal's condition that the fire drill procedures needed to be posted, was that done? Mr. Massey stated she had posted it.

Barbara F. believed the only State stipulation that was not completed was the fire door had not been put into place yet. Mr. Massey stated, correct, they were waiting for Planning Board approval.

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

**Diane S. made the motion to approve the amendment to the Conditional Use Permit to allow up to 12 children to be cared for at the day care with the following conditions:**

- 1) The hours of operation shall be 5:30 a.m. through 6:00 p.m., Monday through Friday.**
- 2) No more than 12 children shall be cared for on site and the number allowed shall be per the Dept. of Health and Human Services staffing requirements, staff-child ratios.**
- 3) The day care shall comply with the Fire Marshall and Dept. of Health and Human Services requirements as listed on the site inspection checklist.**
- 4) Any signage shall go through the Code Enforcement Officer.**

**Maggie M. 2<sup>nd</sup> the motion. All members were in favor.**

**Vote 3 – 0, the motion to approve the Amendment to the Conditional Use Permit was unanimous.**

Nothing further was discussed.

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**After-the-Fact Application for a Private Way – Map 10, Lot 6B (16 Fowler Way) – Charles Fowler, Applicant**

Mr. Carl Beal, P.E., of Civil Consultants was present to represent Mr. Charles Fowler. Also present was Mr. Charles Fowler, owner of the property and Barbara Fowler, a resident of the property.

Mr. Beal provided the Planning Board with a surveyed plan, dated 10/28/2010, which depicted the applicant's property and abutting property. Also depicted was the existing private road which is located within the 50 foot right-of-way created to access Lot 6B and provide the necessary 200 feet of road frontage for Lot 6B.

A 'Typical Cross Section' was shown on the plan for the roadway, which illustrated that the roadway has a sub-base of 15" of bank run gravel and a top layer consisting of 2" of crushed gravel. The minimum travel way of the road is 16 feet in width.

Under Notes, number 8), it states, "Conditions of Approval: The Town of Shapleigh will not be responsible for the maintenance, repair or plowing of the private way known as "Fowler Way". Further divisions of the lots accessed by Fowler Way are prohibited without approval by the Shapleigh Planning Board."

Mr. Beal stated that he was given the list of items the planning board requested at the previous review and

used these to provide a final plan for Mr. Fowler. He stated the drainage was on the plan, and that the drainage was flowing away from Town Farm Road onto Mr. Fowler's property. He excavated two test pits in the roadway and they are noted on the plan. The pits indicated there is 15" of sub-base gravel and 2" of crushed gravel in place. He believed the road is constructed per the requirements of the Private Way ordinance. He added that the private way was 16 feet in width and 900 feet in length and there is a turn-around at the end of the roadway at the eastern end for Parcel B. Mr. Beal concluded that based on the findings he believed the private way complied with the Private Way standards in the ordinance.

Mr. Beal noted that the maintenance agreement had been previously submitted to the Planning Board and he believed it was recorded at the York Registry of Deeds. He pointed out that Note #8 on the plan states that the Town of Shapleigh was not responsible for the maintenance of the roadway.

Board members reviewed the plan before them. Roger A. asked Mr. Beal to point out where the 200 feet of road frontage was. Mr. Beal showed him where the 50 foot right-of-way existed and where the actual roadway was. The right-of-way abuts the property but the road itself does not contact the property in all locations. The board agreed the required right-of-way itself did in fact run 200 feet along Parcel B; it was just hard to see on the plan. CEO McDonough was also confused with the location of the right-of-way but when Mr. Beal pointed it out, it was clear there was a 50 foot right-of-way.

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

**Maggie M. made the motion to approve the plan for the after-the-fact Private Way as presented on the plan entitled 'Existing Conditions Plan of a Portion of Fowler Way prepared for Carl Fowler', dated 10/28/2010. Diane S. 2<sup>nd</sup> the motion. All members were in favor.**

**Vote 3 – 0, the motion to approve the Private Way Plan was unanimous.**

Mr. Beal stated he would return a copy of the plan after it was recorded at the York County Registry of Deeds.

Nothing further was discussed.

**Amendment to a Conditional Use Permit – Add Real Estate Office for One Broker Within Existing Office of Lakeside Marina – Map 18, Lot 17 (143 Emery Mills Road) – Karen & Scott Cudworth, Applicants**

Karen and Scott Cudworth were present for the review of the application.

Roger A. asked the applicants to explain why they were before the board.

Mrs. Cudworth stated she would like to run her real estate business out of the Lakeside Marina office. She stated it would be mutually beneficial to both her and her husband. She stated she would be in the office when he could not be and visa versa and she would be having her own phone line for the real estate but there would be no other changes to the office itself. The hours of operation would remain the same as they are for Lakeside. Mrs. Cudworth stated the only change would be she wanted to add her business to the existing sign.

Roger A. asked about the parking, would the customers be parking out back or in front of the office. Mrs. Cudworth stated she would most likely be using the front door as it would be easier access for people. She said they could park on the side of the building and use the side door but the easiest access is the front door.

Diane S. asked if Mrs. Cudworth was going to do both sales of homes and rental properties? Mrs. Cudworth stated she would like to do both. She stated there was a strong market in the area for seasonal rentals. Diane agreed.

Mrs. Cudworth stated most of the time people would come into the office by appointment but most often she meets people at the house they are interested in.

*Note: On the current approval for Lakeside Marina, dated 11/12/02, the hours of operation are 9:00 a.m. thru 5:00 p.m., 7 days a week.*

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

**Roger A. stated a Public Hearing would be held at 7:00 p.m. on November 23<sup>rd</sup> and a notice to abutters will be mailed.**

Nothing further was discussed.

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## **GROWTH PERMIT(S)**

- **Map 5, Lot 43 (Hooper Road) – New Home – Granted – Permit #09-10**

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## **Other:**

### **Possible change to §105-4.D(5)(a) – Presented by CEO McDonough**

CEO McDonough presented the following change to §105-4.D(5)(a):

- (5) Removal, reconstruction or replacement.
  - (a) Any nonconforming structure which is ~~located less than the required setback from a water body, tributary stream, or wetland and which is~~ removed or damaged or destroyed regardless of the cause, by more than 50% of its Town-assessed value before such damage, destruction or removal, may be reconstructed or replaced, provided that a permit is obtained within one year of the date of said damage, destruction or removal and provided that such reconstruction or replacement must be in compliance with all water body, tributary stream or wetland setback requirements to the greatest practical extent as determined by the Planning Board in accordance with the purposes of this chapter. In no case shall the structure be reconstructed or replaced so as to increase its nonconformity. If the reconstructed or replacement structure is less than the required setback is shall not be any larger than the original structure, except as allowed pursuant to Subsection D(1) above, as determined by the non-conforming floor area and volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replaced in accordance with Section (D)(7)(b) below.

CEO McDonough stated Shapleigh is unique in that we don't have a separate shoreland zoning ordinance as in other towns. When the DEP mandates that the ordinance be changed to comply with new shoreland zoning guidelines, a town with a separate shoreland zoning ordinance just makes the change as directed.

CEO McDonough stated when Shapleigh makes a shoreland zoning change, in some instances the change applies to the entire town, all districts, which is what happened in this instance when the words ‘located less than the required setback from a water body, tributary stream, or wetland’ were added. He said because the ordinance was changed, now this section of the ordinance doesn’t apply to a non-conforming structure in the general purpose zone. He said, “This is a problem because now a non-conforming structure not in the shoreland zone cannot be replaced. If the structure is destroyed it cannot be replaced.”

CEO McDonough stated that more and more homeowners are contacting him stating that the banks are requiring conformation for financing that the home can indeed be replaced should it burn down. He stated that at this moment the way the ordinance is written property in the general purpose zone is not addressed.

CEO McDonough stated that although this change would need to be approved by the DEP, he had already spoken with Mike Morse about the problem, and Mike has no issue with the change. He said, Mike understands that by crossing out the words above, the ordinance would be all encompassing, covering all the zones in Shapleigh.

CEO McDonough stated that basically this sentence in the ordinance needed to go back to the old wording before the changes in 2009. Roger A. stated he had no problem with the change. Board members agreed this change would allow the section to cover all districts in Shapleigh which was the original intention.

Barbara F. reminded members there would be a public hearing for the proposed ordinance changes on Tuesday, November 23<sup>rd</sup>. She also gave members a copy of the change approved by the voters to §105-19.H, that was proposed by the Board of Selectmen for building height.

Nothing further was discussed.

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**The Planning Board meeting was adjourned at 8:10 p.m.**

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



# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, November 23, 2010**

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

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### **PUBLIC HEARING begins at 7:05 p.m.**

Madge B. opened the Public Hearing stating the hearing was to review the proposed changes to Shapleigh's Zoning Ordinance. Madge read the proposed change to §105-4.D(5)(a) and it was noted the proposal came from CEO McDonough. Madge asked CEO McDonough if he would like to comment. CEO McDonough stated that by leaving the wording in the ordinance as it exists now certain areas in Shapleigh would not be addressed. He stated that as written the paragraph only applies to shoreland areas. Madge agreed. He stated by removing the reference to the shoreland the paragraph becomes all encompassing and applies to all non-conforming structures in town. Madge stated that this is what the paragraph should address, all non-conforming structures. CEO McDonough stated he had spoken with Mike Morse of the DEP about it and although the town will need written approval on this change Mike stated he would agree to this change. CEO McDonough stated that the reason it is written this way in many towns ordinances is because they have a separate ordinance book for shoreland zoning, whereas Shapleigh does not, all shoreland zoning is mandated in the Zoning Ordinance. Madge stated it made absolute sense to her and she asked if anyone had any questions? There were no comments or questions.

The proposed change to §105-4.D(5)(a) is as follows:

#### **§105-4.D(5)(a)**

(5) Removal, reconstruction or replacement.

- (a) Any nonconforming structure which is ~~located less than the required setback from a water body, tributary stream, or wetland and which is~~ removed or damaged or destroyed regardless of the cause, by more than 50% of its Town-assessed value before such damage, destruction or removal, may be reconstructed or replaced, provided that a permit is obtained within one year of the date of said damage, destruction or removal and provided that such reconstruction or replacement must be in compliance with all water body, tributary stream or wetland setback requirements to the greatest practical extent as determined by the Planning Board in accordance with the purposes of this chapter. In no case shall the structure be reconstructed or replaced so as to increase its nonconformity. If the reconstructed or replacement structure is less than the required setback is shall not be any larger than the original structure, except as allowed pursuant to Subsection D(1) above, as determined by the non-conforming floor area and volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replaced in accordance with Section (D)(7)(b) below.

Roger A. arrived to the meeting and continued the review of the proposed ordinance changes.

Roger stated the next change was under §105-15 and it is a clerical error.

Proposed change to §105-15. Definitions, is as follows: DRIVEWAYS – See § ~~105-46~~ **§105-60** and 105-60.1

There were no questions or comments regarding this ordinance change.

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Roger stated the next changes were to §105-39.

Roger noted that changes were made to §105-39 and §105-61 because much of the language in both ordinances was redundant and the board felt one ordinance should be geared toward the home owner and the other toward a commercial establishment. He said this would make it easier for the board, as well as the applicant, to help discern what criteria was applicable. Roger then read the changes as follows:

**§ 105-39. Earth removal and filling ~~other than activities regulated under §105-61.~~**

- A. General. The following provisions shall apply to filling, grading, lagooning, dredging, excavation, ~~processing and storage of soil, earth, loam, sand, gravel, rock and other mineral deposits~~ **types of earth**. Filling, grading, lagooning, dredging and other earth moving activity which would result in erosion, sedimentation or impairment of water quality, of fish and aquatic life are prohibited. **All activities conducted pursuant to this section must also comply with standards in Section 105-27 and/or Section 105-61 when deemed applicable by the Planning Board.**
- B. Earthmoving not requiring a conditional use permit. The following earthmoving activity shall be allowed without a permit:
  - (1) The removal and filling of less than 10 cubic yards of material from or on any lot in any one year, except within the Resource Protection District, the Floodplain District or the Shoreland District.
  - (2) The removal or filling of material incidental to construction, alteration or repair of a building, or in the grading and landscaping incidental thereto.
  - (3) The removal and filling or transfer of material incidental to construction, alteration or repair of a public road or essential services.
  - (4) Removal and fill or transfer of material for the repair of an existing private way in the General Purpose District.
- C. Earthmoving in the General Purpose District. Movement of material in excess of 10 but not more than 50 yards is permitted. Movement of materials from 50 cubic yards to 150 cubic yards requires the approval of the Code Enforcement Officer. Movement of materials in excess of 150 cubic yards requires the approval of the Planning Board. In either case, all relevant performance standards below shall be observed, including binding agreements to guarantee proper reclamation of the site after operations cease.
- D. Earthmoving in Shoreland District. Any filling, dredging or excavation of land above or below the normal high watermark, except earthmoving of less than 10 cubic yards which shall require a permit from the CEO (except as provided above) to ensure proper erosion and sedimentation, shall require a conditional use permit from the Planning Board.
- E. Earthmoving in Resource Protection and Floodplain Districts. Filling shall be prohibited in these two districts, but excavation or dredging may be permitted within the Floodplain District in accordance with the performance standards of this chapter, after review and approval as a conditional use by the Planning Board.
- F. Application for permit. Application for a permit from the Planning Board ~~for excavation, processing and storage of soil, loam, gravel, rock and other mineral deposits~~ **pursuant to this section** shall be accompanied by a plan which shall show:
  - (1) The name and current address of the property involved.
  - (2) The location and the boundaries of the lot or lots for which the permit is requested.
  - ~~(3) The location of all proposed access roads and temporary structures, and the sight distances from all entrances and exits.~~
  - (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~~ **activity**, 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.)

- 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.
  - (2) Temporary ground cover (such as mulch) and temporary runoff filter (such as hay bales in swales) shall be used as required to prevent stream sedimentation. The Planning Board shall set a specific date by which permanent ground cover shall be planted.
  - (3) Diversions, silting basins, terraces and other methods to trap sediment shall be used.
  - (4) Lagooning shall be conducted in such a manner as to avoid creation of fish trap conditions. The applicant shall submit written approval from the Department of Marine Resources or Department of Inland Fisheries and Wildlife, as applicable, prior to consideration by the Planning Board.
  - (5) The extent and type of fill shall be appropriate to the use intended. The applicant shall specify the type and amount of fill to be used.
  - (6) Fill shall not restrict a floodway, channel or natural drainageway.
  - (7) The sides and bottom of cuts, fills, channels and artificial watercourses shall be constructed and stabilized to prevent erosion or failure. Such structures are to be designed and built according to the Maine Soil and Water Conservation Commission, Technical Guide, Standards and Specifications.
  - (8) Where activities carried out under this article require the removal of existing ground cover, revegetation should be carried out.
  - ~~(9) (Reserved)~~
  - (10) Specific plans are established to avoid hazards from excessive slopes or standing water. Where embankment must be left upon the completion of operations, it shall be at a slope not steeper than one foot vertical to four feet horizontal.
  - ~~(11) No excavation shall be extended below the grade of an adjacent street, except for drainageways, unless 100 feet from the street line. No excavation below the grade of the surrounding land shall be allowed within 100 feet of any side or rear lot line. However, removal of earth material deposits from hills or knolls may be allowed within 50 feet of a side or rear lot line if no excavation below the grade of abutter's properties occurs.~~
  - (11) The top of a cut or the bottom of a fill section shall not be closer than 10 feet to an adjoining property, unless otherwise specified by the Planning Board.**
  - (12) Sufficient topsoil or loam shall be retained to cover all areas, so that they may be seeded and restored to natural conditions.
  - ~~(13) No existing rock, gravel or sandpit will be extended or expanded until the operator has complied with the provisions of this chapter and obtained a permit therefore.~~
- H. Optional conditions of permit. The Planning Board may impose other reasonable conditions to safeguard the neighborhood and the municipality, which may include those relating to:
- (1) Methods of removal or processing.
  - (2) Days and hours of operation.
  - (3) Type and location of temporary structures.
  - ~~(4) Routes for transporting material.~~
  - (4) The location of all proposed access roads and the site distances from all entrances and exits.**
  - (5) Area and depth of excavations.
  - (6) Provision of temporary or permanent drainage.
  - (7) Disposition of stumps, brush and boulders.

- (8) Cleaning, repair and/or resurfacing of streets used in removal activity which has been adversely affected by said activity.
- (9) The need for written approval of soil and erosion and sedimentation plan by a State of Maine licensed civil engineer selected by the applicant for the Planning Board.

~~I. Surety and terms of permit.~~

- ~~(1) 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.~~
- ~~(2) 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.~~

~~J. Existing operations. Any operation involving the excavation, processing or storage of soil, earth, loam, sand, gravel, rock or other mineral deposits in lawful operation at the time this chapter became effective (March 12, 1983) may operate for a period of three years from the effective date. Discontinuance of any existing operation for a period of more than one year shall require application for a new permit. Continuance of any existing operation for more than three years shall require a permit from the Planning Board.~~

Roger A. asked if there were any questions? Mr. Robert Ferrera, a citizen of Shapleigh, asked if a bond would no longer be needed for gravel extraction? Roger and Diane S. stated that this section would be for a homeowner moving earth, a commercial gravel pit would still need a bond. As a note, Mr. Ferrera is currently permitted for a commercial gravel operation.

Madge B. said to Mr. Ferrera that he might remember while reviewing his application the board had to flip back and forth between 105-39 and 105-61, these changes should eliminate much of that. CEO McDonough stated that the board was not adding anything new to the ordinance. CEO McDonough stated currently the board had no guideline as to which ordinance would apply to an applicant so the board would state that both ordinances would apply and after reading the two you see there are issues if you try to apply both. One ordinance states there is a 10 foot setback to the side lot line and the other a 100 foot setback. This is just one example. CEO McDonough stated that by gearing one toward the homeowner and one toward a bigger operation it makes it easier for both the board and the applicant. Roger A. stated it was important that if you tell someone they have to follow a certain ordinance that there aren't contradictions.

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

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Roger A. stated the next change is to §105-43. The change is as follows:

**§ 105-43. Off-street parking and loading.**

- A. Basic requirements. In any district where permitted, no use of premises shall be authorized or extended, and no building or structure shall be authorized or constructed or enlarged, unless there is provided for such extension, construction or enlargement, off-street automobile parking within 300 feet of the principal building, structure or use of the premises, in accordance with the following schedule of parking requirements. An area of 200 square feet appropriate for the parking of an automobile, exclusive of maneuvering space, shall be considered as one off-street parking space. No required parking space shall, for the purposes of this chapter, serve more than one area. No off-street parking facility shall have more than two entrances and exits on the same street, and no entrance or exit shall exceed 26 feet in width. **The Planning Board has the option upon clear showing of necessity by the applicant, to increase the maximum width, not to exceed 32 feet.** Parking areas with more than two parking spaces shall be so arranged that the vehicles can be turned around within such areas and are prevented from backing into the street.

Roger A. stated presently the maximum width allowed is 26 feet. Roger said that recently the Town had applied for an entrance to a proposed Sand/Salt shed on Route 11 and they requested a 32 foot wide entrance for safety reasons. The Town went before the Zoning Board and were granted the 32 foot width so the trucks

could safely enter and exit the proposed facility. The Planning Board therefore agreed to the proposed language so that in the future applicants would not have to go before the Zoning Board to increase a proposed entrance/exit width.

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

Roger A. read the following changes to §105-61:

**§ 105-61. Mineral exploration and extraction, processing, and removal, including sand and gravel.**

- A. Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring or other methods which create minimal disturbance of less than 100 square feet of ground surface. A permit from the Code Enforcement Officer shall be required for mineral exploration which exceeds the above limitation. All excavations, including test pits and holes, shall be immediately capped, filled or secured by other equally effective measures, to restore disturbed areas and to protect the public health and safety.
  - B. Mineral extraction may be permitted under the following conditions:
    - (1) A reclamation plan shall be filed with and approved by the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of Subsection B(4) **(15)** below.
    - (2) No part of any extraction operation including drainage and runoff control features, shall be permitted within 100 feet, horizontal distance, of the normal high-water line of a great pond classified GPA, or a river flowing to a great pond classified GPA, and within 75 feet, horizontal distance, of the normal high-water line of any other water body, tributary stream or the upland edge of a wetland. Extraction operations shall not be permitted within 75 feet, horizontal distance, of any property line without written permission of the owner of such adjacent property.
    - (3) Developers of new gravel pits along significant river segments shall demonstrate that no reasonable mining site outside the shoreland zone exists. When gravel pits must be located within the zone, they shall be set back as far as practicable from the normal high-water line and no less than 75 feet and screened from the river by existing vegetation.
    - ~~(4) Within 12 months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than 100 cubic yards of minerals are removed in any consecutive twelve-month period, ground levels and grades shall be established in accordance with the following:~~
      - ~~(a) All debris, stumps and similar material shall be removed for disposal in an approved location or shall be buried on-site. Only materials generated on-site may be buried or covered on-site. (NOTE: The State of Maine Solid Waste Laws, 38 M.R.S.A. §1301, and the solid waste management rules, Chapters 400-419 of the Department of Environmental Protection's regulations may contain other applicable provisions regarding disposal of such materials.)~~
      - ~~(b) The final graded slope shall be 2 1/2 to 1 slope or flatter.~~
      - ~~(c) Topsoil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.~~
    - ~~(5) In keeping with the purposes of this chapter, the Planning Board may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources.~~
- ~~X. **Conditions of permit. The Planning Board may issue a permit, provided that the following conditions shall be met:**~~
- ~~(4) 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.~~
  - ~~(5) Temporary ground cover (such as mulch) and temporary runoff filter (such as hay bales in swales) shall be used as required to prevent stream sedimentation.~~
  - ~~(6) Diversions, silting basins, terraces and other methods to trap sediment shall be used.~~

- (7) Lagooning shall be conducted in such a manner as to avoid creation of fish trap conditions. The applicant shall submit written approval from the Department of Marine Resources or Department of Inland Fisheries and Wildlife, as applicable, prior to consideration by the Planning Board.
- (8) The extent and type of fill shall be appropriate to the use intended. The applicant shall specify the type and amount of fill to be used.
- (9) Fill shall not restrict a floodway, channel or natural drainageway.
- (10) The sides and bottom of cuts, fills, channels and artificial watercourses shall be constructed and stabilized to prevent erosion or failure. Such structures are to be designed and built according to the Maine Soil and Water Conservation Commission, Technical Guide, Standards and Specifications.
- (11) Where activities carried out under this article require the removal of existing ground cover, revegetation ~~should~~ shall be carried out.
- (12) Specific plans are established to avoid hazards from excessive slopes or standing water. Where embankment must be left upon the completion of operations, it shall be at a slope not steeper than one foot vertical to four feet horizontal.
- (13) No excavation shall be extended below the grade of an adjacent street, except for drainageways, unless 100 feet from the street line. No excavation below the grade of the surrounding land shall be allowed within 100 feet of any side or rear lot line. However, removal of earth material deposits from hills or knolls may be allowed within 50 feet of a side or rear lot line if no excavation below the grade of abutter's properties occurs.
- (14) Topsoil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.
- (15) Within 12 months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than 100 cubic yards of minerals are removed in any consecutive twelve-month period, ground levels and grades shall be established in accordance with the following:
  - (a) All debris, stumps and similar material shall be removed for disposal in an approved location or shall be buried on-site. Only materials generated on-site may be buried or covered on-site. (NOTE: The State of Maine Solid Waste Laws, 38 M.R.S.A. §1301, and the solid waste management rules, Chapters 400-419 of the Department of Environmental Protection's regulations may contain other applicable provisions regarding disposal of such materials.)
  - (b) The final graded slope shall be 2 1/2 to 1 slope or flatter.
  - (c) The Planning Board shall set a specific date by which permanent ground cover shall be planted.
- (16) No existing rock, gravel or sandpit will be extended or expanded until the operator has complied with the provisions of this chapter and obtained a permit therefore.

C. Optional conditions of permit. The Planning Board may impose other reasonable conditions to safeguard the neighborhood and the municipality, which may include those relating to:

- (1) Methods of removal or processing.
- (2) Days and hours of operation.
- (3) Type and location of temporary structures.
- (4) Routes for transporting material.
- (5) Area and depth of excavations.
- (6) Provision of temporary or permanent drainage.
- ~~(7) Disposition of stumps, brush and boulders.~~
- (8) Cleaning, repair and/or resurfacing of streets used in removal activities which have been adversely affected by said activity.

(9) The need for written approval of soil and erosion and sedimentation plan by a State of Maine licensed civil engineer selected by the applicant for the Planning Board.

D. Surety and terms of permit.

(1) 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.

(2) 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.

E. Existing operations. Any operation involving the excavation, processing or storage of soil, earth, loam, sand, gravel, rock or other mineral deposits in lawful operation at the time this chapter became effective (March 12, 1983) may operate for a period of three years from the effective date. Discontinuance of any existing operation for a period of more than one year shall require application for a new permit. Continuance of any existing operation for more than three years shall require a permit from the Planning Board.

Roland L. and Diane S. noted that under B(11), the word ‘should’ should be replaced with ‘shall’. All board members agreed.

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

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Roger A. stated the next changes were to §105-73 ‘Conditional Use Permits’, the changes are specifically to F(3) and I(1) and are as follows:

F. Decision.

(1) Within 40 days of the public hearing, the Planning Board shall reach a decision on a conditional use and shall inform, in writing, the applicant, the Code Enforcement Officer and municipal officers of its decision and shall prepare a detailed finding of facts and conclusions. Upon notification of the decision of the Planning Board, the Code Enforcement Officer, as instructed, shall immediately issue, issue with conditions prescribed by the Board or deny a building permit, if applicable.

(2) A conditional use permit secured under the provisions of this chapter by vote of the Planning Board shall expire if the work or change involved is not commenced within two years of the date on which the conditional use is authorized.

(3) **A conditional use permit tabled at the request of the applicant or planning board shall expire if after 90 days the applicant does not return before the planning board with new information in order to continue with the application process.**

(4) An appeal may be taken within 30 days after a decision is rendered to Superior Court.

Roger stated this addition is because there have been times when either the applicant or the board tabled the application to produce additional information and then the applicant waited a year to return and some have never returned so the application is still sitting in a pending file. Because things change over time the Board felt there should be a time frame.

I. Performance guaranties.

(1) At the time of approval of the application for conditional use, the Planning Board may require the applicant to tender either a certified check payable to the Town, an irrevocable letter of credit from a lending institution or a performance bond payable to the Town issued by a surety company in an amount adequate to cover the total costs of all required improvements, taking into account the time span of the bond and the effects of inflation upon costs. The conditions and amount of the certified check or performance bond shall be determined by the **Planning** Board with advice from the Board of Selectmen. **The bond shall be presented to the Planning Board within 45 days of application approval and once approved must be rendered to the Town of Shapleigh no later than 90 days from the date of approval or the application shall be null and void.**

Roger A. stated the Board has several approved applications that still have not presented the Town with an approved bond. Some have been open for over a year. The Board felt it was better to have a time line for the bond.

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

Roger A. stated these were all the changes the Board was going to be presenting in March. Madge B. noted much of them were housekeeping, there were no significant changes.

The Public Hearing for the Zoning Changes was closed at 7:35 p.m.

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The next Public Hearing was opened for: **Amendment to a Conditional Use Permit – Add Real Estate Office for One Broker Within Existing Office of Lakeside Marina – Map 18, Lot 17 (143 Emery Mills Road) – Karen & Scott Cudworth, Applicants**

The applicants were before the board so Mrs. Cudworth could operate her Real Estate Business out of the existing office used for Lakeside Marina. There will be no changes to the building. The only addition is a telephone line would be added for the real estate business.

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

The Public Hearing was closed at 7:40 p.m.

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**The Planning Board meeting started at 7:41 p.m.**

**The minutes from Tuesday, November 9, 2010 were accepted as read.**

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**Amendment to a Conditional Use Permit – Add Real Estate Office for One Broker Within Existing Office of Lakeside Marina – Map 18, Lot 17 (143 Emery Mills Road) – Karen & Scott Cudworth, Applicants**

Karen and Scott Cudworth were present for the review of the application.

Roger A. noted there was a letter from an abutting property owner, George Ruopp. Mr. Ruopp was concerned with off-road parking. He wanted to be sure the parking on site was adequate for what they wanted to do. He noted that customers to the sports shop often parked on Route 109 creating a traffic hazard and he noted that someone has hit his mailbox in the past. Barbara F. told Roger that she had shown the letter to the Cudworth's prior to this evenings meeting.

Mrs. Cudworth stated that she did not know Mr. Ruopp but with his address his home must be on the opposite side of the road from their establishment and he might about Pot Belly Junction. This being the case she did not believe that any of their customers would have parked near his home. She wasn't sure if any customers from Pot Belly Junction would either because they had adequate parking for their business. Several board members agreed. Ms. Cudworth noted that the snow plows have hit their mailbox in the past and perhaps this is what happened to Mr. Ruopp? *Note: Mr. Ruopp does directly about Potbelly Junction and is located across the street from Lakeside Marina, Map 18, Lot 29.*



Mrs. Cudworth added that the real estate business would not generate a lot of traffic. Most of her business is conducted off site.

Roger A. stated at the initial review of Lakeside Marina there was concern with parking and the fact that no one was to park along Route 109 or back onto Route 109 and that remains in effect.

Roger A. asked if the hours of operation would remain the same? Mr. Cudworth stated that the hours of operation listed in the existing permit are 9:00 a.m. to 5:00 p.m. He said they have never operated under these hours. He believed this was a mistake and that the original hours should have been 5:00 a.m. to 9:00 p.m. Board members said that might be possible. Mr. and Mrs. Cudworth stated they would like the hours of operation to be listed as 5:00 a.m. to 9:00 p.m. because during ice fishing season they do open that early to sell bait. Board members did not have an issue with these hours. CEO McDonough stated he wanted a stipulation that no noise can be created prior to 7:00 a.m. Board members agreed.

Roger A. reviewed the following ordinances:

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

- 105-21 – Traffic.** *The site distances were approved on the original permit for the marina, nothing has changed.*
- 105-22 – Noise.** *There will be no noise made between the hours of 5:00 a.m. and 7:00 a.m. for the expanded hours. The real estate business will produce no outside noise.*
- 105-23 – Dust, fumes, vapors and gases.** *There are no emissions created by the real estate business.*
- 105-24 – Odors.** *The will be no odors produced by the real estate business.*
- 105-25 – Glare.** *There is no additional lighting being added to the existing structure.*
- 105-26 – Stormwater runoff.** *There are no changes to the site to create a stormwater issue.*
- 105-27 – Erosion control.** *The storm and erosion control measures were approved on the original application for the marina.*
- 105-28 – Setbacks and screening.** *There are no changes being made to the existing vegetation 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. Parking and storage areas are on the plan and nothing is being changed.*
- 105-33 – Refuse disposal.** *There is minimal waste associated with this business. Any refuse shall be disposed of by the applicant.*
- 105-43 – Off-street parking and loading.** *The parking area is in existence and there will be minimal parking required for the addition of the real estate office.*
- 105-46 – Sanitary Provisions.** *There is an approved wastewater disposal system on site.*
- 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, there are no changes to the outside of the building.*
- 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 Route 109.*

- 4) Traffic access to the site is safe. *The site distances were approved during the original application approval and there are no changes to the entrance or exit.*
- 5) The site design is in conformance with all municipal flood hazard protection regulations. *It is, the site is not in the flood zone.*
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. *There is an existing state approved waste water disposal system on site and there will be minimal waste produced by the addition of a real estate office.*
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. *There are no hazardous materials associated with the real estate business.*
- 8) A stormwater drainage system capable of handling twenty-five-year storm without adverse impact on adjacent properties has been designed. *The stormwater drainage system was approved on the original application and there are no changes being made on site.*
- 9) Adequate provisions to control soil erosion and sedimentation have been made. *Erosion and sedimentation measures were approved for the original application for the marina; no changes are being made to the site.*
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. *There are and these were approved on the original application.*
- 11) The provisions for buffer strips and on-site landscaping provide adequate protection to neighboring properties from detrimental features of the development, such as noise, glare, fumes, dust, odors and the like. *The existing vegetation shall be kept in place; there is no glare, fumes, dust or odor associated with the addition of the real estate 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.

**Diane S. made the motion to approve the amendment to the Conditional Use Permit to run a real estate office out of the existing office for Lakeside Marina with the following conditions:**

- 1) The hours of operation shall be 5:00 a.m. thru 9:00 p.m., 7 days a week.
- 2) There shall be no noise generated between 5:00 a.m. and 7:00 a.m.
- 3) Any changes to signage shall go through the Code Enforcement Office.
- 4) All the existing conditions for Lakeside Marina shall remain in place except the hours of operation, they shall be as written above.

**Maggie M. 2<sup>nd</sup> the motion. All members were in favor.**

**Vote 5 – 0, the motion to approve the amendment to the Conditional Use Permit was unanimous.**

Nothing further was discussed.

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**GROWTH PERMIT(S) – There are growth permits available.**

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**The Planning Board meeting was adjourned 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 14, 2010**

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

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**The Planning Board meeting started at 7:35 p.m.**

**The minutes from Tuesday, November 23, 2010 were accepted as read.**

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**Best Possible Location – Replace Existing Structure – Map 37, Lot 5 (160 Apple Road) – William & Judy Porreca, Owners; Carl Beal & Deborah Randall, Representing**

Carl Beal, P.E. of Civil Consultants was present to represent the owners, as well as Deborah Randall who is the architect for the proposed project.

Mr. Beal stated he was before the board, along with Deb Randall, to submit a Best Possible Location for Bill and Judy Porecca, property located at 160 Apple Road. He said they currently own a cottage and want to build a year round home that they can live in permanently.

Mr. Beal stated the existing structure is closer to the lake than the proposed and it is approximately 1600 square feet in size. He stated with a 30% expansion within the 100' setback to the high water mark, the square footage allowed would be 2077 square feet. He said they would be using 1926 square feet, so it would be less than the full 30% expansion allowed within the 100 foot setback.

Mr. Beal stated the garage would be located beyond the 100 foot setback.

Mr. Beal stated the existing lot coverage is 2,049 square feet which is 15.2% of the lot area. The proposed coverage is 2,044 square feet which is 15.18%. He stated the future lot coverage will be no greater than the existing lot coverage.

Roland L. asked if these calculations include the proposed garage? Mr. Beal stated, yes they included the garage.

Using the plans submitted, Mr. Beal showed the board where the 100 foot setback to the lake was and where the 75 foot setback to the roadway was located. Mr. Beal noted that because of the setback locations there was no place on the lot where a structure could be placed to make it conforming, which is why they were before the board for a best possible location.

Mr. Beal stated the existing setback from the cottage to the shoreline is 40 feet. He stated the proposed home is 64 feet from the high water line, moving the new structure 24 feet farther back from the high water line.

Mr. Beal stated in order to do the project, there would be 23 pine trees removed within the 100' setback. He noted their location on the plans. Mr. Beal stated that after reviewing the ordinance they are putting back one tree for every tree removed. He said it would be a variety of trees, 12 would be fir and 11 would be pine. He stated they would be placed on either side of the lot.

Mr. Beal stated in the location of the existing cottage and gravel patio, in order to make the area work with the new home, he proposed creating a new gravel patio with terraces and vegetation to help prevent future erosion. Mr. Beal stated the terraces would be flat with landscape timbers and native vegetation would be planted, the type used is based on York County Soils and Water recommendations for native ground covers.

Mr. Beal said they had architectural designs if the board wished to see them. The board did not, those would need to be presented to the CEO if approved.

Mr. Beal stated the applicant would meet the 30% for the home. The garage is beyond the 100 foot setback to the high water line but it will not meet the setback to the road. The garage would be 39.6 feet from the center of the road.

Mr. Beal stated the septic system is designed to go under the driveway.

Roland L. stated, "There currently is no garage". Mr. Beal stated, "Correct". Roland asked approximately what the size of the trees were that were being removed in front of the cottage, nearest the water. Mr. Beal stated they were all mature pines, approximately 20 feet tall. Roland asked if they were diseased in any way? Mr. Beal stated there were a couple that were, they are noted on the plan. He showed Roland the locations.

Mr. Beal stated the ordinance requires the owner replant with a tree at least 3 feet in height. Roland L. stated, "This applies only if you have to cut them". Mr. Beal stated, correct. Mr. Beal stated the majority of the trees being cut are behind the existing structure, they need to be removed to put up the new structures. Roland stated he was most concerned with the trees on the water side. Roland said, "Often times those are the first to go not because they have to but for aesthetics, better visibility to the water."

Mr. Beal stated wherever there isn't any ground work the trees will remain. He said they tried to plan on removing as few as possible. Ms. Randall stated there was one major tree in the middle of the lot in front of the existing camp. She said that would be severely damaged during removal of the existing camp.

Roland L. asked about the proposed terrace. He wanted to know what was there now, was it a natural slope? Mr. Beal stated yes, right now it is a slope with wooden stairs from the driveway to the gravel patio area.

Maggie M. asked if the gravel patio that is in existence was going to be removed and replaced with the new one. Mr. Beal stated the existing gravel patio is the same size as the proposed, it is being relocated and rebuilt. He stated there is a proposed walkway that is contoured to help reduce erosion. He said the walkway is shown as a gravel walk but they could use mulch if the board preferred. Mr. Beal reminded the board that all the terraces would be re-vegetated.

Roger A. asked Mr. Beal if he wanted to be on the agenda for the 28<sup>th</sup>? He stated yes that would be fine.

Roger A. asked if they had applied for their DEP permit? Mr. Beal stated they had not. (Permit by Rule) Roger stated the only thing the DEP would be interested in was the terracing. Mr. Beal stated he would submit it. He said they were waiting for feedback from the board before submitting it.

Roger A. asked when the owners would be building? Ms. Randall stated they wanted to start in the spring. Roger stated they would need to put in for a Growth Permit.

Roger A. asked if the shed was being removed? Mr. Beal stated yes. Ms. Randall stated the wooden stairs would be removed as well.

Mr. Beal asked if the board wanted a DEP Permit by Rule prior to making a decision? Roger A. stated no, it would be a condition of approval.

**Roger A. stated a Notice to Abutters would be mailed and members would do individual site inspections.**

Nothing further was discussed.  
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**Citizen Proposed Ordinance Change to §105-56, Animal breeding or care. Proposed by David Morrison.**

David and Christine Morrison of 470 Newfield Road were present to discuss proposed changes to §105-56, Animal breeding or care.

Mr. Morrison proposed the following changes to the ordinance:

*§105-56. Animal breeding or care.*

*The keeping or raising of ~~animals~~, **livestock**, including fowl, **swine, etc.** ~~for any commercial~~  
~~purposed~~, may be conducted as a conditional use, subject to the below standards:*

Mr. Morrison stated the reason he was proposing this change was because he had a neighbor that was raising pigs within 50 feet of his property line. He stated the smell was so bad this summer they could not open the windows in their house, they had to use air conditioners. Mrs. Morrison stated the back of their home was covered with flies. Mr. Morrison said this denied him the use of his property, they could not use their deck and he reiterated the pigs were within 50 feet of his property line.

Barbara F. wanted to know what the State's rules were with respect to something like this? CEO McDonough stated that for commercial purposes the State is very lenient. CEO McDonough stated that Mr. Morrison had a point, the Town does not address farm animals for personal use at all. CEO McDonough stated that it is an allowed use without regulation. CEO McDonough said it has been a problem.

CEO McDonough did not feel that changing the commercial section is how to address it. He did feel the Town should look at personal farm animals in their yard, with respect to neighboring properties. Barbara F. asked if the board should have a separate section for farm animals other than for commercial purposes? Maggie M. stated that it could be worded for 'personal use'.

CEO McDonough stated this is the first he had heard of this proposal so he didn't have anything concrete at this time to address this.

Mrs. Morrison stated that at times the odor was putrid. She said she asked her neighbor to try to mitigate the problem because there are ways to reduce the odor but they did nothing. Maggie M. asked if the neighbors had enough land so they could put them on the other side of the property? Mr. Morrison stated not really, they owned less than 2 acres.

Barbara F. stated she would have to do some research. She asked, "Does the board want her to research farm animals for personal use? Or are we addressing odor in general?" Maggie M. stated perhaps animals other than domestic animals. CEO McDonough stated he didn't want to have to say you have to have 10 acres to be able to have farm animals either. Barbara thought more strict setbacks to a property line would help.

Barbara F. stated she would do research in how other towns were addressing this issue. She said when she had information for the board she would also advise the Morrison's so they could be present for future discussions.

Barbara F. stated that she didn't think the board would want to change §105-56 because the Town needs an ordinance to address raising livestock for commercial purposes. Roger A. agreed.

CEO McDonough told the Morrison's that it was unlikely this will be brought up at the next town meeting in March 2011 because of time constraints. There would have to be discussions to be sure it was addressed properly, so no decisions should be done in haste. Barbara F. agreed due to having to hold public hearings 30 days prior to a vote and usually at least two public hearings are held.

Maggie M. asked about putting it forth on a special town meeting? Barbara F. stated the board does not like to present ordinance changes at a special town meeting. Roger A. agreed.

Roland L. asked if the Town had an existing odor ordinance? CEO McDonough stated under a Conditional Use Permit it is addressed but that is for a business only, not someone's house. Roland wanted to know if the town had any ability to address a foul or offensive odor? Barbara F. stated she was not aware of one. CEO McDonough only knew of standards that were applied to applicants of a permit. Roland stated he was aware of those.

Roland L. asked if there was something in place if a septic system fails and it is causing an odor? Barbara F. did not believe so because there are times there is odor emitted from a septic system, especially in the spring during high water and it isn't addressed unless it is definitely failing. The odor itself is not addressed.

Roland L. just wanted to know if there was a stopgap for the Morrison's prior to drafting a new ordinance. Barbara F. stated she was not aware of one.

Barbara F. stated that she would begin research on this right away.

Roger A. noted that the board could not guarantee a new ordinance would get passed. It did have to be voted on by the citizens. All the board could do was present the new ordinance and explain why it was being presented.

Roger A. stated he understood where the Morrison's were coming from. He said if someone is stockpiling manure, it needed to be placed such that it didn't bother the neighbors as best possible.

Barbara F. concluded she would contact the Morrison's when a proposed ordinance was going to be reviewed.

Nothing further was discussed.

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### **Industrial Tower and Wireless Communications Tower, Map 5, Lot 23**

Barbara F. stated the Board of Selectmen had given her a letter from Town Attorney Bradley Morin, an associate of Ronald Bourque of Bourque & Clegg, which read in part as follows:

***Dear Karla,***

*Per our discussions yesterday, I believe that the latest proposal by Industrial Tower and Wireless (certified check, to be replaced by letter of credit) will satisfy the performance guaranty requirement of the Telecommunications Facilities Ordinance §105-61.2.*

*I understand that there are questions regarding the status of their permit. I have looked back at the correspondence and the ordinance. The delays that have occurred were due to working out the details of a performance guaranty, including attorney-to-attorney negotiations. I do not believe that they have to go through the application process again because of the delay caused by negotiations over the performance guaranty.*

Barbara F. stated it was the opinion of the Town Attorney's that Industrial Tower has now satisfied the performance guaranty and can move forward with their building permit. Attorney Morin also believed the planning board should overturn their recent decision to make the CUP null and void.

CEO McDonough stated he had no issue with Attorney Morin's decision. Board members discussed allowing Industrial Tower to continue with their permit, based on the Attorney's recommendation and the fact that if they re-applied it was unlikely there would be any changes to the original application.

**Maggie M. made the motion to rescind the decision to make the Industrial Towers Conditional Use Permit to erect a telecommunications tower on Map 5, Lot 23 null and void. Roland L. 2<sup>nd</sup> the motion. All members were in favor.**

**Vote 3 – 0, the motion to allow Industrial Towers to proceed with the building permit process was unanimous.**

Nothing further was discussed.

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Other:

Barbara F. presented board members with a minor change to §105-73.I.(1). Barbara asked board members if they agreed that adding the word 'bond' as follows would strengthen the ordinance proposal. All the board members agreed it was a good idea. Therefore the change to §105-73 would be as follows:

I. Performance guaranties.

- (1) At the time of approval of the application for conditional use, the Planning Board may require the applicant to tender either a certified check payable to the Town, an irrevocable letter of credit from a lending institution or a performance bond payable to the Town issued by a surety company in an amount adequate to cover the total costs of all required improvements, taking into account the time span of the bond and the effects of inflation upon costs. The conditions and amount of the certified check or performance bond shall be determined by the **Planning** Board with advice from the Board of Selectmen. **The bond shall be presented to the Planning Board within 45 days of application approval and once approved must be rendered to the Town of Shapleigh no later than 90 days from the date of bond approval or the application shall be null and void.**

Nothing further was discussed.

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**GROWTH PERMIT(S) – There are growth permits available.**

**The Planning Board meeting was adjourned at 8:22 p.m.**

Respectively submitted, Barbara Felong, Land Use Secretary

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

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, December 28, 2010**

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

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

**The minutes from Tuesday, December 14, 2010 were accepted as read.**

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**Best Possible Location – Replace Existing Structure – Map 37, Lot 5 (160 Apple Road) – William & Judy Porreca, Owners; Carl Beal & Deborah Randall, Representing**

Carl Beal, P.E. of Civil Consultants was present to represent the owners, as well as Deborah Randall who is the architect for the proposed project.

Mr. Beal provided board members with a new set of plans for the project.

Mr. Beal stated that following the planning board meeting on the 14<sup>th</sup>, he made changes to the proposed design. He said he wanted to make the gravel patio in front of the cottage less of a disturbance, therefore the size was reduced. He said they also pulled the proposed terracing back toward the cottage, leaving more of the area undisturbed. He said by doing this they were able to save six pine trees that previously were going to be cut due to the grading and terraces. He said with this new plan the vegetation in front of the cottage, on the lakeside, would remain undisturbed.

Mr. Beal stated there would be trees cut along the side of the property and about 15 trees behind in order to be able to move the new structure back and build the garage.

Mr. Beal reiterated that they do meet the 30% expansion rule within the 100' setback to the shoreline. The proposed lot coverage would be essentially the same as the existing. The existing coverage is 2,049 sq. ft; the proposed is 2,044 sq. ft.

Mr. Beal stated there would be a new septic system going in, placed under the driveway. It would be a chamber system. He gave the board a copy of the new design, done by Thomas Harmon, SE #114, dated 12/7/10.

Mr. Beal stated the garage was beyond the 100 foot setback to the high water mark. He said it did not meet the setback to the road. He said they were looking for the board to approve the new road setback of 39.6 feet.

Roger A. asked about the 8 foot bump-out between the garage and the home. He asked why the garage wasn't attached directly to the new home, then it would be 8 feet farther from the road. He asked if it was a walkway / entry? Ms. Randall stated that the house was within the 100 foot setback and if the garage was attached it would have to be included in the 30% calculation, so she tried to keep the bulk of the house as far from the road as she could and keep the garage beyond the 100 foot setback to the water.



Roger A. said that he felt if it were closer to the house the garage would be more in compliance with the setback to the road. He said he didn't care about how this would affect the 30%. Ms. Randall stated she was looking for the best possible location from the board.

Diane S. asked where the well was located? Mr. Beal showed her the location on the plans. It is located approximately 20 feet from the lake.

Mr. Beal stated the 17 pine trees would be removed and they would be replaced with 9 pine trees and 8 fir trees. He noted the new locations on the plan. He also stated that along the terraces there would be a natural ground cover.

Diane S. asked why the house had a bump-out on the side, instead of the side of the house being in a straight line? Ms. Randall stated it was due to the 30% expansion. She stated instead of one large rectangle she cut part of the structure down to meet the 30%. Ms. Randall stated it also had to do with the roof line. Ms. Randall showed Diane the architectural design of the proposed new home. She noted the main roof and the bump outs / roof lines come down lower than the main structure to reduce the volume in the new home. She said, "I wanted to reduce the structure down because it is a house on a hill, by lowering the roof line it will look much better." Diane thought removing the bump-out would look better, she felt the structure looked odd. Ms. Randall agreed in plan form it looked odd but architecturally it looked better by having the roof line graduated. She showed Diane the design. Diane said she was just curious and looking at the design helped.

Madge B. asked if the side setbacks were the same with the new structure as the existing? Mr. Beal stated they were greater than the existing. Ms. Randall stated the new structure is more centered on the lot than the existing. Madge asked if the side setbacks conform? Roger A. stated, yes.

Roger A. stated his issue is with the garage. He said the original building is farther away from the road but by moving the new structure back from the water it is more non-conforming to the road.

Madge B. stated that the board did not have to approve the garage. She said the applicant could go to the Board of Appeals and they could deal with it. She said she would personally feel more comfortable with the zoning board dealing with the issue. Roger A. stated he did not have a problem with the structure being expanded by 30%. Madge agreed but she felt the board did not have to approve the garage.

CEO McDonough asked if the lot coverage stayed the same as the existing? Ms. Randall stated the lot coverage stays the same because they are removing several structures from the lot. A shed, lean-to, several stairways. Roland L. thought the wooden framed lean-to could not be considered a structure from what he saw. It was several 2 x 4's, and was just a frame. CEO McDonough asked if there was a roof on it? Roland stated he did not believe there was. Mr. Beal stated there is a tarp on it in the summer. Roland said the only thing there is a frame. Ms. Randall stated that decks count and they do not have a roof and stairs count. CEO McDonough stated that stairs that are attached to a building count.

Ms. Randall stated that lot coverage was not an issue with redesigning the structure but volume is an issue. She stated she has a version of the plan that keeps everything within the 30% expansion including the garage but lot coverage is still the same. CEO McDonough noted that stairs do not constitute the expansion of a nonconforming structure, therefore they do not count against you or for you. (§105-4.D(2)) Ms. Randall asked if stairs attached to the house counted? CEO McDonough stated if there was a landing, that would count as a small deck but stairs to access the house would not count.

Madge B. asked about how the terraces would be constructed? Mr. Beal stated there would be landscaped timbers 4 feet high and the landing would be 4 feet wide. He showed it on the plan.

Madge B. asked what the timbers would be made of? Mr. Beal stated they would be 6 x 6 or 8 x 8 landscape timbers. Madge asked if the walls would have to be engineered? Roger A. stated no, because they were not over four feet high. Madge understood that but said overall the area involved would be over four feet high. Madge asked if it bothered the board members that it wasn't engineered? Roger said no, it was not an issue. Mr. Beal stated he could give the board an engineered plan for the walls if they wanted one.

CEO McDonough stated he was under the impression the landscape was currently sloped. Mr. Beal stated, correct. He said that by doing the terraces, it would slow the water heading toward the lake, down and reduce erosion. CEO McDonough asked if they were moving the gravel patio area back from its current location? Mr. Beal stated they were moving the existing house back and will use the gravel from the move to create terraces to help reduce erosion in front of the new structure. He said they were also going to create a new gravel patio area. Roger A. agreed that the terraces would help to minimize possible erosion. Roger said he was surprised that they weren't using concrete block instead of wood to create the retaining walls. Mr. Beal stated the wood was more natural looking. Ms. Randall stated the owners did not have an opinion so if the board preferred concrete block she felt they would use that. Diane S. asked if the wood was treated wood? She did not feel they should be using a treated wood so close to the water. Mr. Beal stated perhaps the Porecca's would want to use block? Diane stated she would prefer they use concrete block vs. treated wood.

Roland L. stated he applauded the attempt to save the trees on the water side of the camp. He said he had two areas of concern. He said looking at the existing trees on the lot and adjacent lot, the density of the trees, he questioned the survivability of the replacement trees. He said the existing canopy is very dense and will let very little light in.

Roland L. said his second concern was adding to the non-conformity with the garage. He was glad however, that they were moving the camp away from the water.

CEO McDonough, looking at the plan, asked what structures were being removed? Mr. Beal showed him the shed, lean-to, walkway and stairs. Mr. Beal said only one existing structure near the water was remaining. CEO McDonough asked about the structure nearest the road, what was there now? Mr. Beal stated that currently it was just a frame. CEO McDonough noted that all the existing structures could be expanded by 30% so if the garage is not approved the applicant may want to expand the existing so as not to lose the grandfathered allotment. He said Mr. Beal and Ms. Randall may need to redesign the plan depending on the planning boards' opinion.

Mr. Beal asked what the board would feel comfortable approving and then they could go to the zoning board for anything else. Ms. Randall stated the owners would be retiring in this house and they have a special needs adult son that lives with them, so they want something safe and easy to use. Ms. Randall stated an alternate design that brings the garage within the 30% she could present. She said it wasn't what the owners want but the whole building would be within 100 feet of the water. The new structure would be closer to the water in order to comply with the road setback. She said the owners would probably prefer to try the zoning board first. Roger A. asked in order to meet the road setback and keeping the garage, would the owners lose square footage in the house? Ms. Randall stated yes, they lose height. There would be no second floor and part of the living space would be in the basement. She said the footprint stays the same but the living space shifts. Mr. Beal said by moving the structure closer to the water, the garage still wouldn't meet the road

setback. Ms. Randall stated, correct. Roger said they would at least not be more non-conforming to the road. He said he understood the new building as designed now would be more conforming toward the water than the existing.

Ms. Randall stated she would like to leave the house farther from the lake. She asked if she removed the 8 foot bump-out between the house and the garage, making the garage more conforming by 8 feet, would that help to satisfy the boards concerns? Madge B. stated the Board of Appeals could look at the plans and possibly grant a variance for what they were asking for. Madge still believed the garage should go to the Board of Appeals.

Maggie M. asked if there was a garage at this time? Madge stated no, there is no garage. Maggie asked if this made the proposed plans more non-conforming than the existing structures? Madge felt like it was more non-conforming and added that the board did not have to approve the garage when a perfectly good residence was being proposed. She did not feel it was a planning board issue. She added that most requested variances were in the shoreland zone.

CEO McDonough believed it would be better if the applicants came back with a more agreeable plan vs. going to the appeals board. He stated it was very difficult, based on the criteria, to be able to get a variance for a garage. Maggie M. stated that the applicant would have to prove they could not get reasonable use from their land without the garage. Barbara F. stated there was still a reasonable value to the lot without a garage and it would probably be difficult to prove otherwise. Maggie agreed, they would have to prove a hardship.

Diane S. stated again that she would like the owners to find something more natural to use other than a chemically treated wood product for the terraces. She didn't like the idea of rainwater running over it and heading toward the lake. Mr. Beal stated he would talk with the owners to see what they would prefer.

Ms. Randall asked what would be the best way to keep the application before the planning board? Should she move the new structure closer to the water, moving the garage away from the road setback? CEO McDonough stated it was a confusing issue because by moving the house you would be more conforming to the road but still less conforming to the water. Which is the bigger concern? What takes priority? Mr. Beal stated that they cannot meet both setbacks.

Ms. Randall stated her clients goal was to get a garage on the main level, so they could live all on one level. She stated that is why they presented the plans as they did. If the existing cottage is moved closer to the lake, in order to walk in at the existing level, they would be eight to ten feet above grade, therefore they would have quite a walk into the new home.

Maggie M. asked if there was consideration for a special needs person? Couldn't this be the reason for a variance? Madge thought that might be a good reason to go for a variance. CEO McDonough stated there was a zoning board rule that handicap access to a structure is allowed by way of a variance but access does not constitute a garage. It's whatever it takes to get access to a building.

CEO McDonough reiterated again, how do you say the road setback is more of an issue than the setback to the water? Who makes that call? Roger A. stated he believed they were moving the garage beyond the 100 foot mark in order to be able to expand the house by 30%; by moving the garage back they get a bigger house. Ms. Randall stated they wouldn't lose house moving it closer to the water because they would be using a ground level for living space. Mr. Beal stated they would be losing storage. Ms. Randall stated, correct.

Roger A. stated that he would be comfortable if they moved the garage 8 feet closer to the home. Making the road setback more conforming.

Diane S. asked about a one car garage? That might make it more conforming. She asked if they had to have a two car garage?

Madge B. still believed the correct procedure for these plans was to send them to the Zoning Board of Appeals. Madge said the structure that was going closer to the road was a building that was not essential to living.

Roger A. read §105-4.D(7), Relocation, “(a) A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located, provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board, and 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. In no case shall a structure be relocated in a manner that causes the structure to be more nonconforming.”

Roger A. noted that this is where the board has to determine the greatest practical extent for the relocation.

Roland L. read §105-4.D(1), Expansions, “(1) Expansions. A nonconforming structure may be added to or expanded if such addition or expansion does not increase the nonconformity of the structure. If proposed addition or expansion of a nonconforming structure cannot meet the dimensional requirements of this chapter, **a variance** shall be applied for in accordance with the procedures set forth in this chapter. “

Roland thought the applicant should be applying for a variance. Roger A. stated that is under an “expansion”. Roland believed this is what this application was. Roger disagreed, he believed this was a “relocation” of an existing structure. Roland said it was a relocation that was being expanded. CEO McDonough stated he agreed with Roger that this was a best practical location and should be reviewed under relocation. He said the structure was already non-conforming which was why it was before the board. He said although this was a non-conforming structure being expanded the board was dealing with moving it, so it falls under relocation. Roger agreed, relocation was a planning board issue not zoning board, and the board could move it to the greatest practical extent. Roger explained that years ago the legislature made a change because too many variances were going to the zoning board in the shoreland zone. It was made easier for the citizens to go to the planning board to have a decision made. Roger thought it was in the 80’s that this change occurred.

Ms. Randall spoke about the temporary garage that currently didn’t have the canvas on it. She and Mr. Beal noted it was an immobile wooden structure. She said it was closer to the road than the proposed garage making it more non-conforming with respect to the road setback than the proposed garage. Roland L. thought it was a lean-to only. He did not believe it was a structure. Ms. Randall stated that if the owner tried to get a permit today for it, it would be considered for setback requirements. And she also would prefer to prevent the owner from using this in the future if they don’t have a garage. It’s not a pleasant structure for the neighbors to look at.

Roger A. read the definition of structure from the ordinance. It read as follows: **STRUCTURE** – Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences and poles, wiring and other aerial equipment normally associated with service drops as well as guying and guy anchors. The term includes structures temporarily or permanently located, such as decks, patios and satellite dishes.

Madge B. thought based on the definition the temporary canvas garage would be a structure.

Diane S. thought the owner would have to think about what was more important to them, a large garage or the size of the house. Diane said she would prefer the house, noting that she didn't have a garage.

Mr. Beal asked, "Is the garage more non-conforming or not based on the fact a structure on site is closer to the road than the proposed garage?" He stated that currently you have a setback to the water which is 40 feet and the canvas garage is approximately 32 feet to the road. He said the proposed structure would be more conforming to both the water and road based on this. Ms. Randall asked if she moved the garage 8 feet toward the home, knowing she would have to reduce the size of the house slightly, would that be more comfortable for the board to approve? Roger A. stated he would prefer that.

Ms. Randall, using the plans, showed the board what she would remove to move the garage 8 feet farther from the road. She also tried to show board members how the building would look by moving the garage.

CEO McDonough spoke about giving up the patio and instead make the area all natural. He believed this would move structures farther from the water. The board did not understand what he was addressing. CEO McDonough thought because there was a patio area shown on the plan that it was a structure but in fact it was a dirt/gravel area. When CEO McDonough was made aware of this he concluded that they could not create an exposed soil area, therefore this area needed to be re-vegetated. He said you cannot have undisturbed raw earth within 100 feet of the water. Mr. Beal stated it would be stable and flat made of crushed stone or bark mulch.

Mr. Beal asked the board what they wanted with respect to the garage? Madge B. stated she would like to see the garage attached to the house, moving it further from the road. The other board members agreed.

Roger A. noted that where the original structure is located, the area needs to be replanted with native vegetation. Madge B. stated where the new gravel pad is located needed to be native vegetation.

Ms. Randall listed the items the board had requested:

1. The garage would be moved 8 feet closer to the new home, removing the breezeway.
2. There would not be a gravel patio created, there had to be a ground cover put in place.
3. The terraces as depicted are adequate.

Roger A. and Diane S. stated the terraces should be created with something other than a treated wood product, such as stone or concrete block. Madge B. agreed and stated the terraces would help to improve the area due to the steep terrain.

Maggie M. said that none of the trees near the water would be removed. Mr. Beal stated correct, none of the trees on the lakeside needed to be removed because they moved the terraces back farther from the water. Maggie noted that the replacements can't be back any farther than the ones being removed. Mr. Beal stated the replacement trees would be the same distance or closer to the water than the existing being removed.

Mr. Beal asked if everyone agreed that moving the garage 8 feet would be adequate or was the board looking for more? He said moving the garage would put the garage approximately 48 feet from the road but not the required 75 feet. Roger A. asked if the other members were comfortable with this, if so Mr. Beal could make the changes and bring them to the next meeting.

Diane S. reading part of §105-4.D(5)(a) and asked if the following pertained to this application; it read as follows: "If the reconstructed or replacement structures is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Subsection D(1)..."

CEO McDonough asked how the plan presented was increasing the non-conformity? Roger A. stated there was a decrease on both sides. It's being moved back from the lake and the lean-to is closer to the road than the proposed garage. He stated that commonly in the shoreland zone you cannot meet the setbacks so they come before the planning board for the best practical location. If the board were to adhere to the sentence read, no one would ever have their structure moved, which is the goal to be able to move it farther from the high water mark, if possible.

Roger A. agreed and stated that in Section §105-4.D(5) it refers the board to subsection D(7), Relocation, where the structure must meet the setback to the *greatest practical extent*. He said this is why the board can consider the application without sending the applicant for a variance.

Roger A. stated he was comfortable with the total project if the garage was moved the 8 feet.

Maggie M. stated when replacing trees the ordinance requires that no one tree can be more than 50% of the total trees replaced. She said there would be nine of one kind and eight of another. Mr. Beal stated that there were 17 trees being replaced. CEO McDonough stated from his standpoint as long as people were replacing the trees being removed and they kept them alive, he was happy. Roger A. stated you cannot split a tree so this is a non-issue; it's as close as they can get to following the requirement.

Roger A. asked if there were any other issues the board wanted to discuss? The board agreed if the items discussed this evening were addressed the plan would be approved at the next meeting.

The items to be addressed are:

1. The garage shall be moved 8 feet closer to the new home, 8 feet farther from the existing roadway.
2. The terraced walls shall not be built out of a pressure treated wood; a more natural and environmentally safe substance such as stone shall be used.
3. There shall be no gravel patio constructed on site.

**The final approval shall be conducted on Tuesday, January 11, 2011. There will be a snow date of Wednesday, January 12<sup>th</sup>.**

Nothing further was discussed.

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## **GROWTH PERMIT(S) –**

### **• Map 37, Lot 5 (160 Apple Road) – Seasonal Conversion**

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

Respectively submitted,

Barbara Felong,

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