

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, January 11, 2011**

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 28, 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 the final set of plans for the project.

Mr. Beal stated that following the last meeting Ms. Randall pulled the garage closer to the home eliminating the breezeway. He stated the garage was therefore 6 feet farther from Apple Road or 45.6 feet from Apple Road.

Mr. Beal stated, “In addition I pulled the terraces and patio closer to the house, saving 3 additional trees on the east side of the property.” Barbara F. asked, “I thought there was not going to be a gravel patio area?” Mr. Beal stated he would address that.

Mr. Beal stated several trees were lost on the west side but overall instead of cutting 17 trees, 16 trees would be removed, a net gain of saving one additional tree.

Mr. Beal stated he looked at doing a grass patio area but did not feel the board would like grass on the lakeside of the property. He said currently there is a gravel patio and he is proposing a new gravel patio area the same size as the existing but it is moved farther from the lake. He said the existing gravel patio area will be re-vegetated, as well as in front of the house with native ground cover. He said the ground cover that exists at this time is bare ground and pine spills, so now there will be ground cover on the terraces and where the existing patio is.

Mr. Beal stated on the east side of the lot, nothing will be removed. He said that is the only area on the entire lot at this time that has small shrubs, there is some native ground cover and it will not be disturbed.

Mr. Beal stated the expansion is still 30% and the lot coverage does not increase.

Board members reviewed the plans. They asked about the basement door and retaining wall. Mr. Beal told members a retaining wall was needed there due to the slope. Madge B. asked if they were putting in a full basement. Mr. Beal stated, yes. Madge asked if there would be both inside and outside access to the basement. Ms. Randall stated, yes. Mr. Beal stated this would be the easiest way to be able to bring items in from the front yard. It would be a 36” door, not an overhead door.

Madge B. noted that she had been back to the site to see the lean-to and she wasn't impressed with the structure but she said she did speak with CEO McDonough earlier in the day and they found a building permit for it from 1985 or 1987. She did not think it should have ever have been permitted but it is. She added that it was the most minimal structure. Maggie M. stated that after reading the definition of a structure last week, it did qualify as a structure. Madge agreed.

Madge B. stated the board had spoken about getting rid of the gravel patio area. She said she did not believe the board wanted a grass area. She said it should not be an impervious area. Roger A. stated that because of the retaining walls he didn't have issue with the gravel area. Madge said that the water could travel thru the gravel area. Diane S. noted there would be vegetation between the gravel patio and the lake. Madge stated, correct. Madge added that it was not a good area to try to grow grass so she didn't think requiring grass would be a benefit. Mr. Beal agreed, stating it would be difficult because of the pine trees and gravel that exists now.

Roger A. read §105-4.D(1) 'Expansions' of a nonconforming structure, §105-4.D(5) 'Removal, reconstruction or replacement' of a nonconforming structure and §105-4.D(7) 'Relocation' of a nonconforming structure.

Roger A. stated 16 trees were being cut and replaced. Roger said the structure was being moved farther from the high water mark making it more conforming in that direction but it also was moving closer to the road making it less conforming in that direction. He said the Planning Board, under 'relocation', has the ability to be able to move the structure on the property to the best practical location.

Roger A. stated that Best Management Practices must be maintained until the project is completed. Roger asked if the DEP Permit by Rule had been filed? Mr. Beal stated, not yet. He said they wanted to wait for final approval before they submit the proposed project to DEP. Roger said it would need to be filed for the new terracing.

Madge B. asked when the owners would be doing the project? Mr. Beal stated they wanted to do the project this summer. Madge and Roger A. both agreed a date of completion for the planting schedule needed to be determined. Madge stated the owner could obtain an extension if necessary. Ms. Randall stated construction would begin in the spring, building throughout the summer and planting in the fall. The date of October 1, 2011 was agreed upon by the board and the applicants. Mr. Beal noted the planting plan was provided on the plans submitted.

Madge B. stated that if the owners could not meet the October 1<sup>st</sup> deadline, then the date would probably be extended until the following spring because nothing would be able to be established much after October due to the weather. Mr. Beal agreed.

Roger A. asked where the demo debris would be going? Mr. Beal stated he did not know at this time because they had not hired a contractor. Roger stated it could not be taken to the Shapleigh Transfer Station. Ms. Randall stated she believed the contractor would know that.

**Roger A. stated there were four conditions of approval at this time. They are:**

- 1. Best Management Practices shall be used until the project is completed.**
- 2. The re-vegetation plan provided shall be completed by October 1, 2011. If this date cannot be met an extension shall be acquired through the Code Enforcement Office.**
- 3. A DEP Permit by Rule shall be applied for prior to a building permit be obtained.**
- 4. No demolition debris shall be taken to the Shapleigh Transfer Station.**

Madge B. asked if the board had to require that a surveyor place the building? Roger A. stated it was part of the ordinance so it didn't have to be a condition but he could add it just as a reminder to the owner that it needed to be done. Roger read the ordinance (§105-4.D(7)(c)) for the applicants, it read as follows: "All approved plans shall require confirmation in writing by a licensed surveyor that the placement of the structure is correct per the specifications approved by the Planning Board."

**Therefore, the fifth condition of approval is:**

- 5. A licensed surveyor must place the structure per the approved plan and certify the foundation location.**

CEO McDonough stated this was required prior to back fill of the foundation. He stated the surveyor can put this information on a piece of paper, it doesn't have to be on the survey but the surveyor has to be licensed and he has to state the foundation is placed per the approved plan. Mr. Beal stated he understood.

**Madge B. moved for approval of the plans provided to replace the existing structure with the five conditions noted above. 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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**OTHER:**

**Review local ordinances with respect to livestock housed for non-commercial use.**

Mr. and Mrs. Morrison, citizens of Shapleigh, had asked the Planning Board during a meeting in December if they would either make a change to the existing ordinance §105-56 'Animal breeding or care' or create a new ordinance to address circumstances in which a neighbor's raising of animals becomes a health hazard due to the proximity of the livestock to the lot lines, homes, or wells of the neighboring properties. The board members agreed to look at ordinances of other towns in Maine and have further discussions on the issue. (See minutes of 12/14/2010.)

Barbara F. gave members copies of several existing ordinances currently addressing barnyard animals, also referred to as animal husbandry, not associated with commercial enterprises.

Madge B. stated that she thought a member of the board should take the idea of creating a new ordinance to regulate animal husbandry to the Board of Selectmen and ask them if they felt it was something of importance they would like the town to get involved with. She believed the Board of Selectmen would be the ones that normally would hear the complaints and if they have had more than one complaint then they may think it's a good idea for some regulation. She did not feel the Planning Board was in the business of putting in an ordinance for every neighbor that has problems. Therefore, she believed the board should find out if there is only one problem in town or several problems of this nature. Madge said the more the problem has been brought to light the more comfortable she would be with trying to create a regulation.

Roland L. stated the issue that he was most concerned with, beyond an issue of odor, was the possibility of contaminating someone's drinking water. He said that for no other reason he believed there should be something in place to prevent someone from being allowed to have animals too close to a neighboring well. Diane S. asked if there was already some type of rule in place with respect to wells?

CEO McDonough asked where this rule could be found? Roland stated the only rule he was aware of was with respect to distance from a well to a septic system. CEO McDonough stated you can also regulate a commercial application.

Madge B. stated the board needs some information from someone with some expertise as to how far a distance should be between livestock and a well. She did not feel the board could just use other ordinances as a reference. Where did these towns come up with their distance requirements? Roland agreed but also believed other ordinances could be used as a guideline or the fact a leachfield cannot be within so many feet of a well then that should show there is a problem. Diane S. stated that she was concerned that the board was now talking about regulating water issues. She said, “What about the person changing oil in their yard, does that have to be regulated to the neighboring well? It can become very complicated; the town cannot regulate everything someone does on their property.” CEO McDonough agreed that you cannot police everything everyone does.

Barbara F. stated, “Another issue is, do we look at each individual animal and have varying distances depending on the manure? Each animal carries a different level and type of contaminants in their manure. How complicated do we want to make this?”

Roger A. noted that South Berwick and Ogunquit had ordinances that stated, “Uncovered manure shall be kept 150 feet from the nearest dwelling other than the applicant’s and 300 feet from any body of water or well.” Diane S. thought this made sense because it protected the drinking water. Roger stated, “Depending on the depth of the well and its location, perhaps the 300 feet isn’t enough. How will the board know?”

Madge B. still believed the issue should be brought to the Board of Selectmen to see how strongly they felt about regulating personally held livestock. She stated, “When creating an ordinance it should be done for all the right reasons. If the Selectmen are behind the Planning Board, if we need to gather additional expert opinion, it will be understood as to why by the Selectmen.”

It was concluded that Roger A. would speak to the Board of Selectmen during one of their scheduled meetings. Also, Barbara F. will try to gather additional information on the subject of animal manure and safe distances to it. She will also contact the DEP to see how they came up with the figures used under regulating manure in the shoreland zone. Madge B. agreed it was more of a water issue than an odor issue. Barbara agreed stating that an odor that might offend one person may not at all another. It was very subjective.

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 8:20 p.m.**

Respectively submitted,

Barbara Felong,

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

# SHAPLEIGH PLANNING BOARD

## MINUTES

Tuesday, February 8, 2011

Members in attendance: Roger Allaire (Chairman), Madge Baker (Vice Chair), Roland Legere, Maggie Moody and Barbara Felong, Land Use Secretary. Code Enforcement Officer Steven McDonough was also in attendance. Note: Roger A. arrived at the meeting at 7:15 p.m.

### Public Hearing began at 7:05 p.m.

- Proposed changes to Chapter 105, Shapleigh Zoning Ordinance as follows:  
Amendment to §105-4, Nonconformance; §105-39, Earth removal and filling;  
§105-43, Off-street parking and loading; §105-61, Mineral exploration and extraction;  
and §105-73, Conditional Use Permits.  
Typographical error in §105-15, under Driveways.

Madge B. opened the public hearing as Roger A. had not arrived yet.

Madge B. began by saying the public hearing is for the changes to the Zoning Ordinance that are to be placed on the Town Warrant in March. Amendments are either in **Bold** and/or are ~~stricken~~. The first item discussed was the change to §105-15. This was a typographical error and is as follows:

§ 105-15 'Definitions'  
DRIVEWAYS – See § ~~105-16~~ **§105-60** and 105-60.1

Madge B. stated the next change was to §105-4, Nonconformance, as follows:

- (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 it 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 specific words were being removed and in doing this the basis of this section of the ordinance will be all encompassing. It will not apply to the Shoreland District only. Madge B. agreed stating this was for all non-conforming structures not just shoreland zoning throughout the town.

Madge B. stated in §105-43, Off-street parking and loading, the following was added:

- 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.

Madge B. stated this change was based on the size of the vehicles using the entrance/exit, and so the applicant would not have to go to the Zoning Board of Appeals. She noted the Town had come before the Planning Board with an application that requested a 32 foot entrance and then had to go to the ZBA to have the size allowed. She said it was approved by the ZBA for safety reasons. The Planning Board felt there are times special exceptions are required so this sentence was added.

Madge B. then reviewed §105-39 & §105-61, which both deal with earth moving. She noted that some sections of 39 were placed in 61 and visa versa. She said the end result was not substantive; there were neither restrictions added nor any subtracted. The board tried to make each ordinance more clear. If you are moving earth in relation to construction activities than 39 would be applicable and if you are doing some kind of mineral extraction then it would come under 61. She noted there was a fallback clause that stated the planning board had the option of applying standards from either ordinance if necessary. The changes are 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 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.~~
  - (3) The proposed provisions for drainage and erosion control, including drainage calculations.
  - (4) 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.~~



**§ 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 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.~~
- (7) Cleaning, repair and/or resurfacing of streets used in removal activities which have been adversely affected by said activity.
- (8) 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.**

Madge B. stated the final ordinance change is to §105-73, Conditional Use Permits. The changes to the ordinance 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.

Madge B. stated this change was so the board didn't have to hold tabled applications over a long period of time. The board believes there needs to be a closure date. Madge asked if the applicants would be notified prior to the 90 days? Barbara F. stated they could be now that there will be an expiration date. She stated she had tabled applications in a drawer that were years old. She said she notified them either by way of letter or telephone conversation one time but they have not moved forward. She said she never gets rid of the files.

Roland L. asked if this change to the ordinance was accepted, would the people with tabled files currently be grandfathered, or would they receive a letter stating there was a new ordinance and that they have 90 days to come before the board? CEO McDonough stated he believed the applications currently tabled would be grandfathered. Madge B. believed so as well. Madge didn't think they were grandfathered with respect to any substantive changes in the ordinance provided they haven't expended a lot of money on their application. Madge added that most of the changes made to the ordinance in the past several years have been housekeeping so they probably would not affect any of the tabled applications, therefore, it isn't an issue to hold them. Roland stated that subsequent applications after town meeting would be affected. Madge stated, yes.

Madge B. stated there was another change to §105-73, 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.**

Madge B. stated this was done so the board can track and make clear what is happening with the bond because the amount of the bond could change over time. What was required one year may not be required the next, the amount could either go up or be reduced based on what the bond is needed for. Barbara F. noted there are still outstanding bond issues that are both over a year old. And she reminded the board about a bond that was very difficult to obtain recently that took a year to get approved.

Madge B. asked if there were any questions regarding the ordinance changes? There were none.

The Public Hearing was closed at 7:20 p.m.

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

**The minutes from Tuesday, January 11, 2011 were accepted as amended.**

A change was made on Page 2 of 4, Paragraph 2, 3<sup>rd</sup> Sentence as follows: "She said it should **not** be an impervious area."

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**Other:**

Roger A. stated he had spoken with the Board of Selectmen regarding the proposal by David & Christine Morrison for an ordinance to regulate animal breeding and/or care on private property. He stated the Selectmen were putting together a questionnaire for several items to be available during the March Town Meeting. He stated one question would be asking the citizens if they wanted to regulate non-commercial animal husbandry. This way it would indicate if the townspeople wanted this regulated.

Mr. and Mrs. Morrison were present and Mr. Morrison asked how many people needed to respond? Roger A. stated if the majority of the questionnaires were in the affirmative it was likely the BOS would refer the matter to the Planning Board to draft an ordinance. If the majority of the responses are not in favor of a new ordinance, it will be up to the person with the complaint to file a civil action against his/her neighbor. Roger said nothing would be decided until after town meeting.

Mr. Morrison asked if once the questionnaire was created, could someone come and pick them up and distribute them around town? He noted that there were a lot of people in Shapleigh who don't vote so they might not see the questionnaire. Roger A. did not know if someone could pick them up or not. Barbara F. stated that Karla Bergeron, the Board of Selectmen's Secretary, would be the one to ask about how the questionnaire would be distributed and when it would be ready to view.

Mr. Morrison asked if he could come in and pick up some questionnaire's and distribute them around town? Barbara F. said again Karla Bergeron would be the one to ask. Roger A. agreed, he didn't have an answer.

CEO McDonough asked if there was a way for a citizen to get together signatures and then petition to have something put before the townspeople for a vote? Roger A. stated yes but he didn't know the exact procedure. CEO McDonough asked how many signatures were required? Barbara F. didn't know but she said the Town Clerk could answer that question or perhaps Karla. She believed it was a percentage of how many people voted at the last election. Madge B. believed it was a percentage of the numbers from the previous gubernatorial election but she reiterated Karla Bergeron would be the person to contact.

CEO McDonough asked the Morrison's if they understood what he was referring to? They stated no. He said that if the questionnaires are presented and those that fill out the questionnaire state they do not want to bother with an animal care ordinance and the BOS state they do not want to create a new ordinance, then you as a citizen can draft an ordinance, get a certain amount of signatures that state they agree with your proposal and then you give it to the Town and then they have to present it at the next town meeting.

Mr. Morrison asked who Karla Bergeron was? Barbara F. stated again she was the Secretary to the Selectmen and her office was across from the Assessor / Board of Selectmen's office. She is in her office Tuesday, Wednesday and Friday from 9:00 a.m. to 4:00 p.m. Barbara told them they could come in or call her and speak about it.

In conclusion, the Planning Board will do nothing further with respect to this matter until after town meeting, the results from the questionnaire, and direction from the Board of Selectmen.

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**Conditional Use Permit – Earth Moving Greater than 150 Cubic Yards – Map 3, Lot 20C (Simon Ricker Road) – John Toothaker, Applicant; Jim Libbey, Owner**

Mr. Toothaker was present to represent the Owner of the property, Mr. Libbey.

Mr. Toothaker began by stating he was a Certified Soil Scientist and Licensed Site Evaluator. He stated the project before the board was off of the Simon Ricker Road. He stated it was Tax Map 3, Lot 20C. He stated he was called out by the DEP on behalf of Mr. Libbey to look at the site. He stated he had also spoken with the Planning Board Secretary and Code Officer which were helpful. He also found some relevant documents and also went to the Registry and found some recorded plans.

Mr. Toothaker stated he was in the process of getting the NRPA's (National Resource Protection Act Permit) for the erosion control plans, restoration plan and existing conditions plan.

Mr. Toothaker stated he wanted to be certain all relevant people were notified, including the Town and abutters.

Madge B. asked what Mr. Libbey wanted to do with the property? Mr. Toothaker stated he wanted to create a single home lot. Mr. Toothaker stated he believed it was a very good idea but first the area had to be restored. He said there were approximately six acres that were damaged. Madge agreed stating the area looked very damaged and she had spoken with CEO McDonough about it. CEO McDonough stated yes and noted one DEP official had stated there was an issue and another stated it was being taken care of. Mr. Toothaker stated that DEP had actually rezoned the area after the damage was done, consequently that is why it is more of an issue at this time. He said now it is now in Resource Protection. CEO McDonough agreed.

Mr. Toothaker stated that Mr. Libbey wanted to restore the area correctly and has the resources to accomplish it. He stated he was before the board to see if they had any questions and he believed they would want to do a site inspection after the snow receded so they could walk the area. Mr. Toothaker stated there was lots of erosion and sediment and piles of junk to be removed. Madge B. stated she was glad someone was going to see that the area was repaired.

Madge B. asked if there were DEP permits on file for this lot? Barbara F. stated no, the permits were for the adjacent lot, Map 3, Lot 19. Mr. Toothaker agreed stating he couldn't find anything for this lot. CEO McDonough stated the area had not been rezoned until 2009 so the requirements were not the same as they are today. Mr. Toothaker agreed. CEO McDonough stated that at the time work was being done the person could fill in 4,300 square feet without a DEP permit. Mr. Toothaker stated that there still should have been a permit to cross the stream. CEO McDonough agreed but he has contacted DEP regarding a stream crossing and the person in charge had stated a permit wasn't required, as a result, depending on who was in office at the time this took place would dictate whether or not a permit should have been obtained. Mr. Toothaker agreed with CEO McDonough.

Mr. Toothaker stated that Christine Woodruff was his contact at the DEP and the Project Manager for this application. He stated she had been to the site several times.

Roger A. stated the application was to be able to move more than 150 cubic yards of material. He asked what material would they be moving? Mr. Toothaker stated it was to move existing material in order to clean up the area. Area's needed to be leveled and graded, and loamed and seeded.

Board members reviewed the plans presented. The plans were entitled: Existing Conditions Plan; Medium Intensity Soil Survey; Restoration Plan; Erosion Control Details and Deed Restriction Plan.

Roger A. asked how soon they wanted to get the Planning Board permit? Mr. Toothaker stated the DEP permits would take some time. He said if they could get started by May or June that would be fine. He said he didn't want the project to be pushed to fall because then they couldn't get plants to grow before the ground froze. Roger agreed.

It was concluded that Mr. Toothaker would contact Barbara F. when he felt it would be feasible to do the site inspection. Barbara will notify the abutters when the site inspection is scheduled so if they wanted to meet on site they would be able to do so.

The application is tabled until the site inspection is scheduled.

Nothing further was discussed.

**GROWTH PERMIT(S) –**

- **Map 1, Lot 27B-1 (Ridley Road) – New Home – Growth Permit #01-11**

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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, March 22, 2011**

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, February 8, 2011 were accepted as read.**

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### **Results of Questionnaire from Town Vote / Town Meeting Regarding Support of Regulating Animal Breeding or Care for Non-commercial Uses**

Barbara F. stated she and Executive Secretary Karla Bergeron had counted the ballots received for the three questions posed to voters. The question regarding regulating animal breeding or care had a mixed response. Barbara stated approximately 1/3 of the voters stated they were in favor of some type of regulation. 1/3 were not in favor, and 1/3 had no opinion. There were several people who commented on the question. Some of the comments were that animals and waste should be kept clean; there should be regulation with respect to animal waste and wells; and someone believed there were rules in place at this time.

Barbara F. stated the board had plenty of time to discuss the matter further. She believed because there was not a distinct no or yes there should be further discussion. She thought the Board of Selectmen would be reviewing the results this evening and may have a comment for the Planning Board.

Note: The question posed to the voters was as follows: Would you support regulating “animal breeding and care” for non-commercial uses. Definition – The keeping and raising of animals, including but not limited to fowl, for any non-commercial use which would include the regulation of the location of manure and enclosures with respect to lot lines, nearest dwelling and wells. This does not include household pets (cats and dogs). The results of the questionnaire: Yes = 94; No = 113; No Opinion = 54; Blank = 15

Nothing further was discussed.

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Barbara F. read an email from Karla B. regarding the new Flood Plain Maps. In it Karla asked if the Planning Board was involved in the Risk Map MOU for the flood plains in Shapleigh. In a memo from the State to the Board of Selectmen it shows that Shapleigh is not involved in the draft process. Barbara asked if the Planning Board wanted to be involved? She did not believe based on previous discussions that the board would be as there are no new areas to be mapped in town.

Roger A. discussed the meeting he attended regarding the Flood Plain Ordinance and the Flood Plain Maps. He agreed based on what he learned that there were no new areas to address. He did believe however that once the maps were drafted by the State for Shapleigh, the town would need to hold a public hearing so citizens could be informed as to whether or not they were in a flood plain. If a citizen is in a known flood plain it affects their insurance rates if they do not have flood insurance and will be required to have it in the future.



CEO McDonough and Selectman Perro recently attended a Flood Plain meeting and CEO McDonough stated he did not feel he had the expertise to map out flood plains. He had no issue with letting the State map out the areas that they believed were a flood zone and then hold a public hearing to discuss it.

Roger A. explained about the 14 foot designation in the flood plain and the fact the State was using topo maps to determine the flood plain areas in towns such as Shapleigh. He also spoke of flood insurance and how if someone has it at this time they can continue to purchase it but if the let it lapse or if there is a new area designated and that person doesn't have it at this time there could be a problem obtaining it. Roger talked about the S curve on the Springvale line and how that could be an issue if the designation changes.

The board members and CEO concluded that they would wait to hear from the State to see the draft and at that time would hold a public hearing so townspeople would be aware of the State's flood plain designation. Board members and CEO McDonough did not feel they were qualified to determine if there were any new floodplains in Shapleigh.

Nothing further was discussed.

**Conditional Use Permit – Map 3, Lot 17F – Earth Moving – Jim Libby, Applicant; John Toothaker, Representative**

Barbara F. asked if the Planning Board would like to schedule the site visit for the next meeting on April 12<sup>th</sup> or wait until April 26<sup>th</sup>. She stated she would need to send out a Notice to Abutters so there had to be a decision made this evening for a date as she needed 10 days to notify. After discussion about the current amount of snow on the ground, board members agreed that they would like to wait until the end of April to be sure the snow would be gone. The topic will be brought up again at the meeting on the 26<sup>th</sup>.

Note: Road Commissioner Richard Goodwin pointed out that the applicant had put the wrong Lot number on his application. The applicant stated the Lot to be reviewed was Lot 20C but in fact it is Lot 17F. Barbara F. notified the applicant of the error. She noted to Mr. Toothaker that the incorrect lot number was also used in their application to the DEP. They would need to correct this as soon as possible.

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, April 12, 2011**

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, March 22nd, 2011 were accepted as read.**

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**Amendment to a Conditional Use Permit – Live Entertainment at the Tractor Races – Map 10, Lot 22 (2 Oak Hill Road) – Robert Ferrera, Applicant.**

Mr. Ferrera was present to review his application.

Mr. Ferrera stated he was looking for permission to have a band on site along with the tractor races. Roger A. asked if the live entertainment would be only during, before and after the races on race day? Mr. Ferrera stated, yes. He said they may start with the Star Spangled Banner and one additional song, then they will play at intermission; it will be broken up into segments throughout the day. He stated it wasn't a music concert, just an additional item at the tractor races.

Mr. Ferrera stated he had been speaking with the Sanford Stage Company and it is possible on Halloween he may have some actors come on site in costumes and walk among the people. Diane S. mentioned Destination Haunt in Lebanon, Maine, which was a walk thru with people dressed up, she said it was excellent.

Mr. Ferrera stated that is why he is asking for permission to have live entertainment, not just music. He doesn't want to have to return before the board to amend his permit again in the future.

Mr. Ferrera stated there seemed to be a grey area as to whether or not he also needs a mass gathering permit. He read from Chapter 50, Mass Gatherings, Section 4, Definitions, 'Mass Gathering Area', "Any place maintained, operated or used for a group gathering or assemblage, *except an established permanent stadium, athletic field, arena, auditorium, coliseum, fairground or other similar place of assembly* that has sufficiently existing sanitary facilities to handle the expected gathering." He stated he was an ongoing business. Maggie M. stated her only concern was the part referring to sufficient existing sanitary facilities. She didn't know if portable toilets would be sufficient or if there needed to be a building? Mr. Ferrera stated that in the mass gatherings ordinance it states that porta-potties may be substituted for toilets. Note: Under §50-13. Sanitation, E, it reads in part: Urinals (men's) and Sanistands (women's) or Porta Johns may be substituted for the required number of toilets.

CEO McDonough asked if Mr. Ferrera intended to exceed 250 people? Mr. Ferrera replied, no, his average crowd to date was 125 to 150, with his maximum being 170. He said he did not foresee 250 people but he was still going to add an additional porta-potty and a wash facility and drinking facility in case the crowds are larger than what has been on site in the past. CEO McDonough asked if he would shut the gates at 250? Mr. Ferrera stated not if he has additional porta-potties and wash facilities to make it work. He believed if he had 280 people attend and he had the proper facilities he didn't see why he would have to turn anyone away.

Mr. Ferrera mentioned that the mass gatherings ordinance stated you needed 25 law enforcement officers on site, he didn't think this was equivalent to the other requirements; it seemed excessive for what he was asking to do. He thought that was perhaps something that Acton Fair might require. Board members agreed it seemed excessive.

CEO McDonough believed that if Mr. Ferrera wanted to exceed 250 people he would need to meet the criteria for the mass gathering ordinance which is issued by the Board of Selectmen.

CEO McDonough stated he was going to review the building code to see what it requires for mass gatherings. Mr. Ferrera noted that under §50-13. Sanitation, D, it requires 2 toilets for every 350 people. He would have a minimum of 3 on site.

The board members were wondering where the mass gathering ordinance came from because in fact there were areas that may need to be re-reviewed. Was it a Board of Selectmen issue?

Roger A. didn't believe the Planning Board reviewed the mass gathering ordinance, that was a Board of Selectmen issue. The board members agreed. Roger said he didn't care about what was in the mass gathering ordinance; what was important this evening was reviewing the proposal and the zoning ordinance requirements that pertain to it. He said again it was up to the Board of Selectmen to determine if Mr. Ferrera needed a mass gathering permit.

Roger A. stated that because the band would be playing on race day it would be an amendment to his original Conditional Use Permit for the tractor races. He believed the band was going to be in association with the races. He stated that if the band was going to be playing on a separate day from the races then he would only need a mass gathering permit.

CEO McDonough asked if it would be a condition of his CUP that if he exceeded 250 he would need to go to the Selectmen for a mass gathering permit? Roger A. stated he would not put that condition. He said as long as the board reviewed his current permit and made sure he could continue to meet his current conditions for parking and sanitary provisions that was what the Planning Board could continue to regulate. Roger stated that with his current permit for the race track he is supposed to have 2 portable toilets on site unless it's deemed he needs an additional one, then he needs to bring another in. That is currently part of his permit for the race track.

Madge B. asked CEO McDonough if he had a number for the board with respect to portable toilets required? CEO McDonough stated he would look through the building code book.

Roger A. stated that John Gallant, the person who supplies the portable toilets, has an idea of the number required. He said that Mr. Ferrera would have to contact Mr. Gallant for additional if it was necessary. Mr. Ferrera stated that Mr. Gallant is the one who told him how many would be necessary initially.

Roger A. stated that Mr. Ferrera was before the board because under §105-73.B.1 it states: *A conditional use which existed prior to the effective date of this chapter may not be changed to another conditional use nor substantially expanded or altered except in conformity with all regulations of this chapter pertaining to conditional uses. Substantial expansion shall be defined as:*

- (a) *Floor space increase of 25% or;*
- (b) *New material or processes not previously associated with the existing use.*

Roger stated it was (b) which is why the board is reviewing this amendment to a CUP.

Roger A. stated §105-73.B.2 also applied, “No changes shall be made in any approved conditional use without approval of the change by the Planning Board.”

Roger A. read the review of the ordinance standards from June 9, 2009 for the approval of the Tractor Races. They are as follows:

- 105-20 – Applicability of standards; prohibited uses. *This application is a permitted use within the Zoning Ordinance and will not cause any health and safety concerns when permitted through the Planning Board.*
- 105-21 – Traffic. *In February 2002, during the approval process for the existing Alpaca business, the site distances were approved, being over 500 feet in either direction.*
- 105-22 – Noise. *Based on the location of the race track, the existing vegetation and the fact no residence is within 500 feet of Mr. Ferrera’s property, noise will not be an issue. In addition, the lawn tractors have to have stock exhaust and measured rpm’s that meet the clubs standards, thus reducing the noise level.* Roger A. read the noise standards to Mr. Ferrera should there be an issue in the future.
- 105-23 – Dust, fumes, vapors and gases. *The dust shall be addressed by use of watering down the track and there shall be no excessive fumes produced because the machines are required to have a stock muffler to help with both noise and odor.* Roland L. asked Mr. Ferrera if dust became an issue would he be watering the track? Mr. Ferrera stated yes, he would have a truck on site for that purpose.
- 105-24 – Odors. *The machines shall have a stock muffler.*
- 105-25 – Glare. *There shall be no additional lighting added to the existing buildings or around the race track.* Mr. Ferrera was told if he wanted additional lighting he would have to come back before the board.
- 105-26 – Stormwater runoff. *There are no changes being made to the existing property that will create a problem with stormwater. The area is very flat and the existing vegetation outside of the parking area will remain in place. In addition the area has very sandy / permeable soil.* Board members noted at the site inspection the area was very well drained.
- 105-27 – Erosion control. *There will no stripping of the existing vegetation and the area to be used is a great distance from the lot lines.*
- 105-28 – Setbacks and screening. *There shall be no exposed storage areas associated with this business, no machinery installation, no discarded lawnmowers, or lawn mower parts or salvage of any kind on site.*
- 105-29 - Explosive materials. *There shall no explosive materials stored on site.*
- 105-30 – Water quality. *There is no change to the existing property that would affect water quality. There shall be two portable toilets on site. Oil changes for the mowers shall not be allowed on site, mowers shall be ready to race when brought onto the site, no additional maintenance will be allowed.*
- 105-31 – Preservation of landscape; landscaping of parking and storage areas. *The surrounding landscape, which is trees and shrubs, shall not be disturbed. No additional parking area is going to be created that would require screening. There are no outside storage areas for this application.*
- 105-33 – Refuse disposal. *The waste shall be removed from site by the applicant no later than either Tuesday or Wednesday following the Saturday event. There shall be enough waste barrels provided so no trash is left on the ground.*
- 105-34 – Access control on Routes 109 and 11. *The site distance from the access point onto Rte 11 is well in excess of the site distance requirement.*
- 105-43 – Off-street parking and loading. *There is an existing large area for parking which is currently surrounded by vegetation which shall not be removed.*
- 105-46 – Sanitary Provisions. *There shall be a minimum of two portable toilets on site for each event.* Mr. Ferrera stated the company providing the toilets stated they would monitor the use and would provide additional toilets as needed.
- 105-47 – Signs and billboards. *All signage shall be permitted through the Code Enforcement Office.*
- 105-52 - Water quality protection. *There is nothing to be stored on site to affect water quality.*

Mr. Ferrera noted that he has had no complaints from anyone with respect to the race days for noise or traffic.

Roger A. asked if there were any additional questions for Mr. Ferrera at this time?

Roland L. asked if Mr. Ferrera was going to be building a band stand to listen to the music? Mr. Ferrera stated no, basically the band would be housed under a canopy in case of rain.

Diane S. asked if the entertainment would basically be bands? Mr. Ferrera stated the band he would be having for Memorial Day weekend was a country band. He felt this went along with racing. Diane asked if he would be having any theatrical productions such as a play? Mr. Ferrera stated that outside of actors on Halloween he had nothing planned. He stated the board could see the name of the band on his website for Redneck Raceway. He stated they were a very popular band from Massachusetts.

Roger A. asked if there would be a band at every event? Mr. Ferrera stated no, this was a special event on Memorial Day weekend, it was the only points race this year. He said there may be one more points race in the fall but at this time he had no other dates for the band.

Madge B. thought the only condition that needed to be changed may be the porta-potties. She said whatever the building code required should be what the board requires. CEO McDonough stated the building code is based on the number of people attending. He stated therefore, someone needed to know how many people were going to attend. The building code requires 1 portable toilet for every 75 males and 1 portable toilet for every 40 females. Maggie M. stated for the average gathering at this time he had enough portable toilets. CEO McDonough stated that with 250 people it seemed four would be required. CEO McDonough stated the code also requires a sink to wash your hands. He asked if there were any sinks associated with the portable toilets? Mr. Ferrera stated they only had hand sanitizers but he was going to provide an outside sink. CEO McDonough said one sink was required for every 150 females and one for every 200 males.

CEO McDonough said that in light of the building code he thought that the Planning Board could address the portable toilet issue by just saying one for every 75 males and one for every 40 females. Madge B. agreed that was probably the best the board could do.

Diane S. asked Mr. Ferrera if there would be tickets sold to this event so he would have an idea of how many are attending? Mr. Ferrera stated no, you buy the tickets at the gate.

Roger A. stated that if Mr. Ferrera felt he needed additional portable toilets he could call John Gallant and get an additional toilet within an hour. Mr. Ferrera stated he didn't want to order an excessive amount of toilets and have only 150 people show up. Madge B. agreed.

Madge B. stated there was more than adequate parking. Roger A. agreed. CEO McDonough asked if there was a parking plan? Mr. Ferrera stated yes, he provided it with the application for the tractor races. Barbara F. made a copy of it for this application.

Roger A. asked when the first meet was? Mr. Ferrera stated May 15<sup>th</sup> but that was usually a low turnout. The band would be Memorial Day weekend.

Roger A. asked if he was asking for an amendment for a band for just one time? Mr. Ferrera stated no, he wanted to be able to have a band in the future without having to go before the board again.

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

**Roger A. stated that because this was a business there would be a public hearing on Tuesday, April 26<sup>th</sup> at 7:00 p.m. and a notice to abutters.**

CEO McDonough told Mr. Ferrera he believed Mr. Ferrera would need to have a mass gathering permit if he had over 250 people so he might want to address that with the Selectmen to get their opinion. CEO McDonough stated that the BOS were meeting this evening so Mr. Ferrera might want to obtain their views this evening before proceeding.

Roger A. asked CEO McDonough why Mr. Ferrera needed a mass gathering permit in addition to the CUP where he is already approved for the tractor races on site? CEO McDonough stated the amount of people was not regulated by the Planning Board. Roger stated true, but the activity is regulated. CEO McDonough didn't see where the mass gathering permit rule wouldn't apply because in the ordinance it says any time you have a gathering of 250 people you need a mass gathering permit from the Board of Selectmen. Roger stated this was not a one time event. CEO McDonough stated the mass gathering permit is not specific to a one time event, it could be several events. Madge B. stated she believed Mr. Ferrera should go to the Board of Selectmen and if they believe it doesn't apply then it doesn't apply but the Planning Board cannot make that decision.

Maggie M. noted that the mass gathering permit can apply for more than one event during a season. Mr. Ferrera could apply for an entire season, not just one event, which would save him some money and make it easier for him.

Roger A. went back to the definition of Mass Gathering Area and the exception to the permit requirement is *an established permanent stadium, athletic field, arena, auditorium, coliseum, fairground or other similar permanent place of assembly that has sufficiently existing sanitary facilities*. He said this isn't a fairground but it is a permitted business that is similar to a fairground. CEO McDonough stated that if the Planning Board wants to make the decision that a mass gathering permit isn't required because of this definition then that is fine. Roger did not feel this was a mass gathering but instead it's a business. Madge B. stated that she believed the Board of Selectmen would need to make that decision.

Diane S. stated that in the future Mr. Ferrera might want to sell tickets prior to the event so he would have an idea of how many are coming. Mr. Ferrera didn't know at this time how he would be able to do that, what venue he would use. He will consider it for the future.

Madge B. noted that the Conditional Use Permit doesn't address police security, which can be a big issue with a large crowd. Also having someone direct traffic onto the road would be a problem with a large crowd. Roger A., agreed stating even with the tractor races traffic could be an issue.

CEO McDonough suggested again that Mr. Ferrera attend the Board of Selectmen's meeting, which may still be going on at this time, and ask their opinion. Mr. Ferrera stated he would do just that.

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

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

Board members received a copy of the current Shoreland Zoning Newsletter and the Town of Shapleigh Questionnaire given out during the March elections and Town Meeting.

It was noted that there was no definitive answer to the Planning Boards question regarding the regulation of animal breeding and care for non-commercial uses. Maggie M. stated that by having a checkbox for 'No Opinion' it made the results much more difficult to determine. She didn't feel that should have been an option. The other board members agreed. There was no further discussion.

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Barbara F. stated she had not heard back from Mike Morse of the DEP regarding the Zoning Changes adopted at the March Town Meeting. She stated that if she didn't hear by the end of the month she would email him asking if he had reviewed them.

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Barbara F. stated she scheduled the site inspection for the CUP for Earth Moving, Map 3, Lot 17F, for Tuesday, April 26<sup>th</sup>. She said she had to make the decision prior to the meeting because the applicant, Mr. Toothaker, stated he had to give a 30 day notice to the DEP prior to the final review as well as tell the DEP of the on site inspection. She asked members what time they wanted to meet? It was agreed everyone would meet at the town hall at 6:00 p.m., except for Roger A. who would meet members on site. Barbara stated she would email Mr. Toothaker with this information as well as mail him a copy of the next agenda.

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Madge B. wanted to remind board members of the Legislatures proposed changes to Shoreland Zoning, LD219, proposed by the Governor's office. LD219 would reduce the protective shoreland zone from 250 feet to 75 feet. She stated that whether the board members had a view pro or con, she would appreciate them contacting their Legislators.

Madge B. stated that this will be the State's mandate if it passes. She said that Shapleigh can keep its shoreland zoning at the 250 feet. She said she was not concerned with the citizens of Shapleigh, she believed the townspeople understand the importance of the 250 foot buffer to protect the lakes and rivers. She asked what if Acton decides that 75 feet is fine? This would put Mousam Lake and Square Pond at risk. CEO McDonough stated that in New Hampshire he has seen a setback difference between two towns; it is not uncommon and it poses a large problem with pollution. Madge again stated she believed the citizens in Shapleigh understand that surface water quality is a huge concern.

CEO McDonough asked if she was talking about the building setback? Madge B. stated no, its everything. The entire shoreland zone would be reduced to 75 feet. Roger A. stated everything beyond the 75 feet would be general purpose. Madge wasn't sure exactly who is behind this. She said she has been told it is political. She said for 35 years she and others have been trying to push shoreland zoning to protect the lakes, ponds, rivers and streams. So she said if anyone has an opinion please make a phone call.

CEO McDonough stated this is a huge concern because if Acton does go along with the State the water quality is going to be compromised and it wouldn't matter what Shapleigh retained because if the Acton side was polluting the lake our shoreland district would do no good. Diane S. stated another big concern was many people could add onto their houses if the setback was reduced and this adds to the footprint around the lake.

Madge B. noted that the Dept. of Environmental Protection testified against LD219.

Madge B. also noted that Senator Ronald Collins has put in legislation to get rid of shoreland zoning all together. Madge stated that Senator Collins is from Wells and she didn't think people along the coast

understood the importance of shoreland zoning for the lakes. Diane S. stated that it was highly likely it comes down to construction as being the big motivating factor behind all this. Madge agreed. Maggie M. agreed stating they want to be able to build bigger houses closer to the water. Nothing further was discussed.

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Roland L. asked if anyone had noticed the deforestation that took place on the Back Road before the power line? Madge B. thought it was the Stanley property. Roland was concerned with the wetlands below it. Roland wants to know how they can take out that many trees? Roger A. stated that is under the Dept. of Forestry. CEO McDonough stated that the stream on the opposite side of the road had gotten silted up from timber harvesting and he contacted DEP on it. In that instance, DEP stated they were fine. It was concluded this is not a Planning Board issue.

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Diane S. wanted to bring up a concern she had with Bill Turgeon's boat business on Route 11. She thought he had more boats on the property than what he was allowed to have. She stated that he had permission to build a boat storage building, which was where he was supposed to be storing the boats. She thought there might be 30 boats behind the shop. She asked that CEO McDonough look into what he was approved for. Barbara F. will pull the file and see exactly what Mr. Turgeon is approved for and give the information to CEO McDonough. Mr. Turgeon may have to come back before the board to change his Conditional Use Permit.

*Note: In May of 2006, Mr. Turgeon's Conditional Use Permit allows him to have up to 30 boats outside of the Marine Service Building. He is not allowed to park any of them adjacent to the boat storage building approved in 2008, for safety issues.*

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 8:30 p.m.**

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



# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, April 26, 2011**

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

Note: Diane Srebnick and Maggie Moody were unable to attend.

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### **Public Hearing - Amendment to a Conditional Use Permit – Live Entertainment at the Tractor Races – Map 10, Lot 22 (2 Oakhill Road) – Robert Ferrera, Applicant**

Mr. Ferrera was not in attendance for the public hearing at 7:00 p.m. There were two audience members and they asked what the reason for the public hearing was. They stated they enjoyed the tractor races and were hoping no one was trying to stop them.

Roger A. stated the public hearing was posted for an amendment to the existing Conditional Use Permit for the tractor races. He said Mr. Ferrera wanted to be able to have live entertainment along with the tractor races. He said that at this time Mr. Ferrera was proposing having a band on site the day of the tractor races for Memorial Day and possibly on other tractor race dates as well. He noted there was not going to be concerts on site on days other than the tractor race days.

Roger A. stated that the board had no issue with Mr. Ferrera's permit for the tractor races.

As there were no other townspeople in attendance and Mr. Ferrera was not present, nothing further was discussed.

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

**The minutes from Tuesday, April 12, 2011 were accepted as read.**

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### **Amendment to a Conditional Use Permit – Live Entertainment at the Tractor Races – Map 10, Lot 22 (2 Oak Hill Road) – Robert Ferrera, Applicant.**

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

Barbara F. pointed out to Mr. Ferrera that a public hearing for his application was held at 7:00 p.m. He apologized for being late. Roger A. told Mr. Ferrera that there were two people present and that they were in favor of the tractor races and had no issue with live entertainment.

Roger A. began by stating there wasn't actually a public hearing held because the two people in attendance asked why it was being held and when he told them, they were satisfied and they left. Also Mr. Ferrera was not present.

Roger A. asked Mr. Ferrera if he spoke with the Selectmen regarding whether or not he also needed a mass gathering permit? Mr. Ferrera stated he did speak with them and he believed they were consulting with the town attorney's. He said he didn't have an answer at this time.

Roger A. stated the Planning Board didn't have the authority to look at the mass gathering issue, the Planning Board only looked at the Zoning Ordinance. Madge B. stated the Board had reviewed the standards applicable to this permit at the previous meeting. Roger agreed.

Roger A. asked if there were any additional questions or comments regarding the amendment to this Conditional Use? There were none.

**Madge B. moved for approval of the amendment to a Conditional Use Permit to have live entertainment on site during the tractor races, based on the prior review of the standards applicable in the ordinance at the meeting on April 12, 2011.**

Roger A. asked if there were any additional conditions or changes to the amendment?

Madge B. did not believe there were any. Barbara F. asked if the Board wanted to address the portable toilet issue any differently from the original approval which stated "There shall be a minimum of two portable toilets on site at all times. If this is deemed unsatisfactory then an additional toilet must be added." Barbara asked, "Should the board go by the number of people in attendance or refer back to the Building Code?" Madge said they probably should address having a sink as well.

Board members reviewed the minutes from the previous meeting. Madge B. stated that she was not concerned that Mr. Ferrera wouldn't have enough toilets as this would pose a problem for him and his property. Roland L. noted the minutes of the last meeting where it was stated that there was supposed to be a sink on site. Mr. Ferrera thought that only applied if a mass gathering permit was required? CEO McDonough stated no, this had to do with the Building Code and it was based on the number of people attending. He said a certain number of toilets and sinks are required for so many people. (Note: The Building Code requires 1 portable toilet for every 75 males and 1 portable toilet for every 40 females; and one sink for every 150 females and one sink for every 200 males.)

Mr. Ferrera wanted to know why the ball field is not required to do the same thing? CEO McDonough did not know.

Madge B. stated a condition of approval should be that Mr. Ferrera complies with the Building Code. The other Board members agreed.

**Roland L. 2<sup>nd</sup> the motion for approval of the amendment to the Conditional Use Permit with the following condition:**

- 1) Portable toilets and hand washing sinks shall be provided per the requirements mandated in the 2009 International Building Code.**

**All Board members were in favor. By a vote of 3 – 0, the motion to approve the Conditional Use Permit to have live entertainment on site during the tractor races was granted.**

Nothing further was discussed.

*The Board concluded that if a mass gathering permit is required that will be issued by the Board of Selectmen.*

Note: Attorney Bradley Morin, in a letter to Executive Secretary Karla Bergeron, dated May 2, 2011, stated that if the applicant exceeds 250 people a mass gathering permit shall be required.

**Conditional Use Permit – Earth Moving to Restore Area – Map 3, Lot 17F (Simon Ricker Road) – John Toothaker, Applicant; Jim Libbey, Owner**

Mr. Toothaker was present to review the application. Note: The board members as well as Mr. Toothaker did a site inspection prior to this evenings meeting. Road Commissioner Richard Goodwin was also present at the review of the application and was at the site inspection.

Board members, Mr. Toothaker and RC Goodwin reviewed the town map depicting Lot 17F as well as 19A, both properties owned by Mr. Libbey. Board members were trying to figure out if the area to be restored and debris to be removed was on 17F alone or also on 19A. They were curious exactly what Mr. Libbey was going to be doing and where.

RC Goodwin showed the board where they walked during the site inspection. Mr. Toothaker pointed out on the map where Mr. Libbey would be doing the majority of the work on site.

CEO McDonough asked Mr. Toothaker if any work was going to be done on land not owned by Mr. Libbey? Mr. Toothaker did not believe so, the area was surveyed and the work would be conducted within the area the surveyors showed to be his property.

RC Goodwin asked if the Mr. Libbey was going to be making just one house lot of the entire area? Mr. Toothaker stated that was his intent. Mr. Toothaker stated that if anything different is going to be done he will have to return to the Planning Board as well as notify the DEP regarding stormwater issues. Mr. Toothaker stated that was a condition imposed by the DEP at this time because Mr. Libbey didn't do a full stormwater plan that he can only use the property for a single house lot. Mr. Toothaker stated that currently Mr. Libbey lives across from Lavalley Lumber and he wants to move from that location. Madge B. stated that it was a nice piece of property at one time.

CEO McDonough asked if any work was going to be done within 10 feet of the property line? Mr. Toothaker stated the road was within 10 feet of the property line. He said the bankings within 10 feet are not going to be touched. CEO McDonough stated there was a discrepancy at one time as to whether or not any of the work that was done previously had crossed the property line. Mr. Toothaker didn't know for certain.

Mr. Toothaker stated he would recommend, based on CEO McDonough's concerns about the proximity to the property lines of work to be done, that Mr. Libbey get the property lines marked up better by the surveyor. Also the areas of construction could be marked as well.

Roger A. asked if any material would be removed from the site? Mr. Toothaker stated the intention was to not remove anything from the site. Mr. Toothaker stated that could be a condition of approval. Roger stated in order to get a 4 to 1 slope, a lot of material would need to be moved. Mr. Toothaker stated that the junk on site would need to be removed and brought to the proper facility, which should also be a condition of approval. Board members noticed shingles, tires, metal, etc. on site.

Roland L. asked what the plan was for the stumps that are on site? Mr. Toothaker stated there was a plan filed with the DEP and the DEP states it depends on the size of the pile as to whether or not they get burned. Roland had a concern with the proximity of the stumps to the trees. Mr. Toothaker didn't know exactly what the DEP was going to allow.

Roland L. stated that it was noted on the site visit that there was some natural revegetation taking place. Roland wanted to know if there is a formal replanting plan on file. Mr. Toothaker stated there was a restoration plan provided along with the CUP application. There were new trees included in this plan.

Mr. Toothaker stated there was also a plan provided to the DEP and they reviewed it and stated there were some areas that they did not want disturbed due to the new vegetation that was already beginning to come in. They wanted it as natural as possible. He stated there would be some grass and perennials that were going to be placed on site. DEP will come back after Mr. Libbey says its planted to make certain it was in fact planted and that it is growing. It will be monitored initially.

Roger A. asked if there were additional amendments with respect to this property to be coming from the DEP? Mr. Toothaker replied, yes, Christine Woodruff from the DEP was waiting for a call back from him stating there was a public hearing held and a notice to abutters was sent out, and a site inspection was done by the town. He said it was a condition of their approval. He said she was very satisfied that the town was involved in this process.

Mr. Toothaker believed that the DEP would be sending CEO McDonough a conditional letter of approval for this project once he tells them that the site inspection, public hearing and notice to abutters was done. He stated that when he receives the conditional approval, if the CEO isn't copied on the document he would make sure CEO McDonough receives a copy. Roger A. stated that often the Planning Board wants to see a copy of this letter prior to Planning Board approval. Mr. Toothaker agrees the board needs to see the letter and make sure they are comfortable with it and add anything additional to it if they deem it necessary.

Madge B. stated that she agreed the board should see this letter and the area should be marked to make sure the work isn't being done within 10 feet of the neighbor's property.

Roger A. stated he believed Best Management Practices should be used in several places. He said the board would also need to know what the number of stumps they were allowed to burn would be and anything over that would need to be removed from site. He said they would probably be taken to Jeff Simpson's or have him bring his grinder to the site. Mr. Toothaker stated this should also be a condition of approval.

Roger A. stated that as soon as Mr. Libbey has conditional approval from the DEP the board could probably act on this application. Mr. Toothaker thought this would be by the end of May. Roger told him to call Barbara F. when he is ready to come back before the board.

Mr. Toothaker wants this project to move forward to be able to get it done and have the replanting during the growing season.

Roger A. asked RC Goodwin if he had any concerns with this project? RC Goodwin's concerns were for the road and the amount of trucks that would be traveling over it. Mr. Toothaker stated that should the project become bigger than what is being presented here then Mr. Libbey has to go back to the DEP for a full stormwater report which will include how many trucks and how it will affect the road. Roland L. noted that the current plan shows them bringing in 4" of loam and that could create quite abit of truck traffic due to the amount needed. Mr. Toothaker stated that was why they are suggesting bark mulch in places because Mr. Libbey gets it from Lavalley Lumber for free. Roland noted that that still would require a lot of trucks to haul it to the site.

Mr. Toothaker asked how the board would want the road situation handled? RC Goodwin stated that if there is a time line as to when this will be done, such as a few months that isn't a problem. His concern would be if it went on for a few years. He didn't want to see trucks on this road during mud season. CEO McDonough asked what the time line was? Mr. Toothaker stated he would like to see work begin in June and be done by November. He said plants wouldn't grow after that. Roger A. stated the board could put a

stop to traffic during certain times of the year or limit the amount of truck travel. He said during mud season you don't want 20 trucks traveling over the road. Roger said if the roads are torn up the board could ask Mr. Libbey to help improve the road that was destroyed.

Mr. Toothaker was also concerned with a blind spot coming off the property. There might need to be a temporary sign put up noting construction vehicles coming onto the road.

RC Goodwin stated that as long as the property doesn't become a gravel pit he won't be concerned and if there is an end date to the project. Mr. Toothaker agreed, he didn't want this to continue on for two or three years. He added that you can't grow anything in December so the end date should probably be November that it is completed.

Roger A. stated that a time schedule would be helpful. Mr. Toothaker believed there was a construction schedule that he could provide for the board.

*CEO McDonough stated that he thought the Board would like to see the letter of approval from the DEP, a 10 foot buffer strip noted on the plan showing no construction was going to take place within 10 feet of the property line and a time line. Roger A. agreed.*

Mr. Toothaker stated if the board had any further questions they could contact him prior to the next review.

Nothing further was discussed.

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**GROWTH PERMIT(S) – Map 4, Lot 45A (Back Road), New Home - GP #02-11**

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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, May 10, 2011**

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, April 26, 2011 were accepted as read.**

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### **Letter from Bourque & Clegg LLC regarding Mass Gathering Permits**

Roger A. noted board members received a copy of a letter from Attorney Bradley Morin regarding a question posed by Karla Bergeron, Executive Secretary to the Board of Selectmen, asking whether or not a mass gathering permit would be required in addition to the amendment to a Conditional Use Permit to have live entertainment at the approved tractor races. The letter states that if the owner of the business exceeds 250 people then a mass gathering permit would be required. Board members agreed that this permit is not an issue of the Planning Board but the Board of Selectmen so there is nothing further required by this board.

It was noted it was clear Attorney Morin did not realize the Conditional Use Permit was a separate issue from the mass gathering permit as each permit is issued by different boards.

### **Approval of Ordinance Changes to Shoreland Zoning from the DEP**

Board members received a copy of the letter from Mike Morse of the DEP which states that the ordinance changes approved at the March 2011 Town Meeting that affect shoreland zoning had been approved by his department.

### **Selectmen's Meeting for all Dept. Chairs**

Roger A. stated he went to the Department Chairman meeting and the Board of Selectmen asked what the Planning Board was doing at this time. Roger told them it was quiet due to the economy.

Roger A. said he did discuss the application for a sand/salt shed and told the BOS that as soon as they get DEP approval they need to notify Barbara to get it back before the Planning Board. It has been a year since this project was before the Planning Board. Roger reminded the BOS they need a full set of plans for the PB to review. Road Commissioner Goodwin told Roger there had been a holdup with the engineering firm. Roger was also told all the town needed from the DEP was a Permit by Rule.

Roger A. stated he was asked if the Planning Board would hold a special meeting as soon as the Town had all the necessary paperwork to present to them. Roger told them that he would prefer not to do that; he noted that in all the years he had been on the board the PB has only had several special meetings. Also, if the meeting was held specifically for the BOS it would look like the Town was trying to hide something not holding the review during a regularly scheduled meeting. CEO McDonough agreed and stated there was only two weeks between meetings so it didn't make sense to have to schedule one in between regular meetings. Board members noted that it wasn't the Planning Board that has held up this project. All the Board members agreed a special meeting was not warranted.

*Note: Barbara F. was notified the BOS wanted the sand/salt shed placed on the agenda for May 24<sup>th</sup>.*

Roger A. asked the Board of Selectmen where the Library addition was at. He noted that it had been a year since they got their permit approval from the board. CEO McDonough stated that today someone from the Library board had come in to renew their building permit which would be good for another year.

Roger A. said that he was asked by the Board of Selectmen if the Planning Board would consider leaving Conditional Use Permits open for a longer period of time. Roger told them that the Planning Board had just tried to close any loose ends which included limits for open conditions of an approved Conditional Use Permit. He did not believe you should leave something open ended for years; zoning rules change and what is approved today may not be allowed five years from now. This has to be taken into consideration. All board members agreed an approved CUP should have an expiration date along with conditions of approval. Roger said he was getting to the point that he would state to applicants that unless they are ready to do their project they should not be before the Planning Board. The entire board agreed with Rogers's assessment.

Roger A. stated he also spoke about the Growth Permit Ordinance. He told the BOS due to the economy it was unlikely the Planning Board would make any changes. The Planning Board also does not want to do away with the ordinance even though at this time there are not many homes being built. He said the BOS agreed, in the future the Town would once again need to make sure growth was at a pace the Town budget could handle with respect to services provided along with the school system.

Nothing further was discussed.

***ELECTION OF OFFICERS***

Roland Legere nominated Roger Allaire as Chairman of the Planning Board.

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

Roger Allaire accepted the nomination.

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

Diane Srebnick nominated Madge Baker as Vice Chairman of the Planning Board.

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

Madge Baker accepted the nomination.

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

Roger Allaire nominated Barbara Felong as Secretary of the Planning Board.

Diane Srebnick 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) – There are Growth Permits Available.**

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

Respectively submitted,

Barbara Felong,

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

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, May 24, 2011**

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, May 10, 2011 were accepted as read.**

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### **Conditional Use Permit – Sand/Salt Shed - Map 7, Lot 5 (Shapleigh Corner Road) - Town of Shapleigh**

Mr. Pete Tuell, PE, of CES Inc. in Brewer ME, the engineering firm hired to design the project, was present. Also, Road Commissioner Richard Goodwin and Road Commissioner John Burnell were present representing the Town of Shapleigh.

Mr. Tuell began by stating he was taking over the project for Mr. James Lacadie, PE, that had retired from the company. Mr. Tuell stated the company made changes to the original plan based on the Zoning Ordinance requirements discussed during the previous review, as well as the changes to the Ordinance with respect to building height.

Mr. Tuell stated they were able to get a Stormwater Permit by Rule by reducing the impervious surface area and the fact that all the stormwater will be staying on site.

Mr. Tuell noted that on the new plans are the erosion control measures and a table which depicts the Ordinance requirements and how the plan meets or exceeds those requirements. There is also a hedge row added between the building and Route 11. He stated that there was an adjustment to the access road, reducing the width in order to meet the State's stormwater provision in a Permit by Rule. He said the permit was sent to the State and he believed Karla had a copy of the approval. Barbara F. stated this was correct; CEO McDonough gave her and Karla a copy of the approval earlier in the day. The Permit by Rule Application has an approval date of 5/16/11.

Mr. Tuell stated the new plan does not deviate much from the original plan except the interior access roads are reduced in size, the hedge row was added and the stormwater permit issues have been resolved.

Roger A. asked about the plunge pool, which keeps all the stormwater on site. Roger asked if the State was aware these pools are set over an aquifer? Mr. Tuell stated, yes. He said the sand / salt shed actually is what protects the aquifer. The surface runoff provisions are for drainage issues of stormwater and they have been approved.

Roland L. noticed that on the plan there is a notation in the Legend for a well but he could not find one on site. Mr. Tuell believed that was part of the generic symbols for a plan, he did not believe there was an actual well on site.

Roland L. stated he wondered if there would be a well on site so that the water could be tested periodically for possible contamination. Mr. Tuell stated no, it would have been an issue if they needed more than a Permit by Rule, but by reducing the size of the impervious surface a monitoring well was not required.



Roland asked Mr. Tuell if he was confident that over time there wouldn't be any ground water contamination? Roland said he was concerned because he drank from the aquifer. Mr. Tuell stated there was more of an issue in the area with failing septic systems or road run-off.

Roger A. asked if the interior of the building was paved? Mr. Tuell stated, yes. He added that there would be concrete walls with laminated wood on top of the walls and a metal roof. He noted there would also be a pure salt storage building adjacent which would also have a paved floor.

Roland L. asked the Road Commissioners if the tax payers would be allowed to access the sand for their own purposes. Roland was noticing there was a gate. RC Goodwin stated there would be access for tax payers but they have not agreed on the location. RC Goodwin stated they wanted to be able to lock the facility.

Roland L. asked about ATV traffic. RC Goodwin stated the area would be fenced to keep ATV and snowmobile traffic out.

Roland L. asked about the plunge pools, were they a catch basin? Mr. Tuell stated no, they are a collection area with stone to slow the velocity of the water down. He said, they fill up and the water seeps slowly into the ground. Roland asked if it was used to filter surface runoff? Mr. Tuell stated yes, he pointed out the flow of water on the property as depicted on the plans provided.

Madge B. asked where the runoff from the roof flows? Mr. Tuell stated that it sheets across the paved area and flows into the catch basin. He noted the direction of the water flow on the plan. He said the area itself for the facility is in a bowl so all the water is directed to the lowest point and cannot leave the site.

Diane S. asked about the structure that would house the sand/salt for residents. RC Goodwin stated it would not be a large structure and would consist of a roof only. Diane asked again what the possible location of it would be. Diane thought it should be on the final plan. RC Goodwin agreed but again said the location has not been decided. RC Goodwin stated it had to be easy access for residents but also a good area to be able to replenish it often.

Roland L. asked if there was going to be much more excavation at the site than what they are seeing now? Mr. Tuell stated there would be some excavation for the foundation for the building. There will also be some movement of material on site to do the grading but there will be no mass excavation.

Roger A. asked if there would be any storage of fuel on site? RC Goodwin stated, no, there is no reason to store fuel on site. There is a location nearby for fuel. (RC Goodwin was speaking of Boonies which is within site of the proposed facility.)

Roger A. asked about lighting on the outside of the building? Mr. Tuell stated yes, there would be a light on the outside of the building over the doors, front and rear. Roger asked if there was a door on each end? Mr. Tuell stated, yes.

Roger A. asked about the drain / man hole, where does the water from there go? Mr. Tuell stated, to the catch basin / plunge pool. He showed Roger how the stormwater would flow on the plan.

Madge B. asked if the width of the entrance had been changed from the original plan? Madge remembered at the last review that the board was told that the entrance was too narrow for the trucks bringing in the salt. RC Goodwin stated yes, and that it needed to be widened for the plow trucks.

Madge B. asked how many loads of salt would be brought to the site during the course of the year? RC Goodwin stated they normally use 300 ton of salt and each truck holds 30 ton. Madge asked if this happened over time? RC Goodwin stated yes, over the course of the winter. Initially there is a stockpile to prepare for winter to mix with sand then more is brought in as needed.

Roland L. asked if there was a timetable for completion of the project? Will it be ready for this winters use? RC Goodwin stated that was the plan, to be able to use it this winter.

CEO McDonough asked how big the building for the public access area would be? He noted that anything over 120 square feet would need Planning Board approval. RC Goodwin did not believe it would be very big. He said the sand would have to be replenished every storm to keep it useable. Roger A. noted that if a front end loader was being used to refill the sand / salt then the size of the building would have to be able to accommodate the loader as well as the sand. RC Goodwin stated it was not going to be a building with walls, only a roof to keep the rain and snow off the sand. He said again they have not been able to agree upon what would work. Roger said he agreed with the CEO that if it is greater than 120 square feet it would have to be approved by the Planning Board.

Roger A. stated his biggest concern is that the aquifer is not disturbed and it appears it has been addressed. RC Goodwin stated it was the same aquifer the town was over now. Roger stated he understood that but the board had to make sure it would be protected. RC Goodwin stated the new facility will be under DEP guidelines and the Town needs to put the sand / salt in the new building to protect the aquifer. The Town had to get permission from the DEP in order to be able to use this site and the DEP is aware of the aquifer. He noted that the DEP has approved the plan and DEP employees have actually been on the site.

Board members agreed that the entire project is a plus for the Town and will help to protect the aquifer.

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

**A Public Hearing will be scheduled for Tuesday, June 14<sup>th</sup> at 7:00 p.m. There will also be a site inspection at approximately 5:30 p.m. and a notice sent out to abutters.**

Nothing further was discussed.

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**Conditional Use Permit – Dock 46+ Feet Long into Lower Mousam Lake – Map 15, Lot 7A (114 32<sup>nd</sup> Street) – Clifford & Monique Libby, Applicants**

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

Mr. Libby stated he was before the board to get permission to put in a 48 foot boat dock. He stated on his application he believes he put 46 feet because 2 feet were on shore so he was not sure how he should address the length. He stated he could reduce the dock by 2 feet if the board felt it needed to be.

Mr. Libby stated that when the water is low in August, the area in front of his home gets very shallow so the additional length is needed to be able to use it to access his boat, otherwise he has to put the boat out on a mooring.

Roger A. asked if the length would interfere with any other neighbors with respect to ingress or egress from their property? Mr. Libby did not believe so. He said the dock goes straight out from his property. He

explained that a neighbor of his was making issues for him with respect to boundaries in the water, placing his dock in such a way that Mr. Libby could not use one side of his existing dock. Mr. Libby stated that the neighbor angled his dock to create an issue. Mr. Libby said it also created a hazard and he worried about his grandchildren because of the perilous way the neighbor put in his makeshift dock.

Mr. Libby stated he would defer to the Planning Board's idea with where it would be best placed if his current location did not meet with Planning Board approval.

Diane S. asked how wide the dock was? Mr. Libby stated it was approximately 3 feet wide. Mr. Libby stated one section of the dock is wider but he could remove it if it was a problem.

Roland L. asked if the 48 foot length was the whole dock? Mr. Libby stated that was the entire length.

Diane S. asked if it would extend more than 250 feet into the lake? Mr. Libby stated, no.

Mr. Libby stated that he could make his sketch more accurate if need be. He said he took compass readings prior to the meeting so he could add those readings to the sketch if the board wanted him to.

CEO McDonough asked if he was in a cove? Mr. Libby thought he might be. The board and Mr. Libby looked at the town map and concluded he was not in a cove but was in Lower Mousam Lake with over 400 feet between his shoreline and the opposite shoreline. (The width of the lake at this location is approximately 500 feet at the closest points.)

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

**A site visit was scheduled for approximately 6:15 p.m. on June 14<sup>th</sup> and a notice to abutters will be mailed as well.**

Nothing further was discussed.

**Conditional Use Permit – In-home Day Care for up to 8 Children – Map 1, Lot 41A (344 Simon Ricker Road) – Ashley Bailey, Applicant**

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

Ms. Bailey stated she wanted to run a day care out of her home.

Roger A. asked if the Fire Marshall had been out to look at her home yet? Ms. Bailey stated, no. She said she was told that she needed Town approval first. Roger asked if she had submitted an application for a day care yet? Ms. Bailey stated no, again she was told she needed Town approval first so she did not want to pay for an application until she knew she would be allowed to do it. Barbara F. asked if she was talking about the license for a day care? Ms. Bailey stated, yes.

Roger A. asked what the ages of the children would be? Ms. Bailey stated it would depend on what the Fire Marshall stated would be allowed. Ms. Bailey stated she wanted 8 children but she may be limited due to the size of the home she is living in. Ms. Bailey stated that she also had her child at home and she cared for a 3 year old and another child after school.

Roger A. stated it was important for her to know that whatever the Planning Board approved, regardless of what the Fire Marshall approved would be the deciding factor. If the Planning Board only allows 6 children and the Fire Marshall says 10, she would still only be allowed 6 children, so it is important she asks for what

she believes she will want. Also the board needs to know the ages. Roger said the Fire Marshall may not allow as many as the Planning Board, so if that is the case she would be limited to that number of children. He said whoever is more strict will be the deciding factor. She said she understood. Roger also said that if she wanted to care for infants she may need another adult on site. Ms. Bailey stated she was not planning on caring for infants initially. She said she would be caring for toddler or pre-school and perhaps some after school care.

Madge B. asked what the hours of operation would be? Ms. Bailey stated 6:30 a.m. to 5:30 p.m. to begin with. Roger A. stated she needed to be certain of the hours because whatever the board approved would be all she could be open without additional approval.

Roger A. asked if there would be a sign? Ms. Bailey stated she didn't know. She did not want to upset the neighbors.

Roger A. asked if the hours of operation would be five days a week? Ms. Bailey stated, yes. Roger asked if she would be caring for children during school breaks? She said, yes.

Roger A. asked if there was a play area and if so was it fenced in? Ms. Bailey stated the yard was not fenced in. She also stated there was a creek behind her property in the woods, so she didn't know if the board would require a fence. She pointed out on the town map the general location of the creek and board members did not believe it would be an issue but would know more after the site visit.

Madge B. asked what the size of the lot was? Ms. Bailey stated she was not sure. Board members looked at the town map and it showed the lot to be 2 acres in size. Madge noted that she asked because it had to be a conforming lot and it appeared it was.

CEO McDonough asked if a fence was required? Madge B. read from §105-40.1, 'Child day care.', 'D' "Outside play areas shall be buffered from adjoining uses, including neighboring properties, and the parking area(s), by appropriate fencing or plantings." She said based on this a fence was not a requirement for the play area. She said that if on the site visit the board feels it is necessary for safety they can require it. Roger A. agreed if there was a traffic hazard or other hazard the board can require it and has in certain instances in the past.

Madge B. asked how often the State reviews the day care? Ms. Bailey stated the first license approval is good for only a year and then they come out to evaluate again. She said then they come out every 2 years unless there is a complaint.

Roland L. asked if there was an area on site to turn around or do people have to back out of the driveway? Ms. Bailey stated, back out. Madge B. stated the board would have to see the area before they would know if it was a concern. It was noted that it was posted as 15 mph in this area so it shouldn't be an issue.

**A site inspection was scheduled for around 6:30 p.m. on June 14<sup>th</sup> and a notice to abutters will be mailed. Also a Public Hearing will be held at 7:00 p.m.**

Nothing further was discussed.

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**GROWTH PERMIT(S) – Map 3, Lot 17 (Simon Ricker Road) – Growth Permit #03-11**

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

Respectively submitted,

Barbara Felong,

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

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, June 14, 2011**

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

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

#### **Conditional Use Permit – Sand/Salt Shed - Map 7, Lot 5 (Shapleigh Corner Road) - Town of Shapleigh**

Speaking for the Town of Shapleigh was Road Commissioner Richard Goodwin and Selectman Mike Perro. Also in attendance were Road Commissioner John Burnell, Selectman Charles Mullins and Selectman Ruth Ham.

As a note, prior to this evenings meeting the Planning Board did a site inspection of the location for the sand / salt shed.

RC Goodwin began by stating the Town wanted to erect a sand / salt shed and a salt storage building on Map 7, Lot 5. He said both buildings would be enclosed.

Roger A. asked where the fence would be located that was mentioned at the last meeting, it was not depicted on the plan presented. He also showed RC Goodwin on the plan where it appeared there were two entrances, one paved, and one gravel. He asked if both would be gated? RC Goodwin stated that what looks like a gravel entrance is not an entrance. He said that at one time it was a ditch where the water ran thru that area; it is not a gravel road. He said there was a driveway in another location on site but that has been blocked off.

Madge B. asked again, what about the fence? RC Goodwin stated the fence would go around the back of the lot in order to keep ATV's from entering the property. He said it would not be part of the bid for the facility. He said the fencing had been priced locally but not purchased. Selectman Perro agreed it would be a separate bid process.

Roland L. asked if the drawing showed where the public would have access to sand/salt? RC Goodwin stated no, no decision has been made to the location. He felt that it likely would be near the salt shed, beside or behind it. Selectman Perro stated that there would need to be a pad poured under it and a structure over it. He didn't know if it would be a portable structure. He said it would not be a permanent building like the sand / salt sheds. He stated due to the flow of traffic they weren't sure yet what the best location would be. He said there would not be a separate access for it, there would only be the paved entrance as shown on the plan.

Roger A. stated that on the plan it said the sand / salt building would be 38 feet plus or minus in height. Roger asked if they knew what the exact figure was going to be? RC Goodwin believed it was 38' 6". Selectman Perro agreed, stating from the base of the lowest downhill side he believed it was just over 38 feet. RC Goodwin stated it was definitely less than 39 feet. The engineering plans were provided and they in fact gave a figure of 38' 6". Roger stated that as long as it is less than 40 feet it would meet the Ordinance requirement.

Selectman Perro agreed that according to the Ordinance the building had to be less than 40 feet so he thought if the approval said it had to be less than 40 feet it would be in compliance. Roger A. agreed, his only

concern was that the plan provided to the Planning Board said plus or minus, it did not state it would be less than 40 feet. It was a variable.

Roger A. asked about the front setback which stated it was 55 feet but he thought it was mentioned that it was actually 85 feet, which is it? RC Goodwin stated that because Rte. 11 is a three rod road, and the Ordinance says the setback requirement is 75 feet from the centerline and 50 feet from the edge of the road whichever is greater, the 85 feet is the greatest distance. He added that the building was more than 50 feet from the right-of-way line.

Roger A. asked if the area around the building would be paved? RC Goodwin stated the amount of paved area will be determined when the bid prices come in. He said the apron around the building, inside the buildings and the roadway in would be paved. A larger area will be paved depending on the pricing.

Roger A. asked if there were any other questions? Abutter, Robert DeZenzo (Map 7, Lot 5A), stated that he had property abutting this lot. He said he did not have a problem with the project. His only concern was with the salt and he wanted to be sure it could not contaminate his well which was a drilled sand well and he also noted there was an aquifer under this area. He asked how the salt would be contained? Selectman Perro stated the Maine Dept. of Environmental Protection (DEP) required very stringent steps be taken to protect the area. He said that first of all there had to be an impervious area created between the salt and the ground. He said there would be no salt or salt/sand that would be housed outside for rainwater to move it to the ground. He said all salt and salt/sand structures are completely covered, the working area is paved, and there are some specific drainage areas for the rainwater, pitched to send all rainwater to go into sedimentation areas leaving all rainwater on site. The sedimentation areas were approved by the DEP so as not to have a negative impact on the area, including the aquifer below. He said the DEP was well aware of the aquifer. He noted that none of the rainwater would have any sand/salt contained in it. Mr. DeZenzo asked about how the sedimentation areas would be created. Would there be a liner, would they be clay based? RC Goodwin stated they were basic sedimentation areas for rainwater. Mr. DeZenzo asked about the salt. RC Goodwin stated there would be no salt. All salt would be under cover. RC Goodwin stated there was more runoff from the State road in the winter than there would be from this facility. There can be no sand or salt left outside the building.

Selectman Perro noted that at the State's sand and salt facility which is also near Mr. DeZenzo's property, there is sand and salt outside on the ground. RC Goodwin stated there is sand and salt mix outside but the stockpile of salt for the State is inside the building. RC Goodwin stated the point of this project is to get more environmentally sensitive. He said the Town was as bad as it gets right now housing all the sand and salt for the roads outside on the ground with no protection for the environment. He said this a huge improvement and it will meet the DEP guidelines. Selectman Perro stated he would have no issue with having Mr. DeZenzo's well tested at this time and then do it periodically to see if there was any contamination. He said he would have to speak with the other two Selectmen. CEO McDonough asked if he heard correctly that Mr. DeZenzo was between the State facility and this new facility? If this is the case how would you know if it was the State facility or the Town's that caused an issue if one was to arise? Selectman Perro stated that was why he would want to test it now, where the State facility is being used now. CEO McDonough stated how could we know that a year from now, if it was contaminated that it wasn't caused by the State facility? Selectman Perro stated it would also depend on what was found in the well. He was confident that there are so many provision in the plan that were mandated by the DEP to make sure no environmental impact would take place that he didn't believe there would be an issue. He felt the provisions were actually overkill. Mr. DeZenzo stated he was happy to hear that. Roger A. stated that recently a hydrologist working on another application noted that the water from the aquifer flowed toward Goose Pond so there shouldn't be any contamination of Mr. DeZenzo's well from the State facility.

Selectman Perro stated he could put it on the Selectmen's agenda for next week to see if they wanted to do a water test for Mr. DeZenzo's well prior to the project. Mr. DeZenzo stated he could pay for a water test, it was not expensive. Roger A. stated the engineering firm has made sure all the areas housing any salt would be on impervious material. Roger said the engineer that was at the last meeting speaking about the plans stated he was sure there would be no ground contamination from the facility.

Roland L. asked what would prevent the salt from breaking down the concrete walls of the new buildings? Is there a coating? RC Goodwin stated there is a sealer in the plans for concrete buildings. The entire facility and floor will be sealed and then it will be done as needed. He agreed concrete did not like salt. Roger A. asked if there were maintenance provisions if the loader hit the walls during loading? Selectman Perro stated he was sure it would have to be addressed. The Town wanted to be sure the building would last and he said it was not a big job to reseal it. He thought prior to the building being refilled each year it should be reviewed to see what maintenance needed to be done. RC Goodwin agreed it would be advantageous to be sure the building was protected and maintained.

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

The Public Hearing for the sand / salt shed facility was closed at 7:20 p.m.

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**Conditional Use Permit – In-home Day Care for up to 8 Children – Map 1, Lot 41A (344 Simon Ricker Road) – Ashley Bailey, Applicant**

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

Ms. Bailey stated she wanted to run a day care out of her home for up to 8 children. She said currently she has her son and she cares for another 3 year old child and an after school child. She said depending on what the State and Fire Marshall allows, she would like to have up to 8 children in her home.

Roland L. asked if the eight would be above the three children she now has in her home? She said no, she wants to care for an additional five children.

Roger A. stated the board did a site inspection prior to this evenings meeting. He said at the site inspection there was a question asked of Ms. Bailey as to whether or not the fire pit on site would remain. He said the board had some concerns with the fire pit. He said Ms. Bailey said the fire pit could be removed.

Roger A. stated that at the site inspection it was noted the rails on the deck were not to code. Ms. Bailey stated they were aware of that and her fiancé was going to fix the problem. She said they were waiting for the materials from the Landlord. She said she has had a concern about this from the time she moved in.

Roger A. stated the board needed something in writing stating that the Landlord was aware of her intentions to have an in-home day care. Ms. Bailey stated the Landlord signed the Conditional Use Permit application as the owner of the property. She asked if this would be sufficient? Roger looked at the application and said it would be fine.

Roger A. stated another concern was the height of the grass, it was quite tall. Ms. Bailey stated she had an issue with her lawnmower last week while mowing it. She said she was in the process of getting a new one. She noted that the board must have seen that part of the area was mowed and part was not.



Roger A. asked about fencing in the rear of the property, the board was concerned with the stream in the backyard. He said if anyone gets beyond the trees you won't see them as well. He said children can stray off at times. Ms. Bailey had concerns about the stream as well that she expressed at the last meeting.

Roland L. asked if there was a concern with people backing onto Simon Ricker Road? Roger A. stated it has been looked at in the past and there are times when backing out onto the roadway isn't allowed. He didn't think it would be a problem in this location. Madge B. asked if it was on the record what the site distances are? Roger said, no. Madge felt the site distances should be measured and put into the record. Roger agreed.

Board members asked what the speed limit was in this area? Roger A. didn't believe it was posted. Ms. Bailey stated there was a yellow sign stating it was 15 MPH. Roger noted this wasn't a State sign. Roger asked RC Goodwin if he knew what the speed limit was? RC Goodwin thought the dirt was 25 MPH. He thought the other end of the road was 35 MPH. Madge believed the board needed to know what the State speed limit is and what the site distances are. Roger and Selectman Perro both agreed because it isn't posted most would think it was 45 MPH. Madge again stated the board should know the speed limit and site distances for the record.

Roger A. asked if there were any other questions for the Public Hearing for Ms. Bailey? There were none.

The public hearing was closed at 7:27 p.m.

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**The minutes from Tuesday, May 24, 2011 were accepted as read.**

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

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**Conditional Use Permit – Sand/Salt Shed - Map 7, Lot 5 (Shapleigh Corner Road) - Town of Shapleigh**  
Speaking for the Town of Shapleigh was Road Commissioner Richard Goodwin and Selectman Mike Perro. Also in attendance were Road Commissioner John Burnell, Selectman Charles Mullins and Selectman Ruth Ham.

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

**Roger A. reviewed the pertinent ordinance standards and made findings of fact:**

- 105-17 - Land Uses. *The Town needs a CUP for a sand / salt facility as listed under the section for public and semipublic structures and the proposed structures are allowed in the general purpose district.***
- 105-19 – Notes to table on dimensional requirements. *The setback requirements for the proposed structures shall be met per the plans provided, the lot is greater than the minimum lot size required and the maximum building height shall not be exceeded. The proposed sand / salt facility shall be less than 40 feet in height per the 'engineered plans' provided to the Selectmen.***
- 105-20 – Applicability of standards; prohibited uses. *This application is a permitted use within the General Purpose Zone and it meets all state and federal law regulations.***

- 105-21 – Traffic.** *Traffic will have safe access. The entrance / exit is wide enough to accommodate both salt and gravel trucks as well as snowplows.*  
*Madge B. asked if the board had the actual site distance measurements for the site? The board did not. RC Goodwin agreed to provide the site distances to the board for the record. All members agreed the site distances exceed the minimum based on the site inspection done earlier in the evening. It was also agreed that for the record they should be listed in the file. The minimum required at 50 MPH is 350 feet.*
- 105-22 – Noise.** *The only noise will be the trucks traveling on and off the property and the loader which will be used mostly inside the structure.* Roger noted between the hours of 10 p.m. and 7:00 a.m. the sound pressure level limit is 45 dB(A) and can be exceeded by 10 dB(A) no longer than 15 minutes a day. The board agreed this should not be an issue.
- 105-23 – Dust, fumes, vapors and gases.** *There will be none generated beyond the lot lines. In addition a hedge row shall be planted per the plan provided between the work area and State Rte. 11 which should further prevent dust and noise from leaving the site.*
- 105-24 – Odors.** *There will be no obnoxious odors emitted from the activities on site.*
- 105-25 – Glare.** *Lighting will be over the two doors of the sand / salt building as noted in the minutes of the previous review and it will be directed so it shall not shine onto State Rte. 11 or beyond the lot lines.*
- 105-26 – Stormwater runoff.** *There was a stormwater plan provided which was approved by the DEP on 5/16/11. A copy of the stormwater PBR is in the file.*
- 105-27 – Erosion control.** *There was an erosion control plan provided which includes Best Management Practices.*
- 105-28 – Setbacks and screening.** *There shall be a hedgerow planted per the plans provided between the facility and State Rte 11, which will be made up of native vegetation, at least 2 feet in height upon planting and it shall be maintained to ensure survival.*  
*Selectman Perro asked if the board had a preference as to what type of plantings need to be placed on site? Also, he noted the Ordinance stated in parentheses that the evergreen hedgerow needs to be six feet in height. Selectman Perro asked if this is the height when planted or when full grown? CEO McDonough stated that because the height is in parentheses he felt the notation is an example, otherwise it would be part of the sentence and it would state it was mandatory. He feels this gives the Planning Board latitude as to what would be required for plantings and height. The board agreed and stated the vegetation shall be at least 2 feet in height upon planting.*
- 105-29 – Explosive materials.** *There is none on site.*
- 105-30 – Water quality.** *The plans for the area which include housing the sand / salt in the buildings and undercover on impervious material, and the stormwater plans provided ensures the water quality will not be affected. The DEP approved the plans provided.*
- 105-31 – Preservation of landscape; landscaping of parking and storage areas.** *There is no parking lot. There shall be a hedgerow placed between the facility and State Rte. 11 per the plans provided, consisting of native vegetation, at a minimum of two feet in height when planted. The hedgerow shall be maintained in order to ensure its survival.*
- 105-32 – Relation of proposed building to the environment.** *The existing building fits in well with the surrounding area.*
- 105-33 – Refuse disposal.** *N/A.*
- 105-34 – Access control on Routes 109 and 11.** *All access shall be via one common entrance which has been approved by the Maine D.O.T. Site distances shall be provided by RC Goodwin for the record.*
- 105-39 – Earth removal.** *Does not apply, all earth moving shall be done as part of the construction process on site. Roger A. noted that if any large quantity of earth is moved to a location*

*other than the Town's property a CUP permit shall be required for the land owner. RC Goodwin stated he understood.*

**105-46** – Sanitary provisions. *N/A*

**105-47** – Signs and billboards. *Any signage shall be obtained through the Code Enforcement Office.*

**105-52** - Water quality protection. *The sand & salt shall be housed in the facility on an impervious surface approved by the DEP which will protect the aquifer.*

**105-60** – Driveways. *The entrance was approved by the Maine DOT and the Road Commissioner.*

**Roger A. reviewed Shapleigh Zoning Ordinance 105-73.G “Standards applicable to conditional uses” and made findings of fact.**

- 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 plans presented known as Proposed Site Plan for the Town of Shapleigh Sand/Salt Storage Facility, dated 1/20/11 and Site Details, dated 4/21/10, drafted by Donald Becker, PE #6514, of CES, Inc. All design plans were approved by the DEP on 5/16/11.*
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. *N/A*
- 3) The use is consistent with the Comprehensive Plan. *It is, the Comprehensive Plan encourages small businesses and services to be located along Routes 109 and 11. The facility is located on State Rte. 11. The Comprehensive Plan also promotes measures that protect the environment.*
- 4) Traffic access to the site is safe. *It is, there is entrance approval from the Maine DOT and site distances exceed the minimum required in this location. RC Goodwin shall provide the exact site distance calculations for the file.*
- 5) The site design is in conformance with all municipal flood hazard protection regulations. *It is, this location is not in a flood zone and stormwater and erosion control measures have been provided to handle a 50 year storm.*
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. *There is no wastewater or solid waste to be produced at this facility.*
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. *The hazardous materials of sand and salt shall be stored per the plans provided which will protect the site and surrounding area from contamination. There is DEP approval of the plans provided.*
- 8) A stormwater drainage system capable of handling fifty-year storm without adverse impact on adjacent properties has been designed. *There has been a stormwater drainage system designed capable of handling a 50 year storm, drafted by Donald Becker, PE #6514 of CES, Inc.*
- 9) Adequate provisions to control soil erosion and sedimentation have been made. *Erosion control measures have been designed and provided by Donald Becker, PE #6514 of CES, Inc.*
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. *There is, the property is in close proximity to the water holding tank on State Route 11.*
- 11) The provisions for buffer strips and on-site landscaping provide adequate protection to neighboring properties from detrimental features of the development, such as noise, glare, fumes, dust, odors and the like. *Provisions have been made for a vegetative buffer strip between State Rte. 11 and the facility, to be vegetated with native evergreens being a minimum of 2 feet in height upon planting. All lighting shall be directed so as not to glare onto State Rte. 11 or neighboring properties. There shall be no excessive noise produced at this facility. The only odor produced on site will be from the equipment exhaust and it shall not go beyond the property lines.*
- 12) All performance standards in this chapter applicable to the proposed use will be met. *They shall.*

**Madge B. moved for approval of the Sand / Salt Facility per the plans provided, the findings of fact and with the site distance calculations to be provided for the file. Diane S. 2<sup>nd</sup> the motion. All members were in favor. The motion passed unanimously.**

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**Conditional Use Permit – Dock 48 Feet Long into Lower Mousam Lake – Map 15, Lot 7A (114 32<sup>nd</sup> Street) – Clifford & Monique Libby, Applicants**

Mr. and Mrs. Libby were present for the final review of their application.

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

Mr. Libby stated they realized they needed a permit for a dock over 20 feet in length so they are before the board in order to be in compliance. He stated they needed 48 feet of length for their dock in August when the water gets shallow for their boat.

An abutter, Mr. James Haller, of 53 32<sup>nd</sup> Street, asked if the dock would be on piers or floating? Roger A. stated the members did a site inspection earlier in the evening and the dock is already in. Mr. Haller asked if it had been in for the last month? Mr. Libby stated, yes. Mrs. Haller asked why they were getting a permit now? Roger said it is because they just realized they need a permit after talking to the Code Enforcement Officer.

Mr. and Mrs. Haller were trying to determine the location of the property. Mr. Libby explained the location. Mr. and Mrs. Haller just wanted to be sure if wasn't the individual who in the past did dredging of the shoreline, that the Libby's were not the owners of that particular property. The Haller's concern was because the dredging situation was never resolved. They said the property owner was fined but never put the property back to the way it had been before. It was determined the property with the dredging issue was not the Libby property.

Mr. Beyea of 119 32<sup>nd</sup> Street, a direct abutter of the Libby's, also wanted to comment. Roger A. asked if he was right next door to the Libby's? Mr. Beyea stated, yes. Roger noted that on the site inspection the board members saw there were four unregistered vehicles in his yard. Mr. Beyea stated that was correct but he could move some of them if it was necessary. Roger said it was a problem.

Mr. Beyea stated the Libby's dock was always on the other point of their property. He said that last year they moved it. He said now the dock is in front of his property, whereas it was not before. Mr. Beyea stated if the dock was located where it is in the sketch plan then it would not be in front of his property but instead in front of the other neighbors' property. Mr. Beyea did not think they should be able to put the dock in where it is and he added that the water did not get that shallow. He said he didn't mind that it was out as far as it was but he didn't want it in front of his property.

Roger A. stated the board members did a site inspection prior to the meeting and they looked at the property lines and where the dock was located. The board did not feel the dock was in front of Mr. Beyea's property. Roger added that the board believed Mr. Beyea's dock was along the property line and in front of the Libby's property if you were looking in a straight line. Several members noted agreement.

Mr. Beyea stated you have to look down the fence line which is the property line. Roger A. stated that is what the board was using to determine location. Mr. Beyea stated that the Libby dock comes out at an angle and a lot of it is in front of his property. Diane S. stated that the property line stops at the waters edge. The water is not what the board regulates unless there is an issue with the travel lanes.

Mr. Beyea stated he called the DEP and other agencies last year about the situation and they said they had no ruling for the dock and there was nothing they could do about it.

Mr. Beyea stated he did not mind the dock as depicted on the plan but if you go down and look at it, it is in front of his house. Diane S. stated they did look at it today and did not believe this was true. Roger A. concurred. Diane said that when looking at the Libby's right-of-way, the dock appears to be in the middle of their right-of-way. She said it is not on Mr. Beyea's side or the other neighbors. Mr. Beyea stated it angled in front of his house. Diane said it had to because of the angle of Mr. Beyea's dock.

Roger A. stated he disagreed with Mr. Beyea's viewpoint and that was his personal opinion.

Mr. Beyea stated that he wished he was notified of the site inspection. (Note: Mr. Beyea came into Barbara's office the week before the meeting and she told him there would be a site inspection prior to the meeting and he was welcome to attend it.)

Roger A. and Madge B. stated the Planning Board does not govern out into the water so what they see in the water does not matter. Only what is happening on the shore.

Diane S. stated this was an encroachment issue in the water. Madge B. agreed but the board does not determine what goes on in the water but only on the property itself. The board does not govern the water.

Mrs. Libby stated that she did not believe the dock affected the quality of the water or hurt the shoreline. Madge B. agreed. Mrs. Libby stated that it was not an eyesore and it was a necessity to have this length when the water was lower. She did not think they were encroaching on anyone. She said they were before the board in order to get a permit for the length.

Roland L. asked CEO McDonough if there was anything in the Ordinance that requires a setback from the property line for the dock. CEO McDonough stated the only thing in the Ordinance that regulates docks is the sentence that says if they extend more than 20 feet into the water they require a Conditional Use Permit. See §105-44.A(4)

**Roger A. read §105-44.A in its entirety. Roger then read §105-44.C, 'Conditions of permit.'**

**The conditions of approval and findings of fact are as follows:**

The proposed activity shall not:

- 1) Unreasonably interfere with existing recreational and navigational uses, nor unreasonably alter scenic and aesthetic qualities. ***It was observed at the site inspection that the Libby's dock does not stretch father out into the water any more than the immediate neighbor's dock nor does it interfere with recreational or navigational uses and it does not alter scenic or aesthetic qualities.***
- 2) Unreasonably interfere with or harm the natural environs of any lake, pond, tributary stream or river nor harm any fish or wildlife habitat. ***It was observed the dock is removable and set on metal posts with pvc surrounding it. It is not unlike other dock systems in the area. Therefore, it should do no harm to the lake, fish or wildlife.***
- 3) Cause unreasonable soil erosion nor lower the quality of any waters. ***It does not have any effect on the shoreline or subsurface area.***
- 4) Unreasonably alter the natural flow or storage capacity of any water body. ***The flow of water moves naturally under and around the dock system.***
- 5) Create or cause to be created unreasonable noise or traffic of any nature. ***There is no noise or traffic impact created by the dock.***

**Madge B. moved for approval of the 48 foot dock system, based on the fact all the conditions that apply to this application have been met. Roland L. 2<sup>nd</sup> the motion. All members were in favor. The motion passed unanimously.**

*Note: The Maine Dept. of Inland Fisheries and Wildlife was contacted and the dock met their criteria. The emails are in Libby file.*

Nothing further was discussed.

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**Conditional Use Permit – In-home Day Care for up to 8 Children – Map 1, Lot 41A (344 Simon Ricker Road) – Ashley Bailey, Applicant**

Ms. Bailey was present for the final approval of her application.

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

Ms. Bailey began by stating she wanted to have an in-home day care for up to 8 children in her home, which includes her child and two that she is currently caring for.

Board members looked at the plan provided to determine if the driveway could fit four parked cars. Roger A., based on what he observed at the site inspection and looking at the plan provided, believed four cars could be parked on site without issue. Ms. Bailey agreed stating four have been parked there in the past without issue.

Madge B. stated the board needed to know what the posted speed limit is and what the site distances are. Roger A. stated he would get the site distance. Barbara F. will get the speed limit from the Selectmen.

Madge B. asked if there was going to be any additional lighting? Ms. Bailey stated there are currently two outside lights, one on the porch and one over the garage. She said there would be no additional added.

Madge B. asked if the children were expected to go from the driveway into the backyard? She also asked if the front yard would be used. Ms. Bailey stated she believed the play area would be mostly in the backyard. She said she was taking a water course so that next summer she might get a small kiddie pool and put it in the front yard.

Madge B. asked about §105-40.1.E which read, “All outside play equipment shall meet the required front, side and rear setback requirements.” She asked CEO McDonough to determine what that regulated. CEO McDonough stated that any equipment including the kiddie pool would have to meet the requirement. He noted that the side setbacks were 25 feet to the side in the General Purpose zone or 10 feet in the Shoreland zone.

Roger A. reading §105-40.1.D determined that the backyard play area should be fenced from the neighboring property, parking area, and for protection from the stream in the rear of the property. Ms. Bailey stated if it was necessary she would put one up. She asked what type of fence? Diane S. stated she believed it should be a fence that children couldn’t crawl thru. Madge B. agreed. Roger A. recommended a four foot chain link. CEO McDonough stated there were other products that are less expensive than chain link. Diane stated there was stockade fencing. Barbara F. stated there is also four foot what she calls animal fencing. It is about half the price of chain link but works as well for this purpose. Roger agreed it would work. Ms. Bailey asked where she could find this. Barbara stated that any hardware store would carry it or Home

Depot, Lowe's, etc. Roger stated again it was important to protect the children from the small stream. Ms. Bailey agreed.

Ms. Bailey asked about the fire pit, should she remove it? Board members had noted the fire pit at the site inspection and thought it probably should be moved. Roger A. stated it would be best to move it to keep the children from playing in it. Roland L. stated he didn't want anyone to get burned; coals can stay hot long after it appears to be put out. Roger said she could move it to the other side of the fence so they cannot access it. All the board members agreed that would work.

Roger A. stated the deck would have to be addressed as well, it needed to be up to code.

Diane S. thought the children's activities should be kept in the fenced yard in the back. She was concerned with traffic if they are allowed into the front yard without a fence.

CEO McDonough asked what the distance from the home to the road was? Madge B. stated it appeared on the sketch to be approximately 63 feet. CEO McDonough stated that was pretty much the setback requirement so he did not see where there was enough room for play equipment in the front yard. Diane S. stated again it was best to keep the children in the backyard unless it is fenced in.

Ms. Bailey stated the State licenser may determine she has to fence in the front yard. She said she realized that whoever is more strict, the Town or the State, that is whom she has to abide by.

Roland L. asked what the hours of operation were? Ms. Bailey said, 6:30 a.m. thru 5:30 p.m., Monday thru Friday, including school vacation.

Diane S. asked if there would be any other employees? Ms. Bailey said, no.

Madge B. asked if there would be any infants? Ms. Bailey said, no.

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" and made findings of fact as follows:**

- 1) The use will not have an adverse impact on spawning grounds, fish, aquatic life, birds or other wildlife habitat. ***It will have no effect.***
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. ***N/A***
- 3) The use is consistent with the Comprehensive Plan. ***It is, the Comprehensive Plan encourages small businesses.***
- 4) Traffic access to the site is safe. ***It is upon initial review at the site visit but the actual speed limit and site distances shall be determined prior to the day care opening. If site distances cannot be met there will need to be further review.***
- 5) The site design is in conformance with all municipal flood hazard protection regulations. ***It is, this location is not in the flood hazard zone.***
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. ***There is a State approved septic design done by John Large, SE #7 on 4/28/79 and it was permitted on 5/10/79. Any trash shall be removed by the applicant and taken to the transfer station.***
- 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 fifty-year storm without adverse impact on adjacent properties has been designed. ***The home is in existence and has been permitted thru the Code Enforcement Office. There are no changes being made to the property that would affect stormwater drainage.***
- 9) Adequate provisions to control soil erosion and sedimentation have been made. ***There are no changes being made to the property that would create an erosion issue. There is only an addition of a safety fence.***  
*Roger A. noted to Ms. Bailey that she should notify Dig Safe prior to putting up her fence to be certain there was no underground wiring on site due to the fact this was a mobile home and sometimes they bury electric lines underground upon installation of utilities.*
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. ***There is, the property is in close proximity to the fire hydrant on Emery Mills Rd.***
- 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 area is landscaped at this time and there are no changes being made other than a fence being erected for the safety of the children. There is no additional lighting being added to the existing structure.***
- 12) All performance standards in this chapter applicable to the proposed use will be met. ***They shall with the imposed conditions.***

Roger A. stated any signage shall be permitted through the Code Enforcement Office.

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

- 1) **The hours of operation shall be 6:30 a.m. thru 5:30 p.m., Monday thru Friday.**
- 2) **There shall be no additional employees. Ms. Bailey is the only caretaker.**
- 3) **There shall be no infants cared for.**
- 4) **There shall be a fence erected in the backyard, 4 feet in height, with no greater than 4” openings.**
- 5) **The play area shall be in the rear of the building, inside the fenced in area.**
- 6) **The fire pit shall be outside of the fenced area so the children do not have access to it.**
- 7) **The deck shall be brought up to code.**
- 8) **A copy of the State License and Fire Marshall Report shall be given to the Planning Board prior to operation.**
- 9) **The site distance shall be determined by the Planning Board along with the speed limit. If there is a problem the board will contact Ms. Bailey and further review may be required.**
- 10) **Any signage shall be permitted thru the Code Enforcement Office.**

**Madge B. moved for approval of the in-home day care for up to 8 children with the above conditions. Diane S. 2<sup>nd</sup> the motion. All members were in favor. The motion passed unanimously.**

Roger A. stated he would verify the site distances and Barbara F. will get the speed limit from the Board of Selectmen. *Note: The Official speed limit in the vicinity of Ms. Bailey's home is 35 MPH.*

Nothing further was discussed.

**Conditional Use Permit – In-home Day Care for up to 12 Children – Map 12, Lot 12B (16 Swan Circle) – Virginia Fries, Applicant**

Ms. Fries was present for the initial review of her application.



Ms. Fries stated she wanted to have an in-home day care for up to twelve children. She said she was told to come before the Town first before obtaining her State permits. She said the State requires so much usable space for each child so she believes she will be allowed to have between 10 and 12 children. She said she was told to apply for the maximum so she wouldn't have to re-apply. She said her daughter would be helping her at some point.

Barbara F. asked Ms. Fries to point out her lot on the map so the board could determine the exact location. There had been concern with the last application about lot size and therefore Barbara did not want the board to have incorrect information as it appeared the applicant's lot may not be the minimum lot size currently required for a permit for in-home child care.

After determining the location of the lot, it was observed that the lot was less than 2 acres in size and per the Ordinance, §105-40.1.B, "A child day-care home shall be allowed in a single family dwelling located on a residential lot that meets the minimum lot size requirement, ..." The minimum lot size requirement in Shapleigh at this time is 80,000 square feet. Ms. Fries only has 20,000 square feet.

***Therefore, the board unanimously agreed that at this time, the way the Ordinance is written under §105-40.1. Child day care., this permit cannot be allowed.***

Ms. Fries asked if she had any recourse. Members stated she had the right to apply for a variance. Roger A. noted the board could table the application pending the appeals process. Ms. Fries was unsure if she wanted to take that avenue.

Diane S. stated another possibility was to try to get the Ordinance changed. Roger A. stated that if that were to happen, and if the townspeople approved, it would not take affect until March of 2012.

Ms. Fries stated that she was told that her lot was a grandfathered lot. She asked, "So what did this mean?" Madge B. stated there was nothing wrong with her house being permitted. She said that because this is a new use being requested for this lot, and the Ordinance requires the minimum lot size, the new use cannot be allowed based on the dimensions of the lot.

CEO McDonough agreed the Ordinance was very clear in this case and this new business cannot be allowed. The applicant needs 80,000 square feet and 200 feet of road frontage, neither of which the applicant has. CEO McDonough stated the applicant had the right to appeal the Planning Board's decision or apply for a variance. Roger A. concurred.

Members noted that in order to get a variance there has to be a hardship and personal financial hardship is not one of the criteria when determining whether or not a variance can be granted. Diane S. stated the only other thing is to buy property from an abutter to get the minimum lot size needed. Ms. Fries stated that she is unable to do that.

Barbara F. will see that Ms. Fries is refunded her application fee based on the fact no notices were mailed out nor any other action was taken on this application. Nothing further was discussed.

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**GROWTH PERMIT(S) – Map 7, Lot 5-1 (Hodgdon Road) – Growth Permit #04-11  
Map 39, Lot 55 (48 Swan Circle) – Growth Permit #05-11**

**The Planning Board meeting was adjourned at 8:55 p.m.**

Respectively submitted, Barbara Felong, Land Use Secretary

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

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, June 28, 2011**

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, June 14, 2011 were accepted as read.**

These minutes were amended on page 3 of 4, the amendment is in italics.

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**Best Possible Location – Daylight Basement with 6' x 22' Addition – Map 36, Lot 16 (166 Indian Village Road) – Bruce Ballard, Owner**

Mr. Bruce Ballard was present for the review of his application along with the Contractor for the project, Shawn Woods.

Mr. Ballard stated he wanted to renovate the existing property which would include putting in a full daylight basement, removing a small entryway bathroom and putting in a new bathroom in an addition on the back of the house.

Roger A. asked with the new foundation, would the existing building be higher than what exists at this time? Mr. Woods stated it would be 2 feet higher than the existing. Roger noted that you cannot raise the existing structure more than 3 feet. Mr. Woods stated that he understood.

The board reviewed the plan provided by the applicant, done by Corner Post Land Surveying Inc., on 6/24/11 which showed the boundary of the property, the location of the 100 foot setback to the water and the dimensions of the existing structure. Also on the plan is the proposed 122 square foot addition to the back of the building, the existing vegetation, garage, gravel travel area and proposed septic system location. A separate revegetation plan for the site was also provided.

Diane S. asked how far back the home was from the water. The *setback from the structure* to the high water line was not depicted on the plan. The board requested that the measurement from the high water mark to the building be provided for the next meeting.

Madge B. asked about the shed and garage, would they be staying? Mr. Ballard stated there were no changes being made to the garage, the shed would be removed and the addition would be in the location of the shed as noted on the plan. Madge asked if the deck was in existence? Mr. Woods stated yes, it would be removed and replaced in the same location.

Board members while reviewing the plan noted the location of the proposed septic system. The applicant was asked if a septic design had been provided for the board? Barbara F. stated yes, the Subsurface Wastewater Disposal System Application was provided, done by Kenneth Gardner, SE #72, dated 6/3/11. Also provided was a copy of the Subsurface Wastewater Disposal System Variance Request, which would allow the septic system to be placed within 70 feet of the applicants existing well. This was also signed by Kenneth Gardner. Mr. Gardner noted the variance was requested so the septic system can be placed 100 feet from the lake.

Madge B. asked about the area on the plan that appeared to be gravel and leads to the water, did it exist at this time or was it proposed? Mr. Ballard stated it exists and is a gravel roadway that goes all the way to the water. Roland L. asked if this area was used to launch a boat? Mr. Ballard stated, yes. Madge asked if the area had much slope? Diane S. stated this area was relatively flat. Mr. Woods agreed stating the elevation may go up 5 feet at best.

Roland L. asked if there was any concern with ground water getting into the excavated area? Mr. Woods stated no, they would not go much deeper than the front elevated area toward the water. Mr. Woods stated he could shoot elevations and provide those if the board would like and state the water level.

Diane S. asked about the notation on the plan that referred to the area of the shed to be removed, which was 48 square feet. She wanted to know exactly where that area was. Mr. Woods pointing to the plan and stated it was the area at the rear of the building that would be removed. He noted it wasn't actually a shed but a dormer.

**Roger A. stated a notice to abutters would need to be mailed and a site inspection will take place on Tuesday, July 12<sup>th</sup> at 7:00 p.m.** Members will meet at the town hall prior to. (Diane will meet at the site.)

Mr. Woods asked if the board wanted the site elevations for the next meeting. Roger A. stated he would need to provide that information for the CEO because under §105-4 (7)(c) there is a requirement to provide in writing confirmation by a licensed surveyor that the placement of the structure is correct per the approved plans. He did not think the Planning Board needed this information in order to approve the plan.

Roland L. asked about the replanting plan. Mr. Woods stated the area around the building will be disturbed about four feet out. Barbara F. stated a landscaping plan had been provided. CEO McDonough asked Mr. Woods to explain to the board what trees would be removed and why. Mr. Woods noted two trees that would have to be removed due to the roots being damaged during the excavation process. Mr. Woods stated six trees would be planted to replace the two removed.

Madge B. asked about the roofing system, how would the rainwater drain? Mr. Woods spoke about the roof configuration and that rainwater did in fact drain toward both the rear of the structure and on the side facing the lake. Madge asked if more plantings could be placed on the lake side of the structure to prevent stormwater from flowing into the lake. Mr. Woods stated he could do that. CEO McDonough asked Mr. Woods if he could modify the existing plan to show the additional plantings. Mr. Woods stated he would do so.

Roland L. asked about the location of the access to the daylight basement, where would the door be placed? Mr. Woods showed him the location using the plan provided.

Roger A. asked about a proposed time frame for this project, including the planting schedule. Mr. Ballard stated he would like to do the construction in the fall and have the plantings completed in the spring.

Madge B. asked if any material would be removed from the site? Mr. Woods stated, yes, some of the material from the rear of the structure would be removed from site. Madge asked where it would be moved to? Mr. Woods stated that he had been speaking with the Town's Road Commissioner and the Town may have a use for the material. Madge stated it was important it wasn't just dumped somewhere inappropriate. Mr. Woods understood. Roger A. stated that depending on the number of yards moved and where it is moved to, the land owner may need a Conditional Use Permit from the Planning Board in order to be able to accept the material. Mr. Woods stated the R.C. may be using the material for Town Farm Road or stock it in

the Town's gravel pit. Roger had no issue with this but the board needed to have an idea where it was going. Mr. Woods asked what the requirement was for a Conditional Use Permit? CEO McDonough stated that over 150 yards moved in the General Purpose District required a CUP, 50 to 100 yards required a permit thru his office. He stated that in the Shoreland District the removal of material in excess of 10 cubic yards requires a CUP to make sure erosion control measures are taken.

Nothing further was discussed.

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**OTHER:**

**Conditional Use Permit – In-home Day Care for up to 8 Children – Map 1, Lot 41A (344 Simon Ricker Road) – Ashley Bailey, Applicant**

Roger A. stated that he had done the site distance calculations for Ms. Bailey's property as discussed at the final review of her application. He said the site distance looking northeast was 125 feet and there were shrubs that caused much of the view to be blocked. He said looking southwest there was greater than 350 feet of site distance.

Diane S. asked what the speed limit was for this location. Barbara F. stated she received paperwork from Karla that stated it was 35 MPH. Under §105-21, Traffic, the minimum site distance at 35 MPH is 245 feet.

Roger A. stated that he did not have issue with the site distance due to the fact the traffic is very limited in this location. He also said that the ordinance states that not being able to meet the site distance cannot be the sole criteria for rejecting an application.

Diane S. asked if the shrubs Roger spoke of could be trimmed? Roger stated the shrubs give Ms. Bailey privacy from the road. It was also noted that Ms. Bailey did not own the property but rented it so she would probably need permission to change the landscape.

Madge B. stated her only concern is that you can't turn around in the driveway and drive out. CEO McDonough said that with several instances where the board did require a turn-around be put in, the homeowner instead of using it as a place to turn around, uses it at an additional parking spot, so this requirement doesn't always solve the problem. Roger A. concurred.

The board members agreed that the site distance calculation facing NE was not reason enough to disapprove Ms. Bailey's application. Roger A. stated that he believed it was safe to back out onto Simon Ricker Road in this location at this time.

Nothing further was discussed.

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**Best Possible Location**

CEO McDonough stated he had a concern with the fact that a Best Possible Location application had no expiration date. Someone could hold the approval for years and not act on it. He said the Zoning Ordinance changes over time and what they were approved for may not longer be allowed so he would like to see an expiration to the approval like with the Conditional Use Permit. *All board members agreed, except for Diane S. She has an open BPL permit at this time.* Barbara F. will draft some language to present to board members. CEO McDonough stated perhaps it should be like with the Growth Permit in which the applicant

has 90 days to get the building permit. Once they get the building permit they have a year to act on it and two to complete the project.

Nothing further was discussed.  
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**Information from Southern Maine Regional Planning Commission**

Barbara F. supplied members with the Census data from 1999 thru 2010. Also provided was information regarding the cost to the school system to taxpayers. Barbara told members she had also written to SMRPC to get their input as to what they feel would be a logical number to set for the Growth Permit Ordinance based on all the information they had.

Roger A. stated that he felt comfortable keeping the number of permits as is. Members noted that the number of building permits issued over the past several years was far below the number allowed due to the economy. Members did not want to reduce the number allowed however, in light of this.

In conclusion, members will wait for information from SMRPC prior to holding a public hearing on the matter but no member foresees a necessary change in the existing ordinance as it stands.

**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 12, 2011**

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, June 28, 2011 were accepted as amended.** On page 3 of 4, the following change was made, "All board members agreed, except for Diane S. She has an open BPL permit at this time."

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**Best Possible Location – Daylight Basement with 6' x 22' Addition – Map 36, Lot 16 (166 Indian Village Road) – Bruce Ballard, Owner**

Mr. Bruce Ballard was present for the review of his application along with the Contractor for the project, Shawn Woods. Board members did a site inspection of this property prior to the meeting.

Mr. Ballard is before the board to renovate the existing property which includes putting in a full daylight basement, removing a small entryway bathroom and putting in a new bathroom in an addition on the back of the house.

At the previous meeting the board members reviewed the plan provided by the applicant, done by Corner Post Land Surveying Inc., on 6/24/11 which showed the boundary of the property, the location of the 100 foot setback to the water and the dimensions of the existing structure. Also on the plan is the proposed 122 square foot addition to the back of the building, the existing vegetation, garage, gravel travel area and proposed septic system location. A separate revegetation plan for the site was also provided. After discussion board members asked the applicant that the additional plantings be added to the revegetation plan to be placed along the structure on the water side of the property to prevent stormwater runoff from going into the lake.

Roger A. began by asking why the applicant wasn't moving the structure back from the high water mark? Mr. Ballard stated that if the structure was moved back it would have to go to the right because of the location of the garage. Roger asked why the house couldn't go up against the garage? Mr. Ballard didn't see how 6 feet would gain anything? Roger said it would increase the setback to the water which is one of the main reasons why the applicant is before the board. Mr. Ballard stated that by moving the structure back 6 feet he still would not meet the setback to the water. Madge B. stated that was correct but perhaps less of the slope toward the water would be disturbed. Mr. Woods stated there would be more area disturbed with the excavation required to move the structure back. He said much more soil would need to be moved. CEO McDonough stated the amount of soil disturbed doesn't come into play because the project as it stands will create a lot of disturbance in order to put in the foundation. Madge agreed and stated that is why they were asking if the structure could be moved back.

Mr. Ballard stated if the structure was moved back the doors to the garage would be right up against the entrance to the cottage. Madge B. state that looking at the plan provided it appears the structure can be moved back at least 6 feet and not affect any door. Mr. Woods stated this would leave only 2 feet between the structure and the garage.

Mr. Ballard, using the plans, showed the board members how the doors would block the entryway to the cottage if it were to be moved back. Mr. Woods wasn't as worried about the doors as he was stormwater runoff. He stated that at this time stormwater drained between the two buildings, if they were closer the stormwater would likely go into the garage. He also wasn't sure about the soil, because it is live sand, moving the structure farther back might cause some problems for the foundation support of the garage.

Madge B. stated the board could postpone the decision of location and go look at the site again if board members had more questions. Madge was concerned with the ordinance mandates and whether or not it would be an issue not moving the structure. Roger A., read from the Ordinance, §105-4.D(7)(a) which in part states that "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, ..." Roger noted it stated 'may be' not 'shall be' relocated. Roger added that the Ordinance mandates that the applicant must demonstrate the subsurface waste water disposal system meets the requirements of State law and he noted there is a new system designed to go in on site.

Roger A. went on to read the last sentence in §105-4.D(7)(a) which stated that "In no case shall a structure be relocated in a manner that causes the structure to be more nonconforming." Roger stated that by leaving the cottage in the same location it will not be more nonconforming. He noted that pushing it back would however make it more conforming to the high water mark.

Madge B. agreed the board did not have to move the structure back but the board has to justify why they are not moving it back. Maggie M. stated that in moving it back there would need to be more excavation which would disturb more area. Madge noted that CEO McDonough stated previously this was not necessarily true.

Mr. Woods stated he was worried about the transition from the front of the garage to the cottage. He noted there would be a landing / stairs which would also be close to the entrance of the garage, as there are at least five stairs needed due to the slope. He spoke again about the water shed problem that would be created as well. He stated the driveway would need to be changed as well due to stormwater runoff if the cottage were moved back.

Madge B. asked about the steps on the side toward the lake. Would the steps be removed that exist at this time? She noted that Mr. Woods had stated that the entrance to the house would be from the deck not the water side so she wanted to know if these steps would be removed? Mr. Woods stated yes, the steps on the water side, where they are located now, would be removed. He stated Corner Post should have removed them from the final plan. Roger A. stated he saw no reason why a set of stairs couldn't be placed perpendicular to the lake for access instead of toward the lake, this would essentially move part of the existing structure back from the water. Mr. Woods agreed the stairs could be moved. He stated the applicant would have a daylight basement to walk out of so they didn't need stairs to walk out toward the water.

Diane S. asked if there should be a new plan drawn up showing where the new steps would be and show that the existing stairs would be removed. Roger A. sketched in a possible location of the new stairs and it will be noted the existing stairs toward the water will be removed and not replaced. Roger stated that other than adding another pier to shore up the deck there would be no other changes to the deck. Roger said that because the deck would be 18" higher than what it is now, if the existing stair location was used you would need more risers and a longer run and that might push the stairs closer to the lake so he believed it was important to move the stair location so this would not happen. Mr. Woods agreed that moving the stairs to the side would be best. It was agreed between the applicant and the board that the stair location would

not be where it exists at this time and no stairs would come directly off the deck toward the water but instead either run perpendicular to the water line or go off the deck toward the side lot line so there would be no encroachment toward the high water mark.

Roland L. noted that he understood Roger's concern with the stairs going toward the water but it was important a set of stairs be put in that is safe for the applicants to leave the deck area. Roger agreed. Roger didn't want a set of stairs that went 8 feet toward the water. Roger was also concerned with walking toward the water. Diane S. said a pathway could be created from the new steps toward the water down the hill. Mr. Woods asked if a separate landing could be created with stairs toward the new basement door? Roger did not have issue with that as long as it didn't encroach further than the existing structures toward the lake. Mr. Woods stated they could also use bark mulch to stabilize the area. Diane S. stated she would agree to either placing the steps off to the side of the house or toward the walkout basement, not toward the lake. Mr. Woods stated the stairs, if going toward the basement door would not go beyond the existing deck. Roland believed this would be a good compromise. Roger sketched the new stairs in this location on the plan as all board members agreed this would work. The applicant agreed as well.

Madge B. stated that the board needed a good statement as to why the board was not requiring the applicant to move the cottage further back from the high water mark. Maggie M. stated if the cottage was moved back it would affect the garage due to the slope, it may cause a water issue for the garage. Diane S. stated there isn't enough room because of the garage location. Madge disagreed, she believed there was enough room and with respect to the garage doors, they could be changed. Diane went back to the drainage issue and that it would be a problem if the stormwater was redirected due to the terrain being changed. Diane did not believe it was worth moving the cottage back six feet when you could create more problems on site than you are helping. Diane said if the garage was farther back than it is, she would not have an issue with moving the cottage back but this isn't the case.

Mr. Ballard noted again that when the cottage is raised there will need to be additional stairs to the rear of the cottage and the garage doors would end up abutting these stairs if the cottage was moved back. Roger A. stated the doors could be changed to another type of door to prevent that so that isn't reason enough not to move the cottage.

Madge B. asked if the reason not to move it back is because of the garage doors? Diane S. stated the possible stormwater drainage issue is more of a concern. Roger A. stated if the cottage is moved back, because of the live sand, the garage would be undermined and would have to be re-stabilized. He said this would not be easy because of the type of soil in the area. Mr. Woods added that he believed as the water came off the cottage, it would run directly into the garage if the cottage was moved back because there would be no where else for it to go. He said the sills are at grade now so there is nothing preventing excessive water from going into the garage. Roger believed the best option for the plan presented was to keep the cottage where it is now and to have the stairs to the rear go toward the new sliding door in the basement.

Madge B. asked if CEO McDonough needed a revised plan? CEO McDonough stated he needed the revised plans when the applicant applies for the building permit. CEO McDonough asked about the replanting plan, wasn't there supposed to be a new plan for this meeting? Mr. Woods stated the board had asked for more plantings on the water side of the cottage but he couldn't put plantings in front of the sliding door. Madge agreed but she said something had to be put into place to keep stormwater out of the lake. Mr. Woods stated they could add stone or mulch and flagstone.

Roger A. asked when the start for this project would be? Mr. Ballard stated it would be in the fall so he could use the area during the summer. Mr. Woods hoped to have the building completed by mid December.



Roger A. asked if it would be o.k. if the board had the condition that the plantings would be in and viable by June 15, 2012? Mr. Woods stated that would be fine. Mr. Ballard agreed.

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

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

- 1. The revegetation plan shall be revised due to the entrance location of the daylight basement. This plan shall be presented and approved by the Code Enforcement Officer upon applying for the building permit.**
- 2. The revegetation plan shall be completed, including mulch, stone and viable plants to prevent stormwater erosion by June 15, 2012.**
- 3. Best Management Practices shall be used until the project is completed.**
- 4. A licensed surveyor must place the structure per the approved plan and certify the foundation location.**

**Roland L. made the motion for approval per the plans provided and as amended at this meeting, along with the above stated conditions. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. The motion passed unanimously.**

Nothing further was discussed.

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**Best Possible Location – Replace Existing Structure – Map 43, Lot 26 & Lot 27 (115 & 109 Pine Cone Drive) – Bill Elwell, Owner; Pat Frasier, Applicant**

Mr. Frasier was present for the initial review of the application. He is representing the owner, Mr. Bill Elwell on the project.

Mr. Frasier provided a copy of the purchase and sale agreement between Mr. Elwell and the current owners of the properties, Arthur and Diane Marles. He also presented a statement by Mr. Elwell which said he could act on Mr. Elwell's behalf for this project.

Mr. Frasier also brought to the board an Existing Conditions Plan for the two lots being reviewed. The plan showed that on Lot 26 there is an existing 864 sq. ft. cottage that Mr. Frasier stated was dilapidated and had to be removed before someone got hurt. The plan for Lot 27 showed a 339 sq. ft. structure.

Mr. Frasier stated that the structure on Lot 26 would either be burned by the Shapleigh Fire Dept. or removed. He was waiting for instruction from Chris Coppi of the DEP as to what he would be able to do. He noted that there were 3 trees very close to the structure that would be destroyed if the structure was burned or removed due to their close proximity to the structure. The trees were noted on the plan provided.

Mr. Frasier stated he believed he would be able to move the structure on Lot 26 back beyond the 100 foot high water mark. He said again that they want to remove the 30' x 30' existing structure as soon as possible before someone gets hurt around it. He said they would like to reduce the footprint to move it farther from the side lots lines and instead raise up the new structure. He said they will be applying for a growth permit for the new structure as well.

Mr. Frasier asked how many trees he would need to replant if the three existing trees near the structure have to be removed, which he believed they would. Roger A. read §105-4.D.7(b)[1][a] which read in part, "Trees

removed in order to relocate a structure must be replanted with at least one native tree, three feet in height, for every tree removed.”

Mr. Frasier stated he had no issue with moving the structure on Lot 26 farther back from the high water line. He said he would also like to move the septic system beyond the 100 foot mark.

Mr. Frasier spoke about possible septic locations, including putting it on a back lot owned by Mr. Elwell. CEO McDonough stated the board needed a septic design that shows that the location he is considering would in fact work. Board members agreed they would need to have a septic design and have to do a site inspection prior to making any decision on septic location.

**Roger A. stated a notice to abutters would be mailed and a site inspection will be done on Tuesday, July 26<sup>th</sup> at 6:45 p.m.** Members will meet at the town hall at 6:30 p.m.

Nothing further was discussed.

**OTHER:**

**Discuss §105-4, expiration of permits.**

CEO McDonough at the last Planning Board meeting stated he was concerned with the fact that there was no expiration date for a Best Possible Location application approval, as there is with a Conditional Use Permit. The majority of the board members agreed there should be an expiration date so the permit would not remain open for years because over time the Zoning Ordinance changes and what is allowed or not allowed at this time, may be much different years from now.

Barbara F., based on CEO McDonough’s suggestion made the following addition to §105-4 ‘Nonconformance’.

**J. Expiry of Permits. Permits issued under this chapter shall expire after 90 days, unless a building permit is issued. This time period may be extended by the Code Enforcement Officer if issuance of a building permit is delayed due to a technical problem.**

Madge B. stated as long as CEO McDonough had no problem with determining what a technical problem was she thought it would be fine. CEO McDonough did not have an issue deciding which circumstances could delay a project beyond what an applicant should have been able to control.

Diane S. asked if this ordinance change passes, would it be in effect only for new applications or would be applicable to current approved applications? Madge B. and Roger A. both stated it would only apply to applications from the date it is accepted by the Town. CEO McDonough stated that Diane should abstain from any further discussion on this subject as she has an open Best Possible Location application so her opinion would be bias. Roger agreed.

All board members, except Diane S., agreed the above change would be a benefit. There will be a public hearing on this at least once prior to the end of the year.

Nothing further was discussed.

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Growth Permits – There are Growth Permits available.

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

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

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, July 26, 2011**

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, July 12, 2011 were accepted as read.**

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### **Best Possible Location – Replace Existing Structure – Map 43, Lot 26 (115 Pine Cone Drive) – Bill Elwell, Owner; Pat Frasier, Applicant**

Mr. Frasier was present for the review of the application. He is representing the owner, Mr. Bill Elwell on the project. Note: Planning Board members did a site inspection prior to this evenings meeting.

Mr. Frasier noted that the purchase of the property was finalized and Mr. Elwell did in fact own the property as of Thursday, July 21st. (At the last meeting a copy of the Purchase and Sale agreement had been provided.)

At the previous meeting, Mr. Frasier also brought to the board an Existing Conditions Plan for two lots. On Lot 26 there is an existing 339 sq. ft. shed and on Lot 27 there is an 864 sq. ft. structure. (During the last meeting the structures with respect to which lot they were on were incorrectly addressed. The above is correct.)

Mr. Frasier presented a soils report for Lot 26 and the back lot across the street from Lot 26, known as Lot 60. The soils report, done by Thomas Milligan, Jr., SE #11, on July 25, 2011, showed the existing soils on both lots can support a subsurface wastewater disposal system. The design has not been completed because Mr. Frasier is waiting for the board to determine if they would allow the septic system for Lot 26 to be placed on Lot 60.

Roger A. asked if there was a map showing the location of the proposed septic system as well as the proposed location of the new structure? Mr. Frasier stated he knew where he wanted it but didn't know if it would be allowed, therefore he didn't have it placed on a plan yet. Mr. Frasier stated he needed to figure out exactly how many square feet he can have for the new structure and then place it on the map. Mr. Frasier said that he did not believe he could move the structure any closer to the water. Madge B. stated correct. Mr. Frasier stated the lots were already surveyed. Roger A. stated the board needed to approve where the new structure would actually be placed on the lot so it had to be on the plan.

Roger A. stated he had an issue with replacing the existing structure which is a shed with a new structure to be used for living quarters. Roger read §105-4.D(8) 'Change of use of a nonconforming structure.' (a) 'The use of a nonconforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no greater adverse impact on the water body, tributary stream, or wetland, or on the subject or adjacent properties and resources than the existing use.' Roger did not believe the structure would be allowed to go from a shed to a house. Roger did agree he could expand the shed by 30%.

Mr. Frasier asked if he could have a toilet in the structure? Roger A. did not believe so, it was a shed. Mr. Frasier disagreed; he thought you could have a bathroom facility in a shed. Mr. Frasier thought that according to the building code he could go to the Code Enforcement Officer at this time and have an approved State septic system put on the lot without going thru the Planning Board and put a bathroom in the existing shed as long as he wasn't going to expand the shed or move it.

CEO McDonough began by stating he has had many conversations on this subject with the DEP. He stated the DEP does not feel the structure is more non-conforming by converting it to a dwelling because it is an allowed use in the shoreland zone. He understood how the board could believe it would appear more non-conforming.

CEO McDonough stated that looking in the table of allowable uses in the shoreland district, a dwelling is an allowable use. He also added that with respect to the previous statement as to whether or not you can put a toilet in a shed, he believed you could. Mr. Frasier noted that he had the ability to put the holding tank 100 feet away from the lake using Lot 60. Mr. Frasier believed what he could not do without Planning Board approval is expand the existing structure by 30%. He stated he thought that by keeping the shed the same size with a toilet in it would have the same impact as expanding it by 30% with a toilet in it. Roger A. stated that could be true but it was up to him to show that what he was proposing would not have adverse impact on the lot. Roger said the board needed this information so they can make their findings of fact as to why they can approve the expansion. Mr. Frasier stated he understood.

Roger A. stated he felt the board should table it until Mr. Frasier has additional information. Mr. Frasier stated that he believed he would be ready for the next meeting.

Madge B. noted that the Planning Board was not going to deal with the 30% expansion calculation, that was between him and the CEO. Madge said the Planning Board approves the location so he needs to come back to the board with a plan that shows exactly where the new structure will be located, then the board can act on it. Roger A. agreed noting that it wasn't up to the board to determine the new location of the structure. Roger said it was the applicant's job to place it on the plan.

Madge B. also said that the board would not agree to burning down the existing structure after viewing it at the site inspection.

Roger A. stated that there was an issue on site regarding the cutting of some trees. Stumps were noted at the site inspection. He did not believe Mr. Elwell had anything to do with it but it would need to be addressed by Mr. Elwell as he is the current owner, unless it has been noted in writing somewhere that he does not assume responsibility. Roger said he may want to go back to the prior owner to get it resolved because it has to be addressed. Roger said the board would have to know how it will be addressed. CEO McDonough stated he thought there may have been a letter violation sent to the prior owner. He will look into it. Mr. Frasier stated that whatever the previous owner failed to do, Mr. Elwell will take care of it. (In April of 2008 an after-the-fact permit was written to remove seven trees within 100 feet of the water and replace them with 14 trees within 100 feet of the water to be well distributed. Permit #080028)

Roger A. referred Mr. Frasier to §105-4.D(7)(b)[1][a], which read in part "If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed." Mr. Frasier stated they could place the new trees next to the existing stumps.

Roger A. asked if there were any additional questions? There were none. Nothing further was discussed.

**Best Possible Location – Replace Existing Structure – Map 43, Lot 27 (109 Pine Cone Drive) – Bill Elwell, Owner; Pat Frasier, Applicant**

Mr. Frasier was present for the review of the application. He is representing the owner, Mr. Bill Elwell on the project. Note: Planning Board members did a site inspection prior to this evenings meeting.

Roger A. began by stating the board would need to know the proposed size and location of the new structure. Roger noted that the side setback distance in the Ordinance is 10 feet minimum on one side and a total of 30 feet cumulative on both sides. Mr. Frasier stated the current side setbacks are approximately 8 feet on one side and 10 on the other for a total of 18 feet. He stated he wanted to reduce the width of the proposed structure from the existing width and go up with the new structure, thereby creating a more conforming footprint. Roger stated he understood they may not be able to meet the side setbacks but the board would like to see the new structure more conforming than the existing as much as possible.

Roger A. stated it would be best to have the footprints of both buildings on the plan, where they set today. Mr. Frasier stated he would have the surveyor go out and put the distance from the existing structures to the lot lines on the plan.

Mr. Frasier noted that the existing survey markers were not along the high water mark but actually a distance away. Roger A. stated he could see that at the site inspection, it looked like the pins were 6 to 8 feet from the high water mark.

Mr. Frasier asked if he could put the new septic system on the back lot? He thought he could with an easement. CEO McDonough stated that the Site Evaluator would need to put an actual legal design on paper so the board would know it could be done. Roger A. stated he didn't like the idea of an easement because if the land were to be sold there could be future agreement issues with respect to accessing it. Roger added that the building going up would be very small so it would only require a small leach field. He did not see why it could not be placed on the same lot as the structure. Mr. Frasier stated it was because the leach field would have to be raised up to meet current code, such as you see on the neighboring property. In doing this it creates a mound. He stated another idea is getting permission from the neighbor to blend his mound with the neighbors so there isn't a vee created between the two properties.

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

Roger A. told Mr. Frasier to contact Barbara F. when he was ready to come back before the board.

Nothing further was discussed.

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**Construction of a Private Way – Map 3, Lot 17 (Simon Ricker Road) – Bill Elwell, Owner; Pat Frasier, Applicant**

Mr. Frasier was present for the review of the application. He is representing the owner, Mr. Bill Elwell on the project.

Mr. Frasier stated he was before the board because the driveway location the applicant wanted to use, based on a location recommendation of Road Commissioner Richard Goodwin, and for ease of access, was located in Resource Protection. He said according to the Zoning Ordinance the Planning Board may grant a permit to construct a road or driveway to provide access in the Resource Protection District, so that is why he was before the board. (See §105-59.D 'Roads, driveways, and water crossings.')

Mr. Frasier stated there is an existing road that the DEP stated he could use, because it was existing, but it directly abuts Resource Protection and he wants to be farther from this area. He stated that there would be about 300 feet of road that is close to Resource Protection then the rest of the roadway wouldn't have an issue.

Mr. Frasier stated the DEP regulates the first 75 feet in the Resource Protection District, the rest is regulated by the Planning Board. Madge B. stated that in light of this the DEP won't be involved? CEO McDonough stated correct, he called the DEP and because what Mr. Frasier is proposing isn't within 75' of the water line they don't regulate it.

Mr. Frasier stated again there is a roadway in Resource Protection at this time but he wants to move farther out of that area. Madge B. asked if he was asking the board to regulate 300 feet of road? Mr. Frasier stated, yes.

Roger A. asked if he was proposing access for 2 or more lots? Mr. Frasier stated, yes. Mr. Frasier stated he would have an engineer create the road plan once he is sure the board will allow him to use the area he is suggesting. He stated the other reason he wants to use this area is because the grade on site, this area will work best.

Roger A. stated the board would need to know where the fill is going. He said if it was going to another location in town that person would need a Conditional Use Permit to accept the fill. Mr. Frasier stated he wanted to keep as much fill on site as possible. He said there were many areas that could use the fill to level them off.

**Roger A. stated a notice to abutters would be mailed and a site inspection will be done on Tuesday, August 9<sup>h</sup> at 6:30 p.m.** Members will meet at the town hall at 6:15 p.m.

Nothing further was discussed.

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Growth Permits – 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, August 9, 2011**

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

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

**The minutes from Tuesday, July 26<sup>th</sup>, were accepted as read.**

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**Best Possible Location – Replace Existing Structure – Map 43, Lot 26 (115 Pine Cone Drive) – Bill Elwell, Owner; Pat Frasier, Applicant**

Mr. Frasier did not have the necessary information for the Planning Board this evening to continue with the review process so the board tabled the application until the next scheduled meeting.

**Best Possible Location – Replace Existing Structure – Map 43, Lot 27 (109 Pine Cone Drive) – Bill Elwell, Owner; Pat Frasier, Applicant**

Mr. Frasier did not have the necessary information for the Planning Board this evening to continue with the review process so the board tabled the application until the next scheduled meeting.

**Construction of a Private Way – Map 3, Lot 17 (Simon Ricker Road) – Bill Elwell, Owner; Pat Frasier, Applicant**

Mr. Frasier did not have the necessary information for the Planning Board this evening to continue with the review process so the board tabled the application until the next scheduled meeting.

The Planning Board did meet Mr. Frasier on site to do an inspection of the area but the engineered plans were not provided so the board, along with Mr. Frasier, agreed to postpone the site inspection until the plans were ready and they could see exactly where the proposed new road would go.

Nothing further was discussed.

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**OTHER:**

Roger A. stated he was asked by the Board of Selectmen if the Planning Board had anything they wanted to put on the Special Town Meeting taking place on September 10<sup>th</sup>. Roger said he told them the board did not present ordinance changes on a special town meeting. The board will present any changes at the yearly town meeting held in March. All the board members agreed that the place for ordinance changes is the yearly town meeting.

Roger A. noted he received the Budget and Warrant Article schedule for Town Meeting 2012. He asked Barbara F. if she had received a copy? She had not; therefore Roger gave her a copy.

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



Growth Permits – There are Growth Permits available.

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**The Planning Board meeting was adjourned at 7:35 p.m.**

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

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, August 23, 2011**

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

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

**The minutes from Tuesday, August 9th, were accepted as read.**

**There is a new Planning Board Member, Mr. Joseph Stanley. He will act as an Alternate. The board is extremely pleased to have him as a member.** As a note, there is still a vacancy for another alternate to the Planning Board. If you are interested please contact the Land Use Secretary at 636-2844, x404 or [planningboard@shapleigh.net](mailto:planningboard@shapleigh.net)

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**Best Possible Location – Replace Existing Structure – Map 43, Lot 26 (115 Pine Cone Drive) – Bill Elwell, Owner; Pat Frasier, Applicant**

Mr. Frasier was present to represent Mr. Elwell, the owner of the property.

Alternate Joseph S. was asked by Acting Chairman Madge B. to stand in for Diane S. at this evenings meeting.

Mr. Frasier began by stating he would not be reviewing the private way application tonight or Lot 27 because his surveyor has been unavailable to do the necessary work for the board. Madge B. stated the board would table those applications until the next meeting.

Mr. Frasier stated tonight he was prepared to talk about 115 Pine Cone Drive with respect to information provided by Mr. Elwell addressing the section in the Ordinance that requires an applicant to show that the change of use of a non-conforming structure would have no greater adverse impact on the water than what exists, which is at this time a shed. Board members quickly looked thru the information provided but concluded they would need to review it in depth before making any decision as to whether or not the information provided was adequate. Also, Madge B. requested that Barbara F. mail a copy of the information to Diane S. and Roger A., both were unable to attend this evenings meeting.

Mr. Frasier noted that the information provided this evening by Mr. Elwell consisted of documentation from not only Mr. Elwell but a licensed engineer/site evaluator, Thomas Milligan, SE, PE, PLS., which gave in depth detail as to why he believes the proposal will have no impact.

Madge B. asked when the plan for the new structure and the septic design would be provided? Mr. Frasier stated that once the board reviewed the material he gave them and if they agree the shed can be converted as proposed, then he will have the engineer draw up the design. Madge said that was why she thought it would be best for members to read the information at home and discuss it at the next meeting.

Roland L. stated that after quickly looking thru the material from Mr. Frasier, it suggests the septic should be placed 250 feet from the high water mark, on the lot across the road from Lot 26. CEO McDonough stated until he saw a septic design on paper from a licensed site evaluator he could not determine whether or not a septic system could be placed on site. Madge B. agreed.

CEO McDonough reviewed the Planning & Land Use Laws, specifically §4807-A. Minimum lot size required, “In all areas of the State, notwithstanding any other provision of state or local law or regulation, no person shall: 1. Dispose of waste from any single family residential unit by means of subsurface waste disposal unless such lot of land on which such single family residential unit is located contains at least 20,000 square feet; and if the lot abuts a lake, pond, stream, river or tidal area, it shall further have a minimum frontage of 100 feet on such body of water;”

CEO McDonough also read §4807-B. Approval of smaller lots, “1. Approval by local plumbing inspector. A lot of less than the size required in section 4807-A may be used for subsurface waste disposal if approved in writing by the local plumbing inspector for the municipality or unorganized territory, as long as: A. The applicant has submitted a current application for subsurface wastewater disposal, or the equivalent, pursuant to rules adopted by the Dept. of Human Services; B. The subsurface waste disposal meets the criteria for first-time subsurface waste disposal systems as adopted by rule by the Dept. of Human Services without requiring a variance; and C. The subsurface waste disposal is not an engineered disposal system.”

Roland L. asked if it had been determined there could be a new structure on site or is it whether or not the site would hold a septic system that would determine that? CEO McDonough stated it depended on what the minimum lot size law states and whether or not a site evaluator can design a system for the lot.

Madge B. had asked at the previous meeting if Barbara F. could find a copy of the subdivision this property is located in. Barbara looked through the files for both this lot and the adjacent lot owned by Mr. Elwell and could only find a copy of the deed which describes the lot as being part of a subdivision plan entitled ‘Plan of Camp Lots at Silver Lake Beach’, dated 1949. Barbara stated that she did not know if the Town Hall held a copy of the plan. Joseph S. stated he may have a copy of the plan because he had surveyed lots in the area for a previous job. He took down the deed information and will try to provide a copy of the plan for the next meeting. Madge noted that a copy of the plan should be recorded at the York County Registry of Deeds.

Going back to the discussion on the proposed septic system, Mr. Frasier asked if the septic was placed on the back lot, beyond the 250 foot shoreland setback, would there still be as much of an issue? Madge B. and CEO McDonough both stated the lot the structure is on is what is used for the criteria for the septic design and this lot is a non-conforming lot with less than 100 feet of lot frontage on the water.

CEO McDonough stated that the site evaluator should create a plan that meets all the criteria of the Dept. of Health and Human Services. He stated that he could not determine if a location could meet the septic criteria for a particular lot, it is up to the professional to determine that. He said it was his job to be sure a certified plan was drafted.

Roland L. asked if there was a difference in standards depending on the type of activity on site, seasonal or year round? Mr. Frasier believed it was determined by the amount of effluent being created, how many gallons based on what the activity is. CEO McDonough stated the septic design is based on a set of standards that the site evaluator uses to create the size of the system needed on site. Roland stated that there had been discussion in the past that a holding tank isn’t allowed. CEO McDonough stated correct, so the soils must be able to filter the effluent. CEO McDonough noted that the criteria for a first time system and a replacement system are very different. On this particular lot it must be able to hold a new system, as there is not one in place.

Madge B. speaking to CEO McDonough stated that she believed one way or the other the new septic system design will have to go to the Dept. of Health and Human Services for approval. She asked him what he

thought? Madge referred the CEO and board members to §4807-C. Approval of lesser frontage., because Lot 27 has less than 100 feet of frontage. Madge read the first sentence to the board, “A lot of less than the frontage required in section 4807-A may be used for subsurface waste disposal if approved in writing by the Dept. of Human Services.” Madge wondered if it wouldn’t be best to send the project to DHS.

Madge B. also read §4807-B.2 Approval by Dept. of Human Services, “A lot that does not meet the criteria listed in subsection 1 may be used for subsurface waste disposal if the subsurface waste disposal is in compliance with the rules regarding subsurface waste disposal adopted by the Dept. of Human Services and is approved in writing by the Dept. of Human Services.” Again she thought perhaps DHS would need to review the septic design. CEO McDonough stated it does appear it should go to DHS but he said if you read §4807-D. Exemptions, this lot might be exempt from a separate filing to DHS. This chapter read as follows:

This chapter as to the use of a lot for single family residential purposes shall not apply to any lot which prior to January 1, 1970, was specifically described as an identifiable and separate lot either in the instrument conveying such lot to the then owner or in a valid and enforceable agreement for purchase and sale or was shown on a plan recorded in accordance with the law, prior to January 1, 1970; provided that contiguous lots in the same ownership on or after October 3, 1973 shall be considered as one lot for the purposes hereof.

This chapter shall not apply to any structure in existence and in place on or before October 3, 1973, which then or theretofore disposed of wastes by means of subsurface waste disposal; except that no person shall reduce the size of the lot upon which such structure is located to a size or frontage less than that allowed by section 4807-A unless permitted pursuant to section 4807-B.

Madge B. stated that was why she asked about the subdivision plan initially to determine when the lot was created. (The lot was created in 1949.) Madge asked about contiguous lots, lots being owned by the same person, being combined. Mr. Frasier stated that both lots are owned differently. One lot is owned by Bill Elwell, the other by Bill and his son. CEO McDonough stated he should provide a copy of each deed for the board.

Mr. Frasier was also asked to provide permission from Mr. Elwell’s son showing he could represent him as well as Bill. Mr. Frasier stated he would do so.

CEO McDonough stated he would like to determine how the chapter reviewed applies to this lot. He asked members to review the laws so there could be a discussion at the next meeting. CEO McDonough also thought that a licensed site evaluator should have an interpretation based on their knowledge of the laws as they apply to septic design. A site evaluator should be able to determine whether or not the minimum lot size laws apply.

Madge B. stated members should read the information provided by Mr. Frasier as well as the minimum lot size law so it can be discussed at the next meeting.

Madge B. asked if she had a motion to table this application until the next meeting? **Maggie made the motion to table this application until Tuesday, September 13, 2011. Roland L. 2<sup>nd</sup> the motion. All members were in favor.**

Nothing further was discussed.

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**Conditional Use Permit – Replace Retaining Wall – Map 28, Lot 27 (18 17<sup>th</sup> Street) – C & D Landscaping, Applicant; Richard Foye, Owner**

The board briefly reviewed the application before them. Along with the application, provided were pictures of the existing retaining wall and stairs that the owner wanted to replace. A sketch plan of the property, showing the location of the retaining wall and stairs was also provided. The Permit by Rule was mailed to Augusta on August 23, 2011.

It was noted Mr. Foye's property had been before the board in October of last year to replace 3 retaining walls, patio and one set of stairs.

**Madge B. stated board members would do a site visit on Tuesday, September 13<sup>th</sup>. Members will meet at the Town Hall at 6:45 p.m. A notice to abutters will be mailed as well.**

Nothing further was discussed.  
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**Best Possible Location – Replace Existing Structure – Map 43, Lot 27 (109 Pine Cone Drive) – Bill Elwell, Owner; Pat Frasier, Applicant**

Mr. Frasier did not have the necessary information for the Planning Board this evening to continue with the review process so the board tabled the application until the next scheduled meeting.

**Construction of a Private Way – Map 3, Lot 17 (Simon Ricker Road) – Bill Elwell, Owner; Pat Frasier, Applicant**

Mr. Frasier did not have the necessary information for the Planning Board this evening to continue with the review process so the board tabled the application until the next scheduled meeting.

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Growth Permits – 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 13, 2011**

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

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

**The minutes from Tuesday, August 23rd, were accepted as read.**

Alternate Joseph S. was asked by Chairman Roger A. to stand in for Madge B. at this evenings meeting.

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**Conditional Use Permit – Replace Existing Retaining Wall and Stairs – Map 28, Lot 27 (18 17<sup>th</sup> Street) – C & D Landscaping, Applicant; Richard Foye, Owner**

Charles Starbird of C & D Landscaping was present to represent Mr. Foye.

Roger A. noted there was a site inspection prior to this evenings meeting. He stated at the site inspection it was clear the wall, due to the pressure behind it and lack of drainage would eventually totally collapse. Roger said a hard rain would be a detriment at this point.

Roger A. asked if there were any questions? Roland L. stated he hoped that while doing the project Mr. Starbird could convince the owner, Mr. Foye, to do something about the stormwater runoff currently taking place on site. Mr. Starbird agreed there is a problem and said he had placed a berm on site during the last project to help somewhat and he thought more should be done.

Roger A. stated the height of the wall was 42 inches and it appeared the footings were fine. **The board members agreed to the following conditions of approval:**

- 1. Best Management Practices shall be used until the soil around the new wall is stabilized.**
- 2. There needs to be a landscaping plan provided to the Code Enforcement Officer prior to commencement of the project. Also, any tree removal from the prior permit to replace walls along with this project would need to be addressed and the proper number of trees replaced. This should be on the landscaping plan.**
- 3. Concrete material must be removed from the site.**
- 4. The project shall be completed by June 30, 2012, which includes the replanting of vegetation.**
- 5. Permit by Rule must be approved. (Permit by Rule was received as approved by the CEO on 9/16/11.)**

**Roger A. added that the approval of the wall permit will also be with the recommendations of Joe Anderson for mitigating the stormwater runoff problem on site. The recommendations are to be given to the CEO along with the landscaping plan. This will be the 6<sup>th</sup> condition of approval.**

Roger A. added that he realized that unless 17<sup>th</sup> Street is repitched there will always be a stormwater issue heading toward the lake. But he still believed there could be more measures taken to help to protect the lake.

**Roland L. made the motion to approve the application to replace the existing 42" x 27' retaining wall and stairs per the plan provided with the above six conditions. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. The motion passed unanimously.**

**Conditional Use Permit – Replace Concrete Patio & Restore Retaining Wall – Map 43, Lot 7 (119 North Shore Road) – Dianna Lyell, Owner**

Ms. Dianna Lyell was present along with the contractor doing the work, Mr. Joseph Letourneau of Earth Works Landscaping Construction.

Ms. Lyell and Mr. Letourneau provided the board with a plan for the scope of the project which included replacing the existing patio that has deteriorated with concrete pavers and replacing the 6 foot high, 46 foot long wall that is collapsing with two terraced walls approximately 30 to 36 inches in height. They will both be 46 feet long. Also provided was a copy of the Permit by Rule application, a sketch plan, a materials/pricing list, a letter from Ms. Lyell stating Mr. Letourneau could represent her if needed and there were recent pictures of the existing wall and patio.

*Note: A copy of the approved Permit by Rule was received by the CEO on 9/16/11 and a copy placed in Ms. Lyell's file.*

Ms. Lyell began by stating the plan was to remove the concrete pad and replace it with pavers. She said the other part of the project is to stabilize the retaining wall. She said it is not only currently falling into the lake but she feels it's a safety issue. She noted she had provided both pictures of the cracking concrete pad as well as the wall.

Roger A. stated that because the DEP hadn't gotten back to Ms. Lyell yet it should mean the project as she presented it has been approved by them. The Permit by Rule application had been mailed on 8/13/11. Ms. Lyell stated Chris Coppi at the DEP had given her a verbal o.k.

Roland L. asked what the span of the wall was? Ms. Lyell stated the wall was 50 feet long. Roland asked if it was a wall or rip rap? Ms. Lyell stated it was both. Mr. Letoureaux stated that it was a stone wall and at present was about four or five feet in height. He said that you could see that it had been a very nice stone wall but it has crumbled down because of the wave action. He said he wasn't rip rap.

Ms. Lyell agreed the wall was originally a dry stacked wall. Roland L. asked if they were going to use the existing stones for the new wall. Mr. Letourneau said he would use the existing stones and they would be back mortared but not face mortared. He believed this would prevent the wave action from deteriorating the backfill which is what has happened.

Roger A. asked if there was a replanting plan? Mr. Letourneau stated there wasn't a plan drafted. Ms. Lyell stated she would like to replace the existing vegetation with the same as exists now, that being Juniper and Beach Roses. She believed the Juniper made for good erosion control.

Roland L. asked if the replacement wall was going to extend beyond what was there now? Ms. Lyell stated definitely not. Mr. Letourneau agreed but noted there would be two walls instead of one, the one closer to the home would hold up the new patio area.

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

**Roger stated a notice to abutters would be mailed and a site inspection scheduled for Tuesday, September 27<sup>th</sup> at 6:45 p.m. Members will meet at the town hall.**

Roger A. stated it would be good if someone could meet the board at the site inspection in case there were any questions. He said after the site inspection the application would be taken back up at the meeting at 7:30 p.m.

**Construction of a Private Way – Map 3, Lot 17 (Simon Ricker Road) – Bill Elwell, Owner; Pat Frasier, Applicant**

Mr. Frasier was present to represent Mr. Elwell.

Mr. Frasier presented the board with a preliminary plan for the private way. The plan showed the site contours to the left of the proposed private way, the private way itself along with a proposed turn around area. The gravel road was depicted as being 16' wide.

Mr. Frasier pointed out where the wetland area was located. He also noted that the road grade went from 3% to 8%. He asked if the location of the turnaround was o.k. He wanted to know if it had to be a certain distance from the end?

Mr. Frasier also noted that the line depicted showing a 2 acre lot was not the actual lot line, it is a proposed lot line.

Mr. Frasier stated that the top of the proposed private way location is approximately 200 feet away from the wetland. He said there would need to be more contour lines done to the right of the proposed roadway. He asked the board if there was anything else they needed to see on the final plan?

Roger A. asked how far the turnaround was from Simon Ricker Road? Mr. Frasier stated it was 540 feet. He stated the entire length of the road as depicted on the plan is 664 feet. Roger, looking at the Private Way Ordinance, said there needed to be a turn-around every 500 feet. Roger asked if this road was going to be for a subdivision? Mr. Frasier stated at this time it is a private way.

Mr. Frasier asked if the board had any issues with the road being in Resource Protection? He asked if the board had any issue with the location of the road? Roger asked if the total length of the road was going to be 664 feet? Mr. Frasier stated in the future it may be longer but this is to get the road out of Resource Protection.

Roland L. asked if there needs to be a turnaround every 500 feet does that mean he only has to have one or does he need another at the end? CEO McDonough did not think you can dead end a road, there needs to be a place for emergency equipment to turn around. Mr. Frasier stated the turnaround was placed where it is because there is a flat spot but if they have to move it they will.

Roger A. noted that the ordinance does state that there needed to be a hammerhead or T at the end of the road. Roger said therefore either the road needs to be shortened up or there needs to be two turnarounds, one at 500 feet and one at the end.

CEO McDonough, reviewing the ordinance, said it did not state there needed to be a turnaround at 500 feet; the road just had to be wide enough to provide space for 2 vehicles to pass for every 500 feet. He said as long as the area is wide enough for two vehicles at 500 feet then he only needs a turnaround at the end of the proposed road. Roger A. thought the road as proposed may be fine now because it is 16 feet wide, two vehicles should be able to pass. CEO McDonough thought it should be wider so two fire trucks could easily pass each other. Roger agreed and said 22 feet wide should be sufficient. CEO McDonough asked how long the 22 foot area should run? Roger stated 40 feet long should be adequate.

Roger A. stated the board will need to see the contours on both sides. Mr. Frasier talked about the possibility of needing a culvert and/or rip rap to prevent runoff at the entrance to the private way. Roger A. stated he will need the road cross section on the plan along with the grading. Mr. Frasier stated that he understood.



Mr. Frasier asked if it was o.k. to portray just the 2 acre lot on the plan now along with the roadway as they are going to cut one lot every five years. Roger A. stated that right now all the board needed was the private way plan because it isn't a subdivision. Roger said the 50 foot right-of-way needed to be delineated on the plan and a road maintenance agreement was required. Mr. Frasier stated that was not a problem.

Nothing further was discussed.

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**Best Possible Location – Replace Existing Structure – Map 43, Lot 26 (115 Pine Cone Drive) – Bill Elwell, Owner; Pat Frasier, Applicant**

Mr. Frasier was present to represent Mr. Elwell, the owner of the property.

Mr. Frasier supplied the board members with additional information from Thomas Milligan, Jr., SE, PE, PLS regarding placing the septic system on a separate parcel from the one holding the structure. Mr. Milligan stated that in order to do this the design must comply with the Plumbing Code and an easement must be created and recorded in the Registry of Deeds. Mr. Milligan also contacted Ms. Deidre Schneider at the MDEP and she indicated there is no shoreland zoning requirement that requires a wastewater disposal system be installed on the same lot as the structure it would serve. Mr. Milligan does not believe, based on his investigation that the disposal system is required on the same lot as the structure.

CEO McDonough agreed that with respect to shoreland zoning and subdivision rules, placing the disposal system on another lot would be allowed but he still believed the lot size law must be reviewed to see how it applies. CEO McDonough was referring to the Planning & Land Use Laws, §4807-A. 'Minimum lot size required'; §4807-B. 'Approval of smaller lots'; §4807-C. 'Approval of lesser frontage'; and §4807-D. 'Exemptions'. CEO McDonough stated that in order for a lot to be buildable it had to be able to sustain a disposal system. He felt the board needed to review in particular the section on 'exemptions' and see how it applies to this case.

§4807-A. Minimum lot size required, reads in part "In all areas of the State, notwithstanding any other provision of state or local law or regulation, no person shall: 1. Dispose of waste from any single family residential unit by means of subsurface waste disposal unless such lot of land on which such single family residential unit is located contains at least 20,000 square feet; and if the lot abuts a lake, pond, stream, river or tidal area, it shall further have a minimum frontage of 100 feet on such body of water;"

§4807-B. Approval of smaller lots, "1. Approval by local plumbing inspector. A lot of less than the size required in section 4807-A may be used for subsurface waste disposal if approved in writing by the local plumbing inspector for the municipality or unorganized territory, as long as: A. The applicant has submitted a current application for subsurface wastewater disposal, or the equivalent, pursuant to rules adopted by the Dept. of Human Services; B. The subsurface waste disposal meets the criteria for first-time subsurface waste disposal systems as adopted by rule by the Dept. of Human Services without requiring a variance; and C. The subsurface waste disposal is not an engineered disposal system."

§4807-C. Approval of lesser frontage, "A lot of less than the frontage required in section 4807-A may be used for subsurface waste disposal if approved in writing by the Department of Human Services. Approval must be granted if the applicant for approval demonstrates to the Dept. of Human Services that such frontage will not cause such lot to be of such configuration as to prevent compliance with the standards in section 4807-B, or not otherwise present any harm to public health, safety or general welfare."

**§4807-D. Exemptions**, "This chapter as to the use of a lot for single family residential purposes shall not apply to any lot which prior to January 1, 1970, was specifically described as an identifiable and separate lot either in the instrument conveying such lot to the then owner or in a valid and enforceable agreement for purchase and sale or was shown on a plan recorded in accordance with the law, prior to January 1, 1970; provided that contiguous lots in the same ownership on or after October 3, 1973 shall be considered as one lot for the purposes hereof.

*continued*

This chapter shall not apply to any structure in existence and in place on or before October 3, 1973, which then or theretofore disposed of wastes by means of subsurface waste disposal; except that no person shall reduce the size of the lot upon which such structure is located to a size or frontage less than that allowed by section 4807-A unless permitted pursuant to section 4807-B.”

CEO McDonough asked members again to read the laws and see how they apply to this situation.

Maggie M. reviewing §4807-C, noted that it talks about DHS approval but also leads you back to 4807-B. She thought the way these laws were written were very confusing. Diane S. agreed. CEO McDonough stated that it is under §4807-D, that it refers to the lot exemption which could make this lot exempt from A and B. The board needs to decide if it applies.

Roger A. asked how the deeds were recorded? Mr. Frasier thought he had given the board a copy of the deeds. Barbara F. noted they had not received a copy of the deeds. Mr. Frasier stated that he will get the board a copy of the deeds. Roger asked if the deeds had the same owner? Mr. Frasier stated there was a difference in title. He said the camp lot was owned by Bill Elwell and Doug, the other lots are owned by Mr. Elwell.

Mr. Frasier stated that he believed legally he could put a septic system on the back lot or on the lot with a structure. His question was whether or not he could occupy the structure. He said he knew the structure could exist but could it be occupied? Roger A. believed a single family residential unit needed 20,000 square feet. CEO McDonough asked if the ‘exemption’ applied to this lot due to when it was created? Roger said he needed to know how the deeds were recorded. Roger stated that if both lots are owned by the same person he believes the board can combine the lots and then only one residential structure is allowed.

Roger A. also thought Mr. Elwell should show how it is best to put the septic system on the back lot to prevent adverse impact that way the board would shift the septic to the back lot. Roger also asked how many bedrooms would be in the expanded structure? Mr. Frasier stated, one. Roger stated the plan shows two. Mr. Frasier stated that to comply with State law the leach field has to be for two bedrooms. Roger stated he wanted to see that the waterfront lot could not support a disposal system then it would have to be pushed back on the other lot with an easement, then he wouldn’t have a problem with placing it there. Mr. Frasier stated that he thought the lot with the structure would have to show it could support a system but it would be best to push it onto the back lot for setbacks to the water, well, etc. CEO McDonough agreed with Mr. Frasier in that if a lot is less than 20,000 square feet it has to be able to support its own septic system but under ‘exemptions’ provided the lot has been shown on a plan or deed to exist prior to 1973, then the 20,000 square feet doesn’t pertain and the minimum lot size law doesn’t apply.

Mr. Frasier said that legally he believed he could put a well and septic on the lot and expand the structure by 30%. Also, he didn’t understand why for example if someone could come onto the lot and bring their children how his doing what he is applying for would not be allowed. They would surely be impacting the area having no facilities on site, etc.

Diane S. asked if the Planning Board should get a legal opinion? CEO McDonough stated that at the last meeting the board believed one wasn’t necessary. Barbara F. asked if the board should wait for Madge to return to the next meeting to continue this discussion. Mr. Frasier stated he thought the board and the engineer could make the decision on how the law applies.

Mr. Frasier stated an easement from the back lot to the front lot was not an issue for a new septic system. He said Mr. Elwell owned one lot and he and his son owned the other. Maggie M. asked what happened when the lot was sold in the future? Barbara F. stated the easement runs with the land. Mr. Frasier stated there were hundreds of easements on lots around the lakes, it was a common practice.

Diane S. stated that when selling a lot with an easement on it sometimes it's harder to finance but if this is family owned and it stays in the family it shouldn't be a problem. Mr. Frasier agreed that sometimes it reduces the value of the property but again it has not been an uncommon practice in this area.

Roger A. stated he has no problem with the easement he just wanted it shown that the lakefront property could not hold a septic design then it would have to be on the back lot. Roger said that for the adverse impact if it was on the rear lot it would reduce this issue. He said it could give the board more criteria to say it has to be on the rear lot.

Mr. Frasier stated he would contact Mr. Milligan and explain to him that the lot is less than 20,000 square feet, let him read the deeds and see if he changes his design. Mr. Frasier stated he wanted to do this project correctly. He also wanted to get Madge Baker's opinion.

Mr. Frasier stated the other application for 109 Pine Cone Drive was very simple. He said they would be moving the new structure back about six or eight feet due to the location of the septic system, getting that away from the well as much as possible. He said he was also trying to meet the side setbacks; he was waiting for the plans to be drawn up.

Mr. Frasier noted that at the site inspection the board members asked if he could spare some of the existing trees. He said he would like to but those he cannot he will replace. He noted there were trees leaning toward the existing building and during excavation they probably won't survive or may land on the structure. Roger A. stated he understood that trees would have to be removed due to the excavation.

Mr. Frasier, getting back to 115 Pine Cone Drive, noted that a septic system could be placed on that lot but it would be extremely expensive to do so as it will have to be one of the new innovative systems. Joseph S. stated that there were two separate issues being considered in his opinion, the minimum lot size rule and how it applies and can a septic system be placed on the back lot to service the front lot. Mr. Frasier stated there is a letter from the engineer that addresses the impact on the front lot and that a disposal system on that lot will not have an adverse impact and that a system can be placed on the rear lot to service the front lot.

Roger A. asked if there was a septic design for 109 Pine Cone Drive? Mr. Frasier stated there is an engineered design but he does not have it on paper yet. He said the new design would be chambers because it will take up less area. He said originally it was going to be a leach field but Mr. Milligan changed his mind which is why the design hasn't been given to the board members yet.

Roger A. stated that on 109 Pine Cone Drive the board needs a design of the system and then it will be easier to tell how far back the new structure can be pushed back. Roger said he would like to see it moved back more than 8 feet but he realized the septic location will play a role.

**The board tabled the application until the next meeting on September 27<sup>th</sup>.**

Nothing further was discussed.  
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**Best Possible Location – Replace Existing Structure – Map 43, Lot 27 (109 Pine Cone Drive) – Bill Elwell, Owner; Pat Frasier, Applicant**

Mr. Frasier did not have the necessary information for the Planning Board this evening to continue with the review process so the board tabled the application until the next scheduled meeting.

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**Growth Permits – Map 10, Lot 2-2-1 (White Pine Lane of Great Hollow Acres) – GP #06-11**

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

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

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, September 27, 2011**

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

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

**The minutes from Tuesday, September 13th, were accepted as read.**

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**Best Possible Location – Replace Existing Structure – Map 43, Lot 27 (109 Pine Cone Drive) – Bill Elwell, Owner; Pat Frasier, Applicant**

Mr. Frasier was present to represent Mr. Elwell.

Mr. Frasier began the meeting by providing the Deeds to Map 43, Lot 27; Map 43, Lot 26; and Map 43, Lot 60 which is directly across the street from lots 26 & 27. The deeds show Mr. William Elwell owns Lot 27 and 60, and Mr. William Elwell and Mr. Douglas Elwell own Lot 26. There had been a question regarding common ownership at the previous review.

Mr. Frasier provided a new plan for the proposed building on Lot 27. The plan showed the existing structure, existing concrete patio, proposed new building and septic system location in relation to all the lot lines, Pine Cone Drive and Silver Lake. The plan depicted the proposed new structure six feet farther back from the lake and it would be farther from the side lot lines than the existing structure.

Mr. Frasier asked the board if they were o.k. with the new structure being centered on the lot or did they prefer it closer to one side or the other? As presented, distance to one side lot line would be 13.86 feet and the other 12.39 feet. He asked if the board would prefer one side being 10 feet to the side lot line, creating a greater distance on the other. He noted that he realized he was still shy four feet of the 30 foot requirement but was more in compliance than the existing structure.

Roger A. didn't see any reason to change the location, he didn't think it would make a difference putting it closer to one side.

Mr. Frasier gave the board a copy of the new septic system design done by Thomas Milligan, Jr., SE #11, dated 9/25/11 and a copy of the Subsurface Wastewater Disposal System Variance request also done by Mr. Milligan on 9/25/11. Madge asked for further explanation of the variance. Mr. Frasier said that although the new system would be more compliant with the setback to existing wells, it still would not be 100 feet or greater away from them so a variance is required.

Madge B. asked who approves the variance? CEO McDonough stated he did. He said almost every time you are replacing a septic system in the shoreland zone a variance is required. He pointed out the table on the request form which showed the variance request for replacement systems. He stated that for a new system which would normally require a 1000 to 2000 gallon system, 100 feet is the required distance to the owners or neighbors well. He said for this system they are requesting to have the disposal field 60 feet from the existing well. He said in reality, where the existing system is 40 feet from the existing well, this proposed system is 20 feet farther from the well than the existing. He said the State requires this form when you don't meet the standards. He noted that he had the authority to grant a variance from 100 feet down to 50 feet. If the variance request is greater than that, the request goes to the State.

Madge B. asked what the distance was from the proposed structure to the holding tank? Mr. Frasier stated that from the house to the tank there has to be a minimum of 8 feet, from the tank to leach field you have to have grade. He said therefore, the new structure is as close to the road as he could place it and furthest away from the lake. He said he could only move it with respect to the side lot lines if the board thought that was best.

Mr. Frasier asked if they had a buyer for the property and the buyer wanted the structure moved, what would he need to do? Roger A. stated he would have to come back before the board if he makes any changes to the plan, once it is approved. The rest of the board agreed.

Madge B. didn't think the board had to allow the porch. Mr. Frasier stated if the board does not allow the porch then he would like to move the patio blocks that are near the water, in place of the porch.

CEO McDonough asked about the 10% lot coverage, what is the current coverage and what will it be with the new structure. Doing quick calculations it appeared the approximate lot size was 6,786 square feet. The existing structures cover approximately 1,060 sq. ft. (structure and patio), which exceeds the lot coverage allowed of 679 sq. ft. The proposed structure will cover 720 sq. ft., making the proposed more in compliance than the existing. Note: The figure used to calculate the existing structures was 864 sq. ft. for the structure (less the eaves) and the 14' x 14' patio. If the eaves were used existing lot coverage would be 1,151 sq. ft. Mr. Frasier believed the structure itself was 30' x 30' making it 900 square feet. He said the building was leaning so the measurements weren't totally accurate. Mr. Frasier stated there was one roof overhang not included in any of the calculations. In conclusion, regardless of which measurements are used, the new structure is more in compliance than the existing.

Madge B. asked if the concrete block patio was a structure? CEO McDonough stated, absolutely. Madge noted that the new structure would then be much farther back from the high water mark than the existing structures. Mr. Frasier stated, yes.

Mr. Frasier stated he could have the final plan stamped by the surveyor. Roger A. noted that a surveyor has to place the structure on the face of the earth per the approved plans according to Ordinance §105-4.D(7)(c). This has to be given to the CEO.

Madge B. asked if this was a 30% expansion? Roger A. stated, yes, but those figures will be approved by the CEO.

Roger A. reiterated that if the board approves this plan tonight, those are the figures to be used for the surveyor. If those figures change the applicant has to come back before the board prior to construction.

Madge B. asked about the fill, did the board have to approve that? Roger A. stated no, it is incidental to construction.

Mr. Frasier spoke about blending in the fill on his lot with the neighbors so as not to create a funnel for water to go toward the lake. Roger A. stated that he would need a letter from the neighbor giving him permission to do so. He should give a copy of the letter to the CEO. Also, if more than 10 yards of fill are moved onto the neighbor's property a permit would be required from the planning board.

Roger A. read §105-D 'Nonconforming structures' (3) 'Removal, reconstruction or replacement'; and (7) 'Relocation', in their entirety.

Mr. Frasier noted that at this time, what was existing for ground cover was sparse grass, the area was mostly

gravel. He asked if grass was sufficient as a ground cover? Madge B. stated the board usually tried to stay away from grass. Mr. Frasier stated he would like to try grass because he didn't think bark mulch would offer much. He said it would just wash away or blend in with the gravel. Roger noted the leach field would be grassed in so perhaps in this location trying grass would work. He added that the area to be recovered was very small.

Mr. Frasier asked if the existing patio could be left? He thought it would continue to hold the ground in place but he would do whatever the board wanted. CEO McDonough stated it had to go, it is a structure. Madge B. agreed it has to be removed. Madge said there should be some type of vegetation that would work in that area. CEO McDonough showed Mr. Frasier a recent re-vegetation plan that he had received that was a good example of what Mr. Frasier should put together for a plan, it being a sketch plan and key to the type of vegetation to be used and where.

Roger A. asked where the owners would park? Mr. Frasier, using the plan, showed Roger that there could be a car placed alongside the building or near the road there was 20+ feet that could be used. He said he couldn't shift the leach field. Roger said he was just curious, it didn't affect the Best Possible Location.

**Roger A. stated the conditions for approval would be:**

- 1. Best Management Practices shall be used until the project is completed.**
- 2. The cement patio next to the water is to be removed.**
- 3. The re-vegetation plan shall be given to the CEO prior to construction for his review and approval.**
- 4. The re-vegetation plan shall be completed by 6/30/2012.**
- 5. A licensed surveyor must place the structure per the approved plan and certify the foundation location.**

**Madge B. voted for approval of the Best Possible Location per the plan with the conditions. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. The motion passed unanimously.**

Nothing further was discussed.

**Construction of a Private Way – Map 3, Lot 17 (Simon Ricker Road) – Bill Elwell, Owner; Pat Frasier, Applicant**

Mr. Frasier stated they requested this application be tabled as more engineering is necessary to get the best location of the Private Way. Mr. Frasier stated the slope is a problem so he wanted to go back on site with the engineer. The board agreed to table the application.

Mr. Frasier stated he would have to come back to the board for a driveway permit for the proposed house lot. Roger A. stated driveway permits go through the Road Commissioner. Mr. Frasier stated because the property is in Resource Protection he had to go through the Planning Board. CEO McDonough agreed.

Mr. Frasier asked how wide the driveway would need to be? Roger A. asked if he was looking to phase in the project? Mr. Frasier stated he wanted to get the driveway in then the roadway? Roger said the criteria for the driveway would have to be the same as for the Private Way, needing a 50 foot right-of-way. Mr. Frasier asked if they stayed on the edge of the 200 foot mark for the lot and then turned onto the next lot at a later date if that would work? Mr. Frasier asked if he could keep both separate, the driveway and the road, making it so they just touch each other? Madge B. asked if he were talking about never coming onto the neighboring property? Mr. Frasier stated yes, they would touch at the lot line only, being side by side.

Roger A. asked if the driveway would be coming off the Private Way? Madge B. and Mr. Frasier stated, no. Mr. Frasier stated he believed this was two different applications. One was for a Private Way in Resource Protection and the other for a driveway in Resource Protection. Roger again asked if this was a roadway to be done in phases? Madge said she believed the driveway would access the new lot only. Mr. Frasier said, right. Mr. Frasier stated that when the Private Way is built he could blend the driveway and the Private Way together at the entrance so there is only one entrance onto Simon Ricker Road. He realized multiple entrances are not favored.

CEO McDonough stated the entrance to the road cannot be greater than 26 feet wide, so there may be a problem. Roger A. stated he would like to see a phase one and two for the Private Way. He said that when the Private Way is put in there will be a subdivision and he wanted to be sure the roadway was up to the subdivision road standard.

Mr. Frasier stated he just wanted an application for a driveway at this time. Mr. Frasier noted that there was an area on the lot that he could put in a driveway outside of Resource Protection and get the permit from the Road Commissioner but it is a bad location. CEO McDonough stated Mr. Frasier needed to do more research as to what he wanted to do and present a plan to the board.

Nothing further was discussed.

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**Best Possible Location – Replace Existing Structure – Map 43, Lot 26 (115 Pine Cone Drive) – Bill Elwell, Owner; Pat Frasier, Applicant**  
Mr. Frasier was present to represent Mr. Elwell.

Mr. Frasier presented the board with a plan showing a proposed building location and septic tank on the lot.

Mr. Frasier stated before proceeding he believed the decision had to be made as to whether or not the lot is exempt from the Minimum Lot Size Law. Madge B. agreed and read the chapter Mr. Frasier was referring to, it read as follows:

**§4807-D. Exemptions,** “This chapter as to the use of a lot for single family residential purposes shall not apply to any lot which prior to January 1, 1970, was specifically described as an identifiable and separate lot either in the instrument conveying such lot to the then owner or in a valid and enforceable agreement for purchase and sale or was shown on a plan recorded in accordance with the law, prior to January 1, 1970; provided that contiguous lots in the same ownership on or after October 3, 1973 shall be considered as one lot for the purposes hereof.

This chapter shall not apply to any structure in existence and in place on or before October 3, 1973, which then or theretofore disposed of wastes by means of subsurface waste disposal; except that no person shall reduce the size of the lot upon which such structure is located to a size or frontage less than that allowed by section 4807-A unless permitted pursuant to section 4807-B.

Madge B. stated that it was her understanding that the lot was on a recorded plan. Mr. Frasier stated yes, from 1949. It is noted as such in Mr. Elwell’s deed, registered at York County Registry of Deeds as Book 16130, Page 1-2, that this lot is, “depicted as Lot No. 143 on a plan entitled “Camp Lots at Silver Lake Beach, Shapleigh, Maine dated November 1949.”



Madge B. stated she asked Barbara F. to look into prior owners and how both lots in question were owned. Madge said she cannot say to the board they were in separate ownership going back to 1972. Mr. Frasier asked if the building located on Lot 26 would have any effect on the decision. Madge asked if the building was on the lot prior to 1973? Mr. Frasier stated he did not know. Madge did not believe the structure in this case would apply because there was no subsurface wastewater disposal system being used.

Mr. Frasier stated he believed the prior owners owned the property over 40 years. Barbara F. stated that she has seen a prior deed showing the lot has two separate owners going back before 1973, and after reviewing Mr. Elwell's deed it shows Lot 26 as being owned by Albert and Barbara Cameron in 1967, and Lot 27 as being transferred to Arthur and Diane Marles in 1977 from their parents who had owned the property prior to 1977.

**Madge B. stated that she would like to state for the record that Lot 26 was created and recorded on a subdivision plan in 1949 and has been in separate ownership prior to 1973 according to the deeds. This makes this lot exempt from the Minimum Lot Size Law as written.**

Mr. Frasier asked when expanding 30% which direction should the building extend to, toward the lake or the road? Madge B. stated toward the road.

Mr. Frasier stated that for the next meeting he will have a new building design. He said he didn't have a better plan for this evening as they didn't want to put more time and money into this lot if it was not exempt from the Minimum Lot Size Law.

Mr. Frasier asked if the board wanted the septic tank as close to the road as possible? CEO McDonough stated the leach field was his only concern.

Mr. Frasier asked if both lots should be on the surveyed plan or just Lot 26? Roger A. stated he felt it would be best to show the whole project but he still would prefer to see the septic system remain on Lot 26 and not have the leach field onto Lot 60. Mr. Frasier stated the cost to keep it on Lot 26 would be substantial. Roger stated the cost is irrelevant to the board. He said he didn't like easements and the problems they create in the future. Mr. Frasier didn't see future problems with such minimal use in a small building, he didn't expect the system to fail.

Mr. Frasier stated he would talk to Mr. Elwell and it would be up to him how he would proceed.

**Roger A. stated the application would be tabled until more information was available.**

Nothing further was discussed.

*Madge B. had to leave the meeting at this time due to a prior commitment.*

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**Conditional Use Permit – Replace Concrete Patio & Restore Retaining Wall – Map 43, Lot 7 (119 North Shore Road) – Dianna Lyell, Owner**

Ms. Dianna Lyell was present along with the contractor doing the work, Mr. Joseph Letourneau of Earth Works Landscaping Construction. Board members did a site inspection prior to this evenings meeting.

Roger A. noted that at the site inspection it seemed the only thing holding up the existing wall was the vegetation surrounding it.

Roger A. stated the wall would not be greater than 4 feet in height. Mr. Joseph Letourneau agreed, stating it was going to be two 3 foot walls. Roger said the distance between the two walls was approximately 3 feet. Mr. Letourneau stated, yes 2 to 3 feet.

Roger A. stated at the site inspection he noted a catch basin between the two camps with pvc pipe sending water directly into the lake. Roger said the applicant agreed to move the pipe and bury it at the base of the wall, so the water would flow thru the crush stone prior to going into the lake.

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

**Roger A. stated the conditions would be as follows:**

- 1. Best Management Practices shall be used until the soil around the new wall is stabilized.**
- 2. The re-vegetation of the area shall be completed by June 30, 2012.**

Barbara F. asked if the vegetation was going to be Juniper and wild roses? Ms. Lyell stated, yes.

**Maggie M. voted for approval of replacing the existing 6' x 46' retaining wall with two terraced walls not to exceed 36 inches in height x 46 feet long and to replace the existing concrete patio with concrete pavers per the sketch plan provided with the above stated conditions. Diane S. 2<sup>nd</sup> the motion. Roger A., Maggie M. and Diane S. voted for approval. Roland L. abstained as he was unable to make the site inspection. By a majority vote of 3 for Approval – 1 Abstained, the motion passed.**

Nothing further was discussed.  
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**Conditional Use Permit – Extend Existing Driveway / Parking Area, Stabilize Area Disturbed by Storm Damage – Map 25, Lot 23 (181 23<sup>rd</sup> Street Loop) – Kenneth West, Applicant**

Mr. Marc Boisse represented the applicant at this evenings meeting.

Mr. Boisse stated Mr. West wanted to create additional parking and elongate his driveway, as well as stabilize the area after recent storm damage. He said that the CEO had been on site and Mr. Goodwin would be doing the work which would require bringing in additional fill. Also bark mulch would be added alongside the driveway.

Roger A. stated this applicant was before the board because he was bringing in more than 10 cubic yards of fill. CEO McDonough agreed.

*Roger A. stated due to light constraints it would be best for board members to go view the site on their own during daylight hours.* Board members asked if there was anything depicting the location so they could find it. Mr. Boisse stated he would put something up to identify the location after Thursday of this week.

**Roger A. stated a Notice to Abutters would be mailed and this would be brought back up on Tuesday, October 11<sup>th</sup>.**

Nothing further was discussed.  
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**OTHER:**

**Growth Ordinance Required Three Year Review and Update**

Barbara F. gave members a copy of the Growth Ordinance which contained changes made to reflect information taken from the current 2010 Census as well as information provided by Chris MacClinchy, Planner from SMRPC. Barbara asked board members to review the changes and bring suggestions or approval to the next meeting. She will be scheduling the Public Hearing for Tuesday, October 25<sup>th</sup>.

Barbara F. also noted that she would also hold the Public Hearing for the change to §105-4 'Nonconformance', adding J 'Expiry of Permit' and the Maine Uniform Building and Energy Code on October 25<sup>th</sup>. This leaves plenty of time for a second public hearing prior to town meeting in March. Board members agreed.

Nothing further was discussed.

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**Growth Permits – There are Growth Permits Available.**

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

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

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, October 11, 2011**

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

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

**The minutes from Tuesday, September 27th, were accepted as read.**

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**Conditional Use Permit – Extend Existing Driveway / Parking Area, Stabilize Area Disturbed by Storm Damage – Map 25, Lot 23 (181 23<sup>rd</sup> Street Loop) – Kenneth West, Applicant**

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

Board members did individual site inspections prior to this evenings meeting.

Mr. West was before the board in order to extend his existing driveway and repair storm damage on his property. He provided a site plan done by Joy & Hamilton Architects, Inc. which showed the existing lot, structures on the lot and a sketched location of his existing driveway and a sketch depicting the proposed location of the extended driveway. Also provided was a statement written by Mr. West which stated there would be 28 cubic yards of 7/8 crushed gravel being brought onto the site by Richard Goodwin, as well as 10 cubic yards of bark mulch from Simpson's in Sanford, to be placed on site by Marc Boisse.

Roger A. asked what would happen to the stumps on site? Mr. West stated they would be staying where they are. Roger asked if he was just asking to bring in fill to get easier access on and off the lot? Mr. West stated, correct.

Madge B. stated when she went on the site inspection by herself she was left with questions. She asked what the white flags on site represented? Mr. West stated they are for a dog fence, it's a training area. Madge was glad because she was concerned that he might be taking more trees down. Mr. West stated, no, there would be no additional trees removed. He said when he spoke with CEO McDonough they had discussed the possibility of removing several oaks that are leaning since the tropical storm came through but he wanted to wait to see if they survived. Mr. West said the wood stakes represented the area for the new driveway.

Roger A. stated there were no additional trees being removed. Mr. West stated correct.

Roger A. noted his only concern at the site inspection was the stumps on site.

Roland L. noticed there was crushed stone on site at this time. He asked if it was pre-existing? Mr. West stated, yes, it had been on site for about 3 years from a previous project. Roland asked what the new driveway would consist of? Mr. West stated he had given the board a materials list. Barbara F. gave Roland Mr. West's plan. It read as stated above.

Roland L. asked if the grade would cause any runoff to go toward the neighbor. Mr. West stated he was concerned with this as well, so he spoke with Mr. Goodwin and he did not see a problem because of how they will be grading the area. Mr. West stated only about 12 feet will actually slope toward the road.

Roland L. asked what Mr. West was going to do to stabilize the area? Mr. West stated after the gravel has been spread then bark mulch is going to be placed alongside the roadway. He said it would be a mulch

without dyes in it.

Roger A. read from §105-59 'Roads, driveways and water crossings.', Section C. He stated the project would be greater than 50 feet from the high water mark; the project would not encroach toward the high water mark; and there would be proper ditching so he believed the project met the requirements of the ordinance. Roger said that he hoped the driveway would be done such that the neighbor would receive no additional water on his site. Mr. West stated Mr. Goodwin said he could do it in such a way that it will not affect the neighboring lots. Roger said the driveway has to be done so that it could stand up to a 50 year storm.

Roger A. stated he agreed with Roland the area has to be stabilized and noted the plan does state it will be stabilized.

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

**Madge B. voted for approval of the Conditional Use Permit to extend the existing driveway and stabilize the area per the plan presented. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 4 – 0, the motion passed unanimously.**

Nothing further was discussed.

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**Best Possible Location – Replace Existing Structure – Map 43, Lot 26 (115 Pine Cone Drive) – Bill Elwell, Owner; Pat Frasier, Applicant**

Mr. Frasier was present to represent Mr. Elwell.

Mr. Frasier provided a copy of the Subsurface Wastewater Disposal System Application, dated 10/7/11, drafted by Thomas Milligan, Jr., SE #11; a copy of the easement deed for Lot 60 for the right-of-way for the leach field access, where the leach field for Lot 26 shall be located; and a proposed building plan drafted by John Perry, Jr. PLS #2127 of Biddeford, ME, dated 10/7/2011, which depicted the location of the existing shed in relation to the lot lines, Pine Cone Drive and Silver Lake. Also depicted on the plan was the location and size of the proposed new structure and septic system location. The new septic system shall be placed on both Lot 26 and across the street on Lot 60.

Previously provided was a copy of the test pit results for Lot 26 and Lot 60, done by Thomas Milligan, Jr., dated 7/23/11; a copy of the warranty deeds for both Lot 26 and Lot 60; a copy of a letter dated 7/25/11 from Thomas Milligan, Jr., stating that although an advanced septic system could be located on Lot 26 after obtaining the necessary variances, due to the high water table it would be best placed on Lot 60; a copy of a letter from Thomas Milligan, Jr. dated 8/21/11 and one from Mr. Elwell dated 8/5/11 explaining why the proposal would have no greater impact on the lot than what is existing which included the ways to mitigate any impact during the project itself using erosion and sediment control practices, clean-up of the existing site, site stabilization after the project is completed, and a new wastewater disposal system; a copy of a letter dated 8/30/11 from Thomas Milligan, Jr. stating that the installation of a subsurface wastewater disposal system would have no greater adverse impact on the lot as long as proper erosion and sedimentation control practices were followed during the installation of the system and during any site construction work on the property and that it is put in per the requirements of the State Plumbing Code; and a copy of a letter dated 9/10/2011 from Thomas Milligan, Jr. stating there are no shoreland zoning rules that require a septic system to be placed on the same lot as the structure which it would serve but it must be installed per the requirements of the State Plumbing Code and meet all the setback requirements required by Chapter 1000.

CEO McDonough, looking at the proposed septic system and leach field location, asked why the easement and piping wrapped around the outside lot lines of Lot 60? Mr. Frasier stated the owner wanted to leave room for a garage should someone want to put one on the lot. Mr. Frasier had depicted Lot 60 as being two separate lots but the town has joined them into one lot.

Mr. Frasier stated the tank location on Lot 26 is where it has to go per the engineer. Mr. Frasier stated the tank itself will have to be sealed because of the high water table. Madge B. asked if it still got pumped out the same way? Mr. Frasier stated yes, just like with any other one. Madge asked what happens if the pump no longer works? Mr. Frasier stated you remove and replace it.

Roger A. asked if there was a test pit for Lot 60? Mr. Frasier stated, yes. Barbara G. stated there were three test pits, one for Lot 26, Lot 27 and for Lot 60. She said it must be in the file for Lot 27. She asked Roger if he wanted her to retrieve it? He stated no. Mr. Frasier stated he could get another copy if they needed one.

Mr. Frasier stated CEO McDonough will have to see a copy and sign off on it prior to installation.

Roger A. said as a personal issue he did not like to see an easement for a septic system on another parcel. He said that also looking at the high water table on Lot 26, being 15", he felt it is as though that Lot 26 is an uninhabitable lot. Madge B. stated that if it passes the laws as written the board cannot turn it down. Mr. Frasier stated that it does pass the laws. Mr. Frasier agreed, looking at all the septic systems and wells around the lake so close together you wonder why they are allowed. But he said as long as you pass the rules and regulations you can have them.

Mr. Frasier noted that because the new structure will be so small it is unlikely someone will be on the lot year round. He said the septic system as designed should be more than adequate for its use.

Diane S. stated that because it was stated it was likely people would only use the site on occasion, wouldn't it be cheaper to just have a portable toilet? CEO McDonough stated it was not legal for a dwelling. Mr. Frasier agreed, you cannot even use a holding tank. Roger A. added that you still have to deal with the grey water from the sinks.

Diane S. asked if the owner is set on having a bathroom and sink? Mr. Frasier stated yes, and it will have a mini kitchen with 2 small bedrooms.

Roger A. stated the board cannot specify that this building is used only for seasonal use. He said what the board is looking at is a change of use of a non-conforming structure; it is going from being a shed to a dwelling. Madge B. noted that it is not a non-conforming use. Roger agreed. She said if it were a non-conforming 'use' then it would be a different issue.

Madge B. stated that if they meet the septic system laws then it has to be allowed and it appears there is documentation stating it meets the requirements.

Roger A. stated he still had a problem with the change of use of a non-conforming structure. Roger read Ordinance (§105-4.D(8)) which read as follows:

- (a) The use of a nonconforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no greater impact on the water body, tributary stream, or wetland, or on the subject or adjacent properties and resources than the existing use.

- (b) In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and functionally water-dependent uses.

Madge B. stated she understood that this has been Roger's complaint all along and is a valid one and one that the board should vote on. She felt that the board had no evidence in front of them that this proposal would cause a greater adverse impact on the water quality. She stated that all the requirements of the ordinance are being met including documentation from the applicant from an engineer that this will not adversely impact the lot in question. She stated again it is a valid point to vote on.

Roger A. still believed a residential structure would have a greater adverse impact on the lot than what exists today. Madge B. stated she would want a written statement by somebody that states it will cause a greater adverse impact and the board does not have that.

Roger A. asked what if there is a greater adverse impact tomorrow? Madge B. stated that he is correct there could be but that could be said for any dwelling around the lake.

Several board members asked about just placing a camper on the site, could that be an option for the applicant? CEO McDonough stated you cannot have a camper placed within 100 feet of the high water mark. Maggie M. asked about a tent? CEO McDonough stated there shall be no campsite, including a tent within 100 feet of the water. (See §105-38)

Roger A. stated with respect to the impact, reading a letter dated 8/30/11 from Thomas Milligan which spoke about the fact the installation of a subsurface wastewater disposal system would not have any greater adverse impact on adjacent resources or abutting properties, he said it did not address anything else. Madge B. stated then Roger will have to get some information for the board. Roger again said he was not for the project. Madge stated she understood that but there is nothing shown that it will cause adverse impact. Roger did not believe all the criteria had been met. Barbara F. noted there was another letter addressing adverse impact from Mr. Elwell and Mr. Milligan that addresses other issues. (See Mr. Elwell's letter dated 8/4/11 and Mr. Milligan's letter dated 8/21/11.)

Mr. Frasier noted the fact the leach field will be placed 100 feet from the high water mark which will not have any impact on Lot 26. CEO McDonough agreed it would be a legal system. Roger A. did not dispute that but he thought visually it would be impacted. Madge B. stated the visual impact clearly would be improved from what exists today. Diane S. agreed. Mr. Frasier stated the site is already much improved today than it was when Mr. Elwell purchased it.

Madge B. stated that she did not think Roger's opinion was going to change so she believed the board should take a vote on the application. Madge stated there would have to be a finding the change of use would have no greater impact.

**Madge B. moved for approval of the change of use and best possible location of the proposed structure per the plans proposed. Madge stated there is no evidence before the board the proposed use will have a greater adverse impact on the water body or surrounding area. Roland L. 2<sup>nd</sup> the motion. Members Madge B., Roland L., Maggie M. and Diane S. voted for approval. Roger A. voted against approval. By a majority vote of 4 – 1, the motion to grant the application was approved.**

**Per the ordinance, Best Management Practices shall be used until the project is completed per the plans presented and a licensed surveyor must place the structure per the approved plans and certify the foundation location.**

Nothing further was discussed.

**Other**

Roger A. stated he got a call from Attorney Joseph Lenkowski regarding a lot on Square Pond. Mr. Lenkowski told Roger that he had spoken with CEO McDonough regarding the lots over the past year. Roger said he was told there was a total of four lots that were joined and taxed as one lot. Roger said Mr. Lenkowski wanted to come before the board at the next meeting to show a picture of the lots. Roger said that he believed there was one front lot and 3 back lots. Mr. Lenkowski told Roger the owner wants to take what were once 3 back lots and make them into two lots. Roger said he didn't know how that should be done. Roger said Mr. Lenkowski was told to go to the Assessor to see what could be done but he said he was uncomfortable with that, he would prefer to come before the Planning Board. Mr. Lenkowski will show the board how the lots looked back in the 1950's before they were joined.

CEO McDonough stated this was not a Planning Board issue. Madge B. agreed, it was not the board's job to determine lots. CEO McDonough stated if the Assessor wants to listen to the issue and get a legal opinion that's fine. CEO McDonough stated he has already given Mr. Lenkowski his opinion and added that the story he gave Roger was a whole new story than what he was told.

CEO McDonough added that there is no application before the board and the board doesn't give arbitrary opinions. Madge B. agreed. Roger A. stated Mr. Lenkowski would bring in a sketch to show the board. Madge stated the board does not plan for individuals. Madge added that the board cannot give advice because then they could be implicated on future problems. Barbara F. stated that she didn't think the board could approve a division that creates non-conforming lots. Roger didn't know if they would be non-conforming.

*The board members concluded that this is an issue to be brought before the Assessor's office, since that office combined the lots. At this time it is not a Planning Board issue.*

Nothing further was discussed.

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**Growth Permits – There are Growth Permits Available.**

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

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



# SHAPLEIGH PLANNING BOARD

## MINUTES

Tuesday, October 25, 2011

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

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

- State Mandated 3 Year Review and Update to the Growth Ordinance
- Change to §105-4 Nonconformance, adding J. Expiry of Permits
- Maine Uniform Building and Energy Code

Chairman Roger A. was in attendance but relegated Diane S. to chair the meeting due to not being able to speak because of a medical issue. Vice Chairman Madge B. was unable to attend.

Diane S. began by opening the meeting and reviewing the changes to the Growth Ordinance. They are as follows:

#### Growth Ordinance

- (f) To allow growth of the residential population of the town at a rate which would not impose an undue burden upon the provision of community services (including education, fire protection, road maintenance, waste disposal, health services and welfare) and which would be compatible with the orderly and gradual expansion of said services.
- (1) During the most current review of the tax base for 2011, the Education system accounts for 63.63% of the cost to taxpayers. **The figure calculated per child per year for 2011 is \$7,898.42. Although the number of children enrolled in the school system is not expected to rise dramatically in the next several years, the cost to Shapleigh taxpayers continues to have a slight increase each year. The most recent figures of cost increase to taxpayers projected for the year 2012 is 2.15%, creating a cost per child of \$8,281.64.** With this figure it is apparent that any household with even one child would be an impact since there are not enough property taxes derived from the average house to generate enough money to pay for one child's education. Therefore, the Growth Ordinance system must calculate growth in such a way as to assure the town can fund education at the current levels and those of the future.
- (g) To guide Shapleigh's expansion so that the annual increase in population and dwelling units shall not exceed the average rate of population and housing growth which occurred within the sub-region between 2000 and 2010. **During this time period, the change in the average annual growth rate for the sub-region for population was 1.38% and for housing 1.17%. With the current projected need for housing, the maximum annual number of Growth Permits should remain unchanged at 35 dwelling units.**

~~During this time period, the compounded annual growth rate for the sub-region was a population of 2.65% and housing of 3.05% growth. With the projected need for housing growth of 3.05%, the maximum annual number of Growth Permits should be 35 dwelling units.~~

Diane S. asked if there were any questions or comments? There were none.

Diane S. then read the change / addition to Zoning Ordinance §105-4 Nonconformance, it read as follows:

- J. Expiry of Permits. Permits issued under this chapter shall expire after 90 days, unless a building permit is issued. This time period may be extended by the Code Enforcement Officer if issuance of a building permit is delayed due to a technical problem.**

Roland L. wanted to reiterate that this would only apply to new permits after the vote at Town Meeting. Diane S. stated correct.

Diane S. asked if there were any other questions or comments? There were none.

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Diane S. stated with respect to the Maine Uniform Building and Energy Code (MUBEC) she would defer the discussion to CEO McDonough.

CEO McDonough stated that in 2010 the State of Maine began by mandating that all towns with a population of 2000 or greater automatically had to enforce the new Maine Uniform Building and Energy Code. He said, recent legislation in September of this year, now mandates that towns with populations under 4000 people have to adopt the new codes.

Diane S. asked if you have to adopt it or you vote to adopt it? CEO McDonough stated vote to adopt it. Diane asked who votes for it, the Planning Board? CEO McDonough stated no, the Townspeople of Shapleigh. Maggie M. asked if the Town doesn't vote to adopt it, then do we have to do it anyway? CEO McDonough stated, no. Diane asked if the Town votes no, do we go back to using what is in place now? CEO McDonough stated that in his opinion if it goes to town vote and it is not approved then the Town would fall back to what was previously adopted which is the 2003 International Building Code. Diane asked if the Townspeople vote on that at Town Meeting also? CEO McDonough stated, no, the Town already voted on the 2003 International Building Code. Diane asked if the Town was voting on the new one in March? CEO McDonough stated, yes, the 2009 International Building Code which is part of MUBEC.

Roland L. asked if CEO McDonough was in a position to make a recommendation one way or the other about the new codes? CEO McDonough stated he was not. He said when Shapleigh adopted the 2003 IBC, there are portions of it the Town does not use such as the energy efficiency section because the State of Maine has their own energy code. This is the same with the Maine Plumbing Code. CEO McDonough stated that now that the State is not using their energy code, the 2003 International Building Code goes into affect in its entirety, excluding the plumbing code. He believed a lot of the problems with this new Maine Building Code is the energy section is very stringent, for example, with respect to the amount of insulation in your attic, it will require R49 and it also requires insulation in your basement. He noted that if the Town falls back on the 2003 IBC, there is a chapter in there that requires the same thing. Both the 2003 IBC and 2009 IBC are stricter than the Maine Energy Efficiency Code which no longer exists.

Diane S. asked if there was much difference between 2003 and 2009 IBC? CEO McDonough stated the 2003 does not have a ventilation code, we wouldn't follow the ASTM (American Society for Testing & Materials) standards for radon installation but with 2003 you still need a radon vent. He said in light of this he does not recommend one over the other.

Roland L. stated that it sounds like there will be some confusion at Town Meeting. Townspeople will be looking for someone to explain whether there should be support or opposition to it. He said looking at the legislation it gives little explanation for the possible change to 2009 IBC. Maggie M. agreed, people should have an idea of the differences. Roger A. stated that couldn't be done, there were too many. CEO McDonough agreed.

Diane S. thought it might be easier to put it on the ballot as a yes or no vote, at the same time the Townspeople vote for Selectmen etc. rather than discussing it at Town Meeting.

CEO McDonough stated when the 2003 IBC was adopted the State of Maine had said if a town was going to adopt a building code they wanted it to be the 2003 International Building Code, so Shapleigh adopted it. He said the State hoped all towns would adopt it so there would be a uniform building code state wide. CEO McDonough said it didn't work out, many towns in Maine never adopted it. So in 2010 the State decided to create the Maine Uniform Building and Energy Code, known as MUBEC. They didn't create their own document but instead it's a combination of five books and then the State went on to create addendums that say things such as on page 35 of this book we are going to change this sentence and on page 5 of this book we are going to change this sentence, etc. In December of 2010 the State told the town's that they didn't have to adopt MUBEC it was in effect regardless. Now in September of this year the towns with less than 4000 people have to vote to adopt it in order to implement it.

Barbara F. noted that both she and CEO McDonough had emailed the State asking how Shapleigh can mandate the usage of MUBEC without a town vote? Their comment was they didn't know but it was a fact. Roger A. stated he believed the Town was better off with CABO and BOCA. CEO McDonough stated they don't exist anymore. CEO McDonough stated he was fine with using 2003 IBC but would also have no problem enforcing MUBEC if that passes. He noted that the Town didn't have to put MUBEC to vote but if Shapleigh wants to enforce it it has to go to vote. Maggie M. asked if it didn't go to vote could the State stop us from using 2003 IBC? Roger A. stated, no. Maggie stated that it sounded like the State didn't know legally what should happen. CEO McDonough stated, correct. He said that he has spoken with the State Office several times this week and could not get a straight answer. Roland and Maggie wanted to know who decides whether or not it would go to a vote? Diane S. thought it would be easier to keep the 2003 IBC. CEO McDonough noted the reason for the public hearing tonight was to discuss this and no one other than the members of the Planning Board are present.

Mr. Frasier was an applicant before the board and he said that he has had experience with the new rules in MUBEC and he believed the rules imposed by it are so stringent the costs to the contractor and consumer are substantial.

CEO McDonough concluded he thought it should be on the warrant for the Townspeople to vote on it. He had no opinion as to whether or not it is a good idea. He will enforce either the 2003 IBC or MUBEC, whichever is adopted.

Diane S. asked if there were any further questions? There were none.

The public hearing closed at 7:18 p.m.

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**The regular meeting began at 7:30 p.m.**

**The minutes from Tuesday, October 11, 2011 were accepted as written.**

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**Construction of a Private Way – Map 3, Lot 17 (Simon Ricker Road) – Bill Elwell, Owner; Pat Frasier, Applicant**

Mr. Frasier was present, representing Mr. Elwell for this application.

Mr. Frasier said he just wanted to state that Mr. Elwell wanted to table the application indefinitely at this time. Diane S. noted the board had voted at the last review to table the application.

CEO McDonough told Mr. Frasier that in the ordinance it states that an application can only be tabled for 90 days then it expires. Mr. Frasier stated that was not a problem. Diane stated that since it was tabled at the last meeting it would be tabled 90 days from the last meeting.

Nothing further was discussed.

**Construction of a Driveway in Resource Protection – Map 3, Lot 17 (Simon Ricker Road) – Bill Elwell, Applicant/Owner**

Mr. Frasier was present, representing Mr. Elwell for this application.

Mr. Frasier began by giving board members a copy of a plan depicting a 2 acre lot being cut from Map 3, Lot 17 and a proposed driveway to access this lot. Mr. Frasier also provided a copy of the Warranty Deed for Map 3, Lot 17 and a letter that stated he could represent Mr. Elwell.

Mr. Frasier told board members he had spoken with Road Commissioner Goodwin to find the best possible location for the driveway. Mr. Frasier stated that he would have to put a culvert in according to RC Goodwin and there would be several other restrictions. Barbara F. and CEO McDonough had also spoken with RC Goodwin and showed RC Goodwin the sketch plan and agreed with Mr. Frasier that RC Goodwin stated this was the best location. RC Goodwin also noted it was a difficult lot to access.

Diane S. asked if there needed to be a site inspection. The other members noted they had already been to the lot. Mr. Frasier stated that was correct, they had walked in this area at the last site inspection.

Diane S. asked if there were any questions at this time? There were none.

**Diane S. stated there would need to be a notice to abutters. Barbara F. noted the next meeting would be WEDNESDAY, November 9<sup>th</sup>, due to voting on November 8<sup>th</sup>.**

Nothing further was discussed.

**Conditional Use Permit – Earth Moving for a Road in the Shoreland District – Map 21, Lot 45 (Hollon Way) – Andrew Townsend, Applicant/Owner**

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

Mr. Townsend provided the board with a sketch plan of the right-of-way to access his property as well as an engineered plan, done by ProTerra Design Group, LLC of North Hampton, MA.

Mr. Townsend stated there is approximately 25 trees that will need to be removed, the largest being 18” in diameter. The trees will be chipped on site and used for erosion control. There will be large stones placed on site as well as a cement block wall along the proposed camper pad. The project is all beyond the 100 foot high water mark.

Mr. Townsend stated that he had spoken with CEO McDonough about this project and CEO McDonough has been to the site.

Mr. Townsend stated the lot is a virgin lot and the right-of-way goes across the abutting lot. He said there is a gravel bank, a slope, etc.

CEO McDonough stated it was a right-of-way that exists on the town map and in the deed. He said on the face of the earth it stops on the previous lot, it has never been used to access Mr. Townsend's lot. CEO McDonough stated that because this is a deeded right-of-way that exists he did not believe this was before the board as a new private way, it is before the board for earth moving of more than 10 cubic yards in the shoreland zone. Diane S. stated that it has always been there on paper. Mr. Townsend said, right.

Barbara F. asked Mr. Townsend if the area was marked so board members would know where it is? Mr. Townsend stated that it was marked. CEO McDonough thought Mr. Townsend would need to be there to show members where it is. Mr. Townsend stated he could be there.

Roger A. asked how far back the right-of-way would go. Mr. Townsend stated 60 feet onto his property. He said he had to get away from the property line and the location he chose was the best place to make a flat area to place a camper on site.

CEO McDonough asked if Mr. Townsend had spoken with the neighbor he would be creating the right-of-way over. He said he had spoken with the neighbor and they were working on writing up some paperwork on the width of the road. He said worse case it would be 20 feet wide, it may end up being narrower. CEO McDonough asked if abutters would be notified. Barbara F. stated yes, everyone within 500 feet, which would include his direct neighbor.

Diane S. asked if there were any additional questions? There were none at this time.

**Board members agreed to do the site inspection on Sunday, October 30<sup>th</sup> at 10 a.m. Diane S. noted that the next meeting would be Wednesday, November 9<sup>th</sup>, due to elections on November 8<sup>th</sup>.**

Nothing further was discussed.

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**Amendment to a Conditional Use Permit – Change Store/Stove Shop into Motorcycle Repair Shop and Retail Sales for Accessories – Map 18, Lot 28 (146 Emery Mills Road), Stephen Fleming, Applicant/Owner**

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

Mr. Fleming began by stating he had recently purchased Potbelly Junction Stove Shop. Mr. Fleming stated with respect to changes to the building, he would take out the walk-in cooler that exists at this time and the other end of the building would remain the same. He said there would be a motorcycle repair shop in one end and a retail showroom in the other. He said the only changes to the outside of the building would be to put in a 7' garage door on the left side of the building.

Roger A. asked if Beadle's Bait & Tackle Shop was staying? Mr. Fleming stated, yes. He said the storage units would also remain.

Diane S. stated there would be repair of motorcycles and sales of accessories. She asked if there would be anything else? Mr. Fleming stated he would on occasion sell used motorcycles. Diane stated he needed to incorporate that in his application. Mr. Fleming stated he had written that on his application.

Mr. Fleming's application states, "Leave Bait/Tackle Shop and Self-Storage as is. Change store / stove shop into motorcycle repair shop with an area for retail sales of motorcycles, parts, accessories & clothing; the remaining area for motorcycle repairs & service."

Mr. Fleming stated he was also a State Inspection Station. He stated that in order to inspect vehicles they have to be pulled into the building which is why he needs the 7' garage door.

Diane S. asked what the hours of operation would be? Mr. Fleming stated, 9:00 a.m. to 6:00 p.m., six days a week. He would be closed on Sunday.

Diane S. told Mr. Fleming if he thought he would want to be open longer hours in the future that he should ask for those hours. What is the longest amount of time he may want to be open? Diane stated he may want to consider being open at 8:00 a.m. Mr. Fleming thought about it and stated his hours of operation would be 7:00 a.m. thru 9:00 p.m. He said he would still be closed on Sunday. Board members noted there was a noise ordinance. Mr. Fleming asked what hours that took effect? Diane stated that from 10:00 p.m. to 7:00 a.m. there is a reduction in the noise allowed. She said with his proposed hours he would be fine.

Diane S. asked about the number of motorcycles that would be for sale at any one time? CEO McDonough stated the board needed to know how many motorcycles would be outside for sale or repair at any given time. He said if for example he was approved for 10 and there were 30, then he would be cited and would have to remove the additional bikes. CEO McDonough stated he should consider the future, not including vehicles on site for customers purchasing accessories or paying a bill. Mr. Fleming thought a dozen would be a good number. Barbara F. asked Mr. Fleming to think five years down the road, not just what may be on site this year. Diane gave an example of boat storage; those businesses are only allowed so many boats on site at any given time. Roger A. agreed and stated that Beadle is only allowed a certain number of boats on site; he thought the number was 15. Mr. Fleming stated he believed 15 would be a good number. Barbara stated he would not have to have a definite number until the final review so he had some time to think about it. Roger asked if there would be any new motorcycles? Mr. Fleming stated, no. Roger asked if there would be consignment? Roger stated again that if someone complains to the CEO there needs to be approval for what is on site. Mr. Fleming concluded that he would ask for 15 vehicles.

Diane S. asked if there would be any other types of vehicles repaired or located on site, ATV's, snowmobiles, etc.? Mr. Fleming stated occasionally there may be a snowmobile. Diane said then that needed to be incorporated with the number of vehicles. CEO McDonough told Mr. Fleming to take the next two weeks before the meeting to really think about what he might want to have on site and the number of vehicles. Roger A. agreed, and noted the number had to include anything he was going to sell on site. Mr. Fleming asked if that included something parked under the overhang. Roger said yes, anything for sale, not inside the building. Maggie M. asked about vehicles parked inside the building. CEO McDonough stated he did not have a rule to point to but as far as he was concerned the vehicles parked outside are the issue. He said there is only so much space inside and he needs part of that space for service. He wants all vehicles outside addressed, that is what he will get calls for.

Roland L. asked if the applicant will be required to address how he will handle used oil, gasoline and the like? Diane S. stated yes, the board needs to know where the waste fuel will be taken. She said the board needs a letter stating where it is being taken from the company Mr. Fleming will use. Mr. Fleming stated he put the waste fuel into a 55 gallon plastic drum and he took it to A-1 Environmental. Diane stated the board needed a letter stating A-1 accepted the oil. Roger A. asked about the used batteries? Mr. Fleming stated Interstate Battery picked up the used batteries. Diane stated the board would need a letter from them as well.

Diane asked if the waste oil was stored inside the building? Mr. Fleming stated, yes.

Diane S. asked if there was any additional lighting being added? Mr. Fleming stated not at this time. Diane stated any signage is through the CEO. Roger A. asked if there was any discarded metal and if so where did it go? Mr. Fleming stated he had several people that came to his business and disposed of the waste metal. He said it was taken off site from one of these people once a week. Roger stated this would be a condition of approval that it is removed from site once a week.

Mr. Fleming asked if he could take his trash to the dump or if he needed a dumpster? Diane S. thought that because he is a Shapleigh tax payer he should be able to take regular trash to the dump. She said if he didn't have his dump sticker he could get one at the Town Hall from Joanne Rankin the Town Clerk.

***Diane S. stated a notice to abutters would be mailed and a Public Hearing held at 7:00 p.m. on Wednesday, November 9<sup>th</sup>.*** She didn't believe a site inspection was necessary as everyone knew the location of the business. The other members agreed.

Diane S. reminded Mr. Fleming he needed letters from the people who take his waste oil and old batteries. She said the board also needed to know the number of vehicles that will be on site for sale. Mr. Fleming asked if he needed to show where the vehicles would be located on site? Roger A. stated, no, he believed from past approvals there is more than enough space to park vehicles for sale as well as patrons coming on site for retail sales.

Mr. Fleming stated that if the board members wanted to know more about his business they could visit the shop he currently works out of in Sanford.

Diane asked if there were any additional questions? There were none.

Nothing further was discussed.

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**Growth Permits** – Map 43, Lot 27 (109 Pine Cone Drive) - **GP #07-11**  
Map 43, Lot 26 (115 Pine Cone Drive) - **GP #08-11**

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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)

# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Wednesday, November 9, 2011**

Members in attendance: Roger Allaire (Chairman), Roland Legere, Maggie Moody, Diane Srebnick, and Barbara Felong, Land Use Secretary. Code Enforcement Officer Steven McDonough was also in attendance. Note: Madge Baker was unable to attend. Joseph Stanley was in attendance but not acting as an active board member this evening, he is currently working with applicant Andrew Townsend.

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Chairman Allaire relegated Diane S. to chair the meeting several times throughout the meeting due to a medical issue he is having which makes it difficult to converse at times.

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

#### **Amendment to a Conditional Use Permit – Change Store/Stove Shop into Motorcycle Repair Shop and Retail Sales for Accessories – Map 18, Lot 28 (146 Emery Mills Road), Stephen Fleming, Applicant/Owner**

Mr. Fleming was present for the public hearing.

Mr. Fleming began by stating he currently has a motorcycle repair shop in south Sanford and he recently purchased the property at 146 Emery Mills Road and now would like to operate out of the building in Shapleigh.

Mr. Fleming stated that 75% of his business is motorcycle repairs and he also sells a small amount of used bikes, trailers, occasionally a snowmobile or dirt bike. He stated that most of his business is repair and retail sales of parts but he also offers State inspections.

A member of the audience asked what was the primary type of motorcycles he worked on? Mr. Fleming stated Harley Davidson's. He said he had the ability to repair any type of cycle but he was limited to his parts inventory which was predominately for Harley's.

Diane S. asked if there were any other questions?

An abutter, Ronald Benson, Map 14, Lot 3, who lives almost directly across from the entrance to Deering Ridge Road, stated in the summer there were many motorcycles going up and down Route 109 day and night. He said when one or two go by it wasn't bad but there are times there are upwards of 100 that go by at a time. Mrs. Benson stated that she has counted 75 motorcycles going by at one time. She said she was also concerned with the noise some Harley Davidson's make when they make changes to the exhaust system. She said when they go by the house she cannot hear the television or hear someone talk and because they live across from Deering Ridge Road its loud when motorcycles pull out onto 109.

Mr. Benson asked if it was going to create more motorcycles in the area? He was concerned that the motorcycles that Mr. Fleming repaired now in Sanford, would be coming here to Shapleigh. Diane S. stated there is a noise ordinance in Shapleigh where there can be no excessive noise from 10:00 p.m. thru 7:00 a.m. and she noted that Mr. Fleming would not be operating during those hours.

Mr. Fleming stated the problem the Benson's were referring to were from a few bars in the area where the motorcycles frequent and they have runs through the area. He agreed that when these runs take place there can be as many as 150 motorcycles coming thru at one time. Mr. Benson stated when this happens it has actually knocked things off the shelves in his home.



Mr. Fleming stated that he understood there is a problem in the area, especially on the weekends. He stated that he had two employees at this time, one part time and one full time mechanic. He said on any given day they deal with between 10 and 15 bikes at the most. He said the problem the Benson's are talking about is being addressed by the State at this time. He said much of the problem comes from motorcycles not getting inspected and they are running loud pipes that are illegal. Mrs. Benson stated the legislation had been passed. Mr. Fleming stated that the State needs to enforce it. He said that it is out of his hands. He said he does his part; he rejects motorcycles every day during inspection for not being legal.

Mr. Fleming stated he has been working on the building in Shapleigh the past three weekends and he has heard the motorcycles going by in the afternoon. He said he understands their concern. Mrs. Benson stated she was not against motorcycles, she was against the noise of some of them.

Diane S. stated she understood the Benson's concerns as well but she felt it was a separate issue, which is the motorcycle traffic on Route 109. Diane believed that was an enforcement issue which had nothing to do with the Planning Board or Mr. Fleming's business application. Mrs. Benson stated that every time someone goes into Mr. Fleming's business they will be revving up their motorcycles when they go back out onto the road. She felt that if the motorcycle shop wasn't there it would reduce motorcycle noise by 30%. Diane said that Ted's Fried Clams which was in the same area, gets motorcycles and would have the same issue and the board cannot shut down Ted's because motorcycles go in and out of Ted's to eat. Diane said the noise issue of some of the motorcycles is a criminal issue which the Planning Board has no control over; it would be the jurisdiction of the State Police or Sheriff's Department. Diane thought they should contact them with their concerns. Diane noted there were machines used to monitor noise levels that perhaps the State could place outside their home to monitor the situation.

Mrs. Benson asked what the Planning Board's role was? Diane S. stated the board reviews Mr. Fleming's business to see whether or not it meets the criteria in the Zoning Ordinance. Diane noted again that Shapleigh does have a noise ordinance so Mr. Fleming would be restricted between 10:00 p.m. and 7:00 a.m. and Mr. Fleming was not planning on being open during those hours. Mrs. Benson stated that bikes could come into his business during the day and rev their engines. Diane said it was the boards hope that if he was fixing them correctly then that wouldn't be a big issue.

Diane S. asked if there were anymore questions or comments? Mrs. Benson said that it would not do her any good to comment further as the board had already made up their mind. Roger A. stated that was not true. The board would not make a final decision until the meeting where the ordinance would be reviewed to see if Mr. Fleming's business would meet all the criteria.

Roger A. stated that it appeared the issue being discussed by the Benson's is the motorcycles going on a run up Route 109 at this time. They are not going to Mr. Fleming's business. Mrs. Benson disagreed, she said there would be more motorcycles in the area coming for repairs, to buy accessories, etc. Roger said that would be one or two at a time, not hundreds as a group.

Mrs. Benson asked Roger A. if motorcycles went by his home? Roger A. said no, he is on a more rural road. Mrs. Benson stated she bought her home in the winter and did not know there would be a problem with motorcycles. Roger said that opening a motorcycle repair shop did not dictate there would be hundreds more motorcycles going up and down Route 109 to this shop. Roger said the problem with the noise is the runs with hundreds, not just one or two. Mrs. Benson stated she did not like the noise that one motorcycle created. Roger stated the board could not disallow a business based on one motorcycle going up or down the road. Mrs. Benson asked if the type of business is considered? Roger said yes, but how much of an adverse affect is taken into consideration and he did not believe it would have anymore of an adverse affect than

other businesses in the area. Mrs. Benson did not believe Roger was concerned because the motorcycles did not go by his home. Roger said he would have no issue with one or two motorcycles going by his home which is the amount that would be coming and going from Mr. Fleming's establishment at one time.

Roger A. stated again the problem is at the State level and with enforcement; if there was enforcement it would alleviate much of the present problem. Roger said the board cannot say the motorcycle shop is going to be the culprit of bringing in all these illegal bikes in the area and create the noise problem. Mrs. Benson said if another type of business were going in she would have no problem with it. Mr. Benson agreed, he said it was just about the noise. He said they had moved to the area to get away from traffic and noise.

Mr. John Gallant, also an abutter, asked if he could comment. He stated that there is Ted's Fried Clams up the street, Wild Willey's, what was Big Daddy's, all in the area. He stated with these establishments open and having the motorcycles now, he did not see how opening the motorcycle repair shop would make any difference in the area. Mr. Gallant stated he currently was a customer of Mr. Fleming and said he was always courteous and ran a good establishment presently. Mr. Gallant concluded that he believed he would be a good neighbor.

Diane S. asked if there were any additional comments or questions? There were none.

The public hearing was closed at 7:11 p.m.

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**The regular meeting began at 7:30 p.m.**

**The minutes from Tuesday, October 25, 2011 were accepted as written.**

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**Construction of a Driveway in Resource Protection – Map 3, Lot 17 (Simon Ricker Road) – Bill Elwell, Owner; Pat Frasier, Applicant**

Mr. Frasier was present, representing Mr. Elwell for this application.

Mr. Frasier at the previous meeting had provided the board with a plan to place a driveway from Simon Ricker Road onto Map 3, Lot 17. The driveway is before the board because it will be placed in Resource Protection. It had been established at the previous meeting that the location was thought to be best possible by Road Commissioner Richard Goodwin. Board members had done a site inspection of the area previously.

Mr. Frasier began by asking the board if they needed any further information? The board members did not believe so, things such as culverts would need to be discussed with the road commissioner.

Roger A. stated the applicant was before the board because of §105-59.D, which read as follows:

“In a Resource Protection District new roads and driveways are prohibited except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the district. A road or driveway may also be approved by the Planning Board in a Resource Protection District, upon a finding that no reasonable alternative route or location is available outside the district. When a road or driveway is permitted in a Resource Protection District the road and/or driveway shall be set back as far as practicable from the normal high-water line of a water body, tributary stream or upland edge of an inland wetland.”

Roger A. stated after the site inspection and noting the lay of the land he agreed the location on the plan was the best access for the proposed lot. Mr. Frasier agreed, there would be very little work that needed to be done.

**Roland L. made the motion to accept the plan for the driveway in Resource Protection as presented. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. The motion passed unanimously.**

Nothing further was discussed.  
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**Conditional Use Permit – *Earth Moving for a Road in the Shoreland District – Map 21, Lot 45 (Hollon Way) – Andrew Townsend, Applicant/Owner***

Mr. Townsend was present for the review of his application. Joseph Stanley of LinePro Land Surveying was also present.

Mr. Townsend had provided the board with a sketch plan of the right-of-way to access his property as well as an engineered plan, done by ProTerra Design Group, LLC of North Hampton, MA.

Members did a site inspection on an individual basis. Maggie M. did the site inspection with Mr. Townsend. Mr. Townsend stated that the area staked out is not correct or as it is going to be. He said he has since talked with a forester and after listening to the board and how the lake has to be taken into consideration, the area used is going to be shifted. He said that although the deeds state he has a deeded right-of-way, there is some disagreement as to exactly where the right-of-way is located. Mr. Townsend stated he would like to hear from the abutters to see where they believe the right-of-way should be.

John and Elizabeth Nagle, owning Map 21, Lot 43 and Maura Lowe, co-owner with Richard Dunn, owning Map 21, Lot 44, were present to discuss the issue. The abutters asked how wide Mr. Townsend was planning on making the right-of-way? Mr. Townsend stated 18 feet. Both the deeds to the Dunn/Lowe property and the Nagle property show a right-of-way to access Mr. Townsend's property.

The Nagle's were concerned that Mr. Townsend would want a right-of-way on both Lot 43 and Lot 44, which could create a very large road. Mr. Nagle asked Mr. Townsend if this is what he planned? Roger A. stated it appeared to be possible but he could not see why it would be probable. Mr. Townsend stated he hadn't even thought about that, he was just looking for access to his lot. Mr. Nagle stated at present Mr. Townsend was planning on putting the right-of-way totally on their property. Roger asked what the width of the right-of-way was? Mr. Stanley stated there were no figures written, he was doing research at this time to try to determine the exact location and width.

Ms. Lowe wanted to know because there was no septic system on the property, what would happen to the septic waste? Mr. Townsend stated he had spoken with CEO McDonough and he would have to have a plan on file of what he would do with it. He said he would either have to have it pumped out, have a portable toilet on site, or remove it himself. CEO McDonough stated that in order to have an individual campsite a person has to follow ordinance §105-38 and under section E, it states that a written sewage disposal plan describing the proposed method and location of sewage disposal shall be required for each campsite and shall be approved by the Local Plumbing Inspector, which is CEO McDonough. CEO McDonough stated he did not have the plan at this time but agreed Mr. Townsend had several options which included him removing it himself.

Ms. Lowe asked Mr. Townsend what his plan was? Mr. Townsend stated his plan was to have an outside person who does this for a living come in and remove it. CEO McDonough stated that Mr. Townsend could

apply for a septic system in the future if he got an approved design. Mr. Townsend stated that he did not intend to have a septic system at this time but may in the future.

Ms. Lowe asked if Mr. Townsend could build on this lot? CEO McDonough stated it was a grandfathered lot of record. If Mr. Townsend could meet the ordinance setbacks for a structure then he could put a structure on the lot. CEO McDonough did not know if he could or couldn't have a structure, he would have to review the lot.

The abutters asked Mr. Townsend if he would be parking in the right-of-way or on his lot? Mr. Townsend did not plan on using the right-of-way for anything other than access. The abutters asked about the trees being removed, what did he plan on doing with them? Mr. Townsend stated they were the property of the property owner and he would place them where they wanted them.

Roger A. stated he had concerns that because there was no survey and the right-of-way had not been accessed for 25 years, that the right-of-way may have been reverted back to the landowner. Roger said he wanted Mr. Townsend to make sure he had deeded access otherwise he may need an easement from the Nagle's to pass over their property. Mr. Stanley asked why Roger said it disappeared? Roger believed that many years ago the legislature got rid of all paper roads. Mr. Stanley disagreed and said he had dealt with this issue often around the lakes. Mr. Stanley will review the rules and how they apply here. He agreed public rights to use right-of-ways many times no longer exist but private rights are still there. Roger stated the board will need to know that and if Mr. Townsend needs anything further from the landowner. Roger added that the board needs to make sure it isn't just a three foot wide path vs. 18 feet.

Mr. Nagle stated he wanted Mr. Townsend to have access to his property, they just wanted to know exactly what is allowed and what the details will be. CEO McDonough stated the applicant may need a legal opinion.

Mr. Townsend stated that he will have an engineered plan for CEO McDonough. Mr. Townsend stated he would do what is best for everyone.

**Mr. Townsend will be back before the board on November 22<sup>nd</sup>.**

Nothing further was discussed.

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**Amendment to a Conditional Use Permit – Change Store/Stove Shop into Motorcycle Repair Shop and Retail Sales for Accessories – Map 18, Lot 28 (146 Emery Mills Road), Stephen Fleming, Applicant/Owner**

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

Mr. Fleming recently purchased Potbelly Junction Stove Shop. The application before the board was for a motorcycle repair shop on one end of the building and a retail showroom in the other. Beadle's Bait & Tackle Shop will also remain on site and Mr. Fleming will operate the existing storage units as well.

Mr. Fleming presented the Planning Board with the requested letter from A-1 Environmental Services which stated they would be accepting Mr. Fleming's waste oil for recycling and a letter from Interstate Batteries stating they take Mr. Flemings used and old batteries, picking them up weekly.

At the previous meeting Mr. Fleming presented the board with the proposed floor plan for the motorcycle repair shop / inspection area and retail sales area.

Mr. Fleming began by stating he would be selling on site used motorcycles, scooters, ATV's, dirt bikes, snowmobiles, trailers, and utility trailers. These would all be vehicles outside. He said there would be a maximum of 30 outside at any one time.

Board members reviewed the existing parking area as well as the lot itself to see if it could hold 30 vehicles in addition to parking and it was agreed there was plenty of room on the left side of the lot facing the building.

Diane S. asked about the hours of operation? The hours will be 8:00 a.m. to 9:00 p.m. six days a week, it will be closed on Sunday.

Maggie M. reminded the board that they had said a condition of approval would be that the waste metal would be removed off site once a week. Mr. Fleming stated the waste metal is not stored outside.

Roger A. asked what is done with the used tires? Mr. Fleming stated they were removed from site three times a year by BES Waste Disposal. Roger asked how many are stockpiled at the maximum? Mr. Fleming stated 30. He said in the summer they come by once a month for removal. Diane S. asked if they could be stored in a storage unit? Roger said that would be a good idea to prevent a fire danger.

Diane S. asked if there were any additional questions? There were none.

**Diane S. reviewed the basic performance standards, they are as follows:**

- 105-21 – Traffic.** *This site had been previously reviewed for the store / stove shop; the site distances were approved, being over 500 feet in either direction.*
- 105-22 – Noise.** *The motorcycle repair shop shall be closed between 9:00 p.m. and 8:00 a.m. Most repairs shall be done inside the building. Noise levels shall be adhered to per the ordinance.*
- 105-23 – Dust, fumes, vapors and gases.** *There shall be no excess dust, fumes, vapors and gases beyond the lot lines. Most work takes place inside the building.*
- 105-24 – Odors.** *There shall be no odors beyond the lots lines.*
- 105-25 – Glare.** *There shall be no additional lighting added to the existing buildings.*
- 105-26 – Stormwater runoff.** *There are no changes being made to the existing property that will create a problem with stormwater. The stormwater plan was previously provided and approved for the store / stove shop.*
- 105-27 – Erosion control.** *There will no stripping of the existing vegetation and the erosion control plan was previously approved for the store / stove shop.*
- 105-28 – Setbacks and screening.** *There shall be no removal of the existing vegetation. Waste metal shall be stored inside the building and waste tires shall be stored in one of the units of the storage building.*
- 105-29 - Explosive materials.** *There shall no outside storage of waste oil and batteries and both shall be removed per the letters provided.*
- 105-30 – Water quality.** *There is no change to the existing property that would affect water quality. There shall be no outside storage of waste oil, batteries, metal or tires. Oil changes shall be made inside the building.*
- 105-31 – Preservation of landscape; landscaping of parking and storage areas.** *The surrounding landscape, shall not be disturbed. No additional parking area is going to be created that would require screening. There are no outside storage areas for this application.*
- 105-32 – Relation of proposed building to environment.** *The existing building fits in well with the surrounding building in the area.*
- 105-33 – Refuse disposal.** *The waste shall be removed per the letters provided. Personal trash shall be removed by the applicant.*
- 105-34 – Access control on Routes 109 and 11.** *The site distance from the access point onto Rte 109 is well in excess of the site distance requirement.*

105-46 – Sanitary Provisions. *There is an existing bathroom facility for employees.*

105-47 – Signs and billboards. *All signage shall be permitted through the Code Enforcement Office.*

105-52 - Water quality protection. *There is nothing to be stored on site to affect water quality. All waste oil shall be stored inside the building in the proper containment.*

Diane S. reviewed Shapleigh Zoning Ordinance 105-73.G “Standards applicable to conditional uses” and made findings of fact.

- 1) The use will not have an adverse impact on spawning grounds, fish, aquatic life, birds or other wildlife habitat. *It will not, there is nothing to be stored outside and all waste products shall be removed from site per the letters provided.*
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. *N/A*
- 3) The use is consistent with the Comprehensive Plan. *It is, the Comprehensive Plan encourages small businesses and services to be located along Routes 109 and 11. The facility is located on State Rte. 109.*
- 4) Traffic access to the site is safe. *It is, there is entrance approval from the previous Conditional Use Permit for the store / stove shop. The distance exceeds the minimum required.*
- 5) The site design is in conformance with all municipal flood hazard protection regulations. *It is, this location is not in a flood zone and stormwater and erosion control measures have been provided to handle a 50 year storm.*
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. *There is a state approved septic system on site and all waste oil, batteries, metal and tires shall be removed from site by the proper facilities noted, per the letters received and on a regular basis.*
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. *The hazardous materials have been addressed. Waste oil shall be stored on site in proper container and removed by A-1 Environmental Services, waste batteries shall be stored inside and removed by Interstate Batteries on a weekly basis, waste tires shall be stored inside the storage shed and removed from site a least every four months and waste metal shall be stored inside and removed on a regular basis by local scrap metal services.*
- 8) A stormwater drainage system capable of handling fifty-year storm without adverse impact on adjacent properties has been designed. *There has been a stormwater drainage system designed and approved for the previous application at this location. No changes are being made to the site.*
- 9) Adequate provisions to control soil erosion and sedimentation have been made. *Erosion control measures have been designed and were provided for the previous approved application for the store / stove shop. No changes are being made on site to create erosion.*
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. *There is, this property has been previously approved.*
- 11) The provisions for buffer strips and on-site landscaping provide adequate protection to neighboring properties from detrimental features of the development, such as noise, glare, fumes, dust, odors and the like. *There are no changes being made to the surrounding landscape, there shall be no additional lighting, work shall be primarily done inside the existing building and the noise ordinance shall be adhered to.*
- 12) All performance standards in this chapter applicable to the proposed use will be met. *They shall.*

Roger A. noted that with respect to §105-43, Off-street parking and loading, there is more than enough parking for the size of the structure.

Conditions of approval are as follows:

1. Used tires shall be kept in one of the empty storage facility containers.
2. The scrap metal shall be stored inside and removed from site at least three times a year.
3. The hours of operation shall be 8:00 a.m. thru 9:00 p.m., six days a week. Closed on Sunday.
4. The conditions for Beadles Bait and Tackle Shop and the Storage Facility shall remain in place.

Maggie M. voted for approval of the amendment to a Conditional Use Permit for a motorcycle repair shop and retail sales area for accessories with the above noted conditions. Roland L. 2<sup>nd</sup> the motion. All members were in favor. The motion passed unanimously.

Nothing further was discussed.

**Conditional Use Permit – Firewood Business – Map 12, Lot 34-1 (598 Newfield Road) – Nicholas Dimanstrantonio, Applicant; Rodger & Linda Houle, Property Owners**

Mr. Dimanstrantonio was present for the review of his application. Mr. Houle, the property owner was also present.

Mr. Dimanstrantonio began by stating he had originally operated in the shoreland zone and was told by CEO McDonough he could not operate his business in that location so now he was going to move it to a lot that is in the general purpose district, he will be operating on Rodger Houle's property.

Mr. Dimanstrantonio did not know if there was a distance he needed to be from the road. CEO McDonough stated a structure needed to be 75 feet from the center of the road. Barbara F. asked if a pile of wood was a structure? CEO McDonough didn't think so and he didn't think there was a distance for a pile of wood.

Diane S. asked exactly what he would be doing, cutting wood? Mr. Dimanstrantonio stated yes, he would be bringing in tree length wood and cutting and splitting it for sale. Diane asked if he was adding any structures to the property? Mr. Dimanstrantonio stated, no.

Roger A. asked how much processing would be done? Mr. Dimanstrantonio stated between 75 and 80 cord a year. Diane S. asked if it would be year round? Mr. Dimanstrantonio stated most likely 7 months out of the year. Diane asked what the hours of operation would be? Mr. Dimanstrantonio stated it would be well within the noise ordinance. Roger asked what would be the exact hours? Mr. Dimanstrantonio stated probably 9:00 a.m. thru 6:00 p.m. He said he didn't usually work after dark. Diane said it was best to put in for longer hours for the future.

**Diane S. stated a site inspection would need to be done as well as a public hearing. Diane stated a notice to abutters would be mailed as well. The site inspection, due to time constraints will be done on an individual basis. The public hearing will be held at the next meeting on Tuesday, November 22<sup>nd</sup>.**

Nothing further was discussed.

**Growth Permits** – There are growth permits available.

**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 22, 2011**

Members in attendance: Roger Allaire (Chairman), Madge Baker, Roland Legere, Maggie Moody, Diane Srebnick, and Barbara Felong, Land Use Secretary. Code Enforcement Officer Steven McDonough was also in attendance. Note: Madge Baker was unable to attend the public hearing. Joseph Stanley was in attendance but not acting as an active board member this evening, he is currently working with applicant Andrew Townsend.

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

#### **Conditional Use Permit – Firewood Business – Map 12, Lot 34-1 (598 Newfield Road) – Nicholas Dimanstrantonio, Applicant; Rodger & Linda Houle, Property Owners**

Mr. Dimanstrantonio was present for the public hearing. Also present was Mr. Houle.

Roger A. asked Mr. Dimanstrantonio to tell the board and audience members what it was he wanted to do. Mr. Dimanstrantonio stated he had to relocate his business from his property to Mr. Houle's property due to zoning issues. He stated Mr. Houle's property was large enough to accommodate what he wanted to do which was process between 75 and 80 cord of wood from tree length to stove length on a seasonal basis. He would be delivering the firewood with a truck, taking it off site. He stated the process would be done in an organized fashion. He noted he was aware of the noise ordinance and would not be processing late into the evening. He also stated there would not be a mess on site. Mr. Dimanstrantonio asked if board members went to the location? The members did a site inspection on an individual basis.

Roger A. asked if wood processing was going to stay where the wood is now? Mr. Dimanstrantonio stated yes. Roger asked if any firewood would be sold from the site or would it all be taken off site? Mr. Dimanstrantonio stated it would be taken off site. Mr. Dimanstrantonio stated there was a market for the wood he was processing in the amount he was processing it at this time. He said he and Mr. Houle also utilized the wood. Mr. Houle stated his personal firewood would be stacked on site.

Roland L. asked if there would be any employees? Mr. Dimanstrantonio stated it would be a one man operation. He said the way he has it set up one man can load the processor and it goes from there to the delivery truck.

Roland L. asked if there would be any signs on site? Mr. Dimanstrantonio did not think he needed a sign. Mr. Houle stated there was a sign on the truck they were using and it was parked in the yard.

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

The public hearing closed at 7:10 p.m.

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**The regular meeting began at 7:30 p.m.**

**The minutes from Wednesday, November 9, 2011 were accepted as written.**

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**Conditional Use Permit – Earth Moving for a Road in the Shoreland District – Map 21, Lot 45 (Hollon Way) – Andrew Townsend, Applicant/Owner**

Mr. Townsend was present for the review of his application, as well as Joseph Stanley of LinePro Land Surveying who did the site survey. In addition, John and Elizabeth Nagle, abutters of Mr. Townsend, owning Map 21, Lot 43 were present to discuss the issue.

Mr. Townsend presented the board members with a plan and boundary survey done by Joseph Stanley, Land Surveyor #2453 of LinePro Land Surveying, Shapleigh Maine, dated 11/22/2011. In addition, provided was a Driveway Plan and Profile, designed by ProTerra Design Group, LLC of Northampton, MA, dated 11/22/2011, which depicted an engineered plan and profile of the proposed new roadway.

Mr. Townsend stated that the right-of-way to access his property passed over the Nagle property at this time. He said he had discussed the right-of-way access with the Nagle's and they have agreed to sell him a piece of their property to put the roadway on. He said they signed letters of agreement prior to the Planning Board meeting. He stated the purchase agreement would have to be reviewed by an attorney and he agreed he would not begin the project until after the purchase was finalized.

Board members looked at the proposed right-of-way plan. Madge B. asked if the proposed travel way was just to access Mr. Townsend's lot? Mr. Townsend stated, correct. Madge asked how far the proposed roadway was from the shoreline, was it over 100 feet? Mr. Stanley showed the 100 foot mark and the proposed roadway was beyond the 100 foot mark. Mr. Stanley added that the roadway was 75 feet from what appeared to be a wet area on the Nagle property. He didn't know if the wet area was classified as a wetland area but to be sure he kept the road the 75 feet away that might be required if it is wetland.

Roland L. asked about the width, he thought it was going to be 18 feet? Mr. Townsend stated it was going to be 18 feet but after talking to the engineer, due to the slope, it would be best and cause the least amount of disturbance if the roadway was kept to 12 feet in width.

Roger A. asked how much material would be removed from site? Mr. Townsend stated most of the material would be moved in order to flatten out the area, keeping it on site. Mr. Stanley pointing to the engineered road plan and noted there would be little fill removed from site if any. Mr. Townsend stated there would be no fill brought onto the site. Roger asked if any fill were removed where would it be going? Mr. Townsend stated again he didn't think any would leave the area.

**Roger A. reviewed §105-59, Roads, driveways and water crossings.**

- A. The following roads, and/or driveways and water crossing requirements shall apply Town wide. Additional requirements for roads, driveways and water crossings located within the Shoreland Zone are found in Subsections C and D.
- 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 re-vegetated or otherwise stabilized so as to prevent erosion and sedimentation of water bodies. **Roger stated there was an engineered plan provided which addressed this that noted the areas to be re-vegetated or mulched to stabilize the slopes.**
  - (2) Road and driveway banks shall have a slope no steeper than a slope of two horizontal to one vertical. **Roger stated this was addressed on the engineered plan.**

- (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. **Roger stated drainage ditches going into a stone line swale / plunge pool are on the engineered plan.**
- (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.

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

**Roger stated the high water mark would never be reached due to the height of the area. Roger also noted there was not a water crossing. Roger stated the plan depicted the grade to be at a maximum of 16% and the roadway would be over 100 feet from the high water mark.**

- (5) Drainage ditches for roads and driveways approaching a water crossing shall be designed, constructed and maintained to empty into an unscarified filter strip of at least the width indicated on the table set forth in Subsection B(4) above between the outflow point of the ditch and the normal high-water mark of the water. Where such filter strip is impracticable, appropriate techniques shall be used to reasonably avoid sedimentation of the water body. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed so as to reasonably avoid sedimentation of the water body. **Roger stated there is no water crossing.**
- (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 stated this was covered in the engineered driveway plan and profile.**
  - (a) Drainage dips may be used in place of ditch relief culverts only where the grade is 10% or less. **Roger stated the applicant would be putting in a stone lined swale.**
  - (b) On sections having slopes greater than 10%, ditch relief culverts shall be placed at approximately an angle of 30° down slope from a line perpendicular to the center line of the road or driveway.
  - (c) Ditch relief culverts, drainage dips and water turnouts shall direct drainage onto unscarified filter strips as required in Subsection B(4) and (5) above.
  - (d) Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning, and their inlet and outlet ends shall be stabilized with appropriate materials. **Roger stated there will be rip-rap and a plunge pool per the engineered design.**

- (e) 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 stated the engineered plan showed it met the criteria, looking at 16 to 20% the spacing is 45 to 60 at a maximum, the plan shows 50 feet at 16%.**

- (f) Ditch relief culverts, drainage dips and associated water turnouts and other storm water runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning.

C. Within the Shoreland Zone, all new roads and driveways shall be set back a minimum of 100 feet, horizontal distance, from the normal high water line of a great pond, the Mousam River and the Little Ossipee River and 75 feet, horizontal distance, from the normal high water line of other water bodies, tributary streams or the upland edge of a wetland, unless no reasonable alternative exists as determined by the Planning Board. If no reasonable alternative exists, the road and/or driveway setback reduction shall be no less than 50 feet, horizontal distance, and may be permitted by the Planning Board upon a clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of water bodies, tributary streams or wetlands. Such techniques may include, but are not limited to, the installation of settling basins and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream or wetland. **Roger stated the proposed roadway was greater than 100 feet from the high water line except for the parking area. The parking area is over 50 feet from the high water line and the necessary stabilization measures are written on the plan provided.**

- (1) On slopes of greater than 20%, the road and/or driveway setback shall be increased by 10 feet, horizontal distance, for each five-percent increase in slope above 20%. **Roger stated this does not apply, there are no slopes greater than 20%.**
- (2) This subsection does not apply to approaches to water crossings or to roads or driveways that provide access to permitted structures and facilities located nearer to the shoreline, or tributary stream due to an operational necessity, excluding temporary docks for recreational uses. Road and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of this section except for that portion of the road or driveway necessary for direct access to the structure.

Madge B. asked if there was a reason why the board would allow the parking area within the 100 foot setback to the high water line? Roger A. stated due to the topography in that area, there is a limited area that can be used to create a flat gravel pad for parking a recreational vehicle. Roger didn't think there was another area to shift it to. Because Madge was unable to the site inspection, Roger explained what the terrain was like in that area. Mr. Stanley agreed with Roger and showed Madge on the survey plan how the slope dropped off markedly in either direction after leaving the proposed gravel pad area. Madge didn't have an issue with the location as long as the board made a finding as to why it was being allowed within 100 feet of the high water mark.

Madge B. asked what the parking area would be used for? Mr. Townsend stated a camper.

Roger A. reviewed Shapleigh Zoning Ordinance 105-73.G “Standards applicable to conditional uses” and made findings of fact.

- 1) The use will not have an adverse impact on spawning grounds, fish, aquatic life, birds or other wildlife habitat. ***It will not, the roadway shall be 100 feet from the high water line and there are trees and vegetation between the gravel pad for the camper and the high water line.***
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. ***It shall, the area is over 75 feet from the high water line and there is vegetation including trees and shrubs between the roadway, parking area and the lake.***
- 3) The use is consistent with the Comprehensive Plan. ***The board was not certain but believed a homeowner should be allowed access to his/her lot as long as they can meet the criteria of the ordinance.***
- 4) Traffic access to the site is safe. ***It is, there is minimal traffic in this area and the applicant’s lot is the last to be accessed on the right-of-way.***
- 5) The site design is in conformance with all municipal flood hazard protection regulations. ***It is, this location is not in a flood zone.***
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. ***There shall be provisions made for waste disposal between the applicant and code enforcement office prior to a recreational vehicle being placed on site. There is no solid waste associated with the roadway.***
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. ***There are no hazardous materials being generated.***
- 8) A stormwater drainage system capable of handling fifty-year storm without adverse impact on adjacent properties has been designed. ***There has been a stormwater drainage system designed per the engineered road design submitted by ProTerra Design Group, LLC, of Northampton, MA, dated 11/22/11..***
- 9) Adequate provisions to control soil erosion and sedimentation have been made. ***Erosion control measures have been designed for the proposed road by ProTerra Design Group, LLC, of Northampton, MA, dated 11/22/11.***
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. ***N/A for the proposed roadway.***
- 11) The provisions for buffer strips and on-site landscaping provide adequate protection to neighboring properties from detrimental features of the development, such as noise, glare, fumes, dust, odors and the like. ***There are no changes being made to the surrounding landscape to adversely affect the area.***
- 12) All performance standards in this chapter applicable to the proposed use will be met. ***They shall.***

Madge B. wanted it documented that with respect to §105-59.C, where it states that within the Shoreland Zone, all new roads and driveways shall be set back a minimum of 100 feet, horizontal distance, from the normal high water line of a great pond, the Mousam River and the Little Ossipee River and 75 feet, horizontal distance, from the normal high water line of other water bodies, tributary streams or the upland edge of a wetland, unless no reasonable alternative exists as determined by the Planning Board; ***the parking area has to be less than 100 feet from the high water line but greater than 75 feet due to the topography of the area and therefore is set in the least environmentally detrimental area. Madge added that if the parking area were set farther back where the area is excessively sloped, it would cause more damage with respect to stormwater erosion and would require more earth work.***

Roland L. made the motion, based on finding that the placement of the parking area is in the best possible, to *approve* the Conditional Use Permit for earth moving to create a travel way across the existing deeded right-of-way per the surveyed plan provided as well as the driveway plan and profile, along with the stipulation the property crossed by the new roadway shall be purchased by the applicant or an easement created over it by the Nagle Family Living Trust prior to any construction. Maggie M. 2<sup>nd</sup> the motion. All board members were in favor. The motion passed unanimously.

Nothing further was discussed.  
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**Conditional Use Permit – Firewood Business – Map 12, Lot 34-1 (598 Newfield Road) – Nicholas Dimanstrantonio, Applicant; Rodger & Linda Houle, Property Owners**

Mr. Dimanstrantonio was present for the final review of his application. Mr. Houle, the property owner was also present.

Madge B. asked if there was a setback requirement for logs? She was concerned with being able to see pulling out from the property. Roger A. stated that wasn't an issue as the logs were not set along the street. Madge asked if there was a road near the logs? Maggie M. believed the road she was referring to was on the other side so it wasn't a problem. Roger agreed.

**Roger A. stated the following ordinances would apply:**

**105-21 – Traffic.** *There would be no people coming to the site, the applicant would be delivering the wood. Also, the site distance would meet the ordinance in this location.*

**105-22 – Noise.** *The noise ordinance would have to be adhered to. The hours of operation are within the guidelines, being 9:00 a.m. to 6:00 p.m., Monday thru Saturday. Should any neighbor complain about the noise generated by the wood processor, the applicant would need to come back before the board to determine how the problem will be mitigated.*

*Mr. Dimanstrantonio stated he understood there was a noise ordinance. He stated the diesel engine used on the processor is not very loud beyond 60 feet. Roger's concern was that the area was very open. Mr. Dimanstrantonio agreed and stated if there is a future problem he will address it.*

**105-23 – Dust, fumes, vapors and gases.** *There shall be no excess dust, fumes, vapors and gases beyond the lot lines.*

**105-25 – Glare.** *There shall be no additional lighting added to the site.*

**105-26 – Stormwater runoff.** *There are no changes being made to the existing property that will create a problem with stormwater.*

**105-27 – Erosion control.** *There are no changes being made to the existing property that will create an erosion problem.*

**105-28 – Setbacks and screening.** *There shall be no removal of the existing vegetation.*

**105-29 - Explosive materials.** *There shall no explosive materials stored on site.*

**105-30 – Water quality.** *There is no change to the existing property that would affect water quality.*

**105-31 – Preservation of landscape; landscaping of parking and storage areas.** *The surrounding landscape, shall not be disturbed. No additional parking area is going to be created that would require screening.*

**105-47 – Signs and billboards.** *All signage shall be permitted through the Code Enforcement Office.*

**105-52 - Water quality protection.** *There is nothing to be stored on site to affect water quality. Wood chips shall be used by the applicant.*

Roger A. asked again what the hours of operation would be? Mr. Dimanstrantonio stated 9:00 a.m. thru 6:00 p.m., six days a week.

Roger A. reviewed Shapleigh Zoning Ordinance 105-73.G “Standards applicable to conditional uses” and made findings of fact.

- 1) The use will not have an adverse impact on spawning grounds, fish, aquatic life, birds or other wildlife habitat. ***It will not, there is nothing to be stored outside and the only waste product will be wood chips which will be removed by the applicant.***
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. *N/A*
- 3) The use is consistent with the Comprehensive Plan. ***It is, the Comprehensive Plan encourages small businesses, especially along well traveled roads which Newfield Road is.***
- 4) Traffic access to the site is safe. ***It is, the site distances can be met in both directions and access will only be used by the applicant and property owner.***
- 5) The site design is in conformance with all municipal flood hazard protection regulations. ***It is, this location is not in a flood zone.***
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. ***The only solid waste shall be wood chips and they will be removed and used by the applicant and property owner.***
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. ***There is no hazardous material to be stored on site.***
- 8) A stormwater drainage system capable of handling fifty-year storm without adverse impact on adjacent properties has been designed. ***There is no change to the property that would require a stormwater drainage system.***
- 9) Adequate provisions to control soil erosion and sedimentation have been made. ***No changes are being made on site to create erosion.***
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. ***There is, this property is serviced by the Ross Corner Fire Department.***
- 11) The provisions for buffer strips and on-site landscaping provide adequate protection to neighboring properties from detrimental features of the development, such as noise, glare, fumes, dust, odors and the like. ***There are no changes being made to the surrounding landscape, there shall be no additional lighting, work shall be primarily done during daylight hours and the noise ordinance shall be adhered to. If there is a problem with noise the applicant shall come back before the board to address the problem as soon as possible.***
- 12) All performance standards in this chapter applicable to the proposed use will be met. ***They shall.***

Conditions of approval are as follows:

1. The hours of operation shall be 9:00 a.m. thru 6:00 p.m., six days a week. Closed on Sunday.
2. Any signage shall be permitted through the Code Enforcement Office.

Maggie M. voted for approval of the Conditional Use Permit to operate a firewood business with the above noted conditions. Roland L. 2<sup>nd</sup> the motion. All members were in favor. The motion passed unanimously.

Nothing further was discussed.

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**Growth Permits** – There are growth permits available.

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, December 13, 2011**

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

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**The meeting began at 7:30 p.m.**

**The minutes from Tuesday, November 22, 2011 were accepted as amended. The change is as follows:**  
“The minutes from ~~Tuesday~~ Wednesday, November 9, 2011 were accepted as written.”

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**Conditional Use Permit – In-home Day Care for up to 12 Children – Map 1, Lot 29B (13 Ridley Road) – Laurie Mercier, Applicant; Ronald Brook, Owner**

Ms. Mercier was present for the review of the application.

Ms. Mercier began by stating she wanted to open an in-home day care for up to 12 children.

Roger A. asked what ages she would be caring for? Ms. Mercier stated between 6 weeks and 12 years. Roger asked if there would be any other employees? Ms. Mercier stated, not at this time. Roger asked if she was allowed to have up to 12 children where she was accepting infants. Ms. Mercier stated there were guidelines she had to adhere to.

*Note: Under the States rules for Family Child Care Providers, under Section IX ‘Staffing requirements’, A. ‘Staff-child ratios’, 1. One provider, working alone, may care for (ages defined in section 1):*

- 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.*

Roland L. asked what the hours of operation would be? Ms. Mercier stated 6 a.m. thru 6 p.m. Roland asked the number of days per week? Ms. Mercier stated, Monday thru Friday.

Roger A. asked if the Fire Marshall had approved her location? Ms. Mercier stated the Fire Marshall had been to her home and she had a copy of the checklist. She said she’s had the required water test done, she has her CPR certificate, the required day care course is completed and the final Dept. of Human Services Inspection is scheduled for the day after the final Planning Board review. They will be at her home on Wednesday, December 28<sup>th</sup>.

Roger A. noted the landowner, Mr. Brook, had signed the CUP, so he did not have an issue with the day care being in his home.

Ms. Mercier stated they had a lot that was approximately 2 acres in size. There is a horseshoe driveway so no one has to back out onto the road, and there will be no parking on the road. She noted the Shapleigh Memorial school bus does go by her home and has stopped at her home when her daughter was going to that school, so it is likely the bus would drop off children at her home now.

Board members reviewed the sketch provided. Roger A. asked if the play area was fenced in? Ms. Mercier stated it was not but the house and garage blocked the front yard and there was a small fence between the house and garage.

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

**Roger A. stated a Public Hearing would be held on Tuesday, December 27<sup>th</sup> at 7:00 p.m. and a notice to abutters would be mailed. A site inspection will be conducted as well. Board members will meet at the applicant's home at 6:30 p.m.**

Roger A. asked if there were any lights in the backyard? Ms. Mercier stated she could park her vehicle in such a way that they would shine on the back yard.

Nothing further was discussed.  
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**OTHER:**

**Violation Letters from CEO to Patrick Frasier and William Elwell regarding earth moving in Resource Protection, dated 12/13/2011.**

CEO McDonough wanted board members aware that recent applicants Mr. Elwell and Mr. Frasier had moved earth on Map 3, Lot 17 without a permit; more specifically they removed a beaver dam that was retaining a 20 acre wetland. When this happened the water traveled 3000 feet through stream protection and on into Mousam Lake, depositing massive amounts of silt and debris. CEO McDonough was seeking penalties payable to the Town of Shapleigh from both the property owner, Mr. Elwell and the contractor, Mr. Frasier. He was also requiring a restoration plan be designed by an environmental engineer. CEO McDonough stated he has discussed this issue with both the MDEP and MDOT. He wanted the planning board aware of what was taking place.

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**Growth Permits - Map 6, Lot 12 (Back Road ) – Growth Permit #09-11**

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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)



# **SHAPLEIGH PLANNING BOARD**

## **MINUTES**

**Tuesday, December 27, 2011**

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

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

#### **Conditional Use Permit – In-home Day Care for up to 12 Children – Map 1, Lot 29B (13 Ridley Road) – Laurie Mercier, Applicant; Ronald Brook, Owner**

Ms. Mercier was present for the public hearing.

Ms. Mercier stated that she was applying for an in-home day care for up to 12 children. She stated she would be having only 8 if there were any children under 30 months of age, as she did not intend to hire any additional employees.

Roger A. asked about the hours of operation. Ms. Mercier stated 6:00 a.m. thru 6:00 p.m., Monday thru Friday.

Ms. Mercier stated there should not be an issue with parking as she has a horseshoe driveway which allows for parking as well as being able to pull straight out of her driveway instead of having to back out onto Ridley Road.

Roger A. asked if she had Fire Marshal approval? Ms. Mercier stated that she had and that DHSS (Dept. of Health and Human Services) would be at her home tomorrow, December 28th. They were waiting for Town approval.

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

The Public hearing closed at 7:10 p.m.

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### **The planning board meeting began at 7:30 p.m.**

**The minutes from Tuesday, December 13, 2011 were accepted as amended. The change is as follows:** On page 2 of 2; under Other, “When this happened the water traveled 3000 feet through stream protection and on into ~~Lower~~ Mousam Lake, depositing massive amounts of silt and debris.”

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#### **Conditional Use Permit – In-home Day Care for up to 12 Children – Map 1, Lot 29B (13 Ridley Road) – Laurie Mercier, Applicant; Ronald Brook, Owner**

Ms. Mercier was present for the review of the application. Board members did a site inspection prior to this evenings meeting.

Roger A. noted that Ms. Mercier was present for the public hearing and had applied for an in-home day care for up to 12 children. Roger asked if there were any additional questions for Ms. Mercier; there were none.

Roger A. reviewed the pertinent ordinance standards and made findings of fact:

- 105-21 – Traffic. *Traffic will have safe access. The horseshoe driveway allows room for parents to park and they can pull out onto Ridley Road, instead of backing out. There is no issue with speed in this area, and the site distance can be met.*
- 105-22 – Noise. *The only noise will be from children playing in the back yard at various times and there are limited hours of operation.*
- 105-23 – Dust, fumes, vapors and gases. *There will be none generated for this activity.*
- 105-24 – Odors. *There will be no obnoxious odors emitted from the activities on site.*
- 105-25 – Glare. *There shall be no additional lighting being placed on site.*
- 105-26 – Stormwater runoff. *There are no changes being made to the existing home and property that would cause a stormwater problem. There is existing vegetation, including a lawn and no visible stormwater issues were noted on the site inspection.*
- 105-27 – Erosion control. *There are no changes being made to the existing home and property that would cause an erosion problem.*
- 105-28 – Setbacks and screening. *The existing vegetation is not going to be removed from the back and side yard, the home screens the play area from the roadway except for the small area used to enter the play area.*
- 105-29 – Explosive materials. *There is none on site.*
- 105-30 – Water quality. *The drinking water has been tested by the State and meets the standards.*
- 105-31 – Preservation of landscape; landscaping of parking and storage areas. *There is no long-term parking or a parking lot. The only vehicles parked on site are the applicant and homeowners.*
- 105-32 – Relation of proposed building to the environment. *The existing building fits in well with the surrounding area.*
- 105-33 – Refuse disposal. *There will be a minimal amount of trash and it shall be removed by the applicant.*
- 105-40.1- Child day care. Roger read following that pertained to this application: *A. A child day-care or center may be conducted as a conditional use. B. A child day-care home shall be allowed in a single-family dwelling located on a residential lot that meets the minimum lot size requirement, providing care for up to 12 children, which charges for their care and which holds all legally required licenses and approvals by the Town of Shapleigh and the State of Maine. (1) A child day-care home may also include part-time care. "Part-time" in this use shall mean four hours per day, per child. (2) The parking area shall be large enough to accommodate the two spaces required for the dwelling unit, as well as two additional spaces minimum. D. Outside play areas shall be buffered from adjoining uses, including neighboring properties, and the parking area(s), by appropriate fencing or plantings. E. All outside play equipment shall meet the required front, side, and rear setback requirements. Roger stated the applicant met all of the child day care criteria.*
- 105-43 – Off-street parking and loading. *There is adequate parking for both the applicant and patrons dropping off and picking up their children. There shall be no change to the site to affect stormwater.*
- 105-46 – Sanitary provisions. *There is a State approved waste water disposal system on site that is in good working order.*
- 105-47 – Signs and billboards. *Any signage shall be obtained through the Code Enforcement Office.* Roger A. read 105-47.A(3) and (4), which read as follows: Home occupations may display a single sign not over eight square feet in area with their name on it, with information about goods or services rendered on the premises or with information concerning the sale, rental or lease of the premises. Signs shall be placed at least 10 feet from any side lot line and shall be placed so as not to obstruct the view of traffic.

Roger A. reviewed Shapleigh Zoning Ordinance 105-73.G “Standards applicable to conditional uses” and made findings of fact.

- G. Standards applicable to conditional uses. It shall be the responsibility of the applicant to demonstrate that the proposed use meets all of the following criteria. The Board shall approve the application unless it makes written findings that one or more of these criteria have not been met.**
- 1) The use will not have an adverse impact on spawning grounds, fish, aquatic life, birds or other wildlife habitat. ***It will not, the property is not near the water and no changes are being made on site to disturb wildlife habitat. In addition, the nature of the business being conducted will have no adverse impact on the area.***
  - 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. *N/A*
  - 3) The use is consistent with the Comprehensive Plan. ***It is, the Comprehensive Plan encourages small home-based businesses.***
  - 4) Traffic access to the site is safe. ***It is, the site distance can be met in both directions and patrons can pull out onto Ridley Road due to there being a horseshoe driveway.***
  - 5) The site design is in conformance with all municipal flood hazard protection regulations. ***It is, this location is not in a flood zone and no changes are being made on site to affect stormwater.***
  - 6) Adequate provision for the disposal of all wastewater and solid waste has been made. ***There is, a State approved functioning septic system is on site, design done by John Large, SE#7, dated 5/6/92 and amended on 7/16/92, approved by the CEO on 8/3/92. Trash shall be removed by the applicant.***
  - 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 fifty-year storm without adverse impact on adjacent properties has been designed. ***There are no changes being made to the site to affect stormwater. The activity of the new business will not affect stormwater movement.***
  - 9) Adequate provisions to control soil erosion and sedimentation have been made. ***There are no changes being made to the site to create an erosion problem. The lot was stabilized after the home and garage were permitted and built.***
  - 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 pond on Deering Ridge Road.***
  - 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 buffers the outdoor play area from neighboring properties and the home / garage buffers the play area from the road. There shall be no additional lighting, no fumes, dust or odors from this business and there are limited hours of operation.***
  - 12) All performance standards in this chapter applicable to the proposed use will be met. ***They shall.***

Roger A. asked CEO McDonough about an atrium door, it had a lock on it but was that enough? Roger stated that there was approximately an 8 foot drop to the ground outside the door so he was concerned. CEO McDonough stated a guard rail no less than 36” height with no greater than 4” openings between the balusters must be placed outside the door or some other code compliant protection. CEO McDonough told Ms. Mercier to contact him if she had any questions about what would meet code requirements.

Roland L. asked about the approval letters from the Fire Marshal and DHHS, did the board have a copy? The board did not. Roger asked Ms. Mercier to provide a copy of both for the file.

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

Roger stated the conditions of approval are as follows:

- 1) The hours of operation shall be 6:00 a.m. thru 6:00 p.m., Monday thru Friday.
- 2) There shall be no additional employees. Ms. Mercier is the only employee.
- 3) There shall be a code compliant guard rail placed outside of the atrium door. The guard rail shall be inspected and approved by the Code Enforcement Officer prior to operating the day care.
- 4) A copy of the Dept. of Health and Human Services License and Fire Marshal Report shall be given to the Planning Board prior to operation.
- 5) Any signage shall be permitted thru the Code Enforcement Office.

Maggie M. made the motion to approve the Conditional Use Permit to operate an in-home child day care for up to 12 children, the number of children to be complaint with Section IX. ‘Staffing Requirements’ as mandated in the Rules for Family Child Care Providers, with the above conditions; Roland L. 2<sup>nd</sup> the motion; all members were in favor. By a vote of 5 – 0, the decision was unanimous.

Nothing further was discussed.

*Note: Ms. Mercier supplied the Code Enforcement Officer with a copy of the Fire Marshal’s Office Inspection Sheet, dated 11/14/2011 which stated it was o.k. to issue Ms. Mercier a child day care license. She also provided a copy of the Summary and Comments by DHHS which stated it was o.k. to issue a license as soon as she had Town approval. Lastly, she placed a piece of plywood blocking any exit from the atrium door which is code compliant and was approved by the CEO.*

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**Conditional Use Permit – Temp. Use of Existing Church & Parking Area – Map 1, Lot 41 and Map 14, Lot 1 (192 Emery Mills Road) – Richard Gallant, Owner and Applicant, Peter Cutrer, Representative**

Mr. Cutrer was present to represent both the owner of the property, Mr. Gallant, and the Springvale Congregation of Jehovah’s Witnesses, the congregation wanting to use the existing structure.

Mr. Cutrer provided board members with information regarding his application. He began by stating he was representing Virginia and Richard Gallant, owners of the two properties which are to be utilized on a temporary basis for the Springvale Congregation of Jehovah’s Witnesses.

Mr. Cutrer stated he appreciated the board being able to fit them in on short notice. He stated as a brief synopsis, the congregation of the Springvale Jehovah’s Witnesses sold the property they now meet in and one of the seller’s stipulations is that they vacate the premises by January 19<sup>th</sup>. He stated the congregation is currently building a new structure but will not be able to utilize it until the end of summer 2012.

Mr. Cutrer stated when looking for a temporary meeting hall they looked at the size of the building, the capacity, and the aesthetics / an area appropriate for religious worship. He stated that being said, Mr. Gallant, who is currently in Florida, offered the use of his building located on Map 14, Lot 1. He stated it was formerly the Living Christian Center and the building was originally raised as a religious meeting house, and now is a historic structure. Mr. Cutrer said, this being available at this time and it being a suitable location, they would like to be able to utilize it as soon as possible. He added that Mr. Gallant was one of their members, so they will be able to use it rent free.

Mr. Cutrer stated the use of the structure was a temporary situation. He noted that he sat on a Planning

Board and worked with the Town of Sanford, so he realizes it is tricky giving someone a temporary use of a structure. Mr. Cutrer stated that the congregation has already purchased property on Shaw's Ridge Road for a new meeting house and the planning for that is underway. He said that is why they only need a temporary meeting place but he understands that the board needs to look at this as possibly being more permanent.

Mr. Cutrer stated the building was previously approved for a church but he knows because it hasn't been utilized for about 20 months, that permit is no longer valid.

Mr. Cutrer stated the building is an old building and the congregation does not plan to make any changes to the building other than some cosmetics and servicing the heating system which hasn't been used for some time.

Mr. Cutrer stated the biggest issue was parking. He said that Rte. 109 is a problem in this location as people don't go the speed limit. He said being a volunteer for the fire department for a time he had to go to quite a few accidents in this location, it's a bad corner. Therefore, Mr. Gallant is going to allow people to park on Map 1, Lot 41.

Mr. Cutrer provided board members with a site plan for the parking area. He stated there is currently approval for parking and storage for Stoney Road Portables on Map 1, Lot 41. The entrance to this lot was off of Simon Ricker Road, the entrance is graded bank run gravel and supports the weight of trucks. The maintenance has been superb and he believed there would not be an issue with supporting the traffic for church attendance.

Mr. Cutrer stated the area they would utilize for parking would be approximately 30,000 square feet. There would be pedestrian access thru the rear of Mr. Gallant's property going into the church from the back side. This will prevent automobiles from entering or exiting Route 109 in this dangerous location. In his opinion, the access from Simon Ricker Road would not cause a safety issue.

Mr. Cutrer stated the walkway from the parking area and church will need to be lighted and well maintained, especially during the winter months. He stated the facility would be used approximately 4 hours a week. There will be ushers to help people along the walkway as well.

Mr. Cutrer stated the congregation size was under 100 people. He stated that after reviewing the Zoning Ordinance it appears the parking calculation would be based on the size of the building, which is 1470 square feet and at 1 space per 150 square feet of building area, would equal 9.8 spaces @ 200 square feet per space. Mr. Cutrer stated that there would be at least 150 parking spaces available, much more than the minimum requirement.

Mr. Cutrer stated also with respect to the number of people allowed inside the building based on the International Building Code, the benches call for 18 inches per person. He said in this building you can fit roughly 92 people based on the bench size. Also, based on ingress and egress calculations he believed the building could house the congregation at this time, whereas there are 85 members.

Mr. Cutrer stated he thinks it would be a great building to use and he believed Mr. Gallant is happy to see the structure being used.

Roger A. asked if there was going to be any parking at the structure across from John Gallants house? Mr. Cutrer stated that that area was offered but again he thought there would be a safety issue as people would have to walk along Route 109, so he did not think it would be a good option. Mr. Cutrer stated when mud

season comes they may have to make some changes to the parking plan and at that time they would come back before the board with these changes. He believed the proposed parking area is the safest choice.

Mr. Cutrer stated he had spoken with CEO McDonough prior to the planning board meeting and CEO McDonough gave him several things he needed to address and one was sanitary facilities. He said that because the structure was old there were no bathroom facilities in it. The previous users of building used chemical toilets inside the building but he didn't feel that was the most pleasant or sanitary thing to do. Therefore, John Gallant has offered the use of one of his nicer temporary portable facilities that are A.D.A. accessible. He said they would place them on the paved area of Mr. Gallant's driveway. Mr. Cutrer noted two locations on site that were an option to locate the portable, he was open to an opinion as to which location would work best. CEO McDonough did not have an opinion but wanted Mr. Cutrer to be aware that at the public hearing the neighbors may have concerns with the location so he would want to keep this in mind. Mr. Cutrer stated that they wanted to be good neighbors.

Roger A. stated he did not see a letter from Richard Gallant stating Mr. Cutrer could represent him. Mr. Cutrer stated he did have a letter but due to the rushed nature of the application he did not have time to put it in the mail for his signature. Mr. Cutrer provided an email for member to view, between he and Mr. Gallant which showed Mr. Gallant was aware of the application and in agreement. Mr. Cutrer stated he would have a signed copy for the board for the next meeting.

Roger A. asked how far from the parking area was from the structure (church)? Mr. Cutrer stated it was somewhat flexible, he showed on the plan the area that is currently well maintained as a parking / storage area. He thought it was between 200 to 300 feet, depending on where you park. Diane S. had brought it to Roger's attention that under 105-43 'Off-street parking and loading', it requires that off-street automobile parking needs to be within 300 feet of the principal building to be used. Mr. Cutrer stated he would make certain the vehicles were within 300 feet of the structure.

Roger A. asked if there were any additional questions? Mr. Cutrer asked if it was possible to be granted the use of the structure after the next meeting? Roger stated, yes, if they it meet all the criteria in the ordinance.

***Roger A. stated a site inspection would be held on site at 6:30 p.m., then a Public Hearing will be held at 7:00 at the Town Hall.*** At that time comments will be addressed if there are any.

***Roger A. stated a notice to abutters would be mailed as well.***

Roger A. stated the board would need the hours of operation and the days the structure will be used for the next meeting. Mr. Cutrer asked if an operating guideline would be sufficient. Roger stated, yes, that will be a condition of approval.

Nothing further was discussed.

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**Other:**

Barbara F. stated she would like to hold the final public hearing for the ordinance change, Growth Ordinance and MUBEC on Tuesday, February 14<sup>th</sup>. Board members had no issue with this date.

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**Growth Permits - There are growth permits available.**

**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)