

# ***Shapleigh Planning Board***

## ***Minutes***

**Tuesday, January 8, 2019**

Members in attendance: Roger Allaire (Chairman), Steve Foglio (Vice Chairman), Madge Baker, Roland Legere, Maggie Moody and Alternate Ann Harris. Code Enforcement Officer Mike Demers was also in attendance. *Note: Ann Harris sat in as a regular member for the review of the Conditional Use Permit on Map 18, Lot 30, as Steve Foglio has a monetary interest in the property, and therefore is not a voting member.*

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

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### **Public Hearing Began at 6:05 p.m.**

### **Proposed Ordinance Changes**

**Copies of the proposed amendments can be obtained from the Land Use Secretary at the Town Hall.**

### **Proposed Amendment to §105-4. Nonconformance**

D(7) Relocation.

(b)[1] Trees, woody vegetation and ground cover.

- [a] Trees removed in order to relocate a structure must be replanted with at least one native tree, six feet in height, measured from the base of the trunk to the top of the tree, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed. Trees shall be planted greater than five feet from the side lots lines, and shall create a well-distributed stand of trees. **These replanted trees shall be flagged with fluorescent tape no less than 18 inches in length which shall not be removed except by the Code Enforcement Officer upon inspection.**

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

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### **Proposed Changes to § 105-15 ‘Definitions.’**

HOME OCCUPATION – An occupation or profession which is customarily carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit; carried on by a member of the family residing in the dwelling unit; clearly incidental and secondary to the use of the dwelling unit for residential purposes. ~~Real estate offices and resale of purchased merchandise will not be considered as home occupations.~~ **This shall not be interpreted to include telecommuting.**

**BILLBOARD** – A sign, structure or surface larger than ~~eight feet which is available for advertising purposes for goods or services rendered off the premises, excluding directional signs.~~ **thirty-two (32) square feet, which is available for advertising purposes for goods, services, or attractions rendered off the premises, excluding directional signs.**

**DWELLING, TWO-FAMILY:** A single building containing two dwelling units, with a separate entrance for each. May also be referred to as a “Duplex”.

**LOT LINES** – A line which forms a boundary of a property dividing one lot from another, or from a street or waterbody or other public space. The lines bounding a lot ~~as~~ **are** defined below:

- A. **FRONT LOT LINE** – On an interior lot, the line separating the lot from the street; on a corner or through lot, the line separating the lot from either street.
- B. **REAR LOT LINE** – The lot line opposite the front lot line. On a lot pointed at the rear, the rear lot line shall be an imaginary line between the side lot lines parallel to the front lot line, not less than 10 feet long, lying farthest from the front lot line. On a corner lot, the rear lot line shall be opposite the front lot line of least dimension. **In some circumstances, a lot may not have a rear lot line.**
- B. **SIDE LOT LINE** – Any lot line other than the front lot line or a rear lot line.

*Roger noted that with respect to the addition to the definition of ‘Rear Lot Line’ it is because in the Shoreland District often there is no rear lot line, only shorefront.*

**MARIJUANA:** As defined in State Administrative Rules (10-144 CMR Chapter 122), §1.17, “Marijuana”.

**MEDICAL MARIJUANA:** Marijuana that is acquired, possessed, cultivated, manufactured, used, delivered, transferred or transported to treat or alleviate a qualifying patient’s medical condition.

**MEDICAL MARIJUANA CAREGIVER:** A person, licensed hospice provider or licensed nursing facility that is designated by a qualifying patient to assist the qualifying patient with the medical use of marijuana in accordance with state law. A person who is a medical marijuana caregiver must be at least 21 years of age and may not have been convicted of a disqualifying drug offense.

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

*Roger A. stated the four definitions related to medical marijuana were all new.*

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

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**Proposed Amendment to §105-17 ‘Land Uses’**

LAND USES	RP	SD	GP	FD	SP
<b>RESIDENTIAL</b>					

**Existing:**

Manufactured housing units not in parks	NO	CU	CEO	CU	CU <sup>1</sup>
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**Amendment:**

Manufactured housing units not in parks	NO	CEO	CEO	CEO	CU <sup>1</sup>
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<sup>1</sup> Provided that a variance from the setback requirement is obtained from the Board of Appeals.

*Roger A. stated the review in the Shoreland District and Resource Protection was going from the Planning Board to the Code Enforcement Officer.*

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

**Proposed Amendment to §105-40 ‘Home Occupations’**

- A. Home Occupations shall be carried on wholly within the principal building or within a building or other structure accessory to it.
- B. Not more than ~~two~~ **one** employee other than the home’s occupants may work on-site at any time, and one additional on-site parking space shall be provided if there is such an employee.
- C. There shall be no exterior display, no exterior sign (except as permitted by the provision of this chapter), no exterior storage of materials and no other exterior indication of the home occupation or variation from the residential character of the principal building.
- D. **Additional workers cannot gather even briefly on the property.**
- E. No nuisance, heavy traffic, waste discharge, offensive noise, vibration, smoke, dust, odors, heat, glare or radiation shall be generated.
- F. ~~If existing off-street parking is required to be expanded, it shall be the road and adjacent lots (for example, with a dense screen of evergreens) and shall not be located between the house and the road.~~
- F. **When off-street parking must be expanded, screening from adjacent lots (for example, a dense screen of evergreens) may be required.**
- G. **Home occupations are allowed on nonconforming lots of record and within legally existing nonconforming structures providing all applicable performance standards in the ordinance, including those in § 105-73.G are met.**

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

**Proposed Amendment to §105-43. Off-street parking and loading.**

- D. Landscaping. Required parking and loading spaces for residential uses, where not enclosed within a building, ~~shall~~ **may need to** be effectively screened from view by a continuous landscaped area not less than eight feet in width containing evergreen shrubs, trees, fences, walls, berms or any combination thereof forming a visual barrier not less than six feet in height along exterior lot lines adjoining all residential properties, except that driveways shall be kept open to provide visibility for vehicles entering and leaving.

*Roger A. stated that this change was made to allow the Planning Board more flexibility in making the decision if screening was necessary or not.*

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

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**Proposed Changes to §89-14, 15, 16, 17, 18 & 19**

§ 89-14. Procedure

- A. Within six months after the on-site inspection by the Board, the subdivider shall ~~submit an mail a~~ **copy of the application for approval of the final plan to each Board member, including alternate members and the Code Enforcement Officer** at least seven days prior to a scheduled meeting of the Board. Failure to do so shall require resubmission of the sketch plan to the Board. The final plan shall approximate the layout shown on the sketch plan, plus any recommendations made by the Board.

§ 89-16. Procedure.

- A. Within six months after the on-site inspection by the Board, the subdivider shall ~~submit an mail a~~ **copy of the application for approval of the final plan to each Board member, including alternate members and the Code Enforcement Officer** at least seven days prior to a scheduled meeting of the Board. Failure to do so shall require resubmission of the sketch plan to the Board. The final plan shall approximate the layout shown on the sketch plan, plus any recommendations made by the Board.

§ 89-15. Submissions.

Last sentence: In addition, one copy of the final plan, reduced to a size of 8 ½ inches by 11 inches, and all accompanying information shall be mailed to each Board member, including alternate members **and the Code Enforcement Officer**, no less than seven days prior to the meeting.

§ 89-17. Submissions.

Fourth sentence: In addition, one copy of the plan(s), reduced to a size of 8 ½ inches by 11 inches, and all accompanying information shall be mailed to each Board member, **including alternate members and the Code Enforcement Officer**, no less than seven days prior to the meeting.

§ 89-18. Procedure.

F. A public hearing may be held by the Planning Board within 30 days after the issuance of a receipt for the submittal of an incomplete application. This hearing shall be advertised in a newspaper of local circulation at least two times, the date of the first publication to be at least seven days before the hearing, and the notice of the hearing shall be posted in at least three prominent places at least seven days prior to the hearing. When a subdivision is location within 500 feet of a municipal boundary, and a public hearing is to be held, the Planning Board shall notify the Clerk and the Planning Board of the adjacent municipality involved, at least ~~10~~ **7** days prior to the hearing.

§ 89-19. Submissions.

Last sentence: In addition, one copy of the final plan, reduced to a size of 8 ½ inches by 11 inches, and all accompanying information shall be mailed to each Board member, **including alternate members and the Code Enforcement Officer**, no less than seven days prior to the meeting.

*Roger A. stated the changes were to add the CEO and alternate members, so they would also receive the information from the applicant. And mailing information to the adjacent municipality was changed from 10 days to 7, so the deadline in the ordinance could be met.*

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

**§89-36**

**Proposed Amendment to 89-36.I under ‘Street design standards’**

I. The following design standards apply according to street classification:

| Description                       | Type of Street |           |       |  | Private Right-of-Way    | Industrial / Commercial |
|-----------------------------------|----------------|-----------|-------|--|-------------------------|-------------------------|
|                                   | Arterial       | Collector | Minor |  |                         |                         |
| Minimum right-of-way width (feet) | 80             | 50        | 50    |  | 50                      | 80                      |
| Minimum pavement width (feet)     | 44             | 24        | 20    |  | <b>12<sup>(1)</sup></b> | 44                      |

**(1) Pavement Requirement for a Private Right-of-Way in a minor subdivision may be at the board’s discretion.**

*Roger A. stated the only change is to Private Right-of-Way in a minor subdivision, allowing a gravel road if the board felt it was warranted.*

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

### **Residential Growth Ordinance Review**

Roger A. stated that the board reviewed the Growth Ordinance every three years to determine if a change to the number of permits given was warranted. Roger stated the only changes to the growth ordinance would be as follows:

#### **Growth Ordinance – Town of Shapleigh**

- (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 2018, the Education system accounts for 66.75% of the cost to taxpayers. The figure calculated per child per year for 2016-2017 in RSU #57 is \$12,675.42. 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 for the school year 2016-2017 is 4.63%. The percent of the total cost of RSU #57 that Shapleigh Taxpayers currently pay is 15.69%. 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. During this time period, 2010 thru 2018, there is no census data but the number of single family dwellings permitted in the town has steadily increased from (3) in 2010, to (16) in 2018. With the current projected need for housing, the maximum annual number of Growth Permits should remain unchanged at 34 dwelling units.
- (h) To guide Shapleigh's expansion so that the increases in education costs are predictable and manageable.

*Roger A. stated there were no other changes made to the growth ordinance. He stated the General Requirements; Administration; Growth Permit Selection System; Appeals; Expiry of Permits; Non-Transferability; Conflict with Other Ordinances; Validity and Severability; Effective Date; Review Procedure, Amendment Procedure; Violations; and Penalties sections would all remain the same. After this latest review it was determined the number of growth permits allotted would remain unchanged, at 34.*

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

**Amendment to ‘Establishment of Shapleigh Planning Board’**

Roger A. read the entire Establishment of Shapleigh Planning Board document. The only change to the document is as follows:

- H. Meetings shall be held on the second and fourth Tuesdays of the month at the time specified on the municipal calendar. The meetings shall be at the Town Hall or other suitable meeting place. The Chairman, or upon the request of a majority of the Board, may schedule a special meeting, provided, however, that notice thereof shall be given to each member ~~and to representative of the press at least 24 hours in advance~~ **in accordance with the Maine Freedom of Access Act**, and that no business may be conducted other than as specified in said notice. All meetings shall be open to the public.

*Roger A. stated this change was made to make the ordinance in line with current State rules for notification for meetings.*

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

The public hearing for the proposed ordinance changes ended at 6:20 p.m.

Roland L. asked if the changes would be voted on in separate articles or all together under one article. Roger A. believed the Zoning changes would all be together, Subdivision together and the Growth Ordinance & amendment to the Establishment of Planning Board would each have their own article. So it would probably be a total of four articles but it was up to Karla (Town Administrator).

Nothing further was discussed.

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**The minutes from Tuesday, November 27, 2018 were accepted as read.**

*Note: There were no Planning Board meetings held in December.*

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

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Roger A. stated they would hear ‘New Business’ first because it would not take as much time as the review for Keepin It Local.

**Conditional Use Permit – New Business ‘Honest Cords Firewood’ – Map 1, Lot 12 (221 Deering Ridge Road) – Tim Cochrane, Applicant; Richard Day, Property Owner**

Mr. Cochrane and Mr. Day were present for the review of the application.

Provided along with the application, was a copy of the town tax map with Lot 12 highlighted to depict its location; several copies of the digital map depicting approximately where the logs will be placed and

processed; a copy of an email from future property owner Richard Day stating that he was under contract to purchase Lot 12, and that he granted Tim Cochrane permission to operate a firewood business known as “Honest Cords Firewood” on a portion of the property; a copy of the Purchase and Sale Agreement between Stanley Family Trust and Richard Day, dated December 13, 2018 and to be executed on January 11, 2019; and a letter of intent from Tim Cochrane, owner/operator of Honest Cords Firewood, established 2015. The letter read as follows:

Proposed Business Location: Lot 12 Deering Ridge Road access.

Honest Cords Firewood started with one goal, to sell honestly. The reason I started HCF is because I have witnessed too many people being taken advantage of by other firewood providers through shorted cords, price gouging, and wood being sold as seasoned when not truly seasoned. HCF is a small one person operation that has family help in the summer and on weekends. We are looking for a location to settle in and grow our family business. The location of Lot 12 on Deering Ridge Road, Shapleigh, is a very exciting prospect for HCF.

HCF’s current hours of operation are Monday – Sunday, between the hours of 8:00 a.m. and 5:00 p.m. If I am at this location I will be sure to work with the abutting land owners (neighbors) to assure an amicable working relationship with them.

HCF’s current equipment:

- **2015 Dyna Firewood Processor** 32 hp gas powered engine; 15 gal. hydraulic tank
- **Chainsaw:** Gas powered
- **Wood Splitter:** Gas powered, belt driven
- **1 Ton Dump Trucks:** Gas & Diesel
- **Low Impact Tractor:** Diesel

**Please Refer to Map 4**

The red box indicates the general area I intend to use as the business grows, allowing adequate tree cover and buffer between abutting properties. Honest Cords Firewood will use this portion of property for the processing, stock piling and loading of firewood for delivery. We receive tree length logs that are brought in via logging trucks from local logging companies. There is head in head out access (white lines) for the logging trucks to and from the property. Tree length wood (green boxes) will be dropped off for processing into firewood. Processed firewood will be stock piled for seasoning (blue box).

Roger A. asked Mr. Cochrane to state what he intended to do. Mr. Cochrane stated that in 2015 he started a firewood business in Alfred to see how it would go with the intention of doing it full time. The 1<sup>st</sup> year it went very well. He said by the second year he had outgrown the property he was using and began to look for a new location to move to. He stated that his business was word of mouth and he believed the growth was due to them basing it on customer satisfaction and honesty. He said it has been a very positive experience, so in September of 2018 he decided after 14 years in logging to leave that business and create and do the firewood business full time, as it has been very positive.



Mr. Cochrane stated that he also wanted a business with more flexibility to be able to spend more time with his family and help out. He said this would be a family based business and it is growing. He believed this piece of land in Shapleigh would be ideal. He noted the old saw mill on the property, seeing the history of the property. He was hoping to be able to maintain some of the sawmill if it is structurally sound but he wasn't sure at this time.

Mr. Cochrane stated he would process wood on the property, trucks would head in and head out, and he didn't see that there would need to be many changes to the property. He noted that he lived just two miles from the location which made the location ideal.

Roger A. asked if there were going to be any changes to the old sawmill building? Mr. Cochrane said he was not sure. He said they would have to look further into it, they would like to repurpose it and maintain it, but he hadn't had the opportunity to really look it over.

Roland L. said he was not familiar with the style of wood processor noted in the plan. He asked if it had a cover to it or was it out in the open? Mr. Cochrane stated it was a mobile processor, so it can be put anywhere. You can hook it up to your tractor and move it. He said it was a standard live deck, infeed, saw, and conveyor all in one. Roland asked him if he would be working out in the elements or will there be some type of structure over it? Mr. Cochrane said he liked the ability to be able to be mobile, so if he is stockpiling he can put the processor in the area to convey and then move it to another area to convey. He said he has done this for three years out in the weather and it didn't bother him. He said he had no plans to make it a permanent piece of equipment.

Roger A. asked with respect to the logs, how close will they be to Deering Ridge Road? Mr. Cochrane stated that the location can be adjusted. He said on the plan he gave the board a rough estimate of where they would be located and he thought he located them about 50 feet from the entrance. Roger said he was concerned upon entering or exiting, if the pile of logs would block the visibility onto Deering Ridge Road. Mr. Cochrane did not see an issue. He noted the trucks are approximately 80 feet in length and more than 2/3's of the truck are close to the road and able to see. He said again that the piles can be moved if there is a problem.

Roger A. said with respect to the sawmill, it sounded like part of the structure would be torn down. Mr. Cochrane said at this time he had no idea, he did not know what could be salvaged at this point.

Roger A. asked if the hours were going to be seven days a week, 8 to 5? Mr. Cochrane believed this would be the hours. Roger said if he went beyond the 5 pm, and there is a complaint, the business would be shut down until the approval was amended. He wanted Mr. Cochrane to be sure to include all possible hours of operation. Roger said that he could say 8 to 6 pm if he thought he might go longer, the board would not have an issue with that. Mr. Cochrane did not see any reason to go beyond 5 p.m. He said that his main goal was to be good neighbors, and he felt 5 p.m. was a reasonable hour. Madge B. agreed, she felt the neighbors would agree that 5 p.m. would be better accepted. Roger said Mr. Cochrane would have to make the decision before the final approval. Mr. Cochrane asked when that would be? Roger said it would be at least another two weeks. The board had to notify abutters and a public hearing would be held at the next meeting, which was on January 22<sup>nd</sup>.

**Members decided they would do a site visit on an individual basis. A notice to abutters will be mailed and a Public Hearing scheduled for 6:00 p.m. on Tuesday, January 22<sup>nd</sup>.**

Steve F. asked if there would be an issue with noise because of the sawmill. He was noting §105-22 'Noise'. Roger A. stated in this ordinance from 7 am to 10 pm the noise limit is 60 decibels. Mr. Cochrane asked if that was at the lot line? Roger said "Yes". Ann H. looked under Appendix A and it noted a chainsaw operated at 115 decibels. Steve stated that that was at the chainsaw and what the board looked at was at the property line. Roger stated that was correct.

Mr. Cochrane told the board that when the roads were posted he would not be having any trucks come to the site. Roger A. noted that the entrance/exit onto the property could not be greater than 26 feet in width.

Madge B. asked how many trucks would be coming to the site? Mr. Cochrane stated that at the most there would be 50 to 60 a year, roughly one a week. He said at present they were not at that amount. Ann H. asked if he knew how many deliveries he would be making. Mr. Cochrane said certainly not more than one a day.

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

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**Conditional Use Permit – Relocate Business known as Keepin' it Local – Map 18, Lot 30 (130 Emery Mills Road) – Mary Letourneau, Applicant; Paul Letourneau, Property Owner**

Mary Letourneau was present for the review of the application, along with her husband.

Provided along with the application, was a letter from property owner Paul Letourneau stating Mary Letourneau had permission to move forward with the conditional use permit; a sketch plan depicting the existing structure, septic & leachfield location, and arrows depicting how the traffic will flow on the property; a sketch plan depicting the existing structure and driveway on the property; an aerial photo of the property; an aerial photo of the property including distances from the existing structure to the side lot lines and Emery Mills Road; Subsurface Waste Water Disposal System Application for a 3 bedroom home, drafted by John E. Large, SE #7, dated 11/4/11; and a copy of the Purchase & Sale Agreement between Mary Letourneau and Paul Letourneau with an Offer Date of October 29, 2018.

The Detailed Description of the Project is as follows:

The following is a description of the proposed project for moving Keeping' it Local from its current location at 120 Emery Mills Road to 130 Emery Mills Road.

When purchased we would like to add on to the existing structure:

- creating a larger kitchen, dining area and retail space
- outdoor dining space
- parking area to the right of the building and behind to accommodate 60 seats (30 spaces needed for customers, employees and retail space)
- a farmer's porch onto the driveway side and back of the building
- drive thru on the left side of the building
- upgrade septic to include chambers and grease trap
- upgrade electrical and plumbing

We would also be looking to add in beer, wine and liquor and to expand on our menu to include dinners and brunches.

Operating hours would ‘be’ up to 24 hours depending on baking.  
Serving hours would be between 5 am and 11 pm.

Additionally provided was a new sketch plan drafted by LinePro Land Surveying, LLC. The plan depicted in addition to the existing structures on site, a conceptual parking plan, entrance and exits onto Route 109, and the proposed expansion of the existing structure. Additionally, there were 33 parking places depicted, how the traffic will flow, including a separate lane for drive-thru traffic.

The Planning Board had requested that Mrs. Letourneau get MDOT approval for the entrance onto Route 109 (Emery Mills Road). In an email to the PB dated December 11, 2018 at 11:27 AM from Anthony Fontaine of the MDOT, it stated the proposal for two separate access points is acceptable. He stated that the property owner, Mr. Paul Letourneau requested that the access be 24 feet in width and this was acceptable to the department. Mr. Fontaine also stated that having an entry and exit onto Route 109 was acceptable. He concluded with the following: Because everything meets or exceeds the minimum standard for a major collector highway, further review by others here at MaineDOT is not required and I will issue the permit as proposed (two separate access points, one for entry and one for exit, each 24’ wide). The town is free to impose their own requirements but the proposal satisfies state statutes.

Members received a copy of a letter from Carl V. Beal, P.E. #5013 of Civil Consultants, regarding the Stormwater Drainage Study for the new location of Keepin It Local, that being 130 Emery Mills Road. The letter read in part as follows:

Pursuant to the pending application to the Planning Board by “Keepin It Local” for a new facility at 130 Emery Mills Road, the following information is presented regarding stormwater runoff.

The new Keepin It Local facility will construct additional building area to the current residential structure at 130 Emery Mills Road. New parking spaces and traffic circulation will also be added, resulting in approximately 16,000 SF of new impervious surface. Pre-development stormwater runoff drains to the SE corner, to Rte. 109. It continues to flow easterly for approximately 120 feet along the Rte. 109 side swale, to an 18” CMP cross culvert. An existing low detention area is present at the inlet of the culvert. Runoff flows through the culvert, then continues along a wooded swale and discharges to Lower Mousam Lake.

Post-development runoff will flow in the same direction as pre-development. A new Stone Level Spreader will be installed at the SE corner of the parcel to control the increase in runoff from the new impervious surfaces and to reduce the potential for erosion of the existing Rte. 109 swale and abutting properties. This spreader will limit runoff energy and velocity to match existing conditions.

In conclusion, construction of the new Keepin It Local facility will result in no negative impacts due to stormwater runoff to downstream properties, tributaries, or Mousam Lake.

Provided along with the letter were two (2) - 11 x 17” prints entitled Keepin it Local - Proposed Improvements – Drainage Study – 130 Emery Mills Road, Shapleigh Maine’. Print D1 noted the following, “Work performed by Carl V. Beal is limited to stormwater drainage only. Survey information was provided by LinePro Land Surveying, LLC”. Print D2 noted the following, “Work performed by Carl V. Beal is limited to stormwater drainage only. Building addition, new parking and traffic pattern, and other improvements were provided by others”.

Roger A. asked Mrs. Letourneau to let the board know what she wanted to do. Mrs. Letourneau stated she was moving the existing business known as Keepin it Local from 120 Emery Mills to 130 Emery Mills Road. She stated that they would be adding onto the existing building for a larger kitchen, adding parking and a drive thru.

Roger A. stated that in the letter from Mr. Beal there was no mention of the water drainage that is taking place behind the existing stone wall at the back of the property. Roger said that was one of the concerns noted at the previous meeting by Mr. Muse, an abutting property owner. Roger said Mr. Muse was concerned about keeping the area in the back open to prevent flooding of his property. Roger noted that Mrs. Letourneau will not own that piece of property that Mr. Muse was concerned with. Mr. Letourneau stated that in the back of Mr. Muse's property was all ledge and in the spring when the water is high it runs down the ledge like a waterfall. He added that the water that Mr. Muse was addressing would have to run uphill to get behind the property they would be obtaining. Mrs. Letourneau did not see where this would be her concern. Roger did not disagree with Mrs. Letourneau. He noted the water coming off Simon Ricker Road, the stream comes up quite abit in the spring, he felt the issue would be with the property owner behind Mrs. Letourneau's location, they would need to make sure the channel was kept open for water to flow properly. He just wanted to bring it up to show it has been addressed.

Roger A. asked if there were any additional questions? Madge B. stated that for the record she wanted to note this was a non-conforming lot, as well as a non-conforming structure. The property did not have enough road frontage or acreage. She wanted to know if it was in the record when the lot was created. She said it would have to have been created before the zoning, and she felt it needed to be noted for the record when it was created. Madge wanted to ask the applicant to get the information. She felt the deed would show when it was created. Because Mrs. Letourneau was purchasing the property there should be a title search and she could obtain the information from that. Mrs. Letourneau stated that she would get the information, she did not have it with her.

Madge B. stated that in the findings of fact when the lot was created should be in the record. Madge asked when the road frontage requirement and minimum lot size went into effect? Barbara F. stated that all the zoning ordinances were in the Code Enforcement Officers office she believed.

Madge B. reviewed §105-31 Preservation of landscape; landscaping of parking and outdoor storage areas. She stated that she thought an adjacent property was a residence. Madge read part of Section A, which read as follows: *An effective visual screen of native vegetation, including evergreens, shall be established and maintained between the parking or storage area and any abutting residential property. The PB may require additional trees planted in and around large parking lots.* She said at the prior meeting the board did not get specific with respect to this section. She said that the applicants are adding parking and there will be delivery trucks coming in. She said that for the abutting residents this will be a change. Ann H. asked the applicant if they were planning on putting in a buffer. Mrs. Letourneau stated, "Yes, we talked about that last week". Ann stated that the applicant was supposed to bring in a re-vegetation plan. Madge agreed stating it was in the record. Madge stated that they were asked for an engineered stormwater plan and a replanting plan. Ann added that they were also asked for MDOT approval for the two entrances. Madge agreed.

Mrs. Letourneau drew some information on a copy of the plan. Roger A. stated that the board needed a detailed plan, so when the CEO goes to look at it, he will know that what the board approved, is in place.

Madge B. stated that they need to revegetate after they create the parking area. Roger agreed that the area around the parking lot needs to be reclaimed. Mrs. Letourneau stated they were going to plant grass all the way around. Roger said that it was not indicated on the plan. Mrs. Letourneau wasn't sure what the board was asking for. Ann H. said it should be a landscape drawing, like if you were going to go to someone's house and you would know what was planted by looking at the drawing. Mr. Letourneau said it was going to be very simple because he would have to do plowing, so there would be no islands. Roger stated it needed to be put on the plan. Madge asked about the level spreader, how the landscaping fit with that. Ann asked what the level spreader was, just something to catch water? Roger said, "Yes". Madge asked if it was rip rap? Roger said it depended on the depth and size of it. Madge asked if that information was spelled out some place? Roger said, "No, Carl didn't do that". The board was having a hard time reading the plan because of the size of the plan.

Mr. Letourneau asked if he could draw the shrubs and grass on the plan? Roger A. asked if he could tell the board what the dimensions are and materials that will be used in the level spreader? Roger stated, "We don't see how Carl got to the actual size. Normally he has the figures for the 50 year storm, and has the calculations for how he determines what the size of that needs to be". He said it seems like he left off a page and didn't give it to us, we don't have the calculations. Roger said Carl talks about the 16,000 SF of impervious area but he doesn't say what that equals with respect to stormwater. The applicant wanted to know if he was asking for the quantity of water? Roger said the water and how big the level spreader is going to be, how it will contain the water. He said normally Carl has that information for the board, how he figured out the size, showing the calculations. Steve F. asked if the board would like detailed information for the level spreader. Roger stated, "In actuality, he really hasn't given us a stormwater drainage plan".

Ann H. asked if the person installing the level spreader would know what they were going to put in? Roger A. said it needs to be shown on the plan. He stated that Carl is liable for what goes in and that it works, so there needs to be details. Ann asked if the applicants were going to do the stone spreader themselves? Mr. Letourneau stated, "Probably". Ann stated, "But since he didn't put down what size to take that runoff, how would you know what size to put in". Steve F. stated they could look at the drawing, it is scaled to the plan. Ann said she saw it was on the plan but it doesn't show how wide or deep it is. Steve thought the plan was just too small but it was done to scale.

Roland L. stated that he would like to see on the revegetation plan, exactly how far the arborvitaes are going to go along the property line, some details. Roland said, "A revegetation plan was just that, it is telling the board or someone else that is completely unaware or hasn't participated in any of the discussions, what they can expect. It will go X number of feet and they will be staggered at 8 foot intervals or whatever it is. And I am surprised at the spreader, as Roger mentioned, that there wasn't more detail to it. Those that we have seen before produced by the same individual have talked about the width and depth". Mrs. Letourneau stated, "I've never had one done before, so I don't know". Roland stated that at times they even give a cross sectional view, so you can see that there is rip rap at the bottom, he thought it seemed this plan was lacking. Roland stated that it lacked the details that the board would need to be able to say it was going to do the job. Ann asked if the plantings had to be a certain height? Roland thought it might be indicated by the type of plant, he didn't feel they should use a dwarf species that wouldn't go more than 3 feet high because the idea would be as cars come into the parking lot, it would block the headlights from shining onto the neighbor's property, it is a visual break. Roger read

Section B of §105-31, which stated in part ‘*landscaped buffer strip at least 15 feet wide*’. He said that would be at least a couple of sets of trees going up through to block it.

Roland L. asked Mrs. Letourneau if she had had a conversation with the abutting property owner? Mrs. Letourneau stated, “Nope”. Roland said they must have been notified. A citizen in the audience stated that he had been notified. He said that he had no issue with what was going on and he believed it was zoned commercial prior to this application. (Note: There is no commercial zone in Shapleigh. This location is in the General Purpose District where both residential and commercial property is allowed.) The citizen thought the abutters had tried to come to a previous meeting but it was rescheduled.

Roger A. read from §105-28 ‘Setbacks and screening’, this section reads in part: *visual buffer sufficient to minimize their adverse impact on other land uses within the development area and surrounding properties (A dense evergreen hedge, six feet or more in height). All such plantings shall be maintained as an effective visual screen; plants which die shall be replaced within one growing season.* Roland felt this section applied more for a junkyard or gravel operation. Madge B. agreed. She said that is why she quoted §105-31. Maggie M. thought it could apply to the dumpster. Roger said he was quoting it to give the height for the screening. Madge stated she remembered that they did ask about the dumpster being screened at a previous meeting and the applicants said they would. She added that they were not going to be very far from the abutting residential property.

Roger A. asked if there were any other concerns. Madge B. stated that she had no questions. She said that the board needed additional information from Carl Beal for the level spreader, maybe a cross section and stormwater calculations. She wasn’t exactly sure but thought Roger knew what to look for.

**Roger A. stated the board needs Mr. Beal to provide the 50 year storm calculations, noting the size of the level spreader which is determined by the calculations, along with the details for the stone containment including size and materials to be used.**

**Roger A. stated the board needs a detailed landscaping plan which will include the buffer strip to protect the neighboring property.**

**Roger A. stated the board needs the date of when the lot was created, to be sure it is a legal non-conforming lot of record.**

The board discussed when they thought zoning was put into place for minimum lot size and zoning. Roger A. believed it was 1976 for lot size but he wasn’t sure with respect to road frontage. He said if the lot was created yesterday, they would not be able to have the business, but if it was created legally, then the lot will be grandfathered. This is why the date when the lot was created is required. Roger believed this is a legal lot of record, the board just needs to know when it was created for the record.

Roger A. asked Roland L. if he had any other concerns. Roland stated he was reviewing the minutes of the last meeting and noted that he read where the board indicated the requirement of a stormwater runoff plan and replanting schedule but he felt there was a difference between replanting and a visual screen. Madge B. stated that she wasn’t sure the board addressed the visual screening properly. Roland wanted it noted for the record that the board did not direct the applicant to bring information about screening. Madge stated that Maggie M. noted that that applicant stated they were going to put up a visual screen.

Ann H. noted that she had brought up §105-31 'Preservation of landscape', asking 'if any shrubbery had to be put along the driveway to create a block between the neighboring property'? She had read part of the ordinance which speaks both of the visual screen of native vegetation as well as all parking or outdoor storage areas shall be separated by a landscaped buffer strip at least 15 feet wide. Roland noted that he had not reread all the minutes, he only read the summary where the visual screening wasn't noted.

Roger A. stated the board will bring this back up at the meeting on January 22<sup>nd</sup>. He felt Mr. Beal should be able to get this information to the board quickly. Madge B. agreed.

Nothing further was discussed.

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### **Growth Permits**

There are Growth Permits available.

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**The Planning Board meeting ended at 7:25 p.m.**

**NOTE: The winter hours are in effect thru March 31<sup>st</sup>, the meetings now begin at 6:30 p.m. and any scheduled public hearing begins at 6:00 p.m.**

The next meeting will be held **Tuesday, January 22, 2019** at 6:30 p.m. The Planning Board meets the 2<sup>nd</sup> and 4<sup>th</sup> Tuesday of each month unless it falls on a holiday or Election Day. Should there be a cancellation due to a storm event, holiday or Election, the meeting will typically be held the following Wednesday, also at 6:30 p.m. Please contact the Land Use Secretary if there is a question in scheduling, 207-636-2844, x404.

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

## ***Shapleigh Planning Board***

### ***Minutes***

**Tuesday, January 22, 2019**

Members in attendance: Roger Allaire (Chairman), Steve Foglio (Vice Chairman), Madge Baker, Roland Legere, Maggie Moody and Alternate Ann Harris. Code Enforcement Officer Mike Demers was also in attendance. *Note: Ann Harris sat in as a regular member for the review of the Conditional Use Permit on Map 18, Lot 30, as Steve Foglio has a monetary interest in the property, and therefore is not a voting member.*

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

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#### **Public Hearing Began at 6:05 p.m.**

#### **Conditional Use Permit – New Business ‘Honest Cords Firewood’ – Map 1, Lot 12 (221 Deering Ridge Road) – Tim Cochrane, Applicant; Richard Day, Property Owner**

Mr. Cochrane and Mr. Day were present for the public hearing.

Roger A. asked Mr. Cochrane to let the board and audience know what he intended to do. Mr. Cochrane asked if the abutter’s received a copy of the minutes from the last planning board meeting? Roger stated that no, the minutes would not be approved until this evening, the abutter’s only received a notice that a public hearing on the application was being held this evening.

Mr. Cochrane stated that he started Honest Cords Firewood 3 years ago, prior to that he was a logger working 60 plus hours a week which didn’t leave a lot of time to spend with young children and family. So he and his wife decided to try to do the cord wood business full time, and as of September 2018 he was doing it full time in Alfred, but has outgrown that location and has been searching for another property to better serve his needs. He said that when this property came on the market he thought it was perfect, and the access to the site is perfect.

Mr. Cochrane wasn’t sure if the abutter’s received the hours of operation, it was discussed at the last planning board meeting. He said they were trying to be reasonable, asking for 7 days a week, 8 am to 5 pm. He said he didn’t plan on working 7 days a week but often he had to fix equipment and he wanted to be able to do so as needed. He said that typically he works 4 to 5 days a week, noting he did not work 7 days a week at this time. He said equipment would not be running 7 days a week.

Mr. Cochrane said that they just bought a house in Shapleigh, not far from this location. He stated that he was going into this with his wife’s father; his father-in-law was actually purchasing the property.

Mr. Cochrane stated that this was a small operation, using a low impact tractor, and a small processor. He stated that the board had mentioned noise levels and he did a noise level check at the controls and it read 63 decibels. He said that at the last meeting the board stated he could not go over 60 decibels at the



property line; he felt with the existing vegetation and distance, the noise was not going to be an issue based on this reading. He added that he wanted to work with the neighbors, and it is also the mantra of his business, to provide honesty and keep the customers happy. He said to date, doing that, he has been very successful.

Mr. Cochrane said the site access is near the old sawmill, and he thought it was great that the location was originally built to process lumber. He said that he has looked into possibly preserving some of the old mill. He said that they noticed there were 2 sections that were added on to the original mill, those sections are dilapidated and probably will be removed. He hoped he could preserve the main building and perhaps use it to do basic carpentry in the future. He said they would like the piece of history preserved.

Roger A. asked if there were any questions?

**1<sup>st</sup> Citizen** – My only concern is the 7 days-a-week operation. I wish him all the best but I do have a concern about 7 days a week. I have no issues with him as a neighbor, and fixing equipment on the weekend is not an issue. I own a repair business, so I know there can be problems. But if he gets a permit to run the business 7 days a week, down the road if this turns into a huge operation, I am going to be listening to that 7 days a week and I don't want to do that.

**2<sup>nd</sup> Citizen** – I feel the same, 5 days a week. I lived in this area for almost 50 years and I don't need the noise 7 days a week. My wife and I are getting up in age and we need 2 days of quiet.

**Roland L.** – Could I ask you where in relation to the project do you reside?

**2<sup>nd</sup> Citizen** – Do you know Stanley's old place? We are moving to the house next door in the spring. We wanted a smaller house and peace and quiet. Noise level is a concern.

**1<sup>st</sup> Citizen** – I own a business on the same road, noise is also an issue. I work from 8 to 5, no air guns before 8 or after 5. I try to be as respectful to the neighbors as much as possible. If I work on my own stuff on Saturdays or Sundays I work inside with the doors down because I don't want to bother the neighbors. It has worked pretty good for 14 years. He is proposing to do the exact same thing, work from 8 to 5, it is his business, I get it. For me I would like at least one day a week that I don't have to hear the noise.

**3<sup>rd</sup> Citizen** – The lot that you purchased, is that Lot 12 on the map?

**Mr. Cochrane** – Yes.

**3<sup>rd</sup> Citizen** – I am lot 11A and I noticed there has been activity and survey tape put up on the property, what are your intentions for the rest of the property?

**Mr. Cochrane** – I am assuming if you walked onto the property, you are looking at the left.

**3<sup>rd</sup> Citizen** – Yes, and the middle.

**Mr. Cochrane** – That area right there is wetland, so we are not planning on doing anything.

**3<sup>rd</sup> Citizen** – What are you doing near Grant Road?

**Mr. Cochrane** – Can I show him using the map?

The board had no issue with him speaking about his plans. The Citizen was concerned with the property being divided.

**Mr. Day** – I am subdividing a piece of property for Tim (Mr. Cochrane), and keeping the rest for myself.

**3<sup>rd</sup> Citizen** – What are the plans for the rest of the property, the piece next to mine?

**Mr. Day** – There aren't any plans for that piece.

**3<sup>rd</sup> Citizen** – So are you just going to cut it?

**Mr. Day & Mr. Cochrane** – It's been cut.

**3<sup>rd</sup> Citizen** – So what are the ribbons?

**Realtor** – I am the Realtor that sold the property. That land was surveyed in 2011 by the Stanley family and the lines have been there since 2011. We just asked the surveyor to flag the lines, and make sure the pins are there. You may have seen activity but no lines have changed since 2011. Nothing has changed at all.

**Mr. Day** – I am going to be building a house off of Grant Road, there is not going to be any other division.

**3<sup>rd</sup> Citizen** – Where are you going to be building?

**Mr. Day** – Right on the curve, there is 291 feet of frontage there and 300 feet on the road.

**Road Commissioner John Burnell** – It's not my end of town, but as an f.y.i., these roads will be posted in the spring.

**Mr. Cochrane** – We are aware and there will be no trucks showing up during that time. We are planning the deliveries around the postings. The deliveries will be planned around the summer, fall and winter. We totally understand that and have discussed those issues. We appreciate you bringing it up.

Roger A. asked if there were any other questions?

**2<sup>nd</sup> Citizen** – Are you going to be planting anything for a noise buffer?

**Mr. Cochrane** – Yes, we were planning on planting hedges for an additional noise buffer.

**Madge B.** – The board needs to have the site distances for the record. I believe they are adequate but I would like them in the record.

*Madge used the plans provided to calculate the site distances and stated that it appeared in both directions the minimum and maximum site distances could be met. The other board members agreed.*

Roger A. asked if there were any other questions?

**Citizen** – Is the board going to vote on it?

**Roger A.** – Yes, this will be brought back up at the regular meeting. The Public Hearing is for public input but at the regular meeting the public doesn't have much input.

**Madge B.** – You are welcome to stay.

**Roger A.** – If there are other questions the board can clarify, if not, I am going to close the public hearing.

There were no other questions.

The public hearing closed at 6:20 p.m.

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The minutes from Tuesday, January 8, 2019 were accepted as read.

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

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Madge B. asked to speak about a procedural issue. Madge stated, “I became aware rather slowly and late that we had at the last meeting sitting with us Steve Foglio, and it only slowly dawned on me, that he has in my opinion a conflict of interest. When we think that may be the case, our rules require that we bring it up as a board, and it is my understanding that that wasn’t done. So I would like to refer you to the by-laws and the ordinance that created us and it says ‘any question of whether a member shall be disqualified from voting on a particular matter shall be decided by a majority vote of the members except the member who is being challenged’. (Taken from Establishment of Planning Board, Section 3.F.)

**Madge B. stated, “We did not I believe do that. I would like to make a motion at this point that Steve Foglio step off the board for our discussions of the Letourneau application. Do I have a second?” Maggie M. 2<sup>nd</sup> the motion.**

Roland L. asked, “Would that be necessary if the board member recused themselves or would you still have to go through the same procedure”. Madge B. stated, “I don’t have a strong view about that, as long as the record clearly shows that the member has stepped away. But in this case I don’t think the record has shown that to date”.

Madge B. stated, “I don’t like anyone sitting in front at the table. The physical location”. Ann H. stated, “Gotcha”. Madge B. said, “Because I think it’s confusing to people attending the meeting. I am not saying we did anything awful, and we haven’t made any decisions. What happens is, if someone miscounted the quorum, the votes, that decision can be challenged, but we haven’t done that. I just would like us to have a clear record and I would personally prefer that whoever has a conflict not sit up here, because I find that confusing”.

Maggie M. thought if you recused yourself that covers it. Madge B. agreed, and stated that not too long ago she recused herself, we hadn’t had a vote, so it was in the record, and I sat away from the table. Ann H. stated that she had gone to the meetings about Planning Boards, and the attorney’s that run the meetings say that some towns have them go out of the room. Madge said that the Chairman can control the meeting, but if he has a problem, then he should ask the person to leave the room. Madge said that as board members, if we think the board member is over-stepping or making us uncomfortable then we certainly can ask Roger to have the person leave. She asked if this made sense? Board members said that it did.

**Roger A. asked if he could have a vote by the board? The board members voted 5 – 0, in favor of the motion to have Steve Foglio step down as a member for the review of the Letourneau application.**

Maggie M. asked if Steve could be part of the vote? Roger A. stated no, he isn’t part of the vote. Roger added that during the first review, Steve F. spoke to him about a conflict of interest, and Roger agreed there was, so he had Ann H. sit in as a regular member with respect to voting. Roger said it had been

discussed between Steve and himself. Tonight Madge B. felt it was best that the whole board make the decision and that it be in the record. Roland L. stated that the secondary benefit to this is that in the future the board will know how to proceed.

Steve F. asked the board members if they had an issue with him answering questions based on this application? No one had an issue with it.

Nothing further was discussed.

**Conditional Use Permit – Relocate Business known as Keepin’ it Local – Map 18, Lot 30 (130 Emery Mills Road) – Mary Letourneau, Applicant; Paul Letourneau, Property Owner**

Mary Letourneau was present for the review of the application, along with her husband.

Provided along with the application, was a letter from property owner Paul Letourneau stating Mary Letourneau had permission to move forward with the conditional use permit; a sketch plan depicting the existing structure, septic & leachfield location, and arrows depicting how the traffic will flow on the property; a sketch plan depicting the existing structure and driveway on the property; an aerial photo of the property; an aerial photo of the property including distances from the existing structure to the side lot lines and Emery Mills Road; Subsurface Waste Water Disposal System Application for a 3 bedroom home, drafted by John E. Large, SE #7, dated 11/4/11; and a copy of the Purchase & Sale Agreement between Mary Letourneau and Paul Letourneau with an Offer Date of October 29, 2018.

The Detailed Description of the Project is as follows:

The following is a description of the proposed project for moving Keeping’ it Local from its current location at 120 Emery Mills Road to 130 Emery Mills Road.

When purchased we would like to add on to the existing structure:

- creating a larger kitchen, dining area and retail space
- outdoor dining space
- parking area to the right of the building and behind to accommodate 60 seats  
(30 spaces needed for customers, employees and retail space)
- a farmer’s porch onto the driveway side and back of the building
- drive thru on the left side of the building
- upgrade septic to include chambers and grease trap
- upgrade electrical and plumbing

We would also be looking to add in beer, wine and liquor and to expand on our menu to include dinners and brunches.

Operating hours would ‘be’ up to 24 hours depending on baking.  
Serving hours would be between 5 am and 11 pm.

Additionally provided was a new sketch plan drafted by LinePro Land Surveying, LLC. The plan depicted in addition to the existing structures on site, a conceptual parking plan, entrance and exits onto

Route 109, and the proposed expansion of the existing structure. Also depicted were 33 parking places, and how the traffic will flow, including a separate lane for drive-thru traffic.

The Planning Board had requested that Mrs. Letourneau get MDOT approval for the entrance onto Route 109 (Emery Mills Road). In an email to the PB dated December 11, 2018 at 11:27 AM from Anthony Fontaine of the MDOT, it stated the proposal for two separate access points is acceptable. He stated that the property owner, Mr. Paul Letourneau, requested that the access be 24 feet in width and this was acceptable to the department. Mr. Fontaine also stated that having an entry and exit onto Route 109 was acceptable. He concluded with the following: Because everything meets or exceeds the minimum standard for a major collector highway, further review by others here at MaineDOT is not required and I will issue the permit as proposed (two separate access points, one for entry and one for exit, each 24' wide). The town is free to impose their own requirements but the proposal satisfies state statutes.

Members received a copy of a letter from Carl V. Beal, P.E. #5013 of Civil Consultants, regarding the Stormwater Drainage Study for the new location of Keepin It Local, that being 130 Emery Mills Road. The letter read in part as follows:

Pursuant to the pending application to the Planning Board by “Keepin It Local” for a new facility at 130 Emery Mills Road, the following information is presented regarding stormwater runoff.

The new Keepin It Local facility will construct additional building area to the current residential structure at 130 Emery Mills Road. New parking spaces and traffic circulation will also be added, resulting in approximately 16,000 SF of new impervious surface. Pre-development stormwater runoff drains to the SE corner, to Rte. 109. It continues to flow easterly for approximately 120 feet along the Rte. 109 side swale, to an 18” CMP cross culvert. An existing low detention area is present at the inlet of the culvert. Runoff flows through the culvert, then continues along a wooded swale and discharges to Lower Mousam Lake.

Post-development runoff will flow in the same direction as pre-development. A new Stone Level Spreader will be installed at the SE corner of the parcel to control the increase in runoff from the new impervious surfaces and to reduce the potential for erosion of the existing Rte. 109 swale and abutting properties. This spreader will limit runoff energy and velocity to match existing conditions.

In conclusion, construction of the new Keepin It Local facility will result in no negative impacts due to stormwater runoff to downstream properties, tributaries, or Mousam Lake.

Provided along with the letter from Mr. Beal were two (2) - 11 x 17” prints entitled Keepin it Local - Proposed Improvements – Drainage Study – 130 Emery Mills Road, Shapleigh Maine’. Print D1 noted the following, “Work performed by Carl V. Beal is limited to stormwater drainage only. Survey information was provided by LinePro Land Surveying, LLC”. Print D2 noted the following, “Work performed by Carl V. Beal is limited to stormwater drainage only. Building addition, new parking and traffic pattern, and other improvements were provided by others”.

This evening the board members received from the applicant, a Warranty Deed from Walter G. Rand and Clara M. Rand to Donna M. Ruopp and George M. Ruopp, Book 4003, Page 189, describing Map 18, Lot 30, containing highlighted information regarding road frontage that being 151 feet, dated December 16, 1982; a replanting plan which denotes areas of grass to be planted and 24 – 6’ Arborvitae’s between the parking area and adjacent residential property; an updated Proposed Improvements Drainage Study, which depicted additional water management information on page D2, and added a page D3, which describes how the Level Spreader will manage a 50-year storm event; and provided was the Maine

Erosion and Sediment Control BMP guidelines for a level spreader from 2016. Also received from the applicant was a letter from George and Donna Ruopp, dated January 21, 2019, which read in part as follows:

*Mary Letourneau has asked us to consider a privacy screen along our shared property line (138 & 135 Emery Mills Road). Donna and I have discussed various options and decided a line of arborvitae would be most acceptable. Options such as flowering shrubs would require more maintenance, primarily pruning to keep them from spreading, without the degree of screening provided by arborvitae. A fence, to provide adequate screening would need to be fairly tall.*

*There is another consideration to this application we wish to bring to your attention. When the septic system currently serving the property was installed a few years ago, the grade was change so that runoff from rain & snow-melt now comes to my property, rather than to the ditch along Route 109 (Emery Mills Road) as it previously did. I was assured during the final grading that this would not happen. Currently, there is a grass buffer strip, and the area is mostly lawn. However, we understand the anticipated parking area will abut our property. Whether paved or compacted gravel, the absorption factor will be practically non-existent compared to lawn. We prefer the parking area be engineered with proper grading and/or necessary drainage structures to direct runoff to the roadside ditch without crossing our lawn.*

*Thank you for this opportunity to express our thoughts on this application. We look forward to welcoming our new neighbor.*

This evening the board also received a letter from Shapleigh Fire Chief Duane Romano, dated January 15, 2019, which read in part as follows:

*Re: Conditional Use Permit for Moving 'Keepin it Local' – Includes Expanding Retail Space & Dining Area – Location Map 18, Lot 30 – 130 Emery Mills Road*

*Board members,*

*It has recently been brought to my attention that an existing residential property, located at the address indicated above, is having the use of the property changed from residential to commercial.*

*As the Chief of the Shapleigh Fire Department, it is my recommendation that one of the following be implemented for fire suppression:*

- 1) A 20,000 gallon cistern system be placed on the property,*  
*OR*
- 2) A sprinkler be installed.*

*Repairs and maintenance of the sprinkler system shall be the responsibility of the property owner. The Shapleigh Fire Department will check the water level of the cistern at their discretion and add water if necessary. Please have the applicant contact me with their decision.*

Roger A. read both the letter from the Ruopp's and Fire Chief Romano during the review of the application for Mrs. Letourneau. Roger also noted the new information submitted for the level spreader and planting plan.

Ann H. asked about the level spreader and where the water runoff is going to go, she wanted to know if the water is going to the same area that the letter from the Ruopp's requested? Steve F. stated, "Correct".

Ann H. asked if the application was approved this evening, if the revegetation would be accomplished by September 1<sup>st</sup>? Steve F. stated that the arborvitae can be planted at any time. Ann stated she was referring to the information provided on the Level Spreader which included construction standards, and it noted that the revegetation plan should be limited to the growing season and done before September 1<sup>st</sup>. Mr. Letourneau stated that the information she was referring to was just generic information from the State. Ann said that was fine, she just wanted to be sure it wasn't specific to this application.

Roger A. stated that the only other issue is from the Fire Chief who wanted the building sprinkled. Steve Foglio stated, "At this point we are in contact with the State Fire Marshal's office regarding either a sprinkler or suppression system. What the applicant is aiming for tonight is to let the State Fire Marshal and Codes Officer determine if that will be required based on what they see with the final plan. The suppression system you got to have, it doesn't make sense to do both. To have a fire suppression system and a sprinkler system seems to be doubling up on services. If you want to put something in that in the end there is a requirement to have that signed off by the State Fire Marshal and Code Officer to make sure on those plans, whether it has to be sprinkled or not; but just to generically say that it needs to be sprinkled doesn't make a lot of sense. Number one, we are 400 feet from Mousam Lake and number two there is no other building that I can think of in recent memory that we have required a sprinkler on besides subdivisions. So I think if the board is going to set a precedent, that any time you switch from residential to commercial, you have to be prepared to stand behind that. That could fall into use from day cares to any other conditional use that comes before the board". Roger stated, "To respond, we do have one that we required it, over at Hannon's place. It's got a tank that we required them to put in for the restaurant. So it has been done". (As part of the conditional use permit to change the structure on Map 7, Lot 3-2 from a showroom, to having one-third of the structure used for a 92 seat restaurant, the then owner Mr. Patrick Hannon, was required to put in a cistern on site for fire protection.)

Ann H. stated, "I in the letter, is the Fire Department looking at life safety or fire protection, it didn't say that in the letter". Ann stated that if they are looking at life safety, they are probably looking to see that no one gets burned. If they are looking at fire suppression over the cooking area, they just don't want a fire. Steve F. stated it didn't say, it just says it was because they were switching from residential to a commercial structure. Ann asked if that could be determined. Steve said the only other sprinklers he could think of was in subdivision, but that is residential. Ann thought it was for life safety.

Madge B. asked what fire suppression was? Ann H. stated it was like a UL System, you go into a cooking area, there is a hood that squirts the water over the cooking area. If they are looking for life safety, which is starting to be a big deal in Maine, then they would want sprinklers everywhere in case somebody couldn't get out if there was a fire. Ann said it was two different systems. She said the letter doesn't say why they are saying what they are saying. Do they want fire safety or life safety? She asked if there was a way to determine what they are looking for? Roger A. read Fire Chief Romano's letter at this point (see above).

Ann H. asked if the Fire Chief was just wanting to be sure the well on the property was big enough to operate a sprinkler system? Ann thought the letter was vague. Steve F. stated that it is in our ordinance to be sure the water supply was adequate. Ann asked if this was for a sprinkler system. Roger A. said that because it is a cooking area, the State will require fire suppression over the cooking area. He said with respect to the rest of the building, if the Fire Marshal determines because of the number of people they need more protection for the building itself, then that will need to be done. Roger said it could be what the Fire Chief is asking for or the State may be less restrictive.

Madge B. asked about what an insurance company would want. It was stated that it was the applicant's problem. Roger A. again stated that when Mr. Hannon's restaurant was approved, the board required a 20,000 gallon cistern that Mr. Hannon paid for. He said it got installed and Mr. Hannon also gave the town money to keep it in working order. Roger said the town has used it and the Fire Department keeps it full of water. Madge stated that it was in a great location, because there isn't anything else in that area. Roger thought the cistern was required for not just the size of the building, but the number of people who would be in the building.

Mrs. Letourneau stated that she had to fill out an application for the State Fire Marshal's office, and then he will come to the site when he receives it. Ann H. thought they would only need fire suppression in the kitchen if they were frying. Mrs. Letourneau stated that she may be frying.

Roland L. asked if the State Fire Marshal overruled the local government? Roger A. stated whoever is more stringent applies. He noted that the Town had home rule.

Madge B. asked how the board would know who would be more stringent? Roger A. stated the board would not know until the State Fire Marshal had a decision. Ann H. asked if that goes to Code Enforcement, not us? Steve F. stated that there are other avenues that cover this, so it makes sense to let those play out. Ann said that means let the Code Enforcer let it play out for whatever is needed. Steve said, "Exactly". Roger stated that in order to get the OC Permit they will need all the criteria in place. CEO Demers stated, "That goes to Ken Paul anyway". Roger agreed, saying that our CEO could not do anything with this application because it is a conflict of interest (CEO Demers is Mrs. Letourneau's brother), so he has to get the Deputy CEO.

Madge B. said when we look at our standards, §105-73.G (10) states 'There is adequate water supply to meet the demands of the proposed use, and for fire protection purposes', She asked, "How do we know we can say there is?" Roger A. stated that the board does not know how many gallons are in the well at the present time. Madge asked how the board could act on this yet? Ann H. agreed, because the board did not know.

Madge B. said that there was another provision that we didn't have an answer for, §105-73.G (6) 'Adequate provision for the disposal of all wastewater and solid waste has been made'. She said the board has no plan on file for the subsurface waste disposal system for the business, all the board has is the 2011 system, which clearly is not what they are going to use. She asked how the board could approve this without this information? Roger A. said the board would need verification that the system would be adequately sized. Madge asked if this is adequate, she was concerned because the board has heard there are drainage issues from the existing system. She asked where the new system would go, and where



would the drainage go? Steve F. stated the new system would have to go under the parking lot. Madge said she assumed that. She asked where the water would go after the chambers? Steve stated it would go into the ground. He asked Madge if she was asking for a copy of the new design? Madge said she would like more than what they have now, to be able to vote that the standard has been met. Just as she felt she needed more information that the water supply standard has been met. Steve said he didn't disagree with her, but he said he knew a State certified soil engineer would have to determine just exactly that, prior to. He said if the board wanted to put in the conditions that a copy of the new septic design would be received by the Code Enforcement Officer prior to the building permit, or occupancy, that is fine. He didn't feel it was something the board had to deal with at this time, because without that they could not get their occupancy permit.

Roger A. stated that the soil engineer will design the system, including the grease trap, and the Deputy CEO will have to sign off saying the permit has been approved, and that it is being built according to whoever designed the system. Madge stated that she understood, but it was usual for the board not to have a design. She said that usually when the board approves something, they know where the system is going to go, in this case the board has nothing. Steve F. stated that right now the only restriction they have from the engineer, is the distance to the well. Steve said the septic is an allowable verification from the CEO.

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

Roger A. began the review of the applicable standards in the Zoning Ordinance. They are as follows:

**§105-4.B – Definitions.** *Roger stated that this was a nonconforming lot of record. The applicant provided a copy of a deed to verify that at the date of creation it met the zoning criteria.*

**§105-4.C(4) – Change of use.** *Roger stated that the new use will not have any greater impact on adjacent properties with conditions.*

**105-17 – Land Uses.** *Roger A. stated that this was an allowed use but required a Conditional Use Permit.*

**105-20 – Applicability of standards; prohibited uses.** *Roger A. stated that this was before the board because it was an expanded use of the existing permit, and the location was being changed. He added that it was an allowed use.*

**105-21 – Traffic.** *Roger A. stated the speed limit in this location is 35 mph, and the minimum site distance required is 245 feet which can be met. Madge B., using the map provided by the applicant, stated that the minimum can be met or exceeded in both directions. Roger A. stated that he agreed they would meet the recommended of 350 feet.*

**105-22 – Noise.** *Roger A. stated there is a limited amount of noise generated by this activity. He read the noise requirement level that being a limit of 60 dB(A) between 7 am and 10 pm, and 45 dB(A) between 10 pm and 7 am.*

**105-23 – Dust, fumes, vapors and gases.** *Roger A. stated there is no dust, fumes, vapors or gases generated by this activity.*

**105-24 – Odors.** *Roger A. stated there would be no offensive odors produced by this activity.*

**105-25 – Glare.** *Roger A. stated that any additional lighting could not create a strong and dazzling light onto neighboring properties or cause a glare on the roadway to impair a driver's vision.*

- 105-26 – Stormwater runoff. *Roger A. stated that a stormwater runoff plan was provided by Carl V. Beal, P.E. #5013, designed for a 50 year storm, which included a level spreader to contain the stormwater runoff.*
- 105-27 – Erosion control. *Roger A. stated that a revegetation plan was provided, for the area surrounding the parking area. Grass will be placed around the parking area, and the level spreader was designed to keep the stormwater on site. Madge B. stated that the board would need to know when the revegetation would be established.*
- 105-28 – Setbacks and screening. *Madge B. felt this section was not applicable, instead section 31 applied.*
- 105-29 – Explosive materials. *Roger A. asked if they were going to use propane? Mrs. Letourneau stated that they were. Roger stated that they would have to comply with the NFPA 58 Liquefied Petroleum Gas Code, typically the company supplying the gas will make sure it is in compliance.*
- 105-30 – Water quality. *Roger A. stated there are no changes being made to the property to affect water quality.*
- 105-31 – Preservation of landscape; landscaping of parking and storage areas. *Roger A. stated arborvitae shall be planted between the parking area and the neighboring residential property, and the dumpster shall be hidden as well. The shrubs shall be a minimum of six feet in height to prevent glare onto the neighboring property.*
- 105-32 – Relation of proposed building to the environment. *Roger A. stated the building is in existence and fits in well.*
- 105-33 – Refuse disposal. *Roger A. stated that Mrs. Letourneau stated they would be using a dumpster and it will be screened off.*
- 105-34 – Access control on Routes 109 and 11. *Roger A. stated the MDOT approved the proposed entrance and exit.*
- 105-43 – Off-street parking and loading. *Roger A. read the ordinance in its entirety, which included Section A which states no more than two entrances are allowed and no entrance or exit shall exceed 26 feet in width. Section B(1) which states that one space was required for each 150 square feet or fraction thereof of floor area of any retail, wholesale or service establishment or office or professional building. He added that one space is required for each three seats, permanent or otherwise, for patron use for restaurants and other places serving food or beverage and for theaters, auditoriums and other places of amusement or assembly, and a space is required for each person employed or anticipated to be employed. Roger stated that the stormwater plan was designed to keep stormwater runoff on site. Roger stated that based on this, 33 parking spaces were created on the plan. Madge B. asked how many outdoor seats there would be? Mrs. Letourneau stated there would be a total of 60 seats inside and out. She wasn't sure how many would be outside.*
- 105-46 – Sanitary provisions. *Roger A. read Section B 'Private sewage disposal. Roger stated that a system would need to be put in that would meet the State standards and it would include a grease trap.*
- 105-47 – Signs. *Roger A. stated this would be permitted by the Deputy CEO.*

Roger A. then reviewed §105-73.G 'Standards applicable to conditional uses' and made findings of fact.

*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. ***Roger A. stated, it will not.***
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. ***Roger A. stated this is not applicable.***
- 3) The use is consistent with the Comprehensive Plan. ***Roger A. stated it is, the Comp Plan wants businesses along Route 109.***
- 4) Traffic access to the site is safe. ***Roger A. stated the speed limit in this location is 35 mph, the minimum site distance is 245 feet and recommended is 350, both can be met in this location.***
- 5) The site design is in conformance with all municipal flood hazard protection regulations. ***Roger A. stated it is, the structure is in existence, permitted by the Town, and is not in the flood zone.***
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. ***Roger A. stated the applicant will have a dumpster for trash and there shall be a State approved Subsurface Wastewater Disposal System permitted and put in prior to the Occupancy Permit being issued.***
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. ***Roger A. stated that there is none generated by this activity.***
- 8) A stormwater drainage system capable of handling fifty-year storm without adverse impact on adjacent properties has been designed. ***Roger A. stated a stormwater system was designed by Carl V. Beal, P.E. #5013.***
- 9) Adequate provisions to control soil erosion and sedimentation have been made. ***Roger A. stated an erosion control plan was designed by Carl V. Beal, P.E. #5013, and a revegetation plan was also provided for the area around the parking area.***
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. ***Roger A. stated this will be determined by the State Fire Marshal prior to construction.***
- 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. ***Roger A. stated a landscaping plan was provided which included a row of arborvitae between the parking area and the neighboring residential property.***
- 12) All performance standards in this chapter applicable to the proposed use will be met. ***Roger A. stated they shall with conditions.***

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

- 1) The revegetation plan, including the planting of grass and arborvitae, shall be completed prior to the Occupancy Permit being issued, no later than October 1, 2019.**
- 2) The hours of operation are 24 hours a day for baking, and 4 AM thru midnight for serving customers, 7 days a week.**
- 3) The State Fire Marshal shall make certain there is adequate water supply to meet the demands of the proposed use and for fire protection purposes prior to construction, which includes fire suppression for the building.**
- 4) The Alternate Code Enforcement Officer shall make certain there is adequate provision for the disposal of all wastewater and solid waste prior to issuing an Occupancy Permit.**

**Madge B. made the motion to move for approval of the Conditional Use Permit to relocate Keepin' it Local to 130 Emery Mills Road, creating a larger kitchen, dining area and retail space, and including an outdoor dining space, on Map 18, Lot 30 per the plans submitted, with the above stated conditions. Ann H. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

Nothing further was discussed.

**The Findings of Facts**

1. The applicant is Mary Letourneau of 1110 of Milton Mills Road, Acton, Maine 04001.
2. The owner of Shapleigh Tax Map 18, Lot 30 (130 Emery Mills Road) is Paul J. Letourneau of 130 Emery Mills Road, Shapleigh, Maine 04076. There is a Purchase & Sales Agreement between Mrs. Letourneau and Mr. Letourneau (not related) with an Offer Date of October 29, 2018.
3. The property is located in the General Purpose District and according to the assessor, the property contains 1.3 acres.
4. The applicant is before the board for a Conditional Use Permit to relocate Keepin' it Local from 120 Emery Mills Road to 130 Emery Mills Road.
5. Received was a letter from property owner Paul Letourneau stating Mary Letourneau had permission to move forward with the conditional use permit; a sketch plan depicting the existing structure, septic & leachfield location, and arrows depicting how the traffic will flow on the property; a sketch plan depicting the existing structure and driveway on the property; an aerial photo of the property; an aerial photo of the property including distances from the existing structure to the side lot lines and Emery Mills Road; Subsurface Waste Water Disposal System Application for a 3 bedroom home, drafted by John E. Large, SE #7, dated 11/4/11; and a copy of the Purchase & Sale Agreement between Mary Letourneau and Paul Letourneau with an Offer Date of October 29, 2018.
6. Received was a sketch plan drafted by LinePro Land Surveying, LLC. The plan depicted in addition to the existing structures on site, a conceptual parking plan, entrance and exits onto Route 109, and the

proposed expansion of the existing structure. Also depicted were 33 parking places, and how the traffic will flow, including a separate lane for drive-thru traffic.

7. Received were two (2) - 11 x 17" prints entitled Keepin it Local - Proposed Improvements – Drainage Study – 130 Emery Mills Road, Shapleigh Maine'. Print D1 noted the following, "Work performed by Carl V. Beal is limited to stormwater drainage only. Survey information was provided by LinePro Land Surveying, LLC". Print D2 noted the following, "Work performed by Carl V. Beal is limited to stormwater drainage only. Building addition, new parking and traffic pattern, and other improvements were provided by others".
8. Received was an email to the PB dated December 11, 2018 at 11:27 AM from Anthony Fontaine of the MDOT, it stated the proposal for two separate access points is acceptable. He concluded because everything meets or exceeds the minimum standard for a major collector highway, further review by others here at MaineDOT is not required and I will issue the permit as proposed (two separate access points, one for entry and one for exit, each 24' wide). He noted that the town was free to impose their own requirements but the proposal satisfies State statutes.
9. Received was a letter from Carl V. Beal, P.E. #5013 of Civil Consultants, regarding the Stormwater Drainage Study for the new location of Keepin It Local, that being 130 Emery Mills Road. The letter read in part that post-development runoff will flow in the same direction as pre-development. A new Stone Level Spreader will be installed at the SE corner of the parcel to control the increase in runoff from the new impervious surfaces and to reduce the potential for erosion of the existing Rte. 109 swale and abutting properties. In conclusion, construction of the new Keepin It Local facility will result in no negative impacts due to stormwater runoff to downstream properties, tributaries, or Mousam Lake.
10. Received was a letter from Fire Chief Duane Romano, dated January 15, 2019, which read in part as follows: *As the Chief of the Shapleigh Fire Department, it is my recommendation that one of the following be implemented for fire suppression: 1) A 20,000 gallon cistern system be placed on the property, or, a sprinkler be installed. Repairs and maintenance of the sprinkler system shall be the responsibility of the property owner. The Shapleigh Fire Department will check the water level of the cistern at their discretion and add water if necessary. Please have the applicant contact me with their decision.*
11. Received was a Warranty Deed from Walter G. Rand and Clara M. Rand to Donna M. Ruopp and George M. Ruopp, Book 4003, Page 189, describing Map 18, Lot 30, containing highlighted information regarding road frontage that being 151 feet, dated December 16, 1982; a replanting plan which denotes areas of grass to be planted and 24 – 6' Arborvitae's between the parking area and adjacent residential property; an updated Proposed Improvements Drainage Study, which depicted additional water management information on page D2, and added a page D3, which describes how the Level Spreader will manage a 50-year storm event; and provided was the Maine Erosion and Sediment Control BMP guidelines for a level spreader from 2016.

12. The Detailed Description of the Project is as follows:

The following is a description of the proposed project for moving Keeping' it Local from its current location at 120 Emery Mills Road to 130 Emery Mills Road.

When purchased we would like to add on to the existing structure:

- creating a larger kitchen, dining area and retail space
- outdoor dining space
- parking area to the right of the building and behind to accommodate 60 seats (30 spaces needed for customers, employees and retail space)
- a farmer's porch onto the driveway side and back of the building
- drive thru on the left side of the building
- upgrade septic to include chambers and grease trap
- upgrade electrical and plumbing

We would also be looking to add in beer, wine and liquor and to expand on our menu to include dinners and brunches.

Operating hours would 'be' up to 24 hours depending on baking.  
Serving hours would be between 5 am and 11 pm.

13. The board reviewed the Basic Performance Standards and the board concurred the application met all the standards imposed.
14. The board reviewed Zoning Ordinance §105-73, Section G, 'Standards applicable to conditional uses' and concurred the application and information as presented met the performance standards in this chapter, with conditions.
15. A notice was mailed to all abutters within 500 feet of the property on November 14, 2018. Meetings were held on November 13, 2018, November 27, 2018, January 8, 2019 and January 22, 2019. A site inspection was not necessary as members were aware of the location.
16. The Planning Board unanimously agreed to approve the Conditional Use Permit to relocate Keepin' it Local to Map 18, Lot 30, per the plans provided with conditions.
17. **The conditions of approval are:**
- 1) The revegetation plan, including the planting of grass and arborvitae, shall be completed prior to the Occupancy Permit being issued, no later than October 1, 2019.**
  - 2) The hours of operation are 24 hours a day for baking, and 4 AM thru midnight for serving customers, 7 days a week.**
  - 3) The State Fire Marshal shall make certain there is adequate water supply to meet the demands of the proposed use and for fire protection purposes prior to construction, which includes fire suppression for the building.**
  - 4) The Alternate Code Enforcement Officer shall make certain there is adequate provision for the disposal of all wastewater and solid waste prior to issuing an Occupancy Permit.**

Motion:

After careful consideration and a review of all material presented to the Board, including the review of the Zoning Ordinances ‘Basic Performance Standards’, and §105-73, Section G, ‘Standards applicable to conditional uses’ a motion was made on Tuesday, January 22, 2019 to approve the Conditional Use Permit to move Keepin’ it Local to Map 18, Lot 30, per the plans provided, with four conditions.

Vote:

By a unanimous vote of 5 – 0, the motion to approve the Conditional Use Permit to move Keepin’ it Local to Map 18, Lot 30, per the plans provided, with four conditions, was accepted.

Decision:

**The Conditional Use Permit to move Keepin’ it Local to Map 18, Lot 30, per the plans provided, with four conditions, was approved.**

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**Amendment to a Conditional Use Permit – 3 Year Gravel Pit Renewal of the Town of Shapleigh – Map 7, Lots 7 & 22A (Square Pond and Cedar Drive)**

Road Commissioner John Burnell represented the Town of Shapleigh.

Provided along with the application, was a copy of the town map showing lots 7 & 22A, and a copy of the assessment of the two properties, which lists Lot 7 as ‘Ferguson Parcel (gravel source) and Lot 22A as Gravel pit/Winter sand. Previously submitted during the initial approval process was the following:

1. A Notice of Intent to Comply – Performance Standards for Excavations for Borrow, Clay, Topsoil or Silt (For Use with 38 MRSA Section 490-C) was applied for to the Maine Dept. of Environmental Protection, Division of Land Use Regulation. Approval was received on October 25, 2006, Permit Number L-636.
2. A copy of a document entitled Real Estate Inquiry, dated 7/27/2006, which listed the Town of Shapleigh as owner, as listed by deed reference, Book 14461, Page 121. The document also listed the number of acres, that being 67, and the location of the property being Cedar Drive. In addition, handwritten on the document was the following: Subject Parcel, Access Road – 2800 feet + or – length, 20 feet traveled portion, clearing 40 + 50 feet; Area to be Mined – whole parcel w/limitations of setbacks – minimum of 5 acres.

Roger A. asked RC Burnell if there were going to be any changes to the gravel pit? RC Burnell stated there were not. He said that they reclaimed out front, that which was requested in 2016, this area is closed down. He said everything is out back and the Town is still loading from the same footprint. Roger asked if there would be any reclaiming of that? RC Burnell stated that they are still under the 5 acre guideline for reclamation. He thought it would be at least another year or two before they had to reclaim that area. He said there was plenty of material there. He said the Town had taken the loam from the top and is saving wood chips to reclaim the area.

Roger A. asked if there were any changes for this permit, from the last approval? RC Burnell stated there were no changes, they were doing gravel extraction, a little storage of sand and processed material.

Roland L. asked if they were going to continue to use the same entrance and exit? RC Burnell stated they would be using the same entrance and exit. Roland said, “Projecting down the road, after that area is reclaimed, would you then change the entrance point or would you still just use the same”. RC Burnell stated they would still use the same entrance, unless down the line there was another parcel purchased between the sand/salt facility and the one we are using now.

**Roger A. stated because there are no changes, the board will mail out a notice to abutter’s and hold a public hearing to let the public know what is going on. The public hearing will be held on Tuesday, February 12<sup>th</sup> at 6:00 p.m. Board members know the location, so there is no need for a site inspection.**

Nothing further was discussed.

**Conditional Use Permit – New Business ‘Honest Cords Firewood’ – Map 1, Lot 12 (221 Deering Ridge Road) – Tim Cochrane, Applicant; Richard Day, Property Owner**

Mr. Cochrane and Mr. Day were present for the review of the application.

Provided along with the application, was a copy of the town tax map with Lot 12 highlighted to depict its location; several copies of the digital map depicting approximately where the logs will be placed and processed; a copy of an email from future property owner Richard Day stating that he was under contract to purchase Lot 12, and that he granted Tim Cochrane permission to operate a firewood business known as “Honest Cords Firewood” on a portion of the property; a copy of the Purchase and Sale Agreement between Stanley Family Trust and Richard Day, dated December 13, 2018 and to be executed on January 11, 2019; and a letter of intent from Tim Cochrane, owner/operator of Honest Cords Firewood, established 2015. The letter read as follows:

Proposed Business Location: Lot 12 Deering Ridge Road access.

Honest Cords Firewood started with one goal, to sell honestly. The reason I started HCF is because I have witnessed too many people being taken advantage of by other firewood providers through shorted cords, price gouging, and wood being sold as seasoned when not truly seasoned. HCF is a small one person operation that has family help in the summer and on weekends. We are looking for a location to settle in and grow our family business. The location of Lot 12 on Deering Ridge Road, Shapleigh, is a very exciting prospect for HCF.

HCF’s current hours of operation are Monday – Sunday, between the hours of 8:00 a.m. and 5:00 p.m. If I am at this location I will be sure to work with the abutting land owners (neighbors) to assure an amicable working relationship with them.

HCF’s current equipment:

- **2015 Dyna Firewood Processor** 32 hp gas powered engine; 15 gal. hydraulic tank
- **Chainsaw:** Gas powered
- **Wood Splitter:** Gas powered, belt driven



- **1 Ton Dump Trucks:** Gas & Diesel
- **Low Impact Tractor:** Diesel

**Please Refer to Map 4**

The red box indicates the general area I intend to use as the business grows, allowing adequate tree cover and buffer between abutting properties. Honest Cords Firewood will use this portion of property for the processing, stock piling and loading of firewood for delivery. We receive tree length logs that are brought in via logging trucks from local logging companies. There is head in head out access (white lines) for the logging trucks to and from the property. Tree length wood (green boxes) will be dropped off for processing into firewood. Processed firewood will be stock piled for seasoning (blue box).

Roger began by asking Mr. Cochrane if there were any changes to the hours of operation, based on the comments that were made during the public hearing. Mr. Cochrane stated that he wasn't going to make changes, because he knew that if he said he would not operate for two weekend days, and then there was rain during the week, he would need to work at least one of the weekend days to make up for it. He stated that he spoke with the neighbors present during the public hearing and they agreed to talk more about it in the future. He wanted to work something out that would work for everyone.

Roger A. stated if there weren't any other questions, he would begin review of the applicable ordinance as follows:

- 105-17 – Land Uses.** *Roger A. stated the reason why the applicant was before the board is because a business requires a Conditional Use Permit in the general purpose district. He stated the size of the lot is adequate, it meets the 2 acre minimum required, and it has the required road frontage of 200 feet.*
- 105-21 – Traffic.** *Roger A. stated the speed limit in this location is 35 mph, and the minimum site distance required is 245 feet and the recommended is 350 feet. Using the plans provided, the board agreed there was approximately 400 feet of site distance in one direction and greater than 400 feet in the other, therefore, the site distance requirement can be met.*
- 105-22 – Noise.** *Roger A. stated the noise requirement level, that being a limit of 60 dB(A) between 7 am and 10 pm, and 45 dB(A) between 10 pm and 7 am. Roger stated that Mr. Cochrane stated the decibel at the equipment is registering at 63 decibels, but believed it was below the 60 at the lots lines, so it is within the limits allowed. Madge B. stated there would be noise from trucks but noted the applicant stated there would only be on average one truck a week, being on site for approximately 20 minutes to unload. Madge stated that the applicant will organize the trucks, so they come on site at a reasonable hour.*
- 105-23 – Dust, fumes, vapors and gases.** *Roger A. stated there may be fuel emissions generated by this activity, but they should not go beyond the lot lines.*
- 105-24 – Odors.** *Roger A. stated there can be no offensive odors produced by this activity beyond the lot lines.*
- 105-25 – Glare.** *Roger A. stated there is to be no glare onto neighboring properties or onto the roadway, as all activity shall take place during daylight hours.*

- 105-26 – Stormwater runoff. *Roger A. stated that stormwater runoff has to be detained on site, as much as possible and practical. Roger stated the only change to the property would be the driveway or lay down areas.*
- 105-27 – Erosion control. *Roger A. stated that very little vegetation would be removed, only the areas where the logs will be located and firewood. Madge B. noted again the driveway and if a culvert is required it will be placed on site. Madge asked about sawdust, if it was created. Mr. Cochrane stated that he did create sawdust and it would be removed for biomass and/or local farms use it. He said if there was an excess, it can be taken to Simpson's for disposal. Madge noted that she did not see it as waste.*
- 105-29 – Explosive materials. *Roger A. asked if there was any outdoor storage for fuel? Mr. Cochrane stated that there was not, it was stored in his truck.*
- 105-30 – Water quality. *Roger A. stated there are no changes being made to the property to affect water quality, fuel will not be stored on site.*
- 105-31 – Preservation of landscape; landscaping of parking and storage areas. *Roger A. stated the applicant is going to preserve the existing vegetation as much as possible, keeping the site in a natural state.*
- 105-32 – Relation of proposed building to the environment. *Roger A. stated there was no structure being built for this application.*
- 105-33 – Refuse disposal. *Roger A. stated there would be a minimal amount of refuse disposal. Madge B. asked about fuel spillage, what would be done with material associated with that? Mr. Cochrane stated he had hazmat material if anything happens. He added that they have a small hydraulic tank, perhaps 5 gallons, but he did have materials to clean up any spillage from that. He said to date they have never had a spill. Madge asked what they did with the hazmat once it has material on it? Mr. Cochrane said it would be taken care of appropriately either through Sanford or Shapleigh.*
- 105-46 – Sanitary provisions. *Roger A. asked if they would be having a portable toilet on site? Mr. Cochrane stated he lived only two miles down the road, so he didn't foresee the necessity for one at this time. He said in the future if he puts in a small shop, he will come in for a permit at that time, and an amendment to this permit.*
- 105-47 – Signs. *Roger A. stated this would be permitted by the CEO.*

Roland L. asked if the firewood processor was self-leveling, did it have leveling pads, or did Mr. Cochrane have to build a pad for it? Mr. Cochrane stated currently he drives around the yard and processes as he goes. He said it was just eyeballing it, the machine is not fussy, it didn't have to be perfectly level.

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

**Roger A. then reviewed §105-73.G 'Standards applicable to conditional uses' and made findings of fact.**

*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. **Roger A. stated, it will not.**
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. **Roger A. stated this is not applicable.**
- 3) The use is consistent with the Comprehensive Plan. **Roger A. stated it is, the Comp Plan wants small family owned businesses.**
- 4) Traffic access to the site is safe. **Roger A. stated the speed limit in this location is 35 mph, the minimum site distance is 245 feet and recommended is 350, both can be met in this location.**
- 5) The site design is in conformance with all municipal flood hazard protection regulations. **Roger A. stated it is, is not in the flood zone.**
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. **Roger A. stated the applicant will remove wood chips and sawdust as required. There is no Subsurface Wastewater Disposal System required at this time.**
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. **Roger A. stated that there are no hazardous materials being stored on site. Any spillage of hydraulic oil will be taken care of immediately with a hazmat and disposed of properly.**
- 8) A stormwater drainage system capable of handling fifty-year storm without adverse impact on adjacent properties has been designed. **Roger A. stated there are no changes being made to the site that would require a stormwater plan. The only change will be to the driveway. If a culvert is needed it will be put in.**
- 9) Adequate provisions to control soil erosion and sedimentation have been made. **Roger A. stated there are no changes to the existing vegetation that would require an erosion control plan, only the driveway will be re-leveled.**
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. **Roger A. stated there is a pond with fire hydrant across the street. Mr. Cochrane added that there was a fire extinguisher on all his equipment.**
- 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. **Roger A. stated no additional buffer is needed at this time. There will only be logs added to the site, and firewood.**
- 12) All performance standards in this chapter applicable to the proposed use will be met. **Roger A. stated they shall with conditions.**

Roger A. stated the conditions shall be as follows:

- 1) Hours of operations shall be 8 AM to 5 PM, 7 days a week.
- 2) A driveway permit must be obtained and the Road Commissioner will determine if a culvert is required.

Roland L. stated that he would take the applicant at his word that he would work out an amicable situation with respect to hours of operation. He also noted he was happy that the applicant was going to maintain a buffer strip between his property and the neighbors that attended who had concerns. Mr. Cochrane stated that he would be sure everyone was on the same page.

Madge B. asked about how culverts got dealt with? Roger A. stated the Road Commissioner was the person who determined whether or not a culvert was required. Roger said that while obtaining a driveway permit the RC makes the determination. Roland L. thought there may be one in existence at this time. Mr. Cochrane was not sure.

Madge B. stated that she wanted to be sure if dirt gets onto the road, because of the logging trucks or delivery truck, that it gets taken care of. Madge said sometimes the RC asks the applicant to pave a few feet or add crushed gravel. Mr. Cochrane stated that he understood, he said in the past he had to sweep the road. Madge wanted to add this to the conditions. Roger A. added to condition #2, that the issue of sand on the road also be discussed with the RC.

**The two conditions of approval are as follows:**

- 1) Hours of operations shall be 8 AM to 5 PM, 7 days a week.**
- 2) A driveway permit must be obtained and the Road Commissioner will determine if a culvert is required, or measures need to be taken with respect to the possibility of dirt being deposited on the road by the logging / delivery trucks.**

**Maggie M. made the motion to approve the Conditional Use Permit for a firewood business known as ‘Honest Cords Firewood’ to be located on Map 1, Lot 12, with the stated two conditions. Roland L. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

Nothing further was discussed.

**The Findings of Facts**

1. The applicant is Tim Cochrane of 1 Sabrina Lane, Springvale, Maine 04083.
2. The owner of Shapleigh Tax Map 1, Lot 11 (221 Deering Ridge Road), is Richard Day of 636 Gore Road, Alfred, Maine 04002.
3. The property is located in the General Purpose District and according to the assessor, the property contains 61.53 acres.
4. The applicant is before the board for a Conditional Use Permit to open a firewood business to be known as Honest Cords Firewood.
5. Received was a copy of the town tax map with Lot 12 highlighted to depict its location; several copies of the digital map depicting approximately where the logs will be placed and processed; a copy of an email from future property owner Richard Day stating that he was under contract to purchase Lot 12,

and that he granted Tim Cochrane permission to operate a firewood business known as ‘Honest Cords Firewood’ on a portion of the property.

6. Received was a copy of the Purchase and Sale Agreement between Stanley Family Trust and Richard Day, dated December 13, 2018 and to be executed on January 11, 2019.
7. Received was a letter of intent from Tim Cochrane, owner/operator of Honest Cords Firewood, established 2015, which was also the detailed description of the project. The letter read in part as follows: HCF’s current hours of operation are Monday – Sunday, between the hours of 8:00 a.m. and 5:00 p.m. If I am at this location I will be sure to work with the abutting land owners (neighbors) to assure an amicable working relationship with them.

HCF’s current equipment:

- **2015 Dyna Firewood Processor** 32 hp gas powered engine; 15 gal. hydraulic tank
- **Chainsaw:** Gas powered
- **Wood Splitter:** Gas powered, belt driven
- **1 Ton Dump Trucks:** Gas & Diesel
- **Low Impact Tractor:** Diesel

8. Received was a plan, also part of the detailed description, which depicted the following: On the Map of Lot 12, the red box indicated the general area to be used as the business grows, allowing adequate tree cover and buffer between abutting properties. This portion of property will be used for the processing, stock piling and loading of firewood for delivery. Tree length logs are brought in via logging trucks from local logging companies. There is head in head out access (white lines) for the logging trucks to and from the property. Tree length wood (green boxes) will be dropped off for processing into firewood. Processed firewood will be stock piled for seasoning (blue box).
9. The board reviewed the Basic Performance Standards and the board concurred the application met all the standards imposed.
10. The board reviewed Zoning Ordinance §105-73, Section G, ‘Standards applicable to conditional uses’ and concurred the application and information as presented met the performance standards in this chapter, with conditions.
11. A notice was mailed to all abutters within 500 feet of the property on January 9, 2019. Meetings were held on January 8, 2019 and January 22, 2019. A site inspection was done on an individual basis.
12. The Planning Board unanimously agreed to approve the Conditional Use Permit to operate a firewood business to be known as ‘Honest Cords Firewood’, to be located on Map 1, Lot 12, per the plans provided with conditions.
13. **The conditions of approval are:**
  - 1) **Hours of operations shall be 8 AM to 5 PM, 7 days a week.**

- 2) A driveway permit must be obtained and the Road Commissioner will determine if a culvert is required, or measures need to be taken with respect to the possibility of dirt being deposited on the road by the logging / delivery trucks.

Motion:

After careful consideration and a review of all material presented to the Board, including the review of the Zoning Ordinances ‘Basic Performance Standards’, and §105-73, Section G, ‘Standards applicable to conditional uses’ a motion was made on Tuesday, January 22, 2019 to approve the Conditional Use Permit for a firewood business to be known as ‘Honest Cords Firewood’, to be located on Map 1, Lot 12, per the plans provided, with two conditions.

Vote:

By a unanimous vote of 5 – 0, the motion to approve the Conditional Use Permit for a firewood business to be known as ‘Honest Cords Firewood’, to be located on Map 1, Lot 12, per the plans provided, with two conditions, was accepted.

Decision:

**The Conditional Use Permit for a firewood business to be known as ‘Honest Cords Firewood’, to be located on Map 1, Lot 12, per the plans provided, with two conditions was approved.**

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Growth Permits

There are Growth Permits available.

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

**NOTE: The winter hours are in effect thru March 31<sup>st</sup>, the meetings now begin at 6:30 p.m. and any scheduled public hearing begins at 6:00 p.m.**

The next meeting will be held **Tuesday, February 12, 2019** at 6:30 p.m. The Planning Board meets the 2<sup>nd</sup> and 4<sup>th</sup> Tuesday of each month unless it falls on a holiday or Election Day. Should there be a cancellation due to a storm event, holiday or Election, the meeting will typically be held the following Wednesday, also at 6:30 p.m. Please contact the Land Use Secretary if there is a question in scheduling, 207-636-2844, x404.

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

***Shapleigh Planning Board***  
***Minutes***  
**Wednesday, February 13, 2019**

Members in attendance: Roger Allaire (Chairman), Roland Legere, and Maggie Moody. Steve Foglio, Madge Baker and Ann Harris were unable to attend. Code Enforcement Officer Mike Demers was also in attendance.

\*\*\*\*\*

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

\*\*\*\*\*

**Public Hearing Began at 6:04 p.m.**

**Conditional Use Permit – 3 Year Gravel Extraction Renewal for the Town of Shapleigh – Map 7, Lots 7 & 22A (Square Pond & Cedar Drive)**

Road Commissioner John Burnell represented the Town of Shapleigh.

Roger A. opened the meeting by asking RC Burnell to speak for the record about the fact the Town wants to renew their gravel pit. (There were no audience members.)

RC Burnell stated the Town wanted to continue to use the gravel pit off of Square Pond Road and Cedar Drive. He stated there were no changes in usage. The Town extracts gravel and keeps gravel product on site. Roger A. asked if the reclamation plan was as originally submitted? RC Burnell stated it was.

Roger A. asked if there were any questions for RC Burnell? Roger said he did not see any issues with the permit. Roger noted the Town did reclaim the original section. RC Burnell agreed, noting that there were two different parcels and it was the parcel on Square Pond Road that was reclaimed for the most part.

Roger A. stated that at the last meeting it was noted the same road would continue to be used for ingress and egress. RC Burnell said, “Yes”. He stated there would be no new entrance or exit.

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

The public hearing closed at 6:07 p.m.

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**The minutes from Tuesday, January 23, 2019 were accepted as read.**

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

**Amendment to a Conditional Use Permit – 3 Year Gravel Pit Renewal of the Town of Shapleigh – Map 7, Lots 7 & 22A (Square Pond and Cedar Drive)**

Road Commissioner John Burnell represented the Town of Shapleigh.

Provided along with the application, was a copy of the town map showing lots 7 & 22A, and a copy of the assessment of the two properties, which lists Lot 7 as ‘Ferguson Parcel (gravel source) and Lot 22A as Gravel pit/Winter sand. Previously submitted during the initial approval process was the following:

1. A Notice of Intent to Comply – Performance Standards for Excavations for Borrow, Clay, Topsoil or Silt (For Use with 38 MRSA Section 490-C) was applied for to the Maine Dept. of Environmental Protection, Division of Land Use Regulation. Approval was received on October 25, 2006, Permit Number L-636.
2. A copy of a document entitled Real Estate Inquiry, dated 7/27/2006, which listed the Town of Shapleigh as owner, as listed by deed reference, Book 14461, Page 121. The document also listed the number of acres, that being 67, and the location of the property being Cedar Drive. In addition, handwritten on the document was the following: Subject Parcel, Access Road – 2800 feet + or – length, 20 feet traveled portion, clearing 40 + 50 feet; Area to be Mined – whole parcel w/limitations of setbacks – minimum of 5 acres.

Roger A. opened the meeting by stating that the Town of Shapleigh is before the board to renew the gravel pit with the same conditions. Roland L. asked if the board had a copy of the conditions? Roger stated that they did. Roland asked if he would read them to refresh his memory.

Roger A. stated the condition from 2016 was:

- 1. Reclamation of the area no longer being used, consisting of approximately 2 plus acres, will be completed by October 31, 2016.**

Roger read the original Findings of Fact from 2016, they are as follows:

2. The property is located in the General Purpose District and according to the assessing file, it contains 67 acres.
3. The applicants are before the board to renew the mineral extraction permit for three years to excavate sand and gravel for the Town of Shapleigh. The original application was dated 12/5/2006 and approved on 1/23/2007. Subsequently, the permit was also renewed on 1/26/2010 and 1/8/2013.
4. A Notice of Intent to Comply – Performance Standards for Excavations for Borrow, Clay, Topsoil or Silt (For Use with 38 MRSA Section 490-C) was applied for to the Maine Dept. of Environmental Protection, Division of Land Use Regulation. Approval was received on October 25, 2006, Permit Number L-636.
5. Originally provided was a copy of a document entitled Real Estate Inquiry, dated 7/27/2006, which listed the Town of Shapleigh as owner, as listed by deed reference, Book 14461, Page 121. The document also listed the number of acres, that being 67, and the location of the property being Cedar



Drive. In addition, handwritten on the document was the following: Subject Parcel, Access Road – 2800 feet + or – length, 20 feet traveled portion, clearing 40 + 50 feet; Area to be Mined – whole parcel w/limitations of setbacks – minimum of 5 acres.

6. During the review process on December 12, 2006, Road Commissioner Richard Goodwin stated the gravel pit would be accessed from Square Pond Road; the Town wanted to be able to stockpile stumps on site, to be ground up at a later date and used for mulch; the gravel used would not be dug below the existing grade; all activity would take place more than 100 feet from the road and more than 100 feet from the adjacent property lines; a reclamation plan was not needed at the time of initial review because of the limited amount of gravel to be initially extracted, a reclamation plan would be presented and put into place when the exposed area is no longer going to be used.
7. On January 13, 2016, Road Commissioner Richard Goodwin and Selectman Michael Perro stated no changes were required from the original permit. The location will continue to be used for gravel extraction and on-site gravel storage, as well as a location to store tree stumps.
8. On January 13, 2016, Road Commissioner Richard Goodwin stated reclamation of the area next to Square Pond Road, which is no longer being used, had not been done to date. The loam is on site but the Town ran out of time to do the reclamation in 2015.
9. A notice was mailed to all abutters within 500 feet of the property, on Wednesday, January 13, 2016 and a Public Hearing was held on Tuesday, January 26, 2016.
10. The Planning Board unanimously agreed to approve the Conditional Use Permit to renew the permit for mineral extraction, on Map 7, Lot 7, as originally permitted on January 23, 2007, with one condition.

Roger A. asked if the board wanted to make a motion to approve?

**Maggie M. made the motion to extend the gravel extraction permit on Map 7, Lots 7 & 22A, for a period of three years. Roland L. 2<sup>nd</sup> the motion.**

**Roger A. stated the condition of approval from 2007 is as follows:**

**The CUP to operate the gravel pit shall be allowed to operate for a period of three years from the date of approval, per Zoning Ordinance 105-39.J; at which time the permit will be re-reviewed and may be renewed by the Planning Board.**

**Roger A. stated that this will be the condition of approval for this renewal as well. The Ordinance reference will be §105-61.E based on the current Zoning which has been amended since 2007. All the board members concurred with the condition. By a vote of 3 – 0 the motion to approve the application to extend the gravel extraction permit for three years with one condition was unanimous.**

Nothing further was discussed.

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**The Findings of Facts**

1. The owners of Shapleigh Tax Map 7, Lot 7 and Lot 22A are the Town of Shapleigh, 22 Back Road, Shapleigh, Maine 04076
2. The property is located in the General Purpose District and according to the assessing file, it contains 67 acres.
3. The applicants are before the board to renew the mineral extraction permit for three years to excavate sand and gravel for the Town of Shapleigh. The original application was dated 12/5/2006 and approved on 1/23/2007. Subsequently, the permit was also renewed on 1/26/2010, 1/8/2013, and 1/26/16.
4. A Notice of Intent to Comply – Performance Standards for Excavations for Borrow, Clay, Topsoil or Silt (For Use with 38 MRSA Section 490-C) was applied for to the Maine Dept. of Environmental Protection, Division of Land Use Regulation. Approval was received on October 25, 2006, Permit Number L-636.
5. Originally provided was a copy of a document entitled Real Estate Inquiry, dated 7/27/2006, which listed the Town of Shapleigh as owner, as listed by deed reference, Book 14461, Page 121. The document also listed the number of acres, that being 67, and the location of the property being Cedar Drive. In addition, handwritten on the document was the following: Subject Parcel, Access Road – 2800 feet + or – length, 20 feet traveled portion, clearing 40 + 50 feet; Area to be Mined – whole parcel w/limitations of setbacks – minimum of 5 acres.
6. During the review process on December 12, 2006, Road Commissioner Richard Goodwin stated the gravel pit would be accessed from Square Pond Road; the Town wanted to be able to stockpile stumps on site, to be ground up at a later date and used for mulch; the gravel used would not be dug below the existing grade; all activity would take place more than 100 feet from the road and more than 100 feet from the adjacent property lines; a reclamation plan was not needed at the time of initial review because of the limited amount of gravel to be initially extracted, a reclamation plan would be presented and put into place when the exposed area is no longer going to be used.
7. On January 13, 2016, Road Commissioner Richard Goodwin and Selectman Michael Perro stated no changes were required from the original permit. The location will continue to be used for gravel extraction and on-site gravel storage, as well as a location to store tree stumps.
8. On January 22, 2019, Road Commissioner John Burnell stated the Town wanted to continue to use the gravel pit off of Square Pond Road and Cedar drive. He stated there were no changes in usage. The Town extracts gravel and keeps gravel product on site. The reclamation plan was as originally submitted.
9. On January 22, 2019, Road Commissioner John Burnell stated reclamation of the area next to Square Pond Road had been completed. The Town continues to stockpile loam and wood chips for future reclamation of the area, which he did not think would be necessary for at least 2 years, as there continues to be a lot of material for the Town to utilize.

10. A notice was mailed to all abutters within 500 feet of the property, on Wednesday, January 23, 2019 and a Public Hearing was held on Wednesday, February 13, 2019 (due to a storm event on Tuesday, February 12). Meetings were held on Tuesday, January 22, 2019 and Wednesday, February 13, 2019.
11. The Planning Board unanimously agreed to approve the Conditional Use Permit to renew the permit for mineral extraction, on Map 7, Lot 7 & Lot 22A, as originally permitted on January 23, 2007, with one condition.
12. **The condition of approval is as follows:**

**The approved gravel pit shall be allowed to operate for a period of three years from the date of approval, that being February 13, 2019, per Zoning Ordinance §105-61.E; at which time the permit will be re-reviewed and may be renewed by the Planning Board.**

**Motion:**

**After careful consideration and a review of all material presented to the Board, as well as Zoning Ordinance §105-61, ‘Mineral exploration and extraction, processing, and removal, including sand and gravel’, a motion was made on Wednesday, February 13, 2019 to approve the Conditional Use Permit to renew the permit for mineral extraction for three years from date of approval, on Map 7, Lot 7 and Lot 22A, per the information provided, with the above stated condition.**

**Vote:**

By a unanimous vote of 3 – 0, the motion to approve the Conditional Use Permit for gravel extraction and storage of material for a period of 3 years was accepted.

**Decision:**

**The Conditional Use Permit for the three year renewal for gravel extraction and storage of material for a period of 3 years was approved. The permit is valid through February 13, 2022.**

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**Growth Permits**

**Map 40, Lot 6 – 25 Mallard Way - Seasonal Conversion**

**#1-19**

This is an existing home permitted by the Town of Shapleigh.

**Map 3, Lot 44 – Coley Trafton Road – New Home**

**#2-19**

This is a legal lot of record.

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**The Planning Board meeting ended at 6:45 p.m.**

**NOTE: The winter hours are in effect thru March 31<sup>st</sup>, the meetings now begin at 6:30 p.m. and any scheduled public hearing begins at 6:00 p.m.**

The next meeting will be held **Wednesday, February 27, 2019** at 6:30 p.m. The meeting hall is unavailable due to Candidates Night on Tuesday.

The Planning Board meets the 2<sup>nd</sup> and 4<sup>th</sup> Tuesday of each month unless it falls on a holiday or Election Day. Should there be a cancellation due to a storm event, holiday or Election, the meeting will typically be held the following Wednesday, also at 6:30 p.m. Please contact the Land Use Secretary if there is a question in scheduling, 207-636-2844, x404.

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

***Shapleigh Planning Board***  
***Minutes***  
**Wednesday, February 27, 2019**

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

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

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**The minutes from Wednesday, February 13, 2019 were accepted as read.**

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

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**Best Possible Location – Replace Existing Structure – Map 29, Lot 29 (43 Hickory Street) – LinePro Land Surveying LLC, Applicant; Cote & Ellis Trusts (Ron & Patricia Cote), Property Owners**

Joseph Stanley of LinePro was present for the review of the application.

Provided along with the application was an email, dated 2/11/2019, from Ron & Patricia Cote stating that LinePro Land Surveying would be representing them at the Planning Board meetings. Also provided was a plan drafted by Joseph Stanley, PLS #2453, entitled ‘Plan Showing a Proposed Building Location for Ronald H. Cote Revocable Trust & Patricia A. Ellis Living Trust, 5 Falls Lane, North Berwick, Maine, of Property Located on Hickory Street in Shapleigh, Maine’. Depicted on the plan is the footprint of both the existing house and proposed location, the location of Hickory Street & the existing driveway; the existing retaining wall; the location of the utility lines and setback to those; the location of existing trees and proposed stabilization plan which includes the location of blueberry/juniper bushes and bark mulch; and an existing shed, concrete area, deck and stairs toward the water. The plan stated the lot size is 23,297 square feet ±. The distance from the existing structure to the high water mark is indicated as 35.9 feet ±; the distance of the existing structure to the centerline of Hickory Street is 64.7 feet at the closest point; the distance to the lot line of Map 29, Lot 28 is 27.2 feet ±; and the distance to the lot line of Map 29, Lot 30 is 35 feet ±. The distance from the proposed new structure to the high water mark is indicated as 75.9 feet and the distance to the centerline of Hickory Street is 35.9 feet. The 30 foot minimum requirement for the side setbacks back is also indicated on the plan and the existing and proposed structure meets the requirement.

Roger A. asked Mr. Stanley to let the board now what his client wanted to do. Mr. Stanley stated that they wanted to do a Best Practical Location on Square Pond at the end of Hickory Street. He said it was straight forward, they were proposing to slide the building envelope back about 40 feet. He stated that the existing structure and proposed were fairly centered on the lot, and the distance back honors the 15 foot setback to the CMP powerlines. He said the existing building is currently about 35 feet from the lake and the proposed location is approximately 75 feet from the lake.

Mr. Stanley stated that there would be a standard revegetation, noting his clients were happy with idea of blueberry bushes and bark mulch. He stated that at the site inspection the board may have other suggestions, and they would be open to ideas.

Roger A. asked if there was going to be a new septic system put in? Mr. Stanley stated that there would be, but noted it had not been designed yet, therefore, he wasn't sure what the location was going to be at this moment. CEO Demers asked if he knew where the existing septic location was? Mr. Stanley did not know and wasn't sure the applicant's knew, because they just bought the property recently. He stated that his clients did not want to do a septic design until they knew where the location of the new structure would be.

Ann H. asked if the retaining wall was coming down? Mr. Stanley stated that it would be if the structure gets moved back to where they were suggesting.

Steve F. asked what the distance to the high water mark was currently? Mr. Stanley stated that it is 35 feet and they are hoping to move it back to 75 feet. Mr. Stanley said they thought they would put the well in the front and the septic toward the rear of the property.

Ann H. asked if the owners know why the retaining wall is placed where it is? Mr. Stanley stated that when on site, the wall makes sense. He said where the existing building is, is relatively flat, and the wall was probably put in to step up to the natural grade, and he noted the wall was only a few feet in height.

Roger A. asked about a parking area. There was none shown on the plan. Mr. Stanley stated that he had to figure that out. He said once the building envelope is determined they may put in a garage and have drive-in parking on the first floor. At present they were not certain.

Roland L. asked if this was a shared driveway, noting the abutting property owned by Mr. James Stonemetz. Mr. Stanley stated that on the plan was a bunkhouse on Mr. Stonemetz property, he did not think it was used as a residence. He said most properties come in from another direction.

Mr. Stanley said they haven't put a lot of thought into the design of the building, because they were waiting for the approval of the location.

**Roger A. stated a site inspection would be held prior to the next meeting on Tuesday, March 12<sup>th</sup> at 6:00 p.m. Members will meet at the Town Hall. (Roland will meet members at the site.) A notice to abutter will be mailed as well.**

Mr. Stanley stated the front of the new building will be at the back of the old building. The plan delineates the 100 foot mark from the water.

Steve F. stated that in the interest of full disclosure, the applicants work for him. He stated that he had no problem sitting out on this if the board felt it was warranted. He noted that he had no financial gain from this project. He said he did not care either way, so if anyone on the board feels he should step down he had no issue doing so.

Madge B. stated that whether or not it is an issue, is not only financial, but perception. She asked if he could speak to that. Did he think people would perceive him as being biased because they work for him?

Steve F. stated that he felt he was one of five members, but at the same time they have alternate members, and can make quorum. He added that even if Ann is not present, they will have four members. He had no issue abstaining from the vote of any part of the discussion, which would be perceived that he would persuade the board, or have any influence on the outcome.

Maggie M. thought the purpose of sitting out was if you were going to have any gain from it. Madge B. stated that it was not only financial gain but bias, which is why she asked him, because it is both. Madge stated, “The reason is you’ve got to be able to sit here as a public citizen representing the Town’s interest. That is why I asked him. And his answer is that he is fine, but that is why I asked”.

Mr. Stanley stated that it was hard because in a small town everyone knows everyone. He said he considered many of the board members friends. He said he looked at the financial side of it, is there something to be gained. Madge B. stated that was the most important issue but sometimes it is perception. She said as an example, she sat out because some good friends were in front of the board, and it would be really hard for her to vote on something for them, noting she had no financial interest at all. She said again that is why she asked him, and his answer was no, there was no issue. She said it was his decision.

Steve F. said he brought it up because it could be an issue down the road. Madge B. thanked him for bringing it up. Roger A. stated that now that he knows, he will bring it up at the next meeting and make sure no one in attendance has an issue.

Nothing further was discussed.

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### **Growth Permits**

#### **Map 6, Lot 30B-2 – Nason Road – New Home**

**#3-19**

This is a legal lot of record, meeting the dimensional requirements of the Town.

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**The Planning Board meeting ended at 6:55 p.m.**

**NOTE: The winter hours are in effect thru March 31<sup>st</sup>, the meetings now begin at 6:30 p.m. and any scheduled public hearing begins at 6:00 p.m.**

The next meeting will be held **Tuesday, March 12, 2019** at 6:30 p.m.

The Planning Board meets the 2<sup>nd</sup> and 4<sup>th</sup> Tuesday of each month unless it falls on a holiday or Election Day. Should there be a cancellation due to a storm event, holiday or Election, the meeting will typically be held the following Wednesday, also at 6:30 p.m. Please contact the Land Use Secretary if there is a question in scheduling, 207-636-2844, x404.

Respectfully submitted,  
Barbara Felong, Land Use Secretary

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



## ***Shapleigh Planning Board***

### ***Minutes***

**Tuesday, March 12, 2019**

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

\*\*\*\*\*

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

\*\*\*\*\*

**The minutes from Wednesday, February 27, 2019 were accepted as read.**

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

\*\*\*\*\*

#### **Best Possible Location – Replace Existing Structure – Map 29, Lot 29 (43 Hickory Street) – LinePro Land Surveying LLC, Applicant; Cote & Ellis Trusts (Ron & Patricia Cote), Property Owners**

Joseph Stanley of LinePro was present for the review of the application.

Originally provided along with the application was an email, dated 2/11/2019, from Ron & Patricia Cote stating that LinePro Land Surveying would be representing them at the Planning Board meetings. Also provided was a plan drafted by Joseph Stanley, PLS #2453, entitled ‘Plan Showing a Proposed Building Location for Ronald H. Cote Revocable Trust & Patricia A. Ellis Living Trust, 5 Falls Lane, North Berwick, Maine, of Property Located on Hickory Street in Shapleigh, Maine’. Depicted on the plan is the footprint of both the existing house and proposed location, the location of Hickory Street & the existing driveway; the existing retaining wall; the location of the utility lines and setback to those; the location of existing trees and proposed stabilization plan which includes the location of blueberry/juniper bushes and bark mulch; and an existing shed, concrete area, deck and stairs toward the water. The plan stated the lot size is 23,297 square feet ±. The distance from the existing structure to the high water mark is indicated as 35.9 feet ±; the distance of the existing structure to the centerline of Hickory Street is 64.7 feet at the closest point; the distance to the lot line of Map 29, Lot 28 is 27.2 feet ±; and the distance to the lot line of Map 29, Lot 30 is 35 feet ±. The distance from the proposed new structure to the high water mark is indicated as 75.9 feet and the distance to the centerline of Hickory Street is 35.9 feet. The 30 foot minimum requirement for the side setbacks back is also indicated on the plan and the existing and proposed structure meets the requirement.

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

Roger A. asked Mr. Stanley to let the board now what his client wanted to do. Mr. Stanley stated as a recap, now that members have seen the site, the current proposal to meet the best practical location is to slide the existing camp back as far as possible, before they hit the setback for the powerline easement. He said that distance is moving the structure back approximately 40 feet.

Mr. Stanley stated that it puts the front of the new structure at the back of the overhang of the existing structure. He said based on what they viewed, at least 4 trees would be impacted. One on the corner, is in the vicinity of where 35.9 is depicted on the plan. He isn't sure if the tree can be saved or not.

Roger A. asked if there would be a full foundation? Mr. Stanley stated that was his assumption but he tells his clients to put the brakes on what they visualize until the board approves a location. He stated that he believed they wanted single level living due to the fact they are getting older. The owner is hoping the lot coverage calculations will allow for a small garage and workshop attached to a single level home.

Mr. Stanley noted the location of the stone retaining wall and where the 100 foot mark was from the high water line, stating that it ran thru the middle of the proposed new home.

Mr. Stanley stated that much of his work was based on an existing survey plan done by Middle Branch Land Surveyors. He said the boundaries used are from the Middle Branch plan. He said with respect to the road, Middle Branch depicted a gravel drive to the cottage and a separate gravel drive to the neighboring property. He said with the snow cover it is hard to depict where the travel way is.

A direct abutter, Mr. McArdle stated that the shed on his property, used to belong to the applicants property. Another direct abutter, Mr. Stonemetz agreed. Mr. McArdle said the shed was part of this property so there was a driveway by the shed that went to the applicants property. Mr. Stanley said there may be a situation that access was for convenience, whereas the actually travel way / deeded right-of-way may be in another location. He said the deeds he reviewed were not specific with respect to the location of the ROW, going back to at least the 1920's. Mr. McArdle did not disagree. He said the issue is the person who used to own the applicants property, he let her cut through my property because she was an elder and was used to going this way.

Mr. Stanley said the existing plan done by Middle Branch was what he used to create the right-of-way for this plan. Mr. McArdle asked where the driveway for his applicant would be located? Mr. Stanley stated he would not know until the building is designed. He said they were before the board just to get the location, meeting the dimensional requirements of the property as best possible. He believed the existing loop was used out of convenience, but may not be the ROW.

Mr. McArdle stated he never used the loop because he entered his house prior to the loop. Mr. McArdle asked Mr. Stonemetz if he used the loop, and he stated that he had in the past and noted the previous owners preferred to drive through Mr. McArdle's property. Mr. Stonemetz stated that he agreed there was no way to prove where the actual location of the ROW was because the deeds were not specific. The deeds say 'the roadway as laid out'. Mr. Stonemetz only had a copy of the Town's tax map from the 1970's. Mr. Stonemetz was concerned with emergency vehicles, he believed traveling over Mr. McArdle's property was an easier travel way. He was also concerned with blocking it off forever. Mr. McArdle stated that the only people using it would theoretically be Mr. Stonemetz and the applicants. He added that putting the house in this new location could benefit him, because the road being used now is a safety issue, because when children are playing in his yard, literally vehicles cross thru the middle of his property. They drive by the picnic table.

Steve F. asked Mr. Stanley if there was any indication where the ROW was? Mr. Stanley said the deeds for quite a ways back, probably 100 years, are not specific. He said he tried looking at aerial photot's

from the 1960's and 1970's but he could not depict anything due to the trees. He also looked at old survey notes and couldn't find any information. After his research he could not find anything definitive. Mr. Stanley stated that he did not see in any of his research a loop, he felt the loop was done out of convenience, but he could not tell the board he was 100% correct or the location of the road was as he depicted. Mr. McArdle noted that if the shed was part of the applicants property, they could have parked on his property and walked to their house. Mr. Stanley did not disagree.

Madge B. noted that the Planning Board could not straighten this situation out.

Roger A. asked if the abutter's had access from Ivy Street? They both said, no. Roger said that on the Town map it showed they had access. Mr. Stonemetz stated he believed CMP has access through Ivy but there is no roadway where it shows there is one on the map.

Steve F. asked if relocating this house where proposed would impact the back of the ROW besides the fact that now there will be two-way traffic? Mr. Stanley said in this situation, believing the deeded rights run across the back, moving the structure straight back, there is a distance of 35.9 feet to the ROW.

Roland L. stated that assuming the applicant is able to place the structure as on the plan, they would then not be using the other roadway at all, correct? The continuation through Mr. McArdle's property. Mr. Stanley thought as the surveyor they would come off what he perceived what the ROW on the back of the property. Roland stated he was asking because it was noted there is a possibility of wanting a garage, so he was wondering if the applicants thought the shortest distance between two points would be across the McArdle property, over the hill instead of around and to the garage. Mr. McArdle stated that was why he asked where the driveway was. Roland wanted to know where the driveway was going to be, and he would like to hear from the abutter's, specifically if they are opposed to the plan, or do they have a specific reservation or concern.

Madge B. said that the Planning Board cannot solve their problems. Roland L. said he understood that, but he thought visually he wished there wasn't snow, so the board could see if there was a well-traveled path or not. He said walking on snow they could not. Madge said if it is not deeded, the board has no reason to pay attention to it. Roland would like the applicant to know they have no right to travel over the neighbor's property. Mr. McArdle said the area between his house and the applicant's property is all grass. He said he let the neighbors use that area next to the shed to back trailers in for a boat launch. But he said it grass. Mr. Stonemetz said in the past it was gravel. Mr. McArdle did not disagree but noted it has not been used as a travel way for a long time.

Mr. McArdle stated that he had grave concerns with what the building will look like. He stated that he could see the footprint and had no issues, but the issue is with the calculations for the expansion. Madge B. stated that the CEO does those, the board has nothing to do with that. Mr. Stanley stated that he was before the board just to get approval for the setbacks.

Steve F. asked Mr. McArdle asked if he had any indication if there were deeded access through his property to get to his property. Mr. McArdle stated that he did not. Mr. Stonemetz stated that no one knew but he knew what they did for 45 years. Mr. McArdle said using the ROW as depicted there is no concern with children getting hurt, whereas using the other access, it is literally through the middle of his property. Mr. McArdle stated that what Mr. Stanley depicted as the ROW would be the preferred ROW.

Madge B. stated that Mr. Stanley's proposal does not impact the deeded ROW, so she believed the board could act on it, then let the property owners figure it out. She added that it was none of the board's business. Steve F. stated that he agreed. Madge understood that the board should listen to what the abutter's have to say, and she believed the board did that. She felt now the board needs to decide if the plan depicts the best possible location for a non-conforming structure. Steve said he agreed.

Madge B. added that the board is not to solve property issues. Roland L. stated that he did not feel the board was supposed to create a problem for someone else. He said he would like to know where the parking area was going to be located. Madge said that was their problem, not the boards problem. She stated that the applicant's had to figure out how to put the cars on their lot. She said the board does not normally ask people where they were going to put their cars. Roland did not entirely agree.

Roger A. stated said that he asked Mr. Stanley about the deeded access, and if there isn't deeded access across Mr. McArdle's property, then they should use what is noted on the plan. It is up to the applicant's how they will access their site, but he didn't feel the board should encourage someone to trespass across someone else's property. Roger said if Mr. Stonemetz feels he wants to continue to use the access through Mr. McArdle's property, it will be a civil matter, the board cannot dictate where the ROW is. Mr. Stonemetz stated that he did not have to continue to use it, his concern was with respect to emergency vehicles and he said it was shock to change which road is being used. He said again it was just a concern, because he understood he had no legal document that states it was deeded in any particular configuration.

Madge B. asked if the board can discuss the safety issue when dealing with the best possible location? She said she wanted to look at the best possible location requirements. Roger A. stated that he felt the best possible location as presented was fine. Steve F. stated that he didn't see a better possibility, unless the board moves them back closer to the lake, which is counterintuitive. Maggie M. asked how far the proposed structure was from the side lot line. Maggie thought there was a lot of space between the side lot line and the new structure. Roger A. did not agree, because he felt the new septic system would be going between the new structure and Mr. McArdle's property. Steve noted they meet the shoreland side setbacks.

Madge B. stated she understood what Maggie M. was getting at, should the board not only move it back but shift the structure closer to Mr. McArdle's property to make room for parking and easier access. Madge said she also understood Roger's thought about the septic system location, because then they would not have to have a pump up system. She asked if the septic system had to go behind the 100 foot setback to the water? Roger said because it's in the shoreland it will get a variance. She said not if it is more than 100 feet back. She wondered if they could put it back beyond the 100 foot mark. Roger didn't think it was best due to the slope of the land. Roger said that would be up to CEO Demers. Madge said Maggie's point of view is there would be more room for a garage if the structure was shifted. Madge said if the board approves this location, there is nothing that prevents the applicant from coming back with a plan for a better location, once a septic location is established.

Steve F. said the applicant meets the side setbacks. He said the board is only looking at the variance from the water and the road. Madge B. stated she understood that but she was talking about shifting the structure, but Steve is saying the side setbacks are met so they don't necessarily have to come back to the board. Steve said the board can't pin them down for setbacks that can be met.

Madge B.

Nothing further was discussed.

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### **Growth Permits**

#### **Map 6, Lot 30B-2 – Nason Road – New Home**

**#3-19**

This is a legal lot of record, meeting the dimensional requirements of the Town.

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**The Planning Board meeting ended at 6:55 p.m.**

**NOTE: The winter hours are in effect thru March 31<sup>st</sup>, the meetings now begin at 6:30 p.m. and any scheduled public hearing begins at 6:00 p.m.**

The next meeting will be held **Tuesday, March 12, 2019** at 6:30 p.m.

***Shapleigh Planning Board Minutes – February 27, 2019***

***Page 4 of 4***

The Planning Board meets the 2<sup>nd</sup> and 4<sup>th</sup> Tuesday of each month unless it falls on a holiday or Election Day. Should there be a cancellation due to a storm event, holiday or Election, the meeting will typically be held the following Wednesday, also at 6:30 p.m. Please contact the Land Use Secretary if there is a question in scheduling, 207-636-2844, x404.

Respectfully submitted,  
Barbara Felong, Land Use Secretary

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

## ***Shapleigh Planning Board***

### ***Minutes***

**Tuesday, March 26, 2019**

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

\*\*\*\*\*

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

\*\*\*\*\*

**The minutes from Tuesday, March 12, 2019 were accepted as read.**

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

\*\*\*\*\*

#### **Best Possible Location – Replace Existing Foundation – Map 26, Lot 26 (220 16<sup>th</sup> Street Loop) – Tyler Matthews, Applicant; Kurt & Lori Krinki, Property Owners**

Tyler Matthews was present for the review of the application.

Provided along with the application, was a sketch plan drafted by Dana A. Libby – PLS #1350 of Corner Post Land Surveying, Inc., dated 10-1-2014, which depicts the existing structure(s), leach field and septic tank location, and driveway. The sketch also depicts the distance from the existing structures, which included the house, enclosed porch and deck, as 25.7’ at the closest point to Mousam Lake, and 14.9 at the closest point to the lot line that abuts Map 26, Lot 25; the location of the boundary of the 100’ setback to the high-water-line and the 75’ setback to the center of the road; as well as the location of the proposed silt fence and the location of 16th Street Loop Road. Also provided were two hand drawn sketches; one showing the house footprint and distance from the house to the septic tank; and one showing the footprint of the house and porch, and the location of the drip line trench for roof runoff for each.

Additionally, provided was a copy of the Subsurface Wastewater Disposal System Variance Request, drafted by Kenneth Gardner SE #73, dated 9/19/18, and the Subsurface Wastewater Disposal System Application, also drafted by Kenneth Gardner, dated 7/20/18. The system is designed for a 3 bedroom house.

Roger A. asked Mr. Matthews to let the board now what his client wanted to do. Mr. Matthews stated that they wanted to take the existing house, with no expansions, elevate the house, remove the block foundation, dig out underneath and put in a full foundation. He stated the septic system and leachfield are right behind the structure, so there is no room to go back.

Roger A. asked if this is a new leachfield? Mr. Matthews stated, “Newer, yes”. It was noted that the septic design was from 2018.

Roland L., looking at the sketch plan, asked about the ridge line. He said that on the sketch it looked like the house was divided in two pieces, because there were two shades depicting the house, was it 2 structures? Mr. Matthews stated the entire house was shown on the sketch, along with the deck. He didn't know why the sketch plan showed two different shades.

Roland L. asked how close it was to the lake from the high water mark? Mr. Matthews stated it was 25.7 feet. Mr. Matthews stated that it looked like the house was 60 feet from the water, because it is on a hill, but in a straight line it is 25.7 feet.

Steve F. asked if the area was steep? Mr. Matthews stated that where the house and septic were located it was fairly flat but in front of the house it is steep.

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

**Roger A. stated a site inspection would be conducted prior to the next meeting on April 9<sup>th</sup> at 7:00 p.m. Members will meet at the Town Hall. (Roland will meet members on site.) A Notice to Abutters will be mailed as well.**

Roger A. told Mr. Matthews that the meeting will be held after the site inspection at 7:30 p.m.

Nothing further was discussed.

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### **Growth Permits**

#### **Map 5, Lot 20-2 – White Tail Lane – New Home**

**#4-19**

This is a legal lot of record, in an approved subdivision, meeting the dimensional requirements of the Town. As a note this lot was previously approved but the application expired.

#### **Map 5, Lot 20-5 – White Tail Lane – New Home**

***Tabled***

This is a legal lot of record, in an approved subdivision, meeting the dimensional requirements of the Town. However, the Purchase and Sale Agreement was not signed by the property owner, so the application was tabled until the next meeting, so a signature can be obtained.

#### **Map 9, Lot 12B (Town Farm Road) – New Home**

**#5-19**

This is a legal lot of record, meeting the dimensional requirements of the Town.

#### **Map 2, Lot 40A (Walnut Hill Road) – New Home**

**#6-19**

This is a legal lot of record, meeting the dimensional requirements of the Town.

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**The Planning Board meeting ended at 6:55 p.m.**

**NOTE: The summer hours are in effect thru October 31st, the meetings now begin at 7:30 p.m. and any scheduled public hearing begins at 7:00 p.m.**

The next meeting will be held **Tuesday, April 9, 2019** at 7:30 p.m.

The Planning Board meets the 2<sup>nd</sup> and 4<sup>th</sup> Tuesday of each month unless it falls on a holiday or Election Day. Should there be a cancellation due to a storm event, holiday or Election, the meeting will typically be held the following Wednesday, also at 7:30 p.m. Please contact the Land Use Secretary if there is a question in scheduling, 207-636-2844, x404.

Respectfully submitted,  
Barbara Felong, Land Use Secretary

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



## ***Shapleigh Planning Board***

### ***Minutes***

**Tuesday, April 9, 2019**

Members in attendance: Roger Allaire (Chairman), Steve Foglio (Vice Chair), Roland Legere, and Maggie Moody. Madge Baker and Alternate Ann Harris were unable to attend. Code Enforcement Officer Mike Demers was also in attendance.

\*\*\*\*\*

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\*\*\*\*\*

**The minutes from Tuesday, March 26, 2019 were accepted as read.**

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

\*\*\*\*\*

#### **Best Possible Location – Replace Existing Foundation – Map 26, Lot 26 (220 16<sup>th</sup> Street Loop) – Tyler Matthews, Applicant; Kurt & Lori Krinki, Property Owners**

Tyler Matthews was present for the review of the application.

Previously provided along with the application, was a sketch plan drafted by Dana A. Libby – PLS #1350 of Corner Post Land Surveying, Inc., dated 10-1-2014, which depicts the existing structure(s), leach field and septic tank location, and driveway. The sketch also depicts the distance from the existing structures, which included the house, enclosed porch and deck, as 25.7’ at the closest point to Mousam Lake, and 14.9 at the closest point to the lot line that abuts Map 26, Lot 25; the location of the boundary of the 100’ setback to the high-water-line and the 75’ setback to the center of the road; as well as the location of the proposed silt fence and the location of 16th Street Loop Road. Also provided were two hand drawn sketches; one showing the house footprint and distance from the house to the septic tank; and one showing the footprint of the house and porch, and the location of the drip line trench for roof runoff for each.

Additionally, provided was a copy of the Subsurface Wastewater Disposal System Variance Request, drafted by Kenneth Gardner SE #73, dated 9/19/18, and the Subsurface Wastewater Disposal System Application, also drafted by Kenneth Gardner, dated 7/20/18. The system is designed for a 3 bedroom house.

Roger A. asked Mr. Matthews to let the board know what his client wanted to do. Mr. Matthews stated that they wanted to take the existing house, with no expansions, elevate the house, remove the block foundation, dig out underneath and put in a full foundation. He stated the septic system and leachfield are right behind the structure, so there is no room to go back.

Roger A. asked if this is a new leachfield? Mr. Matthews stated, “Newer, yes”. It was noted that the septic design was from 2018.

Roland L., looking at the sketch plan, asked about the ridge line. He said that on the sketch it looked like the house was divided in two pieces, because there were two shades depicting the house, was it 2 structures? Mr. Matthews stated the entire house was shown on the sketch, along with the deck. He didn't know why the sketch plan showed two different shades.

Roland L. asked how close it was to the lake from the high water mark? Mr. Matthews stated it was 25.7 feet. Mr. Matthews stated that it looked like the house was 60 feet from the water, because it is on a hill, but in a straight line it is 25.7 feet.

Steve F. asked if the area was steep? Mr. Matthews stated that where the house and septic were located it was fairly flat but in front of the house it is steep.

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

**Roger A. stated a site inspection would be conducted prior to the next meeting on April 9<sup>th</sup> at 7:00 p.m. Members will meet at the Town Hall. (Roland will meet members on site.) A Notice to Abutters will be mailed as well.**

Roger A. told Mr. Matthews that the meeting will be held after the site inspection at 7:30 p.m.

Nothing further was discussed.

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### **Growth Permits**

#### **Map 5, Lot 20-2 – White Tail Lane – New Home**

**#4-19**

This is a legal lot of record, in an approved subdivision, meeting the dimensional requirements of the Town. As a note this lot was previously approved but the application expired.

#### **Map 5, Lot 20-5 – White Tail Lane – New Home**

***Tabled***

This is a legal lot of record, in an approved subdivision, meeting the dimensional requirements of the Town. However, the Purchase and Sale Agreement was not signed by the property owner, so the application was tabled until the next meeting, so a signature can be obtained.

#### **Map 9, Lot 12B (Town Farm Road) – New Home**

**#5-19**

This is a legal lot of record, meeting the dimensional requirements of the Town.

#### **Map 2, Lot 40A (Walnut Hill Road) – New Home**

**#6-19**

This is a legal lot of record, meeting the dimensional requirements of the Town.

\*\*\*\*\*

**The Planning Board meeting ended at 6:55 p.m.**

**NOTE: The summer hours are in effect thru October 31st, the meetings now begin at 7:30 p.m. and any scheduled public hearing begins at 7:00 p.m.**

The next meeting will be held **Tuesday, April 9, 2019** at 7:30 p.m.

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Respectfully submitted,  
Barbara Felong, Land Use Secretary

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

## ***Shapleigh Planning Board***

### ***Minutes***

**Tuesday, April 23, 2019**

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

\*\*\*\*\*

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\*\*\*\*\*

**The minutes from Tuesday, April 9, 2019 were accepted as read.**

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

\*\*\*\*\*

**Best Possible Location – Repair Sills / New Foundation – Map 20, Lot 7 (104 Shapleigh Corner Road) – Gallo Construction, Applicant; Brant Duncan, Property Owner**

Mr. Gallo and Mr. Duncan were present for the review of the application.

Provided along with the application were the following:

- 1) Email from Brant Duncan to Code Enforcement Officer Mike Demers, dated April 3, 2019, stating that Mike Gallo of Gallo Construction could represent him during the permitting process with the Town of Shapleigh.
- 2) Subsurface Wastewater Disposal System Application for a 2 bedroom house, dated 4/11/96, designed by Kenneth Gardner, SE #73.
- 3) Plan Survey drafted by Dana Libby, PLS #1350, dated 3/18/19, entitled ‘Plan Showing A Boundary Survey for Brant J. & Marianne Duncan, 100 Commonwealth Road, Lynn, MA 01904, Property Located on Shapleigh Corner Road (State Route 11) & Mousam Lake in Shapleigh, Maine’. This plan depicts 4 existing structures on site, along with a set of stairs to the water. The structures depicted are entitled House – height 12.0’; House – height 19.5’, Sunroom & Shed.

In addition, the survey plan depicts the structure that will have the sills replaced and a new foundation, as being 63.24 feet to the high water mark at its closest point, 6.21 feet to the lot line of Map 20, Lot 8 at the closest point; and 8.11 feet from the adjacent structure on this lot.

Roger A. asked Mr. Gallo to let the board know what they intended to do.

Mr. Gallo began by stating that they wanted to jack the house up, replace between 20 and 30 feet of sills that are rotted, and put it back down in the same location on a new poured concrete foundation, to make a basement area. He said they wanted to raise the overall building area 3 feet from its present elevation for the purpose of adding windows on the lower slope of the land, so they can be egress windows, this way they will have a way out of the basement. He said there would be no additions, no 30%, but he added that he was trying to convince Mr. Duncan to do any addition now.

Roger A. told Mr. Gallo that you can only occupy the lot with structures by 10%, and this property already exceeds 10%. Mr. Gallo asked if he was talking about overall lot coverage? Roger said yes, and he asked if all the existing structures had been permitted. He was curious as to what put the structures over the 10% and when and if they were permitted. Mr. Gallo asked if Roger was talking about them having an issue now or if they asked for an addition in the future. Roger thought it could be now, because they are currently at 11 ½ % lot coverage. Mr. Gallo said he was not increasing anything existing. CEO Demers stated that whatever was on the ground in 1989 was the starting point, from that whatever square footage he had in 1989, he can add 30% to that. Roger disagreed because you cannot exceed 10% lot coverage, so that is the trump card here. Mr. Gallo said he wasn't sure how long everything had been there, but they were not adding to what is there now.

Roger A. said the plan presented shows two houses. Mr. Gallo said it was a garage and a house. Roger said on the plan it said two houses, so he wanted to be sure it was not a duplex. Roger asked if there was a kitchen and a bedroom? Mr. Gallo stated that there was no bedroom. CEO Demers said it would be a duplex if he had a kitchen, sleeping area and bath. Mr. Gallo said it did not. Roger said that if it was a duplex it would have to be reverted back to a bunk room. Steve F. noted that on a plot plan on file it showed the structure Roger was talking about and noted it was a hobby shop. Mr. Duncan stated that the structures on site now are what was there when he purchased it. Roger said sometimes people put up structures without a permit; when they come before the board, that is when the illegal structure gets flagged. Mr. Duncan asked what constitutes the 11% Roger is speaking about? CEO Demers said it was 10% lot coverage. Roger said all the structures on site now occupy over 11% of the land and only 10% is allowed. He said if Mr. Duncan wanted an expansion, it could not go out, it would have to go up.

Madge B. said there was a limit to how much they can go up. She wasn't sure how high it was now. She noted that they were talking about raising it 3 feet, she asked if they were going to be able to? Roger A. asked which building on the plan was going to be raised? Mr. Gallo showed him on the plan. Mr. Gallo noted that the structure they were going to raise was currently 19.5 feet in height. Madge said based on this, they would not be able to raise the structure. Mr. Gallo said that based on the current measurement he could go up 6 inches, then he would apply for a variance for the remaining 30 inches needed in order to be able to put the windows in. He said that he has always gotten variances in the past, so he didn't think there would be an issue here. He said they would go to the Board of Appeals in order to be able to put the windows in. Roger did not think he would be granted the variance, due to the fact it wasn't a hardship. Mr. Gallo asked why the Zoning Board would not want something to be safer, egress is safer? Roger said that the applicant did not have to raise the house, he was choosing to do so. Mr. Gallo said they were fixing the sills, so why not add the basement.

Mr. Gallo said he understood what Roger was saying. Both Roger A. and Ann H. said the Planning Board could not deviate from the Zoning Ordinance. Mr. Gallo said that is why he would go to the next board. CEO Demers agreed with Mr. Gallo that his next step would be to go to the Board of Appeals. Roger said again he did not think it would be granted because this was not a hardship currently, and they cannot meet all four of the criteria which has to be done in order to get the appeal granted. He said if the ZBA approved it, he would be surprised. Mr. Gallo said that if they did not approve it, he would be surprised, he has had good luck with them on life safety. Maggie M. said she thought with respect to life safety, he was looking at it after they put in the addition. She believed the Zoning Board would look at it as it is now. Mr. Gallo said it is life safety for egress out of the basement. Maggie said that the basement didn't

exist yet, so they would look at it as you don't need the life safety now because the basement is not in yet. CEO Demers stated, "Let's let the ZBA decide". Maggie agreed, stating they would explain it better.

Note: The four criteria that must be met in order to obtain a variance from the Zoning Board of Appeals are:

1. That the land in question cannot yield a reasonable return unless the variance is granted.
2. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.
3. The granting of a variance will not alter the essential character of the locality.
4. The hardship is not the result of action taken by the applicant or a prior owner.

Roger A. stated that the board will do a site inspection prior to the next meeting. Ann H. asked what the board was going to look at? Madge B. asked if the board was going to do a site inspection to see if the board would want them to move the structure. Roger said it was a best possible location, the board has to see if it is in the best possible location. Madge said, "OK". Roger said, "If they can pick it up they can move it". Mr. Gallo said that when they meet on the lot, the board will get the feel for why it is probably best to leave it where it is, including boundary lines and structures in the way.

**Roger A. stated board members will meet at the Town Hall at 6:55 p.m. and be on site at 7:00 p.m. A Notice to Abutters will be mailed as well. The next meeting is Tuesday, May 14<sup>th</sup>. Maggie M. stated she would meet members on site, as this location is near her home.**

Roger A. said the board will look at the trees, the overall site, etc. Roger was also concerned with it being 8'11" from the other building, wanting to be sure the project won't compromise it.

Ann H. asked if there was a foundation under the building now? Mr. Gallo stated there was not. He said there was some footing type things with bricks on top, then there is posts, and at one point the sill is actually on the ground. He said off the back is a crawl space for the heating system.

Nothing further was discussed.

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### **Growth Permits**

#### **Map 11, Lot 11B-1 – Gray Road – New Home**

**#9-19**

This is a legal lot of record, meeting the dimensional requirements of the Town.

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**The Planning Board meeting ended at 8:15 p.m.**

**NOTE: The summer hours are in effect thru October 31st, the meetings now begin at 7:30 p.m. and any scheduled public hearing begins at 7:00 p.m.**

The next meeting will be held **Tuesday, May 14, 2019** at 7:30 p.m.

The Planning Board meets the 2<sup>nd</sup> and 4<sup>th</sup> Tuesday of each month unless it falls on a holiday or Election Day. Should there be a cancellation due to a storm event, holiday or Election, the meeting will typically be held the following Wednesday, also at 7:30 p.m. Please contact the Land Use Secretary if there is a question in scheduling, 207-636-2844, x404.

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

## ***Shapleigh Planning Board***

### ***Minutes***

**Tuesday, May 14, 2019**

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

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

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**The minutes from Tuesday, April 23, 2019 were accepted as read.**

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

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#### **Best Possible Location – Repair Sills / New Foundation – Map 20, Lot 7 (104 Shapleigh Corner Road) – Gallo Construction, Applicant; Brant Duncan, Property Owner**

Mr. Gallo and Mr. Duncan were present for the review of the application. *Board members did a site inspection prior to this evenings meeting.*

Previously provided along with the application were the following:

- 1) Email from Brant Duncan to Code Enforcement Officer Mike Demers, dated April 3, 2019, stating that Mike Gallo of Gallo Construction could represent him during the permitting process with the Town of Shapleigh.
- 2) Subsurface Wastewater Disposal System Application for a 2 bedroom house, dated 4/11/96, designed by Kenneth Gardner, SE #73.
- 3) Plan Survey drafted by Dana Libby, PLS #1350, dated 3/18/19, entitled ‘Plan Showing A Boundary Survey for Brant J. & Marianne Duncan, 100 Commonwealth Road, Lynn, MA 01904, Property Located on Shapleigh Corner Road (State Route 11) & Mousam Lake in Shapleigh, Maine’. This plan depicts 4 existing structures on site, along with a set of stairs to the water. The structures depicted are entitled House – height 12.0’; House – height 19.5’, Sunroom & Shed.

In addition, the survey plan depicts the structure that will have the sills replaced and a new foundation, as being 63.24 feet to the high water mark at its closest point, 6.21 feet to the lot line of Map 20, Lot 8 at the closest point; and 8.11 feet from the adjacent structure on this lot.

Detailed Description of Project on the Application states: Raise House 3’ – Repair Sills, Lower House on New 8’ High Poured Concrete Foundation w/Egress Windows.

Roger A. began by stating the application was reviewed under §105-4 ‘Nonconformance’. Roger read section D(3) ‘Foundations’ (a) Whenever a new, enlarged, or replacement foundation is constructed under a nonconforming structure, the structure and the new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in Subsection D(7), Relocation, below. Roger then read D(7) in its entirety.



Roger A. told Mr. Gallo that the two or three trees being removed could not be any further from the water than the ones that exist today. He added that they had to be six feet in height.

Roland L. thought in this case the stumps would have to be removed instead of being ground. Roger A. said during the excavating they would get pulled out, as they will be adjacent. Mr. Gallo thought he might be able to grind one of them. He said the other two are part of the existing foundation, therefore, they will have to be pulled.

Roland L. asked about a revegetation plan. He said in some instances you can just grind but if the stumps are being removed and attached roots, there will be a fair amount of area in the front that will be distributed. Roland asked what their plan was to revegetate that area. Mr. Gallo said they would be putting it back to the existing grade, and place 12 trees to replace the trees being removed, an average of 6 feet high and 4 inches on the girth. He said the only thing he thought Roger said was, that he couldn't have them all the same species, he noted that he liked to use white pine, so people can keep it trimmed. Roger A. said that with any more than five trees, it can't be all one species. Mr. Gallo said he would mix it up. He said he got the trees at Springvale Nurseries.

Roger A. asked about the disturbed soil, what would happen there? Mr. Gallo stated that it would be redistributed and reseeded. Roger said there is no plan that shows what it is you will be doing. Mr. Gallo stated that until he got to the site and started digging, he would not know how big an area would be disturbed. He said if they hit ledge they are only going to repair the sills on the existing structure. If they can get the foundation in, then they will create a plan showing the CEO what they will disturb and how they will put the area back to its natural state. Roger said this is typically approved by the Planning Board. Roger said the CEO will get the approved plan, he enforces what the Planning Board approves, the board can't enforce anything. He said, the CEO will ensure that whatever the Planning Board approves is done as approved. He added that this even includes the location of the trees, and what type of ground cover will be used. Mr. Gallo stated that once he knew the extent of the area to be disturbed, he will create a plan and provide it for the board.

Roger A. stated that the foundation will need to be have a surveyor state that the placement of the foundation is correct. Mr. Gallo said he understood, and he will have the pins set and pour the cement around the pins. He added that he provides the customer with a surveyed plan, stamped, showing the location of the foundation. He said he could provide a copy of that for the board.

Roger A. stated that whomever would be doing the digging would need to be DEP certified. Mr. Gallo asked by whom? Roger said that the DEP certifies and provides a license for erosion control in the shoreland. Mr. Gallo thought the only person certified was the person setting the sediment control, not his excavator. Mr. Gallo was told the excavator had to be as well. He said that could be a problem, he was not sure if the excavator was licensed. He wondered if there was anyone in the Acton/Shapleigh area that was certified. Mr. Aleve, who was there to present the board with another application, stated that most contractors in the area were certified by the DEP. He said it was just a class they had to take to get certified. Roger agreed, it was an 8 hour course. Roger said if you go to the DEP website, the contractors are listed.

Roger A. stated that Best Management Practices needed to be used until the completion of the project, which included stabilizing all the soil.

Roger A. asked if he had a start and completion date? Mr. Gallo stated that he did not plan on starting until fall. He said he liked to put a completion date of December 25<sup>th</sup>, then he could remember the date. Madge B. said it was not a good date to plant, she thought the board would prefer a different date due to the plantings. Mr. Gallo said that was the completion date for the job. She asked if they would plant before then. Mr. Gallo said they would probably plant in October or November, Springvale Nurseries will do the plantings. Madge said they could give a date in the following spring to get the plantings done. He said he would like the contract done by December 25<sup>th</sup>. Madge said if he doesn't finish, he will have to come back before the board.

Madge B. wanted to be sure the drainage around the foundation will be adequate for storm water. She asked if she could assume it would be? Roger A. said there wouldn't be any stormwater change. Madge asked with a new foundation if they automatically put in drainage? Roger said when they backfill there will be drainage around the foundation, he added that CEO Demers would be looking at that as well. Madge said it is important.

Roger A. said it is paved to the bulkhead now, so he thought they would repave again. Madge B. said the pavement causes a drainage issue, so how does the board know that will be addressed? Roger said they won't be taking all the pavement out, and as the pavement sits today it is fairly flat. He said that will be the level for any new pavement. Madge said she wanted to know where the water was going to go, and is it adequate now? She said nothing was submitted. Roger said he didn't notice any issue. Mr. Gallo said the piece of land will be exactly as it is now when finished. Roger said he noticed no washouts now, and with respect to regrading, he will have to do it to prevent an issue.

Roland L. stated the runoff will change, because the canopy is being removed. He stated that the existing tree canopy is really slowing down the rain as it comes down, and without it there, there will be more of an impact. He said there will be more sheeting off the roof, etc. Madge B. agreed and thanked him for the support with respect to her concern. Roland said that is why the board wants trees, to slow the runoff into the lake. He said with the absence of the trees, the rain goes on the roof and there is a greater likelihood it could cause erosion now. He said he wasn't saying it would, but it could, because of the lack of canopy it is possible. Madge said that since they are not starting until September, could the board get a planting plan from Mr. Gallo now. He is going to use Springvale Nursery, he has someone who will do it, could the board have them design a plan, and submit it to the board. Madge said if they find they cannot dig, fine, but at least the board would have something in place if they do. She added that the board typically gets the plan before they start, not after. She said it won't hold him up. Mr. Gallo said that they are going to replant trees. Roland stated, "The trees that are going to be replaced, we are talking about the difference between a toothpick and a telephone pole. There is no comparison".

Mr. Gallo asked if what they were saying is that there will be the same amount of rain, but it will sheet off a little faster. Roland L. said, "I believe so, because the canopy slows it down". Roland also wanted to know at what point Mr. Gallo will decide whether they will do the foundation or not? Will it be before or after the trees are removed? Mr. Gallo said it would be before the trees are removed. Roland said that it was possible that if the unfortunate occurs and there is ledge, would that change the plans to remove the trees or would they have to come down regardless? Mr. Gallo said that if they do not put in a foundation, the trees will stay. He said the only reason they will come down with the foundation is because they will not survive the digging around the foundation.

Ann H. asked how they would know if they are going to hit ledge. Mr. Gallo said they will reach underneath with a backhoe; if there is no ledge, the crane will be brought in to take the trees down. He said, we will not waste any time, and he is hoping it is all sand. He said he would not blast so close to the houses, and the expense would not be worth it for the homeowner.

Mr. Gallo said he had no problem with the board having the condition of having a plan that is suitable for replanting. He will put where they will plant grass, adding that they put in a thicker blade grass to prevent erosion.

Ann H. asked if the building would be staying in the same location? Roger A. said they may want to think about moving the building 18” or so to get more height. Mr. Gallo did not believe they could move the 18”, he didn’t believe it could ‘economically’ be moved. He said anything could be done, but it would be costly due to the location.

Roger A. stated that there are 4 criteria that an applicant must meet in order to have a variance granted. He said if he felt as though he could meet all four, then he should go for it.

Roger A. asked if the board wanted to postpone the approval until a replanting plan is provided. Madge B. said that the board usually has the plan prior to approval, because there is no mechanism for getting the plan at a later date.

**Madge B. moved that the board table the application until a revegetating plan is received. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

Ann H. thought if he was using Springvale Nurseries, they would know what type of trees to plant. Madge B. agreed. Madge asked if there was anything else the board needed? Roger said the type of trees to be used needs to be on the plan, along with the location.

Nothing further was discussed.

**Best Possible Location – New Foundation/Basement – Map 40, Lot 20 (263 Granny Kent Pond Road) – Harry Spiliopoulos, Applicant**

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

Provided along with the application, was a plan drafted by Dana A. Libby, PLS 1350, dated July 29, 1999, entitled ‘This Is Not A Standard Boundary Survey – Mortgage Loan Inspection Made For Sanford Institution for Savings & Its Title Insurer’. The plan depicted the general location of the existing cottage, Granny Kent Pond Road, Granny Kent Pond, the boundary distances per the deed, that being one site lot line as 130.0’, the second side lot line as 130.6’, the road frontage as 50.0’ and the distance on Granny Kent Pond as 50.0’. There also appeared to be a shaded parking area.

In addition, provided was a copy of the Subsurface Wastewater Disposal System Application, dated 8/23/97, drafted by Mark J. Hampton, SE #263, for a 2 bedroom home.

The Detailed Description of the Project is as follows: A full basement will be added to structure.

Roger A. asked Mr. Spiliopoulos to brief the board on what he wanted to do. Mr. Spiliopoulos stated that he had a 37' x 16' cottage that he would like to put a full foundation under. He said right now it was sitting on cement blocks in a sandy soil, there is a minimal grade and it is about 10 feet above the water level or a little higher. He said most of the trees he had are far enough away, he didn't see a problem with trees. He said he wanted to lift up the cottage enough to get it off the ground and for some storage. He said it was built in the 1940's, so its time.

Mr. Spiliopoulos stated he would be using Caleb Chessie as a contractor for the ground work; Mike Morin would be doing the lifting and Mr. Lambert for the Foundation. He said that Mr. Chessie had come up with a general idea about drainage around the foundation, and backfilling to reduce the flow of water. He didn't believe they would have to remove any trees, but if they did he would replace them with something similar or shrubbery.

Mr. Spiliopoulos stated that he was limited to movement on the lot as it is a small lot, 50' x 145' give or take, and he noted the location of the septic system which was in the driveway, which consisted of a 1000 gallon holding tank with three chambers coming off of it. He said this was behind the cottage, so he did not feel he could move it backward. Currently he believed the cottage was 51 feet from the high water mark, so he knew he could not go forward.

Mr. Spiliopoulos stated that the contractors will probably move it forward, dig the foundation, then move it back in to place, to make it easier for them to do the excavation work. He said the current height of the structure was 12 feet, so he believed he would be looking at a 6' frost wall in the back and 4' in the front. He stated that they would be doing a drainage system and backfill with gravel for a positive drainage system, so all water goes into the ground. He said it was all sand in this location, no ledge, so he didn't feel there would be any problems, the water should absorb well. He said anything additional that the board requires would not be an issue.

**Roger A. stated that a site inspection would be scheduled for 6:00 pm on May 28<sup>th</sup>. A Notice to Abutters will be mailed as well.**

Ann H. asked if he needed a site plan for the next meeting? Roger A. stated that the board would need a landscaping plan for what will be taking place where there is any soil disturbance. Mr. Spiliopoulos stated that he did not know if he would be disturbing any trees until they get into the project. He said one problem is some of the trees are shared with the neighbor's boundary, so he needed to speak with them prior to the project.

Roger A. stated the board would need to know about the backfilling area, how that will be stabilized. Mr. Spiliopoulos thought Mr. Chessie could get him this information. Roger stated that he knew Mr. Chessie, and he may have a hard time getting a landscaping plan from him, he probably should get someone else to do it. Mr. Spiliopoulos asked if the board had any name suggestions? Roger said the board can't pick out a person, but CEO Demers may be able to give him some names.

Roland L. stated that the board did not require someone else to do this plan, he could make a plan that meets the expectations of the board. Mr. Spiliopoulos asked what those were? Roger A. stated the board needed to know what he would put in place to prevent and stop soil erosion. He said when Mr. Chessie digs beyond the foundation, whatever distance that is, it needs to be addressed. You can use bark mulch

or plantings. The board needs to know what you will do to put the ground back and stabilize the area. Mr. Spiliopoulos thought he would use crush gravel and pea stone.

Roger A. stated that the fill coming out for the foundation also needed to be addressed. Where will it set, and that has to be stabilized, to prevent it from running off into the lake. He said the board needed a plan showing and stating what will be used to prevent erosion. He said, if you are using mulch, state that, and show where it will be placed. Roger noted that the person working on this project had to be DEP certified in erosion control, and Roger said Mr. Chessie was certified.

Roger A. stated that Mr. Chessie will use Best Management Practices to help prevent erosion during the project. Roger said again that there needed to be a plan provided on how erosion will be handled once the project is completed, a revegetation plan or where mulch will be place.

Ann H. asked if Mr. Spiliopoulos owned the property and if not, if the board had a letter stating it was ok for him to represent the owner. She asked because the plan provided was in someone else's name. Mr. Spiliopoulos stated that he was the current owner, this was an old plan he was using.

Nothing further was discussed.

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**Amendment to a Conditional Use Permit – Replace Retaining Wall(s) – Map 44, Lot 20 (4 Camp Road) – Jonathan & Sandra MacDougall, Applicants**

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

Provided along with the application, was a plan entitled 'Retaining Wall Replacement', drafted by JD MacDougall Inc. Building Contractor, dated 5/6/2019. The plan depicted the lot lines as being: one side lot line as 148.0', one side lot line as 131.0', the road frontage along Silver Lake Road as being 65.0' and the lot line along the water as being 50.0'. Also depicted was the existing private driveway (Camp Road), location of the existing shed, propane fuel tank, 24' x 18' home, existing retaining walls and steps, along with the proposed steps to be added and new retaining wall(s). One of the new retaining walls will be in a different configuration than the existing, but the overall size has not increased.

Also provided was the Subsurface Wastewater Disposal System Application, dated 11/7/2006, drafted by John E. Large, SE #7 for a 3 bedroom home; as well as pictures of the existing retaining walls.

The Detailed Description of the Project is as follows: Replace one 10' x 30" PT 6 X 6 and one 20' x 30" PT 6 X 6 retaining wall with Genest retaining wall blocks.

Roger A. asked Mr. MacDougall to let the board know what he intended to do. Mr. MacDougall stated that he wanted to replace 2 walls, they are listed as 30" high but he believed they were more like 24" high, they are 6' x 6' and have been in place for about 40 years. He said the only change from the existing wall was on one of the walls he wanted to have it curve around instead of being at a right angle.

Roland L. asked if the curvature would increase or decrease the amount of area? Mr. MacDougall stated that it would be less because the curve is less linear footage than the right angle wall. He stated that he wanted to taper the new wall back into the bank to slow down the water flow. He noted that over the years there

have been a lot of changes on site that have helped to reduce stormwater flow. He said they used to use tires but now the retaining walls are there helping with the erosion.

Ann H. asked if the old steps were being removed? Mr. MacDougall stated that they were, and they were putting in steps on the other side of the wall where they hadn't existed before.

Roger A. asked if Mr. MacDougall had applied for the DEP Permit by Rule? Mr. MacDougall stated that he had. Roger asked if he had received any notice from them? Mr. MacDougall stated that he had not to date. Roger said there is 14 days that they can reply. Mr. MacDougall stated that they were close to the 14 days.

Roger A. asked about erosion control? Mr. Mr. MacDougall stated that during the project they were putting in a silt fence. Roger asked about when done in the disturbed area. Mr. MacDougall stated that he wasn't going to change what was there now, there is already erosion control. The surface will be as it is now. There will be a compact base, and the area now is very stable. He said again the area will be as it is now.

**Roger A. stated a site inspection will held at 6:30 p.m. on May 28<sup>th</sup>, and a Notice to Abutter's will be mailed as well.**

Nothing further was discussed.

**Amendment to a Conditional Use Permit – Addition of a 104' x 126' Boat Storage Facility – Map 3, Lot 16A (86 Emery Mills Road) – Geoffrey Aleva, PE, Applicant; Chief Realty, LLC, Property Owners**

Mr. Aleva was present to review the application.

Provided along with the application, was information from the ME Dept. of the Secretary of State, regarding Chief Realty, LLC, that being it is in good standing and was filed on 1/25/2016; an email from Jill Richards of Parker's Boathouse Inc., stating that Geoffrey R. Aleva, PE of Civil Consultants could sign regulatory applications for submittals on behalf of Parker's storage building project in Shapleigh; a response from Civil Consultants in a Memorandum form that demonstrates the proposed use meets all the criteria necessary for a Conditional Use Permit; a copy of the tax map depicting Map 3, Lot 16A in a highlighted fashion; a copy of the USGS Map for the site location; a copy of the Flood Insurance Map for the site location (showing it is not located in the flood zone); Beginning With Habitats Map (which did not depict a rare plant or animal habitat); Lot Coverage Determination for Parker's Boathouse, showing both existing and proposed as 14.3%.

Also provided was a copy of an aerial view of the location depicting the hydrologic soil group and a description of what the soil group means with respect to water infiltration when soils are not protected by vegetation, are thoroughly wet, and received precipitation from long-duration storms. This location appears to have predominantly LyC (70.7%) and LyE (14.6%) soils which have a Class D rating. This rating is as follows: Soils having a very slow infiltration rate (high runoff potential) when thoroughly wet. These consist chiefly of clays that have a high shrink-swell potential, soils that have a high water table,

soils that have a clay pan or clay layer at or near the surface, and soils that are shallow over nearly impervious material. These soils have a very slow rate of water transmission.

A Stormwater Management Plan was provided drafted by Neil Rapoza, PE 12169 of Civil Consultants, dated 5/7/2019. Both a Pre-Drainage Plan and Post-Drainage Plan was drafted, along with a detailed narrative for the proposed project. The conclusion of the report is as follows: Conclusion: Through the use of the modified detention facilities and structures to mitigate stormwater flow from the site, the runoff calculated for the post-development condition is predicted to have an overall decrease in runoff compared to the pre-development condition for the 50 year storm events analyzed. The analysis is somewhat conservative as it did not incorporate stormwater infiltration into the onsite soils. It is our opinion that the proposed site modification will not result in an impact on downstream waterways or abutters with respect to stormwater quantity and quality.

A full size site plan and proposed construction details were drafted by Geoffrey R. Aleva, PE #9679, dated 5/7/2019. The site plan depicts the existing three buildings, the existing paved area, gravel drive to be improved, the location of rip rap and retention pond to be added, silt fence or filter berm location, drainage flow and the location of the proposed structure. The proposed construction details depict the silt fence detail, filter berm detail, board crested weir, typical gravel drive section, riprap apron pipe outlet detail, a second riprap apron pipe outlet detail and the hay bale barrier. It also lists the erosion and sediment control practices, and seeding mixture and schedule.

The Project Narrative is as follows:

This project is located at Parkers Boathouse on 86 Emery Mills Road in Shapleigh, Maine. The lot is known as Map 3, Lot 16A and 16A01 on the Town of Shapleigh Tax Map system. This site is currently utilized as a boat storage facility. The intent of this project is to add a new 104' x 126' boat storage building. The new building will be positioned over existing exterior boat storage and will require minimal impact to existing vegetation and wildlife habitats.

We have confirmed via the Maine Beginning With Habitats Map 2 (Plant and Animal Habitat overlay) that this project is located outside any substantial wildlife habitats. The property is not located in a flood zone based on FEMA Flood Insurance Rate Map (FIRM) community-panel number 2301980015B.

The total area of land impacted by this project will be approximately 1 acre. This includes the new gravel drive, drainage facilities and graded areas. A drainage study has been performed to ensure the site can handle a 50 year storm event with no adverse impacts on abutting properties.

The subject lot is unique in that it consists of several parcels that have been merged over the years. Using information on file at the York County Registry of Deeds and sketches prepared by Middle Branch Surveyors, a compiled lot area has been determined for the area in question.

For the purpose of determining the proposed lot coverage, it was determined that the portion of the lot that could be classified as a "flag lot" would be removed from the usable lot area. This consists of the 100' wide section and the connected land to the north. The portion of the lot that directly abuts Emery Mills Road and is the location of the existing development has been assumed to be the usable area.

Using this methodology, it has been conservatively determined that the proposed development will result in a lot coverage of 14.3%. This is well below the maximum allowable 20% coverage. See the attached sketch for coverage determination.

The proposed development meets all applicable standards of a conditional use permit. A checklist has been provided indicating how each standard has been met. We have also included supplemental information as part of this application.

Attachments in the application package include:

- Abutters List
- Tax Map
- USGS Map
- Flood Map
- Web Soil Survey Map
- Beginning With Habitats Map
- Proposed Site Plan
- Erosion Control Plan
- Drainage Plans
- Sketch for lot coverage determination

The Detailed Description of the Project is as follows: This project includes the addition of 104 FT by 126 FT Boat Storage Facility. There will be no additional water or sewer line connections as part of this project.

Roger A. asked Mr. Aleva to tell the board what they intended to do. Mr. Aleva stated he was before the board for an Amendment to the Conditional Use Permit for Parker's Boathouse for them to build a building that is roughly 13,000 sf to allow them to have stacked boat storage. He said it is on the northern part of the property, and the building will be on land that has already been disturbed, currently boats are being stored on it. He stated they have a plan to put in grading and controlled drainage, and a detention pond will be created at the base of the hill to capture the water. He stated the property is not in the shoreland, it does not have to go to the DEP for any permits. He said there will be erosion control around where the foundation is going to be. He said once the exact geometry for the inside of the building is designed, Civil Consultants will be designing the foundation. He said when this is approved they will go for a building permit from the Town.

Mr. Aleva stated the site plan was created with some survey information created over the years by Middle Branch Surveyors, along with some of the things Civil Consultants has done to get the project to work with respect to the soils, because it is a big building. He said there is bedrock, and from an engineering standpoint they may be able to drill into it, which makes it easier than poured concrete.

Ann H. asked how they would get into the building? Mr. Aleva showed on the plan how they will enter the building and how they would access it. Noting that forklifts will move the boats and lift them into place.

Ann H. asked if there would be enough room to get a fire engine to and around the building? She stated that it was an issue the last time this applicant was before the board, whether or not there would be



fire access. Mr. Aleva said with the proposed contours they are flattening the area out. He said that they would also have to drive boats in that space, so he believed it was better access than what is there now. He felt they could access both sides of the building.

Maggie M. thought there was a limited space between the two buildings and that was an issue. Mr. Aleva said there was more than 12 feet between the two buildings, so he felt they could get access.

Ann H. asked about the gated entrance, she did not think they would be able to use that for access. Mr. Aleva said the gate will still remain. Roger A. stated they would need a DOT permit for the second entrance. Mr. Aleva said the entrance with the gate would not be used. Roger said that the entrance was not supposed to be there at all without a permit. Roger also said that the application was under Chief Realty, he asked if that was all the same lot as Parker's? Mr. Aleva said it was all the same lot.

Roger A. asked about the number of doors in the building. Mr. Aleva stated that there would be pass doors, but only one entrance door for the boats. So if someone needs to get out, there will be a door for that, but not a door for someone to drive straight thru.

Roger A. asked if there would be power in the building? Mr. Aleva said there would be power for lights in the building.

Ann H. said there would be a detention pond, she noted at the last review there was a neighbor being flooded by water that came from this property. Mr. Aleva said there is a lot of water that comes off this property.

Ann H. said it was very important that he determines that a fire truck can access the property. She didn't want them to go forward if they could not get fire access.

The board discussed lot coverage and noted that the lot coverage allowance went from 10% allowed for businesses to 20%. Mr. Aleva stated that in the package he calculated lot coverage as being a little over 14% with this new structure and he didn't use the property in the back, the odd shaped piece, so he was under the 20% maximum.

Roger A. said at one time this was a separate parcel, which is why he asked about who owned what lot. Mr. Aleva said that he believed this was all one lot. Roger said that being the case they could meet the 20% lot coverage limit with no issue. Mr. Aleva said he provided a sheet of paper that shows the buildings and the lot coverage calculations.

Roger A. stated that Mr. Aleva needs to get in touch with Fire Chief Duane Romano and go over the plan and see if he has any issues. Then FC Romano will have to give the board a letter stating that the plans are ok, that he will have adequate access.

Roger A. stated that in the past DOT only wanted one driveway per lot onto Rte. 109 but recently they approved a second access for another location, so Roger felt they should ask for access now for the second entrance, so they will have it. Mr. Aleva stated he would contact Tony at the DOT.

Roger A. read §105-34 'Access control on Routes 109 and 11'. "Land lying on Routes 109 and 11 may be divided into lots, but all vehicular movements to and from the highway shall be via a common driveway or entranceway serving adjacent lots or premises. All lots of record existing at the time of the ordinance amendment shall be allowed direct access to Routes 109 and 11, provided that minimum safe sight-distance standards can be met."

Roger A. said the site distance in this location were fine. Roger said for safety reasons, having the second entrance may be a better option. Mr. Aleva agreed that if the fire department had two options it would be better.

Roland L. asked if the boats would continue to be stored outside, after the building was erected? Mr. Aleva stated the idea was to get the boats inside to clean up the area. But he did not want to say there would be no boats outside. He said the building gives Parker's more capacity to store boats than what they have now. CEO Demers asked if the board could impose a condition about outdoor storage? Roger A. stated that yes, they could, because the fire department needs to have access to the building. Roger stated that Fire Chief Romano would need to say where he did not want to have boat storage. Roger noted other boat storage facilities in town were not allowed to have boat or trailer storage next to the buildings, so the fire department has access to the building and they do not have to move trailers. Roland L. said the boats would be stacked inside the building but where would they leave the trailers? Roger said much of the time the trailers go home with the owner. Roland said he knew of a location where the trailers were all around the building. Maggie M. said her boat stayed on the trailer and goes into the building. Roland said that in a stacked situation you don't have the boat on the trailer. Roland said it is like a shelving unit, they lift the boat, slide it in and set it down. Ann H. thought perhaps the retention pond would take up a lot of space where boats are now. Roland and Mr. Aleva stated it would not be the case, the retention area is not that large. Mr. Aleva did not think Parker's Boathouse would want to give up the opportunity to give up an area to store boats or trailers outside. He said perhaps they just needed to indicate on the plan where they would be stored.

Roland L. asked, "The area that is currently being used to store boats outside, how will it be used after the construction?" He asked if they were still going to have outside storage of boats, is it going to be where the trailers are parked? He said this is the question. Mr. Aleva said he understood his question.

Ann H. asked if there would be a fence around the detention pond? Mr. Aleva said no, it was not very deep. He said that even though the area was bedrock, the soils were pretty porous, the pond is just to slow it down. He didn't think it would be a standing water situation.

**Roger A. stated a Public Hearing will be held on Tuesday, May 28<sup>th</sup> at 7:00 p.m. A Notice to abutters will be mailed as well. A site inspection will take place at 5:30 p.m. Members will meet at the Town Hall.**

Ann H. asked if the board should wait to have the public hearing until they hear from the Fire Chief? Roger A. said no, the board can still hold the public hearing and do the site inspection. Mr. Aleva agreed, stating if he had to, he would revise the plan. Mr. Aleva stated he would contact Fire Chief Romano prior to the next meeting. The other members agreed to hold the public hearing, they did not have to decide on approval if more information was required. Madge B. noted that it was good to hold a public hearing first, to get public input.

Nothing further was discussed.

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**OTHER:**

Roger A. addressed CEO Demers, and asked, “On BPL’s, when the board approves them, and they have had a 30% expansion, can you take and grant a new expansion of that same building”? CEO Demers stated, “No, I wouldn’t think so”. Roger said there may be one out there, that had a BPL with 30% expansion and the owner came back and wanted an expansion, and I heard there is a possibility they received a permit to get that expansion. Roger said the reason stated was that they could expand to 1000 square feet now. Roger said, “The thing of it is, they have already had their 30%. They have been shut down basically, you are only allowed to do it once. You can’t have a new expansion, just because our ordinance changed, they have had a 30% expansion”. CEO Demers stated “I see what you are saying”. Roger said, “You had that 30% you had yesterday, now that you have come in because the rules have changed, doesn’t allow you to take and have another expansion for the 1000 feet”. Roland L. asked what this was in reference to, was it what we discussed this evening? Roger said, no.

CEO Demers stated, “The ordinance changed for 10% lot coverage for Parker’s, now it’s up to 20, they can go up to 20”. Roger said they can go up to 20, but it’s not in the shoreland. Roger stated, “In the Shoreland Zone the 30% expansion is a one-time shot, once you get your 30%”. Madge B. agreed, stating it is a different project. CEO Demers, “In what year we adopted DEP’s Chapter 1000, and then we had a choice, we could either do the 30% rule or switch it over to a lot coverage, and square foot coverage, and height restriction. So those new rules now...”. Roger stated that we still have both. CEO Demers stated that we no longer have 30% volume, it is gone. Roger agreed. Ann H. stated, “But if someone took 30% prior to that, that is all they get”. CEO Demers stated, “If they took 30% volume. If they took 30% foot print, then I would say....it depends to on how high the building is, because of what the height restriction is today. So I guess each case would be different, I guess there is no one blanket answer that covers everything”. Roger asked if you are allowed to have a second expansion? CEO Demers stated it would depend on what was in the file, they are allowed 10% lot coverage, they are allowed the 30% expansion up to the 10% and now the height. He said if their previous expansion put them over the height restriction, I would have a hard time with that, but if they were below the current height restriction, everything is subject to the individual property.

Madge B. said, “I felt Roger’s point is the one that I understood, that you get one shot at 30%, you can’t come back later and say ‘I don’t think I used what is now allowed, now is what I can have’.” CEO Demers asked what happens when they tear down and rebuild? He said you are taking that footprint coverage, the only thing you are restricted by is your current footprint, and for 30% expansion, your current square footage, and a height restriction, in a building envelope that is no more non-conforming than was before. Roger A. stated that if they are going to take it down, the board can ask them to move it. Roger said, “That if I had a camp, and I got a 30% expansion back in 1990, and so today I’ve decided I am taking my camp down, because I don’t like it. I want a new place. Today I should be only allowed to say my camp is this size and this tall, and I should only be able to replace it like-kind and stay the same size”. Roger said no deviation, I am just replacing like kind. Ann H. said that you would be grandfathered in, because it is existing. Roger agreed, saying he was just replacing like kind. Roger said because he is removing it, the board has the ability to ask it be moved, but no expansion.

Roger A. stated that any approved plan, any deviation from that plan, has to come back before the board. CEO Demers asked if the board was approving expansions? Barbara F. asked if she was understanding what they are saying. She said if the board approved a 30% expansion, whether it be volume or square footage in the past, and now the applicant wants to change the home, can they increase the size, because the new rules might allow it, if it were before the board today? She said they already had their 30% in the past, she didn't think they could get an addition, even if the 30% is calculated differently now? Madge B. stated, "You can't keep adding 30%". Madge said you just get it one time, you can't add more later. Barbara said, "Ok".

Roland L. said that he got a permit in 1991, and he ended up with a 6 ½ 12 pitch roof because of the 30% volume, nice and squatty. He said he would like to change that, and get a steeper pitch for a variety of reasons. He asked if he was able to do that? Barbara said, based on what we just discussed, no, if you had your 30%. CEO Demers stated, "The board doesn't approve the 30%. If somebody came in and just said I want to expand my camp 30%, I do that through my office". He said it goes to the board for best practical location, if they are going to put in a new foundation. He said that in the ordinance it says expansions of foundation, the foundation and the expansion is to be placed by the Planning Board. He said the board has said they only take a look at the original foundation. Roger said the DEP requires this. Madge B. stated that the board used to do it differently. Roger said the board used to look at the original size and the expanded size to place it. Madge B. said she did not agree that the board should not look at the expansion. CEO Demers noted that the ordinance states that the structure and new foundation must be placed by the Planning Board, and he reviewed the ordinance. Madge B. stated she agreed with Mike's opinion. Madge wondered if they should get a legal opinion from the Town Attorney, because she thought the board should be looking at the expansion.

CEO Demers said he tried to nail this down with Mike Morse before he left the DEP, but he never got a clarifying answer. He said his position just got filled, and he will pose the same question to him, because he wants to follow the rules. Madge B. stated, "So do we". CEO Demers laughed and said, in his CEO meetings it is said the only thing consistent about the DEP is they are inconsistent.

Roger A. agreed that the board should look at the entire project, because the board could determine all the factors, including erosion control. He said the board was told by the DEP the expansion went to the CEO. CEO Demers did not agree, nor did Roger. Roger thought the board should see the expanded foundation to be able to make the best determination for location. CEO Demers agreed, stating the board should apply the ordinance as written, not by what the DEP told them. He said his decisions are based on his research, not the DEP.

Madge B. agreed the board should review the application as it is written. She said the board needs to be allowed to look at the whole lot, the septic system location, all other buildings, and put the expanded building in the best possible location. Madge said it sounded like the board was all on the same page, so let's review the entire structure going forward. The other board members agreed, as did CEO Demers.

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Roger A. said he had several calls from neighbors adjacent to The Whole Nine Yards, regarding working on a culvert that is next to a stream that goes into a great lake (Mousam). Roger said there should be a 75 foot setback due to the stream, so there was concern. CEO Demers stated that the stream dissects their

property, and he took out a rusted culvert and put in a plastic culvert, and regraded the area with gravel. He said that stream does go into Mousam. He said he has a list of protected streams in his office and that isn't on it. Barbara F. thought it may be in resource protection, and she said the only reason she thought this because when Knox Auto Body was before the board they had to do an engineered stormwater report because of the stream, because it was part of the Mousam Lake Water Shed and it was protected. She said if you look at the zoning map it is hard to compare, she understood that, but she thought it was protected.

CEO Demers said with what he has, he did not feel he could push a violation. He said he asked the neighbor to do a written complaint and she did not want to do so. Ann H. said, "He just replaced one with another". CEO Demers said he replaced one with another, opened it up and closed it up, there is no sediment on Shapleigh Corner Road and he did not feel any flowed downstream. Roger A. said he brought it up because of the telephone calls. Roger added that the board had no enforcement, they could only tell people to contact the CEO.

Roger A. stated that The Whole Nine Yards is pushing past a Home Occupation. CEO Demers stated that they were going to move out of town. Roger said that did not matter, a violation of a Conditional Use is a violation, there is no grace period. CEO Demers asked what the violation was? Roger said the Conditional Use is for a home business, he has grown beyond that. CEO Demers asked what condition of his CU he has violated. Roger said he can amend his existing application, but he never has. CEO Demers asked by what metric has he grown too large?

Roger A. read the definition of Home Occupation which is 'An occupation or profession which is customarily carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit; carried on by a member of the family residing in the dwelling unit; clearly incidental and secondary to the use of the dwelling unit for residential purposes. Real estate offices and resale of purchased merchandise will not be considered as home occupations.'

Roger A. stated that they all did not reside there. CEO Demers asked if they work at that site? Roger did not believe so, he thought they arrived and left. CEO Demers asked if the complaint was they had too many employees? Roger said it is beyond a home occupation. Maggie M. said the recent home occupation the board approved was that they could only have one employee and they could not all be there at once. CEO Demers agreed that he has employees, the question was do the employees do field work or work at the home.

Madge B. asked if we could say it is primarily a residence? She said it sounded like the property was definitely being used as a business, and there may be a residence? CEO Demers said he would write him up for a violation, but what was the violation? Roger stated, §105-40 'Home Occupations'. Roger read the ordinance out loud.

Barbara F. said the board allowed them to have a dock out front and everything else out back, she thought that was what he was doing? CEO Demers said he would write him up for §105-40, what would be the remediation? Roger A. stated they would have to amend the CUP, and because of the recent ordinance change they would likely be allowed to have both a regular business and a residence on the property. CEO Demers said if they amend a CUP, pay the fee, he asked if there was any reason it would be denied? Maggie M. and Roger A. said with the ordinance change they had enough land for both. Roger added the

board would need to know where the parking would be. Madge B. said it would not shut him down but it would make the site compliant.

Madge B. said she was curious about the alpaca farm, she wanted to know if they kept up the gravel permit? Roger A. said he was told the owner went through bankruptcy and the bond the Town had to reclaim the area, the Selectmen released the money and gave it back to the property owner. He added that nothing was signed off to release the bond, and nothing has been done to reclaim the property.

Ann H. said she insured the place, and she knew Mr. Ferrera, and she was told the Town gave the money back to Mr. Ferrera and she agreed she did not think it was supposed to happen. CEO Demers asked how long ago this was? Ann said that it wasn't too long ago. Madge B. asked what happens now? Roger said we now have no recourse, unless the Town wants to go in and regrade the area. Madge B. asked Roger if he met with the Selectmen on this? Roger said he would be seeing them soon to discuss application fees. Roland L. said Mr. Ferrera was supposed to reclaim it. Madge said that if anyone starts hauling out gravel they will need a permit, because right now it is not permitted. She said it sounds like there is a problem. Maggie M. said legally the Town was supposed hold the money to be sure it was reclaimed. She said now he is not going to do it. The other board members agreed. Roger said that is why we hold a performance guaranty.

Nothing further was discussed.

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**ELECTION OF OFFICERS**

Madge Baker nominated Roger Allaire as Chairman of the Planning Board.  
Maggie Moody 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.**

Madge Baker nominated Steve Foglio as Vice Chairman of the Planning Board.  
Maggie Moody 2<sup>nd</sup> the motion.

Steve Foglio was not present to accept the nomination.  
All members were in favor. **Steve Foglio will remain Vice Chairman of the Planning Board.**  
*If Steve F. does not wish to be Vice Chairman, they will reconsider at the next meeting.*

Madge Baker nominated Barbara Felong as Planning Board Secretary  
Maggie Moody 2<sup>nd</sup> the motion.

**Barbara Felong will remain Secretary of the Planning Board.**  
*Note: This position is hired by the Selectmen*

Nothing further was discussed.

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

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**The Planning Board meeting ended at 9:25 p.m.**

**NOTE: The summer hours are in effect thru October 31st, the meetings now begin at 7:30 p.m. and any scheduled public hearing begins at 7:00 p.m.**

The next meeting will be held **Tuesday, May 28, 2019** at 7:30 p.m.

The Planning Board meets the 2<sup>nd</sup> and 4<sup>th</sup> Tuesday of each month unless it falls on a holiday or Election Day. Should there be a cancellation due to a storm event, holiday or Election, the meeting will typically be held the following Wednesday, also at 7:30 p.m. Please contact the Land Use Secretary if there is a question in scheduling, 207-636-2844, x404.

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

## ***Shapleigh Planning Board***

### ***Minutes***

**Tuesday, May 28, 2019**

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

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

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

#### **Amendment to a Conditional Use Permit – Addition of a 104’ x 126’ Boat Storage Facility – Map 3, Lot 16A (86 Emery Mills Road) – Geoffrey Aleva, PE, Applicant; Chief Realty, LLC, Property Owners**

Mr. Aleva was present to review the application. Jill Richards of Parker’s Boathouse was also in attendance.

The Detailed Description of the Project is as follows: This project includes the addition of a 104 FT by 126 FT Boat Storage Facility. There will be no additional water or sewer line connections as part of this project.

Roger A. asked Mr. Aleva if he would like to let all those in attendance know what he would like to do. Mr. Aleva began by introducing himself and that he was with Civil Consultants. He said they were proposing a 13,000 sf boat storage building at Parker’s marine. At the site visit prior to the meeting, he believed the board was able to see where the new structure was going to be placed. He said he spoke with the Fire Chief and said he sent an email to the Code Enforcement Officer regarding the questions for fire protection. He added notes to the plan, keeping access to the area around the storage building. (The note on the plan states: No Boat Storage Within 10 Feet of the Building Perimeter.) He said this was for emergency access. He pointed to the area on the plan he provided. He stated that the Fire Chief would like to have access through the gate, so he would get a punch code.

Roger A. asked if there were any questions for Mr. Aleva? Roland L. said that it was previously mentioned that there would be power to the building. Roland wanted to know if there was going to be any outside lighting? Mr. Aleva did not believe so, he noted the other existing buildings did not have outside lighting. He said there would be power inside the building for lights inside the space but no lights around the perimeter.

Maggie M. asked how many boats could fit inside the new structure? Mr. Aleva, using the plan, showed how the boats would enter the building, be turned around, and placed on the racks. He believed there would be approximately 80 boats stored in the bays along the perimeter, and there would be some storage in the access way. He thought there was a potential for up to 100 boats. He said trailers would still be stored outside, but he noted you wouldn’t be seeing blue tarps any longer because the boats would be inside.



Roland L. asked what the depth of the ditch would be? Mr. Aleva said it was approximately 2 to 2 ½ feet of depth before a weir allows an outlet. He said that it would be a gravel base, so water would infiltrate as well. He said there was a basin along the ditch line currently, so in that general area. He noted that although it had rained all day, there was no ponding in it. He said the gravel in this area allows for a lot of infiltration. He said the detention area created will slow down the water, before it is discharged. Roland said this depth does not seem it would pose a drowning hazard. Mr. Aleva said, no, and he showed again the location on the plan and how the water dissipates, noting the pipe outlet and the emergency weir in case it does fill up. Roland asked if the runoff ties into the State drain. Mr. Aleva stated that it did, and noted he provided a drainage report with his initial submission. He said it showed that with this design the amount of water leaving the site after the new structure is up, matches what leaves the site now. Mr. Aleva provided Roland with a larger copy of the plan, so he could clearly see what he was talking about.

Roger A. stated his only concern was regarding the corner of the building that was only 26.7' from the lot line, he didn't want anything to be parked in this location. Mr. Aleva understood, and he said along both corners close to the lot line, there wouldn't be anything parked and he noted they do not park close to the lot line at this time.

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

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

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**The minutes from Tuesday, May 14, 2019 were amended as follows:**

Steve Foglio was not present to accept the nomination.

All members were in favor. Steve Foglio will remain Vice Chairman of the Planning Board.

*The word Vice was added.*

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**Best Possible Location – New Foundation/Basement – Map 40, Lot 20 (263 Granny Kent Pond Road) – Harry Spiliopoulos, Applicant**

Mr. Spiliopoulos was present for the review of the application. *Note: Prior to this evenings meeting the board held a site inspection.*

Originally provided along with the application, was a plan drafted by Dana A. Libby, PLS 1350, dated July 29, 1999, entitled 'This Is Not A Standard Boundary Survey – Mortgage Loan Inspection Made For Sanford Institution for Savings & Its Title Insurer'. The plan depicted the general location of the existing cottage, Granny Kent Pond Road, Granny Kent Pond, the boundary distances per the deed, that being one site lot line as 130.0', the second side lot line as 130.6', the road frontage as 50.0' and the distance on Granny Kent Pond as 50.0'. There also appeared to be a shaded parking area.

In addition, provided was a copy of the Subsurface Wastewater Disposal System Application, dated 8/23/97, drafted by Mark J. Hampton, SE #263, for a 2 bedroom home.

The Detailed Description of the Project is as follows: A full basement will be added to structure.

This evening the board was provided with an Erosion Control Plan drafted by Mr. Spiliopoulos. The plan noted that there were 4 trees that may be affected and require removal. The plan also provided information regarding how erosion would be prevented during and after construction. The plan included a depiction of the area around the camp, the location of the 4 existing trees that may be removed, as well as the area where erosion control mulch would be used.

Roger A. asked Mr. Spiliopoulos to brief the board for the record what he intended to do. Mr. Spiliopoulos stated he was putting in a full foundation under the existing camp. He said it was approximately a 34' x 18' area to excavate, to a depth of approximately 4 to 5 feet for a frost wall. He said there was a possibility he would have to remove 4 trees, which he marked on the map he provided this evening. He said he also provided a backfill plan. He stated that they would be placing crushed gravel around the footing / base of the foundation, with a crush-proof Flex-Drain tubing over the gravel, covered by porous material and then covered by a four foot area of erosion control mulch around the camp.

Roger A. began by reviewing §105-4.D 'Nonconforming structures.' (3) 'Foundations.' "Whenever a new, enlarged, or replacement foundation is constructed under a nonconforming structure, the structure and the new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in Subsection D(7), Relocation, below. Roger then read Section §105-4.D(7) Relocation, in its entirety, which included the description of how revegetation must be accomplished.

Roger A. stated in this location, the replanting of trees removed, keeping them in the same location would be difficult due to the close proximity of the trees to the structure and the lot line. Mr. Spiliopoulos agreed, stating there was only about six feet. Roger said the CEO can discuss this during the permitting process.

Roger A. stated that there would not be any woody and herbaceous vegetation replaced because presently there is none in existence, the area is all sand.

Roger A. concluded with §105-4.D(7)(c) which states 'All approved plans shall require confirmation in writing by a licensed surveyor that the placement of the structure is correct per the specifications approved by the Planning Board.

Roger A. stated the board agreed the placement of the structure shall remain where it is, because of the location of the septic system. He said the chamber system is in the back of the camp. Madge B. agreed with Roger, because of the location of the septic system there is no advantage to moving it back or to either side, because the distance to the lots lines is similar, and with the trees on both sides, she felt this was as well situated as the board could find or suggest.

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

- 1) Best Management Practices shall be in place until the project is completed and the ground is stabilized.**
- 2) The contractor doing the work must be licensed by the Dept. of Environmental Protection in Erosion Control Measures.**

- 3) Trees removed must be replaced with a tree six feet in height per Shapleigh Zoning Ordinance §105-4.D.7B[1][a].
- 4) The project shall be completed by November 15, 2019. If this date cannot be met, the applicant shall notify the board of a new projected date of completion.
- 5) The area shall have erosion control mulch placed around the foundation per the plan presented.
- 6) Per Shapleigh Zoning Ordinance §105-4.D7(c), the approved plan shall be confirmed in writing by a licensed surveyor that the placement of the structure is correct per the specifications approved by the Planning Board.

**Roland L. made the motion to approve the Best Possible Location to put a foundation under the existing structure on Map 40, Lot 20, leaving the structure in the same location, per the plans presented. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

Mr. Spiliopoulos asked if he was supposed to have a surveyor mark where the foundation was supposed to go. Roger A. stated that yes, where it sits now, then when you move it, dig it out and are to move it back, the contractor will know exactly where to place the foundation. The CEO when doing the building permit will go to the site and see that it is placed as approved.

Nothing further was discussed.

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### **The Findings of Fact**

1. The owner of Shapleigh Tax Map 40, Lot 20 (263 Granny Kent Pond Road), is Harry Spiliopoulos of 129 River Street, Sanford, Maine 04073.
2. The property is located in the Shoreland District and according to the assessor contains 0.16 acres.
3. The applicant is before the board for a Best Possible Location to add a new foundation to the existing structure.
4. Received was a plan drafted by Dana A. Libby, PLS 1350, dated July 29, 1999, entitled ‘This Is Not A Standard Boundary Survey – Mortgage Loan Inspection Made For Sanford Institution for Savings & Its Title Insurer’. The plan depicted the general location of the existing cottage, Granny Kent Pond Road, Granny Kent Pond, the boundary distances per the deed, that being one site lot line as 130.0’, the second side lot line as 130.6’, the road frontage as 50.0’ and the distance on Granny Kent Pond as 50.0’. There also appeared to be a shaded parking area.
5. Received was a copy of the Subsurface Wastewater Disposal System Application, dated 8/23/97, drafted by Mark J. Hampton, SE #263, for a 2 bedroom home.

6. Received was an Erosion Control Plan drafted by Mr. Spiliopoulos. The plan noted that there were 4 trees that may be affected and require removal. The plan also provided information regarding how erosion would be prevented during and after construction. The plan included a depiction of the area around the camp, the location of the 4 existing trees that may be removed, as well as the area where erosion control mulch would be used.
7. The Detailed Description of the Project is as follows: A full basement will be added to structure.
8. The board reviewed Zoning Ordinance §105-4, ‘Nonconformance’, and concurred the application and information as presented met the standards applicable in this chapter.
9. A notice was mailed to all abutters within 500 feet of the property on May 15, 2019. Meetings were held on Tuesday, May 14, 2019 and Tuesday, May 28, 2019. A site inspection was done on May 28, 2019, prior to the meeting.
10. The Planning Board unanimously agreed to approve the Best Possible Location to add a new foundation under the existing structure, per the plans provided and information discussed during the two meetings held to review the project, with 6 conditions.
11. **The conditions of the approval are as follows:**
  - 1) **Best Management Practices shall be in place until the project is completed and the ground is stabilized.**
  - 2) **The contractor doing the work must be licensed by the Dept. of Environmental Protection in Erosion Control Measures.**
  - 3) **Trees removed must be replaced with a tree six feet in height per Shapleigh Zoning Ordinance §105-4.D.7B[1][a].**
  - 4) **The project shall be completed by November 15, 2019. If this date cannot be met, the applicant shall notify the board of a new projected date of completion.**
  - 5) **The area shall have erosion control mulch placed around the foundation per the plan presented.**
  - 6) **Per Shapleigh Zoning Ordinance §105-4.D7(c), the approved plan shall be confirmed in writing by a licensed surveyor that the placement of the structure is correct per the specifications approved by the Planning Board.**

**Motion:**

After careful consideration and a review of all material presented to the Board, including the review of Zoning Ordinance §105-4, ‘Nonconformance’, a motion was made to approve the Best Possible Location to add a new foundation under the existing structure, leaving it in the same location, per the plan provided, on Tax Map 40, Lot 20, with six conditions.

**Vote:**

By a unanimous vote of 5 – 0, the motion to approve the Best Possible Location to add a new foundation under the existing structure, leaving it in the same location, per the plan provided, on Tax Map 40, Lot 20, with six conditions, was accepted.

**Decision:**

**The Best Possible Location application to add a new foundation under the existing structure, leaving it in the same location, per the plan drafted by Dana A. Libby, PLS 1350, dated July 29, 1999, entitled ‘This Is Not A Standard Boundary Survey – Mortgage Loan Inspection Made For Sanford Institution for Savings & Its Title Insurer’, on Tax Map 40, Lot 20, with six conditions was approved.**

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**Amendment to a Conditional Use Permit – Replace Retaining Wall(s) – Map 44, Lot 20 (4 Camp Road) – Jonathan & Sandra MacDougall, Applicant**

Mr. MacDougall was present for the review of the application. *Note: Prior to this evenings meeting the board held a site inspection.*

Previously provided along with the application, was a plan entitled ‘Retaining Wall Replacement’, drafted by JD MacDougall Inc. Building Contractor, dated 5/6/2019. The plan depicted the lot lines as being: one side lot line as 148.0’, one side lot line as 131.0’, the road frontage along Silver Lake Road as being 65.0’ and the lot line along the water as being 50.0’. Also depicted was the existing private driveway (Camp Road), location of the existing shed, propane fuel tank, 24’ x 18’ home, existing retaining walls and steps, along with the proposed steps to be added and new retaining wall(s). One of the new retaining walls will be in a different configuration than the existing, but the overall size has not increased.

Also provided was the Subsurface Wastewater Disposal System Application, dated 11/7/2006, drafted by John E. Large, SE #7 for a 3 bedroom home; as well as pictures of the existing walls and stairs to be replaced.

The Detailed Description of the Project is as follows: Replace one 10’ x 30” PT 6 X 6 and one 20’ x 30” PT 6 X 6 retaining wall with Genest retaining wall blocks.

Roger A. began the review by reading a letter received from an abutter, Mr. Richard Sawyer who resides at 152 Silver Lake Road. The letter read in part as follows:

Dear Shapleigh Planning Board,

In response to your notification sent to us as an abutter (152 Silver Lake Road) to the request noted above, I would like to inform you that we are okay with this amendment and request that the following stipulation on timing of when work can be performed is put into place to ensure the impact to my family’s time spent at this location is minimized.

Requested Stipulation on When Work Can't Be Performed

- Friday – Sunday
- June 28 – July 7
- August 2 – August 11

Since we purchased this home to get away from all the traffic and noise associated with living in the Boston area, we would appreciate that our request is considered when approving this amendment.

Please don't hesitate to contact me should you have questions. Thank you for your attention to this matter.

Steve F. asked Mr. MacDougall if he had any issue with the request. Mr. MacDougall stated that not working on a Friday could be an issue, he had no issue with Saturday and Sunday. Roger gave the dates again, noting it was a two week span. Mr. MacDougall stated that he wanted to get it done sooner rather than later, to have it done before summer. He said it would take less than a week to finish the project, and he stated he would keep this in mind. He said he knew Richard, and said he didn't tell him he had any issue. He asked the board to provide a copy of the letter for him, CEO Demers did just that.

Ann H. asked Mr. MacDougall if he knew when he was going to start the project? Mr. MacDougall stated he thought it was just prior to the first dates. He said he wanted it done as soon as possible. Madge B. asked where Mr. Sawyer was located. Mr. MacDougall stated that when facing the lake, it was on the left. Madge said perhaps he could minimize the work done on that side during those dates. Mr. MacDougall said it was mostly hand work, there was not going to be equipment on site. Madge didn't think it would be a problem. Mr. MacDougall thought it would be mostly done between Monday and Thursday in a week. He didn't think there would be an issue.

Steve F. said he didn't have an issue with the plan, but it was his understanding that walls had to be replaced exactly as they set now. He said there was no option to deviate from the plan, but he had no issue with this change, as long as the board was not setting outside the boundaries of the ordinance. Roger A. said he agreed with Steve, that as it sits today is how it has to be. He said modifying it would be nice to have, but the board cannot allow a non-conforming structure to be more non-conforming. Mr. MacDougall stated that he was not increasing the impervious surface. Roger agreed but it was a non-conforming structure now. Steve said by moving the wall closer to the property line, it was making the structure more non-conforming. Mr. MacDougall thought a wall was similar to a driveway, where you could move it closer to a property line. The board did not agree, a wall is considered a structure.

Steve F. said he thought this wall as presented was a good idea, and noted the fact that in many cases they look at a modification to a wall as making perfect sense, but the board is handcuffed by what is in the ordinance. He said if the board feels we can do it, he was open to opinion.

CEO Demers asked if the DEP had any comment regarding his plan? Mr. MacDougall stated that he was notified that the DEP didn't get his map, so he sent it in. He said the DEP didn't have any other comments about what he sent in. Roger A. asked if it was put in as a Permit by Rule? Mr. MacDougall stated, "Yes". Roger said that he may not get notified. Mr. MacDougall agreed, unless they object. CEO

Demers stated that he gets the approval typically. He thought they would send one to Mr. MacDougall, but if it was incomplete it may take a little longer.

Roger A. asked the board their thoughts about the placement of the wall. Ann H. didn't think the board could allow placement any closer to the property line. Madge B. agreed, because it would increase the non-conformity to the setback. Ann asked if he could curve it closer. Mr. MacDougall said he wasn't looking for a curve as much as he was looking to move it into the bank, that is why he placed it as he did.

Roger A. said all he believed the board could do is replace like with like. Ann H. and Madge B. agreed. Ann asked about the new steps. Madge said he was taking out steps and putting in steps, so he wasn't adding anything more non-conforming. Steve F. stated that stairs are not regulated, he felt the board had a lot of flexibility with stairs. He said it was just the wall that was an issue.

Roger A. asked if he had a motion to replace the walls, as they are today?

Roland L. asked about the existing wall, what would be done with it? Roger A. said the old timbers cannot go to the transfer station. Mr. MacDougall stated either he or the contractor would remove them from site. He said he would take them to Simpson's in Sanford, or another place that was adequate.

**Maggie M. made the motion to replace one 10' x 30" PT 6 X 6 and one 20' x 30" PT 6 X 6 retaining wall with Genest retaining wall blocks, on Map 44, Lot 20, keeping the wall size and location exactly as they exist now, with the condition that the existing pressure treated walls will be taken out of Shapleigh and disposed of properly. Roland L. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

Nothing further was discussed.

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**The Findings of Fact**

1. The owner of Shapleigh Tax Map 44, Lot 20 (4 Camp Road), is Jonathan MacDougall, mailing address of P.O. Box 566, Shapleigh, Maine 04076.
2. The property is located in the Shoreland District and according to the assessor contains 0.16 acres.
3. The applicant is before the board for a Best Possible Location to replace two existing retaining walls.
4. Received was a plan entitled 'Retaining Wall Replacement', drafted by JD MacDougall Inc. Building Contractor, dated 5/6/2019. The plan depicted the lot lines as being: one side lot line as 148.0', one side lot line as 131.0', the road frontage along Silver Lake Road as being 65.0' and the lot line along the water as being 50.0'. Also depicted was the existing private driveway (Camp Road), location of the existing shed, propane fuel tank, 24' x 18' home, existing retaining walls and steps, along with the proposed steps to be added and new retaining wall(s). The plan depicted one of the new retaining walls would be in a different configuration than the existing, but the overall size had not increased.

5. Received was a copy of the Subsurface Wastewater Disposal System Application, dated 11/7/2006, drafted by John E. Large, SE #7 for a 3 bedroom home.
6. Received were pictures of the two existing retaining walls and stairs to be replaced.
7. The Detailed Description of the Project is as follows: Replace one 10' x 30" PT 6 X 6 and one 20' x 30" PT 6 X 6 retaining wall with Genest retaining wall blocks.
8. The board reviewed Zoning Ordinance §105-4, 'Nonconformance', and concurred the application and information as presented met the standards applicable in this chapter.
9. A notice was mailed to all abutters within 500 feet of the property on May 15, 2019. Meetings were held on Tuesday, May 14, 2019 and May 28, 2019. A site inspection was also done on May 28, 2019, prior to the meeting.
10. The Planning Board unanimously agreed to approve the Best Possible Location to replace the stairs and two retaining walls, keeping the walls the same dimension and in the same location with one condition.
11. **The condition of the approval is as follows:**
  - 1) **The existing pressure treated 6 x 6 timbers shall be removed from site, taken out of Shapleigh, and disposed of properly.**

**Motion:**

After careful consideration and a review of all material presented to the Board, including the review of Zoning Ordinance §105-4, 'Nonconformance', a motion was made to approve the Best Possible Location to replace the existing stairs, and one 10' x 30" PT 6 X 6 and one 20' x 30" PT 6 X 6 retaining wall with Genest retaining wall blocks, on Map 44, Lot 20, keeping the walls the same dimension and in the same location, with the condition that the existing pressure treated walls will be taken out of Shapleigh and disposed of properly.

**Vote:**

By a unanimous vote of 5 – 0, the motion to approve the Best Possible Location to replace the existing stairs, and one 10' x 30" PT 6 X 6 and one 20' x 30" PT 6 X 6 retaining wall with Genest retaining wall blocks, on Map 44, Lot 20, keeping the walls the same dimension and in the same location, with the condition that the existing pressure treated walls will be taken out of Shapleigh and disposed of properly, was accepted.



**Decision:**

**The Best Possible Location application to replace the existing stairs, and one 10' x 30" PT 6 X 6 and one 20' x 30" PT 6 X 6 retaining wall with Genest retaining wall blocks, on Map 44, Lot 20, keeping the walls the same dimension and in the same location, with the condition that the existing pressure treated walls will be taken out of Shapleigh and disposed of properly, was approved.**

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**Amendment to a Conditional Use Permit – Addition of a 104' x 126' Boat Storage Facility – Map 3, Lot 16A (86 Emery Mills Road) – Geoffrey Aleva, PE, Applicant; Chief Realty, LLC, Property Owners**

Mr. Aleva was present to review the application. *Note: Members did a site visit prior to this evenings meeting.*

Originally provided along with the application, was information from the ME Dept. of the Secretary of State, regarding Chief Realty, LLC, that being it is in good standing and was filed on 1/25/2016; an email from Jill Richards of Parker's Boathouse Inc., stating that Geoffrey R. Aleva, PE of Civil Consultants could sign regulatory applications for submittals on behalf of Parker's storage building project in Shapleigh; a response from Civil Consultants in a Memorandum form that demonstrates the proposed use meets all the criteria necessary for a Conditional Use Permit; a copy of the tax map depicting Map 3, Lot 16A in a highlighted fashion; a copy of the USGS Map for the site location; a copy of the Flood Insurance Map for the site location (showing it is not located in the flood zone); Beginning With Habitats Map (which did not depict a rare plant or animal habitat); Lot Coverage Determination for Parker's Boathouse, showing both existing and proposed as 14.3%.

Also provided was a copy of an aerial view of the location depicting the hydrologic soil group and a description of what the soil group means with respect to water infiltration when soils are not protected by vegetation, are thoroughly wet, and received precipitation from long-duration storms. This location appears to have predominantly LyC (70.7%) and LyE (14.6%) soils which have a Class D rating. This rating is as follows: Soils having a very slow infiltration rate (high runoff potential) when thoroughly wet. These consist chiefly of clays that have a high shrink-swell potential, soils that have a high water table, soils that have a clay pan or clay layer at or near the surface, and soils that are shallow over nearly impervious material. These soils have a very slow rate of water transmission.

A Stormwater Management Plan was provided drafted by Neil Rapoza, PE #12169 of Civil Consultants, dated 5/7/2019. Both a Pre-Drainage Plan and Post-Drainage Plan was drafted, along with a detailed narrative for the proposed project. The conclusion of the report is as follows: Conclusion: Through the use of the modified detention facilities and structures to mitigate stormwater flow from the site, the runoff calculated for the post-development condition is predicted to have an overall decrease in runoff compared to the pre-development condition for the 50 year storm events analyzed. The analysis is somewhat conservative as it did not incorporate stormwater infiltration into the onsite soils. It is our opinion that the proposed site modification will not result in an impact on downstream waterways or abutters with respect to stormwater quantity and quality.

A full size site plan and proposed construction details were drafted by Geoffrey R. Aleva, PE #9679, dated 5/7/2019. The site plan depicts the existing three buildings, the existing paved area, gravel drive to be improved, the location of rip rap and retention pond to be added, silt fence or filter berm location, drainage flow and the location of the proposed structure. The proposed construction details depict the silt fence detail, filter berm detail, board crested weir, typical gravel drive section, riprap apron pipe outlet detail, a second riprap apron pipe outlet detail and the hay bale barrier. It also lists the erosion and sediment control practices, and seeding mixture and schedule.

The Project Narrative is as follows:

This project is located at Parkers Boathouse on 86 Emery Mills Road in Shapleigh, Maine. The lot is known as Map 3, Lot 16A and 16A01 on the Town of Shapleigh Tax Map system. This site is currently utilized as a boat storage facility. The intent of this project is to add a new 104' x 126' boat storage building. The new building will be positioned over existing exterior boat storage and will require minimal impact to existing vegetation and wildlife habitats.

We have confirmed via the Maine Beginning With Habitats Map 2 (Plant and Animal Habitat overlay) that this project is located outside any substantial wildlife habitats. The property is not located in a flood zone based on the FEMA Flood Insurance Rate Map (FIRM) community-panel number 2301980015B.

The total area of land impacted by this project will be approximately 1 acre. This includes the new gravel drive, drainage facilities and graded areas. A drainage study has been performed to ensure the site can handle a 50 year storm event with no adverse impacts on abutting properties.

The subject lot is unique in that it consists of several parcels that have been merged over the years. Using information on file at the York County Registry of Deeds and sketches prepared by Middle Branch Surveyors, a compiled lot area has been determined for the area in question.

For the purpose of determining the proposed lot coverage, it was determined that the portion of the lot that could be classified as a "flag lot" would be removed from the usable lot area. This consists of the 100' wide section and the connected land to the north. The portion of the lot that directly abuts Emery Mills Road and is the location of the existing development has been assumed to be the usable area.

Using this methodology, it has been conservatively determined that the proposed development will result in a lot coverage of 14.3%. This is well below the maximum allowable 20% coverage. See the attached sketch for coverage determination.

The proposed development meets all applicable standards of a conditional use permit. A checklist has been provided indicating how each standard has been met. We have also included supplemental information as part of this application.

Attachments in the application package include:

- Abutters List
- Tax Map
- USGS Map
- Flood Map

- Web Soil Survey Map
- Beginning With Habitats Map
- Proposed Site Plan
- Erosion Control Plan
- Drainage Plans
- Sketch for lot coverage determination

The Detailed Description of the Project is as follows: This project includes the addition of a 104 FT by 126 FT Boat Storage Facility. There will be no additional water or sewer line connections as part of this project.

This evening, provided was an 8 ½ x 11 updated copy of the site plan which included a notation that there would be no boat storage within 10 feet of the storage building, and an email from Mr. Aleva to CEO Demers, dated 5/28/2019, which read in part as follows:

Mike,

I spoke with the Fire Chief yesterday and we discussed some additional information that will be placed on the plans.

He still does not have any issues with the project. We will add this information to the plans as well.

- We will add a Knox box at the gate location, for access if needed. A pathway will be left open to the proposed building.
- No boats or trailer will be parked directly adjacent to the perimeter of the building. The plans will indicate a minimum of 10 feet clear space around the building.
- The access to the building will be kept open behind the store toward the new storage building.
- Man doors will be placed in the storage building for access in the event of an emergency.

No changes to access for the driveway. All public access will be via the existing driveway.

Roger A. asked Mr. Aleva to once again state their intentions for the record. Mr. Aleva stated that he was an engineer from Civil Consultants. He was representing the applicant for the proposed construction of a boat storage building on the property. He stated they had a site visit earlier in the evening, he believed even with the rain the board could see what was going to take place. He said the building will hold 80 to 100 boats, and there will be clear access around the building for safety, he noted the areas on the plan. He stated the Fire Chief asked for access through the gate, in an area that is typically closed. He said it was a metal building, no lights on the exterior, but there will be power for lights on the interior. He asked if there were any questions?

Madge B. asked where the trailers would be parked? Madge said she understood he knows they cannot be against the building but she was curious where they would go. Jill Richards told Mr. Aleva that the majority of the boats do not have trailers. He said they would go pick them up and put them into the building. He noted that now there are a lot of pontoon boats on foam blocks, so those will be put into the building. He said there was room to store some trailers on site, and there was also room inside the building to store some boats on trailers. He showed, using the plan, the area where they wanted to have

everything centralized to make the area look a lot cleaner, and he noted that now they won't have to shrink wrap boats. Madge said the last time this project was discussed there was concern about a lot of traffic backing the trailers up, because of the slope, there are areas that may not be good for traffic. Mr. Aleva said that it should be said that when the trailers are placed on the lot, it is by the staff of Parker's, not by you or I, and it is their equipment. He said you bring your boat in and they take it and place it where it needs to go. Madge said, "OK". Ann H. said that they use small equipment like little tractors, not vehicles. Ms. Richards agreed that they use small tractors.

Mr. William Paladino asked to speak. He said that he lived directly across the street, and he said he wasn't sure if there were other meetings held with respect to this. Madge B. said there was a public hearing earlier. Mr. Paladino said the last time they were before the board, he was concerned with runoff, as there is a significant amount of water that comes off the property. He stated that he just spent a lot of money trying to stop the stormwater problem on his property and wanted to be sure that a stormwater study had been done. He asked if there was a water retention area? He was concerned that it might be too close to Route 109. Roger A. and Madge both said that they had that information. He asked if the area would be paved or was it staying as it is. Mr. Aleva stated it was staying the way it is. Mr. Palladino said, "Ok". Madge agreed, they were not paving.

Mr. Aleva stated that there was a stormwater report that showed how they would reduce the flow of stormwater. They would be using a retention pond to capture the flow to slow down the water before it leaves the site. He said it wasn't on the road, it is upslope to capture it.

Mr. Paladino asked if it was going to go slowly, so it won't wash over 109? Mr. Aleva said it would not go over 109, but go into the culvert that goes under 109.

Roger A. began review of the basic performance standards.

- 105-21 – Traffic. *Roger A. stated the access is safe, site distances can be met in both directions. Roger stated that the drop-off is in the same location, so there is no change there. He also noted that the fire department would have access to the property, both from the existing entrance and through the gated access.***
- 105-22 – Noise. *Roger A. stated there is a limited amount of noise generated by this activity. Once the building is completed there will be no change to the noise generated on site.***
- 105-23 – Dust, fumes, vapors and gases. *Roger A. stated there is no dust, fumes, vapors or gases generated by this activity.***
- 105-24 – Odors. *Roger A. stated there would be no offensive odors produced by this activity.***
- 105-25 – Glare. *Roger A. stated there would be no lighting added to the outside of the new structure, so glare is not an issue.***
- 105-26 – Stormwater runoff. *Roger A. stated that a stormwater runoff plan was provided by Neil J. Rapoza PLS #12169 of Civil Consultants, dated March 2019 which concluded that post-development condition is predicted to have an overall decrease in runoff compared to the pre-development condition for the 50 year storm events.***
- 105-27 – Erosion control. *Roger A. stated that erosion control was addressed in the Proposed Construction Details, Sheet L2, drafted by Geoffrey R. Aleva of Civil Consultants, PLS #9679, dated 5/7/2019.***

- 105-28 – Setbacks and screening. **Roger A. stated there are no changes being made to setbacks and screening from what exists today.**
- 105-29 – Explosive materials. **Roger A. stated there would be no explosive materials, batteries will be disconnected, and gasoline will be removed.**
- 105-30 – Water quality. **Roger A. stated there is no outside storage of chemicals.**
- 105-31 – Preservation of landscape; landscaping of parking and storage areas. **Roger A. stated additional landscaping would not add to this location, the building will be at least 40 feet above State Route 109, so adding trees would not be a benefit. He added that the stormwater drainage system is in front of the building, along State Route 109, therefore nothing will be added there other than what is on the plan to direct stormwater.**  
*Board members asked how much room there would be around the building for fire access. Mr. Aleve stated that there would be approximately 10 feet. All board members agreed additional screening would not work in this location, and that is why the board changed this requirement to 'may' instead of 'shall' because it doesn't always work. Also, the look of the landscape won't change by not adding new vegetation, because there isn't any there now.*
- 105-32 – Relation of proposed building to the environment. **Roger A. stated the building fits in well with the existing buildings on site.**
- 105-33 – Refuse disposal. **Roger A. stated that refuse disposal will be as it is now, there is a dumpster, and it was noted there will be less refuse because there won't be shrink wrap disposal required.**
- 105-34 – Access control on Routes 109 and 11. **Roger A. stated there is existing access on Route 109 that will continue to be utilized.**
- 105-39 – Earth removal and filling for activities other than mineral exploration and extraction. **Roger A. stated that there is very little earth moving to be done with this project, most of the earth moving has already taken place.**

**Roger A. then reviewed §105-73.G 'Standards applicable to conditional uses' and made findings of fact.**

*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. **Roger A. stated, it will not.**
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. **Roger A. stated this is not applicable.**
- 3) The use is consistent with the Comprehensive Plan. **Roger A. stated it is, the Comp Plan wants businesses along Route 109.**
- 4) Traffic access to the site is safe. **Roger A. stated the existing location has been previously approved and site distances can be met in both direction.**
- 5) The site design is in conformance with all municipal flood hazard protection regulations. **Roger A. stated it is, this location is not in a flood zone as recognized by FEMA for the Town of Shapleigh.**

- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. **Roger A. stated this is not applicable for this application.**
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. **Roger A. stated that there is none generated by this activity.**
- 8) A stormwater drainage system capable of handling fifty-year storm without adverse impact on adjacent properties has been designed. **Roger A. stated a stormwater runoff plan was provided by Neil J. Rapoza PLS #12169 of Civil Consultants, dated March 2019.**
- 9) Adequate provisions to control soil erosion and sedimentation have been made. **Roger A. stated erosion control was addressed in the Proposed Construction Details, Sheet L2, drafted by Geoffrey R. Aleva of Civil Consultants, PLS #9679, dated 5/7/2019.**
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. **Roger A. stated there was, and the board had an email stating the conditions requested by the Fire Chief, and these conditions will be met.**
- 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. **Roger A. stated everything will remain as it is today, nothing additional is being done.**
- 12) All performance standards in this chapter applicable to the proposed use will be met. **Roger A. stated they shall with one condition.**

**Roger A. stated the condition of approval is:**

- 1) The Fire Department requests in the email from Geoffrey Aleva to Mike Demers, dated 5/28/2019, shall be adhered to, the requests are as follows:
  - Add a Knox box at the gate location, for access if needed. A pathway will be left open to the proposed building.
  - No boats or trailer will be parked directly adjacent to the perimeter of the building. The plans will indicate a minimum of 10 feet clear space around the building.
  - The access to the building will be kept open behind the store toward the new storage building.
  - Man doors will be placed in the storage building for access in the event of an emergency.

**Madge B. moved for approval for the addition of a 104' x 126' Boat Storage Building to be located on Map 3, Lot 16A, per the plans provided, with the stated condition. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

Nothing further was discussed.

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**The Findings of Fact**

1. The owner of Shapleigh Tax Map 3, Lot 16A (4 Camp Road), is Chief Realty, LLC, mailing address of 86 Emery Mills Road, Shapleigh, Maine 04076.
2. The property is located in the General Purpose District and according to the assessor contains 8.17 acres.
3. The applicant is before the board for an amendment to a Conditional Use Permit for the addition of a 104' x 126' Boat Storage Building.
4. Received was a copy of the tax map depicting Map 3, Lot 16A in a highlighted fashion; a copy of the USGS Map for the site location; a copy of the Flood Insurance Map for the site location (showing it is not located in the flood zone); Beginning With Habitats Map (which did not depict a rare plant or animal habitat); Lot Coverage Determination for Parker's Boathouse, showing both existing and proposed as 14.3%.
5. Received was a copy of an aerial view of the location depicting the hydrologic soil group and a description of what the soil group means with respect to water infiltration when soils are not protected by vegetation, are thoroughly wet, and received precipitation from long-duration storms. This location appears to have predominantly LyC (70.7%) and LyE (14.6%) soils which have a Class D rating. This rating is as follows: Soils having a very slow infiltration rate (high runoff potential) when thoroughly wet. These consist chiefly of clays that have a high shrink-swell potential, soils that have a high water table, soils that have a clay pan or clay layer at or near the surface, and soils that are shallow over nearly impervious material. These soils have a very slow rate of water transmission.
6. Received was a Stormwater Management Plan drafted by Neil Rapoza, PE #12169 of Civil Consultants, dated 5/7/2019. Both a Pre-Drainage Plan and Post-Drainage Plan was drafted, along with a detailed narrative for the proposed project. The conclusion of the report is as follows: Conclusion: Through the use of the modified detention facilities and structures to mitigate stormwater flow from the site, the runoff calculated for the post-development condition is predicted to have an overall decrease in runoff compared to the pre-development condition for the 50 year storm events analyzed. The analysis is somewhat conservative as it did not incorporate stormwater infiltration into the onsite soils. It is our opinion that the proposed site modification will not result in an impact on downstream waterways or abutters with respect to stormwater quantity and quality.
7. Received was a full size site plan and proposed construction details were drafted by Geoffrey R. Alewa, PE #9679, dated 5/7/2019. The site plan depicts the existing three buildings, the existing paved area, gravel drive to be improved, the location of rip rap and retention pond to be added, silt fence or filter berm location, drainage flow and the location of the proposed structure. The proposed construction details depict the silt fence detail, filter berm detail, board crested weir, typical gravel drive section, riprap apron pipe outlet detail, a second riprap apron pipe outlet detail and the hay bale barrier. It also lists the erosion and sediment control practices, and seeding mixture and schedule.

8. Received was an 8 ½ x 11 updated copy of the site plan which included a notation that there would be no boat or trailer storage within 10 feet of the storage building, as well as these additional provisions requested by the Fire Chief as follows: Add a Knox box at the gate location, for access if needed; A pathway will be left open to the proposed building; The access to the building will be kept open behind the store toward the new storage building; Man doors will be placed in the storage building for access in the event of an emergency.
9. The Detailed Description of the Project is as follows: This project includes the addition of a 104 FT by 126 FT Boat Storage Facility. There will be no additional water or sewer line connections as part of this project.
10. The board reviewed the Basic Performance Standards and the board concurred the application met all the standards imposed.
11. The board reviewed Zoning Ordinance §105-73, Section G, ‘Standards applicable to conditional uses’ and concurred the application and information as presented met the performance standards in this chapter, with one condition.
12. A notice was mailed to all abutters within 500 feet of the property on May 15, 2019. Meetings were held on Tuesday, May 14, 2019 and May 28, 2019. A site inspection was also done on May 28, 2019, prior to the meeting, and a Public Hearing was held at 7:00 p.m. on May 28, 2019.
13. The Planning unanimously agreed to approve the Conditional Use Permit for the addition of a 104’ x 126’ Boat Storage Building to be located on Map 3, Lot 16A, per the plans provided, with one condition.
14. **The condition of the approval is as follows:**

**The Fire Department requests in the email from Geoffrey Aleva to Mike Demers, dated 5/28/2019, shall be adhered to, the requests are as follows:**

- **Add a Knox box at the gate location, for access if needed. A pathway will be left open to the proposed building.**
- **No boats or trailer will be parked directly adjacent to the perimeter of the building. The plans will indicate a minimum of 10 feet clear space around the building.**
- **The access to the building will be kept open behind the store toward the new storage building.**
- **Man doors will be placed in the storage building for access in the event of an emergency.**

**Motion:**

After careful consideration and a review of all material presented to the Board, including the review of the Zoning Ordinances ‘Basic Performance Standards’, and §105-73, Section G, ‘Standards applicable to Conditional uses’, a motion was made on Tuesday, May 28, 2019 on the Amendment to a Conditional



Use Permit for the addition of a 104' x 126' Boat Storage Building to be located on Map 3, Lot 16A, per the plans provided, with one condition.

**Vote:**

By a unanimous vote of 5 – 0, the motion to approve the Amendment to a Conditional Use Permit for the addition of a 104' x 126' Boat Storage Building to be located on Map 3, Lot 16A, per the plans provided, with one condition, was accepted.

**Decision:**

**The Amendment to a Conditional Use Permit for the addition of a 104' x 126' Boat Storage Building to be located on Map 3, Lot 16A, per the plans provided, with one condition, was approved.**

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**Amendment to a Subdivision – Add 4 Additional Lots to the Dezan 3-Lot Subdivision – Map 7, Lot 41 (Norton Ridge & Owl's Nest Road) – Joseph Stanley, Surveyor/Representative; Lee M. and Gail M. Dezan, Property Owners/Applicant**

Mr. Stanley was present for the review of the application, along with Mr. Dezan.

**The application for an Amendment to a Subdivision contained the following information:**

Name of Applicant: Lee Dezan  
Name of Property Owner: Lee M. & Gail M. Dezan  
Mailing Address: 35 North Ridge Road, Shapleigh, Maine 04076

Name of Authorized Agent  
Land Surveyor/Plan Prep: LinePro Land Surveying, LLC  
Joseph Stanley, PLS #2453  
455 Main Street, Springvale, Maine 04083  
207.636.4555

**Land Information:**

Location of Property: YCRD Book 11543, Page 57  
Shapleigh Tax Map 7, Lot 41  
Norton Ridge & Owl's Nest Roads  
Current Zoning: General Purpose District  
No part of the property lies within 250 feet of the high-water mark of a pond or river.  
Acreage to be developed: 10.79 acres  
Number of Lots to be Created: 4 Lots  
Current Deed/ Subdivision  
Restrictions: No restrictions proposed at this time. Current Deed 11543/57 (existing subdivision) a copy of the deed for this lot was provided to board members.

Water Bodies on Parcel: Yes  
Flood Hazard Zone: No

**General Information:**

Current No. of Lots: 4  
Existing in Development: Road  
Method of Water Supply: Individual Wells  
Method of Sewage Disposal: Individual Septic Tanks  
Method of Fire Protection Proposed: Shapleigh Fire Dept., along with nearby hydrants.

**Waiver Requests:**

Section 89-29A – Underground Utilities  
Section 89-30A – Stone Monuments  
Section 89-30D – Stormwater Drainage Plan  
Section 89-36M – Sidewalks  
Section 89-36 thru 37, & 39 thru 41 – Article XI – Street and Storm Drainage Design & Construction Standards

Also provided was a copy of the soils map for the area being reviewed, which showed the area was primarily Skerry fine sandy loam, with 0 to 8 % slopes and secondarily Brayton and Westbury very stony find sandy loams, 0 to 8% slopes. Approximately 28% of the property has an 8 to 15% slope. In addition, a map of the Shapleigh aquifers was provided, and on this map there was an indication of a brook that ran through the northeast corner of the proposed Lot 3.

Mr. Stanley provided a survey plan entitled ‘Plan Showing Division of Lot 3 – Dezan Subdivision – Revising Plan Book 268, Page 7, Shapleigh Tax Map 7, Lot 41, Owned by Lee F. Dezan, 35 Norton Ridge Road, Shapleigh, Maine 04076, Of Property Located on Norton Ridge Road & Owls Nest Road in Shapleigh, Maine’. The plan is dated March 21, 2019, drawn by Joseph L. Stanley, PLS #2453 of LinePro Land Surveying, LLC, of 455 Main Street, Springvale, Maine 04083. The plan depicts 4 lots; Lot #1 being 1.87 Acres and accessed by both Norton Ridge Road and Owls Nest Road, Lot #2 being 1.84 Acres and accessed by Norton Ridge Road; Lot #3 being 5.65 Acres and accessed by Owls Nest Road; and Lot #4 being 1.88 Acres and accessed by Norton Ridge Road. Lot #3 depicts Norton Brook and the delineation of where the Stream Protection District is located. Lots #2 and #4 have existing structures located on them, and Lot #4 has an existing septic system, whereas Lot’s #1, #2, and #3, show test pit locations. The location of the boundary lines for each lot is indicated, along with abutter’s and the location of both Norton Ridge and Owls Nest Road. Also depicted is the location of the well on Lot #4, Existing Utility Poles, Utility Lines, Stone Wall, Right-of-Way Lines, Wetland Edge, and Tree Line.

**Addition Plan information:**

- Plan Referenced Dezan Subdivision dated January 25, 2002, prepared by Middle Branch Professional Land Surveyors and recorded as Plan Book 268, Lot 7 at the YCRD.
- The topographic contour lines depicted on the plan were interpolated from the USGS Topographic Quadrangle “Mousam Lake”, dated 1983.

Roger A. began by asking Mr. Stanley to let the board know what they intended to do. Mr. Stanley, using a copy of the plan he provided to members, began by stating that they were presenting an amendment to the original 3-lot plan for the Dezan subdivision which was approved in 2002. Mr. Stanley was not sure if the board was going to look at this as a minor or major subdivision. He stated that he had seen subsequent divisions that were done more than five years after the original looked at as a minor, but he also knew it was likely Roger would want to review it as a major, because now the entire lot would be greater than 4 lots. He said he did not have an issue with it either way, he noted that he has seen different towns review it differently. Mr. Stanley stated that even different attorneys have viewed it differently. Roger stated that he believed it was now a major subdivision and would be reviewing it as such.

Mr. Stanley showed the board on the plan the original 3-lot subdivision and noted that Lot 3 on that subdivision plan was what was now being divided into four lots. He stated that Mr. Dezan presently had a home on what is being called Lot #4 and he had a garage on the proposed Lot #2.

Mr. Stanley stated that Norton Brook runs along the top part of Lot #3 and, therefore, there is a stream protection delineation noted on the plan. He showed the board the existing tree line and where the Dezan's were envisioning putting a home. He said the spot was away from the brook. He stated that Ken Gardner mapped out the wetlands and did the suitability test for the three proposed lots that didn't have an existing septic.

Mr. Stanley thought the plan was straight forward. He said he added some of the notes that were on the existing approval from 2002, and they asked for the standard waivers, such as monuments, sidewalks, and also the street storm drainage design, as that generally applies to a new road and they will be using the existing roads. He said that he would like to discuss utilities with the board, noting that lots #2 and #4 have existing overhead power and utility poles. He said he hadn't discussed this with Mr. Dezan much. Mr. Dezan stated that for Lot #3 there was a utility pole within 140 feet of where the new home would be. He said he would like to minimize the cost for utilities. Steve F. asked if he was saying that the pole he would use for Lot #3 would be on the other side of Owls Nest Road? Mr. Dezan said, "Yes". Note: The pole is noted on the plan provided.

Roger A. asked about fire protection. Mr. Stanley stated that within 3/10ths of a mile there was a significant hydrant. He thought it was sufficient for the fire department to access it for fire protection. Roger asked if it was not sufficient, were they going to use sprinklers, or would they put in a tank? Mr. Dezan asked if it was required? Roger said that it was required to have fire protection. He said if the fire department wants to ask for additional fire protection, because it is a major subdivision, such as a water holding tank or sprinkling the home, it would be required. Mr. Stanley stated that if it is decided that the hydrant isn't sufficient, they would need to discuss it. Mr. Dezan asked for further explanation. Roger said that if the Fire Department feels the pond where the hydrant is, is not sufficient for fire protection for two additional lots, then you will need to have either a tank or a sprinkler system. Roger asked Mr. Dezan what he would like to do in that case. Madge B. noted they did not have to answer this evening.

Ann H. asked if the board had to determine if this was a major or minor subdivision. Steve F. said he was looking at it as if he bought this piece of land from Lee yesterday, and he came in here to divide it, then it would be a four lot subdivision. He asked if it was a major because Mr. Dezan still owned it? Roger A. said any division of land from an original lot, is going to trigger subdivision, this goes from three lots to 4 additional. Ann said this would change how the board goes forward, correct. Roger said it would not

change much because he was not putting in a road. Steve agreed, that other than fee schedule it doesn't change a lot, and he didn't believe it changed anything with respect to fire protection either. Roger said that minor can be reviewed just like a major subdivision. Steve asked if it made sense to have all the existing houses on the road without sprinklers, now these new houses would be required to have sprinklers. Roger said it is because it is reviewed in subdivision, not as an individual lot. Steve thinks it should be up to the applicant. He said it made sense with a cluster subdivision because you have houses that are close together, one house burning could catch another on fire, so he could understand having a sprinkler system. Roger said he had an issue with sprinkler systems because if they are not maintained they won't work. He said the board can't force a homeowner to maintain them and the Fire Department doesn't maintain them, so it's a great idea new, but down the road it may not work. Mr. Stanley said he would speak with the Fire Chief and see what, if anything, he would like, and he will try to get his opinion in writing.

Roger A. said the only other thing he saw that was missing, was the board did not received the test pit information. Mr. Stanley said there was one on each lot, he must have just forgotten to provide the information.

Roger A. said with respect to topography, he would just stay with the USGS. Mr. Stanley said the contours on this plan were digitized from the previously approved plan.

Roger A. said he did not believe the additional lots would change the storm drainage design from the original approved plan. He said the overall area hasn't changed. Mr. Stanley agreed, stating there are no major modifications being done. He said two lots have already been built on, we are just adding two building sites.

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

**Roger A. stated a site inspection would be done on Tuesday, June 11<sup>th</sup> at 6:30 p.m. A public hearing will be held at 7:00 p.m. that evening. A notice to abutters will be mailed as well.**

***Roger A. stated the board needed the information for the test pits and a letter from the Fire Chief regarding fire protection.***

Nothing further was discussed.

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### **Growth Permits – There are Growth Permits Available**

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

**NOTE: The summer hours are in effect thru October 31st, the meetings now begin at 7:30 p.m. and any scheduled public hearing begins at 7:00 p.m.**

The next meeting will be held **Tuesday, June 11, 2019** at 7:30 p.m.

The Planning Board meets the 2<sup>nd</sup> and 4<sup>th</sup> Tuesday of each month unless it falls on a holiday or Election Day. Should there be a cancellation due to a storm event, holiday or Election, the meeting will typically be held the following Wednesday, also at 7:30 p.m. Please contact the Land Use Secretary if there is a question in scheduling, 207-636-2844, x404.

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

# ***Shapleigh Planning Board***

## ***Minutes***

**Tuesday, June 11, 2019**

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

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

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**The Public Hearing began at 7:15 p.m.**

**Amendment to a Subdivision – Add Additional Lots to the Dezan 3-Lot Subdivision for a Total of Six Lots– Map 7, Lot 41 (Norton Ridge & Owls Nest Road) – Joseph Stanley, Surveyor/Representative; Lee M. and Gail M. Dezan, Property Owners/Applicant**

Mr. Stanley was present for the review of the application, along with Mr. Dezan.

Roger A. opened the public hearing by asking Mr. Stanley to let the Planning Board know what they wanted to do. Mr. Stanley stated that they were proposing a subdivision on the intersection of Norton Ridge and Owls Nest Road for Lee Dezan. He said it was a modification to an existing 3 lot subdivision. Madge B. stated that it was confusing as to how many lots there were and are being proposed. She said at the site visit it became a little more clear, but said she had trouble with determining what was the old subdivision and what is being proposed. She asked if he could point it out using the plan presented, what exactly were the new lots and the existing. Mr. Stanley showed the board how they were dividing the 3<sup>rd</sup> lot of the existing subdivision into four lots, creating a total of six lots. After his demonstration it was clear to all those in attendance why this was a four lot division and how the total of six lots was determined.

Madge B. stated that the board was dealing with a 4-lot subdivision now, but Roger A. is calling it a major subdivision because it will be a total of six lots when completed. Roger said that it was a modification to the original minor subdivision, and with adding the additional lots, it created a major. Note: A major subdivision is 5 or more lots.

Mr. Stanley depicted on the current subdivision plan the existing home of Mr. Dezan, the lot where his shop is located, and the lot that Mr. Dezan wanted to build a new home. There would also be an additional house lot for the future. He said that Kenneth Gardner of JRK Soils Search, Inc. came out and mapped the wetlands associated with Norton Brook. He said the 75 foot stream protection around the brook is depicted, including both branches. Mr. Gardner also performed soil test pits. Mr. Stanley had the test pit information for the board, and noted that all the soil tests passed on the properties. He said the area was fairly evenly sloped toward the stream, and the area where Mr. Dezan wanted to build was on the high side of Lot 3. He stated that all the lots created were around the minimum lot size, with Lot 3 being the remaining amount of land.

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

The public hearing was closed at 7:20 p.m.

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**The minutes from Tuesday, May 28, 2019 were accepted as read.**

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**Best Possible Location – Repair Sills / New Foundation – Map 20, Lot 7 (104 Shapleigh Corner Road) – Gallo Construction, Applicant; Brant Duncan, Property Owner**

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

Previously provided along with the application were the following:

- 1) Email from Brant Duncan to Code Enforcement Officer Mike Demers, dated April 3, 2019, stating that Mike Gallo of Gallo Construction could represent him during the permitting process with the Town of Shapleigh.
- 2) Subsurface Wastewater Disposal System Application for a 2 bedroom house, dated 4/11/96, designed by Kenneth Gardner, SE #73.
- 3) Plan Survey drafted by Dana Libby, PLS #1350, dated 3/18/19, entitled ‘Plan Showing A Boundary Survey for Brant J. & Marianne Duncan, 100 Commonwealth Road, Lynn, MA 01904, Property Located on Shapleigh Corner Road (State Route 11) & Mousam Lake in Shapleigh, Maine’. This plan depicts 4 existing structures on site, along with a set of stairs to the water. The structures depicted are entitled House – height 12.0’; House – height 19.5’, Sunroom & Shed.

In addition, the survey plan depicts the structure that will have the sills replaced and a new foundation, as being 63.24 feet to the high water mark at its closest point, 6.21 feet to the lot line of Map 20, Lot 8 at the closest point; and 8.11 feet from the adjacent structure on this lot.

Detailed Description of Project on the Application states: Raise House 3’ – Repair Sills, Lower House on New 8’ High Poured Concrete Foundation w/Egress Windows.

During the meeting on May 14, 2019, the application was tabled in order for Mr. Gallo to provide the board with a revegetation plan. This evening Mr. Gallo provided the board with a letter dated June 10, 2019 from Kelly Tarbox of Springvale Nurseries in Springvale, Maine, which provided information regarding the proposed revegetation plan. The letter in part read as follows:

Three White Pine – two of 30” diameter and one of 24” diameter are to be removed. This requires that eight trees of two inch DBH (designated breast height) diameter be planted in the general area. Two varieties of native species are required. These will be five Armstrong Maple (*Acer rubrum* ‘Armstrong’) and three White Birch, single stem, (*Betula papyrifera*). The general replanting area is approximately 25’ x 50’. Three of the trees will be planted in the approximate area of the trees removed.

You have indicated that the schedule called for these to be planted in mid to late October, but trees located farthest away from the work area could be installed earlier. This is recommended.

Attached to the letter from Springvale Nurseries was a diagram of the existing structures, the area to be replanted, and the location of the three trees to be removed, in relation to the lot lines and Mousam Lake.

Roger A. began by stating the board received the replanting plan from Mr. Gallo this evening. Madge B. asked if it complied with the ordinance. She said it stated they would be planting trees 2 inches in diameter. She asked if they had to be bigger than 2 inches? Roger stated that that was not an issue, but they did have to be 6 feet in height. He said that they could have a tree that is 2 inches in diameter, as long as it was 6 feet in height.

Madge B. didn't think they needed 8 trees. Roger A. said, that was just what they were proposing. Madge said, that three of them would be one species and three another. Madge was concerned that the revegetation plan did not note that the trees would be 6 feet in height. Roger said the board would make it a condition of approval. Madge said that would be fine, she didn't think it appeared that Kelly Tarbox had read Shapleigh's ordinance.

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

Roger A. stated that the application had been gone over during the last review. Roger read §105-4.D(7)(b)[1][a], it read as follows: *Trees, woody vegetation and ground cover. Trees removed in order to relocate a structure must be replanted with at least one native tree, six feet in height, measured from the base of the trunk to the top of the tree, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed. Trees shall be planted greater than five feet from side lot lines, and shall create a well-distributed stand of trees.*

Roger A. stated that the revegetation plan states that the trees will be 2 inches in diameter, but they also have to be at least 6 feet in height. Mr. Gallo said that Ms. Tarbox picked the trees she did, because they would meet the criteria. She said they decided against pine trees because after visiting the lot, they noted there were too many pine already.

Roger A. stated the conditions of approval were as follows:

- 1) **Trees replanted, per the revegetation plan, shall be a minimum of 6 feet in height, per Shapleigh Zoning Ordinance 105-4.D(7)(b)[1][a].**
- 2) **Best Management Practices shall be in place until the project is completed and the ground is stabilized.**
- 3) **The contractor doing the work must be licensed by the Dept. of Environmental Protection in Erosion Control Measures.**
- 4) **The project shall begin by September 2, 2019 and be completed by December 25, 2019. Revegetation shall be completed by the end of November.**
- 5) **Per Shapleigh Zoning Ordinance §105-4.D7(c), the approved plan shall be confirmed in writing by a licensed surveyor that the placement of the structure is correct per the specifications approved by the Planning Board.**



**Madge B. moved for approval of the Best Possible Location to repair the sills and put in a new foundation under the existing structure on Map 20, Lot 7, leaving the structure in the same location, per the plans presented, with the five noted conditions. Steve F. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

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**The Findings of Fact**

1. The owner of Shapleigh Tax Map 20, Lot 7 (104 Shapleigh Corner Road), is Brant J. Duncan of 100 Commonwealth Road, Lynn, MA 01902.
2. The property is located in the Shoreland District and according to the assessor contains 0.46 acres.
3. The applicant is before the board for a Best Possible Location to repair sills and place a new foundation under the existing structure.
4. Received was a survey drafted by Dana Libby, PLS #1350, dated 3/18/19, entitled ‘Plan Showing A Boundary Survey for Brant J. & Marianne Duncan, 100 Commonwealth Road, Lynn, MA 01904, Property Located on Shapleigh Corner Road (State Route 11) & Mousam Lake in Shapleigh, Maine’. This plan depicts 4 existing structures on site, along with a set of stairs to the water. The structures depicted are entitled House – height 12.0’; House – height 19.5’, Sunroom & Shed. The survey plan also depicts the structure that will have the sills replaced and a new foundation added, as being 63.24 feet to the high water mark at its closest point, 6.21 feet to the lot line of Map 20, Lot 8 at the closest point; and 8.11 feet from the adjacent structure on this lot.
5. Received was a copy of the Subsurface Wastewater Disposal System Application for a 2 bedroom house, dated 4/11/96, designed by Kenneth Gardner, SE #73.
6. Received was a replanting plan from Kelly Tarbox of Springvale Nurseries in Sanford, Maine, which provided information regarding the proposed revegetation plan. The plan is as follows:

Three White Pine – two of 30” diameter and one of 24” diameter are to be removed. This requires that eight trees of two inch DBH (designated breast height) diameter be planted in the general area. Two varieties of native species are required. These will be five Armstrong Maple (*Acer rubrum* ‘Armstrong’) and three White Birch, single stem, (*Betula papyrifera*). The general replanting area is approximately 25’ x 50’. Three of the trees will be planted in the approximate area of the trees removed. The schedule called for these to be planted in mid to late October, but trees located farthest away from the work area could be installed earlier. This is recommended.

A diagram was also provided by Kelly Tarbox which depicted the existing structures, the area to be replanted, and the location of the three trees to be removed, in relation to the lot lines and Mousam Lake.

7. Detailed Description of Project on the Application states: Raise House 3' – Repair Sills, Lower House on New 8' High Poured Concrete Foundation w/Egress Windows.
8. The board reviewed Zoning Ordinance §105-4, 'Nonconformance', and concurred the application and information as presented met the standards applicable in this chapter.
9. A notice was mailed to all abutters within 500 feet of the property on April 26, 2019. Meetings were held on Tuesday, April 23, 2019, Tuesday May 14, 2019, and Tuesday, June 11, 2019. A site inspection was done on May 14, 2019, prior to the meeting.
10. The Planning Board unanimously agreed to approve the Best Possible Location to repair the sills and put in a new foundation under the existing structure on Map 20, Lot 7, leaving the structure in the same location per the plans provided, with 5 conditions.
11. **The conditions of the approval are as follows:**
  - 1) **Trees replanted, per the revegetation plan, shall be a minimum of 6 feet in height, per Shapleigh Zoning Ordinance 105-4.D(7)(b)[1][a].**
  - 2) **Best Management Practices shall be in place until the project is completed and the ground is stabilized.**
  - 3) **The contractor doing the work must be licensed by the Dept. of Environmental Protection in Erosion Control Measures.**
  - 4) **The project shall begin by September 2, 2019 and be completed by December 25, 2019. Revegetation shall be completed by the end of November.**
  - 5) **Per Shapleigh Zoning Ordinance §105-4.D7(c), the approved plan shall be confirmed in writing by a licensed surveyor that the placement of the structure is correct per the specifications approved by the Planning Board.**

**Motion:**

After careful consideration and a review of all material presented to the Board, including the review of Zoning Ordinance §105-4, 'Nonconformance', a motion was made to approve the Best Possible Location to repair the sills and put in a new foundation under the existing structure on Map 20, Lot 7, leaving the structure in the same location, with five conditions.

**Vote:**

By a unanimous vote of 5 – 0, the motion to approve the Best Possible Location to repair the sills and put in a new foundation under the existing structure on Map 20, Lot 7, leaving the structure in the same location, with five conditions was accepted.

**Decision:**

The Best Possible Location application to repair the sills and put in a new foundation under the existing structure on Map 20, Lot 7, leaving the structure in the same location, per the plans provided, with five conditions was approved.

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**Amendment to a Subdivision – Add Additional Lots to the Dezan 3-Lot Subdivision for a Total of Six Lots– Map 7, Lot 41 (Norton Ridge & Owls Nest Road) – Joseph Stanley, Surveyor/Representative; Lee M. and Gail M. Dezan, Property Owners/Applicant**

Mr. Stanley was present for the review of the application, along with Mr. Dezan.

**The application for an Amendment to a Subdivision contained the following information:**

Name of Applicant: Lee Dezan  
Name of Property Owner: Lee M. & Gail M. Dezan  
Mailing Address: 35 Norton Ridge Road, Shapleigh, Maine 04076

Name of Authorized Agent  
Land Surveyor/Plan Prep: LinePro Land Surveying, LLC  
Joseph Stanley, PLS #2453  
455 Main Street, Springvale, Maine 04083  
207.636.4555

**Land Information:**

Location of Property: YCRD Book 11543, Pages 57-59  
Shapleigh Tax Map 7, Lot 41  
Norton Ridge & Owl's Nest Roads  
Current Zoning: General Purpose District  
No part of the property lies within 250 feet of the high-water mark of a pond or river.  
Acreage to be developed: 10.79 acres  
Number of Lots to be Created: 4 Lots  
Current Deed/ Subdivision Restrictions: No restrictions proposed at this time. Current Deed 11543/57 (existing subdivision) a copy of the deed for this lot was provided to board members.  
Water Bodies on Parcel: Yes  
Flood Hazard Zone: No

**General Information:**

Current No. of Lots: 3  
Existing in Development: Road  
Method of Water Supply: Individual Wells

Method of Sewage

Disposal: Individual Septic Tanks

Method of Fire

Protection Proposed: Shapleigh Fire Dept., along with nearby hydrants.

**Waiver Requests:**

Section 89-29A – Underground Utilities

Section 89-30A – Stone Monuments

Section 89-30D – Stormwater Drainage Plan

Section 89-36M – Sidewalks

Section 89-36 thru 37, & 39 thru 41 – Article XI – Street and Storm Drainage Design & Construction Standards

Also provided was a copy of the soils map for the area being reviewed, which showed the area was primarily Skerry fine sandy loam, with 0 to 8 % slopes and secondarily Brayton and Westbury very stony fine sandy loams, 0 to 8% slopes. Approximately 28% of the property has an 8 to 15% slope. In addition, a map of the Shapleigh aquifers was provided, and on this map there was an indication of a brook that ran through the northeast corner of the proposed Lot 3.

Mr. Stanley provided a survey plan entitled ‘Plan Showing Division of Lot 3 – Dezan Subdivision – Revising Plan Book 268, Page 7, Shapleigh Tax Map 7, Lot 41, Owned by Lee F. Dezan, 35 Norton Ridge Road, Shapleigh, Maine 04076, Of Property Located on Norton Ridge Road & Owls Nest Road in Shapleigh, Maine’. The plan is dated March 21, 2019, drawn by Joseph L. Stanley, PLS #2453 of LinePro Land Surveying, LLC, of 455 Main Street, Springvale, Maine 04083. The plan depicts 4 lots; Lot #1 being 1.87 Acres and accessed by both Norton Ridge Road and Owls Nest Road, Lot #2 being 1.84 Acres and accessed by Norton Ridge Road; Lot #3 being 5.65 Acres and accessed by Owls Nest Road; and Lot #4 being 1.88 Acres and accessed by Norton Ridge Road. Lot #3 depicts Norton Brook and the delineation of where the Stream Protection District is located. Lots #2 and #4 have existing structures located on them, and Lot #4 has an existing septic system, whereas Lot’s #1, #2, and #3, show test pit locations. The location of the boundary lines for each lot is indicated, along with abutter’s and the location of both Norton Ridge and Owls Nest Road. Also depicted is the location of the well on Lot #4, Existing Utility Poles, Utility Lines, Stone Wall, Right-of-Way Lines, Wetland Edge, and Tree Line.

**Additional Plan information:**

- Plan Referenced Dezan Subdivision dated January 25, 2002, prepared by Middle Branch Professional Land Surveyors and recorded as Plan Book 268, Lot 7 at the YCRD.
- The topographic contour lines depicted on the plan were interpolated from the USGS Topographic Quadrangle “Mousam Lake”, dated 1983.

This evening Mr. Stanley provided board members with the test pit information provided by Kenneth Gardner, SE 73, dated 2/20/19 for plan lots 3-1, 3-2 and 3-3. Lot 3-3 has 2 test pit locations. All test pits show the area to be suitable for a septic system. Lot 3-4 currently holds a working State approved septic system. Also provided was a revised plan, dated June 11, 2019, which changed the lot designations as follows: Lot 1, to Lot 3-1, Lot 2 to Lot 3-2, Lot 3 to Lot 3-3 and Lot 4 to Lot 3-4, to accurately coincide with the test pit information. No other changes were noted.

Roger A. asked Barbara F. if Mr. Dezan paid the final subdivision fees for a major subdivision. Barbara stated that he had.

Madge B. stated with respect to waivers, she believed the board could waive underground utilities, noting that under §89-29 'Utilities', Section A it states 'Utilities shall be installed underground except as otherwise approved by the Board'. She believed based on this, the board could waive the requirement with no issue. Roger agreed, and noted that the other two lots have overhead power now.

Mr. Stanley stated that he and Mr. Dezan met on site with Fire Chief Romano regarding the fire protection requirements, and FC Romano did not believe any additional fire protection was required for the two lots. FC Romano believed the fire pond down the road was adequate for two additional houses, and stated that if the project was considerably different, he would have a different opinion.

Mr. Stanley stated that Fire Chief Romano did not write a letter but while they met on site, FC Romano called Barbara F., thinking it was easier than writing a letter. Roger A. stated that he did say an additional house, a third house, would need to be sprinkled or have some kind of fire protection. Barbara F. agreed stating that FC Romano said nothing additional was required for two additional houses, but a third would require sprinklers. Steve F. asked if he was talking about the big lot. Barbara did not know, FC Romano only allowed for two new houses in the subdivision with nothing additional required, but a third house would trigger sprinklers. Ann H. asked if a third house triggered sprinklers, would they need a bigger water source, big enough to handle the sprinklers in that particular house. Roger said that would be up to whomever put in the sprinklers. He said if the major subdivision had come before the board as a six lot, all at one time, the fire protection requirement might be different. Madge B. thought they only expected two new houses. Roger agreed that is how it appears, one lot has the shop on it. He added that he believed what FC Romano was stating, was that if a house goes on the lot where the shop is, additional fire protection is required, such as a sprinkler.

Steve F. asked where in the ordinance does it say FC Romano gets to make that decision? Roger said it doesn't specifically say he does, but the Fire Chief says whether or not additional protection is required and the size of the system. Whether it needs a cistern or fire pond or sprinkler system. Steve F. said it says that the applicant has to demonstrate that there is adequate water supply. He had a hard time putting this decision in the hands of the Fire Chief the way the ordinance was written, he said he believed some changes may be required to the ordinance. Steve wanted to know who has the say. CEO Demers stated that sprinklers are mentioned in the ordinance but it has to do with a four-family dwelling. CEO Demers stated that dry hydrants are referred to as a recommendation by the Fire Chief to the board, but ultimately it is up to the board whether or not they accept the recommendation.

Roger A. read 89-30 'Required improvements' section (2)(c) "The subdivider shall construct ponds and dry hydrants to provide for adequate water storage for fire-fighting purposes. An easement shall be granted to the municipality granting access to the dry hydrants where necessary. Fire ponds and dry hydrants must meet the specifications of the Shapleigh Fire Chief." CEO Demers stated that this applies to major subdivisions. Roger stated, "Correct, this is a major subdivision". CEO Demers stated that Roger was correct. Roger believed this is why the board asks the opinion of the Fire Chief, what is his recommendation for fire protection in a major subdivision. He did agree with the fact that sprinklers are not feasible in a rural setting, but some type of fire protection is required. He said in the past the board has always asked the opinion of the Fire Chief, what they felt was best for the circumstance. He noted

with one subdivision, purchasing a fire hose was what was agreed upon to help mitigate the possibility of fire suppression.

CEO Demers asked if the board can impose the same criteria to a minor subdivision as a major subdivision? Madge B. and Roger A. both stated, “They can”.

Barbara F. stated that Fire Chief Romano would also allow a cistern in lieu of sprinklers. She said that he had spoken with her prior to meeting with the applicants on site and said that either sprinklers or a cistern might be required. He said he would let the developer decide what would be more cost effective. Steve F. said he worried about the maintenance of a sprinkler system. Barbara agreed and said that in the past people didn’t want to put a cistern in, which is why sprinklers were also an option. She added that FC Romano preferred cisterns. Steve said a fire pond made so much more sense from a maintenance standpoint. He said he was not confident people would make certain the sprinkler system was in good working order. The overall consensus of the board was they preferred a fire pond or cistern to a sprinkler system. The board spoke about the fact that a sprinkler system would not work without power. Madge said it only made sense on a public water system where the loss of water was not an issue.

Madge B. stated that fire ponds were put in because of the 1947 fire and the devastating losses as a result of it. She said it had nothing to do with a subdivision. She said she had a fire pond near her that had nothing to do with a subdivision, and she was happy that it was there. She wished there was money in the town budget to put in more fire ponds, and she noted the fire department maintains them and makes sure they are working. Madge thought it was better for the subdivision to have a fire pond. Mr. Stanley said in some towns he works in, the Fire Chief doesn’t like them because they do have to maintain them. Madge understood, but still felt in a town like Shapleigh it was a good idea.

Ann H. asked why underground utilities was put into the subdivision ordinance. She said there are poles and wires to most houses, so she wondered why this was requested. Roger A. said this came from Southern Maine Regional Planning Commission. Madge B. said it was a great way to have less problems with your utilities, it is much more maintenance free. Roger said he had underground himself. Ann asked if it was for aesthetic reasons? Madge thought it might also be for safety reasons. Ann asked what SMRPC had to do with it? Mr. Stanley noted that they created a subdivision ordinance and many towns adopted it, as it was easier than creating their own. He said many towns have a similar ordinance. Roger noted that Shoreland Zoning was similar in that SMRPC helped towns write the ordinance, and noted the Town of Shapleigh initially didn’t adopt the guidelines but was told by the State that it was mandatory, so SMRPC helped write the original ordinance and the Townspeople eventually voted it in.

Roger A. stated that he had no issue waiving the underground utilities requirement in this application. Steve F. noted that the board waived the requirement in the original subdivision approval in 2002. Ann H. asked Mr. Dezan if he wanted underground utilities? Mr. Dezan stated that he did not because of the expense.

Ann H. asked about stone monuments, what difference did it make whether it was a stone marker or metal pin? Mr. Stanley thought it was a SMRPC suggestion originally. He said he typically asks for this waiver. He noted that some towns like there to be stone markers at the beginning of a road, or in a major curve of the road to figure out the side line, or on an interior subdivision road. He said that was about the only time he was asked for something other than iron.

Roger A. asked how the board wanted to vote on the requirement for underground utilities?

**Madge B. made the motion to grant the waiver for the requirement under §89-29A for Underground Utilities, as there is direct access to existing utility poles and two of the lots currently have overhead utilities. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

Roger A. asked how the board wanted to vote on the requirement for Stone Monuments?

**Madge B made the motion to grant the waiver for the requirement under §89-30A for a stone monument in lieu of capped survey irons. Maggie M. 2<sup>nd</sup> the motion. . All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

Roger A. asked how the board wanted to vote on the requirement for a Stormwater Drainage Plan?

**Madge B. made the motion to grant the waiver for the requirement under §89-30D for a stormwater drainage plan as this is not applicable to this project, no streets or infrastructure is being constructed. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

Roger A. asked how the board wanted to vote on the requirement for a Fire Pond / Dry Hydrants?

**Madge B made the motion to grant the waiver for the requirement under §89-30B(2)(c) for a fire pond / dry hydrant or sprinkler system, following the recommendation of the Shapleigh Fire Chief, who stated that with the construction of two dwellings, no additional fire protection is warranted. The Fire Chief did state if a third dwelling is erected, additional fire protection will be required and must be approved by the Fire Chief and Planning Board. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

Roger A. asked how the board wanted to vote on the requirement for Sidewalks?

**Madge B. made the motion to grant the waiver for the requirement under §89-36M for sidewalks, as it would not be applicable in this location. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

Roger A. asked how the board wanted to vote on the requirement for Street and Storm Drainage?

**Madge B. made the motion to grant the waiver for the requirement under §89-36 & 37, and 39 thru 41, Street and Storm Drainage Design & Construction Standards, as no new streets are proposed or being constructed for this subdivision, therefore it is not applicable. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

Roger A. stated that this subdivision is less than 35 acres in size, therefore, no open space is required (§89-25 'Retention of open spaces and natural and historic features).

Roger A. stated that he did not see the need for the requirement for a performance guarantee (Article XII Performance Guaranties). He stated that there was no infrastructure being created or any required improvements. The other board members agreed.

Roger A. stated notification shall be required from Mr. Stanley stating when the pins have been placed.

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

**Madge B. moved for approval of the Amendment to the Subdivision known as the Dezan Subdivision, creating a total of six lots, as reviewed by the Planning Board and per the plan presented entitled ‘Plan Showing Division of Lot 3 – Dezan Subdivision – Revising Plan Book 268, Page 7, Shapleigh Tax Map 7, Lot 41, Owned by Lee F. Dezan, 35 Norton Ridge Road, Shapleigh, Maine 04076, Of Property Located on Norton Ridge Road & Owls Nest Road in Shapleigh, Maine’. The final plan is dated June 11, 2019, drafted by Joseph L. Stanley, PLS #2453 of LinePro Land Surveying, LLC. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the amendment to the Dezan Subdivision was approved unanimously.**

Roger A. stated the pins would need to be set, and a letter to that fact would need to be given to Barbara F. for the file. Mr. Stanley stated that he would provide this information, along with a statement that the Chadbourne subdivision also had the pins set.

Roger A. stated the Mylar would need to be recorded at the York County Registry of deeds within 90 days and one Mylar and one paper copy would have to be returned to Barbara F., otherwise the approval would be null and void. Mr. Stanley stated that he understood.

Roger A. noted that there were no deed restrictions for this project.

Nothing further was discussed, board members signed the subdivision plan.

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### **Specific Findings**

Based on the preliminary findings set forth above, the Board makes the following specific findings in accordance with Shapleigh’s Subdivision Ordinance 4404 “Review Criteria”.

**The Board finds that the Amendment to the Dezan Subdivision, creating a 6-Lot Major Subdivision:**

1. Does not result in undue water or air pollution.
  - *Test Pit Logs were provided by Kenneth Gardner SE #73, dated February 20, 2019, showing the soils on site will adequately support a subsurface wastewater disposal system on Lots 3-1, 3-2 and 3-3. There is an existing State approved Subsurface Wastewater Disposal System on Lot 3-4.*
  - *The stream protection district is delineated on the plan around Norton Brook on Lot 3-3.*
  - *There is no air pollution being generated by this activity.*



2. Does have sufficient water available for the foreseeable needs of the subdivision.
  - *The water to be supplied by individual drilled wells, no dug wells allowed.*
3. Does not cause an unreasonable burden on the existing water supply.
  - *There is no existing municipal water supply at this time.*
4. Does not cause unreasonable soil erosion or reduction in the capacity of land to hold water so that a dangerous or unhealthy condition results.
  - *There shall not be excessive soil or trees removed from the building site to create a soil erosion problem.*
  - *There shall be no structures built within 75 feet of Norton Brook.*
5. Does not cause unreasonable traffic congestion or result in unsafe conditions on existing or proposed road.
  - *The driveway location for Lot 3-3 will have access along Owls Nest Road and will need a driveway permit from the Road Commissioner.*
  - *Lot 3-1 has access along both Norton Ridge Road and Owls Nest Road and will need a driveway permit from the Road Commissioner.*
  - *Lots 3-2 and 3-4 have existing access along Norton Ridge Road permitted by the Town.*
6. Does provide adequate sewage waste disposal.
  - *The soils observed are suitable for individual septic systems on lots 3-1, 3-2 and 3-3, as defined by the State of Maine Subsurface Wastewater Disposal Rules. This is per Test Pit Logs provided by Kenneth Gardner SE #73, dated February 20, 2019.*
  - *Lot 3-4 has an existing State approved septic system.*
7. Does not cause an unreasonable burden on municipal solid waste disposal.
  - *Each property owner will be responsible for handling his or her individual waste.*
  - *This subdivision is subject to the Growth Ordinance, and therefore, shall not unreasonably burden the municipal solid waste facility.*
8. Does not have an adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat as identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas.
  - *This is not a scenic or historic site, nor is it in the vicinity of one recognized by the Town of Shapleigh.*
  - *This location is not recognized as a high value plant or animal habitat by the Maine Department of Inland Fisheries and Wildlife.*
  - *The building of three additional single family homes in this location will not adversely affect the aesthetics of the area.*
9. Does conform to local regulations, ordinances, development plan and comprehensive plan.
  - *The final approved plan meets all zoning and subdivision regulations.*

- ***Any changes to the final approved subdivision plan shall have to come back before the Planning Board and any building permits must be obtained by the Code Enforcement Officer.***
10. Does not adversely affect the quality of surface water or shoreline of ponds, rivers, streams or tidal areas.
    - ***The 75 foot setback to Norton Brook is delineated on the plan, and no building, wastewater disposal system or well shall be located within the 75 foot setback.***
    - ***Any clearing of vegetation in the Stream Protection District requires a permit from the Code Enforcement Officer.***
  11. Does not alone or in conjunction with existing activities, adversely affect groundwater quality or quantity.
    - ***Three additional homes at this location will not adversely affect groundwater quantity.***
    - ***Test Pit Logs indicated soils are adequate to hold a State approved septic system.***
    - ***A State approved septic system must be installed and approved by the Code Enforcement Officer prior to the granting of an occupancy permit for any new home built.***
  12. Has demonstrated adequate technical and financial capacity to meet the above.
    - ***There is no infrastructure being created that requires a performance guaranty.***
  13. Does have all buildings one foot above the base flood elevation.
    - ***No portion of the property is within the 100-year flood plain per the Flood Insurance Rate Map for the Town of Shapleigh.***
  14. Does have freshwater wetlands identified on maps.
    - ***All wetlands have been delineated on the Final Plan, drafted by Joseph Stanley of LinePro Land Surveying, LLC, PLS # 2453, plan dated June 11, 2019.***
  15. Does have rivers, streams and brooks identified on maps.
    - ***An existing brook has been delineated on the Final Plan, drafted by Joseph Stanley of LinePro Land Surveying, LLC, PLS # 2453, plan dated June 11, 2019.***
  16. The applicant has provided an adequate stormwater management plan.
    - ***Due to the existing topography, and the limited amount of new structures being added to the property, a stormwater management plan was not required by the Planning Board.***
    - ***Any required stormwater mitigation will be dictated by the Code Enforcement Officer during the permitting process.***
  17. Dezan Subdivision shall have no spaghetti lots.
  18. Does not unreasonably increase a great pond's phosphorous concentration.
    - ***The project is not located near a Great Pond.***

**FINDING ON THE REQUESTED WAIVER(S)**

The Planning Board finds that the request to waive the requirement, Article 89-29.A, “Utilities shall be installed underground except as otherwise approved by the Board.” ***shall be granted***. The parcels known as Lot(s) 3-1 & 3-3, have easy access to existing utility poles. The parcels known as Lot(s) 3-2 & 3-4, currently use overhead utilities feeding the existing structures on site.

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

The Planning Board finds that the request to waive the requirement, Article 89-30.D, “Surface drainage”; ***shall be granted***, due to the fact the new lot locations have a relatively flat topography, and the plan provided depicts all stormwater flows toward the back of the property, not toward Owls Nest or Norton Ridge Road. The Road Commissioner does not believe ditching or culverts are required in this location.

The Planning Board finds that the request to waive the requirement, Article 89-30.B (2)(c), “ Fire Pond / Dry Hydrants for firefighting purposes”; ***shall be granted***, for two additional structures, per the recommendation of the Fire Chief. If a third structure is requested to be built, approval from the Fire Chief and Planning Board shall be required.

The Planning Board finds that the request to waive the requirement, Article 89-36.M, “sidewalks shall be installed within all subdivisions within the urban compact area”; ***shall be granted*** due to the fact this subdivision will not have an internal road, it is in a rural area, and does not fall within an Urban Compact Zone.

The Planning Board finds that the request to waive the requirement under Article XI ‘Street and Storm Drainage Design and Construction Standards’, sections 89-36, 37, 39, 40 & 41; ***shall be granted*** due to the fact there are no new streets being proposed or required.

**Planning Board ACTION**

The Planning Board hereby approves the application for the amendment to the Dezan Subdivision, including the requested waivers, for a total of six lots, located on Tax Map 7, Lot 41, with the following conditions:

1. Pursuant to Subdivision of Land, Chapter 89, §89-30 ‘Required improvements’, proof shall be provided to the Planning Board by the surveyor that all the pins have been placed for the new lots, prior to the sale of any lots.
2. No additional fire suppression is required for two additional structures. The addition of a third structure shall require approval from the Shapleigh Fire Chief and Planning Board for additional fire protection measures.

3. Any subdivision not recorded at the York County Registry of Deeds ***within ninety days*** of the date upon which the plan is approved and signed by the Planning Board shall become null and void, unless an extension is granted by the Board in writing.
4. No changes, erasures, modifications, or revisions shall be made in any final plan after approval has been given, unless the revised final plan is first submitted to the Planning Board and the Board approves any modifications.

Nothing further was discussed.

### **CEO Demers to Discuss Protocol Regarding Best Practical Locations in the Shoreland District**

CEO Demers provided the board members with the following information:

#### Expansion of Nonconforming Structures in the Shoreland Zone

##### Code Enforcement Officer

- Expansions to an existing structure §105-4.D(1)
  - 30% Footprint expansion
  - 800 Square foot allotment <25' from HWM
  - 1000 Square foot allotment <75' from HWM
  - 1500 Square foot allotment <100' from HWM

##### Example:

|        |                     |                    |
|--------|---------------------|--------------------|
| 1      | Lot Acreage         |                    |
| 43,560 | Lot Square Foot     | 43,560             |
| 10%    | Max Lot Coverage    | 4356               |
| 1267   | Structure Pre1989   | 1647 30% Expansion |
| 76     | Distance from Water | 1500 Max Allotment |
|        | Max Structure Size  | 1647               |

##### Planning Board BPL

- New foundation is constructed under an existing structure §105-4.D(3)
  - New Foundation
  - Enlarged (under existing structure)
  - Replacement
- Structure is removed by more than 50% and rebuilt within one year §105-4.D(5)
  - Storm Damage
  - Fire Damage
  - Owner Removes

Planning Board BPL, Applicant shall submit to the Board an approved Building Permit Application from the CEO in order to ensure the Board is placing the structure as it will be permitted post PB approval.

CEO Demers began by reminding the board they had discussed best practical location and Madge B. had asked if the board should get a legal opinion on how to review it. He said he had spoken with Durwood Parkinson and he added that he attended a land use class, as well.

CEO Demers stated that the information he provided is how he sees the procedure after reviewing the ordinance. He wanted to bounce the ideas off the board to be sure they look at it the same way. He said the top portion of the page would be looked at in his office, where the new structure is not getting a new foundation, or hadn't been demolished by more than 50%. If they are just going for their 30% expansion, that is taken care of by him. He said there are square footage allotments and height restrictions with the new ordinance. He said that speaking with Durwood Parkinson, if the ordinance changes and somebody files an application to take advantage of that change, they are allowed to.

CEO Demers said that the expansions depend on how far they are from the high water mark, and he noted the example he gave. Steve F. asked if they were doing a 30% expansion with a foundation, was it just the CEO? CEO Demers said, "No, this is where it goes to the best practical location". Steve said, "Then you are talking up". CEO Demers said it could be a 30% expansion of a bedroom. Steve said, "But with no foundation under it". CEO Demers said, "No, a foundation under the bedroom". Steve said, "That's what I am asking".

CEO Demers said a new foundation under the existing structure, an enlarged foundation under the existing structure, or a replacement foundation, obviously is a best practical location. He said that structures that are removed by over 50% of the assessed value, obviously is a best practical location. He said in those scenarios he would suggest that the applicant goes to him for an approval, which he would approve pending Planning Board approval, so that the Planning Board knows exactly what the configuration of the enlarged foundation is going to look like and they can place it accordingly. He said this is the way he sees it.

Madge B. said with respect to the first footnote, the Planning Board wants to review what the applicant wants to do. She said the board used to review, looking at where they want to place the new structure, then the board was told they could not look at where the enlarged footprint goes, the board could only look at where the existing footprint could be placed. She said the board does not like this, and she thought it sounded like CEO Demers was on the same page, that the board looks at where the *proposed* structure will go. CEO Demers said the board will review what the new footprint will be and place it in the best practical location, after the 30% expansion. Steve F. said, "Doesn't this make sense". Madge said, "This is fine, this is what we want".

CEO Demers said the DEP has regulations where they give you many different scenarios and each lot and structure is different, so you look at it and come up with a plan. He felt it was easier for the board to look at the project in its entirety to make a decision. Madge B. said this is where the board wants to be. The other members agreed.

Roger A. said the only issue he had was under §105-4.D(3) 'Foundations', if a new addition has a foundation, the Planning Board has to see it. CEO Demers said it was not the way he read it. Roger read the ordinance out loud as follows: "Whenever a new, enlarged, or replacement foundation is constructed under a nonconforming structure, the structure and the new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board". CEO

Demers said this was under a structure. Roger said, “Under a non-conforming structure”. CEO Demers stated, “This was not under the structure, it is just an expansion to the side”. He said an expansion was taken care of under §105-4.D(1) ‘Expansions’.

Roger A. asked CEO Demers how you expand under the 30% rule to a non-conforming structure. CEO Demers said, “If someone wants to take their 800 sf foundation and ah....so I guess what you are saying is it appears two times in the ordinance under 105-4.D(1) and 105-4.D(3). I don’t see 105-4.D(3) as an enlarged foundation if it’s under the existing structure, that’s when I think it comes in to play”. Steve F. asked what Roger was speaking about? Ann H. read the ordinance section out loud again.

Madge B. wasn’t sure what CEO Demers was seeing vs what the board wasn’t. Steve F. felt there was conflict. Madge asked if CEO Demers believed the board saw the expansion if there was a change in the foundation? CEO Demers stated that he could get clarification by Durwood Parkinson. Ann H. noted that under Expansions it did not talk about foundations, only expanding a structure. She asked if that meant a structure without a foundation, like on a slab?

Roger A. said the board has had some structures, where there was a steep slope behind them, where there was no expansion of the foundation. He noted that was when the board looked at both the volume and the footprint, as both were looked at together. CEO Demers agreed that was how it was, but now it is just lot coverage. Ann H. said one of the sections mentions foundation and the other does not. Ann read 105-4.D(3) again. CEO Demers said that when a 30% expansion isn’t getting constructed under the non-conforming structure, the foundation in that scenario goes to him. If the foundation is under the non-conforming structure then it goes to the Planning Board.

Madge B. asked CEO Demers how you add a bedroom to a non-conforming structure without affecting a foundation? Roger A. wanted to know the same thing. CEO Demers said that with a non-conforming structure, you can just add to the side and not touch the non-conforming structure. Madge B. did not understand how you could add to a non-conforming structure without touching the existing foundation in any way, you are adding to it. Steve F. said the home already has a foundation, and someone comes in and wants to do an expansion, he is going to pour the new foundation but it won’t be under the existing non-conforming structure, it is going to be under the addition. Steve said that was what CEO Demers is saying; if someone picks up a structure, pours a foundation and puts it back, then it’s the Planning Board. He said if someone comes in and wants to do a 30% expansion for something that already has a foundation, and they are adding foundation under the new addition, it goes to CEO Demers. CEO Demers stated that as long as the structure isn’t becoming more non-conforming he permits it. If there is room on the side he will permit it, road setback he can do that, or if you are 150 feet from the water he can do it.

Madge B. said with this information you can expand a non-conforming structure without the Planning Board. Steve F. said, “As long as you don’t make it more non-conforming”. Roger A said it is still a non-conforming structure, even if what you are adding meets a setback. He said if a building is 20 x 20, and it is non-conforming to start with, now you want a 20 x 30 structure; if you are able to meet a setback expanding it, you are still more non-conforming because you are adding to an existing non-conforming structure. He said the Planning Board has always looked at any change to an existing non-conforming structure when it is being added on to. Steve F. said CEO Demers point is that the non-conforming structure is existing. Roger said his point is that the entire structure is non-conforming, and even if you

are able to expand the 30%, the entire building is still non-conforming if you are adding onto the original structure. Roger said when someone wants to add 30%, the board may then ask them to move the structure to a better location on the property to make the entire structure more conforming. Madge B. said, "Exactly". Roger said the board may believe with the addition, that another location is better for the expanding non-conforming structure.

CEO Demers said that if an application comes before him and it doesn't violate a local ordinance or state law then it must be approved. He said if you are expanding a structure, under these guidelines, and you are not making the structure any more non-conforming than it is, then there is nothing that prohibits that, therefore, it must be approved. He said if the question is if you want to see a foundation, under a 30% expansion that doesn't touch the foundation under the current existing non-conforming structure, we will have to get clarity on that. He did not believe it goes to Planning Board. Roger A. believed the board should see any expansion of a non-conforming structure. CEO Demers did not agree. Roger stated that the Best Possible Location was specifically created by the legislature in order to be able to allow an expansion via a variance for the non-conforming structure through the Planning Board. Roger said the CEO cannot give a variance. CEO Demers stated that if the foundation under the non-conforming structure isn't getting touched, then it does not need to go to the Planning Board.

Roger A. asked CEO Demers if you are moving 10 yards of fill in order to put in the new foundation, in the Shoreland? He said if they are, which they are, then it goes to the Planning Board. Steve F. said if that is the case, then the board will see them for that. Roger said one reason any modification to a non-conforming structure comes to the board, is because you are going to move 10 yards. CEO Demers agreed that 10 yards of fill is not a lot. Steve F. agreed, it is only a dump truck. Roger said that the CEO cannot give the applicant a variance with respect to moving fill, the Planning Board has the authority to grant a variance in the Shoreland District, the CEO does not.

Steve F. felt at times he was not sure why the Planning Board is involved, because of the simplicity of the project, such as a retaining wall. Ann H. agreed. Steve said that many of the projects are to the benefit of the town. Steve said the board may want to review the existing ordinance and see if there is anything that can be modified. Steve said that if Roger feels the board should look at every foundation under a camp, then the board should look at that. Roger said it wasn't that he wanted to look at every foundation, he believed the ordinance as written mandated that the board does. Steve said he did not disagree. Roger agreed that there have been some applications that he felt the board really didn't need to see due to the limited scope of the project, but he noted that with the Planning Board approval, the CEO now has an approval to follow and can tell the applicant how the project needs to be completed. Roger said again, that the Best Possible Location was passed by the legislature specifically to make it easier to add to a non-conforming structure without having to get a variance. He also reminded everyone that obtaining a variance is just about impossible. The other board members agreed.

CEO Demers believed that the ordinance allowed him to be the permitting authority in certain situations. He felt that if the structure falls under §105-4.D(1) it falls under his office. He said he would get a legal opinion on it, because that is the way he sees it. Steve said that the applications go through the CEO's office first, so if the board can fix the ordinance, so the board isn't just rubber stamping the application because it meets the criteria, the CEO can do that. Roger A. noted again that if greater than 10 yards of fill is being moved in the Shoreland, then it comes to the Planning Board. Steve asked if the board can modify that, and Roger said, no. Ann H. wanted to know what the State was worried about with respect

to a 10 yard dump truck load of dirt. Roger said that every site is different, some areas removing 10 yards can be an issue. He didn't know how the 10 yard figure came to be. Ann didn't think removing dirt was an issue and who cares. Roger said that it was important that best management practices are put into place. Ann said that the CEO can do that. Roland L. asked if a frost wall constituted a foundation? Roger A. said that it did, it was a structure. CEO Demers agreed.

The board continued to go back and forth with what constituted a structure or not, noting that foundations and frost walls were a structure. Roland asked if adding a foundation under a structure constituted expansion of the structure and CEO Demers told him, no. Steve F. stated that the expansion was eave to eave, not below the existing structure. CEO Demers agreed.

Steve F. stated that the restricting factor for many of the expansions is the 10% lot coverage. The other members agreed.

Roland L. asked if CEO Demers would present something to the Town attorney addressing the difference of opinion. He said he was curious to see what a third party would say. CEO Demers said that in many towns not everything goes to the Planning Board. He said often the CEO has a lot more responsibility, he said in Shapleigh walls go to the Planning Board but that isn't always the case. Steve F. asked if Shapleigh has the 10 cubic yard rule, shouldn't Acton have it? Roger A. said, "No necessarily". Other board members agreed, not both towns were the same. CEO Demers agreed saying that Shapleigh adopted DEP's Chapter 1000, but Acton has not. He said there were differences between both towns. Steve thought the State forced you to adopt at least the minimum of what they preferred. Roger said that they do, and if they do not have the minimum, then it is up to the DEP to push for a court order. Ann said that Acton could have adopted more than the minimum. Roger said that they could have. CEO Demers said that if a town is under a certain amount of people you don't have to elect to adopt it, and he noted that Shapleigh was under this amount, but Shapleigh voted to adopt it. He said that is why there are differences from town to town. He also said each town runs the Planning Board and CEO differently.

Nothing further was discussed.

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### **OTHER:**

Roland L. asked to speak with board members regarding site visits. He asked if it was possible for those who do a site visit to stick together as a group to hear all the same message? He said the group splits up with some listening to the presenter, while others are having a side conversation. He said he felt uncomfortable about that.

Steve F. said that when you look at what the board is supposed to do, no one should be talking at the site visit. Ann H. agreed, members can't even talk about it on the drive back. Roland asked if that included asking questions of the applicant at the site visit for clarity. Madge B. said she believed members should talk at site visits to get further information or questions answered. She said that is what they are there for. She said she understood the training, as she had put on the training for boards and she is very familiar with it. But she said the board needs to make good decisions and present evidence in these meetings, and she noted that she asks Barbara at times if something is in the record, or that she wants to put something in the record, that they discovered something at a site visit. She said the board is not supposed to make



any ex parte ‘decisions’ but the board does need to gather information at site visits, that is what they are there for. She said the only way to get information is by asking questions.

Roland L. said he was not opposed to asking questions, what he would feel more comfortable with, is that the group sticks together to ‘hear’ the information. Madge B. agreed and felt the board needed to be better at that. Maggie M. said it makes sense.

Mr. Stanley was still at the meeting and said that he supported what Roland had to say. He said as a presenter, he was always concerned that he answered all the questions the board might have, because he wanted to squelch a concern. He said when the group is broken up and he is trying to talk to one group while the other is off in another area, he isn’t sure how to address everyone or that he can. He said it would be best if everyone stuck together.

Roland said he was always afraid he missed something from another conversation if a different question was asked by someone and he didn’t hear it or the answer. Madge B. agreed that is a problem. He said he has sensed, like Mr. Stanley, that sometimes the presenters are uncomfortable, because they are not sure who to address, when to start, should they wait for everyone to get together, etc. He asked that the board at least try staying together. Maggie M. noted that at times she cannot be with the group, if the ground is steep or difficult to access. Madge said they understood.

Nothing further was discussed.

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Roger A. stated that he had one other item to bring up. He said he has had questions regarding Mary Letourneau’s application for her business, specifically removing the existing structure. Roger said he has been asked if the new structure is bigger than what was approved, and shouldn’t she have come back to the board to amend the application, since the application did not call for a new structure.

Roland L. said it surprised him, as he believed it was a remodel / addition. He said when he saw the building was gone, and then there was a totally new foundation, he was surprised. Ann H. asked if that was Keepin it Local. Roland said, yes. Ann thought there was an approved addition for extra seating. Roland said that was his impression, not a new structure. She said that was what the plan showed as well, not a tear down.

Roger A. said that the actual plan that was approved by the Planning Board does not exist. He said the building is gone and it isn’t in the same location, so the plan is no longer accurate.

Madge B. said the board reviewed the application because it was a change of use. Ann H. said right, and there was some buffer issues. Madge agreed and she said that there was also a parking plan. She said if the number of people stays the same, then the parking may not need to change. She thought the board might be justified in having them come in, to ask and see what the changes are. Ann asked if they could tear down the building without a permit. Madge said, yes, that is all CEO. CEO Demers said it wasn’t him. Roger A. said it was the Deputy CEO in this case.

Roger A. said that any change of 25% requires a return. Madge B. said the board has no idea if there was a change. Roger agreed and the board will need to know what was approved by the CEO. Madge asked

if the board could get the new plans and look at them? She said they have to be a public record, so the board could see if there was a change. She didn't think reviewing them would be an issue, and the CEO should have a copy of the plans. Roger said that he should, he approved the building permit.

Maggie M. asked CEO Demers if he had a copy? CEO Demers said it was approved by Norm Hutchins with a demo permit and for a foundation only. He said the floors plans and structure are still getting drawn up. He said the way he understood it, is basically the square footage will be the same, the number of seats will be the same, the parking will stay the same. He said the vegetation will stay the same. He said when they started to reconstruct the house they decided it wasn't worth salvaging, so they talked to Norm Hutchins and he gave them the permits.

Ann H. said that even if the board approves something, the applicant doesn't have to do what the board approves. She said if someone approves an expansion and they get into the building and see it isn't worth it, and decide to do something else, she asked, do they have the right to do something else? Roger A. said that no, they have to come back to the board to amend the plan. Steve F. said that only if there is a change of 25%. Roger said that the change to the approved plan needs to come back. Roger said that if the board approves a 24 x 24 garage and it has to be placed here, and then they decide to put it in another location, they should come back to the board with the change for approval. Ann asked if they can get a demo permit and come back to the board with a new plan? Roger said that they should have been stopped prior to and return to the board to state the changes. He didn't see any issue with approving the changes in this case, because the land is being disturbed for parking anyway.

Roland L. said that if the board does not require them to come back before the board, he felt they were creating a dangerous precedent with respect to change of an approval. Steve F. asked what is the amount of change? He said if the board did a CUP 5 years ago, 5 years go by and the applicant decides to rebuild the thing to make it better, would the board be as concerned as they are now? He asked what prompts them to come back? Roger A. said the expansion. Roger said the 25% is gone because they took the approved building down. Steve said that if the applicant hasn't modified the building by more than 25%, does the ordinance require them to come back? Madge B. said that if they don't change the use, no. She said in this case the problem is the board has approved something that no longer exists, so she believed the board should at least straighten out the record with what is going in. The board needs what is going on to be what is on file. Steve said the board needs to look at what was approved, and if the board wants to have the discussion, the board should notify the applicant. Steve asked what grounds as a Planning Board, does the board police what she is doing? Roger reviewed §105-73.B. Steve F. did not think there was anything in this section that was a 'smoking gun'. It was asked if the approval of the business was for the existing structure or not. Steve believed it was. Roger said that it was per the plan submitted which included the existing structure. Madge believed the board should look at their decision. Steve felt what they approved and what will be there, will be the same; even though it is a different structure, it's the same use, same ingress and egress, etc. He said as long as the building has not changed by 25%, he didn't see a reason to bring them back in.

Maggie M. said she agreed it made more sense to tear down the existing structure if the existing building was not going to work. She said tearing down the building alone, should have triggered the applicant to tell the board that the plan was changing, and this is what I want to do. Ann H. said she went to the Code Enforcer and he approved the change. Ann said the CEO didn't tell her she had to go back to the Planning Board. Madge B. said the only thing to do is look at the approval, and it may not need to be

amended. Maggie said that it may have been a good decision but we have to be careful not to set a precedent that you can make a change to the approval, if you decide what was approved won't work. She said if everyone decides to make these decisions without board approval, then down the line it's going to be a problem. Steve agreed that you can't allow the motorcycle shop to start selling cupcakes but he felt what was approved is what is going to take place. Madge agreed and said that at the next meeting the board can look at the approval and see if anything needs to be amended. Maggie said the board may only need a copy of the new plan for the record. Madge said it would be nice but the CEO should have a copy of the building plans.

CEO Demers said the board is authorizing the use and the CEO is permitting the structure. Madge B. said, correct. Maggie said that as long as the conditions of approval are put into place. Steve F. said if the board said the applicant can't tear down the house and rebuild it, then the board has a leg to stand on, but that isn't the case.

CEO Demers asked if for example there was a permitted day care and they decided they wanted to change the room they were using, tear down a wall, and make a change, would that require an amendment to the conditional use? Ann H. said no, because they are still doing day care. Maggie M. agreed, as long as all the original conditions are met. Roger A. added that if the applicant was permitted for 7 children and now they wanted to have 12 children, then that would trigger an amendment to the permitted use. CEO Demers said the conditions of Mary's permits are number of seats, access, parking, stormwater runoff; if those are not violated then they are alright. Madge B. said, correct. Steve F. said that if conditions were violated in the old building or the new one, then it would be an issue. Roger A. said the conditional use is approved and must be followed through verbatim. Madge thought that is why the board should look at the approval to be sure there are no changes. She said if there are no changes, that's fine. CEO Demers said he was trying to draw the line where the use stops and the structure starts. Roger said the only reason the structure is an issue is because it is a conditional use, if it were just the structure it would be CEO only, since it is in the general purpose district. Roger said that because it went from residential to business, now it is the Planning Board and any changes to the approval, if you exceed the parameters given, you come back to the Planning Board. Steve said that if you change by 25%. Roger said, "Or if you change what was presented to the board, all of a sudden you changed it". Roger referred to §105-73.B(2) 'No changes shall be made to any approved conditional use without approval of the change by the Planning Board'. Steve believed that referred to a change in the use. Roger disagreed, that if in the approval the applicant said the building would have vinyl siding and they decided to use something else, they needed to come back to the board, because it was a change to their approval. He said when it is per the plan, it needs to be done per the plan.

Madge B. said that the concern is that a conditional use runs with the land. She said if Mary decides to sell this property tomorrow and somebody else buys it, they take up the conditional use. She said that is why it would be a good idea to look at what the board approved, to be sure that it complies with the approval, so if this property is sold tomorrow the board knows the new owners would follow through with the way the conditional use was approved. She said the point is, it doesn't matter who owns it, what matters is if they are following through with what was approved. She said the board can tell Mary the board is going to review the application to be sure no amendment is necessary. She said then if the board had questions she could answer them. Madge said again that the approval follows the land, not the applicant, so it is important that things are correct. She said it is important to Mary that it is right, because

if they do sell, and it isn't correct, they will have an issue with whoever wants to purchase it, they may have an issue with title approval, etc.

Note: Board members decided to wait until they could get additional information from CEO Norm Hutchins before contacting the applicant, Mary Letourneau.

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

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

**NOTE: The summer hours are in effect thru October 31st, the meetings now begin at 7:30 p.m. and any scheduled public hearing begins at 7:00 p.m.**

The next meeting will be held **Tuesday, June 25, 2019** at 7:30 p.m.

The Planning Board meets the 2<sup>nd</sup> and 4<sup>th</sup> Tuesday of each month unless it falls on a holiday or Election Day. Should there be a cancellation due to a storm event, holiday or Election, the meeting will typically be held the following Wednesday, also at 7:30 p.m. Please contact the Land Use Secretary if there is a question in scheduling, 207-636-2844, x404.

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

## ***Shapleigh Planning Board***

### ***Minutes***

**Tuesday, June 25, 2019**

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

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

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**The minutes from Tuesday, June 11, 2019 were accepted as read.**

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

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#### **Conditional Use Permit – In-home Day Care for up to 12 Children – Map 4, Lot 10C (651 Back Road) – Tatiana Murphy, Applicant; Tatiana & Eddie Murphy, Property Owner(s)**

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

Provided along with the application, was an aerial picture of the property which showed the location of the existing home, and drawn on the picture was the word ‘well’ with an arrow pointing to its location; the words ‘Play area, septic & leachfield’ with an arrow pointing to a box depicting that area; a box containing the words ‘turn around’; and the numbers ‘651’ with an arrow pointing to the driveway. Also provided was a letter from the current owner, Loc Lam, which read as follows: “To whom it may concern, I Loc Lam and Beverly Lam at 651 Back Rd Shapleigh, ME, am selling our home to Eddie and Tatiana Murphy closing date to be June 28<sup>th</sup> 2019, we give them permission to do what they need to, to start the application process with the Town of Shapleigh for their in home daycare.”

In addition, Tatiana Murphy provided a letter stating the following:

*To whom it may concern,*

*My family & I are going to be moving to Shapleigh this month. I currently have an in home daycare at our house that we live in now in Lebanon, ME. I have been licensed in the town of Lebanon for a few years now. I plan to reopen my in home daycare at our new house in Shapleigh. I have already contacted the State of Maine to notify them of our move. I will go through the process to get licensed at our new location pending the approval from the Town of Shapleigh. I will apply for a license through the State of Maine to care for 12 children ranging in age from 6 weeks through 12 years old.*

The application detailed description of the project states: Open an in home daycare that will be licensed through the State of Maine. I will be licensed to care for 12 children.

Roger A. opened the meeting by asking Mrs. Murphy what she intended to do. Mrs. Murphy stated that she just became a resident of Shapleigh and she wanted to open an in-home day care. She stated that she lived in Lebanon (Maine) and she had an in-home day care at that location, so she was just looking to move the business to her new home. She stated she would be licensed through the State of Maine, once she got approval from the Town. She said she had a long driveway and there was an area on site for a turnaround. She stated the State would allow her to be licensed for up to 12 children, ages 6 weeks to 12 years old, her hours of operation would be 6:00 a.m. thru 6:00 p.m., and there was an area that would be fenced in for the children to play in. Roger A. asked if she would be operating five days a week? She stated, “Yes, Monday through Friday”.

Madge B. stated that the board would be interesting in things such as lighting. She said the board did not care if Mrs. Murphy had extra lighting, and she noted she understood the house set back from the road; because the board worried about light shining onto the roadway or onto a neighboring property. Madge didn't think this would be a problem in this location. Mrs. Murphy agreed that it was set back, and noted that there was existing lighting on both the garage and the front door, so parents would be able to see when picking up the children. Mrs. Murphy also added that there were trees on the front of the property, so it wasn't wide open to the road.

Roger A. asked if there would be additional employees? Mrs. Murphy stated, “No, just myself”. Roger said that with being allowed to have 6 weeks to 12 years, he was asking about extra help, because he believed with young children, 6 weeks or so, if the older ones go outside they need to be supervised. Mrs. Murphy stated, “Absolutely. Yes, and so I have an infant son, and so we at our old house, I would take the children out. It really matters depending on schedules. Most of the time children are in school during the school year, so I can keep the children scheduled. I try to, when I take in children, I try to kind of keep them around the same age as well, like 2 year olds and above. I am licensed for 6 weeks but I try to take 1 ½ to 2, where they are down to one nap and they nap all at the same time of day, from like 12 to 3 o'clock, so that way everybody is on the same schedule. That way we are not having multiple nappers throughout the day. But yes, the children will be supervised at all times, so if a child is napping I would probably change outside time to a different time to accommodate their schedule.”

Roger A. read §105-40.1 Child day care, noting that Section C did not apply as it was for day-care centers. The applicable sections are as follows:

- A. A child day-care home 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.

Mrs. Murphy pointed out that although she would be licensed for up to 12 children, it was unlikely she would have 12, because of the ratios mandated by the State based on the ages of the children. She said she would not be allowed to have 12 if she had infants. Roger A. noted there were several other in-home day cares on Back Road. Mrs. Murphy stated that she was aware of that.

Roger A. stated that the board would need to know what type of fencing and the size that she would be using. Roger said that she would meet the setback requirements because the house and play area were far from the road and lot lines, so it wasn't an issue.

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

**Roger A. stated that a site inspection would be scheduled for Tuesday, July 9<sup>th</sup> at 6:00 p.m., and a public hearing would be held at 7:00 p.m. A notice to abutters will go out as well.**

Nothing further was discussed.

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**Best Possible Location – Replace Existing Structure – Map 18, Lot 19 (7 1<sup>st</sup> Street) – Jan & Linda Rajchel, Applicants; Rajchel Family Revocable Trust of 2014, Property Owner(s)**

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

Provided along with the application, was a draft plan depicting the existing building envelope, proposed building roof drip edge, proposed building foundation and proposed decks/stairs; a plan showing the boundary survey of all property located on First Street, prepared by Dana Libby of Corner Post Land Surveying Inc., dated 9/5/2000 (Note: there was no embossed seal noted on the plan); a boundary/existing conditions survey for Rajchel Family Revocable Trust of 2014, dated June 14, 2018, it was done by Corner Post Land Surveying Inc. but the preparer was not noted and there was no embossed seal, you could see the location of 1<sup>st</sup> Street, the boundary lines, abutter lines, right-of-way lines, the existing structure, parking area and location of the septic tank and disposal field; an enlarged view of the aforementioned plan whereby you could see the notations, which are the lot contains 10,455 Square Feet, there are square footage notations for the existing structures which are listed as: Deck & Stairs 525 sf and Building Area 1,425 sf; the current setbacks noted on the enlarged plan are: 14.98' at the closest point to 1<sup>st</sup> Street, 6.31' at the closest point to Map 18, Lot 20, 52.77 to the high water mark at the closest point, and to the proposed agreement line in question with Map 18, Lot 18, distances listed are 15.61 closest to 1<sup>st</sup> Street, 24.38, 23.94 and 29.21 the closest measured distance toward Mousam Lake. Also provided was the Building Height Calculation, showing that at the lowest ground grade the building height is 23.72 feet, and a grading & drainage plan, prepared by Jason VaFiades of Atlantic Resource Consultants.

In addition, provided was a copy of the Subsurface Wastewater Disposal System Application, drafted by John Large, SE #7, dated October 31, 1997, along with the Replacement System Variance Request for a 2 bedroom home. And a letter was provided from the applicants stating that Dana Libby, or his associates, were authorized to represent the Rajchel Family Revocable Trust of 2014 on matters concerning the Best Possible Location application.

The detailed description of the project is as follows:

**Site Plan**

*See attached drawings. Exact location and distances from property lines currently undeterminable as boundary line agreements and long standing lines of occupation pending and/or being negotiated. As such, applicants are using tax assessment data for lot coverage information and calculations. Property purchased by applicant on August 8, 2017. Previous owners took the 30% expansion already, and existing building and decks have been permitted through compromise between previous owners and a previous CEO. Applicants seek to rebuild existing structure within the existing “footprint”. “Footprint” meaning the existing roof drip edge, decks, but excluding staircases as from above.*

*(The applicant provided a copy of the tax assessment documented by John E. O'Donnell & Associates.)*

*Town tax assessment indicates 0.4 Acres; 1 acres = 43,560 sq. feet; 0.4 acres = 17,424 sq. feet*

*Existing building “foot print” (roof drip line plus decks plus stairs)*

*Bldg. 1,425 sq. ft.*

*Deck 415 sq. ft. (approx.)*

*Stairs 110 sq. ft. (approx.)*

*Existing building & deck (1,425 sq. ft. + 415 sq. ft.) cover more than 10% of Shapleigh tax assessment land area.*

*1,840 sq. ft. (building + decks) divided by 17,424 sq. ft. = 10.6%*

*Existing building, decks and stairs will be removed and replaced “in-kind” to the best extent possible. Roof drip edge of replacement dwelling and decks will be within the former roof drip edge and deck areas. See attached proposed sketch.*

*Exact setbacks from property lines, whatever and wherever they are, will not change unless Planning Board decides to move the building from the structure’s current location under the Best Possible Location regulations. Resultant boundary lines will be likely determined based on long standing lines of occupation with respect to abutters.*

*By keeping location of the replacement dwelling and decks within the existing building envelope, the resultant non-conformance is made no better, and no worse, than existing non-conformance.*

*No more than 3 feet of fill will be brought in in order to raise the lowest elevation of the proposed replacement dwelling. The purpose of raising the lowest floor level is to mitigate existing water runoff and drainage issues from 1<sup>st</sup> Street. The adjacent grade will be increased as well to satisfy the “building height” definition.*

*Existing subsurface wastewater disposal system will be maintained in current locations, including existing drywell for grey water.*

*Existing dug well will be abandoned and filled in as a new drilled well has been installed.*

*To the extent possible, all disturbed areas facing Mousam Lake and the side areas will be replaced with grass to restore the land to its current condition and the disturbed areas along 1<sup>st</sup> Street will be replaced with asphalt and grass to restore the land to its current condition.*



*Wood retaining wall located between applicant's dwelling and abutter on Map 18, Lot 20 (Robert Moore) will be repaired and/or replaced.*

*To the extent possible, all disturbed areas will be restored to existing ground cover conditions. Grass where grass is, asphalt pavement where asphalt pavement is. No tree replanting is anticipated.*

Roger A. began by stating the board received his plans and commented on what a nice presentation he put together, and noted he wished the board saw this more often. Roger asked Mr. Rajchel if he could brief the board on what he intended to do.

Mr. Rajchel began by stating he would like to read information to the board as it was easiest for him. He introduced himself and reiterated that the trust was the property owner, he and his wife were the trustees and that he was before the board for a best possible location for property located on Map 18, Lot 19. He stated that Theodore Hobbs originally subdivided the land about 100 years ago. He said that currently there were boundary lines that were not in agreement. Resolution of the differences between property lines between his property and abutters are still being negotiated. He said the boundary line issues should be resolved within the next few months, but the existing boundary lines are currently undeterminable. He said that they are currently working with the property owners of 5 1<sup>st</sup> Street and 11 1<sup>st</sup> Street.

Mr. Rajchel stated he was before the board to determine the best possible location of the existing building. He said the property was purchased on August 8, 2017. He said for this application he would be using the information from the Town Assessor, the current tax information for lot coverage calculations. *Those are noted above, along with distances to the site lots lines, all as noted on the plan provided.* Mr. Rajchel stated the blue line on the plan represented the front setback, and the yellow line represented the shoreland setback.

Mr. Rajchel stated that he was seeking to tear down and rebuild the existing structure within the existing footprint. He believed demolition and removal of debris to occur no earlier than March 2020. He stated debris materials would be brought to Simpsons, and the contractor doing the work will be certified to do work in the Shoreland District. He said completion of Phase I, which would be a weather-tight camp, is estimated to be no later than December 2020. Phase II which would be finishing the main floor interior, has an estimated completion date of September 2022. A walkout basement would likely remain unfinished until they semi-retire. He said the proposed total project duration is estimated to be 30 calendar months from the demolition date of March 2020 thru September 2022.

Mr. Rajchel stated that he would like a request to change the information provided to the board. He said that the paperwork said the previous owners took the maximum expansion of 30% allowed by code, this information was provided by CEO Mike Demers. He said that they now believe the 30% expansion may not have been obtained, so they request that the statement that the previous owner took the 30% expansion be changed to read 'previous owners *possibly* took the 30% allowed expansion'.

Mr. Rajchel stated that the existing structure(s), decks, etc. have all been permitted through compromise between the previous owners and the previous Code Enforcement Officer. He said a portion of the deck facing the lake was recently removed to allow for well drilling rigs on the property and to run power to the drilled well. It has not been replaced. He said he is still shoring up remaining adjacent deck portions. He said the existing building decks and stairs will be removed and replaced in kind to the best extent

possible. He said the proposed replacement dwelling and decks will be located within the former roof drip edge and deck areas. Exact setbacks from property lines, whatever and wherever they are, will not materially change unless the Planning Board decides to move the existing building from the structures current location under the best possible location regulations and guidelines. He said by keeping the location of replacement dwelling and decks within the existing building footprint envelope, the resultant non-conformance is no better and no worse than the existing non-conformance. He said, no more than three feet of fill will be brought in order to raise the lowest elevation of the proposed replacement dwelling. The purpose of raising the lowest floor level is to mitigate water runoff and drainage issues from 1<sup>st</sup> Street. He said the current building height is 23.72', however, they are requesting that the building permit be granted to allow for a maximum building height elevation of 35 feet, based on Shapleigh having a high snow load rating of 80 lbs. per square foot. The roof pitch will be maximized to the steepest possible, vs the current pitch, to minimize snow accumulation on the roof. He stated again he was proposing a building height of 35 feet.

Mr. Rajchel stated the existing subsurface water disposal system will be maintained in its current location. He will use the existing dry well for grey water disposal. He said the existing dry well is pre-existing to the installation of the current subsurface wastewater disposal system and is not referenced on the approved subsurface wastewater plans. He said he will eventually be seeking approval of a replacement grey water disposal system from Maine DES if and when the existing system fails.

Mr. Rajchel stated the existing dug well, near Mousam Lake, will be abandoned and filled in, as a new drilled well has been installed. He said to the extent possible, all the disturbed areas facing Mousam Lake and the side lot abutting areas will be replaced with grass to restore the land to its current condition, and the disturbed areas along 1<sup>st</sup> Street will be replaced with asphalt and grass to restore the land to its current condition. He stated that they did not anticipate having to replace any trees.

Mr. Rajchel stated that abutter's, Rikki and Steven Foglio, are going to try to mitigate the water runoff from 1<sup>st</sup> Street with some type of water retention area, a so-called rain garden between the two properties.

Mr. Rajchel stated that with the application, he submitted an engineered preliminary plan for the rain garden and it includes a catch basin at 1<sup>st</sup> Street. He said they will try to resolve the water issue without the installation of a catch basin due to maintenance issues that catch basins create.

Mr. Rajchel stated there are two wood retaining walls on the property. He said one is located between this property and Map 18, Lot 18, which is the Foglio property, and may be replaced in kind where it currently is, once construction is completed. He said he wants to reserve the right to rebuild the existing wood retaining wall in the same location. He said location, height and length of the wall would remain the same. For the purposes of construction, the retaining wall will have to be taken down to grant access to construction equipment to the lake side of the property.

Mr. Rajchel stated that the wood retaining wall, located between this property and Map 18, Lot 20, owned by Robert Moore, will be repaired and / or replaced. He said Jeff Goodwin Excavation will be contacting CEO Demers on behalf of the owner of the abutting property for direction on how to shore up the wood retaining wall. The replacement wall that currently adjoins both properties will be constructed so the property line between the two properties will be marked. They are going to continue to work with Mr.

Goodwin and the Moore family to try to coordinate plans. He said if needed in the future, they have given Dana Libby or his associates of Corner Post Land Surveying permission to represent them.

Mr. Rajchel asked if the board had any questions?

Roger A. stated that the board could not grant allowing the new structure to be 35 feet in height. He said that although the permit goes through the CEO, the 35 feet will still not happen, it is not allowed. He said that anything Mr. Rajchel wanted to change with his plans, knowing that, he might want to consider.

Roger A. said that because the existing structure is covering greater than 10 percent of the lot coverage at this time, there will be no additional lot coverage allowed, so there will be no additional enlargements whatsoever on the property. He said this was something else he wanted Mr. Rajchel to look at when doing the project. Mr. Rajchel asked if he could maintain the existing size? Roger stated that he could maintain the existing size. Roger asked if the deck shown on the plan, down by the water, was already there? Mr. Rajchel stated that it was. Roger said when looking at the wall, and that needing to be redone, he wasn't sure if Mr. Rajchel was adding the deck to it. Mr. Rajchel stated that the deck was already there and asked if it could stay? Roger stated that if it was there, then it could stay.

**Roger A. stated the board would schedule a site visit for 6:30 p.m. for Tuesday, July 9<sup>th</sup>. A notice to abutters will be mailed as well.**

Mr. Rajchel stated that there was a turtle nest on the front of the property and it is staked out with four stakes, he asked members if they could avoid that area. He said there were a lot of divots in the grass, so he wanted members to be careful as they walked, and the stairs are also a bit of a hazard and should be avoided.

Roger A. stated again that the height of the building will be regulated, and 35 feet will not be allowed per the ordinance (§105-4 'Nonconformance'). CEO Demers agreed that the 35 feet height was not allowed. Roger said he wanted him aware, so he would know what to expect down the road. Mr. Rajchel stated that best possible location didn't have to do with the height, he understood that.

Mr. Rajchel asked if he should be there for the site visit. Roger A. stated it would be nice, so he could answer any questions the board might have.

Steve F. asked the board how they wanted him to handle the next meeting to review this application? The board members thought that since he was a direct abutter, he should step off the board for the final review. Madge B. said he could sit in the room, but if there was any problem because Steve was interrupting, then Roger A., as Chair, could ask that he not speak. Steve said he had no issue with the project and would be happy to not attend the review if the board preferred. Madge said that he was welcome to be there in case the board had a question for him, but it would be preferable if he did not sit at the table during the review. Steve said that was fine, it was all he wanted to know. Roger agreed he had no issue with him being in the audience.

Nothing further was discussed.

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**Conditional Use Permit – Keepin It Local – Review Plan Approval & Building Permit – Map 18, Lot 30 (130 Emery Mills Road) – Mary Letourneau, Applicant**

Board members, at the previous Planning Board meeting on Tuesday, June 11<sup>th</sup>, discussed the fact that the approval for Keepin It Local was for the existing structure to be used for the business. After permit approval, the applicant had the existing structure demolished and the board was concerned that the new structure may not be the same size or in the same location as the original, which might affect stormwater runoff, parking and the number of patrons allowed. The board agreed to look at the approval at this evenings meeting and any other additional information to see whether or not the application as approved needed to be amended.

This evening provided by Joseph Stanley, of LinePro Land Surveying, who drafted the original sketch plan which depicted the existing structures on site, a conceptual parking plan, entrance and exits onto Route 109, and the proposed expansion of the existing structure, provided a new sketch plan dated June 25, 2019, which showed the foundation for the new structure to be within a foot of the original foundation and proposed additions to the original structure. Mr. Stanley stated to Barbara F. that he believed the parking plan remained as originally approved.

The Findings of Fact for the application was provided to members, the findings are as follows:

1. The applicant is Mary Letourneau of 1110 of Milton Mills Road, Acton, Maine 04001.
2. The owner of Shapleigh Tax Map 18, Lot 30 (130 Emery Mills Road) is Paul J. Letourneau of 130 Emery Mills Road, Shapleigh, Maine 04076. There is a Purchase & Sales Agreement between Mrs. Letourneau and Mr. Letourneau (not related) with an Offer Date of October 29, 2018.
3. The property is located in the General Purpose District and according to the assessor, the property contains 1.3 acres.
4. The applicant is before the board for a Conditional Use Permit to relocate Keepin' it Local from 120 Emery Mills Road to 130 Emery Mills Road.
5. Received was a letter from property owner Paul Letourneau stating Mary Letourneau had permission to move forward with the conditional use permit; a sketch plan depicting the existing structure, septic & leachfield location, and arrows depicting how the traffic will flow on the property; a sketch plan depicting the existing structure and driveway on the property; an aerial photo of the property; an aerial photo of the property including distances from the existing structure to the side lot lines and Emery Mills Road; Subsurface Waste Water Disposal System Application for a 3 bedroom home, drafted by John E. Large, SE #7, dated 11/4/11; and a copy of the Purchase & Sale Agreement between Mary Letourneau and Paul Letourneau with an Offer Date of October 29, 2018.
6. Received was a sketch plan drafted by LinePro Land Surveying, LLC. The plan depicted in addition to the existing structures on site, a conceptual parking plan, entrance and exits onto Route 109, and the proposed expansion of the existing structure. Also depicted were 33 parking places, and how the traffic will flow, including a separate lane for drive-thru traffic.

7. Received were two (2) - 11 x 17” prints entitled Keepin it Local - Proposed Improvements – Drainage Study – 130 Emery Mills Road, Shapleigh Maine’. Print D1 noted the following, “Work performed by Carl V. Beal is limited to stormwater drainage only. Survey information was provided by LinePro Land Surveying, LLC”. Print D2 noted the following, “Work performed by Carl V. Beal is limited to stormwater drainage only. Building addition, new parking and traffic pattern, and other improvements were provided by others”.
8. Received was an email to the PB dated December 11, 2018 at 11:27 AM from Anthony Fontaine of the MDOT, it stated the proposal for two separate access points is acceptable. He concluded because everything meets or exceeds the minimum standard for a major collector highway, further review by others here at Maine DOT is not required and I will issue the permit as proposed (two separate access points, one for entry and one for exit, each 24’ wide). He noted that the town was free to impose their own requirements but the proposal satisfies State statutes.
9. Received was a letter from Carl V. Beal, P.E. #5013 of Civil Consultants, regarding the Stormwater Drainage Study for the new location of Keepin It Local, that being 130 Emery Mills Road. The letter read in part that post-development runoff will flow in the same direction as pre-development. A new Stone Level Spreader will be installed at the SE corner of the parcel to control the increase in runoff from the new impervious surfaces and to reduce the potential for erosion of the existing Rte. 109 swale and abutting properties. In conclusion, construction of the new Keepin It Local facility will result in no negative impacts due to stormwater runoff to downstream properties, tributaries, or Mousam Lake.
10. Received was a letter from Fire Chief Duane Romano, dated January 15, 2019, which read in part as follows: *As the Chief of the Shapleigh Fire Department, it is my recommendation that one of the following be implemented for fire suppression: 1) A 20,000 gallon cistern system be placed on the property, or, a sprinkler be installed. Repairs and maintenance of the sprinkler system shall be the responsibility of the property owner. The Shapleigh Fire Department will check the water level of the cistern at their discretion and add water if necessary. Please have the applicant contact me with their decision.*
11. Received was a Warranty Deed from Walter G. Rand and Clara M. Rand to Donna M. Ruopp and George M. Ruopp, Book 4003, Page 189, describing Map 18, Lot 30, containing highlighted information regarding road frontage that being 151 feet, dated December 16, 1982; a replanting plan which denotes areas of grass to be planted and 24 – 6’ Arborvitae’s between the parking area and adjacent residential property; an updated Proposed Improvements Drainage Study, which depicted additional water management information on page D2, and added a page D3, which describes how the Level Spreader will manage a 50-year storm event; and provided was the Maine Erosion and Sediment Control BMP guidelines for a level spreader from 2016.
12. The Detailed Description of the Project is as follows:

The following is a description of the proposed project for moving Keeping’ it Local from its current location at 120 Emery Mills Road to 130 Emery Mills Road.

When purchased we would like to add on to the existing structure:

- creating a larger kitchen, dining area and retail space
- outdoor dining space
- parking area to the right of the building and behind to accommodate 60 seats  
(30 spaces needed for customers, employees and retail space)
- a farmer's porch onto the driveway side and back of the building
- drive thru on the left side of the building
- upgrade septic to include chambers and grease trap
- upgrade electrical and plumbing

We would also be looking to add in beer, wine and liquor and to expand on our menu to include dinners and brunches.

Operating hours would 'be' up to 24 hours depending on baking.

Serving hours would be between 5 am and 11 pm.

13. The board reviewed the Basic Performance Standards and the board concurred the application met all the standards imposed.
14. The board reviewed Zoning Ordinance §105-73, Section G, 'Standards applicable to conditional uses' and concurred the application and information as presented met the performance standards in this chapter, with conditions.
15. A notice was mailed to all abutters within 500 feet of the property on November 14, 2018. Meetings were held on November 13, 2018, November 27, 2018, January 8, 2019 and January 22, 2019. A site inspection was not necessary as members were aware of the location.
16. The Planning Board unanimously agreed to approve the Conditional Use Permit to relocate Keepin' it Local to Map 18, Lot 30, per the plans provided with conditions.
17. The conditions of approval are:
  - 1) The revegetation plan, including the planting of grass and arborvitae, shall be completed prior to the Occupancy Permit being issued, no later than October 1, 2019.
  - 2) The hours of operation are 24 hours a day for baking, and 4 AM thru midnight for serving customers, 7 days a week.
  - 3) The State Fire Marshal shall make certain there is adequate water supply to meet the demands of the proposed use and for fire protection purposes prior to construction, which includes fire suppression for the building.
  - 4) The Alternate Code Enforcement Officer shall make certain there is adequate provision for the disposal of all wastewater and solid waste prior to issuing an Occupancy Permit.

Roger A. stated that he spoke with Alternate CEO, Norm Hutchins regarding the tear down and rebuild of the structure for Mary Letourneau's application. He said that when CEO Hutchins approved the demo, he had no plans to look at whatsoever. He approved it based on Mrs. Letourneau's statement that nothing was being changed, that everything would remain the same. CEO Hutchins said he was waiting for plans to come in before he issued the building permit. Roger said that is what he emailed members, this information, about an hour after he spoke with CEO Hutchins. The email read in part as follows:

Good Morning all,

Just spoke to Norm Hutchins on the issuance of permits. He told me that applicant told him that there would be no change to square footage or placement. He said he did not have print or CU Permit before him so he took their word for it and issued permit. He will now be asking Mike for this info. In other towns he has worked he said return to PB for this change wasn't done due to no change to square footage or location.

Roger A. said the new foundation was larger than the pre-existing, because of the approved additions to the original structure. Madge B. said, "OK". Roger said because the applicant stated the new building would be the same as what was approved, CEO Hutchins did not feel this had to come back to the Planning Board.

Madge B. stated that because CEO Hutchins has no plans for the board to review, the record should state that Roger A. spoke with him and that is what he told us, that there are no changes to the original approved plan. She stated that until the board has a permit to look at, the board doesn't have anything to review. Roger said that he did not know if CEO Hutchins had anything himself at this time. CEO Demers stated that he did not believe he did. Roger said that at this point in time, CEO Hutchins hadn't even seen the Planning Board approval, so he issued a Demo permit without having anything before him. Madge asked if he now has the board's decision? Roger told CEO Hutchins that any time there is a change to what the Planning Board approves, it should come back as an amendment, due to the fact the file has to be amended to say this is what is taking place, vs what was initially approved. CEO Hutchins told Roger that he would wait to see what the Planning Board decided before he did anything further. Madge stated that she did not see that the board had to make any further decisions, if they are doing exactly what the board approved. She said that the board is basically looking at the change of use, the use is what they said they were going to do. She said unless they are going to change the parking, and unless we have a reason to think they are, she did not see that the board has to do anything further. She believed the minutes should show that the board brought it back up, that the board has no reason to change what they have submitted, and for the record, the demolition permit has been issued and we are aware of it. She did not believe the board had to amend the conditional use, unless there is something to amend, and she did not see that the board had anything to amend, based on all the information.

Maggie M. added that at least the board had a copy of the amended plan, showing the location of the 'new' structure. Roger A. agreed. Maggie thought that is what the board needed for the record. Madge B. noted the plan was not different. Maggie stated, "Other than approving existing building being enlarged. Now that that is cleared up, it should be good".

Roger A. stated that Joe Stanley had spoken with him, stating that the new building was within a foot of the original plan. Roger said it was an oversight that they removed the existing structure without telling the board they were going to put up a new structure.

Steve F. asked if the initial approval had side line setbacks? Roger A. stated that there were setbacks on originally approved plan. Madge B. said again, she did not see anything to amend.

Maggie M. thought it might be a good idea in the future, noting there are so many things that go with a permit, whether it be conditional or otherwise, because people don't know if they change something extreme it has to come back, perhaps they need to be told they would have to come back. Steve F. agreed. Maggie said that if they make a change, they need to be told it has to come back before the board. Steve

said not to the use, but to the building. Roger A. disagreed, stating that any change to the whole project with the initial approval. Steve said for example, if the Town of Shapleigh wanted to put a new deck in the back, would they go to the Planning Board or the CEO? Maggie thought they would go to Mike (CEO), she was talking about something with an approval. Roger said that if it is a CU permit and it is putting a deck on the back, he thought it would come back before the board. He said that whatever the building is, if an applicant is before the board for a conditional use permit, that is a change to the permit probably.

Steve F. stated that based on this, CEO Demers should have a list of every conditional use that has been issued in the town. Roger A. said, "Which he should have". Steve said, "So that any time, any applicant comes in with any building permit, he's going to send them back to the Planning Board. Unless the conditional use has been out of date for over a year". Roger A. said, "Yes, if it has been out of business for over a year". CEO Demers said that if we do that, theoretically, with change of use over 25%, who determines the change of use or the 25%? Roger said the CEO is going to say, you are changing it more than 25% or any other processes not associated with the business. CEO Demers said that then there are instances when it doesn't come back to the board. Roger A. read §105-73.B(2) "No changes shall be made in any approved conditional use without approval of the change by the Planning Board".

Madge B. stated, "We should be reviewing things that involve uses, and 2, that involve the applicable standards. The use will not have, the use will conserve, the use is consistent. This is a conditional use permit. I don't think it should be a building permit. I think your reading goes too far". Roger A. stated, "I am looking at it as being a conditional use that any time you change that". Madge agreed that if you change the use it comes back. Roger said, "If you change the size". Madge agreed, 25%.

Madge B. stated that she had no issue if you change the use, or expand the structure, change its nature, but if it isn't a change of use. CEO Demers stated that he wanted to talk about another hypothetical, going back to the day care. He said if the applicant is permitted for a day care for up to 12 children, and she's got a 12 x 12 room where she takes care of six kids. If she comes back to him because she wants to take care of up to 12 kids and, therefore, she wants to add another 12 x 12 room to be able to take care of 12 kids; she has a conditional use for up to 12 kids, but does that addition of the 12 x 12 room, change the use? She is already approved for 12 kids, does it matter what the structure is, as long as it meets the dimensional requirements? Steve F. said if the board is basing the approval on the standards in the chapter, the board could easily say that if there are changes to be made to the property or to the use that affect those standards, then they should come back. Madge stated that she liked that. Steve said that they had talked about the 25%, this simply says 'a conditional use which existed prior to the effective date of this chapter may not be changed'. He did not believe a floor increase of 25% or new materials or processes, apply to anything that was not in effect before the effective date. Madge thought he was probably correct. Steve said, that item (2) does not talk about uses that existed prior to the effective date, it states 'No changes shall be made in any approved conditional use without approval of the change by the Planning Board'. He felt that was a broad statement. He thought the board should talk about this in a workshop and clarify it. He thought that maybe it should say, 'no changes to the use based on the parameters set forth that the board reviewed'. CEO Demers asked if he was talking about changing the ordinance. Steve stated that he was talking about cleaning up the gray area. Steve believed the board wants the same thing, and if the board has a difference of opinion, then what about the confusion for the general population. Barbara F. thought scheduling a working for possible changes to the ordinance would



be a great idea. She stated they could schedule one in the fall, when the board wasn't as busy. She asked that members be noting what they might like to change, and ideas on what would work best.

Steve F. wasn't sure if anyone in town ever asked the board to change an ordinance. Barbara F. stated that they had, typically it was business owners. Roger A. agreed, noting signage was changed. Barbara added that lot coverage was also changed. Roger said that there had been some ideas regarding things such as pigs not being allowed next to someone's house, townspeople have brought up proposed changes but not often.

Steve F. said if Mrs. Letourneau was going to change what she was going to do, that would have been a problem, but the board has proof that she is not, so it is not an issue. He said if the applicant for a day care wants to change a bouncy house to something different, he did not feel it was an issue. Madge B. thought it was a good idea to hold a workshop to discuss this. Madge said at the last meeting it was also brought up why the board was reviewing walls? She said she would prefer not to have to do it. Roger A. stated that the board was reviewing walls because the Town adopted Shoreland Zoning. Madge said if the board did not have to do that, she would like to know. Madge asked Barbara F. if she could get information regarding this. Barbara thought it depended on the size of the wall, because the board is looking at earth moving when they review a wall.

CEO Demers stated that in Waterboro it says the 'Planning Board or its designee' and the board can designate whoever they want to review it. CEO Demers said that is how that can be changed. Madge thought that Roger A. thought the board adopted something and they can't change it. Roger said that if the language is changed with respect to Shoreland Zoning, the DEP needs to approve the change. He noted that you can get more stringent than the DEP but you cannot get lesser than their requirements. Madge asked who they need to talk to? CEO Demers stated that they were short staffed right now. He said if you go back to the original Chapter 1000 from the DEP, it may already say 'or its designee'. He said Shapleigh may have removed it, he was not sure. Steve F. asked how that would work in the case of a wall, would they go to the Planning Board and then we would send them to you. CEO Demers stated that no, it would be pre-determined either / or could do it. Madge asked how the board could find out what the original was. Barbara said they just had to look it up. CEO Demers stated that he had a copy. Madge thought it would be good to look at it at a workshop. Barbara agreed, and said again that they might want to get through the next few meetings first, as they will be very busy. CEO Demers agreed.

Roland L. stated that he thought the board might see an increase with the number of applicants for wall repair with the projected drain-down of Mousam Lake, due to the work to be done on the dam. The lake drawdown may begin on October 1<sup>st</sup> and would be drawn down from 1 to 2 feet lower than the usual seasonal drawdown, by October 15<sup>th</sup>. This is to do the work on the dam. He said the work on the dam is supposed to be completed by November 22<sup>nd</sup>. At that time the level will be allowed to return to its normal seasonal low. He said the message is getting out, so the board may see an increase in the number of applications in the fall. Madge B. thought it was good for the town for people to do necessary repairs.

Roland L. said he only partially agreed with Madge's position with respect to not having the board review the replacement of retaining walls. He said because often times this involves more than just the wall, specifically removing trees and tree roots, which are beneficial. He said it depends on who does the site assessment, you could have someone more or less lenient. He believed when the board goes collectively,

one person's leniency vs one person's stringency, can be offset or you can come up with compromise. CEO Demers agreed that having more eyes takes the responsibility off just one person. Madge said regardless it won't change this fall. Roland said that he could not think of one activity, except for road runoff, that has a greater impact on the lake than walls. Madge agreed. Roland said if you cruise on the lake, you see areas of erosion around walls, behind walls, walls that are falling over. Steve F. didn't think the wall created the erosion. CEO Demers stated that he was correct, but repairing the wall is going to stop it. Roland agreed that it could contain it, if done properly. Roland noted that in some instances that walls have degraded to the point that water just runs past it, but if it were intact, it would stop the runoff.

The board agreed a workshop was needed to talk about walls, conditional uses, etc.

Nothing more was discussed.

**Other:**

**Amendment to a Subdivision – Add Additional Lots for a Total of 6 – Dezan Subdivision – Map 7, Lot 41 (Norton Ridge & Owl's Nest Road) – Joseph Stanley, Surveyor / Representative; Lee Dezan, Property Owner**

Board members signed the Findings of Fact for the Dezan Subdivision that was approved on June 11, 2019. The board has received the recorded Mylar and paper copy, with the book and page for the approved subdivision.

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**Growth Permits**

There are growth permits available.

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

**NOTE: The summer hours are in effect thru October 31st, the meetings now begin at 7:30 p.m. and any scheduled public hearing begins at 7:00 p.m.**

The next meeting will be held **Tuesday, July 9, 2019** at 7:30 p.m.

The Planning Board meets the 2<sup>nd</sup> and 4<sup>th</sup> Tuesday of each month unless it falls on a holiday or Election Day. Should there be a cancellation due to a storm event, holiday or Election, the meeting will typically be held the following Wednesday, also at 7:30 p.m. Please contact the Land Use Secretary if there is a question in scheduling, 207-636-2844, x404.

Respectfully submitted,  
Barbara Felong, Land Use Secretary

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

# ***Shapleigh Planning Board***

## ***Minutes***

**Tuesday, July 9, 2019**

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

Ann Harris sat in as a regular member this evening.

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

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

#### **Conditional Use Permit – In-home Day Care for up to 12 Children – Map 4, Lot 10C (651 Back Road) – Tatiana Murphy, Applicant; Tatiana & Eddie Murphy, Property Owner(s)**

Mrs. Murphy was present for the public hearing.

Roger A. asked Mrs. Murphy to let the board know what she wanted to do. Mrs. Murphy stated that she wanted to open a day care in her home which was located on Back Road. She stated that she was a licensed day care provider in Lebanon but she moved to Shapleigh. She said she would be licensed by the State of Maine for up to 12 children, the day care would be on the first floor of her home, and there would be a playground on her property, which is 300 feet off the road. She noted at the last meeting the board wanted to know how far the home was from back road.

Roland L. asked Mrs. Murphy if she was planning on having any signage? Mrs. Murphy stated that she would like a sign, but noted that other day cares on the road did not have a sign, so she wasn't sure she could have one. Roger A. stated that signage is handled by the Code Enforcement Officer and it is allowed.

Roger A. asked if anyone had any questions? There were none. Roger stated the only items he saw that needed to be addressed were that there needed to be a handrail on the stairs because the stairs were so wide, and there needed to be a gate in front on the fireplace and pellet stove at all times. He also thought the driveway needed additional fill added, so there would be ample room to turn around. Mrs. Murphy stated, “OK”.

Roger A. asked about the children's ages she would be having. Mrs. Murphy stated, “6 weeks to 12 years”. Roger said there would need to be two providers per State regulations. Mrs. Murphy stated, it depended on how many children she had in each age group. Roger stated that State regulations state that 6 weeks to 2 years old need 2 providers and you would only be allowed to have 8 children. Mrs. Murphy stated that she would not have 12 children. Roger stated that when you go to ‘2 years old to 5 years old’,

you need 2 providers for 12 children. Mrs. Murphy stated again that she would not have 12 children. Mrs. Murphy stated that she would be operating on her own. Roger said that being the case, she would only have 8 children in this age group. Mrs. Murphy stated, “Right. If I only have children 6 weeks to 2 years old I would only be allowed to have 4 children on my own, which I will not have 4 infants”. She said the ages she would have would range between a year old to school age, 9 to 12 years old. She stated she could include her two children, because the State rules say that if your children are over the age of 3 or 4, they do not have to be included in the ratio. She said her children did not have to be included, so she would have eight children in her care on her own, two of which would be her own, so she would have six children for licensing. Roland L. asked how old her twins were? She stated they were 6. Roland stated the board was looking at a copy of the state regulations. Mrs. Murphy stated that the rules can be confusing, they break it down in three different tiers, 6 weeks to 2, 2 to school age which could be 5 or 6, and then school age which is technically 5 or 6 up until 12.

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

The public hearing was closed at 7:05 p.m.

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**The minutes from Tuesday, June 25, 2019 were accepted as read.**

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

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**Conditional Use Permit – In-home Day Care for up to 12 Children – Map 4, Lot 10C (651 Back Road) – Tatiana Murphy, Applicant; Tatiana & Eddie Murphy, Property Owner(s)**

Mrs. Murphy was present for the final review of her application.

Previously provided along with the application, was an aerial picture of the property which showed the location of the existing home, and drawn on the picture was the word ‘well’ with an arrow pointing to its location; the words ‘Play area, septic & leachfield’ with an arrow pointing to a box depicting that area; a box containing the words ‘turn around’; and the numbers ‘651’ with an arrow pointing to the driveway. Also provided was a letter from the current owner, Loc Lam, which read as follows: “To whom it may concern, I Loc Lam and Beverly Lam at 651 Back Rd Shapleigh, ME, am selling our home to Eddie and Tatiana Murphy closing date to be June 28<sup>th</sup> 2019, we give them permission to do what they need to, to start the application process with the Town of Shapleigh for their in home daycare.”

In addition, Tatiana Murphy provided a letter stating the following:

*To whom it may concern,*

*My family & I are going to be moving to Shapleigh this month. I currently have an in home daycare at our house that we live in now in Lebanon, ME. I have been licensed in the town of Lebanon for a few years now. I plan to reopen my in home daycare at our new house in Shapleigh.*

*I have already contacted the State of Maine to notify them of our move. I will go through the process to get licensed at our new location pending the approval from the Town of Shapleigh. I will apply for a license through the State of Maine to care for 12 children ranging in age from 6 weeks through 12 years old.*

The application detailed description of the project states: Open an in home daycare that will be licensed through the State of Maine. I will be licensed to care for 12 children.

*Note: Prior to this evening's meeting was a site inspection. Also, Mr. & Mrs. Murphy are now owners of the property.*

Roger A. opened the review by asking Mrs. Murphy once again to state what she wanted to do for the record. Mrs. Murphy stated she wanted to open up an in-home day care on Back Road. She stated she would be licensed by the State for up to 12 children, from the ages of 6 weeks to 12 years old. She said there was a fenced in play area for the children, the home was 300 feet off the road, and there was plenty of space for cars to back up and for drop off and pick-up. She said the day care will be on the 1<sup>st</sup> floor.

Roger A. asked if there were any questions for Mrs. Murphy? There were not. Roger began the review of the pertinent ordinances.

**§105-17 – Land Uses. Roger A. stated that the reason this was before the board was because under this section day care requires a Conditional Use Permit from the Planning Board.**

**§105-40.1 - Child day care. Roger stated Section C did not apply as it was for day-care 'centers', which provided care for 13 or more children.**

- A. A child day-care home 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 A. stated that this home being reviewed has had an approved day care in the past, but it had been greater than a year since it was open, so a new permit was required.**

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

*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. **Roger A. stated, it will not. There is no vegetation being cleared and it is not near any pond.**
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. **Roger A. stated that it was not applicable.**
- 3) The use is consistent with the Comprehensive Plan. **Roger A. stated that it is. The Comprehensive Plan wants small home based businesses in town.**
- 4) Traffic access to the site is safe. **Roger A. stated that it is.**
- 5) The site design is in conformance with all municipal flood hazard protection regulations. **Roger A. stated that it was, this location is not in a flood zone.**
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. **Roger A. stated there is a State approved subsurface wastewater disposal system in existence.**
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. **Roger A. stated there was none generated by this activity.**
- 8) A stormwater drainage system capable of handling fifty-year storm without adverse impact on adjacent properties has been designed. **Roger A. stated this is not applicable because there is no change to the existing structures on site or to the existing landscaping.**
- 9) Adequate provisions to control soil erosion and sedimentation have been made. **Roger A. stated this is not applicable, as there are no changes being made to the property or exterior of the existing structure. Roger noted the area is grassed.**
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. **Roger A. stated there is.**
- 11) The provisions for buffer strips and on-site landscaping provide adequate protection to neighboring properties from detrimental features of the development, such as noise, glare, fumes, dust, odors and the like. **Roger A. stated the existing home sets off the road and away from neighboring properties. There is existing vegetation that will not be removed.**
- 12) All performance standards in this chapter applicable to the proposed use will be met. **Roger A. stated that they will with conditions.**

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

- 1) **Add hand rail to the front steps for safety, due to the width of the stairs.**
- 2) **Maintain fireplace and pellet stove barriers at all times to protect the children.**
- 3) **Add child safety gate at the base of the stairs going to the second floor.**
- 4) **Add additional gravel to the parking area, to make it easier to turn around on site.**
- 5) **Hours of operations will be 6 am to 6 pm, Monday thru Friday.**
- 6) **State requirements under 10-144 C.M.R., Chapter 33, Section 8: Provider-Child Ratios and Supervision, Section A ‘Provider-child ratios.’ shall be complied with.**

Mrs. Murphy stated that looking at this section, under the mixed ages, the tier she would be working under would be 1 Provider: 3 children under 2 years old + 3 children 2 to 5 years old + 2 children over 5 years old.

**Maggie M. made the motion to approve the Conditional Use Permit for an in-home day care licensed by the State of Maine for up to 12 children to be located on Shapleigh Tax Map 4, Lot 10C, with the above stated 6 conditions. Roland L. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 4 – 0, the motion passed unanimously.**

Roger A. stated that any signage would be permitted thru the Code Enforcement Officer, as well as hand rail requirements. Roger stated an approval letter would be mailed.

Nothing further was discussed.

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### **The Findings of Facts**

1. The applicant is Tatiana Murphy of 651 Back Road, Shapleigh, Maine 04076. The owner(s) of Shapleigh Tax Map 4, Lot 10C (651 Back Road), are Tatiana & Eddie Murphy.
2. The property is located in the General Purpose District and according to the assessor, the property contains 5 acres.
3. The detailed description of the project is as follows: Open an in-home day care that will be licensed through the State of Maine. I will be licensed for up to 12 children.
4. Received was an aerial picture of the property which showed the location of the existing home, and drawn on the picture was the word ‘well’ with an arrow pointing to its location; the words ‘Play area, septic & leachfield’ with an arrow pointing to a box depicting that area; a box containing the words ‘turn around’; and the numbers ‘651’ with an arrow pointing to the driveway.
5. Received was a letter from the previous owner, Loc Lam, which read as follows: “To whom it may concern, I Loc Lam and Beverly Lam at 651 Back Rd Shapleigh, ME, am selling our home to Eddie and Tatiana Murphy closing date to be June 28<sup>th</sup> 2019, we give them permission to do what they need to, to start the application process with the Town of Shapleigh for their in home daycare.” Note: The Murphy’s as of the approval are the legal owners of the property.
6. Received was a letter of intent from Tatiana Murphy, owner/operator of the proposed day care, it read as follows: *My family & I are going to be moving to Shapleigh this month. I currently have an in home daycare at our house that we live in now in Lebanon, ME. I have been licensed in the Town of Lebanon for a few years now. I plan to reopen my in home daycare at our new house in Shapleigh. I have already contacted the State of Maine to notify them of our move. I will go through the process to get licensed at our new location pending the approval from the Town of Shapleigh. I will apply for a license through the State of Maine to care for 12 children ranging in age from 6 weeks through 12 years old.*

7. The board reviewed Zoning Ordinance §105-40.1, ‘Child day care’ and the board concurred the application met all the standards imposed.
8. The board reviewed Zoning Ordinance §105-73, Section G, ‘Standards applicable to conditional uses’ and concurred the application and information as presented met the performance standards in this chapter, with conditions.
9. A notice was mailed to all abutters within 500 feet of the property on June 26, 2019. Meetings were held on June 25, 2019 and July 9, 2019. A site inspection was done and a public hearing was held on July 9, 2019, prior to the meeting.
10. The Planning Board unanimously agreed to approve the Conditional Use Permit to open an in-home day care for up to 12 children, to be located on Map 4, Lot 10C, per the plans and information provided, with six conditions.
11. **The conditions of approval are:**
  - 1) **Add hand rail to the front steps for safety, due to the width of the stairs.**
  - 2) **Maintain fireplace and pellet stove barriers at all times to protect the children.**
  - 3) **Add child safety gate at the base of the stairs going to the second floor.**
  - 4) **Add additional gravel to the parking area, to make it easier to turn around on site.**
  - 5) **Hours of operations will be 6 am to 6 pm, Monday thru Friday.**
  - 6) **State requirements under 10-144 C.M.R., Chapter 33, Section 8: Provider-Child Ratios and Supervision, Section A ‘Provider-child ratios’, shall be complied with.**

Motion:

After careful consideration and a review of all material presented to the Board, including the review of the Zoning Ordinances §105-40.1 ‘Child day care’, and §105-73, Section G, ‘Standards applicable to conditional uses’ a motion was made on July 9, 2019 to approve the Conditional Use Permit for an in-home day care for up to 12 children, on Shapleigh Tax Map 4, Lot 10C, per the plans and information provided, with six conditions.

Vote:

By a unanimous vote of 4 – 0, the motion to approve the Conditional Use Permit for an in-home day care for up to 12 children, on Shapleigh Tax Map 4, Lot 10C, per the plans and information provided, with six conditions, was accepted.

Decision:

**The Conditional Use Permit for an in-home day care for up to 12 children, on Shapleigh Tax Map 4, Lot 10C, per the plans and information provided, with six conditions, was approved.**

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**Best Possible Location – Replace Existing Structure – Map 18, Lot 19 (7 1<sup>st</sup> Street) – Jan & Linda Rajchel, Applicants; Rajchel Family Revocable Trust of 2014, Property Owner(s)**

Mr. Rajchel was present for the final review of the application.

Previously provided along with the application, was a draft plan depicting the existing building envelope, proposed building roof drip edge, proposed building foundation and proposed decks/stairs; a plan showing the boundary survey of all property located on First Street, prepared by Dana Libby of Corner Post Land Surveying Inc., dated 9/5/2000 (Note: there was no embossed seal noted on the plan); a boundary/existing conditions survey for Rajchel Family Revocable Trust of 2014, dated June 14, 2018, it was done by Corner Post Land Surveying Inc. but the preparer was not noted and there was no embossed seal, you could see the location of 1<sup>st</sup> Street, the boundary lines, abutter lines, right-of-way lines, the existing structure, parking area and location of the septic tank and disposal field; an enlarged view of the aforementioned plan whereby you could see the notations, which are the lot contains 10,455 Square Feet, there are square footage notations for the existing structures which are listed as: Deck & Stairs 525 sf and Building Area 1,425 sf; the current setbacks noted on the enlarged plan are: 14.98' at the closest point to 1<sup>st</sup> Street, 6.31' at the closest point to Map 18, Lot 20, 52.77 to the high water mark at the closest point, and to the proposed agreement line in question with Map 18, Lot 18, distances listed are 15.61 closest to 1<sup>st</sup> Street, 24.38, 23.94 and 29.21 the closest measured distance toward Mousam Lake. Also provided was the Building Height Calculation, showing that at the lowest ground grade the building height is 23.72 feet, and a grading & drainage plan, prepared by Jason VaFiades of Atlantic Resource Consultants.

In addition, provided was a copy of the Subsurface Wastewater Disposal System Application, drafted by John Large, SE #7, dated October 31, 1997, along with the Replacement System Variance Request for a 2 bedroom home. And a letter was provided from the applicants stating that Dana Libby, or his associates, were authorized to represent the Rajchel Family Revocable Trust of 2014 on matters concerning the Best Possible Location application.

The detailed description of the project is as follows:

**Site Plan**

*See attached drawings. Exact location and distances from property lines currently undeterminable as boundary line agreements and long standing lines of occupation pending and/or being negotiated. As such, applicants are using tax assessment data for lot coverage information and calculations. Property purchased by applicant on August 8, 2017. Previous owners took the 30% expansion already, and existing building and decks have been permitted through compromise between previous owners and a previous CEO. Applicants seek to rebuild existing structure within the existing "footprint". "Footprint" meaning the existing roof drip edge, decks, but excluding staircases as from above.*

*(The applicant provided a copy of the tax assessment documented by John E. O'Donnell & Associates.) Town tax assessment indicates 0.4 Acres; 1 acres = 43,560 sq. feet; 0.4 acres = 17,424 sq. feet Existing building "foot print" (roof drip line plus decks plus stairs)*

*Bldg. 1,425 sq. ft.*

*Deck 415 sq. ft. (approx.)*

*Stairs 110 sq. ft. (approx.)*

*Existing building & deck (1,425 sq. ft. + 415 sq. ft.) cover more than 10% of Shapleigh tax assessment land area.*

*1,840 sq. ft. (building + decks) divided by 17,424 sq. ft. = 10.6%*

*Existing building, decks and stairs will be removed and replaced “in-kind” to the best extent possible. Roof drip edge of replacement dwelling and decks will be within the former roof drip edge and deck areas. See attached proposed sketch.*

*Exact setbacks from property lines, whatever and wherever they are, will not change unless Planning Board decides to move the building from the structure’s current location under the Best Possible Location regulations. Resultant boundary lines will be likely determined based on long standing lines of occupation with respect to abutters.*

*By keeping location of the replacement dwelling and decks within the existing building envelope, the resultant non-conformance is made no better, and no worse, than existing non-conformance.*

*No more than 3 feet of fill will be brought in in order to raise the lowest elevation of the proposed replacement dwelling. The purpose of raising the lowest floor level is to mitigate existing water runoff and drainage issues from 1<sup>st</sup> Street. The adjacent grade will be increased as well to satisfy the “building height” definition.*

*Existing subsurface wastewater disposal system will be maintained in current locations, including existing drywell for grey water.*

*Existing dug well will be abandoned and filled in as a new drilled well has been installed.*

*To the extent possible, all disturbed areas facing Mousam Lake and the side areas will be replaced with grass to restore the land to its current condition and the disturbed areas along 1<sup>st</sup> Street will be replaced with asphalt and grass to restore the land to its current condition.*

*Wood retaining wall located between applicant’s dwelling and abutter on Map 18, Lot 20 (Robert Moore) will be repaired and/or replaced.*

*To the extent possible, all disturbed areas will be restored to existing ground cover conditions. Grass where grass is, asphalt pavement where asphalt pavement is. No tree replanting is anticipated.*

Roger A. asked Mr. Rajchel to state what he wanted to do for the record. Mr. Rajchel stated that they were going to tear down the existing structure and replace it so it is within the existing building footprint; the footprint being defined as the roof drip edge plus decks, excluding stairs. He said it would be a two phase project, phase 1 would be a weathertight camp, phase 2 would be to finish the interior. He felt the minutes from June 25<sup>th</sup> stating what he intended to do, were accurate, but he stated he could read those details again if the board wanted him to. Roger did not feel it was necessary. Roger A. asked if there were any concerns regarding Mr. Rajchel? There were no comments.

Roger A. stated the board did a site inspection this evening, on site the only issue he had was being concerned with how he was going to hold back the retaining wall, and how the front wall was going to be held while removing the existing foundation and putting the new one in place. Mr. Rajchel stated that was why they hired general contractors, he stated he was not a contractor, but he trusted that they knew what they were doing. He stated he was going to keep the neighbors septic tanks intact. He stated that the neighboring property, Mr. Moore, has stated that they are replacing their portion of the retaining wall

before this winter. He said it was his understanding that Jeff Goodwin Excavating was supposed to discuss this with the current CEO, Mike Demers. He said he wasn't sure if he has spoken with him yet or not. CEO Demers stated that he had. Ann H. asked if he was going to take the entire wall down? CEO Demers stated that he was looking to have it go along with this project, so they could do it all at the same time. Ann stated, "So it is all going to come down". CEO Demers stated that if everything worked out, probably. Roland L. thought it was the most logical thing to do, instead of trying to do it piecemeal with the material proposed, the interlocking pieces for structure and strength. CEO Demers agreed. Ann noted there was a tree between the wall and the house that would have to come down. Roland thought it was an Ash tree and he agreed. Roland noted that in the presentation it was stated that no trees would come down, but at the site inspection the board members noted two trees that would have to be removed and replanted. Roger agreed, stating there was one on each side of the house.

Mr. Rajchel wanted to know what the definition of a tree was? Roger A. stated they were both trees, there was no way they were not trees. Mr. Rajchel said he believed there was a rule that they had to be six feet high and 2 inches in diameter or is a shrub a tree? Roger said they had to be replanted with a tree six feet in height. Mr. Rajchel asked again what the definition of a tree was? Roland L. agreed with Roger they were trees. Mr. Rajchel stated that he felt if the surveyor thought it was a tree it would have been on the drawing.

Roger A. looking under §105-15 'Definitions', read "TREE – A woody perennial plant with a well-defined trunk(s) at least two inches in diameter at 4.5 feet above the ground, with a more or less definite crown, and reaching a height of at least 10 feet at maturity". Mr. Rajchel stated that he didn't know the measurements at 4.5 feet. He said if it had to come down because of construction, it was the contractors call. Roger stated that they had to be replaced and they could not be any further from the water than the existing. He said they can be closer, but no further. Roger said he would have to put two trees in, at a minimum of 6 feet in height from the base to the top. Roland L. stated this was in the ordinance. Mr. Rajchel didn't know why the surveyor didn't put it on the plan. Ann H. agreed, she did know why either because typically they do. Roland said on the plans provided, because they are so small, perhaps they are on there, the board could not tell. Mr. Rajchel said they were not on there. Roland said that by definition they are trees.

Roger A. stated that the board realizes that there is a boundary in dispute, the building itself he would like to see it moved toward Mr. Foglio's house, but because of the septic location he thought it would be hard to accomplish. He also didn't want it to affect the dry wells. Roger said realizing the building was already exceeding the 10% lot coverage it cannot grow any larger than it is. Mr. Rajchel asked if he was talking about the existing building? Roger said yes, the existing structures.

Roland L. said he was concerned about the lack of clarity on the lot line location. He said when it is resurveyed, if Mr. Rajchel finds out he is encroaching on his neighbor's property, that would be the applicants problem, but the board would hate to see that. Mr. Rajchel stated they purchased the property August 8, 2017. He said the abutters, Robert Moore and his family, we have a good understanding by adverse possession where that property line is. He stated that they have been working with Mr. Foglio for almost 2 years, and this is the closest they have come to an agreement, as to what it is. He stated that they deliberately had not gone for a best possible location until they got that, they don't want to build until they know.

Mr. Rajchel stated he was surprised the abutters, the Foglio's, were able to build without a clear understanding where the boundary was as far as setbacks go. He said they have the same problem, he does. He stated that he felt confident within the next six months they would have an agreement in writing.

Ann H. asked if the board should get something in writing before they approve the plan? Roger A. felt ok with the plan presented, the house is setting on the parcel, it's just the boundaries that are in question. Mr. Rajchel stated that him building the new building in the exact same footprint, they would not be making it any worse off or better off than it currently is. He said they can't go closer to the water, although they would like to. He said they can't go left or right, as they would squeeze toward the property line, so the best possible location was leaving it where it was. Ann asked as a board, could they make the best possible location decision, not knowing where the boundaries are? Roger stated that Dana Libby had set the survey of where the house is. Ann said, ok. Roger said the survey was done in 2014, the board will use that to say the building is in the location it is in, even though the lines are being contested.

Roland L. stated that the only reservation was to protect Mr. Rajchel's interest. Mr. Rachel stated that he understood that, which was why they hadn't torn the building down, they hadn't applied for the permit, they haven't done anything yet. He said they want to know what they own before they start, but it's been 2 years, and he felt it was time to go as far as they could.

Roger A. stated the new property line between Mr. Rajchel and Mr. Foglio was going to decrease the distance that Mr. Libby had in 2014. He said Mr. Libby had 29.21 feet and now it will be less. Mr. Rajchel stated that they did not know because again the stakes that the board saw in the ground were set by Steve Foglio, and he said it was what they believed they were going to call the boundary line on that side between the properties. He said that Steve Foglio stated he had to check with the Town and with his legals to get them to agree as well. Roland asked, "When you said set by Steve, do you mean a representative of Steve like a surveyor"? Mr. Rajchel stated, "No, Steve physically put those wooden stakes in the ground and hammered them where they are. I then had my surveyor, Dana Libby, go in and mark them with concrete post so they wouldn't move". He said we have agreed verbally with a hand shake and now we are trying to make the rest of it work. Roland said, "Ok, thank you".

Roger A. stated that building permits were only good for two years. Roger stated that a DEP permit would be required to remove the structure because of the proximity to the water. Mr. Rajchel stated that he would be using one of the local contractors that has assured him that he is DEP certified, and the contractor estimated that the ground-up stumps used for erosion control are going to be 15 to 20 feet away from the existing building. He said the contractor does not feel that they will have to go closer to the water with erosion control. He said again that that was their expertise, not his.

Roland L. asked if Roger was talking about a DEP Permit by Rule? Roger A. said, yes, a DEP Permit by Rule will allow you to take a building down. He said then, best management practices would have to be done by a DEP contractor that is certified to oversee the project, to make sure erosion control measures are maintained, so that no erosion goes into the lake. Roland asked if it was the applicant's responsibility to contact the DEP and file for a Permit by Rule or is it the contractor. Roger said, "A contractor can do it for the owner". Roland told Mr. Rajchel to remember 'PBR', Permit by Rule, talk with your contractor to make sure he is going to do it, because you need it. Mr. Rajchel said again he was going to use one of the local guys. Ann H. noted that there was a list of contractors on the DEP website that states whether or not they are certified. Roland stated, "Don't make an assumption he is going to apply for it". Roger stated

that the DEP has 14 days to respond to your project, if they don't respond in 14 days your permit is granted. Roger said that they will give a copy to the CEO, so the Town will know that it was filed.

Roger A. stated that BMP (best management practices) must be maintained until everything is stabilized.

Roger A. stated that the surveyor will set where the house actually sets today, as well as where the new foundation will sit. Roger said prior to the concrete being poured, the surveyor and CEO needs to be notified, so he can take a look at it and set pins.

Roger A. stated the two trees to be removed needed to be replanted. Roger said he would leave the location up to the CEO, because it is a two phase project, it would be best to have the CEO determine when replanting should take place and where. Roger didn't want the trees planted and then have the area disturbed again.

Maggie M. stated she wanted clarity with respect to the foundation location, she believed it could only be where it is now. Roger said, "True". Maggie said the section where the foundation is going to be added, by that wording it wouldn't be included. Mr. Rajchel stated, "She is right. The replacement building will have a foundation that is in a different location, but, the new building will be within the existing footprint". Maggie said, "OK, I just wanted to clarify".

Roger A. stated that the front wall where the house sits will have to set exactly where it is. Roger said, "You won't be moving it, just the lake side and Steve's side". Mr. Rajchel stated that the wall itself will be a little closer to the water a couple of inches than the existing. Roger agreed and the wall will be closer to Steve's side. Mr. Rajchel stated again the foundation would be slightly closer to the lake but the drip edge would be within the existing footprint. He stated it was a definition they were working with, when Roger said wall, did he mean wall or drip edge. Roger said, "Poured concrete will actually sit approximately where it is". Mr. Rajchel stated that it would be a little closer to the water because of a bigger eave on the roof, that is what is existing there. He said everything was guided by the roof drip edge, the eave is going to be bigger than existing, so it will push the exterior wall closer in. Ann H. stated, "But it can't go closer to the water". Mr. Rajchel stated, "The new building will be within the existing footprint of the existing building". Roger A. stated that the surveyor will have those dimensions for CEO Demers and he can look at that.

Roland L. asked CEO Demers about grey water holding tanks systems, were they still acceptable? CEO Demers stated that he hadn't run across this but he believed that ones that exist that have nothing wrong with them, and he wants to use it for things like stormwater runoff from his gutters, he didn't see anything wrong with that. He stated that water that came off a boiler, it couldn't go into a grey water system and obviously not sewerage. Roland said it was pointed out during the site visit that there were two grey water tanks. He said the board hadn't come across this before. CEO Demers said again that as long as it was existing and he wasn't putting anything hazardous into it, water from gutters was fine.

Roger A. reviewed §105-4.D 'Nonconforming structures' and Section 7 'Relocation'. Roger noted that the area was grass at this time, therefore, the revegetation will be grass once the project is completed.

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

- 1) **Best Management Practices shall be in place until the project is completed and the ground is stabilized. A DEP Permit by Rule is required prior to demolition.**
- 2) **The contractor doing the work must be licensed by the Dept. of Environmental Protection in Erosion Control Measures.**
- 3) **Two trees removed must be replaced with 2 trees six feet in height per Shapleigh Zoning Ordinance §105-4.D.7B[1][a]. Location and planting scheduled will be determined by the Code Enforcement Officer.**
- 4) **Per Shapleigh Zoning Ordinance §105-4.D7(c), the approved plan shall be confirmed in writing by a licensed surveyor that the placement of the structure is correct per the specifications approved by the Planning Board. The surveyor shall place the structure where it is today and then place the pins prior to pouring the new foundation.**

Maggie M. asked if there needed to be anything in the conditions to address the current boundary issues? Roger A. stated the plan the board has is from Dana Libby and that is what we are using. He said if the boundaries change it is up to them to record it at the courthouse. Roland asked that a condition be listed that all demolition material be taken out of town. Roger stated, yes. Mr. Rajchel stated that he was going to be taking it to Simpsons, and he believed it was out of town. Roger agreed, stating it was in Sanford.

**Condition 5) All demolition material shall be taken out of Shapleigh and disposed of properly.**

**Maggie M. made the motion to approve the best possible location, placing the footprint of the new structure within the existing building envelope, on Shapleigh Tax Map 18, Lot 19, with five stated conditions. Roland 2<sup>nd</sup> the motion. All members were in favor. By a vote of 4 – 0, the motion passed unanimously.**

Mr. Rajchel asked if it was clear that the new building could be built within the existing building envelope. Roger A. stated that yes, the existing envelope and the surveyor would set that envelope, and Mr. Rajchel would need to get that information to the CEO.

Nothing further was discussed.

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### **The Findings of Facts**

1. The owners of Shapleigh Tax Map 18, Lot 19 (7 1st Street), is the Rajchel Family Revocable Trust of 2014; Jan J. Rachel & Linda M. Rajchel, Trustees, of 122 Jacobs Well Road, Epping, NH 03042.
2. The property is located in the Shoreland District and according to the assessor contains 0.40 acres.
3. The applicant is before the board for a Best Possible Location to replace the existing structure, keeping the new structure the same size and leaving it in the same location as the existing structure.
4. Received was a draft plan depicting the existing building envelope, proposed building roof drip edge, proposed building foundation and proposed decks/stairs; a plan showing the boundary survey of all property located on First Street, prepared by Dana Libby of Corner Post Land Surveying Inc., dated 9/5/2000 (Note: there was no embossed seal noted on the plan); a boundary/existing conditions survey

for Rajchel Family Revocable Trust of 2014, dated June 14, 2018, it was done by Corner Post Land Surveying Inc. but the preparer was not noted and there was no embossed seal, you could see the location of 1<sup>st</sup> Street, the boundary lines, abutter lines, right-of-way lines, the existing structure, parking area and location of the septic tank and disposal field; an enlarged view of the aforementioned plan whereby you could see the notations, which are the lot contains 10,455 Square Feet, there are square footage notations for the existing structures which are listed as: Deck & Stairs 525 sf and Building Area 1,425 sf; the current setbacks noted on the enlarged plan are: 14.98' at the closest point to 1<sup>st</sup> Street, 6.31' at the closest point to Map 18, Lot 20, 52.77 to the high water mark at the closest point, and to the proposed agreement line in question with Map 18, Lot 18, distances listed are 15.61 closest to 1<sup>st</sup> Street, 24.38, 23.94 and 29.21 the closest measured distance toward Mousam Lake. Also provided was the Building Height Calculation, showing that at the lowest ground grade the building height is 23.72 feet, and a grading & drainage plan, prepared by Jason VaFiades of Atlantic Resource Consultants.

5. Received was a copy of the Subsurface Wastewater Disposal System Application, drafted by John Large, SE #7, dated October 31, 1997, along with the Replacement System Variance Request for a 2 bedroom home.
6. Received was a letter from the applicants stating that Dana Libby, or his associates, were authorized to represent the Rajchel Family Revocable Trust of 2014 on matters concerning the Best Possible Location application.
7. The detailed description of the project stated in part: *Existing building, decks and stairs will be removed and replaced “in-kind” to the best extent possible. Roof drip edge of replacement dwelling and decks will be within the former roof drip edge and deck areas. Exact setbacks from property lines, whatever and wherever they are, will not change unless Planning Board decides to move the building from the structure’s current location under the Best Possible Location regulations. Resultant boundary lines will be likely determined based on long standing lines of occupation with respect to abutters. To the extent possible, all disturbed areas facing Mousam Lake and the side areas will be replaced with grass to restore the land to its current condition and the disturbed areas along 1<sup>st</sup> Street will be replaced with asphalt and grass to restore the land to its current condition. Wood retaining wall located between applicant’s dwelling and abutter on Map 18, Lot 20 (Robert Moore) will be repaired and/or replaced. To the extent possible, all disturbed areas will be restored to existing ground cover conditions. Grass where grass is, asphalt pavement where asphalt pavement is. No tree replanting is anticipated.*
8. The board reviewed Zoning Ordinance §105-4, ‘Nonconformance’, and concurred the application and information as presented met the standards applicable in this chapter.
9. A notice was mailed to all abutters within 500 feet of the property on June 26, 2019. Meetings were held on Tuesday, June 25, 2019 and Tuesday, July 9, 2019. A site inspection was conducted on July 9, 2019, prior to the meeting.
10. The Planning Board unanimously agreed to approve the Best Possible Location, placing the footprint of the new structure within the existing building envelope per the plans provided with five conditions:

11. The conditions of the approval are as follows:

- 1) Best Management Practices shall be in place until the project is completed and the ground is stabilized. A DEP Permit by Rule is required prior to demolition.
- 2) The contractor doing the work must be licensed by the Dept. of Environmental Protection in Erosion Control Measures.
- 3) Two trees removed must be replaced with 2 trees six feet in height per Shapleigh Zoning Ordinance §105-4.D.7B[1][a]. Location and planting schedule will be determined by the Code Enforcement Officer.
- 4) Per Shapleigh Zoning Ordinance §105-4.D7(c), the approved plan shall be confirmed in writing by a licensed surveyor that the placement of the structure is correct per the specifications approved by the Planning Board. The surveyor shall place the structure where it is today on the lot and then place the pins prior to pouring the new foundation.
- 5) All demolition material shall be taken out of Shapleigh and disposed of properly.

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**Conditional Use Permit – Earth Moving in the Shoreland District – Map 23, Lot 10 (37 Starboard Lane) – Michael Roberts, Applicant & Property Owner**

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

Along with the application, Mr. Roberts provided a sketch plan which depicted the location of the existing house, garage and decks, areas called ‘stumps grindings’, areas called ‘sand now’, the location of the existing retaining walls, and the shoreline setback, which is located approximately halfway thru the middle of the existing garage. All other features on the plan, except the rear portion of the garage, are within 100 feet of the high water mark.

The detailed description of the project is as follows: Bring in 52 yards of sand to replenish and level existing sanded area.

Roger A. asked Mr. Roberts to let the board know what he wanted to do. Mr. Roberts stated he wanted to replace and regrade what was there. He said nothing was going to be removed, it was going to be brought in to replace and level the existing area.

Roland L. asked what was there now? Mr. Roberts stated, “All sand”. Roland asked if there was any vegetation? Mr. Roberts stated it was rocks and sands. Ann H. said, “Then nothing will grow in it”. Mr. Roberts stated that the trees that had been replaced since the house was burned down were growing, but the areas noted on the plan have no vegetation at all. Mr. Roberts said that they bought it in August of 2015, and there is anywhere from 2 inches to 6 inches in spots that were missing sand, both on the upper and lower location. He stated they just want to level it off, so it is just 2 inches from the top of the wall to make it level.

Roland L. noted that the board had visited the site in the past. Mr. Roberts agreed, that several times the board had been there. Ann H. asked if Mr. Roberts intended to put mulch on top of the sand? Mr. Roberts stated, “No it’s sand now and it’s going to stay sand”. He said there were mulch areas around it, and those areas would not be disturbed. He added that it wasn’t actually mulch but erosion control. Ann



said, “OK, that is what that meant”. She was referring to the notation on the plan. Mr. Roberts said that at some point they may need to add more erosion control mulch, noting that when they bought the house it was much thicker than it is now.

Roger A. stated, “You need a DEP Permit by Rule”. Mr. Roberts asked what for? Roger said, “For filling in”. Mr. Roberts asked if it was for mulch or the sand? Roger stated that for anything being brought in, mulch or sand, a DEP permit was required. He said a Permit by Rule was required if you are moving greater than 10 yards of anything within 100 feet of the water. Roger stated that DEP had to be notified as to what Mr. Roberts was going to do to see if they have any concerns.

Roger A. stated that his concern was how the area was going to be stabilized, he did not feel you could just leave sand there. Mr. Roberts stated that it was stabilized with concrete. He said there is a barrier between the lake and the first area, and another concrete wall that stabilizes it between the house and the first area. He said there is erosion control around it, which includes the trees and growth, so it is all stabilized. He said the natural area stabilizes it.

Ann H. asked other members what was said in the meeting they had regarding erosion control measures, was it to place a berm? She couldn’t remember exactly what they were told. Roland L. stated that she would have a better understanding what was taking place on site at the inspection, she would see what Mr. Roberts was talking about.

**Roger A. stated a site inspection would be held at 6:30 on Tuesday, July 23<sup>rd</sup>, just prior to the meeting. A notice to abutters would be mailed as well.**

Nothing further was discussed.

**Conditional Use Permit – Replace Existing Retaining Wall & Add Riprap to Slope – Map 27, Lot 20 (30 Point Road) – Craig Burgess, PE, Representing; Gerard Landry, Applicant & Co-Trustee of the Property**

Mr. Burgess and Mr. Landry were present for the review of the application.

Along with the application, provided was an email dated June 11, 2019, which stated that Mr. Burgess had permission to act on behalf of L. Gerard Landry, trustee of the Percy M. Cunningham Jr. Trust, owner of 30 Point Road, Shapleigh, regarding the wall replacement project; a site location map depicting the location of the project; a plan entitled Site Exhibit, 30 Point Road Site, which depicted the house, two decks and stairs, along with the location of Point Road; and a copy of the Warranty Deed showing Cynthia L. Cunningham, L. Gerard Landry, and Becky A. Landry, as Successor Co-Trustees of the Percy M. Cunningham, Jr. Trust dated as recorded at the YCRD on 12/26/2018.

Also provided was a set of plans, entitled ‘30 Point Road Shoreline Improvements’ which contained the following pages: Cover Sheet, drafted by Craig A. Burgess, PE #12638, dated 6/7/2019, which listed the table of contents and depicted the existing structures and vegetation located at 30 Point Road; Existing Conditions Plan, drafted by Jacob I. Bartlett, PLS #2513, dated 2/25/2019, which depicted survey pipes found, the existing structures on site, driveway, vegetation, elevation contours, location of Point Road, Mousam Lake and abutting properties, and ‘apparent location of tire retaining wall, unable to verify

extent due to snow cover; Site & Grading Plan, drafted by Craig A. Burgess, PE #12638, dated 6/7/2019 which depicts the existing structures, vegetation, Point Road, boundary lines, property line at high water line, which trees will be removed or protected, erosion control measures and where they will be located, the location of the structures to be replaced which includes a deck, stairs, and wall, and the addition of riprap; Erosion Control & Sediment Control Notes, drafted by Craig A. Burgess, PE #12638, dated 6/7/2019; and the Erosion & Sediment Control Details, also drafted by Craig A. Burgess, PE #12638, dated 6/7/2019. Both Craig Burgess and Jacob Bartlett are from Sebago Technics, in South Portland, Maine.

The detailed project description reads in part, as follows:

*The enclosed Conditional Use Permit application is for shoreline stabilization along Mousam Lake at 30 Point Road. Over the years, an existing retaining wall made of old tires and sideslopes immediately adjacent to Mousam Lake have experienced erosion. Without proper stabilization, the existing wall will likely fail and the sideslopes will continue to erode.*

*Shoreline stabilization work at 30 Point Road will involve replacement of the existing retaining wall and approximately 26 linear feet of riprapped slope to prevent additional erosion and to provide long-term protection of existing developed areas. Other improvements include extending the wall an additional 3 feet, replacement of stairs and wood deck, replacement of existing gravel with stone pavers and removal of two trees with significant root exposure. Construction during the offseason is ideal, and the applicant is hopeful to complete the project sometime between September and November of 2019.*

*Project impacts to Mousam Lake natural resource buffer will be reviewed concurrently by Maine Department of Environmental Protection under an individual Natural Resources Protection Act permit and the Army Corps of Engineers. Both applications were filed on June 11, 2019.*

Roger A. asked Mr. Burgess to let the board know what they intended to do. Mr. Burgess began by introducing himself and Mr. Landry. He stated the main reason they were before the board was due to an old retaining wall that was made up of mostly old tires, which was put into place prior to Mr. Landry's acquisition of the lot. He said they decided to replace the wall and are before the town for a permit. They also want to replace an old stairway, and an old wooden deck with a stone patio, noting that the patio will match the existing deck footprint. He pointed out a slope on the plan that was showing signs of erosion, so they want to install riprap between the stairway and the property line. He pointed out an adjoining parcel, which they also own, and stated that they will match the riprap on that side of the property as well. He stated that 2 trees have roots exposed, so they want to remove them as part of the project. He stated that overall the retaining wall would be lengthened approximately 7 feet. He said at the site inspection the board would see the reason to lengthen it, to better improve the slope. He stated that was the extent of the project. Overall, the disturbance limits will match what exists now, except for the riprap slope which they will install brand new to prevent future erosion.

Mr. Burgess stated that they had submitted a full Natural Resource Protection Act Permit with the Maine DEP, and they will be visiting the site next Wednesday. He said an Army Corp of Engineers permit is not required, because there is no work being proposed below the high water mark of Mousam Lake. He said

he was awaiting the DEP permit, which he hoped to have by September, so they can have a fall construction start for the project.

Roger A. said that was the perfect time to do this project, as they are lowering the lake to repair the dam, the water will be very low. Two feet lower than typical.

Mr. Burgess stated that he forgot to mention the level gravel area, which he showed on the plan; the Landry's wanted to place a stone patio there as well. Roger A. stated that existing structures can typically be replaced but no new structures are allowed within 100 feet of the water. Mr. Burgess stated that they were going to replace the existing gravel that is there with stone patio. Roger said that pavers are considered a structure, and you cannot add a new structure. Mr. Burgess stated, "So we can't replace the gravel with a stone patio". Roger said, "No. You can put down stone dust but not pavers. It is a structure. You can't lengthen the wall, the wall has to be the same length". Mr. Burgess said when you go to the site, it appears that at one point it was an extra seven feet in length but the tires have fallen out over the years. He said it was hard to tell exactly how long the wall was. Roger stated that if the board could see evidence of a wall, they could consider it. Ann H. told Mr. Burgess to mark out where they believed the wall set. Mr. Burgess stated that they were definitely trying to improve the slope and prevent future erosion. Roger said, yes. Roger said the trees where the roots are exposed, you can cut the trees but you need to leave the roots. He didn't like the appearance, but it is usually what the DEP wants. Mr. Burgess stated that usually they allow us to cut down the trees and remove the roots, because if the tree comes down it usually takes the roots with it, then the whole slope is compromised. Ann H. said, "Then they approve it". Roger said, "Yup".

Mr. Burgess said again, "So the Town prohibits a stone patio, so we will just level off the gravel area that's there". Ann H. said that rain cannot go through the patio, so they don't want the runoff to go into the water. Roger A. said again that you cannot add any new structures. Mr. Burgess said, "OK". He said they would remove that from the project.

**Roger A. stated the board would have a site inspection at 7:00 p.m. on July 23<sup>rd</sup>. A Notice to Abutters would be mailed as well.**

Mr. Burgess asked if a permeable paver be allowed? CEO Demers stated, "That is a structure as well". Mr. Burgess said, "OK".

Roger stated that after the site inspection would be the regular meeting to review the plan.

Nothing further was discussed.

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**3-Lot Minor Subdivision – Map 1, Lot 12 (221 Deering Ridge Road) – Richard & Susan Day, Applicants & Property Owner(s)**

Mr. & Mrs. Day were present for the review of the application. Also in attendance were Leah and Tim Cochrane.

**The application for an Amendment to a Subdivision contained the following information:**

Name of Applicant(s): Richard B. & Susan J. Day  
Name of Property Owner: Richard B. & Susan J. Day  
Mailing Address: 636 Gore Road  
Alfred, Maine 04002

Name of  
Land Surveyor/Plan Prep: Steven C. Horne, LLC, PLS #2389  
849 Main Street, Suite 400  
P.O. Box 1544, Sanford, ME 04073  
207.651.1149

**Land Information:**

Location of Property: YCRD, Book 17878, Page 387  
Shapleigh Tax Map 1, Lot 12  
221 Deering Ridge Road & Grant Road  
Current Zoning: General Purpose District  
No part of the property lies within 250 feet of the high-water mark of a pond or river.  
Acreage to be developed: 48.11 Acres  
This property has not been part of a prior subdivision.  
There was one lot created from the parent lot in the last five years.  
Existing Use of Land: Old saw mill on part of the property, the rest is wooded.

Number of Lots to be  
Created: 3 Lots in Total (1 New Lot - 8.01 Acres in Size)  
Current Deed/ Subdivision  
Restrictions: No restrictions proposed at this time.  
Water Bodies on Parcel: No  
Flood Hazard Zone: No

**General Information:**

Proposed Name of  
Development: Day Subdivision  
Total Number of Lots: 3  
Existing in Development: Road Access  
Method of Water Supply: Individual Wells  
Method of Sewage  
Disposal: Individual Septic Tanks  
Method of Fire  
Protection Proposed: Shapleigh Fire Dept., along with nearby hydrant/fire pond.

**Waiver Requests:**

Section 89-29A – Underground Utilities

Section 89-30A – Stone Monuments

Section 89-30D – Stormwater Drainage Plan

Section 89-36M – Sidewalks

Section 89-36 thru 37, & 39 thru 41 – Article XI – Street and Storm Drainage Design & Construction Standards

Provided along with the subdivision application, was a plan entitled ‘Plan Depicting a Boundary Survey of Land of Stanley Family Trust, Grant Road and Deering Ridge Road, Shapleigh, Maine’ drafted by Steven C. Horne, LLC, PLS #2389, dated 6/21/2011. The plan depicts Map 1, Lot 12, showing a total area of 56.98 acres. The plan depicts three lots, one lot which consists of approximately 8.57 acres and shows an existing structure, driveway, stonewall and pond. This lot has been deeded out of the parent parcel to a member of the Stanley Family Trust. The plan also depicts the remaining acreage of the parent lot, which includes the proposed new lot being 8.01 acres (the location of an old saw mill is depicted), an existing stone wall and trail, and abutting properties and property owners. Both Grant Road and Deering Ridge Road are depicting on the plan.

Also received was a letter from the applicants, Richard and Susan Day, dated June 20, 2019. The letter read as follows:

*We purchased 48.11 acres from the Stanley Family Trust on January 11, 2019. Our plan was to convey 8.01 acres to our daughter and son-in-law, Leah and Tim Cochrane. It was made clear to us by our attorney David Ordway and our surveyor Steve Horne that we would not be creating a subdivision and that the approximately 8 acres Cindy Smith previously received from the family trust didn't count as a subdivision because she is a family member. In the process of doing title work to convey the property to our daughter and her husband, Hull Law Office states Cindy Smith received her property from a trust, a trust is not a person, it doesn't qualify as a family member subdivision exemption. Hull Law Office has determined we cannot convey 8.01 acres to a family member of ours without a minor subdivision approval. By retaining more than 40 acres, would this lot count for subdivision purposes? As of this writing, it is not our intent to subdivide the remaining 40.1 acres, to build more than our one retirement home or develop this property in any way. Our desire is to simply convey the 8.01 acres to Tim and Leah Cochrane for their business, Honest Cords Firewood, which has already been approved.*

Roger A. opened the review by stating that the Days were before the board because they were in a predicament. Roger said that the board had granted the firewood business to Mr. Day's son-in-law on the property. Roger asked Mr. Day to explain further. Mr. Day stated that his son-in-law went through a bank to purchase the property and during the process the bank attorney discovered that the lot being sold was the third lot within five years, so the bank is requiring them to apply for a minor subdivision. Mr. Day said that Cindy and John Smith, their lot was the first lot, that lot is 8.57 acres. He said this lot has an existing house and a pond, this is considered lot number one. He stated that the 48 acres he bought is lot number two, and splitting off 8.01 acres to Tim and Leah creates the third lot. Mr. Day stated that the bank will not give Tim and Leah a loan to purchase unless they go through the town for a subdivision.

Ann H. asked if they needed to make it into a subdivision in order to have the firewood operation? Roger A. said that that has nothing to do with this. Ann asked if they wanted to build a house. Mr. Day said, no.

Tim Cochrane stated, “I just want to be able to purchase that piece of property. This was the intention all along, however, that bank’s attorney found out that we are not under the 3-lot minimum. So in order to buy it, I can’t until this is all squared away”. Mr. Day added that they cannot get insurable title on the third lot unless they go through minor subdivision. Ann said she understood about title insurance. Mrs. Day asked about the fact it’s a trust and the trust gave her (Mrs. Smith) the property. Roger A. said it didn’t matter. He stated that he spoke with Mr. Day about whether or not he needed to go through subdivision, and he told him yes, because Mr. Day is selling the lot to his son-in-law. He said if Mr. Day had given the lot to his son-in-law, then it would have been exempt, as a gift to a family member. He said again it was the sale that created the third lot. Mr. Day said the other problem was that the whole property was in a trust, which is not a person. He said, so when Cindy and John inherited the piece of land, this was the first sale.

Roger A. stated that what was going to happen on the new lot was not going to change, it was still going to be a log splitting business, it is just the fact the lot is being sold, that is what triggered subdivision. Ann H. asked if he will meet the road frontage? Mr. Day said that he would and his driveway has already been approved. Roger agreed, he had everything, the road frontage, size of the lot, everything complies with the Zoning Ordinance. Ann said as a Planning Board, we just have to say it is ok for them to create a minor subdivision here. Roger said, “That’s true. And they will have Mylar’s that the board will sign and they will get it recorded within the 90 day period”. He said it was a formality to get money from the bank.

Roger A. said they were asking for a waiver for underground power, sidewalks, monuments and drainage. Ann H. asked if the Smith’s had to put in underground or any of the other stuff. Roger said, “That lot was already existing”. Mr. Day stated that he understood they had to have test pits done on Tim’s lot, as well as his own. Roger said yes, and thought he would want to have it regardless. Mr. Day asked why they needed one for Tim and Leah’s lot if they were not building a home? Roger said it was to be sure the soils would hold a septic system. Mr. Day asked if there was a particular location that had to be put on the plan. Roger said they will put the location on the plan for the test pit, and provide the accompanying information on the soils. Mr. Day stated that the test pits were scheduled for July 15<sup>th</sup>, so it will be done for the next meeting.

Mr. Day said it doesn’t affect the people that are around the property. Roger A. stated that they will be notified because it is required. He said they can voice any concerns, but he didn’t think there should be much of an issue. Ann H. said that is why she asked if they had to put in underground utilities and monuments (the neighbor). Roger said they were asking for waivers for it for all lots. Mr. Day said the survey had already taken place and the lots were pinned already. Ann said she was worried if the neighbor had to do it. Maggie M. said, no. Roger said the only change being done is the purchase of one lot. Roger added that Mr. Day would be building a new house on the remaining land. Mr. Day said he would be next year. Roger said that it was up to the board, as to whether or not they wanted to grant the waivers. He said in truth the only reason for the subdivision was because the lot was being sold. Had he given the lot to his daughter and son-in-law they would not be before the board.

Roger A. stated that with respect to the waivers, and stormwater management, there are no changes being done to the road or the lot, since the creation of the new lot, so he didn’t see an issue there. He did not see a problem with waiving that requirement. He said this is the same with street design standards, there is no new road being created, the lots are on the existing road(s).

**Roger A. stated that a notification to abutters will be mailed out.** Maggie M. asked if a public hearing would be required. Roger didn't see the need for a public hearing, as no major changes to the lot are being done. The board did not feel a site inspection was required since they had been to the lot for the approval of the firewood business, and no changes are being made since that time.

Barbara F. asked if the only additional thing being required are the test pit pits and the information regarding the soils at the test pits? Roger A. agreed, that was all the board needed.

Roger A. stated the board would take this back up on Tuesday, July 23<sup>rd</sup>, where they will sign the Mylar's. Mr. Day was told he would need 2 Mylar's as well as three paper copies for the board to sign. Roger said that after they are signed, Mr. Day would have 90 days to get them recorded at the York County Registry of Deeds. Roger said that once they put a book and page number on the Mylar's, one of those has to come back to the town hall for assessing, so we know it is legal. One of the paper copies goes into the Planning Board file.

Nothing further was discussed.

**Other:**

Roland L. told board members that the dam committee met and reviewed the latest bids, and there was no determination made to who would get the contract. He said they did make the decision that regardless whether or not the work is done to the dam, they will be doing a major draw-down because they said they were going to. He said there has been a lot of conversation regarding the fact the water will be really low come fall, so they felt in all fairness they would do what was expected and draw the lake down as planned. Roland said it would be drawn down an extra two feet beyond what is typical, which will be significant, and it will begin on October 1<sup>st</sup>. He said the plan was to have the work completed by November 22<sup>nd</sup>, and the hope is the lake will be able to recharge to the normal winter low before it freezes. Roland said if it doesn't recover, and the water freezes, then if you get water on top, the ice will rise and there will be open water on the shore. This is a huge safety issue. Or if people leave a dock in the water, it could be destroyed. Ann H. thought everyone was supposed to remove their docks. Roland said that was true but not everyone does. Roger A. agreed. Roland said if anyone needs to use the State ramp, they need to be aware, because the State doesn't want to leave the ramp out late in the season. Maggie M. said the notice said the boat are supposed to be out by October 1<sup>st</sup>. Roland understood that but people don't always pay attention, but they will need to this year.

Nothing further was discussed.

Roger A. stated he wanted to speak about amendments to an approved Best Possible Location. He felt when any change was made to a Planning Board decision regarding a BPL, it needed to come back before the board. He did not want people thinking that an approval was not to be adhered to, he believed that the parameters given by the board needed to be followed, and if not, the applicant had to come back before the board to amend the approval, not only to get further approval but so the information on file was accurate.

Roger A. also felt that any change to an approved Conditional Use Permit, also needed to come back before the board. He said if the CUP as presented, changes, the applicant needs to tell the board of those changes.

Roger A. stated that a recent BPL approval by the board needs to be amended, and the applicant is asking whether or not he has to come back before the board or just go to the Code Enforcement Officer for approval. Roger believed that since the board was the authority for the approval on the original application, then they are also the authority for the amendment.

CEO Demers stated that he understood what Roger was stating. He asked if an amendment was a reapplication or is it as a courtesy the applicant comes in to let the board know of the change, and then 'see you later'? Ann H. asked if it was Shoreland the board sees it and if something else CEO? Roger pointed out that all BPL's were going to be Shoreland. Ann said the changes to a recent CUP wasn't in the Shoreland. Roger said he understood that, that was a business approval.

Roger A. stated that any new CUP, that gets modified from the original approval, he believed needed to come back before the board for an approval of the change. Ann H. asked if they should just look at changes in the Shoreland and any other changes the CEO? Roger stated that he did not care if it was Shoreland or not, he felt that any approval made by the Planning Board, if the applicant does not follow through exactly as approved, they need to come back before the board to have the change approved.

CEO Demers stated that a change of more than 50% then it has to come back before the board. Roger A. stated 25% for conditional uses existing prior to zoning. Roger said that new conditional uses, the ordinance states that 'any change' to any approved Conditional Use has to come back before the board.

Roger A. said he did not want the board to pick and choose, as to who has to come back before the board and who does not. He felt that all applicants need to be treated the same. He also didn't want a 'bait and switch' from the applicant, whereas they pick and choose what part of the approval they will follow and what they will ignore. He personally could not see a conditional use being granted and after that the board doesn't care what the applicant does. He said again that he felt any change needed to come back to the board, because if the board does not do this and do it for everyone, people will start to say 'why can't I make a change, you let the other person make a change to their approval'.

Roland L. said one applicant this evening said something similar, that the board allowed the neighbor to have an approval without knowing where the property line was, so they should also be allowed. CEO Demers said this was a falsehood, because the neighbor had his survey. He said what is happening now, is the neighbor and tonight's applicant are trying to take the property line that exists and come to an agreement. Roland said he didn't say the applicant was accurate and noted he showed them the property line at the site inspection. He said he agreed that everyone had to be treated the same.

Roger A. stated that what he wanted to know from the board members, are changes to Planning Board approvals going to come back before the board as an amendment, or are they going to the CEO for approval? Roland L. asked CEO Demers his opinion, as a general rule. CEO Demers stated at least he would want a courtesy amendment, for the applicant to come back and tell the board what they were doing. He did not know if abutters would have to be notified again or not. Ann H. said it would probably



depend on the decision. CEO Demers said it could also depend on the time frame. Ann felt if everyone had to come back before the board it would be consistent.

Roland L. felt they should have to come back before the board, because it would make it easier for CEO Demers and it would reduce the likelihood people would say so-n-so could do this, why can't I. Maggie M. said that it would also reduce the possibility, if everyone had to do it, of someone saying 'well they don't do it for everyone, so let's just take the chance'. Roger A. said it would help prevent 'bait n switch' and he believed that with any amendment, it gives the board the chance to re-review and see if further changes should be required because of the change. Roger said that with respect to re-notification for an amendment, I think the board should have the option, but it doesn't have to be required. It would depend on what change is taking place. Roland agreed that if the change was controversial the board might want to notify abutters. Roger said if it was a recent BPL, and no one had any interest in what was taking place, the board probably wouldn't require notification if the modification was minimal.

Roland L. stated he supported the idea of having the applicant come back before the board for any change in their approval. Ann H. agreed. Roland said if it is necessary, the board can do a site visit, if the applicant uncovers something they didn't know during the approval process and they have to make a change, they should come back for an amendment. CEO Demers asked if fees would be involved. Barbara F. stated that to date all amendments to the approval have required the amendment fee. She noted that the amendment fee was not as high as it is now, but again past precedence was a fee was paid by the applicant for the board to review the changes to their approval. Roger A. stated that in his opinion, that is the cost of doing business. He felt it was not a huge deal to pay an amendment fee when doing these projects. CEO Demers agreed, he just wanted to know what to tell them when they ask. Roger said an amendment cost the town no matter what, so they should pay the fee.

Roger A. gave an example of when a house gets placed by the board, then a surveyor comes in and makes a change to the plan. Roger noted that a recent applicant had to come back before the board because the location of their house ended up changing from the approval. The new location will be modified and the new measurements will be put into the file.

**The board members agreed that any modification to a Planning Board approval, would come back to the Planning Board as an amendment to the original approval.**

CEO Demers asked about whether or not it was Planning Board or his office if someone was replacing something one for one. He said if someone was transforming a deck into a patio, is this something the Planning Board would approve or is that something that goes to the Code office? Roger A. asked if 10 yards of fill was being moved? CEO Demers said if you are replacing a patio in kind. Roger said if one for one there is no change, if I pulled my deck and put a patio down and did not move 10 yards, then it is CEO. He said if 10 yards of fill are moved, then it is Planning Board.

CEO Demers said if he found through research that the existing deck was never permitted, even though the Planning Board approved the replacement, could he deny the building permit? Roger A. said if the CEO has documentation that the structure was never approved, it would trump the Planning Board approval, because the applicant gave the board false information.

Nothing further was discussed.

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**Growth Permits**

**Map 5, Lot 3-5B (23<sup>rd</sup> Street Loop) – New Home**

**GP #10-19**

This is a legal lot of record meeting the minimum lots size standards in the Zoning Ordinance.

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**The Planning Board meeting ended at 9:25 p.m.**

**NOTE: The summer hours are in effect thru October 31st, the meetings now begin at 7:30 p.m. and any scheduled public hearing begins at 7:00 p.m.**

The next meeting will be held **Tuesday, July 23, 2019** at 7:30 p.m.

The Planning Board meets the 2<sup>nd</sup> and 4<sup>th</sup> Tuesday of each month unless it falls on a holiday or Election Day. Should there be a cancellation due to a storm event, holiday or Election, the meeting will typically be held the following Wednesday, also at 7:30 p.m. Please contact the Land Use Secretary if there is a question in scheduling, 207-636-2844, x404.

Respectfully submitted,  
Barbara Felong, Land Use Secretary

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

## ***Shapleigh Planning Board***

### ***Minutes***

**Tuesday, July 23, 2019**

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

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

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**The minutes from Tuesday, July 9, 2019 were accepted as read.**

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

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#### **Conditional Use Permit – Earth Moving in the Shoreland District – Map 23, Lot 10 (37 Starboard Lane) – Michael Roberts, Applicant & Property Owner**

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

Previously provided along with the application, was a sketch plan which depicted the location of the existing house, garage and decks, areas called ‘stumps grindings’, areas called ‘sand now’, the location of the existing retaining walls, and the shoreline setback, which is located approximately halfway thru the middle of the existing garage. All other features on the plan, except the rear portion of the garage, are within 100 feet of the high water mark.

The detailed description of the project is as follows: Bring in 52 yards of sand to replenish and level existing sanded area.

Roger A. asked Mr. Roberts to describe to the audience what it was he wanted to do. Mr. Roberts stated he was seeking a permit for bringing in sand to regrade and level what is already on site. He said at the previous meeting the board heard his request, and he was now back before the board seeking approval. Mr. Roberts stated that the letter sent out (abutters notice) said earth moving, but he said he wasn’t moving what is there, he was requesting to bring in sand of like kind, washed sand, to regrade what is there. *Note: Under Shapleigh Zoning Ordinance §105-17 ‘Land uses’ Earth removal, dredging, or ‘filling’ requires a permit from the Planning Board if the amount of earth moved is in excess of 10 cubic yards in the Shoreland District. In part, the review falls under §105-39 ‘Earth removal and filling for activities other than mineral exploration and extraction’. This includes filling, grading, lagooning, dredging, excavation, processing and storage of soil, earth, loam, sand, gravel, rock and other mineral deposits. These are considered ‘earth moving activities’.*

Roger A. stated that at the previous meeting the board had asked Mr. Roberts to contact the MDEP

(Maine Dept. of Environmental Protection) regarding his project to see if they had any issues. Roger stated that Mr. Roberts said he contacted the DEP and the DEP would not go along with the project, due to the fact that they required a better plan. Mr. Roberts stated that he contacted the DEP by telephone on July 10, 2019, and woman that he spoke with had him forward all the paperwork he had presented to the Planning Board. He said he heard back from her in the last day or two, and she stated that the current plan that was requested could not be granted through the DEP.

Roger A. stated that in 2004, there were issues with the wall. Roger stated there was an after-the-fact permit for the repair of two retaining walls & adding an additional lock block walls. Roger read the minutes from May 11, 2004 as follows:

In October 2002 the applicants were permitted to remove and replace one retaining wall, directly adjacent to the water, as well as put in plantings to prevent erosion by June 15, 2003. In January of 2003 the applicants requested that the Planning Board allow them to extend the date of plantings until June 15, 2004, which was approved, but nothing else was changed from the original application for the one retaining wall.

Mr. Lincourt began by telling the Planning Board members that in addition to the wall they were approved to replace, a second 8 foot high wall was placed on the property due to the extremely detrimental erosion problem once the 1<sup>st</sup> wall was removed. Mr. Lincourt stated that the original 2<sup>nd</sup> wall collapsed after the 1<sup>st</sup> wall was removed due to the sandy soil. Mr. Lincourt also said they had no alternative but to immediately place a 2<sup>nd</sup> wall behind the 1<sup>st</sup> before the erosion caused the home on the property to fall into the lake. Several Planning Board members agreed there was a problem but stated that he should have contacted the Town of Shapleigh and come before the Planning Board noting the necessary changes that had to take place to the original plan. Mr. Lincourt admitted that he should have done so.

The board members asked Mr. Lincourt if the 2<sup>nd</sup> wall was certified by an engineer? Mr. Lincourt stated it was not but it was “built to twin” the 1<sup>st</sup> wall that was an engineered wall. The board members were concerned about the original plan, since it appears it did not take into account the possibility of the 2<sup>nd</sup> wall collapsing. Roger A. stated that the Planning Board would need certification from an engineer that in fact the 2<sup>nd</sup> wall was adequate to protect the area from further erosion, as well as protect the foundation (support columns) of the existing home.

Mr. Lincourt stated that in addition to this 2<sup>nd</sup> wall, they were told by the DEP and other local agencies that they also needed to create some smaller tiered walls (approximately 32” high) to prevent the back fill behind the concrete walls from eroding into the lake. Mrs. Lincourt stated that they would like to use the lock-block system. She had been told they work very well in this type of location.

Mr. Lincourt stated that they also needed a 32” high wall to prevent the support columns under the home from being undermined. The new 8 foot high wall would not be enough due to the steep incline and the sandy soil.

Bill H. asked Mr. Lincourt why he came before the Planning Board now, when most of the work had already been done and without Planning Board approval? Roger A. stated that Mr. Lincourt had called him on Saturday evening to discuss extending the approved planting date of June 14<sup>th</sup>, because the area would not be ready. When Roger asked him why, Mr. Lincourt explained about the new wall, and the need for additional walls. Roger at that time told him he was operating without a Conditional Use Permit and he needed to come back before the Planning Board to get the necessary permit(s). Mr. Lincourt added that Saturday was the first day he and the other owners of the property had a clear plan of what they wanted to do next. This is why they knew the planting would not be done on time.

Roger A. told Mr. Lincourt that they would need an engineered plan from a certified engineer for the 2<sup>nd</sup> wall as well as the proposed wall(s). In addition, there needed to be a plan to stabilize the area, also

engineered by a professional. Roger stated that the board members did not have the expertise to render a decision on a site that was so unstable. The other board members agreed.

The Planning Board members concluded the following would need to be presented to the Planning Board before they could render a decision on additional permitting:

- 1) A new Amendment to the original Conditional Use Permit must be received by the Planning Board. The permit application is after-the-fact and the fee will be \$400.
- 2) A certified engineered plan for the additional lock block retaining wall(s) being added to the property, as well as a certified engineered plan for the existing new 2<sup>nd</sup> wall that was placed on site without a permit.
- 3) A new DEP Permit by Rule Notification, the existing permit on file expired 11/6/03.
- 4) A stabilization plan for the entire area involved, which includes replanting using plants indigenous to this area.
- 5) Pictures of the shorefront area prior to the initial project beginning. The board members need to see exactly what was removed / replaced.

Roger A. told Mr. Lincourt to contact Barbara G. when they were ready to come back before the Planning Board. Mrs. Lincourt thanked the Planning Board members for their time.

Roland Legere asked the Planning Board members why Mr. Lincourt didn't face a consequence for his actions, i.e. putting up a wall in the Shoreland zone without proper permits? Steve M., CEO, stated that they would have to come back for the proper permits and the fee associated with it would be for an after-the-fact permit. Roger A. added that the after-the-fact permit fee is four times what the normal fee is. Steve also added that the DEP was involved with this project, as well as several other agencies.

Mr. Legere still felt that other after-the-fact permits were treated much more severely than these applicants. He asked if Mr. Lincourt was going to have to do some replanting? Roger A. stated that yes, as part of the original approval, plantings were required to help to retain the soil on site. Mr. Legere stated that he thought there were trees at this location as well, that were no longer there. Roger replied that the board members had no way of knowing that without pictures of what it looked like prior to the project. The Planning Board will ask Mr. Lincourt to produce these pictures, so there is something to compare to.

Bill H. stated that he also looked at intent. Did the people come in voluntarily or not? Roger A. stated that the only reason they came in was because Roger told them they were working without permits and needed to come back before the Planning Board. He did not know whether or not they would have come in otherwise.

Steve M. added that he had been watching this project for several weeks because they did not have any silt fence up, no hay bales, etc. and the sand was washing directly into Mousam Lake. He was in the process of addressing the issue. Steve added that Mr. Lincourt had already heard from the DEP and York County Soils. They may have gotten a fine from the DEP?

Bill H. asked Roger A. if the Planning Board had the ability to fine someone for not doing what was called for in an approved permit? Roger stated the Planning Board did not, but the Code Enforcement Officer did. Roger stated that the only thing the Planning Board has control over is the permit fees and for an after-the-fact permit, and again he said the fee is four times the amount of the normal permit fee.

Bill H. stated that it would be very helpful to see the pictures of the grounds before construction began. He asked if the board members had seen any pictures before the project had started? Roger did not remember whether or not they had, but there was a site inspection. Steve M. stated that the DEP would have required pictures prior to approving the Permit by Rule. Steve said that Mr. Lincourt may be able to get a copy of the pictures from them for the board members. Nothing further was discussed.

Roger A. stated that in 2004 this area was supposed to be reclaimed and stabilized, but no one did anything about it. Roger said he believed now the board should review both the 2002 and 2004 minutes and make certain that the area is replanted and restabilized as approved. Steve F. asked if the replanting plan is on file? Roger stated that he did not think the Planning Board ever received a copy of it.

Mr. Roberts stated since that time, the house fire happened, and everything was granted after that. Steve F. asked if the board had a copy of replanting plan from the house fire? Roger stated that he did not believe they did. Madge B. stated the board did a site inspection after the fire, and had them replant trees, and that planting was done, so she thought the board should have a plan. Roger asked Barbara F. to go pull the file from the replacement of the structure. He believed the board would have had the applicants put down mulch or plantings, he did not believe the board would allow them to keep it just sand. Madge added that she believed you can plant blueberries in sand. Roger said in 2004 the board asked for a stabilization plan for the entire area involved which included using plants indigenous to the area. He said on June 22, 2004, in a letter from the board to Mr. Lincourt it stated the board received a copy of a letter from Springvale Nurseries Landscaping which gave a detailed plan of what they felt should be placed on site to stabilize the area. *Note: The plan provided to the board by Springvale Nurseries, dated 6/8/04, depicts both Blueberries and Sweet Fern behind the upper wall, and Potentilla, Sweet Fern and Blueberry along the far left and right hand side of the lower wall. Additional plantings are also noted along the property line. Also, in the letter from Springvale Nurseries, it states in part that areas that have been disturbed during the construction of the concrete retaining walls will be planted with native and indigenous material. The grade of the land should, wherever possible, be returned to its pre-existing condition. In the areas where this is no longer feasible the grade should be as shallow as possible. Planting performed in areas with a grade greater than a 3:1 slope will be stabilized with a long term degradable erosion control blanket such as the C125 Long-Term Blanket. The letter also listed 10 species of plants chosen to be used on site.*

Roger A. stated that the wall revegetation requirement was prior to the fire. Madge B. stated that the fire likely didn't hurt any of the plantings because there were no plantings in place.

When Barbara F. returned with the file for the replacement structure from the house fire, the plan on file depicted the trees that had to be replaced after the fire and their locations. Roger A. read the note on the plan from 2014 which stated the following: 2' of crushed stone around completed house, crushed stone at bottom of stair areas 3' x 5' maximum, erosion mulch over all disturbed areas and reclaimed areas. The approval did not appear to address the area behind the walls specifically.

Steve F. believed the board would need a DEP Permit by Rule to start with. Roger A. agreed. He stated in 2014 it was written erosion control mulch was required, and he noted at the site inspection you could see some bark chips in the sand. Mr. Roberts agreed. Roger said that perhaps it just needed to be restabilized with more bark chips. Mr. Roberts stated that he brought it to the board's attention on July 9<sup>th</sup> that at some point in time there may have been more chips there. Madge B. asked if he should prepare a revegetation plan and show it to the DEP? Steve said that the problem is that the applicant doesn't know why the DEP said no to his plan. He guessed it was Mr. Roberts's choice for top covering. Mr. Roberts stated that the DEP said he could reclaim the area from the lake after consulting an environmental engineer. He could dredge from the lake and bring it up, he thought it was baffling he could do that and wondered what type of equipment it would take. He said the other thing was in 2005, when he lived on 16<sup>th</sup> street, he came before the board to removed creosote timber and put in redi-block. At that time, the

DEP had him bring it up to grade using washed sand, so it would be flat and would not erode or it would more slowly erode into the lake. He said these things were baffling to him, that now the DEP won't allow this, and also not knowing what the Planning Board wanted.

Roger A. said in his opinion, he would ask that the bark mulch be replaced in the area and some plants be put in. He said Salmon Falls Nursery did have a plan originally, with some blueberry bushes spread out. Mr. Roberts said in 2017 he saw a plan that showed where the existing plants are located now, he was speaking of the new trees. He said he wanted to add more. He added that he did not know what happened prior to the fire. Roger said that after the fire the board asked for 18 trees, 4 feet in height. The actual final plan depicts a total of 32 tree's 6 feet in height, and it also lists the species that would be planted. These included Red Maple, Red Oak, Heritage Birch, Mountain Ash, Tulip Tree, Eastern White Pine, Balsam Fir and two apple trees. Roger said that most of those trees were put in. Roger asked the board what they would like to see done in the areas that are disturbed now. Madge B. asked if the applicant should come up with a plan for the board to review, that would work for the DEP? She didn't feel the board should review a plan that will not be approved by the DEP?

Steve F. felt that what the board sees in the file, is there was to be erosion control mulch put over all the disturbed areas and that it would be maintained. He said it does deteriorate and has to be maintained. He believed it was there, and from his standpoint, he felt the board needed to start the process over again. He said they can't go back to the last approval because the erosion control mulch is no longer there. He said he didn't know if it included the area between the first and second wall. Madge B. said if he does this, and the DEP won't accept it, it's a problem. Steve did not believe the DEP had an issue with mulch in the past. Roger A. said he would submit to the DEP an application that states he is going to put down erosion control mulch and also add some plantings, and ask them if it would be acceptable. He can add that this was what was approved back in 2004 and 2014. He can ask if he can do that again. Madge agreed this made sense. Mr. Roberts stated that he wants what is there right now, he doesn't want erosion control mulch there. He said it wasn't there when he bought it. Roger stated that that was what the board asked for, whether they did it or not isn't the issue. He said the board was trying to stabilize the area. Mr. Roberts asked who was to say it was not stabilized now? He said an engineer said it was stable now, an engineer approved the walls for the Lincourt's; the walls were engineered to retain the sand from going into the lake, and the second one, if it was engineered correctly. Roger stated that they were not engineered, they were an after-the-fact permit. Mr. Roberts asked when the engineer approved it, noting he would research it. He felt if they were already approved, they were the barriers between the house and the lake, and its erosion control at that point. He felt as they exist they are barriers. Steve said what Mr. Roberts was aiming at, was that the walls were going to hold back any erosion. He did not know if that was taken into consideration when the walls were designed. He believed they are engineered, so the walls don't fall down. Mr. Roberts stated, "Correct". Roger suggested that Mr. Roberts have an environmental engineer write a letter stating that the walls were designed to prevent erosion. Roger added that in his opinion, even if the board gets the letter, he will still want to see mulch and plantings behind the wall, such as blueberry bushes.

Roland L. asked if the board should table the application? Roger A. said that yes, the board should table it pending further information. Steve F. asked how long the applicant had to come back? Roger stated he had 90 days to get back to the board. Mr. Roberts what asked what happened after 90 days? Roger said that he would have to start over with a new application. Madge B. said he could decide not to do anything, it was his choice. She said he came before the board to put sand in, and at this point he did not

have a permit to do so. Mr. Roberts felt the applicant should be told to go to the DEP first, before he spent money on an application fee.

**Madge B. made the motion to table the application for up to 90 days, pending further information. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

Nothing further was discussed.

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**Conditional Use Permit – Replace Existing Retaining Wall & Add Riprap to Slope – Map 27, Lot 20 (30 Point Road) – Craig Burgess, PE, Representing; Gerard Landry, Applicant & Co-Trustee of the Property**

Mr. Burgess and Mr. Landry were present for the review of the application. *Board members did a site inspection prior to this evenings meeting.*

Previously provided along with the application, was an email dated June 11, 2019, which stated that Mr. Burgess had permission to act on behalf of L. Gerard Landry, trustee of the Percy M. Cunningham Jr. Trust, owner of 30 Point Road, Shapleigh, regarding the wall replacement project; a site location map depicting the location of the project; a plan entitled Site Exhibit, 30 Point Road Site, which depicted the house, two decks and stairs, along with the location of Point Road; and a copy of the Warranty Deed showing Cynthia L. Cunningham, L. Gerard Landry, and Becky A. Landry, as Successor Co-Trustees of the Percy M. Cunningham, Jr. Trust dated as recorded at the YCRD on 12/26/2018.

Also provided was a set of plans, entitled '30 Point Road Shoreline Improvements' which contained the following pages: Cover Sheet, drafted by Craig A. Burgess, PE #12638, dated 6/7/2019, which listed the table of contents and depicted the existing structures and vegetation located at 30 Point Road; Existing Conditions Plan, drafted by Jacob I. Bartlett, PLS #2513, dated 2/25/2019, which depicted survey pipes found, the existing structures on site, driveway, vegetation, elevation contours, location of Point Road, Mousam Lake and abutting properties, and 'apparent location of tire retaining wall, unable to verify extent due to snow cover'; Site & Grading Plan, drafted by Craig A. Burgess, PE #12638, dated 6/7/2019 which depicts the existing structures, vegetation, Point Road, boundary lines, property line at high water line, which trees will be removed or protected, erosion control measures and where they will be located, the location of the structures to be replaced which includes a deck, stairs, and wall, and the addition of riprap; Erosion Control & Sediment Control Notes, drafted by Craig A. Burgess, PE #12638, dated 6/7/2019; and the Erosion & Sediment Control Details, also drafted by Craig A. Burgess, PE #12638, dated 6/7/2019. Both Craig Burgess and Jacob Bartlett are from Sebago Technics, in South Portland, Maine.

The detailed project description reads in part, as follows:

*The enclosed Conditional Use Permit application is for shoreline stabilization along Mousam Lake at 30 Point Road. Over the years, an existing retaining wall made of old tires and sideslopes immediately adjacent to Mousam Lake has experienced erosion. Without proper stabilization, the existing wall will likely fail and the sideslopes will continue to erode.*



*Shoreline stabilization work at 30 Point Road will involve replacement of the existing retaining wall and approximately 26 linear feet of riprapped slope to prevent additional erosion and to provide long-term protection of existing developed areas. Other improvements include extending the wall an additional 3 feet, replacement of stairs and wood deck, replacement of existing gravel with stone pavers and removal of two trees with significant root exposure. Construction during the offseason is ideal, and the applicant is hopeful to complete the project sometime between September and November of 2019.*

*Project impacts to Mousam Lake natural resource buffer will be reviewed concurrently by Maine Department of Environmental Protection under an individual Natural Resources Protection Act permit and the Army Corps of Engineers. Both applications were filed on June 11, 2019.*

Roger A. asked Mr. Burgess to let the board know what they intended to do. Mr. Burgess began by introducing himself and stated they met with the board previously on July 9<sup>th</sup>. He said the board met with them on the Landry property and noted Mr. Landry was at the meeting this evening. He stated the property included the removal of a retaining wall which is constructed of old tires, and they would like to lengthen the wall, so that they can stabilize the steep earth behind it. He said they would also be replacing a wood deck with a stone patio, add riprap to stabilize some open sand areas that are showing signs of erosion along the shoreline, and they also are proposing the removal of two trees that have their roots fully exposed, and noted that the DEP considered the trees ‘as hazardous’ at last week’s on-site meeting with them. He said he was looking to get an official determination from the DEP on that and something on record. He said they wanted to replace a stairway, so rather than going down to a level area and then a jog, it would be going straight down to the lake. He said they just met with the board on site, and stated that looking at the elevations on the plan, it was approximately 11 feet based upon the elevation from the first level landing down to the higher elevation right above the lake; the lake drops two to three feet down, so it is 11 feet from the first level landing. He said they also wanted to replace some of the gravel along the lake with flat rocks and gravel, and he noted the DEP supported this idea; the DEP thought the flat rocks would hold the gravel in place, so that over time Mr. Landry didn’t have to keep going back and add gravel, and it would also reduce sedimentation going into the lake. Mr. Burgess said that was the project. He said he knew there were some open items including whether or not the trees were considered hazardous. He stated that Mr. Landry was trying to set himself up to have a worry free site, so 10 years down the road he didn’t have to worry about replacing the entire banking because the tree roots would pull the bank down if the tree goes down. He admitted he wasn’t sure how the board would view this.

Roger A. stated that he had a question for CEO Demers. He asked what the longest run allowed for stairs was, between landings? CEO Demers stated it was 12 steps to a landing. Mr. Burgess asked if it was a 10 inch step. CEO Demers and Roger stated it was 7 ¾ on the rise. Mr. Burgess said he would have to look at that and how they could best replace the stairway. Roger stated that was why he was looking at it on the site inspection, and told them that the length of the run was probably where it needs to be. He said that making it longer to make it to the lake, without a landing, is probably not going to happen.

Mr. Burgess stated said he would look to change that, so at a minimum they would have to either keep the jog that exists or push it more into the banking which was not ideal. Roger said the upper deck that needs a small retaining wall in order to contain it, instead of having a step up to it, perhaps keep it level. He felt that would not be an issue, keeping it the same size. He said removing the tires creating a small

wall would be fine, but he didn't think the wall could be extended, as the board isn't allowed to enlarge existing structures. Mr. Burgess said that one area is currently showing signs of erosion. Roger said he wished the board could do something about that. Mr. Burgess asked about riprap? Roger said that a Permit by Rule from the DEP might allow it. Mr. Burgess stated that they were currently under review for a full NRPA Application, so this would be rolled in. Roger said that would be fantastic. Mr. Burgess said if an extension to the wall wasn't allowed, they would have to use larger rip rap stones. Steve F. asked if Mr. Burgess showed stabilization of the area to the left of the wall on the application to the DEP? Mr. Burgess said that yes, what the board had in front of them is what the DEP was provided.

Roger A. stated that the board can table the application pending approval from the DEP. Madge B. said what the board had in front of them was extending the wall. Mr. Burgess said, yes, it was about 2 feet on one side and about 3 feet to align with the stairs. Madge said, ok, and she agreed with tabling the application. She said they needed an updated plan with the stairs as they are going to be. She said the board will need the DEP results from the application. Roger said if the board receives the DEP authorization from the full NRPA permit, then the board can go along with what he is proposing. Madge agreed, but said the stairs would still have to be redone. Roger agreed.

Roland L. said he would like to see something from the DEP indicating that the trees in fact need to come down. He said, they also stated the DEP agreed verbally to the stones and gravel, he would for the record, like to see that in writing. Madge B. agreed. Roland said his concern was, as stated on site, he felt the act of removing the trees will destabilize both sides of the bank. He said the plans before the board do not address that, therefore, he had serious concerns about the short term impact that will create on the lake. Mr. Burgess asked if DEP calls the trees a hazard tree, does the board want to see a planting plan of two additional trees, what would the board want to see? Roland said, "At the very least something to stabilize the area, and obviously planting something. But beyond that, the canopy of the tree is quite large, and I have seen and I hope you probably have from other experiences, that when you take a tree out like that and expose the earth, the earth is fairly loose as it is. Heavy rainfall and what-have-you will follow gravities path and that is down into the water. So the other question with regards to the tree removal would be, are we talking about just cutting the tree off, leaving the roots to decay in place, or are you proposing the roots be removed as well? Because that is a whole other issue of concern". Mr. Burgess stated that the original plan was to remove the roots as well, and fill that back in and stabilize it. Madge asked if it would be riprap? Mr. Burgess stated they could use riprap or they could loam and seed it and put a fabric over it. Roland asked how they propose to remove the trees and root mass? Mr. Burgess stated that it would have to be done by a professional arborist. Roland said that unless they come in over the winter, over the ice, they will have to have some large mechanical piece of equipment go across the site to get to the roots. He said it was not five to ten feet to the trees. He asked if they would create a road to get there, use a 75 ton crane? He said he would like to know the details because this is eminent impact on the lake, not something 100 feet back that over time something will gradually get to the lake. Mr. Burgess stated, "That is a great comment, and the DEP brought up the same issue. And what we are going to have Mr. Landry's contractor do, is write up a description on how they will go about doing that work. DEP asked the same question. The intent is not to have any machinery down there". Roland said he had no idea then, how this was going to happen, if it has to happen at all.

Mr. Burgess said that at the last meeting the board wanted to see the root system stay in place. He said they were ok with doing that, but at this point they would like to cut one of the large roots they saw this evening, so the stairway could go down. He said if the code requires 12 steps, they would have to keep

the existing jog. Roger noted it was not 12 steps, it was based on the length of the run, which is 12 feet. He said it wasn't a 12 foot height, it's not 12 steps, it was the length of the run. Roger stated that for every 12 foot run you need a landing. Mr. Landry asked if you could start at the lake, go up 12 feet, then put a landing and then go up from there. He said that would be his preference rather than going down to the lake. Roger said, then the dock would be in line with the steps, you could come up from the dock. Mr. Landry stated, "Correct". Steve F. stated, that would make sense, to be on site and work with the ground, so you are not excavating into the hill. He believed Mr. Landry was trying to build the second set of stairs on top of the ground, not built in. He said he believed he could accomplish it. Madge B. noted that the tree roots are in the way. Steve said, "On the right side". Mr. Landry said on one side they are in the way but the other roots could stay. Steve thought that in that case the one tree could also stay. Mr. Landry said if they cut the roots they cannot leave the tree. Roger said in that area the root could be cut and shaved to put the stairs in, just take the tree down, and because they are not going into the ground, they could leave the rest of the roots. Mr. Landry said he wanted to put in riprap to stabilize that area, so they don't have to worry about what will happen when the roots disintegrate. Madge B. didn't think the board were the experts. She said someone who is qualified needed to make the decision. Steve stated that at the end of the day it is a steep slope, and there is a concern for erosion. He thought if they could keep the trees great, but if they can't then the applicant needs to come back to the board with a different plan. Mr. Burgess asked if the board was supporting the removal of the trees, only if the DEP is on board with it. Roger said, "Right". Steve asked if it was possible to put a slight jog in the stairs to put it between the trees? Mr. Burgess said he was going to re-evaluate it. He said it was worth sitting down with the contractor, put elevations on the stairs, the size and width of the landings, etc. He said he wants to better understand the stairs, see if the DEP will let them cut the trees, and they cannot lengthen the wall at all. Roger said, unless the DEP under the full permit states they will allow another 30 inches to get from the last tire to the tree. Mr. Burgess said that is what pushed this into the full NRPA, it was because they were calling for the wall to be longer. Roger understood and said if they approve it, he didn't feel the board would have an issue. Steve said there have been cases where the board wished they could add to a wall but they can't. Mr. Burgess stated due to the steep grade, he felt this was the best solution.

**Madge B. moved that the board table the application for 90 days in order for the applicant to provide additional information. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

Nothing further was discussed.

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**3-Lot Minor Subdivision – Map 1, Lot 12 (221 Deering Ridge Road) – Richard & Susan Day, Applicants & Property Owner(s)**

Mr. & Mrs. Day were present for the review of the application. Also in attendance was Tim Cochrane.

**The application for an Amendment to a Subdivision contained the following information:**

Name of Applicant(s):	Richard B. & Susan J. Day
Name of Property Owner:	Richard B. & Susan J. Day
Mailing Address:	636 Gore Road
	Alfred, Maine 04002

Name of

Land Surveyor/Plan Prep: Steven C. Horne, LLC, PLS #2389  
849 Main Street, Suite 400  
P.O. Box 1544, Sanford, ME 04073  
207.651.1149

**Land Information:**

Location of Property: YCRD, Book 17878, Page 387  
Shapleigh Tax Map 1, Lot 12  
221 Deering Ridge Road & Grant Road

Current Zoning: General Purpose District  
No part of the property lies within 250 feet of the high-water mark of a pond or river.

Acreage to be developed: 56.98 Acres Total - 48.11 Acres Owned by Mr. Day  
This property has not been part of a prior subdivision.  
There was one lot created from the parent lot in the last five years.

Existing Use of Land: Old saw mill on part of the property, the rest is wooded.

Number of Lots to be  
Created: 3 Lots in Total (1 New Lot - 8.01 Acres in Size)

Current Deed/ Subdivision

Restrictions: No restrictions proposed at this time.

Water Bodies on Parcel: No

Flood Hazard Zone: No

**General Information:**

Proposed Name of  
Development: Day Subdivision

Total Number of Lots: 3

Existing in Development: Road Access

Method of Water Supply: Individual Wells

Method of Sewage  
Disposal: Individual Septic Tanks

Method of Fire  
Protection Proposed: Shapleigh Fire Dept., along with nearby hydrant/fire pond.

**Waiver Requests:**

Section 89-29A – Underground Utilities  
Section 89-30A – Stone Monuments  
Section 89-30D – Stormwater Drainage Plan  
Section 89-36M – Sidewalks  
Section 89-36 thru 37, & 39 thru 41 – Article XI – Street and Storm Drainage  
Design & Construction Standards

Provided along with the subdivision application, was a plan entitled ‘Plan Depicting a Boundary Survey of Land of Stanley Family Trust, Grant Road and Deering Ridge Road, Shapleigh, Maine’ drafted by Steven C. Horne, LLC, PLS #2389, dated 6/21/2011. The plan depicts Map 1, Lot 12, showing a total area of 56.98 acres. The plan depicts three lots, one lot which consists of approximately 8.87 acres and shows an existing structure, driveway, stonewall and pond. This lot has been deeded out of the parent parcel to a member of the Stanley Family Trust. The plan also depicts the remaining acreage of the parent lot, which includes the proposed new lot being 8.01 acres (the location of an old saw mill is depicted), an existing stone wall and trail, and abutting properties and property owners. Both Grant Road and Deering Ridge Road are depicting on the plan.

Also received was a letter from the applicants, Richard and Susan Day, dated June 20, 2019. The letter read as follows:

*We purchased 48.11 acres from the Stanley Family Trust on January 11, 2019. Our plan was to convey 8.01 acres to our daughter and son-in-law, Leah and Tim Cochrane. It was made clear to us by our attorney David Ordway and our surveyor Steve Horne that we would not be creating a subdivision and that the approximately 8 acres Cindy Smith previously received from the family trust didn't count as a subdivision because she is a family member. In the process of doing title work to convey the property to our daughter and her husband, Hull Law Office states Cindy Smith received her property from a trust, a trust is not a person, it doesn't qualify as a family member subdivision exemption. Hull Law Office has determined we cannot convey 8.01 acres to a family member of ours without a minor subdivision approval. By retaining more than 40 acres, would this lot count for subdivision purposes? As of this writing, it is not our intent to subdivide the remaining 40.1 acres, to build more than our one retirement home or develop this property in any way. Our desire is to simply convey the 8.01 acres to Tim and Leah Cochrane for their business, Honest Cords Firewood, which has already been approved.*

Roger A. opened the review by asking Mr. Day to address the audience with what he intended to do. Mr. Day began by reading the letter he provided to the board for the first meeting. It read as noted above.

Mr. Day stated that the board asked for test pits to be dug on the two new lots. He then provided the board with a copy of the new plan, depicting all three lots, entitled ‘Final Plan of the Day Subdivision land of Richard B. Day and Susan J. Day, Grant Road and Deering Ridge Road, Shapleigh, Maine’, drafted by Steven C. Horne, PLS #2389, dated Revised 7/18/2019. This new plan depicted the elevation contours, as well as test pit locations for the two new lots created by Mr. Day. The existing lot, which contains 8.87 acres and has an existing structure, did not need a test pit, as it already has a state approved wastewater disposal system on it. Mr. Day also provided the Soil Test Pit Logs, done by Mark A. Truman, SE #121, dated 7/16/19. Mr. Truman stated the test pits locations were represented as TP #A and TP #B, and that there were suitable soil areas on the proposed lots not restricted to only the test pit locations. In addition, Mr. Truman stated that each lot could hold a wastewater disposal system meeting the requirements of the Maine Plumbing Code.

Roger A. asked if there were any comments from the abutters? One citizen asked if there was any deviation from the original plans. Roger stated that with respect to Maine State Law, any division of property, creating 3 lots in a five year period, you are creating a subdivision. Roger said that you are allowed to have a family subdivision without going to the Planning Board, providing that you ‘give’ the

lot to a relative, son, father, etc., but if you sell it to them, it counts as a lot. It doesn't matter if it is your daughter, son, etc. He said a dollar figure triggers a subdivision for a third lot, so in this case because Mr. Day is selling the lot to his son-in-law, so it counts as a single division; the original Trust transferred a lot, and a Trust isn't a person, so that counts as a division. Roger said that the sale to Mr. Day's son-in-law is the third division within five years, which triggered a minor subdivision review. He said Mr. Day didn't want to create a subdivision, but this is a division of the property, just as the lot from the Trust is. Roger stated that Mr. Day did not plan on putting in a bunch of houses, he is putting in a house for himself on the 40 acres and the cordwood business will be on his son-in-law's lot. He stated that the bank will not loan his son-in-law the money until he gets Town approval for the subdivision, this in order for him to get a clear title.

Roger A. asked if there were any other comments? An Abutter to the property asked where Mr. Day's home would be built? Mr. Day stated it was going to be built on the 40 acres. The Abutter asked where the access would be? Mr. Day stated it would be off of the Grant Road. He stated there was 300 feet of road frontage there. The Abutter asked where the other house would go? Mr. Day and Mr. Cochrane (his son-in-law) both stated there was not going to be a house, it was a firewood business. The Abutter asked if that was going to be on the Deering Ridge Road? Mr. Day stated, yes.

Mr. Day provided the board with 2 Mylar copies and paper copies of the subdivision plan. He pointed out on the plan where the test pits were located. The Abutter, looking at the plan, asked where the new home would go. Mr. Day showed an approximate location. He also showed where the driveway would be located.

Madge B. stated that the board needed to act on the waivers. Roger A. noted that the waivers were not on the plan, so the board would act on them and they would become part of the Findings of Facts. Roger also explained to Mr. Day how to record the documents and the fact a Mylar and paper copy would need to be returned to the Planning Board, Assessing will get the Mylar and the Planning Board will get the paper copy.

Roger A. stated that reviewing the criteria for a minor subdivision, there would be no roads being created, they will be using the existing town roads. He said one lot would be accessed from Grant Road and the other from Deering Ridge. The existing lot is currently accessed from the Deering Ridge Road.

Roger A. stated that with respect to underground utilities, these lots are adjacent to the existing Town road with direct access to existing utility poles, so he said that underground power would not be required. He said the applicant could put in underground power, but again, noted it would not be required.

**Madge B. made the motion to grant the waiver for the requirement under §89-29A for Underground Utilities, as there is direct access to existing utility poles for the two new lots and the existing lot currently is using overhead utilities. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

Roger A. asked how the board wanted to vote on the requirement for Stone Monuments?

**Madge B. made the motion to grant the waiver for the requirement under §89-30A for a stone monument in lieu of capped survey irons, as the lots have already been surveyed and capped survey**

**irons are in place at this time. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

Roger A. asked how the board wanted to vote on the requirement for a Stormwater Drainage Plan?

**Madge B. made the motion to grant the waiver for the requirement under §89-30D for a stormwater drainage plan as this is not applicable to this project, no streets or infrastructure is being constructed. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

Roger A. asked how the board wanted to vote on the requirement for a Fire Pond / Dry Hydrants?

**Madge B. made the motion to grant the waiver for the requirement under §89-30B(2)(c) for a fire pond / dry hydrant or sprinkler system, as there is an existing fire pond adjacent to this property. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

Roger A. asked how the board wanted to vote on the requirement for Sidewalks?

**Madge B. made the motion to grant the waiver for the requirement under §89-36M for sidewalks, as it would not be applicable in this location. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

Roger A. asked how the board wanted to vote on the requirement for Street and Storm Drainage?

**Madge B. made the motion to grant the waiver for the requirement under §89-36 & 37, and 39 thru 41, Street and Storm Drainage Design & Construction Standards, as no new streets are proposed or being constructed for this subdivision, therefore it is not applicable. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

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

**Madge B. moved for approval of the 3-Lot Minor Subdivision on Shapleigh Tax Map 1, Lot 12, to be known as the Day Subdivision, creating a total of three lots, as reviewed by the Planning Board and per the plan presented entitled ‘Final Plan of the Day Subdivision land of Richard B. Day and Susan J. Day, Grant Road and Deering Ridge Road, Shapleigh, Maine’. The final plan is dated July 18, 2019, drafted by Steven C. Horne, PLS #2389 of Steven C. Horne, LLC. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the 3-Lot Minor Subdivision on Shapleigh Tax Map 1, Lot 12, to be known as the Day Subdivision, was approved unanimously.**

Roger A. stated again for the record that the Mylar would need to be recorded at the York County Registry of deeds within 90 days and one Mylar and one paper copy would have to be returned to Barbara F., otherwise the approval would be null and void. Mr. Day stated he would be doing it right away.

Roger A. noted that there were no deed restrictions for this project.

Nothing further was discussed, board members signed the subdivision plan.

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## Planning Board's Findings of Fact

### Preliminary Findings

As a preliminary finding of fact, the Board finds that the proposed Subdivision falls under the provision of the Shapleigh Subdivision Code, which relates to Minor Subdivision, this being "Subdivision of Land, Chapter 89, Town of Shapleigh".

### Specific Findings

Based on the preliminary findings set forth above, the Board makes the following specific findings in accordance with Shapleigh's Subdivision Ordinance 4404 "Review Criteria".

#### **The Board finds that the Day Subdivision, creating a 3-Lot Minor Subdivision:**

1. Does not result in undue water or air pollution.
  - *Test Pit Logs were provided by Mark Truman SE #121, dated July 16, 2019, showing the soils on site will adequately support a subsurface wastewater disposal system on Lots 2 and 3. There is an existing State approved Subsurface Wastewater Disposal System on Lot 1.*
  - *There is no air pollution being generated by this activity.*
2. Does have sufficient water available for the foreseeable needs of the subdivision.
  - *The water is to be supplied by individual drilled wells, no dug wells allowed.*
3. Does not cause an unreasonable burden on the existing water supply.
  - *There is no existing municipal water supply at this time.*
4. Does not cause unreasonable soil erosion or reduction in the capacity of land to hold water so that a dangerous or unhealthy condition results.
  - *There shall not be excessive soil or trees removed from the building site on Lot 3 or around the existing saw mill on Lot 2, to create a soil erosion problem.*
  - *All new structures will be permitted through the Code Enforcement Office.*
  - *There are no changes being made to Lot 1.*
5. Does not cause unreasonable traffic congestion or result in unsafe conditions on existing or proposed road.
  - *The driveway location for Lot 1, on Deering Ridge Road, is in existence and has been approved by the Road Commissioner.*
  - *Lot 2 has access onto Deering Ridge Road, and the entrance has been approved by the Road Commissioner.*
  - *Lot 3 has access along both Deering Ridge and Grant Road, any driveway shall have to be approved by the Road Commissioner and permitted by the Town.*
6. Does provide adequate sewage waste disposal.



- *The soils observed are suitable for individual septic systems on lots 2 & 3, as defined by the State of Maine Subsurface Wastewater Disposal Rules. This is per Test Pit Logs provided by Mark Truman SE #121, dated July, 16 2019.*
  - *Lot 1 has an existing State approved septic system.*
7. Does not cause an unreasonable burden on municipal solid waste disposal.
    - *Each property owner will be responsible for handling his or her individual waste.*
    - *This subdivision is subject to the Growth Ordinance, and therefore, shall not unreasonably burden the municipal solid waste facility.*
  8. Does not have an adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat as identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas.
    - *This is not a scenic or historic site, nor is it in the vicinity of one recognized by the Town of Shapleigh.*
    - *This location is not recognized as a high value plant or animal habitat by the Maine Department of Inland Fisheries and Wildlife.*
    - *The possibility of building two additional single family homes in this location will not adversely affect the aesthetics of the area.*
    - *The existing old saw mill has been on site for many years.*
  9. Does conform to local regulations, ordinances, development plan and comprehensive plan.
    - *The final approved plan meets all zoning and subdivision regulations.*
    - *Any changes to the final approved subdivision plan shall have to come back before the Planning Board and any building permits must be obtained by the Code Enforcement Officer.*
  10. Does not adversely affect the quality of surface water or shoreline of ponds, rivers, streams or tidal areas.
    - *There is no pond, river, stream or tidal area on the two new lots.*
  11. Does not alone or in conjunction with existing activities, adversely affect groundwater quality or quantity.
    - *Two additional homes at this location will not adversely affect groundwater quantity.*
    - *Test Pit Logs indicated soils are adequate to hold a State approved septic system.*
    - *A State approved septic system must be installed and approved by the Code Enforcement Officer prior to the granting of an occupancy permit for any new home built.*
  12. Has demonstrated adequate technical and financial capacity to meet the above.
    - *There is no infrastructure being created that requires a performance guaranty.*
  13. Does have all buildings one foot above the base flood elevation.
    - *No portion of the property is within the 100-year flood plain per the Flood Insurance Rate Map for the Town of Shapleigh.*
  14. Does have freshwater wetlands identified on maps.
    - *There are no wetlands depicted on the proposed two lots.*

15. Does have rivers, streams and brooks identified on maps.
  - ***There is no river, stream or brook identified on the two new lots.***
16. The applicant has provided an adequate stormwater management plan.
  - ***Due to the existing topography, and the limited amount of new structures being added to the property, a stormwater management plan was not required by the Planning Board.***
  - ***Any required stormwater mitigation will be dictated by the Code Enforcement Officer during the permitting process.***
17. Day Subdivision shall have no spaghetti lots.
18. Does not unreasonably increase a great pond's phosphorous concentration.
  - ***The project is not located near a Great Pond.***

### **FINDINGS ON THE REQUESTED WAIVER(S)**

The Planning Board finds that the request to waive the requirement, Article 89-29.A, "Utilities shall be installed underground except as otherwise approved by the Board." ***shall be granted.*** All parcels have easy access to existing utility poles. The parcel known as Lot 1, currently uses overhead utilities feeding the existing structure on site.

The Planning Board finds that the request to waive the requirement, Article 89-30.A, "stone monuments shall be set at all street intersections and at all corner and angle points"; ***shall be granted.*** All the lots have been surveyed and there are existing steel rebar w/survey caps at this time.

The Planning Board finds that the request to waive the requirement, Article 89-30.D, "Surface drainage"; ***shall be granted,*** due to the fact the new lot locations have a relatively flat topography. The Road Commissioner will determine if additional ditching or culverts are required in this location.

The Planning Board finds that the request to waive the requirement, Article 89-30.B (2)(c), "Fire Pond / Dry Hydrants for firefighting purposes"; ***shall be granted,*** for the two additional lots. There is an existing pond / dry hydrant very close to this location.

The Planning Board finds that the request to waive the requirement, Article 89-36.M, "sidewalks shall be installed within all subdivisions within the urban compact area"; ***shall be granted*** due to the fact this subdivision will not have an internal road, it is in a rural area, and does not fall within an Urban Compact Zone.

The Planning Board finds that the request to waive the requirement under Article XI 'Street and Storm Drainage Design and Construction Standards', sections 89-36, 37, 39, 40 & 41; ***shall be granted*** due to the fact there are no new streets being proposed or required.

### **Planning Board ACTION**

The Planning Board hereby approves the application for the minor 3-lot Day Subdivision, including the requested waivers, located on Tax Map 1, Lot 12, with the following conditions:

1. Any subdivision not recorded at the York County Registry of Deeds *within ninety days* of the date upon which the plan is approved and signed by the Planning Board shall become null and void, unless an extension is granted by the Board in writing.
2. No changes, erasures, modifications, or revisions shall be made in any final plan after approval has been given, unless the revised final plan is first submitted to the Planning Board and the Board approves any modifications.

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**Best Practical Location – Replace Existing Camp – Map 30, Lot 34 (26 Elm Street) – Bret Brierley, Applicant and Property Owner**

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

Along with the application, provided was a survey plan entitled ‘Plan Showing a Boundary Survey for Bret N. & Donna M. Brierley, 82 Portland Road, Marlborough, CT 06447, Property located on Elm Street & Square Pond in Shapleigh, Maine’. The plan was drafted by Dana Libby PLS #1350, of Corner Post Land Surveying, Inc., dated 4/30/2018. Depicted on the plan is the existing structure, and the distances from the structure to the side lots lines, Square Pond, and Elm Street. The closest distance from the structure to the side lot line abutting Map 30, Lot 35 is 2.4 feet, the closest distance from the existing structure to the side lot line abutting Map 30, Lot 32 is 30.2 feet; the closest distance from the structure to the high water mark of Square Pond is depicted as 16.2 feet; and the closest distance from the structure to Elm Street is depicted as 13.3 feet to the centerline. Also on the plan is a depiction of a building setback 75 feet from the centerline of Elm Street, 10 feet from the side lot line and 20 feet from the rear lot line. It was also noted that Elm Street is 16 feet in width.

In addition, provided were two sketch plans drafted by Mr. Brierley. One sketch plan depicted a proposed structure located 25 feet from the high water line, 10 feet to Map 30, Lot 35 and 20 feet to Map 30, Lot 32. This sketch also depicted the location of the existing septic system, well and CMP line. The second sketch appeared to be the revegetation plan. It depicted the location of the existing and proposed structure. It also depicted the existing trees and proposed tree locations, that the applicant would vegetate the previous camp area with erosion control seed mix for dry sites, and it pointed out an area on the lot that had a steep wooded slope. In addition, provided were the erosion control measures to be used during the project; and a copy of page 3 of 5 of the Subsurface Wastewater Disposal System Application, which showed the location of the septic system designed by John E. Large, SE #7, dated 8/11/99, as well as the Replacement System Variance Request signed by the property owner at that time. As a note the variance did not contain the page which depicts the site evaluator’s signature and there was no LPI signature.

Roger A. asked Mr. Brierley to tell the board what he intended to do. Mr. Brierley stated that he bought the property about 20 years ago; the existing structure was converted from a boat house into a camp. He said he fixed it up, but there is no foundation, it is on a stack of blocks. He said he now wants to replace it. Roger asked if it would be the same size? Mr. Brierley said it would be the same size but a different configuration. Mr. Brierley stated that the structure currently occupies 13.5% of the lot. Roland L. stated that he was concerned with the amount of lot coverage. Roger stated that the structure cannot be increased in size if it is at 13.5%, because you cannot exceed 10% lot coverage in the Shoreland District.

Mr. Brierley stated that the proposed new structure would meet the side setbacks by having 10 feet on one side and 20 feet on the other. The proposed structure will be 25 from the high water mark. He stated that there was a legal right-of-way for the power company and the new structure would be placed so that it was not in this ROW. He also stated that he chose the location because the bulk of the land is not buildable, having a 45 degree slope, which the board will see on the site visit.

Mr. Brierley stated he had no additional approval as asked on the application. He wasn't sure what additional approval he would need. Roger A. stated he would need a DEP Permit by Rule to remove the camp. Roger said it was not hard to apply for and it was a 14 day turnaround, therefore if Mr. Brierley applied now he would know by the next meeting if the DEP approved of the project as submitted.

Roger A. asked where the material from the old structure would go? Mr. Brierley wasn't sure. Roger stated that the debris cannot go to the Shapleigh Transfer Station, it must be disposed of properly and taken out of town.

Steve F. stated that Mr. Brierley needed a replant plan. Mr. Brierley stated that he was going to go to Springvale Nurseries to talk about options. Steve asked about the removal of trees, how many and where. Mr. Brierley stated that there would be several removed in order to put in the new well, several where the house would be located, and another because it was leaning. Roger A. stated that the new trees cannot be planted any farther from the high water mark than the trees to be removed. He also noted that on the plan provided he showed replacement trees running along the side lot lines, and said that any tree along a lot line needs to be at least 5 feet away from the lot line according to the Ordinance (§105-4.D(7)(b)[1][a]). Mr. Brierley stated that if he understood correctly, the new trees had to be as close to the water or closer. Roger said that was correct, and they cannot be in a row, they must be well distributed.

Roland L. asked Mr. Brierley if he could flag the trees that he wanted to remove, so the board would know which ones he was considering, while they were at the site visit. Roland stated that he would be asking why they had to come down. Mr. Brierley understood and he also realized why the board wanted to keep the tree roots in place, in order to help prevent erosion. Roger A. stated that if he is replacing greater than 6 trees, he would need to use 3 different species of trees.

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

**Roger A. scheduled a site inspection for Tuesday, August 13, at 7 p.m. A notice to abutters will be mailed as well.**

Roger A. stated the board would need a better replanting plan, based on the conversation this evening. The board would also like to know when the project will start and when it will be completed, including the replanting plan. The contractor will have to be certified by the MDEP in erosion control measures, and a silt fence will have to be in place and maintained until the project is completed. Roger stated that a surveyor will set the foundation location approved by the Planning Board, prior to the foundation getting poured, so the CEO can be sure the placement is correct per the approved plan.

Roger A. stated that under §105.51.1 'Hazard trees, storm-damaged trees, and dead tree removal' it states in both Sections A and B that stumps may not be removed. Roland L. asked if the stumps can be ground?

CEO Demers stated that they can be ground to ground level. CEO Demers asked about trees that are tipped over and the roots are exposed? Roger stated that he was referring to ‘standing’ dead trees, that the stumps cannot be removed.

Nothing further was discussed.

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**Growth Permits**

**There are growth permits available.**

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**The Planning Board meeting ended at 9:20 p.m.**

**NOTE: The summer hours are in effect thru October 31st, the meetings now begin at 7:30 p.m. and any scheduled public hearing begins at 7:00 p.m.**

The next meeting will be held **Tuesday, August 13, 2019** at 7:30 p.m.

The Planning Board meets the 2<sup>nd</sup> and 4<sup>th</sup> Tuesday of each month unless it falls on a holiday or Election Day. Should there be a cancellation due to a storm event, holiday or Election, the meeting will typically be held the following Wednesday, also at 7:30 p.m. Please contact the Land Use Secretary if there is a question in scheduling, 207-636-2844, x404.

Respectfully submitted,  
Barbara Felong, Land Use Secretary

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

# ***Shapleigh Planning Board***

## ***Minutes***

**Tuesday, August 13, 2019**

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

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

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**The minutes from Tuesday, July 23, 2019 were accepted as read.**

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

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Roger A. opened the meeting by stating that Mr. Justus Brierley, the son of the applicant, was going to be late, as he had to verify a few things with his father (Mr. Bret Brierley, the applicant). The applicant was unable to attend the meeting, therefore, his son was representing him this evening at both the site inspection and the review of the application.

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### **After-the-Fact Conditional Use Permit – Earth Moving in the Shoreland District – Put in a Lawn – Map 16, Lot 31 (66 Cattail Loop) – Lee Mencoboni, Applicant**

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

Along with the application, provided was a sketch plan which depicted the location of the existing structures, gravel driveway, along with areas shaded in green entitled ‘Proposed New Lawn’ and a notation that stated ‘Removed Shed’ with an arrow pointing to the shed that was removed.

The detailed description of the project is as follows: Planting of a New Lawn

Roger A. asked Mr. Mencoboni to let the board know why he was before the board. Mr. Mencoboni stated that he first wanted to apologize because he did not realize he needed permission to redo a lawn. Roger stated that the contractor doing the work should have known. Mr. Mencoboni agreed. Mr. Mencoboni stated he had a lawn with a lot of bare patches, so he was putting in a new lawn on top of what was there. Roger asked if the area had been stabilized. Mr. Mencoboni stated, “Yes sir”.

Roger A. asked how many yards of material had been brought to the site? Mr. Mencoboni stated, “3, 14 yard trucks came in”. He said there was supposed to be 14 yards in each. Ann H asked if this was 3, 14 yards of loam? Mr. Mencoboni stated, “Yes”.

Roger A. asked if any trees came down? Mr. Mencoboni stated that he did not take trees down but there were some stumps from trees taken down years ago that were ground up. He asked if that was ok. Roger said that was fine, he just couldn't pull the root system up.

Roland L. asked if the contractor that performed the work was certified by the DEP? Mr. Mencoboni stated that he did not know. He said he just hired the nearest person from Sanford, P & E Landscaping. He said he found them with a Google search. Ann H. said she had seen their trucks in town.

Roger A. asked if Mr. Mencoboni had filed a DEP permit? Mr. Mencoboni stated that he had. Roger asked when? Mr. Mencoboni stated that he sent it registered mail about 10 days ago. Roger asked CEO Demers if he had gotten anything from the DEP? CEO Demers stated that he had been too busy to check his emails, but he would look to see if he had anything.

Roger A. stated that the board had to notify the abutters regarding the application and tell them what it was for. He said the board could not act on the application until the next meeting, as they had to do a 10 day notification to abutters. **Roger stated the board would do a site inspection at 7:00 pm, on Tuesday, August 27<sup>th</sup>, which is prior to the next meeting and send a Notice to Abutters.**

Ann H. asked if more work had to be done? Mr. Mencoboni stated that the work was not completed yet, and he would like to complete it when it gets cooler.

Nothing further was discussed.

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**Best Practical Location – Replace Existing Camp – Map 30, Lot 34 (26 Elm Street) – Bret Brierley, Applicant and Property Owner**

Mr. Bret Brierley was unable to attend, so his son, Justus Brierley was present for the review of the application. *Note: Board members did a site inspection prior to this evenings meeting.*

Along with the application, provided was a survey plan entitled 'Plan Showing a Boundary Survey for Bret N. & Donna M. Brierley, 82 Portland Road, Marlborough, CT 06447, Property located on Elm Street & Square Pond in Shapleigh, Maine'. The plan was drafted by Dana Libby PLS #1350, of Corner Post Land Surveying, Inc., dated 4/30/2018. Depicted on the plan is the existing structure, and the distances from the structure to the side lots lines, Square Pond, and Elm Street. The closest distance from the structure to the side lot line abutting Map 30, Lot 35 is 2.4 feet, the closest distance from the existing structure to the side lot line abutting Map 30, Lot 32 is 30.2 feet; the closest distance from the structure to the high water mark of Square Pond is depicted as 16.2 feet; and the closest distance from the structure to Elm Street is depicted as 13.3 feet to the centerline. Also on the plan is a depiction of a building setback 75 feet from the centerline of Elm Street, 10 feet from the side lot line and 20 feet from the rear lot line. It was also noted that Elm Street is 16 feet in width.

In addition, provided were two sketch plans drafted by Mr. Brierley. One sketch plan depicted a proposed structure located 25 feet from the high water line, 10 feet to Map 30, Lot 35 and 20 feet to Map 30, Lot 32. This sketch also depicted the location of the existing septic system, well and CMP line. The second sketch appeared to be the revegetation plan. It depicted the location of the existing and proposed structure. It also depicted the existing trees and proposed tree locations, that the applicant would vegetate the

previous camp area with erosion control seed mix for dry sites, and it pointed out an area on the lot that had a steep wooded slope. In addition, provided were the erosion control measures to be used during the project; and a copy of page 3 of 5 of the Subsurface Wastewater Disposal System Application, which showed the location of the septic system designed by John E. Large, SE #7, dated 8/11/99, as well as the Replacement System Variance Request signed by the property owner at that time. As a note the variance did not contain the page which depicts the site evaluator's signature and there was no LPI signature.

*The board received this evening, an email from Bret Brierley giving Justus Brierley permission to act on his behalf.*

Roger A. asked Mr. Justus Brierley to address the board regarding the application. Mr. Brierley said he had an updated plan which depicted a new landscaping plan. He said his father was confused with exactly what the board wanted on the plan with respect to the new structure. He said his father wanted to get a location approved, but he didn't know that he had to provide an 'exact footprint' of the actual structure. He thought he only needed a location approved and within the location he could put the footprint of the house.

Mr. Brierley wanted to know if everything else looked ok besides the exact footprint of the house? Roger A. said that there had to be a landscaping plan, because when the house was pulled back from the present location, the area where it was needs to be addressed. Ann H. said that there may be more area dug out to put in the foundation, and that area would need to be addressed as well. Roger said where the building sits today, the area uncovered, needs to be recovered, and the board needs to know with what he would be using. Roger added that any trees that were coming down, the board needed to know what type of tree he would be using to replace the removed trees with. Roger said that the new trees needed to be no further from the water than the existing, and they have to be six feet in height. Mr. Brierley thought someone said it had to be closer to the water? Roger stated that it could be closer, but it can't be farther away from the water. Mr. Brierley said one tree is right on the water, so he in that case he didn't know what to do. Roger said that you wouldn't put it on top of the stump. You would have to put it off to the side. Roger added that the stump can't be removed. Mr. Brierley stated, "So they have to be in the same vicinity and six feet tall". Roger said, "Right".

Mr. Brierley asked about the trees being removed where the house is going to go, where should those get planted? Roger said they can't be any further from the water, and they have to be five feet from the property line. Roland L. added that the new trees had to be flagged with a ribbon 18 inches long, and they cannot be removed until after they have been inspected by the Code Enforcement Officer §105-4.D(7)(b).

Mr. Brierley stated that he believed they had to be all native species. He asked if they had to be the same species as those taken out? Roger A. stated that it depended on how many were removed. Roger said that if you take two Pine out, you can put two Pine in. He said if they removed six Pine, they would not be able to put in six Pine, they would have to have a mix of different species. Mr. Brierley said that at present there are two Pine, an Oak, so if he stayed with those they may be fine. He said he would write down that they needed a mix of native species.

Mr. Brierley stated that his father would have to come back and have the actual footprint of the house approved. Ann H. stated, "And a landscape plan". She said the board needed to know what he was going to put down, where the old structure was. Mr. Brierley said the board wanted a landscape design, and he believed the board was concerned with the waterfront. Roger A. said, "Anything disturbed". Mr.



Brierley stated, “A landscape design of anything disturbed”. Ann said by the time they remove the structure and trees, just about the entire area would need to be addressed.

Roger A. said that because there is a deeded right-of-way on the plan, Mr. Brierley will not be able to put the building in the ROW. Mr. Brierley stated, “Right”. Roger said that when the surveyor comes and sets the approved placement, he needs to know where the ROW is. Roger, looking at the plan provided by Mr. Brierley, said that the ROW depicted is 16 feet in width. Roger said from the existing building to the centerline is depicted as 13.3 feet. Roger said based on this and the size of the existing structure, you can’t pull the building back 10 feet, because you will be in the ROW. Roger said if the configuration of the building is changed so 5 feet is removed from the width, the building will go back 25 feet from the high water mark. Mr. Brierley stated, “As long as he meets the side setbacks of 10 feet and 20 feet”. Roger said, “Yup”. Mr. Brierley thought it was what his father proposed as a building envelope, they just didn’t have the exact design yet.

Mr. Brierley asked if everything else looked ok, other than a landscape design and the actual footprint of the new structure. Roger said, “Yes”. Mr. Brierley stated that the board wanted to see where the replacement trees were going to go. Roger said, “Yes”. Mr. Brierley said the board also wanted to see what additional landscaping was going to be done. Roger said that while the excavator is digging out for the foundation, that area is disturbed. Mr. Brierley stated that the board wanted to know what will be done with that area. Roger said, “Right, anything being disturbed has to be addressed”.

Madge B. stated that she wanted to know where the roof runoff will go. She said it was important that it not go into the lake. Mr. Brierley understood. He asked if they wanted a gutter system? Roger A. and Madge both said that they liked a French drain. Roger said it would drain into the ground slowly. Ann H. said that another preferable idea is having the water go into a rain garden. Madge wasn’t sure it would work in this area. Madge thought the contractor would put in drainage around the foundation. Roland L. stated that the drainage she was talking about was below grade, you want to catch what is coming off the roof and keep it from going into the lake. Roland said he was not opposed to gutters if they can direct the gutter to some type of a catch basin, a dry well perhaps. Steve F. stated that if they directed the water toward the ROW with gutters, then they would have a buffer area, that being the house and perhaps some stone, between the stormwater and the lake.

Madge B. asked if the applicant understood that the overhangs count when looking at the footprint of existing and new structure? Roger A. said that when the board looks at the size of the structure, the board is looking at the size from the sky down onto the structure, not just the foundation. Mr. Brierley asked if they were talking about a one foot overhang. Roger said the size of the overhang doesn’t matter, the board was looking at the size, for example 20’ x 20’, this would include the overhang. Roger said because of the lot restriction of 10%, the building will not be able to be increased in size. Mr. Brierley said, “From what it is now”. Roger said, “Yes”. Roger believed the ROW created a division of the lot.

The board members reviewed the surveyed plan to try to determine the area involved. Madge B. did not feel this mattered. She said they could still use the same 1000 sq. ft. that is allowed. Roger A. believed that whatever size the existing structure is, that is what the board will allow with the new structure. He said that whatever sq. ft. there is now, that is what he can have. Mr. Brierley asked when the new plan had to be recorded? The board stated, after they approved the new size and location.

Roger A. stated that when the board places the location and size of the new structure, a surveyor will have to come in and verify the location, prior to the foundation being poured. He said after that it will get recorded.

Mr. Brierley said they need to measure eave to eave, get the exact design of the new house, and not exceed the sq. ft. of what is there now. He said they have to measure what is there now, with the patio. Roger said that if they decide to keep the patio, then they have to subtract that from the sq. footage of the new structure, because that footprint is counted.

Roger A. stated that the board can table the application for a period of up to 90 days.

**Madge B. moved to table the best possible location application for a new structure on Map 30, Lot 34, for up to 90 days. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

Madge B. said Mr. Brierley can contact the board when he is ready and he will be put back on the agenda.

Two citizens in the audience asked if they could speak regarding the application. Roger A. stated that they could. The first citizen stated that her concern was about the road. She stated that they had helped to maintain the road and had done work for the stormwater drainage to protect the lake, working with the Acton-Shapleigh Conservation group to maintain the integrity of the road. Ann H. asked if it was a private road? The second citizen stated that yes it was a private road, and he added the applicant doesn't have the right-of-way to it but they will use it to get the equipment down to where their property is. Ann asked where the deeded ROW was located on the property? The citizen stated that he was not sure. Madge B. stated that they did not know that, and she didn't think it was fair to ask them to answer that question. Another citizen asked if the new structure was seasonal? Mr. Brierley stated that it was going to be built as if it were year round, but it would likely only be used seasonally.

Roger A. stated that if Mr. Brierley was going to live there year round, he would need to put in for a Growth Permit. Roland L. asked if he was correct in saying that as this project goes thru the approval process, one of the conditions that can be included is their concern that the road remain in its current condition and if something happens to it, it is the applicant's responsibility to repair it. Madge B. stated that the board can put the condition in the approval but the Town cannot enforce it. Madge said it is a private road, the Town therefore, has no enforcement power over it. Madge said again she had no objections putting it in as a statement. Roger agreed, it can be there for someone to look at but the Town cannot do anything about it. Madge added that it was a reasonable concern.

Roger A. asked if there were any additional questions? Madge B. asked if the abutters would get notified again? Barbara F. stated they would not, but the agenda is posted on the Town's website the Friday before the meeting and they can always call her the Friday before or on the day of the meeting, to see if it is on the agenda.

Nothing further was discussed.

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**Sign Findings of Fact and Approval for the Day subdivision – Map 1, Lot 12 (Deering Ridge Road)**  
**– Approved on July 23, 2019**

Board members signed the findings for the record. A copy will be mailed to the applicants, Mr. & Mrs. Day.

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**Other:**

Board members discussed whether or not a right-of-way bisecting a lot reduced the amount of lot coverage allowed on either side of the ROW, because the ROW may create a division of the lot. Several members thought this was only an issue when reviewing a subdivision. Steve F. read ‘Lot Area’, ‘The area of land enclosed within the boundary line of a lot, minus land below the normal high-water line of a water body or upland edge of a wetland and areas beneath roads serving more than two lots.’

Steve F. said it would discount the square footage of the road. Madge B. said she had no issue discounting the square footage of the road, but she would have an issue saying it was two lots because of the ROW. The board agreed with respect to the Brierley application, lot coverage was not an issue with what he was proposing. CEO Demers stated that he was limited in square footage by the ordinance due to the location and size of the structure, not by the size of the lot.

Ann H. asked why Mr. Brierley couldn’t go back into the bank? Roger A. stated because it would create more of a disturbance on the property to go into the banking, than to put it where Mr. Brierley was suggesting. Steve F. noted a similar application, that by moving it back would be more detrimental to the property. CEO Demers noted that adjacent properties might also come into play when placing the new location. Board members agreed. Steve F. stated the board has to look at a lot of different things when making the decision. Roger A. agreed.

Nothing further was discussed.

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Madge B., because of a property the Land Trust was thinking about purchasing, wanted to know if board members knew the difference between a Family Trust and an Individual Trust. In part, because the board just reviewed a subdivision, whereas an attorney stated a Family Trust cannot gift land to a family member and be exempt from subdivision, because a Trust is not a person but an entity. In that case the Trust gifting to a family member created a lot that had to be counted, which when creating a third lot in that case created a minor subdivision. She wasn’t sure if an Individual Trust was viewed the same way. No one had a definitive answer. CEO Demers thought an Individual Trust could gift to a relative. It was suggested that Madge might want to inquire to someone who had expertise in this area.

Nothing more was discussed.

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**Growth Permits**

**There are growth permits available.**

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**The Planning Board meeting ended at 8:45 p.m.**

**NOTE: The summer hours are in effect thru October 31st, the meetings now begin at 7:30 p.m. and any scheduled public hearing begins at 7:00 p.m.**

The next meeting will be held **Tuesday, August 27, 2019** at 7:30 p.m.

The Planning Board meets the 2<sup>nd</sup> and 4<sup>th</sup> Tuesday of each month unless it falls on a holiday or Election Day. Should there be a cancellation due to a storm event, holiday or Election, the meeting will typically be held the following Wednesday, also at 7:30 p.m. Please contact the Land Use Secretary if there is a question in scheduling, 207-636-2844, x404.

Respectfully submitted,  
Barbara Felong, Land Use Secretary

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

## ***Shapleigh Planning Board***

### ***Minutes***

**Tuesday, August 27, 2019**

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

Ann H. sat in as a regular member this evening.

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

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**The minutes from Tuesday, August 13, 2019 were accepted as read.**

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

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#### **After-the-Fact Conditional Use Permit – Earth Moving in the Shoreland District – Put in a Lawn – Map 16, Lot 31 (66 Cattail Loop) – Lee Mencoboni, Applicant**

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

Along with the application, provided was a sketch plan which depicted the location of the existing structures, gravel driveway, along with areas shaded in green entitled ‘Proposed New Lawn’ and a notation that stated ‘Removed Shed’ with an arrow pointing to the shed that was removed.

The detailed description of the project is as follows: Planting of a New Lawn

Roger A. opened the review by stating the board did have some correspondence from an abutting property owner. He read the letter to the members and audience, it read in part as follows:

Thank you for your letter about permitting at 66 Cattail Loop. Please understand that our concerns for the Shoreland District are not specific to Cattail Loop, but for all of Mousam Lake.

According to Maine Shoreland Zoning: A Handbook for Shoreland Owners, ‘responsible development’ seeks to conserve shore cover. Many of the camps on Mousam Lake were built before the 1970s and do not have proper setback from the water. They are ‘Non-conforming’. The handbook cautions that we should use the lake with “the aim of reducing non-conformity over time”. (Page 26) The temptation to replace bushes and low plantings with lawn does not follow that guideline.

We refer you to the Buffer Handbook: Guide to Creating Vegetated Buffers for Lakefront Properties. The authors stress the importance of plants within 250 of the water. “Properties without vegetation have no barrier against sediments and pollution”, they said; and define buffer strips as “trees, shrubs, and ground cover that block sediments before they reach the lake”. (Page 4) They continue to say, “Environmental

professionals highly recommend creating a vegetative buffer as an effective conservation practice (or Best Management Practice – ‘BMP’) for controlling storm water runoff pollution”. Unfortunately, a border of rocks is not a barrier against sediments and pollution. The Handbook describes effective buffers and the role of buffer planning. The Buffer Handbook suggest “Lawns are best used as part of an overall landscape design” that combines open space for outdoor activities, as well as proper plantings to protect the lake. A lawn is not a good buffer alone, partly because it does not stop surface erosion and partly because the use of fertilizers, herbicides, and pesticides are bad for the lake. (Page 5) The Buffer Handbook Plant List contains a wealth of information about choosing effective buffer plans from ground cover to trees. The Maine DEP has created DEP Issue Profile, Rev. 2018, which defines a ‘well distributed stand of trees and other vegetation’. This booklet and the others we have mentioned are available from the Maine DEP in printable form.

We hope that you will require all those who wish to change their landscaping to create and maintain an effective vegetative buffer on their property. Please assist them, when possible, in finding resources to help develop an overall buffer plan. Robert B. & Susan W. Riding

Roger A. asked if there were any comments about the project from the DEP? CEO Demers stated he had no comment from the DEP. Roger asked Mr. Mencoboni if he heard from the DEP? He stated, “I did. I got a call from a lady named Claire yesterday and she gave the go ahead but she said you wouldn’t get it for a few days”. Roger asked Mr. Mencoboni when he submitted the application? He said it was submitted before the last meeting but it came back because there were some things he had to correct. He said he did correct it, and sent it back to the DEP the next day. He believed it was 10 days ago he mailed it back.

Roland L. wanted to know if they were referencing a Permit by Rule application? Mr. Mencoboni said he said he was talking about the DEP paperwork he had to fill out. Roland asked when the DEP said Mr. Mencoboni was going to be hearing from them in a few days, was this in regards to the Permit by Rule? Mr. Mencoboni believed so. Steve F. asked what the lady had concerns about? Mr. Mencoboni said that what she asked him about was did he chew up anything? He said he answered that he did not, he just put loam on top. He said there was something else she asked but he didn’t recall what it was. Mr. Mencoboni said that whatever he answered, along with what was on the sheet, she said it was fine. Roland said that he wasn’t trying to dispute his statement but it appeared to him looking at the area at the site inspection, there were clumps of sod, so something had to be pushed up. Roland said that this was besides the bark mulch that was put down. Mr. Mencoboni said he absolutely did not push up the area, all they did was cover it with the loam. He said he didn’t know what it was Roland was speaking about. Roland asked if anyone else had seen the sod? Roger A. said he didn’t notice, but perhaps when going over the area with the machine, some of the grass was picked up and distributed. Steve F. asked if they installed the silt fence with a skid steer? Mr. Mencoboni stated, “No”.

Roger A. stated that the newly proposed lawn was 6 to 8 inches higher than it was before. He said with the existing silt fence, he did not know how Mr. Mencoboni planned on keeping the erosion from getting into the lake, even if he planted grass. Roger believed there would have to be some kind of a buffer in between the rocks and silt fence, and where the proposed lawn is and the rest of the property. Roger said the rocks can’t be picked up higher. Mr. Mencoboni stated, “I can do that easily”. Ann H. asked if there was a place or somebody with a specific certification, like a landscape place, that can go to his property and do a design that keeps everything from going into the lake? Roger said there was. He said

Springvale Nurseries can come up with a plan, and there are others. Ann stated that she wanted to be sure that he went to someone that would be qualified, considering what he had gone thru. Roger said, had the contractor doing the work been DEP certified, he may have known to be more careful.

Steve F. said the requirement falls on the landowner, and he felt at this point Mr. Mencoboni was prepared to do what the board requests. Steve said in the past the board has said they would not tell the landowner what the 'fix' is. He said unless the board is prepared to do it in this situation, then he felt the board should table the application until such time the applicant can provide them with a plan. Steve said he could produce a picture which shows a green grass lawn, but he felt the board now has an opportunity to make this situation better than it was before.

Ann H. stated she did not feel she was qualified to make a decision, not knowing exactly what plantings would best protect the lake. She would rather have a professional come up with a plan. Maggie M. said the handbook that is mentioned in the letter is a place to start to help in this situation. Ann told Mr. Mencoboni that he could let the board know when he had a plan created on how he would keep erosion from going into the lake, a planting plan. Steve F. believed time was of the essence, so he did not want this delayed any longer than possible.

Ann H. asked if the board needed him to come back with a new plan, or could he come up with something tonight? Steve F. said unless the board can have him this evening modify the plan, he will need to come back. He felt the board was leaning toward having him come back with a new plan. Roger A. agreed. Steve said again that in the past the board has required the applicant to come back with a new landscaping plan. Roger agreed. Steve said in the end it is up to the board. Ann said that she was hearing from the applicant that he did not know what it would take to keep the erosion from going into the lake. Mr. Mencoboni said he was told tonight that he could use four feet of the mulch and then keep the lawn beyond that. He said he could also do plantings if the board would like that. Steve said he had no problem amending the existing plan. Maggie M. believed a combination of mulch and plantings might be the better plan, because there is such a wide area that is exposed.

Mr. Mencoboni asked the board where he would find out what kind of plantings to use. Ann H. said if he spoke with Springvale Nurseries they would help. Roland L. stated that York County Soil and Water Conservation is a better resource for this kind of information. He stated that they were located in Springvale. Ann asked if they would go to the site? Roger A. stated, "Yes, and they will actually do a design". Ann asked if they would look at the soil, trees, and location, she was not familiar with them? Roger said they would. Steve F. asked if the board was going to review this or were they ok with having the CEO look at the plan? CEO Demers stated, "I would say approve or disapprove the lawn, pending DEP approval and based on the recommendation of the soils expert".

Roger A. stated that the retaining wall on site was not on the plan presented. Roger said he was referring to the wall noted at the site inspection and that Mr. Mencoboni said would be restabilized with a new wall and wooden deck, which would be smaller than the original. Mr. Mencoboni stated that the plan he provided for the board was an old plan from the former owner, but it was all he could find to show the lawn. Roger said there was concrete piled up on site. Mr. Mencoboni stated it was going to be removed, it was part of an old shed full of ants, so the shed was taken down. Roger wanted to know where the debris would be removed to, noting it could not go to the transfer station. Mr. Mencoboni wasn't sure where it was going. Roger said the board needed to know. Mr. Mencoboni said he could provide the

contractors name. Roger said he was responsible, so he needed to know where it was going, and again it could not go to the transfer station.

Steve F. said if the board denies the lawn, that brings the applicant back in two weeks and doesn't do anything for the site. He felt if it went to the CEO, perhaps it would move forward. Roland L. did not think waiting two more weeks was an issue, there is a silt fence up at this time to mitigate runoff. He would like to see the applicant do some leg work and come up with a plan to present to the board, and have the DEP Permit by Rule. Mr. Mencoboni asked CEO Demers if he received the permit. CEO Demers stated that he usually did, but did not have it at this time.

Roger A. stated that the board could table it in order to get a landscaping plan, along with where the concrete being removed is going to go, and how that area will be addressed. He said also what the size would be for the new deck, as well as the wall. Ann H. asked Mr. Mencoboni if he already had a contractor for the project? Mr. Mencoboni stated that he did. Ann stated that the contractor could come to the next meeting to answer questions if it would be easier. Mr. Mencoboni said it would be. Maggie M. stated that he might want to contact York County Soils because they did a lot around the lake. Roland L. stated again that they were located in Springvale. Roger said behind the Springvale Courthouse in the old Nason Library.

Roland L. asked if there was any recourse for the contractor that deposited the material without certification? Ann H. did not think the Town could anything. Mr. Mencoboni thought it would have to be in civil court. Roland stated, "I cannot believe in this day and age, with all the attention put on water quality, whether you are from Maine, New Hampshire, Massachusetts, Connecticut, wherever; everyone is concerned with what happens in the water. I can't believe that as an applicant that you or the contractor didn't realize the impact that that activity was going to have on that body of water without seeking out some advice or getting approval". Mr. Mencoboni stated, "It never occurred to me, that just simply putting a lawn in, would be such a disruption. It never ever occurred to me". Roland stated that 42 yards of loam is a big pile of loam. Mr. Mencoboni stated, "I absolutely never considered putting a lawn in, actually I was thinking I was helping the water because the lawn was in such bad shape. I understand now what is going on, but no, I never really understood".

Roger A. said the sad part was that the contractor that he hired, without being DEP certified was just fleecing Mr. Mencoboni. Ann H. said it does happen to lots of people.

Roger A. asked if there was a motion to table?

**Maggie M. made the motion to table the application until additional information, as stated, can be provided to the board. Ann H. seconded the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

**Roger A. stated the information required is as follows:**

- 1) Provide a landscaping plan for the site which includes erosion control measures.**
- 2) Provide a copy of the MDEP Permit by Rule along with any comments.**
- 3) Provide a plan for the removal of the debris on site.**
- 4) Provide a plan showing the proposed wall and deck replacement, which is to include the location and size removed and how it will be replaced.**



Roger A. asked Mr. Mencoboni to contact Barbara F. when he had the information so he could be placed back on the agenda. It was noted the next meeting is Tuesday, September 10<sup>th</sup> at 7:30 pm.

Nothing more was discussed.

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**Conditional Use Permit – Replace Existing Retaining Wall & Add Riprap to Slope – Map 27, Lot 20 (30 Point Road) – Craig Burgess, PE, Representing; Gerard Landry, Applicant & Co-Trustee of the Property**

Mr. Burgess and Mr. Landry were present for the review of the application. *Board members did a site inspection prior to this evenings meeting.*

Previously provided along with the application, was an email dated June 11, 2019, which stated that Mr. Burgess had permission to act on behalf of L. Gerard Landry, trustee of the Percy M. Cunningham Jr. Trust, owner of 30 Point Road, Shapleigh, regarding the wall replacement project; a site location map depicting the location of the project; a plan entitled ‘Site Exhibit, 30 Point Road Site’, which depicted the house, two decks and stairs, along with the location of Point Road; and a copy of the Warranty Deed showing Cynthia L. Cunningham, L. Gerard Landry, and Becky A. Landry, as Successor Co-Trustees of the Percy M. Cunningham, Jr. Trust dated as recorded at the YCRD on 12/26/2018.

Also provided was a set of engineered plans, entitled ‘30 Point Road Shoreline Improvements’ which contained the following pages: Cover Sheet, drafted by Craig A. Burgess, PE #12638, dated 6/7/2019, which listed the table of contents and depicted the existing structures and vegetation located at 30 Point Road; Existing Conditions Plan, drafted by Jacob I. Bartlett, PLS #2513, dated 2/25/2019, which depicted survey pipes found, the existing structures on site, driveway, vegetation, elevation contours, location of Point Road, Mousam Lake and abutting properties, and ‘apparent location of tire retaining wall, unable to verify extent due to snow cover’; Site & Grading Plan, drafted by Craig A. Burgess, PE #12638, dated 6/7/2019 which depicts the existing structures, vegetation, Point Road, boundary lines, property line at high water line, which trees will be removed or protected, erosion control measures and where they will be located, the location of the structures to be replaced which includes a deck, stairs, and wall, and the addition of riprap; Erosion Control & Sediment Control Notes, drafted by Craig A. Burgess, PE #12638, dated 6/7/2019; and the Erosion & Sediment Control Details, also drafted by Craig A. Burgess, PE #12638, dated 6/7/2019. Both Craig Burgess and Jacob Bartlett are from Sebago Technics, in South Portland, Maine.

The detailed project description reads in part, as follows:

*The enclosed Conditional Use Permit application is for shoreline stabilization along Mousam Lake at 30 Point Road. Over the years, an existing retaining wall made of old tires and sideslopes immediately adjacent to Mousam Lake has experienced erosion. Without proper stabilization, the existing wall will likely fail and the sideslopes will continue to erode.*

*Shoreline stabilization work at 30 Point Road will involve replacement of the existing retaining wall and approximately 26 linear feet of riprapped slope to prevent additional erosion and to provide long-term protection of existing developed areas. Other improvements include extending the wall an additional 3 feet, replacement of stairs and wood deck, replacement of existing gravel*

*with stone pavers and removal of two trees with significant root exposure. Construction during the offseason is ideal, and the applicant is hopeful to complete the project sometime between September and November of 2019.*

*Project impacts to Mousam Lake natural resource buffer will be reviewed concurrently by Maine Department of Environmental Protection under an individual Natural Resources Protection Act Permit and the Army Corps of Engineers. Both applications were filed on June 11, 2019.*

This evening, provided by the applicant was a memorandum from Craig Burgess, PE, of Sebago Technics, dated August 20, 2019, to Jennifer McGill, Project Mgr., of the Maine DEP. The memo read in part as follows:

On behalf of our client, Gerard Landry, we are resubmitting Site Plans for shoreline stabilization along Mousam Lake at 30 Point Road in Shapleigh, Maine. Changes to the plans include:

- Replacement of the wall to match existing height and length. Lengthening of the wall is no longer proposed.
- Stairway will be replaced to include level landing areas and a bend to better match existing conditions.
- No changes to the wood deck at top of slope are proposed.
- Expansion of the riprap slope in areas previously depicted as stabilized with a lengthened retaining wall.
- Combination of flat stepping stones and gravel along immediate shoreline at bottom of slope. Patio stones are no longer proposed.

Level platforms will be constructed for the contractor to stage and perform work for demolition and grading improvements. Construction vehicles including a tracked skid steer, mini excavator, and likely a larger 12 metric ton excavator will be used to perform work along the shoreline. Basic excavation will be performed to construct the footer (crushed stone base) for the retaining wall. Construction will start from the lowermost point of the project along the immediate shoreline, and work up to the top of slope. When there is little room for staging of materials, it may be necessary to truck/haul materials out only to bring them back for backfill and grading. No work will be completed below the high-water elevation. Erosion control measures will be installed in general conformance with the civil plans prior to demolition, grading and other site improvements.

The retaining and stairs will be built to minimum standards set forth by National Concrete Masonry Association (NCMA) for retaining walls and other applicable standards. All walls over three feet or shoreline walls will be professionally engineered.

Also provided this evening was an email from Jeffrey, Kalinich of the Maine DEP, Asst. Shoreland Zoning Coordinator, dated July 25, 2019, which read in part as follows:

The 2 trees that are being requested to be removed do appear to be hazard trees from the photos I have seen. The trees may be removed to ground level. Based on the photos it does not appear replanting is necessary in this instance.

The wooden deck being proposed to be removed and replaced cannot be replaced in the same location. The deck is not a functionally water dependent structure and when greater than 50% of the value of the structure is removed, the entire structure must be moved to meet the structural setback. The existing deck can be maintained and repaired as long as any repairs are to less than 50% of its value.

The board was also provided with a new set of engineered plans. These plans include: Sheet 1 – Cover Sheet entitled ‘30 Point Road Shoreline Improvements’; Applicant: Gerard Landry, 89 Crest Drive, Somersworth, NH 03878; Engineer / Surveyor / Landscape Architect: Sebago Technics. The cover sheet depicted a surveyed drawing of the site in grey-scale along with existing conditions and improvements; Sheet 2 – Existing Conditions Plan, drafted by Jacob I. Bartlett, PLS #2513, dated as submitted to MDEP on 6/7/19; Sheet 3 – Site & Grading Plan, drafted by Craig A. Burgess, PE #12638, dated as revised per Town & DEP Comments on 8/19/19 and dated as Created Construction Management Plan & Submitted to Maine DEP on 8/27/19; Sheet 4 – Construction Management Plan, drafted by Craig A. Burgess, PE #12638 dated and revised same as Sheet 3, this Sheet is an addition to the original set of plans. It depicts Construction Management Notes detailing how the project will be completed, along with Landscape Notes giving detail to how all disturbed vegetation will be replaced, and the plan depicts existing trees to be protected, trees and roots to be removed to ground level, location of filter barrier, staging area for riprap of slope and wall, construction work area, and stockpile area for organic layer; Sheet 5 – Erosion & Sediment Control Notes, drafted by Craig A. Burgess, PE #12638, dated and revised same as Sheet 3; Sheet 6 – Erosion & Sediment Control Details, drafted by Craig A. Burgess, PE #12638, dated and revised same as Sheet 3.

Roger A. asked Mr. Burgess to let the board know about the new information provided. Mr. Burgess stated that since the last meeting they have been going back and forth with the MDEP as to what the best way was to build the stairs. He said they are back with the original plan, except in order to build the stairs complaint to the building code, they will have 2 level landings, along with the jog that is there now. Mr. Burgess stated, “We are replacing the stairs that are there now, as well as taking out the steps at the top and replacing those with stairs, and putting a landing at the bottom before the stairs jog again”.

Mr. Burgess stated that they were no longer going to touch the wooden deck, it will remain as is. He said they would continue the riprap slope underneath a portion of the stairs. He noted the DEP letter did classify the two trees as hazard trees, therefore, Mr. Landry wants to remove the two trees that have the roots fully exposed.

Mr. Burgess stated the replacement of the retaining wall will match the exact length and height of the existing wall. He said they were no longer proposing to lengthen the retaining wall. He said they also got rid of the idea of patio stone, and instead will use stepping stones and the existing gravel that is there, and said there is an email from DEP supporting that. The DEP believes adding some natural flat stepping stones will help hold the silt back and help prevent the erosion of the gravel into the lake. Steve F. asked if he was speaking of the flat area? Mr. Burgess stated that yes, the existing flat area that is gravel; adding some stepping stones will help stabilize the gravel.

Mr. Burgess stated that was the scope of the project. He believed they were in compliance with the comments they received at the last review and they were hoping for approval. He said he had a copy of the whole NRPA application to the DEP, and their processing time line is that they have until mid-September. He noted that he has been addressing comments as they come in, and he hoped that the approval is sooner rather than later. He stated that he hoped he could get the approval from the board this evening, so he could present the approval to the Code Enforcement Officer as soon as the DEP approval comes in.

Mr. Burgess did not anticipate the design would change with the DEP comments.

Roger A. asked if the stumps were staying when the trees are removed? Mr. Burgess stated, “No, they are saying to cut down to the existing grade”. Mr. Landry stated they would be putting riprap to stabilize the soil.

Mr. Burgess said he did question how it was phrased by the DEP and they said it meant ‘to the ground’, so the fully exposed roots are to be cut, they are not going to go further. He said the roots will be cut at ground level. Steve F. stated, “Chain sawing, not excavating”. Mr. Burgess said, “Yup”. Roger A. reviewed § 105-51.1. Hazard Trees, Storm-Damaged Trees, and Dead Tree Removal, as follows:

A. Hazard trees in the Shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:

- (1) Within the shoreline buffer, if the removal of a hazard tree results in a cleared opening in the tree canopy greater than two hundred and fifty (250) square feet, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least six (6) feet in height above ground level and no less than (2) inches in diameter. **Stumps may not be removed.**

Roger A. stated that stumps cannot be removed, the board cannot waive this. CEO Demers stated, “But the roots can be cut”. Roger agreed. CEO Demers said they cannot excavate into the ground. Mr. Landry stated that the DEP recommended they add rip rap into the banking to stop the erosion of the banking. He said the roots in the ground are not stopping the erosion, something has to be added around the root. Roger stated that the root will help hold the rock.

Mr. Burgess said to address some comments from the last meeting regarding construction, as well as the DEP questions, which were similar, he created another plan that is a Construction Management Plan. He said he spoke with Mark Arsenault, the landscape contractor, and the plan is to remove the stairs to bring his equipment down and then to operate his equipment from a certain location to reach over to the wall and add the riprap. He stated there may need to be some staging areas that require some excavation into the existing slope, and there are notes that all excavated material needs to be stockpiled, and then brought back down and put back where it was. He added that any saplings that are removed, they are to be replaced with a 2 inch tree of a similar species and a landscape architect in his office created a list of acceptable native species that would do well in this type of soil and location. He said there is now a Construction Management Plan that was submitted today to the DEP. Mr. Burgess said that he also provided this information in the plans he provided to the board this evening. (Sheet 4 of 6)

Steve F. asked, regarding this plan, if Mr. Burgess expected to hear back from the DEP within the next couple of weeks? Mr. Burgess said, “Yes”. Mr. Burgess said the plan calls for any soil that is removed to be put back, and the area to be as it was before, with the original duff layer / top soil to be placed on top. He said then it will be mulched and planted with similar plant species. Roger A. stated that there will be a silt fence toward the front by the lake. Mr. Burgess stated, “Yes”. Roger said BMP will be maintained. Roger asked if the contractor doing the work was DEP certified. Mr. Burgess stated, “Yes”.

Roger A. asked when the time frame was for completion? Mr. Burgess stated that once they have DEP approval, they will begin sometime in September. Roger asked when there might be a completion date? Mr. Landry thought late October, early November. He said it was also weather dependent.

Ann H. asked about the deck, if nothing was going to be done. Mr. Burgess stated, “Yes”. Mr. Landry said they were going to just leave it as is.

Roger A. asked if there were any additional comments? Roland L. asked about the landscaping notes, there was diagram of a small tree, and that they would remove all labels and tags. He asked if these were going to be considered replacement trees? He wanted the applicant to know that the ordinance requires new trees have to be flagged with a ribbon 18 inches long, and it cannot be removed until after they have been inspected by the Code Enforcement Officer §105-4.D(7)(b). Ann H. stated that if they just remember that every tree that they replant, to just flag it. Roland said he just noticed the tree notation, and thanked the applicant for providing ample detail in the plans provided.

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

- 1) Best Management Practices will be maintained until the project is completed which includes stabilization of the entire area affected. A person licensed in erosion control practices by the MDEP must be on site during the project until the area is stabilized and project is completed.**
- 2) The project, including the revegetation is to be completed by November 15, 2019. If for any reason this date cannot be met, the Code Enforcement Officer (CEO) must be notified.**
- 3) The replacement trees shall have 18 inch ribbons placed on them, so they can be easily seen by the CEO.**
- 4) The Planning Board and CEO will need to have a copy of the MDEP comments regarding the final plan submitted.**
- 5) The tires from the existing wall will be taken out of Shapleigh and disposed of in a licensed waste facility.**

**Steve F. made the motion to approve the Conditional Use Permit to replace the existing retaining wall, riprap the slope, and replace stairs on Map 27, Lot 20, per the final plans provided, with five conditions. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

Nothing further was discussed.

### **The Findings of Facts**

1. The owner of Shapleigh Tax Map 27, Lot 20 (30 Point Road), is Percy M. Cunningham, Jr. Trust, with a mailing address of 89 Crest Drive, Somersworth, NH 03878. L. Gerard Landry, Cynthia L. Cunningham, and Becky A. Landry, Successor Co-Trustees, as granted by Warranty Deed dated as recorded at the YCRD on 12/26/2018.
2. The applicant is L. Gerard Landry, mailing address of 89 Crest Drive, Somersworth, NH 03878.

3. The property itself is located in the Shoreland District and according to the assessor the property contains .17 acres.
4. The application project description reads in part, as follows: *Shoreline stabilization work at 30 Point Road will involve replacement of the existing retaining wall and approximately 26 linear feet of riprapped slope to prevent additional erosion and to provide long-term protection of existing developed areas. Other improvements include extending the wall an additional 3 feet, replacement of stairs and wood deck, replacement of existing gravel with stone pavers and removal of two trees with significant root exposure. Construction during the offseason is ideal, and the applicant is hopeful to complete the project sometime between September and November of 2019.*
5. Received was a copy of the site location map, USGS Quadrangle: Mousam Lake, which pointed out the location of 30 Point Road; a plan entitled ‘Site Exhibit, 30 Point Road Site’ which depicted the existing structures on site which included a house, 2 decks, stairs, and the existing retaining wall; and a plan entitled ‘Disturbance Area Exhibit, 30 Point Road Site’ which detailed the area around the wall to be replaced, depicting trees to be removed and protected, area of disturbance, stairs to be replaced, wall to be replaced, area to have riprap, and deck to be replaced.
6. Received was a set of engineered plans, entitled ‘30 Point Road Shoreline Improvements’ which contained the following pages: Cover Sheet, drafted by Craig A. Burgess, PE #12638, dated 6/7/2019, which listed the table of contents and depicted the existing structures and vegetation located at 30 Point Road; Existing Conditions Plan, drafted by Jacob I. Bartlett, PLS #2513, dated 2/25/2019, which depicted survey pipes found, the existing structures on site, driveway, vegetation, elevation contours, location of Point Road, Mousam Lake and abutting properties, and ‘apparent location of tire retaining wall, unable to verify extent due to snow cover’; Site & Grading Plan, drafted by Craig A. Burgess, PE #12638, dated 6/7/2019 which depicts the existing structures, vegetation, Point Road, boundary lines, property line at high water line, which trees will be removed or protected, erosion control measures and where they will be located, the location of the structures to be replaced which includes a deck, stairs, and wall, and the addition of riprap; Erosion Control & Sediment Control Notes, drafted by Craig A. Burgess, PE #12638, dated 6/7/2019; and the Erosion & Sediment Control Details, also drafted by Craig A. Burgess, PE #12638, dated 6/7/2019. Both Craig Burgess and Jacob Bartlett are from Sebago Technics, in South Portland, Maine.
7. Received was a revised set of engineered plans which was amended to include both the Zoning Ordinance requirements cited by the Planning Board, and MDEP requirements, these plans contain the following pages: Sheet 1 – Cover Sheet entitled ‘30 Point Road Shoreline Improvements’; Applicant: Gerard Landry, 89 Crest Drive, Somersworth, NH 03878; Engineer / Surveyor / Landscape Architect: Sebago Technics. The cover sheet depicted a surveyed drawing of the site in grey-scale along with existing conditions and improvements; Sheet 2 – Existing Conditions Plan, drafted by Jacob I. Bartlett, PLS #2513, dated as submitted to MDEP on 6/7/19; Sheet 3 – Site & Grading Plan, drafted by Craig A. Burgess, PE #12638, dated as revised per Town & DEP Comments on 8/19/19 and dated as Created Construction Management Plan & Submitted to Maine DEP on 8/27/19; Sheet 4 – Construction Management Plan, drafted by Craig A. Burgess, PE #12638 dated and revised same as Sheet 3, this Sheet is an addition to the original set of plans. It depicts Construction Management Notes detailing how the project will be completed, along with Landscape Notes giving detail to how all disturbed vegetation will be replaced, and the plan depicts existing trees to be protected, trees and roots to be removed to ground level, location of filter barrier, staging area for riprap of slope and wall, construction work area, and stockpile area for organic layer; Sheet 5 – Erosion & Sediment Control Notes, drafted by Craig A. Burgess, PE #12638, dated and revised same as Sheet 3; Sheet 6 – Erosion & Sediment Control Details, drafted by Craig A. Burgess, PE #12638, dated and revised same as Sheet 3.

8. Received was a memorandum from Craig Burgess, PE, of Sebago Technics, dated August 20, 2019, to Jennifer McGill, Project Mgr., of the Maine DEP. The memo read in part as follows:

On behalf of our client, Gerard Landry, we are resubmitting Site Plans for shoreline stabilization along Mousam Lake at 30 Point Road in Shapleigh, Maine. Changes to the plans include:

- Replacement of the wall to match existing height and length. Lengthening of the wall is no longer proposed.
- Stairway will be replaced to include level landing areas and a bend to better match existing conditions.
- No changes to the wood deck at top of slope are proposed.
- Expansion of the riprap slope in areas previously depicted as stabilized with a lengthened retaining wall.
- Combination of flat stepping stones and gravel along immediate shoreline at bottom of slope. Patio stones are no longer proposed.

Level platforms will be constructed for the contractor to stage and perform work for demolition and grading improvements. Construction vehicles including a tracked skid steer, mini excavator, and likely a larger 12 metric ton excavator will be used to perform work along the shoreline. Basic excavation will be performed to construct the footer (crushed stone base) for the retaining wall. Construction will start from the lowermost point of the project along the immediate shoreline, and work up to the top of slope. When there is little room for staging of materials, it may be necessary to truck/haul materials out only to bring them back for backfill and grading. No work will be completed below the high-water elevation. Erosion control measures will be installed in general conformance with the civil plans prior to demolition, grading and other site improvements.

The retaining and stairs will be built to minimum standards set forth by National Concrete Masonry Association (NCMA) for retaining walls and other applicable standards. All walls over three feet or shoreline walls will be professionally engineered.

9. Received was an email from Jeffrey, Kalinich of the Maine DEP, Asst. Shoreland Zoning Coordinator, dated July 25, 2019, which read in part as follows:

The 2 trees that are being requested to be removed do appear to be hazard trees from the photos I have seen. The trees may be removed to ground level. Based on the photos it does not appear replanting is necessary in this instance.

The wooden deck being proposed to be removed and replaced cannot be replaced in the same location. The deck is not a functionally water dependent structure and when greater than 50% of the value of the structure is removed, the entire structure must be moved to meet the structural setback. The existing deck can be maintained and repaired as long as any repairs are to less than 50% of its value.

10. The board reviewed the pertinent sections of the Zoning Ordinance, which included §105-4 'Nonconformance', §105-26 'Stormwater runoff'; §105-27 'Erosion control'; §105-39 'Earth removal and filling for activities other than mineral exploration and extraction'; §105-51.1 'Hazard trees, storm-damaged trees, and dead tree removal'; §105-73 'Conditional uses', and concurred the application and information as presented met the performance standards, with conditions.
11. A notice was mailed to all abutters within 500 feet of the property on July 10, 2019. Meetings were held on July 9, 2019, July 23, 2019 and August 27, 2019. A site inspection was done on July 23, 2019 by members.

12. The Planning Board unanimously agreed to approve the Conditional Use Permit to replace the existing retaining wall, riprap the slope and replace stairs, per the engineered plans provided by Craig Burgess of Sebago Technics, dated as revised on 8/27/19, on property known as Tax Map 27, Lot 20, with conditions.
13. **The conditions of approval are:**
  - 1) **Best Management Practices will be maintained until the project is completed which includes stabilization of the entire area affected. A person licensed in erosion control practices by the MDEP must be on site during the project until the area is stabilized and project is completed.**
  - 2) **The project, including the revegetation is to be completed by November 15, 2019. If for any reason this date cannot be met, the Code Enforcement Officer (CEO) must be notified.**
  - 3) **The replacement trees shall have 18 inch ribbons placed on them, so they can be easily seen by the CEO.**
  - 4) **The Planning Board and CEO will need to have a copy of the MDEP comments regarding the final plan submitted.**
  - 5) **The tires from the existing wall will be taken out of Shapleigh and disposed of in a licensed waste facility.**
14. **Additional requirement:**
  - **A building permit must be obtained from the Code Enforcement Officer, prior to the construction of the new wall.**

**Motion:**

After careful consideration and a review of all material presented to the Board, along with the review of the Zoning Ordinance, a motion was made on Tuesday, August 27, 2019, to approve the Conditional Use Permit to replace the existing retaining wall, riprap the slope and replace stairs, per the engineered plans drafted by Craig Burgess, PE #12638, dated Revised August 27, 2019, on property known as Tax Map 27, Lot 20 with five conditions.

**Vote:**

By a unanimous vote of 5 – 0, the motion to approve the Conditional Use Permit to replace the existing retaining wall, riprap the slope and replace stairs, per the engineered plans drafted by Craig Burgess, PE #12638, dated Revised August 27, 2019, on property known as Tax Map 27, Lot 20 with five conditions, was accepted.

**Decision:**

**The Conditional Use Permit to replace the existing retaining wall, riprap the slope and replace stairs, per the engineered plans drafted by Craig Burgess, PE #12638, dated Revised August 27, 2019, on property known as Tax Map 27, Lot 20 with five conditions, was approved.**

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**Conditional Use Permit – Replace Retaining Wall – Map 16, Lot 40 (14 Cattail Loop) – David Levesque, Applicant; William Turgeon, Property Owner**

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

Provided along with the application was a sketch plan of the existing wall, which showed the length of the wall to be 24 feet, plus 22 feet, plus 22 feet, plus 10 feet. The plan also had the following notations: Existing Walk to Remain; Concrete Pad to be Replaced; Concrete Wall to be Replaced with Block Wall; a notation for the location of the house and lake; and the notation stating ‘Wall location and dimensions to remain the same as existing wall height – 4.5’ ±’. In addition, provided was the MDEP Permit by Rule, dated 6/11/19 which listed the project description as: Replacement of failing retaining wall, stairs and small pad; provided were pictures of the existing retaining wall.

The Maine DEP Permit by Rule Explanation, also serves as the Planning Board project description which is as follows:

*The activity that we are proposing to perform is the replacement of an existing concrete retaining wall that has become a hazard to the home owner. The new wall shall be constructed with precast concrete blocks manufactured by Genest concrete. The new wall is to be located in the same location as the existing and the dimensions are to remain the same. There is also a small concrete landing at the base of the stairs in the wall. This landing is to be replaced with concrete pavers. The landing is to remain the same size and location as the existing. All BMP erosion control practices are to be used during construction of the project. We plan to do the project while the Emery Mills Dam is open and the lake level is at its lowest.*

Roger A. opened the discussion by stating that the new wall would be less than four feet. Roger said Best Management Practices would be used throughout the process.

Steve F. stated that the base of the wall was under water, so he wanted to know if they have to do something different to construct it vs a wall that is on dry land. Mr. Levesque stated that if you have a wall that is greater than 4 feet, it has to be engineered and the engineering does not change because of the base. He said the right way to construct it, is to over-excavate. He said typically you have a six inch base block and marry it to 12 inches of crushed stone; so they will excavate 18 inches below the existing grade. He said there will be woven geotextile in the excavation, then the crushed stone, then the base block; the geotextile comes over the base block and ties in and then you stack the wall up from there. He said as the waves come in and out it carries material into the lake, this undermines the base of the wall. He said with the base they create, it is imbedded deeper in and it is protected by the geotextile, so this does not happen. He referenced another wall he had done on 17<sup>th</sup> street, it was engineered by Steve Grant Engineering, this is how they designed that wall, and he felt this was standard engineering for a lakeshore wall. He stated this was standard practice for him to do it this way.

Mr. Levesque stated that if it were not in the water, they would excavate it out, and add 4 to 6 inches of stone depending on the soil type; in sandy soils the stone is used to level it out. He stated it is the constant wave action that requires the depth and the use of geotextile fabric.

Roger A. asked if the existing footing was coming out? Mr. Levesque stated that it was not, because the failure of the Turgeon wall was not due to the footing. Roger asked if he was going to start at the top of the existing footing? Mr. Levesque stated, no. Roger asked again if the footing was coming out? Mr. Levesque stated that it was, he said he misunderstood him.

Ann H. said when she was walking around the wall, it appeared the dirt was falling down behind the wall. Mr. Levesque stated that it was settling, and the water pushes the wall forward just a little every year. He said the wall is higher than the existing grade, so it is creating a dam, allowing the water to pond and it is a drainage issue. He said that some believe having it higher is better for the lake, maybe it was, but he saw it as a drainage issue in the winter time, and bad for the wall.

Roland L. asked if the wall would be high enough to prevent the water from going over the top of it? Mr. Levesque said, “No”. Roland asked how the water will be addressed? He said he noticed the area where the equipment will be, it is all dirt and roots. Mr. Levesque stated they would be spreading erosion control mulch and there is some stabilizing grass there now. Roland asked if Mr. Levesque thought the grassy area would be disturbed to the point that something needed to be done? Mr. Levesque agreed that the construction process was going to disturb everything. He said the area would be restabilized with what is there now, where there is grass there will be grass, and there will be mulch as well. He did not see any evidence of erosion now, there are no steep inclines.

Roland wanted to know if Mr. Levesque was confident the level of the wall, the work being done behind it, would not create more of a problem in the future. Mr. Levesque did not feel there would be any future issues.

Steve F., looking at the pictures provided, noted that it is a very gradual slope. He said under the Pine trees nothing would grow, just on the sides. He felt any disturbed areas that won’t grow anything, will get mulched when the project is completed. Mr. Levesque stated in the areas that they plant grass, it will be the homeowner’s responsibility that the grass is maintained.

Roger A. asked if the wall was going to be higher than the finished grade? Mr. Levesque stated that it would be even with the finished grade. Roger asked if the cap would be above? Mr. Levesque stated that it would not. He felt that even though some people think they are slowing the water down, and it does, he believed when you create a pond and then it overflows, it deteriorates one spot. He also felt if you let it sheet across the top and you let the water spread out, it was better for the wall.

Steve F. said it appeared to be a fairly flat area that will go back to grass. He said there were trees, and if they maintained mulch in the gravel area, that should deal with where any problem may initiate. Mr. Levesque said the flat grass spot should slow it down.

Ann H. asked if they were using blocks or would it be poured? Mr. Levesque stated they would be using 6” Genest concrete blocks. Ann felt more water would get absorbed by the blocks instead of a poured wall. Steve F. agreed. Mr. Levesque stated that there would be crushed stone and drainage behind the wall, so much of the water goes behind and thru the wall, but some will go over the edge. Steve said looking at the photos of the property, a lot of the water that the applicant will deal with comes from the neighboring site.

Roger A. asked if any shrubs removed would be replaced? Mr. Levesque stated he did not perceive removing anything. Roger asked about the ends. Mr. Levesque asked if there was a certain size, that if removed, it had to be replaced. Roger said there was no size, just if it was a tree. Ann H. stated that she didn't believe he was going to be doing anything where the fence was, and that is where the trees are. Mr. Levesque asked if they were talking about the chain-link side. Roger said that he was asking about the other side. Mr. Levesque said he didn't plan on digging any of those trees out. Roland L. read the definition of a tree, so Mr. Levesque was aware of what he might have to replace. *Tree – A woody perennial plant with a well-defined trunk(s) at least two inches in diameter at 4.5 feet above the ground, with a more or less definite crown, and reaching a height of at least 10 feet at maturity.* Mr. Levesque thought the DEP was less strict. Roger said that the Town can be more strict.

Roger A. asked about when he expected this to be completed? Mr. Levesque was not sure. Steve F. asked if he was going to do this during the lake draw-down? Mr. Levesque again said he wasn't sure. Steve said the board needed a date of completion. Roger agreed. Mr. Levesque gave the board a date of January 15, 2020. Steve asked when the grass would be planted? Mr. Levesque said they would do it first thing in the spring. Mr. Levesque stated that he would be comfortable with May 15, 2020 for the planting. Ann H. stated that if he had to change the date of completion, he could let the CEO know.

Roland L. stated that the plan for the dam on Mousam Lake is that the job will be completed by November 27<sup>th</sup>. The plan calls for the level of the lake to be brought back up to the normal season low before ice-in. He wanted Mr. Levesque to know, so he could plan the project accordingly.

Roger A. asked about the DEP notification, did they have any comments? Mr. Levesque did not have any. Ann H. stated that the DEP was running behind, so they may not have reviewed it yet.

**Roger A. stated that a notice to abutters will be mailed, and the board will bring the application back up at the next meeting on Tuesday, September 10<sup>th</sup> at 7:30 p.m.**

Nothing further was discussed.

**Other:**

CEO Demers asked about seasonal camps and Growth Permits. He said he met with a person who said he bought a camp as a year-round residence but it needed improvements. When CEO Demers saw the extent of the improvements, he asked if the gentlemen wanted to get a Growth Permit for year round residency. The gentlemen believed it already was a year round residence, but when CEO Demers looked up the records, it was built as a seasonal cottage back in the 1960's. CEO Demers said he could not find anything in the records showing it was year round. Barbara F. stated that the proof is typically on the landowner if the Town has no record of it.

Steve F. asked, "What if my house on Ross Corner Road was built in the 1960's without a Growth Permit, just because it's on the water, is it on posts, is it on foundation, what are we looking at"? CEO Demers stated that the permit specifically said summer residence. Steve said he wanted to be sure we were not targeting waterfront people. CEO Demers stated that if someone built a garage and they have been living

in the garage, if they don't have a Growth Permit, regardless of where it is, they would have to get a Growth Permit to make it an official apartment and sell it as a year round residence.

Steve F. said again he wanted to be sure the Town wasn't targeting waterfront. He believed you can have a summer house anywhere. Barbara F. agreed, Growth Permits are not tied in with just waterfront properties. Roger A. said with seasonal conversations a higher percentage tends to be Shoreland.

Roger A. gave another example, such as a duplex. If you built a duplex and did not get a Growth Permit for it and you are trying to sell it as a duplex, you would have to come to the board for a Growth Permit in order to do. CEO Demers agreed. Roland L. asked when Growth Permits were created. Roger thought it was in the late 70's.

Steve F. thought that if it isn't specific on the application, the CEO doesn't have a leg to stand on if it is built prior to enactment. Steve asked CEO Demers if that was what he was asking? CEO Demers stated, "No". Roger A. stated that he is saying they are coming in for a renovation and it is flagging him that it is a camp that they are trying to make year round. He said it was a camp with all open walls, and now they are going to close it up. CEO Demers agree, that yes, there was no insulation. Roger said they are now going to use it year round.

Barbara F. thought that the Town wants to look at not only insulation but that they have an approved septic system if they are year round. CEO Demers agreed. Ann H. asked what if someone built a house in the late 60's and they didn't live it in year round, and it doesn't say if it is a camp, secondary house or full time, then do you have to have a Growth Permit? CEO Demers said that if it says seasonal, you need a permit. Roland L. asked about assessment purposes, does something change? Roger A. did not think so. Barbara F. thought the value might go up because it is assumed it has greater value because it now has insulation and a septic system, but she said Karla might be the person to ask about that.

Roger A. stated, that was why when people come in for Best Possible Location, he asks them if they plan on living there year round, because if so, it would be a good time to get the Growth Permit at the same time.

Roland L. asked if it was true that the legislature just passed that starting next year Shoreland zoned properties that are sold have to prove they have a working septic system? Roger A. said that yes, the legislature just passed it.

Nothing further was discussed.

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### **Growth Permits**

#### **Map 6, Lot 29-B (103 Owl's Nest Road) – New Home**

**GP #11-10**

This is a newly created lot, which is a combination of a front lot and rear lot, with combined acreage of 5.39 acres ±, and has in excess of 250 feet of road frontage.

\*\*\*\*\*

**NOTE: The summer hours are in effect thru October 31st, the meetings now begin at 7:30 p.m. and any scheduled public hearing begins at 7:00 p.m.**

The next meeting will be held **Tuesday, September 10, 2019** at 7:30 p.m.

The Planning Board meets the 2<sup>nd</sup> and 4<sup>th</sup> Tuesday of each month unless it falls on a holiday or Election Day. Should there be a cancellation due to a storm event, holiday or Election, the meeting will typically be held the following Wednesday, also at 7:30 p.m. Please contact the Land Use Secretary if there is a question in scheduling, 207-636-2844, x404.

Respectfully submitted,  
Barbara Felong, Land Use Secretary

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

# ***Shapleigh Planning Board***

## ***Minutes***

**Tuesday, September 10, 2019**

### **AS AMENDED 9/24/2019**

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

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

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**The minutes from Tuesday, August 27, 2019 were accepted as read.**

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

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### **After-the-Fact Conditional Use Permit – Earth Moving in the Shoreland District – Put in a Lawn – Map 16, Lot 31 (66 Cattail Loop) – Lee Mencoboni, Applicant**

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

Originally provided along with the application, was a sketch plan which depicted the location of the existing structures, gravel driveway, along with areas shaded in green entitled ‘Proposed New Lawn’ and a notation that stated ‘Removed Shed’ with an arrow pointing to the shed that was removed.

The detailed description of the project is as follows: Planting of a New Lawn

After reviewing the information provided on August 13, 2019, the board asked for the following the information:

- 1) Provide a landscaping plan for the site which includes erosion control measures.
- 2) Provide a copy of the MDEP Permit by Rule along with any comments.
- 3) Provide a plan for the removal of the debris on site.
- 4) Provide a plan showing the proposed wall and deck replacement, which is to include the location and size removed and how it will be replaced.

This evening the board received a copy of the DEP Permit by Rule which stated the description of the project as ‘New Lawn’, dated as accepted by the DEP staff on 8/26/2019. Also received, was information provided by Melissa Brandt, of York County Soil & Water Conservation District in Springvale, Maine. The information was entitled ‘Erosion Control Planting Plan – Plant List & Instructions. The information included a sketch plan depicting the structures on site, along with the location of existing trees and proposed planting locations for shrubs; a page which showed pictures of the property and recommended that the applicant ‘Install a buffer planting a minimum of 3.5’ wide around the perimeter, using a mix of low growing shrubs & perennials’; this page, along with the subsequent page, included a plant list of shrubs, perennials, groundcover and seed mix suggestions; and the last two pages listed the ‘Proper Planting Methods’, ‘Maintenance of Your Plantings’, ‘Native Plant Selection’ and ‘Invasive Species to Avoid’.

Roger A. opened the review by asking Mr. Mencoboni about what he had for the board this evening. Mr. Mencoboni stated that he went to York County Soil and Water (YCS&W) as suggested by the board, and he said they were gracious enough to gather the information quickly. He provided members with a copy of the information they provided (information listed above of what was provided).

Members reviewed the information. Ann H. asked if Ms. Brandt went to the property? Mr. Mencoboni stated that she went to the site two weeks ago. Mr. Mencoboni also introduced Isaiah Knox, who he said would be doing some of the work, and Caleb Chessie who will be doing the landscaping.

Roger A. stated the board was concerned that the work that had been done was higher than the rocks that went into the water, and wondered how the applicant would prevent erosion and stormwater from going into the lake. Mr. Knox asked if they talking about the silt fence? Roger stated he was talking about the area where the silt fence was located. Mr. Knox stated that Mr. Chessie had backfilled the silt fence. Roger stated that that was fine, it was the area between where the silt fence is and where the rocks begin. The board wanted to know what was going to be done in that area, so that is why they asked Mr. Mencoboni to get a plan drafted to address the area between where the grass will be and the rocks. He also said if the silt fence gets pulled too early there is going to be an erosion problem, especially before the grass is established. Several board members asked if any plantings would be done to help protect the area. Mr. Chessie stated that he got as close as he could with the silt fence, he asked if the board also wanted some erosion control mulch placed. Roger A. stated that is why the board sent the applicant to YCS&W to see what they thought would work best for stabilization.

Roger A. stated that they are saying they want a 3.5' buffer of plantings as a minimum around the area. Ann H., looking at the plan, asked Mr. Mencoboni if where it says 'infiltration trench or gutters', if Ms. Brandt wanted him to install this? Mr. Knox stated, "There are stone beds on either side of the buildings now, but he is to put in a gutter system". CEO Demers stated that that will capture the water and put it into a spot where the water will be absorbed. Ann asked if the line on the plan is where the locations of the gutters are? Mr. Knox stated, "Either side of the garage, and either side of the house".

Madge B. asked if the plan was the way the property was now? Maggie M. stated that the sides don't have any shrubs at this time, the grass area comes to the edge of the rocks which go into the water, that is why a three and one-half foot buffer area needs to be created. Madge said that the plan is showing that plantings need to be added. Ann H. stated that yes, they need to be added all the way around the area. Madge said that would help the situation a lot. Roger A. said he noted at the site inspection he felt bark mulch or vegetation would need to be added between 3 and 5 feet between the rocks and the grass in order to help stabilize the area, so that is why he suggested Mr. Mencoboni see what YCS&W thought would work in this area. He said they came back with a minimum of three and one-half feet of shrubs and vegetation.

Roger A. stated that the board also wanted to know in the location where the wall was removed, what was he going to do there. Mr. Knox stated the previous wall was falling, so they were going to replace it with a wall the same size and location as the existing. Roger asked if it was going back to the door? Mr. Knox stated that yes, it was going back where the original was. Roger stated that that was greater than 10 yards of earth moved. Roger then read from §105-39 'Earth removal and filling for activities other than mineral exploration and extraction', Section D 'Earthmoving in the Shoreland District', *'Any filling, dredging or*

*excavation of land above or below the normal high watermark, except earthmoving of less than 10 cubic yards which shall require a permit from the CEO (except as provided above) to ensure proper erosion and sedimentation, shall require a conditional use permit from the Planning Board.’ Roger said this is the reason this activity required a Conditional Use Permit.*

Roger A. then read again from §105-39, Section D(1), *‘When an excavation contractor will perform an activity that requires or results in more than one (1) cubic yard of soil disturbance, the person responsible for management of erosion and sedimentation control practices at the site must be certified in erosion control practices by the Maine Department of Environmental Protection. This person must be present at the site each day earthmoving activity occurs for a duration that is sufficient to ensure that proper erosion and sedimentation control practices are followed. This is required until erosion and sedimentation control measures have been installed, which will either stay in place permanently or stay in place until the area is sufficiently covered with vegetation necessary to prevent soil erosion. The name and certification number of the person who will oversee the activity causing or resulting in soil disturbance shall be included on the permit application. This requirement does not apply to a person or firm engaged in agriculture or timber harvesting if best management practices or erosion and sedimentation control are used; and municipal, state and federal employees engaged in projects associated with that employment.*

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

Roger A. asked about the timeline for completion. Mr. Knox stated 2 to 4 weeks to completion. Roger asked if a completion date of 10/30/2019 would be ok? Mr. Knox stated, “Yes”. Roger felt the silt fence would need to stay up all winter until the plants are established.

Roger A. asked about the concrete on the back corner, was that going to be removed? Mr. Knox stated that it would and it would be disposed of properly. Roger said where the new wall goes in against the camp, will that area be filled in? Mr. Knox stated that it will be, as it was. Roger asked if there would be a patio on top, probably pavers? Mr. Knox stated that it would be something concrete, something permanent.

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

- 1. The project, including the planting of a new lawn, ~~removal and replacement of the existing wall and deck~~, and revegetation of the site per plan drafted by York County Soils and Water, shall be completed by October 30, 2019. If this date cannot be accomplished the applicant must contact the Code Enforcement Officer, and have a new date of completion established.**
- 2. Best Management Practices shall be kept in place until the project is completed. The silt fence shall be maintained until spring, until the vegetation used to stabilize the area is well established. There must be a person certified by the DEP in erosion control practices on site during the project.**
- 3. All waste material on site noted, including concrete, ~~All material from the existing walls~~ shall be taken out of Shapleigh and disposed of at a proper facility.**

Roger A. asked if there was a motion.



**Maggie M. made the motion to approve the After-the Fact Conditional Use Permit for earth moving in the Shoreland District to put in a lawn, including revegetation per the recommendations provided by Melissa Brandt of York County Soils and Water District, ~~and replace the existing wall and deck, same size and same location per the minutes of the meeting on September 10, 2019 on Map 16, Lot 31, with the stated conditions.~~ Madge B. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

Nothing further was discussed.

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### **The Findings of Facts**

1. The owner of Shapleigh Tax Map 16, Lot 31 (66 Cattail Loop), is Lee Mencoboni of 911 Waverly Street, Framingham, MA 01702.
2. The property is located in the Shoreland District and according to the assessor the property contains .7 acres.
3. The application description reads as follows: Planting of a New Lawn
4. Received was a sketch plan which depicted the location of the existing structures, gravel driveway, along with areas shaded in green entitled ‘Proposed New Lawn’ and a notation that stated ‘Removed Shed’ with an arrow pointing to the shed that was removed.
5. Received was a copy of the DEP Permit by Rule which stated the description of the project as ‘New Lawn’; dated as accepted by the DEP staff on 8/26/2019.
6. Received was information provided by Melissa Brandt, of York County Soil & Water Conservation District in Springvale, Maine. The information was entitled ‘Erosion Control Planting Plan – Plant List & Instructions. The information included a sketch plan depicting the structures on site, along with the location of existing trees and proposed planting locations for shrubs; a page which showed pictures of the property and recommended that the applicant ‘Install a buffer planting a minimum of 3.5’ wide around the perimeter, using a mix of low growing shrubs & perennials’; this page, along with the subsequent page, included a plant list of shrubs, perennials, groundcover and seed mix suggestions; and the last two pages listed the ‘Proper Planting Methods’, ‘Maintenance of Your Plantings’, ‘Native Plant Selection’ and ‘Invasive Species to Avoid’.
7. The Planning Board reviewed §105-39 ‘Earth removal and filling for activities other than mineral exploration and extraction’, and §105-73 ‘Conditional Use Permits’ and concurred the application and information as presented met the performance standards, with conditions.
8. A notice was mailed to all abutters within 500 feet of the property on August 14, 2019. Meetings were held on Tuesday, August 13, 2019, August 27, 2019 and Tuesday, September 10, 2019.

9. The Planning Board unanimously agreed to approve the After-the Fact Conditional Use Permit for earth moving in the Shoreland District to put in a lawn, per the recommendations in the plans provided by Melissa Brandt of York County Soils and Water District received on September 10, 2019, ~~and replace the existing wall and deck, same size and same location per the minutes of the meeting on September 10, 2019~~ for Map 16, Lot 31 with conditions.
10. The conditions of approval are:
  1. **The project, including the planting of a new lawn, ~~removal and replacement of the existing wall and deck~~, and revegetation of the site per plan drafted by York County Soils and Water, shall be completed by October 30, 2019. If this date cannot be accomplished the applicant must contact the Code Enforcement Officer, and have a new date of completion established.**
  2. **Best Management Practices shall be kept in place until the project is completed. The silt fence shall be maintained until spring, until the vegetation used to stabilize the area is well established. There must be a person certified by the DEP in erosion control practices on site during the project.**
  3. **All waste material on site noted, including concrete, ~~All material from the existing walls~~ shall be taken out of Shapleigh and disposed of at a proper facility.**

**Motion:**

After careful consideration and a review of all material presented to the Board, a motion was made on Tuesday, September 10, 2019, to approve the After-the Fact Conditional Use Permit for earth moving in the Shoreland District to put in a lawn, ~~including~~ which includes revegetation per the recommendations provided by Melissa Brandt of York County Soils and Water District, ~~and replace the existing wall and deck, same size and same location per the minutes of the meeting on September 10, 2019~~ on Map 16, Lot 31, with three conditions.

**Vote:**

By a unanimous vote of 5 – 0, the motion to approve the After-the Fact Conditional Use Permit for earth moving in the Shoreland District to put in a lawn, ~~including~~ which includes revegetation per the recommendations provided by Melissa Brandt of York County Soils and Water District, ~~and replace the existing wall and deck, same size and same location per the minutes of the meeting on September 10, 2019~~ on Map 16, Lot 31, with three conditions, was accepted.

**Decision**

**The After-the Fact Conditional Use Permit for earth moving in the Shoreland District to put in a lawn, ~~including~~ which includes revegetation per the recommendations provided by Melissa Brandt of York County Soils and Water District, ~~and replace the existing wall and deck, same size and same location per the minutes of the meeting on September 10, 2019~~ on Map 16, Lot 31, with three conditions, was approved.**

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**Conditional Use Permit – Replace Retaining Wall – Map 16, Lot 40 (14 Cattail Loop) – David Levesque, Applicant; William Turgeon, Property Owner**

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

Previously provided along with the application was a sketch plan of the existing wall, which showed the length of the wall to be 24 feet, plus 22 feet, plus 22 feet, plus 10 feet. The plan also had the following notations: Existing Walk to Remain; Concrete Pad to be Replaced; Concrete Wall to be Replaced with Block Wall; a notation for the location of the house and lake; and the notation stating ‘Wall location and dimensions to remain the same as existing wall height – 4.5’ ±’. In addition, provided was the MDEP Permit by Rule, dated 6/11/19 which listed the project description as: Replacement of failing retaining wall, stairs and small pad; provided were pictures of the existing retaining wall.

The Maine DEP Permit by Rule Explanation, also serves as the Planning Board project description which is as follows:

*The activity that we are proposing to perform is the replacement of an existing concrete retaining wall that has become a hazard to the home owner. The new wall shall be constructed with precast concrete blocks manufactured by Genest concrete. The new wall is to be located in the same location as the existing and the dimensions are to remain the same. There is also a small concrete landing at the base of the stairs in the wall. This landing is to be replaced with concrete pavers. The landing is to remain the same size and location as the existing. All BMP erosion control practices are to be used during construction of the project. We plan to do the project while the Emery Mills Dam is open and the lake level is at its lowest.*

Roger A. opened the discussion by stating that the wall would be replaced in its entirety and the replacement wall would not exceed four feet in height. Mr. Levesque agreed. Roger stated that the existing wall is greater than four feet in height, by bringing the new wall down everything will be level with the new wall.

Roger A. asked when the time of completion would be? Mr. Levesque asked what dates they agreed upon at the last meeting? Members, looking at the minutes, noted that the completion date for the wall was January 15, 2020. Ann H. asked when the water was going to go back up? Roland L. stated that on November 22<sup>nd</sup> the water was going to start to return to the normal low. Mr. Levesque stated that he believed the grass was to be planted in the spring, or not established until the spring.

Roger A. asked if they were going to start the project during the draw-down of the lake? Mr. Levesque stated he was not sure at this time due to his work load. Roger asked if he was going to try to take advantage of the draw-down? Mr. Levesque stated that he would like to. Roger asked if the grass stabilization could be completed by June 1, 2020. Mr. Levesque agreed that it could be.

Roger A. stated that any change of completion dates need to be discussed with the Code Enforcement Officer.

Roger A. stated the existing concrete cannot go to the Shapleigh Transfer station.

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

- 1) **The wall shall be no greater than four feet in height, as stated by Chairman Roger Allaire in the Planning Board meeting dated September 10, 2019.**
- 2) **The wall sections shall be completed by January 15, 2020, and the revegetation of the grass shall be established by June 1, 2020. Any change in the dates of completion must be brought to the Code Enforcement Officer.**
- 3) **Best Management Practices shall be kept in place until the project is completed. There must be a person certified by the DEP in erosion control practices on site during the project.**
- 4) **All material from the existing walls to be removed, shall be taken out of Shapleigh and disposed of at a proper facility.**

**Maggie M. made the motion to approve the Conditional Use Permit for earth moving in the Shoreland District to replace the existing retaining wall per the information provided, on Map 16, Lot 40, with the stated conditions. Madge B. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

Nothing further was discussed.

#### **Findings of Fact**

1. The owner of Shapleigh Tax Map 16, Lot 40 (14 Cattail Loop), is William E. Turgeon of 731 Shapleigh Corner Road, Shapleigh, Maine 04076.
2. The property itself is located in the Shoreland District and according to the assessor the property contains .15 acres.
3. The Maine DEP Permit by Rule Explanation, also serves as the Planning Board project description which is as follows: *The activity that we are proposing to perform is the replacement of an existing concrete retaining wall that has become a hazard to the home owner. The new wall shall be constructed with precast concrete blocks manufactured by Genest concrete. The new wall is to be located in the same location as the existing and the dimensions are to remain the same. There is also a small concrete landing at the base of the stairs in the wall. This landing is to be replaced with concrete pavers. The landing is to remain the same size and location as the existing. All BMP erosion control practices are to be used during construction of the project. We plan to do the project while the Emery Mills Dam is open and the lake level is at its lowest.*
4. Received was a sketch plan of the existing wall, which showed the length of the wall to be 24 feet, plus 22 feet, plus 22 feet, plus 10 feet. The plan also had the following notations: Existing Walk to Remain; Concrete Pad to be Replaced; Concrete Wall to be Replaced with Block Wall; a notation for the location of the house and lake; and the notation stating ‘Wall location and dimensions to remain the same as existing wall height – 4.5’ ±’. In addition, provided was the MDEP Permit by Rule, dated 6/11/19 which listed the project description as: Replacement of failing retaining wall, stairs and small pad; provided were pictures of the existing retaining wall.

5. The board reviewed the pertinent sections of the Zoning Ordinance and concurred the application and information as presented met the performance standards, with conditions.
6. A notice was mailed to all abutters within 500 feet of the property on August 28, 2019. Meetings were held on Tuesday, August 27, 2019 and Tuesday, September 10, 2019. A site inspection was done on August 27, 2019 by members.
7. The Planning Board unanimously agreed to approve the Conditional Use Permit for earth moving in the Shoreland District to replace the existing retaining walls per the information provided, for Map 16, Lot 40, with conditions.
8. **The conditions of approval are:**
  - 1) **The wall shall be no greater than four feet in height, as stated by Chairman Roger Allaire in the Planning Board meeting dated September 10, 2019.**
  - 2) **The wall sections shall be completed by January 15, 2020, and the revegetation of the grass shall be established by June 1, 2020. Any change in the dates of completion must be brought to the Code Enforcement Officer.**
  - 3) **Best Management Practices shall be kept in place until the project is completed. There must be a person certified by the DEP in erosion control practices on site during the project.**
  - 4) **All material from the existing walls to be removed, shall be taken out of Shapleigh and disposed of at a proper facility.**

**9. Additional requirement:**

- **A building permit must be obtained from the Code Enforcement Officer, prior to the construction of the new wall.**

**Motion:**

After careful consideration and a review of all material presented to the Board, a motion was made on Tuesday, September 10, 2019, to approve the Conditional Use Permit for earth moving in the Shoreland District to replace the existing retaining wall per the information provided, on Map 16, Lot 40, with four conditions.

**Vote:**

By a unanimous vote of 5 – 0, the motion to approve the Conditional Use Permit for earth moving in the Shoreland District to replace the existing retaining wall per the information provided, on Map 16, Lot 40, with four conditions, was accepted.

**Decision:**

**The Conditional Use Permit for earth moving in the Shoreland District to replace the existing retaining wall per the information provided, on Map 16, Lot 40, with four conditions was approved.**

**Other:**

Board members discussed whether or not to hold a workshop to discuss possible ordinance changes. CEO Demers stated that he did not have any issue at present with the way the Zoning Ordinance is written at this time. Most of the board members did not have anything at present that they felt needed to be added or changed this year.

Roland L. stated that he would like to consider either adding something to the ordinance or tweaking what is there now with respect to the removal of hazard trees. Roland felt that he would like to require that applicants be required to obtain something in writing from an arborist stating that the tree they wish to remove was in fact a hazard. He believed people were removing trees in many cases just to get a better view, or to add to an existing structure, without realizing the consequences of what removing the tree canopy does to the lake. He stated that he is seeing more and more areas around the lakes in Shapleigh being opened up, and he did not think it was doing the lakes any favors, as it is being noted that lake quality is being affected by stormwater. He thought it would be prudent for the board to try to come up with a way to make it more difficult to remove a tree, and to be certain that if and when a tree is removed it is being replanted in a similar location. He added that he is seeing many trees being removed but not seeing them being replaced.

Roland L. stated that he was told that in another town they had language that made it more difficult for someone to remove a tree without just cause. He said he would see if he could find out what that language was. Board members stated that they would look at it if he brought it before them.

Roger A. stated that at this time the board and CEO has §105-51.1 ‘Hazard trees, storm-damaged trees, and dead tree removal’. He briefly read thru the ordinance and noted two items specifically, those being §105-51.1.A (4) & (5) which read as follows:

(4) The Code Enforcement Officer may require the property owner to submit an evaluation from a licensed forester or arborist before any hazard tree can be removed within the shoreland zone.

(5) The Code Enforcement Officer may require more than a one-for-one replacement for hazard trees removed.

Roger A. stated that the CEO does have the ability to require another opinion before granting a permit, as well as having them replant. Roger did not see how much more the board could do, other than perhaps changing the word ‘may’ to ‘shall’. Roland L. thought there needed to be more importance placed on the health of the lakes, as the effects of tree removal is cumulative.

CEO Demers thought that using the word shall would be too harsh. He stated that typically Dick Bentley was hired to remove trees in this area and he felt Mr. Bentley had a good handle on whether or not a tree was a hazard tree. He did not feel the ordinance had to be changed. Roland also noted that people cutting trees without a permit was a huge problem as well. CEO Demers did not disagree but stated he was doing the best he could in this area.

Roland L. stated again that he did not agree that most of the trees being cut were hazard trees, when in fact they were being taken for other reasons such as to improve visibility of the lake. CEO Demers stated that he had learned in classes he has taken on this subject that it is better to err on the side of caution when

having a tree considered to be a hazard removed, then to have it fall and someone gets injured. Roland stated that if that is the case, then they “should” be required to replant. He noted again people having pines taken down just because they didn’t like pitch. He said he didn’t like it either but the benefit of having the trees around the lake outweighed any inconvenience.

Maggie M. wondered if instead of making an ordinance change if there was some way to let people know the consequence of removing the trees, how it affects the lake. Barbara F. asked if something could be stated at meetings held for the lake associations, perhaps they could have someone come in and speak on the subject? Everyone agreed it was an important subject, but there were no answers on how to solve it.

Nothing more was discussed.

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**Growth Permits**

**Map 21, Lot 40 (Hollon Way / Rte. 11 / 24<sup>th</sup> Street) – New Home**

**GP #12-19**

This is a newly created lot, containing 7.44 acres, and having road frontage on 24<sup>th</sup> Street, Rte. 11 and possibly Hollon Way, all in excess of 200 feet each.

**Map 30, Lot 17 (Treasure Island Road)**

**GP #13-19**

This property is an existing lot of record with buildings thereon and is before the board as a seasonal conversion.

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**The Planning Board meeting ended at 8:45 p.m.**

**NOTE: The summer hours are in effect thru October 31st, the meetings now begin at 7:30 p.m. and any scheduled public hearing begins at 7:00 p.m.**

The next meeting will be held **Tuesday, September 24, 2019** at 7:30 p.m.

The Planning Board meets the 2<sup>nd</sup> and 4<sup>th</sup> Tuesday of each month unless it falls on a holiday or Election Day. Should there be a cancellation due to a storm event, holiday or Election, the meeting will typically be held the following Wednesday, also at 7:30 p.m. Please contact the Land Use Secretary if there is a question in scheduling, 207-636-2844, x404.

Respectfully submitted,  
Barbara Felong, Land Use Secretary

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

## ***Shapleigh Planning Board***

### ***Minutes***

**Tuesday, September 24, 2019**

Members in attendance: Roger Allaire (Chairman), Madge Baker, Roland Legere, Maggie Moody and Alternate Ann Harris. Code Enforcement Officer Mike Demers was also in attendance. Steve Foglio (Vice Chairman) was unable to attend. Ann Harris sat in as a regular member this evening.

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

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**The minutes from Tuesday, September 10, 2019 were accepted as amended.**

***An amendment was made to the After-the-Fact approval for a Conditional Use Permit for Earth Moving in the Shoreland District to Put in a New Lawn – Map 16, Lot 31 (66 Cattail Loop) – Lee Mencoboni, Applicant. The approval was amended as follows:***

9. The Planning Board unanimously agreed to approve the After-the Fact Conditional Use Permit for earth moving in the Shoreland District to put in a lawn, per the recommendations in the plans provided by Melissa Brandt of York County Soils and Water District received on September 10, 2019, ~~and replace the existing wall and deck, same size and same location per the minutes of the meeting on September 10, 2019~~ for Map 16, Lot 31 with conditions.
10. The conditions of approval are:
  1. **The project, including the planting of a new lawn, ~~removal and replacement of the existing wall and deck~~, and revegetation of the site per the plan drafted by York County Soils and Water, shall be completed by October 30, 2019. If this date cannot be accomplished the applicant must contact the Code Enforcement Officer, and have a new date of completion established.**
  2. **Best Management Practices shall be kept in place until the project is completed. The silt fence shall be maintained until spring, until the vegetation used to stabilize the area is well established. There must be a person certified by the DEP in erosion control practices on site during the project.**
  3. **All waste material on site noted, including concrete, ~~All material from the existing walls~~ shall be taken out of Shapleigh and disposed of at a proper facility.**

#### **Motion:**

After careful consideration and a review of all material presented to the Board, a motion was made on Tuesday, September 10, 2019, to approve the After-the Fact Conditional Use Permit for earth moving in the Shoreland District to put in a new lawn, ~~including~~ which includes revegetation per the recommendations provided by Melissa Brandt of York County Soils and Water District, ~~and replace the existing wall and deck, same size and same location per the minutes of the meeting on September 10, 2019~~ on Map 16, Lot 31, with three conditions.



**Vote:**

By a unanimous vote of 5 – 0, the motion to approve the After-the Fact Conditional Use Permit for earth moving in the Shoreland District to put in a new lawn, ~~including~~ which includes revegetation per the recommendations provided by Melissa Brandt of York County Soils and Water District, ~~and replace the existing wall and deck, same size and same location per the minutes of the meeting on September 10, 2019~~ on Map 16, Lot 31, with three conditions, was accepted.

**Decision**

The After-the Fact Conditional Use Permit for earth moving in the Shoreland District to put in a new lawn, ~~including~~ which includes revegetation per the recommendations provided by Melissa Brandt of York County Soils and Water District, ~~and replace the existing wall and deck, same size and same location per the minutes of the meeting on September 10, 2019~~ on Map 16, Lot 31, with three conditions, was approved.

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*An amendment was made to the approval of the Conditional Use Permit to Replace an Existing Retaining Wall - Map 16, Lot 40 (14 Cattail Loop) – David Levesque, Applicant; William Turgeon, Property Owner. The approval was amended as follows:*

8. The conditions of approval are:

- 1) The wall shall be no greater than four feet in height, as stated by Chairman Roger Allaire in the Planning Board meeting dated September 10, 2019.
  - 2) The wall sections shall be completed by January 15, 2020, and the revegetation of the grass shall be established by June 1, 2020. Any change in the dates of completion must be brought to the Code Enforcement Officer.
  - 3) Best Management Practices shall be kept in place until the project is completed. There must be a person certified by the DEP in erosion control practices on site during the project.
  - 4) All material from the existing walls to be removed, shall be taken out of Shapleigh and disposed of at a proper facility.
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The Planning Board meeting started at 7:35 p.m.

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**Conditional Use Permit – Earth Moving in the Shoreland District – Map 23, Lot 10 (37 Starboard Lane) – Michael Roberts, Applicant & Property Owner**

Mr. Roberts was present to update members regarding the status of his application.

Previously provided along with the application, was a sketch plan which depicted the location of the existing house, garage and decks, areas called ‘stumps grindings’, areas called ‘sand now’, the location of the existing retaining walls, and the shoreline setback, which is located approximately halfway thru the

middle of the existing garage. All other features on the plan, except the rear portion of the garage, are within 100 feet of the high water mark.

The detailed description of the project is as follows: Bring in 52 yards of sand to replenish and level existing sanded area.

The application was tabled by the Planning Board on July 23, 2019, pending further information which included a DEP Permit by Rule and revegetation plan.

Roger A. opened the meeting by asking Mr. Roberts to brief the board on why he was here this evening.

Mr. Roberts stated that he was before the board to request a continuance to the tabling of his project. He stated that he has been busy since he left the last meeting on July 23<sup>rd</sup>. He said he had hired an environmental engineer, he has had conversations with the previous owner to find out what was done before the previous permit, what was done after the permit, what was done per the code and what wasn't done per the code. He stated that conversation with the previous owners prompted him to hire an environmental company out of Kennebunk, Longview Partners. He stated, Longview Partners requested the DEP come out for a site visit, which was done on August 12<sup>th</sup>. He said the DEP received a report on the 10<sup>th</sup> of September, and now he and Longview are just waiting the 14 days.

Mr. Roberts stated that he believed the site visit went well, he was encouraged, but his 90 days were running out in less than a month. He said based on this, he was before the board to request that he have more time.

**Madge B. moved that the board extend the tabling of the application for an additional 60 days based on the information received this evening. Maggie M. 2<sup>nd</sup> the motion. All were in favor. By a vote of 5 – 0, the motion passed unanimously.**

Mr. Roberts stated that he hoped this would be wrapped up before the 90 days but he wasn't certain. Roger A. agreed, you never know how long it will take.

Roland L. asked what Longview Partners' specialty was? Mr. Roberts stated that they deal with the DEP. He said he got the name from an engineering firm in South Portland called VHB. (James Logan, Soil Scientist and Licensed Site Evaluator of Longview Partners) He said, "VHB hires him when they do environmental things on lakes around Maine."

Roland L. asked if the hope and intent is to pursue what was presented to the board earlier? Mr. Roberts stated, "To some extent, yes." He said it has been modified. Roland asked, "Is there a modified plan?" Mr. Roberts stated that he had spoken with Barbara F. letting her know there was a detailed plan being created. He said that throughout the process he has been keeping Barbara informed where he was at and this prompted him to think he may need a continuance. He stated that there was a mixed blessing to have the DEP on site, it was noted the sides were not locked in, therefore more work will need to be done. The board agreed. He said the DEP brought that to his attention, along with the stump grindings that seem to have disappeared. He told them he wanted to replace them, and this will part of the plan. He said it will be one big project, and it was presented to the DEP today; how all the issues they saw on site will be

taken care of. He said what they thought would be a long term goal, now is going to be done in a shorter period of time. He believed it made sense, doing it all on one permit, instead of multiple permits. He was told he had three years to do the project once approved by the DEP. He will be adding trees, stump grindings, something on the left and right to prevent erosion. Madge B. said it sounded like a win-win.

Mr. Roberts stated as soon as he had more information he would bring it to Barbara F. He asked once he gets the information, if there is no issue and the permit is granted by the DEP, he wanted to know how the process went forward with the Planning Board? Roger A. said it will be brought back up at a Planning Board meeting and the board will act on it, as it sounds like all the concerns that the board has are being addressed. Roger said Mr. Roberts will then be ready to move forward with a permit from the CEO. Mr. Roberts asked if he could move forward with the permit (to the Planning Board) that he has already paid for? CEO Demers said this is a Conditional Use Permit to approve the project, for ‘doing’ the project, he would need a Shoreland Improvement permit from him. Mr. Roberts said he understood.

Mr. Roberts stated much of the work he would be able to do himself. He said he wanted to put in some of the plantings this fall, noting that plants are typically on sale in the fall so nurseries don’t have to hold onto them. Mr. Roberts asked if after he received a permit from the CEO, if there were checkpoints that he would need to come back to the board for? Ann H. stated that after the board approved this permit, all the other inspections would be through the CEO. Roger A. agreed, stating that CEO Demers would be checking in with him to see how much is completed and when it is completed. Roger said he would also be making sure best management practices would be kept in place until the area was stabilized. Mr. Roberts agreed that the left and right side were the areas of concern, not where the existing wall is located. Roger agreed and said again it would be up to the CEO to review the progress.

Nothing further was discussed.

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**Other:**

Madge B. stated she had some issues with the minutes. She said she was not able to go to the property as she was not feeling well, so some of her confusion is because of that. She read from the first page as follows: ... *the board asked for the following the information:*

- 1) Provide a landscaping plan for the site which includes erosion control measures.*
- 2) Provide a copy of the MDEP Permit by Rule along with any comments.*
- 3) Provide a plan for the removal of the debris on site.*
- 4) Provide a plan showing the proposed wall and deck replacement, which is to include the location and size removed and how it will be replaced.*

Madge B. stated that number 4 is where she has a question. She asked if the board received a plan for the wall and deck? She stated that all she saw at the last meeting was the planting plan. Barbara F. stated that she did not have a plan on file for the deck or wall. Madge asked, “Why not?” Roger stated, “We asked him to address it at that time and we discussed that, it was not going to be added on. What happened was...” Madge said she thought that was why he was moving earth? Roger said, “No, this was secondary. This was because at the site inspection we picked up on it. It has nothing to do with the rest of it.” Madge said, “But once we saw it, why didn’t we ask for this?” Roger said that the board asked

him what he was going to do. Madge said, “I know, but we don’t have a plan.” Roger agreed that we did not.

Madge B. said that it was her understanding that he had taken the deck down. Roger agreed. Madge B. said, “Then he can’t replace it then. It’s 100 percent removed. You guys don’t deal with that? We don’t deal with that? He can’t replace it. It’s very clear in the ordinance. It’s over 50% removed.” Madge asked how he could replace it? Ann H. stated, “We saw the edge of it, it was concrete. He had like two septic lids right there.” Madge stated that he could leave the septic lids. Ann said there was a drop off.

Madge B. read from the ordinance §105-4.D(5) ‘Removal, reconstruction or replacement’, as follows:

- (a) Any nonconforming structure 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.*

CEO Demers stated, “Doesn’t it say ‘to the best practical extent’?” Madge said, “Yes, but we didn’t have a review of that. I did not see that in the record.” Roger said, “Because we didn’t have any of that here.” Madge said, “But we can’t allow him to replace it without a permit.” She wanted to know how this happened. Ann H. stated that she thought it was a septic system. Madge said that if he is going to put a structure up again, we are supposed to review those. Ann said, “I thought he was going to do the lawn or whatever he said he was going to do.” Madge said, that he said, he was putting concrete pavers in, that is a structure. Maggie M. stated, “He said he was putting it in exactly the way it was before.” Madge said, “But we have to review it, I am not saying he can’t do it.” CEO Demers stated, “So simply saying the structure will be replaced same size, same location is not reviewing it.” Madge said, “Not without a plan for a best practical location.” Madge believed this was pretty clear. CEO Demers stated, “The board members went out on a site visit, and a question was asked, and the plan was to put it back.” Madge stated, “But we never got a plan.” She noted that the board asked for a plan but did not receive one.

CEO Demers stated that he could hold up the permitting. Madge B. stated again that she was not saying he could not do it, she was saying the board should follow the procedure. CEO Demers agreed. He said, “The Planning Board can permit something, and it won’t get through my office unless I permits it, and so in theory I will catch that, and say we are going to put this back to review by the Planning Board.” Madge said, “Yes, for a best possible location.” CEO Demers asked if it was her belief that it could be replaced, provided it goes through best practical location. Madge said she believed it was best practical location. CEO Demers agreed, after being out on the site.

CEO Demers stated that he wanted to speak further on this. He said this application did come back to him. Madge B. said she did not go to the site, which she should have, and noted she did not understand how important it was to see it. She said she thought the minutes were clear with what they were asking. Roger A. stated that originally the deck and wall were not part of the original permit. He said it originally wasn’t even thought about. Madge said, “This was after-the-fact, right.” Roger said that the whole thing was after-the-fact. He said the wall and deck were beyond the original after-the-fact permit but during the site inspection, he mentioned the height of the foundation and door to the crawl space, and the applicant stated there had been a wall in that location. Roger added that there were patio blocks, so he said he

asked the applicant what was being done. He said the applicant said he would be putting in a deck. Madge agreed that Roger asked the right questions, but something needs to be in the file because otherwise how can CEO Demers enforce the approval if there is nothing in the file to show what the board approved. CEO Demers said the wording was same spot, same size. Madge said because the wall and deck are mostly gone, it seems the board should have a plan reconfirming what was there. Ann H. thought the people addressing the revegetation plan were also going to address this area, because the area was dug out.

CEO Demers stated that his instruction to the homeowner was ‘draw up a plan showing everything, the patio, the plantings, the wall, everything and submit it to the DEP and make it part of the planning board process’. He said the actual DEP Permit was simply the replanting schedule for the new lawn, not the deck. He said, “I would require, prior to permitting the patio or deck, whatever was there, is that it needs to go through PBR and that needs to be approved.” Madge B. stated, “It would be nice to have the plan.” CEO Demers stated, “I took it as same spot, same location as a best practical location approval by the planning board, but you are saying it is not.” Madge stated, “I haven’t found that in the record.” She said that is why the more she thought about it, the worse it got in her mind. CEO Demers stated, “Even if the wording is restore the site back to original condition. That to me is same spot, same location. But if you guys want to review it then I can get him back here. He’s been 100 percent, Lee has been 100 percent cooperative and simply wants to do the right thing. If you want him back before the board to discuss best practical location on the patio, he’ll be happy to come back and visit it.” Madge stated that she would like that, so the board has it. She said she wasn’t suggesting another permit fee, she felt the board made the mistake of not addressing it correctly. CEO Demers felt it was addressed, just not fully. Madge said, “OK.”

Madge B. said that on the second page where Roger talks about the area between the silt fence and the rocks, that he was concerned about that area, she wanted to know if there was a plan making clear how that was being dealt with. Roger A. stated that the landscaping plan presented addressed this. Madge said there was a note about a three foot buffer. Roger said, that was the area he was concerned with because the ground is higher than the rocks that lead into the water. He wanted to know how this would be dealt with, so the soil doesn’t wash into the lake. Roger said that on site he was concerned about the area between the silt fence and the rocks, there needed to be stump grindings or something, but noted that he couldn’t tell the applicant what he should do. CEO Demers agreed. Madge stated, “So the planting will take care of the area.” Roger said the planting plan denotes that there needs to be plantings in that area to help with the erosion.

Madge B. wanted to know why the board discussed a gutter system? She was confused because the board didn’t even review the deck but they were talking about a gutter system. Ann H. said she was looking at the plan and was confused at the time. She said the deck itself to her looked like a wall and not a deck. Ann stated, “It looked like to me he had this property....” Madge interrupted and asked if the board had pictures. Ann said, “No.” Madge said, “Wait a minute guys, we are not doing all we have got to do for these records. Why didn’t you ask for pictures?” Ann said, “It looked like an excavator came in and went boom and took all this dirt all the way around this property, and then there is this hunk of dirt sitting there and I am looking at it, wondering why there is this big glob in front of his house. Then I thought ‘oh that is the septic tank’. Like the concrete things. And I’m like, why would someone dig way down.” CEO Demers stated, “That is where the patio was, it was encapsulating that septic tank. The patio came straight out.” Madge said, “But he’s not doing that now.” Ann said, “No, he’s dropping it down.”

Madge B. agreed that he was dropping it down to the ground level. Ann wondered if he was going to fill it back up. CEO Demers said that he needed to fill it back up. Ann wondered where the leach field was.

Madge B. asked if this was what all the earth movement was for? Roger A. stated that no, that had nothing to do with the earth movement, that was for the lawn. Madge was very confused about this permitting process. She said she would go see the site but wanted to know why all this, that they are speaking about, was not in the record. She asked why there were no pictures, why was the permit not clear? Madge stated, “It isn’t, I can guarantee you.” Roger stated that this was an after-the-fact permit. Madge stated that she knew that, but she did not believe it was a reason not to get it right. Roger said the wall was not even part of the permit. She said that she did not care. CEO Demers stated that they can separate the two. Madge said that she wanted pictures.

Madge B. said she understood this was after-the-fact but the board still needs to have pictures and a plan for the record. Madge read from the minutes, page 2 of 10, ‘Roger A. stated that the board also wanted to know in the location where the wall was removed, what was he going to do there.’ She said that Roger asked the question, but there is nothing in writing. She said again how much she did not like this. Ann H. stated that the board didn’t know what the previous size was. CEO Demers stated that the burden will be on the applicant to provide the information. He said there was ample evidence of what it was before because it was sold not that long ago. Roger stated that Steve F. said he had pictures of the property. Madge said that the board needed them in the record.

Madge B. read from page 3 of 10, ‘Mr. Knox stated that it would be something concrete, something permanent.’ Madge was not happy with this. Barbara F. noted that the board is usually very good at getting a plan. CEO Demers stated, “This was Lee’s (applicant) third meeting and I understand silt fences are already installed, we are not going to...” Madge said, “Of course we are not going to do anything about silt fences, we need silt fences.” CEO Demers stated, “I guess what I am saying is this project had been dragging on and we wanted to get some forward progress with establishing a lawn in the fall, and so the priority, and Roger eluded to this, was that first 36 feet (inches?) of the Shoreland that needed to be addressed. The patio, it was addressed but not addressed thoroughly, we can all agree to that. So let’s go back and look at it. Lee will bend over backwards to work with us and get any information that you guys want to see.” Madge said, “Thank you.”

CEO Demers stated, “As far as best practical location, there is no doubt in my mind, because I’ve done some measurements out there, that spot is the best practical location.” Madge B. said, “That’s fine.” CEO Demers stated, “There is not one stitch of, not one square foot on that property, that’s more than a hundred feet from any water.” Madge said, “I believe you.” CEO Demers said, “At the end of the day..” Madge said, “I want the record to be accurate and thorough, because we shouldn’t be cutting corners.” CEO Demers stated, “Yup.”

The board members agreed with Madge’s assessment that further information was required from the applicant regarding the replacement of both the wall and deck for the record. The approval of the new lawn, per the plan provided, is accurate; however, the current approval will only be for the new lawn, not the deck and wall replacement.

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Madge B. stated she had a few other things to note about the last minutes of the meeting. Madge read from page 6 of 10, an except taken from the CUP approval for William Turgeon's wall replacement, 'Roger A. opened the discussion by stating that the wall would be replaced in its entirety and the replacement wall would not exceed four feet in height.' Madge said that the minutes go on to say, under the Findings of Fact, number 4, 'Wall location and dimensions to remain the same as existing wall height – 4.5' ±'. Barbara F. stated that this referred to the sketch plan presented to the board, this is the notation on that sketch. Madge then read under the Findings of Fact from number 3. *'The new wall is to be located in the same location as the existing and the dimensions are to remain the same.'* (This is the description provided from the DEP Permit by Rule.) Madge stated that based on this, Rogers statement was not correct. Barbara stated, "Or the sketch isn't correct." Roger stated, "The sketch isn't." Roger said, "Because we said he can only go for 4 feet." Madge said the final facts need to be clear. The board reviewed the conditions and noted that the conditions are not clear with respect to the four foot maximum requirement.

**Madge B. moved to correct the minutes of September 10, 2019 to add a fourth condition that the wall shall not exceed four feet in height, as stated by Roger Allaire on page 6 of 10. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

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Madge B. stated that she wanted to speak briefly about the discussion regarding the cutting and replacement of trees in the Shoreland District. Madge read from page 9 of 10 as follows: CEO Demers thought that using the word 'shall' would be too harsh. He stated that typically Dick Bentley was hired to remove trees in this area and he felt Mr. Bentley had a good handle on whether or not a tree was a hazard tree. He did not feel the ordinance had to be changed. Roland also noted that people cutting trees without a permit was a huge problem as well. CEO Demers did not disagree but stated he was doing the best he could in this area.

Madge B. stated she was not correcting this paragraph, she just wanted to state that Dick Bentley is a very nice man, and very qualified to cut trees. She said she really likes him but he's a salesman. She said, "If you say to Dick, because I've done it, I don't know about this tree Dick, he says 'take it down'. He's in the business of cutting trees, that is how he makes money. I am telling you I really like him, he's a great guy, we have really good discussions. But don't expect him to give you any answer except 'of course cut the tree'." Maggie M. said until she read the minutes, she wondered if he cuts all the trees in the area, she didn't think he was the only one. Madge said he may not be the only one, but he does it well and works around the lakes in this area. She asked Maggie if she knew him? Maggie wasn't sure, she said she knew a Dick Bentley from Pratt and Whitney from years ago. Madge said yes, and again he was a great guy but don't expect him to say 'no, don't cut the tree'.

Madge B. asked if Barbara F. did any research with respect to the ordinance regarding tree cutting? Barbara stated that Roland L. said he would see what other towns do. Roland stated that he did not when several board members, and the CEO, felt the existing language in the ordinance was adequate. Ann H. asked if Dick Bentley was an arborist? Madge stated that he wasn't, but he was very good at tree removal. She said she loved watching him work, as he had a very good crew.

CEO Demers stated that the discussion was good, as it got him to create a new tree permit application, requiring more information than had been required in the past. He gave members a copy, which he noted

that now the applicant has to sign off on statements of fact and compliance. CEO Demers noted that likely more trees are removed without a permit than with a permit.

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CEO Demers provided members with a copy of the DEP Chapter 1000, page 17 under Principal and Accessory Structures, (d) which reads as follows:

*On a non-conforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the code enforcement officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure shall not exceed eighty (80) square feet in area nor eight (8) feet in height, and shall be located as far from the shoreline or tributary stream as practical and shall meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure.*

CEO Demers said he was thinking about possible changes after the last board meeting and he thought this would be a handy tool to offer people that are upset that they can't have a shed when the neighbor might. He asked that the board review it.

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CEO Demers gave the board a copy of page 19 of the DEP Chapter, and members had received a copy from Barbara F. as well. This section pertains to retaining walls and reads as follows:

*Retaining walls that are not necessary for erosion control shall meet the structure setback requirement, except for low retaining walls and associated fill provided all of the following conditions are met:*

- (a) The site has been previously altered and an effective vegetated buffer does not exist;*
- (b) The wall(s) is(are) at least 25 horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;*
- (c) The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;*
- (d) The total height of wall(s), in the aggregate, are no more than 24 inches;*
- (e) Retaining walls are located outside of the 100-year floodplain on rivers, streams, coastal wetlands, and tributary streams, as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils.*
- (f) The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and*
- (g) A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:*



- (1) The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch;
- (2) Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;
- (3) Only native species may be used to establish the buffer area;
- (4) A minimum buffer width of 15 feet, horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a wetland;
- (5) A footpath not to exceed the standards in Section \_\_\_\_\_ may traverse the buffer.

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CEO Demers provide board members with an email from Jeffrey C. Kalinich, the Assistant Shoreland Zoning Coordinator of the MDEP. The email read as follows:

I received a complaint that a deck and walls were removed from Lee Mencoboni's property and 48 yards of fill were brought in without a permit from the Town. It is my understanding that the fill was permitted after the fact as well as the deck and wall. Apparently the deck and wall approval were without any dimensional requirements. Once a deck is removed by more than 50 percent of its value it must be moved back to 100 feet. It can not be replaced. Similarly a wall is a structure that must meet structural setbacks. The deck and wall replacement should not have been approved; if the information I was given is accurate.

If it was approved, Mr. Mencoboni would also have to obtain approval from the Department under permit by rule. From our database I am not seeing that he has applied. If you would like to inform Mr. Mencoboni of the requirement let me know. Otherwise, please send me his contact information and I will inform him.

Thanks, Jeff

CEO Demers stated that he felt it came across a little harsh because the day he issued the Notice of Violation, he reached out to the DEP for guidance and advice and he heard nothing. He said, to then get an email stating that he did it wrong, was a kick in the teeth. He said he has emailed Mr. Kalinich back and he is now up-to-speed with the peculiarities of the lot. He stated, "Even in this email he states that 50 percent of its value must be moved back to the 100 foot, it cannot be replaced. Where that is true, is if there is 100 feet to move back to, but it can be moved to the best practical location, that's an error in this email."

CEO Demers noted again that he was not happy about the email from the DEP, he felt that when he had inquiries to the department, he did not get a reply from Mr. Kalinich or Colin Clark. He stated that he found it odd that an anonymous tip would trigger an email to him, an email he was not entirely in agreement with.

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CEO Demers also provide board members with a copy of his Complaint Form, so if anyone has a complaint please fill it out. He stated that it can be filled out unanimously. Ann H. thought this helped her, so she can send someone a copy. CEO Demers stated there was a link on the website she can refer them to as well. All the board members appreciated the form.

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Maggie M. wondered if there was another way people could be made aware of the tree cutting form. CEO Demers stated that on his web page, and he believed on the forms page as well, there is a link to information regarding the cutting of shoreland vegetation. Maggie noted that she was not even aware he had a web page until the last meeting. Roland L. asked where the link was? CEO Demers stated that you go to Shapleigh.net, then code enforcement, and you will find the link there. He said the DEP issued a citizens guide to shoreland zoning, which explains how to maintain the point system for trees, how to maintain it, etc. He said there is also info to setbacks, dimensional requirements, etc. He added that it was put in layman's terms. He said he also has the PBR (Permit by Rule) rule noted. He told members to refer people to his page and there they will find some valuable information.

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Maggie M. wondered if there should be a trigger noted on the home page of the town's website? Barbara F. stated that Maggie could speak with Karla Bergeron regarding the website, as she is the administrator of the site. She was not sure what was or was not allowed on the site.

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Barbara F. provided members with a copy of the NRPA Approval for the Landry application to Replace a Retaining Wall in the Shoreland District on Map 27, Lot 20. She noted that she would like members to read the findings of fact as stated, because she felt it was a great guideline for members to follow when approving a wall in the Shoreland District.

Nothing further was discussed.

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### **Growth Permits**

**Map 27, Lot 20 (Silver Lake Road) – New Home**

**GP #14-19**

This is a property is a legal lot of record.

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**The Planning Board meeting ended at 8:45 p.m.**

**NOTE: The summer hours are in effect thru October 31st, the meetings now begin at 7:30 p.m. and any scheduled public hearing begins at 7:00 p.m.**

The next meeting will be held **Tuesday, October 8, 2019** at 7:30 p.m.

The Planning Board meets the 2<sup>nd</sup> and 4<sup>th</sup> Tuesday of each month unless it falls on a holiday or Election Day. Should there be a cancellation due to a storm event, holiday or Election, the meeting will typically be held the following Wednesday, also at 7:30 p.m. Please contact the Land Use Secretary if there is a question in scheduling, 207-636-2844, x404.

Respectfully submitted,  
Barbara Felong, Land Use Secretary

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

## ***Shapleigh Planning Board***

### ***Minutes***

**Tuesday, October 8, 2019**

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

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

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**The minutes from Tuesday, September 24, 2019 were accepted as read.**

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

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#### **Conditional Use Permit – Earth Moving in the Shoreland District to Replace Retaining Wall – Map 44, Lot 25 (Silver Lake Road) – Roger Pratt, Applicant & Owner**

Mr. Pratt was present for the review of the application, along with his wife Helen.

Provided along with the application was a sketch plan which depicted a wall running along Silver Lake, one section being 22 feet wide x 64 inches high and the other being 24 feet wide x 64 inches high. There is also a set of stairs to the water running 12 – 13 feet, with 11 risers noted. 14 trees are depicted on the plan along with their circumference, and the plan states that 3 of these trees will be removed. There is a notation on the plan that states ‘Beach – Variable Width’.

The detailed description of the project is written as follows:

Replace existing stone wall at water’s edge with concrete landscape blocks 16” x 4’ each. The existing stone wall is cracked, leaning and in danger of falling. The wall extends the entire 50 feet of waterfront, with 5 foot stairs in approximate center. There are 11 steps leading to top of wall. We are proposing replacing the stone wall with concrete 16” x 4’ Loc-Blocks which are available at Pepin Precast. The stairway will need to be moved back so that it will no longer extend onto the beach, causing erosion when the lake is high. Stairs will be even with the front of the wall. We will need to remove the 3 trees indicated to complete the work, and prevent destruction of the replacement wall from roots. The wall is on average 60” to 65” in height. We are proposing to pour concrete footings to place the blocks on, with 4 rows of blocks to keep wall at a uniform 64” across length of wall excluding the staircase. There is currently little to no vegetation on existing ground at top of wall, and would like to maintain the natural landscape of sand and pine needles as it is currently.

Roger A. asked Mr. Pratt to brief the board on what he wanted to do. Mr. Pratt stated the wall had been in place for many years, it is an old stone wall. He stated there is a huge crack where the stairway comes down and it goes the length of the property. He said they wanted to remove the existing wall and replace

it with Loc-Blocks. Mrs. Pratt provided the board with some pictures to look at. Mr. Pratt noted that the existing wall has been moving, and the existing stairs have already been replaced once but because the water comes up over them in the spring, they continue to move. He said they wanted to push the steps back to be even with the wall, and that the cement steps will be incorporated with the new wall. Ann H. asked how tall the wall was? Mr. Pratt stated it would be 4 blocks high, so it would be 64 inches. He said often when they do these walls they place them on stone, but he didn't want any erosion, so he wants to pour a concrete footing and set the blocks on the footing. He said he wanted to do it for several reasons, one reason is it was quicker to pour the footing and set blocks. Steve F. stated that according to the ordinance, Mr. Pratt will need an engineered plan because the wall is over four feet in height. Roger agreed that it had to have an engineers stamp. Mr. Pratt asked if this was the case even with the Loc-blocks? Ann asked if they (the company who makes them) can do it? Steve thought that they could. Roger said the wall still has to be engineered, someone has to state that the wall is going to support the earth as constructed. Steve said again that it was in the ordinance that everything over four feet in height had to have an engineers stamp. Ann stated that is why she asked how high it was going to be. Mr. Pratt stated he would ask Pepin about getting the stamp.

Steve F. asked Mr. Pratt if he was going to do it himself? Mr. Pratt stated that he was, that he was an excavator. He noted that usually the first block is a three foot wide block, so it cantilevers back, and then the next one is a two foot. He felt it helps to hold the ground up. Ann H. asked about how many trees would be removed. Mr. Pratt stated that the only trees they intended to remove were the ones noted on the plan (three noted), all because they are too close to the wall and stairs. He thought the rest would be ok. He added that with respect to the DEP point system he believed he had plenty of points, using the 25' x 50' grid, he said with the size of the trees that exist, taking three trees down, he will still have the amount of points required. Steve said the Zoning Ordinance will still require the replacement of the trees. Mr. Pratt stated that he didn't want to place the trees where they will push on the wall again. Steve stated that the ordinance states they cannot be pushed back any further from the water than the existing trees. Mr. Pratt said the trees are only two feet from the wall now, and he believed it was one reason he was losing the wall. Ann wondered if they would have room to put them in another location. Madge B. said it would be a shame to put them in where it would damage the wall again. Steve stated the board can look at the site when they do the inspection. Mr. Pratt said again that in the 25' x 50' grid he was over the amount of points needed for the State requirement. He said it didn't make sense to add trees in this location. Ann said the board will look at the canopy as well, at the site inspection.

Mr. Pratt stated that he would put them back if he had to, and he said he was trying to keep it to a minimum of what he had to remove. He stated those being removed are because of the location of the new wall and stairs. He didn't have a choice. Ann H. asked if he was going to save the rocks? Mr. Pratt stated that he would not.

Roger A. stated that best management practice would be required. Mr. Pratt stated that he planned on doing the project in the winter, to work off the ice. He said when he got to that point, then he would know what he had to do. He said he would be clearing out the existing and putting it in a truck to remove it. He noted that he had to have enough ice to work on. Steve F. asked what enough ice would be? Mr. Pratt stated that he would be using smaller equipment, so as long as the lake freezes it won't be an issue. Roger asked if the cement he was pouring would freeze? Mr. Pratt stated that he would put hay on it until it set up. He said the job would go faster, than if used stone. He noted at present the water was low, and if it stays that way it will work in his favor.

Roger A. asked Mr. Pratt if he was DEP certified? Mr. Pratt stated that he was.

Mr. Pratt stated that he planned on doing it fast and in the winter. He said he could put some blocks up near the top if he needed to. He added that he put storm dams on site already, to channel the water, and said that the stone dams are working well to mitigate the amount of water that comes down off the property.

The board members went into the next two applications as Mr. Pratt will be doing the work for those as well.

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**Conditional Use Permit – Earth Moving in the Shoreland District to Replace Retaining Wall – Map 44, Lot 24 (18 Silver Lake Road) & Map 44, Lot 23 (16 Camp Road) – Kevin & Sheila Cash, Applicants & Property Owners**

Mrs. Cash was present for the review of the application. Mr. Pratt also sat in on the review of the application, as he was the contractor doing the work.

Provided along with the application for 18 Silver Lake Road was a picture of the existing stone wall to be replaced, along with a sketch plan. The sketch plan depicted the location of the existing structure, septic tank & leachfield location, well point, and existing retaining walls. One appears to be 2 feet from the high water mark and a second one appears to be 10 feet from the high water mark. The width of the property at the shoreline is noted at 50 feet. Also noted on the plan is the location of Silver Lake Road.

The detailed description of the project is as follows:

We purchased the property on 18 Silver Lake Road in 2005, which was beyond repair due to its lack of use over many years. At this time we found two existing stone walls both located on the lake side of the structure. One being 14' from the shoreline, the other at shoreline which was almost completely covered and buried due to years of high water issues. This past spring was the worst we have experienced with the erosion and wall collapsing. We feel with the replacement to a Loc-Block system it would finally stop the issue we face every spring.

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Provided along with the application for 16 Camp Road were three pictures of a block wall, along with a sketch plan. The sketch plan depicts the existing structures, septic tank & leachfield location, well point, and four retaining walls. Two located between the structure and Camp Road and two between the structure and Silver Lake. The wall closest to Silver Lake appears to be approximately 9 feet from the high water mark.

The detailed description of the project is as follows:

We purchased this property 16 Camp Road in 1984. Around 1990 we installed a block wall in front of an existing stone wall that had been collapsing in some areas. We believe over the years due to the hydrostatic ground pressure from the hill behind it has caused the wall to bulge forward. Also over time the high water level and ice has caused the bottom course of block to disintegrate. The ground also in the front of this wall now erodes every spring. The top course of the wall now extends approximately 1 foot from its original placement. We feel this is now becoming a safety issue.

Mr. Pratt stated that the Cash walls were right next door to his property. He said one property is like his, and will be four blocks high, the other will only be 2 blocks high. Steve F. asked if the walls would connect? Mr. Pratt stated that her wall would not connect to his. He stated with both her properties he may interlock them, but where one wall will be higher than the other, he will return one back into the banking. He said if one property is sold, he wants to be able to delineate which property is which. He said when the board sees the property, they will see how her wall is bowing out, so he wants to straighten it. Mr. Pratt stated the short wall runs straight but the other wall is curved, he wants to straighten that one out. Roger A. wanted them to know they cannot encroach upon the water any more than it is at this time. Mr. Pratt said they may need to push it back. Roger said again where the wall sets today, the new wall cannot be any closer to the water. Mrs. Cash stated that she understood. Mrs. Cash asked if where it is bowing out, if that could be straightened? Mrs. Cash stated that the board needs to see it.

Mrs. Pratt stated that there would be a fourth property being done, and the application should be ready for the next meeting. She told the board if it is easier for them to see all the properties at once, they may want to take a look at it. The name of the homeowner is Scott Phelan and it is located at Map is 44, Lot 27. She said it was a yellow camp. Mr. Pratt said his wall that is closest to the water will be pulled back to straighten it. He said it would be a four foot wall, with stairs.

Steve F. thought the board had flexibility with respect to the stairs. Steve said with the walls, in the past, it is inch for inch, foot for foot. Mr. Pratt stated that with the stairs you can't hang them out, they need to be push back with the wall. Steve said the board will look at it at the site inspection. Mr. Pratt thought the DEP allowed them to push it further from the water.

Roland L. asked if Mr. Phelan's place was on Silver Lake Road? Mr. Pratt stated that it was. Mrs. Cash stated that the board should look behind her wall to see what is taking place. She said they fix the rock wall every year, and this year Mr. Pratt asked if they wanted replace it and they said they did. Mrs. Cash, using the pictures provided, showed what she was talking about with respect to her collapsing wall. She noted that with one of the properties she will have to remove three trees and she has no issue replacing them. She did not believe there were any trees on 16 Camp Road that had to be removed. Roger A. stated that replacement trees would have to be six feet in height. Mr. Pratt stated there were two small pines and one white birch that would have to be removed.

Roger A. asked if all the properties would be done all at the same time? Mr. Pratt stated that they would. Roger asked if the Permit by Rule was already mailed out? Mr. Pratt stated that it was. Ann H. stated that his wall would need an engineers stamp? Mr. Pratt stated that one of hers (Mrs. Cash) would as well. Mr. Pratt said he would get it from Pepin.

Roger A. asked about the removal of the existing? Mr. Pratt said he would use a small machine to remove the existing. Steve F. stated the debris has to be taken out of Shapleigh. Mr. Pratt said he would bring the rocks to his house. Roger said nothing can go to the transfer station. Roger said he asked about the gravel and stone because if it was going to another location in Shapleigh, the person accepting the gravel would have to come to either the CEO or the board for a permit, depending on the number of yards and location.

Roger A. said the board will need a time frame to restabilize the area. Mr. Pratt stated that all that is there now is pine needles. Roger said there will be a date set when they will be set back into place, and it includes the plantings (trees). Roger said a date for completion will be required.

**Roger A. asked what would be a good day for members to meet on site. Members agreed to meet on site, Friday, October 18<sup>th</sup> at 4:00 pm. A notice to abutters will be mailed as well, for both applicants.**

Mrs. Pratt noted her property was a vacant lot, so members are welcome to go any time. Members agreed to meet at the Town Hall at 4:00 pm, on October 18th and go over to the site as a board. Roland L. stated he may not be able to make it due to possible jury duty.

Nothing further was discussed.

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**OTHER:**

CEO Demers stated that Mark Brochu on Mousam Lake, wants to replace existing blocks with no earth moving. He stated he wasn't sure if the board would want to see the application or not. Roger A. stated that the main reason why the board reviews the walls is due to moving greater than 10 yards of earth. CEO Demers stated with this one he wouldn't be. Steve F. asked if it was aesthetic only? CEO Demers stated that he would be improving the drainage behind the wall but the whole wall is only 3 blocks high. He said he would be moving some dirt out and putting the drainage in and putting the dirt back. He said he didn't think it needed to come before the Planning Board but if they felt otherwise he would send him to the board. Roger said again the reason why the board would need to see it would be based on the number of yards of soil being moved. CEO Demers stated he would wait for the Permit by Rule to come back and go from there.

CEO Demers said with respect to tree replacement that they were speaking about earlier, he read from §105-51.2 'Exemptions to clearing and vegetation removal requirements', Section B, as follows: 'The removal of vegetation from the location of allowed structures or allowed uses, when the shoreline setback requirements of §105-18 are not applicable'. CEO Demers stated, "So in this case with the retaining wall where he is taking some trees out and he can't plant any closer to, basically I would say it is exempt but it is up to you. He is willing to replant one further back than where he is taking trees out and cannot plant any closer to the water". He felt because he can't go closer to the water, this made it exempt but it was up to the board. He noted that the applicant was willing to plant trees further back. Steve F. and Ann H. didn't think it made sense to put the trees right next to the wall. Roger A. stated that in the past the board has not required a tree to be right up against the new wall, because it will eventually cause an issue. Steve said he would still like to see the trees replanted and at the site inspection the board can see what might work.

CEO Demers stated that there was a violation four camps up from the site visit they are going on, and the permit will be coming to the board. He said the board might want to look at it while they were on site, so they don't have to go back out again. (Members had a copy of the Notice of Violation.) CEO Demers said there was a retaining wall approved by the board in 2003 but it was never replaced, which led to



problems. He said they have a stop work order on the job. Ann H. stated that the contractor should have known not to work without a permit.

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**Possible Ordinance Changes to Allow new Retaining Walls in the Shoreland District; to Allow New Accessory Structures in the Shoreland District; Amendment to §105-71 'Board of Appeals'; Amendment to §105-72 'Appeal Procedure'; Amendment to §105-26 'Stormwater Runoff', and any other suggestions board members may have.**

Barbara F. stated that she wanted the board to review the two ordinance suggestions from CEO Demers from the previous meeting, one being to allow low retaining walls in the Shoreland District with a permit, and the other was to be able to add an 80 sf accessory structure in the Shoreland District with a permit. She asked if the board thought these would be good additions, and to please let her know, so she could type something up for the citizens to review at a public hearing. Steve F. asked where the ordinances were (he was unable to attend the previous meeting)? Barbara showed him where to find the information.

CEO Demers stated that the new structure would be allowed on a non-conforming lot with a camp on it, and where a new structure can't meet setbacks; this would allow people to store yard tools, gas lawn mowers, etc. Barbara F. stated that they are not supposed to be able to be added onto to with respect to the 30%. CEO Demers stated, "Correct". Barbara asked if she should add a sentence to the ordinance to make that clear. Roger A. agreed adding something would be a good idea. CEO Demers had no issue with adding a sentence addressing expansion, and he noted that they would still be limited by the lot coverage rule. Roland L. asked about the side lot setbacks. CEO Demers stated that it would be a 10 foot setback to the side lot lines for an accessory structure. Roger added that in no case shall an accessory structure be any closer to the shoreline than the principle structure. Steve F. stated that the board is usually looking at the birds-eye view for square footage. He was concerned if you have a foot overhang, that doesn't leave you much of a structure. CEO Demers said it could be 8 x 10 or 6 x whatever. Steve said the DEP was not thinking birds-eye, they are thinking 80 sf outside dimensions of the structure. CEO Demers stated it would be 80 sf from the drip edge. Steve said that if we do that, it shrinks the size of the structure. CEO Demers agreed, but said it was for hand tools and a lawn mower. Roland said he wanted to keep it birds-eye. Madge B. said if it is bigger they will store motorized vehicles. The board noted they will be putting bunk beds in them.

Board members discussed the pros and cons of allowing low retaining walls in the Shoreland District. Most felt that allowing low retaining walls in areas of high erosion would be beneficial. Steve F. talked about being able to terrace steep slopes, and Madge B. agreed there are cases where adding a wall would help to retain the soil on site. Roland L. stated that there would need to be caution to be sure the walls are not used to create new sitting areas and an area for patios. Barbara F. stated that is the CEO's job during the permitting process to let the applicant know what can and cannot be done. Roland stated said he could see people clearing an area, and putting in a wall, so they can put in a picnic table or something like that. Madge stated that it sounded like Cattail loop (a recent application), where they brought in 8 inches of loam that could fall into the water. Steve said he believed the walls in the ordinance have to be 25 feet from the high water mark. Ann H. thought when someone pulls a permit for the wall, it can say, no patio, and whatever else is not allowed. Steve said he reviewed the DEP ordinance and he felt it was set up pretty well. CEO Demers said that the board could require Planning Board review if they would like. Ann didn't think the board should have to review the wall. Roland asked if the board was supposed to

review the ordinance and then comment on it. Barbara stated that she would like members to review it and let her know at the next meeting if they would like to add it to Zoning. She stated that the board would have to hold a public hearing before the end of the year on ordinance changes and she didn't want to wait until the last minute.

Steve F. wanted to briefly discuss being able to move an existing wall back. He was noting that the board was told the woman that worked for the DEP told a recent applicant she has no issue with him moving the wall back. Ann H. agreed. Steve asked if the board was hurting themselves if they tell applicants they can't move the wall back in order to straighten it out. Roger A. and Madge B. both agreed an applicant could always pull a wall back, it just cannot go any closer to the water. Roger said there have been some that were approved pushed back from the water. Steve thought the wall had to be replaced in the exact same spot and the same size. Madge said, no, it just can't be any closer. Ann asked if the board could ask them to move the wall back during the review. Roger said that would likely create more soil erosion, because they are going into a banking. Steve agreed, citing the topography behind a wall is typically steep, so if the board asks them to push it back it is more of a problem. Roger agreed. Ann asked if the top block of a wall is supposed to be higher than the ground behind it? Maggie M. stated that with a recent application, the applicant stated that the wall being higher was what caused the problem. He said the water pooled there and pushed against the wall. Roger stated that if the drainage had been behind the wall, it would not have been a problem. Steve agreed, that was the point of the stone behind the wall.

Barbara F. stated the change to §105-26 'Stormwater runoff' this was to change the review from a 50 year storm plan to a 100 year, as noted by Madge B. at a previous meeting. Roger A. agreed this was more relevant.

Barbara F. stated that as a Town we have to follow what is in the ordinance, and we are currently not doing this with §105-71 'Board of Appeals' and §105-72 'Appeal Procedure'. She said this was based on the Town Attorney, specifically allowing a property owner with a Notice of Violation 'NOV' to appeal the Code Enforcement Officer's letter of violation instead of taking the issue up in court. Barbara stated it started with the Lindquist NOV for an illegal deck, and subsequent NOV's have allowed the applicant the option of appealing the CEO's decision. Barbara stated that the ordinance is clear that an NOV is not appealable. In §105-71.C(1) the last sentence reads, 'Any order, requirement, decision or determination made, or failure to act, in the enforcement of this chapter is not appealable to the Board of Appeals'. And in §105-72.A(1), 'An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decisions of the Code Enforcement Officer or the Planning Board, except for the enforcement-related matters as described in §105-71.C(1) above'.

Barbara F. stated that she asked the DEP if the town could remove this section from the ordinance and she was told we could, it is not preferable, but if the Town felt it was better to remove it, they would allow it. Barbara said it seemed the Town Attorney with Lindquist case was more comfortable not having it go to litigation, because at the time when she had Karla ask the Town Attorney about this matter, she said it might be best to allow them to go to the appeals board. Barbara said she didn't have an opinion either way, but we need to follow the ordinance, so if we are going to allow the appeal process then we need to remove it from the Zoning Ordinance.

CEO Demers asked what the proper protocol was? Barbara F. stated that as the ordinance is written at

this time, NOV's are not allowed to go to the Board of Appeals, they go to court. Madge B. agreed. CEO asked if this included an administrative appeal? Barbara said, if it is a NOV, it not appealable; if someone wants to dispute whether or not you will give them a building permit, that is appealable. She said if someone comes in for any type of permit, and the CEO says no, that is appealable, any permit related issue is appealable. She reiterated that she was speaking of a building permit that is denied, that is appealable. She said a notice of violation is not, that is enforcement. She said the DEP does not want lots of time to go by before a violation issue is resolved, and often if someone realizes they have to go to court in order to fight the NOV, they will instead just fix the problem because it often is less costly. Barbara said again, how we are writing the NOV currently, is not as it is written in the ordinance. Madge B. asked if this was also how it was written by the State? Barbara said yes, this is what the DEP wanted and it is in the DEP shoreline guidelines.

Barbara F. stated what she highlighted is what is in the ordinance now, and we are not following that. Madge said that the NOV isn't following the ordinance. Barbara stated that was correct. Madge said then we need to take it out of the ordinance. Ann H. asked if we remove it, and they get an NOV, then they can go to the Board of Appeals? Barbara said, "Correct". Madge said that that was apparently what we are doing now, and it doesn't follow the ordinance. Steve F. asked if anyone has gone to the Board of Appeals? Barbara stated, "Not since Lindquist". Barbara said either she needs to remove it from the ordinance or we need to follow it, again it is up to the board. Madge said that we are not following it because of the Town Attorney. Barbara said that it started with Lindquist. She didn't know of any other times the Attorney might have been asked with respect to an NOV? Barbara asked CEO Demers if he knew what the Town Attorney's opinion might be? CEO Demers said he did not, this was the first he heard of this.

Madge B. stated she had an issue with this, because it meant local boards are reviewing local decision making and that can get sticky. She said she has always advocated that local decisions should go to court. She said it gets personal instead of legal when it is kept in-house. Barbara F. stated she could ask if the Town can enforce what is in the ordinance, or CEO Demers can, she didn't care either way. Steve F. asked if we have to remove this from CEO Demers letters. Madge said right, the right to appeal. Steve wanted to know what the board had to do with this. Barbara stated that the Planning Board makes the changes to the ordinance, in this case it was shoreland zoning. Steve said that the ordinance calls for.... Barbara stated that the existing ordinance does not allow an applicant to go the Board of Appeals for any enforcement issue. Ann H. thought as it is written now was good. She didn't think someone should have the right to appeal, if they did something wrong. Barbara said again, she didn't care either way, but we cannot go against what is in the ordinance. She thought especially with an NOV, the CEO should have more clout. She asked CEO Demers what he was comfortable with? CEO Demers asked if how the letters are written now go against DEP recommendation? Barbara stated, "That is correct. If you want what DEP recommends, you leave it as it is now and remove the right to appeal in the NOV". CEO Demers stated, "Then I will just take it out of the NOV". Barbara stated that the DEP will back this process, they like the strength. Barbara added that she wanted CEO Demers to be able to write a NOV the way that worked best for him, but she thought keeping the ordinance as it was, gave him more back-up if the applicant fought him. Madge felt the NOV should be consistent with the ordinance, and she preferred not having local people review local decisions. Barbara said again that if he denies a building permit, then the applicant can still take him to the Board of Appeals as the ordinance is written now.

*Roger A. said he believed the board recommends that the paragraph allowing an appeal in an NOV should be removed, and the ordinance will remain as written. CEO Demers agreed.*

Barbara F. asked the board to review the other two ordinances they spoke about earlier and give her an idea as to whether or not they wanted to add it to the ordinance by the next meeting.

Steve F. stated, going back to the Town Attorney, he wanted to know what her opinion was. Barbara F. stated that when CEO Demers cited Mr. Lindquist for an illegal deck, at that time CEO Demers put the paragraph in allowing the applicant to go to the Board of Appeals. Because it didn't follow the ordinance, Barbara stated that she asked Karla to ask the Town Attorney her opinion. Barbara said at that time the Attorney said it was not a problem allowing the applicant to go through the appeals procedure. Barbara was not sure she understood the ordinance as it was written, Barbara was not even sure of the Attorney's name. Madge B. stated it was possible the Attorney was not familiar with how land use violations are handled. She said this is specific to land use. Barbara agreed, because after reading the ordinance the Attorney didn't acknowledge what it said. CEO Demers stated that the Lindquist letter was a carbon copy of a letter written in 2003. Barbara said that in 2003, this section of the ordinance did not exist, so that was why. This change occurred in 2015. CEO Demers said, ok, gotcha. Barbara said the DEP added this to give it more strength, and be more protective of the environment. Madge agreed.

Nothing further was discussed regarding possibly ordinance changes.

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Madge B. wanted the board members to know she did submit something with respect to trees and the Mousam Lake newsletter. The board wanted her to see if she could write something for it. She did contact the Lake Association the day after the meeting, and she wrote something for the newsletter. She said she had been in communication with them. They told her if she wrote it within 24 hours they would put it in as long as it was short. She said she did just that, and it was short. She asked Roland if he saw it? He said he hadn't received his letter yet. Madge said they never got back to her, but she did think it was a good suggestion.

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Members talked about putting something on the Town's webpage, the first page, that would direct people to the CEO page, so they would see the Shoreland information. Currently, the members did not even know there was a CEO page when going to the website. Barbara F. suggested that perhaps CEO Demers could ask Karla if he could add a link on the front page that would stand out. Everyone thought that would be a good idea, as he had lots of information on his page that was helpful. CEO Demers was not against doing that.

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Madge B. said she went to Cattail Loop, the Mencoboni application, and she noted that she did take one picture. She reminded the board that she had asked for pictures and she felt the board agreed we should try to get pictures for the file. Madge said she wasn't sure how this was going to happen but she felt it was important to get them. Roger A. stated that CEO Demers had pictures. CEO Demers agreed, stating that Steve F. had sold the property a few years ago, so he felt Steve and he could get together and recreate the patio that had been removed. Madge said she would like the information for the Planning Board file because a lot has happened on the property that wasn't documented.

Madge B. asked if there was a deck removed? CEO Demers said it was a patio area that was attached to the camp, that encapsulated the septic. Madge asked if it was a deck? CEO Demers stated that no, it was just a cement patio. He said he did clear it up with the DEP.

Nothing further was discussed.

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**Growth Permits**

**There are Growth Permits available.**

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**The Planning Board meeting ended at 8:50 p.m.**

**NOTE: The summer hours are in effect thru October 31st, the meetings now begin at 7:30 p.m. and any scheduled public hearing begins at 7:00 p.m.**

The next meeting will be held **Tuesday, October 22, 2019** at 7:30 p.m.

The Planning Board meets the 2<sup>nd</sup> and 4<sup>th</sup> Tuesday of each month unless it falls on a holiday or Election Day. Should there be a cancellation due to a storm event, holiday or Election, the meeting will typically be held the following Wednesday, also at 7:30 p.m. Please contact the Land Use Secretary if there is a question in scheduling, 207-636-2844, x404.

Respectfully submitted,  
Barbara Felong, Land Use Secretary

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



Please Note Winter Hours Begin in November

The Planning Board Meetings will Begin at **6:30 PM**

## ***Shapleigh Planning Board***

### ***Minutes***

**Tuesday, October 22, 2019**

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

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

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**The minutes from Tuesday, October 8, 2019 were accepted as read.**

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

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#### **Conditional Use Permit – Earth Moving in the Shoreland District to Replace Retaining Wall – Map 44, Lot 25 (Silver Lake Road) – Roger Pratt, Applicant & Owner**

Mr. Pratt was present for the review of the application, along with his wife Helen.

Provided along with the application was a sketch plan which depicted a wall running along Silver Lake, one section being 22 feet wide x 64 inches high and the other being 24 feet wide x 64 inches high. There is also a set of stairs to the water running 12 – 13 feet, with 11 risers noted. 14 trees are depicted on the plan along with their circumference, and the plan states that 3 of these trees will be removed. There is a notation on the plan that states ‘Beach – Variable Width’.

The detailed description of the project is written as follows:

Replace existing stone wall at water’s edge with concrete landscape blocks 16” x 4’ each. The existing stone wall is cracked, leaning and in danger of falling. The wall extends the entire 50 feet of waterfront, with 5 foot stairs in approximate center. There are 11 steps leading to top of wall. We are proposing replacing the stone wall with concrete 16” x 4’ Loc-Blocks which are available at Pepin Precast. The stairway will need to be moved back so that it will no longer extend onto the beach, causing erosion when the lake is high. Stairs will be even with the front of the wall. We will need to remove the 3 trees indicated to complete the work, and prevent destruction of the replacement wall from roots. The wall is on average 60” to 65” in height. We are proposing to pour concrete footings to place the blocks on, with 4 rows of blocks to keep wall at a uniform 64” across length of wall excluding the staircase. There is currently little to no vegetation on existing ground at top of wall, and would like to maintain the natural landscape of sand and pine needles as it is currently.

Roger A. asked Mr. Pratt to brief the board on what he wanted to do. Mr. Pratt began by saying that he owned a property on Silver Lake, and he would be replacing a wall which was approximately 50 feet long and it included a set of stairs. He stated that the new wall would be approximately 64 inches high. He

added that there would be a few trees to cut. Madge B. said there would be three trees. Mr. Pratt stated that regarding the trees the board saw on the site inspection, he might trade out one of the trees, meaning one of the trees he pointed out might stay but another may be removed.

Roger A. asked if he had an engineer's stamp / approval for the wall. Mr. Pratt stated that he hadn't gotten the information yet, because Pepin wanted a copy of his sketch plan and he hadn't done that yet. He said the block company would be the ones giving the engineered information. Roger asked if the board wanted to table the application until the information was received? Mr. Pratt said he wasn't sure if he had to get the information to the CEO Demers or the board, he should have asked the question. Roger said the information has to be provided to the board for the Conditional Use Permit, then Mr. Pratt would go to the CEO for the building permit. Madge B. and Roger stated that the ordinance calls for it. Mr. Pratt said he did inquire already, he just didn't get the information yet.

Roger A. asked if there were any abutters in the audience. Most everyone in the audience was an abutter because they had an application before the board. Roger asked if there were any comments or questions regarding the height of the wall, because if the application is tabled, the abutters will not be notified again. The next meeting to review the application will be November 12. There were no comments.

Mr. Pratt asked if he didn't get ice on the lake, because he needed it in order to do the wall, would he have to come back to the board to go through the permitting process again? Roger A. stated the Conditional Use Permit and Building Permit would be good for two years. Roger said when the board does approve the application, the board will set a date for when the wall will be completed. He said if Mr. Pratt cannot meet that he will either have to come back to the board or go to the CEO for an extension of time, depending on how the board conditions the approval. Roger said the DEP permits are usually valid for three years. Mr. Pratt asked if the board got a copy of the Permit by Rule. Roger stated that the board did have a copy. Mr. Pratt noted that he did not. Barbara F. stated that CEO Demers receives a copy and he forwarded it to the board. Barbara noted that emails to Mr. Pratt had been kicked back to her, so perhaps that happened with this permit. Roger said the Permit by Rule is a 14 day notification, if the applicant did not get notified, it means it is probably approved with no issues.

**Madge B. moved to table Mr. Pratt's application until he notifies Barbara F. that he has the engineered stamp. She added that at that time the board will want to know what trees will be removed and where the replacement trees will be placed. Maggie M. 2<sup>nd</sup> the motion. All members were in favor.**

Nothing further was discussed.

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**Conditional Use Permit – Earth Moving in the Shoreland District to Replace Retaining Wall – Map 44, Lot 24 (18 Silver Lake Road) & Map 44, Lot 23 (16 Camp Road) – Kevin & Sheila Cash, Applicants & Property Owners**

Mr. and Mrs. Cash were present for the review of the application. Mr. Pratt also sat in on the review of the application, as he was the contractor doing the work.

Previously provided along with the application for 18 Silver Lake Road was a picture of the existing stone wall to be replaced, along with a sketch plan. The sketch plan depicted the location of the existing structure, septic tank & leachfield location, well point, and existing retaining walls. One wall appears to be 2 feet from the high water mark and a second one appears to be 10 feet from the high water mark. The width of the property at the shoreline is noted as 50 feet. Also noted on the plan is the location of Silver Lake Road.

The detailed description of the project is as follows:

We purchased the property on 18 Silver Lake Road in 2005, which was beyond repair due to its lack of use over many years. At this time we found two existing stone walls both located on the lake side of the structure. One being 14' from the shoreline, the other at shoreline which was almost completely covered and buried due to years of high water issues. This past spring was the worst we have experienced with the erosion and wall collapsing. We feel with the replacement to a Loc-Block system it would finally stop the issue we face every spring.

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Previously provided along with the application for 16 Camp Road were three pictures of an existing block wall, along with a sketch plan. The sketch plan depicts the existing structures, septic tank & leachfield location, well point, and four retaining walls. Two located between the structure and Camp Road and two between the structure and Silver Lake. The wall closest to Silver Lake appears to be approximately 9 feet from the high water mark.

The detailed description of the project is as follows:

We purchased this property 16 Camp Road in 1984. Around 1990 we installed a block wall in front of an existing stone wall that had been collapsing in some areas. We believe over the years due to the hydrostatic ground pressure from the hill behind it has caused the wall to bulge forward. Also over time the high water level and ice has caused the bottom course of block to disintegrate. The ground also in the front of this wall now erodes every spring. The top course of the wall now extends approximately 1 foot from its original placement. We feel this is now becoming a safety issue.

Members asked if they should table the Cash applications as well, as there is no engineers stamp for those either. Ann H. & Madge B. noted that 18 Silver Lake Road was only 2 feet in height, so that didn't need the engineers ok.

**Madge B. made the motion to table 16 Camp Road (Map 44, Lot 23), pending the engineers stamp. Maggie M. 2<sup>nd</sup> the motion. All members were in favor.**

Roger A. asked about 18 Silver Lake Road, if once the wall is removed and replaced, would there be any plantings behind it? Mr. Cash stated that there would be three trees being removed. Roger asked if there was a replanting plan? Mr. Pratt said with respect to the ordinance, he was looking at the point system, using the DEP rules which is a 25 by 50 foot area, and based on this he didn't need to add additional trees. Roger stated that under §105-4.D(7)(1) it states: 'Trees removed in order to relocate a structure must be replanted with at least one native tree, six feet in height, measured from the base of the trunk to the top of the tree, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water



or wetland than the trees that were removed. Trees shall be planted greater than five feet from side lots lines, and shall create a well-distributed stand of trees. These replanted trees shall be flagged with fluorescent tape no less than 18 inches in length which shall not be removed except by the Code Enforcement Officer upon inspection. He noted this is to verify the tree had been planted.

Mr. Plant stated there is also a section about the point system, which he felt contradicted what Roger read, so he felt one had to go. CEO Demers stated that the point system pertained to hazard trees, this is for trees that are being removed for something different. CEO Demers stated the Planning Board is considering the removal of these trees to facilitate the structure and in this scenario the applicant is required to replace the trees one for one. Mr. Pratt said they would have to move the trees back, they can't go back against the wall. Roger A. agreed that if the tree was put at the same distance, it would once again push the wall. Mr. Pratt said if they have to replace a few trees, they need to go back farther. Mr. Cash stated that he had no issue replacing the trees. Roger said the replacement trees have to be on the plan, so that when the CEO goes to the site, he can make sure they are placed as approved.

Mr. Pratt wanted to go back to the point system. Roger A. stated that the points are not considered. Mr. Pratt stated, "In the case of my lot, the point system has to apply." Roger said, "Nope". Roger pointed out that he just read the paragraph that applies. Mr. Pratt said the trees have nothing to do with the structure. He said the number of trees on his lot, if he isn't doing anything on his lot, it still says in the point system I can thin some of the trees out and get rid of some. Steve F. stated, "Outside of the 75 foot mark". Mr. Pratt stated, "It says in the buffer zone, between the water and 100 feet back. It says in the point system from the DEP guidelines". He said it also tells you the size of the trees. He stated that in Shapleigh's rules you have a point system too, but it isn't exactly the same as the DEP's. Roger agreed noting the Town can be more stringent. Mr. Pratt agreed, and noted that Shapleigh's is, but they still have more than the point system in the ordinance. He said the ordinance says that we can take trees out of there without any problems. Ann H. and CEO Demers both noted that this was listed under Hazard Trees (§105-51.1). Mr. Pratt said the DEP doesn't say hazard trees. Ann stated that it didn't matter, that is what Shapleigh has.

Mr. Pratt stated that under the B (§105-51.1) it talks about selective cutting. Roger A. stated, "Before you get too far, the paragraph specifically states 'Hazard trees, storm damaged trees, and dead tree removal'. It says nothing about a structure and trees to be removed." Mr. Pratt said he was talking about the selective cutting of trees. Roger stated in order to cut you have to prove it is going to be a hazard tree. He said that he had to prove it was storm damaged. Ann H. agreed. Roger stated, "Unless you get a licensed arborist to come in and state that is what it is, then you would have a leg to stand on, otherwise we are telling you those you have to replace. There is no such thing as a point system. It is not there."

Mr. Cash said he was happy to be getting some answers. He said there was something about in 10 years you are allowed to take a percentage. Roger said, no. Ann H. said what he was referring to was the height of the tree, you can take a percentage. Mr. Cash said that when a tree is relocated, it has to be within a certain area. Roger stated there was no exemption but the board is going to say it cannot go back in the exact same location because it will damage the wall. Roger said there needs to be a new location drawn on a plan for the trees for the board to approve. Roger said the new tree will be placed per the plan and the CEO will verify the location. Mr. Cash asked if it mattered what type of tree it was? Roger said that because there were only three trees to be replaced, the type didn't matter, as long as they are a native species. If there were five, then he would have to have more than one species. Ann also stated it had to

be a native tree. Roger said if it is more than three, the board wants diversity, so they would request the type of tree to be noted on the plan. Roger also added that the trees cannot be right on the property line, they need to be five feet away.

Mrs. Cash asked when the trees should get planted? Madge B. stated that they probably will want to plant in the spring, after the excavation is completed. Roger stated that there would be a date of completion given for the tree plantings as well. Mr. Pratt asked what the diameter of the tree had to be. Roger stated there was no diameter reference, it had to be six feet in height.

Roger A. stated that without a planting plan for the trees, the board should table this application as well.

**Madge B. moved to table the application for 18 Silver Lake Road (Map 44, Lot 24), pending the replanting plan for the three trees to be removed and replaced. Maggie 2<sup>nd</sup> the motion. All members were in favor.**

Roger A. noted that the board needs the engineering stamps for the two 64" walls and the replanting plan for the trees to be replaced for 18 Silver Lake Road and Mr. Pratt's Silver Lake Road property. Mr. Pratt stated he wasn't sure exactly what trees or how many. He thought only three, but not sure which yet. Mr. Pratt said he would get the information to Barbara.

Madge B. asked if they understood why trees are so important. Mr. Cash and Mr. Pratt said, yes. Mr. Pratt noted there were lots of trees on his property at this time. Madge said it was extremely important for water quality.

Roger A. said with the respect to the removal of material, it cannot go to the transfer station. He stated that if it is going to another location in Shapleigh, that location may need a Conditional Use Permit to accept it, depending on the number of yards. Mr. Pratt said the wall he is removing is all blocks, and they will be reused up top, and a neighbor also wants to use a few. He asked if this was a problem? Roger asked if he was in the Shoreland zone, was he 100 feet from the water? Mr. Pratt stated that he was. Roger said he would only need a permit from the CEO if it is greater than 100 feet from the water.

Nothing further was discussed.

**Conditional Use Permit – Earth Moving in the Shoreland District for Shoreline Stabilization – Map 23, Lot 1 (37 Starboard Lane) – Michael Roberts, Applicant & Property Owner**

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

Previously provided along with the application, was a sketch plan which depicted the location of the existing house, garage and decks, areas called 'stumps grindings', areas called 'sand now', the location of the existing retaining walls, and the shoreline setback, which is located approximately halfway thru the middle of the existing garage. All other features on the plan, except the rear portion of the garage, are within 100 feet of the high water mark.

The detailed description of the project is as follows: Bring in 52 yards of sand to replenish and level existing sandy area.

The application was tabled by the Planning Board on July 23, 2019, pending further information which included a DEP Permit by Rule and revegetation plan; additionally an extension of time was granted on September 24, 2019.

This evening, provided was a copy of the Permit by Rule Notification Form dated September 18, 2019. The DEP Bureau of Land Resources Field Determination Form, noted the Contact as Jim Logan of Buxton, Maine; Property Owner as Michael Roberts of Londonderry, New Hampshire, and Staff as Claire Briggs. The memo reads as follows: On August 12, 2019, Department staff met on site with Michael Roberts and Jim Logan at 37 Starboard Lane in Shapleigh. The site is located on Mousam Lake a Great Pond as defined in the Natural Resources Protection Act (NRPA), 38 M.R.S. §480-B(5). Department staff observed an existing landing area between the house and the water that was held by a large retaining wall. The area between the retaining wall and the house held sand. The addition of sand to level the area will create better drainage for stormwater runoff. The additional sand is not likely to cross into the lake, passed the retaining wall or proposed vegetative buffer. Department staff is using discretion to allow for fill within 25 feet of the lake. Enhancement of the existing vegetative buffer would be eligible for review under Section 2 of a Permit by Rule. Activities in, on, over or within 75 feet of a Great Pond may require a NRPA permit. Erosion control devices must be installed and maintained on the project site during any soil disturbance activity. A Stormwater Management Law PBR or Maine Construction General Permit "NOI" and "NOT" must be filed with the Department if more than 1 acre of area is going to be disturbed on the project site at any given time during construction. Received: 8/5/2019; Site Visit 8/12/2019; Completed: 9/25/2019.

In addition, received was a Site Location Plan created by Longview Partners, LLC – Environmental Permitting Specialists, Plan Date: 8/23/19. On the Site Location Plan it referred to Section 2 Permit-by-Rule Notification and noted Statement of No Practical Alternative. The statement read as follows: There is no practical alternative to the proposed soil disturbance within 75' of Mousam Lake. The area proposed to be leveled & shimmed with 4" of fine sand and the proposed access stairways are located so as no alternatives to their placement are available. The area to be leveled and shimmed is located in between an existing dwelling and the lake. The location of the access stairway also cannot be relocated as the lot slopes steeply from the area of the existing dwelling to the lake.

Lastly received was a plan entitled Sec. 2 & 20 Permit-by-Rule Notification and Restoration Plan, also created by Longview Partners, LLC, dated 8/23/19. The plan notes are as follows: Fire pit to be relocated 25' minimum to high water line of lake; Existing concrete retaining walls; This area to be leveled/shimmed with <4" thickness of fine sand for passive recreation; Mousam Lake; Proposed stairs to access lower level; Erosion & Sediment Control (see detail attached); Existing Dwelling; Place stump grindings and supplement this area with woody and non-woody native species. Plan Notes: This plan is a composite of property boundary information per Town of Shapleigh Tax Map, Maine Office of GIS 2' Topographic Contours & Maine Office of GIS Aerial Photograph; Map is furnished for planning purposes only and shall not be reproduced or utilized by anyone other than the parties named without express written consent of Longview Partners, LLC.

Roger A. asked Mr. Roberts for the record to let everyone know why he was before the board. Mr. Roberts stated this project started back in July, from there it progressed nicely, getting a letter from the field visit that took place in August, and the project was approved in September. He stated the report shows that after what the DEP saw, the project is allowed to progress as requested. Mr. Roberts provided

members with the Permit by Rule. Mr. Roberts stated that the project as outlined in the report would be costly but better for the lake, as well as himself.

Roger A. reviewed the DEP information. Roger stated that in the areas being reclaimed it stated the DEP was asking for stump grindings and native species of plants. Mr. Roberts said this was discussed at previous meetings, that additional stump grindings were needed, as well as additional plantings. He stated that erosion needed to be controlled. Roger said that there is an existing concrete wall and material has either washed away or has blown away, so the area needs to be re-stabilized. Roger noted to Mr. Pratt that even though there is a concrete wall, there still needs to be erosion control measures such as mulch and plantings added, as well as Best Management Practices. Roger said that he is being allowed to bring in 4 inches of sand and place stump grindings on the top. Mr. Roberts disagreed with that statement, that the front area 25 feet from the second wall was just going to be sand, no stump grindings. He said beyond the 25 feet will be the stump grindings. Roger agreed. Mr. Roberts stated the original permit was for restoration which was granted, then other things were discussed and added.

Roger A. asked what the proposed time frame was for the mulch, etc.? Mr. Roberts stated that the stump grindings would be the last part of the project so they were not tracking over them while doing the other two parts of the project, which include tying in the left and right side with the wall, and moving the fire pit and set of stairs. He stated the sand and stump grindings would be after the restoration of those two areas. He said the trees he will be starting to plant now. Roger said the board needs a time frame as to when the plantings will be done per the ordinance. He said after a date of completion is set, the board will decide whether or not you have to come back to the board, or have the CEO set a new date of completion. Mr. Roberts stated that the DEP allows 3 years, he asked if the Planning Board only allowed 2 years. Roger said that was correct. Mr. Roberts said that that meant the permit would be good for 2 years from the date the board signed it. He said he would like to do it all in one season, but he didn't have estimates to complete the project yet.

Steve F. stated that best management practices have to be up during the length of the project, he asked Mr. Roberts if he wanted to have a silt fence up for 2 years? Steve said he was reading the Permit by Rule. Mr. Roberts stated that they explained to him that when he started moving earth, the fire pit and stairs, that is when they want to see the silt fence up. He said when that is done, then it can come down, according to the DEP. The board thought that made sense. Roger added that where the work was being done in the areas he spoke about, BMP needs to be in place until that work is completed. Mr. Roberts agreed. Steve read from the DEP Permit by Rule the following: 'Erosion control devices must be installed and maintained on the project site during any soil disturbance activity'. Mr. Roberts said, "Correct". He believed with the restoration of the bark mulch there was no soil disturbance, and with the restoration of the sand the wall was there, as well as the stump grindings. He stated, "The soil disturbance will be the fire pit and the stairs". Roger A. stated that if one side is completed before another, CEO Demers may allow him to pull the silt fence on the side that is completed.

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

- 1) Best Management Practices will be maintained until the there is no longer any soil disturbance, as stated in the Permit by Rule. A person licensed in erosion control practices by the MDEP must be on site during the project until the area is stabilized and project is completed.**

- 2) **The revegetation, which includes woody (trees) and non-woody vegetation is to be completed by October 30, 2021. If for any reason this date cannot be met, the Code Enforcement Officer (CEO) must be notified.**
- 3) **The replacement trees shall have 18 inch ribbons placed on them, so they can be easily seen by the CEO.**

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

**Maggie Moody made the motion to approve the Conditional Use Permit for earth moving in the shoreland district per the plans provided and Field Determination from the DEP on Map 23, Lot 10, with the above stated conditions. Madge B. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

*Roger A. told Mr. Roberts that he needed to go to CEO Demers for permits.*

Nothing further was discussed.

#### **Findings of Fact**

1. The owner of Shapleigh Tax Map 23, Lot 10 (37 Starboard Lane), is Roberts Family Revocable Trust, Michael E. & Beth-Ann Roberts, Trustees of 86 Nashua Road – Box 792, Londonderry, NH 03053.
2. The property itself is located in the Shoreland District and according to the assessor the property contains 2.32 acres.
3. The detailed description of the project is as follows: Bring in 52 yards of sand to replenish and level existing sandy area.
4. Received was a sketch plan which depicted the location of the existing house, garage and decks, areas called ‘stumps grindings’, areas called ‘sand now’, the location of the existing retaining walls, and the shoreline setback, which is located approximately halfway thru the middle of the existing garage. All other features on the plan, except the rear portion of the garage, are within 100 feet of the high water mark.
5. Received was a copy of the Permit by Rule Notification Form dated September 18, 2019. The DEP Bureau of Land Resources Field Determination Form, noted the Contact as Jim Logan of Buxton, Maine; Property Owner as Michael Roberts of Londonderry, New Hampshire, and Staff as Claire Briggs. The memo reads as follows: On August 12, 2019, Department staff met on site with Michael Roberts and Jim Logan at 37 Starboard Lane in Shapleigh. The site is located on Mousam Lake a Great Pond as defined in the Natural Resources Protection Act (NRPA), 38 M.R.S. §480-B(5). Department staff observed an existing landing area between the house and the water that was held by a large retaining wall. The area between the retaining wall and the house held sand. The addition of sand to level the area will create better drainage for stormwater runoff. The additional sand is not likely to cross into the lake, passed the retaining wall or proposed vegetative buffer. Department staff is using discretion to allow for fill within 25 feet of the lake. Enhancement of the existing vegetative

buffer would be eligible for review under Section 2 of a Permit by Rule. Activities in, on, over or within 75 feet of a Great Pond may require a NRPA permit. Erosion control devices must be installed and maintained on the project site during any soil disturbance activity. A Stormwater Management Law PBR or Maine Construction General Permit “NOI” and “NOT” must be filed with the Department if more than 1 acre of area is going to be disturbed on the project site at any given time during construction. Received: 8/5/2019; Site Visit 8/12/2019; Completed: 9/25/2019.

6. Received was a Site Location Plan created by Longview Partners, LLC – Environmental Permitting Specialists, Plan Date: 8/23/19. On the Site Location Plan it referred to Section 2 Permit-by Rule Notification and noted Statement of No Practical Alternative. The statement read as follows: There is no practical alternative to the proposed soil disturbance within 75’ of Mousam Lake. The area proposed to be leveled & shimmed with 4” of fine sand and the proposed access stairway are located so as no alternatives to their placement are available. The area to be leveled and shimmed is located in between an existing dwelling and the lake. The location of the access stairways also cannot be relocated as the lot slopes steeply from the area of the existing dwelling to the lake.
7. Received was a plan entitled Sec. 2 & 20 Permit-by-Rule Notification and Restoration Plan, also created by Longview Partners, LLC, dated 8/23/19. The plan notes are as follows: Fire pit to be relocated 25’ minimum to high water line of lake; Existing concrete retaining walls; This area to be leveled/shimmed with <4” thickness of fine sand for passive recreation; Mousam Lake; Proposed stairs to access lower level; Erosion & Sediment Control (see detail attached); Existing Dwelling; Place stump grindings and supplement this area with woody and non-woody native species. Plan Notes: This plan is a composite of property boundary information per Town of Shapleigh Tax Map, Maine Office of GIS 2’ Topographic Contours & Maine Office of GIS Aerial Photograph; Map is furnished for planning purposes only and shall not be reproduced or utilized by anyone other than the parties named without express written consent of Longview Partners, LLC.
8. The board reviewed the pertinent sections of the Zoning Ordinance and concurred the application and information as presented met the performance standards, with conditions.
9. A notice was mailed to all abutters within 500 feet of the property on July 10, 2019. Meetings were held on Tuesday, July 9, 2019, Tuesday July 23, 2019, Tuesday, September 24, 2019 and Tuesday, October 22, 2019. A site inspection was done on July 23, 2019 by members.
10. The Planning Board unanimously agreed to approve the Conditional Use Permit for earth moving in the Shoreland District for shoreline stabilization per the information provided by the applicant and MDEP, for Map 23, Lot 10, with conditions.
11. **The conditions of approval are:**
  - 1) **Best Management Practices will be maintained until the there is no longer any soil disturbance, as stated in the Permit by Rule. A person licensed in erosion control practices by the MDEP must be on site during the project until the area is stabilized and project is completed.**
  - 2) **The revegetation, which includes woody (trees) and non-woody vegetation is to be completed by October 30, 2021. If for any reason this date cannot be met, the Code Enforcement Officer (CEO) must be notified.**

- 3) The replacement trees shall have 18 inch ribbons placed on them, so they can be easily seen by the CEO.

12. Additional requirement:

- A building permit must be obtained from the Code Enforcement Officer, prior to the construction of the new wall.

**Motion:**

After careful consideration and a review of all material presented to the Board, a motion was made on Tuesday, October 22, 2019, to approve the Conditional Use Permit for earth moving in the Shoreland District for shoreline stabilization per the information provided by the applicant and MDEP, on Map 23, Lot 10, with three conditions.

**Vote:**

By a unanimous vote of 5 – 0, the motion to approve the Conditional Use Permit for earth moving in the Shoreland District for shoreline stabilization per the information provided by the applicant and MDEP, on Map 23, Lot 10, with three conditions, was accepted.

**Decision:**

**The Conditional Use Permit for earth moving in the Shoreland District for shoreline stabilization per the information provided by the applicant and MDEP, on Map 23, Lot 10, with three conditions was approved.**

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**After-the-Fact Conditional Use Permit – Earth Moving in the Shoreland District to Replace Retaining Wall – Map 44, Lot 32 (210 Silver Lake Road) – Brian Varney, Applicant & Property Owner**

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

Provided along with the application, was the signed DEP Permit by Rule, Description: Looking to replace hazardous retaining wall & patio, dated as accepted on October 7, 2019. A sketch plan was provided depicting a 6' x 10' shed; location of the leach field & subsurface wastewater disposal system (a copy of the actual SWDS application, dated 11/5/04, drafted by John Large, SE #7 was provide as well); 24' x 28' house & 5' x 16' porch; the location of four retaining walls, one wall to be replaced; the location of the well & patio to be replaced; and the location of the beach, sandy area, mulch/blueberry bushes & mulch/plant areas, all in relation to the lake, side lots lines & Silver Lake Road. It is noted on the plan that the house is 70 feet from the lake.

The Detailed Description of the Project is as follows:

The activity that we are proposing to perform is the replacement of an existing 31' long, 4' high (at its highest point) timber railroad tie retaining wall and an approx. 24' x 24' concrete/paver walkway and patio that has become a hazard to the home and homeowner. The new wall is to be

located in the same location as the existing wall and the dimensions are to remain the same. The concrete and paver walkway and patio are to be replaced with concrete pavers manufactured by Genest concrete and are to remain in the same location with the same dimensions as the existing. All MDEP erosion control practices are to be used during construction of the project and monitored by Roger Pratt a MDEP erosion control certified contractor with certification #367.

Mike Carbone from Action Property Services, Inc. has my permission to act on my behalf at the planning board meeting.

Roger A. opened the application review by stating Mr. Varney had an after-the-fact permit. He asked Mr. Varney to let the board know what he wanted to do. Mr. Varney stated he was looking to replace a wall, concrete walkway and patio. Roger asked Mr. Varney if there was a patio there before? Roger said that because you cannot occupy a property by more than 10% with structures, he was not sure if Mr. Varney would be able to have the patio. Mr. Varney said there was a concrete patio there before, and it was becoming a hazard due to ice, which also went into his basement and he noted had to rake the ice out in the spring. He said because of the ice, this is why the patio he described as a hazard. He stated the wall replaced was made out of wood and is now Genest concrete blocks.

Roland L. asked if Mr. Varney had any photo's depicting what was there prior to demolition. He said he would like evidence of what was there. Mr. Varney stated that he recently purchased the property, and the pictures he had are from last winter with the ice buildup and water. He said he didn't have any pictures of the patio. He said he went to the Town's assessing page but there were no pictures there that would help. Roland asked about the previous owner. Mr. Varney said it was a private sale and the pictures they have are from the area down by the beach, not the patio area. Madge B. stated, "So there is no real estate listing that would have included pictures?" Mr. Varney stated, "Correct".

Mr. Varney stated that the border of the property is a combination of mulch and weeds. Ann H. asked about the area on the drawing the board received, the area that is depicted as 24' x 28', she wanted to know if that was the actual size of the patio. Mr. Varney stated that the actual size was 24' x 24'. Ann asked if the well was in the middle of the patio, and if the patio would be put in around the well. Mr. Varney stated that was correct. Roger A. said it appeared the ground had been brought down 18 – 20" from the well area from what the board looked at on site. Madge B. agreed.

Roland L. asked, "Did the thought ever cross your mind that an activity of that scope and cost, that is that close to the water, might require a permit? Or that it should be approved over overseen by someone?" Mr. Varney stated that he was using the contractor's advice. He assumed because the contractor was advising him and said he had built these things for a living for 30 years, and his father 30 years before that, the contractor said he had never had to pull a permit to replace a wall. Ann H. and Roland L. asked if he was DEP certified to work in the shoreland zone? Mr. Varney said he knew he wasn't erosion control certified, but they did install erosion control measures and he noted that Mr. Pratt had volunteered to oversee those measures. Ann stated there are contractors that are not DEP certified but state that they can do the work. Mr. Pratt said he had been DEP certified before it was a requirement. Roger A. said he was certified in 2012. Mr. Pratt added that those working for him are also DEP certified.



Roger A. stated that at this time, after looking at the site, he felt the patio would have to be scaled back, so that no more than 10% of the property would be occupied by structures. Roger said the rest of the area would have to be bark mulch or something that would prevent erosion, and on the left side looking from the lake, the area that had been cut, that wall has to be put in. Mr. Varney asked other than covering the entire area in mulch, would there be other options? Roger said yes, anything that would prevent erosion control. He said the board can't say what to use. An audience member asked if the board was talking about loam, sod, lawn? Roger said whatever the applicant wanted to come up with, the board can't tell him what to do by law, because the board can't impose cost onto applicants. The applicant can propose what he wants to do and then the board can approve or disapprove it. Mr. Varney asked if a lawn was acceptable in that location? Roger said that in the shoreland zone no fertilizer is allowed, and with the sand that is in that location, Roger didn't think a lawn would grow. An audience member asked if Mr. Varney could bring in loam? Roger said the board can't tell him what to do, but the board can disapprove something that would not work. Mr. Varney asked if he could replace what was there? Roger asked him if he had pictures of what was there? Roger said if he could prove something was there, he could replace it. Steve F. agreed, that if the patio was there prior to zoning, then it can be replaced. He said that because it is not there for the board to see, then the board can't say you can do it. Madge B. noted that Mr. Varney might need a different contractor.

Mr. Varney said if he can't find a picture of the patio, what was he going to have to do? Steve F. and Roger A. both stated that he would have to reclaim the area. Mr. Varney asked what that meant. Ann H. stated that there would be some type of erosion control, so soil doesn't wash down into the water. She said there is a list of DEP approved erosion control measures she believed. Steve and Ann noted that York County Soils and Water could provide a list of what is approved or would work best in this area for erosion control measures. Ann said even York County Soils cannot tell you what to do but they can give recommendations. Mr. Varney believed the only thing that would help to prevent the area from eroding was a wall. He wondered if York County Soils would recommend a wall? Steve asked if he was speaking of a retaining wall on the side of the yard? Mr. Varney said, "Right". Roger asked if there was a wall there previously? Mr. Varney said there were railroad ties. Roger asked if there was a picture? Mr. Varney stated there was not. Roger said even without a picture, as it stand today, the only thing to prevent erosion would be a wall.

Roland L. stated that Mr. Varney could slope the wall area back and add stump grindings, which is a course of ground-up stumps which are used to reduce if not eliminate runoff; and do some homework to come up with material and/or evidence of what was there, in order for the board to be able to take action in compliance with the ordinance. Ann H. stated that the picture from 2004 showed no evidence of a patio being there (taken from a Planning Board file for a previous approval for a wall replacement).

Steve F. thought there should be some evidence of what was there and he believed a wall makes the most sense in that location to prevent erosion. Roland L. said Mr. Varney could contact neighbors to see if anyone had a photograph the board could look at.

The board looked at the picture from 2004, regarding the wall that was removed according to the applicant, and they believed it did appear a wall would have been in that location. Roger A. thought the board could allow a wall to go back in. Madge B. was talking about the third wall in question that was not replaced yet. The other two retaining railroad tie walls had already been replaced. The board still did not feel the patio should go back in, due to lack of evidence on site that there had been a patio. Steve F.

said if there was a way the applicant could find evidence of the patio, the board would allow what was there to be replaced. Steve said if the applicant did not think he could find evidence, then the board could act on the wall, but not the patio. Madge felt the board needed to act on the wall, because the area cannot be left as it is. Mr. Varney asked if he could produce a picture showing the walkway and part of the patio, could he get a smaller patio? Steve said he couldn't speak for the board, but based on the 'grim evidence' that the board received, he was not sure. Roger said that while the board was on site, they could see the walkway with plywood over it to protect it. Mr. Varney stated that that walkway was staying. Roger said he did not see any other walkway at present on site. Mr. Varney stated that Google Earth shows a walkway. Steve said that using Google Earth you could see a walkway and sort of see an old patio up tight to the house and then further from the house it was deteriorating.

Mr. Varney showed Roger the walkway on Google Earth and a small patio that the board saw on the site visit. He wanted the board to agree they also could see remnants of the larger patio area. Madge B. said she could see the walkway but not the patio. Mr. Varney said the larger patio area he was speaking about was broken up pavers, the other area is solid concrete. Roland L. agreed he saw the walkway but could not attest to seeing a patio area. All members looked at what Mr. Varney was showing them on Google Earth. There was nothing definite they could agree that was there.

Roger A. stated that that he did not feel the board could support the replacement of the patio area unless pictures were provided. He stated the walkway could be seen, and he believed the board could agree there was a retaining wall based on the way the embankment looked on site. He said the board would need to know what erosion control measures would be taken and a time frame for completion of the project. The board did suggest York County Soils and Water, if Mr. Varney needed to get ideas of what would work best for erosion control.

Madge B. wanted to know if there was a way to deal with the contractor? Mr. Varney stated that the contractor signed up for the next DEP course in erosion control. Madge asked how someone would know they hired a DEP licensed contractor? Roger A. said that CEO Demers oversees the project, and can obtain information as to whether or not they are licensed. Steve F. stated that Mr. Pratt stated he would oversee this project. Mr. Varney stated that silt fences have been installed.

**Roger A. stated the board needs for the next meeting the dimensions of the wall, both length and width, as well as the dimensions of the landing area; and what would be used to restore and stabilize the area. Again, he suggested YCSW as a good source of information. The board would also be asking for a date of completion for the entire project, including any revegetation.**

*A Notice to Abutters will be mailed. The site inspection was already done prior to this evening.*

Nothing further was discussed.

**Conditional Use Permit – Earth Moving in the Shoreland District to Replace Retaining Wall – Map 44, Lot 27 (188 Silver Lake Road) – Scott & Patricia Phelan, Applicant & Property Owner**

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

Provided along with the application, was a sketch plan depicting the existing 22' x 38' camp and its location in relation to the side lots lines, Silver Lake Road and Silver Lake; the location of a 10' x 10' shed & 6' x 8' shed; the well and the location of the retaining wall along the water's edge, along with a set of stairs. The Permit by Rule was provided, which described the project as: Replacement of Retaining Wall, dated as mailed 10/13/2019, and pictures of the existing retaining wall were also provided.

Additionally provided, were two letters from Mr. Phelan. One stated the reason for application, that being 'I am applying for a permit to replace my existing retaining wall at my property 188 Silver Lake Road, Shapleigh Maine. The existing wall is cracked and deteriorating. We are concerned that it could collapse with another harsh winter'. The other letter stated the vegetation remediation, that being 'In the area of the project there is little to no vegetation that will be disturbed'.

The application detailed description of the project states: Replace cracked and deteriorating retaining wall.

The Planning Board received the signed Permit by Rule, via CEO Demers, dated as accepted on 10/3/2019. The PBR in an attached letter between the applicant and Claire Briggs, Environmental Specialist in the Bureau of Land Resources, DEP, states that the existing wall is 50 feet long by 4 feet high, and that the stairs will be replaced as well.

Roger A. asked Mr. Phelan to let the board know what he intended to do for the record. Mr. Phelan stated that they wanted to replace the retaining wall along the water because it is deteriorating. Roger said while on the site inspection, Mr. Pratt mentioned pulling the stairs back to line up with the wall. Mr. Pratt stated that they also were going to move the stairs, so that they line up with the dock. He said he put this on a sketch he gave to Mr. Phelan. Mr. Phelan showed the board where they wanted to move the stairs. Mr. Pratt stated it was approximately 6 feet from the end. Mr. Phelan stated that they also wanted their wall straightened, so parts will be moved back from the water.

Madge B. asked how many trees would be removed? Mr. Phelan believed it was two trees. Mr. Pratt agreed, stating one had to be removed because it would interfere with the block wall, it was two pine trees. He noted one was right where the wall would go. Madge said the board would need those placed on the plan, and where the replacement trees would go. Mr. Phelan stated after the previous applications, he realized this is what he needed to do. Steve F. wanted to know if the board wanted them to draw the trees in tonight and act on the application? Madge said they couldn't, the abutters needed to be notified. Mr. Pratt said he would be returning to the next meeting anyhow.

Roland L. asked how tall the wall was going to be? Mr. Pratt stated 6 feet.

Roger A. said any tree removed in the Shoreland, the root of the tree has to stay. Mr. Pratt said some have to go, because they will be in the wall. Roger understood. The applicants stated that they understood. Steve F. said you just have to cut it flat. Mr. Pratt asked if the tree that was into the wall, did he have to leave it. Roger said that in the ordinance it states that tree roots have to stay, but you can't leave it if it interferes with the wall.

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

**A notice to abutters will be mailed.**

Nothing further was discussed.

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**Other:**

**Possible Ordinance Changes to Allow for Low Retaining Walls in the Shoreland District and to Allow for a New Accessory Structure in the Shoreland District**

Board members reviewed the two ordinances that they were given at the last meeting. They are as follows:

*Low Retaining Walls in the SD less than 24 inches in height.*

*Retaining walls that are not necessary for erosion control shall meet the structure setback requirement, except for low retaining walls and associated fill provided all of the following conditions are met:*

- (a) The site has been previously altered and an effective vegetated buffer does not exist;*
- (b) The wall(s) is(are) at least 25 feet horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;*
- (c) The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;*
- (d) The total height of wall(s), in the aggregate, are no more than 24 inches;*
- (e) Retaining walls are located outside of the 100-year floodplain on rivers, streams, coastal wetlands, and tributary streams, as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils.*
- (f) The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and*
- (g) A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:*
  - (1) The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch;*
  - (2) Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;*
  - (3) Only native species may be used to establish the buffer area;*
  - (4) A minimum buffer width of 15 feet, horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a wetland;*
  - (5) A footpath not to exceed the standards in Section 105-51.B(1)(a) may traverse the buffer.*

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*Accessory Structures in the SD*

*On a non-conforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the code enforcement officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure shall not exceed eighty (80) square feet in area nor eight (8) feet in height, and shall be located as far from the shoreline or tributary stream as practical and shall meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure.*

Board members discussed both. It was noted with respect to the retaining walls, they had to be less than 24 inches in height and 25 feet horizontal distance from the high water mark. Steve F. asked if there was a definition for a 'low retaining wall', because if the Town adds the ordinance he felt that was necessary. Board members agreed. Barbara F. stated that a low retaining wall would probably say something like 'a retaining wall 24 inches or less in height', after the definition of a retaining wall. Steve F. asked where he would find the low retaining wall section in the DEP handbook. Barbara said, page 19. Madge B. said she was confused about the woody vegetative buffer. Barbara noted that the ordinance states what the DEP wants. Madge agreed but she couldn't figure out where you could put the walls if you needed 15 feet of buffer. Barbara said she thought these were for terracing, not for along the water. CEO Demers agreed, they were for terracing. Maggie M. said she had seen them, and in some locations there were bushes between them. Barbara thought the point to having them was for erosion. CEO Demers stated that it says that low retaining walls *not for erosion control* shall meet the structure setback requirements.

CEO Demers thought they needed a section for retaining walls that are not necessary for erosion control, and a section for those that are. Barbara F. did not think that was necessary. Maggie M. thought the way it is written, it is discouraging terracing unless it is at least 25 feet back from the high water mark. Roger A. preferred not to allow them because it does appear to be complicated, but also if an applicant only needs a permit from the CEO and it is a low wall, they have no idea they also have to consider whether or not they are moving 10 yards of earth; because if they are, they will also need a permit from the Planning Board. He felt if this is allowed, he feels it should go through the Planning Board, to avoid any misunderstanding. CEO Demers said if the Town adopts the ordinance and makes the reviewing authority the Planning Board, then it shouldn't be an issue. Not all board members wanted to have to look at the walls, Steve felt it was a rubber stamp. CEO Demers wondered if the 10 yards would be exempt because it is part of putting up the wall. Roger said no, because the DEP put in the 10 yard rule. Roger said the ordinance would have to be changed, that anything greater than 10 yards the Planning Board would not look at it. Roger said you can't pick and choose. CEO Demers felt it already allows it in the SD if it is a permitted structure, the 10 yards is exempt from Planning Board review. Roger read 105-4.D(3), Whenever a new, enlarged, or replacement foundation is constructed under a nonconforming structure, the structure and the new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board. Roger said in the SD they all fall under 105-4.

Steve F. agreed there may be some growing pains with the new ordinance, but the board has been to situations that they all wished a wall could be put on site to help correct a situation. CEO Demers noted that under §105-39, 'Earth removal and filling for activities other than mineral exploration and extraction'

Section B: Earth moving not requiring a conditional use permit. The following earthmoving activity shall be allowed without a permit; (2) ‘The removal or filling of material incidental to construction, alteration or repair of a building, or in the grading and landscaping incidental thereto.’ He felt earthmoving is already allowed without Planning Board approval. CEO Demers felt the board needed to decide if it applies to low retaining walls. Steve said this could be specific to the low retaining walls, by adding it to that section.

CEO Demers stated that they still would need their PBR. Roger A. felt that under §105-39, Section B(1) still applied that the removal or filling of greater than 10 cubic yards of material from or on any lot in any one year, in the SD applied. Steve F. felt that CEO Demers could make that determination during the permitting process as to whether or not 10 cubic yards would be moved. CEO Demers stated that the board needs to decide if the grading and landscaping is exempt from the 10 yard rule. He felt it read that way. Maggie M. worried that the minute you say something is exempt, unless you know exactly what they are doing, who knows what they are going to haul in. She felt by word of mouth, there is a concern if people say that if you are only doing grading or landscaping it is exempt. She said someone with a large property, that could be an issue. Steve felt it was already in the ordinance, that it is already exempt, they do not need to go to the board. Steve said the board needs to decide if it will fall under grading and landscaping. Ann H. asked if it would hurt if the board did? Steve thought it was to be determined.

Roger A. was concerned with treating everyone the same way. He went back to 105-4, the section on foundations, if it is in the SD it is coming to the board, and even though the board knows they are moving greater than 10 yards, the board is giving the permit with respect to what happens on the site. CEO Demers said the walls are not best practical location, so he feels it falls under the landscaping exemption. Roger felt the Planning Board should review the walls. CEO Demers believed that Section 2 of 105-39, didn’t necessarily apply to a foundation or building, it could be just grading and landscaping, and it is exempt already. Roger did not agree that was true in the Shoreland. He said under Section 1, it talks about Shoreland, Flood Plain, and Resource Protection. He said if it was exempt, it would be listed there. He said Section 2 does not speak about those districts. He felt numbers (2) & (3) did not apply to the SD, as it was not specified. Roger also stated that if the board was going to look at earthmoving in the SD, they would refer to Section D ‘Earthmoving in the Shoreland District’, which again notes the only exemption to Planning Board review in less than 10 cubic yards, which is permitted by the CEO.

Barbara F. reminded the board when making changes to anything regarding the SD, DEP approval was required, and at no time can the Town make the restriction less stringent than what the DEP guidelines state.

Roger A. stated that he felt everyone needed to come in for a permit for a wall. He could see people saying they were putting up a 2 foot wall and it becoming much greater, and having more fill moved. He noted times when the board was told the wall going to be less than 4 feet and the board goes to the site inspection, and he points out that the wall is over his head from base to top. Roger said there needs to be a determination on which is correct, as a board the decision is made by more than one person. CEO Demers felt he could sign off on the height of the wall. The board did agree that what triggers them reviewing a wall was not the wall itself but the yardage being moved. Steve F. thought 10 yards was substantial, Roger disagreed that 10 yards was not a lot of material. Roger noted that each wall being reviewed this evening was at least 10 yards of earth being moved. The board members agreed.

The board agreed to speak more about this in November, possibly in a workshop.

With respect to the addition of an 80sf utility shed, most members agreed it would be a good idea and would talk about it once again at another meeting.

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### **Growth Permits**

**There are Growth Permits available.**

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

**NOTE: The winter hours are in effect thru March 31st, the meetings now begin at 6:30 p.m. and any scheduled public hearing begins at 6:00 p.m.**

The next meeting will be held **Tuesday, November 12, 2019** at 6:30 p.m.

The Planning Board meets the 2<sup>nd</sup> and 4<sup>th</sup> Tuesday of each month unless it falls on a holiday or Election Day. Should there be a cancellation due to a storm event, holiday or Election, the meeting will typically be held the following Wednesday, also at 7:30 p.m. Please contact the Land Use Secretary if there is a question in scheduling, 207-636-2844, x404.

Respectfully submitted,  
Barbara Felong, Land Use Secretary

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

Please Note Winter Hours Begin in November

The Planning Board Meetings will Begin at **6:30 PM**



# Shapleigh Planning Board

## *Minutes*

**Tuesday, November 12, 2019**

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

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

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**The minutes from Tuesday, October 22, 2019 were accepted as read.**

*Madge noted that she did not feel there were any changes required to the minutes but that the board had forgotten to specifically go over the conditions under §105-73 for the review of Mr. Roberts application, and she wanted to be sure that the board did not forget to do this, this evening.*

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

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### **Conditional Use Permit – Earth Moving in the Shoreland District to Replace Retaining Wall – Map 44, Lot 25 (Silver Lake Road) – Roger Pratt, Applicant & Owner**

Mr. Pratt was present for the review of the application, along with his wife Helen.

Previously provided along with the application was a sketch plan which depicted a wall running along Silver Lake, one section being 22 feet wide x 64 inches high and the other being 24 feet wide x 64 inches high. There is also a set of stairs to the water running 12 – 13 feet, with 11 risers noted. 14 trees are depicted on the plan along with their circumference, and the plan states that 3 of these trees will be removed. There is a notation on the plan that states ‘Beach – Variable Width’.

The detailed description of the project is written as follows:

Replace existing stone wall at water’s edge with concrete landscape blocks 16” x 4’ each. The existing stone wall is cracked, leaning and in danger of falling. The wall extends the entire 50 feet of waterfront, with 5 foot stairs in approximate center. There are 11 steps leading to top of wall. We are proposing replacing the stone wall with concrete 16” x 4’ Loc-Blocks which are available at Pepin Precast. The stairway will need to be moved back so that it will no longer extend onto the beach, causing erosion when the lake is high. Stairs will be even with the front of the wall. We will need to remove the 3 trees indicated to complete the work, and prevent destruction of the replacement wall from roots. The wall is on average 60” to 65” in height. We are proposing to pour concrete footings to place the blocks on, with 4 rows of blocks to keep wall at a uniform 64” across length of wall excluding the staircase. There is currently little to no vegetation on existing ground at top of wall, and would like to maintain the natural landscape of sand and pine needles as it is currently.



On October 22, 2019, the board tabled the application pending an engineer's stamp for the design of the new wall because it was over four feet in height, along with requesting a replanting plan for the trees that will be removed.

This evening Mr. Pratt provided the board with an engineered drawing of the proposed wall, drafted by Eric Merluzzi, PE #13003, of 184 Rowenton Road, Wentworth, NH 03282. The drawing was entitled: Proposed Retaining Walls – Pratt & Cash, 177 Silver Lake Road & 16 Camp Road, Shapleigh, ME. The client was noted as Pepin Precast, and the plan was dated November 12, 2019. The plan provides details for the construction of the new wall, including Site Preparation, Leveling Pad & Bottom Block, Wall Drain, Backfilling & Compaction, and General Wall Layout & Construction. Also provided was a revised sketch plan, drafted by Mr. Pratt, which depicted the location of the wall, stairs, 12 x 12' patio, 3 x 4' shed, existing trees, trees to be removed and where the replacement trees will be planted. The sketch depicted a total of 4 trees to be replaced.

Roger A. opened the meeting by asking Mr. Pratt where the placement of the new trees would be? Mr. Pratt showed Roger using the sketch plan he provided.

Roger A. stated that because of the height of the new wall an engineered plan was required, which he pointed out was provided this evening. Madge B. said she believed these were the only two things the board needed for this application.

Roger A. stated the reason Mr. Pratt was before the board was because of §105-39 'Earth removal and filling for activities other than mineral exploration and extraction', Section D 'Earthmoving in the Shoreland District'. Roger stated that earth moving greater than 10 cubic yards required Planning Board approval. Roger stated that under Section D(1) it states Best Management Practices needed to be used, using the DEP standards.

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

Roger A. stated that all the walls greater than 4 feet in height would have the same standards and review. Note: The walls before the board were located in the same general vicinity and several would be built by Mr. Pratt.

Roger A. stated that the project was supposed to be done when the ice was on the lake, so he asked Mr. Pratt if the tree planting would be done by May 15, 2020? Mr. Pratt stated they would be done by June 15, 2020. He said the sooner the ice came in, the sooner he could start.

Steve F. stated that for the record he wanted it stated that he would be moving the stairs. Mr. Pratt stated that it was on the plan. He said they were on page 2 of the plan. There were two sketch plans on page 2 of the engineered plan, one was labeled Pratt and the other Cash.

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

- 1) The use will not have an adverse impact on spawning grounds, fish, aquatic life, birds or other wildlife habitat. **Roger A. stated, it will not. The wall will help to conserve the habitat by stopping erosion and sedimentation from going into the lake.**

- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. **Roger A. stated that it will.**
- 3) The use is consistent with the Comprehensive Plan. **Roger A. stated that it is. The Comprehensive Plan wants to make certain the water bodies in Shapleigh remain healthy by preventing erosion.**
- 4) Traffic access to the site is safe. **Roger A. stated that it is.**
- 5) The site design is in conformance with all municipal flood hazard protection regulations. **Roger A. stated that it was, this location is not in a flood zone.**
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. **Roger A. stated the existing rocks and stones from Mr. Pratt's property will be taken out of Shapleigh. Roger stated with the Cash wall, the existing wall will be moved to a new location and reused.**
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. **Roger A. stated there was none generated by this activity.**
- 8) A stormwater drainage system capable of handling fifty-year storm without adverse impact on adjacent properties has been designed. **Roger A. stated the new wall(s) have been designed by a licensed engineer to retain the existing earth and mitigate stormwater by way of stone behind the wall. The remaining property is not being altered to create a stormwater issue.**
- 9) Adequate provisions to control soil erosion and sedimentation have been made. **Roger A. stated best management practices will be used until the area is stabilized.**
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. **Roger A. stated there is but it is not a requirement for this project.**
- 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. **Roger A. stated there is minimal vegetation being removed from site. Trees being removed will be replaced per the plan(s) provided.**
- 12) All performance standards in this chapter applicable to the proposed use will be met. **Roger A. stated that they will with conditions.**

**Roger A. stated the conditions of approval for Map 44, Lot 25 are as follows:**

- 1. The project, the removal and replacement of the existing wall(s) and stairs, and revegetation plan which includes the replacement of the four trees to be removed, shall be completed by June 15, 2020. If this date cannot be accomplished the applicant must contact the Code Enforcement Officer, and have a new date of completion established.**
- 2. Best Management Practices shall be kept in place until the project is completed. There must be a person certified by the DEP in erosion control practices on site during the project.**
- 3. All material from the existing wall and stairs to be removed shall be taken out of Shapleigh and disposed of properly.**

Madge B. wanted to be sure all the material was going to be removed and taken out of the shoreland area for Mr. Pratt's wall but with the Cash property, they may use some of them on another property in Shapleigh. Mr. Pratt said that yes, he will be removing the material from his wall but some of the existing blocks from the Cash house will be re-used on another property. He said all the rocks would be leaving Shapleigh. Madge said the board didn't want any of the rocks dumped in the Shoreland District, within

100 feet of the water in Shapleigh. Roger A. said Mr. LaPointe is going to take some of them on his property, and his camp is behind the Cash property. Mr. Pratt said it was just the blocks, the landscape blocks that would be reused. Madge thought it was fine, she just wanted to be sure no material would stay in the Shoreland District.

**Madge B. moved for approval of the Conditional Use Permit for earth moving in the Shoreland District to replace the existing wall and stairs on Map 44, Lot 25 with the above stated conditions. Steve F. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

Nothing further was discussed.

**The Findings of Facts**

1. The owner of Shapleigh Tax Map 44, Lot 25 (Silver Lake Road), is Roger Pratt of 1 New Mill Creek, York, Maine 03909.
2. The property is located in the Shoreland District and according to the assessor the property contains .21 acres.
3. The application description reads as follows: Replace existing stone wall at water's edge with concrete landscape blocks 16" x 4' each (see attached).  
Attached: Replace existing stone wall at water's edge with concrete landscape blocks 16" x 4' each. The existing stone wall is cracked, leaning and in danger of falling. The wall extends the entire 50 feet of waterfront, with 5 foot stairs in approximate center. There are 11 steps leading to top of wall. We are proposing replacing the stone wall with concrete 16" x 4' Loc-Blocks which are available at Pepin Precast. The stairway will need to be moved back so that it will no longer extend onto the beach, causing erosion when the lake is high. Stairs will be even with the front of the wall. We will need to remove the 3 trees indicated to complete the work, and prevent destruction of the replacement wall from roots. The wall is on average 60" to 65" in height. We are proposing to pour concrete footings to place the blocks on, with 4 rows of blocks to keep wall at a uniform 64" across length of wall excluding the staircase. There is currently little to no vegetation on existing ground at top of wall, and would like to maintain the natural landscape of sand and pine needles as it is currently.
4. Received was a sketch plan which depicted a wall running along Silver Lake, one section being 22 feet wide x 64 inches high and the other being 24 feet wide x 64 inches high. There is also a set of stairs to the water running 12 – 13 feet, with 11 risers noted. 14 trees are depicted on the plan along with their circumference, and the plan states that 3 of these trees will be removed. There is a notation on the plan that states 'Beach – Variable Width'.
5. Received an engineered drawing of the proposed wall, drafted by Eric Merluzzi, PE #13003, of 184 Rowenton Road, Wentworth, NH 03282. The drawing was entitled: Proposed Retaining Walls – Pratt & Cash, 177 Silver Lake Road & 16 Camp Road, Shapleigh, ME. The client was noted as Pepin Precast, and the plan was dated November 12, 2019. The plan provides details for the construction of

the new wall, including Site Preparation, Leveling Pad & Bottom Block, Wall Drain, Backfilling & Compaction, and General Wall Layout & Construction.

6. Received was a revised sketch plan, drafted by Mr. Pratt, which depicted the location of the wall, stairs, 12 x 12' patio, 3 x 4' shed, existing trees, trees to be removed and where the replacement trees will be planted. The sketch depicted a total of 4 trees to be replaced.
7. Received was the DEP Permit by Rule dated as accepted by the MDEP on 10/10/19. The brief description of the project on the application stated: Replacement of Retaining Wall.
8. The Planning Board reviewed §105-39 'Earth removal and filling for activities other than mineral exploration and extraction', and §105-73 'Conditional Use Permits' and concurred the application and information as presented met the performance standards, with conditions.
9. A notice was mailed to all abutters within 500 feet of the property on October 9, 2019. Meetings were held on Tuesday, October 8, 2019, Tuesday October 22, 2019 and Tuesday, November 12, 2019. A site inspection was done by members on Friday, October 18, 2019.
10. The Planning Board unanimously agreed to approve the Conditional Use Permit to replace the existing retaining wall(s), which will be 64 inches in height and a total of 50 feet in length, and stairs per the plans provided, on property known as Tax Map 44, Lot 25, with conditions.
11. The conditions of approval are:
  1. **The project, the removal and replacement of the existing wall(s) and stairs, and revegetation plan which includes the replacement of the four trees to be removed, shall be completed by June 15, 2020. If this date cannot be accomplished the applicant must contact the Code Enforcement Officer, and have a new date of completion established.**
  2. **Best Management Practices shall be kept in place until the project is completed. There must be a person certified by the DEP in erosion control practices on site during the project.**
  3. **All material from the existing wall and stairs to be removed shall be taken out of Shapleigh and disposed of properly.**
12. **Additional requirement:**
  - **A building permit must be obtained from the Code Enforcement Officer, prior to the construction of the new wall.**

**Motion:**

After careful consideration and a review of all material presented to the Board, a motion was made on Tuesday, November 12, 2019, to approve the Conditional Use Permit to replace the existing retaining wall, which will be 64 inches in height and a total of 50 feet in length, and stairs per the plans provided, on property known as Tax Map 44, Lot 25 with three conditions.

**Vote:**

By a unanimous vote of 5 – 0, the motion to approve the Conditional to replace the existing retaining wall, which will be 64 inches in height and a total of 50 feet in length, and stairs per the plans provided, on property known as Tax Map 44, Lot 25 with three conditions, was accepted.

**Decision:**

**The Conditional Use Permit to replace the existing retaining wall, which will be 64 inches in height and a total of 50 feet in length, and stairs per the plans provided, on property known as Tax Map 44, Lot 25 with three conditions, was approved.**

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**Conditional Use Permit – Earth Moving in the Shoreland District to Replace Retaining Wall – Map 44, Lot 24 (18 Silver Lake Road) & Map 44, Lot 23 (16 Camp Road) – Kevin & Sheila Cash, Applicants & Property Owners**

Mr. and Mrs. Cash were present for the review of the application. Mr. Pratt also sat in on the review of the application, as he was the contractor doing the work.

Previously provided along with the application for 16 Camp Road (Map 44, Lot 23) were three pictures of an existing block wall, along with a sketch plan. The sketch plan depicts the existing structures, septic tank & leachfield location, well point, and four retaining walls. Two located between the structure and Camp Road and two between the structure and Silver Lake. The wall closest to Silver Lake appears to be between 5 and 9 feet from the high water mark.

The detailed description of the project is as follows:

We purchased this property 16 Camp Road in 1984. Around 1990 we installed a block wall in front of an existing stone wall that had been collapsing in some areas. We believe over the years due to the hydrostatic ground pressure from the hill behind it has caused the wall to bulge forward. Also over time the high water level and ice has caused the bottom course of block to disintegrate. The ground also in the front of this wall now erodes every spring. The top course of the wall now extends approximately 1 foot from its original placement. We feel this is now becoming a safety issue.

This evening Mr. Pratt provided the board with an engineered drawing of the proposed wall, drafted by Eric Merluzzi, PE #13003, of 184 Rowenton Road, Wentworth, NH 03282. The drawing was entitled: Proposed Retaining Walls – Pratt & Cash, 177 Silver Lake Road & 16 Camp Road, Shapleigh, ME. The client was noted as Pepin Precast, and the plan was dated November 12, 2019. The plan provides details for the construction of the new wall, including Site Preparation, Leveling Pad & Bottom Block, Wall Drain, Backfilling & Compaction, and General Wall Layout & Construction.

Roger A. stated that the board was also reviewing this application under §105-39 'Earth removal and filling for activities other than mineral exploration and extraction', Section D 'Earthmoving in the Shoreland District'. Roger stated it was due to earth moving greater than 10 cubic yards required Planning Board approval.

Roger A. stated the engineered plan was provided for this wall by Mr. Pratt, as requested by the board at the last meeting. Mr. Cash noted there were no trees being removed for this project.

Roger A. stated the date of completion for this wall would be the same as for Mr. Pratt, June 15, 2020. Mr. Pratt and the applicants agreed with that date.

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Previously provided along with the application for 18 Silver Lake Road (Map 44, Lot 24) was a picture of the existing stone wall to be replaced, along with a sketch plan. The sketch plan depicted the location of the existing structure, septic tank & leachfield location, well point, and existing retaining walls. One wall appears to be 2 feet from the high water mark at its closest point and a second one appears to be approximately 10 feet from the high water mark. The width of the property at the shoreline is noted as 50 feet. Also noted on the plan is the location of Silver Lake Road.

The detailed description of the project is as follows:

We purchased the property on 18 Silver Lake Road in 2005, which was beyond repair due to its lack of use over many years. At this time we found two existing stone walls both located on the lake side of the structure. One being 14' from the shoreline, the other at shoreline which was almost completely covered and buried due to years of high water issues. This past spring was the worst we have experienced with the erosion and wall collapsing. We feel with the replacement to a Loc-Block system it would finally stop the issue we face every spring.

This evening Mr. Cash provided the board with a sketch plan which included the location of the two retaining walls and the location of the trees on the property; one depicting the existing trees to be removed and the other where the replacement trees will be placed. It was noted that three trees would be removed and replaced.

Roger A. asked if the replanting schedule would be the same as for the Pratt wall, to be completed by June 15, 2020? Mr. Pratt agreed that would be appropriate. Roger said any change of date would go to the CEO. The board agreed.

Madge B. stated that this wall is rocks and they are being removed from Shapleigh. Mr. Pratt agreed they were rocks and he would remove them.

**Roger A. stated that the review under §105-73.G 'Standards applicable to conditional uses would be the same for both properties, Map 44, Lot 23 & 24, he reviewed as follows:**

- 1) The use will not have an adverse impact on spawning grounds, fish, aquatic life, birds or other wildlife habitat. **Roger A. stated, it will not. The wall(s) will help to conserve the habitat by stopping erosion and sedimentation from going into the lake.**
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. **Roger A. stated that it will.**
- 3) The use is consistent with the Comprehensive Plan. **Roger A. stated that it is. The Comprehensive Plan wants to make certain the water bodies in Shapleigh remain healthy by preventing erosion.**

- 4) Traffic access to the site is safe. **Roger A. stated that it is.**
- 5) The site design is in conformance with all municipal flood hazard protection regulations. **Roger A. stated that it was, this location is not in a flood zone.**
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. **Roger A. stated the existing rocks and stones from Map 44, Lot 24 will be taken out of Shapleigh. Roger stated on Map 44, Lot 23, the existing block wall will be moved to a new location and be reused.**
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. **Roger A. stated there was none generated by this activity.**
- 8) A stormwater drainage system capable of handling fifty-year storm without adverse impact on adjacent properties has been designed. **Roger A. stated the wall on Map 44, Lot 23 has been designed by a licensed engineer to retain the existing earth and mitigate stormwater by way of stone behind the wall. The remaining property is not being altered to create a stormwater issue. The wall on Map 44, Lot 24 will also be built to mitigate stormwater, using stone behind it.**
- 9) Adequate provisions to control soil erosion and sedimentation have been made. **Roger A. stated best management practices will be used until the area is stabilized.**
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. **Roger A. stated there is but it is not a requirement for this project.**
- 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. **Roger A. stated there is minimal vegetation being removed from site. Trees being removed will be replaced per the plan(s) provided on Map 44, Lot 24, there is no tree removal on Lot 23.**
- 12) All performance standards in this chapter applicable to the proposed use will be met. **Roger A. stated that they will with conditions.**

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

1. The project(s), the removal and replacement of the existing wall(s) and stairs, and revegetation plan which includes the replacement of the three trees to be removed on Map 44, Lot 24, shall be completed by June 15, 2020. If this date cannot be accomplished the applicant must contact the Code Enforcement Officer, and have a new date of completion established.
2. Best Management Practices shall be kept in place until the project is completed. There must be a person certified by the DEP in erosion control practices on site during the project.
3. All material from the existing wall(s) and stairs on Map 44, Lot 24 to be removed shall be taken out of Shapleigh and disposed of properly. Material from the existing wall(s) on Map 44, Lot 23 shall be reused beyond the 100 foot shoreline setback.

**Madge B. moved for approval of the Conditional Use Permit for earth moving in the Shoreland District to replace the existing wall(s) and stairs on Map 44, Lot 23 & wall(s) on Map 44, Lot 24 per the plans provided, with the above stated conditions. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

**The Findings of Facts**

1. The owner of Shapleigh Tax Map 44, Lot 23 (16 Camp Road) is Kevin E., Sheila A. Revocable Trust, mailing address of 15 Susan Lane, Rochester NH 03867.
2. The applicants are Sheila A. & Kevin E. Cash, Trustees, of 15 Susan Lane, Rochester, NH 03867.
3. The property known as Map 44, Lot 23 is located in the Shoreland District and according to the assessor the property contains .22 acres.
4. The application description reads as follows:

We purchased this property 16 Camp Road in 1984. Around 1990 we installed a block wall in front of an existing stone wall that had been collapsing in some areas. We believe over the years due to the hydrostatic ground pressure from the hill behind it has caused the wall to bulge forward. Also over time the high water level and ice has caused the bottom course of block to disintegrate. The ground also in the front of this wall now erodes every spring. The top course of the wall now extends approximately 1 foot from its original placement. We feel this is now becoming a safety issue.
5. Received were three pictures of an existing block wall, along with a sketch plan. The sketch plan depicts the existing structures, septic tank & leachfield location, well point, and four retaining walls. Two located between the structure and Camp Road and two between the structure and Silver Lake. The wall closest to Silver Lake appears to be between 5 and 9 feet from the high water mark.
6. Received an engineered drawing of the proposed wall, drafted by Eric Merluzzi, PE #13003, of 184 Rowenton Road, Wentworth, NH 03282. The drawing was entitled: Proposed Retaining Walls – Pratt & Cash, 177 Silver Lake Road & 16 Camp Road, Shapleigh, ME. The client was noted as Pepin Precast, and the plan was dated November 12, 2019. The plan provides details for the construction of the new wall, including Site Preparation, Leveling Pad & Bottom Block, Wall Drain, Backfilling & Compaction, and General Wall Layout & Construction.
7. Received was the DEP Permit by Rule dated as accepted by the MDEP on 10/15/19. The brief description of the project on the application stated: Wall Replacement
8. The Planning Board reviewed §105-39 'Earth removal and filling for activities other than mineral exploration and extraction', and §105-73 'Conditional Use Permits' and concurred the application and information as presented met the performance standards, with conditions.
9. A notice was mailed to all abutters within 500 feet of the property on October 9, 2019. Meetings were held on Tuesday, October 8, 2019, Tuesday October 22, 2019 and Tuesday, November 12, 2019. A site inspection was done by members on Friday, October 18, 2019.
10. The Planning Board unanimously agreed to approve the Conditional Use Permit to replace the existing retaining wall(s), 64 inches in height and a total of 50 feet in length, and stairs per the plans provided, on property known as Tax Map 44, Lot 23, with conditions.
11. The conditions of approval are:



1. The project, the removal and replacement of the existing wall(s), per the plan provided, shall be completed by June 15, 2020. If this date cannot be accomplished the applicant must contact the Code Enforcement Officer, and have a new date of completion established.
2. Best Management Practices shall be kept in place until the project is completed. There must be a person certified by the DEP in erosion control practices on site during the project.
3. All material from the existing wall(s) on Map 44, Lot 23 shall be reused beyond the 100 foot shoreline setback, or taken out of Shapleigh and disposed of properly.

12. **Additional requirement:**

- A building permit must be obtained from the Code Enforcement Officer, prior to the construction of the new wall.

**Motion:**

After careful consideration and a review of all material presented to the Board, a motion was made on Tuesday, November 12, 2019, to approve the Conditional Use Permit to replace the existing retaining wall(s), which will be 64 inches in height and a total of 50 feet in length, and stairs per the plans provided, on property known as Tax Map 44, Lot 23 with three conditions.

**Vote:**

By a unanimous vote of 5 – 0, the motion to approve the Conditional to replace the existing retaining wall(s), which will be 64 inches in height and a total of 50 feet in length, and stairs per the plans provided, on property known as Tax Map 44, Lot 23 with three conditions, was accepted.

**Decision:**

**The Conditional Use Permit to replace the existing retaining wall(s), which will be 64 inches in height and a total of 50 feet in length, and stairs per the plans provided, on property known as Tax Map 44, Lot 23 with three conditions, was approved.**

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**The Findings of Facts**

1. The owner of Shapleigh Tax Map 44, Lot 24 (18 Silver Lake Road) is Kevin E., Sheila A. Revocable Trust, mailing address of 15 Susan Lane, Rochester NH 03867.
2. The applicants are Sheila A. & Kevin E. Cash, Trustees, of 15 Susan Lane, Rochester, NH 03867.
3. The property known as Map 44, Lot 24 is located in the Shoreland District and according to the assessor the property contains .19 acres.
4. The application description reads as follows:  
We purchased the property on 18 Silver Lake Road in 2005, which was beyond repair due to its lack of use over many years. At this time we found two existing stone walls both located on the lake side of the structure. One being 14' from the shoreline, the other at shoreline which was almost completely

covered and buried due to years of high water issues. This past spring was the worst we have experienced with the erosion and wall collapsing. We feel with the replacement to a Loc-Block system it would finally stop the issue we face every spring.

5. Received was a picture of the existing stone wall to be replaced, along with a sketch plan. The sketch plan depicted the location of the existing structure, septic tank & leachfield location, well point, and existing retaining walls. One wall appears to be 2 feet at its closest point from the high water mark and a second one appears to be approximately 10 feet from the high water mark. The width of the property at the shoreline is noted as 50 feet. Also noted on the plan is the location of Silver Lake Road.
6. Received a sketch plan which included the location of the two retaining walls and the location of the trees on the property; one depicting the existing trees to be removed and the other where the replacement trees will be placed. It was noted that three trees would be removed and replaced.
7. Received was the DEP Permit by Rule dated as accepted by the MDEP on 10/15/19. The brief description of the project on the application stated: Wall Replacement
8. The Planning Board reviewed §105-39 'Earth removal and filling for activities other than mineral exploration and extraction', and §105-73 'Conditional Use Permits' and concurred the application and information as presented met the performance standards, with conditions.
9. A notice was mailed to all abutters within 500 feet of the property on October 9, 2019. Meetings were held on Tuesday, October 8, 2019, Tuesday October 22, 2019 and Tuesday, November 12, 2019. A site inspection was done by members on Friday, October 18, 2019.
10. The Planning Board unanimously agreed to approve the Conditional Use Permit to replace the existing retaining wall(s), less than four feet in height and a total of 50 feet in length, per the plans provided, on property known as Tax Map 44, Lot 24, with conditions.
11. The conditions of approval are:
  1. **The project, the removal and replacement of the existing wall(s), and revegetation which includes the replacement of the three trees to be removed on Map 44, Lot 24, shall be completed by June 15, 2020. If this date cannot be accomplished the applicant must contact the Code Enforcement Officer, and have a new date of completion established.**
  2. **Best Management Practices shall be kept in place until the project is completed. There must be a person certified by the DEP in erosion control practices on site during the project.**
  3. **All material from the existing wall(s) on Map 44, Lot 24 to be removed shall be taken out of Shapleigh and disposed of properly.**
12. **Additional requirement:**
  - **A building permit must be obtained from the Code Enforcement Officer, prior to the construction of the new wall.**

**Motion:**

After careful consideration and a review of all material presented to the Board, a motion was made on Tuesday, November 12, 2019, to approve the Conditional Use Permit to replace the existing retaining wall(s), which will be less than four feet in height and a total of 50 feet in length, per the plans provided, on property known as Tax Map 44, Lot 24 with three conditions.

**Vote:**

By a unanimous vote of 5 – 0, the motion to approve the Conditional to replace the existing retaining wall(s), which will be less than four feet in height and a total of 50 feet in length, per the plans provided, on property known as Tax Map 44, Lot 24 with three conditions, was accepted.

**Decision:**

**The Conditional Use Permit to replace the existing retaining wall(s), which will be less than four feet in height and a total of 50 feet in length, per the plans provided, on property known as Tax Map 44, Lot 24 with three conditions, was approved.**

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**After-the-Fact Conditional Use Permit – Earth Moving in the Shoreland District to Replace Retaining Wall – Map 44, Lot 32 (210 Silver Lake Road) – Brian Varney, Applicant & Property Owner**

Mr. Varney was unable to be at the meeting this evening. Chris Carbone, the contractor on the project was present to represent him.

Provided along with the application, was the signed DEP Permit by Rule, Description: Looking to replace hazardous retaining wall & patio, dated as accepted on October 7, 2019. A sketch plan was provided depicting a 6' x 10' shed; location of the leach field & subsurface wastewater disposal system (a copy of the actual SWDS application, dated 11/5/04, drafted by John Large, SE #7 was provide as well); 24' x 28' house & 5' x 16' porch; the location of four retaining walls, one wall to be replaced; the location of the well & patio to be replaced; and the location of the beach, sandy area, mulch/blueberry bushes & mulch/plant areas, all in relation to the lake, side lot lines & Silver Lake Road. It is noted on the plan that the house is 70 feet from the lake.

The Detailed Description of the Project is as follows:

The activity that we are proposing to perform is the replacement of an existing 31' long, 4' high (at its highest point) timber railroad tie retaining wall and an approx. 24' x 24' concrete/paver walkway and patio that has become a hazard to the home and homeowner. The new wall is to be located in the same location as the existing wall and the dimensions are to remain the same. The concrete and paver walkway and patio are to be replaced with concrete pavers manufactured by Genest concrete and are to remain in the same location with the same dimensions as the existing. All MDEP erosion control practices are to be used during construction of the project and monitored by Roger Pratt a MDEP erosion control certified contractor with certification #367.

Mike Carbone from Action Property Services, Inc. has my permission to act on my behalf at the planning board meeting.

The board requested at the previous meeting on October 22, 2019, the dimensions of the wall still needing to be replaced, both the length and width, as well as the dimensions of the landing area; and what would be used to restore and stabilize the area. In addition, the board would also need a date of completion for the entire project, including any revegetation.

Roger A. opened the application review by stating Mr. Varney had an after-the-fact permit. Chris Carbone was representing Mr. Varney this evening, and an email from Mr. Varney, dated 11/8/19 stated that Mr. Carbone would be attending the meeting.

Roger A. stated that at the last meeting the board noted there was no evidence at the site visit that there was a patio on site, so the board asked Mr. Varney what he would be putting in the area that was noted as 'patio' on the plan. Roger also said the board needed to know the size of the wall that was going in.

Mr. Carbone presented a photo to the board before the area was disturbed. The board now had a total of three pictures, one from google earth and two others, none of which clearly demonstrated that a patio was present on site. The pictures did show the walkway to the door. Mr. Carbone asked if they could do the patio, walkway, and the wall or just the walkway and the wall. Roger A. stated the patio was not going to be allowed, and noted that that was clearly stated at the previous meeting. Mr. Carbone stated that he did not attend that meeting.

The board members reviewed the photo's one additional time. Madge B. asked if there was a picture that showed the wall? There was none. Mr. Carbone stated that it was old railroad ties. Roland L. noted the area was overgrown with plants. Mr. Carbone agreed and said part of the wall had fallen over. He said the issue was water, there was ice buildup getting into the basement. Roger showed Madge where the wall was on the picture.

Roger A. asked how long the wall would be? Mr. Carbone stated the wall was approximately 30 feet long. He said the new material would be precast concrete block. Madge B. asked if there was a curve? Mr. Carbone said that yes, there was a curve to go around the tree, so it wouldn't have to be removed. Madge asked if a curve can be made with the block. Mr. Carbone stated that yes, you could, they are made to be able to do that. Ann H. asked what kind of tree was there? Mr. Carbone stated it was a cluster of White Birch. Ann asked if the roots would grow into the wall? Mr. Carbone did not believe so.

Ann H. asked if they dug down deeper (the area between the house and the wall) to get rid of the water problem? Mr. Carbone said the grade was a problem, so the water flow was going into the basement, heavy rains were a problem.

Madge B. asked because there would be no patio, what was going in that area instead? Mr. Carbone stated that Mr. Varney had spoken with someone at the DEP and they stated that the area could be put back as grass. Mr. Carbone said that if only the walkway was going to be allowed, Mr. Varney said he would be using grass.

Roger A. said the walkway from the side walkway to the rear door, he believed could be 4 feet in width in order to access the door. He stated that the wall could be up to 31 feet in length. Mr. Carbone asked if he could go wider at the door? Roger stated that he thought it should be four feet the entire length. Ann H. stated that Mr. Varney at the last meeting was asking for a patio, so perhaps that is why he was requesting a landing area? She said the board wasn't allowing the patio. Madge B. stated that she saw just a walkway and then grass.

Steve F. said there appeared to be a vegetated area between the existing wall and the proposed grass area. Steve asked if the board should get a sketch of exactly what Mr. Varney was going to be doing now? Steve asked Mr. Carbone if he intended to do the work right now? Mr. Carbone said Mr. Varney wanted to get it in before winter, at least the walkway and the wall.

Steve F. asked how the board wanted to move forward? Steve said he didn't have a problem with not stretching this out another two weeks, he felt Mr. Carbone could add to the sketch provided, as to what he was going to be doing, so the CEO has a plan to go by. Mr. Carbone said the board wants the walkway, grass and? Steve stated grass, blueberry bushes, and a revegetated area.

Madge B. asked if the walkway coming down along the house was not changing? Steve F. said, correct. Roger A. said it was not removed, only the wall on the side was removed. Madge asked where it says mulch and blueberry bushes, is this part of what the board is approving? Mr. Carbone said that area was already existing, what he was doing was above that area. She said Steve mentioned blueberry bushes, so she thought some were being added. Steve said what he was speaking of was that instead of removing the existing blueberry bushes and bringing the lawn to the edge of the wall, he wanted to keep that area as it is, and bring the lawn up to that area. Mr. Carbone agreed and stated there was a mulch bed there as well.

Roger A. stated that there would be no more than 31 feet of wall, and the walkway would be no wider than four feet in width. Members waited for Mr. Carbone to add the information to the plan. Mr. Carbone sketched in an area approximately 18' x 28' for the grass, 4' x 20' for the walkway and the new wall would be 4' high x 31 linear feet long. The words 'patio to be replaced' were crossed off.

Roger A. stated this was an after-the-fact permit and when reviewing §105-39, it speaks of stabilizing the area as soon as possible; Roger noted that the silt fence has been put up.

Roger A. asked what a date of completion would be? Mr. Carbone stated that if the projects gets shut down by winter, then he could be done by June 15, 2019.

Ann H. asked if the board needed to address the patio blocks he won't be using for a patio? Board members did not believe so.

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

- 1. The project, the replacement of the deteriorating railroad tie wall, and revegetation which includes the new lawn on Map 44, Lot 32, shall be completed by June 15, 2020. If this date cannot be accomplished the applicant must contact the Code Enforcement Officer, and have a new date of completion established.**

2. **Best Management Practices shall be kept in place until the project is completed. There must be a person certified by the DEP in erosion control practices on site during the project.**

Roger A. then reviewed §105-73.G ‘Standards applicable to conditional uses’:

- 1) The use will not have an adverse impact on spawning grounds, fish, aquatic life, birds or other wildlife habitat. **Roger A. stated, it will not. The wall will help to conserve the habitat by stopping erosion and sedimentation from going into the lake, once completed.**
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. **Roger A. stated that it will.**
- 3) The use is consistent with the Comprehensive Plan. **Roger A. stated that it is. The Comprehensive Plan wants to make certain the water bodies in Shapleigh remain healthy by preventing erosion.**
- 4) Traffic access to the site is safe. **Roger A. stated that it is.**
- 5) The site design is in conformance with all municipal flood hazard protection regulations. **Roger A. stated that it was, this location is not in a flood zone.**
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. **Roger A. stated the solid waste has already been disposed of outside of the Shoreland District.** *(Mr. Carbone stated it went to Carroll Paving.)*
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. **Roger A. stated there was none generated by this activity.**
- 8) A stormwater drainage system capable of handling fifty-year storm without adverse impact on adjacent properties has been designed. **Roger A. stated the stormwater was running from the neighboring property onto this property. By putting up the new wall it will keep the stormwater from coming from the neighboring property and this property is level, so stormwater will remain on site. In addition, the plantings will help to absorb stormwater.**
- 9) Adequate provisions to control soil erosion and sedimentation have been made. **Roger A. stated best management practices will be used until the area is stabilized, currently silt fencing is in place and remain until the project is completed.** *(Mr. Carbone stated that he will get the property close to grade and put straw on top until spring to prevent erosion.)*
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. **Roger A. stated there is but it is not a requirement for this project.**
- 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. **Roger A. stated there is minimal noise during the project, no glare, fumes, dust or odors.**
- 12) All performance standards in this chapter applicable to the proposed use will be met. **Roger A. stated that they will with conditions.**

**Madge B. wanted it in the record that Mr. Pratt will be acting as supervisor on this project, where he is MDEP certified in erosion control.**

**Roland L. stated that because this is in the Shoreland District, no fertilizer can be used on the lawn.**

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

- 1. The project, the replacement of the deteriorating railroad tie wall, walkway and revegetation which includes the new lawn on Map 44, Lot 32, shall be completed by June 15, 2020. If this date cannot be accomplished the applicant must contact the Code Enforcement Officer, and have a new date of completion established.**
- 2. Best Management Practices shall be kept in place until the project is completed. There must be a person certified by the DEP in erosion control practices on site during the project.**
- 3. No fertilizer shall be used on the property.**

**Madge B. moved for approval of the After-the-Fact Conditional Use Permit for earth moving in the Shoreland District to replace the existing railroad tie wall and walkway, and revegetate an 18' x 28' area on Map 44, Lot 32, per the plans provided, with the above stated conditions. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

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### **The Findings of Facts**

1. The owner of Shapleigh Tax Map 44, Lot 32 (210 Silver Lake Road), is Brian Varney of 4 Margaret Lane, Lee, NH 03861.
2. The property is located in the Shoreland District and according to the assessor the property contains .12 acres.
3. The application description reads as follows: The activity that we are proposing to perform is the replacement of an existing 31' long, 4' high (at its highest point) timber railroad tie retaining wall and an approx. 24' x 24' concrete/paver walkway and patio that has become a hazard to the home and homeowner. The new wall is to be located in the same location as the existing wall and the dimensions are to remain the same. The concrete and paver walkway and patio are to be replaced with concrete pavers manufactured by Genest concrete and are to remain in the same location with the same dimensions as the existing. All MDEP erosion control practices are to be used during construction of the project and monitored by Roger Pratt a MDEP erosion control certified contractor with certification #367. Mike Carbone from Action Property Services, Inc. has my permission to act on my behalf at the planning board meeting.
4. Received was the signed DEP Permit by Rule, Description: Looking to replace hazardous retaining wall & patio, dated as accepted on October 7, 2019. A sketch plan was provided depicting a 6' x 10' shed; location of the leach field & subsurface wastewater disposal system (a copy of the actual SWDS application, dated 11/5/04, drafted by John Large, SE #7 was provide as well); 24' x 28' house & 5' x 16' porch; the location of four retaining walls, one wall to be replaced; the location of the well & patio to be replaced; and the location of the beach, sandy area, mulch/blueberry bushes & mulch/plant areas, all in relation to the lake, side lot lines & Silver Lake Road. It is noted on the plan that the house is 70 feet from the lake.

5. Received was a photo depicting the site before the area was disturbed. The board received a total of three pictures, one from google earth and two others, none of which clearly demonstrated that a patio was present on site. The pictures did show the walkway to the door. Mr. Carbone asked if they could do the patio, walkway and the wall or just the walkway and the wall. Roger A. stated the patio was not going to be allowed, and noted that that was clearly stated at the meeting on October 22, 2019.
6. Received during the meeting on November 12, 2019 was the sketch plan, an area approximately 18' x 28' for grass was added, a 4' x 28' area for the walkway to the back door, and the new wall will be 4' high x 31 linear feet long. The words 'patio to be replaced' were crossed off the sketch plan.
7. Received was the DEP Permit by Rule dated as accepted by the MDEP on 10/7/19. The brief description of the project on the application stated: Looking to replace hazardous retaining wall & patio.
8. The Planning Board reviewed §105-39 'Earth removal and filling for activities other than mineral exploration and extraction', and §105-73 'Conditional Use Permits' and concurred the application and information as presented met the performance standards, with conditions.
9. A notice was mailed to all abutters within 500 feet of the property on October 23, 2019. Meetings were held on Tuesday October 22, 2019 and Tuesday, November 12, 2019. A site inspection was done by members on Friday, October 18, 2019.
10. The Planning Board unanimously agreed to approve the After-the-Fact Conditional Use Permit to replace the existing retaining wall, which will be 4 feet in height by 31 linear feet, a walkway along the rear of the structure 4' x 20' in size, and a new lawn area 18' x 28', per the per the plans provided, on property known as Tax Map 44, Lot 32, with conditions.
11. The conditions of approval are:
  1. **The project, the replacement of the deteriorating railroad tie wall, and revegetation which includes the new lawn on Map 44, Lot 32, shall be completed by June 15, 2020. If this date cannot be accomplished the applicant must contact the Code Enforcement Officer, and have a new date of completion established.**
  2. **Best Management Practices shall be kept in place until the project is completed. There must be a person certified by the DEP in erosion control practices on site during the project.**
  3. **No fertilizer shall be used on the property.**
12. **Additional requirement:**
  - **A building permit must be obtained from the Code Enforcement Officer, prior to the construction of the new wall.**

**Motion:**



After careful consideration and a review of all material presented to the Board, a motion was made on Tuesday, November 12, 2019, to approve the After-the-Fact Conditional Use Permit to replace the existing retaining wall, which will be 4 feet in height by 31 linear feet, a walkway along the rear of the structure 4' x 20' in size, and a new lawn area 18' x 28', per the per the plans provided, on property known as Tax Map 44, Lot 32, with three conditions.

**Vote:**

By a unanimous vote of 5 – 0, the motion to approve the After-the-Fact Conditional Use Permit to replace the existing retaining wall, which will be 4 feet in height by 31 linear feet, a walkway along the rear of the structure 4' x 20' in size, and a new lawn area 18' x 28', per the per the plans provided, on property known as Tax Map 44, Lot 32, was accepted.

**Decision:**

**The After-the-Fact Conditional Use Permit to replace the existing retaining wall, which will be 4 feet in height by 31 linear feet, a walkway along the rear of the structure 4' x 20' in size, and a new lawn area 18' x 28', per the per the plans provided, on property known as Tax Map 44, Lot 32, was approved.**

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**Conditional Use Permit – Earth Moving in the Shoreland District to Replace Retaining Wall – Map 44, Lot 27 (188 Silver Lake Road) – Scott & Patricia Phelan, Applicant & Property Owner**

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

Provided along with the application, was a sketch plan depicting the existing 22' x 38' camp and its location in relation to the side lots lines, Silver Lake Road and Silver Lake; the location of a 10' x 10' shed & 6' x 8' shed; the well and the location of the retaining wall along the water's edge, along with a set of stairs. The Permit by Rule was provided, which described the project as: Replacement of Retaining Wall, dated as mailed 10/13/2019, and pictures of the existing retaining wall were also provided.

Additionally provided, were two letters from Mr. Phelan. One stated the reason for the application, that being 'I am applying for a permit to replace my existing retaining wall at my property 188 Silver Lake Road, Shapleigh Maine. The existing wall is cracked and deteriorating. We are concerned that it could collapse with another harsh winter'. The second letter stated the vegetation remediation, that being 'In the area of the project there is little to no vegetation that will be disturbed'.

The application detailed description of the project states: Replace cracked and deteriorating retaining wall.

The Planning Board received the signed Permit by Rule, via CEO Demers, dated as accepted on 10/23/2019. The PBR in an attached letter between the applicant and Claire Briggs, Environmental Specialist in the Bureau of Land Resources, DEP, states that the existing wall is 50 feet long by 4 feet high, and that the stairs will be replaced as well.

This evening, Mr. Phelan provided the board with two new sketch plans. One depicted the existing camp, concrete patio area, deck, stairs, block wall and rock walls, as well as the existing trees in the area of the wall(s), as well as a proposed tree to be removed near Silver Lake Road and the two trees to be removed along the wall(s). The second sketch depicted the camp, proposed new wall(s), patio area, stairs, and location of the three new trees to be planted, two approximately 8 feet from the wall(s) and one located near Silver Lake Road. In addition, four pictures were provided.

It was noted by Mr. Pratt that this wall will be constructed the same way as his wall, using the same material and stairs. The same engineering will be used as presented for his wall.

Roger A. asked if board members had any questions for Mr. Phelan? There were none.

Roger A. asked what would be used to backfill behind the wall? Mr. Pratt said it was the same as his wall, using stone. Mr. Pratt said he was removing the existing wooden deck because he would be getting into that area to replace the wall. Mr. Pratt stated the new patio would actually be smaller than the existing. Mr. Pratt noted the existing concrete patio will also go, along with some steps, and the concrete will be replaced with pavers.

Roger A. asked if the plantings will be completed by June 15, 2020? Mr. Pratt stated that should work. Roger said a change in date would go to the CEO.

Steve F. asked about the stairs? Mr. Pratt stated that the stairs were moving down to the end to line up with the dock, and also they would be moving back to line up with the wall. Madge B. asked about the area that said 'proposed new', was that a new patio? Roger A. said yes, because the concrete patio was being removed. Mr. Pratt agreed, and said when the wall is straightened out, it will affect the existing concrete. Madge wanted to be sure the proposed new patio area would not be bigger than the existing. Mr. Phelan stated that the new patio area would be 30 to 40 square feet less than the existing.

Roger A. asked if there were any additional questions? There were none. Roger stated the same sections of the ordinance apply, those being §105-39 and §105-73. The applicant was before the board due to earth moving in excess of 10 cubic yards in the Shoreland District.

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

- 1) The use will not have an adverse impact on spawning grounds, fish, aquatic life, birds or other wildlife habitat. **Roger A. stated, it will not. The wall will help to conserve the habitat by stopping erosion and sedimentation from going into the lake.**
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. **Roger A. stated that it will.**
- 3) The use is consistent with the Comprehensive Plan. **Roger A. stated that it is. The Comprehensive Plan wants to make certain the water bodies in Shapleigh remain healthy by preventing erosion.**
- 4) Traffic access to the site is safe. **Roger A. stated that it is.**
- 5) The site design is in conformance with all municipal flood hazard protection regulations. **Roger A. stated that it was, this location is not in a flood zone.**

- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. **Roger A. stated the existing material will be taken out of Shapleigh.**
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. **Roger A. stated there was none generated by this activity.**
- 8) A stormwater drainage system capable of handling fifty-year storm without adverse impact on adjacent properties has been designed. **Roger A. stated the new wall(s) will be designed to retain the existing earth and mitigate stormwater by way of stone behind the wall. The remaining property is not being altered to create a stormwater issue.**
- 9) Adequate provisions to control soil erosion and sedimentation have been made. **Roger A. stated best management practices will be used until the area is stabilized.**
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. **Roger A. stated there is but it is not a requirement for this project.**
- 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. **Roger A. stated there is minimal vegetation being removed from site. Trees being removed will be replaced per the plan(s) provided.**
- 12) All performance standards in this chapter applicable to the proposed use will be met. **Roger A. stated that they will with conditions.**

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

1. **The project, the removal and replacement of the existing wall(s), patio, and stairs, and revegetation plan which includes the replacement of the three trees to be removed, shall be completed by June 15, 2020. If this date cannot be accomplished the applicant must contact the Code Enforcement Officer, and have a new date of completion established.**
2. **Best Management Practices shall be kept in place until the project is completed. There must be a person certified by the DEP in erosion control practices on site during the project.**
3. **All material from the existing wall(s), patios and stairs to be removed shall be taken out of Shapleigh and disposed of properly.**

**Madge B. moved for approval of the Conditional Use Permit for earth moving in the Shoreland District to replace the existing wall(s), patio, and stairs per the plans provided, on property known as Map 44, Lot 27, with the above stated conditions. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

Nothing further was discussed.

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**The Findings of Facts**

1. The owner of Shapleigh Tax Map 44, Lot 27 (188 Silver Lake Road), is Scott D. Phelan, of 8 Valley Street, Saugus, MA 01906.
2. The property is located in the Shoreland District and according to the assessor the property contains .14 acres.
3. The application description reads as follows: Replace cracked and deteriorating retaining wall.

4. Received were two letters from Mr. Phelan. One stated the reason for the application, that being 'I am applying for a permit to replace my existing retaining wall at my property 188 Silver Lake Road, Shapleigh Maine. The existing wall is cracked and deteriorating. We are concerned that it could collapse with another harsh winter'. The second letter stated the vegetation remediation, that being 'In the area of the project there is little to no vegetation that will be disturbed'.
5. Received was a sketch plan depicting the existing 22' x 38' camp and its location in relation to the side lot lines, Silver Lake Road and Silver Lake; the location of a 10' x 10' shed & 6' x 8' shed; the well and the location of the retaining wall along the water's edge, along with a set of stairs. The Permit by Rule was provided, which described the project as: Replacement of Retaining Wall, dated as mailed 10/13/2019, and pictures of the existing retaining wall were also provided.
6. Received were two new sketch plans. One depicted the existing camp, concrete patio area, deck, stairs, block wall and rock walls, as well as the existing trees in the area of the wall(s), as well as a proposed tree to be removed near Silver Lake Road and the two trees to be removed along the wall(s). The second sketch depicted the camp, proposed new wall(s), patio area, stairs, and location of the three new trees to be planted, two approximately 8 feet from the wall(s) and one located near Silver Lake Road. In addition, four pictures were provided.
7. Received was the DEP Permit by Rule, dated as accepted on 10/23/2019. The PBR in an attached letter between the applicant and Claire Briggs, Environmental Specialist in the Bureau of Land Resources, DEP, states that the existing wall is 50 feet long by 4 feet high, and that the stairs will be replaced as well.
8. The Planning Board reviewed §105-39 'Earth removal and filling for activities other than mineral exploration and extraction', and §105-73 'Conditional Use Permits' and concurred the application and information as presented met the performance standards, with conditions.
9. A notice was mailed to all abutters within 500 feet of the property on October 23, 2019. Meetings were held on Tuesday October 22, 2019 and Tuesday, November 12, 2019. A site inspection was done by members on Friday, October 18, 2019.
10. The Planning Board unanimously agreed to approve the Conditional Use Permit to replace the existing retaining wall(s), which will be 4 feet in height and 50 feet in length, patio, and stairs per the plans provided, on property known as Tax Map 44, Lot 27, with conditions.
11. The conditions of approval are:
  1. **The project, the removal and replacement of the existing wall(s), patio, and stairs, and revegetation plan which includes the replacement of the three trees to be removed, shall be completed by June 15, 2020. If this date cannot be accomplished the applicant must contact the Code Enforcement Officer, and have a new date of completion established.**
  2. **Best Management Practices shall be kept in place until the project is completed. There must be a person certified by the DEP in erosion control practices on site during the project.**
  3. **All material from the existing wall(s), patio, deck, and stairs to be removed shall be taken out of Shapleigh and disposed of properly.**

12. **Additional requirement:**

- **A building permit must be obtained from the Code Enforcement Officer, prior to the construction of the new wall.**

**Motion:**

After careful consideration and a review of all material presented to the Board, a motion was made on Tuesday, November 12, 2019, to approve the Conditional Use Permit to replace the existing retaining wall(s), which will be four feet in height and a total of 50 feet in length, patio, and stairs per the plans provided, on property known as Tax Map 44, Lot 27 with three conditions.

**Vote:**

By a unanimous vote of 5 – 0, the motion to approve the Conditional Use Permit to replace the existing retaining wall(s), which will be four feet in height and a total of 50 feet in length, patio, and stairs per the plans provided, on property known as Tax Map 44, Lot 27 with three conditions, was accepted.

**Decision:**

**The Conditional Use Permit to replace the existing retaining wall(s), which will be four feet in height and a total of 50 feet in length, patio, and stairs per the plans provided, on property known as Tax Map 44, Lot 27 with three conditions, was approved.**

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**Other:**

**Possible Ordinance Changes to Allow for Low Retaining Walls in the Shoreland District and to Allow for a New Accessory Structure in the Shoreland District**

Board members reviewed the two ordinances that they were given at the last meeting. They are as follows:

**Proposed Addition to the Zoning Ordinance**

§105-4. Nonconformance

D. Nonconforming structures.

**(9) Low Retaining Walls in the Shoreland District less than 24 inches in height.**

**Retaining walls that are not necessary for erosion control shall meet the structure setback requirement, except for low retaining walls and associated fill provided all of the following conditions are met:**

- (a) The site has been previously altered and an effective vegetated buffer does not exist;**

- (b) The wall(s) is(are) at least 25 feet horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;**
- (c) The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;**
- (d) The total height of wall(s), in the aggregate, are no more than 24 inches;**
- (e) Retaining walls are located outside of the 100-year floodplain on rivers, streams, coastal wetlands, and tributary streams, as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils.**
- (f) The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and**
- (g) A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:**
  - (1) The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch;**
  - (2) Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;**
  - (3) Only native species may be used to establish the buffer area;**
  - (4) A minimum buffer width of 15 feet, horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a wetland;**
  - (5) A footpath not to exceed the standards in Section 105-51.B(1)(a) may traverse the buffer.**

Board members discussed presenting the adoption of allowing low retaining walls. CEO Demers felt it would be a good idea to have the Planning Board review the walls to start, and he also suggested requiring a survey to be sure the new walls are placed as required, just as with a best practical location. Steve F. felt doing the survey would be important and a good idea, so that the homeowner and the board knows exactly what is on the lot and where the property lines are. Roland L. noted that the board has seen occasions where property owners think their property line is in a certain location, when in fact it is not, once the survey is completed. He thought the surveying piece would be an appropriate addition. CEO Demers believed this would be ok legally. Roger A. agreed.

Steve F. thought this would also cleanup the plans for walls. All members agreed that some plans presented are done clearly and others are nothing more than a sketch on a napkin. Steve said it is harder on the board to try to prove something based on a napkin. Madge B. agreed. Steve felt this would be a good time to require a survey.

Roger A. noted that §105-4.7(c), 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. He stated this was for a relocation of a non-conforming structure, and he felt the board could apply this to these retaining walls. Roger said this would make certain these new walls were on the property they were supposed to be on. Steve F. thought this would be a good way to clean up issues that exist.

Barbara F. asked if she should refer back to §105-4.7(c). The board members believed this would work, and if it didn't the ordinance could be adjusted in the future.

Steve F. asked if there was a way the applicant could be informed of the requirements before they get to the meeting. Barbara F. stated that this is why they are supposed to go to the CEO prior to submitting an application, so he can review it with them. She added that the application does come to her, and she lets them know if they forgot typical material, but she is not allowed to speak for the board as to whether or not the sketch plan is adequate, only the board can state that. She added that she refers the applicants to all applicable ordinances that will be reviewed, and again suggest they speak with CEO Demers if they need any additional information on how to interpret the ordinance.

CEO Demers stated that the application also lets them know what is required. He stated that in some instances the board doesn't know they need additional until they review the material, because it can depend on the circumstance.

Steve F. thought the survey should be done prior to coming before the board. Madge B. thought there was an advantage to not having the survey done before they come to the board, and that is if the board said there is no way what they are asking will be approved. She hates to have them pay for a survey first. CEO Demers asked if the ordinance should say 'may' require. Barbara F. reminded the board that although the applicant wants this application processed in two weeks, sometimes it may take longer. She said it was not uncommon in other towns for it to take a lot longer, and if more information is required it will just mean another meeting. CEO Demers agreed, if it takes longer it does. Maggie M. agreed she didn't want someone spending money when they are not allowed to follow through. Roger A. said he had no issue saying at the first meeting that the board was going to require a survey. He noted that in the past there were issues with boundary lines, and an applicant was not able to do the wall as depicted because of the true boundary line. Steve thought it would be nice to have the information on a plan. The board members agreed.

The board decided to add the requirement to the ordinance for low retaining walls as follows:

***(h) All approved plans may require confirmation in writing by a licensed surveyor that the placement of the structure is correct per the specifications approved by the Planning Board.***

The board also discussed applying this to the replacement of existing retaining walls, as they are non-conforming structures. They did note that if only the middle of a wall was being replaced, or there were existing survey markers, then a new survey may not be required.

Ann H. asked if the board was presented with photos and they have a survey, why does the board have to do a site inspection? Roger A. said the site visit is not required but it is for the board's information and if the board sees what is actually on site, often it helps to expedite the process. Barbara F. said the pictures don't always show everything, it depends on who took the photo and what they were trying to portray.

Roger said the only site inspection that the board is obligated to do is with a subdivision, with other applications they are not required. Roger said he has always done a site inspection, because once on site, you know exactly what is there and what is taking place. He also felt the board can alleviate concerns of the neighbor because the board sees all that is going on, not only on site, but in the general vicinity. Maggie M. agreed, saying that she can envision what is taking place better after seeing the location. The board agreed a site inspection was a good idea, even though it was not mandatory.

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#### §105-15. Definitions

**Retaining Wall – Retaining Wall is a structure that retains (holds back) any material (usually earth) and prevents it from sliding or eroding away. It is designed to resist the material pressure of the material it is holding back.**

**Low Retaining Wall – A low retaining wall is considered to be a wall less than 24 inches in height measured from the base of the wall to the top of the wall. The base is considered the area exposed that can be seen upon visual inspection.**

Barbara F. stated that she used what she found in Webster's Dictionary, and another site on line. After a brief discussion members agreed the wall definitions would be presented as written above.

Steve F. asked if there was no definition, was there a place in the ordinance that said if there was no definition, it would be what is written in the dictionary. Roger A. stated that is what is done, it is written somewhere. Roger said because the board is adding a new ordinance for retaining walls, there should also be a definition of what a wall is.

Ann H. asked if the last sentence 'The base is considered the area exposed that can be seen upon visual inspection' could be an issue? All members agreed, as well as CEO Demers that CEO Demers knew what to look for. CEO Demers believed this referred to the exposed face, not the footing. Roger A. agreed.

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#### **New Accessory Structure in the Shoreland District**

**On a non-conforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the code enforcement officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure shall not exceed eighty (80) square feet in area nor eight (8) feet in height, and shall be located as far from the shoreline or tributary stream as practical and shall meet all other applicable standards, including lot coverage and vegetation clearing limitations. Additionally the following apply:**

- 1) In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure.**
- 2) At no time shall the structure be expanded.**
- 3) The structure shall not be used for habitation.**



Barbara F. stated she added numbers 2 and 3 after the previous discussion regarding this ordinance. The board agreed to the additions. Roger A. asked CEO Demers if when he measured the 8 feet, was he looking at the structure from the ground to the top ridge. CEO Demers said that is what he would do.

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Barbara F. asked CEO Demers if he wanted to add anything?

CEO Demers said he was still confused under §105-39.B ‘Earthmoving not requiring a conditional use permit / earthmoving activities allowed without a permit’. He read B(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. He said this means only the general purpose district was exempt from a Conditional Use Permit. He felt in this section even less than 10 cubic yards required a CUP.

Ann H. read under Section D, which in part states ‘except earthmoving of less than 10 cubic yards which shall required a permit form the CEO (except as provided above)’. CEO Demers asked if D overrides B. Roger A. agreed that anything greater than 10 cubic yards comes to the Planning Board. CEO Demers said he understood now that anything over 10 cubic yards in the Shoreland District requires a CUP.

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Madge B. noted that SMRPC had a workshop with case laws, Barbara noted that she read them and asked her if she would review them. She stated she didn’t get to all of them but two of the cases reaffirmed that they deferred to the Planning Boards decision and it was important that the Findings of Fact and Conclusions are thoroughly documented. She pointed out one case where there was little documentation by the board, so the court remanded the case back to the Planning Board to do their job. She added at that there was also a case regarding Code Enforcement and how important documentation was. Barbara F. stated that is why she felt it was so important the board be specific in their findings.

Roger A. agreed and noted that this evening, it was why he could not approve all the walls together, even though they were all very similar. He noted some required landscaping, some did not, while not all required engineering.

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Barbara F. stated that the Public Hearing for the ordinance changes would be held on Tuesday, December 10<sup>th</sup> at 6:00 pm. She would start posting notices now. She also noted that there could still be a change to the ordinances after the first Public Hearing but once the second hearing was held after the first of the year, whatever was agreed upon would have to be voted on.

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### **Growth Permits**

**There are Growth Permits available.**

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

**NOTE: The winter hours are in effect thru March 31st, the meetings now begin at 6:30 p.m. and any scheduled public hearing begins at 6:00 p.m.**

The next meeting will be held **Tuesday, November 26, 2019** at 6:30 p.m.

The Planning Board meets the 2<sup>nd</sup> and 4<sup>th</sup> Tuesday of each month unless it falls on a holiday or Election Day. Should there be a cancellation due to a storm event, holiday or Election, the meeting will typically be held the following Wednesday, also at 7:30 p.m. Please contact the Land Use Secretary if there is a question in scheduling, 207-636-2844, x404.

Respectfully submitted,  
Barbara Felong, Land Use Secretary

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

The Planning Board Meetings Now Begin at **6:30 PM**



# Shapleigh Planning Board

## *Minutes*

**Tuesday, November 26, 2019**

Members in attendance: Roger Allaire (Chairman), Roland Legere, and Maggie Moody. Alternate Ann Harris and Madge Baker were unable to attend. Steve Foglio (Vice Chairman) arrived late to the meeting. Code Enforcement Officer Mike Demers was also in attendance.

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

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**The minutes from Tuesday, November 12, 2019 will be reviewed at the December 10, 2019 meeting. This meeting is being held only to review Growth Permits received. There were no other agenda items, therefore, this is a limited meeting.**

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

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### **Growth Permits**

#### **Map 11, Lot 28F (Newfield Road) – New Home**

**GP #15-19**

This property is a legal lot of record, and it exceeds the minimum residential dimensional lot size requirements for a new home.

#### **Map 37, Lot 23 (356 Indian Village Road) – Seasonal Conversion**

**GP #16-19**

#### **Map 18, Lot 18 (5 First Street) – Seasonal Conversion**

**GP #17-19**

An approved Best Possible Location, with a State approved septic system.

#### **Map 4, Lot 1 (Back Road) – New Home**

**GP #18-19**

This property is a legal lot of record and meets the minimum residential dimensional lot size requirements for a new home. It was noted Pump Box Brook may be located on the property, or a stream of significance, therefore, CEO Demers was asked to make certain a DEP permit was not required, and if so, to ask the applicant to obtain one prior to permitting for the new structure.

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**The Planning Board meeting ended at 7:00 p.m.**

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The next meeting will be held **Tuesday, December 10, 2019** at 6:30 p.m.

**A Public Hearing will be held at 6:00 on December 10, 2019 for proposed Zoning Ordinance additions and amendments.**

**NOTE: The winter hours are in effect thru March 31st, the meetings now begin at 6:30 p.m. and any scheduled public hearing begins at 6:00 p.m.**

The Planning Board meets the 2<sup>nd</sup> and 4<sup>th</sup> Tuesday of each month unless it falls on a holiday or Election Day. Should there be a cancellation due to a storm event, holiday or Election, the meeting will typically be held the following Wednesday, also at 7:30 p.m. Please contact the Land Use Secretary if there is a question in scheduling, 207-636-2844, x404.

Respectfully submitted,  
Barbara Felong, Land Use Secretary

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

The Planning Board Meetings Now Begin at **6:30 PM**



# Shapleigh Planning Board

## *Minutes*

Tuesday, December 10, 2019

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

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

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### **Public Hearing began at 6:00 p.m.**

Several homeowners attended the meeting: William ‘Bill’ Mageary, William ‘Bill’ Porreca, Diane Bragdon and John Reeves.

Roger A. opened the public hearing by stating that the Planning Board was introducing several new sections to the ordinance, both of which are taken from the DEP Chapter 1000 ‘Guidelines for Municipal Shoreland Zoning Ordinance’. He stated that both are therefore allowed by the DEP but to date the Town of Shapleigh had not adopted them.

The first proposed addition to the ordinance Roger read as follows:

§105-4. Nonconformance

D. Nonconforming structures.

#### **(9) Low Retaining Walls in the Shoreland District less than 24 inches in height.**

**Retaining walls that are not necessary for erosion control shall meet the structure setback requirement, except for low retaining walls and associated fill provided all of the following conditions are met:**

- (a) The site has been previously altered and an effective vegetated buffer does not exist;**
- (b) The wall(s) is(are) at least 25 feet horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;**
- (c) The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;**
- (d) The total height of wall(s), in the aggregate, are no more than 24 inches;**
- (e) Retaining walls are located outside of the 100-year floodplain on rivers, streams, coastal wetlands, and tributary streams, as designated on the Federal Emergency Management Agency’s (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils.**

- (f) The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and**
- (g) A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:**
  - (1) The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch;**
  - (2) Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;**
  - (3) Only native species may be used to establish the buffer area;**
  - (4) A minimum buffer width of 15 feet, horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a wetland;**
  - (5) A footpath not to exceed the standards in Section 105-51.B(1)(a) may traverse the buffer.**
- (h) All approved plans may require confirmation in writing by a licensed surveyor that the placement of the structure is correct per the specifications approved by the Planning Board.**

Roger A. stated that the Planning Board added item (h) to the DEP guidelines because this is a new structure in the Shoreland District on lots where property lines can be questionable, this way the Planning Board has the ability to ask for a survey if it appears necessary.

Roger A. asked if there were any questions. Bill Porreca asked where the height of 24 inches came from? He didn't feel this would be enough height in certain areas with very steep slopes with an erosion problem. Steve F. stated that the board was looking at a tool the DEP currently allows to help mitigate erosion issues. He agreed it would not help in all areas, but in areas where there are sandy soils, where there is no vegetation it would help to slow down the water, and it is something that the town currently does not have.

Bill Mageary asked if he understood correctly that the new wall had to be 25 feet back from the high water line? The board stated that was correct. Mr. Mageary asked how far from the first wall a second wall could be placed? Roger A. stated that the new ordinance did not dictate that, nor did the DEP. Mr. Mageary thought this was a great step. He stated that he went to the DEP, as he has a greater than a 30 degree slope and he wanted to know what he or they could do; they asked him what lake he was on and he said Mousam. He said the DEP told him they were not doing anything on Mousam, and that he could use mulch only. He said that he was happy when he saw this option.

Steve F. stated that this ordinance will not let anyone put in a new wall at the water's edge. Bill Mageary asked if the DEP would be involved. Roger A. stated that you would have to get a Permit by Rule from the DEP and there would be a 14 day window. He stated that the DEP would contact the CEO if there were any issues. Roger said if the town adopts the ordinance the DEP would still need to bless the project

as presented. Roger stated that he felt this would at least help some of the erosion that is taking place now, where vegetation will not work.

Mr. Reeves wanted to know if you put in a wall in an area where there is no existing vegetation, and due to the sandy soil no vegetation will grow, is there an alternative to having to plant vegetation? Roger A. stated that you could use mulch for stabilization of that area. Ms. Bragdon asked if you could use pine needles if that was what was currently there? The board had no issue with that.

Bill Porreca and Bill Mageary both wanted to know why this was only allowed on lots that were previously altered? Steve F. stated that if you currently don't have a buffer of plants, trees, or other vegetation and you are unable to stop the erosion, this allows for an alternative. He said that what the board and likely the DEP does not want, are walls going in just for aesthetic reasons, so this ordinance is put in place for areas where there are no trees to slow the water down. Mr. Mageary agreed this would help to slow the water down but on a 30 degree slope it may not be enough, he said he was still happy to have the ability to utilize this. CEO Demers stated that based on Mr. Mageary's lot, he wasn't sure in his situation it would work to his satisfaction. CEO Demers stated that Mr. Mageary's lot is natural, this ordinance is looking at places that have been cleared in the past. Again the question was asked why this was put into the ordinance, that being the words 'the site has been previously altered'? CEO Demers stated that it is tough to address all situations, but this would be a tool to help some situations around the lakes. He said again that in Mr. Mageary's case he didn't think this would fit his lot. Maggie M. was not sure about that. She pointed out that when you read further in the ordinance it states that a wall can be constructed where there is a legally existing lawn 'or' is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings. She felt the ordinance was trying to help with areas that cannot be stabilized and it appeared there was an either/or alternative. The board did not disagree with her assessment.

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

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The second proposed addition to the ordinance read as follows:

Place Under §105-4.D 'Nonconforming structures', placed after Section D.(2)

#### **New Accessory Structure in the Shoreland District**

**On a non-conforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the code enforcement officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure shall not exceed eighty (80) square feet in area nor eight (8) feet in height, and shall be located as far from the shoreline or tributary stream as practical and shall meet all other applicable standards, including lot coverage and vegetation clearing limitations. Additionally the following apply:**

- 1) In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure.**

- 2) **At no time shall the structure be expanded.**
- 3) **The structure shall not be used for habitation.**

Roger A. stated that this would allow people who did not have an accessory structure to have a shed for tools, ski's and yard tools, etc.

Roger A. asked if there were any questions?

Ms. Bragdon was concerned that there wasn't anything in this ordinance that specified what type of shed could be put up. She stated that she didn't want to have something that was unattractive, such as having no siding or built from junk. She wanted to know if there was anything written in the ordinance to address this? Roger A. stated that there was no language written that addresses the appearance of the structure, only the size. Ms. Bragdon asked about maintaining the structure, is there anything stating it will not get run down? She noted there were sheds now around the lakes that were falling apart and she didn't want to see more of that. Roger said that this ordinance only allows someone to put a shed on their property, it doesn't address the appearance of it. Roger stated that even existing structures in Shapleigh, some that perhaps should be condemned, are not addressed with respect to appearance. Roger added that the DEP will allow the new structure based on the size and the criteria that they have written. The board is using their criteria to allow the structure, which currently is not allowed.

Ms. Bragdon stated that she understood the need. CEO Demers stated that the new structure will be built to the building code.

CEO Demers wanted to know if the existing camp is 50 feet to the water and 50 feet to the road setback, does the new structure go next to the camp or can it go next to the road. He also asked if there was only 10 feet side setback existing, which would not allow for much room for a shed, could the shed go closer to the road? Roger A. stated that the new ordinance doesn't state it can't go between the house and the road. He stated that the ordinance states that there is the ability to allow for an accessory structure. Barbara F. stated that she could ask the DEP if they had an opinion with respect to this.

CEO Demers thought perhaps an exemption to the road setback should be added for the shed, such that if the shed could not be put to the side of the existing structure, it did not have to honor the road setback. Roger believed that how the ordinance is written now, it could go closer to the road. He felt that this was giving a waiver to the side and rear setbacks to allow for a new structure. The board thought that perhaps something needed to be added to the 105-17 'Land use' table.

Ms. Bragdon asked what the side setbacks were? CEO Demers stated that a minimum of 10 feet to the side lot line and an accumulation of 30 feet.

CEO Demers asked if this could be considered a Best Possible Location? Roger A. stated that it was not. Roger stated that it was an 80 square foot structure, with a height no greater than 8 feet, that could not go any closer to the water than the existing structure. He said the permitting would be the responsibility of the CEO, not the Planning Board.

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

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The third proposed addition to the ordinance read as follows:

§105-15. Definitions

**Retaining Wall – Retaining Wall is a structure that retains (holds back) any material (usually earth) and prevents it from sliding or eroding away. It is designed to resist the material pressure of the material it is holding back.**

**Low Retaining Wall – A low retaining wall is considered to be a wall less than 24 inches in height measured from the base of the wall to the top of the wall. The base is considered the area exposed that can be seen upon visual inspection.**

Roger A. stated that these were added to support the new ordinance for low retaining walls being proposed.

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

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The last proposed addition to the ordinance read as follows:

§105-17. Land uses.	RP	SD	GP	FD	SP
<b>Low Retaining Walls<sup>2</sup></b>	<b>NO</b>	<b>CU</b>	<b>CU/CEO</b>	<b>NO</b>	<b>CU</b>

Roger A. asked if there were any questions?

Mr. Reeves asked if there was a specific material that had to be used for the new walls or could it be made out of anything such as concrete, stone, brick, etc. Roger A. stated that the wall could be no greater than 2 feet in height but it could be made out of any material that would work.

Bill Mageary asked if you were required to get 1 permit per wall or could you get a permit for all the walls at one time, if you were going to put up multiple walls? He also asked what if it was going to be three years between the time you put up the first wall and the time you put up the next wall, was there a time limit for the permit? Roger A. stated that you could get a permit for one wall or all of them at once if you knew you would be having additional walls. He said they could all be permitted at the same time. He did note however that the Conditional Use Permit and building permit were only good for 2 years, so if you did not think all the walls would be finished in 2 years, you likely would need to do it on separate permits.

Steve F. added that the Planning Board and the ordinance want construction time to be at a minimum, therefore, the board will put an end date on the permit. He said in part, this keeps disturbance at a minimum and it is also for erosion control purposes.

CEO Demers asked what the difference was between a CU and CEO permit in the General Purpose District? The board was not sure? Roger A. thought it had to do with earth moving, because these walls are not size specific. Madge B. and CEO Demers could not remember anyone having to get a permit for a

wall in the General Purpose District. Barbara F. thought perhaps that this should be changed to ‘Allowed’ or ‘Yes’ under GP.

Several board members also questioned whether or not Note 2 applied which reads in part, ‘Dimensional requirements in the underlying zoning district shall apply’. Because the wall is allowed up to the boundary, it will not meet the 10 foot side setback, so perhaps Note 2 should be removed. Roger A. thought the reason the board added the possibility of requiring a survey was so the wall could go up to the side lot line, so he agreed this needed to be discussed further, as Note 2 may not apply.

Madge B. stated that the 10 foot side setback may not apply to the shed as well, she was not sure. CEO Demers asked if the shed could go up to the border? Steve F. stated this was new territory, so the board needs to talk more about what the intention of the changes are, but he felt this was a good start. CEO Demers stated that both permits will require a PBR through the DEP and so they will have an approved plan. He felt the board would just have to rubber stamp it.

Maggie M. wondered if the side setback could be like for new trees, 5 feet from the side lot line, or something similar. CEO Demers thought the 5 feet for trees was so you didn’t have all the trees in a straight line along the border. Maggie added that it was also so that you were not planting on the lot line. Roger A. agreed.

Steve F. stated that the board would need to look at §105-35 ‘Accessory buildings’ as well, because he didn’t think it would apply with this new ordinance, so perhaps a notation would need to be made there as well.

The board agreed to take any questions back up at the next meeting and the next Public Hearing for the ordinance changes after final revisions will be held on Tuesday, January 28, 2020 at 6:00 p.m.

Nothing further was discussed.

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**The minutes from Tuesday, November 12, 2019 were approved as written.**

**The minutes from Tuesday, November 26, 2019 were amended as follows:**

Madge Baker stated that under the approved Growth Permits, Permit GP #18-19, it states that Pump Box brook may be located on the property, or a stream of significance. Madge wanted it in the record that Pump Box Brook is not located on that parcel of property. She did note that there is water in that area.

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

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Madge Baker spoke about the Three Rivers Land Trust and what they were doing presently and how it related to the Town of Shapleigh.

Madge began by stating that when reviewing the Comprehensive Plan from 2005, she was pleasantly surprised how much it mirrored what the Land Trust was trying to do with respect to preserving farm land and forest with respect to conservation. She stated that the Land Trust updated their maps and provided members with copies to review.

Climate Resiliency Map - Madge explained that lands with high resiliency tend to have the following characteristics: existing high density and variety of wildlife, unbroken forests, topographic variety, micro-climates. The map showed the majority of the land owned by the Three Rivers Land Trust is above average in climate resiliency. She said, “Also on the map is a focus area of the Land Trust and in Shapleigh it is primarily Fort Ridge and the Pump Box Brook watershed; for all of the reasons listed, ‘micro-climate’, lots of up and down, wonderful vernal pools, these are a great wildlife habitat and it is unbroken forest, because there are no public roads.”

Madge said she was nuts about the subject of climate change. She said she believed it was real and coming, and she would love to see Shapleigh be more proactive. She agreed it was a hard topic.

Farmland Map – Madge said what Three Rivers Land Trust is interested in is prime agricultural lands. She said they just got an easement on David Mann’s land on Hooper Road. She said there is some prime Ag land. She noted the Comp. Plan speaks of protection of high value agricultural land. She noted again the overlap between Three Rivers and the Town’s Comprehensive Plan.

Forest Resources Map – Madge stated they are always looking for unbroken forested land and blocks of land. She noted the Three Rivers Land Trust owned an easement on Ron Prevoir’s land which shows up on the map, because it provides a corridor between the wildlife refuge and the Waterboro Barrens. Madge said the Comprehensive Plan also talks about protecting wildlife corridors.

Recreation Resources Map – Madge stated the Land Trust believed if people couldn’t use the land they would not be so keen on protecting it thru conservation. She said they have always tried to promote use. She said it’s one reason the William’s property is a neat place, she noted the Town of Shapleigh owned it not the Land Trust. She said it was very accessible to the public. She noted the 5<sup>th</sup> grade going to the site in the spring.

Madge said there was a problem with North Shapleigh Pond because there was no public access at present. She said the Land Trust had acquired Hanson Pond but this also has an issue with access. She said they were putting in a walking trail but you wouldn’t be able to put in a boat.

Water Resources Map – Madge said it was easy to know why water is so important to preserve.

Anna Desmond was also present for this discussion. Madge wanted to know if Anna wanted to add anything or if any of the board members wanted to add something that they care about? She asked if what she spoke of sounded good to the board, and did any members want to talk about priorities?

Madge stated that Three Rivers Land Trust has been trying to purchase land in the Pump Box Brook watershed since creation. Madge stated that Bill Hutchens and Charlie Gruber wrote to every landowner in the past in that area, saying if they ever wanted to sell or conserve the property to please let the Trust know. Madge believed acquisition is important because of the climate issue. She also believed education was very important. She said they need resources to be able to pay people to educate others. She asked members how they felt about land purchases?

Steve F. believed it comes down to landowner education. Madge said it made sense. Steve said he liked the idea of conservation, and he believed there was room for a mix with what he did (Realtor) and what

the Land Trust wanted to do. He said he pushed people into considering cluster subdivisions and to build toward the road. He felt it was smarter to do a small cluster than putting in an expensive road, as well as conserving the backland. He said people need places to live but there is a smart way to do it. He thinks whether someone is selling their land on their own or with an agent, it makes sense to show them what might be a good idea. He said it is their land but it is important to show the benefits of an easement, or selling their backland to the Trust. Madge agreed.

Madge B. noted the Town Forest was used for recreation. Madge said the Conservation Commission created a trail. Anna Desmond stated that they have made great strides in creating a trail which is marked. She said some know about it and in the past it got some bad reviews, but now it is well marked and should be completed by late spring. She noted the Boy Scouts did some work on it, along with the Conservation Commission and volunteers. She said they were proud about that. Anna asked in terms of climate change, was there anything we should think about with the Zoning Ordinance. She asked if the issues have been addressed? Anna thought that the Town has addressed some of what they discussed.

Roger A. stated that over time the Planning Board has tried to conserve and enhance water quality. He stated that everyone that has been on the board has tried to limit erosion issues and problems related to storm water issues. Roger noted he owned a large piece of property and hoped to retain it for recreational uses for his family.

Anna D. stated that it was apparent there was some very forward thinking done years ago, people who recognized the importance of preservation of land, water and the wildlife. Madge agreed, stating that the Town Forest was a good example of that. Anna said the reason there is a trail there now for people to use, is because the Town Forest exists.

Roger A. added that the Town creating the soccer fields for the children was a great thing. He said many people looked at preserving land for future use, noting today it probably could not be done. Madge and Anna agreed, with the amount of land preserved, they were grateful to those in the past who thought about preservation for future generations.

Steve F. said one thing the board could do is to take a look at the village areas and bolster that, short of having public water and sewer. He said at present there is no village, Shapleigh's four villages are no longer. He believed at some point perhaps they could address this.

Steve F. asked Madge what her ideas were? Madge felt the board should take up the Comprehensive Plan and look at it. She believed the board has done some of the things they thought should be done, but perhaps there was more the board could look at. Madge said in 2005 it talked about increasing density, and the board did do it. She wanted to go back through the list the board created. Madge also wanted to see the wetlands protected as much as possible. She said the wetland protection in zoning now was not great.

Steve F. said from a practical standpoint, from his viewpoint, if someone sees wetland grass people are typically not interested. He felt there was better land out there. He said he was not suggesting taking it off the priority list, but he felt from a developer standpoint if they see wetlands they see unusable land.

Steve F. asked if wetlands can be used toward land area calculations. CEO Demers said that yes, you can for dimensional requirements. Steve said Acton does not allow it. CEO Demers said in Acton if you create a private drive, the private drive does not go towards the dimensional requirements. CEO Demers said he didn't see anything here that prohibits. Roger A. said wetlands are subtracted only under subdivision (§89-26). Roger said with respect to a 2 acre private lot, the wetland is not subtracted. CEO Demers asked if it was in the subdivision regulations? Roger said it was under subdivision. Steve said if you are on a non-conforming lot of record, no one is looking at the wetland. Roger agreed. Roger said the structure will have to be placed to keep it away from the wetland, so if you have a small lot it could be an issue.

Steve F. stated that in Acton, the bigger the wetland the further the setback. Madge said ok, she liked that. Steve thought it was too much. Madge said wetlands are very important, especially along Pump Box Brook. Steve said it was because it was part of the tributary. Madge said, "That is it!"

The board agreed to look at the existing Comprehensive Plan. Barbara will provide a copy of the changes enacted in 2016.

Madge asked if the board would like a copy of the maps. Steve F. stated he would and he would like it downloaded onto the website. He said several years ago it was discussed with the Selectmen and everyone was in favor of doing overlays of the town map, but he was frustrated that to date it has not happened. Madge said she agreed it was important and Steve McDonough also wanted them because they are very important. Steve F. said the town needs to decide what is important, and noted these maps would help to educate the public as well. Barbara F. did not think some people knew how much these maps are utilized by the board, CEO, and the public and what an asset good maps would be. Roger A. said he went out and got a proposal to do the layers and gave the information to the Selectmen. Roger said he understood it has to go out to bid, but the criteria for the maps should be what the Planning Board and CEO need, as they utilize them, as do other people in town. CEO Demers stated there was a reason Shapleigh had low taxes. Steve did not disagree but you have to look at what is important. Maggie M. added that the longer you wait the more expensive it gets, and the town is not in danger of going broke.

Madge B. thanked members for listening and she looked forward to future discussions.

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### **Growth Permits**

The year ended with 16 Growth Permits available and 2 for Habitat for Humanity.

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**The Planning Board meeting ended at 7:20 p.m.**

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There will be no meeting held on Tuesday, December 24, 2019.

The next meeting will be held **Tuesday, January 14, 2020** at 6:30 p.m.

**NOTE: The winter hours are in effect thru March 31st, the meetings now begin at 6:30 p.m. and any scheduled public hearing begins at 6:00 p.m.**

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Respectfully submitted,  
Barbara Felong, Land Use Secretary

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