

ALTON PLANNING BOARD
February 21, 2006, at 7:00 p.m.
ALTON TOWN HALL

Call to Order: 7:12 p.m.

Present: Tom Varney, Bruce Holmes, Tom Hoopes-Chairman, Cynthia Balcius, Jeremy Dube, and Jeanne Crouse, Kathy Menici-Town Planner, Monica Jerkins-Town Planner Assistant, and Carolyn Schaeffner-Recording Secretary

Appointment of Alternates: none to appoint

Approval of Minutes: December 20, 2005, and January 24, 2006

Discussion of Minutes of December 20, 2005

Corrections on page 1, second, third, fourth motions made should show made by J. Dube and Second by B. Holmes.

Correction on Page 5, three lines down for C. Balcius "site septic" should be "site specific"

Correction on spelling of Mr. Pelletier should be "Rene" not "Raine".

Motion by J.Dube to approve the minutes of December 20, 2005 as amended. Second by C. Balcius. No discussion. Vote unanimous.

Discussion of Minutes of January 24, 2006.

Page 3, the second T. Hoopes inquired of the "Planner" if this has to be tied in.

Page 2, third line delete "either"

Page 2, first T. Hoopes attorney informed the "Tom Hoopes" that the two cases

Page 3 NH Electrical Cooperative, first sentence property (add the word) "owner).

Motion by J. Dube to approve the minutes of January 24, 2006 as amended. Second by T. Varney. No discussion.

1 abstention, 5 unanimous. Vote passes.

Approval of Agenda: Addition of reschedule of meeting with the Alton Revitalization Commission for a workshop. This will be rescheduled to include the ZBA. K. Menici will check with the Town Counsel to check and see if the Planning Board and ZBA can meet together with the Revitalization Commission. It was suggested to meet on Tuesday, March 21, 2006 at 5:30 p.m. It was also suggested for the Board before the meeting on the 21st to walk down behind Mr. Young's house and look at where the long railroad building is to see the relationship of each of the buildings.

K. Menici proposed to split the agenda for two meetings. The cases on tonight's agenda that will be heard on Tuesday, February 28 will be P06-01 (Long), P06-02 (O'Brien), P06-08 (Beckett), P06-10 (Sedlari), and P06-11 (NSTS).

Motion by J. Dube to approve the amended agenda for February 21, 2006. Second by C. Balcius. No discussion.

Vote unanimous.

K. Menici introduced her new assistant, Monica Jerkins.

Public Input: None seen or heard. Public input closed.

Applications for Public Hearing:

Case P06-13

Map 29, Lot 16

Conceptual Consultation

Brad and Kim Smith

137 Main Street

Request submitted by Alton law Offices on behalf of the business owner for a conceptual consultation to discuss submission requirements for a change of use for the subject property. The previous use of the subject property was commercial office; the proposed use is for commercial retail.

K. Menici noted there is not a site plan for this application. The applicant is inquiring to get input from the Board for submission requirements. This is an existing structure, no proposed changes to the exterior or to the site itself. It is simply a change of use of an existing structure.

T. Hoopes noted in reviewing the history on the property there has never been a formal site plan on the property. He questioned whether one is needed now or not. Questioned minor site plan definition.

General discussion on minor site plan definition and history on this property and town history of minor site plans.

Arthur Hoover from Alton Law Offices and Brad Smith are present for this case.

A. Hoover distributed a letter and also read the letter to the Board. Brad and Kim Smith are operating this retail store at 137 Main Street. This is located in the RC Zone and retail use is a permitted use in that zone. They are leasing a portion of the building on that property in the front of the building. They are using the two front rooms upstairs as offices for the management of the business in the building and their business next door. These rooms were used as offices previously. There is no change in the upstairs use at all. Downstairs in the front of the building, there are two bathrooms remaining as previously use. The kitchen will be used as previously used also. The only rooms that are actually being in use are the four rooms downstairs where were office and are now going to be part of the retail candy store. There are no changes in the building (exterior or interior). When this building was renovated and the Alton Law Offices moved in October 2003, all the changes were made by a building permit at that time and no changes have been made since then. The building is handicapped accessible as required with a ramp on the side of the building. One of the questions they are present for is site plan review required under these circumstances. The enabling statute is RSA 674.42 and authorizes the Board to have site plan review for the development of use, a change of use, or expansion of a use. This is not the development or expansion so the question is does this qualify as a change of use to require site plan review. There is no definition in the Ordinance in the site plan regulations as to what is a change of use. He assumes, that based on the history of this particular building, that has been determined administratively based on circumstances of each case. This particular property has fluctuated and changed in use considerably over the years. It was formerly known as the Beaudreau Professional Building. There have been offices in the building, retail shops, a four-unit apartment mostly all occurring since 1991. The Site Review Regulations were adopted in 1984. The use of the building should have been subject, if it was required for site review and would have been subject to the regulations as of 1984. There is no question that the use has changed on a number of occasions over the years, however, the use as a retail store, currently proposed, has been similarly as a craft shop and pet shop within the past 10-12 years. He refers to a letter from the Planning Board dated 1991 to Brenda Beaudreau stating specifically that she can use the site as a craft shop and does not need site review. Noted that this was a Planning Board decision. In 1991 the craft shop was permitted and in 1992 a pet shop was permitted without formal site review and 1999 a real estate office was permitted without site plan review and after that but before Alton Law Offices were located there it was a 4-unit apartment which was required to have site review but did not get site review approval. When asked before the Law Office was to inhabit the building they asked about site plan review, they were told where it had previously been an office they also did not need site plan review in 2003. He claims, historically, the Planning Board has not required site plan review approval with respect to this particular property, because there had been similar uses in the past. Figures they just

administratively had taken the position that if it was a retail store before, it can be a retail store now, as long as no changes had taken place; also the same with an office situation. That distinguishes it a little bit from the Wainwright Insurance which that property was a longtime restaurant and was changed to an office. He is not aware that that building was ever used as an office before. There were no pre-existing uses as office in the Wainwright Building as there have been pre-existing uses in the property in question. He expressed concern in avoiding a formal site plan review with a less formal procedure; a minor site review administratively. He added, if the Board were to determine that a full site plan review is required, even though it has never been required in the past with respect to this building and with approval of the Planning Board, the Smith's were hoping to not be required to comply with all of those site plan review requirements, particularly the cost and expense of having a surveyor perform an in-depth survey. Noting again that nothing is changing on this property at all. They are asking for guidance at this time with regard to the site plan review with the possibility of this being treated as minor site plan review.

K. Menici informed that the Code Officer has been in contact with Town Counsel and their advice was in order to be in compliance with the Town's Regulations as written, that a change of use application is necessary in this situation. The fact that change of use applications were not submitted in the past does not mean that one is not required at this time. That is why the Code Officer issued the decision that he did issue. With regard to the minor site plan review, the Site Plan Regulations are very specific about when minor site plan review is permissible and it is strictly for a home occupation as defined in the regulations. She does not feel it is unreasonable for the applicants to request that there not be a requirement of a professional survey. Since it is an existing structure, there are no changes that are being proposed. Noted also there have been applicants in the last year that have come before the Board with change of use applications for existing structures and the Board accepted a lesser standard than a full blown survey. Noted, in one case, the Board accepted a very detailed sketch that the property owner did himself.

T. Hoopes felt that when the Board is dealing with something that is pre-existing the need to find a better definition to deal with something that is pre-existing minor site review. As in this case with no changes doesn't feel they need to "re-invent the wheel", as compared to a case where changes will be made, etc. Feels a well defined sketch that shows layout, and they have been provided with the history.

K. Menici suggested that they way the Town Regulations are written with regard to this case and also in general these types of cases, instead of submitting, based on the checklist requirements, that a letter requesting a waiver of the checklist requirements because it is an existing structure with no proposed changes to the exterior, parking, trash removal, etc. being proposed as part of the application, simply a change of use. With regard to parking regulations and this application, it would seem that there would not a concern to traffic impact. She also felt the Board has room to give some flexibility on the submission requirements.

T. Hoopes added in combination with the Board's review of site plan status that they currently have for the Town, they need to come up with a further definition, but in this case he feels, in his opinion, he would not mind suggesting to the applicants to request a waiver. With the existing sketch is adequate for a conversion of a change of use.

C. Balcius questioned the letter and asked the Planner if they also need to obtain a special exception from the ZBA.

K. Menici stated this is a non-conforming lot.

C. Balcius questioned that every lot downtown is non-conforming so, for example, if the video store closed down and became a law office, it would also have to go through the time and expense?

K. Menici informed that is the way the regulations are written right now including Zoning.

A. Hoover informed that this issued on under appeal to the Zoning Board because he is unaware of any other business downtown where that was required. They have initiated an appeal of that decision of the Code Officer and are to be heard at their next meeting.

C. Balcius felt this needs to be discussed as the businesses downtown do not need hurdles like this.

A. Hoover added if a letter requesting a waiver is requested they would be happy to comply with that.

T. Hoopes asked the Board to their opinions.

T. Varney added his opinion that the Site Plan Regulations are clear. If you look at the minor site plan for a home occupation and they are well written. Does not feel this application fits these regulations due to the sign, and it's a retail store. Suggested they submit a site plan and ask for the waivers.

T. Hoopes asked Mr. Varney how formal a site plan he is looking for.

T. Varney answered he would look for an informal site plan.

J. Dube has no concerns.

J. Crouse feels it would be incumbent upon the Board to change the regulations so that everything is standardized. While she understands the issues that the attorney raised, she is a believer that you don't make allowances in the existing lot continually you change the lot, the rule or the procedure. She thinks that whatever it would take for the Board to change the regulations then they could be compliant with them rather than do a waiver so they are non-compliant and when it is not a candy store anymore it goes back to being a real estate office the same issue comes up.

T. Hoopes feels that the Board will be confronted this year in dealing with re-writing the Master Plan and update the Site Plan Regulation and also Subdivision Regulations. So in the site plan review work, they need to come up with a better way to address this.

K. Menici noted the time running over the 15 minutes allotted for a conceptual.

C. Balcius agrees with the discussion taken place regarding this for the lack of having the proper zoning rule and regulations, feels what has been asked of the Board is reasonable that they submit a form of a site plan and request a waiver and perhaps not look for the detailed information for example the Hannaford Store.

A. Hoover was agreeable and thanked the Board for their assistance.

Case#P06-14

Map 38, Lot 21-1

Conceptual Consultation

Stephen Bell, Precious Gardens

317 Mount Major Highway (NH 11)

Request submitted by the property owner for a conceptual consultation to obtain input from the Board regarding the Board's requirements for the submission of a site plan for a business expansion phased over four years.

Bruce Holmes recused himself from this case.

K. Menici informed that the question before the Board tonight with this request for conceptual has a set of circumstances. Mr. Bell came before the Planning Board in 1999 and submitted site plans for construction of a sales building, two green houses, and associated parking. There is question whether approval was actually

granted by the Board. They have minutes that show that the application was accepted by the Planning Board but there is nothing in the minutes that states it was approved and the minutes for subsequent meetings do not show where the application was formally acted on by the Board; however a building permit was issued. The Building Inspector at that time must have interpreted the Board's acceptance of the application as approval of the application. The building permit was issued for what appeared on the 1999 site plan. Since then, additional buildings have been constructed on that site, none of which were approved by the Planning Board, no amended site plan, there are at least two structures on that site that are currently present that were not on the site plan that was approved in 1999. This is another request that the Code Officer referred to Town Counsel. Mr. Bell was before the Board on a conceptual a few months ago on this issue and Town Counsel has advised that before the Board acts on any expansion of the existing site plan, that a site plan is submitted for an as-built so there is an accurate record of what currently exists on that site in the record. Once that is complete, the Board, at that point in time, would deal with the application for expansion of the existing business.

C. Balcius asked of the Planner, as when the Town Counsel is questioned on how to proceed and give instructions, she asked if this could be presented to the Board in written form.

K. Menici stated she would ask him to do that.

T. Hoopes confirmed the Planners statement that they need to establish what is on the property before he can expand.

K. Menici stated this could be done concurrently. As part of the survey requirements, the Board could require a sheet that would show existing conditions and the existing conditions would give you everything that is there. They could assume that there was approval in 1999.

T. Hoopes and C. Balcius asked who the Planner was in 1999.

K. Menici informed there is no signature on a plan. There is a plan in the file that the minutes refer to were discussed.

T. Hoopes asked Mr. Bell for his statement.

S. Bell owner of Precious Gardens informed that in 1999 Mr. Walsh was the Town Planner. After he had gone to the Planning Board the first time and submitted his application for building a greenhouse and garden center, he had to go back a second time for another meeting to amend some items that had been done. Mr. Walsh had resigned and Fran Washburn was taking over for the Planner. States that his plan was accepted but not approved. Stated also that in the Rules and Regulations that after 60 days of no approval from the Planning Board it is an automatic approval unless someone writes a letter to the Selectmen stating that nothing is to be approved.

K. Menici stated this is not correct.

S. Bell stated that this is in the subdivision regulations.

K. Menici informed that this is not subdivision, it is a site plan and there are different regulations for site plan.

S. Bell went on to again say that there was no approval and the Town of Alton did not have another Town Planner until May or June when Mr. Lock was the new Town Planner. Agreed that he obtained a building permit to put up the greenhouses and the building before Mr. Lock came into the office.

K. Menici confirmed, after checking the Regulations that there is nothing in the site plan regulations of a time

period of no decision for an automatic approval. Added that the other issue before the Board is there are additional structures that have been built on that site without amended site plan including a residential apartment on the site.

T. Hoopes asked how can this be resolved in as simple a matter as possible. This is an existing business that needs to be legalized.

S. Bell stated that his original plan shows the building as 24 x 24. His building now is 22 x 30. The only other structure that is on the property is another greenhouse that is 17 x 48, which is used for storage, and a storage trailer on the property which he did not know he need to come before the Planning Board because he did not deem this as business expansion.

K. Menici added that the site plan submitted in 1999 shows a sales building which is on the southeast corner of the lot adjacent to the area by the self-storage. That site plan also included two greenhouses and parking for 17 vehicles. That is all that was on the site plan submitted in February of 1999. Driving by the property today (2/21) she noted that there are the two greenhouses, sales building, a third greenhouse that can be seen from the street, another wooden structure behind the greenhouses and this structure includes, according to the Town Assessor, an apartment. There is not a State Septic Approval for a residential use on that site. There is only a State Septic Approval for a commercial garden center. She again stated that Town Counsel has recommended that the applicant come in with an existing condition to show an as-built, have the Board review that and then take up the discussion of the proposed expansion.

T. Hoopes stated to the applicant that he needs an accurate method showing existing conditions.

S. Bell stated that DMC has been out to survey the property and are preparing an as-built for him. Referred to his plan showing the extra greenhouses, shows the building that is outback, it also shows his expansion that was marked as future expansion. Said they took the two greenhouses that were to extend out another 48 feet from the existing ones and turned them. Stated he has parking for 24 cars. His parking lot is not as big as what it describes on the plan. It only shows 17 for parking but can get 24 in there and this has been done last fall. Stated he is trying to add 14 feet on the back of the building for a work area and storage. Confirmed that he lives upstairs. Spoke with the Code Enforcement Officer about the situation regarding this and he referred him to the Planning Board. He has spoken with someone on the septic and this has been taken care of. Stated "they" have no problem with him living there with the septic that he has in there.

J. Crouse inquired as to who is the person he is referring to that has told him all this about the septic.

K Menici warned that this discussion is getting into the merits of the case and this is a conceptual. She also stated he is probably referring to Sub Surface and these are issues that cannot be taken up during the conceptual. The question before the Board is what would the Board's survey requirement be in order for Mr. Bell to come in with a four-year expansion plan and if the Board would even entertain an amended site plan that includes a four-year build-out.

S. Bell stated that he has also been told that he has to come in a do a complete site plan review.

C. Balcius stated that if he has done an as-built and he comes in he would have a site plan review based on that as-built and the four-year expansion.

K. Menici stated this is entirely up to the Board. There is nothing in the Regulations that prohibits it but also nothing that encourages it either.

T. Hoopes added that he would rather know in advance if someone intends to expand this in stages. Then this is

something you plan on.

S. Bell stated that if he has to come in with a complete site plan review he would like to do the engineering for his expansion that he anticipates in another two – three years and not have to come back in again and spend more money on engineering.

C. Balcius stated that this makes sense to her.

T. Hoopes added that it seems logical even with an approved site plan you will still have to come back in to get building permits as he goes along. Informed the applicant that if he submits a design he must stick to that design. Any changes he would have to come back to the Board.

S. Bell stated he did not catch this himself on the size of the building, when they originally did this; it was a drafting error.

T. Hoopes asked when he returns he need to have a letter from Sub Surface, and have this also sent to the Building Inspector.

K. Menici stated they have received correspondence from Sub Surface on this and they do have it rated simply as a commercial garden center. There is nothing about a residence on it.

T. Hoopes asked if the space is adequate or not?

K. Menici stated no, not according to their regulations but that is an issue for them to decide.

S. Bell again stated that Sub Surface is fine with what he has. He added that they asked for another design in case the system fails.

T. Hoopes confirmed they need to see all this in writing. Added that if DMC is working up the existing conditions and a separate one that shows the build-outs and showing growth for the phases that is what the Board would be looking for, and asked the Board if they agree with that.

S. Bell also asked would he also have to come back and do a complete site plan review?

T. Hoopes stated yes. When he brings the plan back that would be going through site plan review at that point with the as-built and discuss the future growth.

Case#P06-06

Map 5, Lot 72-7

Design Review

Robert and Angela Bystrack

Suncook Valley Road (NH 28)

Application submitted by Karen O'Rourke of Brown Engineering on behalf of the property owner, Robert and Angela Bystrack to review a site design for a proposed 71 site recreational campground. The property is located on Suncook Valley Road (NH Rte. 28) and is within the Rural Zone.

Cynthia Balcius and Bruce Holmes recused themselves from this case.

T. Hoopes asked of the Planner, how do you differentiate conceptual consultation from design review?

K. Menici informed that conceptual consultation is supposed to be a discussion of the project in concept only and design review can have engineering details discussed with the applicant.

T. Hoopes asked the applicant to explain her project.

Angela Bystrack is the property owner and present to discuss the plans that she and her husband have for a property of Route 28. They originally purchased this property five years ago and were going to put their home there but later purchased other property that they decided to use as their primary residence. They decided they wanted to seek a change of use on this property and have been approached several developers for a subdivision. They have others discuss with them a gravel pit and also a 55 plus community. The original plans that were handed to them when they purchased the property were for a 25 lot subdivision and none of those appealed to them as new owners of the property. They wanted to pick the most desirable use for which she and her husband could gain a source of income from. This project will be 71 sites built in phases. There is minimal wetlands impact. They are going to operate seasonally – during the summer months. They will continue with the State Corridor 22 Usage with also allowing the Merrimack Valley Trail Riders Association charity ride events. They are hoping to keep the lot, which consists of 138 acres looking wooded and not be clear cut. There will be extra room for each site for buffers. They are going to have only three permanent structures including one office and two bath houses. They are hoping to keep in the spirit of the Master Plan and draw tourism to the Town of Alton since a lot of the lake cottages that used to be seasonal have been converted to year-round homes. They have no plans to put a road through from Youngtown to Route 28. Stated she is here for instruction on what steps they need to follow.

T. Hoopes stated her plans, layout and presentation make sense. He was on the property for the last subdivision application and knows there are some wet spots on the property. This does seem to skirt them quite well. Notes that it is a difficult piece of property from that point of view. It has to be addressed as a design to have as little impact as possible. All of this is adjacent to other wetland that goes into the Coffin Brook. Once they get into the Coffin Brook to the Merrymeeting, these are concerns that they are dealing with. The kind of run-off that would be established in an RV/Camping park you would need to show what kind of a retainer would be provided where trucks would be parked, etc. They would need to have water qualities properly addressed by an engineer. He asked the Board for questions. He then asked the applicant how many phases.

A. Bystrack responded three or four, they are not sure.

T. Hoopes noted a series of leech fields. Would this be designed so that each place would have a hook-up to a leech field?

A. Bystrack responded that one of the leech fields might actually be used as a dumping station and not particularly a hook-up. They have a lot of test pit information that supports her data.

T. Hoopes referred to her comment of summer only. Has concern for traffic when school begins with an active RV Park.

A. Bystrack added they are looking for campers that would be seasonal, not “weekend warriors”. Then at the end of the season the RVs and campers would be removed.

T. Hoopes stated they need to define “summer”, months of operation. Said the applicant would need to set their times of operation and that is what the permit would show.

A. Bystrack informed they are looking from May through October.

T. Varney asked if each site would have an RV and not a tent.

A. Bystrack confirmed they would be seasonal sites with campers, RV and tag-a-longs and not for tents. Noted they still need to provide the bath houses. They need to provide one male and female toilet and shower per 30 sites regardless of tent or RVs. The long range plan is to have full hook-up at each site.

T. Varney noted that to get State approval you need to decide if the sites will have full hook-up or not. If you are going to rely on a holding tank, that comes out on the approval before you get approved by the Planning Board.

A. Bystrack replied that they have not gone to the State yet with plans.

T. Varney noted the aquifer zone comes on to the land. You will need to should where the boundaries for that. It would be helpful to the engineer.

A. Bystrack asked about the aquifer zone.

T. Varney replied that he believes her property is on part of the Coffin Brook Aquifer Zone and should be checked into. Noted that this could possibly be a headache. Subdivision roads are limited to within 2500 feet.

T. Hoopes read that all campground roads shall be well drained. One way roads shall be maintained at 12 feet in width and all other roads shall have a minimum travel surface of 18 feet. It is different than regular town standards. Agrees with the Mr. Varney and seek assistance and advice from the Fire Chief to see whether he questions.

J. Crouse noted that the Fire Chief does have questions and made a point of the egress for a lot that deep and a road that long, in the event of a fire at the beginning, how are the others going to get out? Asked the applicant if she has a copy of the report from the Fire Chief, and the Conservation Commission?

A. Bystrack informed she does not have copies of these?

K. Menici noted that these copies do not automatically go to the applicant, only upon request.

J. Crouse suggested that the applicant ask for copies of the department head reports. Noted they have important information.

A. Bystrack will request copies. She informed that she had asked them with regards to Robert's Knoll and they informed her there had not been any issues with that campground so that was the next thing they were going to do, after they gather the information from the Planning Board was to ask for the formal form.

T. Hoopes informed that she can also make appointments and go and speak with them and discuss your property.

J. Dube noted that she will also need a Special Exception.

A. Bystrack agreed and said she knew that.

T. Hoopes asked for any more questions and asked the applicant if this was helpful? He noted an abutter to the property that raised his hand and asked him to come forward.

Martin Cornelissen came forward as an abutter to the property in question. He has a couple of concerns and questions. Noted it was stated that was going to be summer only and then stated the "season" would be May through October and felt this was three-season park not just summer park. He also expressed concern was about the corridor and questioned what this would be used with (i.e. 4-wheels, dirt bikes, etc.). He said she stated they would be using the corridor for other programs.

T. Hoopes asked what the corridor was.

M. Cornelissen stated it has to do with the snowmobile State Corridor. It comes through her property and comes out on to the Range Road directly behind his house. His concern is that they do not have a problem with the occasional use if they use it for snowmobiles, but his concern is that if this is an RV Park and they will allow 4-wheelers in the park, dirt bikes and such that the increased noise and traffic coming out from behind their house on to the Range Road (that the Town has given permission to allow to be used). Concern this is turning from occasional use to a business (RV Park). Would like to see that corridor moved on to their property completely and go down through their property even if it has to go through to their adjoining property before it meets up on the other end of the corridor that is beyond Addison Cate's property. Noted that this is up behind the school.

T. Hoopes noted that a snowmobile trail is not licensed for 4 wheelers.

M. Cornelissen informed that they are using it now and what will prevent the people coming in to the RV Park from bringing 4-wheelers and dirt bikes and hitting that corridor?

T. Hoopes stated this is something that can be addressed in permits but also technically any of the easements that are written for the snowmobile trails prohibit wheeled vehicles.

M. Cornelissen informed that they (the applicants) use it now and have in sponsoring programs.

A. Bystrack noted she mentioned only the charity rides are used on the corridor. Confirmed that it will not regularly be used by wheeler vehicles, only these scheduled events.

M. Cornelissen asked how she will prevent 4-wheelers and dirt bikes from going into the RV Park and will this be made a stipulation.

A. Bystrack confirmed yes. The corridor will stay as a snowmobile corridor with only the special permission for the charity ride. She referred to her notification to Mr. Cornelissen of all charity rides that she conducts and uses the corridor for these wheeled events. (Merrimack Valley Trail Riders Association for a charity event.)

T. Hoopes responded to Mr. Cornelissen that in dealing with the State, if someone has an easement that they have given for snowmobile trails, those literally forbid any wheeled vehicles.

M. Cornelissen noted this is behind his house and is not accessible and not able to be monitored.

T. Hoopes suggested that he notify the snowmobile club regarding the use of wheeled vehicles on those trails.

M. Cornelissen would just like it made a stipulation in the approval through site plan that they will be no wheeled vehicles allow in the RV Park. Feels that it is going to happen.

A. Bystrack noted that she has had Fish and Game to her house to insure that it does not happen because she does not want the wheeled vehicle and confirmed to ask Jim Juno to check on this.

T. Hoopes assured that Mr. Cornelissen's concerns have been heard. Feels this will be addressed and the Board was unaware of this situation.

A. Bystrack noted this was also addressed as a gate was put up at the end of Lot Line Road to prevent people from coming down the road with 4-wheelers. Since then, there have been people that have moved into that last

home that are renters and have 4-wheelers and they are planning on blocking their access by putting very large boulders that they will not be able to get around.

T. Hoopes felt that notification to the snowmobile club about 4-wheeler abuse is their responsibility to check on this and make sure problem areas are monitored and checked on. Asked for other questions from the Board and from the public.

None heard.

A. Bystrack asked about the wetlands that were mapped in 2000. When should she ask for a waiver on mapping the wetlands?

T. Hoopes asked the Planner how recent does a date of a survey have to be?

K. Menici stated this decision was up to the Board. Just make sure it has a wetland's scientist stamp and seal. There is no current requirement for a certain period of time.

T. Hoopes suggested to the applicant that she contact the wetland's scientist and see what they would suggest.

Case#P06-07

Map 3, Lot 24-1

2-Lot Subdivision

Brian D. and Heather Welch

Prospect Mountain Road

Application submitted by Lindon Design Associates on behalf of the property owner, Brian D. and Heather Welch. Applicant proposes a 2-lot subdivision of Map 3, Lot 24-1. The property is located on Prospect Mountain Road and is within the Rural Zone.

Bruce Holmes has resumed his seat on the Board.

Don Voltz, Heather and Brian Welch were present for this case.

K. Menici informed the Chairman that the applicants came before the Board for a conceptual consultation in December of 2005 requesting input from the Board at that time with regard to the submission requirements. This is a large piece of property of 35 acres in size. They are proposing to sub-divide off a single building lot at the front of the parcel on Prospect Mountain Road. They have asked the Board for input on whether or not a lesser survey standard would be accepted by the Board and specifically they wanted to just survey that portion of the parcel that is the subject of the application. The application shows the required information, checklist information for the new lot and those portions of the remainder lot that are adjacent to the proposed building lot. There are waivers that have been requested from Section 7.2.23 Natural and Cultural Features, Section 7.2.27 Topography, Section 7.2.29 Future Development and Section 7.2.33 Wetlands. The waivers are being requested just from those portions of the parcel that are not immediately affected by the proposed subdivision. In addition to the waivers that were requested, the application does require an additional waiver from Section 7.2.21 Meet and Bounds. That requirement states that all existing and proposed boundary lines have to be depicted on the plat with meets and bounds description.

T. Hoopes was not present at the last meeting but did read the minutes and has a question regarding access to the back lot. Access was to be granted through the gravel driveway by the workshop?

D.Voltz answered yes, in that general area. Wetlands were mapped in that area and it was the narrowest place to cross to get to the rear of the property in the future.

T. Hoopes asked how much more wetland is in back of the stone wall?

D. Voltz referred to the map that the wetland goes beyond the stone wall. Noted that the narrowest portion to cross was on the easterly side of the land. Noted also that last meeting they had other plans that showed the wetlands mapping on both sides of the wetlands. This demonstrated the only place the Wetland Bureau would allow a road to come in on the section in back of the workshop. Noted also that the wetlands gets very wide behind the house and is not practical to use that.

T. Hoopes stated he was just checking this. Asked for Board input or questions on waivers requested.

B. Holmes questioned about the frontage for the existing driveway.

D. Voltz reported it was over 200 feet. The new lot created is 200 feet. Where the driveway goes back to the existing house that is 200 feet also.

B. Holmes asked also by the workshop?

D. Voltz reported that was 198 feet. He noted the discussion of last meeting was what would happen if or when a subdivision road was put into the rear of the property and the Board felt it was important to show that the house had 200 feet of frontage so no matter what happened its access in frontage would continue to be conforming.

T. Hoopes noted to the Board that this application needs to be accepted if they are comfortable with the waivers requested before the merits can be discussed.

Motion by J. Dube to accept case P06-07 with the following waivers: Section 7.2.23 Natural and Cultural Features, Section 7.2.27 Topography, Section 7.2.29 Future Development, Section 7.2.33 Wetlands, and 7.2.21 Meets and Bounds. Second by B. Holmes. Discussion by T. Varney. He asked what the future development plan is.

D. Voltz stated there is nothing planned.

T. Varney would like to see the whole property shown.

D. Voltz stated it was shown on the location map and was as close to scale as you can get it showing the property owners.

T. Varney would like to see it done better in the future (noted just as a personal observation) but does not have a problem with it at this time.

T. Hoopes asked for further discussion. None heard.

Voted unanimous.

D. Voltz spoke for the application on behalf of Heather and Brian Welch with a proposal to create a lot with somewhat over 200 feet of frontage with over 1 ½ acres upland and not steep slope areas. A test pit has been done with results on the upper left hand side of the plan. A possible well site and 75 foot protective area and also a proposed driveway location for the house, which is just about dead center on the frontage. At a place where there is maximum sight visibility on the road. The wetlands have all been mapped in this area and flags are shown on the plan and easily identified on the field. The total lot area is 2.45 acres and it is shown on the left hand side of the plan a breakdown of the different soils on the lot and how they correspond to a minimum building lot size. The total upland and slope square footage, which is 1.59 acres falls in with the requirement of

no more than 25% of the minimum lot size being in wetlands and steep slopes. It is shown with 25 foot wetland buffers on this lot. Has a question on the wetlands buffer regarding the existing driveways within 25 feet of the wetland and is not sure how this can be designated as buffer.

T. Hoopes answered with an existing drive, obviously you are not going to vegetate the driveway. Their purpose is to get the greatest buffering to get as many pollutants removed from the water stream so it does not pollute something. That is what they are trying to achieve.

D. Voltz asked a second question regarding the future of this lot. If they are designating a 25 foot buffer around all wetlands over 10,000 square feet, how does that affect a future road going through to cross into those buffers.

T. Hoopes replied that at some point it has to be addressed. The way it was addressed in the wording was if there is disturbance it has to be revegetated. So the sides of the roads and that sort of thing would have to be revegetated. Obviously, you need to get through but at the same time the Board is trying to mitigate the absolute most that they can. The whole purpose of a no cut buffer is to protect the ground water and the streams. Noted there are going to be exceptions where you have to get through and you bump into a buffer. There has to be a certain amount of reasonableness involved.

D. Voltz agreed and stated it was his intention to protect the wetlands also. Asked if a note should be placed on the plan that all wetlands over 10,000 square feet on this lot are subject to a 25 foot no cut buffer.

T. Hoopes agreed and this would be good for any future development that they would know this was required.

D. Voltz noted the extensive notes on the right hand side of the plan that summarizes the total frontage on each one of the lots, gives the total acreage, and other standard notes including the State subdivision approval number of the existing septic system for the house and eventually for this lot also, once approved by the State.

T. Hoopes asked for questions from the Board. Noted that looking at the plans the requirements are all met. Asked for public input on this application. None seen or heard. Referred the case back to the Board.

D. Voltz asked if the suggested conditions of approval #2, the marking of buffers be restricted just to this lot for the moment for (Lot 24-1-3 only.)

T. Hoopes agreed that this was a reasonable request.

Motion by J. Dube to approve Case P06-07, Map 3-24-1 with the following conditions:

1. Note on plans stating that all wetlands greater than 10,000 square feet are subject to a 25 foot no cut buffer.
2. A 25 foot no cut buffer be clearly shown on lot 24-1.
3. The trees along boundary of the 25 foot wetlands buffer to be flagged on plat and in the field on trees approximately 25 feet with permanent markers identifying them as the wetlands buffer. All proposed signage to be reviewed and approved by the Planning Board. This pertains only to Lot 24-1-3.
4. A note to be added to the plat stating erosion control will be in place prior to excavation or timber cutting.
5. A note on the plat stating the total acreage of each current use category for each lot number.
6. All necessary state, local, and federal permits be obtained prior to the beginning of excavation or timber cutting; copies to be provided to the Planning Department.
7. The following notes are added to the Mylar and final plat sheets for recording: This subdivision plan contains total of two (2) sheets, which in its entirety constitutes the subdivision plan as approved by the Town of Alton Planning Board. Sheet number 1 is recorded at the Belknap County Registry of Deeds and the remaining sheets on file at the Town of Alton Planning Department. This subdivision plan is subject to the Conditions of Approval itemized in the November 15, 2005 Notice of Decision on file at the Town of Alton Planning Department. Second by B. Holmes. No discussion. Voted Unanimous.

Board took a break at this time.
T. Hoopes called the meeting to order.

Case#P06-09

Map 1, Lot 16-2 and 15

**Boundary Line Adjustment
Lockes Corner Road**

Ronald and Jane Fitzpatrick

Application submitted by Richard D. Bartlett and Associates, LLC, on behalf of the property owner, Ronald and Jane Fitzpatrick for a Boundary Line Adjustment. The property is located on Lockes Corner Road and is within the Rural Zone.

K. Menici informed the Board that no waivers were requested, however, when reviewing the submitted application, the following items were noted. Section 7.1.12 Plat Date. The check list and the Regulations require that the plat date be located in the lower right hand corner of the plat in the revision block and related information located in the lower left hand corner. Section 7.2.16 The Legend. The Legend does not include the symbol used to depict the wetlands. Section 7.2.20 Details on Abutting Properties. There are none that are included on the plat. Section 2.2.21 Meets and Bounds. The plat submitted with the application does not depict Map Lot 115 in its entirety. None are particularly significant issues and the Board can grant the waivers that are necessary in order to accept the application as complete and as part of the acceptance require that any or all of the those items be added or actually none if the Board so chooses. It is a formality that those waivers do need to be granted in order to accept the application as complete and then the Board can decide whether or not they need to be added to the plat as a condition of approval.

Motion by T. Varney to accept the boundary line adjustment application for Ronald and Jane Fitzpatrick as complete and grant the waivers that are noted above in the Planner's Report. Second by J. Dube. No discussion. Voted unanimous.

Mark Sargent and Ron Fitzpatrick were present for this case.

M. Sargent noted the Fitzpatrick's own two parcels of property on Lockes Corner Road identified as Map 1, Lot 16-2 total area of 18.49 acres and currently has a house that is under construction on it. The other parcel is identified on Map 1 as Lot 15 and has a total area of 65 acres, has no frontage in Alton but is contiguous with other properties the Fitzpatrick's own in Barnstead. The proposal before the Board this evening is a lot line adjustment and they would like to annex 1.28 acres of Lot 15 with Lot 16-2 and annex 7.77 acres of Lot 16-2 with Lot 15. This equates new lot area for Lot 15 of 71.4 acres and new lot area for 16-2 of 12 acres. This has been highlighted on the proposed plan.

T. Hoopes confirmed that this is being done to access the property to Lockes Corner Road but also looks at the property and the size of the wetlands and knowing the wetlands across the street he noted this is somewhat of a wet area so he questions is there a feasible access that minimizes the impact on the wetlands?

M. Sargent noted they are not proposing an impact on the wetlands at this time.

T. Hoopes stated that this is taking a piece of property that would normally be developed from another town and putting it in a position to develop in the Town of Alton.

M. Sargent noted that the wetlands have been depicted on the plan. They were delineated by a NH Soils Consultants. The crossing itself equates to less than 2000 square feet if you take into account slopes and such.

T. Hoopes noted his awareness to this property.

K. Menici noted that a boundary line adjustment is legally considered a subdivision, therefore you are creating

new lots by doing the boundary line adjustment.

M. Sargent noted they can add that to the plan.

J. Dube noted that the buffer would not impact anything that is pre-existing.

T. Varney asked about the 4 to 1 or 3 to 1 ratio, is that met here? If it's over 5 acres is it 4 to 1?

K. Menici stated it is 4 to 1 after checking confirmed that it is a 12 acre lot and it would be a 4 to 1 ratio for Lot 16-2. For Lot 15 it would be a 5 to 1 ratio but because of the lot configuration she would say that neither lot meets that requirement.

T. Hoopes notes that it is under 5 to 1 on the new lot being created but a little over 4 to 1.

M. Sargent wanted to clarify that there are no new lots being created. There are two lots and will remain with two lots, they are making one a little bit smaller that it was originally. The lot that is going to be 12 acres has over 400 feet of frontage. The other is about 290. Confirmed that there is a house under construction on Lot 16-2. The other property which will be connected to Lot 15 is contiguous with the Fitzpatrick property in Barnstead which their house is located on.

T. Hoopes asked if there is an access road in Barnstead to this property.

Ronald Fitzpatrick responded no.

T. Hoopes asked if it is closer to a road through Barnstead or closer through Alton.

R. Fitzpatrick the Barnstead piece is on Lockes Corner Road.

M. Sargent noted Mr. Fitzpatrick's property now has frontage on Rand Road which becomes Lockes Corner Road in Alton.

T. Hoopes noted it would be just as easy to do a lot line adjustment with the other piece as well.

M. Sargent confirmed. It's a piece of back land they are trying to get frontage for.

T. Hoopes asked if this is creating a non-conforming lot by doing this and is that consequential.

K. Menici asked which lot in particular is Mr. Hoopes concerned with.

T. Hoopes confirmed it was Lot 16-2.

K. Menici noted that lot is so close to being compliant.

T. Hoopes asked the Board for more concerns. Opened the case to the public. Seeing none and hearing none closed the public input.

K. Menici noted, after doing calculations, that this lot is not a problem with conforming.

Motion by J. Crouse to approve case P06-09 subject to the following conditions:

1. Section 7.1.12 Plat Date, The check list and the Regulations require that the plat date be located in the lower right hand corner of the plat in the revision block and related information located in the lower left hand corner.

Section 7.2.16 The Legend. The Legend does not include the symbol used to depict the wetlands. 2. A no cut buffer be added to the final plat on all wetlands greater than 10,000 square feet. Second by J. Dube. No discussion. Voted unanimous.

Motion by J. Dube to continue past 10:00 p.m. tonight. Second by T. Hoopes. Discussion. J. Crouse questioned by the 10:00 p.m. rule was adopted to not continue past 10:00 p.m. and the Board consistently move to continue past 10:00 p.m. T. Hoopes noted this was done to be able to continue if it was necessary. T. Hoopes noted it was also in the By-Laws. No further discussion. Voted Unanimous.

Case#PO5-77

Map 36, Lot 28

Site Plan Review

Brandt Development Corporation

167-173 Mt. Major Highway (NH 11)

Application submitted by William Tanguay, attorney, on behalf of the property owner for a Condominium Conversion. The property is located in the Residential Commercial Zone, The Town of Alton Shoreland Protection Overlay District and the NHDES Shoreland Protection District. The application was accepted at the October 25 meeting and continued. The application is continued from the January 24, 2006, meeting.

Tom Varney has stepped down from this case.

William Tanguay is present to represent this case.

K. Menici noted issued raised in her report. One of the items at last meeting that the Planning Board required of the applicant was a letter from Mike Pillsbury at DOT in Concord approving the stone wall that was in discussion on this application and to date the Planning Department has not received a copy of that letter. There are also comments from the Fire Chief and Police Chief. They are still waiting on comments from the Water Superintendent and she will follow up with him. The Fire Chief has expressed concerns about the stone wall and his ability to provide emergency services, particularly fire protection service also provided with photographs that the Chief took trying to get fire apparatus onto that sight. The stone wall does not all access to the site as the Fire Department would like to be able to. She has verbal comments from the Water Superintendent with regard to the stone wall and its location. It is actually built over the Town water main in one area of the wall.

J. Dube asked of the Planner, is the discussion with Town Counsel in writing?

K. Menici noted this was a verbal discussion and she makes notations of his recommendations.

T. Hoopes noted from the Town Counsel's perspective the wall does not comply with the Town Zoning Ordinance.

K. Menici noted this has been a discussion with the applicant right from the beginning. The Town Zoning Ordinance states very clearly that there has to be a 25 foot set back for all buildings and structures; set back from the right-of-way line of any street whether public or private. That is from Section 227, paragraph A.2 on page 8 of Zoning Ordinance. Buildings and structures excluding septic systems and fences shall be set back a minimum of 25 feet from the right-of-way line of any street or highway whether public or private.

T. Hoopes asked if they have received the application for subdivision.

K. Menici noted that they have not received this and is still outstanding.

T. Hoopes noted unless they have the letter from DOT, Mike Pillsbury and with the comments from the Town

department heads and anticipating the written statement from the Water Commission he states there is nothing that can be done by the Board. Without an application for subdivision, which has been requested, he would say the next time the applicant comes it should either be denied or expect the items they have asked for.

K. Menici added that Town Counsel is of the opinion that the Board needs to deny the application because it does not comply with Zoning. Unless an application complies with the Zoning Ordinances the Planning Board legally cannot take action on it.

J. Dube feels they need to take action.

J. Crouse does not see what the letter from DOT is going to resolve because if the State gave approval it does not matter. This does not comply with the Zoning in Alton. Feels the application should be denied.

W. Tanguay asked to be heard when the time comes.

T. Hoopes responded whether he should be heard. He is concerned about what the Board has asked for and have not received.

W. Tanguay responded with regard to the application for subdivision. Last meeting he had an application with him and still has it. He asked, and the last meeting, to consider whether or not this application would go on a parallel track with the site plan application. Feels he did not get an answer for this question and has noted that tonight he is still prepared to submit this application but wants an answer first.

T. Hoopes responded that three different applications following along in conversion. They have done the exact same thing for all three to submit an application for subdivision. If it's not there they cannot consider it. They are both handled separately in parallel.

W. Tanguay stated that this was asked last month and was put off so the Board could ask Town Counsel.

T. Hoopes answered that they answered with the exact same response last month.

K. Menici added this is a separate application and have been saying this all along. There is a site plan review and subdivision; two separate applications.

W. Tanguay stated he is prepared to hand this in tonight but the Board is going to deny him anyway. The second thing is there were a number of questions that were to go back to Town Counsel and he asked for a clear specification as to what those items were and was told he would get a list. But he never received a list and wrote to Town Counsel stating that they have not been provided and list and still has not heard from Town Counsel. Stated it has become a frustrating process when he is not knowing what it is he is supposed to be giving the Board.

T. Hoopes stated the Board has specified each item as they have gone along.

W. Tanguay stated it seems clear to him that he is headed to the ZBA and that is fine. He would like to get from the Planning Board as to what it is he needs to be doing there as well. For clarification he has submitted a site plan application but not a subdivision application and the Board feels that he needs both.

T. Hoopes stated this has been said every time they have met with them five months ago.

W. Tanguay stated that the Town Planner says they do not satisfy the set-back requirements and they need to go to the ZBA to get a variance. Clarification he would like on this is the violation that the Board sees for the

building as it goes up to boundary line or do they consider it to be a violation that the stone wall extends beyond the boundary line and into the DOT area.

T. Hoopes corrected that it extends from the boundary line back to the building but it also extends into the State DOT right-of-way.

W. Tanguay asked what the Board considers the violation. Is it both or one or the other.

K. Menici answered. The way the Ordinance reads and read for a second time. Buildings and structures, excluding septic systems and fences shall be set back a minimum of 25 feet from the right-of-way line of any street or highway whether public or private.

W. Tanguay stated that his understanding is that whatever is within 25 feet of the right-of-way line, what is beyond the right-of-way line is not in your Zoning Ordinance?

K. Menici responded that 25 feet back from the right-of-way line. Not the lot line, the right-of-way line. Stated again that it was asked at a previous meeting the Board has asked when the site plan was corrected and submitted that it very clearly indicates where the right-of-way line is. The only thing on there is the edge of pavement. Her understanding is the right-of-way line is right at the property line. That is from her discussions from DOT to be even though it is not depicted.

W. Tanguay responded that if you look at the structure and you look at the right-of-way line is that portion of the stone wall that is in there is in violation. That which is beyond, that is closer to the lake, beyond the right-of-way line is not in violation.

K. Menici corrected no, that is in violation. That is most definitely in violation.

T. Hoopes responded there is a State RSA that no structures can be in the right-of-way.

K. Menici added this goes beyond the State right-of-way issue. This is the Town Zoning Ordinance and it says that nothing can be built within the 25 foot set-back from a street or highway line.

W. Tanguay asked so you set the highway line and you measure back toward the building.

K. Menici agreed.

W. Tanguay stated he understand what she is telling him, but what he wants to know is if he goes the other way, get the right-of-way line and go away from the structure do they consider that to be a violation of the Zoning Ordinance. He just wants to make it very clear before he goes to the ZBA.

T. Hoopes noted it seems to him that there is a boundary line and beyond the boundary line there should be nothing.

W. Tanguay responded that maybe there is some State Law that says that but that is not what the Zoning Ordinance says.

T. Hoopes answered that it is a requirement that there not be anything in there by State Statute.

W. Tanguay responded he will go to the ZBA and ask for relief from the ZBA.

T. Hoopes questioned how he will get State relief from the ZBA?

W. Tanguay stated they are in the process of getting a letter from the State but that does not seem like it will satisfy the Board's requirement. Stated he is not sure how to get the relief.

T. Hoopes asked how something can be built on State property in the right-of-way.

W. Tanguay responded that if DOT tells them they are fine with it.

T. Hoopes noted the Town is not fine with it.

K. Menici made the suggestion after discussing this situation with Mike Pillsbury and the Town's concerns about the stone wall and the Town Department Head's concerns about the stone wall and not including the Water Department's concern about the stone wall, he said that if the Town has concerns that they can file an appeal the permit.

J. Crouse asked what the permit was for.

K. Menici stated it was a permit that stated nothing should be built in the State right-of-way.

J. Crouse asked why we would ask for an appeal that specifically states that nothing should be built on the right-of-way.

K. Menici responded that this would be appealed for two reasons. As part of the appeal tell them you want them to enforce their driveway permit and if they issue a letter waiving or releasing the property owner from that requirement then the Planning Board would appeal that decision. There is an appeal process with DOT.

W. Tanguay noted Hank Brandt is working with DOT and the process has not been completed in order to get a letter in time for this meeting.

J. Crouse asked at what point would the Board appeal to DOT to enforce the permit?

T. Hoopes suggested that they appeal the existing permit with photographs of what the driveway now looks like with the existing wall.

Motion by T. Hoopes that the Planning Board appeal the existing driveway permit issued by the DOT with photographs of what the driveway now looks like with the existing wall. Second by J. Crouse. No discussion. Vote unanimous.

W. Tanguay added that as he is going to the ZBA there has been talk at various times at what they have proposed is or is not a change of use. He noted the provision in 220 A.3 that says that if there is a change of use there is a procedure to go to the ZBA and seek a special exception. He is asking for the Board's input on this question.

T. Hoopes responded he will recommend to the ZBA that whatever they make a ruling of they put conditions of approval on because he feels they did a poor job last time.

K. Menici stated they need to request from the ZBA a variance from the set-back requirements. Implicit in that set-back requirement, if it states that buildings and structures are supposed to be set back 25 feet from the right-of-way line of any street or highway implicit in that requirement is that building and structures will not be built in the right-of-way.

W. Tanguay responded that they can disagree. He understands the issue with regard to set backs and he is going to the ZBA. But the question he is still asking the Board is about the change of use.

T. Hoopes confirmed this was rental to condominium.

K. Menici added the special exception for the change of use is required only if it is non-conforming use. The non-conforming use would also be in relation to lot size. This lot is non-conforming with regard to the size of the parcel.

W. Tanguay feels this was residential use and will still be residential use and does not see it as a change of use and if the Board sees this as a change of use he will go to the ZBA and get their input.

J. Dube stated this is the Board's view that it is a change.

W. Tanguay asked if they come back to the Board from the ZBA what would he come under.

K. Menici stated it was total demolition and he built structures after total demolition.

Motion by J. Crouse to deny Case P05-77 because of concerns about the stone wall built on the State right-of-way and also in violation of the Town of Alton's set back requirements. The absence of the subdivision application has not allowed the Board to proceed on this application. Discussion that the application is in violation of the set-back requirements and the motion is valid. Second by J. Dube. Vote unanimous.

Case#P05-83

Map 34, Lot 37

Site Plan Review

Daryl Breed Hoitt

Mt. Major Highway (NH 11)

Application submitted by Melissa C. Guldbrandsen, Esq., on behalf of the property owner, Daryl Breed Hoitt, for a Site Plan Review to reconfigure Unit 2 (The Alton Bay Pavilion) of the Pavilion Property Condominium to encompass seven (7) two-bedroom residential units and two (2) commercial retail units. The property is located on Mt. Major Highway in the Residential Commercial Zone. This application is continued from the January 24, 2006, meeting.

M. Guldbrandsen, Mike Sava, Lee Maserian and Daryl Hoitt are present for this case.

M. Guldbrandsen gave a brief history of this case. The Site Plan Review application began this application but wanted to have the site plan and the subdivision work together. She is looking for a conditional approval on both of these applications this evening. She did have conversations with the Fire Chief and the Planner can confirm his response. The applicant submitted a letter summarizing his discussion with the Fire Chief and he has signed off on what was distributed to the Board with the accuracy stated and the potential for possibly moving a parking space if necessary. She feels he was comfortable with the plan as depicted. There is a letter in the file the planning department requested another set of fees for the subdivision application and it was their original understanding that there would not be a separate or duplicate fee charged to an applicant when submitting two applications, one for subdivision and one for site plan review. Attorney Sessler made that representation to her by telephone conversation. They have requested a waiver for that second set of fees that the applicant has already paid for the subdivision. The other issue she wants to make the Board aware of with the subdivision application that it was submitted in time to be heard the last meeting but the notices did not go out in time. Noted they have a meeting Thursday in Concord at the DES with Bill Evans who works in the Sub Surface Bureau to address septic issues and also with Heather Dion who is in the Shoreland Protection Bureau to work on that piece of the approval of this project. From their perspective the State permitting is their next hurdle and stated it would be very helpful to be in a position on Thursday of having confirmation from the Board as to the plan and move forward on the septic and shoreland protection issues with the State.

T. Hoopes asked if they have spoken with Bill Evans with some of his concerns.

M. Guldbrandsen confirmed yes with numerous telephone conversations as well as written correspondence. Mr. Evans also suggested they speak with someone from the Attorney General Department and she has had numerous conversations with one of the Assistant Attorney Generals and feels she is on top of that issue. Noted they do have prior approval for the capacity that is being used.

T. Hoopes mentioned one of the concerns that Mr. Evans has is the fact that this is a condominium that is being re-subdivided or reconfigured. From his point of view it is starting to set a precedent. Now one of the three units is re-subdividing as a condo. That is changing something which we see potentially as a precedent. Mr. Hoopes concern from the last meeting is that basically decisions that were made by the ZBA took a lot of things out of the Planning Board hands. The only control remains is what the capacity of the septic field actually is. That is why he asked for the computations of the units.

L. Maserian answered that Unit 1 is restricted to 300 gallons per day. Unit 2 (the Pavillion) is 2195 gallons a day and Unit 3 is 300 gallons per day. Each residential unit (two bedroom dwelling) requires 300 gallons per day. 7 units at 300 gallons per day with a total of 2100. There is roughly 1200 square feet of retail area at 5 gallons per day totaling 60 gallons. The total capacity for Unit 2 is 2160 and the allowed use is 2195 specifically for unit 2. Stated what they implied to him was they were fortunate they agreed on what the capacity of the system was. As long as they kept this within the guidelines they did not have a concern how the building was reconfigured as long as the calculations came out correct. His point was they need this to such a unique situation of a structure or building so this will be a unique scenario.

K. Menici spoke with Bill Evans and she noted it was not the capacity of the system that he expressed concerns about. In her discussion with him she stated his concern was that there is an existing condominium and that the applicant is coming in for further subdividing of an existing condominium and the potential precedent that this might set. When she spoke with him he was very clear that the further subdivision of an existing condominium is the issue of concern and that the applicant's, when it comes time for them to file an application with Sub Service, there has to be something very unique about the situation and circumstances in order for the State to go ahead and approve it. They are looking for uniqueness so that down the road they don't get flooded with requests for this kind of thing to use as an example.

T. Hoopes agreed and wanted this brought up so they can know how to approach this situation.

M. Guldbrandsen stated they are very clear on Mr. Evan's issues and agrees with the Town Planners report and they are meeting on Thursday regarding this situation. They have a copy of the approval of the Septic capacity per day with the calculations.

T. Hoopes asked the Board for questions.

J. Dube does not have any questions.

M. Guldbrandsen suggested the Board move on to the subdivision application and get back to the site plan.

Case#P06-12

Map 34, Lot 37

8-Unit Condo Subdivision

Daryl Breed Hoitt

Mt. Major Highway (NH 11)

Application submitted by Melissa C. Guldbrandsen, Esq., on behalf of the property owner, Daryl Breed Hoitt. Applicant proposes an 8-Unit Condo Subdivision of the building located on Map 34, Lot 37 (The Winnepesaukee Pavilion). The property is located on Mt. Major Highway (NH 11) and is within the Residential Commercial Zone.

K. Menici noted this is the application that Melissa was asking for a waiver for the application fee. She spoke

with Town Counsel and he stated he had not said that the fee should be refunded. He felt this was outside the scope of his authority. Waivers like this lie totally with the Planning Board.

T. Hoopes asked if the application fee for the site plan is similar to the subdivision application.

K. Menici stated the site plan review application the fee was \$850.00 (\$100 per dwelling unit and non resident \$150 for the first acre) and the subdivision application fee was \$1,200 (\$150 per lot).

T. Hoopes feels the Board is not in the business to make money and would like suggestions on what to do.

L. Maserian offered to pay the higher fee of the two applications.

T. Hoopes agreed that would be extremely fair.

Motion by B. Holmes to accept the application for case PO6-12. Second by J. Crouse. No discussion. Vote unanimous.

Motion by J. Crouse to refund the \$850 (the lower of the two application fees) paid by the applicant less the cost of notifying the abutters. Second by B. Holmes. No Discussion. Vote Unanimous.

T. Hoopes asked about the restriction of the ground floor building of additional bathrooms and bedrooms.

L. Maserian noted it was discussed to limiting it to storage.

T. Hoopes asked if there will be an assignment of the docks spaces per unit.

L. Maserian confirmed yes as well as automobile parking.

K. Menici noted this was depicted on the plat. Asked of Melissa regarding the site plan that the units are not depicted.

L. Maserian noted they were going to do that individually as an architectural plan.

K. Menici stated it needs to be done for recording.

M. Guldbrandsen noted it was included.

K. Menici asked if they were going to record the entire packet?

M. Guldbrandsen confirmed yes and acknowledged it would be a big recording fee.

T. Hoopes opened this up to public input. None seen or hear. Referred back to the Board.

T. Varney added he feels it would in the best interest of the Board to wait until they have gone to the State and they have made their decisions. Feels approving this with conditions puts pressure on the State.

J. Dube responded to a statement that a couple of month ago they made a motion to have the State not act until the Board acts on a subdivision.

M. Guldbrandsen added that condition approval sets up the scenario appropriately. They can't move forward until the State approval but they have at least have the certainty what you see in front of you is what they are

taking to the State. Does not see the approval as pressure and puts the burden back on the applicant.

T. Hoopes feels the concerns that were left have been answered.

K. Menici stated they can work on setting the conditions. 1. Address condominium documents being approved by the Town Attorney. 2. There will not be escrow requirements. 3. State, Federal and local permits needed. 4. No excavation or wetlands, so really it's the condominium documents and the other permits.

T. Hoopes asked if the permit from 1996 for the septic provides for the rebuilding.

K. Menici does not know but could be listed as a condition.

M. Guldbrandsen noted on the easement deed it says a perpetual easement to use the land described for a septic system including but not limited to the right to install, use, repair, maintain, and replace pump lines with ancillary facilities and a cross easement strip.

K. Menici another issue of concern would be the parking. They received a variance and asked if they have gone to the Selectmen. Noted the ZBA cannot provide relief.

D. Hoitt noted a letter from the Selectmen on this.

K. Menici noted that the letter Ms. Hoitt has does not run with the property only the owner. There is a change of use and creating a different type of parking situation and that it needs to go back to the Selectmen. It can be done by letter also. It is just a formality. This is outside the purview of the ZBA. The Board of Selectmen still have to sign off on this.

Motion by B. Holmes to approve case P06-12 with two conditions: 1. Condominium documents approved by the Town Attorney. 2. All necessary stated, local and federal permits to be obtained prior to the beginning of construction and with copies provided to the Planning Department. Second by J. Crouse. No discussion. Vote unanimous.

Motion by J. Crouse to approve case P05-83 with two conditions: 1. Condominium documents approved by the Town Attorney. 2. All necessary stated, local and federal permits to be obtained prior to the beginning of construction and with copies provided to the Planning Department. Vote unanimous.

Other Business:

Discussion on these items to discuss them at the February 28 meeting.

It was agreed to discuss the Correspondence received as Mr. Weldon was still present even though the very late hour.

K. Menici noted it was a letter from RACO Development requesting the Board waive the requirements of Section 4.3 General Provisions of the town's Subdivision Regulations to allow the issuance of a building permit for a parcel with a pending subdivision application.

Discussion of Board members that they thought this was not allowed.

K. Menici stated that is why they are here asking to waive this. Noted that this is also in the subdivision regulations. General Provision, Section 4 on Page 6. Whenever any subdivision of land is proposed, no land within that proposed subdivision shall be sold, transferred, leased, altered, or cleared, no road construction or building development shall be started, no permit for the erection of buildings shall be issued and no subdivision plat shall be filed with the Belknap County Registry of Deeds until all required land use permits and approval

shall have been issued and a final plat prepared in accordance with these regulations has been approved and duly recorded by the Board and appropriate secured by the subdivider.

T. Hoopes asked of the status.

Dan. Weldon responded and gave his explanation which was very confusing.

K. Menici corrected his explanation and stated the Cease and Desist was issued because the Building Permit that was issued last year had expired and there was no permit and this Cease and Desist was issued. She had heard that Brian was going out to issue this and she noted that there was a subdivision application pending on that parcel and there should not be any building taken place there at all. At that point the property owner came in a wanted to know how to get around this basically. It was discussed with Town Counsel and they have advised that applicant withdraw the subdivision application, Brian can issue a building permit and no subdivision application should be accepted by the Board until a Certificate of Occupancy is issued for that particular home that is currently under construction now.

T. Hoopes agrees and concerned with the precedent they would be setting.

The owner of the property (did not give his name) gave his explanation.

K. Menici reiterated that the issue before the Board and the only thing the Board has purview over is the subdivision regulations.

General discussion of the building on this lot and what they can do to continue the construction of the building and not follow the Town Counsel's recommendation.

K. Menici suggested continue with construction and in the interim the property owner can come before the Planning Board under design review and so at the time the house is completed and the CO is issued they submitted an application for subdivision to the Planning Board through the design review phase, they have all the detailed worked out and should be able to get subdivision approval if not in one meeting then two with all questions answered.

T. Hoopes asked they can agree with this?

General discussion and explanation to the property owner of this process.

T. Hoopes agreed they are in a "catch 22" but they need to follow the regulations that have been set before them. Feels that the Town Planners suggestion is the best plan of action.

Motion by J. Dube to deny the request by RACO Development to waive Section 4.1 General Provisions of the Town Subdivision regulations. Second by B. Holmes. No Discussion. Vote unanimous.

Old Business: Request from Scott Williams, W. & W. Ralph Trust, for an extension of the subdivision approval for Ingall's Woods. Continued from the November 2005 meeting. **To be discussed 2/28/06**

Motion to adjourn by J. Crouse. Second by B. Holmes. No discussion. Vote unanimous.

Respectfully submitted,
Carolyn B. Schaeffner