

ALTON PLANNING BOARD
Verbatim Meeting Minutes
September 20, 2005
ALTON TOWN HALL

Gillian Marine Application – Amended Site Plan Review-

Present:

Thomas Hoopes, Chair
Bonnie Dunbar, Member
Thomas Varney, Member
Jeremy Dube, Member
Alan Sherwood, Selectmen's Representative to the Planning Board
Kathy Menici, Town Planner
(other members not identified spoke during this session)

K. Menici – Mr. Chairman I'll read the case

T. Hoopes – certainly

K. Menici – Case P0509, Map 32, Lot 13 – Amended Site Plan Review, Ernest Gillan, Gillan Marine Rte 11
Application submitted by MJS Engineering on behalf of property owner Ernest Gillan for site plan review

The property is in the residential commercial zone within the Town of Alton's, aquifer protection zone, the Town of Alton shoreland protection overlay district the NH DES shoreland protection overlay district. The application was accepted with conditions that the July 19th, 2005 meeting and has since been continued.

T. Hoopes – I'd like to state that we have met with our Town Attorney and discussed some different things to deal with the case. And his suggestion was to start with dealing with the situation of compliance. And we have three different topics of the compliance that we want to go through before we do anything else. One is lot coverage, the other is the green area, the lot coverage and drainage, the green area and the usage. By usage I'm referring to whether its retail commercial sales service whatever is being proposed. The green area and the parking are two different items that we need to resolve. And the lot coverage is dealing with the lakeshore and the aquifer and the amount of coverage that was permitted and I would like to start with the first one which is the lot coverage concept.

B. Dunbar - Point of Order Mr. Chairman

T. Hoopes – yes

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B. Dunbar - Perhaps since I will not be here in a couple of months, you might like to appoint Mr. Brock in my place, I'll sit and remain on the Board at this point, but I won't be a voting member

T. Hoopes - Bonnie Dunbar will step down, Donn Brock will assume Cindy's position.

The fact of what of what we're dealing with in lot coverage really is what is pervious, what is impervious. What do the minutes actually say. What is the meaning of a note that is on a plat, and all of the work that we have done in reviewing minutes and looking at different things, we have found -0- reference to a vote ever taken by the Planning Board to permit extra coverage within the aquifer zone. Whether or not that note was put on there inadvertently, we don't know, but there is no evidence that it was something that was approved ever by the Planning Board. The applicant has been represented by lawyers and designers and engineers all the way through and they would have made sure that that was brought to the attention of the Board, so somewhere in the minutes, so the stamps that we're at in this is, we still have to approve an extended lot coverage. In order to do that, we have to understand what is taking place on the property.

A. Sherwood - At the time that this case was accepted, I don't remember if that was our last meeting or not even.

K. Menici - July

A. Sherwood - Alright, and actually it was conditional acceptance. I made the motion, I don't remember the exact wording but I know the intent of it was that we deal with the requirements of the aquifer protection zone as part of this site review. And meaning that to exceed the 20%, than there has to be adequate provisions for water purification and recharge and the intent was to have a design provided by the applicant and to have our Town engineer review that. And the Town Engineer has looked at what's proposed and basically their saying that the applicant still needs to provide a plan for storm water treatment and groundwater recharge of the site prior to flow into the Merrymeeting River.

And then I skim read the response from MJS Engineering and it seemed to say what we proposed to do is all we're going to do. I mean, that's sort of what I got out of it, so we got the Board saying they want something and the Town Engineer looking at it and saying you know, that part of it hasn't been done, what's been presented doesn't do it and so I guess we really need to clarify whether the applicant is going to take that requirement seriously and try to address it. So, I think that's where we are on that and I guess we want to try and resolve that before we move onto other things.

Attorney Roger Burlingame - May I please Mr. Chairman and the Board, for the record, my name is Roger Burlingame I am an attorney and I represent the applicant. So, I take it the Board has already decided, voted that the lot has not previously been approved for coverage in excess of 20%.

T. Hoopes – we have not taken a vote.

R. Burlingame – ok. so, I'm hearing that the decision (interrupted)

A.Sherwood – well, you're hearing that's clearly my decision, and it was when we accepted this case, that we needed to address that. So I don't know about the rest of the Board(interrupted)

T. Hoopes – because its not something that was waived, and that this was a statement that Alan made in the very beginning with this, its something that would have to be proved.

A. Sherwood – And we can go around the Board and see if we have a consensus but you need to address this issue.

R. Burlingame – its our position and I've stated this before that the approval in March of 1997 included the allowance of 51.8% of impervious lot coverage

T. Hoopes – based on the calculation notes on the plat(interrupted)

_____? – based on the notes of an approved signed plan

_____?_ – also in addition to that, the minutes do reflect the discussion about ground water re-charge and at the next meeting there is discussion about providing a stone line swale at the base of the parking lot and that would end up switching back and draining across a grassline swale. So, the Planning Board during their review in 96 and 97 understood, that we were, in my mind, understood that we were exceeding 20% lot coverage and required the ground water discharge. The plan was amended, it was discussed at a meeting and therefore I do believe that, and we believed that the Planning Board approved an excess of 20% lot coverage and that number is shown on the plan as 51.8%.

A. Sherwood – alright I guess my position is, my feeling is that you number one, you didn't explicitly get a waiver of that zoning requirement there was never a vote by a prior Planning Board, but number two this is a new application the site has changed since then and this application for a new structure and we also have the right to look at that requirement within the context of this new application, and that's the second point(interrupted)

_____?_ we may have a disagreement on that as well because we're now prepared to go forward(interrupted)

_____? - step back

R. Burlingame - if that's a decision that this Board is going to make then I think we have to pursue our appeals of that decision because that really controls the project as we're presenting it to the Board.

T. Hoopes – Well, I've reviewed as many of the minutes as I possibly can, as carefully as possible, there is no mention of a vote there is a great deal of discussion about the aquifer, there's a lot of discussion about the swale. With all the discussion that took place and the necessity for extra coverage, you would of thought a vote would have taken place. But they were also talking about the gravel as being pervious not impervious.

R., Burlingame – I know you have spent a lot of time on this Board, I know you are familiar with minutes. My history in dealing with minutes, not this Board, but of Planning Boards around the State is that you are not always certain that you are going to get complete minutes of everything that took place at a meeting when you get the minutes, especially 96 in earlier years. If they are recorded and you tape, then that's fine you can actually go back and listen to them . If you are relying strictly on written minutes, they regularly leave things out. I, on the other hand I've never seen a plan approved and signed by a Planning Board that contained calculations that were not part of the approval.

T. Hoopes – there are often and frequently you find inadvertent or intentional notes that are put onto a Board with a concept of “catch me if you can”. Its information that's hidden in a lot of the notes.

_____? This is not hidden

_____? - _____(unclear)Arthur Hoover brought this all up time after time, this was approved for 51.8%

Selectmen and signed by James Washburn. This is the original plan that was missing from the file, we've got it and it is approved for 51.8. _____(unclear)Parkers have complained and Arthur Hoover (expletive) about this all the way through the process of getting approval, _____(unclear)that it wasn't approved is just false.

T. Hoopes – I'm sorry but that's not the opinion our Attorney and we have reached. I'm an individual, you can ask every other person here. If you want we can take a vote of a finding as to how we feel about this particular situation.

_____? - we need a vote

A. Sherwood - and we might want to ask for Public Input before we do that, but I'll repeat when this case was accepted one of the conditions of acceptance of this case, was that the requirements in the aquifer protection section of the zoning for recharge and for purification be dealt with on this application. And you were all here gentlemen, that night it was accepted and you didn't say "oh no, no, no, don't accept it". So that was very clear.

Roger Burlingame - We believe that the plan as submitted does in fact comply with the applicable protection zone requirements.

A. Sherwood – And our Town Engineer has looked at it and said, "no, it doesn't" ok.

R. Burlingame - because he's assuming there's no grandfathering rights, if there are grandfathering rights then he's wrong.

A. Sherwood – ok, do we want to see if there's any Public Input on this issue.

T. Hoopes – certainly, I will open this up to the Public if there's anybody who wishes to make a statement, please step forward and do so.

Public Input

Charles Weston - I was just wondering, I understood from hearing a lot of talk in general terms that when they had the re-charge area of this previous done, in 91 or 96 whenever it was that that was supposed to be serviced or checked twice yearly or at least yearly. And apparently from what I have heard it has never been checked. If that's part of it or part of the way they handle it then I would be a little concerned for the Merrymeeting and Winnepesaukee on that basis, thank you

T. Hoopes – I think he's referring to the swale being checked

Someone made a response here, but its unclear

A. Sherwood - I think we _____(unclear) to deal with this one issue

Melissa Gulbranson – My name is Melissa Gulbranson from Alton Law Offices on behalf of the abutters, Parker Marine.

The issue was minutes is one that I can speak to having also read through numerous minutes and never found a vote on the issue of the percentage of coverage on this particular lot. In addition to minutes from the Board that the Town provides my clients had transcribed tapes just so they could review minutes more quickly. And in those transcriptions, unfortunately I don't have copies with me today, I would be happy to provide them, but those transcriptions from the tapes and I acknowledge my clients made the transcriptions, but I find them reliable personally and those minutes or transcriptions did not reflect a vote either. I can't imagine that this Board would allow an applicant to cover with pavement right next to Merrymeeting River, right very close to the Lake more than 20% without significant and specific discussion of what is was they were doing.

Certainly, plans often include notations, in fact when one is submitting a plan for a Boards review, often a surveyor will include standards in the plan for the benefit of the Board so people aren't flipping through back to the ordinance to see what a standard is. And the notation at issue here from my perspective is clearly just a statement of the standard that would apply should the approval be granted.

I think the most significant point however is the drainage report submitted by the applicant which explicitly discusses the 20% standard and applies that standard to the drainage analysis. The applicant has argued that there was a supplemental or second drainage report, but that report is not in the records. There is a one page supplement that I believe is the so called 2nd drainage report but it doesn't adequately address the issue of going from a 20% lot coverage to nearly a 60% coverage.

T. Hoopes – Thank you, anyone else? Does anyone else on the Board have a comment?

_____? – I had one more thought.

T. Hoopes – Certainly

_____? – I think its important to remember the drainage that comes from this lot, that's being treated now on this lot that has been an issue since the early nineties, is mostly from a Town road or from the State road, only a small percentage of the water that comes across this property, or goes into the Merrymeeting River from this property is water that is originated from the property or run-off from the property That would support an approval, a willingness to approve a waiver of the 20% for an increase up to 50.18% under the overlay zone where the bulk of the treatment, the bulk of the focus of the treatment and care was directed at channeling and protecting against that off-site run-off that initially ran behind the property directly into the river. That was done in 96 –97 and the focus of our improvements in connection with this site plan is to further that, that protection. So, it doesn't surprise me at all that once the additional engineering information was submitted to Board, that the Board approved this plan without taking a vote specifically on the impervious lot coverage without taking a vote specifically on some of the other notes that are on the plan as well, its not unusual to occur. Maybe it is today, anyway

T. Hoopes – Alan

A. Sherwood – just a clarification, comment I guess. I made it pretty clear that I feel its part of this application, the requirements of the aquifer protection portion of our zoning document be addressed as part of this application. This Board does have the authority in the zoning to waive those, to go up to 60%, provided that there is an engineering design that provides adequate recharge and purification and that's reviewed by our engineer and they agree with that, ok? All I'm saying is that avenue is still available. Anyone else have any comments?

T. Hoopes – I'm wondering if we would like to hear from Eric Ryder from CMA who did the review of the (interrupted)

Eric Ryder – Eric Ryder with CMA Engineers, we did the review of the amended site plan application, and I don't have any background, any of the history from the 97 discussion.

A. Sherwood – I think what we're telling you at least what I'm saying, we're looking to see the zoning requirements be met as they're written

E. Ryder – And the way we reviewed the plans, there were no calculations provided with respect to the amount of re-charge that was going to happen for example if six CFS's generated on the site as a result of the impervious pavement how much of that is being re-charged. We would be looking for something like that essentially how much is being infiltrated through the stoneline swale or the grassline swale as essentially as proof as documentation that infiltration and re-charge is actually happening. There is some treatment also happening in the grass line swale and the stoneline swale the question is how much. There's some, and published documents right now that say you get roughly 30% removal of total suspended solids in a grass line swale. General Guideline its 30 – 50%.or so. There are definitely other treatment options that would remove much more. And considering its location right next to the Merrymeeting River, we felt that more could probably be done.

On the basis of those two comments, we generated our comments saying that it appears that the requirements for up 60% of impervious coverage do apply and that more information should be provided, at least background information stating that the _____(unclear) of the soil would allow for additional recharge, information of that sort. Or, other site plan application might provide for a small retention basin, understandably there is not enough room here for that. There are porous pavements, there are other reasonable treatment and recharge alternatives out there.

T. Hoopes – I guess my feeling is that we're at a point where if their thinking of going to a 60% coverage of any lot with impervious surfaces, if the engineering design provides adequate purification and re-charge conditions. We have to see some evidence of that, or we are derelict in our duties. So, that is a requirement that we are faced with.

R. Burlingame - Unless its already been done

T. Hoopes – Well that's an assumption that you can make.

R. Burlingame - Well, ok, I think I don't want to continue the debate about what happened in 1997. Our position is that it was done in 97 therefore it doesn't need to be done again today

T. Hoopes – Our position, well I would say my position is, that it was not established.

Alan Sherwood – I would like to make a motion then, I move that we find that the requirements on the aquifer protection portions of our zoning, specifically adequate provisions for re-charge and purification, be met as part of this site plan review and be met by design that our engineer believes meets the requirements of that section of zoning.

_____? – second

T. Hoopes – Any Discussion

T. Varney - I don't think you have to make a motion, that's a zoning requirement

T. Hoopes - We're doing a finding, simply, they want to know how we feel, they want to see where we stand on this particular issue cause they question whether they want to move forward.

T. Varney – I don't understand the findings, whether they are in compliance now or (interrupted)

A. Sherwood – the finding is they have to meet those requirements as part of this site plan application

T. Varney – wouldn't they have to under the zoning law anyway, isn't that our job here to follow the law

A. Sherwood – they disagree with that

R. Burlingame - Well we're not disagreeing, we are agreeing with you, but the difference of opinion is that the facts have been presented in 1996 and 1997 and voted upon by the Planning Board at that time, _____(unclear)interceptor swale, stoneline swale that was the swale that provided groundwater recharge.

A. Sherwood – the motion is that we find that you need to do that as part of this application.

_____? – May I ask for clarification

T. Hoopes – sure.

_____? - If an applicant has already received an approval, a waiver, and comes back before the Board seeking an amendment to that approval, the waiver represents the

compliance with the ordinance. What I'd like to come of here with is clarification that it is either the Board's position that we had the waiver or that we didn't have the waiver.

A. Sherwood – the motion is that you have to meet those requirements as part of this site plan application.

T. Hoopes - _____(unclear)making a second finding necessary

_____? (female voice) - Oh, No I disagree with that. Because the waiver, whether they had a waiver way back when or they didn't, it really doesn't matter, what matters is today in 2005, in order for them to propose to do anything on this site we want them to comply with the aquifer, I can't remember all the different words you used, but that's what we want them to do. If they had a waiver back then it was back then(interrupted)

A. Sherwood – your understanding of my motion is correct

_____?(same female voice) – but we want them to comply with the current rules and regulations in order for them to go forward, and that's the motion on the table.

T. Hoopes – I think the distinction though is, they're saying they feel there was a waiver granted (interrupted)

_____?(same female voice) – It doesn't matter (interrupted)

T. Hoopes - It does matter, just a second please. It does matter if they feel that that is a grandfathered circumstance.

_____? The motion is that they have to deal with this as part of this application, period

_____? - Right.

_____? no grandndfathering

_____? _ This is a new application

_____? - whether you had the waiver, we're hear today to make sure you have the correct drainage and re-charge for what we're doing now, its going to be correct and we can stop fighting about whether there is a waiver or not . now our engineer says they have adequate drainage and _____(unclear)and final approval and get going here and stop fighting every month about the same thing. That's all it

was, it wasn't whether you had the waiver or not, or what note was on the plan, whether it was there, that's all done. That's what the motion is, its on the floor and we should move along with this a little bit.

_____? (same female voice)– I seconded it

T. Hoopes – I asked for discussion and we're having a discussion.

_____? – right

T. Varney – I don't think we have to have a discussion to follow the rules. What sense does this make, what does this accomplish

T. Hoopes – what this accomplishes is that at least they understand where the Board stands on different issues.

T. Varney – I understand that, we can say that, we can tell them that, we don't have to...you're making a motion to follow the rules are we going to do that for something else, like we're making a motion...especially for a zoning thing
We don't have a choice.

_____? We're not asking for a motion do we have to follow the rules or not follow the rules, we're asking for a vote that _____(unclear)did the Planning Board approve of a plan in 97, we're asking the Board to make a vote on, I understand you made a different motion than that, but we had our client, Ernie Gillian, he paid money to have an engineer develop ground water re-charge calculations in 96 and the period of 96 – 97 that were reviewed and approved by the Planning Board.

To have that work repeated when essentially there is no change in the limits of
the(interrupted)

T. Hoopes – I think we are at a point where we are reiterating the exact same thing, we are in different perspectives

A. Sherwood - can we move the question

T. Hoopes – I will move the question. All those in favor say aye, aye. T. Varney no, One objection. So it's the feeling of this Board that there needs to be evidence of the property to be able to handle the 60% coverage.

A.Sherwood –right, or whatever its proposed to be right, I'm not sure what it comes out to be, I don't know what the number is.

R. Burlingame - The plan right now reflects the amount of coverage that was approved in 97, which is 51.8%(interrupted)

T. Hoopes – No, we disagree with that entirely

R. Burlingame - If I could just continue please, so now we come back before the Planning Board with these groundwater re-charge that they are looking for so we could show up to 60% if we show that we are adequately recharging the groundwater(interrupted)

T. Hoopes – It would have be approved by the Board. In other words we have to see evidence that we are not doing damage to the lake or to the aquifer. The concept of whether or not it was approved is in disagreement.

A. Sherwood – If you come up with a design that you believe meets the zoning for the current proposed design and our Engineer reviews that, ok and says ok “I think they did it”. That doesn’t guarantee that we would grant the waiver, but that sets the stage for it.

Roger Burlingame – And you believe as a Board that you can also waive the 20% maximum under the Shoreline Protection Act

A. Sherwood – I’m talking about the aquifer protection zone.

R. Burlingame – There’s another zone involved here.

A. Sherwood – right.

R. Burlingame – that has a ____ (unclear)% max

A. Sherwood – We haven’t talked about that..

R. Burlingame – without any allowance for a waiver.

T. Varney – that’s because its in the zoning ordinance, we would have to grant a waiver. You’re not saying we need to comply with State Shoreline(interrupted)

R. Burlingame – No, I’m talking about the zoning ordinance

At this point Side A of this tape has been $\frac{3}{4}$ ’s of the way transcribed to the Best of My Knowledge and Ability

Patricia A. Rockwood, Secretary

T. Varney – we have that copied into a zoning so your saying we have to grant that as well because its in the zoning right.

R. Burlingame - and the board feels it has the authority that under the right circumstances it could grant that waiver.

T. Varney – for the aquifer protection.

R. Burlingame – uhuh uhuh.

T. Varney – shoreline protection as well

R. Burlingame – that I haven't read and I can't answer that, I don't know the answer myself, he thinks he does.

T. Varney – it goes together with the other one and he wont go against one they say essentially the same thing

R. Burlingame – no they don't that's the problem

T. Varney – well what's different then?

R. Burlingame – the aquifer protection specifically permits allowing going up to 60% with the engineering appropriate engineering that the other does not have that provision.

T. Varney - _____ (unclear) then we don't have the authority.

T. Hoopes – were dealing more with contaminates and other things like that with it.

T. Varney – but can you get that through the ZBA?

Female Voice – that would require variance

T. Varney – that's an option.

R. Burlingame – it is, unless again we are grandfathered

T. Varney – ok

R. Burlingame – I think I know were we are

T. Hoopes – so if we are through discussing for the moment lot coverage, we can move on to the green area and the parking status.

R. Burlingame – I think the green area and parking status are going to be driven by the lot coverage issue. We need to resolve that first.

(There were 2 to 3 people talking over one and other and it's indistinguishable)

R. Burlingame – I'm sorry?

J. Crouse – Um if I understood Tom correctly your willing to discuss the other issues

T. Hoopes – absolutely

J. Crouse – and if I understood you correctly you said that you preferred to resolve the first one before proceeding with the others.

R. Burlingame – that was because I think that until we resolve the first we cant really plan to deal with the others.

T. Hoopes – well then there is the other I mean there basically all compliance issues.

J. Crouse – but he doesn't want to discuss them.

T. Hoopes – do you want to hear the boards positions or not?

R. Burlingame – yes please, yes please.

T. Hoopes – so if we want to discuss the concept of the green area and the parking.

R. Burlingame – ok

T. Hoopes – um the green area is supposedly the grass area that is within the 25 foot set back from the street which in the past has been used predominately for storage of boats and it's not suppose to have anything in it. So compliance in a sense of how the parking is used and how the boat storage is used is a substantial issue we don't know I mean there are two different things being asked for under different names, there are some things being applied for under the term marina other things being applied for under commercial and retail. The description of how parking spaces are allotted or used under two different terms, what was applied to the ZBA was represented under a commercial retail and that's basically what has been applied all along to try to switch to a different definition today would seem strange, so how the boat storage area is designated and marked out and how the car space is marked out and where the truck space is I mean you know just this week there was a truck parked on route 11 I mean (interrupted)

E. Gillan – (can't understand)

R. Burlingame – so he was entirely on the property

E. Gillan – entirely on my property

T. Varney – well I think you talked about green area and then you moved to parking so what are we talking about green area (interrupted)

T. Hoopes – well there are two things start with the green area, the designation that we would like to see is a green area that is inviolatable from storage and parking.

T. Varney – I think that's agreed.

E. Gillan – (can't understand)

T. Hoopes – no, but I mean even this summer boats were parked there all summer.

E. Gillan – no there not, not on the green area.

T. Hoopes – not now

E. Gillan – they never have been.

J. Crouse – Sorry rather, excuse me, rather than argue about whether or not there were boats on a certain day or whatever I think maybe the concept that the planning board is trying to convey is that there is the setback from the state along side route 11 that is to be green area we would like it somehow delineated be it fenced be it stonewall be it trees be it bushes so that it is clearly used as green area it is not used for anything else and that there is no real need to go into what was it's just we would like delineation.

T. Varney – I think we agree, I think we agree that the green area is the green area.

R. Burlingame – Your adding an additional requirement in there and that it be essentially blocked off from any other use.

A. Sherwood – Physical barrier or

R. Burlingame – Physical barriers and why?

B. Dunbar – Because it's suppose to be green area

R. Burlingame – You have a green area, when I plow my driveway I run my truck out onto the lawn, that's my green area.

B. Dunbar – I think the intent is that so nothing can be parked over it.

R. Burlingame – Ok parking is one issue but being able to

B. Dunbar – or boats or anything

R. Burlingame – so we cant use the green area for maneuvering vehicles for plowing?

B. Dunbar – No

R. Burlingame – Um again why? What does that accomplish? Is it a safety issue, is it a

T. Hoopes – In the past there has been a case of compliance because the way in which the lot has been used. When you go on site for a visit it's used differently than when it is uh whether it is winter or summer (interrupted)

B. Dunbar – Green areas provide all sorts of things um if you are constantly running over them with vehicles or what not they're no longer green, they provide esthetics, they provide absorption of water which is an issue obviously on this site in the aquifer protection and if its going to do its job properly it needs to be viable green area and perhaps even with trees in it to soak up more of the water it isn't just gee we want a green area there it has a purpose in our zoning and in our um site plan regulations.

R. Burlingame – And I'm a _____(unclear) that we need to have open spaces and green areas but when you look at the abutting properties east and west of this property and across the street from the property um your going to create a little part here that nobody else has.

B. Dunbar – And what a great place to start.

R. Burlingame – Well but your (interrupted)

E. Gillan – yeh but why does Ernie Gillan get singled out to be the first (interrupted)

B. Dunbar – No nobody is singled out as the first person these are regulations that we have in our site plans for the reasons that I espoused.

R. Burlingame – Expect to expand this into the other properties as well?

B. Dunbar – We asked for this earlier in our site plan and obviously we didn't quite get it.

R. Roy – We provide the green area and tonight's the first mention of a barrier to protect the green area.

B. Dunbar – It's because the green area did not remain green and (interrupted)

R. Roy – It's a new application, Ernie's gonna make some new concessions or continue (interrupted)

B. Dunbar – Fine this is the place to try to talk about those areas that were not addressed quite properly.

R. Roy – Ok

A.Sherwood – Um I was gonna skip down to the parking I think we said our (interrupted)

T. Varney – I want to talk about green area

A.Sherwood – Ok

T. Varney – We're talking about compliance aren't we?

A. Sherwood - Yes

T. Varney – Ya I have no problem with green area there that's been _____(unclear) you know what I've seen and on the plan your showing different green areas so your defining green areas planning board has to tackle the issue of parking spaces along with that would come where you can park and not on the green areas and so forth, but I think the greens areas seem to be what you have there now and what your proposing seems fine with me.

A.Sherwood – Where specifically proposing boat sales display area on the paved area where not showing that on the green area where showing parking spaces that are within a paved area um I feel that the plan as it was submitted most recently a few weeks a couple weeks ago satisfies planning boards concerns about having green area and having that protected.

J. Dube – Mr. Chairman?

A.Sherwood – Yes

J. Dube – I think what I'm not saying that I agree or disagree at what there saying but it's not the green areas they propose per say but on and off I mean that's what happened with the recharge and stuff like that I think the _____(unclear) some of the board members think with the issue of compliance meaning that you couldn't back a boat trailer around there then you wouldn't have the issue of compliance. I personally don't pay attention when I drive by to see where the boats are parked to see if there on the grass when we were there on a site visit there was grass and the boats were where they were suppose to be and I don't pay attention to exactly where they are there's boats there and there is. That would be there idea behind the barrier and that's just what it's calling for because I saw and the grass you know and I saw where the green area should be and can see it or read it on the plan, but I don't want to argue about the green areas (interrupted)

E. Gillan – especially about 1 acre of land, (unclear) donate it to the town for a parking lot (unclear) I collected \$309,000.00 in boat taxes since '99 for this town from mostly non resident people that's \$309,000.00 (unclear) for tax dollars, for boat tax. I'm not the bad guy in town, I'm just trying to run a business.

J. Dube – Nobody's saying you're the bad guy

E. Gillan – Oh yes, it's coming down to every time I turn around I'm in violation, I am only trying to operate my business.

A.Sherwood – I think were getting off base here Mr. Chairman.

Male Voice Unidentified – We have a third item on parking?

A.Sherwood – Yeh, may I comment on the parking?

Male Voice Unidentified - Please

A.Sherwood – Um there's an issue of what kind of business is it and I guess I'm most of the way through the history here it's been a commercial retail application and that's the way it was represented to ZBA and in court and all that and a there are parking requirements associated with that and I guess we would like to see I haven't looked at the latest plan there but the parking requirements in the zoning clearing met and identified and then for what's going to be for boats that be clearly marked out into parking spaces for boats and how many boats is that ok (unclear interruption) well I think you can because there's so much area there that's for parking and for outside boat sale parking and I guess you know if there's say there is 30 spaces and I'm picking numbers and you need 10 for parking and there's 20 for boats ok then we would expect that the maximum number of boats that we'd oversee there outside is 20.

R. Burlingame – That assumes that all the boats are a standard size and boats go from 12 foot 10 foot 8 foot long to 60, 70 foot long.

A.Sherwood – Most of them down there are probably in the 23-25 foot class or whatever but I guess we want to see something that clearly divides up that area between parking and boats so that its clear to everybody clear to everybody what where dealing with.

R. Roy – That's um (unclear) we change the parking calculation we were not trying to be underhanded we were very clear in our presentation of the calculation um there was a suggestion by Roger to in reviewing the uses listed under the parking table in the in the site plan regulations (unclear) zoning ordinance that in reading the definitions for those uses that we determine that the more appropriate use to classify the boats sales under was a marina.

A.Sherwood – A marina you need one parking space per boat so if you've got 25 boats (interrupted)

R. Roy – No, well you need one per boat there's another requirement one per slip we don't have a slip we don't have a boat so we have employees, so but the slips are for the business only and there not rented slips for sale or for rent so (interrupted)

A.Sherwood – But so you know the site plan the business that you described to us was a sales business.

R. Roy- It is a sale, so this is sales it's not a marina, so I think that parking ot to follow that, you know its retail commercial rules.

A.Sherwood – I just have a question, did you read through our write up about the parkings calculations that reference the definitions that sort of would carry a person through understanding that it in terms of the parking uses listed we best qualify under marina number of employees (interrupted)

T. Hoopes – But you can't bounce back and forth from one definition to the other, it has been boat sales, there's no question it's retail commercial it's boat sales. I have no problem with that what so ever. But it is not service, it is boat sales so that in part of this application the next thing I want to bring up is usages but lets finish lets finish with parking because the question that where dealing with is how many spaces should be allocated if you deal with it on the basis of retail commercial you come up somewhere near 40 spaces.

A.Sherwood – Well this is not retail in terms of clothing on shelves this is a large 20-30 foot long boat in a building so that its being more like a warehouse than it is a retail space.

T. Hoopes – no matter how you cut it it would fall under our definition as commercial retail sales what else can the town categorize it as how else can we look at it.

A.Sherwood – The way the ordinance does.

T. Hoopes – Which is?

A.Sherwood – Look for the definition of boat sales and it says go see marina. Realistically the regs have to make some sense, they have to serve a purpose and I know you agree with that. What is the real parking demands for boat sales operations of this site, It's not the same demand of a hardware store or a little grocery store or any of the other retail commercial businesses it is much more similar to um to a marina actually that doesn't have any slips or or for rent.

T. Hoopes – What would you describe as a reasonable parking concept from your perspective.

R. Roy – What we have in the plan but we we do need (interrupted)

T. Hoopes – 11 spaces

R. Roy – 11 spaces which you'll see in the plan that there's a number of there's spaces for 4 employees that's one space per employee and then we propose another 7 spaces and that's I think the plan says 7 or 8

Male Voice Unidentified – It says 8

R. Roy – It says 8 ok so um so that's as to be approved by the planning board and Ernie says he's got a maximum of 5 customers there at any one time I don't know what else we don't have any other information to go off of we feel that the person who has been in business for several years is a good source of information for what the parking demand would be so we took that number and we just provided a buffer (unclear) 5 customers 5 spaces we provided 3 extra spaces. We'd like the planning board to talk about it and ask us questions and maybe approve our proposal for 11 spaces.

T. Hoopes – What do we do when you know Hannaford comes in other people come in they have to meet certain requirements.

R. Roy – The parking space requirements for a marina specifically allow the planning board to approve the number as proposed by us the applicant for that use. It's not a

across the board approval of all parking requirements for each use listed in the ordinance. It's only specifically for a marina type use which is the closest definition for this boat sales use.

A.Sherwood – I guess that um the first issue um I was I guess (unclear) over on to use that phrase and on and I guess on this one I would be willing to think about it.

R. Burlingame – Let's look at what's reasonable as Ernie says there's it's not a large lot so there's not any there's not much room for excess wasted parking spaces.

A.Sherwood – I don't know about the rest of the board I was just sitting here listening.

R. Burlingame – What's reasonable and what's reasonable is not (interrupted)

T. Hoopes – That's a wonderful legal term I know.

R. Burlingame – Well, the board has that discretion I think it does and

T. Hoopes – Kathy

K. Menici – Mr. Chairman one thing I do want to point out to the board the original approval they had 15 parking spaces with a considerably smaller building than what's currently being proposed and they're now proposing fewer parking spaces than what was originally approved.

A.Sherwood – I think that was amended and the parking was reduced.

R. Burlingame – To six spaces. Reduced to six space in '99.

K. Menici – Well this parking reference plan was submitted with the this was part of the second approval in '98. And this has this depicts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15 parking spaces.

E. Gillan – (unclear)

K. Menici – It only knows that this was submitted as part of your application in 1998 for the amended site plan approval then.

R. Roy – Right but in '99 Ernie came back and got a subsequent amended approval showing six spaces, we can provide you with a copy of the plan and minutes. Um (interrupted)

T. Hoopes – I think I could agree with what Alan said and that I have some flexibility on the on the number uh I don't know if I agree with 11 or whatever but I mean I feel some flexibility on that issue I don't feel a whole lot of flexibility on (interrupted)

T. Hoopes: Yes, Bonnie

B. Dunbar: Uh, I'd like to go back to the definition between marina and boat sales. As they're applying now, they're basically applying perhaps for a change of use. You might think of it in that manner. And if you're doing that then your allowing all the things that are in the mar in the definition of marina. And I don't think that was the intent when this application was approved prior. (Male voice speaking over: That's ..) It was basically for boat sales period and it (Male voice speaking over: That's not ..) was reiterated several times.

R. Burlingame: And we're here for boat sales, we're not here for marina, there's no change in use it's just we're trying to figure out what makes sense under the zoning ordinance. When you're looking at parking and is a boat sales operation more like a normal commercial retail operation or more like a marina. And when you look at the definition of boat sales and it says go see marina, um and realistically it is more comparable, we're suggesting that that's the better test. No we are not looking for a change in use.

A. Sherwood: Whatever whatever number the Board thinks is the right number um we do want to see on the plan a clear delineation of where and and a division between that and where the boats are gonna to uh be parked (R. Burlingame speaking over: That that is on the plan the plan currently shows..) and and some way to um um and I know that boats come in different sizes ok but we want to have some way to contain this.

R. Burlingame: But we've got, the plan currently shows the parking spaces and then an area for boat display. And and I thought we were accomplishing that.

R. Roy (speaking from the floor, not into a microphone): If I could just just (unclear...). We've heard the concerns of the Planning Board (unclear ...) delineate the area for boat sales display. We've done that. Um we've we've displayed this area as the boat sales display (unclear) I'll read the note for the Board. It is note number 8 at the bottom of the page on the right. "Boats for sales boats for sale shall be positioned within the boat sales display area. Boats may be temporary temporarily moved within that area as necessary during unloading tru uh delivery trucks and the loading of uh outgoing deliveries." (unclear) clearly delineates parking spaces (unclear) stripes on the pavement. (unclear) whatever we could do um (unclear) very difficult to (unclear) Ernie Gillan that he can only park three boats here or he can park three boats here but one

boat's 40 45 feet long (unclear...) How do you show three boats there or two boats there? (unclear

A. Sherwood: This is a this is a set of these are year round requirements.

R. Roy (from the floor, not into microphone): (unclear) Uh this is the site plan and it's not a seasonal site plan. This is the site plan.

A. Sherwood: Thank you. I think the engineer

E. Reitter: If I might speak

T. Hoopes: Please sir.

E. Reitter: As I'm sitting listening to the discussion about how many parking spaces and it sounds like there there's some members of the Board willing to be flexible with respect to the number that are required. Um I mean I don't know off the top of my head um but I think there are probably sources that you can go to um the Institute of Traffic Engineers there's all sorts of information with respect to peak hour traffic and you might be able to find something in there that shows you know roughly how much traffic is expected to come in and out of the facility. I'm not sure whether boat sales is specifically addressed but something close possibly.

R. Roy: (unclear) Basically parts and requirements, its uh, its basically a collection of data from the Institute of Traffic Engineers and uh I'll give you an example of of its importance and also its limitations. Um we have a a restaurant and ice-cream stand, combined use, uh, in Newmarket that we're working on, but you can go to that reference material and you you can find a restaurant or drive up a restaurant um uh you know a bar a restaurant a (unclear) bar, but you can't find a restaurant with an ice-cream use and you can't even find an ice-cream use. So it's limited in that it's only the data that's actually sent to them or they collect on their own. Um I I don't remember with a hundred percent certainty and I do believe I looked at that reference and I did not find a boat sales use listed in there so I'm going to what I have for a reference which is Ernie whose in the business. Um it's a lot of spaces. Um so if (...unclear...) show five or six spaces. They're the ones who said...(unidentified male voice speaking over: now you probably mean like eleven or twelve...) we ended up with eleven. I think the plan the number on the plan is incorrect, but the lineation is is correct. So its eleven spaces.

T. Hoopes: I guess it's the difficulty that we're faced with is what category are we working with for our definitions.

R. Roy: Mhmm.

T. Hoopes: And I guess we need to resolve that and that's uh...

T. Varney: Uh, Mr. Chairman?

T. Hoopes: Yes

T. Varney: When you build a big building, uh, how many people are you gonna attract there? Do you know, I mean, Ernie must know how many people come and stop by his his place of business now but it would be different if you build a a big building like this that attracts people and you gotta have enough parking spaces, otherwise you're gonna be cutting down on your boat sales because people are gonna be parking (unclear). So you gotta be realistic. And when this is over and done with, this is approved and built and you all kinds of people think this is a great place to look and to buy a boat and you don't have enough spaces then uh it it would be a problem.

R. Roy: See we and we and we did we nearly doubled the number of parking spaces.

T. Varney: So you think that's fair and reasonable uh..

R. Roy: That's reasonable.

T. Varney: yeh?

T. Hoopes: Well we're running close to our time limit here, I would like to bring up one other topic here. Which would...

B. Dunbar: You do need to open to public, what not, all the things...

T. Hoopes: Right, I just want to bring up one more topic so that they have it as something to deal with. And that goes back to the definition, are we dealing with retail commercial sales, not a marina, um, and what are we doing about what is described in the application and a lot of places is service and after sales service. Well that to me is different than boat sales. And I think that that's something that we need to at least have some discussion on to reach some sort of a um consensus. But I mean, earlier at one of the previous meetings there was talk about doing some warranty work, and it would seem inappropriate to me on that location to do warranty work when there's a marina across the street.

R. Burlingame: It's a separate business.

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T. Hoopes: But (unclear) we're talking about boat sales and I think we need to define where we're going. And I have never seen service anywhere before in the applications.

R. Burlingame: We've had it, well uh, we can go back through the minutes, but we've had (unidentified male voice talking over, unclear...)

T. Hoopes: But it was not approved before, I don't believe. So that is something that we need, rather than have it slide through, I want this to be upfront and so that we're dealing with it.

R. Roy: And we and we did talk about warranty related boat service. Um, when you know the use is boat sales, the planning board cannot impede on our opportunity to sell boats and to not allow warranty related service, you know the planning board would be discriminating against against Ernie. So...

T. Hoopes: For example, somebody comes back with a lower end that's outta whack and it has to be redone, that's mechanical work that is much more beyond the idea, that's much more service than boat sales.

R. Burlingame: But it's part of boat sales.

T. Hoopes: I don't...

R. Burlingame: Absolutely it is.

E. Gillan: If we can't take care of the product then we can't sell it. We're 99.5% customer satisfaction. We take care of the customer.

T. Hoopes: Well...

E. Gillan: I've been running that company for five, maybe six years.

R. Burlingame: My pulling into the dock and saying "I just destroyed my lower end, can you fix it for me?" and he hauls it out, that's service. If I haven't bought the boat there, if I'm just coming in off the lake saying "I need service", that's service. And that that's not gonna happen and can't happen, that's not boat sales. But boat sales includes the service that's incidental to the boat sales which is, which is prepping the boat to begin with, and then doing the warranty work...

T. Hoopes: This then brings up a whole another discussion, which it goes back to the very first part of coverage and drainage and what do we do when we have oils and petroleum products on the tarmack?

R. Burlingame: You use the emergency kit that Ernie has on the site.

T. Hoopes: That's not enough, I don't think. I need some sort of trap, in other words, we need some sort of evidence that there is a way to protect the aquifer. So, in other words, that's why I bring it up that these, some of these intermesh.

E. Reitter: During our review we had we had somewhat anticipated that and uh I believe its in in the letter talking about possibly oil water separation or some sort of treatment, off of the pavement in a collection system, catch basin collection system. That had...

R. Burlingame: Ernie has been doing boat sales on that site since at least 96, right? At least 96. Um initially on a on a on a crushed gravel surface. Um there've been no leaks no no accidents um there's no reason to expect that there will be that's beyond that which can be contained with the emergency equipment that he has. Because he's not going to be doing the the level of service on older boats on boats that've been um with no maintenance in the last 10 years. Um it's it's the chances of it happening are are very slim. The paving which has been such an issue actually improves the ability to protect. Um so what we're getting mixed messages.

A. Sherwood: Admittedly, the gravel is uh somewhat impervious. I agree with you on that. Um um I have ...

T. Hoopes: The gravel was pervious.

A. Sherwood: Pervious, right. I'm sorry. I agree with you on that .. pervious. I have a question about the existing use. Uh has there been um um after sales servicing uh on the existing site? (Unidentified male voice speaking over: Yup) Do you do you have the capability there, you have a shop a repair shop there in that building?

R. Burlingame: I mean it hasn't hasn't been a problem.

T. Hoopes: No but I mean we have to answer to lakeshore owners. You look at the new assessments that have come out. Uh somebody says oh your there's a problem with my waterfront, they're going to say something to the town and the Planning Board so we do have a responsibility to address these questions.

R. Burlingame: Right, but and and if we were coming with a a piece of property that had had no boat sales activity before, that had no site plan reviews or approvals before, I'd expect that we'd be dealing full board on all of these issues.

T. Hoopes: Right, but you do not see this as an expansion of an existing (interrupted)

R. Burlingame: Absolutely not. The entire site has been used for boat sales in the past, the entire site is going to continue to be used for boat sales. It's the it's the it's the expansion of a structure on the property, it's not an expansion of the use.

T. Varney: Mr. Chairman, uh can I can I ask how many mechanics you're gonna have or how much repair space you're gonna have there or uh

E. Gillan: (indistinguishable) mechanics.

T. Varney: Yeah, yeah and would that be only warranty type work? Um you're not gonna take in ..

E. Gillan: We don't take (unclear) outside work in. If we don't sell the product, we don't service it.

T. Varney: Yeah, so ...

E. Gillan: We're number 1 in the country. You buy the boat here, we take care of it.

T. Varney and E. Gillan speaking over one another (indistinguishable)

E. Gillan: (unclear)

T. Varney: Well that has to go along with the approval of boat sales and not and not boat repairs. It's boat sales and along with that comes warranty.

E. Gillan: Yep that would be ...

T. Varney: And we should end that discussion. Do you wanna have a consensus on that or uhh ..

T. Hoopes: I wanted to bring up the topic so that we could get to the point that's all. This is part of the compliance that we're discussing.

T. Varney: Well would the Board go along with boat sales and warranty without boat repair as business boat boat repair. Know what I'm saying?

T. Hoopes: My question is that at what point does service become a a marina repair.

J. Dube: Mr. Chair?

T. Hoopes: Yes

J. Dube: I have a question. What's a typical warranty go for, what's the say the longest warranty you can get?

E. Gillan: Six years.

J. Dube: So do you do you encounter many major problems usually in six years? I mean obviously you're going to have some .

E. Gillan: (indistinguishable)

R. Burlingame: We're talking about warranty work, we're not talking a a sale of a boat and a guy goes out and runs it up onto the Witches and uh then brings it back and says fix it. That's not going to happen because that's not warranty.

J. Dube: But I'm just saying cause the older more hours you get on something the more kind of work that you're going to be doing.

R. Burlingame: Exactly.

J. Dube: My personal feeling is from a business standpoint you can't sell something and then not (unclear) work, and I understand that and agree with that, you need to stand behind what you sell or you're not going to sell anything

T. Hoopes – I want to bring this up so people can express their points of view, that's all Alright then, we have reached the end of our discussion on compliance, whether we are happy with that or not I don't know. At this point I think we simple have to reschedule to go on with other parts of the application, but we do need to allow some rethinking of aspect of lot coverage. I think we said we are a little bit flexible with the concept of the talking about the parking. Drainage as applies to the lot coverage is still a requirement and I think people seem to be comfortable with the usage.

A. Sherwood – should we re-open to the Public since we covered other issues.

T. Hoopes – yes, I think we have to. At this point I'll re-open this to the public if anybody has any comments please step forward.

M. Gulbrandsen – I have a couple of brief comments. I think we have a number of zoning issues now that we all need to be clear about. The zoning ordinance sets the standard for parking requirements and to the extent that the applicant is not planning on complying with that standard I don't think it's for this Board to decide do we need forty spaces or eleven or some number in between, I think that's a zoning issue. When the applicant went to the Zoning Board to get the special exception which the step they needed to take before they came to this board, a member of the zoning Board specifically asked "how many parking spaces do you have" and the answer was thirty. And in granting the special exception the zoning board found that the parking issues were adequate or safe. So, a) we have a special exception based on representation of having 30 spaces. b) if we want to have something other than 30 spaces or I would argue the requirement is technically 40, clearly that may be an unreasonable standard for a large facility with large boats inside. But again, I don't think it's for this Board to be flexible for the Zoning Board because it's a variance from the zoning ordinance. And frankly I think the determination of whether it's retail commercial or whether it's something else, a marina or something in between, again would be a decision for the Zoning Board, because it's a variance from the Zoning Ordinance.

Secondly, the prior vote that this Board took creates the zoning issues of compliance with the ordinance in the shoreland protection zone. So, I think there are at least two and maybe three zoning issues that need to be addressed before this Board can go forward procedurally.

On the servicing issue, the prior approval back in the mid to late 90's perhaps permitted service that was directly related to sales and looking at the minutes it seems that the understanding was you put the oil in and whatever needs to be done to make it operable.

But coming in for a warranty, six years later on a boat that clearly could have had a lot of hours in that six years is going to raise a different type of service than simply putting in the oil and doing what it takes to get a boat into the water. I'm not sure if the business has any used boats or if a person purchasing a new boat could trade in their old boat and then suddenly you're dealing of servicing with that old boat in preparation for getting that boat into the water.

But we're not necessarily always dealing with brand new boats and the board should be clear about what the permitted use is in this site. Thank-you

T. Hoopes – anyone else, if not I'll close the public hearing and look for a motion to continue.

R. Burlingame – sorry to interrupt could we just make a brief response to the comment?

T. Hoopes – sure

In terms of the parking requirement, the zoning ordinance does specifically allow the planning board to discuss with the applicant the reasonable number of required spaces. Beyond that, for employees, for slips and for trailers (I forget the other term). So that does not need a zoning board decision.

T. Hoopes -- one question though. In a sense, if when you made a presentation to the ZBA in order to come to the Planning Board that you represented the idea of 30 spaces. Should you not go back to the ZBA if you want to address it with a smaller number? Because they granted the exception based on that, that may have been one of their calculations.

R. Burlingame – Right, I don't remember exactly the specific discussions but the special exception was for expansion of a use.

_____? – which Roger had argued we didn't need that, the special exception(interrupted)

A. Sherwood – we need to read the minutes of that ZBA session.

T. Hoopes – the Public Session is closed.

A. Sherwood – I make a motion that we continue case PO5-09 to our next regular meeting October 18, 2005 at 7:00PM, _____?second

T. Hoopes – any discussion, all those in favor say aye. Any opposed. It is unanimous.

T. Hoopes – we will take a 5-minute break.

Transcription completed 2/3/2006 to the best of my knowledge and ability from an audio cassette identified as *copy Gillan P. Board 9/05*.

Patricia A. Rockwood, Secretary

