

**MINUTES OF THE MEETING  
PLANNING BOARD  
September 15, 2016  
7:00 PM**

**MEMBERS PRESENT:** Robert Smith, Chairman; Lou Ann Griswold; Edward Bannister; David Cedarholm; Mark Beliveau; John LaCourse, Selectmen's Rep; Wayne Lehman, Alternate & Howard Hoff, Alternate

**OTHERS PRESENT:** Peter MacDonald; Jane & Kevin Crawford; Caren Rossi, Planning & Zoning Administrator

Robert Smith, Chairman opened up the meeting at 7:00PM.

**08/31/2016 Draft Minutes**

There was no questions or concerns regarding the minutes.  
John LaCourse made a motion to approve the minutes.  
Ed Bannister second.  
Vote: majority, minutes approved.

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**Master Plan subcommittee-**

John LaCourse commented that he is almost threw with the editing of the document.

Lou Ann Griswold stated that she just received in hardcopy, the cemetery inventory. She has given it to Caren to convert electronically.

**Site Review Regulations –**

Mark Beliveau explained that he discussed with Caren that at the October 13, 2016 PB meeting will be a works session to discuss Article II.

**CIP Committee-**

Caren Rossi explained that the CIP committee is on the agenda for the 9/26/2016 BOS meeting to meet with them to see what their objectives are for the upcoming fiscal year.

## **New Business-**

**A Site Review Application presented by Peter MacDonald, representing the Veteran Resort-Chapel. The property is located on 101 Stepping Stones Rd, and is known as Lee Tax Map#12-03-0300. The applicant is proposing to become a Church. This is an application acceptance hearing and a possible final public hearing.**

Robert Smith, Chairman read the application and asked Mr. MacDonald if he was presenting to present.

Mr. MacDonald he is building an 8 x 16 Church on the property and he is asking for a building permit. He is asking for the town to recognize them as Church property. The property is owned free and clear by the Veterans Resort-Chapel, we are a religious organization, and we are a registered 501: C-3 we are registered with the NH Attorney General's Office as a non-profit Church status so the federal government and the state government recognize us as a Church, I am asking this Board to recognize us as a Church and to give us permission to build a church. We applied for a building permit under the rules of zoning and the laws of the state of NH. We should have been granted a building permit as everyone else has been granted a building permit. Instead, Article 5 section a-line 4 singles out churches in a discriminatory manner according to NH courts and the federal 7 state constitutions. I have so noted that to the town. It is called discrimination when you single out a church and make us go in front of the site committee in order to get a building permit that you will grant to anyone else without having to go through that. It was so decided and clearly explained in the case St. Benedict Center vs. Town of Richmond NH in superior court. I explained that to the town selectmen in a letter back in May and in August. I also told the town that the service charge for this meeting, if I was forced to attend to represent the Veterans Resort-Chapel was one million one hundred fifty thousand dollars. That is what the bill is and it has to be paid by the 20<sup>th</sup> because this meeting according to the Federal and State laws is discrimination. And that is what I am standing behind. You can ask me all the questions you want about the church but I applied legally for a building permit and I should have been granted a building permit without question because everything we are doing is legal and we are legally zoned for it if you read the zoning ordinance. Now I went to a selectmen's meeting and the selectmen told me they were 100% behind me and would stand behind me as long as I obeyed the zoning ordinance and the laws. The town has to be held to the same standards. The town has to obey the zoning ordinance and the laws and they cannot single out any individual or religious organization to keep us from doing something in the town. Now our non-profit is to help homeless combat

veterans. You may not like homeless combat veterans in your town but we have a right to live anywhere that is legal for us to live. And the Veterans Resort-Chapel owns the property free and clear and it's our mission from God to do what we are doing. If you don't like it, that's your problem. But we are going to do it, so you can approve this tonight or not. The bill stands for 1.15 million dollars and if it is not paid by the 20th the Beckett foundation is going to represent us in court and we will go from there. Go ahead and ask your questions, Ill answer any questions you gut, but that is where we stand.

Robert Smith, Chairman asked if anyone has any questions?

Mark Beliveau stated so this is the planning board for the town of Lee. Generally we have jurisdiction over two different things, we have jurisdiction over subdivision and over site plan review. While I have just gotten your plan now, from a quick view it doesn't look like you are trying to subdivide a lot into two or more lots and so the other jurisdiction is site plan review and site plan review is required if somebody wants to make a commercial, non-residential use of a property or a mixed use or it's a multifamily dwelling. Those are generally the categories. If it's a commercial use at some type you come to the board. We don't issue permits, we have no ability or legal right to give you a building permit or deny you a building permit. We largely only do those two things. Site plan review and subdivision.

Peter MacDonald stated if you look at your zoning ordinance, which I hope you have all read. It very specifically says only Churches have that site review. According to the courts, that is discrimination.

Caren Rossi said, excuse me, can I read him the regulation so we are all...

Peter MacDonald replied yes.

Caren Rossi read the following into the record.

*ARTICLE V  
RESIDENTIAL ZONE (ZONE A)*

*A. PERMITTED USES*

*In Zone A, the following uses are permitted:*

- 1) Residential;*
- 2) Agricultural in accordance with the Terms of Articles II and III herein.*
- 3) Municipal buildings and structures;*

- 4) Churches on a site approved by the Planning Board;
- 5) Accessory uses and Special Exception uses as permitted herein.
- 6) Recreational Playing Fields, Outdoor: Non-Commercial outdoor playing fields....

Caren Rossi then continued and said the reason he is here is out regulations require churches on a site approved by the planning board, that's why he is here.

Peter MacDonald stated and that according to the courts only churches are required to get site review is called discrimination. It was very clearly stated in the court hearing and under the constitution and under RLUIPA. Religious Land Use and Institutionalized Persons Act. It is an illegal act. I am sitting here because it was required.

Caren Rossi stated that what he is referring to is in 2013 or 2014 he came in for a building permit for a church and it was denied then. He started this process 3 years ago and he withdrew and now he is back.

Mark Beliveau stated what you read it doesn't say that only a church must go thru site plan review, it says on a site approved by the planning board. In other words, like what I said previously about any commercial use or multi-family use needs to go thru site review, there is nothing in out zoning ordinance, that I know of any way that kind of exempts nonresidential uses.

Caren Rossi states as she has explained, just so everybody knows, as I have explained to Mr. MacDonald many times, even at selectmen's meetings, even the Lee Church has come before this board many times. The Lee Church Congregation, many times. The last time they put an addition on in 2000 they were here, this is not something new.

David Cedarholm asked Caren can you tell me in the statues are churches listed as one of those things that would fall under the planning boards purview.

Attorney Sharon Somers stated that the statue only enables the planning board to adopt the site review regulations and it indicates the kind of things that can come under these regulations. Your site review regulations, and I didn't have an opportunity to look at them again today, but your site review regulations are consistent with many site review regulations in the state and I think Mark has accurately depicted those and generally speaking its commercial uses and or multifamily. In the case of Lee, Lee also has, which is not unusual for many communities, as part of the zoning ordinance to say that different types of uses, or are augmented by the definition in site review as well. I think to answer your question there is authority under the state statue to enable site review regulations for a variety of kind of uses and certainly as a matter of administrative practice, as Caren has just said, you have a running history of churches, if they want to put in a parking lot or a new building or whatever they come to you and get site review.

Mark Beliveau asked have you, Sharon had a chance to, review the Federal RLUIPA statute, does this statute prohibit use from, presuming what he's proposing is a church, let's assume it is, does this statute prohibit us from having site review?

Attorney Sharon Somers replied, no it does not. The analysis this board would need to look at is 1 whether this is a religious institution, 2 is it a religious exercise that we are speaking of and 3 assuming that the answer to these 2 question is yes, then we need to look at whether the imposition of site review constitutes as substantial burden to this particular applicant for the application. This is really the sole relevance that RLUIPA has to this Boards actions.

Mark Beliveau stated based on Mr. MacDonald's presentation if we concluded that there is a religious use/religious purpose then we have to look at weather our site review process and or regulations would impose a substantial burden. If we conclude that it does, what happens then?

Sharon Somers if that were the case then, we would need to figure out some sort of means to avoid having the regulations applied in such a way that they are substantial. But alternative means to get to the same end. There are a lot of ifs between point A and Z.

Mark Beliveau stated in your opinion, under state and federal law, we have the right to conduct site plan review but have to go thru those steps that you just outlined so that we know the right standard we are following.

Sharon Somers replied yes, that is correct.

Mark Beliveau continued we are in zone a, and you said a church is a permitted use, on a site approved by the planning board. Does our ordinance define what a church is?

Caren Rossi replied no.

Mark Beliveau replied he has been going to church all his life and you would think I would know it.

David Cedarholm asked if the statute defined what a church is?

Sharon Somers stated that the statute, meaning the RLUIPA statute which is the federal case. A church can be defined under different statutes for different purposes. For example, a church is defined under NH Laws for tax cauterization purposes. I am not getting into that, I just want you to be aware that it is not just one monolithic definition. For purposes of RLUIPA there is case law that talks about this. One of the cases she can cite is the "*Whether something constitutes as a religious institution the courts will often look as to whether the faith occupies a place in the lives of its*

*members paralleled to that filled by the orthodox belief in God and religions more widely accepted".* And then to look at that you really need to look at the organizational documents of the institution. We have not done this in recent times but certainly back in 2013 when this matter was first presented, not so much to this Board but to the ZBA we did spend some time looking at this in some detail, the Articles of Agreement, the Commandments and so forth. The determination at that time, what we presented, was that there had been no central religious tenant or organizational component to the VRC. The indications at that time was this was an organization that allows people to worship in any way that they may feel. To answer your question, there is no catchall definition of what constitutes as a religious institution. In past times, in other court proceedings we, we as the town, have taken the position that this is not a religious institution. The evidence that has been presented thus far does not really support that. This is presented by a way of background for you.

Mark Beliveau stated it is helpful to refresh memories. Did either the ZBA or this Board, to your knowledge, make that finding? Was that finding made as part of a preceding?

Sharon Somers stated it's her recollection that that wasn't made one way or the other. I think a compromise or a middle ground was worked out. What ended up being a single family residence with a chapel underneath for basically for private use? It wasn't deemed a church. It's a chapel that is going to be used for people utilizing/ occupying the single family residence. That was allowed to go in. The determination has never been made as we have never gotten to the point that we have to make it.

David Cedarholm commented that he remembers a lot of discussion about it threw the select board for tax.

Sharon Somers replied it did come up in that context as well.

David Cedarholm replied it was our determination at that time that it was not exempt. We essentially determined that the Veterans Resort Chapel did not constitute as a church under the tax law.

Robert Smith, Chairman asked Sharon, in your opinion does each governing body have to make this decision independently.

Sharon Somers replied it gets a little tricky because each independent body has to make that decision if a question is in front of them. I think that what is important is each independent body needs to make sure that they are not talking at cross purposes with each other. As I indicated a few minutes the definition of a church for tax purposes as David was talking about is something that is defined by statute, under NH Law. It is something a little different than the factors outlined under the federal RLUIPA Law. My advice would be that right now the only thing that is before one of the bodies is the site review application before this board. I don't believe there are

any tax exempt applications before the selectmen. The advice I will give you though in conjunction with the select board is you don't want to make a determination on this that is going to be at cross purposes with a question that might come up a few months from now with the selectmen and vice versa. Make senses? I can't and won't tell you what substantive decision to make but that factor I just outlined is something that I think you need to bear in mind.

Mark Beliveau so in when Mr. MacDonald was back before us, at the planning board, there were a few meetings, I am making the assumption that what is being proposed hasn't changed.

Caren Rossi replied that when he was here before, he was proposing around 10 religious reading rooms on the property along with the single family house.

Mark Beliveau commented he remembers this and remembers doing a site walk.

Caren Rossi continued that this is the same plan, without the handwriting notes, right Peter? And then he took white out to all of the buildings that aren't here before us tonight and just left the one building that he is discussing tonight? Correct?

Peter MacDonald replied yes.

Caren Rossi and now it's not religious reading rooms it's a single person church.

David Cedarholm stated he sees a small rectangle on the plan.

Caren Rossi read the application to the Board "*We are a religious assembly building a single person church*".

David Cedarholm asked so the church in question is not the existing chapel it is somewhere else on the property.

Caren Rossi asked Peter MacDonald to show them on the plan where is going to build the single person church.

Peter MacDonald stated if you notice the telephone pole on the right hand side as you go in the driveway before you get to the building, on the right hand side of the driveway about 6' up there is a telephone marked, just after that there is a well. Between the well and the telephone pole there is a building.

The Board reviewed the plan and looked for the proposed building.

Mark Beliveau stated so the application isn't for what's labeled as the existing chapel?

Sharon Somers stated no that building is the existing residential house which contains a chapel in the basement.

Mark Beliveau stated that so this site plan review is not related to that.

Sharon Somers replied correct.

Caren Rossi stated it is for this 8' x 16' new structure.

Mark Beliveau and that 8' x 16' structure is being described as a single person church.

Caren Rossi replied correct.

Lou Ann Griswold stated she didn't realize it is single person, can we go back and revisit what a church is?

Robert Smith, Chairman said, can I interrupt you for just one second, just to clarify what we are being asked to do. This is all predicated that we believe it's a church. To go forward and approve or take jurisdiction over it.

Caren Rossi stated she would assume its two steps, agree or disagree it's a church and if you agree then its site review.

Sharon Somers replied she thinks that is a correct statement. In order to be before you on under site review, it needs to fall within part of your regulations and part of your regulations constitute whether somebody is proposing a church.

Robert Smith, Chairman so on one hand we are looking at a single person church but in order to get there we have to talk about this whole thing is a church?

Sharon Somers replied no, I think what you need to do is determine whether or not the proposal that is before you, this one structure of dimensions 8' x 16' which is being characterized as a single person church, whether you deem that to be a church, #1 for purposes of your zoning ordinance, such that would then come before you under site review regulations.

Lou Ann Griswold stated she needs clarification about statute and or case law about what is a church, and in particular, a single person church.

Sharon Somers stated she has to confess she hasn't thoroughly done the exhausted research on this because I don't think I am going to find anything that is going to say that one way or another. I think that what I would refer to you before is the kind of... Again, I'll read this again. *"To determine whether an entity constitutes as a religious institution courts will often look at whether the faith".* There has to be a faith operating in this single person church. *"Occupies a place in the lives of its members, paralleled to that filled by the orthodox belief in God in religions more widely accepted".* This may be a helpful way of looking at this particular proposal, you need to think about whether or not this proposal, which would be one person carrying out



or honoring, in some fashion or another, their faith and whether that proposal is going to be analogize to somebody going to the local congregational church, or the local Episcopal church or the Lutheran church or whatever. I am sorry I can't give you anything more definitive but that is the very elastic nature of the case law. Certainly if this Board would like I'd be happy to see if I can find something which is going to provide you more guidance. This is an unusual request. A single person church is not something you can easily get your arms around.

Mark Beliveau asked if the application gives more description of how this single person which is going to be used or can Mr. MacDonald share that with us.

Peter MacDonald stated I am sitting right here you can ask me.

Mark Beliveau stated yes, but if you have already written it up.

Caren Rossi stated the application says. *We are a religious assembly building a single person church.* The applicant is the Veterans Resort Chapel.

Lou Ann Griswold states she is confused when it's a single person and we is used. We implies more than one person.

Sharon Somers stated she thinks "we" is used because "we" is the applicant.

Peter MacDonald stated I am sitting right here you can ask me.

Mark Beliveau stated Mr. MacDonald, please describe what it means to be a single person church and how this structure will be used.

Peter MacDonald stated "we" is the Veterans Resort Chapel, we are a congregation of combat veterans that found God in our own way in combat. I can tell you how I found God in combat but I am not going to, that is between me and God.

Mark Beliveau replied that is fine.

Peter MacDonald continued we are a religious organization. The single person church is our mission from God to help homeless combat veterans. Homeless combat veterans cannot pray or talk to God, or whoever they want to talk to in a public session in a group church. They need their own space because of something, if you have never been in combat, you'll never understand. They need their own space and that is what this whole Veterans Resort Chapel is about. Helping homeless combat veterans come home mentally, as well as physical, if at all possible. Our mission under the Veterans Resort Chapel. We are a registered ministry with the federal and state government and we are here to help homeless combat veterans. That is what the whole thing is about, that is our mission from God. We are a religious assembly.

Mark Beliveau stated that is a helpful explanation of your purpose, your mission. But the structure, I am interested in this 8' x 16' structure and specifically, how it will be used. You are calling it a one person church, how will it be used structurally? You can put the mission aside for a minute. What I am wondering in my mind is it going to be a space, an enclosed space where an individual can go and mediate or pray to God or whatever their belief may be in some kind of spiritual thing and sit quietly or meditate. Is that how the space will be used. From a planning board member that is what I am interested in.

Peter MacDonald stated that is what our plan is. To give them an 8' x 16' space where they can go talk to the God of their choice, they can find themselves thru God to come back. That is what the space is for. What they do in the space and how they pray and their religious conviction is solely theirs, they are combat veterans that found God in their own way and they need their space. That is what we are giving them. We are giving them a religious building to go into and to pray and talk to God or anybody else they choose to find themselves.

Robert Smith, Chairman stated Peter you just hit on something that maybe you can help us with. You refer to this as a religious building. What makes it a religious building in your mind?

Peter MacDonald stated God told me to call it that.

Mark Beliveau asked if people are going to sleep there overnight?

Peter MacDonald replied how they pray or what they do is none of anybody on this Board, their religious conviction is their own. And that is part of their religious conviction what they do in that building is their choice. They are talking with God when they are in there, and that is their choice. It's not this Board's concern what are religious practices are.

Mark Beliveau asked if there is going to be plumbing in there. In other words will there be plumbing, a toilet a sink?

Peter MacDonald replied, yes there will, there will be electricity and there will be plumbing and there will be heat.

Mark Beliveau continued a toilet, Ok. And what kind of heat will there be? Have you decided that? Forced hot water?

Peter MacDonald replied will probably be a wall gas burner.

Mark Beliveau asked have you thought about how you are going to fit it out, partitions. Will there be a small room with a cot in it? Or just all benches? Have you thought about this yet?

Peter MacDonald replied it will be set up as a religious assembly for them to go and talk to God in their own way. That is the way it will be set up. It will be set up as our religious order does it.

Mark Beliveau state you call it a one person church does that mean only one person will go in it at a time?

Peter MacDonald replied yes.

Mark Beliveau continued and how will you assure only one person is in at a time?

Peter MacDonald stated that is up to our religious administration to handle.

Mark Beliveau asked will this be done thru signage or registration, stuff like that?

Peter MacDonald replied that they will be very organized, yes.

Ed Bannister stated you want to help more than one veteran obviously with your ministry practice.

Peter MacDonald stated and we do.

Ed Bannister continued sure, so if you have one of these structures and you have big demand are you going to have other individual churches for other people?

Peter MacDonald replied I am applying for one right now.

Ed Bannister replied I understand, but when I look at a plan I try to get a grasp at the whole thing, I can't image you are going to do all this work for one person. And if the one person can stay in there as long as they want...

Peter MacDonald stated that how our religious practice goes is part of our administrative duties and it's not the Boards

Ed Bannister replied you must have some kind of idea or plan you can't go ...

Peter MacDonald replied and I am tell you that are administrative organization will handle that. I am here to talk about one church on the property that the Veterans Resort Chapel owns free and clear. We are a religious organization, we have a chapel on the property, we have a ministry. I'm a registered minster and we have been on the property for 3 years now. Whether the town selectmen grant us tax status or not should be no concern to this Board. This Board should not make their decision on whether the selectmen recognize us or not. We are here solely to talk about a single person church, one building. If I come back at another time for another building that will be the discussion then. But that is up to our administrative office of our religious

assembly to do. It has nothing to do with me. I am just here representing this one church for this one person. This one time.

Ed Bannister asked who is your Administrative Board for the Veterans Resort Chapel?

Peter MacDonald replied it is public record, it is Russ Manchester; Paul Shea; Dick Bovee; Paul Smith and myself. We are registered as directors at the state Attorney General's Office.

David Cedarholm asked so Peter you say there is going to be plumbing in the church, then why are you asking for a portable toilet?

Peter MacDonald stated we did not want a flush toilet on the property in the beginning the town forced us to put it there. We believe in compost toilets. And that is what will go in the buildings. We are building a church and the church needs a place for a person to discharge. So there will be a compost toilet in the building for them. That is why we asked for a compost toilet for them because we don't want flush toilets.

David Cedarholm states but what you are asking for is a portable toilet so is a portable toilet in your opinion the same as a compost toilet?

Peter MacDonald replied a compost toilet is a portable toilet.

David Cedarholm stated not necessarily if it is built into a building. It is not portable.

David Cedarholm asked so is there plumbing or not?

Peter MacDonald stated there will be a plumbing, there will be running water into the building but not to the toilet. Want to talk about the plumbing? There will be plumbing in the building there will be water in the building but it will not go to the toilet. The toilet is a compost toilet. The shit will be used for fertilizer after composted into the flower gardens.

David Cedarholm stated that is not clear on the plan. There is nothing on the plan that mentions or references that it is a one person building. The plan says "*the VRC is asking approval to have any US Military homeless veteran or a church member*". That sounds like we could end up with 20 people. Where on this plan can I be assured that this is only a one person building?

Peter MacDonald replied the administration of our religious practice is not of this Boards concern. I am telling you they are single person churches and that is what is on the application.

David Cedarholm replied occupancy is part of this boards concern.

Peter MacDonald replied they are single person churches and that is what is on the application.

David Cedarholm replied but that is not what is on the plan. *"Any US homeless veteran or church member"*.

Peter MacDonald replied they are all entitled to use it, one at a time.

David Cedarholm stated it doesn't say that. Does it say that on the application?

Caren Rossi stated it says a single person church on the application.

Peter MacDonald stated we have a chapel on the property and any combat veteran or any veteran at all is allowed on the property. We have many veterans use this chapel on a daily basis.

Wayne Lehman asked is the existing chapel then is inadequate for this purpose?

Peter Macdonald replied this church is a single person church as I explained a few minutes ago for a homeless combat veteran to go and find himself.

Wayne Lehman stated what I am trying to understand Peter is the existing chapel is insufficient for your purposes.

Peter MacDonald stated no, the existing chapel is working, it works daily. The church we are building now is a total separate mission from God to help homeless combat veterans that the other chapel cannot do. That is why we are building the single person church. To help a single homeless veteran, at a time so they can come home mentally and physically thru Gods help.

David Cedarholm stated (Pointing to the proposed site plan) I am a little confused, where is the single person church, there is no label that indicates it is a single person church, I see two rectangles. Is there two single family churches being proposed?

Caren Rossi explained the buildings on the plan. He got a permit for a shed, he is currently building a building that is supposed to be a shed. The other building is what he is here for tonight, and it's not labeled.

The Board members discussed the buildings on the site plan which one is proposed and which one is existing. Mr. MacDonald clarified what is what.

John LaCourse asked Sharon is there a check list or anything that is available, we predicated the fact that if we call it a church we go thru site review. Is there any list that we can read beyond what you have? I am not ready to move on this thing tonight until I get more information to read and think about.

Sharon Somers replied I think I understand where you are going, you are looking for some list of potential factors that will help you to decide what we are talking about is in fact a church for purpose of our zoning ordinance and site review regulations.

John LaCourse stated something we can discuss piece by piece.

Sharon Somers continued I can certainly point something like this together for you. I don't have anything right her right now but I can certainly create something.

The Board members agreed.

Mark Beliveau asked is in our Zone A, is a multifamily dwelling allowed, is it a permitted use?

Caren Rossi replied yes but it has to have a duplex you have to have 5 or more acres and to have multifamily you have to have 20 or more acres. This is just under 12 acres. So all that is allowed on that property is a single family residence. In order to have a duplex you have to have 5 acres or more and 4 of those 5 have to be contagiously developable. I don't believe that property qualifies for this it's just a single family home with an apartment.

Mark Beliveau asked if someone wanted to in Zone A, build cabin type lodging, is that allowed, is this listed in the permitted uses.

Caren Rossi replied he can have a single family home with an in-law apt. anything other than that he would need relief from the ZBA.

Lou Ann Griswold asked how did the existing chapel get there?

Caren Rossi replied it is a single family residence with a chapel in the basement. We refer to it as a single family home, he refers to it as a chapel.

Sharon Somers replied that the building permit was very clear that it was not a church per say simply a chapel to augment the single family home.

Peter MacDonald commented that I do have an occupancy permit for the chapel.

Caren Rossi stated you have an occupancy permit for a single family home.

Mark Beliveau stated I am thinking whether or not this is a church, based on what has been described, it's unclear to me. I get that it's meant to be a space that is used, quiet space, used by one person at a time, used for church/religious purposes. That is what the applicant is telling us. All tough there are other aspects to it when you start asking questions, to me, that takes it beyond, potential beyond religious purposes. If the applicant said Mark, no one is going to sleep there overnight, if someone falls

asleep when they are praying, you know. But, if there were no cots, no beds, we will make sure that no one is going to sleep there overnight. We will make sure everyone is gone by whatever, 7PM or something like that. Then I would kind of think about it differently. But because, the only way I can interpret what Mr. MacDonald said is he is reserving the right to let people sleep there overnight, that is what you are giving me and that is what I have to assume, that people will sleep there overnight, unless you tell me they will not. Since you are not telling me that I have to make the assumption based on what you described. Is that they will be sleeping there overnight.

David Cedarholm stated actually that is what he says. Pointing to #6 note on the plan. He read the note *The VRC is asking approval to have any US military homeless Veteran or church member to sleep on VRC property in the same environment as when Veterans was living on street or better.*

Mark Beliveau continued so where I was going is if we conclude it is a church, an attorney has told us that we are entitled to have site plan review and we might need to modify our site plan review as we discussed earlier. If we conclude that it is not a church, then we kind of have to get an understanding as to what is happening there, and whether from our point of view, we are not use regulators, that is code enforcement officer or the zoning board if you want to get relief, if you want to get relief from something that is not permitted. So we need to kind of get a handle on what this use is, as the applicant describes it and does that call for site plan review. If we are assuming it's not a church, if it is a church we get to exercise some measure of site plan review. If we conclude it's not a church, we need to understand the use so that we can figure out does it come under our site review jurisdiction. Does this make sense? If we conclude we don't think it's a church but based on Mr. MacDonald's explanation we come up with a description as to what it is, then, as a planning board under site plan review, we might conclude it needs site plan review but if the zoning ordinance doesn't allow it, than I think we have the prerogative to say it's not a permitted use before we conduct site plan review we recommend that you seek a variance.

Sharon Somers stated she would add that she absolutely agrees with you, your job is to determine, after we have some additional research as to whether or not this is a church but if you also want to think about if it's not a church what is it. That really should go back to the Code Enforcement Officer for an administrator determination as opposed to you guys making that.

Mark Beliveau commented that makes sense. But clearly the applicant is here saying it's a church.

Lou Ann Griswold stated she hates to ask Sharon to read the definition again but, there is a piece in there that you refer to, some larger body, or some other group, or something. I am kind of stuck there.

Sharon Somers stated this is just one case, I don't mean to suggest that this is the definitive interpretation but it will give you kind of a flavor at least in terms of what one court has said.

Lou Ann Griswold asked if it matters where the court was?

Sharon Somers stated they are all federal cases because it's a federal statute. I do have some from this circuit. I do have some from other parts as well. It's a fairly new statute, only about 10 years old. I'll read this again. *"To determine whether an entity constitutes as a religious institution courts will often look at whether the faith occupies a place in the lives of its members, paralleled to that filled by the orthodox belief in God in religions more widely accepted"*.

Lou Ann Griswold stated that is where it broadens it, I don't know.

Sharon Somers stated what to me what this makes you do is think about religions that may not be main stream, may not be orthodox, this is for purposes of the federal statute, not for the discussion we are having here. What the faith is that is under discussion is carries the same weight in a person life that would be carried for somebody in a more orthodox traditional fashion. In other words, if you have a particular religious institution, and again, in something other than the congregation church, do the people that practice in that particular religious institution is their faith impact their life in a similar fashion to what a Congregationalists faith is going to impact their respected life, if that makes sense. This is the kind of factors that the court would look at for purposes of the federal statute to determine if you are truly talking about a religious institution or whether it is something that is not a religious institution but maybe something more amorphous.

Lou Ann Griswold state it makes her think about religion verses spirituality.

Sharon Somers stated she feels that to some extent that is where this case law is going. What they are trying to say is you do need to somehow draw some lines around as to what constitutes a religious institution as opposed to more free form spirituality.

Howard Hoff stated that definition always seems to surround groups of people verses...

Sharon Somers stated yes, on some levels it requires an institution.

Howard Hoff stated but in this case we are talking about a church of one. With different types of beliefs.

Sharon Somers stated this is what we are wrestling with, I see what you saying.



Peter MacDonald asked Mr. Chairman, we are not talking about a church of one. The Veteran's Resort Chapel, Peter and Agnus MacDonald bought the 101 Stepping Stones Rd in 2012. We gave it free and clear to the Veterans Resort Chapel after we started a 501: c 3. And registered it with the state and federal as a church nonprofit to help homeless combat veterans. The single person church is a part of our chapel or our religious assembly to help an individual veteran, combat veteran find himself thru God, so he has a spiritual place to go. A solo church to go to. That is the purpose of this solo church to give them a solo place to go to, to help them come back mentally and physically thru God which they can't do it within the confines of the chapel because there is too many other people around there and combat veterans have serious trust and survival instincts that when somebody does something near them, that we are trained to kill for on an instants, without thinking that is why they cannot do it in the chapel they have their own space to find themselves thru Gods help.

Howie Hoff commented to call it a space is one thing but to call it a church is a different thing.

Peter MacDonald replied it is a church because it is a single person church where that person is going to pray or talk to God. It is a church. We have a chapel where we meet. We have been a religious organization since 1980 when I was ordained a minister. I have practiced at least 4-6 days a week walking around this state talking to homeless combat veterans or talking to homeless people. Whenever I found a homeless veteran I would try to help them find their way back. If I could not do that I would buy them a McDonalds Happy Meal and a cup of coffee and I would talk to them until it was time to move on. I have done that since 1980. In 2012 my wife and I decided that maybe it is time we had a chapel to do this out of to help more than one at a time. So we bought the property and we started a nonprofit and we gave the land free and clear to the Veterans Resort Chapel. The ministry that has been organized since 1980. Now, our religious assembly is trying to help a single veteran at a time, not taking away from our chapel and all the other church goes from our chapel but to help a single veteran that can't associate in a large room with a number of people. To have a place where he can go and pray and talk to God. And that is what a church is a place somebody goes and prays and talks to God. A church does not require more than one person, a church can be a 1 person church, it is what our faith and our religious assembly has determined is what we are doing. Now, just so the board is clear since she read a law to you, a court case. NH Superior Court, Hillsborough County in October 23, 09 St. Benedicks Center Vs. Richmond the judge ruled ... the center argued that the Board violated the 1<sup>st</sup> amendment because the worships are not directly allowed in any of the towns zoning district without a special exception which restricts the rights of religious speech assembly and practice. The court found this persuasive because it gave the Board an excessive direction. And this is what I am telling you. This board is taking our right to be a church and using excessive discretion to find ways to stop us. And that is not right. We should have the right as homeless combat veterans to talk to the God of our choice thru our religious assembly. You may not want us in this town, to tell you the truth I don't give a damn. We are gonna be here whether you try to find ways to stop us or not. That is all this

board is doing is trying to find ways to stop us. That is called discrimination. I tried to explain that to you in a letter back in May and another letter in August and you continue to put us thru this way to run up our bills to try to stop us. It's not gonna work. The court at some time have to reflect on the fact that what is going on here is wrong. And you cannot make decisions on our religious assembly just because you do not like us or do not want us in your town. We are homeless combat veterans. We are why you are all sitting up on a board in a democracy. To take this away and send us out on the streets with nothing is wrong. And I don't know why you thinking you have the right to do that to homeless combat veterans. Everything in the zoning ordinance and in the laws say what we are doing is justified and correct. No matter how hard you try to find ways to stop us, hurting homeless combat veterans cannot be expectable or tolerated situation. I don't know how much clearer I can be. We are a religious assembly, we have been organized since 1980 and there is nothing you can do to stop us. You can throw obstacles in our way and cost us more money but its eventually going to cost the town money just like it's going to cost the town over 1million dollars for me to sit here tonight. I know you think that is a joke but, you were given a bill I explained it to you in the beginning and you still had this meeting. This meeting is called discrimination. Thank you

Robert Smith, Chairman asked are you finished?

Peter MacDonald replied I am finished.

Robert Smith, Chairman stated. Thank you. First of all, we are not here to stop you, we are here to ensure that it is done right if it is done. Specially taken care of the veterans. There are several veterans sitting at this board and I don't think anyone of them want to have them mistreated. So don't go there any more Peter and that is all I have to say.

Robert Smith, Chairman asked Caren Rossi how does the state look at multiple dwellings feeding into one sewer?

Caren Rossi explained that septic systems are designed by the number of bedrooms loading the system. So if you increase the number of bedrooms loading the system, you need to increase the system.

Robert Smith, Chairman stated he assumes that is based on the toilet and Peter has already told us that is not going to be a standard toilet it is going to be a different system.

Caren Rossi explained that his system is over designed for what is there. He has a design for a 2 bedroom home and he only has 1 bedroom or actually a studio.

The board discussed the states septic requirements and how we should determine the septic needs for the site. And possible different options to consider and we would need to see what the state will require.

Sharon Somers stated we are also going to have to factor in what the proposed use is.

Ed Bannister asked the existing dwelling that someone living in it and has this private chapel only has occupancy for the resident of the building. So currently if that is being used by whatever it really should be...

Caren Rossi stated what is approved on this lot is a single family home and he has a chapel in the single family home. Because if it was a church it would have to have site plan review. The only thing approved is a single family home.

Ed Bannister replied he remembers that and he remembers the site walk, do we have everything on the check list for today?

Caren Rossi replied no.

John LaCourse stated I have a question Sharon. Most church institutions have bylaws or governing structures. Or at least some written material. The board of directors were just written but there is always a charge or what the function of the Board of Directors is and how it operates. Usually other institutes that come across for site plan review we even ask how it operates, like doggie daycare we got a copy of their manual. So is this within our purview to ask for that information so that we can make the determination if this is a church.

Sharon Somers stated to Peter, I know what got this information three years ago and I don't know if those article of agreement or that paperwork has been updated but if it hasn't, Caren can just provide it to you from 3 years ago.

John LaCourse stated it has to be updated for this consideration because this was not there before. This is a single person church.

Peter MacDonald stated the public documents are in Concord. Our administrative bylaws for our church and stuff are for our church. They are not for this Board to read or discuss. It is our religious matter but any public documents which state what are purpose is what we are doing and why we are registered with the state or on file with the state.

Caren Rossi asked if have they been updated since 2014, 2015?

Peter MacDonald stated I believe they were updated when the new board of directors was put into effect last summer.

Caren Rossi asked Peter if he could please get a copy to her?

Peter MacDonald stated yes I will.

Mark Beliveau stated Sharon, you made the point earlier that if this is not a church code enforcement should try to make a determination as to what it is and if it's allowed. Is it before, is it before us tonight because, Caren has made the determination that it is a church and hence it needs site review.

Caren Rossi stated that he and I have discussed many times what is allowed and what is not allowed on that property. He is adamant that this is a church, I disagree but it is his right to come to this board and here that. I can't stop him from that.

Robert Smith, Chairman so we are treating this as an application acceptance and not a consultation.

Caren Rossi replied correct.

Mark Beliveau asked why is up to us to determine if it's a church or not?

Sharon Somers replied that she thinks that because of the unique elements of this application require some additional work. Carne Raises a good point, I guess procedurally, we are here. What she is saying has some legitimacy to it. She has had discussion with Mr. MacDonald before and he has a right to make the application.

Mark Beliveau states so he says it's a church and he is begrudgingly here for site plan review because this is a church and we are well equipped to start that process to see if it is a complete application or not. But we are spending a lot of time talking about whether it's a church or not. And you now, that could be a fairly challenging process to try and figure that out. I am just starting to wonder why, think if that is something we are supposed to be doing.

David Cedarholm stated it seems to me if the Board of Selectmen determined this is not a church, this organization is not a church, I don't see and if the land use regulations or statues are lacking a definition of what a church is and there is a better definition in tax law, what does it matter if the town Board of Selectmen have already determined this organization does not classify/constitute as a church. Why are we even wrestling with it, we have all been appointed by the Board of Selectmen. We work under a different statue, however, the land use statues lack the definition and we are now looking for new places for a definition. And the Board of Selectmen have already determined it's not a church, why are we wrestling with it?

Sharon Somers replied because I don't think you can take the determination from one governing body and one venue, which is the tax universe, and necessarily transfer that wholesale over into the land use universe. My point before was simply that I think both ends of the governing structure need to know what the other hand is doing. But I don't think that one is interchangeable with the other. It is possible that a determination can be made for land use purposes that might be different than tax purposes or vice versa, I don't know.

David Cedarholm stated it sounds to him it is task number one before we start discussing the check lists and whether this fits into our...

John LaCourse stated the checklist that I requested was to try and make that determination before we decide to do site review. If it is a church we have to deal with the other laws about how much impact is involved. I need that information first so I can make a decision. I would ask Sharon now let's push this case a little, the fact is if it was decided by this board it is a church and the board of selectmen say it's not, are there case laws out there that there are some churches that are being formally taxed?

Sharon Somers asked to say that again.

If this land use board makes the decision that it is a single person church, but the Board of Selectmen say we don't believe it's a church so we are going to tax it. Are there churches out there that are formally taxed? Are all churches not taxable?

Sharon Sommer's replied I don't know. Each church has to apply for tax exempt status.

Mark Beliveau stated and what's taxable, let's take the local catholic church, the government recognizes the Catholic Church as a church. Very loosely, the facilities, properties that are used for religious purposes are not taxed but the facilities that they owned that are not used for religious purposes are taxed. In thinking about this, I think the analysis and or the process is. The applicant comes in, comes in to see Caren and says I would like a building permit to build this structure. What use are you going to use that structure for? If it's a shed that is going to be used to store garden equipment, here is your permit, build a nice shed. But instead, the applicant has said, it's not a shed it's a one person church. It think it someone in Caren's positions job to say ok, tell me about it, is that a church, is it permitted in this zone? But if I am the code enforcement officer and that is not what I understand a church to be and it's not ringing true, you put a label on it, that it's a church and I don't think it's a church and I am not going to give you a building permit. Because it's something else, it's not a church, and I don't know., Caren would have to conclude it's actually a place, its transient housing, and its temporary lodging. Whatever reasonable conclusion while consulting with the town's attorney. If that is allowed, let's say you conclude its transient lodging and our zoning ordinance says you can do that. The fact that you say its transient lodging and the applicant says it's a church, you're the regulator. If you say its transient lodging and it's allowed, he gets a building permit and he may need site plan review. Almost independent, we have to step away from the label we have to understand what the applicant is requesting with this 8' x 16' structure, and if we don't have enough information we have to say Mr. MacDonald, we need more details because we need to understand what you are doing. What activities will happen there? It's not about the mission and then make a determination as to what that is. Is it permitted or not? If it's permitted does it need site review?

Sharon Somers commented that some of this additional information that you are talking about has been provided tonight thru this question and answer session.

Mark Beliveau replied oh yes, we are learning more. I am trying to figure out together what is the process and analysis before it gets to us. And I probably, only have a small idea of how much work has been spent on this project over the years. I know you have spent a lot of time and effort and it's complicated and unique, one of a kind and it's not real intuitive. Does this make sense to you Sharon? Step away from the labels and talk about what is going on here. Then it's up to Caren, as the town employee, who is the regulator. She is the first gatekeeper to say permitted use? Ok, building permit or site plan review or not permitted, got to go to the ZBA if you want to do it. If the applicant doesn't like Caren's decision the applicant has the right to appeal the administrative decision. I know you know all that.

Sharon Somers stated I think that certainly different town's operate differently. Some planning boards get involved to make that decision. You look to Caren to be the gate keeper.

Caren Rossi stated this is a very gray area. We only have churches allowed by site plan review.

Mark Beliveau stated the tricky part is if we are involved in determining what it is, then how does it get appealed? Because statutory, it's the step before us.

Sharon Somers replied what her view is this discussion tonight has been helpful and constructive. I know I certainly know a lot more now at 8 :30pm, than I did at 7PM tonight as to what precisely is being proposed to take place, within the confines of this particular structure. Maybe as a result of that, as might I suggest we table this proceeding and I can work with Caren to go over some of the information and look at some case law in NH about what is a church, and what is not a church to try to get a better handle on the precise use that we are talking about. Take a look at some of the check list concepts that we talked about and the federal law and then from there. I know you asked the question before if the site plan checklist has been complied but I think it's way premature to talk about that stuff.

Ed Bannister replied I know but I was talking about this because it's posted as a possible final hearing.

Caren Rossi explained that she does all of the notices like this just because.

John Lacourse stated what we are really being asked at this time, does this board even consider this issue. Do we confirm what the code enforcement officer has already made as a determination?

Sharon Somers stated I think what we need to pin down at this time is whether or not the use as has been presented here tonight is something which is going to be part of your site review jurisdiction or it's not.

Peter MacDonald stated he just wants the Board to know that the property is owned by the Veteran Resort Chapel free and clear and it has been used 100% for our religious purposes. I am not applying for the application, our religious assembly, our board of directors directed me to represent the veterans resort chapel to apply for this church. It is not me, it's our religious assembly, I am just representing the veterans resort Chapel. I just wanted to make that clear. Thank you.

Caren Rossi read the application and notice we have that, the Veterans Resort Chapel represented by Peter MacDonald.

Robert Smith, Chairman stated you are correct, we recognize that.

David Cedarholm asked Caren you already determined in your opinion that this is not a church, how did you come up with that conclusion and if it's not a church in your opinion what are we looking at?

Robert Smith, Chairman stated why don't we hold off until we get the list together as that may be part of it. We can review it all together. I don't mean to cut you off. I think that is a good question...

David Cedarholm stated I am curious as we are relying upon our code official to make that decision so that we don't wrangle with those things, I am curious what her opinion is.

Sharon Somers stated what I propose that we do, whatever Caren's decision is we reduce that to a writing.

John LaCourse asked I want to make sure we need to have this information, is there some way we can get this and the checklist material that you are going to provide to the board and the material that the governing policies of the church.

Sharon Somers stated she will be working with Caren and this information can be provided but my recommendation is she makes the decision. I wouldn't want to provide you with a bunch of information and then a decision by committee.

Lou Ann Griswold stated if an applicant comes and says I am wanting to put in a barn, and you say it sounds like really what you are doing is putting in a bed and breakfast and the person says it's a barn, doesn't the applicant get to name it and then we proceed? Or if it's flipped and the person says it's an awesome hotel and you say it looks like a barn. Who names the proposal?

Mark Beliveau stated it the use, not the name. In England Football is soccer. The

description of the activity is important. Legitimately people can see the same thing differently. The burden is on the regulator to take that information and take the facts in, apply it to our ordinance and say here are all the facts that applicant described to me, and say how does it fit into our ordinance? It's the regulators job to make that decision. Listen to the applicant's view of the landscape and everything. If that works, if you can fit that peg into the right hole, then ok. Bu if it's just a complete disconnect, the burden falls on the regulator to say, well I realize you're calling it a duck but it is really not a duck. I understand your point, there needs to be some freedom with the applicant to say what they are doing. There is going to be an understanding. This is a unique proposal that no one is familiar with. The hot idea of a church is a morphism anyway, you can bring 10 people in a room and they will all describe it differently.

Caren Rossi and the Board discussed when to continue the meeting too. It was determined to continue to October 19, 2016 at 7pm.

Carne Rossi asked Peter MacDonald to get us the amended Articles of Agreement.

Peter MacDonald stated he would get us what is in Concord.

David Cedarholm wanted it clarified for the record that earlier Peter said the only use that has ever been on the property is a religious use. It is important for the record that it is a single family residence. People have resided there, whether they worship God, and that is wonderful, and I encourage everyone to do that and that is great, but it is a residence and that the record clearly reflect that.

Peter MacDonald stated to clarify it, it is a residence with a homeless combat female veteran living there that has been homeless on the streets in Derry and Manchester and our church, she is a member now, trying to get her back mentally and physically, so it is a religious purpose that the residency is being used, it's a part of our mission from God. As I said before, and ill be clear on this. This property is used 100% for our religious missions. Nothing else goes on, on that property except things to help homeless combat veterans or homeless veterans.

John LaCourse made a motion to continue the meeting to October 19, 2016 at 7PM.

Wayne Lehman second.

Vote: majority, meeting continued.



John LaCourse made a motion to adjourn at 8:46PM.  
Ed Bannister second.

Vote: majority, motion carried, meeting adjourned.

MINUTES TRANSCRIBED BY:

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Caren Rossi, Secretary

MINUTES APPROVED BY:

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Robert Smith, Chairman

\_\_\_\_\_  
Lou Ann Griswold

\_\_\_\_\_  
Edward Bannister

\_\_\_\_\_  
David Cedarholm

\_\_\_\_\_  
Mark Beliveau

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John R. LaCourse, Selectmen's Rep

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Howard Hoff, Alternate

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Wayne Lehman, Alternate