

Moultonborough Planning Board
P.O. Box 548
Moultonborough, NH 03254
(603) 476-2347
Minutes

February 25, 2009
Regular Meeting - 7:30 P.M.
Moultonborough Town Offices

Present: Members: Judy Ryerson, Natt King, Keith Nelson, Eric Taussig, Joanne Copping, Ed Charest (Selectmen's Representative)-arrived at 7:55
Alternates: Peter Jensen, Jane Fairchild
Excused: Members: Jim Bakas
Alternates: James Gray (Selectmen's Alternate)

Ms. Ryerson called the meeting to order at 7:30 PM. Ms. Ryerson appointed Jane Fairchild to sit on the board with full voting privileges in place of Jim Bakas.

I. Approval of Minutes

Mr. King noted an error on page four of the minutes in the first sentence of the last paragraph of hearing number 1. The minutes state "Mr. Hammond said....." when it should read Mr. Hambrook. This was noted and will be corrected in the final minutes.

Motion: Mr. Taussig moved to approve the Planning Board Minutes of February 11, 2009 as amended.
Mr. King Seconded.
Motion Carried – Unanimously.

II. New Submissions

**1. White Pines Trust (194-34)(143 Eagle Shore Road)
Two Lot Subdivision**

This is a request for a two lot residential subdivision.

Ms. Ryerson noted the Unit Density Calculations for Lot #1 is 1.01 and for the residual Lot #2 is 1.097 units. Mr. Ryerson noted that revised plans had been dropped off in the Land Use Office with one small change. There has been a 50' setback line from the wetland added to the plan.

Motion: Mr. King moved to accept the application of **White Pines Trust (194-34)** as complete for action by the board, and to schedule a hearing this evening to be hearing #3.
Mr. Nelson Seconded.
Motion Carried – Unanimously.

III. Boundary Line Adjustments

IV. Hearings

Mrs. Coppinger stepped down from the board at this time. Ms. Ryerson seated Mr. Jensen at this time with full voting privileges.

1. **Champ II, LLC (69-21)(374 Governor Wentworth Highway)**
Continued Compliance Hearing

Ms. Ryerson noted that this was a continued compliance hearing. The board had approved a site plan amendment for Skelley's on February 27, 2008 that addressed the non-compliance issues. At that time Mr. Nelson had stated that the applicant has one year to complete the proposed changes to the site and suggested the board continue the compliance hearing for one year, allowing the board the opportunity to make certain the issues were addressed before closing the compliance hearing.

Eric Roseen, surveyor, and Mr. Skelley were present for the hearing this evening. Mr. Roseen noted the improvements that had been made to the site. The parking lot has been completed along with the plantings for the buffer. Mr. Roseen presented to the board a work sheet for discussion purposes this evening. The working plan depicted a few additional changes which have been made to the site. These included to the north end of the parking lot a relocated portable toilet which was previously against the end of the building. They have installed a vacuum and air pump station which was not shown on the prior plan. They have added a small amount of pavement to the rear of the building, which was gravel and is included in the lot coverage.

Mr. King questioned if the number of parking spaces has remained the same. Mr. Roseen stated yes, that there are 23. Mr. King questioned if the vacuum took up one of the approved spaces. Mr. Roseen stated no, it is placed in the corner and originally it was not a designated parking space. Mr. King questioned if someone were using the vacuum if they would block spaces 12 & 13. Mr. Skelley noted they did not use a parking space. They park perpendicular to the port-a-potty and they don't affect any of the parking spaces.

Ms. Ryerson noted she had asked about the additional improvements because the board has heard through word of mouth that there is some discontent with the location of the portable toilet and vacuum unit. There was no one present in the audience at the hearing who made any comments relating to the site.

Mr. Taussig commented that the lights in the parking lot are on 24/7 and questioned the need for that. Mr. Skelley that is the way the lighting was setup. It doesn't have to be setup that way. It is partially for security. Mr. Skelley stated that on occasion they have had large trucks parking in his lot at night.

Mr. Skelley noted another change to the site was the removal of the foundation that was on the original plan to remain. Mr. Skelley indicated that it was removed more for aesthetics, and he decided that he wasn't going to use it for anything.

Motion: Mr. Nelson moved to close the compliance hearing for **Champ II, LLC (69-21)** Subject to the amendments to the plan to include the removal of the foundation, the installation of the portable toilet and vacuum air pump station.
Mr. King Seconded.
Motion Carried – Unanimously.

Mrs. Coppinger returned to the board at this time.

2. **C.G. Roxane, LLC (Old 85-21 / New 94-4)(Ossipee Park Road / Route 171)**
Continued Site Plan Review

Ms. Ryerson noted that this was a hearing for a site plan review for C.G. Roxane, LLC, Tax Map 94 Lot 4. This is for the construction of a warehouse and trucking facility and has received a special exception from the Zoning Board of Adjustment.

Ms. Ryerson questioned at this time if there were any comments from the board. Mr. Taussig noted that he would like to comply with full disclosure and the Right to Know Law. Mr. Taussig stated that he and Mr. King had received an e-mail from Ms. Ryerson which he passed out to board members along with his response to her e-mail. Mr. Taussig feels that the applicant, the board and the public should be aware of. Mr. Taussig requested the letter be read into the record. Mr. Nelson did not feel that Ms. Ryerson's e-mail should be read into the record and that the opinion of Town Counsel should be disclosed.

Mr. King requested that he be able to address his position at this time. Mr. King realizes that there are individuals that would like him to step down from the board as he was vocal during the special exception process. Mr. King noted that that was a different process, the special exception has been granted, the warehouse can go in and his duty on the Planning Board is in a matter of site plan. Mr. King said that when he opposed the special exception he was among 95% of the populace that responded to the Master Plan Survey that felt that it was inappropriate to have anything other than Residential/Agricultural in that area. The Zoning Board did not feel that way and it is a fact now that there will be a warehouse there. Mr. King stated the board's job at this point is simply to see that the site plan regulations are followed. He feels that he can act in a very objective way about that and would feel uncomfortable to step down.

Mr. Taussig indicated at the present time that he has no intention of stepping down. He suggested that the board members read his letter in response to Ms. Ryerson's e-mail.

Mr. Taussig asked that the board be polled in regards to the request that the e-mail be disclosed to the public. Ms. Ryerson polled the board at this time as to whether the e-mail and the answer should be made public. Jane-Nay; Natt-Nay; Keith-Nay; Joanne-Nay; Eric-Abstained.

Mr. Charest arrived at this time.

Mr. Taussig requested if they were to poll the board regarding the seating of Mr. King and Mr. Taussig that the board first hold an executive session to discuss the e-mail and then poll the board. Mr. Taussig objected to polling the board prior to that and prior to having any discussion on the subject.

Ms. Ryerson polled the board in regards to Mr. King sitting on the board. Judy felt that Natt can be completely neutral in this case; Jane did not see a reason to step down unless there's some undisclosed issue that the board is not aware of; Joanne felt Mr. King could be objective; Keith felt as long as both Mr. King and Mr. Taussig felt they could be objective and listen to the evidence and make an objective decision that he had no objection to them sitting on the board; Mr. Taussig stated that Mr. King had articulated his rational and felt that it was perfectly acceptable.

Ms. Ryerson polled the board in regards to Mr. Taussig sitting on the board. Judy felt that Mr. Taussig could be impartial. Mr. King agreed. Mrs. Fairchild agreed. Mr. Nelson agreed. Mrs. Coppinger agreed.

Regina Nadeau, counsel for C.G. Roxane (CGR) stated that if she was just looking at personalities and it were her own project she would look at character and think that Mr. King could be unbiased in a situation like this. Ms. Nadeau stated that she does not know Mr. Taussig at all, other than the statements he made that are in the transcripts. Therefore, she cannot make a partial objection. For the record Ms. Nadeau objected to Mr. King and Mr. Taussig staying seated on the board.

Ms. Ryerson noted several pieces of correspondence relative to this hearing. They were from Joanne Farnham, Edward Peterson, Cristina Ashjian and Joseph Crowe. The Planning Board was copied on a letter to the Chief of Police from Cristina Ashjian relative to truck traffic that is related to C.G. Roxane, but not directly related to this hearing. The Chairman stated that they are part of the record and the Board will give them due consideration and gave a brief synopsis of the letters stating that there are concerns about a

potential truck depot in the neighborhood, noise, traffic, pollution, what would happen if CGR were to abandon the site.

Ms. Ryerson recapped that the ZBA granted on April 19, 2006, by a 3 to 2 vote, a special exception to operate a warehouse and truck transfer truck facility off Route 171 with an entrance off Ossipee Park Road. There were two conditions placed, one limiting the idling of trucks during the summer months and the second suggesting CGR implement safety measures which would minimize potential risk to Ossipee Park Road traffic leaving the Castle.

Andre Kloetz, (Bauen Corporation), Attorney Regina Nadeau, Paul Fluet, Engineer, Kip Downs (Bauen Corporation) and Attorney Mark Beaudoin were present representing CGR. Mr. Kloetz referred to the site plan which was presented to the ZBA two years ago. Mr. Kloetz described the project, noting it is a 30,000 square foot pre-engineered building, neutral in color located off Route 171 with an access off Ossipee Park Road. There is a staging area for tractor trailers waiting to be loaded. There is a fire lane around the building for safety purposes. There are two loading docks, and an overhead door on the back for access with their forklift. There is a small shipping office inside, bathroom and small sitting area. The remainder of the building is for the storage of water. Drainage is shown on the plan, swales, catch basins, which go into a detention pond with a level spreader at the end of it. The septic field is shown on the plan. The site is 25.3 ± acres with approximately 281,000 square feet or about 6 ½ acres. There are no wetland impacts to the site. Lighting is basic with wall mounted 150 watt wall packs that shine downward to illuminate the area for safety around the building. There is one 30' light pole in the middle of the parking area which is on a timer and will be controlled with the hours of operation. They have received a driveway permit from the town, an approved septic design from DES and site specific approval from DES. Mr. Kloetz noted there is a noise barrier that was instituted at the request of the ZBA. It will be constructed of wood and is designed to buffer and reflect noise back onto the site while the trucks are sitting waiting to be loaded. The development of the site is approximately 590' from Route 171 with about a 70' elevation difference from the road.

Mr. Jensen requested clarification that the parking was presented as a staging area not as an overnight parking area. Mr. Kloetz stated that was correct. Trucks will come in and stage waiting to be loaded. The ZBA set hours of operation for the project. Mr. Jensen questioned if the trucks would be idling overnight, waiting there as if it were a truck depot. Ms. Nadeau stated while at the ZBA they testified that they would mirror the hours of operation of the facility up above which are 6 AM – 11PM with the plan that the last truck would be loaded between 10 and 10:30. Also represented was that CGR has told the truckers that they cannot spend the night there and explained that due to the types of schedules and where they are coming from they shouldn't have to, plus it is illegal.

Ms. Ryerson referred to the ZBA motion noting they had restricted the idling of trucks during the hours of 6 PM to 8 AM to five (5) minutes during May through October.

It was noted that there is a statute regarding the idling of trucks which is related to temperature, above 32; 5 minutes, 32 – 10 below; 15 minutes and below 10, no limit.

Ms. Ryerson noted the ZBA motion did not include specific hours of operation and noted the ZBA stated that would be a matter for the Planning Board (PB). Ms. Nadeau does not recall that it was a matter for the PB, but when they discussed the scope of the operations there was ample testimony of what the hours would be, because the purpose of the warehouse is to take the pressure off up above and in inclement weather. Very often this will be an emergency alternate and they must be able to operate as the same hours as the bottling facility, which is why it is necessary to mirror the hours of 6 AM – 11 PM. Ms. Ryerson read the pertinent sections from the ZBA minutes stating that hours of operation were a matter for the Planning Board and said that that was still an open question before the Planning Board.

The question was raised as to how CGR would prevent trucks from parking in the lot between 11PM and 6 AM as well as monitoring the idling of trucks. It was suggested that a gate could be installed at the

entrance on Ossipee Park Road which would prevent trucks from parking overnight in the lot. It was also suggested that a camera with audio could be installed on the light pole in the staging area that would monitor the trucks in the lot if there were no employees of CGR present. There is to be no staging of trucks on Route 171.

Mrs. Coppinger questioned if there was a study completed on the sound barrier. Ms. Nadeau provided the board with a copy of the summary report from the sound engineer. It was questioned if there was supporting documentation to go with the summary. Ms. Nadeau did not have that with her this evening but will provide it to the board. Mr. Nelson questioned what the buffer was on the uphill side of the warehouse. Mr. Kloetz noted that it is a 2 to 1 grassed slope. Mr. Nelson questioned if grass was sufficient for sound absorption.

Ms. Ryerson questioned the amount of water that can be stored in the facility. Ms. Nadeau stated a full capacity it was a 2-3 day supply. She also noted the need to rotate the stock every two months due to the shelf life of the product. This would require them to ship from the warehouse to clear and rotate their inventory.

Questions were raised regarding the number of trucks that would be accessing the facility. Ms. Nadeau stated that they have not asked for an increase in the number of trucks. They stipulated that there will be an average of forty (40) trucks a day over a thirty (30) day period and that they have provided bimonthly trucking reports as a condition of approval by the PB on the bottling facility.

Joseph Crowe noted his concerns regarding the noise and visibility of the warehouse. Ms. Ryerson questioned the need for an on-site visit. It was noted the ZBA had conducted an on-site visit in February 2006. At that on-site visit they had floated balloons off the location of the corner of the building. The board discussed conducting an on-site visit and felt that this would be very helpful for the members. Mr. Downs stated that he had conducted the balloon float for the ZBA and will do it for the PB. Mr. Downs noted that during the cold weather the balloons do not stay afloat for a long period of time so board members should be prompt at the time of the on-site.

Audience member Will Powers read his letter into the record. Audience member Cristina Ashjian raised questions about truck traffic and read her letter into the record.

Mr. Taussig requested a summary of operations that would be conducted at the warehouse.

Mr. Jensen requested a brief written explanation of how the communication to the drivers is going to change. Ms. Nadeau will provide the board with a policy that will be CGR's policy.

It was the decision of the board to continue the hearing to allow time to conduct the on-site and for Ms. Nadeau to provide the materials requested.

Motion: Mr. King moved to continue the site plan review for **C.G. Roxane, LLC (Old 85-21 / New 94-4)** to March 25, 2009 and to schedule an on-site visit for Wednesday, March 4, 2009 at 3:00 PM.
Mr. Nelson Seconded.
Motion Carried – Unanimously.

The board took a five minute break from 10:12 – 10:17.

**3. White Pines Trust (194-34)(143 Eagle Shore Road)
Two Lot Subdivision**

Ms. Ryerson stated that this was a request for a two lot residential subdivision.

Ms. Ryerson noted the Unit Density Calculations for Lot #1 is 1.01 units and the Unit Density Calculations for residual Lot #2 is 1.097 units.

It was noted the Conservation Commission commented “wetland not delineated in area of homes, especially around homes.”

Carl Johnson, Jr., from Associated Surveyors presented the application for subdivision. Mr. Johnson briefly described the lot, noting the lot is 4.05 acres with 200’ of frontage on the road and over 500 ± feet of frontage on Lake Winnepesaukee. There is an existing cabin located on proposed Lot #2 and is serviced by lake water at the current time and is serviced by an old septic tank. Mr. Johnson stated the lot gently slopes from the road down to the lake. There is a fairly significant poorly drained soil that encompasses most of the northeast, northern portion of the property. This area has been delineated and depicted on the plan. The plan depicts the 50’ setback from the wetlands. There is a footpath that is shown on the plan to access the waterfront. Mr. Johnson stated the proposal is to subdivide the lot into two parcels, and maintaining the integrity of the cabin that has been in the family since the 1940’s. The existing driveway will be converted to access the new lot and create a new driveway off Eagle Shore Road for the existing cabin. A 4K area is shown on the proposed lot, and there is a state approved septic system for the existing cabin.

Mr. Nelson noted the need to place a locus on the plan.

It was noted that they have not received or applied to the state for subdivision approval at this time. Nor have they applied to the town for a driveway permit.

Motion: Mr. Nelson moved to approve the subdivision for the **White Pines Trust (194-34)** subject to the receipt of state subdivision approval, an approved driveway permit from the town and the locus being added to the plan.

Ms. Ryerson added conditioned on this being developed substantially as depicted on the plat and according to testimony this evening.

Mr. Johnson commented on Ms. Ryerson condition, that the intent as they know it now is to keep the cabin in the family. Because there is a large area that could be developed they don’t want to be denied the possibility of replacing the cabin with a new modern structure.

Ms. Ryerson commented that with a subdivision, the board would not weigh in as to where they would place a building, so long as it met setbacks.

Mr. Taussig Seconded.

Motion Carried – Unanimously.

V. **Informal Discussions**

Mrs. Coppinger did not participate in the informal discussion regarding The Robert M. Hammond Trust. **Don Smith** an attorney with Helme, Cole & Smith in Ossipee stated that he had a question for the board relating to the property of Robert Hammond **Tax Map 23 Lot 14**, 1173/1195 Whittier Highway. Mr. Smith stated that Mr. Hammond’s property abuts the Moultonboro Airport and that he is proposing a boundary line adjustment with airport to extend his property to the brook. Mr. Hammond is in the process of negotiating that with the owner of the airport. The question to the board is, outside of the boundary line adjustment would there be any other requirements the board would be looking for. Would they be looking for any site plan application for this? The only change would be the boundary between the two parcels. Mr. Nelson stated there would be a change on the site plan for the airport and a change to the site plan for Mr. Hammond as the use of that area by Mr. Hammond of his property. There could be a site plan

question on both properties. Mr. Smith stated that there would be no change to the use of the runway. The airport will not be changing. Mr. Smith noted to do a site plan of the entire airport to transfer a small portion would cost prohibited. They would like to not have to submit a site plan review for the airport. Mr. Smith noted the impacts would be small. Mr. Nelson stated the size of the site would be changing for the airport and they would need a site plan. It would be up to the board to waive the requirement of a site plan. Mr. Smith questioned if he would be required to go through the process and then request a waiver. The board agreed that it appears to be a "Catch 22". Mr. Smith stated the regulations refer to a substantial change of use and to go through a site plan for the airport when there is not going to be any change is a costly endeavor. The board is not certain if there is or is not a site plan on record for the airport. It has been the practice of the board on sites that are grandfathered and do not have site plans on record, that when a change is made to the site this is the opportunity for the board to get a site plan of the property. Mr. Smith stated even to go through the waiver process, the expenditure to submit the application and then ask for the waiver would be costly. Mr. Nelson noted that at this time they don't know what the lot coverage is of the airport site, and suspects that it may not be an issue, but they don't know that. Mr. Smith questioned, in the spirit of this, is this a material change in the use of the lot. They are estimating that the area to be transferred is approximately one acre or less. The board discussed this issue questioning how an application could be accepted as complete if it did not have the required plat. Mr. Smith could submit a waiver for plat until the board makes the determination as to whether a waiver is needed. This would need to be done in a hearing mode with abutter notification. There may be a whole list of waiver requests that could be done in a step process. Mr. Smith stated that he thought he was hearing that the board might be receptive to a step process of submitting waivers as they go along with the approval process of an application for site plan review.

Mrs. Coppinger returned to the board at this time.

VI. Unfinished Business

VII. Other Business/Correspondence

1) Ms. Ryerson noted that the planner position is on the warrant and Mr. Terenzini has done quite a bit of work on this developing a job description. The board would like to make certain that it is the board that decides what this person will do, as they will be working for the board and not just generally for the town. Mr. King, Ms. Ryerson, Mr. Charest and Mrs. Fairchild will get together to be ready for a planner assuming this will pass.

2) Cristina Ashjian updated the board to several errors in the final copy of the Master Plan, noting that the ZBA is listed as the Zoning Board of Appeals, not the Zoning Board of Adjustment. There are changes to the matrix that are missing and the appendix for the master plan survey is not included. Ms. Ryerson said she will be bringing the copies of the printed Master Plan back to MRI to have the survey inserted but that additional changes cannot be made at this point.

2) JLMC Meeting Minutes of January 20, 2009 were noted.

3) Selectmen's Draft Minutes of February 5, 12 & 19, 2009 were noted.

VIII. Committee Reports

IX. Adjournment

Motion: Mr. King moved to Adjourn at 10:56 P.M.
Mr. Charest Seconded.
Motion Carried - Unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Land Use Coordinator

These Minutes have not been formally approved by the Moultonborough Planning Board. Please contact the secretary after the next regularly scheduled meeting of the Moultonborough Planning Board to be held on the 2nd and 4th Wednesday of each month, to learn if any corrections, additions or deletions were made.