

Moultonborough Planning Board
P.O. Box 139
Moultonborough, NH 03254

Regular Meeting

April 24, 2013

Minutes

Present: Members: Tom Howard, Chair; Paul Punturieri, Josh Bartlett;
Russ Wakefield (Selectmen's Representative)
Alternate: Keith Nelson

Excused: Members: Judy Ryerson, Peter Jensen, Bob Goffredo
Alternate: Natt King

Staff Present: Town Planner, Bruce W. Woodruff; Administrative Assistant, Bonnie Whitney

I. Pledge of Allegiance

Mr. Howard called the regular meeting to order at 7:00 P.M. and appointed Keith Nelson to sit on the board with full voting privileges in place of Judy Ryerson.

II. Approval of Minutes

Motion: Mr. Punturieri moved to approve the Planning Board Minutes of April 10, 2013, as amended, seconded by Mr. Nelson, carried unanimously.

Motion: Mr. Bartlett moved to approve the Planning Board On-site Minutes of April 17, 2013, as amended, seconded by Mr. Punturieri, carried unanimously with Mr. Nelson abstaining.

III. New Submissions

1. Stuart L. & Amy Jean Morrill (163-15)(Hoyt Mill Road)
Two Lot Subdivision

This was a request for a proposed Major Two Lot Subdivision creating one new lot with one residual lot. Mr. Howard noted the request for waivers dated 4 April 2013 from David M. Dolan Associates, PC.

Motion: Mr. Nelson moved to accept the application of **Stuart L. & Amy Jean Morrill (163-15)**, acknowledge the receipt of the waivers for the purposes of acceptance only, and to schedule a hearing for this evening to be Hearing #2, seconded by Mr. Wakefield, carried unanimously.

2. Norway Point Trust (243-28)(Norway Point Road)
Major Subdivision and Conditional Use Permit

This was a request for a Major Subdivision and Conditional Use Permit. Mr. Howard stated that the board, at its prior meeting, had reviewed three requested waivers submitted by the applicant during the submission hearing for Norway Point Trust prior to the acceptance of the application. Two of the waivers were granted. The first was relating to not depicting off-site geographic facts within 200ft. And second, a waiver relevant to roadway frontage that exceeds 600 ft. creating the need for a service road or internal streets.

The last waiver was regarding required road improvements to Norway Point Road. The board and the agents representing the trust entered into a lengthy discussion relating to this request for waiver. The discussion surrounded whether Norway Point Road was currently a driveway and would turn into a new private road once the subdivision was approved and whether a waiver was required from Subdivision Regulation 7.2 to upgrade the road or not. They also discussed whether a recorded lot restriction and covenant document was sufficient to ensure perpetual road maintenance and winter maintenance by the property owners.

Mr. Howard stated the applicant had submitted a lengthy document, received today, requesting the Planning Board rule that Norway Point Road is an existing nonconforming private road that may continue. Included in the document was a new request for waivers from the Section 7.2, E ADT 0-50 Road Standards. The Chairman noted that he would like to go back to the practice of the board to accept the waiver for purposes of acceptance only and to discuss it in a hearing mode.

Motion: Mr. Nelson moved to accept the application of **Norway Point Trust (243-28)**, acknowledge the receipt of the waiver for the purposes of acceptance only, and to schedule a hearing for this evening to be Hearing #3, seconded by Mr. Wakefield, carried unanimously.

IV. Boundary Line Adjustments

V. Hearings

1. Continuation of Tedeschi Food Shops (142-1)(268 Whittier Highway) Site Plan Amendment

Mike O'Donnell, PE from TFMoran, Inc. presented the application for Tedeschi Foods. Also present for the hearing was Biron Bedard, Attorney, of Ransmeier & Spellman P.C. and Michael McLaughlin of Tedeschi Food Shops.

Mr. O'Donnell stated the hearing was tabled at the last meeting to allow time for them to take into consideration some of the feedback they had received. Mr. O'Donnell stated that at this time they are going to withdraw the seating portion of the application. There were a number of perceived negative impacts associated with it and they feel that those will be eliminated by eliminating the seating at this time. Issues that were discussed at the last meeting was the potential night time hang out, so the applicant is withdrawing that portion of the application. Other changes made to the plan that will be finalized on paper plans to be submitted were noted. Mr. O'Donnell referred to the two colored plans presented at the prior hearing. He has highlighted in yellow where the commercial zone line is, the north side being the commercial zone, and the south side being the residential zone. He pointed out the buffer to Mrs. Davis's house which is in the commercial zone.

They have formalized the dumpster pad in the location as discussed. They have added a fence around the back to address the noise and screening concerns brought up in Mrs. Davis's letter. There will be arborvitae plantings in front of the fence to break up the flow of sound. They have changed the entrances, channelization and striping to match what was discussed at the prior hearing. They do feel that this will be safer as it will limit the width coming in, so cars will have to slow down to negotiate the narrower lanes. It is a common traffic calming measure. They discussed the potential truck idling, overnight parking in the parking lot. They reviewed the 1993 site plan, which has a note that there be no transient trucks. They are willing to carry that condition forward with this approval. Last Mr. O'Donnell commented that there was a suggested condition relating to additional lighting, adding a note to the plan stating there shall be no new lighting installed on the site. The applicant would like to amend the

condition to be “if additional lighting on the site is desired, a photometric plan that meets the town’s requirements be prepared and submitted to the Town Planner prior to the installation of any lights.”

Mr. Nelson commented in the material presented it was noted the fencing would be vinyl fencing. He asked what that was. Mr. O’Donnell stated that it is a plastic type of fence that will have the appearance from a distance of a very nicely maintained wood fence. It will be a solid fence that has the appearance of a traditional stockade fence, six (6) feet high.

Mr. Howard commented that it was unfortunate that the board did not have revised plans in front of them to view this evening. Mr. O’Donnell had brought one set of plans. Members reviewed the proposed locations of the fence. He also provided the board with a photo showing what the fence a plantings would look like. The fence will be along south side (rear) of the developed area of the lot. Mr. Howard stated the fence was referred to as a noise attenuation and he questioned if the fence was specifically designed for that, or was it simply the fact that it was a solid fence? Mr. O’Donnell stated it was the fact that it was a solid fence.

Mr. Howard stated in looking back at the minutes of prior hearing the hearing was continued to allow the applicant to address the issues raised. One of the issues was the hours of operation. Mr. Howard questioned if their address of that specific issue was the elimination of the seats, and nothing to do with hours of operation or the drive-thru? Mr. O’Donnell stated that his understanding that he had was that the issues surrounding the 24 hour operation of the facility were noise related and the types of people that might be attracted to hang out there. They feel that by eliminating the seating, they eliminate part of that, and by installing the fence they have made a reasonable effort to attenuate noise. Keeping in mind the site is in a commercial zone, it is a commercial use, and they are very well buffered from the residential zone. There is no buffer requirement between the two zones and they are leaving over 200 feet there.

Mr. Punturieri stated what he heard from the abutters was similar to what was described, but he thinks that abutter, Mark Finnegan, said that he does hear noise and he didn’t know if a six (6) foot vinyl fence is going to satisfy them. This is an amendment to a site plan from 1993 and there was never any delineation of this being a 24/7 operation, or having a drive-thru window. He thinks that it would not be unreasonable for them to not expect a 24 hour, 7 days a week operation essentially where there wasn’t one before. He would like to hear what the abutter’s have to say about the new plan. Mr. Bedard stated that hours of operation were never discussed as part of the original approval, other than to the extent of the prohibition on transient trucking. Historically for the past several years there has been at least 24/7 fueling there occurring on the property.

Mr. Punturieri asked the distance between the diesel island and the canopy. What is the distance to get to the drive-thru? After several minutes and questions, it was noted that the diesel island is a concrete pad, and the canopy was raised. A portion of the last stacking spot for the drive-thru is on the concrete pad.

Mr. Punturieri stated that the drive-thru and 24 hour operation were not approved on the original site plan so this is something new. Mr. Woodruff commented that the board has the purview over the hours of operation for commercial operations. Going back to the original approval he did not see any discussion in the minutes, that doesn’t say that there wasn’t any, about hours. It doesn’t appear to be any condition of approval and it doesn’t appear on the plan.

Mr. Bartlett questioned Mr. Woodruff in his review of the minutes. It was his understanding that either when it became a gas station, food shop, or when it was originally the tractor sales, repair, lawn mower business, there was a requirement that they plant trees along Redding Lane. He asked if he remembered that accurately, there are some arborvitaes along Redding Lane, he assumes for sound or light attenuation then. He didn’t remember if it was for the food shop or the lawn mower business. Mr. Woodruff commented that he believed it was for the original site plan for this use.

Mr. Howard opened the hearing to the public, noting that all the members were present at the prior hearing and asked that the comments or questions be related to what is new or different on the plan than last time. Mark Finnegan, abutter, recognized that withdrawing the seating application is a significant concession. Having said that, as it was correctly pointed out, a six (6) foot vinyl fence, plantings, he's still going to hear the noise. There is very little that can be done. As he said at the last meeting, they can control their volume, but they cannot control the volume of who's coming through that parking lot at any given hour of the day. As we all know, based on a variety of statistics, the people who are out at those hours of the morning tend to be a higher probability that they're not really the type of people that we want in Moultonborough necessarily. You're going to attract these folks from all the surrounding communities. No one's coming here at 2 in the morning to fill up with gas, even though there is a 24 hour pump, they might come here to try and get a sandwich. He does still think that there is a noise issue. He does recognize that's a significant concession.

Mr. Bartlett asked if it would be possible to put in a probationary provision and say that we'll try it but if there's problems it's over. Mr. Nelson commented that in essence there is a probationary provision because if they are permitted under the site plan to do that part of the ordinance and part of the approval can be that people can't hear the noise offsite. If you hear the noise offsite they are called in for a compliance hearing. If they are found out of compliance they can revoke the site plan. Mr. Bartlett stated you can hear noise from the site, but it would have to be, I would expect that it would have to be what a reasonable person would consider objectionable and not the result of open motorcycle exhaust because we have that anyway. Mr. Nelson commented that there certainly is significant noise that comes from Route 25 with the traffic and vehicles coming in and gassing up.

Mr. Nelson referred to the original plan notation that there be no transient trucks. He would like that to be expanded to state that there be no overnight parking of trucks or vehicles on the property. And no idling for a greater period of time other than to refuel. Mr. Bartlett commented that he believes there is a state law now that you are not allowed to idle a truck for any length of time. The applicant is willing to put up a sign addressing the trucks.

Mr. Bedard asked to speak to the noise concern with respect to the board's concern and compliance review, which he agrees is a matter of statute. He asked that the standard they would be held to be what the standard is in the Zoning Ordinance (please note should be Selectmen's Ordinance) for noise and that it only relates to revocation of the hours of operation condition and not the entire site plan. He would not want to have to go back to square one given they are at a constructed facility that already has an approval, which if they're willing to use the existing building without a drive-thru in it they wouldn't have to do most anything. He understands the board's and abutter's concern. He would like to be focused on that concern as opposed to the whole building.

Mr. Bartlett noted publicly that this town does have a noise ordinance. It is quite detailed and spelled out, but he doesn't know if it has ever been enforced. It does exist. So the opportunity for a business to call the police and say come and enforce your noise ordinance, we've got a couple of morons out here that are creating a problem. There also is the acknowledgement that the people coming to a convenience store at 2:30 in the morning are not coming for milk and diapers. They're coming for beer and cigarettes. Mr. Bedard stated they are not coming for beer, because if they are, they're being turned away. By statute in the State of New Hampshire, you have to have a liquor license and you cannot sell beer after 11:45 PM and before 6 AM. So you can come at 2:30 in the morning for beer, you're not getting it. You can get cigarettes. This is going to be the only place selling coffee overnight for roughly a 15-20 mile radius, so they expect it will be people looking for coffee.

Mr. Howard noted the letter in the packets from the Department of Transportation relative to a requirement for a bypass shoulder for the proposed increase in use of an existing station, convenience store. Mr. Woodruff commented the traffic analysis memo the board had them prepare also went to the

NH DOT District 3 Engineer. This is part of the new cooperative and collaborative effort for them to see things like traffic analysis and the plans that are submitted to this board to make sure that the plans and analysis are exactly the same, that's happened. What the district engineer has required as part of the DOT permit is the construction of a bypass lane on the north side of Route 25. This requirement is not just because of the Tedeschi application, it's also because of a forthcoming application on the lot to the east. He believes that it is the feeling of DOT that the cost to do that construction should be shared by at least those two entities, the owners of both these lots. Mr. Howard asked that the planner speak in regards to what can and cannot be done with regard to any approval given tonight prior to compliance with the DOT's request relative to their driveway permit. Mr. Woodruff stated for certain any approvals the board gives tonight should require that the DOT permit be part of the approval package and that it be referenced on the site plan. Beyond that he was not certain, not having been given any analysis with regards to the total cost of the bypass lane, or a fair share cost sharing mechanism, that there is anything else that the board could do with regard to that conditionally. Most likely this will need to shake out privately between lands owners or developers. Mr. Howard questioned what could or could not happen with the approvals they were granting for a drive-thru window, as well as the lanes in and out for the access? Mr. Woodruff stated what could happen was that the applicant could choose after they get their approvals tonight to not go forward with the actual development, with the idea that they would wait for the next development to the east to come in to the board with an application so that possibly the cost sharing could be conditioned. Mr. O'Donnell stated that he has spoken with DOT every day this week about cost sharing mechanisms and who is doing what on which abutting parcel. He has gotten a number of answers. Where they have left it is basically what is triggering the requirement for the bypass lane is an increase in the intensity of the use, i.e. seating. You take the seating out of the development proposal and they are not going to require a bypass shoulder. That's not to say that they may not decide in the future to participate in that project or come back to the board and re-ask for the seating again. They would like to keep that open as they move forward into the future. Their present approved driveway permit allows for the development that they are proposing minus the seating.

Mr. Punturieri asked if the concession on the seating was to quell the concerns of the abutter's or was it to not have to build a bypass lane? He was concerned that Mr. O'Donnell said in the future they might still have 16 seats. Mr. O'Donnell said if they operate this business as a 24 hour business for a year or two, and people have a pretty good feeling about what's going on there, and if an adjacent development does move forward and is willing to share the cost, that there is a chance that Tedeschi may push to participate in that project, come back to this board and increase their use. Mr. O'Donnell stated that they do have an approved NH DOT driveway permit number 313340A issued February 11, 2013.

The board took time to review the conditions they would like to contain in a motion. As a result of this discussion and the concerns regarding the hours of operation for the drive-thru, the applicant offered to restrict the use of the menu board for the drive-thru from the hours of midnight to 5 AM. A message would be placed on the menu board directing patrons to proceed directly to the drive-thru window therefore eliminating the need for the speaker during those hours. After a brief discussion members were in agreement with the restriction of the speaker/menu board as noted. Mr. Finnegan and Mr. Punturieri noted their concerns with the noise that may still be generated. After review and discussion Mr. Nelson made the following motion:

Motion: Mr. Nelson moved to approve the site plan for **Tedeschi Food Shops (142-1)** with the following conditions: 1. The NH DOT permit number be referenced on the plan. 2. Add a note to plan stating that there will be no new lighting installed on the site without a photometric plan being submitted to the Town Planner and approved by the Town Planner or obtaining further Planning Board approval. 3. Add a note to plan to memorialize the 24/7 operation of the facility and that the drive-thru speaker operation shall not be between the hours of midnight and 5 AM. 4. The use of the property will comply with the Town of Moultonborough noise ordinance. 5. There shall be no overnight parking of

vehicles or trucks and no idling trucks beyond the time for re-fueling. 7. The final plan to be submitted to the Office of Development Services in electronic format to include both a pdf and an approved cadd file format, seconded by Mr. Bartlett.

Mr. Howard asked if the only point of contention was the drive-thru as 24 hours, now with the limitation of the 5 hours. He asked if anyone else felt they should be limiting the 24 hours. Mr. Bartlett noted his concern for the abutter's but noted there is a Town noise ordinance that perhaps might spur enforcement throughout the town which would be a good thing.

Mr. Howard closed the public hearing at this time and called for a vote on the motion, which passed in favor 4 to 1, with Mr. Punturieri opposing.

2. Stuart L. & Amy Jean Morrill (163-15)(Hoyt Mill Road)
Two Lot Subdivision

Dave Dolan presented the application for a Two Lot Major Subdivision of a 26+ acre parcel located on Hoyt Mill Road. The lot was created by a subdivision in 1985. The plan depicted the proposed lot and a portion of the residual lot. Mr. Dolan briefly described the existing improvements on the lot. He noted about 12 acres of the property is wet. They have shown the edge of the wetlands, which were delineated by Peter Schauer. The proposal is a two lot subdivision, creating one new lot of 2.74 acres. The lot has 50' of frontage at the end of Hoyt Mill Road. Access to the lot will require a dredge and fill permit. The proposal is for a 16' wide driveway, with 1,750 SF of impact for access. Mr. Dolan noted lot calculations. State subdivision approval is pending, as well as the dredge and fill permit for Lot 1. There are a few minor revisions to be made to the plan, including the recommendations of the planner, the addition of the state approvals to the plan and to set final lot corners. Mr. Dolan answered any questions for the board.

Mr. Howard opened the hearing to the public. There was none.

Mr. Woodruff noted the only issue not mentioned was that the final plat should have the actual Tax Map and Lot number depicted instead of the term "Lot 1". This can be obtained from the assessor.

Mr. Dolan noted the request for waivers from Section 4.3 (A)(4) – location and dimensions of property lines to depict the location and dimensions of the entire property, consisting of the "Remaining Land". A boundary survey was performed by this office on a portion of the property encompassing Lot 1 and approximately 6 acres of the "Remaining Land". Section 4.3 (A) (11) – 2 foot contours for construction areas; 5 foot contours for the remainder of the lot. Section 4.3(A) (13) – off site geographic facts within 200 feet of the property.

Mr. Nelson questioned if a conditional use permit was required. Mr. Dolan noted the area of the wetlands is less than 20,000 SF, therefore the buffer doesn't apply in this case.

Motion: Mr. Nelson moved to move to approve the **Stuart L. & Amy Jean Morrill (163-15)** for a Two Lot Major Subdivision of an existing parcel of land into two lots; one lot containing 2.74 acres and one lot with 24 acres located entirely in the Residential/Agricultural zone, with waivers for not depicting; a. (Section 4.3 A.4.) all parcel boundaries and wetland areas on the entire parcel, b. (Section 4.3 A.11.) topo from the surveyor on the entire parcel, and c. (Section 4.3 A.13.) off-site geographic facts within 200 ft. of the property, with the following conditions: 1. Correct the setback lines on the new lot on the plat. 2. Add a note to the plat depicting the flood hazard zone lines on the plat 3. Add the NH DES Wetland Dredge & Fill permit approval number to a note on the plat. 4. Add the State Subdivision approval number to a note on the plat. 5. Depict the actual Map/Lot

number for new lot 1 on the plat (from the Assessor). 6. That the final plat be submitted to the Development Services Office in electronic format to include both a pdf and an approved cadd file format. Seconded by Mr. Punturieri, carried unanimously.

3. Norway Point Trust (243-28)(Norway Point Road)
Major Subdivision and Conditional Use Permit

Mr. Howard noted the board was in receipt of a packet dated today (April 24, 2013) from Attorney Karen McGinley requesting the board rule that Norway Point Road is an existing nonconforming private road that may continue without meeting the ADT 0-50 Road Design and Construction standards of Section 7.2E of the Moultonborough Subdivision Regulations. He asked that Ms. McGinley give a presentation of what is in the packet, as well as what is different than the last meeting.

Ms. McGinley gave a brief history of the property and the proposed subdivision. In 2009 the owner of the house on the point needed to sell her interest in the trust and her house. At that time they came to the board for a subdivision. Mr. Tony Campbell purchased the property and built a new house. The property was purchased by Mr. Gilman's father in the late 40's, 20 acres, and later in the 60's purchased additional 40 acres. There was 60 acres in one piece shared by 4 sites. The Campbell's, Gilman's, Hazen's and what was Susan Wallis's property. The homes are owned individually by the four families. They believe Norway Point Road is a private road and is used to access the four sites. The three families remaining decided it would be wise to approach a further subdivision so each of them, if and when, would like to exit the trust would be able to do so without coming in piecemeal. They came up with the proposed subdivision as presented. There are five lots on Long Point Road that do not have access to the lake and three lake front lots that are limited to one single family home per lot. There are declarations on record from the original subdivision that allows the "new" Campbell's to use Norway Point Road, it does not give them right to improve it in any manner beyond its current state. There are a new set of declarations that will go record, if the board were to improve this, they will make it a provision of the approval. Beyond that they have an additional request for waiver.

Tim Bernier of T.F. Bernier, Inc. presented the application for the subdivision of 46 acres, with three existing camps, all accessing Long Point Road by Norway Point Road. They are also proposing five single family lots on Long Point Road. They have received stated subdivision approvals for the lots and have approved driveway permits from the town for the lots, each lot to be accessed by its own driveway onto the town portion of Long Point Road. The five lots average in size from 1.5 acres to 1.68 acres. The three lake front lots are all roughly 12 acres. Lot 1 (Hazen) has 921.4' of direct lake frontage, 881.7' measured by the town's definition, Lot 2 (Gilman) has 1056' of direct lake frontage, 734.5' by the town's definition, and Lot 3 (Campbell) has 740.0 of direct lake frontage, 643.0 by the town's definition. Lot 3 also has 924' of frontage on the town maintained portion of Long Point Road. As part of the application, the town has noted the fire protection issue as it is a major subdivision. They have met with the TRC and the Fire Department requested fire protection for the neighborhood, and the Road Agent was looking for a turnaround at the end of the town maintained portion of the road. They met onsite with the Road Agent, and have had several conversations with the Fire Chief. They are proposing to construct a 10,000 gallon cistern in accordance with the specifications of the Fire Chief. That portion of the road is owned in fee by the Trust and there will be an easement for the cistern, which will include the road so that the town will have access to turn around. The location of the cistern was selected for sight distance, access, centrally located in the area. The Fire Chief, Road Agent and Mr. Bernier walked the road and could not find any better places to put it. It does encroach on the wetland buffer setback, so they have requested a Conditional Use Permit to place the cistern in the wetlands buffer. They have presented this to the Conservation Commission for their support and they agreed this was the best location. They have minimized the impact, turning the tank sideways. The Conservation Commission voted unanimously to recommend the Conditional Use Permit. Mr. Bernier noted that they have received all of their state

permits, state subdivision approval and are waiting Planning Board approval. Mr. Bernier answered any questions from the board.

Mr. Howard questioned the location of the septic system for the Gilman camp. Mr. Bernier stated it was beside the camp, it is an older system, which has been there for a long time and is not a state approved system. It was installed before required state approvals.

Mr. Wakefield noted that the road was the major issue. Ms. McGinley gave her argument again as stated at the submission hearing on April 10th that Norway Point Road is an existing non-conforming private road that may continue without meeting current Road Standards. There was a lengthy discussion regarding this issue with the majority of the board agreeing that while Norway Point Road does access four camps/homes, it is a driveway that services two tracts of land, and if the subdivision is approved, it will need to become a road, which per town regulations will require the road to be upgraded. Ms. McGinley stated that it appeared to her that the board was not in agreement with her argument and asked that they proceed with the request for waivers from the Section 7.2, E ADT 0-50 Road Standards as contained in her packet dated April 24, 2013.

Motion: Mr. Nelson moved that the Board, for purposes of this application for Subdivision, considers that the existing right-of-way being used, has historically been, and is a driveway, and will be for further consideration this evening. Seconded by Mr. Wakefield, passed by a vote of 3 to 2.

Ms. McGinley spoke to the request for waiver. Stating since they were last here they have looked at the condition of the road, what needed to be done, and all of the owners of the Norway Point Trust were in unanimous agreement that all of the Life Safety requirements of the Fire Department and the Town be met on this road. She stated that the property is a very wet piece of property and the road crosses several wetlands. The Town's ordinance does provide that they should give due regard to the preservation and protection existing features; trees, scenic points, brooks, streams, water bodies, other natural areas and historic landmarks, including stone walls, in order to preserve the natural environment. The three families that have lived on the point, some for 60 years, are much attuned to that. This is a camp for them. They want the property to remain in the condition that it is right now. So to comply with the road standards, would encroach upon a wetland, would require significant tree cutting, and beyond the Life Safety standard they do not feel it is necessary. The new Campbell's have been able to construct a very large house with all of the trucks that needed to go in and out of there, and they were able to do that. As part of the application they are going to be putting a cistern in which will serve not only this property, but the neighborhood. They have asked that to the extent that beyond Life Safety changes, that your requirements that are in your ordinance for improvement of this road be waived.

Mr. Howard asked if the waiver was a request for waiving in entirety, 7.2 relative to the standards required for a private road. Ms. McGinley stated that was right, excluding the improvements that the Fire Department has requested for Life Safety.

Mr. Howard asked if they had a plan showing all of these because all he has heard so far is that a few trees need to be cut and some gravel needs to be added. Ms. McGinley said that the Technical Review Report did speak to this. Mr. Howard asked Mr. Woodruff if it was in detail. Mr. Woodruff stated no more detailed than the email that was sent to the board. The Fire Chief had recommendations with regards to filling low areas with appropriate gravel and cutting select trees so that his trucks could get around, for the clear zone. Mr. Howard stated general statements have been made about the present condition verses what is needed, but there is no plan, which is what he had alluded to at the end of the last meeting. Mr. Woodruff stated that there is no plan that identifies those low areas or the trees. Mr. Howard commented that he was hoping that they'd have a plan to look at.

Mr. Nelson commented that he went to the site today and agreed with Attorney McGinley that the Board should take into account the environment, trees and the character of the area. He thinks that there

are ways to mitigate both things. One may be a waiver that has been done on other roads where there is limited access, is perhaps instead of having full road standards, have pull offs, where another vehicle can pull in and a truck could go by. It would help with the situation and it looked to him that there were a lot of areas where there could be at least a couple of pull offs in there. That was his impression of the property and a suggestion of something that might be done.

Mr. Bartlett asked if the board could get specifics from the applicant and the Fire Chief, that the Fire Chief will accept. Ms. McGinley commented that she did realize that this was not as specific as she recalled and they need to know what we're talking about, you need to know what we're talking about, and the Fire Department and the Road Agent needs to weigh in. They would be willing to have the owners of the Trust, with staff and whatever department to walk the road and agree upon what needs to be done and come up with a plan with the assistance of Mr. Bernier. Mr. Howard commented that's the outcome that they need to arrive at.

Motion: Mr. Bartlett moved that the hearing be continued until such time that they have the information.

Mr. Howard asked that the board hold off on the motion in order to address the Conditional Use Permit.

Ms. McGinley noted that in the Planners Staff Memo there is a recommendation the Board approve the Conditional Use Permit with conditions, one being "The applicant shall post a performance bond or other acceptable surety in the amount of 110% of an engineer's estimate to ensure that the construction of the fire cistern system is both completed within one year of recording of this plat and that after a successful inspection and certificate of completion at which time the performance bond shall be released; a maintenance bond or acceptable surety in the amount of 15% of the performance bond shall be posted that ensures the system remain in good repair and operational for a period of not less than two years, at which time a final inspection shall occur that may lead to release of the maintenance surety and a recommendation to the BoS to accept ownership of the fire cistern system." She noted that the homeowners have no experience in cisterns and taking care of them. There is also a liability issue that they have no protection for and no way to cover. If something happened to the cistern and a house down Long Point Road burnt down because the cistern didn't work, they do not want to be, as the owner of the cistern, liable for that. The Town has proposed to take ownership in two years. They would like the Town to consider and weigh in on taking ownership as soon as it is completed and certified by the Fire Department that it is in working order. The Town does have protection for issues of liability. The Board does not need to make that decision today, but it is one of their biggest issues in the TRC Report.

The Board discussed the procedures for cisterns. They are filled and tested and allowed to hold water for a couple of months to make certain they do not leak. Mr. Woodruff stated that the suggested language motion is what is in the draft policy that will be presented to the Board of Selectmen with regards to cisterns which could come under the ownership of the town. There currently is no policy with regards to cisterns. There are currently ten cisterns in the Town of Moultonborough, only one of which is owned privately and the other nine do not have a clear pathway, clear title, clear understanding of who fills, maintains or ultimately replaces. The aim is to change that. Mr. Howard asked if this was a draft policy that has gone to the Selectmen. Mr. Woodruff stated no. The gist of this condition was basically what will be entailed in the draft policy that will go to the Selectmen for their review. Mr. Nelson questioned the necessity for two years. Mr. Woodruff stated that two years was the standard for the maintenance bond portion and this would allow two frost cycles that would determine whether or not the cistern was installed correctly and that it will continue to hold water.

Mr. Bernier stated that the Conditional Use Permit is for the location of cistern because it is in a wetlands buffer. There will be a bond on the cistern so if there is some flaw the town will have access to that. The manufacturer of the cistern warranties it for five years and they could make sure that in any

contract document that the warranty passes to the town. There is a lot of security there, for up to two years with the bond, and five years with the manufacturer.

Motion: Mr. Punturieri moved to grant a Conditional Use Permit to construct a fire cistern and gravel access in the 50 ft. wetland buffer; seconded by Mr. Bartlett, carried unanimously.

Ms. McGinley requested that the hearing be continued to the next meeting and requested a site visit with the owners of the property, Mr. Bernier and the appropriate town representatives to make a determination as to what Life Safety changes are recommended and documented. This will be added to the plan and a revised waiver will be provided.

Motion: Mr. Punturieri moved to continue the hearing for **Norway Point Trust (243-28)** to May 8, 2013, with this being the public notice, seconded by Mr. Bartlett, carried unanimously.

VI. Informal Discussions

VII. Unfinished Business

1. Master Plan Survey Questions – Mr. Woodruff stated that he was developing a Master Plan Survey for distribution. He worked on it until just prior to the meeting and handed it out to the members. He has asked for assistance and input from the board, not in critiquing the questions themselves, but to see if they feel that he has contained all of the pertinent areas. Is there something that he has missed or grievous errors in the questions? He asked that members respond only to him, not hitting reply to all in the email, with the attached draft survey. Members questioned what the next step in the process was and noted their concerns with the lack of ability to limiting or controlling the number of responses from individuals to one person or household. Mr. Woodruff requested members get back to him so that he may prepare a final draft for discussion at the meeting on May 8th.

2. Review of Draft Policies and By-Laws - Board members were provided with a copy of the Policies that were approved in 2012, which contained minor changes to sections VIII, XIII, XV, XVI, and were shown in red. Mr. Woodruff stated the major change was in section IX, relating to procedures to follow when more than one Land Use Board Approval or Recommendation is required. Members reviewed these policies.

Motion: Mr. Wakefield moved to approve the Moultonborough Planning Board Policies as amended this evening, seconded by Mr. Punturieri, carried unanimously.

3. Board Members were provided with a copy of the Town Administrator's memo dated April 22nd regarding the Village Sidewalk Study. This was to provide a status update to the board as it mirrors the Master Plan update process.

VII. Other Business/Correspondence

IX. Committee Reports

X. Adjournment: Mr. Punturieri made the motion to adjourn at 10:01 PM, seconded by Mr. Wakefield, carried unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant