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

Regular Meeting December 10, 2014

Minutes

Present: Members: Josh Bartlett, Rich Kumpf, Joanne Farnham, Scott Bartlett,

Kevin Quinlan, Ed Charest; Russ Wakefield (Selectmen's Representative)

Excused: Alternates: Tom Howard, Kathi Margeson

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

I. Pledge of Allegiance

The Chairman, Mr. J. Bartlett, opened the regular meeting at 7:00 PM and led the Pledge of Allegiance.

The Chair noted that the Board was in receipt of a Letter of Resignation from Alternate Member Tom Howard dated December 9th, 2014. He then thanked Mr. Howard for his efforts and expertise, as well as his contribution and service to the board. With deep regrets, the board accepted Mr. Howard's resignation from the board.

II. Approval of Minutes

Motion: Mrs. Farnham moved to approve the Planning Board Minutes of November 12,

2014 as corrected, seconded by Mr. Charest, carried unanimously.

III. New Submissions

1. <u>Goldsmith Children's Trust; Gerald & Barbara Goldsmith, Trustees (219-19)</u> (<u>Black Cat Island Road</u>) Major Five Lot Subdivision

The Chair stated that this was a request for a proposed Major Five Lot Subdivision of a 6.84 acre parcel, creating lots of 1.29 acre, 1.15 acre, 1.27 acre, 1.64 acre and 1.48 acre. He then stated that the application was in order for acceptance and scheduling of a public hearing by the board for this evening.

Motion: Mr. Wakefield moved to accept the application of Goldsmith Children's Trust;

Gerald & Barbara Goldsmith, Trustees (219-19) and to schedule a hearing for this evening to be Hearing #3, seconded by Mr. Charest, carried unanimously.

Betsey L. Patten Revocable Trust of 2007 and Marcia F. & Donald T. Tepper, Jr. (279-2 & 279-1)(46 Patten Hill Road & 239 Long Island Road)
 Boundary Line Adjustment

3. <u>Betsey L. Patten Revocable Trust of 2007 (279-2) (46 Patten Hill Road)</u>
Major Two Lot Subdivision

The Chair stated that the next two new submissions were for the Betsey Patten Revocable Trust of 2007 and Marcia F. & Donald T. Tepper, Jr. One is for a boundary line adjustment (BLA) and the other is a major two lot subdivision. The Chair stated if the applications are accepted as complete, he should open

each hearing individually for public comment, closing each, and they could make one motion addressing both applications. The Chair stated that both of the applications were in order for acceptance and scheduling of public hearing(s) by the board for this evening.

Motion:

Mrs. Farnham moved to accept the subdivision application of the Betsey L. Patten Revocable Trust of 2007 (279-2) and the BLA application of the Betsey L. Patten Revocable Trust of 2007 and Marcia F. & Donald T. Tepper, Jr. (279-2 & 279-1) (46 Patten Hill Road & 239 Long Island Road), grant the waivers relating to the requirement to depict 2 and 5 ft. contours and off-site wetlands for the purposes of acceptance only and to schedule the hearings for this evening to be Hearings #1 & #2, seconded by Mr. S. Bartlett, carried unanimously.

4. <u>Tech 20, Inc. (288-7) (Long Island Road)</u> Site Plan Review

The Chair stated that this was a request for site plan review and that the applicant seeks re-approval of a site plan originally approved as a special exception granted by the ZBA on November 10, 1993 for Mason Marine, Inc. The special exception runs with the land. The application was in order for acceptance and scheduling of a public hearing by the board for this evening.

Motion:

Mr. Wakefield moved to accept the application for Site Plan Review for Tech 20, Inc. (288-7), grant the waivers for purposes of acceptance only and to schedule a hearing for this evening to be Hearing #4, seconded by Mr. Charest, carried unanimously.

Due to the number of hearings this evening, as a courtesy, the Chair next took up Informal Discussions. He felt these could be addressed quickly and those present would not have to wait for all of the public hearings scheduled for this evening.

VI. Informal Discussions

- 1. Greg Widman Tree Stewardship Geneva Point (232-1 & 9) (108 Geneva Point Road) Mr. Widman presented the Board with the plans for a timber harvest. Mr. Widman noted that they had been before the Board in 2005 for a similar request. This would be a regular management of the tree timber. They will honor the required 25 foot setback in all areas to be cut. It was the consensus of the Board to approve the removal of trees in accordance with the presentation given by Mr. Widman for Geneva Point.
- 2. Randy Frye Tree Stewardship Robindel, Inc. (247-13) (82 Geneva Point Road) Mr. Frye presented the Board with the plans for a timber harvest. Also in attendance this evening from Camp Robindel, was Joel Mudgett. Mr. Frye noted that the last time the property had been cut was in 1992. This would be a thinning of all spaces and not to be developed. There is an area of approximately 4 acres that will remain uncut. It was the consensus of the Board to approve the removal of trees in accordance with the presentation given by Mr. Frye representing Robindel, Inc.

IV. Boundary Line Adjustments

Betsey L. Patten Revocable Trust of 2007 and Marcia F. & Donald T. Tepper, Jr. (279-2 & 279-1)(46 Patten Hill Road & 239 Long Island Road)
 Boundary Line Adjustment

AND

2. <u>Betsey L. Patten Revocable Trust of 2007 (279-2)(46 Patten Hill Road)</u> Major Two Lot Subdivision

The Chair noted that the applicant's agent will give one presentation covering both applications noted above. He will open each of the public hearings for the board to ask questions or make comments, and for public comment as well.

Carl Johnson of Advanced Land Surveying Consultants made one presentation to the Board for both the application for a boundary line adjustment and a major two lot subdivision. Mr. Johnson gave a brief history of the property, noting that Ms. Patten had previously been before the Board earlier this year for a separate subdivision. He stated the proposal this evening is to transfer 44,762 sq. ft. from Tax Map 279, Lot 2 (Patten) to Tax Map 279, Lot 1 (Tepper), and also to subdivide a 24.03 +/- acre parcel (area is after BLA) creating one new lot of 3.54 ac. with a residual lot of 20.49 ac. Mr. Johnson noted the unit density calculation for the new proposed lot is 1.7 units and that this will require state subdivision approval. Mr. Johnson answered any questions from the Board at this time.

Mr. Kumpf questioned a notation on the plan, which Mr. Johnson stated was soil type.

The Chair commented that the driveway permit states the driveway entrance is for access to logging. Mr. Johnson replied that the State will not issue a driveway permit for residents unless you have an approved lot. When the Town approves the lot, they will revise the permit for a single family residence. It was noted this could be a condition of approval that the revised permit be submitted to the Office of Development Services prior to the signing of the plan by the Chairman.

There were no further questions from the Board. The Chair opened the boundary line adjustment hearing for public input, it was noted there was none. There being no questions or comments from the Board or the public, the Chair closed the Public Hearing.

The Chair then opened the subdivision hearing for public input, it was noted there was none. There being no questions or comments from the Board or the public, the Chair closed the Public Hearing.

Motion:

Mr. Wakefield moved to approve the waivers from the requirement to provide and/or depict information relating to off-site wetlands within 200 ft. of the subject parcels, and to depict 2 ft. & 5ft. contours, and further move to approve the major 2 lot subdivision for the Betsey L. Patten Revocable Trust of 2007 and Boundary Line Adjustment between Betsey L. Patten Revocable Trust of 2007 (Tax Map 279, Lot 2) and Marcia F. & Donald T. Tepper, Jr., (Tax Map 279, Lot 1), 46 Pattern Hill Road & 239 Long Island Road, which adjusts the boundary between Patten and Tepper by transferring 44,762 SF +/from Tax Map 279, Lot 2 (Patten) to Tax Map 279, Lot 1 (Tepper) and subdivides a 24.03 +/- acre parcel, (area after Boundary Line Adjustment) creating one new lot of 3.54 ac. with a residual lot of 20.49 ac., with the following conditions: 1) Add the Surveyor's seal and signature, and the owner signature to the plat prior to the Chair signing. 2) Correct the setback lines (not through wetland areas) and add the front setback to the proposed lot on the plat prior to the Chair signing. 3) The surveyor should add the standard certification statement citing that a survey under his direction took place on a date certain, with a specific accuracy (error of closure). 4) Depict new and adjusted boundary corner pins on the plat and set prior to the Chair signing. 5) The final plat be submitted to the Development Services Office in appropriate electronic format. 6) To submit an amended NH DOT driveway permit for the residential lot being created. 7) Receipt of State of NH DES approval for subdivision. 8) Submit necessary deeds for the BLA for recording prior to the Chair signing the plat, seconded by Mr. S. Bartlett, carried unanimously.

V. Hearings

3. <u>Goldsmith Children's Trust; Gerald & Barbara Goldsmith, Trustees (219-19)</u> (<u>Black Cat Island Road</u>) Major Five Lot Subdivision

Dan Ellis, of Ames Associates, introduced himself as the agent representing the applicant.

At this time Rod Dyer, attorney for the Black Cat Island Owners Association (BCIOA), interrupted Mr. Ellis and moved to reschedule the public hearing for a later meeting in January based on a number of factors they think need to be examined before this matter is right for a hearing. He feels that there are a number of issues that need to be reviewed prior to the board conducting the public hearing. There are several issues pending with DES, and may be some civil matters as well. Some of the issues are water supply, drainage, impact on abutting properties, fire protection, impact of open space, and proper sewage disposal. Attorney Dyer went on at great length giving history on the property, stating the application had been before the board in 2005 and was not completed as DES denied the subdivision application. Attorney Dyer requested a reasonable period of time to review the plans that have been submitted, and that they thought it would be fair to schedule the public hearing in January.

It was noted for the record that the abutters were noticed in a timely fashion, meeting statute, and that the President of the association had been in contact with the Planner and had received an electronic copy of the application and plans submitted by the applicant. It was the decision of the Board to allow Mr. Ellis to continue this evening with his presentation.

Mr. Ellis stated the lot is a 6.84 acre parcel, on the interior of Black Cat Island creating a total of five lots. The property has gentle terrain, which has mostly B or C slopes. There are four small pockets of wetlands, which are not subject to the 50 foot setback requirement. The wetland delineation was performed by Ames Associates this year. A site specific soils survey was performed in 2005 by Gove Environmental Services as part of the original subdivision application. They received a follow up report from the soil scientist earlier this year confirming the information provided in 2005. The proposal is to subdivide five building lots, all with road frontage. The proposed lots are lots of 1.29 acre, 1.15 acre, 1.27 acre, 1.64 acre and 1.48 acre, with the unit density calculations of 1.01, 1.00, 1.00, 1.01, and 1.01 units. They have submitted an application to DES for state subdivision and expect approval within a week or two. Mr. Ellis stated that it is a simple subdivision application and that he will speak to the concerns that have been raised. Noting the concerns are not quite as complicated as they may appear at face value. The biggest issue is the matter of state subdivision approval. When a similar application for five lots was submitted in 2005, the State eventually did deny the application. The reason for that was that there were questions raised regarding the impressions of other owners on Black Cat Island that this specific lot was to be reserved for purposes of replacement septic systems for some of the lake front lots. When the subdivision application was submitted at that time to DES, DES did discover some documentation in their files which supported those claims. There were various letters from the original developer that indicated that was the intent. On that basis, and some concerns raised about the covenants and deed restrictions, DES denied the application in June 2005. Subsequently Attorney Steve Nix completed research and provided information to DES demonstrating that there was no deed or other legal evidence supporting the claim that this property was reserved for use by any other property owners. In March of 2007 DES responded to Attorney Nix's information, by citing the documentation that they had on file, indicating that originally this lot, when subdivided, was intended for use by the lake front lots for septic system purposes. DES stated in their March 2007 letter that a subdivision application would not be refused by the department until the applicant demonstrated by means of a study how much area needed to be reserved for these lake front lots, if any. On April 30th, 2014, David Ames provided a study to DES demonstrating that all abutting shorefront lots had their own septic systems, and also demonstrated that over the last 40 +/- years NH DES' septic system requirements have changed and technology has improved to the point where these lots, that were once considered very marginal, are now able to support their own septic system. NH DES accepted that study and on May 14th, 2014, issued a letter that indicated that all requirements they set out originally in their March 2007 letter have satisfied and that the department would entertain and application for subdivision, which would then be reviewed in a normal

manner according to their subdivision rules. Subsequently they submitted an application for this five lot subdivision and Mr. Ellis has been told by the reviewer that their technical review in office is complete and the only thing pending is an actual site inspection. He has been told that will be done in a week or two, and expects the State will approve their application.

Mr. Ellis commented that there was a letter from an abutter that expressed concerns regarding the reservation of this lot for septic system purposes, the road system, the maintenance cost associated with it, and the bridge. They have acknowledged in a note on the plan, according to the Bylaws of the association, that all new lot owners shall become members of the Association and shall share in the road maintenance cost accordingly. In regards to concerns about drainage that have been raised, the Towns Zoning Ordinance and subdivision regulations have no requirement for storm water management for non-commercial lots. Mr. Ellis felt that their application met the requirements of the board, and that the concerns would be more of a civil nature. Mr. Ellis answered any questions from the board.

The Chair asked for the Planner for his input on this proposed subdivision. Mr. Woodruff stated that the TRC held a technical review of this pre-application and all of their concerns were answered or satisfactorily addressed. The Fire Chief reviewed the plans for accessibility of firefighting and emergency vehicles. There was an issue about firefighting capability by the Chief and at that time the applicant's agent offered a requirement to sprinkle homes that would be built on these lots. This was in lieu of other firefighting infrastructures such as cisterns or a dry hydrant to the lake. There is no adequate place to install a dry hydrant because of the grade changes.

It was noted the Conservation Commission had no comment.

The Board had a few additional questions relating to lot owners becoming a part of the association and sharing in the road maintenance costs. It was noted that the applicant also owns a water front lot and questioning if they could grant rights to the water front. There was a brief discussion regarding runoff and stormwater management, again it was noted that there are no ordinances or regulations for a non-commercial lot. One member questioned if the applicants have tried to work with the association regarding their concerns. Mr. Ellis stated that there has been quite a bit of work.

The Chair opened the hearing for public input.

Gerald Goldsmith, applicant, addressed some of the associations concerns raised by Attorney Dyer. He has on many occasions tried to get the association to buy the lot or some of the land. He stated that he has owned property on the island since 1967 and has a vested interest in the island. He would not knowingly do something that would damage or destroy the islands beauty or value. He feels he has met the association more than half way on any reasonable approach to his property.

Rich Smith stated that his family has been residents of Black Cat Island for 40+ years. He stated that the small areas of wetlands on the lot are a result of the developers of the island. The wetlands did not exist prior to the roads being built. Mr. Smith stated that he is in favor of the proposed subdivision.

Attorney Dyer commented that he too has had a history with Black Cat Island and drew the original restrictions in 1966. He was involved with the then developers, Nelson Piper and Miles Israel, with regard to the development of the property. He stated it is true that Attorney Nix did provide some material to the DES, and noted that he refuted every item that was presented to DES. As a result of the correspondence back and forth DES did disallow the development of the property. Mr. Dyer noted originally the lots were 200 foot lots and there was an agreement between DES, the engineers and the original developers, that they would permit 100 foot lots on the island with the understanding that the interior would be retained for overflow septic systems.

Mr. Ellis clarified the sequence of events, noting the agreement to keep the interior of the island for septic system purposes for shorefront lots was between the original developer and DES. There was no deed restrictions, nothing legal filed. That original agreement was the reason DES denied this subdivision in 2005. Subsequently they issued a letter in 2007 stating that they would entertain an application for subdivision if these concerns were mitigated with a study. They did submit such study. Mr. Ellis provided the board with a copy of their letter to DES. There were four items that have changed that are listed in the May 15th letter from DES.

Lee Janic, owner of a lot on Black Cat Island, stated that he was the Chair of the bridge committee and the road committee for the island. He noted his concerns regarding the bridge and the stormwater management. Chairman Bartlett commented that these concerns were not the purview of the board. Mr. Janic questioned the soil density testing for the property and asked for additional time to understand the information provided. He commented that there appears to be different assessments being made, and the question has been asked what has changed. They have not had time to review this, therefore the request from Attorney Dyer for additional time for review. Mr. Ellis replied that the lot was remapped electronically. Some of the areas, soil types and topography are different. They separated out areas that were lumped together on the 2005 plan.

Marceil Bradley, President of the BCIOA commented that there were a lot of issues that still need to be explored, which is why they have requested additional time to review the material presented to the board and to DES. She noted that many of the residents of the island are scattered during this time of the year and have concerns with this request.

The Chair requested a brief 5 minutes break at this time (9:02-9:08).

Cindy Moore, treasurer for BCIOA, commented that her family has been residents of the island since its early development. She questioned what lots were taken into consideration for the study prepared by Ames Associates. Mr. Ellis replied the study addressed all directly abutting shorefront lots (9). Ms. Moore echoed the sentiment that there are a lot of issues that need to be explored still and was in agreement with asking for additional time. Chairman Bartlett commented that the board cannot have an opinion on DES matters, or deed restrictions and covenants.

There were no further questions or comments from the public at this time, the Chair closed the public input portion of the hearing at this time.

The Chair briefly recapped some of the concerns which appear to be with DES and the deed restrictions. He asked at this time for board input regarding the request for approval by the applicant, as well as the request for continuance by Attorney Dyer on behalf of the association. A majority of the members commented that they saw no reason to deny or postpone or did not see any evidence that they shouldn't move forward in approving this with the conditions noted in the Planners staff memo, one condition being the receipt of DES approval. If they do not receive DES approval the board approval would be a moot point. Mr. Woodruff commented that the board could add another condition that prohibited stormwater runoff over lot lines, which could go in the deeds and on the plat. Secondly there was a concern about loss of natural existing tree cover and vegetation. A condition could be placed on the subdivision that allows only for minimal cutting for the construction of a house, septic system, well and a driveway. Those two conditions could address a couple of the major concerns raised by the abutters. These would be in addition to the prior suggestion requiring the submittal of DES approval prior to the Chair signing the plat. Mr. Woodruff noted his suggested language and conditions contained in his staff memo prepared on November 24th, 2014.

Chairman Bartlett noted that Attorney Dyer commented that he has requested a 60 day continuance from DES for the review and approval, as well as the abutters have a 30 day right of appeal. Mr. S. Bartlett

noted that this was a sensitive subject for both the applicant and abutters as well and that perhaps a continuance would be in order, allowing the abutters the opportunity to better research their concerns.

Motion: Mr. S. Bartlett made the motion to table the hearing for Goldsmith Children's Trust;

Gerald & Barbara Goldsmith, Trustees (219-19) until January 28, 2015, seconded by

Mrs. Farnham

Mr. Woodruff commented that the notification for this hearing was sent out 12 days sooner than required by statute, and the plans, documents and application were requested by the Association president a few weeks ago, which he sent them electronically. He did not understand what the tabling of the application was all about. The only reason to table this would be to get other experts that may rebut what the board has already heard. He strongly recommended the board not table the application.

After a discussion where each member spoke, the consensus was to act on the application this evening.

The Chair called for a motion to table the hearing to January 28th. 2 Ayes, 5 Nays. Motion failed.

Motion:

Mr. Quinlan moved to approve the five Lot Major Subdivision Plan at Map 219, Lot 19 for Goldsmith Children's Trust; Gerald & Barbara Goldsmith, Trustees, which subdivides the existing 6.84 acre parcel into 5 proposed lots of: 1.29 acre, 1.15 acre, 1.27 acre, 1.64 acre, and 1.48 acre, with the following conditions: 1) Add Owner's signature to the plat sheets. 2) Correct Note 5 to add the requirement to meet the water quality protection section of the MZO. 3) Correct the setback lines by removing them from the wetlands. 4) Depict the boundary pins to be set at the new lot corners on the plat. 5) Revise Note 9 to call out the actual Map/Lot numbers. 6) The final plat to be submitted to the Development Services Office in appropriate electronic format. 7) Receipt of State of NH DES approval for subdivision prior to the Chair signing the plat. 8) That any new impervious surfaces placed on the lots be designed to infiltrate stormwater runoff such that there is no increase in runoff from the lots. 9) Addition of a note to the plat that there be minimal cutting of trees and shrubs and be included in the deeds for each lot. 10) Amend note on the plat II. Roads, 1; change 'share in the road maintenance cost accordingly" to language that the ownership of each lot shall be in accordance with the bylaws and requirements of Black Cat Island Owners Association, seconded by Mr. Wakefield, carried unanimously.

4. <u>Tech 20, Inc. (288-7) (Long Island Road)</u> Site Plan Review

The Chair opened the next hearing for Tech 20, Inc.

Dave Farley, owner of Tech 20, presented the application for site plan review. Also present this evening was Tom Roys, owner of the property. Mr. Farley stated that the property has been utilized as a construction yard for purpose of utilizing the transfer of materials out on barges to and from island properties on the lake. Mr. Farley stated that he has been using the property for the past 4 or 5 years. He commented that he goes in and out of the landing at Harilla regularly and tries to keep it maintained as the state does not do much of it.

The property was approved in 1993 by both the Zoning Board and Planning Board. There was a prior contractor on the site that had some issues which resulted in compliance hearings. Mr. Farley was not aware of this until he was informed that the fence needed to go back up. In speaking with the Code Enforcement Officer he learned that the site plan approval was revoked in 2006 for non-compliance, which included the lack of maintenance of the fence. Mr. Farley stated that the fence has been put back in place. Mr. Farley has been working with the Planner with issues on the site, adding a wooden gate, the

proposed concrete pad for the dumpster with fencing for screening. They are proposing nothing different than the original site plan that was approved in 1993. He is seeking re-approval of the site plan.

The Chair noted the statement on the bottom of sheet S-1that says "The intent of this site plan is to reinstate site plan approval for the use as granted by the Moultonborough ZBA on 10/6/93."

Mr. Woodruff stated that there has been a history through the years of non-compliance with the site plan that was approved in November of 1993 after the special exception was granted for this commercial use on this lot. When special exceptions were granted, they ran with the land, this use runs with the land and is grandfathered. When the Planning Board took the steps to revoke the plan, they didn't go the whole nine yards. The special exception remained, and so the corrective action today is to reinstate the site plan with some minor tweaks, and to underscore the fact that there were some major issues over the long time use of the parcel; 1) The hours of operation be adhered to, and 2) The screening be kept in good condition. Once you reinstate the site plan the Board will have more teeth to enforce this through the code enforcement process administerially.

A short discussion ensued over the history of the property and the non-compliance with the prior tenant.

The Chair opened the hearing for public input. Abutter's Richard and Carol Austin expressed their concerns with the lot. Mr. Austin showed photos that were taken this past summer of general contracting debris that was not only in the 25 foot buffer zone, but claiming that it was actually over their mutual property line. The Austin's noted their concern that they would not be able to sell their lot and or that there is a diminution of value due to the lack of compliance on the site.

Mr. Farley offered to install a wooden fence between the abutting properties. After discussing this with the Board it was agreed to that a six (6) foot wooden fence would be installed along the east side of the lot, abutting the Austin's property, the entire length located from the southeast to the northeast.

There were no further questions or comments from the Board or the public. The Chair closed the Public Hearing.

Motion:

Mr. Quinlan moved to approve the waivers for not providing contour information within 100ft. of the subject property, and for not providing existing features within 50 ft. of the parcel, and further move to approve the site plan for Tech 20, Inc. (288-7) with the following conditions; 1) That the owner sign the plan; 2) That the fence and gate shall be reinstalled prior to the Chair signing the plan; 3) That the final plan be submitted to ODS in appropriate electronic pdf and cadd file format; 4) That a six (6) foot high, closed view fence be continued from the point on the south easterly side along the entire boundary line to the most north easterly point, to be completed within 30 days, and prior to the Chair signing the plat; and that the applicant adhere to the hours of operation noted on the plan as Monday – Friday, 7:00 AM to 7:00 PM, seconded by Mr. S. Bartlett, carried unanimously.

VII. Unfinished Business

VIII. Other Business/Correspondence

1. <u>Application For and Notice of Voluntary Merger</u> for Charles F. & Cheryl E. Ciano (99-67 & 99-68) (58 Eden Lane & Eden Lane). Members were provided with a map showing the two lots to be merged. Mr. Quinlan noted for the record that he was President of the Balmoral Improvement Association.

Motion: Mr. S. Bartlett moved to acknowledge the Voluntary Merger for Charles F. & Cheryl E. Ciano (99-67 & 99-68) seconded by Mrs. Farnham, carried unanimously.

IX. Committee Reports

X. Adjournment: Mrs. Farnham made the motion to adjourn at 10:15 PM, seconded by Mr. Charest, carried unanimously.

Respectfully Submitted, Bonnie L. Whitney Administrative Assistant