

**TOWN OF NEW BOSTON  
NEW BOSTON PLANNING BOARD  
Minutes of 2015**

**March 24, 2015**

1 The meeting was called to order a 6:30 p.m. by Planning Board Chairman Peter Hogan.  
2 Present were regular members Mark Suennen and David Litwinovich, and ex-officio Joe  
3 Constance. Also present were Planning Coordinator Nic Strong and Recording Clerk Valerie  
4 Diaz.

5  
6 Present in the audience for all or part of the meeting were Ed Hunter, BI/CEO, William  
7 Drescher, Esq., Christopher Drescher, Esq., Town Administrator Peter Flynn, Michael Tremblay,  
8 BJ Branch, Esq., Robert Tremblay, Jim Straw, Selectman Dwight Lovejoy, Brian Ridge, Susan  
9 Ridge, Marianne Morrison, Barbara Thomson, and Betsy Whitman.

10  
11 **TREMBLAY, MICHAEL**

12 **TREMBLAY, JOANNE**

13 **TREMBLAY, ROBERT**

14 **SHERMAN, JEANNE**

15 Public Revocation Hearing/Non-Residential Site Plan Review/cordwood processing & sales

16 Location: 194 Parker Road

17 Tax Map/Lot #3/122

18 Residential-Agricultural "R-A" District

19  
20 Transcript of the hearing

21  
22 Mr. Hogan: -- Michael Tremblay and this is a public hearing, Non-Residential Site  
23 Plan Review, cordwood processing and sales agricultural business on Parker Road. This  
24 is a hearing on a public revocation hearing.

25 Atty. Drescher: Am I on board?

26 Mr. Hogan: Yes, please do.

27 Atty. Drescher: Thank you, Mr. Chairman. My name is William Drescher for the record,  
28 counsel for the Board of Selectmen in this case and the Town's Code Enforcement  
29 Officer. And we are the reason that you are unfortunately required to hold a hearing  
30 because we asked this Board to invoke its somewhat extraordinary power to revoke a site  
31 plan previously granted under RSA 676:4-a. And as the Board I'm sure is aware,  
32 certainly by now if you weren't before, the -- one of the typical reasons that you can  
33 revoke a plan is if indeed the operator or the applicant has conducted a use on those  
34 premises which violated some material condition of the plan as imposed. There is a  
35 history to this which we have put together as best we could and I'm sure, you know, to  
36 the extent that there is other information, the other side will provide it. By the way, we  
37 all exchanged all our information and nobody, to my knowledge, is trying to hide  
38 anything. And we put together a package of material that identifies the Town record  
39 documents in support of this request and I don't know that each one of you has a full copy  
40 of this but I think there's enough up there so hopefully if we refer to this you'll be able to  
41 share the documents. The property in question, as you probably know but I'll mention it  
42 for the record, is Map 3 Lot 122 and for many years that was owned by Joanne Tremblay  
43 but in 1996, I believe, it was deeded from Mike to Joanne to Jeanne, Robert and Michael

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1 **TREMBLAY, cont.**

2  
3 who I am assuming are her children, and Joanne herself as well with a life estate.  
4 Nothing unusual about that but the deed is at page 81 and I believe that I'm not saying  
5 something out of school when I say that that was the home of Joanne for a considerable  
6 period of time. And it was Joanne's home even at the time of that conveyance and at the  
7 time that this matter started to come to the attention of the Town. There is a tax map on  
8 page 77 and also on 78, to the extent that you aren't familiar with the property, and I  
9 suspect you are, I've highlighted in yellow the lot in question and the map on 78 is a little  
10 bit bigger version of it. And you would note -- to the -- if you look at the map on 78 the  
11 property is situated -- frontage on the north of the property on the south side of Parker  
12 Road and it's abutted on the east or the right by several lots in a subdivision on Moss  
13 Drive. And one of the owners of the property on that subdivision, Mr. Straw, who has  
14 been in touch with us and has been in touch with Ed Hunter and was here at the last  
15 hearing. I don't know if he is here tonight.

16 Mr. Straw: Yes I am.

17 Atty. Drescher: He has been concerned about the -- what he contends is an increase of the  
18 scope of this operation. Now before we get into the little bit of the history here I just  
19 would like to point out that then as now there were several sections of the Town's Zoning  
20 Ordinance that were implicated in this and they are all in this document. One is on page  
21 86. The page contains Section 204.4 of your Ordinance which deals with the residential  
22 and agricultural area. The language that is in there that is important, we contend, is the  
23 language that says, there shall be one principle building and one principle use of the land  
24 and building in this district with accessory and subordinate uses as is customarily related  
25 to the principle use of the land. Now that is very important as that was around back in  
26 2003 and it's still around now. And it's a very important provision because it basically  
27 says in that kind of zone you have one use. You can have a house, if you want to have  
28 garage, you can have a garage only because the garage is -- typical accessory structure to  
29 a house. What normally does not count as accessory or something that is operating on its  
30 own or completely independent of the use of the property. That is repeated again in  
31 another section of the Ordinance, Section 303, which is also found on page 83 of this  
32 document. It says that there shall only be one principle building on the lot with the  
33 exception of commercial lots, which recognizes the fact that in a Commercial District  
34 you're likely to have more than one use on a particular parcel. And finally there is a  
35 definition of what an accessory building or use is; a building or use subordinate and  
36 customarily incidental to the main building or use. The term accessory building when  
37 used in connection with a farm includes all buildings customarily used and so forth.  
38 What we've been able to determine is that sometime in the pre-history of this thing, Mr.  
39 Tremblay started doing a small cordwood cutting operation in the backyard. And it went  
40 on, I suspect, for a long time and that is because it is a fairly big piece of land; it is 5.83  
41 acres. There is a swale on one side that protects, to some degree, the neighbors. What  
42 also is important to note -- I'm not sure when that subdivision went in but whenever it did  
43 houses were built there and things became a little dicier.

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**TREMBLAY, cont.**

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3       Somebody complained perhaps or somebody was driving by and made an issue of it but  
4 in any event a letter indicated -- A letter was written from Nic Strong to Mr. Tremblay.  
5 I'm not entirely sure what motivated that, I don't know if Nic is -- There may be a  
6 cordwood business operating on your property -- I think it was sent to the mother --  
7 located at 194 Parker Road. In that letter she asked the following four questions because  
8 she wasn't sure what was going on over there, hadn't checked into yet, probably had a  
9 complaint that she was dealing with. She asked four very, very important questions and  
10 you will probably remember these to the extent that -- I know that some of you were on  
11 the Board back then so you remember this particular plan. She asked do you plan on  
12 establishing or do you presently have a business anywhere on the property? Will you be  
13 storing any substantial quantities of supplies or inventory other than a business related  
14 vehicle at your home site, assuming it was a home site because I think the communication  
15 was between Nic and Mr. Tremblay's mother. Again, I -- that's in the file and that letter, I  
16 think, the very first document in here. Yes, it was written to Joanne Tremblay and then  
17 Jeanne Sherman et al, being the other folks that owned the property at the time. But I  
18 think Joanne was living there. Will you have any related or non-related employees  
19 working for you onsite? If so please state the number and relationship. Will you be  
20 having customers visit your site and discuss and proceed with business [inaudible]? And  
21 that letter was politely responded to by Mr. Tremblay who -- also by Michael who signed  
22 this at page 2. And they were not hiding anything. They said, Yeah, I presently have a  
23 cordwood operation. My son, Michael, does run and has been doing this part-time now  
24 for 9 years. I have no problem with my son working here. My son stores the wood logs  
25 that are in full lengths that are to be cut up for firewood on the back portion of my 5  
26 acres. My son does all the deliveries by himself. He has no customers come to the  
27 house. And she said, My son is the only person doing this cordwood operation on this  
28 property. The normal working business hours are between 8:00 a.m. and 5:00 p.m., part-  
29 time due to he does have a full-time job on the third shift.

30  
31       Those details did not find their way into the approval language but I am here to suggest to  
32 you that we contend that the law in this State says that when somebody comes before a  
33 Board and represents something about an application that is that specific and the Board  
34 relies on that representation to consider this plan that is as binding as if it were contained  
35 on the plan as a note or in a written agreement or in the approval itself. I know that  
36 Attorney Branch will disagree to some degree with that, maybe to a great degree but we  
37 do have a number of different cases that I am not going to get into now, in New  
38 Hampshire where this has been the holding. And these representations are what started  
39 this discussion going. Now this Board then entertained or probably Nic suggested that  
40 what needed to happen was that somebody had to get a site plan in here because it was a  
41 commercial operation to some degree was non-residential and needed that. It begs that  
42 question of whether it was even a permitted use at that time, however, I think the Town  
43 can be forgiven for treating this level of this particular use as something that was so

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**TREMBLAY, cont.**

evidently accessory to this use. My son is doing this in the backyard. He is the only one that does. He's been doing it for 9 years and nobody has complained and nobody even knew, you're bringing it up now kind of thing. And so, maybe this is an accessory, an incidental to the main use. I think most of us would like to believe that if we could pick up a few bucks cutting wood, although I think I'd choose a different form of application, but if we could do that without getting into a lot of trouble and we could do it in the backyard, cut tree down and chop up the wood and maybe even offer it for sale. And there is probably a limit or a line, it's not a fine line, past which, when you cross that line you've gone into a commercial operation. And I think that one of the things that this Board made clear -- because you held a couple of hearings on this and they are detailed in this document.

One of the things that was repeated and I think even one of the Board members is here today said it, You have to understand, Mr. applicant, this is the level that you're operating at and if you get any bigger than this, you've got to move out of that place because this is a residential area. And you have got to go find a place to do this that's commercial. And that was in the minutes and it is clear. There were other things that were stated, there was an application -- the minutes of October 14, 2003, indicated that that's where you first accepted this application. October 31st there's a statement of "the number of employees at present one, to be added, zero." Handwritten on the plan on page 26, "No parking spaces need" , it should have been "needed", "for all wood orders are delivered by me, Michael Tremblay. Also no snow removal is needed, seasonal working hours 7:30 a.m. to 5:00 p.m., work is only part-time, 4 and 5 hours per day, between the above hours." Representations and conditions regarding the scope of operation occurred again on December 9th. "Mike Tremblay stated" -- and this is your minutes -- "that he usually processed 200 to 300 cords of wood a year. He did not do so full-time every day. He had a full-time job elsewhere. Woodcutting was about 4 hours either in the morning or in the afternoon." The Planning Board minutes of December 9, 2003, on page 7 is also in there. If you look through all of these you will eventually see all of these statements made. He made a representation about hours of operation, Monday through Saturday, 7:30 a.m. to 7:00 p.m., Sunday 9:00 a.m. to 2:00 p.m. The number of persons engaged in the operation is an issue. He said he had no plans to have any additional employees. That statement is on page 36 of the material and it is part of the minutes of the December 9th meeting on page 8, 6th paragraph. Eventually you approved this plan. All of the noted corrections from the hearing were included in your vote to approve and the plan was to include the hours of operation and restriction to one saw operator only.

Now since that time this business, as we contend, increased. I think that no one would disagree that there's been a significant change in the amount of people that work on the site. The neighbor Mr. Straw kept a log for a short period of time from April of 2014 to November 19 of 2014. I believe he did that after he complained and Ed Hunter sent the

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1 **TREMBLAY, cont.**

2  
3 notice and I believe that Ed suggested that he keep a log and he did so. And when I went  
4 through the log we were able to identify a number of different violations of what  
5 everybody agreed this should have been. In this log -- and I'll give you these sheets and  
6 I've given them to the other side and there will probably be some dispute about them.  
7 These are Mr. Straw's notes and again I don't know if he is here or not.

8 Mr. Straw: Yes, I am.

9 Atty. Drescher: Oh, good. So maybe I should let you speak to them. I did some math in  
10 here and was able to find that there was more than one chainsaw operating, according to  
11 his notes, on at least 10 observed violations in May, June and July. More than one  
12 employee, at least 30 observed violations, May, June, July, August, September. We have  
13 the dates here and of they are of course in this list and I'll share this with the Board. I'm  
14 sure Mr. Straw will be able to speak to it. As to the hours of operation we counted at  
15 least 16 observed violations during that period of time and I made a list of them all here.  
16 They are not in that book but suffice it to say some days there were 8 hours of work  
17 going on. There were other people there helping. There were more than one saw  
18 operator. And of course when we raised this issue we sent out a cease and desist order.  
19 Their contention is that they complied with it because from that date forward, I believe  
20 you'll hear from Attorney Branch, that there was only one saw operating. But there were  
21 other people working there. I believe that if you look through these materials what you  
22 will find is the representation at the front end of this thing that Mr. Tremblay was going  
23 to be a one-man show. The word employee --

24 Mr. Hogan: It's on page 36.

25 Atty. Drescher: Pardon me.

26 Mr. Hogan: It's on page 36.

27 Atty. Drescher: Thank you.

28 Mr. Hogan: Yup.

29 Atty. Drescher: There's one thing that jumps out at me anyway and I know this  
30 Planning Board and I've worked with you folks before and I could not imagine you  
31 approving this except for that representation being made. It was going to be a one-man  
32 show, he was the only guy in town. Then we start tinkering with the definition of  
33 employee and whether an employee can be a sub-contractor and that kind of nicety. We  
34 think this has obviously increased in size and scope to a point where it violates the  
35 representations that were made to this Board that formed the basis for your approval in  
36 2003 of the site plan, which at the level it is operating now, clearly constitutes a violation  
37 of your Zoning. If he were to come in here and ask for such an operation, I don't have  
38 any doubt that the first place that you folks would send him is to the Zoning Board of  
39 Adjustment because this is a commercial operation. And point of fact, Joanne Tremblay  
40 doesn't live there anymore and I think it was alluded to that we were saying that Mr.  
41 Tremblay was living there and I may have inferred that in a couple of my statements but  
42 as far as I know this has always been her house and all four of them own it now. I don't  
43 know if Mr. Tremblay ever lived there maybe he did years ago but the fact of the matter

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1 **TREMBLAY, cont.**

2  
3 is today that house is being rented to a third party. So what you actually have on this  
4 residential lot with an ordinance that says one use per lot unless it's accessory is a rental  
5 dwelling and a commercial woodcutting operation. And I don't think there is any doubt  
6 that you would have never approved this in 2003 if you were confronted with the level of  
7 operation that is there today.

8  
9 Now what we ask this Board to do so that we can -- and I'll make no secret about it, the  
10 reason we're asking this is because if we go off to Superior Court to try to shut this thing  
11 down I have to be able to say that this Board has revoked this approval. I'm sensing from  
12 the Board that at some point your interest in this was to get him back into compliance,  
13 which is a laudable purpose, in which case you would still find this to be at the originally  
14 represented level and acceptable site plan approval. And that is your privilege and you  
15 have every right to make that choice. I would ask that if you don't revoke this, and of  
16 course we're asking that you do, that if you don't revoke this that you at least nail down  
17 some of the conditions that are so important today because they are now being looked at  
18 and twisted around a little bit, so that we get a little more leverage or more activity out of  
19 the language; particularly how many people are in this operation. I don't care whether  
20 they are employees, pals that hang around, subcontractors or what. If they're there,  
21 they're there. And if they are picking up machinery they are increasing the efficiency of  
22 the operation. Part of what bothers me about this whole thing is that no one wants to beat  
23 up on Mr. Tremblay. He's a hardworking guy and we would certainly would like to see  
24 him do this in a way that is both profitable for him and tolerable for his neighbors. I  
25 think that -- Thankfully Mr. Straw here, who probably has few words to say when we get  
26 to that point but again we would ask that either -- Our preference is that this be revoked  
27 and that way we can move on. If it isn't revoked at least make absolutely clear what your  
28 intentions were when you approved it with respect to the number of people that would be  
29 operating, the hours of operation -- There's been a lot of talk over the past few weeks  
30 about altering that. I don't know if you want to get into that kind of a dialogue because  
31 that can go on forever but that's, again, your choice. We appreciate how difficult these  
32 kind of decisions are for a Board like this and we certainly thank you for the opportunity  
33 [inaudible]. If you have any questions I'll be glad to answer them but at this point I  
34 would defer to Attorney Branch who I'm sure is ready to contradict me on almost every  
35 point. Thank you.

36 Atty. Branch: Unfortunately — I think I can just seated, right? No one is going to feel  
37 disrespected by that, Attorney Drescher did. I am BJ Branch. I do represent Mike  
38 Tremblay. I thank you for hearing us. Before we proceed I did unfortunately have to  
39 send in a letter requesting that certain members consider recusing themselves based on  
40 what was stated in the initial meeting that we had here and I am certainly not going to  
41 storm out of the room if you don't but I am going to have to register my objection and I  
42 don't know whether any of the — There's only two members I asked. If those two  
43 members are prepared to just continue to sit on the Board for this hearing.

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1 **TREMBLAY, cont.**

2

3 Mr. Hogan: I wouldn't consider recusing myself.

4 Atty. Branch: Okay. And there was -- I think it was Mr. --

5 Mr. Litwinovich: I wouldn't consider it either.

6 Atty. Branch: Alright. Well I will just note my objection to the composition of the panel  
7 in light of the comments that were made. And it does invalidate the action if it is found  
8 that you should have recused yourself. Having said that I had submitted, I assume you've  
9 got it, a fairly extensive written presentation.

10 Mr. Hogan: Mmm hmm.

11 Atty. Branch: So I don't want to go over that again. And I don't want to contradict  
12 everything that Mr. Drescher said because I am a Bill Drescher fan, I respect him and he  
13 certainly knows the law. I do disagree with him on representations that aren't made part  
14 of the formal decisions and aren't identified as a condition precedent, especially in the  
15 sort of manner in which they were presented and in the manner that the matter went  
16 forward. So I will rest on my written submission and allow all of you to understand that  
17 and as a practical matter we do not have an objection with any of the conditions that have  
18 been articulated with the exception of the one and that has to do with whether — So  
19 make that clear, no problems with the saw operator, no problems with the hour  
20 limitations on both the days, the days of the week, the number of total hours. I went into  
21 some detail and I think Ms. Strong can confirm this, Mr. Tremblay over the years lost  
22 track of the original site plan application -- excuse me, the site plan approval. He had  
23 lent it to somebody else who was operating a business --

24 Mr. M. Tremblay: Mark Bilodeau.

25 Atty. Branch: Mark Bilodeau who wanted to see it I guess and he didn't get it back.  
26 Ultimately when he got the cease and desist letter, and Ms. Strong is here, he came right  
27 down to the Town and he said let me see that and when he saw that it had specifically  
28 stated one saw operator, he brought it to a halt. It had grown a little bit in that regard;  
29 that he had some people helping him with the saws. He did not remember the one saw  
30 operator, okay? So hours are fine with us, the days of the week are fine with us. We've  
31 had some discussions with Attorney Drescher about voluntarily encumbering ourselves  
32 with additional conditions that do specify and do make it clear. And I think the very fact  
33 that Attorney Drescher is asking you to make sure that any limitations are clearly stated is  
34 not an admission but it is a recognition that some of those conditions that were perhaps  
35 discussed were not clearly articulated, okay? And I'm not going to get into employees  
36 and independent contractors. I did bring that up simply because Mr. Tremblay is not  
37 trying to violate the law or violate the site plan. He has demonstrated his good faith  
38 throughout these proceedings. He has always immediately responded to Town inquires  
39 and he did so when he saw that limitation on one saw operator you will note after that  
40 cease and desist order the saw operator issue stopped.

41 Mr. M. Tremblay: July 3rd.

42 Atty. Branch: July 3rd. He got the plan, it's ended, okay? So there is only one kernel of  
43 disagreement here and that is the number of people who can be assisting him in the

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**TREMBLAY, cont.**

1  
2  
3 process of stacking wood and moving wood. We've submitted -- it's an affidavit, you  
4 have that stuff. So I'm willing to ask that you look at one in -- well not only look at this.  
5 You should look at the whole record and I commend you to it. And I do want to note that  
6 Attorney Drescher said, "somewhat extraordinary relief". The only thing I would change  
7 there is get rid of the "somewhat". It is extraordinary relief to close a site plan that has  
8 been in operation for more than 11 years. So I would say it is extraordinary and  
9 whenever we're being asked to do something extraordinary, by your own attorney's  
10 admission, it does seem like there should be some preliminary steps because you don't  
11 take extraordinary relief when there are less extraordinary, perhaps agreeable, ways to  
12 move forward.  
13

14 But I do want to turn your attention -- and this is the only thing that I will emphasis in the  
15 record over and above what I have submitted to you is to page 33 of the record. And I  
16 would ask that you look carefully and specifically at page 33. I don't want to say all of  
17 you but if at all possible, all of you look at it because it's incredibly important within the  
18 context of the dispute we have here today. Under conditions precedent, this is the  
19 original document, you will look under — There's a line through the sentence "checklist  
20 corrections and any corrections as noted at the hearing". And in there someone actually  
21 wrote 1/1/04 to, it wasn't me, to show how it had changed. And if you look at what was  
22 originally written, as best as I can discern it, it says, "all plans from the hearing this  
23 evening including hours and one" -- Originally it said, "and one operator of the business".  
24 One operator of the business. That is then crossed out and it is crossed out and you will  
25 note that someone carefully inserted a new word there; "one saw operator" and the  
26 change is corrected. The one saw operator. Now if this was supposed to be a one person  
27 business there would have been absolutely no reason to limit it to one saw operator. It  
28 would be pointless because I don't know anyone with the exception of the Highland  
29 Games who can operate two chainsaws simultaneously. It is contradictory within the  
30 internal document itself because you do not need a limitation on saw operation, it being  
31 one saw operator when there is only one person in the business. You could never have  
32 more than one saw operator in that circumstance. And it does say operator, I'm making a  
33 slight joke when I say, you know, only two operating -- I suppose he could operate if he  
34 could physically operate two chainsaws simultaneously then you could run two  
35 chainsaws as long one person was operating. But we are not against having one saw  
36 operator and I don't think anybody feels like the guys who help Michael on a part-time  
37 basis, as needed to stack wood that is processed already are contributing any degree of  
38 nuisance, for lack of a better term, to this use.  
39

40 It is clearly the saw operator or the saw that is troubling and so he is not disputing and  
41 does not dispute that he can only have one saw operator. He needs a maximum of an  
42 additional two people now and then to help him stack stuff which does not in any way --  
43 And whether it was known or not, his wife has always helped him periodically. I mean,



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1 **TREMBLAY, cont.**

2  
3 are we getting to the point where she can't come out and help her husband? I think  
4 Attorney Drescher just spoke incorrectly. It's still rented by -- to a family member --  
5 rented -- it's his daughter, Michael Tremblay's brother lives there. It's not as if it's out  
6 there with a third party. It's owned by the family and a family member lives there. But  
7 the bottom line is we have an unconventional situation where we have a saw operation  
8 abutting to a neighborhood. And I am still ready, willing and able and have discussions  
9 with Attorney Drescher prior to the first meeting to lay out very specific conditions with  
10 an end date on this thing of two years. And you had two of these saw operations that  
11 appeared to create problems for the Town. One of them has closed, Mr. Bilodeau and  
12 Mr. Tremblay is willing to close in less than two years from today's date and then you  
13 would have none of these clearly, incompatible uses -- I guess not clearly but it is not  
14 hard to see a problem here when you have people cutting wood next to residential homes.  
15 It's just fairly obvious. And we are looking to come up with a plan that perhaps allows  
16 some minor modification or clarification of the site plan with an ending date that it would  
17 be taken down completely within two years of the date of your modification, unless, we  
18 can't frankly get some kind of equitable accommodation.

19  
20 And I am sympathetic to Mr. Straw. I had a neighbor who had three dogs and they drove  
21 me crazy for years. And I get it when you have someone next-door to you using their  
22 property in a way that disturbs you it's problematic. And that's why when I looked  
23 through all of these minutes and look through Mr. Straw's thoughtful comments — He  
24 talked about just giving some specific hours of operation not a band of time within which  
25 he operates but specific hours of operation so he could plan around it. And we have  
26 offered that. We have offered a chunk of time that we would do it within that we  
27 wouldn't go outside of. We have offered to end all saw operations on Monday, I mean on  
28 Sundays and we would go to every other Saturday, weather permitting. We are trying to  
29 find a way to make this work and we are trying to do it with a lot of money being spent  
30 by everybody. And Mr. Tremblay would like to shut his business down in two years, is  
31 willing to shut his business down if he can operate in some kind of predictable way going  
32 forward that accommodates everybody's concerns. I would certainly say instead of the  
33 extraordinary release of taking this away from this man after all of these years, where let  
34 us note that, and I've put this in my paperwork and I'm getting into the department of  
35 redundancy department, but he operated for more than 11 years with no one complaining  
36 and no problems occurring. And as soon as he was reminded of this one saw operation  
37 limitation -- that's what you've seen, he will comply. And so to just take his livelihood  
38 away -- Not his livelihood, he stills works a third shift job here folks. He works -- What's  
39 that company you work for?

40 Mr. M. Tremblay: Freudenberg.

41 Atty. Branch: Freudenberg. 11:00 p.m. to 7:00 a.m. He comes in, he sleeps a couple  
42 hours and he cuts wood and he stacks wood to help him to put his kids through college.  
43 That is a pattern of behavior that is by definition self-limiting because you are going to be

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1 **TREMBLAY, cont.**  
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3 exhausted.  
4 Mr. Hogan: Exactly.  
5 Atty. Branch: Yup.  
6 Mr. Hogan: You just — you just finished the site plan review for me.  
7 Atty. Branch: Okay.  
8 Mr. Hogan: Let me explain to you how this works.  
9 Atty. Branch: Okay.  
10 Mr. Hogan: He came in site plan review.  
11 Atty. Branch: Yes.  
12 Mr. Hogan: I was here, I was sitting Chairman.  
13 Atty. Branch: Mmm hmm.  
14 Mr. Hogan: He does exactly what you just said. He goes to work all day, he comes  
15 back, he's tired —  
16 Atty. Branch: At night.  
17 Mr. Hogan: Grabs a nap, cuts some wood, splits some wood, loads some wood. Can't  
18 do that much because he's got a full-time job.  
19 Atty. Branch: Still does.  
20 Mr. Hogan: There you go.  
21 Atty. Branch: Yes.  
22 Mr. Hogan: That's the limiting factor.  
23 Atty. Branch: And it still is.  
24 Mr. Hogan: No it isn't because you've added employees that can load the wood for him  
25 which is exhausting. That is the limiting factor that you've just -- that you want to  
26 remove from the equation. Anyway, you just said it and that is exactly how his operation  
27 was approved based on the exhaustion level of a person working full-time, sawing,  
28 splitting, loading. How much can a person actually do? He represented it as he's the only  
29 one that can do it and everyone said, "How much can he possibly do? He's going to be  
30 exhausted." That's how he got it approved. That's how his business is compatible in an  
31 "R-A" District.  
32 Atty. Branch: They are not operating --  
33 Mr. Hogan: That's it, you just said it.  
34 Atty. Branch: They are not operating without him there, okay?  
35 Mr. Hogan: It doesn't matter. You are missing the point. You are totally missing the  
36 point.  
37 Atty. Branch: I disagree --  
38 Mr. Hogan: You just spelled out how his site plan was approved in the first place. You  
39 just laid it out perfectly in the same way he laid out which is how he got the Board, sitting  
40 at the time, to approve it. Because if you could have had -- Why not a cordwood  
41 processor?  
42 Atty. Branch: Well --  
43 Mr. Hogan: Because now a cordwood processor is no louder than what he is doing,

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3 however the intensity of the operation is much higher, it brings you to a commercial use  
4 which I specifically told him was not allowed and if it went to that he needed to find  
5 commercial property.

6 Atty. Branch: Well I --

7 Mr. Hogan: By adding helpers, no matter whether they are paid or not, your whole  
8 contention on that is kind of hilarious, brings it to the next level. So that's what I have to  
9 say on that.

10 Atty. Branch: Well I would be interested in seeing where in the minutes this discussion  
11 because that's the other note I --

12 Mr. Hogan: Page 36.

13 Atty. Branch: Page 36, okay. And could you --

14 Mr. Hogan: But you can move on because you've had this paperwork to go over for a  
15 very long time.

16 Atty. Branch: I know and I've tried --

17 Mr. Hogan: And if you didn't read it --

18 Atty. Branch: I've gone over it. I've read it if you want to see all my little highlights --  
19 I've read everything here and there is nothing as far as I can see in these minutes, unless  
20 you can direct me to it, that said he'd have to be moving to a commercial area. And I'll  
21 admit, there's a lot of verbiage here so maybe I've missed it.

22 Mr. Hogan: That's my standard lecture. I'm good with it. I know it was said. It is said  
23 on every business venture in a "R-A" District.

24 Atty. Drescher: I think it's — I've cited it in the petition to the Board.

25 Mr. Hogan: Yup.

26 Atty. Branch: The petition to the Board?

27 Atty. Drescher: The petition to the Board. I asked for revocation. A motion, whatever  
28 you call it -- a request.

29 Atty. Branch: Okay. And I just don't — I just didn't see anything in there about he'd  
30 have to move to a different area.

31 Mr. Hogan: "Mike Tremblay stated that he had no plans to have any additional  
32 employees. A note will be added to the plan stating there will only be one person  
33 sawing." I even extended the hours on -- in some --

34 Atty. Branch: I know you did.

35 Mr. Hogan: That's right because that allows for him to rest because he's working a  
36 full-time job. If he was having employees we would have narrowed his hours.

37 Atty. Branch: So you would --

38 Mr. Hogan: It's common sense.

39 Atty. Branch: So you would have permitted it if -- If he had added employees you would  
40 have narrowed the hours, which is what we are offering.

41 Mr. Hogan: Yeah, we would have maybe given him two hours a day to do it or  
42 something like that. Maybe.

43 Atty. Branch: Alright.

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3 Mr. Hogan: And even then I'm not privy to what that Board would have approved.

4 Atty. Branch: I just don't understand nowhere in this entire record it says it was going to  
5 be limited to one employee. He simply answered a question that at present he had no  
6 intention of having any employees. No one said at that point, well you never can. We'll  
7 limit it to one employee. We'll limit it to one operator. Instead on page whatever it was  
8 you guys actually had a limitation of one operator only. Right there you had it. It's  
9 exactly what you're saying. Page 33 would have said "...and one operator of the  
10 business". That was crossed out to say, "one saw operator".

11 Mr. Hogan: You —

12 Atty. Branch: You don't —

13 Mr. Hogan: You already clearly stated the way the Board — exactly how the Board  
14 was thinking about it.

15 Atty. Branch: So we would ask at this time, as I don't think we've done anything except  
16 be straightforward, that rather than revoke this site plan approval, that you indicate  
17 clearly and unequivocally what the conditions are and I would suggest to you that we  
18 have come forward and are willing to voluntarily put on a lot of conditions to clarify  
19 these issues so there is no dispute and that — I don't know how you look at this record  
20 and conclude that there has been a binding limitation that he could never have anyone  
21 assist him. It just isn't in the record. The fact that when he applied, at the time he  
22 applied, he didn't have anyone helping with him and he wasn't intending to add anybody  
23 is not binding when it comes to his operation as long as he doesn't exceed the 300 cords,  
24 which he doesn't, and there's no proof that he does. We could have a, you know, a big  
25 hearing on that issue. He's still doing 200 to 300 cords. So to the extent your argument is  
26 by having additional employees he's going to change the output of his business, it hasn't.  
27 It is still 200 to 300 every year like clockwork. It is still the same scope of business. The  
28 hours that you guys allowed him to have is what he has used. And the only dispute that is  
29 before this Board has to do with the number of people and I would suggest to you page  
30 33 quite clearly makes it clear -- Quite clearly states that at one point there may have  
31 been some discussion about there being one operator of the business and no more but it  
32 was not made part of this approval at all. In fact, it was specifically crossed out and it  
33 was replaced with one saw operator.

34

35 So we have a reasonable view of this site plan approval that would indicate that he could  
36 have some people helping him stack wood. And if that's where this use is going to fall I  
37 personally believe, especially with a guy who is going to close the business in two years,  
38 we ought to take this opportunity to make the use that goes on there going into the last  
39 two years more responsive to the concerns of the abutters, which Mr. Straw on many  
40 occasions said it has to do with hours of operation and predictability of behavior, which  
41 we are willing to do. And to sit here and stop the dialogue and just shut him down when  
42 this is the only little obstacle we have, is not a supportable decision under — given the  
43 extraordinary relief that is being requested.

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3 Mr. Hogan: Is it fair to state that you have no intention whatsoever of abiding by the  
4 single operator?

5 Atty. Branch: No.

6 Mr. Hogan: Well that's what it sounds like. You have no intention of abiding by what  
7 the Planning Board contends is on the site plan which is, he's the only one to be operating  
8 the business.

9 Atty. Branch: No. We would --

10 Mr. Hogan: Your contention is that you will continue to hire private subcontractor to  
11 help him load the wood so that he can run the saw?

12 Atty. Branch: No.

13 Mr. Hogan: Because that's — I mean, that's been the contention right along and —

14 Atty. Branch: When —

15 Mr. Hogan: And, and basically he walked out of the meeting and said we can deal with  
16 you from here on out when we said, "We want you to abide by your site plan," which is,  
17 you're the only one to be running it.

18 Atty. Branch: He simply stated what he stated at the time, that he had retained an  
19 attorney and he was looking into it and that I would advise him accordingly. And I've  
20 looked through everything here and I advised him at that point. But at that point there  
21 has been no action by the Board. If the Board --

22 Mr. Hogan: What action by the Board are you referring to?

23 Atty. Branch: Well if you guys looking at this project issue an order that says there can  
24 only be one saw operator then we will have to look at that decision and see if we can  
25 make it work. I'm not going to sit here and announce an intention to --

26 Mr. Hogan: Yeah.

27 Atty. Branch: -- break a decision that I'm unaware that you have made.

28 Mr. Hogan: I think that maybe you misunderstand the process. He's not going through  
29 site plan review right now.

30 Atty. Branch: I understand that.

31 Mr. Hogan: He's been found to not in compliance by our Code Enforcement  
32 Officer,(CEO). It's been handed over to the Selectmen and their attorney and they have  
33 negotiated with you extensively and basically your answer is no, that's not on the site  
34 plan, we're wrong, even though I was sitting on the Board and I recall very well exactly  
35 the way you stated it.

36 Atty. Branch: Well I will only say that before there is an order from the Board, then  
37 everyone has to look at the various materials they have and see whether when someone  
38 says this is a violation of your plan. In the opinion of Mr. Hunter it was a violation of the  
39 plan --

40 Mr. Hogan: Mmm hmm.

41 Atty. Branch: -- and I've already made it very clear that when he did that he noted a  
42 couple of issues, specifically the saw operator issue that he has complied with. So, he  
43 hasn't sat here and said, "I'm not going to comply." He is asking for permission to go

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3 forward with his business as he understands it, which is coming down to simply one  
4 thing and one thing only and that is the number of people he can have, if any, assist him  
5 with the business. So now if you guys issue a decision that says we disagree with you  
6 Attorney Branch, it won't be the first time that someone has disagreed with me. At that  
7 point Mr. Tremblay has a decision to make and that's what we will do at that time. We're  
8 hoping and asking that you look at this record and say, you know what without throwing  
9 ourselves under the bus, we could have done a better job of articulating this restriction.  
10 That when you look at the paperwork reasonable minds could differ and that the site plan  
11 approval was issued, I guess, without a full and complete meeting of the minds.

12 Mr. Constance: Mr. Branch, I want to make sure I understand because Mr. Hogan asked  
13 you just a moment ago, was the one person operating the business, you were not willing  
14 to comply with that?

15 Atty. Branch: No, I didn't say that.

16 Mr. Constance: You didn't -- And you -- Now you're saying you didn't say that. So what's  
17 the hang up here? I'm --if -- Because --

18 Atty. Branch: I'm not saying --

19 Mr. Constance: -- what Mr. Hogan was insisting on was the original site plan.

20 Atty. Branch: Yes.

21 Mr. Constance: And that was one key to it. That was a key to it. And so, which answer is  
22 it?

23 Atty. Branch: I can disagree with your interpretation of the site plan and agree to comply  
24 with it. I mean, I disagree that 107, that I drive every day, should be posted 35 but I have  
25 learned to comply with that. And I think when there's an order from the Board in the  
26 Town, that's different, with no disrespect to Mr. Hunter -- If Mr. Hunter sits down and  
27 looks at a document and, as I said, I cited it in my written submissions in a letter that he  
28 sent to I believe Attorney Drescher, which is in your brochure and I laid it out. He said  
29 the only limitation that isn't on there is the one employee limitation. That's what he stated  
30 in his letter. And that Michael was complying with everything except that. Without your  
31 definitive decision, I wrote a letter to Mr. Hunter and said, I agree with a lot of what you  
32 say, we are going to abide by a lot of what you say but we respectfully disagree on that  
33 one issue, whether he can have someone help him stack wood. So once a court issues an  
34 order, for example in a divorce or in any other case, you can have parties go forward to  
35 the court and have very differing opinions on what a marital settlement may say but once  
36 a court order comes out that says you've got to do x, y and z that changes that complexion  
37 of things. Now --

38 Mr. Constance: The history and everything I guess I'm clear. I guess your answer I'm still  
39 not.

40 Atty. Branch: The answer is that if you guys tell him we want — we believe that that  
41 you have a right to operate your site plan but these are the very clear limitations that we  
42 are issuing that under then I have to talk with my client about whether he can comply  
43 with those conditions. He does not want to get into a fight with the Town. He's not

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3 asking for a fight with the Town. At no time, contrary to a person who is no longer  
4 sitting here, at no time have I threatened anyone and Mr. Tremblay doesn't want me to. If  
5 you tell us that we can operate but only subject to certain conditions and that's the way it's  
6 got to be we'll have to look at that and see if we comply with it. If we can comply with it,  
7 we will comply with it. We're just asking that you provide some degree of flexibility on  
8 one issue which is the number of employees. So to presume that —

9 Mr. Hogan: Does it help you if I simply tell you the answer is no? Is that helpful to  
10 you?

11 Atty. Branch: Yes. You're one member of the Board.

12 Mr. Hogan: Because if you -- For the sake of argument if you were to apply for an  
13 expansion of your business and you came in and said I want to add a couple of people to  
14 help me the answer would be no. Because that would change the face of what is going on  
15 because we would no longer have the fatigue factor to limit the business.

16 Atty. Branch: I don't know, given the fact that he is twenty years older you may still  
17 have the fatigue factor but realistically you seem to be —

18 Mr. Hogan: No you've completely missed that.

19 Atty. Branch: I'm sorry?

20 Mr. Hogan: You totally missed that.

21 Atty. Branch: Totally missed what?

22 Mr. Hogan: What I just said.

23 Atty. Branch: No. I heard what you had to say.

24 Mr. Hogan: No you didn't.

25 Atty. Branch: Okay.

26 Mr. Hogan: Because if he came in and applied --

27 Atty. Branch: Yes.

28 Mr. Hogan: The limiting factor --

29 Atty. Branch: Yes.

30 Mr. Hogan: -- of how intense he could run the business --

31 Atty. Branch: Yes.

32 Mr. Hogan: -- would be the fatigue factor. So he would not be allowed to have any  
33 other employees --

34 Atty. Branch: Okay.

35 Mr. Hogan: -- because it would rely on his fatigue limiting the scope of his cordwood  
36 operation just as it did in the first place.

37 Atty. Branch: Okay.

38 Mr. Hogan: That was what the Board was going for and banking on.

39 Atty. Branch: Okay. Well again, you know, the word fatigue does not appear in your  
40 minutes at all.

41 Mr. Hogan: But it certainly did yours --

42 Atty. Branch: Yes.

43 Mr. Hogan: -- when you just went through the whole rendition of how it would work.

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3 Atty. Branch: I did? You never said --

4 Mr. Hogan: So we did the same thing. We had the same dialogue with him when he  
5 was in here in '03.

6 Atty. Branch: Neither the word "fatigue" or "factor" are in the minutes nor are they co-  
7 joined together.

8 Mr. Hogan: Okay. So it sounds clear to me that you don't have any intention of  
9 abiding by the current site review?

10 Atty. Branch: No. That's not -- We have a legitimate question about what the original  
11 site plan says and for you to presume we're going to violate that when we are simply  
12 saying we understand it differently and reasonable minds can differ is to project upon us  
13 behavior that has not yet occurred and in my opinion continues to show your pre-  
14 judgment against Mr. Tremblay.

15 Mr. Hogan: Okay.

16 Atty. Branch: With all due respect. I mean, you know, we have come here to make nice  
17 and I never -- I've been in front of Boards in a lot more contentious proceedings and they  
18 have been less contentious.

19 Mr. Hogan: Okay.

20 Atty. Branch: This is a well that feels like it's been poisoned.

21 Mr. Hogan: Okay.

22 Atty. Branch: We would like an opportunity and I'm are asking for an opportunity to  
23 have you guys set forth your understanding. Because again, Mr. Hunter, perfectly nice  
24 guy, I have no problem with him but his understanding isn't the law and with all due  
25 respect to you Mr. Hogan neither is yours. You guys only have power as a Board. So if  
26 this Board announces that Mr. Tremblay may go forward subject to the following  
27 conditions, Mr. Tremblay ought to have an opportunity to comply with that and I  
28 certainly would not advocate to my client to ignore an order without a lot of  
29 consideration. We just feel like in order that says that isn't sort of adjusting for the reality  
30 when you look back in time at what the document said. And more importantly it misses  
31 an opportunity for everybody here to put limits on this that make sense for the abutters,  
32 makes sense for Mr. Tremblay and allows for an endgame that everyone can pursue. And  
33 you know, if you sit here and you try to project what a court would do you're going to be  
34 mistaken. I could be too, certainly. There's all types of unpredictability that results and  
35 we're looking for some predictability and I certainly think that step one, which is where  
36 we feel we are is coming to you saying we don't understand your site plan the way you do  
37 and this is the only part that is troublesome. If you -- And I think I know how you're  
38 going to vote but if you hear my arguments and reject them, you won't be the first or the  
39 last to do so and then we have decisions to make. But certainly one of this decisions may  
40 well be that he complies with whatever you guys set down for limits and I believe given  
41 the fact that he had years of compliance with no complaints he is entitled to that.

42 Mr. Straw: He hasn't been within compliance for years.

43 Mr. Hogan: Okay. All right. As a Board we have a request from the Selectmen for us



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3 which is to revoke his site plan as I understand it.  
4 Mr. Suennen: I've got a couple of questions.  
5 Mr. Hogan: Yes, please do.  
6 Mr. Suennen: Attorney Branch.  
7 Atty. Branch: Yes, sir.  
8 Mr. Suennen: We're talking about what's in writing because that's the key. That's going  
9 to be the key which goes to — since before the Planning Board, that's going to be key as  
10 it goes forward in whatever manner it goes forward. Whether it's the revocation or a  
11 continuing operation?  
12 Atty. Branch: I think largely you're correct.  
13 Mr. Suennen: Okay. With that said, what is Mr. Tremblay's legal address -- residence at  
14 this time?  
15 Atty. Branch: I'll let him answer that. I have no idea.  
16 Mr. M. Tremblay: 60 Church Street and that was the -- my legal address that was on the  
17 application at the time too.  
18 Mr. Suennen: Okay, okay. And then the personnel that you have helping you, what is  
19 their legal address?  
20 Mr. M. Tremblay: Their legal address?  
21 Mr. Suennen: Let me ask it this way. How many of the helpers that you have are legally  
22 residing at 194 Parker Road?  
23 Mr. M. Tremblay: None.  
24 Mr. Suennen: None.  
25 Mr. M. Tremblay: They're subcontractors.  
26 Mr. Suennen: Okay, so let me read this. Section 319.1 of the Zoning Ordinance, it  
27 defines a home business; "Shall be carried on by members of the family residing onsite."  
28 Mr. Hogan: Can I stop you? It's not a home business.  
29 Mr. Suennen: Isn't that how it was proposed as a home business?  
30 Mr. Hogan: It was proposed but that's not how it was approved.  
31 Atty. Drescher: I think that's the way it was originally discussed and then it was pointed  
32 out --  
33 Mr. Hogan: It was moved out of that.  
34 Atty. Drescher: I saw a --  
35 Mr. Hogan: That's right.  
36 Atty. Drescher: -- a reference in the minutes that —  
37 Mr. Hogan: Yup. Because it can't be a home business because it's conducted outside.  
38 Mr. Suennen: Okay. So it's an exception to a home business?  
39 Mr. Hogan: Correct.  
40 Atty. Drescher: Mr. Chairman, could I interrupt for just one moment? I submitted a  
41 document which was a three page set of notes from Mr. Straw and I would be obliged if  
42 you would ask him to identify that for the record.  
43 Atty. Branch: I will stipulate that those are the records — that those are the notes that

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3 Mr. Straw kept. I'm not playing any games here. I just have to note that they are not  
4 under oath, they're not independently corroborated but I don't care. You know, I just  
5 telling you that I'm not going to dispute that Mr. Straw, who is here, submitted those as  
6 his notes. It's --

7 Mr. M. Tremblay: And you'll note --

8 Mr. Hogan: But you need to know that this set of notes is not a pivoting factor in my  
9 mind for all the reasons you just said.

10 Atty. Branch: Okay.

11 Mr. Hogan: I, for one, am not a fan of neighbors overlooking a business operation. It's  
12 frequently tainted and it's "not in my backyard" mentality. I dislike it. They don't get a  
13 vote, ever, on revocation or approval or anything else.

14 Atty. Branch: Okay.

15 Mr. Hogan: And there could be the same set of notes, they could be very adamantly  
16 against the cordwood operation business, that if he were to propose it today and that  
17 would have no effect on my vote.

18 Atty. Branch: Okay.

19 Mr. Hogan: I would still vote for approval of his cordwood operation business the way  
20 that it was presented to us during original site plan review.

21 Atty. Branch: And --

22 Mr. Hogan: The whole bringing in of additional help is the catch for me because that's  
23 where it changes the scope of what the business is. Because it's no longer -- You could  
24 roll through fresh help constantly and you could run this thing the full extent of the hours.  
25 But if the person representing it as operating it is the only one operating it, that's its own  
26 self-limiting factor unless he's a superman, which, you know nobody really is.

27 Atty. Branch: I do want to clarify that we have never taken the position he has the right  
28 to run the full extent of the hours. We have always interpreted that aspect of things as a  
29 window of time within a six hour operation would occur.

30 Mr. Hogan: However --

31 Atty. Branch: At least that's how we understand it now.

32 Mr. Hogan: However with your added people helping it makes the operation more  
33 intense. It has to because they're not going to come to work exhausted unlike him who is  
34 going to do it exhausted because it's his. It's his baby. That's what you do. That's what  
35 you do when you run a business at home. You run it when you can and that's the nature  
36 of it. That's why these businesses are often permitted by this Planning Board is for that  
37 reason.

38 Atty. Branch: Well, I appreciate those comments.

39 Mr. Suennen: All right, going back to things that are in writing.

40 Atty. Branch: Yup.

41 Mr. Suennen: The -- Item #30 on the Request to the Planning Board for Site Revocation  
42 quotes from page 6 of the record that, "The number of employees at present and the  
43 number of employees to be added [one and zero]."

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3 Atty. Branch: Yup.

4 Mr. Suennen: All right, so disregarding the definition of employee, is it fair to say that  
5 "to be added" is indefinite?

6 Atty. Branch: Well I don't want to play word games but I would have to say not  
7 necessarily because it is limited by the present. I don't know what else to tell you. When  
8 I look at that it says, "Number of employees at present: one, to be added: zero." At  
9 present -- but again, look I want to make it clear, he wants an opportunity to comply with  
10 a plan that's clarified. Because to the extent he has not complied with the plan it is  
11 because we had a reasonable disagreement but you guys might just say, "you're full of it"  
12 and I suspect maybe at times that has been thought but we're not. If I could -- If I had  
13 worn a camera on Mr. Tremblay, he came in and said, "What can I do?" And I told him  
14 that every single thing that we have been discussing is in play with the exception of the  
15 employees. And I think that I made that clear to Mr. Hunter. That that was the only area  
16 that were having an issue here. Is it possible that on the margins Mr. Tremblay over ten  
17 years maybe got a little sloppy on the exact beginning time and ending time. You know,  
18 we've said, "Okay." We've had a come to Jesus moment there, we've got to be really  
19 tight. There's no one complaining for years and years and years. And I know Mr. Straw  
20 feels strongly about this, I don't blame him as I said.

21 Mr. Straw: Excuse me for a minute. No one complained because we were all  
22 working. All of a sudden we retire and were saying, "Hey, what the hell is going on?"  
23 That's why no one complained, nobody knew he was doing it because we were all  
24 working.

25 Mr. Hogan: But your comments aside, the violations have been verified by our CEO.  
26 And that's it. They are -- He's the one that does it. Not us.

27 Mr. Straw: He's not doing 200 to 300 cords --

28 Mr. Hogan: It's not us.

29 Mr. Straw: He's admitted that he's doing over 700 cord a year. The people he does  
30 have working for him do work there when he's not there and the so called wood throwers  
31 or whatever you want to call it, are actually using splitters while he's doing the sawing.  
32 So there is more gas powered implements being put to use with these people being there.

33 Mr. Hogan: I would expect that there would be.

34 Mr. Straw: And that's still be going on. I can cite you the dates that he's had both the  
35 saw and the splitter going.

36 Mr. Hogan: I would imagine there would be, that was --

37 Mr. Straw: That has happened in February and March.

38 Mr. Hogan: That's why the one person, zero to be added makes it an allowable use and  
39 anything beyond that makes it a not allowable use. And that's in writing and that's fairly  
40 clear.

41 Mr. Suennen: So Attorney Branch --

42 Atty. Branch: Yes.

43 Mr. Suennen: You are asking the Board to consider -- Let's focus on the one issue, the

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1 **TREMBLAY, cont.**  
2  
3 employees, helpers, volunteers, independent contractors whatever you want to call them.  
4 Atty. Branch: Yup. I don't want to -- I know I started that discussion --  
5 Mr. Suennen: Okay.  
6 Atty. Branch: -- and I wish I hadn't, okay? So I -- It's just --  
7 Mr. Suennen: For all intents and purposes people helping Mr. Tremblay.  
8 Atty. Branch: Correct. We'll keep it at that.  
9 Mr. Suennen: So, my interpretation, and again, as you pointed out with Mr. Hogan, I am  
10 one member of the Board --  
11 Atty. Branch: Yes.  
12 Mr. Suennen: -- one and only one person, Mr. Tremblay himself, only operating.  
13 Atty. Branch: Yes.  
14 Mr. Suennen: That would be my only condition.  
15 Atty. Branch: I understand that.  
16 Brian Ridge: And that's what we all thought was going to happen when we sat here --  
17 Mr. Hogan: We need your name and address for the record.  
18 Mr. Ridge: My name is Brian Ridge and I live at 12 Moss Drive.  
19 Mr. Hogan: Thanks. Well you probably thought that because that's what was  
20 represented.  
21 Mr. Ridge: And as a matter of fact, I asked Mike in the meeting if he would ever  
22 intend to expand his business and he said clearly that he had no plans to do that.  
23 Mr. Hogan: Mm hmm.  
24 Mr. Ridge: So we all thought that he was going to be the only guy doing it, using a  
25 saw and then not using the saw and using the splitter and so forth. And now there are  
26 more people operating all of these pieces of equipment and I know that Mike's attorney  
27 there has suggested that those people are quietly stacking wood but that's not the case.  
28 They are splitting wood and they're using a motorized conveyor to put it in a pile. So  
29 there's two pieces of equipment going while there is a saw going. So there's three pieces  
30 of equipment going almost all the time.  
31 Mr. Hogan: I actually read in a note somewhere that you've always had the conveyor.  
32 Atty. Branch: Yes. The conveyor was there from the get go.  
33 Mr. Hogan: Yup.  
34 Atty. Branch: And one saw was there.  
35 Mr. Hogan: Yup.  
36 Atty. Branch: And wood was split --  
37 Mr. Ridge: But if Mike was working alone he couldn't run the saw, the wood splitter  
38 and the conveyor all by himself. One guy.  
39 Mr. Hogan: Right.  
40 Mr. Ridge: So we all thought that, you know, if he was just alone doing this as he  
41 presented that he wanted to earn some extra money and so forth --  
42 Mr. Hogan: Yeah, it's all good.  
43 Mr. Ridge: Yeah. And I would also like to say that I know that it's been stated that

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1 **TREMBLAY, cont.**

2  
3 Mike does 200 to 300 cords of wood a year and his business has never changed. So if he  
4 did 200 to 300 cords of wood by himself and now he has all these people it would stand  
5 to reason that he is doing more than that and as a matter of fact when Mike came over to  
6 my house one day to apologize for starting to cut wood at 6:30 in the morning, he told me  
7 that he was doing between 700 and 750 cords a year. Now I don't know how much wood  
8 he does but those are his words.

9 Atty. Branch: Well there's two concerns [inaudible] here. One is that we're talking about  
10 something that allegedly was said, and I don't mean to say anything except that  
11 recollections can change over time. Eleven or twelve years ago that is not in the minutes  
12 -- And we are talking about what he was approved to do. And we -- Everyone in this  
13 room may be convinced after everything that has been said, that Mr. Tremblay's  
14 understanding of the site plan permit and it's conditions as we looked at them is factually  
15 now incorrect. It doesn't change the fact, and I would hope that the Board would agree  
16 with this, that it is not stated very clearly in there. You may say it is. You look at this  
17 and it just, again, if you only had one person involved in the business you wouldn't need  
18 to limit the number of saw operators. The conveyor was always there. Sawing wood,  
19 throwing it onto the conveyor and he wasn't hand splitting this stuff back then and he isn't  
20 now. So there was a splitter operating. Yes, simultaneous operation but I'm going to  
21 suggest to you they don't shut off the conveyor, who would? You leave it running so that  
22 you could still have the saw and the conveyor but —

23 Mr. Hogan: Well more likely you're going to have the splitter and the conveyor.

24 Mr. M. Tremblay: Right.

25 Atty. Branch: Okay.

26 Mr. Hogan: That's fine.

27 Atty. Branch: Fair enough. But we're talking about stuff on the margins here and I just  
28 think the Board ought not to ignore the fact, however you feel about the so-called  
29 NIMBY Syndrome, and however that -- they feel about whether it should be allowed or  
30 not allowed. Whether we can't -- Instead of taking this into a shootout at the O.K. Corral  
31 we instead look at it and see if we can find a way to voluntarily assume conditions which  
32 are, a) clearly stated and b) accommodate some of their concerns or all of their concerns.  
33 And if what I'm hearing is that it's only one employee, I feel that's unfortunate and we  
34 should have an opportunity to --

35 Mr. Hogan: How about only one person?

36 Atty. Branch: Okay, one person, whatever you want to call --

37 Mr. Hogan: See, because that's on 36, one person. Right?

38 Mr. Constance: Exactly.

39 Atty. Branch: 36.

40 Mr. Hogan: That one person.

41 Atty. Branch: "Mr. Tremblay stated that only one person sawing." Page 36; "The  
42 Chairman thought that a note could be added to the plan stating there would only be one  
43 person sawing." Again, it's --

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1 **TREMBLAY, cont.**

2

3 Mr. Hogan: "Brian Ridge [inaudible] his concern was that the business would expand  
4 so there would be more than one person cutting and loading and delivering the wood.  
5 Mike Tremblay stated that he had no plans to have any additional employees."

6 Atty. Branch: That was his opinion then.

7 Mr. Hogan: That's right. And what's -- And that's the plan. That's it. That's what it's  
8 all based on. He's not adding any employees, it's only him. That's it. We can keep  
9 talking about what person, employees -- We can go on and on and on about that. That's  
10 really the pivoting point of the entire discussion.

11 Atty. Branch: Well there is --

12 Mr. Hogan: That's how it was approved, was with him operating it. That's the reason  
13 why it was approved is because he was going to be operating it.

14 Atty. Branch: There is something to be said about what individual members of the  
15 Planning Board thought they were approving and what was approved and that remains --  
16 Our point here -- We've looked at all of this information and if -- I believe that people  
17 who are truly being reasonable look at this stuff and could say at the very least, "You  
18 know what? Maybe it wasn't as clear as it should have been in the approval of the  
19 business." Because there is no way -- There is nothing in there that says he can never  
20 hire anybody else. There's nothing that says he can't have helpers. He stated what was  
21 going on at the time, what the facts on the ground were and if that gets leveraged into a  
22 condition precedent to approval of the plan which means it can't be exceeded then so be it  
23 but it is not on its face clear at all. Again, the limitation on one saw operator would be  
24 unnecessary if there was only one person working. It just creates contradiction. So now  
25 you guys are going to tell me, I think, that it should be clear, that there shouldn't be any  
26 ambiguity about it and that's how you intend it if you allow it to go forward, to go  
27 forward. But I do think it's a bit, for lack of a better term, haughty to say, based on this  
28 record that Mr. Tremblay had unequivocal notice beyond a shadow of a doubt that it was  
29 only his physical being that could be present on that site when wood operations were  
30 taking place.

31 Mr. Hogan: I think it was his representation.

32 Atty. Branch: His representation of what he was doing at that time.

33 Mr. Hogan: Right.

34 Atty. Branch: Clearly people --

35 Mr. Hogan: Right and that would be what would be approved to go forward, is here's  
36 what you are doing at the time.

37 Atty. Branch: Well, I'm not so sure about that.

38 Mr. Hogan: Right.

39 Atty. Branch: The law would suggest to you that that's not always the case but it doesn't  
40 really matter. I still think we have an opportunity here to come forward and say, "What  
41 are the abutter's concerns and can they be coalesced with Mr. Tremblay's concerns in a  
42 manner that improves it, without dispute for the final two years of his operation?"

43 Mr. Hogan: So now you're asking for a site plan review again, which you're not getting

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1 **TREMBLAY, cont.**  
2  
3 at this meeting.  
4 Atty. Branch: No, I'm not asking for a site plan review. I am asking for an opportunity  
5 for a site plan clarification and an ability to take into account what the Board has now  
6 articulated, unequivocally --  
7 Mr. Hogan: I have to stop you. Do you think that you can say it differently?  
8 Mr. Suennen: Do I think I could say — Say what differently?  
9 Mr. Hogan: Lone operator? Mr. Tremblay?  
10 Mr. Suennen: I'm not even going to get into the semantics of that.  
11 Mr. Hogan: Okay.  
12 Mr. Suennen: I understand what they are trying to say.  
13 Mr. Hogan: Yup.  
14 Mr. Suennen: I think that the record says what it says.  
15 Mr. Hogan: Mm hmm.  
16 Mr. Suennen: And it's this job's Board to interpret it at this time and make a decision  
17 based on what the Select Board's attorney has asked us to address.  
18 Mr. Hogan: Okay.  
19 Mr. Suennen: And I think that's flat out what we are dealing with right now.  
20 Mr. Hogan: That is what we are dealing with. We are dealing with a request from the  
21 Selectmen for a site plan revocation based on the record.  
22 Mr. Suennen: Right.  
23 Atty. Branch: And I would only say that you're not bound by that, no more than you are  
24 bound by them if they said we've settled the case.  
25 Mr. Hogan: Mm hmm.  
26 Atty. Branch: So there is a middle course which can be pursued which is to make sure  
27 that we understand what you're saying because we have legitimate disagreement and to  
28 give him an opportunity to conform his project to that. And that is -- And there is a  
29 separate approach that could be pursued that would allow a dialogue to be established  
30 knowing that it would close within two years. To have an immediate beneficial effect  
31 going forward in those two years.  
32 Mr. Hogan: I don't want it closed in two years. Why would I agree to something that's  
33 like that? That doesn't make any sense. I want him to abide by the site plan that he  
34 represented to this Planning Board twelve years ago.  
35 Atty. Branch: There may be --  
36 Mr. Hogan: That's what I want, which is, I want him to operate his business and have  
37 the ability to make his money on the side to supplement his lifestyle in any way that he  
38 likes. That's what I want to happen.  
39 Atty. Branch: Okay.  
40 Mr. Hogan: I want his business to go on, him operating it without help, so that we'll  
41 have the fatigue factor in there that he can only do so much, he's by himself. He had a  
42 long day at work, put in some overtime, I can only work an hour or two today. That was  
43 the plan and it was the point of the site plan approval.

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1 **TREMBLAY, cont.**  
2  
3 Mr. Suennen: And in the interest of Mr. Tremblay's health, to do it safely, so that he's  
4 not fatigued enough that he's falling asleep on the --  
5 Mr. Hogan: Well he's not going to do that.  
6 Mr. Suennen: Just so the record says, the Planning Board wants Mr. Tremblay to be safe  
7 and alive.  
8 Mr. Hogan: Right.  
9 Mr. Constance: Mr. Branch just -- And I come back to asking that same question I did  
10 before because I don't really understand. And look it, as the newest member here --  
11 Atty. Branch: Yes.  
12 Mr. Constance: — and relying on the documents.  
13 Atty. Branch: Yes.  
14 Mr. Constance: A couple of things are clear, I mean there is this issue of one, vis-a-vis the  
15 business, okay, one person. And the other, more or less, semantical (sic) arguments  
16 about whether the initial was vague or whether Mr. Hunter misperceived certain things --  
17 Look nobody is trying to make Mr. Tremblay's life miserable. And he was permitted the  
18 business on the, I think, along the grounds that Mr. Hogan as outlined pretty clearly and  
19 so I come back to that question again, the business about the additional people.  
20 Atty. Branch: Yes.  
21 Mr. Constance: You said that it was not something -- First it was something that you  
22 couldn't comply with, then it was something that, no necessarily it wasn't a deal breaker.  
23 So can you comply with this? Can you comply with this.  
24 Atty. Branch: We would like an opportunity to comply with it. Once the --  
25 Mr. Constance: Well the opportunity is there, I think it's always been there.  
26 Atty. Branch: We had -- I don't mean to play semantic games here. All I am saying is  
27 that a Board's decision has to carry more weight than a single code enforcement officer's.  
28 That Boards are there to clarify, Boards are there to settle disagreements about things.  
29 We had a disagreement about the one person limitation. We wanted an opportunity to try  
30 and have you understand what our concerns were, why we had this concern. That we  
31 weren't out there intentionally attempting to flaunt your site plan. That we had a  
32 reasonable basis for believing that we had the right to have some flexibility in the number  
33 of people involved in the operation. We were hoping that you would give us that  
34 flexibility, that you would say, you know, we look at it and we certainly wanted it  
35 limited. We can see where there might have been some permissible expansion within a  
36 given approval and allow us -- And then we would be able to move forward in  
37 compliance. Now if you announce that we have looked at everything, we've heard what  
38 you've had to say, Mr. Branch, more than once, and we are telling you here's what we  
39 believe our order to be. And --  
40 Mr. Constance: Was there any thought by you and your client in asking for a site plan  
41 review?  
42 Atty. Branch: It kind of went off the tracks pretty quickly on the site plan revocation, so  
43 if that it is what -- Again you guys are the lawful body here that we have to comply with.



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So if you told us we want you to operate under certain conditions and have a site plan review then that is what he has to comply with or pursue whatever remedies he can to change your mind, including a motion for rehearing and all of those things that take place. But we had -- We can't go to Mr. Hunter to say, "Answer our questions about the site plan that we have." Because I spoke with Mr. Hunter, we exchanged correspondence, we had very cordial discussions about it. So you guys are the arbiters, you're the judge, right? That's why people go to disputes. So now you get a court order, which is effectively what you guys have said. This is how you have to operate, this is what we interpret the site plan to be. And we lawfully complied with everything Mr. Hunter said, once he articulated it and we looked at the paperwork, we said, "Okay". And we have done that. The one issue and the only issue that we have continued to battle on and only exercising our rights to come before you and say, "Here's what we understood and why". You now have an opportunity to reject that. And I suspect you will. But I -- To presume that we won't comply with a clarified order just because we articulated that it would be difficult for us to do so is not fair to a law-abiding citizen, who ran his business -- You know they say he was violating it and we were working so we didn't know. So we are to presume a violation in the absence of complaints because people were working? There were no complaints. That's the bottom line.

Mr. Straw: There were after we knew.

Mr. Hogan: Forget about the complaints.

Atty. Branch: Yes.

Mr. Hogan: Forget about them.

Atty. Branch: Yes.

Mr. Hogan: Okay. What we have is a CEO --

Atty. Branch: Yes.

Mr. Hogan: -- issuing the citation stating that you weren't in compliance. That's the key here. It's not what anyone else is saying, it's that you were operating out of the scope and you did correct it. So here's the question because we could probably go on with this all night --

Atty. Branch: No.

Mr. Hogan: -- about what your interpretation is going to be and I'm not going to.

Atty. Branch: I understand.

Mr. Hogan: You know my position --

Atty. Branch: Yes.

Mr. Hogan: -- on it.

Atty. Branch: Yes.

Mr. Hogan: I don't want this business gone.

Atty. Branch: Okay.

Mr. Hogan: I want it operated under what we believe Mr. Tremblay represented to us, which was him operating it.

Atty. Branch: Yes.

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1 **TREMBLAY, cont.**  
2  
3 Mr. Hogan: It does need to be clarified so that's crystal clear if we were not to revoke  
4 the site tonight.  
5 Atty. Branch: Yes.  
6 Mr. Suennen: Excellent, let's do that. Let's start setting terms. Let's start setting the  
7 conditions and starting with the ones that you had indicated at the last meeting. Starting  
8 with -- Not more than five hours on any given day. This is yes or no.  
9 Atty. Branch: Okay. Sorry --  
10 Mr. Suennen: Not more than five hours --  
11 Atty. Branch: This guy's big head is in my way.  
12 Mr. M. Tremblay: Yeah, okay.  
13 Mr. Suennen: Okay, so not more than five hours on any given day.  
14 Atty. Branch: That's number one.  
15 Mr. Suennen: Not more than 300 cords per year.  
16 Mr. M. Tremblay: Yup.  
17 Atty. Branch: I'll just let him answer it.  
18 Mr. Suennen: Monday through Friday, not starting before 8:00 am and not continuing  
19 beyond 3:00 pm.  
20 Mr. M. Tremblay: That's different than the conditions.  
21 Mr. Suennen: Oh no, I understand --  
22 Mr. M. Tremblay: Is that what you're proposing?  
23 Mr. Suennen: No, no. This is what was stated at the previous meeting. So if you are  
24 saying something different, tell me now.  
25 Atty. Branch: No, that is what we stated. What we would be willing to do within the  
26 context of him being allowed to have a couple of people helping him; a maximum of two.  
27 Mr. Hogan: No.  
28 Mr. Suennen: Hang on, hang on, hang --  
29 Atty. Branch: I --  
30 Mr. Suennen: Time out. Time out. Let's agree to the conditions that are agreeable first  
31 before we get into the mess.  
32 Atty. Branch: All right.  
33 Mr. Suennen: Mondays through Fridays not before 8:00 am, not beyond 3:00 pm. If you  
34 are saying that is contingent on a number of employees, we'll step aside and come back to  
35 that one.  
36 Mr. M. Tremblay: Yeah, that's with the -- having at least one employee --  
37 Mr. Suennen: Okay, all right. We'll come back to that one.  
38 Mr. M. Tremblay: -- I'd agree to but --It'd have to be different hours because if I'm working  
39 by myself I sometimes don't go out there in the morning, I go in the afternoon.  
40 Mr. Suennen: Okay. No Sundays.  
41 Mr. M. Tremblay: That was -- I can do that.  
42 Mr. Suennen: No Sundays. Okay.  
43 Mr. Hogan: With no employees?

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- 1 **TREMBLAY, cont.**  
2  
3 Mr. M. Tremblay: With no employees I can drop Sundays.  
4 Mr. Suennen: All right. Are -- Again, standing down, Peter. You have stated that you'd  
5 be willing to cease the operation by March 31, 2017?  
6 Mr. M. Tremblay: Yes.  
7 Mr. Suennen: And we are not suggesting you have to cease the operation entirely. If you  
8 can move to a commercial site we'd love that. You know, we don't want to see you go out  
9 of business, we just want to see you comply with the terms --  
10 Mr. M. Tremblay: If I'm going to comply with the terms I'm going to keep on working. I'm  
11 going to keep so I can stay.  
12 Mr. Suennen: So you're saying that if we all agree to terms, you would continue the  
13 operation indefinitely, under those terms?  
14 Atty. Branch: No. If the condition was that he only had to have the one employee that  
15 would -- himself, one person Michael Tremblay. So that when he assumes room  
16 temperature there is nothing going on there. We may for all these --  
17 Mr. Hogan: Concessions.  
18 Atty. Branch: — offers.  
19 Mr. Hogan: Concessions. Concessions, really.  
20 Atty. Branch: All right, concessions, in an attempt to find peace but you just heard him  
21 say that even without any kind of exchange of people going back and forth and  
22 exchanging in value, whatever you want to call it, that he certainly would comply with  
23 everything else that you said. What he said was that if he is going to continue it as a solo  
24 operation than he may want to continue it as a solo operation after two years. He thought  
25 it would be helpful to the neighbors if they knew it ends in two years.  
26 Mr. Suennen: Okay.  
27 Atty. Branch: That was a hard fought thing that we decided we should offer to try to  
28 wrap this up peacefully.  
29 Mr. Suennen: Okay.  
30 Mr. M. Tremblay: I'll go back on the Sundays it'd be just loading trucks if it's just me, myself  
31 that's operating.  
32 Mr. Suennen: So, well — You're saying loading only?  
33 Mr. M. Tremblay: Yeah, loading only. No machinery.  
34 Mr. Suennen: No saws?  
35 Mr. M. Tremblay: No saws, no nothing.  
36 Mr. Suennen: How about conveyors?  
37 Mr. Hogan: How about the conveyor?  
38 Mr. M. Tremblay: No, that's loading the truck by hand.  
39 Mr. Suennen: Okay.  
40 Mr. M. Tremblay: Because I take my truck to work a lot of times so I load the truck Sundays  
41 and take it to work Monday nights. My Monday is a Sunday.  
42 Mr. Hogan: You sure you want to do that?  
43 Mr. M. Tremblay: I've been doing it all along.

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- 1 **TREMBLAY, cont.**  
2  
3 Mr. Hogan: Loading your truck without the conveyor?  
4 Mr. M. Tremblay: Yeah. I throw it all in by hand.  
5 Mr. Suennen: What hours?  
6 Mr. M. Tremblay: Sunday? Is the original hours is 9:00 am to 2:00 pm.  
7 Mr. Suennen: 9:00 am to 2:00 pm, all right. Not before 9:00 am not after 2:00 pm.  
8 [Mr. Straw]: And no machinery?  
9 Mr. M. Tremblay: And no machinery.  
10 Mr. Suennen: Right, no machinery.  
11 Atty. Branch: Voluntarily, we'll volunteer that. We're not here to fight, I'm telling you, I  
12 know people think differently.  
13 Mr. Litwinovich: Holidays as well would be --  
14 Mr. Suennen: The next one I was going to go was — We've talked about Sundays, we've  
15 talked about what we can do there. Legal State holidays.  
16 Mr. M. Tremblay: I can take those off. Like the 4th of July? You know what I mean —  
17 Mr. Suennen: Yup.  
18 Mr. M. Tremblay: It's not like Martin Luther King Day or —  
19 Mr. Suennen: Whatever the ten legal State holidays —  
20 Atty. Branch: Legal holidays.  
21 Mr. M. Tremblay: I get paid, like, seven legal holidays; 4th of July, Memorial Day, Labor  
22 Day —  
23 Mr. Suennen: I want to be clear. Not the ones you are paid for, we are talking the legal  
24 State holidays. The ones -- The ten State holidays -- The holidays that the State  
25 recognizes.  
26 Mr. M. Tremblay: I can take those off.  
27 Mr. Flynn: Which Martin Luther King Day is.  
28 Mr. M. Tremblay: It is. It is.  
29 Atty. Branch: But [Fast Day] -- Is Fast Day still in there? I think it is for Liquor Store  
30 employees but not for --  
31 Mr. Suennen: Yeah, right. I don't think that's one of the legal State holidays.  
32 Mr. Hogan: You would not work on the holidays? So you wouldn't do Sunday hours?  
33 Mr. M. Tremblay: Take the holidays off.  
34 Mr. Suennen: All right.  
35 Mr. Hogan: Okay.  
36 Mr. Suennen: This one I like. If the property is no longer owned and resided in by a  
37 member of the Tremblay family the business would cease.  
38 Mr. M. Tremblay: There's three of us own -- Me, my brother -- My mother is deceased now -  
39 Mr. Suennen: Understood.  
40 Mr. M. Tremblay: -- and it's turned over to us, the property.  
41 Mr. Suennen: So what I'm saying is should you --  
42 Mr. M. Tremblay: And my brother's daughter rents the house.  
43 Mr. Suennen: So what I'm saying is that if you sell the property or a Tremblay family

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1 **TREMBLAY, cont.**  
2  
3 member doesn't live there anymore the business is to cease.  
4 Mr. M. Tremblay: Yeah.  
5 Mr. Suennen: Okay. All right. So that leaves us with obviously the big one. It is -- I  
6 think Peter and I agree that the condition would be that Mr. Tremblay and only Mr.  
7 Tremblay would be doing any and all operations in this work which would include  
8 sawing, moving, stacking, delivering, loading, picking-up, etc. of the cordwood business.  
9 Atty. Branch: If that is the condition I'm going to have to answer this for Mr. Tremblay.  
10 If that's the condition we will have to look to whether we can comply with it. We don't  
11 want to mislead you. We want this to be equitable and not non-acrimonious.  
12 Mr. Suennen: Sure.  
13 Atty. Branch: But I'm not going to lie to you and say -- To what Mr. Constance said and  
14 to what Mr. Hogan said. I don't want to look at you, and I'm not looking at you and  
15 telling you, you tell us one employee, we're going to blow you off. But I also can't, in  
16 good faith, represent to you that no doubt about it we are going to comply. We will try  
17 our hardest to comply and we'd like an opportunity to try and comply.  
18 Mr. Constance: But respectfully, sir.  
19 Atty. Branch: Yes.  
20 Mr. Constance: Hadn't you thought of this eventuality before, that it would come down to  
21 this, that you'd have to comply with that? You haven't given any thought to that at all?  
22 Atty. Branch: No. And I'm not trying to be a wise guy. We hoped we could persuade  
23 you --  
24 Mr. Constance: Okay, that's fine.  
25 Atty. Branch: But when I go to court I always hope to persuade people and a fair amount  
26 of time we reach either an agreement or the judge agrees with me. When the judge  
27 disagrees with me, I don't like it, that doesn't mean that I think the judge is right. But  
28 now it's an order and if we don't comply there is no dispute, good faith or otherwise about  
29 what you guys said. That's what I'm looking for. Here it is, this is what you can do and  
30 not do and we're willing -- The only one that I can't equivocally say that we will comply  
31 with is that one.  
32 Mr. Suennen: Okay.  
33 Atty. Branch: Nor am I telling you we're going to say, you know, shove it.  
34 Mr. Hogan: Which is truly how we got here. Because that's the non-compliance issue.  
35 So we are exactly back at the revocation of your site plan --  
36 Atty. Branch: The only thing I would --  
37 Mr. Hogan: -- because you don't agree with the contention --  
38 Atty. Branch: I respectfully disagree. What I quibbled with Was Mr. Hunter's  
39 interpretation of what you guys said. And now if you say it , it's in a different light.  
40 Again, with no disrespect to Mr. Hunter, he is not the Board that enforces the law here.  
41 So I have the right to say to a neighbor, even if it's Mr. Hunter, geez you say I can't have  
42 this addition on here, I think I can and the building inspector may come in and say,  
43 Branch is right or Hunter is right and then we have to go to the ZBA. So, you know, the

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- 1 **TREMBLAY, cont.**  
2  
3 fact that Mr. Hunter says it doesn't mean it's the law. It's his understanding, looking at  
4 everything you guys looked and said this is how I interpreted it, I think you're out of  
5 compliance.  
6 Mr. Hogan: Perhaps I'm over simplifying it. Mr. Hunter is telling us that you had  
7 more than one employee operating  
8 Atty. Branch: Yes.  
9 Mr. Hogan: -- at a given time.  
10 Atty. Branch: Yes.  
11 Mr. Hogan: And he says that, that's a violation and the sitting Planning Board agrees  
12 with him.  
13 Atty. Branch: Yes, understood.  
14 Mr. Hogan: And based on that you're in violation of your site plan. So then it goes to  
15 the Selectmen. The Selectmen looks at the situation and they're requesting us to revoke a  
16 site plan for non-conformance. So —  
17 Atty. Branch: Yes and we —  
18 Mr. Hogan: We keep doing the same circle.  
19 Mr. Hogan: And he says that, that's a violation and the sitting Planning Board agrees  
20 with him.  
21 Atty. Branch: Yes, understood.  
22 Mr. Hogan: And based on that you're in violation of your site plan. So then it goes to  
23 the Selectmen. The Selectmen looks at the situation and they're  
24 requesting us to revoke a site plan for non-conformance. So --  
25 Atty. Branch: Yes and we --  
26 Mr. Hogan: We keep doing the same circle.  
27 Atty. Branch: No, because --  
28 Mr. Hogan: So the resolution tonight is for you to agree to operate it as what the  
29 Planning Board felt was going to be Mr. Tremblay operating it on his own. And --  
30 Atty. Branch: Okay. I'm just trying to be as candid as I can with you but one  
31 eventuality, it's not that we didn't consider it Mr. Constance, we hoped, because I did  
32 speak with Attorney Drescher that there would be some, perhaps, agreed upon, going  
33 forward thing that would allow him to have additional helpers because I disagreed with  
34 Mr. Hunter and Mr. Hunter may well be right based on what you are saying. I disagreed  
35 with Mr. Hunter's interpretation of the site plan approval. And I come to you —  
36 Mr. Lovejoy: One second. How would it go if we allowed you two people, if you ran  
37 this thing down — give you till snow of this next coming year? That way he can get his  
38 stuff off the ground and paid for and this will be the end of it. That way you can take two  
39 or three guys on and clean your thing up and walk away when snow falls next fall. You  
40 countered with us, we're countering with half the time you want. And I don't think that's  
41 unfair in this position.  
42 Mr. M. Tremblay: Is that something you're going to go for?  
43 Mr. Lovejoy: Well this is something that I'm talking about. This is another angle we can

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1 **TREMBLAY, cont.**

2  
3 go. This is not cut and dry what's being offered here tonight. This is a situation. We can  
4 work our way out of it. We have been neighbors for sixty years. You know, I've been  
5 allowed to walk on your property so, it's not a big deal.

6 Mr. Hogan: Why would you do that?

7 Mr. Lovejoy: That's my question. What's the benefit of —

8 Mr. M. Tremblay: I'm fifty-three years old. I want to get done when I'm fifty-five. That's  
9 why the whole proposal was — And then we're going to sell the property or his daughter  
10 is going to buy it.

11 Mr. Lovejoy: Give it until snow falls of this next year and set your goal. Don't bring in  
12 100 extra cords and say [inaudible].

13 Mr. Hogan: I don't like that.

14 Mr. Lovejoy: We would put a time limit on it for you to clean up the whole yard, you  
15 can sell your wood, everybody will be happy.

16 Mr. M. Tremblay: I'd have to go only one year but into March because that's the wood  
17 season, runs into March.

18 Atty. Branch: All I know is that this has become a revocation or nothing issue, when I  
19 viewed it as us making a pitch to you, maybe I am naive, but I thought there was at least a  
20 possibility that you guys would say, You know what? Maybe there was some loosey-  
21 gooseyness in the language. And I know you have your opinion otherwise and I accept  
22 that.

23 Mr. Hogan: Mm hmm.

24 Atty. Branch: But -- So, we'll go forward with some -- Not a site plan review but if  
25 everyone in the room could get behind a way to proceed, we'll agree to accommodate  
26 ourselves in that fashion and we'll allow that to make you an order. But I don't want to  
27 throw Mr. Hunter under the bus at and I don't want to throw myself under the bus.

28 Mr. Hogan: He's totally right. Mr. Hunter is totally right.

29 Atty. Branch: So now the Board has said that they interpret the plans as one employee  
30 and I simply asked an opportunity for us to comply with that and, I mean --

31 Mr. Lovejoy: I just gave you an option.

32 Mr. Constance: Mr. Chair, could we see if Mark has anything left on his checklist?

33 Mr. Suennen: To your point, we are discussing terms so it's not all or nothing.

34 Atty. Branch: Excuse me?

35 Mr. Suennen: To your point, we are discussing terms so it's not all or nothing. What --  
36 Just lay all the cards on the table -- What I am developing here is the checklist that will  
37 clarify the means by which you may continue to operate --

38 Atty. Branch: Yes.

39 Mr. Suennen: -- under the assumption that we -- that I am going -- that I would put  
40 forward a motion for a conditional revocation, such that, if you meet all these terms you  
41 are not revoked. The moment there is a violation no matter how minor the infraction you  
42 are instantly revoked and the site plan is null and void.

43 Atty. Branch: Well then I'm good on everything. If we could get some flexibility on the

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1 **TREMBLAY, cont.**  
2  
3 number of people but everything you have said so far -- And again, I just -- I don't want  
4 to give away Mr. Tremblay's position without talking to him privately as lawyers do  
5 sometimes.  
6 Mr. Suennen: So what I am telling you right now is that at least two of us have made it  
7 clear, there is absolutely zero flexibility on the number of people operating this business.  
8 Atty. Branch: Yeah, fair enough.  
9 Mr. Suennen: There's still two members who still have not voiced their opinion on that --  
10 Mr. Hogan: Would you like that? Would you like that right now? How are you on the  
11 number of employees?  
12 Mr. Litwinovich: I am stuck on one employee. It was on the application.  
13 Atty. Branch: Can we just say one person? I'm not trying to be a wise guy.  
14 Mr. M. Tremblay: All right, so what — Let's say — Where are we going with Dwight's  
15 proposal?  
16 Mr. Hogan: That to me requires a site plan review. That's something that's not going  
17 to be, you know -- If we move out of here and there's a crystal clear understanding that it  
18 is operating as yourself, operating it, I think we move on. And then you can always come  
19 in for a site plan review to try and modify it but like I said right from the start, I don't  
20 want to waste your time --  
21 Mr. M. Tremblay: You said no.  
22 Mr. Hogan: Yeah, well I don't want to waste your time.  
23 Mr. M. Tremblay: Yeah, so basically what he says is a no-go anyway?  
24 Mr. Hogan: I think it would be. I wouldn't agree to those.  
25 Atty. Branch: So I would encourage you to consider then a conditional revocation  
26 because that gives Mr. Tremblay the opportunity to comply.  
27 Mr. Suennen: Absolutely.  
28 Atty. Branch: Which is all I'm asking for and to pursue a site plan review in the interim.  
29 Mr. Hogan: Right.  
30 Mr. Suennen: All right, going on. So if we've established Mr. Tremblay and only Mr.  
31 Tremblay doing the work —  
32 Atty. Branch: Yup.  
33 Mr. Suennen: Let's talk hours. You had stated, Mike, that if it was only you, you want to  
34 go to the hours shown on the site plan as existing?  
35 Mr. M. Tremblay: Yes, 7:30 am to 7:00 pm.  
36 Mark Suennen: Okay.  
37 Mr. M. Tremblay: Because I work, you know what I mean? Depending on how I feel I might  
38 not go out there in the morning.  
39 Mr. Suennen: Understood. But still limited to the five hours?  
40 Mr. Hogan: It's like twelve years ago again.  
41 Atty. Branch: I wasn't here twelve years ago, thankfully. Nothing personal.  
42 Mr. Hogan: And I don't have any issue with the way he is representing it but that's how  
43 he represented it before too.



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1 **TREMBLAY, cont.**  
2  
3 Atty. Branch: And I would suggest as an alternative relief a conditional revocation  
4 subject to whatever terms you set forth with reference to which we do not have to agree  
5 or disagree, you're just going to set forth what they are and then we have to comply.  
6 Mr. Suennen: That's right.  
7 Atty. Branch: And then we would pursue a site plan review to see if we could get  
8 flexibility on that one issue and that would narrow it to that.  
9 Mr. Constance: But you do understand what Mark just said? If you don't comply you are  
10 revoked.  
11 Atty. Branch: Yes, crystal clear.  
12 Mr. Suennen: Okay. So we're talking the original 7:30 a.m. to 7:00 p.m., Saturdays the  
13 original 9:00 a.m. to 2:00 p.m.?  
14 Mr. M. Tremblay: Sundays is 9:00 a.m. to 2:00 p.m. Saturdays was actually 7:30 a.m. to  
15 7:00 p.m. too.  
16 Atty. Branch: Not for twelve hours during that time.  
17 Mr. Suennen: A five hour window — A five hour time period in the window.  
18 Atty. Branch: Yes.  
19 Mr. Hogan: 7:30 a.m. to 7:00 p.m., Monday through Friday.  
20 Atty. Branch: There was a specific hour limitation on Saturday that I don't recall it but it  
21 was there.  
22 Mr. Hogan: For what?  
23 Mr. Suennen: Monday to Saturday.  
24 Atty. Branch: Oh, Monday to Saturday.  
25 Mr. Suennen: 7:30 a.m. to 7:00 p.m., Monday through Saturday, Sunday is 9:00 a.m. to  
26 2:00 p.m.?  
27 Atty. Branch: Yes.  
28 Mr. Suennen: Okay.  
29 Mr. Straw: Under those hours we can't plan anything to go on without the possibility  
30 of him running his chainsaw business if you want to have people over.  
31 Mr. Suennen: That's correct. You live next to an operation that has been going on for  
32 however long it has been going on, twelve, fifteen years. Any neighbor of yours could  
33 run a chainsaw on their own property for as long as they want to. You at least have  
34 restrictions on how long he can run it. Whether or not you can hold a picnic in your  
35 backyard is not this Board's business.  
36 Mr. Straw: [inaudible] they don't have a business going, if they were to do that. And  
37 they wouldn't. Any reasonable neighbor wouldn't.  
38 Atty. Branch: Again, maybe some of these issues, with all due respect to the Board and  
39 everything else, and I'm sorry I don't mean to step you but in the site plan review there is  
40 nothing that is off the table in a site plan -- Am I right? There could be a give and take in  
41 the site plan review where you guys say you can do this but you can't do that.  
42 Mr. Hogan: Right because currently we are not modifying anything.  
43 Atty. Branch: I understand.

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- 1 **TREMBLAY, cont.**  
2  
3 Mr. Hogan: Currently we are going over what the original site plan --  
4 Mr. Suennen: We are defining what the existing site plan says.  
5 Mr. Hogan: And clarifying it. We are not moving hours, we are not extending them  
6 and we really don't want to reduce them.  
7 Mr. M. Tremblay: Just the only thing is I'm giving up is holidays which I don't care.  
8 Atty. Branch: Yeah, it's fine.  
9 Mr. Hogan: And you agree to that?  
10 Atty. Branch: Yeah.  
11 Mr. Suennen: And as a clarification while it is not written anywhere --  
12 Atty. Branch: Yes.  
13 Mr. Suennen: Just so that we have it in writing --  
14 Atty. Branch: Yup.  
15 Mr. Suennen: That there are no drivers coming for pick-up and that there's no drivers  
16 loading their own. It's always Mr. Tremblay loading and Mr. Tremblay driving out with -  
17 Mr. M. Tremblay: My own trucks.  
18 Atty. Drescher: And did I hear that Sunday was going to be no machinery?  
19 Mr. Suennen: And no machines on Sundays.  
20 Atty. Branch: That wasn't in the original but we voluntarily agreed to it --  
21 Mr. Suennen: Sure.  
22 Atty. Branch: -- because we're asking --  
23 Mr. Suennen: In good faith.  
24 Atty. Branch: Yeah, we're asking you guys to cut us some slack potentially on  
25 revocation or nothing. So we certainly can give that as well.  
26 Mr. Suennen: So then just to be clear those are the conditions that I am going to set forth  
27 in my motion but so that everyone understands, what is a violation?  
28 Atty. Branch: Yes.  
29 Mr. Suennen: Anything that exceeds the requirements here --  
30 Atty. Branch: Yes.  
31 Mr. Suennen: -- as determined by the any member of the Planning Board --  
32 Atty. Branch: Yes.  
33 Mr. Suennen: -- any alternate of the Planning Board --  
34 Atty. Branch: Yes.  
35 Mr. Suennen: -- any member of the Select Board --  
36 Atty. Branch: Yes.  
37 Mr. Suennen: And the Code Enforcement Officer.  
38 Atty. Branch: Yes.  
39 Mr. Suennen: If anyone of those parties finds an example of a violation --  
40 Atty. Branch: Yes.  
41 Mr. Suennen: As soon as the Planning Board is notified it is officially revoked.  
42 Atty. Branch: Yes.  
43 Mr. Straw: Is there only one piece of power equipment running on the property at any

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1 **TREMBLAY, cont.**  
2  
3 time?  
4 Mr. Suennen: No, that is not a requirement. It has never been a requirement of the site  
5 plan. He could run, if he is physically able to, he can run his chainsaw, his conveyor belt  
6 and his splitter all at the same time.  
7 [ ]: And the truck.  
8 Mr. Suennen: And have his truck running.  
9 Mr. Straw: But he cannot have any employees?  
10 Mr. Hogan: Correct.  
11 Mr. Suennen: He cannot have anybody except himself on site operating.  
12 Mr. M. Tremblay: What about my wife?  
13 Mr. Suennen: No. The stipulation is Mr. Tremblay and only Mr. Tremblay. The only  
14 thing she can come out is to bring you a glass of lemonade and to make sure you're not  
15 having a heart attack.  
16 Mr. M. Tremblay: Okay.  
17 Atty. Branch: Can you -- I know you said -- you just said okay but can you say that to  
18 him because --  
19 Mr. M. Tremblay: Yeah.  
20 Mr. Suennen: I'm being facetious but you understand that the stipulation is you and only  
21 you.  
22 Atty. Branch: Just say yes, Mike or not, or no. One or the other.  
23 Mr. M. Tremblay: Yes.  
24 Atty. Branch: Yes?  
25 Mr. M. Tremblay: Yes.  
26 Atty. Branch: Yes, for the record.  
27 Mr. Suennen: Anybody on the Planning Board have any issues with the terms as I have  
28 set them out?  
29 Mr. Constance: I'm in full agreement.  
30 Mr. Hogan: Did your wife bring anything big to the party?  
31 Mr. M. Tremblay: My wife used to help split wood. Because I do my own --  
32 Mr. Suennen: Do you want to allow the wife?  
33 Mr. M. Tremblay: I sell my own. I burn wood myself. So we do six cords a year, we go out  
34 there.  
35 Mr. Hogan: I don't ever want to have a discussion about his wife walking through the  
36 yard.  
37 Mr. Suennen: Understood. So you're willing to say that Mr. Tremblay and his wife --  
38 Mr. Hogan: His current wife.  
39 Mr. Suennen: His current wife.  
40 Mr. Hogan: Because I don't want him getting a new young one or something that'll stir  
41 everything up.  
42 Atty. Branch: Mr. Tremblay has been married enough times that he doesn't need to go  
43 down that road again.

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1 **TREMBLAY, cont.**  
2  
3 Mr. Suennen: Okay.  
4 Mr. Hogan: But if he got a younger wife —  
5 Atty. Branch: No, this wife. What's her name?  
6 Mr. M. Tremblay: Freda.  
7 Atty. Branch: Freda?  
8 Mr. M. Tremblay: Yup.  
9 Mr. Hogan: Because I don't want to have to have a discussion with your wife walking  
10 through the yard carrying an arm full of wood as to whether she's employed with you or  
11 not.  
12 Atty. Branch: No, I appreciate —  
13 Mr. Hogan: I want her in the business plan.  
14 Atty. Branch: I appreciate that clarification because it is not a violation for her to be  
15 there.  
16 Mr. Hogan: Because you don't want to deal with that.  
17 Mr. Suennen: Okay, so let's make a clarification then. If Freda is allowed to be  
18 operating as well -- is allowed to be conducting the business on the site with the  
19 assumption that Mr. Tremblay is there all the time. She cannot be working without him?  
20 Atty. Branch: That's fine.  
21 Mr. M. Tremblay: That's fine, she'd only be there if I was there. We do our own wood  
22 together sometimes, that's it.  
23 Mr. Hogan: Okay.  
24 Mr. Suennen: All right. Are we ready?  
25 Mr. Hogan: Okay. Were there any quick comments on anything you think we may not  
26 have hit from the audience and I need your name and address.  
27 Mrs. Ridge: Susan Ridge, 12 Moss Drive.  
28 Mr. Hogan: Okay.  
29 Mrs. Ridge: If Mike's wife is helping on a Sunday or whenever does that mean that  
30 there can be two or more equipment going?  
31 Mr. Hogan: There's no equipment on Sunday.  
32 Mrs. Ridge: All right.  
33 Mr. Hogan: Other than the truck.  
34 Mrs. Ridge: Okay, thank you.  
35 Mr. Lovejoy: They have the nicest dogs in the world they always wipe themselves when  
36 they're down there at the site working.  
37 Mr. Suennen: That's excellent. I think I'll leave that out of the motion.  
38 Mr. Hogan: Was there anyone else?  
39 Mr. B. Tremblay: Bob Tremblay. I just wanted to ask Mr. Straw what the concern is about  
40 the equipment. We had a -- My brother had a decibel thing, you know, check at different  
41 places and it's like seventy decibels.  
42 Mr. Hogan: Okay but we are not approving or disapproving any new or old equipment.  
43 That was the previous site plan.

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1 **TREMBLAY, cont.**

2

3 Mr. B. Tremblay: Okay but I mean it seems like he's concerned about, you know,  
4 complaining about the equipment.

5 Mr. M. Tremblay: Plus I put up a berm along the whole length of the property.

6 Mr. Straw: There's a lot to be said about how that -- there's a lot to be said about that.

7 Mr. Hogan: Okay.

8 Mr. B. Tremblay: I just, whatever, I just wanted to bring that out, you know what I mean.

9 We had a decibel thing and it was way below. Motorcycles going by are --

10 Mr. Straw: Sure it was but -- running his chainsaw out near the house --

11 Mr. Hogan: We are not doing the site plan again.

12 Atty. Branch: I would just encourage Mr. Straw, and I mean this sincerely, I won't be  
13 billing Mr. Tremblay for this, to submit a letter to me as to anything he wants by way of  
14 conditions and we would consider them. Fairly and reasonably because I think if we got  
15 Mr. Straw and the other abutters on board at a site plan review hearing in some manner  
16 that might influence a little bit, your decision. Maybe not, I understand.

17 Mr. Suennen: And just to be clear, there is no noise ordinance in the Town of New  
18 Boston. With that said we would only ask that Mr. Tremblay as a good neighbor,  
19 maintain your equipment so that it meets what a normal person would -- what a normal,  
20 reasonable person would expect it to make. So with that said I make a motion that the,  
21 how do I want to do this?

22 Mr. Hogan: Did you have anything to comment?

23 Atty. Drescher: There is no power on earth that could make me say one more word.

24 Mr. Hogan: You don't think we missed anything that was —

25 Atty. Drescher: I think your --

26 Atty. Branch: I would just like to add that Drescher is not permitted on the site.

27 Mr. Straw: If one of us neighbors finds him to not be in compliance with whatever is  
28 going to come about here, how does that have to be enforced?

29 Mr. Hogan: Through the Code Enforcement Officer.

30 Mr. Straw: He has to catch him again?

31 Mr. Suennen: Yes.

32 Mr. Hogan: So videotape it and bring it in and show him. I mean everybody's phone  
33 does that, you know what I mean? Everyone's phone has a video on and it's time stamped  
34 and the whole bit. So do that and bring it in and take it from there. He's the Code  
35 Enforcement Officer. He's the one who does it.

36 Mrs. Morrison: Marianne Morrison, I live at 28 Moss Drive. I was at the first hearing and  
37 I agree that we did not want to shut him down. Our biggest concern was that it was going  
38 to become a bigger operation. I still feel that if you could be in compliance but it feels  
39 like there is a total lack of respect for any enforcement whatsoever and that's what  
40 bothers me. It didn't matter what he was told when he was told to stop. And that's my  
41 concern that — and Jim's, I think too, it's like what happens if —

42 Mr. Straw: Were concerned it's going to happen again.

43 Mr. Hogan: Well it's very possible that his attorney's bill will make him compliant.

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1 **TREMBLAY, cont.**

- 2
- 3 Ms. Morrison: It's unfortunate that it had to come to that.
- 4 Mr. Hogan: It is. It is. And I think he'll reflect back and figure out how many cords of  
5 wood it took to pay for him and consider whether it was worth it.
- 6 Atty. Branch: I will say and I think Mr. Hunter would agree but maybe I'm wrong that  
7 on many of the issues that he specified there was compliance. It was the multiple  
8 employees. So we have shown a willingness to comply with the lawful authority of the  
9 Town.
- 10 Mr. Hogan: Our game here is to move forward.
- 11 Atty. Branch: Okay.
- 12 Mr. Hogan: Okay.
- 13 Mr. Suennen: So I am going to make a motion:

14

15 I **MOVE** that in accordance with the wishes of the Select Board, that the Planning Board  
16 is conditionally revoking the site plan approval for the Non-Residential Site Plan for  
17 cordwood processing and sales at 194 Parker Road, Tax Map/Lot #3/122 in the  
18 Residential-Agricultural "R-A" District, subject to that if Mr. Tremblay maintains his  
19 business in accordance with the conditions as set forth, the revocation shall be postponed.  
20 Upon any violation, no matter how minor, of any of these conditions as identified by any  
21 member of the Planning Board now or future, any alternate of the Planning Board, any  
22 member of the Select Board now or future and the Code Enforcement Officer, the  
23 approval is revoked.

24

25 The conditions being:

- 26
- 27 1. That Mr. Tremblay and only Mr. Tremblay shall be onsite with the exception that  
28 he may use his wife, Freda, only when Mr. Tremblay is on site for work on the  
29 operation.
  - 30 2. That not more than 300 cords of wood a year shall be processed.
  - 31 3. That not more than five hours per day shall be involved in the operation,  
32 exclusive of the transportation offsite.
  - 33 4. That the hours of operation shall be Monday through Saturday not before 7:30  
34 a.m. and not past 7:00 p.m. On Sundays not before 9:00 a.m. and not after 2:00  
35 p.m. with the additional stipulation that Sundays there shall be no machines  
36 except for Mr. Tremblay's vehicle and that there shall only be loading of the truck  
37 manually.
  - 38 5. That there shall be no work on any legal state holiday.
  - 39 6. That if the property is no longer owned by and resided in by a member of the  
40 Tremblay family the business shall cease.
  - 41 7. That no driver shall come and pick up their own wood and no driver shall load  
42 their own wood.
- 43

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- 1 **TREMBLAY, cont.**  
2  
3 Mr. Straw: How deep does that go with the family members?  
4 Atty. Branch: Freda alone.  
5 Mrs. Ridge: What about the five hours?  
6 Mrs. Morrison: Yeah, the five hours wasn't in there.  
7 Ms. Strong: Yes it was.  
8 Mr. Suennen: Not more than five hours per day.  
9 Mrs. Ridge: Okay, thank you.  
10 Mr. Constance: Second.  
11 Atty. Branch: This doesn't prejudice his right to come before you for a site plan review.  
12 I don't need that as part of the motion as long as it --  
13 Mr. Suennen: Agreed, yes. Any citizen has the right to petition before the Board.  
14 Mr. Straw: I don't think you've answered my question. As far as a member of the  
15 family living in the house, how deep can that go? Cousins, nephews, great-aunts, great-  
16 nephews, I mean --  
17 Mr. B. Tremblay: My daughter is going to -- We're buying the house. I'm buying the house.  
18 I'm buying the house and my daughter is going to rent it from me.  
19 Mr. Hogan: Now when that happens, under our provision, can they still run the  
20 cordwood business?  
21 Mr. Suennen: Say again. When his daughter owns the house?  
22 Mr. Hogan: Yes.  
23 Mr. Straw: No, not after the house --  
24 Mr. Suennen: If the property is no longer owned and resided in by a member of the  
25 Tremblay family. If his daughter owns it and lives it? Yeah, they can continue the  
26 business.  
27 Mr. Hogan: Okay.  
28 Mr. M. Tremblay: I have no plans -- because I plan on getting done.  
29 Mr. B. Tremblay: We have a two year plan to retire.  
30 Mr. Suennen: Again, notice that the stipulations did not restrict you to that two year plan  
31 --  
32 Mr. M. Tremblay: Yup.  
33 Mr. Suennen: -- if you have to go to two and a half. Obviously the neighbors would  
34 appreciate the two year commitment.  
35 Mr. Straw: When he stops the business, nobody else can pick it up? It's done?  
36 Someone would have to come back in? He can't sell that business?  
37 Mr. Suennen: Remember it's very clear that only Mr. Tremblay is allowed to operate. If  
38 he sells the business --  
39 Mr. Straw: That's what I'm saying. I just want to clarify it.  
40 Mr. Suennen: If he sells the business and it's still him operating, he can still operate it,  
41 but he and only he and Freda.  
42 Mr. Hogan: Okay so we have motion and we have it seconded. Any discussion  
43 amongst the Board? We haven't missed anything? All in favor?

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1 **TREMBLAY, cont.**

2

3 Mr. Constance: Aye.

4 Mr. Suennen: Aye.

5 Mr. Litwinovich: Aye.

6 Mr. Hogan: Aye. So it's ayes unanimous. Okay. Thank you for your time.

7 [General conversation as the meeting ended.]

8

9 **Continued Discussion, re: Wetlands Conservation and Stream Corridor District**

10

11 Present in the audience were Barbara Thomson and Betsy Whitman from the  
12 Conservation Commission.

13 The Chairman asked if there were comments from the audience. Barbara Thomson  
14 answered that they were present on behalf of the Conservation Commission and were only  
15 present because they saw the discussion posted on the agenda.

16 Mark Suennen asked if the pieces of legislation provided by the Coordinator were  
17 relative to this discussion. The Coordinator answered yes.

18 Mark Suennen commented that the language used for the Town of Nottingham's  
19 ordinance was interesting, i.e., the 200 x 200 square or a 4,500 sf area of land shown on the plan.

20 Mark Suennen believed the Board needed to discuss whether or not the contiguous  
21 upland area requirement of the Wetlands Conservation and Stream Corridor District belonged in  
22 the Zoning Ordinance or if it should be moved to the Subdivision Regulations. He felt that the  
23 district should remain in the Zoning Ordinance and stated that it was less difficult to obtain a  
24 variance from the ZBA for the requirement than it was to obtain a wetlands permit and a CUP.  
25 He stated that the Board would not be adding any burden by leaving the district in the Zoning  
26 Ordinance. The Chairman and Joe Constance agreed with Mark Suennen.

27 Mark Suennen indicated that a recommendation had been made to the Board to require a  
28 shaded or delineated plan to show the contiguous space. Joe Constance noted that the plan  
29 would not have actual dimensions. Mark Suennen stated that he did not have a problem with the  
30 requested requirement, however, he did not know if he wanted that portion recorded. He  
31 explained that it could be a separate sheet of the plan to be kept in the Planning Boar file but  
32 would not have to be recorded. Joe Constance and David Litwinovich agreed with Mark  
33 Suennen. The Coordinator noted that, based on the Board's discussion this evening, the  
34 delineation of the contiguous upland area could be made a plan requirement of subdivisions and  
35 site plans and the relevant changes made in those regulations rather than changing the Zoning  
36 Ordinance. Mark Suennen agreed. He asked about lots of record and the Coordinator replied  
37 that they would not necessarily be subject to that requirement anyway.

38 The Board decided that the proposed changes to the Subdivision and Site Plan regulations  
39 would be proposed by the Coordinator in the yearly look at those documents to see if anything  
40 else needed to be updated.

41

42

43



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1 **Continued discussion, re: next Zoning Ordinance question, re: existing zoning districts and**  
2 **uses.**

3 David Litwinovich stated that his research project had determined that most of the Town  
4 of New Boston's uses were also uses in other towns. He stated that he could not come up with  
5 any uses that were not already covered.

6 David Litwinovich indicated that there was some overlap between the Town's Industrial  
7 District and Small-Scale Planned Commercial District and stated that other towns allowed for  
8 commercial uses to be permitted in their Industrial Districts as well as the industrial uses. The  
9 Coordinator pointed out that currently there was only one parcel zoned "Industrial" and it was  
10 for the cabinet shop located at the corner of Byam and River Roads. Mark Suennen stated that it  
11 was not a bad idea to allow those combined uses in the Industrial district.

12 David Litwinovich stated that he liked the way the Town of Dunbarton listed its uses  
13 using a table and suggested looking into that possibility as it cut down on the amount of space  
14 needed in the Zoning Ordinance.

15 The Board thanked David Litwinovich for his work on this topic.

16  
17 **MISCELLANEOUS BUSINESS AND CORRESPONDENCE FOR THE MEETING OF**  
18 **MARCH 24, 2015.**

- 19  
20 1. Distribution of the February 24, 2015, meeting minutes, for review and approval at the  
21 March 24, 2015, meeting.

22  
23 Mark Suennen **MOVED** to approve the minutes of February 24, 2015, as written. Joe  
24 Constance seconded the motion and it **PASSED** unanimously.

- 25  
26 2. Endorsement of an amended Earth Removal Permit for Dugout Gravel, LLC, formally  
27 Towns Family Trust, Tax Map/Lot #13/6, Lyndeborough Road & 2nd NH Turnpike, by  
28 the Planning Board Chairman.

29  
30 The Chairman endorsed the above-referenced permit.

- 31  
32 3. Construction Services Report dated February 10, 2015, from Northpoint Engineering,  
33 LLC, for Twin Bridge Estates, Phase II, for the Board's information.

34  
35 The Chairman acknowledged receipt of the above-referenced matter; no discussion  
36 occurred.

- 37  
38 4. Construction Services Report dated February 11, and 17, 2015, from Northpoint  
39 Engineering, LLC, for Forest View II, for the Board's information.

40  
41 The Chairman acknowledged receipt of the above-referenced matter; no discussion  
42 occurred.

43

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1 **MISCELLANEOUS BUSINESS, cont.**  
2

3 5. Letter copy dated March 5, 2015, from David J. Preece, AICP, Executive Director,  
4 SNHPC, to Peter Flynn, Town Administrator, re: 2015 SNHPC New Boston Traffic  
5 Counting, for the Board's information.  
6

7 The Coordinator advised that if the Board was interested they could ask for a counter to  
8 be placed on specific roadways.

9 Mark Suennen asked if the Road Agent had seen the above-referenced letter. The  
10 Coordinator answered that she was not sure but noted that it had been sent to Public Works  
11 Directors. It was noted that the closing of the Riverdale Road Bridge for replacement might  
12 make a difference to where the SNHPC would place their counters.  
13

14 6. Letter copy dated March 17, 2014, from Peter R. Flynn, Town Administrator, to Peter  
15 Hogan, re: Planning Board Appointment, for the Board's information.  
16

17 The Chairman acknowledged receipt of the above-referenced matter; no discussion  
18 occurred.  
19

20 7. Letter copy with attachment dated March 18, 2015, from Kevin Leonard, P.E.,  
21 Northpoint Engineering, LLC, to Nic Strong, Planning Coordinator, re: Forest View II,  
22 Phase II Construction Monitoring Estimate, for the Board's information.  
23

24 The Chairman acknowledged receipt of the above-referenced matter; no discussion  
25 occurred.  
26

27 Mark Suennen **MOVED** to adjourn at 8:45 p.m. Joe Constance seconded the motion and  
28 it **PASSED** unanimously.  
29  
30

31 Respectfully submitted,  
32 Valerie Diaz, Recording Clerk

Minutes Approved: