

**MINUTES
NEW DURHAM PLANNING BOARD
4 FEBRUARY 2014**

Chair Craycraft called the meeting to order at 7:17 pm.

Roll Call: Bob Craycraft (Chair), Scott Drummey (Vice-Chair), Paul Raslavicus, Dot Veisel, David Swenson (Selectmen's Representative), Terry Chabot (Alternate), Craig Groom (Alternate), Recording Secretary Amy Smith.

Others Present: Videographer Jim Ladd, Town Administrator Jeremy Bourgeois, Atty. Justin Richardson (Town Attorney), Atty. Art Hoover (representing Mr. Weldon), Atty. John Cronin (representing Mr. Weldon), Brad Jones, Mark Fougere; abutters Angela Pruitt, Tom & Tammy Hutchinson, Jim & Sue Jagielski, Brenda Conery; residents/property owners David Bickford, Debra Jelley, David Shagoury, James Fenske, Jan & Dan Bell, Chris & Kathy Cairns, Richard Duffy, Mark Sullivan, Dennis Neyland, Fred Quimby, Douglas Peck, Royal Smith, Joan Swenson, Cynthia Quimby, Kenneth Reall, John Goyette, Edward Dupont, Susan Raslavicus, Fred Booth, LeeAnn Beals, Ann Brady.

Public Input: Chair Craycraft asked the audience if there was anything not on the agenda they wished to bring up. There was not.

PUBLIC HEARING – Proposed Zoning Amendments (recessed from 21 January 2014)

Chair Craycraft opened the public hearing for the proposed zoning amendments. Chair Craycraft stated the first proposed amendment was approved for the ballot at the 21 January 2014 public hearing. Chair Craycraft read proposed Amendment 2 and noted the changes that were made as a result of public input at the 21 January 2014 hearing. Chair Craycraft opened the hearing to public comment. There was none. Mr. Swenson noted a quotation mark should be added to the end of the sentence. **Vice-Chair Drummey made a motion to approve Amendment 2, as corrected, for inclusion on the Town ballot. Ms. Veisel seconded the motion. The motion was unanimously approved.**

**ACCEPTANCE & PUBLIC HEARING – Penny Williams –release of woodlot status
Map 240 Lot 37 – Penny Lane**

Chair Craycraft opened the Acceptance and Public Hearing for Penny Williams for release of woodlot status of Map 240 Lot 37 located on Penny Lane. Chair Craycraft read a letter from the applicant's agent, surveyor Paul Zuzgo, requesting the hearing be recessed until 4 March 2014. **Vice-Chair Drummey made a motion to recess the ACCEPTANCE & PUBLIC HEARING for Penny Williams for release of woodlot status of Map 240 Lot 37 located on Penny Lane until 4 March 2014 at 7 pm at the New Durham Library. Mr. Raslavicus seconded the motion. The motion was unanimously approved.**

Letter of Resignation – Alternate member Cameron Quigley

Ms. Smith read a letter of resignation from Alternate member Cameron Quigley. **Mr. Raslavicus made a motion the Board accept Mr. Quigley’s resignation. Vice-Chair Drummey seconded the motion. The motion was unanimously approved.**

Proposed Golf Course – Town of Middleton

Vice-Chair Drummey informed the audience that there is a proposed 18 hole golf course, restaurant, and hotel with associated meeting space being proposed in the Town of Middleton. Vice-Chair Drummey expressed concern with the potential of increased traffic on New Durham Roads and the environmental impacts on water quality and the use of fertilizer. Vice-Chair Drummey stated the Planning Board for the Town of Middleton will be holding a public hearing on the proposal 13 February 2014. Vice-Chair Drummey also stated he will be attending as a citizen and will report back to the Board.

Review of Mail

Board members reviewed the mail.

ACCEPTANCE & PUBLIC HEARING – Russell Weldon –site plan review-seasonal water ski and activity camp to be rented at Cove Cottages - Map 119 Lots 11 & 32 – 298 Merrymeeting Road

Chair Craycraft opened the public hearing for Russell Weldon for a site plan review for a seasonal water ski and activity camp to be rented at Cove Cottages - Map 119 Lots 11 & 32 located at 298 Merrymeeting Road. Chair Craycraft explained the public hearing procedure to the audience noting the first step is to ensure the application is complete. Chair Craycraft also noted the Board has received several letters from landowners regarding the proposal.

Board members reviewed the application materials and accompanying plans. Ms. Smith noted the checklist was prepared by the applicant’s agent with a couple of minor notes she added. Ms. Smith also noted the cover letter submitted by Mr. Jones, when the application materials were submitted, states a “Project Narrative (to be provided under separate cover by Attorney)” was never submitted. Chair Craycraft asked if a representative for the applicant had a narrative for distribution. Atty. Arthur Hoover stated it is not in a format for distribution and he just would read it.

Mr. Raslavicus asked Ms. Smith if any written waiver requests were submitted. Ms. Smith stated there were not. Chair Craycraft asked Ms. Smith if all abutters have been notified and all fees paid. Ms. Smith stated all abutters were notified. Ms. Smith noted the fees were paid, with the exception of the recording fees, which are payable upon approval. Board members reviewed the Site Plan Review Checklist and noted the following items were missing: width and class of

existing roads; existing impervious surfaces with square footage listed; existing signs, walls, or fences; significant wildlife and fishery habitats; pedestrian circulation plan; special exception permit; traffic impact analysis; changes in municipal costs; impact on public safety. Mr. Raslavicus noted the impact statement needs to be in writing and all questions must be answered, if a question does not apply, it should be stated as such, along with the reason it doesn't apply.

Chair Craycraft asked if a representative of the applicant wished to address the Board. Atty. Hoover stated he would defer the narrative and suggested the Engineer, Mr. Jones, address the Board's questions. Mr. Jones stepped forward and referred to a posted plan of the site. Mr. Jones stated the only change to the site is the relocation of the 'meeting house' which the Board has already reviewed. Mr. Jones noted the roads depicted on the plan are drawn to scale and the width is variable. Chair Craycraft asked Mr. Jones to add a note to the plan stating such and also to state the class of the road on the plan. Mr. Jones noted page C3 of the plan set lists the impervious surfaces. Mr. Jones also noted pages C1 and C2 of the plan set show a wall, an existing sign, as well as, a cross walk. Board members continued to review the plan and Mr. Jones answered Board member's questions about lighting, well locations and well lines.

Chair Craycraft referred back to the checklist and noted the applicant's agent checked off 'not applicable' for the 'conditional use or special exception permit'. Atty. Hoover stated Atty. Cronin would address this point. Atty. Cronin introduced himself. Atty. Cronin stated he did not attend the meetings where the project was discussed, however, he did watch the meetings. Atty. Cronin thanked the videographer and stated he did a great job. Atty. Cronin stated he first wanted to address the Board's Rules of Procedure regarding recusal. Atty. Cronin also stated the Supreme Court has ruled that if potential conflicts are not raised at the first instance then that right is waived. Atty. Cronin stated the Board's Rules of Procedure state that if a Board member has an interest different than the general public then they should step down. Atty. Cronin also referred to the 'juror's standard'. Atty. Cronin stated he knows recusal is an issue for the Board but stated it became apparent to him from watching the video that there were certain members, who owned property on the Lake, that had an interest different than the general public and believed the proposed use may have a negative impact on their use and enjoyment of the Lake. Atty. Cronin asked the Board and those members to consider recusal. Atty. Cronin then explained the 'juror's standard' in the State of New Hampshire.

Atty. Cronin next addressed the issue regarding use. Atty. Cronin stated at previous meetings there was discussion with Atty. Hoover and others regarding whether there was a change in use. Atty. Cronin stated the Building Official stated the existing use is residential. Atty. Cronin stated he believes the cottages were built in the 1940's and have been continuously used by people to live, sleep, and recreate. Atty. Cronin stated that will not change with the current proposal as no new buildings, hardscape, or impervious soils will be generated. Atty. Cronin also noted the Board's jurisdiction stops at the water line as was noted in the memo drafted by the Town's Building Official. Atty. Cronin referred to the Site Plan Review Regulations and read a portion of Section I (page 6) which states when review authority is applicable. Atty. Cronin then stated it is his contention that the Board has no jurisdiction to conduct a site plan review as the property is currently a residential use and will remain a residential use. Atty. Cronin continued to state the Town's Building Official called the use residential and it is defined on the tax card as residential. Atty. Cronin stated the applicant submitted the application in good faith and is willing to concede

to reasonable conditions even if the Board does not have the jurisdiction to conduct a site plan review.

Atty. Cronin referred to the Town's Zoning Ordinance regarding campgrounds and State RSA 216 which regulates campgrounds. Atty. Cronin noted per the Town's own regulations the Board cannot consider the cottages 'camping cabins' as the Town's Zoning Ordinance prohibits 'camping cabins' from having a connection to water and sewer and the cottages are connected to water and sewer. Atty. Cronin stated one of the Board members questioned if Zoning Board action is required. Atty. Cronin continued to state he does not believe there is any action required on the part of the Zoning Board of Adjustment.

Chair Craycraft asked, for the record, if there are any Planning Board members who felt they should recuse themselves. Mr. Swenson stated he resides on Merrymeeting Lake. Mr. Raslavicus stated he resides on Merrymeeting Lake and noted he is very inquisitive and asks many questions but he does that for everything. Atty. Cronin stated as residents of the Lake, Mr. Raslavicus and Mr. Swenson may have interests different than the general public and requested they both step down. Mr. Swenson asked Atty. Cronin on what basis he formed his opinion. Atty. Cronin stated he watched the video and there were many questions that were asked about the Lake and about the photographs on the website. Alternate members Terry Chabot and Craig Groom both stated they lived on the Lake. Chair Craycraft stated he has been involved with the Merrymeeting Lake Association for many years doing water quality testing. Ms. Veisel stated she is involved in a legal issue where Atty. Hoover is opposing counsel. Ms. Veisel stated she does not see this as a problem and asked Atty. Hoover if he did. Atty. Hoover stated he did not. Chair Craycraft stated he does not believe he has any conflict of interest and feels he can be impartial. Vice-Chair Drummey stated Atty. Cronin watched one or two videos and saw Mr. Raslavicus asking many questions about this project. Vice-Chair Drummey noted Mr. Raslavicus is like that about everything all over Town and there is nothing he saw about Mr. Raslavicus' questions on this particular project that is any more or less inquisitive than any other project. Vice-Chair Drummey also stated Merrymeeting Lake is the core of New Durham and any resident would be interested in this case. Vice-Chair Drummey noted he lives close to the Farmington line, far away from the Lake, and he is very interested in this case. Mr. Swenson stated he believes the Board members gave full disclosure and noted none of the Board members are abutters to the site. Ms. Veisel stated from what she understood Atty. Cronin to state was that it is up to the individual to decide whether they can be impartial. Atty. Cronin stated he believes it is up to the Board. Mr. Swenson asked Atty. Cronin if he is asking any specific Board members to recuse themselves. Atty. Cronin stated he is asking Mr. Raslavicus and Mr. Swenson to recuse themselves. Mr. Swenson asked Atty. Cronin if he recognized he and Mr. Raslavicus were not the only Board members who live on the Lake. Atty. Cronin stated he did. Chair Craycraft stated it is up to each Board member to decide if they should step down. Chair Craycraft also noted he did not see anything out of the ordinary at the meetings where the project was discussed that warrant anyone to step down. Ms. Veisel asked Mr. Raslavicus, Mr. Swenson, and Mr. Groom if they felt they could be unbiased in this case. All answered in the affirmative. Ms. Veisel stated she was satisfied with that.

Mr. Raslavicus asked Atty. Cronin to summarize his case. Mr. Raslavicus stated as he understood the presentation Atty. Cronin is stating the property is currently residential and will remain residential. Mr. Raslavicus questioned if that is the case then why was a site plan review

application submitted. Atty. Cronin stated the Board asked Atty. Hoover to have his client present one. Atty. Cronin further stated his client didn't want to debate with the Board and was open to reasonable conditions. Atty. Cronin also stated Boards typically like to have existing condition plans as a matter of record and since the property is so old there isn't a site plan on file.

Mr. Raslavicus stated the Board felt the proposal is not a natural expansion but a change of use and therefore a site plan review was required. Mr. Raslavicus noted this is assuming the property is not residential but a use allowed by special exception. Mr. Raslavicus noted the beginning of Cove Cottages predates the Town's Zoning Ordinance. Mr. Raslavicus stated he believes the property has previously been before the Planning Board requesting various uses and the requests were granted. Mr. Raslavicus also stated he believes the property was granted a special exception. Atty. Cronin stated he does not have any records to that affect and it is contrary to what was stated by the Building Official and what the Assessor says. Atty. Cronin stated people are going to continue to do what they've done on the properties since the 1940's eat, sleep, and recreate. Atty. Cronin also stated whether the property is rented to one person or multiple people or one week or many weeks does not change what is being done on the property. Atty. Cronin also noted the fact that the property is going to be rented to a water skiing camp does not change anything. Ms. Veisel asked if the supervision of minor children altered things. Atty. Cronin stated it may on the State level but the Planning Board's realm is land use. Ms. Veisel stated there may not be physical changes to the land but there are changes to the use. Atty. Cronin stated he disagreed. Atty. Cronin referred back to the Site Plan Review Regulations which state a site plan review is triggered by development, change, or expansion of non-residential use or for multi-family dwelling units. Vice-Chair Drummey stated the project is not multi-family dwelling units and noted with the exception of possible siblings the various people at the camp would not be related and not be considered a family. Atty. Cronin stated if that is the consensus of the Board they now need to determine whether they believe the use is non-residential.

Mr. Swenson asked several questions regarding the septic system. Mr. Jones stated the relocation of the meeting house caused a need for the systems to be upgraded. Mr. Jones stated there is now one community system that is further away from the Lake. Mr. Swenson asked if the upgraded system has increased in capacity or size. Mr. Jones stated he thinks so. Mr. Swenson asked Atty. Cronin if he felt that was an expansion of what Atty. Cronin is calling a residential use. Atty. Cronin stated that is irrelevant as a residential use. Atty. Cronin also stated he does not wish to debate with the Board, he is asking them to decide whether the use is residential.

Chair Craycraft stated Ms. Smith pulled the tax card for the property (Map 119 Lot 011) and the card does indicate the property is in the Residential – Recreational - Agricultural zone, however, the property is being taxed as commercial land and buildings. Atty. Cronin stated the tax card available on-line shows the property in the Residential – Recreational - Agricultural zone and lists the use as 'motels'. Atty. Cronin submitted a binder containing various documents including the property card that was printed on-line. A document entitled "Requests for Findings of Fact and Rulings of Law" was also submitted by Atty. Cronin.

Atty. Richardson stated prior to the Board getting into the merits of the case and whether or not the use of the property is residential the Board should get back on track and determine if the application is complete. Alternate member Craig Groom read the definition of 'commercial use'

as defined in the Zoning Ordinance to the audience. Atty. Richardson stated the Town's Zoning Ordinance is pretty clear on what a 'commercial use' is. Atty. Richardson also stated an application was submitted to the Board and the application should be acted upon.

Board members continued to review the application and the checklist. Ms. Veisel stated she felt the Board should have a traffic analysis and an impact study. Board members agreed. Mr. Raslavicus suggested a pedestrian circulation plan and also referred to the Site Plan Review requirements found in Section V- B – 12 (page 10). Ms. Veisel suggested statements from the Highway and Police Departments. Mr. Raslavicus noted the road is a substandard road and the applicant's representatives should be aware of that. Mr. Swenson asked if it is the responsibility of the applicant to supply the studies to the Board. Chair Craycraft stated yes. Atty. Hoover asked if the studies should include the current impact, as well as, any projected impact. Board members stated yes. Ms. Veisel questioned if the campers would be bringing their vehicles and this should be included in the study. Mr. Swenson stated camp counselor's vehicles should also be included. Mr. Swenson suggested a fishery study as the property is immediately adjacent to the public boat launch. Vice-Chair Drummey stated Ms. Chabot noticed, on page 1 of the checklist, 'Town, State, & Federal Approvals' is left blank. Chair Craycraft stated any of those types of permits would be necessary for final approval but not for acceptance of the application. Vice-Chair Drummey asked the agents for the applicant if any State licenses or approvals are required. Atty. Cronin stated he would look into it. Mr. Groom stated the New Hampshire Code of Administrative Rules for Youth Camps lists many things that are required such as medical facilities.

Chair Craycraft asked Atty. Richardson if the application is substantially complete, with the exception of the studies, can the Board accept the application knowing the studies will be forthcoming. Atty. Richardson stated the Board can but the members of the public are going to want a completed application that they can look at. Atty. Richardson also stated it really is a judgment call on the part of the Board. Ms. Smith asked for a list of the missing studies to make sure she has a complete list. Pedestrian Circulation Plan, Traffic Impact Analysis, Impact on Public Safety, and Significant Wildlife and Fishery Habitats were noted. Chair Craycraft stated, this is not necessary for application completeness, but the Engineer also needs to add a note to the plan regarding the width and class of the roads. Chair Craycraft apologized to members of the public for sitting through the meeting for so long but noted until the Board accepts the application as complete they cannot take public comment. **Vice-Chair Drummey made a motion to recess the acceptance and public hearing for Russell Weldon for a site plan review of a seasonal water ski and activity camp to be rented at Cove Cottages - Map 119 Lots 11 & 32 located at 298 Merrymeeting Road subject to receipt of the following studies: a pedestrian circulation plan, traffic impact analysis, impact on public safety, and significant wildlife and fishery habitat until 4 March 2014 at 7:30 pm at the New Durham Library. Ms. Veisel seconded the motion. The motion was unanimously approved.**

Chair Craycraft asked if any members of the public had input on anything other than this application. Audience member John Goyette expressed his displeasure at not being able to speak. Audience member Mark Sullivan stated Atty. Cronin asked the two Board members to recuse themselves as they may have interests different than the general public. Mr. Sullivan asked Atty. Cronin to define 'general public' as close to ½ the taxpayers of New Durham own property on

the Lake. Chair Craycraft asked audience members to hold off on any further comment until the application is accepted as complete.

Atty. Richardson stated RSA 676:4 (c) requires the Board to make a determination as to whether an application is complete or incomplete within 30 days of receipt. Atty. Richardson continued to state that the Board voted to recess the acceptance and public hearing but it did not take a vote on the application's completeness. **Vice-Chair Drummey made a motion the application submitted by Russell Weldon for a site plan review of a seasonal water ski and activity camp to be rented at Cove Cottages - Map 119 Lots 11 & 32 located at 298 Merrymeeting Road is determined to be incomplete due to the lack of a pedestrian circulation plan, traffic impact analysis, impact on public safety, and significant wildlife and fishery habitat. Ms. Veisel seconded the motion. The motion was unanimously approved.**

Review of Minutes

Board members reviewed the minutes of 21 January 2014. **Vice-Chair Drummey made a motion to approve the minutes of 21 January 2014 as printed. Ms. Veisel seconded the motion. The motion was approved with four affirmative votes (Veisel, Drummey, Craycraft, Raslavicus) and one abstention (Swenson).**

At 9:35 pm Vice-Chair Drummey made a motion to adjourn. Mr. Swenson seconded the motion. The motion was unanimously approved.

Respectfully submitted,

Amy Smith
Recording Secretary