

**MINUTES
NEW DURHAM PLANNING BOARD
3 MARCH 2015**

Vice Chair Drummey called the meeting to order at 7:07 pm.

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

Others Present: Town Attorney Justin Richardson, Videographer Corky Mork, Police Chief Shawn Bernier, Atty. Arthur Hoover, Atty. Ashley Scott, Russell and Patricia Weldon, Evan Goldner, Susan Raslavicus, Greg Anthes, Mark Sullivan, Angela Pruitt, Ellen Phillips, Mark McKeon of M.H. McKeon Appraisal Services, Mark Fougere of Fougere Planning & Development, Stephen Pernaw of Pernaw & Company, Bradford Jones of Jones & Beach Engineering.

Public Input: Ms. Veisel stepped forward and informed Board members and the viewing public that the Citizen of the Year award was not presented at the Town's Deliberative Session. Ms. Veisel noted the original date of the Deliberative Session was 2 February 2015 but was rescheduled to 4 February 2015 due to snow. Ms. Veisel further stated neither she nor the recipient were available on 4 February 2015. Ms. Veisel noted the Citizen of the Year is Planning Board member Paul Raslavicus. Ms. Veisel noted the countless hours of research and hard work Mr. Raslavicus has done and thanked him for his many years of dedicated service to the Town of New Durham.

ACCEPTANCE & PUBLIC HEARING - Russell Weldon - site plan review - change of use - seasonal water ski and activity camp to be rented at the Cove Cottages- 298 & 299 Merrymeeting Road -Tax Map 119 Lots 11 & 32.

Chair Craycraft opened the Acceptance and Public Hearing for Russell Weldon for a site plan review for a change of use for a seasonal water ski and activity camp to be rented at the Cove Cottages, located at 298 & 299 Merrymeeting Road -Tax Map 119 Lots 11 & 32.

Mr. Raslavicus stated he would like to bring up a procedural issue. Mr. Raslavicus stated Section VI-A- 2 of the Site Plan Review Regulations states "Design review is required for Conservation Focus Area District Applications or for Standard Site Plan Review Applications that include two acres or more of proposed development". Mr. Raslavicus noted the proposal is not in the Conservation Focus Area District but it is over two acres. Mr. Raslavicus also noted the Site Plan Review Regulations became effective in May 2014 and the current application was submitted in August 2014. Mr. Raslavicus stated the issue is that the abutter and public notification was for 'acceptance and public hearing' and not for 'design review'.

Chair Craycraft stated he wanted to disclose that he does water quality testing for Merrymeeting Lake. Chair Craycraft also stated he received a call last week, in his professional position at

UNH, from Atty. Ashley Scott. Chair Craycraft stated as Atty. Scott was describing the project he realized it was regarding Water Monkey Camp. Chair Craycraft stated he informed Atty. Scott that he was on the New Durham Planning Board and also suggested she contact the Department of Environmental Services (DES). Chair Craycraft continued to state the person at DES referred Atty. Scott back to him. Vice Chair Drummey stated he does not believe this is a conflict of interest. Mr. Swenson agreed with Vice Chair Drummey. Vice Chair Drummey asked Atty. Hoover if he had any issue with Chair Craycraft sitting on the case. Atty. Hoover stated he did not.

Atty. Hoover stated Atty. Cronin submitted a letter to Town Atty. Justin Richardson requesting Board member Paul Raslavicus recuse himself. Board members reviewed the letter. Mr. Swenson outlined the reasons listed in Atty. Cronin's letter, for the viewing public, as to why Mr. Raslavicus should recuse himself. Mr. Swenson stated the letter states Mr. Raslavicus has a personal interest in the outcome of the case, has a direct view of the Water Monkey Camp boats, and is upset about the relocation of the meetinghouse onto the Cove Cottages property. Vice Chair Drummey noted the decision as to whether or not Mr. Raslavicus recuses himself is his own decision. Mr. Raslavicus stated he does not have a personal interest in the outcome of the case and is not sure where that assumption comes from. Mr. Raslavicus stated he wants to ensure the Town's regulations are followed and "all i's are dotted and all t's are crossed". Mr. Raslavicus noted he does this with all applications and not just for this one. Mr. Raslavicus stated as far as the boats are concerned, it can be said that anyone on the Lake has a view of the boats. Mr. Raslavicus continued to state he is not sure if he actually can or cannot see them. Mr. Raslavicus stated he is not upset about the move of the meetinghouse but just wants to make sure everything is done properly.

Ms. Veisel stated Mr. Raslavicus does meticulous and thorough research on all projects and is comfortable with him sitting on the case. Chair Craycraft, Vice Chair Drummey, Mr. Swenson and Ms. Chabot agreed with Ms. Veisel. Vice Chair Drummey again noted the decision is Mr. Raslavicus's and asked him his decision. Mr. Raslavicus stated he does not believe he needs to recuse himself.

Mr. Swenson noted for clarification purposes Chair Craycraft and Vice Chair Drummey have been co-chairs for almost a year and it is not just for this specific case.

The Board returned to the procedural issue regarding Section VI-A- 2 of the Site Plan Review Regulations brought up by Mr. Raslavicus. Chair Craycraft stated he does not believe this provision has been triggered as the project is not proposing to develop 2 acres. Vice Chair Drummey stated he agrees with Chair Craycraft and noted nothing is actually being developed as the structures are existing. Ms. Chabot agreed and noted the proposal is for a change of use, the structures are existing and nothing is being developed. Mr. Raslavicus stated 'development' is not defined but 'developer' is and Mr. Weldon would be considered a developer per the definitions and therefore Article VI-A-2 would be triggered. Mr. Swenson stated he agrees with Mr. Raslavicus and Article VI-A-2 would be triggered. Chair Craycraft and Vice Chair Drummey stated they do not think VI-A-2 would be triggered. Ms. Veisel stated she does not want to contaminate the process and if the Board were to err it is better to err on the side of caution.

Atty. Richardson stated he does not believe there is a significant legal risk either way. The hearing was noticed as a formal hearing and he does not see how anyone can claim injury to either interpretation. Discussion followed. Atty. Richardson noted Section VII of the Site Plan Review Regulations which is entitled “Application and Site Plan Requirements” does not list ‘design review’ as a requirement. Atty. Richardson continued to state Section VI governs what an applicant has to do if they choose to do a ‘pre-application’ but there is nothing in the regulations that states they have to do a ‘pre-application’. Mr. Swenson asked if Section VII-A-4-b infers that ‘pre-application’ is a requirement. Atty. Richardson stated it is stating that an applicant does not have to pay twice if they have already paid during the ‘pre-application’ phase but it does not mean they have to go through a ‘pre-application’. The application was accepted on the basis of the applicant choosing to skip the pre-application process.

Chair Craycraft polled Board members as to whether they felt they could proceed with the application. Craycraft - yes, Drummey-yes, Swenson-yes, Veisel-yes, Raslavicus-yes, Chabot-yes. (Ms. Chabot was polled but she was not designated as a voting member for this meeting as there is a full Board).

Audience member Mark Sullivan stated he sat on the Planning Board for another Town and stated design review was not a requirement but meant to be helpful to applicants if they chose that path so they could get some guidance from the Planning Board before spending a lot of money on a project that the Board could not approve. Atty. Richardson stated that is a risk an applicant takes if they skip design review.

Ms. Smith stated due to the weather Road Agent Clarke would not be able to attend the meeting but he did submit a memo regarding the proposal. Ms. Smith read the memo from Road Agent Clarke which stated he did not anticipate any road related issues with the proposal.

Board members reviewed the plan set and the application material. Mr. Raslavicus stated all of lot 32 and a portion of lot 11 are in the Shorefront Conservation Area. Mr. Raslavicus further stated the ZBA decision was for a variance to Article IV - A ‘Residential-Recreational-Agricultural’ but nothing was done as far as Article IX ‘Shorefront Conservation Area’ is concerned. Atty. Scott noted the 30 day timeframe set by the State of New Hampshire to appeal ZBA decisions has lapsed. Mr. Raslavicus stated since the ZBA did not act on Article IX the applicant must comply with the provision of Article IX. Mr. Raslavicus also noted the application itself does not have the ‘Shorefront Conservation Area’ overlay box checked. Engineer Brad Jones stated this is an oversight and noted page C-1 of the plan set does show the 300’ setback line for the Shorefront Conservation Area. Mr. Jones asked that the box be checked on the application. Mr. Raslavicus noted the ‘pedestrian circulation plan’ box on the checklist was checked off as ‘not applicable’ by the engineer. Mr. Jones stated the ‘pedestrian circulation plan’ will be discussed during the presentation.

Mr. Swenson made a motion to accept the application of Russell Weldon for a site plan review for a change of use for a seasonal water ski and activity camp to be rented at the Cove Cottages, located at 298 & 299 Merrymeeting Road -Tax Map 119 Lots 11 & 32 as complete with the understanding that the ‘pedestrian circulation plan’ will be discussed during the presentation, the “Shorefront Conservation Area” box is checked under the

‘overlay’ section of the application, and the ZBA decision is noted as received on the checklist. Ms. Veisel seconded the motion. The motion was unanimously approved.

Atty. Arthur Hoover stepped forward and stated he would give a brief synopsis of his presentation due to the lateness of the hour. Atty. Hoover noted Water Monkey Camp is already on Merrymeeting Lake and operating out of Camp Birch Hill. Atty. Hoover also noted no one owns the Lake it is the property of the State of New Hampshire. Atty. Hoover stated both the Planning Board and Zoning Board of Adjustment are land use boards. Atty. Arthur Hoover gave a brief summary of the history of the project and noted the applicant should not be punished for following the process. Atty. Hoover also noted when the ZBA granted a variance they found the five criteria necessary in granting a variance were met. Atty. Hoover noted the five criteria are: the variance will not be contrary to the public interest, the spirit of the ordinance is observed, substantial justice is done, the values of surrounding properties are not diminished, and literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

Russell Weldon stepped forward and stated no abutter is opposed to the project. Mr. Weldon also noted the move of the meetinghouse was being discussed three years prior to the Water Monkey Camp application. Mr. Weldon informed Board members of the improvements he made to the meetinghouse building such as new septic, handicap bathrooms and parking and noted the meetinghouse is deeded to the Lake Association and that is where they have their annual meeting. Mr. Weldon also noted the move of Water Monkey Camp from Camp Birch Hill to Cove Cottages removes 4 commercial boats from the Lake on weekends plus however many boats renters of Cove Cottages would have used.

Brad Jones of Jones and Beach Engineering stepped forward and submitted test pit logs for the file. Mr. Jones noted there is a dry hydrant on the property and the furthest point from the cottages to the hydrant is 410’. Mr. Jones noted each cottage has its own septic system and they are gravity fed to one of the pump stations. Mr. Jones stated there are two pump stations one for the cottages and one for the meetinghouse. Mr. Jones stated there is an existing crosswalk and pointed out its location on page C-1 of the plan set. Mr. Jones noted Mr. Pernaw will be discussing the crosswalk.

Stephen Pernaw of Pernaw and Company stepped forward and explained the process and results of the traffic study he conducted. Mr. Pernaw stated the study was done in July 2014 and noted the site does not generate a lot of traffic and the proposed use would generate even less. Mr. Pernaw stated there is more than adequate site distance but noted there are some areas where foliage can be trimmed to improve site distance. Mr. Swenson asked Mr. Weldon if he has already trimmed some foliage. Mr. Weldon stated he did. Mr. Pernaw stated he would recommend leaving the cross walk where it is but noted it is in poor condition. Mr. Pernaw stated he is recommending a “zebra pattern” for the marking of the crosswalk as it is more visible. Mr. Pernaw also stated it is not a requirement but an “advance warning” sign could be used for added safety. Mr. Pernaw passed out a handout showing examples of the “advance warning” signs which are button activated ‘pedestrian crossing’ LED signs which light up when the button is pushed. Police Chief Bernier stated he believes the sign is a good idea. Mr. Swenson asked Chief Bernier if he has spoken to Road Agent Clarke regarding the sign. Chief Bernier stated he did not. Mr. Weldon stated he has spoken with Road Agent Clarke about the sign. Mr. Weldon continued to state Road Agent Clarke thinks the sign is a good idea and it will improve safety.

Ms. Veisel asked if the study was based on a 25 mile/hour speed limit. Mr. Pernaw stated the road is posted at 25 mph but they used the 85th percentile speed of 28 mph. Mr. Pernaw explained the 85th percentile speed is the speed at which 85% of the vehicles travel under. Ms. Veisel noted the Selectmen have been discussing speed limits on Town Roads and asked Chief Bernier if this is a road that he will recommend a change to the speed limit. Chief Bernier stated he does not recommend a change of any speed limit on any of the roads in Town. Mr. Swenson stated the Selectmen asked the Police Department and the Highway Department to review the roads to make sure they are properly posted and signed.

Mr. Raslavicus asked what the building on the water will be used for. Mr. Weldon stated eating, recreation, assembly. Mr. Raslavicus asked if there will be overnight campers staying in the waterfront house. Mr. Weldon said no. Mr. Raslavicus asked if the buildings are all seasonal. Mr. Weldon stated all the buildings are seasonal with the exception of the main house which is year round. Mr. Raslavicus stated there is a ZBA decision issued to a Mr. Shattuck that states occupancy is for seasonal use only. Mr. Raslavicus stated Mr. Weldon could get a copy of the decision from Ms. Smith.

Chair Craycraft opened the public input portion of the meeting and asked for the input of any Department Heads present.

Chief Bernier stepped forward and stated he received a copy of the application materials from Ms. Smith. Chief Bernier stated he concurs with everything in the traffic study. Chief Bernier also stated the signage is a good idea and he will be recommending similar signs at the New Durham Elementary School and the Town Beach. Chief Bernier stated the majority of accidents in the area are caused by boat trailers backing into rocks. Chief Bernier noted he will be increasing patrols in the area as a result of the traffic study.

Mr. Swenson noted Road Agent Clarke had submitted a memo noting his opinion that Ms. Smith read earlier in the meeting.

Chair Craycraft asked if there are any abutters present who would like to speak on the proposal. Angela Pruitt stepped forward and stated she is in favor of the proposal.

Atty. Scott stated she has two letters for the record from people in favor of the proposal. Atty. Scott noted the writers are not abutters. Atty. Scott submitted the letters to Ms. Smith with copies for Board members.

Chair Craycraft asked if there are any members of the public who would like to speak on the proposal. There were none.

Chair Craycraft closed the public input portion of the public hearing.

Chair Craycraft noted an Operation and Maintenance plan for the bio-retention system, as well as, a certification signed by the owner attesting to their compliance with the Operation and Maintenance plan is required. Chair Craycraft informed Mr. Jones he could speak with Ms. Smith for an example.

Board members next reviewed Article IX of the Zoning Ordinance 'Shorefront Conservation District'. Mr. Raslavicus noted the ZBA granted a variance from Article IV-A but never reviewed

Article IX. Atty. Richardson noted the ZBA can only act upon the application as it is received. Atty. Richardson noted the application submitted to the ZBA was for a variance to Article IV-A, and the hearing was noticed for a variance to Article IV-A. Atty. Richardson noted Article IV-A is the only thing the ZBA was legally allowed to make a decision on. Atty. Richardson stated the Planning Board has to review Article IX and determine if the application complies with it. Atty. Richardson further stated if the application does not then the applicant would have to go back to the ZBA and apply for a variance to the relevant provision of Article IX.

Mr. Raslavicus also noted the application does not comply with either Article IX-E-4- a or b. A lengthy discussion followed regarding whether lot 32 is considered a 'common area'. Atty. Richardson stated he believes a 'common area' applies more to condos where there are multiple units of ownership. Atty. Richardson stated in this case there is one owner and he does not believe a 'common area' is being created. Vice Chair Drummey and Ms. Chabot agreed that they do not believe lot 32 is a 'common area'. Atty. Richardson stated as a condition of approval the Board could limit the project to only lot 11 and lot 32 and mandate that the properties remain in common ownership or the Site Plan approval is void.

Board members reviewed Article IX -E-1. Atty. Richardson noted the property is already a non-conforming property and the Board needs to decide if the proposal is an increase or decrease to the nonconformity. Atty. Richardson noted if there is an increase in nonconformity then the applicant would need to apply to the ZBA for a variance to the appropriate section of the Ordinance, if there is equivalent nonconformity or a decrease in nonconformity then the applicant does not need ZBA approval. Mr. Raslavicus asked if the Planning Board can approve an application for a nonconforming use if it is less nonconforming than the existing use. Atty. Richardson stated yes.

Ms. Veisel asked about use of the Town Beach and the Town Field. Mr. Goldner stated he has no intention of using the Town Beach or Field.

Atty. Hoover noted the Town election is next week and asked how that would affect the Board's make up. Vice Chair Drummey stated he does not think it will as alternate member Terry Chabot is the person running for Ms. Veisel's seat. Ms. Veisel noted she will be applying to the Board to be an alternate member. Mr. Swenson stated he is not sure who the Selectmen's Representative to the Planning Board will be but if it is not him he will request that he remain as the Selectmen's Representative until the completion of the project.

Chair Craycraft made a motion to recess the Public Hearing for Russell Weldon for a site plan review for a change of use for a seasonal water ski and activity camp to be rented at the Cove Cottages, located at 298 & 299 Merrymeeting Road -Tax Map 119 Lots 11 & 32 until 17 March 2015 at 7 pm at the Town Hall. Mr. Swenson seconded the motion. The motion was unanimously approved.

At 10:46 pm Mr. Swenson made a motion to adjourn. Chair Craycraft seconded the motion. The motion was unanimously approved.

Respectfully submitted,

Amy Smith
Recording Secretary