

1 Sandown Planning Board
2 Minutes
3 January 5, 2010
4

5 DRAFT ONLY
6

7 **Date:** January 5, 2010

8 **Place:** Sandown Town Hall

9 **Members Present:** Ken Sweet, Chairman, Donna Green, Vice Chairman, Ed Mencis,
10 Steven Meisner, Marilyn Cormier and Matt Russell, Alternate.

11 **Absent:** Paula Bonasoro and Selectmen's Representative Nelson Rheaume

12 **Also present:** Bette Patterson, Administrative Assistant and Town Engineer Steven
13 Keach (arrived at 7:25 p.m.)
14

15 **Chairman Sweet called the meeting to order at 7:05 p.m.**
16

17 **Approval of Minutes:**
18

19 December 15, 2009 - Vice Chairman Donna Green stated that each of the options (for
20 the wetland district ordinance) that were discussed should be incorporated into the
21 minutes and not just attached. Mrs. Green explained that she directed the discussion in
22 an orderly fashion and the minutes should reflect that. Ed Mencis stated that attaching
23 the documents to the minutes is sufficient for the record. Marilyn Cormier suggested
24 that, because of the right to know law, the e-mails should also be attached to the
25 minutes. Lisa Sears, a Sandown resident and a Nottingham Town Employee, stated
26 that attaching e-mails to minutes only serves to confuse people. All e-mails are
27 available for review in the Planning Board office during regular business hours so it is
28 unnecessary to add them to the minutes. Board members agreed to place a discussion
29 on the February 2nd agenda focusing on the right to know law and how the board wants
30 to proceed in the future with minutes. The December 15th and October 20th minutes will
31 be reviewed at the next available meeting.
32

33 **Public Hearing**

34 Review of an application for a Lot Line Adjustment from Thomas G. Carr 2005
35 Revocable Trust and Karen J. Carr 2005 Revocable Trust for property as shown on the
36 Sandown Tax Map 6, Lot 62 (owned by Carr 2005 Revocable Trust) and Lot 63 (owned
37 by Jennifer & Kelly Ward). Lot 62 is located on 42 Phillipswood Road and Lot 63 is
38 located on 7 Beechwood Road. *A copy of the plan is available for review in the Planning
39 Board Office during regular business hours.*
40

41 Town Engineer Steven Keach advised the board members that the application was
42 complete.
43

44 MOTION: Marilyn Cormier made a motion to accept jurisdiction on the application for a
45 Lot Line Adjustment from Thomas G. Carr 2005 Revocable Trust and Karen J. Carr
46 2005 Revocable Trust for property as shown on the Sandown Tax Map 6, Lot 62 (owned
47 by Carr 2005 Revocable Trust) and Lot 63 (owned by Jennifer & Kelly Ward). Donna
48 Green seconded. Voted unanimously in the affirmative.
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Town Engineer Steven Keach gave the following report to the board:
January 05, 2010

*Mr. Kenneth Sweet, Chairman
Sandown Planning Board
Post Office Box 1756
Sandown, New Hampshire 03873*

*Subject: Application for Approval of Lot Line Adjustment – Thomas G. & Karen J. Carr – 42 Phillipswood Road (Map 6 – Lot 62) and Jennifer L. & Kelly E. Ward – 7 Beechwood Road (Map 6 – Lot 63); Sandown, New Hampshire
KNA Project No. 10-0105-1*

Dear Mr. Sweet:

At your request we have completed a technical review of the subject application. To date, we have received a copy of a proposed lot line adjustment plan (one sheet), dated October 2009, which was the subject of our review. Based upon our careful review and consideration of this plan, we offer the following comments and recommendations at this time:

General Comments

It does not appear that any State project permits will be required under this application.

Zoning Matters

In order to fulfill the requirements of Article III-Part A-Section 1.D of the Zoning Ordinance, we recommend the final plat be revised to specify a minimum building setback dimension of 50-feet from adjacent wetlands. Currently, the plans specify a setback dimension of 40-feet.

Planning/Design Matters

In order to fulfill the requirements of Section 9.25 of the Land Subdivision Control Regulations, we recommend a note be added to the final plat indicating whether or not any portion of either subject parcel is situated in a designated flood hazard area.

We recommend any approval granted to this application occur subsequent to, or be conditional upon, installation of all boundary monuments specified as to be “set” on the final plat, or otherwise required in order to fulfill the requirements of Section 9.11 of the Land Subdivision Control Regulations.

101 *We recommend the final plat depict and define the extent of a general highway*
102 *easement, to be conveyed to the Town of Sandown, over that portion of Map 6 – Lot 62*
103 *situated within 25-feet of the occupied centerline of Phillipswood Road.*

104
105
106 *We trust you will find the content of this brief memorandum self-explanatory. As always,*
107 *please contact the writer in the event you should have specific questions or further*
108 *instructions pertaining to this application.*

109
110
111 *Sincerely:*

112
113
114 *Steven B. Keach, P.E.*
115 *President*
116 *Keach-Nordstrom Associates, Inc.*

117
118
119 Mrs. Fontaine, Mrs. Irish, Mr. Ward, Mr. Townsend and Mr. Sullivan, abutters, viewed
120 the plan. There was no additional comment from abutters.

121
122 MOTION: Ed Mencis made a motion to approve the Lot Line Adjustment from Thomas
123 G. Carr 2005 Revocable Trust and Karen J. Carr 2005 Revocable Trust for property as
124 shown on the Sandown Tax Map 6, Lot 62 (owned by Carr 2005 Revocable Trust) and
125 Lot 63 (owned by Jennifer & Kelly Ward). Lot 62 is located on 42 Phillipswood Road and
126 Lot 63 is located on 7 Beechwood Road. The following conditions shall apply:
127 Steven Meisner seconded. Voted unanimously in the affirmative.

128
129 Mrs. Fontaine was concerned with paving that had been done on Phillipswood Road
130 which crossed on to her property. Steven Meisner offered to meet with her after the
131 meeting to explain how that paving came about.

132
133 **Public Hearing**

134 Review of the following proposed amendment to the Zoning Ordinance:

135
136 Amendment 3 – To delete Article I– Part B–Wetland Conservation District in it's entirety
137 and replace it with an Amended Article I-Part B-Wetland and Surface Waters
138 Conservation District. The proposed amendment provides protection to wetlands and
139 surface waters. *A copy of the complete text for Amendment 3 is available for review in*
140 *the Town Clerk's Office during regular business hours or you may view it at*
141 *www.sandown.us.*

142
143 Chairman Sweet opened this public hearing by inviting members of the public to make
144 comments or ask questions.

145
146 **Public Comment:**

147
148 Ryan Beaudry stated his house is 400 feet back and is surrounded by wetland on three
149 sides and if there is a 100 foot buffer requirement he could not put up a garage. Ed
150 Mencis replied that the buffer requirement is now 50 feet so it would not affect him. Mr.
151 Beaudry stated he does not want to see more rules and he doesn't want to sacrifice use

152 of his land. He asked if there is any scientific proof that there has been destruction of
153 wetland. The existing rules would not allow anything to be built in a flood plain and he
154 feels the rules that are in place are fine. He stated the town doesn't need more
155 government.

156
157 Fred Daley stated he would respond to the gentlemen that the present policy stands at
158 50 (feet)but the initial policy was 100 (feet) and he is confident that there's going to be
159 efforts to move the number if the number should get established. He stated that his
160 primary comments are still going to revolve around that the policy that is based on the
161 report. The West report, on it's introduction, clearly states "*the wetland boundaries*
162 *.....(end of paragraph page 3 wetland mapping very last paragraph) The wetland*
163 *boundaries do not flag on the ground or in the field and do not constitute wetland*
164 *delineation according to the 1987 Corp of Engineer report..... (Pg12 Wetland restoration*
165 *project)* This report itself clearly states that it's a starting point to begin doing things. The
166 report recommends that a digital overlay be done, taking the aerial photos, which the
167 board may not have seen, and digitizing those photos over the plot plans so that you
168 could actually see where the boundaries occur and the district can be set. Mr. Daly
169 stated that to his knowledge this has not been done. The policy is predicated on this
170 report and references that the board needs to be following section 4 item c d the surface
171 water map. This is based on US Army Corp of Engineers and it references the wetland
172 manual again. He stated he does not think this has been done. The policy does not
173 establish boundaries which raises a concern because the present policy puts the burden
174 of that proof on the landowner. If there are any disputes either by the town or the
175 resident, the applicant is then responsible to hire a wetland scientist, at an expense to
176 the applicant, to define the boundary. Based on this report which says it shouldn't be
177 used as a foundation of the policy, the main concern should be to develop a policy that is
178 on a firm foundation. Mr. Daly stated that he again would request the planning board to
179 table this ordinance and take the steps necessary to identify those actual boundaries,
180 which over time will change, so that a determination can be made even on enforcement
181 of this policy. The aerial photos are supposed to identify the boundaries, however,
182 looking at his own aerial property photos, he stated he now questions if he knows what a
183 wetland is. As a landowner it's difficult to tell if it's a wetland or not. A few pieces of this
184 foundation have not been put into place. Before this board puts forth public policy, these
185 items should established. The policy impacts how people can use their land and to
186 reduce the liability of this, there is a lot of homework that needs to be done. Mr. Daly
187 stated that with all due respect to those that worked on this ordinance, the foundation
188 has not been established. Mr. Daly stated that if this is going forward, he would
189 recommend a language change to item 6G. He stated that the board is well aware that
190 his primary concern has been his lot and if this policy goes into effect it will remove more
191 of his land from his personal use. He is concerned if he has to replace his septic
192 system or well system that he be able to do so in the way he is able to do presently. Mr.
193 Daly read section 6G regarding the requirements for septic and well systems. He stated
194 he would like to add the words "on an approved and built lots within the district prior to
195 the adoption of this article". He stated that in the event he has to replace these two
196 items, he has enough standards that he would have to meet in order to do that and he
197 wants it to be clearly written. As it is written now, if those systems aren't in the district,
198 then they could not be replaced. The property was built and approved by the standards
199 of this planning board and if those systems fail they should be able to be replaced.

200
201 Marilyn Cormier stated that Mr. Daly had some concern previously about right to know
202 and accessibility to information. She asked Mr. Daly if the information was accessible

203 and if he had written a letter on the right to know issues he has.
204
205 Mr. Daly stated that he has not written a letter yet regarding the right to know and he
206 does have some concerns regarding procedural issues in terms of outreach. The
207 outreach could have been far better particularly to the residents effected by this policy.
208
209 Marilyn Cormier asked Mr. Daly if he felt he did not receive the proper information.
210
211 Mr. Daly stated that the dissemination of information regarding this issue has been a
212 concern. He stated when he requested certain documents he was given one set
213 although the board was given another set. He stated when he went to Town Hall to
214 obtain the report it was not available although the documents indicated they were. It
215 took some time to get it and when Mrs. Blaisdell, the office manager, asked for the
216 report, she was asked what she needed it for.
217
218 Marilyn Cormier stated that the board previously discussed right to know issues,
219 specifically e-mails sent to board members. She stated the board will be holding a work
220 session to discuss right to know issues and requested that Mr. Daly write his concerns in
221 a letter to the board so that they can be addressed.
222
223 Peter Kirk stated that one of his concerns is the cost to the applicant other than normal
224 application fees.
225
226 Lisa Sears asked how the ordinance was developed and the science of it.
227
228 Matt Russell stated that a wetland scientist was hired by the conservation commission
229 through money obtained from the CTAP grant. (Mark West of West Engineering)
230
231 Lisa Sears stated she would concern the 100 foot setback. If an individual has difficulty
232 meeting this then a waiver could be requested or a variance could be applied for. There
233 is a process for each application. Developer's should be held accountable and she
234 would rather have the more restrictive setback in the ordinance.
235
236 Mr. Mencis stated that he thought the 100 feet was much more restrictive and that is why
237 he supported the 50 foot setback.
238
239 Mrs. Green stated she is also in favor of the 100 foot buffer.
240
241 Mr. Russell stated that he was also in favor of the 100 foot buffer, however, the
242 ordinance was somewhat contentious and this was a source of compromise.
243
244 Mr. Kirk stated that he would like to see the ordinance require an independent scientist 's
245 report. If one party is trying to put restrictions on another, the burden of proof should be
246 on the party placing the restrictions.
247
248 Mr. Keach stated that the ordinance refers to general surface waters and a certified
249 wetland scientist is required in to delineate wetlands.
250
251 Mr. Kirk stated that the town is placing rules when they don't even know where the
252 boundaries may be and the burden of proof is on the individual.
253

254 Mr. Mencis stated that boundaries are required to be field delineated by a certified soil
255 scientist.

256

257 Mr. Keach stated that the legislature made that decision about 10 years ago. This is
258 how it's done in New Hampshire.

259

260 Mr. Beaudry stated rules are being established for the use of an individual's land, and
261 since it's unknown how big that restriction is going to be, it's like buying a car sight
262 unseen. He added that this ordinance seems to give another layer of control to the
263 conservation board.

264

265 Mrs. Green stated in section 9 there are special application procedures, which address
266 Mr. Beaudry's concerns. This specifically considers the individual home owner who
267 wants to do something like Mr. Beaudry is considering. It specifically states that a
268 detailed map for something of this nature is not necessary. The ordinance is aimed at
269 development and the board understands that there are complications that arise because
270 there are lots that have already been built. Mrs. Green stated, in respect to Mr. Daly's
271 remarks that there are no detailed maps, wetlands change from moment to moment so
272 any map is going to be instantly outdated so field examination is going to be necessary.

273

274 Mr. Russell stated that the ordinance was created to make it as easy as possible for the
275 homeowner, to come to conservation, utilize the expertise that the conservation
276 commission has with certified wetland scientists available, allow us to come out to the
277 property and advise the land owner of best management practices. He stated that he
278 has heard this referred to a land taking or a taking or right but it's not intended to be that
279 way. The intent is to be responsive not restrictive and the goal is to keep the water
280 quality as good as we possibly can.

281

282 **Note: Mr. Sweet left the meeting at 8:30 p.m. Vice Chairman Green assumed the**
283 **Chair for the remainder of the meeting.**

284

285 Mark Treager stated that this has been a long process but the town has come to a good
286 point for a compromise and this should be placed on the ballot. Several letters of
287 support have been received by the planning board from Rockingham Planning
288 Commission, Exeter River Advisory Board as well as others.

289

290 Peter Kirk stated that this proposed ordinance is more restrictive and he feels there are
291 sections that are very subjective and the wording needs to be reviewed. He discussed
292 with the board the fact that a number of sections of the proposed ordinance requires
293 land owners to do much more to obtain a permit.

294

295 Mr. Kirk noted on Section 2 D on the bottom of the page that you have to "*demonstrate*
296 *to the planning board.....*" and that is a harshly restrictive absolute which means
297 anyone can turn down an application for a minimum use permit. There are several
298 sections that say there will not be any adverse impact. He stated his concern that is not
299 in accordance with policy with the other stated goals of the town's zoning ordinance and
300 it is much more restrictive than what the State requires for the same use.

301

302 Mrs. Green stated that wording is "*the applicant is able to demonstrate....That it not*
303 *interfere...*" and "interfere" is very different from "impact."

304

305 Mr. Beaudry stated that the way it's written it is absolute. Certain areas are words
306 "things should be done that will have the least impact possible...." But there are other
307 areas that might work better, possible in the stated purpose. Some of the language in
308 the proposed ordinance is an absolute because of the fact that the landowner cannot do
309 anything when there is a negative statement.

310
311 Mr. Keach stated that if you look in section 6 it tells you the permitted use. Those things
312 you are permitted to do by right. The conditional use permit allows land owners to do
313 other things within the 50 foot buffer. As you look at items sub paragraph a through e
314 they are in essence the permit guidance requirements.

315
316 Mr. Kirk stated his concerns that Section 10 B 2 regarding the "no negative
317 environmental impact to abutting or downstream properties" . He stated that the word no
318 is another absolute and reasonable would be better term to use.

319
320 Mrs. Green thanked Mr. Kirk for his input and stated that the board would review his
321 suggestions after all the public comments.

322
323 Kevin Major stated he has some suggestions for changes to the proposed ordinance.
324 He stated he realizes he has come in at the end of this process and if the board wants to
325 wait on these items, he has no issue with doing that.

326
327 Donna Green stated she is open to hearing from Mr. Major and the board agreed.

328
329 Kevin Major stated that he e-mailed his recommended changes to some of the board
330 members prior to this meeting. He proposed the following:

331
332 SECTION 2 – PURPOSE:

333
334 *Add*

335 **H. Preserve and protect critical wetland habitat of threatened and**
336 **endangered species.**

337
338

339 Notes:

340 'critical' habitat is the referred to term in the USACOE PGP - 2008

341 Reference:

- 342
- 343 • Federal Endangered Species Act (ESA)
 - 344 • NH Endangered Species Conservation Act [1979 as amended]
 - 345 • Effective 9/20/2008 the NH list includes the following species associated with wetlands,
 - 346 ○ Threatened Species:
 - 347 ▪ Spotted turtle, *Clemmys guttata*
 - 348 ▪ Black racer, *Coluber constrictor*
 - 349 ○ Endangered Species:
 - 350 ▪ Blanding's turtle, *Emydoidea blandingii*
 - 351 ▪ Eastern hognose snake, *Heterodon platirhinos*
 - 352 ▪ Timber rattlesnake, *Crotalus horridus*
 - 353 ▪ Marbled salamander, *Ambystoma opacum*
 - 354

355 Donna Green asked why Mr. Major would want to add section “H” when section”D” which reads
356 “*Preserve and protect important wildlife habitat and maintain ecological balance;*” is already in
357 the proposed ordinance.

358

359 Kevin Major stated that section “H” is very specific . He stated he did not have anything that
360 gives meaning to section “D”, however, he does know what a threatened and endangered species
361 is because it’s defined by the State of New Hampshire and the Federal Government. He added
362 that a lot of things are included in the state list, however, it is important to also include them in
363 the proposed ordinance.

364

365 Steve Keach suggested that if the board adds section “H” then the definitions that are listed on
366 Mr. Major’s e-mail under section 5 would also have to added.

367

368 Mr. Major agreed, adding that these are not random terms, they are terms defined by the State of
369 New Hampshire and the Army Corp of Engineers.

370

371 Donna Green asked if Sandown had a habitat that supported a threatened species but the species
372 was no longer indigenous to Sandown , where would that put us?

373

374 Mr. Major replied that NH Fish and Game posts an inventory of endangered species on their
375 website which lists endangered species by Town. This is the list Sandown would refer to when
376 determining if an endangered species is indigenous to the area.

377

378 Mrs. Green asked “what if the list is 3 years old?”

379

380 Mr. Major replied that he did not know.

381

382 Mrs. Green stated that this is her concern about adding this.

383

384 Mr. Keach stated from a practical standpoint, when you file a wetlands application, there are
385 twenty questions, one of which can only be answered by referencing the endangered species list
386 and getting a certification from the state in order to get a wetlands permit. More times than not
387 the endangered species is a type of plant. He recommended that if the board wants to use the
388 language suggested by Mr. Major , the proposed new section “H” be simply incorporated into
389 section ”D”. It would add definition to a term that may otherwise be construed as arbitrary.

390

391 Mrs. Green stated that not all important wildlife is threatened or endangered.

392

393 Mr. Keach stated you could expand it to say to preserve and protect important wildlife including
394 threatened and endangered species.

395

396 Mr. Russell stated that it’s important wildlife habitat.

397

398 Mr. Keach stated that it can be wordsmith later and the important thing is not to have two
399 statements of wildlife habitat in the statement of purpose. Mr. Mencis asked if this is making the
400 ordinance more restrictive and Mr. Keach replied that it does not.

401

402 Mr. Major reviewed the following section of his recommendations with the board:

403

404

405

406 SECTION 4 – WETLAND AND SURFACE WATERS CONSERVATION DISTRICT
407 BOUNDARIES

408
409 *Propose modifying as follows:*

410
411 **A. 5. All Vernal Pools ~~having a contiguous area of 1500 square feet or more, as~~**
412 **well as a 50 foot Buffer measured outward from their boundaries.**

413
414 Notes:

- 415
- 416 · I believe that the '1500 square feet' is an artifact left over from the old
- 417 Sandown Wetland Conservation District.
- 418 · There is no reference to a minimum Vernal Pool size in:
 - 419 o Federal Law (USACOE PGP or EPA) All Vernal Pools are protected as
 - 420 a "RESOURCE" not an extension of the Wetland Boundary.
- 421 · NH State Law [Env-Wt 100-800]
- 422 · NH Fish and Game definitions
- 423 · Identification and Documentation of Vernal Pools in New Hampshire, 2nd
- 424 Edition by NH Fish and Game Dept of Non-game and Endangered Wildlife
- 425 Program, 2004.
- 426 · A field Guide to the animals of Vernal Pools, Kenney & Burne, Mass Div of
- 427 Fisheries & Wildlife Natural Heritage & Endangered Species Program &
- 428 Vernal Pool Assoc, 2001.

429
430 Mr. Major stated that he recommends taking out the 1500 square feet in section 4 A5
431 because the State has defined what a vernal pool is and after going through the
432 Sandown ordinance, there is no reference to size anywhere. At the time the wetland
433 ordinance was created the State had not defined a vernal pool. The Army Corp of
434 Engineers says that a vernal pool is not a wetland, it's a resource and there is no size on
435 it.

436
437 Marilyn Cormier stated that if the board takes out the 1500 square feet then the wetland
438 ordinance would be in line with the State.

439
440 Mr. Keach stated that the 1500 feet is in the proposed ordinance because in the existing
441 ordinance vernal pools are protected differently than wetlands. He stated that Mr.
442 Major's suggestion to remove the 1500 feet is a good one because we really don't need
443 it. It brings the town ordinance into compliance with the requirements of the state.

444
445 Acting Chairman Donna Green summarized as follows:

446
447 Section 4 A5. All Vernal Pools, as well as a 50 foot Buffer measured outward from their
448 boundaries.

449
450 Acting Chairman Donna Green asked if the board wanted to change the purpose section
451 at this time.

452
453 Section 2D which currently reads "*Preserve and protect important wildlife habitat and*
454 *maintain ecological balance;*"

455
456

457 Mr. Keach suggested that it be changed to read *“Preserve and protect important wildlife habitats,*
458 *preserve and protect critical wetland habitat of threatened and endangered species”*

459
460 Mrs. Green stated that she thought that’s it’s too narrow now because we also want to
461 protect habitats that are not threatened or endangered.

462
463 Mrs. Cormier suggested using a list type language with semi-colons.

464
465 Mr. Keach agreed and proposed the following language: *“Preserve and protect important*
466 *wildlife habitats; critical wetland habitat; threatened and endangered species; and*
467 *maintain ecological balance”*

468
469 *Acting Chairman Green polled the board as to they were in favor of the following*
470 *proposed language to Section 2D - “Preserve and protect important wildlife habitats; critical*
471 *wetland habitat; threatened and endangered species; and maintain ecological balance”*

472
473 *Mr. Russell - Yes, Mr. Mencis-Yes, Mr. Meisner-Yes, Mrs. Cormier- Yes, Mrs. Green-*
474 *Yes*

475
476

Mr. Major reviewed his recommendations for the following section:

477
478 SECTION 5 – DEFINITIONS

479
480 Revise definition for Vernal Pool

481
482 *Add:*

483
484 **Endangered Species:** are those native species whose prospects for survival in New
485 Hampshire are in danger because of a loss or change in habitat, over-exploitation,
486 predation, competition, disease, disturbance or contamination. Assistance is needed to
487 ensure continued existence as a viable component of the state’s wildlife community.

488
489 **Threatened Species:** are those species which may become endangered if conditions
490 surrounding them begin, or continue, to decline.

491
492 Notes: these terms would be added to go with proposed SECTION 2, H.

493
494 Mr. Major stated that the definition for vernal pools needs to be changed to reflect the
495 state definition.

496
497 Mr. Keach agreed and suggested it be *“a body of water, typically seasonal that provides*
498 *a central breeding habitat for amphibious and vertebrae which meets the criteria*
499 *established by NH Code of Administrative Rule Part ENV WQ 199.”*

500
501 Mrs. Green suggested the definitions be referenced.

502
503 Mr. Major stated they are from NH Fish and Game not in NH Code.

504
505
506

507 SECTION 10 – CONDITIONAL USE PERMIT APPLICATIONS PROCEDURES

508
509 B. 5.

510 *Add to the end of 5.:*

511
512
513 ...and Department of the Army Programmatic General Permit – State of New Hampshire
514 (NAE-2007-461) or current version of the permit.

515
516 Notes: NAE-2007-461 by the US Army Corps of Engineers is the law of the land for
517 Wetlands permitting in NH. The current issue was effective in 2008.

518
519 Mr. Major stated that his proposal is to add the above sentence to Section 10 number 5 that
520 currently reads: *“Federal and/or State Permit(s) have been received for the proposed activity in*
521 *accordance with N.H. Administrative Rules Env-Wt 100-800 and the Federal Clean Water Act*
522 *(Section 404).”* The additional language is in accordance with the US Army Corps of Engineers
523 which is the law of the land for Wetlands permitting in NH. This is how NH DES gets its
524 authority to govern wetlands.

525
526 Mr. Keach stated that section 404 is only one subset of what is permissible under this section. He
527 suggested that it could just say Federal and State permits received and add the word applicable
528 which would cover both the general and individual permits.

529
530 Mrs. Green stated that Mr. Keach’s recommendation is to word section 10 B.5. *“All applicable*
531 *Federal and/or State Permit(s) have been received for the proposed activity in accordance with*
532 *New Hampshire Code of Administrative Rules – Part Env-Wt 100-800 and Section 404 of the*
533 *Federal Clean Water Act .”* She asked the board if they were in favor of this change.

534 Mr. Mencis-Yes, Mr. Russell-Yes, Mr. Meisner-Yes, Mrs. Cormier-Yes, Mrs. Green-Yes.

535
536 Mrs. Cormier requested that Mr. Major provide a copy of the documents he cited so that they are
537 on file in the planning office. Mr. Major agreed.

538
539 Acting Chairman Green stated that the board needs to consider the changes presented by Mr.
540 Kirk. Mrs. Green also is proposing a change for the board to consider. Mrs. Green recommended
541 in Section 4 E. Where it cites boundary disputes and in the case where there is a dispute between
542 the board and the applicant as to the boundaries of a wetland it says that the applicant can hire
543 their own independent certified wetland scientist which should transmit his findings to the
544 conservation commission and the planning board. *“The Planning Board, after consultation with*
545 *the Conservation Commission, shall make a final determination regarding the Wetland and*
546 *Surface Waters Conservation District boundaries based upon information contained in the*
547 *independent Certified Wetland Scientist’s report.* “ Mrs. Green stated that her point is why not
548 just leave out “based upon” because the board shouldn’t make a decision exclusively on the
549 information provided in the independent wetland scientist’s report. It was agreed to place a
550 period after the word boundaries and omit the remaining part of the sentence.

551 Mrs. Green reviewed the changes Mr. Kirk suggested earlier.

552 Mrs. Green read the existing proposed Section 7.1 *“ The following uses of land situated within*
553 *the Wetland and Surface Waters Conservation District may be permitted by issuance of a*

554 *Conditional Use Permit by the Planning Board provided the board objectively determines such*
555 *use or uses will not be expected to impair the function and values of resources situated within the*
556 *district”.*

557 Mrs. Green stated that impairing the function is not an absolute term and for a function to be
558 impaired leaves a lot of discretion on the board’s part and that is what we may want. The
559 applicant’s lawyer may not want that, but leaving the board the optimal amount of discretion is
560 what the board is aiming for.

561 Mr. Russell stated that with respect to Mr. Kirk, if there were three lawyers in the room right
562 now, there would probably be four answers. He stated he appreciated the fact that Mr. Kirk
563 brought these suggestions to the board, however, the board has worked very hard on the language.
564 The board has taken input from outside of town as well and used language recommended by
565 several professionals. Mr. Russell stated that if this is adopted, the board may want to consider
566 some of the changes that Mr. Kirk proposed, however, at this time it would be better to move
567 ahead with the proposal.

568 Steven Meisner asked Mr. Kirk what the one recommendation was that he would like to have put
569 into the proposed ordinance. Mr. Meisner asked Mr. Kirk: “What is the most important in your
570 opinion that needs to be changed or incorrect or in your opinion would not hold up in a court of
571 law?”

572 Mr. Kirk replied that there are two issues that are most prominent. One issue is the previously
573 discussed Section 7.1 - (1st paragraph) part of last sentence: “*will not be expected to impair the*
574 *function and values of resources situated within the district”*. The board is going to objectively
575 use the word impair. He suggested the board include a term such as “significantly impair” in
576 order to better define this section.

577 Mr. Keach stated that ultimately a court would make a determination on anything questionable.

578 Mrs. Green suggested using wording such as best evidence.

579 Mr. Kirk stated that wording doesn’t address the point he is raising. The language as written is
580 requiring that the proposed use not impair at all.

581 Mrs. Green stated it doesn’t say impair it says impair the function. She stated if she is missing
582 part of a lung she can still breathe.

583 Mr. Kirk replied that if your function is at 100% and you pare it down to 99% you may still
584 breath but by the mere fact that breathing has been cut by only 1%, and breathing has been
585 impaired, you trigger this.

586 Mrs. Green stated that the function has to be impaired a lot before there’s a significant
587 impairment.

588 Mrs. Green stated that Mr. Kirk’s input on this issue is appreciated; however, the board has
589 agreed to move forward.

590 Mrs. Green reviewed more of the changes Mr. Kirk suggested earlier and she read the existing
591 proposed Section 10 B.1:

592 *Section 10 B. 1. The proposed activity minimizes the degradation to, or loss of Wetland and*
593 *Wetland Buffers, and compensates for any adverse impact to the functions and values of Wetland*
594 *and Wetland Buffers, including but not limited to the capacity of the Wetland to:*

- 595
596 a. *Support fish and wildlife;*
597 b. *Attenuate flooding;*
598 c. *Supply and protect surface and ground water resources;*
599 d. *Remove sediments;*
600 e. *Remove pollutants;*
601 f. *Support wetland vegetation;*
602 g. *Promote public health and safety; and*
603 h. *Moderate fluctuations in surface water levels.*

604 Mr. Kirk stated that Section 10 B 2 there would be “no negative environmental impact to abutting
605 or downstream properties” . He suggested adding the word “reasonable “ before compensation in
606 Section B 1.

607 Mrs. Green and Mrs. Cormier disagreed because it’s subjective. Mrs. Cormier stated that it’s not
608 always going to be the same board but the board would always ask for an opinion from a wetland
609 scientist.

610 Mr. Kirk stated on top of page 8 where it says “no negative...” the word no is an absolute.

611 Mr. Keach suggested using “no significant negative....”.

612 Mrs. Green polled board members if they were in favor of adding the word significant to section
613 10 B.2 to read “*The proposed activity will have no significant negative environmental impact to*
614 *abutting or downstream properties and/or hydrologically connected water and/or Wetland*
615 *resources, including...*”

616 Mr. Russell – Yes, Mr. Mencis-Yes, Mrs. Green-Yes, Mr. Meisner-Yes, Mrs. Cormier-Yes

617 Mr. Kirk suggested changing the language in Section 7D to take out the word no.

618 Mr. Keach suggested adding the words “not significantly...” .

619 Mrs. Green stated she still holds that function is broader than impacts and does not think this
620 needs to be changed.

621 Mr. Keach stated that Mr. Kirk raises an incredibly strong point because this wording reserves the
622 judgment of the planning board.

623 *Acting Chairman Green polled the board as to they were in favor of the following*
624 *proposed language to Section 7 D. “Other uses, which the applicant is able to demonstrate to*
625 *the satisfaction of the Planning Board, that will not significantly interfere with Wetland functions*

626 *and values, water quality, or wildlife habitat, pursuant to the statement of Purpose contained in*
627 *Section 2 of this Article.”*

628

629 *Mr. Russell - Yes, Mr. Mencis-Yes, Mr. Meisner-Yes, Mrs. Cormier- Yes, Mrs. Green-*
630 *No*

631

632 Mrs. Green reviewed the changes agreed to at this meeting as follows:

633 *Section 1 – No change.*

634 *Section 2 – D. Preserve and protect important wildlife habitat; critical wetland*
635 *habitat of Threatened and Endangered Species; and maintain ecological balance;*

636 *Section 3 – No change*

637 *Section 4 - 5. All Vernal Pools, as well as a 50 foot Buffer measured outward*
638 *from their boundaries.*

639 *Section 4E . (last sentence) The Planning Board, after consultation with the*
640 *Conservation Commission, shall make a final determination regarding the Wetland*
641 *and Surface Waters Conservation District boundaries.*

642 *Section 5 – Definitions* **Endangered Species:** *Those native species whose*
643 *prospects for survival in New Hampshire are in danger because of a loss or change*
644 *in habitat, over-exploitation, predation, competition, disease, disturbance or*
645 *contamination. Assistance is needed to ensure continued existence as a viable*
646 *component of the State’s wildlife.* **Threatened Species:** *Those species which may*
647 *become endangered if conditions surrounding them begin, or continue to decline.*
648 **Vernal Pool:** *A body of water, typically seasonal, that provides essential breeding*
649 *habitat for amphibians and invertebrates, which meets the criteria established by the*
650 *New Hampshire Code of Administrative Rules, Part Env-Wt 101.99.*

651 *Section 6 – No Change*

652 *Section 7 D. Other uses, which the applicant is able to demonstrate to the*
653 *satisfaction of the Planning Board, that will not significantly interfere with Wetland*
654 *functions and values, water quality, or wildlife habitat, pursuant to the statement of*
655 *Purpose contained in Section 2 of this Article.*

656 *Section 8 – No Change*

657 *Section 9 – No Change*

658 *Section 10 D 1. The proposed activity minimizes the degradation to, or loss of*
659 *Wetland and Wetland Buffers, and compensates for adverse impact to the functions*
660 *and values of Wetland and Wetland Buffers, including but not limited to the capacity*
661 *of the Wetland to:*

662 *Section 10 D 2. The proposed activity will have no significant negative environmental*
663 *impact to abutting or downstream properties and/or hydrologically connected water*
664 *and/or Wetland resources, including:*

665

666

667 Section 10 5. All applicable Federal and/or State Permit(s) have been received
668 for the proposed activity in accordance with New Hampshire Code of Administrative
669 Rules – Part Env-Wt 100-800 and Section 404 of the Federal Clean Water Act .

670 Section 11 – No change

671 Mrs. Green asked if there were any additional public comments.

672 Mr. Daly stated that under Section 6 in permitted uses you may want to consider
673 owners with a previous conforming use a way to be able to continue that use.

674 Mrs. Green stated that is what Section 8 – Special Permits is for.

675 Mr. Daly disagreed because Section 6 requires a permit even if an owner is going to
676 continue with a previously conforming use.

677 Mr. Keach stated that in the zoning ordinance non-conforming uses are addressed.

678 Mr. Daly questioned what will happen now because significant changes have been
679 made tonight. One of those changes is the omission of the 1500 square feet for a
680 vernal pool. The second is the change of several absolutes changing no to
681 subjective issues. Those two changes fall into the category of significant changes to
682 the document and it's his opinion that these changes need to go to a public meeting.

683 Mrs. Green agreed stating that the changes will go a public hearing on January 19,
684 2010.

685 Mrs. Green stated that while Mr. Keach is researching the non-conforming issue she
686 would like to go over the action points.

- 687 ▪ Revised October 20th minutes
- 688 ▪ Revised December 15th minutes
- 689 ▪ Post for January 19th public hearing
- 690 ▪ Revise Wetland Ordinance as per this evening's meeting and
691 distribute
- 692 ▪ Schedule work session for first Tuesday in February – Right to
693 Know and minute issues.
- 694 ▪ Copy of correspondence to Montana Realty

695 Mr. Keach stated that Article II Section A 13 of the Sandown Zoning Ordinance
696 covers the pre-existing, non-conforming use question. This permeates the entire
697 ordinance.

698 Mrs. Green closed the meeting to public comment.

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703 MOTION: Matt Russell made a motion to accept the changes made to Article I Part
704 B WETLAND AND SURFACE WATERS CONSERVATION DISTRICT and to
705 post this for a second public hearing on January 19, 2010 beginning at 7:00
706 p.m. in the Sandown Town Office. Mr. Mencis seconded. VOTE ON THE
707 MOTION: Mr. Mencis-Yes, Mr. Russell-Yes, Mrs. Green-Yes, Mr. Meisner-Yes
708 and Mrs. Cormier-Yes

709

710 After a brief discussion, it was agreed that at the January 19th meeting, the
711 board would begin prioritizing updates to the regulations.

712

713 **Adjournment**

714 MOTION: Matt Russell made a motion to adjourn. Ed Mencis seconded.
715 Voted unanimously in the affirmative. MEETING ADJOURNED AT 10:46 P.M.

716

717 Respectfully submitted,

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719 Bette Patterson, Administrative Assistant

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