

1 **TOWN OF SUNAPEE**

2 **PLANNING BOARD**

3 **JULY 6, 2017**

4 **PRESENT:** Peter White, Chair; Donna Davis Larrow, Vice Chair; Joseph Butler; Richard Osborne; Randy  
5 Clark; Michael Marquise, Planner

6 **ABSENT:** Joseph Furlong; Shane Hastings, ex-officio member

7 **See attached sign in sheet**

8 Chairman White called the meeting to order at 7:00 pm.

9 **CONTINUATION: PARCEL ID: 0235-0092-0000: SUBDIVISION / LOT LINE ADJUSTMENT NINE (9) LOTS**  
10 **IN FIRST PHASE. EDGEMONT RD, LYNNE BELL.**

11 Jason Bell continued presenting the merits of the case.

12 Mr. Bell gave the requested road profiles and the proposed detention basin plans to the Board. Mr. Bell  
13 explained that the detention basin plans are subject to test pits once they can access the property; they  
14 need to get in and do the wetland crossings.

15 Mr. Bell said that they have the DOT and Wetland Permits and gave copies to the Board.

16 Chairman White asked about the possible steep slopes. Mr. Bell said that Clayton Platt did the math and  
17 they do meet the minimum of one (1) acre of usable land on all of the proposed nine (9) lots.

18 Chairman White asked if the wetlands needed to be mitigated. Mr. Bell said that it is under 10,000 sq ft  
19 so it does not need to be mitigated. Mr. Marquise said that it is 6,600 sq ft.

20 Mr. Bell said that at the intersection of the road the detention basin will serve as the discussed fire  
21 pond. They are proposing that area and another area by Edgemont Rd be conservation land, though  
22 that needs to be worked out with the Conservation Committee. The area by Edgemont Rd would  
23 provide a buffer to the road.

24 Chairman White asked and Mr. Marquise confirmed that he has reviewed the new material and it was  
25 discussed at the Peer Review Meeting.

26 Mr. Marquise asked Mr. Bell about the spur going towards the future development as there was a  
27 concern about the size of the hammerhead. It seemed to scale less than 150 ft, which is what in the  
28 regulations. Mr. Bell said that there is one temporary hammerhead but once they get as far as they  
29 determine what they are doing it will be at the town regulations. Mr. Marquise said that the concern is  
30 if a fire truck could turn on that road. Mr. Bell said that if it needs to be increased to 150 ft they can,  
31 though the only thing that would be turning there would be a dump truck. It is just a temporary and the  
32 engineer put it on the plan; the actual road will be continuing past that area. It does say that it is  
33 temporary on the plan. Chairman White asked and Mr. Bell explained that the road will eventually  
34 continue beyond that point but they need to get onto the land and see what they have.

35 Chairman White asked if there will be a dump and fill area rather than trucking everything offsite. Mr.  
36 Bell said that they will not have an excess of fill coming off the property and they will be trucking more  
37 fill onto the site.

38 Mr. Butler asked and Mr. Bell said that the water and sewer will all be private. Mr. Bell continued that  
39 Mr. Platt put on the plans where the well and leach fields could potentially go on all the lots. There was  
40 further discussion regarding this matter.

41 Mr. Butler asked if the Fire Department will require hydrants in this subdivision. Mr. Marquise said that  
42 nothing was said about it. Mr. Bell said that there is a dry hydrant proposed on the detention pond at  
43 the intersection. There was further discussion regarding the dry hydrant.

44 Mr. Butler asked and Mr. Bell confirmed that they want to do the first phase of the project.

45 Mr. Marquise asked and Mr. Bell confirmed that Lots 1 and 2 will be a shared driveway and that is part  
46 of the DOT approval.

47 Mr. Butler asked about the site line. Mr. Bell said that to the south the site line is over 800 ft and DOT  
48 has measured it as well.

49 Mr. Marquise said that Scott Hazelton would like to see the typical cross sections of the road on the  
50 plans including the dry section and the wetland crossing areas. Mr. Bell said that he has spoken to his  
51 engineer and will get both of those done.

52 Mr. Marquise asked and Mr. Bell confirmed that they will need a State Subdivision Approval as well as  
53 an Alteration of Terrain Permit (AoT) as they will have over 100,000 sq ft of disturbance. The AoT was  
54 started but they need more test pits completed. They would like to get past the wetlands and get that  
55 section stabilized and then move forward. They would like conditional approval based on the State  
56 Subdivision and AoT Permits. Mr. Clark asked and Mr. Bell explained that test pits need to be done in  
57 order to obtain those permits.

58 Mr. Clark asked and Mr. Bell confirmed that the driveways for Lots 1 and 2 will be privately maintained  
59 and then the road would eventually be Town maintained. The road will be built to Town specifications  
60 and then they would ask the Town's engineer to do inspections during construction. Chairman White  
61 asked and Mr. Bell confirmed that Lots 1 and 2 will not have any access off the new road. There was  
62 further discussion regarding this matter.

63 Chairman White asked and Mr. Marquise confirmed that there were no other comments from the Peer  
64 Review Meeting.

65 Mr. Butler asked and Mr. Marquise confirmed that a bond will be needed for this project. Mr. Marquise  
66 said that the Board may decide they want a bond for the first part of the project as well as they are  
67 going across wetlands.

68 Mr. Butler asked and Mr. Bell confirmed that they will want the road to become a Town road.

69 Chairman White asked and Mr. Bell confirmed that they would like to get conditional approval and do  
70 the cutting into the lots to get the AoT permit and the State Subdivision Permit.

71 Mr. Butler asked and Mr. Bell said that no test pits have been done as they have not been able to get  
72 onto the site.

73 Chairman White asked Mr. Marquise if he sees any issues with giving conditional approval for the road  
74 through the wetlands. Mr. Marquise said that he thinks that conditional approval can be given for the  
75 development and allow them time to get the road in and get the permits before coming in for a bond  
76 and with the Mylar. There was further discussion regarding the State permitting.

77 Vice Chair Larrow asked and Mr. Bell said that they would prefer to start in August to go over the  
78 wetlands in the driest part of the year. They have a one-year Wetlands Permit to get everything  
79 stabilized.

80 Chairman White asked and there was no one in the audience with any questions.

81 Mr. Butler asked and Mr. Bell said that Mr. Platt or Pierre Bedard will oversee the test pits depending on  
82 who is available.

83 Chairman White asked and there were no further questions for Mr. Bell.

84 There was a brief discussion regarding the conditions for approval and the bond requirement as well as  
85 a time limit for the approval.

86 Vice Chair Larrow made a motion to grant conditional approval for Parcel ID: 0235-0092-0000: for a  
87 Subdivision / Lot Line Adjustment, nine (9) lots in first phase, Edgemont Rd, Lynne Bell with the following  
88 conditions: the Planning Board needs the State Subdivision and Alteration of Terrain Permits; a one year  
89 bond for the construction of the road piece, which can be worked out with Scott Hazelton of the  
90 Highway Department; and the cross sections of the road needs to be put on the plan. Mr. Butler  
91 seconded the motion. Mr. Marquise asked about the final bond. Vice Chair Larrow amended her  
92 motion to include the final bond and bond hearing for the entire construction. Mr. Butler seconded the  
93 amendment. The motion passed unanimously.

94 **PARCEL ID: 0136-0018-0002 & PARCEL ID: 0136-0018-0001: SUBDIVISION / LOT LINE ADJUSTMENT**  
95 **TO AMEND THE DRIVEWAY ACCESS TO LOT 18-02 BY PROPOSING A COMMON DRIVEWAY WITH LOT**  
96 **18-01. BRUCE & MARY MCCARTHY, LAKE AVENUE.**

97 Chairman White asked and Mr. Marquise confirmed that this is an amendment to the approved existing  
98 subdivision. Chairman White asked and Mr. Marquise confirmed that they should go over the  
99 completeness of the application.

100 Mr. Marquise said that the application was filed in advance, fees were paid, abutters were notified by  
101 certified mail, and notices were posted. The application is an amendment to a previous subdivision and  
102 the specific change is for the driveway location and mitigation of the wetlands. Mr. Marquise said that  
103 with the documentation they have he believes the application is complete.

104 Vice Chair Larrow made a motion to accept the application as complete for Parcel ID: 0136-0018-0002  
105 and Parcel ID: 0136-0018-0001: Subdivision / Lot Line Adjustment to amend the driveway access to lot  
106 18-02 by proposing a common driveway with lot 18-01, Bruce and Mary McCarthy, Lake Avenue.  
107 Matthew Lowrie, 313 Lake Ave, asked if the completeness of the application can be revisited in the

108 merits. Chairman White said that completeness of an application is typically something that the Board  
109 determines with the requirements and the Subdivision Regulations. Mr. Marquise said that it does not  
110 prohibit additional items to be discussed; completeness is just confirming the administrative items have  
111 been done. Mr. Lowrie said that he does not believe that the drainage calculations have been  
112 completed, which was required. Mr. Marquise said that the drainage can be discussed during the  
113 merits. Mr. Clark seconded the motion. The motion passed unanimously.

114 Bruce McCarthy presented the merits of the case along with Kevin Leonard and Randal Shuey of  
115 Northpoint Engineering.

116 Mr. Leonard said that the subdivision was approved in 2014 and built in 2015. In February 2016,  
117 Northpoint was hired to deal with site stable issues that were causing problems with water quality to  
118 the Lake. They have been working with Mr. McCarthy and DES to resolve the issues and part of the  
119 process included identifying wetlands on the property.

120 Mr. Leonard said that the middle lot was originally approved with a driveway off the cul de sac. The  
121 wetlands restoration identified that the driveway needs to be removed. The purpose of this application  
122 will be to use the existing driveway that has always been on this property, and previously used to be  
123 access to Burkehaven, to access the upper lot, Lot 2. Lot 2 will be given an easement over Lot 1 for the  
124 driveway. Mr. Leonard continued that they believe that this makes a lot of sense and minimizes the  
125 impact on the wetlands.

126 Mr. Leonard said that the submitted plans include the as-built survey as well as the DES approved  
127 restoration plan and the driveway plan. The wetlands restoration and the plantings have been  
128 completed.

129 Chairman White asked and Mr. Leonard explained that no new driveway will be constructed other than  
130 a small segment from the existing driveway to the future home.

131 Chairman White asked if the rest of the road is passable. Mr. McCarthy said that it is passable and used  
132 to go to the hotel. It has been used from time to time and is a dirt road. Mr. Marquise asked if any of  
133 the abutting properties have an easement. Mr. McCarthy said that he does not know if there is an  
134 easement for the right of way. Mr. Leonard said that the power company does have an easement and  
135 the power lines have used the road for repair work. Mr. Marquise explained that once a driveway  
136 serves more than two units it becomes a road and it would have to be maintained in a permanent  
137 private road condition. Chairman White said that they should make sure that no other property has an  
138 easement for the road so that they do not have any issues. Mr. Leonard said that all the other homes  
139 have direct access to Burkehaven and the application that was submitted and approved for the  
140 subdivision had a plan drawn by a licensed land surveyor and it did not identify an easement. Chairman  
141 White said that the two lots are the maximum that can be served by a driveway and he recommends  
142 that they make sure that there is no easement.

143 Mr. Leonard said that on the restoration plan that was approved by DES there are indicated wetlands,  
144 however, they created more wetlands, which DES will not object to.

145 Mr. Marquise said that the proposal is for the driveway and wetlands, however, the plan indicates water  
146 quality function replacements. Mr. Leonard said they were part of the wetlands restoration approval,

147 which was implemented last fall. There have been plantings that have occurred, which they have  
148 photos that they can show the Board. They expect that in October, when they report back to the  
149 Wetlands Bureau they will have formal approval of the wetlands restoration.

150 Mr. Shuey said that he is a Certified Wetlands Scientist as well as a Certified Soil Scientist. He was  
151 brought into this project in March of last year. They identified that wetlands had not been delineated  
152 per DES and the Army Core Standards as part of Town approval for the subdivision. They worked with  
153 the Wetlands Bureau and received a Wetlands Restoration approval. Mr. Shuey showed the Board  
154 photographs of what the site looked like in the spring and explained all the photographs.

155 Mr. Shuey said that they restored approximately 9,000 sq ft of wetlands and worked with DES to do  
156 that. One of the photographs from the spring shows the winter rye that was used for stabilization.  
157 There is a series of pools that cascade from one to another so the water doesn't just go from one  
158 detention basin to another. The watershed flows into the wetlands system and flows out into a  
159 spillway, down a riffraff swale, across the road, through a swale, then into the lower detention basin,  
160 which was planted with some vegetation to help with filtering.

161 Mr. Shuey said that the water quality did not meet the DES standards and they have been working with  
162 DES to try and get it to that point. Last summer was a drought, which helped with the stabilization of  
163 the site. This spring has been wet and they have had some discharges that exceeded DES requirements  
164 but he thinks they are getting close to where they need to be. Mr. Shuey gave further explanation  
165 regarding how they have worked to stabilize the site and help improve water quality including a surface  
166 skimmer for one of the basins, plantings, and stone.

167 Mr. Shuey said that they have a wetlands restoration area that is functioning exactly as they planned.  
168 There are step pools that collect the water and slowly bring it down into the lower basin. There are  
169 water quality features that seem to be functioning fairly well and as time goes on the one-foot spacing  
170 plants will become zero foot spacing and a thick vegetated area. The skimmer will remain in place until  
171 December.

172 Mr. Shuey said that they have experienced, like many parts of Sunapee, some water quality issues with  
173 some of the storms. The intense cloud bursts have created some havoc in various places and they have  
174 applied to NH DES to use a flatulent terratube system to help attract the soil and help it settle out. He  
175 has worked on other projects with this type of system and they are used across the country but NH has  
176 been reluctant to allow their use on sites for anyone other than DOT. It is a tool that can be utilized on  
177 the site for days that there are big storm events to help ensure clean water goes into the lake.

178 Mr. Butler asked if they re-topoed and cleaned out the green area on the plan to create the reservoirs.  
179 Mr. Shuey said that a good portion of the area was previously wetlands which had been filled in and  
180 graded and part of it was adding in areas. There were areas that were excavated that took out some  
181 wetlands and there is no way to create the wetlands in place so the offset to replace the functions and  
182 values of that square footages was to create new areas.

183 Mr. Leonard said that at the time of the subdivision and construction no one had identified wetlands on  
184 the property. The professionals involved and the Town did not know about the wetlands. They were  
185 hired to deal with water quality issues and they suspected that there were potential wetlands issues.

186 They brought in a professional to assess the site and they located the wetlands by survey and then  
187 worked with DES to correct the issues with the restoration plan.

188 Mr. Butler asked if they are not meeting the water quality requirements to go into the lake what will  
189 happen in the future and who will maintain the site. Mr. Leonard said that Mr. McCarthy will be  
190 responsible for everything. For most storms that have occurred this year they have met the water  
191 quality standards. There are a few storms where they did not but they continue to do monitoring and  
192 have been very close to what the numbers should be. The standard is 10 NTU's (Nephelometric  
193 Turbidity Units), which is basically the cloudiness of the water and is measured by reflecting light in the  
194 water at an angle. The State has a requirement of no more 10 NTU's above back ground. Mr. Leonard  
195 gave further explanation regarding this matter. They are down to about 20 NTU's above background  
196 right now and they have been a little higher but they are getting closer. The goal is to meet the  
197 requirements and get the land stable. Mr. Shuey said that Mr. McCarthy is a responsible land owner  
198 who has been meeting with DES and trying to make it right. He has not been ignoring the situation.

199 Mr. Butler said that new skimmers are being added and that they are talking about adding new devices  
200 and this seems like a work in process and asked who will maintain the work in progress. Mr. McCarthy  
201 said that DES is requiring ongoing monitoring. Mr. Butler asked and Mr. McCarthy explained that they  
202 will report back to DES in October with a full report that will identify any problems that have occurred.  
203 If DES thinks that further steps are needed they will do them.

204 Mr. Butler asked if there is currently any erosion on the site with the microbursts that have recently  
205 happened. Mr. Shuey said that they were on the site the day one of the microbursts arrived. The site  
206 eroded on Friday and Monday they were back fixing the site and then another storm came in. Tuesday  
207 morning, they were back fixing the site and they have not needed to go back to the site. Mr. Leonard  
208 and Mr. Shuey showed the Board additional pictures of the site.

209 Mr. McCarthy said that after the microburst and other rain that came in they had murky water in the  
210 lower basin so they decided to start a new wetlands filtration system. They pumped the murky water to  
211 the highest level of the new filtration system and it came out clear. Mr. Leonard said that when it is  
212 raining heavily water comes from other sources on Lake Ave and some of the other sources are murky;  
213 heavy rain causes erosion everywhere.

214 Chairman White asked and Mr. Leonard explained how the water gets to the lake from the site. Vice  
215 Chair Osborne asked if there has been any testing done on the water joining the water from the site.  
216 Mr. Shuey explained that they sample at multiple places on the site and from the right of way at the  
217 edge of the road.

218 Chairman White asked if the lower detention area has gotten full enough to overflow or if it will even  
219 crest and go over the road. Mr. Shuey explained that there is a grate before the elevation and if it gets  
220 too high it will go into the grate and under the road.

221 Mr. Lowrie gave a packet of slides he compiled with pictures and other information to the Board and  
222 presented the slide show. Mr. Lowrie explained that the first page is pictures from July 6, 2017 after a  
223 .66 in rain event. The left shows the muddy water in the swale and the middle shows the muddy water  
224 entering the lake.

225 Chairman White asked and Mr. Lowrie said that part of the reason that he is before the Board is to make  
226 a case that what is being done on the site is not working. Mr. Lowrie said that the conclusion is that  
227 Sunapee regulations are being violated. He is trying to protect the lake and Sunapee's tax base.

228 Mr. Lowrie said that he wants the Board to be aware that there are other proceedings happening. DES  
229 required mediation and it appears they are still requiring monitoring. They are not sure about what is  
230 going on because they are not getting correspondence. He filed an appeal with the DES Wetlands  
231 Council on December 6<sup>th</sup> saying that the remediation was insufficient. Mr. Lowrie continued that Mr.  
232 McCarthy took the position that it was not a DES permit or approval so it was interesting to hear them  
233 talk about what DES has approved. He has filed an appeal with the NH Supreme Court who will review  
234 the case. Mr. Lowrie continued that on May 15, 2017 he filed a lawsuit on his own behalf.

235 Mr. Lowrie said that his presentation includes some history of the project that Northpoint did not go  
236 over for the Board. The original plan was for a T-shaped drive and 2 discharge points and the table on  
237 the page indicated that the flow rates would go down because the total impervious square footage was  
238 supposed to be reduced. Mr. Lowrie continued that as far as he can tell these were the only drainage  
239 calculations ever submitted to the Board. The original plans were done by Horizon Engineering and they  
240 were fired and David Eckman was hired. In January 2015, an amended plan with a circular drive was  
241 submitted. The plan was very different and had a lot more impervious surface. In August 2015, the plan  
242 was approved over the abutters objections. The approved plan had the demolition very narrowly carved  
243 around the roundabout and the driveways but what was done was completely different per the satellite  
244 plan shown on the page. Mr. Lowrie continued that per the before and after pictures all the water that  
245 is on the property is now going onto his and the Pasculano's property. The minutes of August 6, 2015  
246 show that the Board members said that updated drainage calculations were needed and they have  
247 never been presented. Mr. Lowrie continued going through his presentation for the Board of pictures of  
248 the lake after rain events as well as additional history of the project. He said that the abutters do not  
249 know what is going on, however, they do know that it is not fixed.

250 Mr. Lowrie said that the first issue is contamination, per the pictures of the June 19, 2017 storm. The  
251 second issue is the excess flow as there is a lot more water than there should be. The pictures on the  
252 page show the excess water that come onto his and the Pasculano's properties. The third issue is  
253 erosion per the pictures of the base of a retaining wall and a formerly underground invisible fence.

254 Mr. Lowrie explained the Town of Sunapee Subdivision requirements that the subdivision does not  
255 comply with including: the storm water calculations for the project; adequate storm water handling is  
256 not provided for; easements for increased flows were not obtained; and utilities and sewage are not  
257 provided for in the amended plan. Mr. Lowrie said that he thinks that additional work, either driveways  
258 or houses, will make the problems worse. He thinks that the only way to prevent more issues with the  
259 water flow is to revoke the subdivision until they can show the system can handle the rainwater.

260 Chairman White thanked Mr. Lowrie for his presentation.

261 Another abutter said that the erosion is happening on their property, not on the McCarthy's property.  
262 The monitoring is being done on the McCarthy's property, not on their property. There are so many  
263 sources because the McCarthy's clear cut the land. The stream was a little trickle and now it is massive  
264 and if it overflows it floods her property. The water washes through her property to the lake. She has

265 steps that go down into the water and she used to be able to see them but now it is just mud. The lake  
266 in front of her house, which used to be clear, is now a murky, muddy mess. There is nothing that DES  
267 can do to fix what has happened to the lake. She hopes that the Board can do something so it doesn't  
268 continue to happen to the lake.

269 Mr. Lowrie explained that the McCarthy's had a forested area where they took out mature trees. He has  
270 been told that a mature tree can consume up to 600 gallons of water a day in a sunny, warm day. The  
271 trees that used to lower the water table are not doing it any more. The whole area is a large rocky area  
272 with dirt and when they took out the trees there was nothing holding the dirt anymore. For the  
273 remediation, they have planted 3 ft tall trees and it will be decades before that will be sufficient.

274 Mr. Butler said that on slide seven of Mr. Lowrie's presentation on the original plan he said that 31,000  
275 sq ft was to be cleared. Mr. Lowrie said that was the area that was shown as being altered. Mr. Butler  
276 said that on the picture slide it shows 101,000 sq ft and asked if it is accurate. Mr. Lowrie said that he  
277 thinks that it is but that Mr. McCarthy will say it is approximately 92,000 sq ft per his surveyor. Mr.  
278 Butler asked and Mr. Lowrie confirmed that 31,000 sq ft was the original proposal. Mr. Lowrie said that  
279 if you look at the original to the amended plan on slide eight you can see the differences in the clearing.  
280 Mr. Butler asked if the front of Mr. McCarthy's house was all trees originally. Mr. Lowrie said that it was  
281 surrounded by trees.

282 Chairman White said that there are issues and Mr. McCarthy and his consultants have admitted that  
283 there have been issues and they are trying to remedy the situation. He thinks that it is good that Mr.  
284 McCarthy is addressing it now; maybe it should have been addressed earlier on but it does seem like  
285 there has been an earnest effort to address the concerns.

286 Mr. Lowrie said that the Planning Board should not allow additional work to be done until it is shown  
287 that they have met the Section 5.11 requirements, which is that there is no increased storm flow and  
288 that the other issues are addressed. He believes that the subdivision should be revoked as he believes  
289 that it the only way to prevent building permits from being issued. Mr. Lowrie said that the violations to  
290 the regulations are plain. They have not shown that they are in compliance with the regulations.

291 Mr. Marquise said that when Mr. Eckman took over the project in 2015, he did do a set of calculations  
292 based on the amended layout. It was to determine the best way to handle a control structure. They  
293 were prepared September 3, 2015, so they do have calculations based on what was built, which was the  
294 cul de sac rather than the hammerhead. Mr. Lowrie said that he does not think that he has ever seen  
295 those calculations and they were not submitted before the approval, which was in August. There was  
296 further discussion regarding this matter and that the calculations are public record and available at the  
297 Town Office.

298 Mr. Butler asked Mr. Leonard and Mr. Shuey if they have been using Mr. Eckman's calculations or if they  
299 did their own. Mr. Leonard said that the subdivision was designed by a different entity and was  
300 approved and built and he thinks that the Board will have a hard time revoking a subdivision that has  
301 made this much progress. Mr. Butler asked again if Mr. Leonard is using Mr. Eckman's calculations in  
302 the remediation process. Mr. Leonard said that they are not doing drainage calculations as the drainage  
303 has already been designed. Mr. Lowrie said that the drainage is different because what is built is



304 different and they assume a completely different topography. There was further discussion regarding  
305 the drainage calculations.

306 Mr. Lowrie said that the original plans had two discharge points and he believes the amended plan did  
307 as well but all the drainage has one discharge point. There was further discussion regarding drainage.

308 Mr. Lowrie said that no one has shown the Board that the water flow has not increased and the  
309 regulations say that the water flow cannot be increased without an easement.

310 Mr. McCarthy said that most of the issues have been aired thoroughly with DES and with the Wetlands  
311 Bureau and he thinks that is who should be handling this because they are the ones who issued the  
312 letter of deficiency and required the restoration plan. He thinks that they are doing a good job  
313 monitoring the process and making sure they comply; it is a work in process but they are not there yet.  
314 Mr. McCarthy continued that Mr. Lowrie's concern about them moving forward is currently a non-issue  
315 as there is no way to sell the lots without having the issues resolved. They are committed to having the  
316 site work properly so Mr. Lowrie has already won his point.

317 Mr. Lowrie said that the Wetlands Council refused to hear the case. He does not believe that DES is  
318 satisfied but they do not deal with issues of waterflow as it is beyond their jurisdiction. The waterflow is  
319 something that the Planning Board can handle. He is going to different places because there are  
320 different things each one can do. The Wetlands Council could require additional remediation of the  
321 wetlands and the Planning Board cannot do that. The lawsuit is to try and stop it now; he has waited 20  
322 months and does not want dirty water entering the lake any more. It is the Planning Board's obligation  
323 to enforce their regulations and they have been violated. If there can never be another building on the  
324 site until it is fixed he does not see a reason not to revoke the subdivision.

325 Chairman White said that the Board can consider Mr. Lowrie's concerns and revoke the subdivision  
326 approval but at the same time they have an amendment to the approved subdivision before them. Mr.  
327 Clark said that if an injunction is granted by the court it would overrule the Planning Board. Mr. Lowrie  
328 said that he does not know if the court looks at the Subdivision Regulations or not.

329 Vice Chair Larrow asked Mr. McCarthy if the Planning Board revokes the subdivision what it gets him if  
330 the water is still cloudy going into the lake and how it solves his problem. Mr. Lowrie said that is  
331 something separate and why he filed the lawsuit. He might not have done it if he thought the Planning  
332 Board could address the dirty water. Vice Chair Larrow asked if Mr. Lowrie is asking the Board to halt  
333 the project to allow them time to process through court to do something about the dirty water. Mr.  
334 Lowrie said that he does not want anything happening on the project until the water problem has been  
335 addressed. He is asking the court to do that and he is asking the Planning Board to not allow permits to  
336 be issued. He believes that he was told at the December meeting that there is not a way for the Board  
337 to not allow permits unless the subdivision is revoked.

338 Mr. Butler said that at one of the meetings he thought the Board asked the two parties to get together  
339 and asked what happened. Mr. Lowrie said that he does not believe that was asked. Last summer they  
340 gave the information to DES and started to have DES look at the site and they have since been cut out of  
341 the communication loop. There was further explanation from Mr. Lowrie regarding this matter. Mr.  
342 Butler asked and Mr. Lowrie said that there has only been one meeting about a year ago.

343 Mr. Butler asked how Mr. Lowrie thinks remediation has gone since they met. Mr. Lowrie said that June  
344 19<sup>th</sup> was as bad as it has ever been, both the water volume and the dirt, it is not better in any way.

345 Mr. Shuey said that the June 19<sup>th</sup> storm was bad; turbidity wise it was horrible. It was right after they  
346 finished replacing the riffraff and they had an area in the basin that washed out. That was corrected  
347 Tuesday morning; they were not ignoring that there was an issue. Their concern with the quality of the  
348 lake is as strong as anyone else's. The water quality is what brings people to Sunapee and he does not  
349 want it to become a green algae lake. It is their goal to make it better. Mr. Shuey gave further  
350 explanation as to what they have done on the site.

351 Mr. Butler asked about the abutter's erosion. Mr. Shuey said that he has not been on their property to  
352 look at that. With the number of lawyers involved, he has not asked and he does not think that he'd get  
353 permission. Mr. McCarthy said that they have not been allowed to go on the abutter's properties.  
354 There was further discussion regarding this matter.

355 Chairman White said that the issue is that the McCarthy's are not where they need to be to get the  
356 water, to where it needs to be. They have done a lot but there is more work to do. Mr. Leonard said  
357 that it is in DES' jurisdiction and they are working on it. Chairman White said that DES should not need  
358 to be involved in this project as this was an approved subdivision and it appears there was work done  
359 that was not on the initial and subsequent subdivision plans.

360 Chairman White asked if there is more disturbed area than what was on the plans. Mr. McCarthy said  
361 that the area in front of the existing house was cleared after consultation with Mr. Landry and because  
362 they are outside the 250 ft of the lake they were told it was OK. Chairman White asked and Mr.  
363 McCarthy confirmed that was not indicated on the initial subdivision. Chairman White said that there  
364 has been additional clearing and such done that was not on the plan. Mr. McCarthy said it was done  
365 with the knowledge of the Town.

366 Chairman White said that there were wetlands on the property, and he does not know how previous  
367 professionals did not notice them or identify them and it is frustrating to him because if things had been  
368 identified properly he does not think that they would here. Mr. Leonard said that he said in December  
369 that the wetlands on this subdivision had not being identified, which reminded him of the late 80's when  
370 they were just coming out with the Army Core Manual. The response from the Planning Board was that  
371 per the regulations these are not wetlands and no one asked if there were wetlands on the site.  
372 Chairman White said that the Planning Board believes that if there are wetlands on a property then they  
373 are properly identified. They are not wetlands scientists and they cannot go on a property and identify  
374 wetlands. Mr. Shuey said that he suggests that for future plans if there is not a wetlands stamp on the  
375 plan that the Board ask that a wetlands scientist at least look at it. It was pretty obvious to him when he  
376 went to Bing Maps and looked at the street view and panned in that the road was under construction  
377 and there were cattails. He does not know why wetlands were never identified. Chairman White said  
378 that neither does the Planning Board. Mr. Leonard said that he thinks that the original plan with the  
379 hammerhead driveway may have also disturbed wetlands but it was so much smaller than what was  
380 done. Mr. Shuey said that as he understands, according to the Town's regulations they are not  
381 wetlands. Mr. Marquise said that is true because there is a soil mapping that triggers the Town  
382 Regulations. Chairman White asked and it was confirmed that they are wetlands to the State, which is  
383 why they are dealing with the Wetlands Bureau.

384 Mr. Leonard said that the goal of a subdivision is to develop lots and when a subdivision is approved the  
385 Board is approving the infrastructure, the frontage, and the lot lines that were on the plan. There are  
386 three lots in the subdivision and as long as they meet Shoreland Regulations and any local building  
387 codes, you can develop your piece of land however you want to. There were no limitations from the  
388 Planning Board as to how these lots were developed. Mr. Leonard continued explanation regarding this  
389 matter.

390 Mr. Butler asked and Mr. Leonard confirmed that they are asking the Planning Board to amend the  
391 driveway.

392 Chairman White said that unless there is something new that someone has to say to the Board he will  
393 close the public input part of the meeting.

394 Mr. Lowrie said that he has not looked at the wetlands regulations in the Town of Sunapee regulations  
395 but he does know that they require compliance with State laws and he does know that they have water  
396 flow regulations.

397 Mr. Marquise said that the Board should keep in mind that the hearing is an amendment to the  
398 subdivision, not a revocation hearing, which would be a separate hearing. He believes that if the Board  
399 did decide they wanted to hold a hearing to revoke the subdivision they should have Town Counsel at  
400 the meeting as they have never done one before. He does feel that there should be some commentary  
401 from the engineer that would make a statement, not to the adequacy of the existing system as they did  
402 not design it, but what impact these changes will have to the system, if the flow will be increased or  
403 decreased and if the flow will change. Mr. Marquise said that he also thinks that there should be  
404 documentation as to the driveway and how many people may use it in the future. Chairman White  
405 asked if the new driveway amendment will affect the drainage calculations and the ebb and flow. Mr.  
406 Leonard said that there were no restrictions with the original approval and people can do whatever they  
407 want with their property. No one is proposing to further disturb the wetlands. Chairman White asked if  
408 his question has been answered as he thought that it was a simple yes or no. He understands simple  
409 property rights and when someone buys a lot they have a right to do whatever they want but that is not  
410 what is being discussed. Mr. Leonard said that by proposing a common driveway, they are using an  
411 existing impervious surface to access a home. If it were a separate driveway it would be adding  
412 impervious surface. Chairman White asked if Mr. Leonard is saying that they are not making any  
413 changes to the driveway and that there are no difference to the drainage calculations. Mr. Leonard said  
414 that it will be beneficial to everyone to share the driveway.

415 Mr. Butler asked about legal access. Mr. Leonard said that Mr. McCarthy will have to provide a legal  
416 easement and have a maintenance agreement between the two properties.

417 Vice Chair Larrow asked if they are using the existing driveway if there will be any disturbance to the  
418 land or any build out of the driveway. Mr. Leonard said that the driveway exists, in a rough form, all the  
419 way to Burkehaven. The person who purchases the lot will arrange their house to use the driveway.  
420 Vice Chair Larrow asked if there will be any change to the land to accommodate the lot. Mr. Leonard  
421 said that there will always be changes to the land to accommodate the lot. Vice Chair Larrow said that  
422 there will be a lot less disturbance following the path already in place. She asked if there will be  
423 disturbance in the land that is not as developed when it leaves Mr. McCarthy's lot because the

424 disturbance is what caused the problem with the drainage. Mr. Leonard said that part of the driveway  
425 already exists as he parked there before the meeting. He believes that the better solution is to access  
426 the property as proposed. Mr. McCarthy said that the new driveway would be replacing another  
427 driveway that they reclaimed as a wetlands so there is a net benefit.

428 Chairman White closed the public input part of the meeting.

429 Mr. Lowrie said that he asked Mr. McCarthy's attorney for an electronic copy of what was submitted to  
430 the Town. He has not seen plans nor the June 27<sup>th</sup> submission so it might not be right to permit the  
431 amendment. If it gets rescheduled he would like the Town to have a hearing for revocation at the same  
432 time. Chairman White explained that revocation is a formal process. Mr. Lowrie said that he looked and  
433 he could not find that in the Town regulations. Mr. Marquise said that it is a NH law.

434 Mr. Osborne said that they are removing one driveway and using an existing driveway as a common  
435 driveway. They are not actually building a driveway from the property line to the house and there will  
436 be no additional disturbance. When the property owner does their driveway, there will be a change and  
437 that will be up to the property owner to do the proper drainage. Though the remediation that has been  
438 done is all still new, the upper part seems to be all grown in and the lower part seems to be the biggest  
439 issue at this point as it is brand new. Two sections were installed in June and have not had a chance to  
440 come in yet. Mr. Shuey said that vegetation was peeking through the blankets before the meeting.

441 Mr. Osborne asked if the lots can be sold yet. Mr. McCarthy said that they would need to go to DES and  
442 demonstrate that there is a legal requirement of the new owner that they would have to do everything  
443 they are required to do. A potential owner would not be very interested in the property. Mr. Butler  
444 asked and Mr. McCarthy explained that there would have to be an agreement that the new owner  
445 would be legally responsible to do everything that they have been charged with doing by DES. There  
446 was further discussion regarding this matter.

447 Chairman White said that revoking the plan sounds like another process. He thinks that the Board  
448 should just focus on the driveway.

449 Vice Chair Larrow said that it makes more sense to use the existing driveway. Looking solely at the  
450 amendment for the driveway she believes that it makes sense.

451 Mr. Butler asked if there was a bond for the project. Mr. Marquise said that there was and he believes  
452 that it has all be utilized. Mr. McCarthy said that the Town does hold some monies left in the bond. Mr.  
453 Lowrie said that at an earlier meeting the Board made a recommendation to the Selectboard that the  
454 bond not be released until the issues on the site are resolved.

455 Chairman White asked for a motion for the amended driveway. Chairman White asked and Mr.  
456 Marquise confirmed that the Board can make a condition that Mr. McCarthy provide proof that the  
457 driveway is not able to be used by anyone else. Vice Chair Larrow asked if there should be a statement  
458 regarding the impact the change will have on the wetlands. Mr. Marquise said that the statement was  
459 made verbally and it is up to a professional to confirm, which he thinks was done. There was further  
460 discussion regarding these issues.

461 Vice Chair Larrow made a motion to approve the subdivision / lot line adjustment for Parcel ID: 0136-  
462 0018-0002 and Parcel ID: 0136-0018-0001 to amend the driveway access to lot 18-02 by proposing a  
463 common driveway with lot 18-01, Bruce and Mary McCarthy, subject to having a driveway  
464 documentation as to how many users will be using the access. Mr. Osborne seconded the motion. The  
465 motion passed unanimously.

466 Mr. Butler asked and Mr. Marquise explained that the Town looks at the soil maps and if they do not  
467 identify them as a 5 or a 6 then they do not consider the land wetlands. There was further discussion  
468 regarding the clearing of the lot and the wetlands.

469 **PARCEL ID: 0209-0001-0000: SUBDIVISION REVIEW: ONE NEW LOT FROM EXISTING 5.96 ACRE**  
470 **PARCEL. FINAL LOTS WILL BE 4.28 ACRES WITH EXISTING HOUSE AND 1.68 ACRES. LEONARD & LISA**  
471 **POLLARI, 211 PERKINS POND RD.**

472 Mr. Marquise said that the application is for a minor subdivision and falls under Sections 6.04 and 6.05-b  
473 of the Subdivision Regulations. The application was filed in advance, fees were paid, abutters were  
474 notified, and notices were posted. Mr. Marquise said that he went through the checklist and he feels  
475 everything is there; being a minor subdivision it is eligible for waivers including: existing and proposed  
476 contours; existing and proposed utility lines; and plans for storm water drainage. Mr. Marquise  
477 continued that the subdivision needs a State Approval for Subdivision as it is under 5 acres and it was  
478 recently approved under SA2017062002. He assumes that the Town will receive a copy of that  
479 approval. With those waived items, Mr. Marquise believes that the application is complete.

480 Mr. Clark made a motion to accept the application as complete for Parcel ID: 0209-0001-0000. Mr.  
481 Butler seconded the motion. The motion passed unanimously.

482 Leonard Pollari presented the merits of the case.

483 Chairman White asked and Mr. Pollari confirmed that the proposal is to subdivide a 5.96 acre lot into a  
484 4.28 acre lot and a 1.68 acre lot. There is an existing house, which is on Lot 1.

485 Mr. Marquise showed the Board a copy of the plan that went to DES.

486 Chairman White asked and Mr. Pollari confirmed that the property is not waterfront, it is just located on  
487 Perkins Pond Rd.

488 Chairman White asked and Mr. Marquise said that the application meets all the aspects of Zoning. The  
489 plan shows there are some wet areas that exist but no construction will occur in the wetlands and the  
490 driveway will be shared.

491 Mr. Butler asked and Mr. Pollari confirmed that the site has been cleared. Chairman White asked and  
492 Mr. Pollari confirmed that the house will sit at the high point and the lot falls from there.

493 Chairman White asked and Mr. Pollari confirmed that the driveway will be shared with an right of way  
494 and then the new lot will have a gravel driveway past the culvert.

495 Mr. Butler asked and Mr. Pollari said that the culvert was installed in the initial construction for the  
496 upper house.

497 Chairman White asked and Mr. Pollari confirmed that there is a house on the bigger lot.

498 Mr. Clark made a motion to approve Parcel ID: 0209-0001-0000: review of the subdivision. Mr. Butler  
499 seconded the motion. Mr. Clark amended his motion to include verification of the State Subdivision  
500 Approval. Mr. Butler seconded the motion. The motion passed unanimously.

501 **CONSULTATION – LAKE SUNAPEE ROWING CLUB**

502 Faith Reney explained that the Rowing Club has been at 16 Cooper St for six years and have been doing  
503 basically the same thing every year, this year they have just changed the parking. For the past three  
504 years they have had the same days and times, they have just had to change dates to correspond with  
505 the calendar so instead of saying May 31<sup>st</sup> it may say June 1<sup>st</sup>. The last application may have said 6:00  
506 am and this one says 5:45 am.

507 Mrs. Reney said that the main issue with the site has been parking. They have non-residents who  
508 participate in the program and because they do not have a Sunapee sticker they are unable to park at  
509 the Georges Mills public boat launch. In the past, they have parked at a couple of different places where  
510 they had Property Usage Forms signed by the owners but the properties have been sold and the new  
511 owners are not able to give them parking.

512 Mrs. Reney said that they know who is going to row every day because they must make lineups for the  
513 boats. They will know how many people they need to have parking for and they will park at the Exit 12  
514 Park and Ride and Sunapee residents with parking permits will meet them and car pool them down.

515 Mr. Marquise said that in 2010, the Rowing Club came before the Board and the Board decided that a  
516 Site Plan Review was not necessary. It is on Town land and basically OK'd by the Town so the Club was  
517 given permission to operate without a Site Plan Review. There have been some changes to the hours  
518 over the years. In 2014, the Rowing Club came back for a consultation regarding their hours and with a  
519 Statement of Property Usage and the Board signed off that a Site Plan Review was not required.

520 Mr. Marquise said that this year there was some concern from the Selectmen regarding the loss of  
521 parking due to the sales of the properties. He thinks that the Rowing Club has resolved the parking  
522 issues. Outside a few dates changes the hours are right in line with what was presented in 2014, and he  
523 does not see that there is anything that should concern the Board. The main concern of the Selectboard  
524 was the parking.

525 Chairman White said that if they are using cars with the stickers they can use as much of the parking  
526 as reasonable. Mr. Osborne said that he thinks that the parking issue has been resolved. Mr. Clark  
527 asked and Mrs. Reney said that she thinks that the carpooling solution is reasonable.

528 Mr. Marquise asked and Mrs. Reney said that the storage provision for the boats has not changed. They  
529 have racks in the backyard of 16 Cooper St and pay them rent.

530 Mrs. Reney gave the Board copies of Certificates of Insurance for the Town and for the owners of 16  
531 Cooper St.

532 Mr. Marquise asked if the Board feels as though they should vote that no Site Plan Review is necessary.

533 Mr. Osborne made a motion that no Site Plan Review be required. Mr. Butler seconded the motion.  
534 The motion passed unanimously.

535 Mrs. Reney asked and Mr. Marquise said that if in the future the Rowing Club isn't changing anything  
536 then just submit the application to the Selectboard. If the Selectboard feels as though there are any  
537 changes they will direct them to the Planning Board.

538 There was further discussion regarding where the Rowing Club used to park and the parking issues that  
539 have happened because of the sales as they lost have the season because they could not find parking.

#### 540 **MISCELLANEOUS**

541 Mr. Butler said that he drove by the Yacht Club and there was a tent on the property and asked if they  
542 have come before the Board. Mr. Marquise said that they were supposed to come before the Planning  
543 Board but the Selectboard decided to allow them to do the one event. He thinks that there were some  
544 stipulations that said that there could not be any other use of the main building, which would cause a  
545 parking issue. The people who had the wedding were abutters so there wasn't a concern about abutters  
546 not being unhappy. It was just a liquor license so the Selectboard signed it that it complied with  
547 Zoning.

548 Chairman White said that for the McCarthy case, he was not aware that a revocation of a subdivision  
549 has to be a separately filed case. If he had known that he would not have allowed so much time to be  
550 spent on that issue. Mr. Clark asked if the Planning Board or the Selectboard revokes a subdivision. Mr.  
551 Marquise said that the Planning Board hears the case. He is not sure who drives it and whether it must  
552 come from a formal request from an abutter. The Board would need guidance from the Town Counsel.  
553 Vice Chair Larrow said that it is not the first time the abutters have asked for the subdivision to be  
554 revoked and recommended finding out what the requirements are. Mr. Butler asked if there is anything  
555 in the regulations that talk about new information being discovered after an approval where there could  
556 be a hold put on a subdivision until the Board can hear what was discovered. Mr. Marquise said that a  
557 revocation can be done, however, he does not think that the subdivision can be held. It is serious  
558 because if someone has gotten an approval they could be selling lots. Most things should be able to be  
559 taken care of in a bond. The wetlands came up in a separate issue and the McCarthy's came back to the  
560 Board. Mr. Butler asked who takes care of the erosion of the abutter's properties because that is not  
561 covered in a bond. Mr. Marquise agreed and explained that is why they are handling it civilly. Mr. Clark  
562 said that the court will give a lot of weight to what the Planning Board looked at. Chairman White said  
563 that if Mr. McCarthy was not doing anything it would be different. Mr. Clark said that the engineers are  
564 in a bad place and they are trying to do what they can.

#### 565 **OTHER BUSINESS**

566 Chairman White said that he has received an email from Aaron Simpson, a Zoning Board member who  
567 has been a member of the Upper Valley Lake Sunapee Regional Planning Commission for the past 10  
568 years. He is stepping down from the Regional Planning Commission and asked Chairman White to  
569 mention it to the Planning Board to see if anyone is interested in becoming a member of that Board.  
570 Josh Trow, a Selectboard member, is the other member.

571 Mr. Marquise explained that there are regular meetings, maybe monthly, and all the members meet and  
572 discuss regional projects. He does not know how many meetings are involved. Mr. Clark said that he is  
573 interested in the position.

574 Chairman White said that he received a letter from a citizen with some thoughts on some Ordinances.  
575 The citizen makes some statements regarding required notices as not everything requires notices and he  
576 feels that it would be nice to expand the list a bit more. The citizen also commented on the Planning  
577 Board's participation in the Deliberative process. The citizen feels as though there is an issue as many  
578 owners are not legal residents and cannot vote and the issue is compounded because discussion of  
579 Zoning Amendments happens in the fall after many residents have departed. The televised hearings  
580 have helped allow people to know what is going on but the citizen would like the discussion of the  
581 Zoning Ordinances to be changed to the summer. Mr. Marquise said that there are statutory  
582 requirements for when public hearings must be held. Discussions could be held in the summer but fall is  
583 the natural time to meet the statutory requirements. Chairman White said that the Zoning Board has  
584 been discussing Zoning Amendments at many of their meetings and that might be a place where people  
585 could start. Mr. Marquise said that he hopes that the Zoning Board is aware of the timing and hopes  
586 that they do not come to the Board in November to discuss changes. There was further discussion  
587 regarding the discussions needing to start in September and the Zoning changes and a joint meeting.

588 Mr. Butler asked about Mr. Furlong. Chairman White said that he emailed Mr. Furlong asking if he was  
589 going to be in attendance and did not hear back. Also, before the meeting, Chairman White texted Mr.  
590 Furlong asking if he was going to be available. Mr. Furlong responded that he is away on business and  
591 not able to attend. Mr. Clark asked and the Board discussed that Mr. Furlong has not been to a meeting  
592 in quite a while. Mr. Butler asked if there are any rules regarding attendance. Chairman White said that  
593 there is a rule that there can only be so many unexcused absences but the Board have always been  
594 understanding and flexible as usually it is a personal matter that takes someone away from a meeting.  
595 Mr. Marquise said that even if there are 12 misses the Board cannot remove them as they are elected  
596 officials. Chairman White said that he will reach out to Mr. Furlong before the next meeting. Mr.  
597 Marquise said that there might be a process of removal but it is difficult. Chairman White said that the  
598 proper procedure would be to have someone resign. There was further discussion regarding this  
599 matter.

600 **SIGN HP BROOK RD SUBDIVISION MYLAR**

601 Mr. Marquise said that the applicant is not in attendance for the meeting. They wanted the Board to  
602 sign off of the project, however, they do not have a bond.

603 Mr. Osborne made a motion to adjourn the meeting at 9:56 pm. Mr. Butler seconded the motion. The  
604 motion passed unanimously.

605 Respectfully submitted,

606 Melissa Pollari

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610 Planning Board

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612 Peter White, Chairman

Donna Davis Larrow, Vice Chair

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\_\_\_\_\_

614 Richard Osborne

Joseph Butler

615 \_\_\_\_\_

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616 Joseph Furlong

Randy Clark

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618 Shane Hastings, ex-officio member

Suzanne Gottling, ex-officio alternate member