

1 **TOWN OF SUNAPEE**

2 **PLANNING BOARD**

3 **DECEMBER 1, 2016**

4 **PRESENT:** Peter White, Chair; Donna Davis Larrow, Vice Chair; Richard Osborne; Joseph Furlong; Joseph
5 Butler; Randy Clark, Alternate Shane Hastings, ex-officio member; Michael Marquise, Planner

6 **ABSENT:** Kurt Markarian

7 **See attached sign in sheet**

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

9 Chairman White appointed Mr. Clark to sit in for Mr. Markarian.

10 **ZONING AMENDMENTS**

11 Mr. Marquise explained to the Board that they can alter the text of the proposed amendments,
12 however, they cannot alter the intent without another public hearing. Mr. Marquise explained the
13 process of approval or disapproval to the Board.

14 **Amendment #1** - Amend Article III, Section 3.10 – Dimensional Controls – by changing the requirement
15 to state that road setback applies to all roads as defined in the definition of “Roads” found in Article XI.

16 The full text of road setback (excluding Routes 11, 103, 103B) in the table of dimensional controls will be
17 as follows:

18 Minimum Front Setback (All other roads as defined in Article XI) 40 ft., 40 ft., 40 ft., 40 ft., 50 ft., 50 ft.,
19 75 ft.

20 Mr. Marquise explained that this Ordinance is to try to make things consistent because there is no
21 Official Road Map.

22 Mr. Osborne made a motion to accept Amendment #1 as written. Mr. Hastings seconded the motion.
23 The motion passed unanimously.

24 **Amendment #2** - Amend Article III, Section 3.50 (b) – Special Exceptions – by changing the requirement
25 in subsection (2) that structures used for comparison purposes to reduce road front setback must exist
26 on either side of the subject property and not just one side.

27 The full text of Article III, Section 3.50(b)(2) – Special Exceptions – as amended will be as follows:

28 3.50(b)(2) – the majority of lots on the same side of the road and within 500 ft. both sides of the subject
29 lot have structures of equal or greater type which do not meet front setback requirements (the
30 hierarchy of structures from greater to less is house > garage > shed).

31 Mr. Marquise said that it was felt as though the word “either” didn’t apply so the proposal is to change
32 it to “both sides” of the lot. The Board felt as though it should read “of both sides of the subject lot...”

33 Mr. Osborne made a motion to pass Amended #2 as corrected. Mr. Butler seconded the motion. The
34 motion passed unanimously.

35 **Amendment #3** - Amend Article IV, Section 4.33(b)(4) – Shorelines – Specific Provisions - by removing
36 the requirement that shoreline alterations caused by beach and dock construction be reviewed by the
37 Planning Board.

38 The full text of Article IV, Section 4.33(b)(4) – Shorelines – Specific Provisions – as amended will be as
39 follows:

40 (4) Beach and dock construction may be permitted in accordance with the requirements set forth
41 herein. In addition, all alterations of the shoreline require a permit from the New Hampshire Wetlands
42 Board as set forth in RSA 483-A and 483-B-1. The Conservation Commission shall review all permit
43 applications submitted to the Wetlands Board and shall recommend approval, disapproval, or take no
44 action.

45 Mr. Hastings asked if the words “In addition” should remain in the Ordinance. Mr. Osborne said that it is
46 an additional requirement and said that the words should remain.

47 Mr. Osborne made a motion to approve the corrected Amendment. Vice Chair Larrow seconded the
48 motion. The motion passed unanimously.

49 **Amendment #4** - Amend Article IV, Section 4.33(B)(8)(b)(I)(1) – Shorelines – Specific Provisions – by
50 changing allowance for removing up to 5 trees in the natural woodland buffer from a calendar year to
51 any 12-month period.

52 The full text of Article IV, Section 4.33(b)(8)(b)(I)(1) – Shorelines – Specific Provisions – as amended will
53 be as follows:

54 (1) Cutting within the Natural Woodland Buffer of more than five (5) trees having a diameter of six (6)
55 inches or more at a point 4.5 ft. above existing ground in any 12 month period.

56 The Board briefly discussed this Amendment as it relates to the wording of the whole Article.

57 Mr. Hastings made a motion to approve Amendment #4. Mr. Butler seconded the motion. The motion
58 passed unanimously.

59 **Amendment #5** - Amend Article IV, Section 4.33(B)(8)(b)(VII) – Shorelines – Specific Provisions - by
60 reducing the exempted area that allows vegetative matter to be removed in the natural woodland
61 buffer to 12’ from the centerline of driveways and 10’ from edge of parking areas and also limiting the
62 exempted area to a maximum of 25% of the existing basal area in the natural woodland buffer.

63 The full text of Article IV, Section 4.33(b)(8)(b)(VII) – Shorelines – Specific Provisions – as amended will
64 be as follows:

65 (VII) A Well-Distributed Stand of Vegetation Matter shall be maintained in the Natural Woodland Buffer
66 except for those areas within 20 ft. of existing and proposed structures, 12 ft. from the centerline of
67 driveways, and 10 ft. from the edge of parking areas. The exempted area may not exceed 25% of the
68 existing basal area in the natural woodland buffer of the lot.

69 Mr. Osborne made a motion to approve the Amendment. Mr. Hastings seconded the motion. The
70 motion passed unanimously.

71 **Amendment #6** - Amend Article IV – Use Regulations - by adding Section 4.90 which will define an
72 Accessory Dwelling Unit per state requirements and set dimensional controls. This amendment will also
73 add this use to each zoning district.

74 The full text of Article IV, Section 4.90 – Accessory Dwelling Unit – as proposed will be as follows:

75 A. Authority – This Article is adopted pursuant to RSA 674.21 and is intended as an Accessory Dwelling
76 Unit (ADU) provision.

77 B. The purposed of the ADU is to provide societal benefits for again homeowners, recent college
78 graduates, care givers, disabled persons, etc.

79 C. General Requirements

- 80 1. And ADU will be permitted in all districts by Special Exception.
- 81 2. Only one (1) ADU is allowed per single family dwelling unit.
- 82 3. Owner occupancy is required in the main unit or ADU.
- 83 4. The ADU cannot be larger than 1,000 sq. ft. It must be within or attached with heated space
84 to the single-family dwelling unit and there must be a connecting door between units.
- 85 5. Setback dimensions for the ADU must meet the same guidelines as the single-family unit.
- 86 6. The ADU addition must comply with existing lot coverage standards as specified elsewhere
87 in this Ordinance.
- 88 7. There shall not be more than two (2) bedrooms in the ADU.
- 89 8. Septic designs and sewer hookups shall accommodate the number of bedrooms as required
90 by Article VII of this Ordinance.
- 91 9. Proper off-street parking must be provided per Section 3.40€ of this Ordinance.

92 Mr. Clark said that the word “provided” in #9 is missing the “d”. The Board was asked and Mr. Osborne
93 explained that this does not prevent something to be built that is normally allowed. It is allowing for an
94 Accessory Dwelling Unit, which would not normally be allowed to be built, to be built by Special
95 Exception. There was further discussion regarding this Amendment as the unit has to be attached and
96 that this will be another dwelling unit. This is a new law from the State that the Town is able to put
97 restrictions on.

98 Mr. Marquise read a letter from LSPA, signed by Robert Wood, the Associate Director, to the Board
99 which said:

100 “Dear Mr. White and Planning Board members,

101 As I am sure you are well aware, the new State Accessory Dwelling Unit (ADU) law is set to take effect on
102 June 1, 2017. It requires that every municipality that adopts a Zoning Ordinance shall allow ADUs as a
103 matter of right or by either conditional use permit or by Special Exception, in all Zoning Districts that
104 permit single family dwellings.

105 One way or another, every municipality with Zoning Ordinances will have to make changes or
106 adjustments to their Ordinances to comply with this law. But the law does enable municipalities to
107 exercise significant discretion in allowing ADU's.

108 The RSA states that there may be benefits associated with the creation of ADUs. These stated potential
109 benefits are associated with: a need for more diverse affordable housing opportunities; more
110 households where adult children wish to give care and support to parents in a semi-independent living
111 arrangement; elderly and disabled citizens in need of independent living space for caregivers; again
112 homeowners, single parents, recent college graduates saddled with significant student loan debt,
113 caregivers, and disabled persons.

114 What impacts this may have on "affordable" housing, so-called "work-force" housing, or other aspects
115 of housing in the State remains to be seen.

116 Along with potential societal benefits, there are potentially significant negative environmental (and thus
117 societal) impacts. Though there is no mention in the RSA of potential negative impacts, many have
118 concerns that there could be significant natural resource impacts. Those potential negative impacts may
119 include: significantly increased densities (in all districts that permit single-family); increases in land
120 disturbance, impervious surfaces, and storm water impacts to land and water resources; increased loads
121 to septic systems and / or municipal sewage systems; increased demands on water supply and
122 transportation infrastructure; and increased parking demand.

123 Residential areas adjacent to or near surface water generally can have higher existing densities. Further
124 increases in allowable densities in these areas will further increase existing water quality impacts. But
125 the potential impacts apply to more areas than just the "Shoreland Zones". If this door is opened too
126 widely, it could potentially undermine some water resource protections and other environmental /
127 societal benefits upheld / sustained by our current Ordinances.

128 Given that the municipalities have significant freedoms to craft the details in their Ordinances, as long as
129 the minimum requirements of the State law are met, we would strongly urge our municipal Board
130 Members to think long and hard about the potential and possibly unintended consequences of opening
131 this door too widely. We urge our towns to be very careful with this issue and to apply adequate
132 limitations to protect our natural resources."

133 Vice Chair Larrow asked what happens if the Amendment does not pass. Mr. Marquise explained that if
134 it does not pass then there will be no restrictions on ADU's.

135 Mr. Butler asked and the Board discussed that someone has to live in the unit that the ADU is attached
136 to if the Amendment passes.

137 There was a brief discussion as to whether Chairman White could write a "Letter to the Editor" in
138 response to Mr. Wood or the Board doing a presentation regarding the Amendment. The Board also
139 discussed if they could add wording to the Warrant about the rationale and Mr. Marquise said that he
140 does not think that it is allowed. The Board decided that they will wait until the Warrant is set before
141 deciding to address some of the Amendments publicly.

142 Mr. Osborne made a motion to accept the Amendment as corrected. Mr. Furlong seconded the motion.
143 The motion passed unanimously.

144 **Amendment #7** - Amend Article VI, Section 6.12 – Restoration and Reconstruction – by adding
145 alterations of a non-conforming structure as actions which require a special exception or variance.

146 The full text of Article VI, Section 6.12 – Restoration and Reconstruction – as amended will be as follows:

147 6.12 Restoration and Reconstruction – A non-conforming structure existing at the time of the passage of
148 this Ordinance may be replaced on the same or smaller footprint and having the same or lower height
149 by a new structure having the same purpose and use provided that the non-conformity to this
150 Ordinance is not increased thereby. The replacement or alteration of a non-conforming structure that
151 increases the horizontal or vertical dimension or one which increases the non-conformity to this
152 Ordinance, shall only be permitted by Variance or, if permitted hereby, by Special Exception.

153 The Ordinance should read “having the same or lower height, by a new structure...” and “...shall only be
154 permitted by Variance...”

155 Mr. Hastings made a motion to approve Amendment #7 as corrected. Mr. Osborne seconded the
156 motion. The motion passed unanimously.

157 **Amendment #8** - Amend Article VI, Section 6.40 – Non-Conforming Lots – by adding the term “legal” to
158 nonconforming lots which would allow a non-conforming lot to remain such even if there is a
159 subsequent change in the configuration that is permitted by the Planning and / or Zoning Boards.

160 The full text of Article VI, Section 6.40 – Non-Conforming Lots – as amended will be as follows:

161 Section 6.40 – Legal Non-Conforming Lots – The Planning Board may approve subdivision / lot line
162 adjustments on pre-existing, non-conforming lots with additional approval by the Zoning Board of
163 Adjustment provided that the new lot size(s) and dimension(s) are not more non-conforming than what
164 was existing. The subdivided or adjusted lot will be considered a legal non-conforming lot and will still
165 qualify for the same dimensional reductions or Special Exceptions given to a pre-existing, non-
166 conforming lot.

167 Chairman White said that the wording for the explanation of the Amendment should read “...to remain
168 such, even if...” Mr. Marquise said that the wording for the Article should read “...non-conforming lots
169 without additional approval...”

170 Mr. Marquise said that the purpose of the Amendment is to allow pre-existing, non-conforming lots to
171 be changed and still retain the benefits such as the setback reductions.

172 Mr. Hastings made a motion to approve Amendment #8 with corrections. Mr. Butler seconded the
173 motion. The motion passed unanimously.

174 **Amendment #9** - Amend Article XI – Definitions and Explanations – Structures, Minor - by adding play
175 gym/swing sets and pergolas as structures not requiring a Certificate of Zoning Compliance.

176 The full text of Article XI – Definitions and Explanations – Structures, Minor – as amended will be as
177 follows:

178 Structure, Minor – A minor structure is exempt from the terms of this Ordinance and shall not require a
179 Certificate of Zoning Compliance. Minor structures shall include the following:

- 180 1. Fence measuring less than five (5) ft. high from the ground surface provided that the fence is
181 constructed in such a manner as to allow the fence owner the ability to maintain both the fence
182 and fence owner’s land, if any, on the neighbor’s side of the fence.
- 183 2. Mail Box
- 184 3. Flag Pole
- 185 4. Dog House
- 186 5. Thirty-two (32) sq. ft. open platform and associated stairs, which is no more than four (4) ft. off
187 the ground and is used for access to a structure.
- 188 6. Gym / swing sets for private residential use
- 189 7. Pergolas (8 ft. x 10 ft. maximum footprint)

190 The Board discussed that they removed treehouses from the list of proposed changes.

191 Mr. Osborne made a motion to accept Amendment #9 as written. Mr. Clark seconded the motion. The
192 motion passed unanimously.

193 **Amendment #10** - Amend Article XI – Definitions and Explanations – Structures - by adding patios to the
194 list of structures requiring a Certificate of Zoning Compliance.

195 The full text of Article XI – Definitions and Explanations – Structures – as amended will be as follows:

196 Structure – Anything constructed or erected with a fixed location on the ground, or attached to
197 something having a fixed location on the ground. Structure includes, but is not limited to, a building,
198 swimming pool, mobile home, pier, wharf, or patio. It shall not include a minor structure.

199 There was a brief discussion regarding the addition of patios to the definition of “Structure” as people
200 are building patios as part of their landscaping.

201 Chairman White said he thought another issue is that people were coming in and saying that a patio is a
202 structure so they should be able to build a deck where the patio was. There was a discussion regarding
203 a sand set patio and a patio with a foundation. There was further discussion regarding the Amendment
204 or defining Patio.

205 Vice Chair Larrow said that “billboard” should be after “mobile home” and before “pier”.

206 Mr. Hastings made a motion to approve Amendment #10 with the change of the “billboard”. Mr.
207 Osborne seconded the motion. The motion passed with six in favor and one opposed.

208 Mr. Marquise said that they have had the public hearing on these Amendments but there are still 14
209 days left for petitioned Zoning Amendments and if they get one the Board has to hold a public hearing
210 and they cannot change it but can vote it up or down. It will say on the ballot if the Zoning Board
211 approves or disapproves the potential Amendment. Mr. Marquise explained the timing for the public
212 hearing for a petitioned Amendment as everything must be done before January 30th and if this happens
213 the public meeting will need to be held on January 19th.

214 **CONTINUATION: PARCEL ID: 0148-0025-0000: SUBDIVISION / ANNEXATION; LANCE & CHRISTINA**
215 **HARBOUR, HAMEL RD.**

216 This hearing was continued until the January 5th Planning Board meeting.

217 **CONTINUATION: PARCEL ID: 0211-0018-0000: SITE PLAN REVIEW: AUTO REPAIR SHOP WITH 10-15**
218 **EMPLOYEES, TOWING, AND STORAGE. THE WAREHOUSE TO STAY AS DANCE STUDIO WITH 4-6**
219 **EMPLOYEES. 962 ROUTE 11, ALBEE AUTOMOTIVE.**

220 Mr. Marquise said that he believes that Albee Automotive is still in limbo and he does not have an
221 update on the case.

222 **OTHER BUSINESS – SCOTT HAZELTON ROUTE 11 IMPROVEMENTS**

223 Scott Hazelton, the Highway Director, and Adam Ricker, of the Upper Valley Planning Commission,
224 explained the Route 11 improvements concept.

225 Mr. Hazelton explained that he drafted the concept a couple of months ago after speaking with Mr.
226 Marquise. The improvements would be along the Route 11 corridor from Lower Main / Main St up to
227 Sargent Rd. It was done based upon discussions and a walk done about three years ago with engineers
228 regarding a roundabout at the intersection of Route 11, Lower Main, and Main. The improvements are
229 meant to create traffic calming, parking, drainage, and pedestrian access. There are approximately 87
230 parking spaces that will be added along both sides.

231 Mr. Hazelton said that he has been looking into funding that the State has for projects like this called the
232 Transportation Alternative's Program (TAP). He has met with a number of different individuals at DOT
233 and has presented the concept. They have thoroughly supported it and have offered assistance to apply
234 for a potential storm water grant, though he is not sure that is something that will work as they are not
235 treating storm water. He has also met with the Executive Councilor, Joe Kenney, who was supportive of
236 the concept and he is going to share it with DOT. He has also met with Mary Danko, the Library
237 Director, the school Superintendent, and both Chief Cahill and Chief Ruggles, all of whom support the
238 concept. He has met with the Board of Selectmen twice to discuss the concept.

239 Mr. Hazelton said that the concept includes improvements to the intersection of Route 11 and Sargent
240 Rd with an Optacon, which is a blinking light that the Fire Department would have control over so if
241 there was a call they would be able to get out onto Route 11, which the State supported.

242 Mr. Hazelton said that he had a discussion with one of the three engineers that was shortlisted by the
243 Town who is very interested in the project. He has established a cost estimate for the project at just
244 under \$1,000,000. The TAP requires projects to be between \$400,000 and \$1,000,000 and it is an 80 /
245 20 match, Federal money to Town Funds so it would cost the Town approximately \$200,000. He is also
246 looking at other grant opportunities, though he is not sure that there will be a lot.

247 Mr. Hazelton said that he wanted to present the concept to the Board. He does not have the time to
248 spearhead the project, it is something that the Board and Mr. Marquise will have to spearhead, though
249 he can be used as a technical resource. Mr. Ricker is going to walk the Board through the next steps in
250 the process. This year is the time for the Board, Mr. Marquise, and himself to get an application ready

251 to go to the State in September. He has created a Warrant Article as a placeholder for this project for
252 \$25,000 for engineering, though he is not certain that amount is needed. They may just need to have an
253 engineer spruce up the concept and the cost estimate so that it is accurate on the application. Once the
254 application is submitted you cannot increase the money that has been approved.

255 Mr. Ricker explained that the TAP program is a relatively new program as the State took a few different
256 grant programs that DOT ran and combined them to broaden the projects that can apply for it. The TAP
257 program is meant to improve connectivity to schools, libraries, and municipal institutions, provide safe
258 sidewalks, etc. and this project falls in line with that with the sidewalks and the locations of the schools
259 and library. The application process runs throughout the summer and the application is due in
260 September. The application for 2017 has not been released yet, however, Mr. Ricker gave copies of the
261 2016 application to review as well as a copy of the presentation done by the State last year. There was
262 further discussion regarding this matter and the way that the Regional Planning Committee and DOT
263 prioritize projects and the application process.

264 Mr. Butler asked if the money includes design fees for the engineering and asked if it has to go to public
265 bid. Mr. Hazelton confirmed that they money includes the engineering and said that it does not need to
266 go to bid as he has already developed a short list of engineers for this project and another project down
267 the road.

268 Mr. Ricker said that traditional DOT grants work on the reimbursement process so the Town does the
269 project and then is reimbursed. Mr. Hazelton said that projects can be municipally managed or
270 managed by an outside company. He prefers the municipal managed process as it is cleaner and easier
271 for everyone.

272 Mr. Butler asked about the lines in the middle of the road. Mr. Hazelton explained that on the plan the
273 green is softscaping, the two grey lines are sidewalks, the cross walks are spaced up and down the road
274 and by driveway entrances, the red centerline is a raised median down the middle for traffic calming,
275 and the blue lines are drainage. Mr. Hazelton gave further explanation about the proposed plan and
276 everything included in the estimated costs. He used the DOT numbers for the estimated costs but an
277 engineer would have more knowledge about the numbers and give a better estimate.

278 Mr. Butler asked if the width of the road works with the parking. Mr. Hazelton explained that the DOT
279 asks for the travel lanes to be 15 ft. and they will still maintain the road if it is that wide. The Right of
280 Way is inconsistent but wide enough that this can be done. Once the project is applied for and
281 approved, the first part of the engineering will be to do a feasibility study. There was further
282 explanation of the feasibility study.

283 Mr. Butler asked if this project will include a full traffic study. Mr. Hazelton said that they will look at the
284 traffic but it will not do a full traffic study. They are not doing anything to the intersections or the
285 driveways, traffic will just be coming in at a better skew.

286 Mr. Osborne asked if it they would be able to work in a turn lane going onto Sargent Rd from Route 11.
287 Mr. Hazelton said that he does not know if they could with the location of a bump out. Mr. Osborne
288 said that he thinks that they could give up two parking spots in order to get the turning lane. There was
289 further discussion regarding this matter.

290 Mr. Ricker said that any infrastructure improvements that are done through this project will become the
291 Town's responsibility to maintain. Mr. Hazelton said that the sidewalks and such will need to be
292 maintained but the State will maintain the road.

293 Mr. Butler said that one of the issues with Dunkin Donuts was the big trucks parking and asked if the
294 parking areas were big enough for them to park. Mr. Hazelton said that they will not be big enough,
295 they are parallel parking spaces for personal vehicles.

296 Mr. Furlong said that the biggest complaint about parking is from the bank for games as they say that
297 people are taking bank parking and asked if there will be extra parking for the field. Mr. Hazelton
298 explained that in between each of the bump outs will be parking and it will be along both sides of the
299 road.

300 Mr. Butler asked and Mr. Hazelton explained that the State salts the road.

301 Mr. Marquise asked how the Town would get the funding if they would get approval and then the Town
302 would approve the matching. Mr. Ricker said that he is not sure as they could get approval and then the
303 Warrant Article could be denied. Mr. Marquise said that the Town could also vote to approve the
304 Warrant Article and then the State could deny the application. Mr. Butler asked if the Warrant could be
305 for up to \$200,000 and then if the costs were less it could be adjusted. Mr. Hazelton said that you can
306 reduce the amount but you cannot add to it. Mr. Butler asked and Mr. Hazelton confirmed that the
307 Warrant Article currently is only for \$25,000 as it was to get the application completed. If they get it all
308 revised and the concept done, they could get the application ready and on the Warrant for next year.
309 There was further discussion regarding the process and phases and when construction would start and
310 what needs to be done such as attending the State presentations.

311 Mr. Butler asked and Mr. Hazelton said that the money is Federal.

312 Mr. Butler asked and Mr. Hazelton explained that the qualification base, a RFQ, had to be advertised to
313 engineering firms to assist the Town with engineering projects and then from those six the Town short
314 listed three. They do not have to go back out to bid for the engineers. They will have to do competitive
315 bidding for the construction. Mr. Butler asked and Mr. Hazelton said that the Town will not do the work,
316 they will oversee the work done by a contractor. The State will also probably have someone there and
317 then the engineer will oversee the project as well. The Town will be the owner of the project.

318 Mr. Marquise asked if there has to be a local public hearing prior to the application. Mr. Ricker said that
319 the application requires a letter of support but he does not believe that there is a public hearing
320 requirement. Mr. Hazelton said that after the project is approved there needs to be a public hearing.

321 Mr. Butler asked if there will be issues with maintenance in the future. Mr. Hazelton said that the Town
322 will clean the sidewalks and the parallel parking spaces and the State will clean the road and maintain
323 the paving.

324 There was a discussion about the visual changes that should slow down traffic and the way that this
325 connects the Town.

326 Mr. Butler asked and Mr. Hazelton said that he does not have the time to spearhead the project or do
327 the physical work but he can be a technical resource. Mr. Marquise said that because this originated in
328 the Master Plan and came from the Planning Board it should be the Planning Board's project. Mr. Ricker
329 said that in the scoring process there are higher scores for projects that are put in Master Plans.

330 Mr. Butler asked and Mr. Hazelton said that they have to find out if the Town has to approve the funds
331 ahead of time with the TAP program. Mr. Marquise said that he can work on the project when he is at
332 the Town Office.

333 **OTHER BUSINESS – MCCARTHY SUBDIVISION**

334 Mr. Marquise said that the McCarthy subdivision was approved by the Planning Board in 2014. They
335 started construction and there were issues with runoff during some storms. The subdivision has been
336 completed but it has since been discovered that there were wetlands on the property and the Wetlands
337 Bureau has issued a Restoration Plan Approval.

338 Mr. Marquise said that an abutter has expressed some concerns and asked that the subdivision be
339 revoked, which is a possibility as the Board does have the right to do it but the RSA allows for other
340 remedies. This meeting is to discuss any changes that may have affected the subdivision and to
341 determine where to go from here. If the Board does decide to revoke the subdivision or if there is an
342 amendment there needs to be a public hearing.

343 Bruce McCarthy explained that the Restoration Plan was suggested by DES to address two things. The
344 first was the problem with the storm water runoff that contained some sediment that was leaching into
345 the stream across the street and eventually into the Lake. The second was the restoration of wetlands
346 that had been disturbed during the construction.

347 Mr. McCarthy introduced Randy Shuey, a wetlands scientist and the designer of the Restoration Plan
348 who supervised the implementation of the plan.

349 Mr. Shuey explained the plan that was part of the Subdivision Approval from the Planning Board in 2014
350 / 2015. The project had two different engineering firms. One was Horizons Engineering and they did an
351 existing conditions plan and then there was another plan done by the other engineering firm but neither
352 plans showed wetlands. Northpoint Engineering, the company he works for, was called and he went to
353 do an inspection and found wetlands. It is surprising that wetlands were not delineated on the site as it
354 is pretty obvious that there are wetlands. Currently, there are undisturbed wetlands and there are also
355 wetlands that are completely obliterated and some that have been changed. The plan that was done by
356 Horizons Engineering had one part that they labeled "wet area" and as a wetlands scientist that does
357 not mean anything because it could be a puddle or it could be something else. There was no note that
358 wetlands had been delineated on the site. Mr. Shuey continued that he went out in the spring and
359 delineated the wetlands the best that they could. When they got to the edge of the tree line they
360 stopped and then they overlaid the wetlands plan onto the existing conditions plan. They also tried to
361 use Google Street View and aerial photographs, but this area was forested.

362 Mr. McCarthy asked Mr. Shuey to explain Woodland Wetlands to the Board. Mr. Shuey said that in one
363 area there were emerging wetlands and there was drainage that has been built through there but based
364 on photographs and the topography it is clear there were wetlands there. Everything else was forested

365 area with very stony soils and many seeps coming out of the ground. The vegetation goes to wetlands
366 pretty frequently and they are shown on the plan. Mr. Shuey gave further description regarding the
367 plan and said that because they are currently pockets of wetlands they figured there were other pockets
368 of wetlands. The work that has been done has changed the entire topography of the lot so they cannot
369 be sure.

370 Mr. Shuey said that they talked about what to do and met with DES because it is difficult to recreate
371 wetlands. The advantage on this site is that there is a lot of water coming down onto the property and a
372 lot of shallow drainage and the soils are not the best as the water tables are close to the surface. They
373 determined there was a wetlands area between Lots 2 and 3 and another wetlands area on Lot 2. They
374 tried to figure out how to take all the water and recreate a wetlands system that will replace the
375 function and values of the wetlands, some of which have to do with flood flow storage. There are some
376 steep slopes so there is not a lot of storage but it can be recreated by changing the topography and
377 doing some planting that will help with water quality as the vegetation develops.

378 Mr. Shuey said that that they submitted the plan to DES. It included two water quality areas that are
379 not wetlands restoration areas. The wetlands area that was at the edge of the area is gone and is part
380 of the basin area. They can't recreate it but can put in plants for a filter.

381 Mr. Shuey said that they have done construction and plantings and the entire project from start to finish
382 has been monitored for water quality. While they constructed it they knew they had a chance of rain
383 and the landscape crew came and covered the site with erosion control blankets.

384 Mr. Shuey showed the Board some photographs of the site and explained the changes to the site with
385 the pictures. They used organic loam to do some wetlands restoration and dug a 4 ft. wide ring and did
386 some plantings in the lower detention basin. In the main basin they took out the rip rap, put down
387 organic topsoil, covered it with a blanket, and then planted veracious plugs. They also added two rows
388 of compost socks. There is evidence that the entire basin will turn into veracious vegetation and will
389 provide a nice filter as the water comes down the hill. There was further explanation regarding the
390 changes to the site including what they did at the top of the site.

391 Mr. Shuey said that during construction, the detention basin was built larger than planned because
392 there was a concern that the engineering design wasn't big enough. The design of the wetlands
393 restoration is to add in some flood storage. They made a weir structure to have an area pond up and
394 then the water will discharge over it and work its way down to the detention basin.

395 Mr. Shuey said that they have met the DES requirements to date and have submitted to them a
396 completion report. There is a requirement to make sure over the next couple of years that it does turn
397 into a wetland and see if additional remedial action is needed.

398 Mr. McCarthy asked and Mr. Shuey explained that they have planted almost 100 trees and shrubs. They
399 are all from 2 ft. to 4 ft. tall and include different species. While it will take a while to grow into forested
400 wetlands it will quickly turn into a scrub shrub wetland and it will function as wetlands by the summer.
401 It was also seeded with a wetland seed mix, which should grow well.

402 Mr. McCarthy asked Mr. Shuey to explain the monitoring that is being done as a DES requirement. Mr.
403 Shuey said that his company initially got involved because DES thought there was water quality issue on

404 the site and they monitor the site after large rainstorms. They are also doing turbidity monitoring and
405 taking samples from the site and explained the reason for the samples and the results of the samples
406 and said that they are meeting the State's discharge requirements.

407 Mr. Butler asked if they have currently met DES' requirements with the exception of monitoring. Mr.
408 Shuey said that they have some long term monitoring to go and thinks that they will want more water
409 quality sampling. The requirement was to replace the wetlands that were lost. They estimated that
410 around 7,500 sq. ft. of wetlands were lost and they have reconstructed over 7,500 sq. ft. so they have
411 over 9,000 sq. ft. of wetland and have more wetlands restoration than anticipated. DES has done a site
412 walk and were happy with what they saw so far.

413 Mr. Butler asked about the ultimate goal and the future plans. Mr. McCarthy said that he thinks that
414 there will be more tests to make sure they can be sure that they can handle heavier rain falls. Mr. Shuey
415 said that nothing should get disturbed unless someone gets a permit.

416 Mr. Marquise asked Mr. McCarthy what happened to the access to Lot 2 with the changes that have
417 been made. Mr. McCarthy said that there is a suggested relocation of the driveway with the driveway
418 access being shared with Lot 1. The bottom part of the drive would be common and then there would
419 be a new drive.

420 Mr. Marquise said that there needs to be enough buildable area to meet 65% of the minimum required
421 lot size, which is .65 acres and asked if there is .65 acres of buildable land on each lot. Mr. Shuey said
422 that Lot 3 has 36,898 sq. ft. of wetlands, which is 84% of 1 acre. Lot 2 has over an area of wetlands and
423 Lot 1 has an acre and a half of wetlands.

424 Mr. Butler asked if the drainage calculations are done with plans for structures to be on the sites. Mr.
425 Shuey said that he is a wetlands scientist and the Board would need to go back to the engineers who
426 designed the storm water plans. He has been hired to restore wetlands, the engineering firm he works
427 for has not been hired to do any drainage calculations.

428 Mr. Butler asked if the calculations are wrong because there were wetlands on the site. Mr. Marquise
429 said that the wetlands would not have affected the drainage calculations. The drainage calculations
430 relate to impervious surfaces. The relocation of the driveway and things like that may affect the
431 drainage calculations. Matt Lowrie of 313 Lake Ave said that he does not think that there are updated
432 drainage calculations. Mr. Butler asked if the Board can ask for the calculations.

433 Mr. Marquise said that the Board needs to decide if they want an amendment to the Subdivision Plan.
434 He feels as though with the relocation of the driveway it could affect the numbers and the Board needs
435 to know. The Board can then get an update that they are keeping up with the wetlands monitoring.

436 Mr. McCarthy asked if this is a jurisdictional issue as it is being monitored by DES and if they are satisfied
437 whom do they go back to. Chairman White said that there are two separate issues. The wetlands are a
438 State issue and by addressing that there have been some changes to the Subdivision Plan. Moving the
439 driveway impacts the drainage. Mr. Shuey said that he is not an engineer but he does do some
440 calculations when he is asked. There is a building site in the back of the lot and even with the change in
441 the driveway there should not be a change in the impervious surface. Chairman White said that the fact

442 that the wetlands were not identified by the engineering firm previously and it sounds like they were
443 obvious wetlands, he has some reservations in any of their other work and he'd like to have it revisited.

444 Mr. Furlong asked if Mr. McCarthy was given an explanation as to how the wetlands were missed by the
445 engineers. Mr. McCarthy said that they denied that they missed the wetlands. He thinks that they will
446 end up in court or dealing with their insurance carrier as it has cost him a lot of time and money.

447 There was a brief conversation about wetlands and what are wetlands are what are not wetlands.

448 Mr. Lowrie said that he called Mr. Landry about the wetlands issues and Mr. Landry said that he could
449 ask for a revocation of the subdivision because of the wetlands. He does not know if there should be a
450 revocation or an amendment, however, it does seem to him that there should be some type of hearing.
451 Mr. Lowrie said that in January he knew that Mr. McCarthy was planning to clear cut the rest of the
452 wooded wetlands. He has video of silt running into the lake and he asked to get that taken care of
453 before anything else was cut. Mr. Lowrie continued that Mr. McCarthy would not agree to do that so he
454 contacted DES who gave Mr. McCarthy an order not to do it and that is when they discovered there
455 were forested wetlands on the property. DES required that the wetlands be documented and there was
456 a submission in July by Mr. Shuey and one of the wetlands was missed completely. He hired his own
457 expert who found the wetlands, and Mr. Shuey later acknowledge it. He wonders where there is
458 buildable space because there isn't a lot of room between the two wetlands. One of the driveways ends
459 in a wetlands so what was approved by the Board cannot stay like that. Mr. Lowrie continued that he
460 thought the requirement for a lot size with wetlands was 1.5 acres so the lots do not work. He thinks
461 that there needs to be another hearing process as the things that have been done have resulted in
462 massive dumps into the lake.

463 Mr. Lowrie said that there was a July 20th submission to DES and they were not notified of it but were
464 able to see it. A new plan was submitted in September and he did not see it before it was approved so
465 he has appealed the approval. Mr. Lowrie continued that what is being done needed to be done, but
466 more still needs to be done. The Board approved 31,000 sq. ft. of alteration of terrain. They have
467 acknowledged 93,000 square ft. of alteration of terrain in this area. This is close to the alteration of
468 terrain permit of 100,000 sq. ft. and the person he hired said that it looks like there was 120,000 sq. ft.
469 of alteration of terrain. He feels as though the Board needs to go back and look at the plans.

470 Mr. Lowrie said that his appeal is pending and another issue is that Mr. Shuey said that 7,500 sq. ft. of
471 wetlands were destroyed. The person he hired said that it looks closer to 10,000 sq. ft. and there are
472 many areas that you cannot tell if there were wetlands there or not because they have been so
473 obliterated by digging. In Mr. Shuey's letter to the State it says that he knows that there were additional
474 wetlands but he is not accounting for them because he couldn't tell. Mr. Lowrie continued that he does
475 not think that is right. There are 3 ft. trees where there were 50 ft. trees and it won't filter or consume
476 the water the same way.

477 Mr. Lowrie said that the appeal is at the Wetlands Council and gave Mr. Marquise a copy of the appeal
478 which walks through the site and the areas disturbed. Mr. McCarthy has filed a motion to dismiss the
479 appeal and if it is dismissed Mr. Lowrie said he will file another appeal.

480 Mr. Butler asked and Mr. Lowrie explained that DES issued an approval of the Restoration Plan but did
481 not issue any permits or have any public hearings. He is appealing the approval as not requiring enough
482 remedial steps. Chairman White asked if DES is required to have public hearings. Mr. McCarthy said
483 according to his attorney they are not. Mr. Lowrie said that if Mr. McCarthy were to do anything to the
484 wetland they would have needed a permit and a public hearing but Mr. McCarthy's argument is because
485 they illegally destroyed all the wetlands and area addressing them subject to a request from DES he has
486 lost his right to appeal. Chairman White said that he is sure that DES has a process that they follow. Mr.
487 Lowrie said that under the procedures DES is required to look at this as an After the Fact Wetlands
488 Permit, which provides the same protections as a Wetlands Permit but it was not done.

489 Mr. Lowrie said that he does not think that the problems are fixed with the runoff. The driveway
490 doesn't work and there is not enough road frontage for each of the lots.

491 Mr. Butler asked and Mr. Lowrie confirmed that there have been issues with runoff since January and
492 April was very bad. He spoke to the Town in the fall and received an email from Mr. McCarthy saying
493 that the Town was not interested in anything.

494 Mr. Shuey said that Mr. Lowrie's wetland scientist sent a report to DES saying that there were missed
495 wetlands. He is a certified wetlands scientist and has been doing it since 1988. He also had another
496 wetlands scientist with him and the two of them spent a day on the 5 acres of land delineating wetlands.
497 He did go back out and agreed that he missed the wetlands as he was not on that part of the lot. What
498 Mr. Lowrie's scientist showed on his plan is completely different from his plan and he is not sure how
499 Mr. Lowrie's wetland scientist was delineating the wetlands. There are also areas that they disagreed
500 were wetlands and the Wetlands Bureau said that they are not getting in the middle of the
501 disagreement about the delineation of the wetlands and DES is comfortable with his line. Mr. Shuey
502 continued that he only knows the site from after the road was done and in March the water was flowing
503 over the site. They have moved the water to go through the wetlands system and have created areas
504 for the water to pond. He did not do any calculations on the site as the goal was to restore the
505 wetlands.

506 Mr. Shuey said that the alteration of terrain was done with after the fact conditions by a licensed land
507 surveyor. He measured all the areas that were disturbed and did a complete as built and it is 92,000 sq.
508 ft. and change. DES Alteration of Terrain does not count the area of the house lot if a road does not
509 connect directly to the house and the only connection is a driveway.

510 Mr. Butler asked where Mr. Shuey feels the house should be built on Lot 3. Mr. Shuey said that the
511 driveway will stay in its location and there is no setback off wetlands so the house could be built with a
512 drive under garage. Mr. Shuey gave further explanation and said that it will require a detailed
513 construction plan. He also gave an explanation as to where he believes the house on the other lot
514 should be built.

515 Mr. McCarthy said that DES issued a Letter of Deficiency, which called for a voluntary compliance
516 requesting they do a wetlands mitigation plan, which they did and submitted to them. He was told by
517 them and by his attorney that the approval is not appealable as it was not an order nor a permit
518 request. Chairman White said that the Board will leave that up to DES.

519 Mr. Shuey said that the State does not have any regulations about clearing trees in wetlands as long as
520 the soils are not disturbed and the stumps are not removed. He does feel as though it is good not to
521 remove the trees until the water quality problems are taken care of. The last month that we've started
522 to get rain they have met the storm water requirements. Mr. Shuey gave further explanation regarding
523 what they did to the site such as the blankets that they put down.

524 Mr. Shuey said that the lots still work as far as being buildable. Chairman White said that is what the
525 Board needs to discuss.

526 Mr. Lowrie asked if there will be clear cutting done this winter. Chairman White said that the Board
527 does not have any jurisdiction over that. Mr. McCarthy said that the plan was to clear enough to create
528 a building site on each of the lots. They are not clear cutting the lot. They have voluntarily not done any
529 cutting because of the issues with the water runoff and do not plan to do any cutting except for some
530 trees on either side of the wetlands on Lot 2. There will not be any cutting on the lot that borders Mr.
531 Lowrie's property.

532 Mr. Butler asked and Mr. McCarthy confirmed that he fired the second engineers because they were
533 unresponsive and there were problems that they were unable to rectify and said that there were no
534 problems. The first engineer came up with a design that they did not like so they went with the second.
535 There was an individual there that they did not work well with.

536 Mr. Butler asked Mr. McCarthy how he feels about the drainage calculations. Mr. McCarthy said that he
537 is very encouraged by what Mr. Shuey has done and the way things have gone with the recent storms.
538 There are still some big storms ahead and he hopes that as the vegetation grows in that it will work for
539 the site. They do know that they can handle a 1 inch storm but don't know if they can handle more than
540 that but he is encouraged and committed to getting the problems solved.

541 Mr. Marquise said that he understands that the monitoring will continue on and he remembers last
542 year's storm, which was unique. Mr. Shuey confirmed that they have agreed with DES that they will
543 continue monitoring until they are told they can stop.

544 Mr. Marquise said that in terms of the drainage ways and the road he recommends to the Board that a
545 reason to ask for an amendment is though it may be the same impervious area, it may not be in the
546 same drainage areas. Certain things are flowing to the different basins and if things are changed he
547 thinks that the Board should know that because this is sensitive as to where the water is going.
548 Chairman White said that this is almost a different piece of land than what the Board originally looked at
549 with the wetlands that have now been identified. He would like to see that on the plan and future
550 discussion as to where the houses will be located.

551 Mr. McCarthy asked and Mr. Marquise confirmed that the Board would like to look at the new driveway
552 layout and how the new driveway layout affects the drainage. Mr. Marquise said that the Board needs
553 to know if the drainage system will support the new driveway layout.

554 Mr. Marquise said that he appreciates Mr. Shuey's thoughts about having wetlands setbacks and he
555 knows that a lot of towns and states do have wetlands setbacks. The Town defines wetlands by the RCS
556 mapping as very poorly drained and they are just blobs on a map so it is not very accurate. To have a
557 wetlands buffer around all the little potholes that are on this site could tremendously affect the site.

558 Mr. Shuey said that Meredith has a sliding scale for buffers and gave a brief description regarding the
559 scale. There was further discussion regarding wetland buffers.

560 Mr. Shuey said that the Board should consider requiring a note on the plan saying that someone has
561 looked at wetlands and they are not on the property or they should require wetlands to be delineated.
562 Mr. Marquise said that the Town has a way that they define wetlands, however, it does not excuse the
563 State's requirements. He thinks that when the Town updates the Subdivision Regulations this should be
564 on there. There was further discussion regarding this matter.

565 Chairman White said that the wetlands issue is not something that the Board has jurisdiction over other
566 than how it affects individual lots. Mr. Osborne said that the Board needs a new plan showing the new
567 driveway and drainage calculations. Mr. McCarthy asked and Chairman White confirmed that this would
568 be an amendment to the subdivision. Mr. Marquise asked if the Board would like to implement a time
569 limit on receiving the amendment so that this is taken care of. Mr. McCarthy said that nothing will
570 happen in terms of construction until the spring. Chairman White asked and Mr. McCarthy said that the
571 lots are not currently on the market.

572 Mr. Marquise asked how long before the Wetlands Board issue is resolved. Mr. Shuey said that they had
573 to wait a certain amount of time before they could consider it so in theory the next meeting should be in
574 the next couple of weeks or it may be pushed back until January. The Wetlands Board is very busy and
575 the last time that he checked it was not on their calendar. Mr. Marquise said that it would be nice to
576 have the answers from them as well for the meeting regarding the amendment.

577 Mr. Lowrie asked if the 1.5 acre minimum lot size apply to this subdivision because of the wetlands. Mr.
578 Marquise said that the Regulations require 65% of the minimum required lot size. Mr. Lowrie said that
579 he thought that there was a separate requirement that said that if there is wetlands the lot size must be
580 1.5 acres. Mr. Shuey said that the wetland maps that the Town uses does not show wetlands on this
581 site. Mr. Marquise explained to Mr. Lowrie that the 1.5 acre requirement is in the Wetlands Overlay
582 District and these lots are not in that District.

583 Chairman White asked what the Board felt was an appropriate amount of time for Mr. McCarthy to
584 return to the Board with an amendment. Mr. Furlong said he thinks that six months is appropriate. Mr.
585 McCarthy said that six months would be enough time and they would return to the Board as soon as it
586 was done. Mr. Shuey said that he thinks things could be done by March but he cannot promise the time
587 of the people who would need to do the calculations. The Board and Mr. McCarthy agreed to a six
588 month time limit. Mr. Shuey asked and Mr. Marquise confirmed that the meeting will require notice
589 and there is a formal process that must be followed.

590 Mr. Butler asked if the Board should put a stop on building permits for the subdivision. Mr. McCarthy
591 said that he is not planning to do anything until this is cleared up. Mr. Marquise said that he does not
592 believe that the Board could do this without revoking the approval. Mr. Butler asked if they could tell
593 Mr. Landry that permits cannot be issued for six months. Mr. Marquise said that this is an approved
594 subdivision. Mr. Butler said that there are issues with the subdivision that the Board did not know
595 about. Mr. Marquise said that they have an agreement with Mr. McCarthy that he will come back
596 before the Board with an amendment within six months the Board is not revoking the subdivision.

597 Mr. Marquise asked Mr. McCarthy to make sure that there are building envelopes indicated on the
598 amended plan.

599 Mr. Butler asked who remediates the site if there is a 5 inch rainstorm. Mr. McCarthy explained that Mr.
600 Shuey's firm will monitor it and if there is action requirement they will call Mr. McCarthy's property
601 manager, landscaper, and contractor to handle it right away.

602 **MISCELLANEOUS**

603 Mr. Butler asked if there is a conservation person who works for the Town. Mr. Marquise said that
604 there is a Conservation Commission. Mr. Butler asked if they go to the sites and look at the vegetation
605 and what they could be. Mr. Marquise said that they do not have the same knowledge as soil scientists.
606 Mr. McCarthy's site is not mapped as wetlands soil. There is a peer review process and the
607 Conservation person is at the meetings now, however, they do not sign off on subdivisions. Chairman
608 White said that the Conservation Commission are not scientists and the Board relies on engineers to tell
609 them that there are wetlands. Mr. Hastings asked if there is anything for wetlands on the application
610 checklist. Mr. Marquise said that there are not, there is something for soils. Mr. Hastings said that this
611 may be something that needs to be added. Mr. Marquise said that he thinks that the Board needs to
612 update the Subdivision Regulations. Mr. Clarke said that DES has about four or five people in the
613 Wetlands Department and they are dealing with after the facts because they are too busy.

614 There was a discussion about wetlands buffers.

615 Changes to the Planning Board minutes from November 3, 2016: Change Line 100 to read "...existing
616 basal area..."

617 Mr. Osborne made a motion to accept the minutes of November 3, 2016 as corrected. Mr. Furlong
618 seconded the motion. The motion passed unanimously.

619 **MISCELLANEOUS**

620 Mr. Butler asked if the Board can put something in the paper regarding ADU's. Chairman White said
621 that he thinks that they should wait so that everything gets addressed that needs to and so that they
622 reach as many people as they can.

623 Mr. Hastings said that parking was an issue for the dance studio approved on Route 11 and now there
624 are parking spaces that are missing. The plan had four parking spaces on the side of the office building
625 and now there is a fence there and two sheds. There is also two campers and a flatbed trailer parked in
626 there. Mr. Hastings continued that Mr. Landry approved the building permit and the Planning Board did
627 not have a say on the changes. The dance studio is still there. Mr. Marquise said that he will ask Mr.
628 Landry if he considered the Site Plan when he approved the building permit.

629 Mr. Osborne made a motion to adjourn the meeting at 10:01 pm. Mr. Hastings seconded the motion.
630 The motion passed unanimously.

631 Respectfully submitted,

632 Melissa Pollari

633

634

635 Planning Board

636

637 Peter White, Chairman

Donna Davis Larrow, Vice Chair

638

639 Kurt Markarian

Richard Osborne

640

641 Joseph Furlong

Joseph Butler

642

643 Shane Hastings, ex-officio member

Randy Clark, Alternate Member