

**TOWN OF WEBSTER, NEW HAMPSHIRE**

*Zoning Board Of Adjustment*

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Zoning Board of Adjustment

Minutes of September 11, 2007

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Attendance: Martin Bender-Chairman, Patricia Inman-Secretary, Donald Koberski, David Barnes, Robert Drown, Jr., Linda Hook, Chris Vary, Panning and Zoning Assistant-Sarah Carter, and many Webster residents.

7:10 P.M. Barbara Darby and John Guay of Clough Sanborn Hill Road presented a request to build an 8 stall barn 36'x 50' on the left (south) side of the property, 25' from the property line. In doing so, they would remove an existing barn which currently blocks view of the property and is not in a good location to utilize pasture space. The new barn would also be more in line with the driveway.

As there were no other comments for or against the proposal, Chairman Martin Bender closed the hearing and opened to discussion by the Board. Patricia Inman mentioned she saw no issues with the proposal as it was presented. There were no other comments from the Board, Ms. Inman motioned to accept the application and approve the special exception for Barbara Darby and John Guay to construct the new 26'x 50', 8 stall barn on the left side of the property 25' from the boundary line. The motion seconded by Don Koberski followed by a unanimous vote of approval.

7:15 P.M. JKS Coldbrook Campground/James & Tina Schindelwig with their attorney, Peter McGrath, presented their application for expansion of the campground by an additional 90 sites through commercial exception that would include sites and buildings both pre existing and grandfathered.

Chairman Martin "Marty" Bender opened the hearing by asking that anyone wishing to speak during this hearing, to please identify themselves and speak with facts only. Chairman Bender also stated that this session would run no later than 10:00 P.M. Chairman Bender asked the Board of Selectmen to start by announcing what, if any, are the existing violations which would need to be addressed prior to considering the addition of any new sites. To which, Atty. McGrath asked if he may interrupt briefly which was permitted by the Zoning Board. Atty. McGrath stated that by law, if Board members are biased in any way or otherwise have conflict of interest to this matter, that the individual should recuse themselves from impartial participation and/or voting. Atty. McGrath also felt that it would be inappropriate to open the meeting with the violations as there would be no approval to any new proposal without first correcting the old violations. Chairman Bender gave permission for the applicant to continue with his proposing argument. Atty. McGrath started with the history of the pavilion, stating that his clients (the Schindelwig's) had phoned the municipality prior to completion of construction to ask if an addition required any permitting. Atty. McGrath argued that the caller was told in part that the campground held a grandfathered status to any such permit and there would be in no violation to construct the outbuilding. Atty. McGrath also added that the pavilion was also in compliance with the State Site Inspection. Atty. McGrath then presented the history of the camp store which is said to have been with the campground for approximately 40 years or since 1974 prior to the implementation of a Zoning Ordinance in the Town of Webster. The store is not a formal store, used for general camp needs only and is not open to the public. It is open only to those who are camping there. Atty.

McGrath asked Mr. & Mrs. Jack Welch to please stand to attest to the longevity of the existence of the camp store. Atty. McGrath asked Jack & Claudia Welch how long they had been camping at Cold Brook to which they responded that they have been camping there for nearly 30 years and the store had been in existence prior to them arriving for their first visit to Cold Brook Campground. Atty. McGrath also added that the store has all inspection approvals from the State of NH. Atty. McGrath then started with an Exhibit summary, and handed some copies of the Exhibit to the Board members. Atty. McGrath went on to say that it would be tough for Webster to prove undue hazards at Cold Brook Campground for health, safety, or property values which would be offensive to the public because of noise, vibration, excessive traffic, unsanitary conditions, noxious odors, smoke, unsightliness, or other similar reasons; because (see Exhibit A of the petitioner Exhibit labeled and highlighted as Exhibit 1) there are letters of support from the Webster Police Chief which in part says that the owners of the campground are responsive to safety, and that increasing the number of sites would not burden the police services, and that the Police Department is in support of the proposal. There is also a letter from the Webster Fire Chief who wrote similarly to the fact of the increase in calls would not be significant, and the owners are cooperative with emergency services.

Chairman Bender interrupted, asking Atty. McGrath of what exactly is being proposed. Atty. McGrath responded that his clients are seeking permission to operate the campground as it exists today, and also to request permission to add another 90 new sites with an ending result of 225 sites to operate. The Zoning Board and Atty. McGrath and his clients agreed that there have been no ZBA approvals to previous expansions to the campground. Atty. McGrath again mentioned that his client would call the Town Office to ask about permitting and each time was told no permits were needed. Atty. McGrath also said that there was an occasion when a Town Selectmen had visited the campground during construction of the pavilion and they too mentioned that there was nothing needed for permitting.

Atty. McGrath continued with the opening argument, by speaking about the character of the campground. The character of the campground is consistent, typical, and traditional of other campgrounds in New Hampshire, and is typical of the rural atmosphere of Webster. Again, Atty. McGrath spoke of there not being any offensive noises, vibrations, unsanitary conditions, and the like, as Coldbrook has rules and regulations for the campers to abide by (see Exhibit E of the petitioner Exhibit labeled and highlighted as Exhibit 1). The campground also has surprise inspections of which, the reports support the cleanliness and safety of the beaches, restrooms, and other amenities. Atty. McGrath briefly discussed that the water aquifer which the campground sits on, would not be affected at all with the addition of another 90 sites, and further, that the campground is up to date with all State approvals for septic waste disposal.

Atty. McGrath explained Exhibit C (see Exhibit C of the petitioner Exhibit labeled and highlighted Exhibit 1), which shows the tax bills to Coldbrook Campground and the assessments. Atty. McGrath mentioned that the assessments across the board have gone up; there would be no undue burden on the property values of the abutters, as the Town assessments prove that. Atty. McGrath stated that the campground has an approved/permitted driveway from the State and has routine water testing (see Exhibit C of the petitioner Exhibit labeled and highlighted Exhibit 1) there have also been permits updated with the State of NH Department of Environmental Services and with the State of NH Department of Transportation and for other State of NH permits. There are also (see Exhibit F of the petitioner Exhibit labeled and highlighted as Exhibit 1) twenty letters in support of the use and expansion of the campground from area and local businesses which operate under similar exceptions. Atty. McGrath also introduced three owners of similar campgrounds in neighboring towns (Henniker with 159 sites, Hillsboro with 125 sites and Washington with 64 sites) and all are in support of the expansion. Alternate Chris Vary asked how many sites are currently

used by Coldbrook, the response from Mrs. Schindelwig was 129 current sites, and that the State approved for a total potential number of 536 sites and for the approval to occupy 129 sites. Chris Vary asked the question of what those two numbers meant. Peg Foss speaking as a resident, also works at the D.E. S. however not representing D.E.S., could answer the question. The 536 is the potential number of sites this campground could hold. 129 of those sites are the only sites that have an "OA" or Operational Approval meaning they are the only sites with occupancy approval. There should not be any more than 129 sites being occupied or operated at this present time. Chris Vary then asked if people stayed at the campground seasonally or if there was anyone staying there full time. The question was answered by the Schindelwigs who answered that the stay is seasonal only, with operation from April 15 to October 15 annually. No one stays there full time. (The ZBA noted that the hours were not stated in the application for this exception).

Mike Barbaro, a camper at Coldbrook Campground spoke in favor of the proposal and stated that the facility is child friendly, it's safe, the beach is always clean, as well as the restrooms, and the atmosphere is very quiet, there are no loud dogs, and there have been no loud parties or music at the times when he has visited. Other campers and some residents of Webster; Bob and Harriet Rumsey, Ed Tellier, Claudia Welch, Michelle Pratt-Leinhart, George Godsoe, John McColgan, and Roger Billideau, all spoke in favor with similar interests and opinions such as; the campground is a friendly establishment, a good place for family vacationing, it is rural and quiet, with plenty of room and lots of things to do.

With no other comments in favor, the floor was turned to those opposed to the proposal. Judith O'Donnell of Webster, and has been a direct abutter to the campground for 34 years, read from the Zoning Ordinance in Article V section 1, F about alterations to a business, which states "Any future enlargement of the commercial use or alteration of the use can be made only with the approval of the Board of Adjustment." And also from Article V section 1, D about existing violations, which states "No special exception shall be issued for a property where there is an existing violation of this ordinance unless the granting of the exception will correct the violation." Ms. O'Donnell stated that at the time when the campground was sold, there were 36+/- camp sites at Coldbrook. Since the initial 36 sites, if they have stated that they currently have 129 sites, and have not come for approval for the 93+/- sites that have been added to now have 129 sites currently in operation, that issue should be addressed and corrected.

Thomas Mullins of Webster, also a member of the Board of Selectmen and the Planning Board, spoke as a resident of individual capacity only and not in representation of any municipal board. Atty. McGrath spoke again briefly to remind the audience of the recusal law. Chairman Bender then asked Mr. Mullins to continue. Mr. Mullins mentioned that the Town of Webster's Zoning Ordinance in Article V, Section 1, B states absolutely that "No business, commercial or industrial venture or use shall be permitted which could cause any undue hazard to health, safety or property values or which is offensive to the public because of noise, vibration, excessive traffic, unsanitary conditions, noxious odor, smoke, unsightliness, or similar reason.

In order for a special exception to be granted, the proposed use shall not adversely affect:

1. The capacity of existing or planned community facilities.
2. The character of the area affected.
3. Traffic on roads and highways in the immediate vicinity.

Also, NH State RSA 674:33 IV Says in part "All special exceptions shall be made in harmony with the general purpose and intent of the zoning ordinance and shall be in accordance with the general or specific rules contained in the ordinance. In the Webster Zoning Ordinance, the Purpose states in Article III Section 5 "It shall be unlawful for any person to utilize a recreational vehicle on a temporary basis who does not possess a permit from the Board of Selectmen. A permit is not required for the storing or parking of a recreational vehicle during periods of non-use on the premises of the owner. No permit shall be issued for any period

greater than 90 days per calendar year. A permit is not required for the use of a recreational vehicle in a State and locally approved campground.” In regards to traffic increase, (see Exhibit labeled and highlighted as Exhibit 2, T-5) the Police report from January 2007-September 6, 2007 showed 20% of the traffic calls are to the area of Coldbrook Campground.

Gordon Welch, a direct abutter to the campground, agreed that the traffic in that section of Battle Street should be studied as it is dangerous. Having concerns where the campground advertises access to the Blackwater River, which is located across Battle Street from the campground, the campers would have to cross the State Road at a section of road marked as a passing zone, and often motorists do not obey the speed limit through there. He himself, trying to turn into his driveway from the opposite side of the street, has been passed and “cut-off”, almost been run into to accomplish pulling into his own driveway. There are break marks in the street directly in front of the entrance to the campground where Mr. Welch assumes that campers traveling have overshot the driveway and hit the breaks which could cause accidents. Mr. Welch feels that there should be a traffic study completed. Mr. Welch also expressed concern for the effect on surrounding property values if the proposal is approved. Mary Welch, a direct abutter for 30 years has concern for the amount of smoke that exists currently as it affects her living habits, and her being able to accommodate for family with strong allergies to smoke. Adding new sites will surely add to the amount of smoke in the air. Another resident of Battle Street, Cynthia Anderson, also feels a traffic study is needed as the street traffic is loudest during the summer months with camper traffic. Constantine Evanofski, a Webster resident has no overall issues with the campground or the proposal, however is concerned about the effect on real estate values in Town. Mr. Evanofski feels that as a former appraiser and real estate salesman, an appraiser would be needed to determine the effect on values. Guy Larochelle, another abutter, said that from his house, the noise from the campground as it operates today is horrendous, the smoke in disconcerting even though property values have nearly doubled. Mr. Larochelle also asked how the increase of septic use and where it goes would affect the aquifer lying beneath the campground and how would that affect the agricultural zone? Chris Vary of the ZBA asked what noises Mr. Larochelle was referring to. Mr. Larochelle said that prior to this year when the proposals first started for expansion, the noise from music and screaming went past 11:00 PM and at times he hears dogs barking loudly and consistently. Helena Higgins had similar concerns for noise and smoke as a resident there for 13-14 years; these elements have worsened since the previous owners sold the campground. Susan Roman, speaking independently as a Webster resident, gave a presentation on drinking water resources. Aquifers such as the one which lies beneath Coldbrook Campground, is of high transmissivity which means it is one of the most productive aquifers because of the sand and gravel allowing the water to move. This also means that this type of aquifer is more vulnerable to pollution. (See Exhibit highlighted and marked as Exhibit 3). Chris Vary, in concern for preventing further contamination to the aquifer states that Atty. McGrath and his clients should be required to provide the ZBA with all health and aquifer test documents as part of the record. Helena Higgins also is concerned about the same aquifer which also serves them as abutters and what affect any future contamination would have for abutters. Peg Foss, a Webster resident who also works at D.E.S. but speaking individually as a resident; presented (Exhibit marked and highlighted as Exhibit 4) shows that in 1996 there were only 56 sites in operation; however the certificate authorized up to 129 sites. Since December of 2002, there is no record of any new septic operational approvals. (See Exhibit marked and highlighted as Exhibit 4) this shows the wetlands crossing systems provided. One culvert which has recently been upgraded by the owners prior to approval from D.E.S, is still not adequate enough to keep the stream from “blowing out”. There are four wetlands crossings shown on this map that should be checked out. Also, there are two camp sites in operation that are within the protective radius of the well. Ms. Foss stated that as stated at the beginning of the hearing, if violations exist, they should be discussed. Mr. Larochelle referred to the Webster Zoning Ordinance Article I C. which says that

one reason of such ordinance is to “retain, protect, and enhance the beauty and rural atmosphere of the Town.” Mr. Larochelle stated that doubling the size of the campground will be in compliance to that, expansion of the campground would not protect the property values, prevent overcrowding, nor preserve agricultural rights. The expansion will affect others. Mary Jo MacGowan of the Webster Conservation Commission mentioned that there are possibly some current wetlands issues that have yet to be reviewed. As there have been alterations made to wetlands already prior to State approval, there may possibly be in the future as well. The previous alterations, because they were not first approved by the State, resulted in the installation of an inadequate culvert. If this happens again it could cause trouble down stream. Approval from the State prior to any alterations to any of the wetlands crossings is important as Ms. Foss previously stated. Thomas Mullins asked the Board of Adjustment to review the application for completion to be certain all areas have been addressed. Jay Bowe of Webster agreed that a traffic study is needed on Battle Street and other streets because of speed and traffic, loud pipes were also mentioned. Mrs. Bowe also brought up the point that if more spaces are provided to accommodate more people, it will result in even more noise. Constantine Evanofski asked if there were any regulations towards the size of the camping units, specifically the Class A motor homes. Mr. Evanofski asked if any of these vehicles coming in would be more like mobile homes rather than camper units and could eventually turn the place into a mobile home park as people will follow the trend if allowed to stay off season as well. Chairman Bender answered that there are no regulations on mobile home parks and that this exception would not provide room for one. Chris Vary asked if the Board felt that it may open the door to that if/when the campground is ever sold in the future. Chairman Bender stated that because that would be another alteration, the new owner as well as the current owner if they chose to go in that direction, would have to come in front of the Zoning Board to get the approval. Gordon Welch asks if the campers on any of the sites will be removed. And if not removed and they stay on site would they need to be registered and inspected and able to move as required by law. If this is approved, that should be monitored as well as those units that are currently there off season should come into compliance with that. Elizabeth “Betsy” Janeway, a member of the Conservation Commission but speaking on her own behalf, mentioned that the Blackwater River is a Class A river meaning that it is very special and rare because of its clarity and lack of pollution in comparison to other rivers. As we know, water travels. If we think of the affect expansion to the septic would possibly cause pollution not only directly to the aquifer which runs into our river and flows down stream to and through Contoocook and eventually goes to Concord where the residents there receive their water supply from. Michele St.Jaques, a life long resident of Battle Street very near to the campground but not an abutter shared her concerns of traffic as well, where on several occasions she has seen strange people who she does not know walk past her home, and only assumes that they are campers. The strangers concern her because she has young children. The water issues are also a concern of hers as she has had problems with her well in the past. If there have been expansions made without approval, what will be done to correct them? Tom Mullins asked the Board further in conjunction with Mrs. St.Jaques, if you allow the expansion, will you also allow for the current expansions to also continue in operation even though they were expanded without prior approval? Peg Foss agreed with Mrs. Janeway in that it would be absurd to have something happen to the river. There has been a team of volunteers testing pollutions and bacteria in the Blackwater River. Ms. Foss stated that those reports will be made available and sent to the Town of Webster. Guy Larochelle says that as a direct abutter he has four wheelers and golf carts, people walking on his property which he can not post because of the current use status, but feels that the campground owners should be responsible for making the people who come onto the property to be respectful of his property as some of the campers that come onto his land will leave trash. In rebuttal, Atty. McGrath addresses the issue over the total number of sites as in many of the Exhibits many had conflicting numbers.

There are currently 129 sites (state approval seen in Exhibit C of Exhibit 1) in operation. During the time when the sites were being added to get to 129 sites, the Town was frequently called and questioned about any permits that may have been required.

The applicants now wish to add 90 more sites to that. In regard to the ground water concerns, Atty. McGrath and his clients are in recognition of those concerns, however the area is tested and reported frequently and the campground is in compliance with those safety concerns. Also, D.E.S has sole jurisdiction over the well. D.E.S has recognized the aquifer and has granted the campground the use of the well as well as expansion of the well. (Documents are also included in Exhibit 1). Also, there are tests done for the well and aquifer every five years on site, and every two years, samples are brought in for testing. In regards to the septic approvals, Atty. McGrath showed the Zoning Board that in Mrs. Schindelwig's records she has every operation approval for septic expansion that has ever been applied for during their time of ownership of the campground to date. Atty. McGrath praised the Schindelwigs of their record keeping as Mrs. Schindelwig made a note of every conversation and notes each State representative she has talked to, and of every Town representative she has talked with and the dates of those conversations. Chris Vary asked to see specifically those notes recorded from Town representatives. Atty. McGrath said that those records would be provided to the Board. In reference to the aquifer, Atty. McGrath said that cattle also have bacteria which seeps into the aquifer causing pollution. Chris Vary addressed that some of the abutters who spoke are new since the Schindelwigs have purchased the campground and were not present at the start of the campground to speak of current concerns, they are now given the opportunity to address them as concerns of the proposal for 90 new sites. Atty. McGrath said that the Zoning Board could implement conditions as part of the approval which may address some of those concerns. Some of those conditions would be limited to Class A motor homes. All would be road worthy. Chris Vary asked in regard to the Class A sized motor homes, as on the plan presented it seems that the lots are much tighter in relation to some of the others. What is the standard size, width and length of these motor homes? James Schindelwig said that all of the new sites will be anywhere up to 35' wide to about 60'-80' long. Tina Schindelwig added that of the 90 new sites, the 40 sites that would be added near the road would not be permitted to have campfires. Mr. Barbaro spoke about the traffic complaints heard so far, and stated that the speed for that area is posted and Police are in the area often to remind everyone staying at the campground and others, of the speed limits. Margo Armstrong then spoke in regards to noise as some of the noise on the streets is from fast traveling tractor trailers and not always a travel trailer. Also, the dogs that are heard are from a nearby kennels in Town, off site from the campground. The smoke also is not a nuisance to her and she is asthmatic. Another man who did not identify himself mentioned the waste from farm animals being more of a problem for pollution than a federally regulated septic system. Constantine Evanofski asked how this would benefit the Town and be an asset to the Town. Atty. McGrath answered that it would generate revenue, and referred the letters provided as Exhibit F (in the Exhibit marked and highlighted as Exhibit 1). The Schindelwigs also added that the campground generates for the State of NH and the Chamber of Commerce, \$700,000 annually. Chris Vary asked how close, specifically to the property of Guy Larochelle near the pond, the sites are going to be placed. The Schindelwigs stated that per previous minutes Mr. Larochelle said that they could make use of the property right up to the boundary line. Chris Vary also said that in this case, should the expansion be approved, some setback from the boundary would be required to which the Schindelwigs said they would comply to. Linda Hook of the ZBA noticed that there are some units shown on the plat as existing sites with porches, and asked if those campers are ever removed or if they stay on site off season. Mrs. Schindelwig said that some do leave and some do not. Atty. McGrath then stated that anything there has to be road worthy. Chairman Bender asked the Schindelwigs if there have been any vehicles which have not been moved in quite a few years to which the Schindelwigs said yes, some have not moved. Atty. McGrath provided the Board with the Exhibit (marked and highlighted as Exhibit 5) and then

asked the other campground owners to confirm that leaving vehicles off season in storage is not out of the ordinary. Patricia Inman of the ZBA asked if those units are taxed in those other towns. One owner said currently the Town which he operates in does not (he regulates the use of such porch units), however many towns do tax on them. Atty. McGrath asked the Board to see Exhibit D (of the Exhibit marked and highlighted as Exhibit 1) which is copies of the Town Tax bill of the campground. The campground owner from Henniker said that campgrounds are operated rural as opposed to cities; this approval would not be out of the ordinary. Atty. McGrath adds that the use is regulated as in Exhibit E (of the Exhibit marked and highlighted as Exhibit 1). Chris Vary asked if there was a septic dump site located at the campground to which Mr. Schindelwig responded yes. Mrs. Janeway asked if the road/street accessing these new sites would be lit to which Mr. Schindelwig answered they would be lit, however the light poles would not be tall and the lighting would not pollute the view of a night sky. Ms. Foss added that manure that is properly composted will not contaminate the water supply and tests can be done to the supply to determine exactly where any bacteria found came from. Mr. Larochell said that until now, there has not been a chance for abutters to opine about their concerns. He then added that as the campground exists now could be tolerated, however he is strongly against the proposal to double the facility. Mr. Mullins added that this approval for expansion would result in a quadruple in size. Mrs. Higgins asked the ZBA how the abutter's camping trailers and RVs apply and asked why they were even brought up. Mary-Jo MacGown reiterated that the wetland approval came after work on the blown out culvert. Ms. Foss added that the State has a condition which is #4 on the actual approval, that says in part that all bets are off and there would be no approval without first applying. Atty. McGrath informed the Board that the Schindelwigs understand and are in agreement with that condition. Susan Roman asked for the Board to consider the wave of affects and also stated that many of those who spoke in favor are not full time residents of Webster. It affects our drinking water where we live full time. At 9:50 P.M., Chairman Bender continued the hearing for October 9, 2007 at 7:00 P.M. at 945 Battle Street in Webster. At that time no other evidence or comments will be accepted, as it will be for the public to hear the deliberation of the ZBA.

Respectfully,

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Patricia Inman-Secretary