

Wolfeboro Zoning Board of Adjustment
Regular Meeting
June 30, 2014

Minutes

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Patricia M. Waterman
WOLFEBORO, N.H. TOWN CLERK

Members Present: Alan Harding, Chairman, Mike Hodder, Vice-Chairman, Fred Tedeschi, Clerk, Suzanne Ryan, Member, Hank Why, Member, and Christine Franson, Alternate

Members Absent: David Senecal, Alternate (Excused)

Staff Present: Rob Houseman, Director of Planning & Zoning and Robin Kingston, Administrative Assistant

Alan Harding called this meeting to order at 7:00 PM in the Wolfeboro Town Hall Meeting Room. A quorum was present.

The Conduct of the Meeting and the Rules and the Procedures for the Public Hearings were read. Also noted were Minutes are now being taken at Site Visits and will be submitted with the minutes of the meeting.

Appointments

TM# 133-28

Case # 13-V-14

Applicant: Woodbine Senior Living, LLC

Variance

Agent: Jim Rines, White Mountain Survey & Engineering, Inc.

Fred Tedeschi, Clerk read the Abutter and Public Notification for the record. A site visit was held at approximately 6:30 pm.

Alan Harding submitted the minutes of the site visit (attached).

Public Hearing for a Variance from Article 175.88.4 , Section 175-125 of the Wolfeboro Planning & Zoning Ordinance to allow for a 58 bed Alzheimer's facility and a sister 78 bed assisted living facility with a future single family owner's home. This property is located at Governor Wentworth Highway and Center Street.

The applicant is seeking a Variance to allow for a Senior Living Center to include a proposed 58 bed Alzheimer's facility and a 78 bed assisted living facility as well as a future single family owner's home. The parcel in question, shown as parcel #28 on TM# 133 falls

within two zoning districts, the Rural Residential and Rural Agricultural. In addition, the parcel is adjacent to the new Center Street/ Rt. 28 Mixed Use Business District.

Jim Rines addressed the Board and gave an overview of the proposed project. Woodbine Senior Living now owns the subject property based on the purchase after a prior hearing and now is being reheard. This property is zoned Rural Residential and Residential Agricultural and is bisected. The property was depicted on the plan. It abuts the Center Street/Route 28 Mixed Use Business District. It is 34 acres in size, and though all of the wetland has not been delineated, it was shown by Jim Rines on the plan an area that has been delineated by a wetland scientist and the boundary was shown that is approximate based on a site walk. There is approximately 7-10 acres. The lot has road frontage on Routes 28 and 109 which are fairly busy state highways. Within 1,500 feet of this property there are no less than 15 truly commercial uses, most of which are far more commercially intense than the proposed use, although commercial by definition is residential in nature, as it is used for housing Alzheimer's patients and if they move forward, assisted living. One of the uses, approximately 400' away is a convenience store and gasoline station that is open 24/7, 365 days per year. The soils are predominately glacial outwash sands and gravels mapped as Gloucester fine sandy loam and Lyester Walpole glacial till. A portion of the property lies within the Wetland Conservation Overlay District, which is part of the innovative land use planning in Wolfeboro and is regulated by the Planning Board and they will fully comply with the requirements as the Planning Board dictates. A portion of the property may also fall within the Groundwater Protection Overlay District and that is governed by the Planning Board and they will conform with the requirements. At the prior hearing there were concerns raised about antibiotics in the septic system and Mr. Rines spoke with NH DES and the information has been submitted to the Board and file to supplement the application. NH DES has no specific design criteria relating to this type of facility or to deal with antibiotics. The only studies they are aware of that have raised this concern is antibiotics in municipal waste-water treatment plants that discharge directly into surface water. It is not at all analogous to on site sewerage treatment plants. . Additionally this is a social model, not a medical model. The residents that live here are no healthier or no more ill than the general population. A copy of the Wolfeboro Tax Map that shows the area of Wolfeboro Commons was submitted to the Board and has been made part of the file. Wolfeboro Common is a project from the 1980's that has a 30 year history and is on on-site septic systems. There are no less than 15 wells down slope of this. The age population is similar and there are greater flows on a 50 acre site vs. a 34 acre site. Proportionately it is very similar. Throughout that 30 years there has been no evidence of contamination to any wells so that stands as an example that this is a concern that may have been heard before. Also there are many tiny lots in Port Wedeln to the west that again would contribute to that same concern, but nothing has arisen to show that. Also while engineers and hydrologist love to create computer models to project results of what is going to happen in things like soil which is nonhomogeneous. As a result of a lawsuit that was brought down in the Great Bay Region of NH because DES was limiting some towns on nitrogen, DES agreed to have a 3rd party review of the nitrate modeling that they do and as a result of that nitrate modeling they found that DES's

models, which we will be designing these systems for are overly conservative in that nitrates do not travel as far or as quickly as those models predicted and they are actually bound in the soil. Since there are no studies out there on antibiotics it is not entirely inconceivable, the same would hold true there. Traffic concerns were also raised at the last hearing. These are state highway and the access is regulated and dictated by NH DOT. They will determine if there is any need for off-site mitigation or improvements. The roads carry not an insignificant amount of flow in the highway capacity which is dictated by highway width which is more than adequate for this. The ITE Trip Generation Manual, which is the industry standard says there will be 2.75 trip ins (a trip out and a trip in is a trip in either way) so on a 24 hours per day facility like this that would have three shift changes, they anticipate 374 vehicles per day in this project. Since the Alzheimer's residents will have no vehicles and if the assisted living wing facility is constructed, not everyone is going to have vehicles. If you average that out over a 24 hour period, that is about 16 vehicles per hour. During shift changes these will be peaks, but even with peaks of 3-4 this would not be a tremendous trip generator. As testified to at the last hearing they met with the Lake Wentworth Association Representative, Roger Murray and Woodbine has committed to using phosphate free detergent and employing appropriate filtration systems to minimize any potential groundwater impacts in spite of the fact there is no evidence to demonstrate that there would be any outside the norm. The proposal will completely conform with the new storm-water management regulations and they will not be seeking any waivers from those. This project will disturb more than 100, 000 sq.ft. they will be needing an alteration of terrain permit and that will be reviewed by the state as well. As for the uniqueness of this parcel in relation to other parcels similarly zoned, there are 52 parcels in the town bisected by the Rural Residential and Agricultural zone and of these 52 parcels only three abut the Center Street/Route 28 Business District. Of those three, one is owned by the town which directly abuts this subject parcel to the south; one is owned by NH DOT which is the railroad because the right -of-way abuts this and the other parcel is the subject parcel. It is absolutely unique in that it is bisected and abuts the mixed use. Four of the six abutting parcels are non-residential or commercial; Imecom and the Krause Building which is commercial, the church which is civic, the railroad which is civic and the town lot. There are seven indirect abutters which are non-residential or commercial; Single-Rose (conservation); Calico Graphics (commercial and office); the Wolfeboro Fire Station (civic); Carroll County Landscape (commercial).

Alan Harding explained because is an application for a variance there are five criteria that have to be met. The Public Hearing was opened for a few questions the public may have for Mr. Rines based on the information just presented by Mr. Rines.

Jim Brown, abutter asked as Wolfeboro Commons was mentioned, has the water ever been tested.

Jim Rines responded that he is not aware of any testing but over the 30 years, through real estate transactions, it is a common request to test wells so he suspects the wells

have been tested over the 30 years as the transfers have taken place of the downstream properties.

Jim Brown stated during transfer of property waste medical products are not tested in the standard testing of wells. It is an above and beyond the normal testing for transfer of property.

Alan Harding asked if that was a statement or a question.

Jim Brown responded he has bought seven homes in his lifetime and out of those homes and the well testing they did, none of them ever mentioned any medical stuff they were checking for. The stuff that comes out of gasoline and radon, lead and arsenic, those kinds of things, they do not check any kind of medical and a number of solids, stuff like that.

Dana Piper, abutter stated said Mr. Rines mentioned something about the wells being contaminated; when he bought his house in 1986 the state had put in to the previous owner a new well because it was contaminated from the state by salt. He had it tested and they said do not use that as drinking water. Throughout the years there are two wells that are dug and the one contaminated he had access to through the basement. He asked if Mr. Rines was aware of that and he is concerned about the water. What is this going to do to his well system?

Jim Rines responded if these systems are designed to the state standards that have been in place since July 1, 1967 and they are consistent throughout the US; they say if you design them to their standards, you are not going to impact the groundwater. NH DOT as a result of using tremendous amounts of salt on the highways have been found to replace shallow dug wells.

Alan Harding noted there will be discussion on many of these issues, especially the groundwater, through the Planning Board if this application is approved

Howard Kruger, College Road asked about workers but did not hear about the families visiting traffic wise. Also noted was if this site is developed they would have to put a traffic light at the intersection of Routes 28 & 109 in the event emergency equipment would need to bring a patient to the hospital or things like that

Jim Rines responded and pointed out these are residents and not patients. The traffic figure quoted 2.75 trips includes visitors. In the State of NH you cannot get a traffic light because you want one, you have to meet certain warrants. He can tell you this will absolutely not trigger traffic warrants to require traffic lights. As for emergencies at that intersection, emergency vehicles are equipped with emergency lights and we all know they go through all kinds on intersections anytime there's an emergency; they have the authority to where they want when they want.

Howard Kruger noted at night the facility will have lights on and asked how many will be lit all night and will that be an impact to people in the area. He also asked if there has been a study as to animals living there and any impact to them.

Jim Rines responded lighting is a Planning Board issue but they will fully comply with the dark sky initiative that is contained in the Wolfeboro Regulations. For those not here at the last hearing there was discussion that some of these lights will be on timers and some on motion sensors because there will be three shift changes and when staff is leaving they will need to get to their vehicles safely but there is not an intent to light the area up, as far as animal studies there have been none done to his knowledge.

Tim Campbell, 37 College Road asked about the 18,000 gallons of water projected to be withdrawn from the local aquifer. He is concerned and asked have there been any impact assessments concerning what will happen to the local hydrology of the area.

Jim Rines responded there have been no studies. A portion of this property has been broadly mapped on the Transmissivity Maps which are an indication of an aquifer. This is the lowest Transmissivity of less than 2,000 sq. ft. per day and though as we go through this process they will be doing soil studies and other things but you are allowed to dispose of 2,000 gallons per day per acre and then you have certain nitrate setbacks that are require depending on the amount of sewerage being disposed of. Again those are the models that were just challenged and were found to be overly conservative and presumably if they satisfy those criteria, not only are they going to be meeting the current regulations but will be exceeding what they are actually finding to be the case.

Tim Campbell stated he is concerned with the fact there has not been an impact assessment completed yet. Many of them have dug wells and are getting their water from that area. As a Geology Major he has taken several hydrology classes and most studies he has read show that 18,000 gallons will affect the groundwater flow. As a Board and as citizens they should be asking to prove that this is not going to affect us. We should be going with a precautionary approach and asked Mr. Rines to advise the Board and any other parties involved that that should be the approach, precautionary, instead of wait to see if it affects people and then alter it.

Jim Rines stated until you know you have the use, it is difficult to expend all these monies. All of this is part of Site Plan Approval. This is not an unreasonable request, as he said they are going to have to do soil studies and other aspects as this moves forward so at this point it would be premature he would not recommend this to a client before they knew they even have the use permitted.

Tim Campbell responded he thinks he is talking about the discharge and he is more concerned about the water that is being drawn up. Mr. Rines is talking about policies about discharge and he is concerned about what is being drawn up.

Jim Rines responded that is presuming you are drawing the water from the aquifer but if you do a bedrock well through the aquifer then you are not even drawing from it; so again he stands by his prior comments.

Richard Masse asked if ZBA is including the questions and answers from the previous meeting by reference into this hearing.

Alan Harding explained the Board is not. This is a new hearing. Opening the public hearing for limited questioning of Mr. Rines' initial overview is complimentary. There will be an opportunity to rebut after the five criteria is presented and reviewed by Mr. Rines. Once that is completed, those in favor and those in opposition will have the opportunity to rebut.

Richard Masse asked how many residences, under current zoning could be placed on the current property and what would be the estimated withdrawal of water from the ground.

Jim Rines responded he does not have a definitive answer because parts of the property are 3 acre and parts are 5 acre. It is not just the number of residences, which could be in the 6-7 range but it is also the number of bedrooms. You are not restricted in a residence to any particular number of bedrooms, whatever the lot loading will support. You can put 2,000 gallons per day per acre for the flattest driest soils and as the water tables come closer to the surface or the slope of the land increases that number diminishes. It could be 6-7 homes and they could be 4, 5, 6 bedroom, 2 bedroom, he does not know what they number would be.

Michael Hodder asked about water draw, with a potential of 8 homes on the property, 24 bedrooms total, how many gallons per day could that number of houses suck out of the land and still be approved without having to come to the ZBA.

Jim Rines responded the example is 3,600 gallons per day but that is only what is going in the septic system, which is not irrigation, washing of vehicles or other uses. NH DES only regulates what goes into the systems.

Mike Hodder asked if there are any DES regulations as to how much water comes out.

Jim Rines responded there is not.

Mike Hodder asked if the Town of Wolfeboro has any regulations as to how much water can be taken out.

Jim Rines responded there is not for single family residences.

Richard Masse asked if the comparison of Wolfeboro Commons was made because they have a similar geological underlayment, what is the basis for making that comparison.

Jim Rines responded the basis was because the concern raised at the prior hearing was there was a concern they would be disposing of antibiotics and other prescription medications. Since this was a similar density and age and health group to what is being proposed he felt this was a good example. Additionally they are on septic systems like this project.

Richard Masse pointed out his question about geology was not answered.

Jim Rines reviewed the 5 variance criteria as submitted including supplemental data submitted prior to the hearing.

Chris Franson asked if a use such as this is allowed in other zones in the town and in your due diligence whether you looked at other properties where you would not need a variance.

Benjamin Avery, Black Rock Construction and Developer for the project explained they completed a fairly extensive search with a local Realtor and the narrowed it to 4 different parcels, some which would require a variance and some would not. The reason they arrived at this particular parcel was the overall impacts, meaning the visual impacts from the roadway, the impacts as far as use, how it mixes in with the character of the neighborhood and the traffic on a numbered highway, they felt this project, despite the fact it needed a variance they felt this particular location really was the best suited. They looked at a number of them and narrowed it down to a short list.

Fred Tedeschi asked he was assuming the 1/3 of the acreage to be developed includes parking lots and appurtenant structures.

Jim Rines responded that is correct and depicted the area on the plan for building and parking. There will be storm water management and things like that but as shown on the plan, they are seeing it to scale with the exception of a single family owner/residence.

Fred Tedeschi asked if they would be covering more than land than what would be permitted had they developed it for 6-8 single family residences.

Jim Rines responded the problem with single family residences is they are not regulated like anything that is not single family residences.

Fred Tedeschi asked what the lot coverage would be if you divided it into 6-7 lots, whatever is easier for the math. Would you be covering approximately about the same?

Jim Rines responded you would probably be covering less, as a single family residence is capped at 40%.

Rob Houseman responded the coverage is the same for either use.

Jim Rines responded there would really be no difference.

Suzanne Ryan stated she knows the site plan process however the public perhaps does not have that vision down the road, some of these questions might be applicable to that but she does not know. You will have to provide snow storage on that site and asked how are you going to remediate the ice and snow in the parking lot.

Jim Rines responded he is sure it is going to have to be sanded when there is an ice storm just like any other property in town, single family residence or commercial business. Snow storage they need 5' around the sides of the parking. His guess is salt treatment is done at walkways and entrances to building and things like that. Generally it is cost prohibitive for businesses to do that and most places do not allow it so he envisions this will simply be sanded.

Suzanne Ryan noted discharge 2,000 gallons per day per acre that would be exclusive of all wetlands, so its 2,000 gallons per good soils acre.

Jim Rines responded that is for the flattest driest soil and as the water table comes closer to the surface and the slope of the land increases, that 2,000 gallons per day per acre gets diminished.

Suzanne Ryan asked how many good acres are there.

Jim Rines responded there may be 7-10 acres and it's a 34 acre parcel so if we assume 10 acres, there are 24 acres of good soil there.

Chairman Harding asked for those speaking in favor to address the Board.

Kathy Eaton, year round resident of Wolfeboro and Chairman of Wolfeboro Economic Development Committee (EDC) read the Mission Statement of the EDC as follows:
The Mission of the Wolfeboro Economic Development Committee is to identify barriers and opportunities to enhance the economic growth and opportunity of the Wolfeboro community and all of its constituents and to champion the actions necessary to achieve economic growth and benefits that exceed growth in our county and state while also balancing impacts on the Town's environment, character and culture." (submitted and attached)

She is here to speak today on behalf of the EDC in favor of this petition. It will be very beneficial for the Wolfeboro Community. It will provide a service that an ever increasing number of elderly citizens in our town needs. We know that because we

understand and know of waiting lists in various facilities here but we do not have a facility exactly like this and that the Woodbine people told us they came to Wolfeboro because they have people from Wolfeboro going to them, so families have to place their loved one in a situation in Meredith or Laconia, on the other side of the lake and then travel. We will have that kind of facility here. If she was in a place like that she would want to have her family close and if she had a loved one that needed to be in a facility like that it is nice to have them right in town, you can go every day, you can go as often as you want. That's a facility our town needs. It meets the demographic of our community so this is a huge asset for our town. It will bring 50 full-time jobs to Wolfeboro. It will make it in doing so one of the top 10 employers in our town. We need those jobs. Our welfare rolls and food pantry use demonstrate families need more and better paying jobs. There will be a cross section of all levels of jobs in a facility like this and there will be ancillary services; other businesses in town will benefit, they are going to need their parking lot plowed, they are going to need laundry pick up, they are going to need waste pick up; they will need plumbers and electricians, it will be good for our town. It will be a for profit business so it will be paying property taxes, it will be paying federal taxes as well. The location is near ideal; it is tucked away on a piece of property that will have minimal impact on its neighbors and speaking to our mission it will not disrupt the character or culture of our town rather will enhance our culture because of the service it provides to a very important population of our community and last we are confident that the federal, state and local regulations will protect our environment including our beautiful Lake Wentworth.

Adding a personal note, Kathy Eaton commented her husband and she are Lake Wentworth residents here. They live on Trigs Island 6 months out of the year and downtown for the other 6 months. They also own property on Route 109 less than ½ mile away from this proposed facility and they personally support this petition as well. This project is a great example of the reason why we have a ZBA. You people are here to listen to what makes sense for this town. This is a gray area, not a black and white issue. It happens to be a piece of property that is ideal for this that does not happen to be in the right zone. It lies on your shoulders to make a sensible decision that is in the overall benefit that is in the overall majority of the residents and help this community. We feel it is in a perfect location and we please request that you grant this variance and let this project pass on to the next phase, which will be before the Planning Board where the very details of how this will all go together including the impact on the environment and all of that will all be dealt with in more detail, that is kind of the appropriate area she understands. Please grant this variance and give Wolfeboro the opportunity to join with these people in building a facility they really would like welcomed here.

Amanda Cook, Executive Director, Forest View Manor in Meredith NH, a Woodbine operated facility and also an RN. A letter from her Director of Community Relations, who was married on Saturday, on her honeymoon and unable to attend, was read. (submitted and attached)

Gloria Brock, Founder and Managing Partner of Woodbine Senior Living and also now the subject property owner addressed the Board. Jim Rines was asked to refer to the residents as residents because they are not patients. This is not a medical community and they do not treat medical diagnosis other than dementia any different than they would treat a medical diagnosis in their own homes. Her residents need hands on care and that does not require antibiotics, prescriptions or any other kind of waste materials that would normally be found in a nursing home or a hospital. The minimal waste materials they do use they dispose of through a medical waste disposal process that a community of 8 houses would not have to do. They are regulated so they have less ability to damage the water systems than the residential homes would. Amanda's letter was very emotional for her and herself, she believes as our country grows older, the number of people who are diagnosed with some form of dementia is going to increase by 20 fold to what it is today. Before any of us are done with our lives, in this room, she thinks it will increase by 10% at a minimal. The choice they have now in this country besides an Alzheimer's Community is a nursing home or their families trying to take care of them in their own home, which if you have never taken care of someone with dementia you cannot speak to that that, period. They are going to be a one story building surrounded by woods. The lights are not going to go over the trees. They will follow every single rule that the Planning Board and Zoning and whatever it is called tell them to follow when it comes to water purity, water usage. They will add to the community and if they need they will provide whatever you guys need. They will not take away from you; we will give you what you need if that becomes an issue in order to make this project work. She wants to be a good neighbor, she wants to be someone you are proud of to have living next to you and she wants to be able to provide this community with the type of services it has never had. It is important to her. As you speak when you come up, it is a request, please be respectful of the fact they are trying to create a residence and a community for seniors in this community, it is not a joke, not something to be making fun of, not something to be snickered at and she would like to ask for respect in the responses to what they are doing. As much as she respects, she would like them to respect their desire to make this community what it is rather than downplay what they believe is a very important things for this community and every other community in this nation.

Alan Harding read a letter from Mary DeVries, Executive Director Wolfeboro area Chamber of Commerce. This letter was received via email late in the afternoon. (Letter submitted and attached)

Alan Harding, Chair
Wolfeboro Zoning Board of Adjustment
PO Box 629
Wolfeboro, NH 03894

Dear Mr. Harding:

The Board of Directors of the Wolfeboro Area Chamber of Commerce encourages your approval today of Woodbine Senior Living Center's application for Variance, as you intended with your earlier vote.

The addition of Woodbine will create openings for new, year-round employment and the facility will compliment existing services available in Wolfeboro.

It is evident in the application that they are taking every step to be a good neighbor, and to protect the town's assets.

We appreciate that Woodbine Senior Living Center chose to invest in building a new facility in Wolfeboro. Thank you for your thoughtful consideration of its application.

Sincerely,

Mary DeVries, Executive Director
On behalf of the Board of Directors
Wolfeboro Area Chamber of Commerce

Alan Harding noted the names of the Board of Directors who are all civic minded individuals who are activists and volunteers.

Speaking in Opposition:

Connie Brown, Center Street commented that no one here is against an Alzheimer's Unit but they are concerned and scared. They are afraid of their property values, the runoff, the drying out of the water; they want to be heard for that. March 2014 the town voted to reaffirm the location of a commercial zone in the town. The town vote is a legislative process. The property is not part of that zone. The town planners worked for years to identify the commercial zone and its uses and the ZBA does not have that legislative power. In legal terms the words will be and shall be are finite and not open for interpretation. The ZBA does not have the authority to interpret the law; it must apply the law the way a building inspector must. She stated she feels the ZBA does not have the authority. This is not a variance this is a change. Our town already voted on the commercial zone and she does not believe this falls into a variance.

Tom Fortuna, 9 College Road, abutter commented he lost a mother in law to Alzheimer's so he is very familiar with it and he thinks they could be a good neighbor and maybe an asset to the community but his problem is with the location. We are told nothing will be taken away from us, well if his water is taken away that is a major concern and contrary to his interests and he is part of the public so it would make it contrary to public interest. As much as he thinks this facility could be an asset to Wolfeboro he would like to see it in a more suitable location that is zoned for this. It has been pointed out there are abutting properties that are commercial; they have to be in the commercial district. Is it in the spirit of the ordinance? If we consider it a commercial property, it does not belong in the

residential or agricultural district. The ordinance is designed to keep that residential, not commercial. To approve a commercial property that has just been billed as one of the top 10 employers in Wolfeboro, that is a large commercial property. That has a major impact on their neighborhood. It moves the commercial district a whole block further north into our residential district. They talk about their not patients but residents, well these districts; the ordinance has put limitations on what can be built in there. The acreage has been put in there whether they are talking 3 or 5 acres per lot. We all understand the reasons the limits are there and it's to keep the population from becoming too concentrated. What is being proposed here is for this lot to have roughly 10 times the population density as the rest of the district. That is not in line with the spirit of this ordinance. As much as he can see a benefit to this he would much rather see it in a more suitable location. He asked the ZBA not to approve the variance.

Fred Tedeschi asked Mr. Fortuna for a description of the neighborhood.

Thomas Fortuna stated the other night he and his wife were sitting on the back porch and they hear the crickets, frogs and the night birds. They hear night noises, animal noises with the occasional car going by. When he walks out here he hears the hum and the noise of ventilation systems and whatever. Things that are associated with being in town, not things being associated with being out in the country. That is one of his concerns. It is a quiet neighborhood. From his house he can only see one neighbor that is across the street.

Fred Tedeschi asked how deep the lots are on College Road.

Thomas Fortuna responded he has about 400' on College Road, roughly 300' on Route 28 and close to 800' on the common boundary.

Fred Tedeschi asked if he looked at the area that is bounded by Rt. 28, 109, the railroad tracks and College Road, what would he say the predominant use in that area is. Is it residential, all open land, commercial?

Thomas Fortuna responded the only commercial is at the intersection of Rt. 109 & 28 and a couple of small businesses along Rt. 28. Once you actually enter the Agricultural District, he does not know of any commercial properties.

Fred Tedeschi stated that what he is hearing it that granting this variance would substantially change the character of the neighborhood.

Thomas Fortuna responded it absolutely it would.

Katie Brown, abutter and neighbor stated she is also a young professional who grew up in Wolfeboro, pretty much her whole life with her family here, like your family or the family of the woman in the letter she has a lot of wonderful memories of Wolfeboro. She feels a

little offended that it is referred to as just a retirement community. She loved walking after school down to the beach, she loved camping out in her back yard, she loved the whole idea living 45 minutes away from the mall, living in a place where we had the lake and the trees and bears walking through their yard. She understands that Wolfeboro has quite the elderly community but what about the potential young ones who may want to start life and a family here. She would personally see that lot as more of a residential place, a small cul-de-sac. Somewhere a family could start and live the life that she got to live. She highly respects what they are doing here. Her family has a lot of medical issues and they have to drive to Florida to visit them. It is hard but they do it because they love them. Distance is distance and as long as you care, as nice as it would be to be right there with them you can't always be right there with them. If they could find another place in Wolfeboro she would be so for it, but that's her home, that's where she grew up and she wants to see it as she saw growing up as a nice quite place faraway place to live, not a retirement community, I guess.

Carl Crosley, Kenny Shore commented he is not sure if in favor or opposed. He does not feel this proposal does meet the criteria of not changing the neighborhood. The adjacent properties, many of them are described as commercial, indeed. If you look at the history of what the Planning Board has done over the last 3 years, those areas which were designated as C2 Commercial, somewhat of a wild west anything goes, was changed to mixed use and among that criteria were specific limitations of high density population. In addition to that the adjacent Rural Residential areas which have not been rezoned but have been under discussion with the Planning Board for a year have also had exceptions of uses removed from them when they were high density populations. This is a high density population use and he feels it contradicts where the planning and zoning has gone in this town for the last 2-3 years.

Howard Krueger, asked Mr. Rines to go over the variances again but just in 3, 4 or 5 words, a,b,c,d,e; so he can understand because he is ignorant on this. He understood this 1st one, does it alter the neighborhood. Then if you can go over b,c,d,&e; either c or d threw him off, he did not understand what that variance is.

Rob Houseman gave Mr. Krueger a copy of the variance criteria.

Chris Franson stated having been on both side of these kinds of things, the ZBA has these five criteria and these are the only things that they can really consider. It doesn't mean do we think it's a great proposal or not, it's about does it meet these criteria. Sometime you may feel we are not listening to what you are saying but it really because we are bound by only these certain questions.

Laura Dockett-Campbell, 37 College Road and is an abutter is glad she is here tonight. Originally there was a mail mix up and they were not invited to the first meeting. The mix up was the difference between Wolfeboro NH and Wolfeboro Falls NH, so they never received the first letter. They thought they bought property in a rural area. They

expected it to be that way and they have major concerns. They are very concerned about their well, their property value and keeping the area rural, so those are her concerns.

Frank Sykes, 152 Governor Wentworth Highway stated he had a father who passed from Alzheimer's and it is a rotten way to go. Ten years of watching him go to hell is not what anyone deserves, so he understands and is sure these people are well intentioned. His question is strictly an economic one – what is a patient or resident going to pay to be there. His father couldn't afford the highbrow deal and he got in one of those facilities where they are kind of shipped in there like a sheep he guesses, which was not a pretty site although his mother took care of him as long as she could. Is this really something that is open to the general public or the people that can afford to live there? He does not really know if he is for or against it. The first time he heard about it; someone slipped a note under his door about what is going on tonight so he showed up. He is more of an economics guy so his questions what is it going to cost a patient or resident to live there, per month, per year.

Gloria Brock, Woodbine Senior Living and owner of the project responded the price depends on the community. When they do their market analysis and they decide what size building, what type building and what their projections for the cost are, they base that on the community's ability to pay. If they are in a low income area then they try to provide a place that is high quality of life, care, independence meaning they have the choice and they help them be able to make the choices at a cost they can afford. They have Medicaid in some of their communities and some they do not. It really depends on the state requirements and whether Medicaid in the state of town will allow them to take care of their residents the way they believe they should be taken care of. She cannot answer the question directly but the rates are based on what the community can afford and her executive directors and directors of community relations (admissions folks) have the authority individually to analyze each families financial situation and analyze how that financial situation will affect the health of the community as a whole financially and if the community can afford to offer some of the residents help in paying for their care. If they can help afford to pay for their care because they have created a successful happy full community that has the ability to do that and they have done it in the past. Communities that do not have Medicaid, if a resident live there for 10-12 years and spends their money down, they have gone as far as saying to that resident, you can live with us for your social security minus what you need every month for your personals. The difference between that is they may be getting \$800 per month and they may be charging \$5,000 per month at that property. She cannot answer the question directly but can give the spirit of intent.

Frank Sykes responded that if his property value goes down it means his taxes go down so he is happy for that. He does not want to pay any more than he has to. Lets face it, this is a fairly wealthy community although he is not one of those people, so what do you charge across the way in Meredith.

Gloria Brock responded that depending on the size of the room, the market they are in and the level of care the resident needs ranges from \$2,000 to \$7,000 depending on those factors.

Suzanne Ryan asked about Meredith and the buildings being existing and already established.

Gloria Brock responded that one of them was and they built two more all on the same lot.

Suzanne Ryan responded that she can expect the facility had the sewer and water and everything such as that, the one that had the buildings.

Gloria Brock responded it was a house, a private residence but she did have septic and well but in order to increase the capacity for that property they had to add considerable more septic and well service to the property.

Suzanne Ryan asked the approximate for the facility in Rye and also is it on the Portsmouth Sewer?

Gloria Brock responded it is town sewer and the cost for a resident ranges from \$4,500 to \$7,200 per month.

Judy Crosley, Kenney Shore stated the idea of having a unit like this in town is a wonderful idea however this is completely in her view to say this is disingenuous not in some way shape or form a medical facility. She had two parents who died using assisted living and believe her, they are patients. They are residents, of course they are, they can do all kinds of things but they take medications, they have at least LPN's who are distributing their medication. She is a healthy 70 years old and she takes a lot of medications. There are all kinds of special needs that they have and that requires special needs. There will be a lot of use of the septic system, water, laundry and we do not know from this hearing how this is going to impact this site. They are very legitimate concerns of the abutters of this project and it has to be taken into very serious consideration because this is a medical facility.

Andrea Dudley, 74 Moose Pint Road commented she is not an abutter but does live in the area. She wanted to echo what Karl Crosley had said about the Planning Board having invested 2-3 years of time having put in place some measures that protected the watershed, Lake Wentworth, Crescent Lake and its tributaries which are very, very important economically to Wolfeboro. She is concerned about the size of the structure being proposed. The way she looks at it is it is being presented as one story building that would house nearly 200 people plus parking lots, so that is a lot of lot coverage that's now a sand pit where the water would just go right down into the earth. She thinks that would drastically change the neighborhood and watershed. She heard Gloria say tonight she was willing to do almost anything to make this get approved and she thinks she heard

her say at the last hearing that she would be willing to reduce the scope of the project to just include the dementia and Alzheimer's unit which would not cut it quite in half but would significantly reduce the needs for the large buildings, the parking lot, the staffing and all kinds of things. She respectfully asked if Gloria is willing to make that adjustment to make this more palatable to the area and to the residents that are abutting this and have concerns about their water and the groundwater.

Alan Harding responded he is concerned with the application. The ZBA is not in the position to deal with the applicant at this point as to whether they want to or do not want to. The ZBA is dealing with the application as presented. You have to understand the ZBA's position. Every town in NH has permissive zoning. You are permitted to put a house on a piece of property. It has to have a setback, that's exactly what it is, no more, no less, than the law. However there are mitigating circumstances to prompt the homeowner to go and get an application is denied by the Code Officer. That homeowner has the right to appeal looking for relief, they come to the ZBA. They are quasi-judicial. The ZBA deals on the facts as presented to us at the hearings and make judgments on them impartially, fairly and using our own life experiences to come to a conclusion on the prescribed criteria. A variance for this is for a use. We have other categories that we deal with, Special Exceptions, Equitable Waivers, and things of that sort. We have to deal with what is presented to us by the applicant.

Andrea Dudley responded she appreciates the tutorial on the Zoning Board and she has received a variance from the ZBA, not this Board but their predecessors, so she is familiar with the process.

Alan Harding responded at that point she had something illegal, wanted to do something that was illegal and the only relief she had was to come to the ZBA for relief

Andrea Dudley responded she would not call it illegal she would say it was not permitted under the rules. When she came to the ZBA she understood she could amend what she was asking for if that made a difference to abutters and all that. She is not clear on the fact that Gloria and Woodbine can't step back from their proposal, reduce the scale and still have the ZBA accept something smaller than they have asked for. She does not understand that they are bound by the entire proposal they have put in front of the ZBA. She respectfully asked the ZBA to deny the request and if they would like to come forward with a smaller request then she thinks maybe that would be more palatable and less jarring to the neighborhood. She feels this would not meet the criteria.

Alan Harding explained that Woodbine will have an opportunity to rebut after the public comments and they could withdraw the proposal if they wish.

Andrea Dudley respectfully requested that Woodbine consider modifying their proposal to reduce the scope and just do an Alzheimer's facility.

Sarah Silk, 272 College Road stated she wants to make it perfectly clear that she is here as a resident of the Ag. Zone and is not here representing any board, commission or anything she is a member of.

Mike Hodder clarified that she is speaking purely for herself.

Sarah Silk responded she was and probably her neighbors feel she is speaking for them as well. She is concerned about the 18,000 gallon per day of water. In 2002 there was a proposal to put a similar business on a piece of property next to her house. There was great concern at that time about the 150 gallons per day of water that would be used plus staff water for washing hands, etc. That was in 2002, it was denied. It was denied by the ZBA at that time because of neighborhood impact and the fact it would be detrimental to people in the neighborhood. They had the same concerns she has heard here tonight. Lighting and 5 parking lots for that proposal that would have been 24 hours a day and a number of other things, regarding trips and the amount of large trucks that would be delivering, everything from uniforms perhaps to supplies, to picking up laundry perhaps to making your regular deliveries of oil etc. It does not matter if an abutter has a dug well, whether it is 250' deep, 30' deep, 450' deep, if it goes dry it is a detrimental impact to his property. Detrimental impact to his property. Everybody in that area has a well; we have no town water out there, no intention of putting it there. We have no town sewer out there; there is no intention of putting town sewer out there. 18,000 gallons a day that is going to come out of that building someplace. You have heard there are social models regarding pharmaceuticals and the general population and different residences and all. She does household Hazardous Waste, for nine years we have been collecting medications. The reason we collect medications is because of the terrible impact it has on ground water that becomes drinking water. If you have 6 individual homes on their piece of property, she has heard anywhere from 5-7 expressed as possible there, you would not have the same impact as 136 residents plus a single family home for sewer coming out of that building or three building. Four years ago she attended a 3 day conference The New England Water Association in Portland, ME. Since 1980 there have been studies done by EPA and other various organizations across the US regarding the high levels of antibiotics, birth control pills and antidepressants that are showing up that come from waste water. Most of the waste water studies have been done as Mr. Rines says on municipal waste water sewerage treatment plans. Why because it is not cost effective to do a study on every single individual septic system. These have been identified; this area with its aquifers and drinking water has been identified in Wolfeboro's Natural Resources Inventory. If you look at the sections she pulled out, page 23 -26 it talks about protecting Wolfeboro's Aquifer's from potential contaminations vital, on page 23. You go to page 25 it talks about non contaminated water must be allowed to seep into grounds surrounding an aquifer in order to protect quality and quantity of water in an aquifer. It goes on to say most wells are dug or drilled, although they could also be driven. Wells and other forms of groundwater resources remain a significant water supply source for many years and it's important to keep this resource protected. Groundwater is very susceptible to contamination most often from leaking underground

storage tanks, poorly maintained septic systems, improper disposal of hazardous chemicals and vehicular accidents. It goes without saying that enormous influxes from septic systems have impact as well. It talks on page 26 about managing potential sources of contamination to minimize threat to drinking water sources. Then it talks about 11 active well head protection areas which serve populations ranging from 50 to 210 individuals and guess what's on the list, the 2nd one down, Trites Chevrolet Chrysler which is right next door to this property.

Alan Harding asked when this study was done.

Sarah Silk responded she does not have the initial page with her.

Alan Harding commented you realize a lot of this is hearsay.

Sarah Silk responded the Natural Resources Inventory is hearsay, oh if you say so Mr. Harding. Public Interest; I would like to look at the public interest.

Alan Harding asked if she has the documentation to support that.

Sarah Silk responded she is sure the Town Planner has this entire document.

Alan Harding commented that she referenced the case that was adjudicated back in 2002. She was an abutter. There is no such thing in the ZBA business that we use a president. It does not exist. Each and every application is unique to that application. The terrain, size, the location, everything is different. Just to site one example that was denied has no bearing on what we are listening to tonight

Suzanne Ryan stated it is the neighborhood. It is part of the neighborhood. To answer your question, this is the document 2011, Natural Resource Study which she is citing, is an official document of the town.

Sarah Silk responded the only reason she brought up the 2002 case is because it is in the identical zone. You talk about public interest and character, you know, if you want to look at this particular business she has nothing personal against this business. Look at The Ledges downtown. They service people but they have a frequent use of ambulance service, but they are downtown. If we have frequent use of ambulance service as happens when you get an older demographic that perhaps has health issues, the response time is not going to be as great. The response time for any accident within town is not going to be as great when they are servicing this particular entity. You heard about 50 jobs, 50 jobs is a wonderful things, it really is, especially in this economy but this wonderful things could happen in the commercial zone downtown. We have a lot of commercial property downtown that's been for sale for a number of years. The infamous Wicker property that the town did not buy for a town hall then there is the True Value property which is right across the street from Huggins Rehab, near the Taylor, near the

Sugar Hill Community, right in the same area as a lot of other people that have similar interest and similar concerns. There's no special conditions for this lot. It is like looking for a needle in a haystack to say this lot is unique because it straddles zones. That does not qualify; from what she understands as an unnecessary hardship intrinsic in the property. When we went to this same room for a rehearing for the original hearing it was noted by Chris Franson who was on the Planning Board that it took several years of planning for the town to establish where this zoning demarcation line was going to be. People may not recall the reason it took so long was because of zoning changes put in place that were voted down for the entire town because of the concern about the Ag. District, hence the whole reason that the Ag. Commission has been formed, to keep a look out for the activities that are making a commercial creep into that Ag. Zone. There was a note about other business in the neighborhood; of course there are other businesses in the neighborhood because it abuts a commercial zone. The very idea that it abuts a commercial zone makes that very edge of the Agricultural zone highly at risk, highly at risk. Just think Beach Pond as our water supply and how at risk the border of Beach Pond is for contamination. The town has either bought or has a conservation easement on almost all the entire property to protect it. It's a game of attrition. First it's this lot, then it's that lot and one of the people that spoke before her talked about how the zone is creeping a block at a time. A vet has a direct relationship to Ag. Activities. A veterinarian would use a lot less water. I remember hearing this equated with a vet and a hospital. At 2,000 gallons a day per acre and we have 24 acres, what about saturation of those soils. They took all that sand out when it was a gravel pit. OK want to talk about saturation of soils, OK I am not here as a Selectman but with knowledge from that job, this the sprayer, Wolfeboro Spray Area for our treatment plant, think about how that became saturated. They talk about how they will do soil studies and they will do models. Think rapid infiltration basins, think of a 20 year solution that lasted exactly 48 days, think of her being a solid month at federal court.

Alan Harding asked what that has to do with this application.

Sarah Silk stated she will tell him because he is thinking this is perfect of perhaps Mr. Rines is promoting it as a perfect place and we do not know enough about the soils down here and if these things fail it is the entire neighborhood that is going to be at risk.

Alan Harding asked if it is possible if this is approved, it goes to the Planning Board; is it not their prerogative to discuss the issues she is raising right now? Yes or no.

Sarah Silk responded she believes so but she is not talking about the Planning Board's prerogative, she is talking about the ZBA trying to meet these 5 points.

1. The variance will not be contrary to the public interest.
2. The proposed use is not contrary to the spirit of the ordinance.
3. Granting the variance would do substantial justice.

4. The proposed use would not diminish surrounding property values. (there we go)
5. Denial of the variance would result in unnecessary hardship to the owner. (It can be used for 6 lots, where's the hardship? And it goes on).

She just got her brand new version of the Municipal Associations – Knowing the territory and it talks about a variance. It says a variance is permission, as this is going to be a sort of repeat of what he just said earlier, to the owner of land to use the land in some way that would otherwise be a violation of the zoning ordinance. What do we want to violate the zoning ordinance which just got voted in in March.

Alan Harding commented to the audience this is not a sports event so clapping is unacceptable and he does not want to hear it again. Also if you are going to speak and say the same thing as a predecessor, please simply say "I agree with John Doe or Mary Joe".

Susan Poirier, 184 College commented agrees with an awful lot that has been said against this proposal and she will not repeat them all because the ZBA has heard them many time. She would like the ZBA to realize that if you grant the variance effectively you have moved the boundary of the commercial zone because it is on the line now by granting the variance, now the zone has moved over. As far as Mr. Rines' very nice presentation about the type of commercial businesses in the area he neglected to mention that just beyond Calico and the Seven-11 there are more residences. It's a very narrow commercial and they are very small commercials compared to this project so she really hopes the ZBA will not grant this variance.

Raymond Lefloch, 95 GWH commented he is not a very eloquent speaker but lets put the water usage into perspective. 18,000 gallons per day / 365 is 7.6 million gallons of water that is going to be sucked out of the ground that also has to go into some sort of septic system. If you look at Imecom they have a raised septic system in the back right corner of their parking lot and the reason for that he believes is because a short distance down, probably 6' there is a very strong, almost impenetrable layer of clay. He found that out on his lot and he believes it's up there too. That's why Pollini Brothers didn't take the sand out any more than they did.

Alan Harding, addressing Mr. Brown stated he the ZBA will take one more comment from someone who has not spoken because you will have an opportunity after Mr. Rines rebuts what has gone on in the last hours, you can come back for one more bite.

Roger Murray, Esq. representing Single Rose Enterprises, LLC which is an abutter, The Lake Wentworth Foundation and also the Lake Wentworth Association. He has listed to all the input that has come before the Board this evening but he is not here to oppose this application on behalf of his clients. They do have concerns; Jim Rines and Ben Avery, Black Rock Construction were kind enough to meet with him as a representative for his clients and discuss the proposal. He stated the concerns to them which concern drainage,

storm water, impervious surfaces, sewerage disposal and lighting. They have indicated they will work and consult with them, particularly on the sewerage disposal and storm water. He thinks it is important and hope this will go into any approval the Board sees fit to grant; there will be no waiver of any storm water regulation as this goes forward, if in fact it does. They have also represented there will be no phosphorus in any detergents or cleaning agent and he would hope that would also go into any approval the Board might grant so that in the future going forward if there is a change of ownership, that will live on. The one concern they do have, a particular concern with this application is on site laundry facilities. Before this past March, Laundromats were permitted in the C2 district out there. When the Center Street/Route 28 Mixed Use District was put in, Laundromats were eliminated. We do have a concern about the prospect of a laundry facility on this property. Phosphorus.

Alan Harding asked about three conditions Attorney Murray wanted to attach – No waiver of storm water and no phosphorus and no laundry.

Mike Hodder asked if Jim Rines if the Alteration of Terrain Permit they applicant will have to apply for trumps the Storm Water Management Regulations.

Rob Houseman stated it serves as.

Mike Hodder clarified that they would have to comply with Storm Water Management because they are going for an Alteration of Terrain Permit.

Attorney Murray responded they would have to comply with the Storm Water Management Regulations because they are altering terrain in developing the property.

Mike Hodder as if Attorney Murray could make a recommendation as to how his clients would address the laundry problem in the facility.

Attorney Murray responded they would prefer it be done somewhere else, preferably someplace on town water and sewer.

Mike Hodder responded that would be tough. Additionally Attorney Murray was asked to clarify that they are not for or against.

Attorney Murray responded they do not oppose the use.

Rebuttal:

Ben Avery rebutted the opposition. He currently has three of these facilities in development. Every single Board that he has to go before wrestles with the similar questions. The big one being is it residential, is it commercial. He has locations where it is residential and location where it is commercial. This is a use the zoning is working to catch up with. Some of this is aesthetics, as we have discussed. How does the building

character fit into the community. There has been discussion of alternate locations. They have looked at alternate locations, one of which was in town. The zoning met, yet they would probably be sitting here with a different room full of people saying that from their village home they do not want to look at a 35,000 sq. ft. facility. Unfortunately he has the job of being in a no win situation anymore that he believes if this building were 500' across the road in the proper zoning, there would be nobody here. He does not believe that to be the case. Development has changed and it has changed that everybody is a participant in and that is why they are here. They really, as the applicant has to stick as close as they can to the technical and hopefully work through with the community as a good neighbor, like Gloria worked through these changes and hopefully in the end come out with a product that everyone can be proud of that does fit into the community whether it requires a variance or not and really moves forward and helps the entire communities value and aesthetics be something they can all be proud of.

James Brown commented he has a right to speak. His previous questions to Jim on his statements before his 5 reasons for the variance.

Alan Harding acknowledge this and allowed Mr. Brown to speak.

Jim Brown agrees with everything people have said as far as the need, we need these in town as far as Alzheimer's and Assisted Living but as stated before by many people, they do not have a percentage of people in town, probably 80% or better that could ever afford \$4,000 to \$6,000 to \$7,000 a month to live in one of these, so this does not help his neighborhood. This helps everyone else in Wolfeboro that lives along the Lake or lives on a mountain view that has the money to pay and comes into town 6 months out of the year. He lives here year round and he could never afford that kind of a cost so this is not something for him and this should be based on his neighborhood, not what they can do on Main Street. Another thing that was not mentioned is that Kingswood Youth Center had to shut down several times this last couple of years because they could not get enough water. They had to bring somebody in to do a fracking of their well to get enough water to stay open. So water issues and the aquifer is in their district. It's not like they are going to get 18,000 gallons out of the lake, they are not going to pump it in. The location mentioned it was a gravel pit before. What was not mentioned was the gravel pit was an illegal operation that the State shut down in 1998, which he got from Mr. Houseman.

Rob Houseman responded the town shut is down.

Mr. Brown continued that it was never licensed. If you read the Residential /Agricultural District Purpose and Intent a portion of it says in this area the prime land use will be low density residential, agricultural and farming. In legal terms when they say will be, that is not shall be, can be, may be, will be is a definite, defined item in the law. When they say someone is going to be sentenced 10 years for a crime they say will be sentenced. This districts intents as this will be the high density of this location, with this it is just going to

be too much. It does not meet that. He just does not think it meets the 5 reasons for a variance. One, it will cause commercial creep into the district, first it will be this facility, then it will be some other facility then it will just go on and on and pretty soon we do not have a residential or rural residential, we have done away with it.

Alan Harding asked that we have done away with the Agricultural District?

Mr. Brown responded that is this goes on they are allowing creeping into the Residential /Agricultural District. We are moving the line and allowing it to creep. Spot zoning and everything else and pretty soon Tom is going to live next to a gas station and he is going to live across the street from assisted living facility that will have lights on at night. He looks outside at night and he hears the animals and owls.

Alan Harding asked if he never hears a truck.

Mr. Brown responded that of course he does but those at night they are few between. They hear them during the day. This town is like they roll the sidewalks up at 5 pm. Things shut down, everyone goes home, everyone does their business and now we are going to have, the largest employer in town of one of the largest across the street. There are going to be people out there talking at night because they are smoking cigarettes or they just got into work or they are talking about their neighbor. They are going to hear that now; they do not hear that now. It does not meet public interest for the neighbors that are in that location because it is going to creep in the neighborhood. It will cause monetary hardships if they have water issues. It does not meet the spirit of the ordinance because it does say in these areas the primary use will be low density residential, agricultural, farming. It does not meet any of the special exceptions that are listed in the RSA 175:122 the same goes for RSA 175:88-1. On granting the substantial justice, it does not in his belief meet that. The facility will do substantial justice for the community or neighborhood – no he does not believe that. Most residents would not be able to afford it so it does not do substantial justice for their neighborhood. Reduce wells and allowing the facility to be built. Future generations are now going to be moving into Wolfeboro. We go from a nice small town look to all of a sudden we are going to have more industry, more jobs and more facilities. Next thing you know we are going to creep out further into the adjacent residential and agricultural areas. This will diminish property values. Most of them there believe it will effect and diminish property values especially if they have well issues. Denial of the variance would result in unnecessary hardship to the owner; That property can be sold to anybody wanting to build a house. Like all of us else here, if we had another piece of property in town. It's is not going to be an injustice – and oh gee I cannot build my box store in a residential area because that is the only thing that can be built there. This piece of property has access to two roads, housing, cul-de-sac, anything can be built there. By denying this, the property is not useless. It can be used as a house development, it can be used as a small farm, but it would not be a commercial interest.

Rebuttal:

Jim Rines addressed the Board. He thinks everyone here is concerned with their property and always seems to fear the unknown. What he has heard the over the evening are concerns being the groundwater, and their wells. What everyone seems to forget is with Wolfeboro's regulations, with the Alteration of Terrain Regulations, we are not making this water go away. Both demand recharge. You are obligated to get that ground water so it is not runoff. It is infiltrated back in the ground. Similarly, if we are withdrawing 18,000 gallons per day and 18,000 gallons per day is going into the septic system it is recharging and it is treated so this water is just not going away, so you have to keep that in mind. We heard testimony that the ZBA does not have the right to do this but just for the record, he knows the board knows their rights but it is RSA 674:33 – entitled Powers of the Zoning Board. You are authorized upon appeal in specific cases to grant a variance of the terms of the Zoning Ordinance if they meet the criteria that we have gone through this evening. Contrary to testimony, you do have the right to do that. Some of the properties that were suggested in Wolfeboro like the hardware store is next to the Clow's Brook, a prime wetland that Sarah Silk had mentioned. There are oil deliveries that take place if there were 6, 7 or 8 residential homes there they are going to heat their properties as well. In terms of the laundry issue, he was speaking with Gloria and Laundromats and they are commercial facilities are 500 gallons per day for commercial washers. That is conservatively different than here. She was explained they use residential machines and the most you would ever have is 6 in a facility likes this. They are not commercial at 500 gallons per day which would be 3,000 per day but that is already factored into the flows that DES has in their 18,000 gallons per day because that is part of this type of facility that DES Tables use. To equate the Kingswood Youth Center well to something that is going to happen a ½ mile away, he can only tell them that in 37 years of doing this, wells are voodoo magic as far as he is concerned. He has only seen in 37 years 2 wells that were drilled in the State of NH that were essentially dry. His fathers and all of his neighbors have wells that they are 1.5 -2.00 gallons per minute, he has 200 gallons per minute coming out of the top, true artesian, right next to bone dry wells. They have 2.5 inch lines that run into the Ossipee River and they have since 1985 on their own plus one line that goes to the house. There have been statements that if you grant this variance now you have changed the zoning boundary. He realizes this but for the record he is going to state "you have not changed the zoning boundary, all you have done is allowed this use in a rural zone and a residential agricultural zone, but you have not changed the boundary". For this to be called a box store by the last resident is a little disingenuous. Yes it could be used for farm and there could be cattle or hogs or something else fenced in with no separation to the wetlands. The Wolfeboro Zoning Ordinance requires that you adhere to the best management practice of the Department of Agriculture, but nowhere in them does it give you a separation for fenced in animals from wetlands, from surface waters. The only thing they tell you is if you have manure storage then they have a criteria that they want it to be at least 75' away from a well, but beyond that, yes it could be agricultural and yes you could have animals here that could do more harm to the surface water than this proposal. The last thing he will say is we

heard testimony of one young lady who grew up in the area, she said she is a young professional but she did not say where she lives or works now and he wonders if the facility were there and she could work there would she stay or has she gone away. These are just some of the comments that bare response.

Howard Krueger commented his mom is in an assisted living facility in Florida, a wonderful place and there is a lot of hard working people in there. He goes there almost every day when he is in Florida and he sees they work very hard and the facility is running 24 hours a day. He believes Jim Brown hit it on the head a few minutes ago. He hit upon some of these things; the basic problem he thinks is they are not opposed to this it is just location, location, location. That is it, he travels Route 28 and he sees forests that go for miles and if that is just zoned for forest maybe they can make that into the zone that would not impact all these fine people. NH is probably the best state in the US. We come here because it's NH. It's not Florida where they just recently ripped virgin forest. When it snows out all the oils that have been dripping from cars during the season it's going to be plowed, he does not know whether it is going to be taken away or not but it is going to get into the ground level. He asked to say one more thing; he worked on the most successful rainforest on our plant and he was instrumental in doing it. What they did was they got it to be a rainforest, never ever to be developed. Most of the people here want assisted living communities for their families and soon for themselves but if we can just find a little different type of area you would not have this meeting.

Alan Harding commented please understand we are not in the real estate business, We are in business to analyze, to adjudicate an application that has been submitted for a variance to build the property that has been described in it. That's where the Board is.

Howard Krueger commented he does not know if the Board lives here.

Alan Harding responded we do live here.

Howard Krueger commented that he bets the people who came here he believes we not residents for NH, he bets a lot of them were not residents when they came here because they flocked here because it is NH. It's 80% forest now. We do have the cities where we can do our stuff and that's where we can go and buy a refrigerator but when they came here they want to go out and hear crickets, spring peepers, not the sound of trucks and air conditioning units and 3 shifts and lots of cars. He is talking from experience from where his mom is.

Kathy Eaton stated she is speaking as one of the folks supporting it and she thought they have a chance to speak also. Thank you so much for being here and your patience listening to all this, especially knowing some of it you are hearing all over again. As a citizen of the town she appreciates it and she knows everyone in this room does too. She just wanted to touch on a couple of things. The issue of whether or not there will be enough water and what is going to happen to all of those things will be dealt with by the

Planning Board and she thinks that is a more appropriate area. Those folks concerned about the runoff and watching something that has changed, go down and look what Bartlett Tree is doing on half of the Trites property. She understands there is a grant so the remaining Trites property is going to see that too, you're going to be very happy about that. This parcel, from what she understands was said at the last hearing, Jim could probably elaborate on it, this parcel was really looked at to see which zone it really belonged in. It sort of fits into a box that goes around that particular intersection and it could have easily have been the commercial zone and they chose because it was so undeveloped, for whatever reasons they chose to put it in the other, but here we are back before the ZBA where these issues should be appropriately settled to say OK, this could go either way, here's a good use for it. This is not a manufacturing plant, this is not a big box store, this is not a Target, it's not a noisy factory, it is an elderly residential facility and she thinks they will be a very good neighbor. She would like to touch on the young lady who spoke so nicely about how she grew up here. She has lived here for 60 years herself, she grew up here. We want young families in this community. Young families are the future. Without those our community would not be nearly as fun. We have all these recreation facilities be we love it but young families need jobs. We are losing young people from this community all the time. They have to go south because they cannot find a place to work. These are real jobs that will have real meaning to our year round residents. I would like to finish by saying this sounds today as often these meetings sound we do not want it in my back yard, we want it in town but not in my neighborhood. These are the kinds of facilities that you really will want here when you have a loved one who needs it. She has looked after family members and has lost both a mother and a brother to dementia and you keep them in their own home, we were fortunate to be able to do that almost up to the end and that's where you want to but when don't you want a facility. This facility was not here then, they did not have those options. Please as the ZBA considers it look at what is best for the entire town. Look at all the good things this facility can do. They did not speak about the design and the fact this has an interior atrium that outside so these people can go outside but still be safe, you are not going to find that is a hardware store.

Fred Tedeschi asked for clarification as to whether Kathy Eaton and the organization represents supports this facility in this location or are their other alternatives had they proposed it in a different location.

Kathy Eaton stated they support this proposal as it stands. They do not see a problem with this location. They would probably support it in another location, you would have to look at all those aspects of it but she thinks the overall benefits far outweigh the negatives here.

Katy Brown responded to Jim Rines' comments. She is a teacher and she believes in the youth and loves the youth. He is right it is hard to find a job around here but that is one of the best parts about living around here. We are not surrounded by commercial enterprises and we do not live in a place where Walmart is right down the road and we

do not live in a place where there are parking lots everywhere, movie theaters everywhere and lights shining everywhere. That is why she chooses to live here and sir if this is something that is going to be in her neighborhood, then she is going to look for someplace else to start her life and start her family because she does feel the change. Wolfeboro is changing and she does not think it is for the better and with all due respect to the board members, she has been to a few of these meetings and to be quite frank she is appalled, she is embarrassed, she is shocked at the way you compose yourselves, at the way you speak to not only the audience but to one another, she thinks there is a lack of respect, it is embarrassing, so no with the way Wolfeboro is going she does not think this is the place she wants to continue living, you can welcome all of your elderly friend in, but the young are going to find someplace else.

Tim Campbell, 37 College Road commented he wanted to summarize how this evening has gone. The essential question they have been skirting around, circling around and sometimes going off track is does this project meet the 5 criteria, is he correct. If that is the essential question, you have to start examining the 5 factors in. Does this change the spirit of this area? Not economically does it boom, does it glamourify this area. Does it change the spirit of this area? He grew up and 3-4 times a year you would see a bear walk through their yard, they would see wild turkey, they would see deer, this is why we live here. This will change the spirit of their backyard. The question of not in my back yard, that kind of statement, this is changing my backyard and he thinks that why as a young 21 year old when he thinks about where he will live, this is not the place he would want to live if we become an urban center and a commercial dominated town so he would really appreciate if they would rethink the question.

Suzanne Ryan said she would like to try and address this very well spoken young man, Mr. Hamel she believes it was and was corrected the name was Campbell. In his first remarks he had asked could the board or would the board institute the study regarding usage and discharge of the water and we have that within our authority. She heard Mr. Rines say he would not want his applicant to expend the money but that's his job to say that. It is our job to determine if we want further technical information. We have that ability to require that. She is hearing from all the neighborhood that is their primary, major concern, not that it is their only concern. We are not qualified to answer that and by the time it gets to the Planning Board they are going to say they will answer it but in the meantime we have already given the variance. She thinks the board should entertain that discussion as to professional assistance about the use and discharge of the water.

Alan Harding responded he see no reason to do that.

Mike Hodder responded we have to be careful here. There has been a lot of talk about the 5 criteria and how we have to apply them. The 5 criteria in a couple of cases kind of nebulous. Public interest, spirit of the ordinance and public safety. We could take those criteria and expand them almost infinitely; we could call for traffic studies, call for water injection and removal studies, we could call for a special study of antibiotic migration

from a well, somewhere, wherever we wanted to, we could call for light studies, we could call for a balloon test to see if their single story facility is visible above the tree line or not. We can charge them for all of those studies. We have all of these authorities. I think we have to be judicious of what we expect of an applicant, we also have to be very careful that we don't expand our prevue into other areas best handled by boards that have engineering staff at their call that are used to applying fees to applications in order to get further information. He thinks we have to be careful when we apply criteria such as is it in the public interest that we do not expand that indefinitely. He thinks that by asking for a water injection/water removal study we are really expanding a small subset of substantial justice maybe, public interest, he is not sure where we would hang that requirement.

Suzanne Ryan stated under health and safety.

Mike Hodder asked what requirement that was part.

Suzanne Ryan responded it is part of the Zoning Ordinance.

Mike Hodder stated that is not part of the Zoning Ordinance.

Suzanne Ryan responded oh yes it is that is what zoning is based upon. Zoning is based upon health, safety and welfare. If that's not met what good is zoning, why have it.

Mike Hodder continued they have five criteria to apply; health and safety is not one of them. Health and safety is part of a bunch of them, possible 3.

Suzanne Ryan stated she is not going to debate this with Mike Hodder, she just threw it out as an option the Board has available to it.

Mike Hodder responded that he would be against it.

Suzanne Ryan responded it would greatly put at ease her vote and it would also put at ease the residents but she does not think it is going to fly.

Alan Harding reemphasized the Board is a quasi-judicial board. We are not prosecutors; we are acting as a judicial person would, a judge. Judges do not do what she is suggesting, they listen to the prosecutors.

Suzanne Ryan responded it is within our scope of authority Alan.

Alan Harding responded we can subpoena witnesses too. He has said enough on this subject, we have to judge the application, not spend money to do some research that will untimely be covered by the State of NH or the Town of Wolfeboro or other agencies that are fully qualified to make judgments on the issues most of which were discussed tonight;

water, lights, the whole things. It is going to be at the Planning Board, we do not deal with that. We have to judge whether this application is worthy of a variance, period.

Tim Campbell, 37 College Road commented the Chairman has said they were given answers to many the questions tonight but many of the questions we presented they were given the answer “we do not know at this point” and so that leaves him a little uneasy and he thinks the rest of his neighbors would probably say an unknown answer is not adequate.

Alan Harding responded he tried to emphasize the issues he is hearing will be adjudicated at the Planning Board. They will cover the issues they are worried about and if not to their satisfaction the deals off. The ZBA cannot do that, we have the 5 criteria.

Sandy Brown, Center Street asked if the ZBA’s job is to move the boundary the town voted on.

Alan Harding responded they are not moving anything.

Sandy Brown responded they are not moving anything but they are not obeying it.

Alan Harding explained that is why they are here for a variance. Anything that comes before the Board as it stands is illegal because it has been rejected by the Code Officer. The owner/applicant has to come before them with an appeal.

Sandy Brown stated she understand but she does not understand where a variance for commercial has anything to do with the variance. If you are having a hard time Mr. Harding she will try to explain herself.

Alan Harding responded he is having a hard time with himself for not explaining this properly.

Sandy Brown stated he was right.

Mike Hodder stated he did some research before tonight and referenced Black’s Law Dictionary a standard legal dictionary defining what things are; defines a variance as “*a license or official authorization to depart from a zoning law*”— so it is an official authorization to depart from a zoning law.

Sandy Brown responded she got it but if that is correct you can go into any neighborhood theoretically and change their land.

Mike Hodder commented you can see what kind of hoops a Board has to jump through.

Sandy Brown responded it depends on who is on the Board.

Mike Hodder responded a Zoning Board cannot arbitrarily grant a variance – you come up and say I want to build a bowling alley right next door to that guys am I am not allowed by zoning, help me out here. A Zoning Board cannot do that. A Zoning Board, in the case of a variance has to apply 5 particular standards. The standards are kind of fuzzy, they are human product, we don't do things perfect. In order to be able to understand, and these requirements are set by the legislature, not by the ZBA, they say we have to apply these standards. When the ZBA beings to apply them, they have to figure out what does public interest mean, what does spirit of the ordinance mean, they look for guidance in their handbooks which the state publishes, legal opinions and Supreme Court Decisions. We put all that together and as a civilian Board they do their best to apply those standards fairly and impartially to the benefit of the whole town, and that is what we have been struggling with tonight and struggling with two times earlier as well, to apply those standards. As he said before, is granting the variance in the public interest, what does that mean, is it you John Q Public or me Michael John Hodder Public of is it you and mean, is it the entire town's population. These are not defined in the statute which says you have to apply and find it is in the public interest. These are things we have to interpret based upon legal opinions, Supreme Court Decisions and the handbook. As you can see it is not an easy process, it takes a lot of work, part of the work is hearing from you guys.

Chris Franson commented in the past 8 years she was one the Planning Board and a lot of the issues they have raised she can guarantee would be looked at by the Planning Board. People seem to think that this is a definitive answer. We worked hard and there are a lot of changes in the zoning so they have an ordinance on dark skies. A lot of the issues are already in place and will be looked at at the Planning Board level. So I just want you to know that, it's not like they are saying oh we will let the Planning Board deal with that. That is the role of the Planning Board.

Mike Hodder commented to reassure Ms. Brown a little further and any other members of the audience who might be concerned, these are the RSA – Revised Statues Annotated from the State – in RSA 674:33 – in the commentary to that particular chapter under constitutional law there is written and again published by the state; Legislative power was not unconstitutionally conferred by empowering a Board of Adjustment to grant or refuse variance from compliance with the terms – in other words the legislature realizes that when a board grants a variance, the Board is kind of overturning what the town voted on in March; Sarah this is what is going to happen as a result of tonight's proceedings. We are not miss serving legislative power; we are being given the right to grant a variance or refuse, either way is not a miss serving of legislative power.

Chris Franson commented it is also about a specific proposal. We just do not go in as you said and change everything.

Sandy Brown stated he made that very clear, thank you.

James Brown stated when you talk about public interest we are not talking about public interest of the whole town because if that were the case, everyone in town would have gotten a letter to be here tonight. We are talking about the neighborhood that we are in. That's the public interest this variance should be considering, not the whole town because, like he said everybody else would have gotten notice to be here. That's where he thinks should be concerned.

Mike Hodder responded that public interest is expressed in the zoning passed by the town during a town meeting. Public interest is the expression of the towns will in its zoning ordinances. So when you're looking to see what the public interest might be you look at the zoning ordinance and see what the town said about that zoning ordinance and why it wants it there.

Chris Franson also commented the town is notified because there is public postings in all sorts of locations.

Jim Brown responded that not everyone is the neighbor. It affects the whole town but in a public interest it is not going to change anybody on Main Streets nightly or daily routine. It is not going to change anybody else routine during the day. They are not going to deal with the issues that will be raised or problems that may arise because one they do it does not matter if it is this board, the next board of the state, if something happens it cannot be undone. They are not going to build their facility and stop taking water.

Mike Hodder commented you have to remember we are citizens of Wolfeboro, not Center Street/Route 28/Route 109E, we are citizens of the whole town so when the Board applies the regulations governing approval or denial of a variance, the board has to consider the interest of the entire town not just exclusively the interests of the persons living in the neighborhood. Public interest is the expression of the public will of the town.

Jim Brown asked when the Board consider this request, try and separate the commercial district from the other two districts and think to yourself would this belong in this district. Don't even think about the commercial part because that really will not be a consideration because it will not be in that district.

Mike Hodder responded he thinks he is absolutely right when they come to consider the essential character of the neighborhood they do not have to , in this case think in terms of zones.

Alan Harding closed the public hearing. The Board took a 5 minute recess.

Board Deliberations:

With all this discussion about the town voting to make a mixed use overlay she went back and did some research. The Town Planner and the Planning Board made an explicit, conscientiousness and unanimous decision to not include the Pollini property in the rezoning overlay and mixed business use and further deleted inns by special exception as well excluded personal services including Laundromats and on site laundry services. The Board had 13 revisions to this proposal and it started with March 6th and it was Mr. Houseman that recommended the removal of the Pollini property and the residential house on Allen Road from the proposed zoning district. They could have made it a special exception, they could have done various things but it was a conscientiousness decision to leave it agricultural rural residential. On September 17th the Board again met and Kathy Barnard had concerns in this area for size of septic systems. What she is bringing out, it was brought up at the last meeting, the entrance to the community and keeping it a good appearance. It was more than just that. It was moved by the board to remove inns as a permitted use and allow inns as a special exception. Again they could have had special exception for this type of use and they chose not to. On October 1st the Center Street Rezoning Public Hearing Overlay District, we have to remember that this is an overlay district over the rural residential and agricultural zone.

Chris Franson commented that it is a separate district.

Suzanne Ryan stated it is an overlay district.

Chris Franson stated it is a separate zone and it is really for the two little nodules.

Suzanne Ryan stated that it states and she read – Robert Houseman stated the current zoning applies underlying zoning regulations to the property zoned residential. He recommended not deviating from the rural residential criteria except for lot frontage and the rail trail. He stated the Board wishes to redefine personal service and would limit such to the overlay district.

Alan Harding asked for a motion to go back to public input exclusively for Mr. Houseman.

It was moved by Suzanne Ryan and seconded by Mike Hodder to reopen the public hearing to allow Rob Houseman to speak to the Board. All members voted in favor.

Rob Houseman addressed the Board. The conversation is in two parts. One is last year's conversation that was represented in the minutes referred to an overlay district. That overlay district was ultimately tabled by the Planning Board and did not go before the voters at all because it was the areas outside the current commercial zones and they were evaluating them. The initial zoning proposal that was considered and generated for discussion purposes started with the Pollini pit and went all the way to Allen A Motel. That was ultimately sized down and limited to only the two commercial zones that

existed on the books. That's where the zoning change occurred, the two commercial zoning districts. The discussion continues as we speak at the Planning Board level as to whether or not consider an overlay district or not for the balance of those lots out there.

Deliberations were resumed.

Suzanne Ryan continued on December 3, 2013 they clearly made the decision to not allow Laundromats, dry cleaning establishments or other on site laundry services and if you go through the minutes you'll see why they did not want it to have an adverse effect on the district or the area. November 19, 2013 Stacey Jo Pope stated inns are high intensity use and inns in the district would affect the residents in the area. Kathy Barnard stated her issues regarding the construction of large septic systems so the motion was made to do the inns as special exception. Stacey Jo Pope replied the use of chemicals, Chris Franson expressed concerns for phosphorous, Rob Houseman recommended amending the motion to exclude Laundromats and on site laundry services to address off site service and lastly on December 17th Vaune Dugan questioned if the easement is included in the draft 13, that's talking about the Wentworth Current Use Easement, Mr. Houseman replied it is preexisting and not applicable to the zoning change and then draft 13 was moved forward to the town to vote one. She wanted to make it clear the records show it was not just the gateway they were concerned with, they made a logical and decide and clear recommendation to the voters to amend the zoning provisions and exclude the lot we are talking about.

Mike Hodder commented that he is not sure he agrees or follows that analysis.

Suzanne Ryan stated those are the dates she would like to put on file that she read. What we have not seen that she finds interesting is what she calls the overlay district.

Chris Franson commented that maybe she can clarify because they are bad memories of the 13 iterations of what they finally voted on in the course of 3-5 years. There have been various and numerous maps like that that you cannot go by.

Suzanne Ryan responded March 17, 2013; this is what accompanied the zoning change.

Chris Franson responded you cannot go by that that is just a map, it's not the zoning map, it is just showing some of the lots there. The point is it's still a work in progress. One thing she pointed out and is germane to the discussion is that we spent a lot of time talking about inns. They were in the plan then they were out, then they were back in and then they were out and it was primarily because of laundry. That is a topic that is worth discussion but she does not personally feel they need to rehash all the different proposals that did not come to be.

Suzanne Ryan asked why the Pollini property was specifically left as rural residential and rural residential.

Chris Franson responded her recollection is it never really came to a formal vote. It was more that they were talking about the boundaries and they had many maps. As Rob said it started with a really big map and then they realized they would not be able to get consensus on that area so they redefined it and it ended up being those two small areas. The Pollini property was left out intentionally at one point because we felt that it was a natural transition but she does not believe it was voted on that it could not be.

Suzanne Ryan commented it may not have been voted but that is the action the Board ended up taking, excluded from the map.

Chris Franson stated for that particular map on that particular day.

Suzanne Ryan responded no, for the voters to change in 2013.

Chris Franson responded never mind.

Alan Harding asked where this was leading.

Suzanne Ryan responded oh, it's going to get there. What we have been missing is taking a look at a zoning map in its entirety to get an idea to answer Fred's question, what's it like up there, what's the neighborhood like up there. Well what we have is half the town up there from the Northline Road

Mike Hodder called for a point of order which was granted by Alana Harding and he asked Suzanne Ryan where she got the map?

Suzanne Ryan stated it says right there, White Mountain.

Mike Hodder asked Jim's company.

Suzanne Ryan stated it is an official town map, ask Rob for one.

Mike Hodder stated he wanted one.

Suzanne Ryan continued what she is getting at is when they talked about the density and rural neighborhood and the quiet and the noncommercial uses, there was a conscious decision to make that line and keep that line and not change that line and yet here we are. One other thing, what we have here is there is no uniqueness when you look at the red commercial it affects everybody going down the Wentworth Road, some of them are in the commercial and some are not and it affects the whole of Center Street, there is nothing unique about that. Remember that line is drawn, it just happens to intersect your property and everybody is under the same situation.

Alan Harding asked if she could translate just she has just been saying and apply it to the 5 criteria.

Suzanne Ryan stated there is nothing unique about the lot in question.

Alan Harding asked if there were more like that.

Suzanne Ryan responded there are a whole bunch of them, the whole street, the whole zone; where the two zones meet goes the whole of Center Street to Allen A I guess and then it goes.

Chris Franson responded that it does not. It is only like around Trites

Suzanne Ryan asked about down Wentworth Highway, so this map that is current is not commercial.

Chris Franson responded that is what she was trying to tell her. That is not the map you think it is. It is not an official map.

Alan Harding asked if she had any other comments regarding the 5 criteria.

Suzanne Ryan responded when you go to about the area using the natural resource section you will find that the drinking water area is of prime concern to the natural resource section, I can read it but will not, you can go to it yourself, you will find that critical resources co-occurrence analysis there are several, the intimate streams the water, the conservation land are all like co-occurrences and then the definition of hydric soils she believes are in that area, are one of the perimeters to identify judicial wetlands. This is a very sensitive area as far as land features and surface water and the maps support and the text that goes with this talks about the sensitivity of the area and she does not think it meets and would be contrary to the spirit of the ordinance and she does not see there are any special conditions to this that are not applicable to other properties in the area. Primarily the spirit of the ordinances as to remain rural residential and she is not so sure they do have the authority to go forward with this and she would like to know if Fred's question got answered. He sent an email out to Mr. Houseman about.

Alan Harding asked Suzanne Ryan to stay on target.

Chris Franson commented it is getting late.

Suzanne Ryan responded she knows it is getting late but this is important to these people. If it take to 11 or 12 o'clock so be it, she is just as hot as the rest of you.

Mike Hodder asked Fred if his question was does the ZBA have the authority to jurisdiction to deal with the issue and entertain this application.

Fred Tedeschi responded he does yes.

Mike Hodder asked that in granting it allow a commercial use in a residential zone.

Fred Tedeschi responded that is what we need to discuss.

Mike Hodder asked what his concerns are about turning a piece of property zoned currently residential into a piece of property allowed commercial by variance.

Fred Tedeschi responded he has two concerns. He does not think the spirit of the ordinance is observed because what Suzanne went through in detail discussion on how closely examined this was by the Planning Board and how a decision was made on how this property should not be commercial. Secondly the challenge is in this particular area, and that is why he asked for a description of the area, NH Supreme Court won't recognize the change in the area. His feeling is that by granting this you have created the circumstance where you are now within the confines of that decision which says, the next time somebody comes in you have to grant it because the area in which this property now is has changed, we have allowed it to change or it has changed by a significant number of non-conforming uses that continue. To answer your question, certainly we have the jurisdiction to entertain the application, our challenge is how you square this application with the spirit of the ordinance and the add with the principles annunciated by the NH Supreme Court and if you grant this, in his opinion you have substantially changed the locality and so you know have in affect a commercial zone that entire square that is bounded by Route 28, 109 and College Road and the railroad tracks.

Alan Harding responded that it is in the ZBA's prevue to do that.

Fred Tedeschi responded absolutely and if we do our consequences are that in his view likely that the next application that comes on in the court would not allow them to say no.

Mike Hodder questioned that he is not denying the ZBA's ability to grant a commercial variance in this residential zone.

Fred Tedeschi responded this is an application that is a request to do a commercial business in a residential zone that we have the power to entertain.

Mike Hodder responded good because he was unsure of that in the first application and he wanted to be sure and also agreed the board has the right to grant a commercial variance on a residential lot.

Suzanne Ryan responded if it does not violate the spirit and intent of the variance criteria.

Mike Hodder stated it is purer than that; this board has a right to grant a commercial variance in a residential zone. It does not matter what the criteria are, we have the right and power, then follows the criteria. If we cannot get past our authority there is no point in doing this. We then have to apply the statutes.

Mike Hodder continued the first time he heard this case and it is a clearly difficult case. There is a lot of public concern about placement of the use in their neighborhood and he hears that and it is difficult to answer that. If he were living in Mr. Brown's house he would probably be in the audience saying the same thing he is saying now. Were he up here, he would probably feel the same degree of concern that he does because the project would be coming into my neighborhood.

Hank Why commented he does not see a significant alteration to the character of the neighborhood. This is a very unique piece of property of 34 acres. Heavily treed on all sides and you cannot see it from either highway. Sixty percent of it will remain open, 30% will be occupied and there will be very minimal demand on town services. There are questions about septic, water, lighting, and wells all of which is very adequately covered by the regulations of the state and town. The Planning Board will cover all of it and if you do not have confidence then come to the Planning Board and raise your case. He believes it will be done well by Jim Rines. It is a benefit and an asset which he strongly believes. They have looked at sites and this site is very well suited. He does not see any risk to health and welfare assuming they meet all the state requirements for the things that were raised; wells running dry, septic, lighting, storm water all of it will be addressed and we will attached conditions including phosphorus nothing will be passed over. It is well insulated (separated from the surrounding properties). He does not feel it is any risk that the next application that comes in a residential, where we are bound to consider positively because each one is unique and doubts any property is like that.

Fred Tedeschi commented he thinks we all agree the facility proposed is needed and we all want relatives and ourselves as we get there in your hands. Our town has spent a lot of time and effort creating a zoning code. We are entitled to do that under the law and entitled to say where certain uses go. There is a safety valve in this board to see if in a particular circumstance we ought to grant a variance. He thinks the presumption is at this board it is a heavy burden on the applicant to go seeking a variance from the existing zoning code. The applicant is the one that has to bear the burden to show each one of these criteria have been met. He thinks we are confusing the desire and need for the facility with the location and the zoning code. The zoning code says this is a residential area. He has heard two pieces of information, one that a 58 bed facility is going to be 35,000 sq. ft. in a one story building; we heard very little description of the 78 bed facility that is going to be 2 stories. It is likely that is going to be of similar size. He has seen some very large two story homes, in fact one of the owners of the Red Sox built a home down the street from where his summer house is which is 22,000 sq. ft. That is one hell of a huge piece of property; we are at 35,000 sq. ft. in an area that is zoned for residential. He does not think it observes the spirit of the ordinance and contrary to the

public interest. He thinks the folks that live there have a right to have a board like this look very carefully as to whether a variance is required. He does not think they have shown the need for. The testimony that there were two other locations in this town where permitted undercut the case saying this is a variance they ought to grant. They are not a town where they exclude uses. The basically have a use in some place in this town for virtually any kind of business you want to do. A nuclear power plant is the only one he can think of not allowed. The citizens have made that decision, they voted a town meeting, they voted representative, the Planning Board to make these decisions and a line one drawn on 109 and Center Street. There is nothing unique about this property, it could be a nice cul-de-sac; there are lots of uses for it but this use is not appropriate. Going through the criteria he does not see this is in the public interest for this particular site. He thinks the spirit of the ordinance is not observed because this is a residential area and the few commercial uses there are pre-existing to the adoption of the zoning ordinances or they are in a commercial area. Across the street on 109, Mr. Murray and his clients have conservation easements on the property, so that is not commercial. HE does not see any injustice but sees an injustice done to the people who live in the neighborhood to have a 35,000 sq. ft. phase one building on this property. He has heard no testimony from the applicants about value of the property whether it will or will not diminish the value of it; there have been some suggestions but no expert testimony, but those suggestions to raise the doubt and once that doubt is raised it is construed against the applicants that all the things they have heard, all the potential water quality issues, sewer issues, potential well issues, the fact there is going to be light; all these things could be resolved but all go to the diminution of property that is in the surrounding area that is clearly residential. Finally literal enforcement does not create any hardship. There has been no testimony that this is hardship this property cannot be used or any of the traditional ones we would have had or anything will to consider for a hardship or the literal enforcement of the ordinances would be unjust.

Chris Franson stated she pretty much agrees with Fred; #1 says does the variance alter the essential character of the neighborhood; she has a hard time getting past that because the density and everything else would really impact the essential character of the neighborhood as it is now.

Mike Hodder commented as for public interest, there are different ways of examining what the public interest might be. The applicant refers to the ZBA Handbook in which it states we should determine we should ask ourselves will it alter the essential character of the neighborhood; threaten health safety or general welfare of the public. We have heard no testimony that it would hurt the general health and safety or general welfare of the public. We have heard a lot of people say so and everyone has an opinion but we as a board cannot make a decision based upon people's opinions; we have to have some kind of factual information. When we look at the standards that NH DES applies to septic, effluent outflow and they have no particular standards governing the outflow of antibiotics or other kinds of hospital pharmaceuticals; he suspects Huggins Hospital does not have particular standards that have to be applied to its effluent, it is taken in the

towns sewer and we know how the town handles it. We know how antibiotics stay in the watershed no matter what municipal system is used or applied. NH DES does not have any standards to apply for the effluent. He has to apply standards he can justify and if his state hasn't any and the fed's haven't any, what does he apply. He cannot apply hearsay or opinion and he has not expertise so he cannot argue against the facility over issues with effluent. He has to go by what his state has to say and this facility is to be treated as a commercial facility and there are no specific standards for hospitals. Does it alter the essential character of the neighborhood. We have heard testimony that in within 1,500' of the location a series of commercial establishments. When we look at the zone, Rural Residential and Rural Ag., those are huge zones, they are half of the town and we are talking about a tiny corner. Is he worried that if we grant this commercial variance in a residential are that the next guy that wants to build next to them, we are forced to and if we do not the Supreme Court is going to come after us, no because every variance is individual and its own case and we have to grant on the standards that have to be applied and not by precedence or what we are concerned about. Does this application adhere to the spirit of the ordinance; we talked about this earlier, it's not what the Planning Board wanted, the spirit of the ordinance is what the town votes on, the town votes on the zoning and the zoning is written by the zoning ordinance, the spirit is why we wrote this the way we did and if the town likes it they vote to approve it; the spirit of the ordinance is 175:A84 Rural Residential District is designed to provide low density, why low density; in order to preserve open space, reduce demand for service and reduce scattered and premature development. Here will have a 34 acre lot, single or possibly two facilities going into it in a corner of the district where there are no services, water or sewer provided by the town; there is fire and ambulance. It seems to me we are concentrating density in one particular part of the zone and we are leaving the rest of the zone (almost half of the town). Looking at 175:122, the Agricultural District should have low intensity use in order not to permanently damage the land, to cause undue burdens on the town providing municipal services and to prevent scattered and premature development. In this case the land has been permanently damaged by the Pollini Pit so that land is not land that is going to be damaged fresh, its damaged to being with, there are no municipal services out there so again we are following the spirit of the ordinance and again to prevent scattered and premature development, again it is concentrated into one particular area. Substantial justice is measured by who benefits from the development; the town gets a facility that we have heard testimony that is needed; who loses the immediate abutters and people in the neighborhood. When we weigh those two factors where's the balance come out? More than individuals in the town benefit than individuals in the town lose; that's the only way you can apply substantial justice and that is the rule one need to apply. We have heard no testimony that property values are going to be diminished; he cannot as say as he is not a Realtor. Are there special conditions on this property; it is bisected by 2 zones and borders a 3rd, it is on the intersection of two numbered state highways; it's one of only 2 properties in the town like that, that is a special conditions. Just because a single family home can be built there does not mean it is the only use this property can ever be put to. We as a Board provide a safety valve to provide a property owner to use his land in violation of the zoning regulation by virtue of

obtaining a variance from this board so the conditions of the property do speak to unnecessary hardship. He would vote in favor.

Alan Harding has been acting a traffic cop most of the night but he has listened and his obligation to uphold the constitution of the State of NH in this appointed position that he has tells him all of the criteria have been met. There are going to be those here who say you're a fool; he is not a fool, he is listening to what people have said and it is human nature for people to think when something is new it is not the best thing, it could be the worst thing. He thinks Mr. Rines has put together a very positive, realistic, honest proposal and he buys it. The management knows what they are doing and are situated in two other towns in NH and he thinks in the end, the people will be happy with this. He could go through each and every one of the criteria but suffice it to say he cannot find one that he does not agree with and therefore he would vote in favor.

Suzanne Ryan commented she finds a variance to this property does alter the essential character of the neighborhood and that as Michael read the Agricultural District probably has a better definition than the Rural Residential and it was represents a portion of the town for core service and should have a low intensity in order not to permanently damage the land or cause undue burden to the town, which she does feel there is; there will more call for police, fire and ambulance; police and fire anyway because they said ambulance will be there responsibility. Premature development and again low density and further that the Planning Board when looking to make these changes, deliberately left out that lot but looking at the whole picture of the area also should have and I am sure did begin and end with a review of the comprehensive Master Plan in which the ordinance is supposed to be based and our ordinance fortunately has the amendment to the Natural Resource section and she thinks by our zoning is permissive and by the deliberate deletion or omission of including the Pollini lot they have created a restriction against this particular use, commercial use and it will violate the spirit and intent of the ordinance which would allow this commercial use and therefore for those two criteria I will not be voting in favor.

Mike Hodder commented if the Planning Board were the arbitrator of zoning there would be no point in having the zoning.

Suzanne Ryan responded she did not even allude to that.

Alan Harding asked for a motion.

It was moved by Fred Tedeschi to deny the application on the grounds that none of the criteria have been met. Granting this variance would put the Board squarely within the Berlanger Case in Nashua where the Supreme Court said the record is replete with evidence that the area in question has indeed gone through substantial changes from the time it was originally zoned for single family residential use accordingly we find that the courts finding, this was a review of the underlying courts finding that said the ZBA in

Nashua was unreasonable in denying the plaintiffs request for a variance. We are clearly in that situation and I moved to deny the variance for failure to have shown any of the five criteria. Suzanne Ryan seconded the motion.

Staff reread the motion.

Fred Tedeschi and Suzanne Ryan voted in favor of the motion. Alan Harding, Hank Why and Mike Hodder voted in opposition. The motion failed.

It was moved by Michael Hodder to approve Case # 13-V-14, Woodbine Senior Living Center for a Variance on a commercial use on TM# 133-28 with the conditions of approval being the four enumerated in the Planner's outline and in addition that no phosphorus bearing chemicals be used in the laundry facilities on site

Discussion: Mike Hodder asked if it would be wise to make a condition that this variance is limited to this particular applicant on this particular property.

Suzanne Ryan responded the variance goes with the land.

Mike Hodder commented they can limit this particular variance to this particular use. There had been a case recently that they allowed a use for a particular purpose which seems to be a blanket use for any particular commercial use and he would like to limit the commercial use to this particular use.

Rob Housman commented the application before the Board tonight is limited to exactly what is on the plan and what was contained in the application. It does not open the door for other activities; it would need to come back for a variance. In addition in 2013 the legislation changed so there is a 2 year window and if the use does not commence within that timeframe the variance lapses.

Hank Why noted discussion of no waiver of the Storm water Regs.

Mike Hodder responded the Alteration of Terrain Permit from the State and our regulations say if you have to file for that permit; it takes the place of the Storm Water Regs.

Staff read the motion with the attached conditions as follows:

It was moved by Michael Hodder to approve Case # 13-V-14, Woodbine Senior Living Center for a Variance on a commercial use on TM# 133-28 with the conditions of approval being the four enumerated in the Planner's outline and in addition that no phosphorus bearing chemicals be used in the laundry facilities on site.

1. All of the documentation submitted in the application package by the applicant and any requirements imposed by other agencies are part of the approval unless otherwise

updated, revised, clarified in some manner, or superseded in full or in part. In the case of conflicting information between documents, the most recent documentation and this notice herein shall generally be determining.

2. The application, as submitted to the ZBA, does not satisfy all applicable requirements for Site Plan Review application.

3. The Notice of Decision shall be recorded at the Carroll County Registry of Deeds and the applicant shall pay recording fees.

4. This variance shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the Zoning Board of Adjustment for good cause.

5. No phosphorous bearing chemicals shall be used in the laundry facilities on site.

Alan Harding seconded the motion.

Suzanne Ryan commented because the ordinance was specific to not allow Laundromats in this area she feels we should not enter into that allowance cause as we heard testimony there is going to be a lot of laundry done there and she does not think we can rely on whose going to oversee it. Who's going to see it does not happen. She does not have a good feeling, you Alan had a good feeling at the last meeting, you said I am a good judge of character, I have good feeling they will comply with all the wishes' it does not work on wishes, it works on oversight, and she does not have a good feeling about the applicant, they jumped the gun and recorded this deed before the 30 day period for rehearing and she thought that was very inappropriate to do and here we are so she does not want to leave it to their good judgment that they are not going to do it.

Mike Hodder responded they heard testimony that the a commercial laundry facility pumps out 500 gallons per day per machine and we heard testimony from the applicants agent they were going to be running maybe 5-6 residential style machines and there is a considerable difference in the effluent coming out of residential style machines than there is in the commercial laundry style machines so he does not feel that in necessary. If there were 6 residential houses you would have the same situation.

Suzanne Ryan responded she does not know that would be the case.

Hank Why commented if the Planning Board had an issue with that it would be raised at the Site Plan Review.

Suzanne Ryan stated then we put their back against the wall by saying it is ok.

Mike Hodder stated he does not want to burden the applicant by having them truck their laundry down Center Street to the Laundromat.

Suzanne Ryan responded they can hire a commercial vendor, a lot of places do.

It was moved by Suzanne Ryan to exclude laundries on site. Mike Hodder seconded the amendment. Suzanne Ryan voted in favor. Alan Harding, Mike Hodder Hank Why and Fred Tedeschi voted in opposition. The amendment failed.

Vote on the main motion. Alan Harding, Hank Why and Mike Hodder voted in favor. Suzanne Ryan and Fred Tedeschi voted in opposition. The motion passed.

Consideration of Minutes:

Corrections:

Page 3 – 2nd paragraph should read:

Alan Harding responded that Suzanne Ryan is saying he did, however Mr. Brown in his writings, did not.

4th paragraph – 1st line should read:

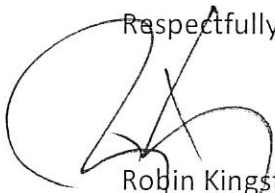
Alan Harding stated he is trying to explain why the ZBA is here tonight.

Discussion Item - Page 8: The Board discussed a recommendation having separate email addresses for ZBA business. This was discussed under the Right to Know Law and not passing out others email addresses and to protect Board members privacy.

It was moved by Suzanne Ryan and seconded by Hank Why to approve the minutes of June 2, 2014 as amended. All members voted in favor of the motion. The motion passed.

There being no further business, this meeting was adjourned at 10:58 pm.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'Robin Kingston', written over a circular stamp or seal.

Robin Kingston
Administrative Assistant

attachments



WOLFEBORO AREA CHAMBER OF COMMERCE

ZONING BOARD OF ADJUSTMENT

June 30, 2014

Alan Harding, Chair
Wolfeboro Zoning Board of Adjustment
PO Box 629
Wolfeboro, NH 03894

Dear Mr. Harding:

The Board of Directors of the Wolfeboro Area Chamber of Commerce encourages your approval today of Woodbine Senior Living Center's application for Variance, as you intended with your earlier vote.

The addition of Woodbine will create openings for new, year-round employment and the facility will compliment existing services available in Wolfeboro.

It is evident in the application that they are taking every step to be a good neighbor, and to protect the town's assets.

We appreciate that Woodbine Senior Living Center chose to invest in building a new facility in Wolfeboro. Thank you for your thoughtful consideration of its application.

Sincerely,

Mary DeVries, Executive Director
On behalf of the Board of Directors
Wolfeboro Area Chamber of Commerce

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email: mary@wolfeborochamber.com

13. V. 14
6/30/14
Chilodby
Sobanbylook
197#
13.28

Robert D. Cook

19th 133.78

I have seen how Woodbine Senior Living runs an assisted living community. I know the quality of care they insist upon in their communities, and the compassion and respect they demand for their Residents. I also know the jobs this community would bring to Wolfeboro, and the families, friends, and visitors it would draw to this town, not only during the traditional peak tourist seasons, but year-round. In addition to the economic benefits to local businesses, this community would provide a significant benefit to the tax base, as well as make Wolfeboro an even more attractive place for retirees. The benefits of creating a continuum of care including memory care, assisted living, and eventually independent living would be immense.

Those are the practical reasons for me to write this letter, but the other reason is personal. I was born in Wolfboro, and grew up here. My parents have lived in Wolfboro, and have been very active in this community for 46 years. Thankfully, they are both healthy, and have no trouble living independently. However, as they are aging, I know that may not always be the case. In fact, they have friends who are already facing these challenges, and some of them are making plans to leave Wolfboro, as they do not have any local options. If one of my parents were to have a health crisis and require assisted living or memory care, I cannot imagine telling them that they would need to leave the community that has been their home for almost five decades. If one was still independent and the other required care, I cannot imagine telling my parents, who have been apart only a handful of nights in the 51 years they have been married, that they would now need to live 45 minutes apart.

Town of Wolfeboro
Economic Development Committee
Mission Statement
Adopted May 23, 2011

1972 13-V-14 239 6/30/14
1974 133-28
Submitted by 133-28
Nathaniel

"The Mission of the Wolfeboro Economic Development Committee is to identify barriers and opportunities to enhance the economic growth and opportunity of the Wolfeboro community and all of its constituents and to champion the actions necessary to achieve economic growth and benefits that exceed growth in our county and state while also balancing impacts on the Town's environment, character and culture."

This mission will be achieved through the following actions:

- Periodic assessments of the health of the Wolfeboro's economy as measured by comparing the Town's job, income, and employment statistics with our county, state and national statistics.
- Collaborate with the Board of Selectmen, Planning Board, other Town committees and the Wolfeboro Area Chamber of Commerce to ensure that the economic impact of ordinances and decisions are properly considered.
- Identify and take appropriate actions or cause other town entities, both public and private, to take actions that will provide economic benefit to our citizens, existing businesses and new businesses that may be attracted to our Town.
- Develop action plans to address weaknesses, opportunities and threats to the Town's economic health.

Objectives:

- A. Job Growth: By the end of 2020 grow the number of jobs in Wolfeboro by 50% above 2010 levels.
- B. Business Opportunity Improvement: By the end of 2016 inspect, review, revise, and replace as needed the laws, rules, regulations, and policies that impact businesses.
- C. Tax Base Diversification: Continuing through the rest of the decade add, minimally, five year-round businesses to the tax base.

Wolfeboro Zoning Board of Adjustment Site Visit Minutes Checklist

F. J. Kelly
6/30/14
J. J. H. H.

Project Name: WOODBINE SENIOR LIVING CTR
 Applicant: SAME
 Site Date: JUNE 30, 2014
 Time Arrived: 6:15 P.M.
 Time Departed: _____

	Owners/Applicant Present
✓	DANA PIPER ABUTER
✓	BEN AVERY
✓	STEVE GAYLON

SEE SUPPLEMENTAL SHEET

	Board Members Present
✓	W. Alan Harding
ND	Suzanne Ryan
✓	Mike Hodder
✓	Fred Tedeschi
X	David A. Senecal EXCUSED ABSENCE
✓	Hank Why
✓	CHRIS FRANSON

MR RINES EXPLAINED
THE LOCATION OF THE
PROPOSED PROJECT AND
DISTANCES FROM ADJUTON

STEVE GAYLON MENTIONED
THAT 1/2 TIE TAXES ON THE
PARCEL WAS \approx \$3,152.

RINES POINTED OUT
WETLAND AREAS ON
THE BOYARD.

W. J. H. H.

Submitted by: W. J. H. H. Date: 06/30/2014

6/30/14

Re 6/30 ZBA meeting

From: Mary DeVries <Mary@wolfeborochamber.com>

To: 'Alan Harding' <aharding@metrocast.net>

Cc: 'Robert Houseman' <planningdirector@wolfeboronh.us>; robinkington <robinkington@aim.com>

Subject: Re 6/30 ZBA meeting

Date: Mon, Jun 30, 2014 3:00 pm

Attachments: Chamber_ZBA_Woodbine.doc (3102K)

To: Alan Harding, Chair Wolfeboro Zoning Board of Adjustment

Hello, Alan – Attached is a letter for your consideration. Thank you for your time.

Mary

Enjoy your day,
Mary DeVries
Executive Director
Wolfeboro Area Chamber of Commerce

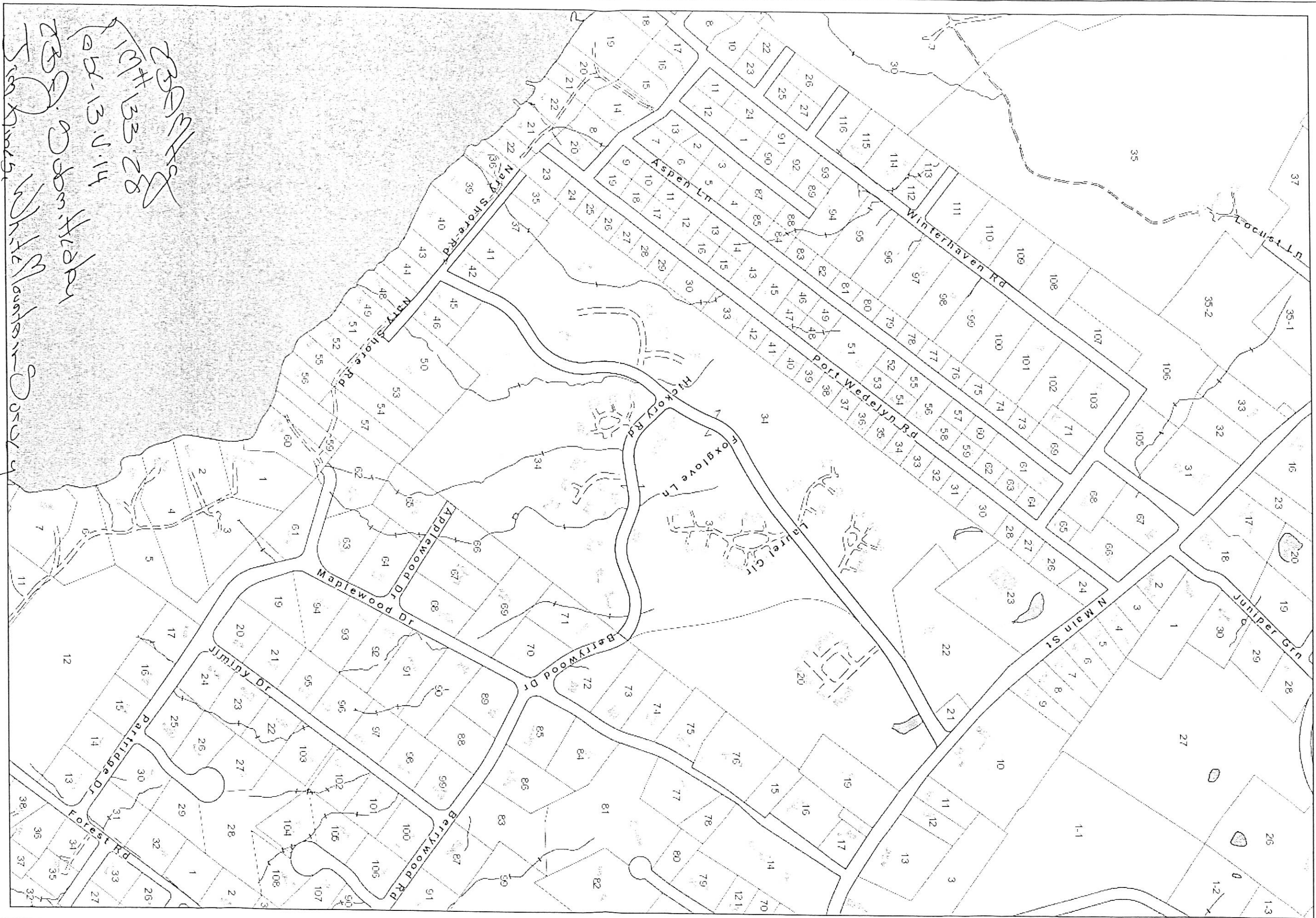
603.569.2200

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Handwritten notes:
19# 133.28
02-13.0.14
C.D. Odom, H. H. Odom
500 Acres, White Mountain State Park



6/30/14

Wolfeboro, NH
1 Inch = 400 Feet
June 30, 2014

