

**TOWN OF WOLFEBORO  
PLANNING BOARD  
November 7, 2017  
MINUTES**

**Members Present:** Kathy Barnard, Chairman, Vaune Dugan, Vice-Chairman, Brad Harriman, Selectmen's Representative, Mike Hodder, Peter Goodwin, Paul O'Brien, Members, Tom Brown, Alternate.

**Members Absent:** John Thurston, Member, Dave Alessandroni, Alternate.

**Staff Present:** Matt Sullivan, Director of Planning and Development, Lee Ann Hendrickson, Administrative Secretary.

*Chairman Barnard opened the meeting at 7:00 PM at the Wolfeboro Town Hall Great Hall.  
Chairman Barnard appointed Tom Brown, Alternate, to sit in for John Thurston, Member.*

**I. Introduction of Board Members**

Chairman Barnard introduced the members of the Planning Board and Staff.

**II. Scheduled Appointments**

**Collden Corporation**

**Subdivision; Two-year Extension Request**

**Tax Map #78-15**

**Case #2017-33**

Kathy Barnard stated the applicant has withdrawn the application.

**Jon Hoagland & Sharon Wells**

**Agents: Randy Walker, Walker & Varney P.C., Randy Tetreault & Scott Lawler, Norway Plains Associates, Inc.**

**Special Use Permit; Construction of a Driveway and Installation of a Water Utility Service Line**

**Tax Map #158-2**

**Case #2017-34**

Randy Walker stated the applicant is presenting a new Special Use Permit application to enable the owners to place a driveway and waterline on the property. He stated as a result of the denial at the last hearing a lawsuit was filed against the Town alleging the Planning Board had wrongfully denied the application due in part to a poor presentation of the facts by the applicant and misinterpretation by the Board. He stated it is the hope to withdraw the suit tomorrow. He stated Staff's review states, "It does not appear to be an alternate non-revocable access to the property." He stated there is only one access to the property which is from Baas Drive where the property has had frontage since 1973 when the Town approved a plan for the subdivision. He referenced the following documents; 1973 Plan of Subdivision (15-lot subdivision; properties have frontage on Baas Drive or North Main Street)(Baas accessed lot via Association property), 1983 Deed from Baas to Murphy (property conveyed with no right-of-way over any abutting property or Association property – no need for such because of frontage on Baas Drive), 1987 Deed from Murphy to Kirley (property conveyed with no right-of-way over any abutting property or Association property; sold with same language from the Baas to Murphy deed), 1998 Deed from Kirley to Blahut (property conveyed with no right-of-way over any abutting property or Association property; sold with same language from the Murphy to Kirley deed), 1999 Association to Blahut License Agreement (Association gave a license to Blahut stating "Whereas, the Licensee is currently accessing their property over a driveway located on the property of the Licensors.", "Whereas, the Licensors and Licensee wish to finalize and memorialize the terms of such use.", "The Licensee acknowledges that this Agreement is not intended to grant an easement or other permanent right over the Premises.", This License is personal to the

Licensor and Licensee and may not be inherited, transferred or assigned.” and “The use of the driveway is restricted to seasonal non-winter use. The Licensee agrees not to have the Premises plowed or to attempt to cross the Premises when there is snow or ice on the ground.”, 2000 Association to Blahut License Agreement (rerecorded 1999 License Agreement), 2016 Deed from Blahut to Hoagland/Wells, 2017 Deed from Hoagland/Wells to Hoagland/Wells, 2016 Association minutes denying easement and 2017 lawsuit against the Town of Wolfeboro. Referencing the Association’s 5/28/17 meeting minutes, he read the following, “Carl (Blahut) addresses the group. He has a buyer for his house who wants an easement to cross the common area to get to his property. The buyers’ attorney thinks he should get it. The difference between an easement and a license agreement, which is what Carl has at this time, was presented to the members. There was a discussion about whether or not to block access to the Blahut’s property and create a landlocked lot.” He summarized Tom McManus testimony noted the minutes reflect that Mr. McManus asks “what is the benefit to the association to grant an easement... if there is no benefit then what are the detriments to the association to grant this easement.” He stated the minutes reflect that Mr. McManus presented the 1999 Agreement in which the attorney wrote in the document that the license is not an easement. He stated the minutes reflect that Mr. Blahut makes a motion to vote to grant an easement assuming the clause about the year round use is crossed out. He stated no one seconded the motion therefore, the Association did not grant an easement. He stated the Blahut’s sold the property to Hoagland/Wells. He referenced a letter sent from the Association to the Town Manager, dated 11/15/16, and read “On Tuesday, November 22, our Association plans to temporarily close the seasonal driveway in our Association by installing a barrier with a lock, signage and a security camera.” He stated there is no ultimate access to the property and it is very clear that access has never been deeded or granted. He stated the owners would like to construct a driveway from the Town approved road (approved in 1973) directly onto their property and install a water line. He stated their need is clear and unequivocal and without the approval the property is landlocked.

Paul O’Brien asked if anything was found in the covenants to reflect that the development is a seasonal development and if the covenants were represented during the time of the conveyance of the deed to Mr. Hoagland.

Randy Walker stated he reviewed the covenants and could not find proof of legal access. He stated there are no regulations regarding seasonal use.

Paul O’Brien asked if there is a setback requirements between the applicant’s driveway and the Association’s driveway.

Matt Sullivan stated driveways are not treated as structures by the ordinance therefore, they are not subject to setbacks however, the Department of Public Works recommends a 10’ setback. He stated the Town does allow for certificates of seasonal occupancy however, such is not the case for this property and a seasonal CO has not been granted for the property.

Randy Tetreault, Norway Plains Associates, Inc., stated a retracement survey, topography and wetlands mapping was performed on the property. He stated they attended TRC and discussed the driveway design; confirming the steep grade of the driveway. He stated Dave Ford had some concerns and requested additional quantitative drainage analysis which was provided. He stated the Wetlands permit needs to be amended to include temporary impacts for the installation of the headwalls. He stated there are no additional impacts to the Shoreland permit. He stated Scott Lawler designed the driveway and would present such.

Scott Lawler, Norway Plains Associates, Inc., stated he designed the driveway off Baas Drive and presented both existing and proposed conditions. He stated the property is constrained with granted NHDES permits and 46’ of frontage; noting a 12’ wide paved driveway with 2’ shoulders on both sides is proposed with the exception of the location of the driveway at the wetlands crossing where there are 1’ shoulders and guardrails. He stated they were able to keep within the permitted wetlands impact area by the use of retaining walls to help raise the grade up from what exists today in order to flatten the slope. He stated the wetlands permit will be amended to include 120 SF of temporary impacts; noting that following construction the areas would be restored. He stated

construction details have been provided which include erosion and sediment control notes, cross section of the waterline, headwalls and rain gardens.

Vaune Dugan asked whether the applicant has an agreement with the Association to work on Association land.

Scott Lawler stated the applicant proposes to remove gravel that was placed as part of the temporary impacts. He stated the installation of the 1' wide vegetative swale on the common property line and back onto the applicant's property is proposed; noting such was designed to address the excess water flow from the neighborhood and Baas Drive into the culverts and catch basins that would then drain under the Association's adjacent parking lot. He stated that during the calculations of the one and five year storm events, it was determined that the existing culvert under the Association's parking lot is adequate however, it is undersized when the 10 & 25 year storm events were calculated therefore, an overflow swale is proposed that will cross back over the applicant's property to a rain garden. He noted the overflow of the rain garden will go through the rip rap and down to the lake.

Vaune Dugan noted the previous plan depicted an infiltration trench at the foot of the driveway at the turn around.

Scott Lawler stated it is his professional opinion that the infiltration trench would not work as originally proposed due to the soils in the area therefore, he removed it from the plan.

Matt Sullivan verified there was an issue with the proximity of the infiltration trenches to the septic system; such goes against NHDES policy.

Peter Goodwin questioned the location of the 1' berm that would prevent water flow onto the Association property.

Scott Lawler stated he designed a swale rather than a berm and located such on Sheet C1.

Vaune Dugan expressed concern regarding the rain garden; noting there is a 6' steep slope on the downside of such and questioned how water is retained.

Scott Lawler stated the rain garden is designed to allow for the rain water to come in and go through the filter media; noting a stone overflow structure is proposed for water that fills up.

Peter Goodwin questioned who is responsible for the maintenance of the rain garden.

Scott Lawler replied the homeowner.

Peter Goodwin asked what would happen if the homeowner does not maintain the rain garden.

Matt Sullivan stated the Planning Office would potentially have to act on the issue. He stated if runoff becomes an issue the Code Enforcement Officer would reach out to the property owner; noting the Town and potentially the State would be checking on it. He requested Mr. Lawlor to review the driveway profile and asked how the water line trenching and burying impact the Dredge & Fill application, if at all, and questioned the location of the crossing of the water line across the property.

Scott Lawler stated the driveway comes off of Baas Drive (3'-5' platform) before it slopes down at 25.5% for approximately 40', then a vertical curve that flattens to 11% for 40'-50', then it picks back up to 21% (mimicking the existing terrain). He stated given the grades, the proposal is the best solution. He stated the water line is already installed through the wetland area; noting such was done prior to the issuance of the approval hence, the after-the-fact permit. He stated the water line was installed below the existing culvert and will exceed the 6' cover required by the Town. He stated the water line follows the proposed driveway to the house and is metered at the house. He stated a secondary line goes from the house to the shed.

Referencing his Planner Review, Matt Sullivan stated on 10/2/17 the Town submitted an Assented to Motion to Stay and Remand to the Carroll County Superior Court after its review of the applicant's appeal to the court in the context of a viable alternative location being present for Lot 158-2. He stated that based on the letter provided by Attorney Walker, he finds that it does not appear that Lot 158-2 has access to its property in non-revocable perpetuity. He stated the total wetland impact of the construction and reconfiguration is 190 SF of a 1,000 SF wetland area adjacent to Baas Drive. He stated the Public Works Director has been intimately involved with the development of this plan, including an on-site visit, and a drainage analysis has been provided and reviewed; noting Mr. Ford supports the design.

**It was moved by Mike Hodder and seconded by Paul O'Brien to accept the application as complete. All members voted in favor. The motion passed.**

*Chairman Barnard opened the public hearing.*

Jack Lynch, 10 Baas Drive, stated there will be a lot of fill going through the drain; noting that when it fills up, it is cleaned out. He asked how to fix such.

Scott Lawlor stated the amount of water flow is not changing rather, a minor adjustment and an alternative is being provided by installing a trench to bring the water back onto Mr. Hoagland's property to alleviate the issue.

Matt Sullivan asked Mr. Lynch if he is referring to the drop inlet across the street.

Jack Lynch stated the Association has placed rip rap on the Association's side of the line to soften the flow. He stated runoff and debris is a concern to the Association. He stated all fourteen owners have access to the common area and does not preclude and never has usage since he has been there (1978); noting the Association would never change that because it would not be being a good neighbor. He stated the preclusion for closing the road in the winter was because it was always seasonal and the Association did not want to pick up the cost of maintenance/snow removal/public safety.

Barbara Hunt, 15 Baas Drive, stated she agrees with everything in the presentation. She stated at the last Association meeting in May 2017 because of the issues that came up, the Association made it clear that everybody in the Association does have use of the road at any time they want. She stated the bylaws were changed at that meeting so if a person wants to plow the road at their own expense to have winter access on the Association road, has that right to do so. She questioned the temporary impact to Association land.

Scott Lawler stated currently there is an area of gravel on the Association land; noting Mr. Hoagland received permission to do such when he installed the culvert. He stated the proposal includes removal of the gravel and restoring the area to its natural state in addition to installing a swale along the edge of the existing driveway.

Mike Hodder requested additional information regarding the May 2017 Association meeting and the change in the bylaws to allow for winter access to the owner of Lot 10.

Barbara Hunt stated the road was only for seasonal use so at the meeting the Association amended the bylaws to say that any individual could plow that road at their own expense in the winter if they wish to use the road.

Mike Hodder asked when the meeting took place.

Barbara Hunt stated a meeting is held every year and this meeting was held in May 2017.

Mike Hodder stated the testimony the Board heard in July and August, subsequent to that meeting, stated specifically by a number of members of the Association that there was no winter access to be allowed on the land, the access way, no plowing would be allowed and no emergency vehicles would have access to Lot 10 because the road would not be plowed. He read the following statement made by Tom McManus, Treasurer of

the homeowners association, on 8/1/17; “He stated Mr. Hoagland has every right to access his property and noted the association has never maintained access in the winter and has no plans to maintain such in the future. He stated the covenants and restrictions state the association is not responsible for such. He stated the association has never denied access and has no plan to however, if the association feels that plowing or snow removal is endangering the association or lake, they question their alternatives.” He stated the change to the bylaws was not presented in July and August to the Board.

Paul O’Brien asked if the Board has satisfied Ms. Hunt’s technical question.

Peter Goodwin asked how the change in bylaws agrees with the statement made in the October letter stating “On October 22 the Association plans to close the seasonal driveway in our Association by installing a barrier with locks and a security camera.”

Barbara Hunt stated that was October 2016 and noted that such never happened.

Kathy Barnard verified the change to the bylaws is in writing.

Jack Lynch stated the change was for the protection of the Association and liability. He stated the bylaws were changed in May of this year and recorded at Carroll County.

Kathy Barnard asked if all the owners have a copy of the bylaws.

Jack Lynch replied yes.

Vaune Dugan asked if the bylaws can be changed at any time by common voted.

Jack Lynch stated it takes  $\frac{3}{4}$  of the vote; noting such is difficult to do.

Mike Hodder replied yet, the Association unanimously overturned Mr. Blahut’s request for an easement over the property. He stated in August he was more vocal calling for a denial of the application because it appeared that Mr. Hoagland had access to his property over the common access way. However, he stated it now appears that Mr. Hoagland can have no confidence that he will have unobstructed access to his property given the past behavior of the Association and the fact that prior access was by license, revocable at will upon the death of Mr. Blahut and there has been no easement ever in any of the deeds from the time the subdivision was set up to allow access to Lot 10 by an easement.

Jack Lynch stated the road has never been maintained due to liability issues for the Association. He stated the Association tried to correct that at the May meeting. He stated all fourteen owners have a right to the common area all the time, 24/7 and by changing the bylaws the Association allowed that year round. He stated that if somebody is there full time the road can’t be closed, nor would they; noting he has been on record saying that, that is never going to happen.

Mike Hodder stated the 2016 letter from the Association to Mr. Hoagland that states the road will be closed subject to gates and bars was done with no reason given, purely arbitrarily and cutting off his winter access to his property being aware that he is winterizing the property and intends to live there. He stated Mr. Hoagland can have no confidence in perennial free access to his property absent his own driveway.

Jack Lynch stated he disagrees; noting such is an integrity issue and never would he or the Association do such. He stated in the context of what the Association did it for was their safety and liability for what they were doing at that time and place; noting such was rectified at the May 2017 meeting.

Randy Walker stated he is unaware of the May 2017 Association vote and reiterated that there is no non-revocable easement ever been granted to the property in 44 years. Therefore, he requested that in the absence of the easement that the Board grant approval of the Special Use Permit.

Kathy Barnard stated a TRC meeting was held on 10/11/17 and all department heads supported the proposal. She stated the Conservation Commission did not change their point of view from the previous application submittal.

Matt Sullivan stated that the Commission's memo does state that if the applicant can show that there is no longer access to the property from the communal lot that the Commission may reach a different position. He stated it is his understanding that the Commission did not have the legal submission from Attorney Walker at the time of their review. Matt Sullivan reviewed the following recommended conditions of approval;

1. The following plans, as amended to the date of this approval, are adopted by reference as part of this approval:  
Plan 1. Existing Features Plan, Owner/Applicant: Jon Hoagland, 13 Baas Drive, Wolfeboro, NH, 03894, Project Location: 13 Baas Drive, Wolfeboro, NH, 03894, Tax Map 158 Lot 2, Prepared by Norway Plains Associates, Inc. dated October 2017.  
Plan 2. Proposed Site Plan, Owner/Applicant: Jon Hoagland, 13 Baas Drive, Wolfeboro, NH, 03894, Project Location: 13 Baas Drive, Wolfeboro, NH, 03894, Tax Map 158 Lot 2, Prepared by Norway Plains Associates, Inc. dated October 2017.  
Plan 3, Proposed Driveway and Water Line Details, Owner/Applicant: Jon Hoagland, 13 Baas Drive, Wolfeboro, NH, 03894, Project Location: 13 Baas Drive, Wolfeboro, NH, 03894, Tax Map 158 Lot 2, Prepared by Norway Plains Associates, Inc. dated October 2017.  
Plan 4, Details and Wetlands Profile, Owner/Applicant: Jon Hoagland, 13 Baas Drive, Wolfeboro, NH, 03894, Project Location: 13 Baas Drive, Wolfeboro, NH, 03894, Tax Map 158 Lot 2, Prepared by Norway Plains Associates, Inc. dated October 2017.
2. The applicant shall comply with the pre-construction siltation and erosion control measures and construction sequence as shown on the plan.
3. An inspection by the Town shall be required of siltation devices prior to construction.
4. All federal, state and local permits to be obtained and received by the Town of Wolfeboro.
5. The applicant shall be responsible for the payment of all recording fees.
6. All of the documentation submitted in the application package by the applicant and any requirements imposed by other agencies are part of this 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.
7. Withdrawal of the Applicant's Appeal of the Decision of the Planning Board relative to Case #2017-18.
8. The applicant shall be required to monument the edge of Wetlands in compliance with § 175-9.1 *Wetlands Boundary Monumentation*. This includes:
  - a. Wetlands shall be delineated by a State of New Hampshire Certified Wetlands Scientist. Markers should be placed at 50'+/- intervals along the total wetland boundary following its general contour.
  - b. Care shall be taken to insure that markers are placed with the appropriate spacing at points closest to any proposed or existing structure located on the property.
  - c. The cost shall be borne by the applicant/developer or their successors in interest.
  - d. The applicant shall be responsible for submitting a letter of certification of the posting to the Code Enforcement Office prior to the issuance of any building permit.

Matt Sullivan questioned whether "Construction to occur on the Association's property" should be a condition of approval. He stated the work done prior without permission is being rectified however, there is still work being done on an abutter's property therefore, permission should be requested from the Association for the removal of the gravel and the construction of the swale.

Kathy Barnard questioned whether amendment to State permits be included as a condition.

Matt Sullivan replied no because there are only temporary impacts.

Peter Goodwin asked what would happen if the Association does not give permission for the material to be removed.

Matt Sullivan stated such is a potential risk.

Mike Hodder expressed concern regarding the condition and stated he feels such is between the land owner and Association.

Matt Sullivan stated that as it currently exists, the Board would be approving a plan for work being done on an adjacent property owner's property; noting such is concerning.

Vaune Dugan recommended "or the swale is relocated further on Mr. Hoagland's property" if permission is not granted.

*There being no questions or comments, Chairman Barnard closed the public hearing.*

Jack Lynch requested to speak – the Board permitted such. He asked what will be done with the snow.

Matt Sullivan stated the applicant can choose to answer the question however, such is not part of the application.

Jon Hoagland stated the snow would be moved.

Mike Hodder stated such is not part of the application process.

Paul O'Brien stated the Board is approving a driveway permit, drainage and a water line. He stated that if the Association has an issue then they can move forward in a separate proceeding.

Matt Sullivan stated structures are not being constructed on another property rather, it is a re-establishment or renewal of an existing condition before this work was done. Therefore, he stated he doesn't believe it has to be a condition.

Paul O'Brien recommended the issue be dealt with on a private basis.

**It was moved by Mike Hodder and seconded by Paul O'Brien to approve the Jon Hoagland and Sharon Wells Special Use Permit application, Case #2017-34, Tax Map #158-2, subject to the recommended conditions of approval.**

***Discussion of the motion:***

Vaune Dugan stated she voted in favor of the previous Special Use Permit application; noting her position is unchanged and stronger due to testimony received.

Kathy Barnard stated she voted against the previous application however, noted that everyone has a right to access their property. She stated there doesn't appear to be access to the property therefore, she stated she is in favor of the application.

Brad Harriman stated he voted against the application prior because he felt that at the time the property owner had access to the property and because the plan lacked detail (grades/slopes). He stated the applicant has submitted a revised plan that includes details of construction. He stated he was opposed to the trench drain in the driveway that was previously proposed however, an alternate design has been proposed and he noted he is pleased with such.

Kathy Barnard agreed with Mr. Harriman in that the revised plan addresses issues addresses stormwater management and impact to the wetlands.

Mike Hodder noted that snow storage is not required to be addressed in a Special Use Permit application.

**It was moved by Mike Hodder and seconded by Paul O'Brien to approve the Jon Hoagland and Sharon Wells Special Use Permit application, Case #2017-34, Tax Map #158-2, subject to the recommended conditions of approval. All members voted in favor. The motion passed.**

**Sean H. & Wendy Lougee O'Brien and Joseph E. & Angela L. Paisker**

**Agent: Loralie Gerard, Thaddeus Thorne Surveys, Inc.**

**Boundary Line Adjustment (TM #'s164-5, 164-9 & 10) & Lot Merger (TM #'s164-10 & 42)**

**Tax Map #164-5, 164-9, 164-10, 164-42**

**Case #2017-30**

Referencing Mr. Sullivan's Planner Review for the lot merger, Mike Hodder questioned whether the applicant has submitted a narrative letter and copy of the deed for lot 164-9.

Matt Sullivan replied yes.

Loralie Gerard reviewed the existing and proposed lot configuration. She stated the lot merger makes a nonconforming lot more conforming.

Referencing the lot merger request, Matt Sullivan stated the proposed merger would create a lot approximately 3.11 acres in size with 275' of shore frontage and no road frontage. He stated the proposed merger removes an existing nonconformity with structural encroachment between Lots 9 and 10. He noted the proposed boundary line adjustment will address the nonconforming encroaching structure on Lot 164-42.

Paul O'Brien questioned whether Lot 10 is a buildable lot.

Matt Sullivan replied yes.

**It was moved by Mike Hodder and seconded by Paul O'Brien to approve the Sean H. O'Brien and Wendy Lougee O'Brien Lot Merger, Tax Map #164-10, 164-9 and 164-42. All members voted in favor. The motion passed.**

Referencing the boundary line adjustment application, Loralie Gerard stated equal areas of exchange is proposed. She stated a shed encroaches on Lot 9; noting the encroachment would be resolved as a result of the adjustment. She requested the following waivers; Section 174-9.A., B., E., F., G. and I. She stated as a result of the approved lot merger, Tax Map 164 new Lot 10 becomes more conforming and the total area remains unchanged but, resolves the encroachment issues. She stated there is no increase in lot loading (all existing structures have existing septic systems) and no new road access or construction is proposed or required. She stated no new utilities, site alterations or pedestrian and bicycle facilities are proposed or required.

Matt Sullivan stated the lots are compliant with the form factor and questioned whether flood plain is present on the parcels.

Loralie Gerard replied no. She stated she would submit a Flood Plain Certification letter.

Matt Sullivan recommended incorporating such as a condition of approval.

**It was moved by Mike Hodder and seconded by Vaune Dugan to grant the following waivers; Sections 174-9.A., B., E., F., G. and I. All members voted in favor. The motion passed.**



**It was moved by Vaune Dugan and seconded by Paul O'Brien to accept the application as complete. All members voted in favor. The motion passed.**

Chairman Barnard opened the public hearing.

Matt Sullivan reviewed the following recommended conditions of approval;

1. The following plan, as amended to the date of this approval, is adopted by reference as part of this approval: Sheet 1, Boundary Line Adjustment Plan, Owner: Sean H. and Wendy Lougee O'Brien (Lots 9, 10 and 42), Wolfeboro, NH 03894, Joseph E. and Angela L. Paiker (Lot 42), Wolfeboro, NH 03894, Project Location: 5, 8 and 16 South Hodge Shore Road, Wolfeboro, NH, 03894, Tax Map/Lots: 164-5, 164-10, 164-9, 164-42, prepared by Loralie Gerard, LLS, Thaddeus Thorne Surveys, LLC, 1164 Brownfield Road, Center Conway, NH 03813, dated 10/16/2017.
2. The applicant shall submit the Mylar plan for recording at the Carroll County Registry of Deeds.
3. The applicant shall be responsible for the payment of all recording fees.
4. The applicant shall be responsible for monumentation and the submittal of the Certificate of Monumentation and updated plans.
5. All of the documentation submitted in the application package by the applicant and any requirements imposed by other agencies are part of this 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.
6. Certification of Flood Plain on the properties shall be submitted.

There being no questions or comments, Chairman Barnard closed the public hearing.

**It was moved by Mike Hodder and seconded by Vaune Dugan to approve the Sean H. and Wendy Lougee O'Brien and Joseph E. and Angela L. Paiker Boundary Line Adjustment application, Case #2017-30, Tax Map #164-5 and 164-9 (f/k/a Lots 9, 10 & 42), subject to the recommended conditions of approval. All members voted in favor. The motion passed.**

### **III. Action Items**

#### **Lot Merger; Susan M. Hayes & Denise M. Tanner, Tax Map #240-24 & 240-26-1**

Matt Sullivan stated the result of the merger will be the creation of a single 4.24 acre parcel with approximately 349' of frontage on Tips Cove Road; noting the lots are currently undeveloped.

Kathy Barnard verified that both lots are conforming lots of record.

**It was moved by Mike Hodder and seconded by Paul O'Brien to approve the Susan M. Hayes and Denise M. Tanner Lot Merger, Tax Map #240-24 and 240-26-1. All members voted in favor. The motion passed.**

#### **Lot Merger; 7 Hopewell Shores Road, LLC, Tax Map #240-6 & 240-26**

Matt Sullivan stated the Board acted on a lot merger for the applicant (7 Hopewell Shores Road, LLC and 5 Hopewell Shores Road, LLC) however, following discussion with Town Counsel and the applicant's counsel, it was agreed to put both parcels in the same ownership regardless that the parcels had the same managing partner.

**It was moved by Paul O'Brien and seconded by Mike Hodder to approve the 7 Hopewell Shores Road, LLC Lot Merger, Tax Map #240-6 and 240-26. All members voted in favor. The motion passed.**

### **IV. Public Comment**

Kathy Barnard stated Mr. Green during public comment of the Planning Board meeting mentioned a letter he had submitted to the Board regarding the Michael Simmons application for construction on a Class VI road. She stated she reviewed her files and found a letter dated July 2016 to the BOS and noted that she and Mike Hodder

were cc'd on the letter. She stated she would never respond to a letter directly rather, the office would provide a response.

Mike Hodder reviewed the letter and stated he had not seen the letter.

The Board discussed the practice of the Board and Planning and Development Office regarding letters that are submitted to the Board and agreed to include all letters received at the time of the Planner Review in the Board's packet.

**V. Approval of Minutes**

**October 17, 2017**

**Corrections:** Page 2, Public Comment, 7<sup>th</sup> paragraph; add "Planning Board and" prior to "ZBA"  
Page 2, 11<sup>th</sup> paragraph; change "tot eh" to "to the"

**It was moved by Mike Hodder and seconded by Vaune Dugan to approve the October 17, 2017 Wolfeboro Planning Board minutes as amended. Kathy Barnard, Vaune Dugan, Peter Goodwin, Mike Hodder, Brad Harriman voted in favor. Paul O'Brien abstained. The motion passed.**

**VI. Communications & Miscellaneous**

The Board was provided the following information; 2018 Planning Board and TRC meeting schedule, 2017 New State Laws and Regulations Publications, Wayfinding Sign Committee minutes and EDC minutes.

**VII. Unfinished Business**

**Master Plan RFP Selection Process**

Matt Sullivan stated he is currently in the negotiation process with a candidate.

Paul O'Brien requested Staff distribute the RFP.

**Steep Slope Ordinance**

Matt Sullivan reviewed the following amendment to the Steep Slopes Ordinance;

This article shall apply to all areas ~~with a slope of 15% or greater, as shown on the Town's Steep Slopes Map or shown via site-specific topographical survey,~~ and where the proposed site disturbance **of slopes 15% or greater is greater** than 20,000 square feet **as shown via a site-specific topographical survey.**

**SITE DISTURBANCE**

**Any activity that removes the vegetative cover from the land surface or includes excavation of earth.**

**VEGETATIVE COVER**

**Grasses, shrubs, trees, and other vegetation which hold and stabilize soils.**

Paul O'Brien questioned where the 20,000 came from.

Matt Sullivan stated such was included in the State's model ordinance that the Town adopted.

Kathy Barnard questioned the removal of grasses from vegetative cover and recommended the definition as it is currently written.

Vaune Dugan verified the proposed language requires a site specific topographical survey.

Mike Hodder stated a half acre of land is a significant disturbance and noted the Town's current steep slope map is not accurate.

Paul O'Brien asked if the Town's zoning map includes topography.

Matt Sullivan replied no and stated there is some contour data on GIS.

Paul O'Brien confirmed the Town has no reliable data for the applicant.

The Board agreed to maintain the existing definition of vegetative cover.

**It was moved by Mike Hodder and seconded by Paul O'Brien to move the Steep Slope Ordinance, as amended, to public hearing. All members voted in favor. The motion passed.**

#### **Shorefront Residential District; Amendments to Shorefront Grids**

Matt Sullivan stated the amendment reflects changes in the State law; noting the changes include an amendment to the grid and point system. Matt Sullivan stated the only changes are those related to tree count which will bring the Town into conformance. He stated the amendment only applies to trees and not ground cover.

**It was moved by Paul O'Brien and seconded by Mike Hodder to move the amendments to the Shorefront Residential District to public hearing. All members voted in favor. The motion passed.**

#### **C2 Zoning District Removal**

Matt Sullivan stated the C2 zone existed in three forms before the amendments were made to the Center Street Route 28 Mixed Use Zoning District; noting two of the zones were abolished when the district was created through a warrant article. However, he stated the third zone was not and the C2 District still exists. He stated only one parcel is included in the C2 District; Bean Park in Downtown. He stated he believes such was in error and the intent was to remove the C2 zone entirely and is recommended formalizing such. He stated the C2 zone is mentioned in other places within the ordinance and have recommended amendments to those areas in the ordinance that references the district.

Kathy Barnard stated the one parcel has a permanent conservation restriction placed on the parcel.

Referencing 175-53.C., Peter Goodwin questioned such; noting the recommended changes by Staff appears incomplete.

Kathy Barnard expressed concern that the change to 175-53.C. would prohibit sexually oriented businesses.

Matt Sullivan stated he believes the Town is required to permit such.

Paul O'Brien recommended the Board review City of Cincinnati v. Larry Flint and table the discussion to allow for further review.

The Board agreed to table such.

#### **Sign Ordinance Amendments**

Paul O'Brien stated he read in the minutes that Staff received constructive feedback regarding signs and questioned whether the Board received a summary of the feedback.

Kathy Barnard stated such was noted in the 11/2/17 Wayfinding Sign Committee minutes.

Matt Sullivan stated he would provide such.

Mike Hodder stated such is germane to the amendments to the Sign Ordinance.

Kathy Barnard asked why flags are being removed.

Matt Sullivan stated because a flag is a type, a content, and it cannot be regulated. He stated the background to the edits are from Town Counsel.

Paul O'Brien stated D.(1) is not consistent with the Lighting Ordinance.

Kathy Barnard questioned B.(6) directional signs for commercial use; noting such would include multifamily; noting signs are permitted on other properties other than commercial. She stated there are all types of directional signs at Brewster Academy and there are uses other than commercial.

Matt Sullivan stated commercial signs are subject to intermediate scrutiny meaning the municipality can have more regulation related to their content. He stated he would seek clarification.

Mike Hodder asked if commercial use was added by counsel and was the purpose to take into account the current Supreme Court decision.

Matt Sullivan replied yes and stated he was informed by Town Counsel that if the Town feels they must regulate content at all, the recommendation is to limit that regulation to only commercial types of speech or signage. He stated that while commercial speech does enjoy a first amendment protection, it is a lesser standard of review if challenged (intermediate scrutiny).

The Board discussed directional signs on Brewster Academy, Kingswood Golf Club and Huggins Hospital and use of the term "campus".

Matt Sullivan stated Town Counsel believes these provisions could be legally problematic; noting the amendments are based on the Supreme Court decision Reed v. Gilbert. He stated the decision has been in place for over a year therefore, the issue needs to be addressed. He stated he asked Town Counsel to review the ordinance.

Paul O'Brien questioned whether the issue should be addressed by the EDC; noting he believes the EDC could assist the Board.

Mike Hodder questioned the model sign ordinance.

Matt Sullivan stated he does not believe such would be helpful.

Following discussion regarding the amendments to the Sign Ordinance, the Board agreed to the following;

- Page 1, A.; place "safety of the traveling public" in front of "vitality"
- Page 1, C.(1); insert "Signs shall only refer to a commercial use or activity conducted on the premise by which the sign is placed."
- Page 1, D.(1); ensure consistency with Lighting Ordinance
- Table further review; seek clarification from Town Counsel
- Provide the Board Staff summary
- Synopsis of Supreme Court decision/law

### **Architectural Design Standards**

Kathy Barnard reviewed the revisions to such per the Board's 10/2/17 discussion.

Paul O'Brien recommended removing photographs of the gas stations because they are not permitted in the Town. He expressed concern regarding representing data about a business without permission especially if the structure is deemed inappropriate; noting an action could be taken against the Town. He stated he doesn't agree with including photographs.

Kathy Barnard stated three existing gas stations could be renovated.

Vaune Dugan stated captions would be included with the photographs to provide an explanation of what is appropriate/inappropriate.

Peter Goodwin stated including pictures would show a contrast; noting that people need to know what is not permitted.

Paul O'Brien asked where it is addressed that these are people's opinions. He stated pictures should be chosen from Town that the Board wants to celebrate.

The Board discussed changing the language inappropriate/appropriate to permitted/not permitted or encouraged/not encouraged. The Board agreed to the following;

- Include captions with photographs
- Submit zoning changes; remove references to voluntary design standards
- Change inappropriate/appropriate language
- Forward examples from other communities to the Board (Jaffrey, Meredith, Durham)
- Page 4, 2<sup>nd</sup> photograph; change to "inappropriate"

**VIII. New Business**  
**Planning Board and EDC Joint Meeting**

Paul O'Brien stated he would like to retrieve feedback from people who have business interests such as contractors, engineers and architects. He questioned what economic data the EDC will contribute to the Master Plan and recommended such be an agenda item with the EDC. He asked what data the EDC will use to construct the Master Plan; noting that part of their charter is to conduct periodic assessments. He stated he would like to have a technical conversation about what data should be used relative to the Master Plan. He stated there is an urgent need and clarity regarding the understanding of the economic status of our Town and doesn't feel they are taking full advantage of what EDC has to offer.

Mike Hodder stated the EDC represents a cross section of interest across the Town.

Matt Sullivan stated the Board could reach out to stakeholders.

Peter Goodwin stated the Board wants input from the EDC to assist with the passing of the regulation and take their comments to determine how to move forward.

The Board discussed such and agreed to include definition of Hotels, Motels and Inns, inform EDC of Board's decision regarding room count and Architectural Design Standards (excluding photographs) as agenda items.

**IX. Planning Board Subcommittee Reports**  
None.

**X. Nonpublic Meeting**  
N/A

**It was moved by Paul O'Brien and seconded by Mike Hodder to adjourn the November 7, 2017 Wolfeboro Planning Board meeting. All members voted in favor. The motion passed.**

There being no further business, the meeting adjourned at 10:19 PM.

Respectfully Submitted,  
*Lee Ann Hendrickson*  
Lee Ann Hendrickson

***\*\*Please note these minutes are subject to amendments and approval at a later date. \*\****