



TOWN OF WAKEFIELD, NEW HAMPSHIRE  
PLANNING BOARD

2 HIGH STREET  
SANBORNVILLE, NEW HAMPSHIRE 03872  
TELEPHONE (603) 522-6205 FAX (603) 522-6794  
PLANNINGBOARD@WAKEFIELDNH.COM

**Town of Wakefield, NH**  
**Minutes of the Meeting – As Amended**  
**20 October 2005**

**Members Present** John Blackwood, Selectmen Rep.; Rod Cools, Vice-chair; Joe Fluet, Chairman; Ed Morrison, Member; Nancy Spencer Smith, Member; Desiree Tumas, Secretary

**Others Present** Donna Faucette, Alternate Member; Rick Sager, Town Counsel; Steve Zslewski, Code Enforcement

**Public Attendance** (As signed in) Fx Bruton, Charles McLaughlin, Jason Lyle, Carla Lyle, Glenn Wise, Dianne Bishop, Lauren Wise, Nancy Jacobson, Anders Jacobson, David Frohlich, Carole Frohlich, William Hughes, David Lee, Sam English, Brabara Drew, Stan Lombara, Kerry Fox, Mr. & Mrs. G. Rhyner, Larissa Mulkern, Bruce Rich, Bryan D. Bonlin, Gilbert Starble, Dick Peckham, Malcolm McNeill, Mark Murphy, John Shiffo. Several others in attendance did not sign in.

**Pledge of Allegiance**

Chairman Fluet called the meeting to order following the Pledge of Allegiance.

**Public Hearing**

- 1. The Applicant, David & Carole Frohlich, have applied for a Home Occupation Review in which they seek approval to operate their seasonal traveling ice cream concession business from the home, as shown on Wakefield Tax Map 5 Lot 25. Said property is located 236 Walsh Road, Sanbornville, NH.**

Chairman Fluet recognized David & Carole Frohlich who come forward and explain that they do not believe their seasonal ice cream concession business to be a Home Occupation. Further explaining they do not regularly receive deliveries at the house that they instead meet the delivery truck at the grocery store or occasionally at home.

Secretary Tumas was recognized and explained, she was told by Building Inspector, Ken Paul, that deliveries are received at the home and pictures are on file in the Code Enforcement Office.

Chairman Fluet again asked if deliveries were received at the home. Mr. Frohlich stated that they do receive approximately 3-4 deliveries of ice and ice cream per month during the spring, summer and fall months.

Mr. Frohlich went on to explain they do not conduct any business from the home other than parking their vehicles on site and receive deliveries 3-4 times per month.

Chairman Fluet reviewed §201.03 Exempt Site Plans:

- F. Changes or intensifications of use of a building or site that are determined to be “not significant pursuant to §202.*

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Chairman Fluet went on to review:

**§202 INSIGNIFICANT CHANGES OF USE**

A change of use or intensification in use of a building that does not involve any expansion of the building or any improvements to the exterior site shall be insignificant if the Planning Board determines, on the record that the change meets all of the following criteria:

- §202.1 *It will not have any impacts beyond the boundaries of the site*
- §202.2 *It will not result in increased parking requirements that cannot be satisfied by the present site*
- §202.3 *It will not result in any increased nuisance to the neighborhood or abutters*
- §202.4 *It will not result in increased traffic hazards either on-site or off-site*
- §202.5 *It will not result in additional drainage beyond the site or adversely affect groundwater resources*
- §202.6 *It will not increase the sanitary waste loading of the site beyond that which the site can absorb*
- §202.7 *The present on-site solid waste disposal system can handle any increase in solid waste*
- §202.8 *The present on-site parking, circulation and loading layout is adequate to accommodate the change*
- §202.9 *The change or intensification of use can be adequately protected with existing firefighting resources*
- §202.10 *The present and proposed use of the site is otherwise lawful*

Chairman Fluet opened the public discussion recognizing Abutter Annie Robbins, who questioned how a home occupation could be exempt or Insignificant Change of use confirming that deliveries were made to the home several times per month, and that there was no business there before.

Chairman Fluet again reviewed Exempt Site Plans and Insignificant Change of Use; Board Members concur with Chairman Fluet.

Chairman Fluet entered into record a letter from Abutter Barbara Drew who asks about truck traffic and safety of children in the neighborhood with consideration of the delivery trucks that frequent the home. Additionally, Mrs. Drew questioned if the business would be approved for the subdivided property approved July, 2005. (See attached)

Chairman Fluet explained that the minimal number of deliveries would not normally be considered safety issues and Mr. Frohlich stated that the business would not be located on the newly subdivided lot. Chairman Fluet then commented, that additional deliveries over and above 3-4 per month would no longer be considered exempt and would require additional discussions with the Planning Board. Mr. & Mrs. Frohlich stated understanding.

Chairman Fluet called for further discussion, hearing none; closed the public discussion.

Mr. Frohlich went on to explain that the business is seasonal and they travel with the concession trailer to Maine, Vermont and New Hampshire events. All solid waste is disposed of at the event site and no solid waste is brought back to the home for disposal.

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Mrs. Robbins requested to address the Board further questioning, if the Frohlich's would be able to continue parking the concession trailer on the abutting property line and if the approval runs with the land.

Chairman Fluet explained the Planning Board could not regulate where on the property the concession trailer was stored and that the approval went to the property owner and not the land.

Chairman Fluet called for further discussion, hearing none; closed the public discussion and redirected to the Board, entertaining a motion to approve the seasonal ice cream concession business as exempt.

***Member Cools moved to approve the seasonal ice cream concession business exempt with the condition of no more than 4 deliveries per month to the home, Member Morrison seconds the motion as stated; the motion passed unanimously.***

Secretary Tumas requested the Board address the outstanding issues of the July 2005 subdivision approval.

Chairman Fluet recognized Secretary Tumas who explained the Frohlich have not complied with the conditions of approval by not installing the berm along the property for the run-off discussed during the public hearing. Additionally, the revised plan had not been submitted and that Abutter, Barbara Drew has come to the Planning Board Office once a month reporting that the berm still had not been installed.

Chairman Fluet explained that if the conditions of approval were not satisfied within six months of the approval, the Board would act to rescind the approval and the Board would address the unresolved issues in January 2006.

Chairman Fluet called for further discussion, hearing none; Chairman Fluet reiterated that the Board would take action to rescind the approval if the conditions of approval were not met.

Mr. Frohlich stated understanding of the 6-month requirement to satisfy the conditions of approval.

Having nothing further, Chairman Fluet thanked Mr. & Mrs. Frohlich for attending and discussions ere concluded.

- 2. The Applicant, Charles & Ann Robbins, have applied for a Major Site Plan Review in which they seek approval to develop a 35,680 sf pharmacy/grocery store and a 6,000 sf medical/retail building on the property shown as Wakefield Tax Map 31 Lot's 204 & 203. Said property is located on White Mountain Highway (Rte. 16) between 2499 White Mountain Highway and 2697 White Mountain Highway, Sanbornville, NH.**

Chairman Fluet recognized Charles & Annie Robbins who introduce Land Agent, Charlie Karcher and Attorney, Malcolm McNeil, who explains that Mr. Robbins has satisfied the requirements of a complete application as determined by the TRC Meeting conducted September 26, 2005, subsequent discussions w/Gerry Mylroie as well as a site walk conducted October 17, 2005. Specifically, the following:

**(Selectmen Rep., Blackwood arrived and is seated.)**

1. DOT – Study sent to NH DOT
2. Exterior Building Material – has been provided on the architectural drawings
3. Peer Review – Drainage Calculations reviewed by, White Mountain Survey – approved and attached to the minutes
4. Waste Disposal Plan has been provided
5. Locate Fuel Type and Tank – Sheet C-1 of the Plans
6. Include Vicinity Map – Cover Sheet of the Plans

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7. Parking Lot Curbing – Mr. Karcher explained various types of curbing will be site specific throughout the parking area and store entrances
8. Easement for Abutting parcels – will be acquired prior to the final approval
9. Snow Removal Plan Note Added – Sheet C-1 of the Plans
10. Landscape Plan – include white picket fence added – in 2 places on Sheet C-1 of the Plan
11. Ken Paul, Wakefield Fire Rep., NFPA Sprinkler Addressed – in agreement with Mr. Paul, these fire regulations to be met prior to issuance of the Building Permit
12. Underground Utilities – All shown on Sheet C-4 of the Plans
13. Name Change on all pages and Tax Map and Lot Numbers added
14. No Changes, No Comments, from Road Agent, Dan Davis
15. Sheet L-1 and L-2 numbering corrected in the index and corresponding sheets
16. Vicinity Map showing adjacent properties and features in relationship to the Rte 16 and 109 Intersection – included on the Cover Sheet
17. Lighting Plan – Sheet L-2 and Explanation Page included – No Peer review required as per Gerry Mylroie on October 18, 2005
18. Traffic Analysis – Sent to NH DOT and Gerry Mylroie
19. Intensity Use Study – included
20. **Waiver Request** - §506.1-D Parking which requires parking aisles shall not be longer than 20 spaces without a turnaround. – Doing so would extend the parking further south consuming more of the external green area. The proposed design provides larger green areas within the parking lot.

Attorney McNeil requested the Board accept the application based on the information provided and relative completeness.

Member Smith stated that the Board should have Town Counsel present during discussions with the applicants counsel present.

Chairman Fluet stated that Counsel was expected.

Attorney McNeil recommended Mr. Karcher, Land Agent and the Architect provide the design and building uses.

Mr. Karcher explained the proposed project consist of a 35,680 sf grocery store with pharmacy. The number of employees will be approximately 130. Of these, approximately 1/3 will be full-time and the remainder will be part-time 25-35 hours per week.

Floor space will be taken up by approximately 90% retail and approximately 10% storage, office and other ancillary uses. Projected sales are hoped to be \$200,000 per week growing to \$300,000.

The proposed other building is 6,000 sf medical office/retail use building. Potential employees estimated at 15-20. Floor space will be mostly office with some possible retail.

All vehicular traffic is addressed in the Traffic Report that is being reviewed by the NH DOT.

Waste Management's recommendations for both buildings including pictures and descriptions of the containers are provided.

The Grocery store will generate cardboard, most of which is recycled. Paper waste, produce and customer generated trash are a large portion of the dumpster waste along with deli, bakery and other groceries including broken glass and dented cans. A 35 yard enclosed dumpster fed from the interior of the building will handle approximately 2 days of waste from a store this size.

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Deli, bakery and other goods that are no longer desired by the store may be given to food banks upon their signing waivers.

The small building will be accommodated by a 6 yard dumpster, containing generated paper products and employee waste from personal food.

Waste Management will transport all solid waste off site to Rochester, NH landfill.

The bio-hazard, if any, is typically picked up by a company such as *Stericycle* which collects the week's waste of medical gloves, garments, and sharps (needles and razors). All waste going into a plastic lined cardboard box and is disposed of at a government-regulated facility in Woonsocket, RI.

Buildings will be screened from the highway by existing tree growth consisting of evergreen and hardwoods and added landscaping. This project offers more screening than any other project recently approved on Rte 16. Prior to this project, all development on Rte 16 has had no screening required with the exception of the Town Farm Country Market at the corner of Pine River Pond Road and Rte 16.

This is the only project that has attempted to emulate the visual character of the community. Recently, we have seen mostly pre-fabricated steel buildings built in the industrial zone on Rte 16. They total 45,000 sq ft. Together with the existing 15,000 sq ft building, there are currently 60,000 sq ft of pre-fabricated steel structures with no required screening and very little landscaping fronting Rte 16. These recently approved projects, while neat and modern; do not appear to represent the community's character. In the area near Governors Road and the septic lagoon entrance, there is still room for upwards of 20,000 sq ft of buildings. One lot has just sold. Two lots fronting Rte 16 remain.

The proposed project will maintain rural character as depicted in the plans and architectural drawings. The building designer for this proposed project was a key figure in the Wakefield Stewardship Program, and contributed to the Rte 16 Corridor Study. The human scale building design and dense hardwood and evergreen screen, obtain the balance growth concepts of rural development while addressing all technical planning details.

**(Town Counsel, Rick Sager arrived and is seated)**

Chairman Fluet opened the public discussion recognizing Bruce Rich, Joe Ruma, Stan Lombara, Dave Schwitzer, David Lee, Curt Carr and Dave Peckem. Mr. Karcher, Mr. Robbins and Attorney McNeil replied to the following questions.

- Type of signage that will be used on Rte 16
  - Signs will comply with all zoning and building codes
- Roof height and overhang proposed
  - 35' high at peak with a 10' overhang and an additional 2' overhang at each entrance
- HVAC System placement
  - HVAC equipment will be located on the roof in such a manner that it will not be visible
- Exterior Lighting
  - Exterior lighting will be used during regular business hours after nightfall and marginal lighting will remain on for security reasons after business hours.
- Deliveries
  - Deliveries will be made in the morning and evenings prior to closing
- Further expansion of the parking lot at a later time
  - Not likely, current regulations would not allow further expansion

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- Wetlands
  - Approximately 4,700 sf of re-grade on site wetlands has been applied for
- Wells & septic
  - All permit applications have been submitted
- Drainage on the property
  - Drainage ponds are proposed and included in the drainage analysis approved by White Mountain Survey as requested by the Board
- Groundwater concerns
  - Site Specific flow rates are such that contamination is not likely.
  - *Environmental Site Assessment is requested by Chairman Fluet*
- Traffic Issues
  - NH DOT has been consulted and report submitted to NH DOT; waiting recommendations
  - *Traffic Study requested by Chairman Fluet time specific: Friday and Sunday.*
- Merging of the lots
  - It is not proposed at this time. Entrance and parking easements will be recorded with and included on the plans and Mylar.
- Curbing
  - Slope & vertical curbing – granite, concrete and bituminous material.
- Right-of-Way and access proposed
  - 50' ROW proposed to Abutting property owned by Joe Ruma
  - Abandonment of Precision Roll access with a Right to pass provided to the owners of Precision Roll through the same entrance as the proposed Wakefield Common
- Snowmobile Trails
  - 7 Lakes Snowmobile Club was granted access through the property temporarily with the understanding that development of the site would commence in the future and continued access would be allowed to continue until such time as development made it impossible. The Applicant stated that it is not his intent to “cut-off” the snowmobile club and that he would work with them.
    - Concern was stated regarding access to diesel fuel needed to operate the grooming equipment and obtained from the gas station at the intersection of Rte 16 and 109.

Chairman Fluet added that the granting of access to allow snowmobiles to traverse through a property is at the property owner's discretion.

The Board briefly discussed placement of diesel fuel tanks along the trail, concluding that environmental issues and filling of storage tanks would not be feasible.

Attorney McNeil requested the Board accept the application based on §4.04 of the Site Plan Review Regulations. Reiterating that the Mr. Robbins has addressed the TRC issues; providing that the application is complete for acceptance purposes according to the checklists.

Board Members and Attorney McNeill briefly discussed the continuance requirements and the time restrictions associated with the 30-day acceptance and 65 day approval restrictions, without conclusion and move on to Regional Notification requirements as outlined by Thomas Fargo, Chairman of Strafford Regional Planning Commission which outlines the following:

NH State Law (RSA 36:55) outlines six factors to be considered by the SRPC Regional Impact Subcommittee during its review of projects with potential regional impact, these factors are:

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- I. Relative size or number of dwelling units as compared with existing stock.
- II. Proximity to the borders of a neighboring community.
- III. Transportation networks
- IV. Anticipated emissions such as light, noise, smoke, odors, or particles
- V. Proximity to aquifers or surface waters which transcend municipal boundaries
- VI. Shared facilities such as schools and solid waste disposal facilities.

The SPRC Regional Impact Subcommittee (RIS) needs additional information to complete their review of the application for a Major Site Plan Review submitted by Charles and Ann Robbins. Their preliminary review of the project plans indicate that factors II, III, IV, and V merit further evaluation.

Additional information requested is as follows:

- A site location map showing proximity of surrounding town boundaries, zoning districts and nearby current land use
- A traffic impact analysis including trip generation data
- A lighting plan for buildings and parking lots that included an assessment of off-site lighting emissions
- A site location map showing nearby surface water bodies, wetlands, and aquifers. In addition, details of the project's storm water management system (including planned structural and non-structural best management practices) would assist in their review.

SRPC RIS understands that several of the items listed are being prepared by the applicant's engineering consultants. The SRPC RIS will be able to provide review comments and recommendations within two weeks of receipt of the listed items.

Secretary Tumas explained that she received a request from the Brookfield Planning Board to consider the project to have a regional impact. Upon receipt, Secretary Tumas contacted the applicant to inform them that the Board would have to make a determination as to the regional impact status of the project and doing so would have delayed hearing of the application by a month; due to the notice requirements and available time to have discussed and made determination.

The Applicant voluntarily opted to make regional notice providing an additional 23 mailing labels and applicable fee and labels required and the public notice that ran in the GSN indicated the Regional Status of the application and cited the appropriate RSA.

Dave Peckem, Brookfield Planning Board, stated concern regarding roadways used to traverse to and from Brookfield and Wolfeboro specifically stating concern for the unpaved portion of Lyford Road, commonly used as short cut to Wolfeboro as well as the further traffic impact along Rte 109, Brookfield's main thoroughfare.

Attorney McNeil reiterated his request for the Board to accept the plan and application, further stating that neither he nor the Applicant expects to receive approval tonight, but rather requests the application be accepted based on the completeness as provided.

Chairman Fluet closed the public discussion and went on to explain the acceptance, approval and appeal process and the concerns of time with consideration that the Board is conducting only one hearing night per month under the current moratorium.

Chairman Fluet called for further comment from the Board, who requested that the following studies would have to be provided:

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- Time specific Traffic Impact Study (Friday and Sunday)
- Economic Impact Study (Including but not limited to outlying markets such as 7 Lakes Provision and Woodman Corner Store), and downtown flight from Sanbornville
- Environmental Site Assessment
- Confirmation of sufficient water supply to accommodate the proposed fire safety equipment
- Historical Site Assessment to determine prior contamination of the site
- Language pertaining to the abandonment of access and shared access easements provided to Precision Roll to the South and Joe Ruma to the North of the property
- Regional Impact Study completed by SRPC RIS

Attorney McNeil again reiterated his request for the Board to accept the application. Adding that the outstanding items are not acceptance based.

With regard to the water supply, Board Members questioned if is found to produce the same volume as the well situated on the Miss Wakefield Diner; would the applicant be willing to allow Town Use.

Mr. Robbins stated he would consider the possibility and further discussions could take place once the water supply was determined

Following further discussion, Chairman Fluet entertains a motion to accept the application as complete pending receipt of the requested studies.

***Member Cools moved to accept the application pending receipt of the following:***

- ***Time Specific Traffic Impact Study (Friday and Sunday)***
- ***Economic Impact Study (Including but not limited to outlying markets such as 7 Lakes Provision and Woodman Corner Store), and downtown flight from Sanbornville***
- ***Environmental Site Assessment***
- ***Confirmation of sufficient water supply to accommodate the proposed fire safety equipment***
- ***Historical Site Assessment to determine prior contamination of the site***
- ***Language pertaining to the abandonment of access and shared access easements provided to Precision Roll to the South and Joe Ruma to the North of the property***
- ***Regional Impact Study completed by SRPC RIS***

***Member Blackwood seconds the motion as stated; the motion passed unanimously.***

Following additional discussion regarding scheduling and time restrictions, Chairman Fluet entertains a motion to continue the hearing until November 17, 2005.

***Member Smith moved to continue the hearing until November 17, 2005, Member Blackwood seconds the motion as stated; the motion passed unanimously.***

Having nothing further, Chairman Fluet thanked Mr. & Mrs. Robbins and their representatives for attending and discussions were concluded.

**Selectmen Rep., Blackwood recused himself to return to budget discussions with the other Selectmen and Town Administrator.**

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3. **The Applicant, Watertown Village LLC, (TM 80 LT 1-M) and Gordon & Irene Rhyner (TM 80 LT 7) have applied for a Boundary Line Adjustment Review in which they seek approval to adjust the property boundary by adding .50± acres to Wakefield Tax Map 80 Lot 7 From Wakefield Tax Map 80 Lot1-M. Said property is located on Pickpocket Road and Pennsylvania Avenue, East Wakefield, NH.**

**The Applicant, Watertown Village LLC, has applied for a Minor Subdivision Review in which they seek approval to subdivide the adjusted 18.20± acre parcel shown as Wakefield Tax Map 80 Lot 1-M creating a 9.05± and 9.15± acre parcel. Said property is located on Pickpocket Road, East Wakefield, NH.**

Chairman Fluet recognized Tom Dube who introduced Kevin Hatch, LLS. Mr. Hatch explained the Boundary Line Adjustment would adjust the Boundary between TM 80 LT 1M and abutting TM 80 LT 7, by adding .50 acres to TM 80 LT 7 from TM 80 LT 1M.

Mr. Hatch went on to explain that the existing easements will remain with no change. TM 80 LT 7 will become less non-conforming.

Board Members briefly discussed the access easement noted on the plan and will discuss the easement further during the subdivision portion of the hearing.

Member Smith noted a scrivener error in Note 14 and the total acreage will be added to the adjusted LT 7.

Mr. Dube explained there are two waivers for the subdivision and none requested for the BLA.

Chairman Fluet called opened the public discussion, hearing none; closed the public discussion and went on to explain the proposed BLA begins with two lots and ends with two lots, in this case causing one lot to become less non-conforming by increasing the lot size by .50 acres.

Chairman called for further Board discussion, hearing none entertains a motion to accept the Boundary Line Adjustment Application.

***Member Cools moved to accept the Boundary Line Adjustment Application, Member Morrison seconds the motion as stated; the motion passed unanimously.***

Chairman Fluet called for further discussion from the Board, hearing none; entertains a motion to conditionally approve the Boundary Line Adjustment as proposed pending the following:

- Scrivener error correction, Note 14 (erotion – erosion)
- Removal of the easement access from the BLA Plan, if the Subdivision is not approved

***Member Smith moved to conditionally approve the Boundary Line Adjustment as proposed pending the outlined conditions as stated by Chairman Fluet, Member Cools seconds the motion as stated; the motion passed unanimously.***

Mr. Hatch went on to explain the proposed subdivision would create one 9.05 acre lot with 200 feet of frontage on Pickpocket Road and one 9.15 acre lot with approximately 700 feet of frontage on Pickpocket and 49.61 feet of frontage on Province Lake Road.

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Mr. Dube has submitted a waiver allowing for further subdivision and 5' Contours.

***Member Morrison moved to approve the waiver, (no second was made to the motion) (See Wise/Feldman Discussions in which Member Smith moves to act on the waiver motion)***

The Board briefly discussed prohibiting access from Province Lake Road; Mr. Dube is disinclined to agree, stating that he does not want to diminish the value with the 9.15 acre size, restrict marketability or impose such a restriction from future buyers adding that Province Lake Road is a State Highway and would require access approval from the NH DOT. Mr. Dube went on to explain that the request is not required by zoning.

Mr. Dube went on to explain that during the TRC Meeting it is perceived that Mr. Mylroie continually attempts to take the rights of the application by attempting to add further restrictions on development even though Fire had provided approval without comment. The Town does not have purview over access to a state highway yet Mr. Mylroie continued to push for the Road Agent to restrict such access throughout the TRC Meeting. Mr. Mylroie further attempted to make Mr. Dube responsible for the addition of street lighting on a state highway.

Board Members and Mr. Hatch went on to discuss the FEMA Flood delineation and due to recent revisions in the maps, Mr. Hatch has had ongoing discussions with FEMA which included explanation of the topography of the site and that it would be impossible to flood due to the 500+ foot elevation. It is expected that Mr. Hatch will note the FEMA information on the revised plan.

Mr. Hatch went on to explain the following:

- Note 8: Building Setbacks include Wetlands 30'
- Note 13: Any additional lots created from this lot in the future shall require additional fire protection.
- Note 14: Any construction on these lots shall provide erosion control as required by the state of NH DES
- Note 16: No access to Route 153 is proposed as part of this plan. Any driveway entering Route 153 requires NHDOT Permit
- Easement access from Pennsylvania Avenue for TM 80 LT 1-13 and LT 1-16 only and will be reflected in both deeds and is noted on the plan

Chairman Fluet called for further Board discussion, hearing none; entertains a motion to accept the application.

***Member Cools moved to accept the application, Member Smith seconds the motion as stated; the motion passed unanimously.***

Chairman Fluet opened the public discussion, recognizing Bruce Rich, BLPOA who explained, people who use roads maintained by the BLPOA pay a fee to cover the cost of maintenance and request that future owners wishing to access the subject property from Pennsylvania Avenue assist financially with the maintenance of the roadway. Mr. Dube agrees to this.

Chairman Fluet called for further public discussion, hearing none; closed the public discussion and called for further Board discussion, hearing none; entertains a motion to approve the subdivision as proposed additionally requesting that separate plans are submitted for the BLA and Subdivision and that the subdivision plan and deeds include a note requiring the owner's to join BLPOA and pay appropriate dues and fees.

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***Member Cools moved to approve the subdivision as proposed, Member Morrison seconds the motion as stated; the motion passed unanimously.***

Chairman Fluet thanked Mr. Dube and Mr. Hatch for attending and discussions were concluded.

- 4. The Applicants, Glenn Wise Development and Carroll Feldman, have applied for a Boundary Line Adjustment Review in which they seek approval to adjust the property boundary by mutual land exchange between Wakefield Tax Map 55 Lot 15N & 15O to satisfy setback requirements of the newly constructed dwelling on Wakefield Tax Map 55 Lot 15O. Said property is located on Sandy Pond Road between 59 Sandy Pond Road and 2941 Province Lake Road, East Wakefield, NH.**

Chairman Fluet recognized Glenn Wise Development and Carroll Feldman, Lauren and Glenn Wise comes forward to explain they seek approval to adjust the boundary by means of a mutual land exchange to satisfy the set back requirements of the dwelling located on TM 55 LT 15-O.

**It was noted that the Board had not made a motion to accept the waivers for the Watertown Village Subdivision. Secretary Tumas confirmed a motion had been made but no second to the motion was heard. Chairman Fluet entertains a motion to reopen the hearing to act on the Waivers.**

***Member Smith moved to re-open the Watertown Village Subdivision hearing to act on the submitted waivers as discussed, Member Cools seconds the motion as stated; the motion passed unanimously.***

Following Brief discussions, Chairman Fluet entertains a motion to approve the submitted waivers as discussed during the hearing.

***Member Smith moved to approve the waivers as discussed, Member Cools seconds the motion as stated; the motion passed unanimously.***

**Chairman Fluet reopened the Glenn Wise Development and Carroll Feldman.**

Chairman Fluet explained that a Boundary Line Adjustment begins with two lots and ends with two lots and the only change is to the boundary of the subject properties.

Chairman Fluet questioned if the checklist was complete. Secretary Tumas confirmed the checklist was completed with Nancy Rafferty of Great East Land Survey and all items outlined in the criteria of the checklist was added to the plan.

Chairman Fluet asked if both parties had all agreed. Secretary Tumas confirmed they have on the application.

Chairman Fluet entertains a motion to accept the application. ***Member Smith moved to accept the application, Member Cools seconds the motion as stated; the motion passed unanimously.***

Chairman Fluet opened the public discussion, hearing none; closed the public hearing and entertains a motion to approve the waiver seeking approval not to include abutting wells and septic systems of the abutter properties as the application seeks to equally exchange of land only and no change to the intensification of the property.

***Member Smith moved to approve the waiver not to include the abutting wells and septic systems, Member Cools seconds the motion as stated; the motion passed unanimously.***

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Chairman Fluet called for further discussion from the Board, hearing none; Chairman Fluet entertains a motion to approve the Boundary Line Adjustment.

***Member Cools moved to approve the Boundary Line Adjustment, Member Morrison seconds the motion as stated; the motion passed unanimously.***

Having nothing further, Chairman Fluet thanked Mrs. & Mr. Wise for attending and Board Members signed the plans and Mylar for recording at the Carroll County Registry of Deeds. Discussions were concluded.

- 5. The Applicant, Gilbert Starble, has applied for a Boundary Line Adjustment Review in which he seeks approval to adjust the property boundary by mutual land exchange between Wakefield Tax Map 53 Lot 91 & 92 to satisfy setback requirements. Said property is located 2425 Province Lake Road and 2431 Province Lake Road, East Wakefield, NH.**

Chairman Fluet recognized Gilbert Starble who came forward and explained he seeks approval to adjust the boundary by means of a mutual land exchange to satisfy the setback requirements of the dwelling located on TM 53 Lot 92.

Chairman Fluet asked if both parties had all agreed. Secretary Tumas confirmed they have on the application

Chairman Fluet explained that a Boundary Line Adjustment begins with two lots and ends with two lots and the only change is to the boundary of the subject properties.

Chairman Fluet questioned if the checklist was complete. Secretary Tumas confirmed the checklist was completed with Nancy Rafferty of Great East Land Survey and all items outlined in the criteria of the checklist was added to the plan.

Chairman Fluet entertains a motion to accept the application. ***Member Smith moved to accept the application, Member Cools seconds the motion as stated; the motion passed unanimously.***

Chairman Fluet opened the public discussion, hearing none; Chairman Fluet closed the public discussion and redirected to Board discussion, hearing none; Chairman Fluet entertains a motion to approve the Boundary Line Adjustment.

***Member Cools moved to approve the Boundary Line Adjustment, Member Smith seconds the motion as stated; the motion passed unanimously.***

Having nothing further, Chairman Fluet thanked Mr. Starble for attending and Board Members signed the plans and Mylar for recording at the Carroll County Registry of Deeds. Discussions were concluded.

**Public Hearing (Continued from August 18, 2005)**

- 1. The Applicant, Charles & Charletta McLaughlin w/McLaughlin Real Estate have applied for a Boundary Line Adjustment in which they seek approval to adjust the Boundary Line between the properties as shown on Wakefield Tax Map 33 Lot 81 and Tax Map 33 Lot 81A by adding 6,446 square feet to Tax Map 33 Lot 81A from the existing 0.516± acre parcel shown as Wakefield Tax Map 33 Lot 81 located on the corner of Wakefield and Witchtrot Roads, Sanbornville, NH.**

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2. **The Applicant, Charles & Charletta McLaughlin, have applied for a Minor Subdivision Review in which they seek approval to subdivide the newly created 16,020 sf parcel shown as Wakefield Tax Map 33 Lot 81 creating 1-additional 0.184 acre parcel. Said property is located on the corner of Witchtrot and Wakefield Roads, Sanbornville, NH.**
3. **The Applicant, Charles & Charletta McLaughlin, have applied for a Minor Subdivision Review in which they seek approval to subdivide the newly created 17,732 sf parcel shown as Wakefield Tax Map 33 Lot 81A creating 1-additional 0.184 acre parcel. Said property is located on Wakefield Road, Sanbornville, NH.**

**(Selectmen's Rep., Blackwood rejoins the Board and is seated)**

Land Agent Berlind requested the Board address a previous application, outstanding issues of the prior BLA conditional approval for the property shown as Wakefield Tax Map 31 Lots 5 & 5A.

All items of the conditional approval have been met with the exception of the sewer bonding.

Following Board discussions; Chairman Fluet entertains a motion to accept a \$2,000 cash security as fair and equitable sewer bonding and requests the bond be placed on file at the Town Hall to be sufficient.

***Member Smith moved to accept a \$2,000 security as fair and equitable for sewer bonding to be on file at the Town Hall, Member Cools seconds the motion as stated; the motion passed unanimously.***

Board Members noted that they would sign the plans and they would be maintained in the Planning Board Office until such time as the \$2,000 security is received.

**Board Members did not sign the Plans and no further comment or request was made on the matter.**

Chairman Fluet recognized Charles McLaughlin, Attorney Fx Bruton and Land Agent, Bryan Berlind.

Chairman Fluet opened the public hearing continued from August 18, 2005 explaining that there is currently a court action pending pertaining to the case.

Attorney Bruton explained that the action filed pertains to whether or not subdivision of the land can take place.

Chairman Fluet defers to Town Counsel for opinion as to the Boards discussions pertaining to the proposed subdivision.

Town Counsel explained the pending action is for a declaredly judgment as to whether or not the property can be further subdivided relative to the Subdivision Regulations and appeal pursuant to RSA 677:15.

***Member Smith moved that the Board not take up further matters past 11:00 pm and reschedule any remaining items, Member Cools seconds the motion as stated; the motion passed unanimously.***

Chairman Fluet explained that it is his understanding that so long as a case is court pending there should be no further discussion until the litigation has been completed and court ruling made and defers to Counsel.

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Counsel does not feel comfortable with the Board proceeding to make determination pertaining to a court pending case and does not see how the Board can continue to move forward with the case pending.

Attorney Bruton explained that after the Board had decided that no further subdivision could take place further discussions continued.

Chairman Fluet stated that the Board followed its long-standing policy and there was no reason to change.

Attorney Bruton confirmed that the Board had denied the waiver request after which the Applicant continued with explanation of the proposal. Litigation only pertains to the denial of the waiver. The Board also conducted a site walk of the property.

Attorney Bruton went on to request that the Board continue hearing the application and make determination pending the court ruling of the denial of the waiver.

Chairman Fluet commented on the use of the video camera in respect to wanting to document the case with respect to the Board's possible errors, and is not clear about the legal ramifications with respect to separating out the discussions. He further commented that the applicant's lawsuit and video taping of this hearing are both indicative that the Board should proceed very carefully, and with counsel advice.

Attorney Bruton reiterated that the pending case is relative to the denial of the waiver to further subdivide. Attorney Bruton does not intend to discuss the denial of the waiver and wants to proceed with the content of the subdivision relative to the subdivision regulations.

Town Counsel and Attorney Bruton again debated the pending court case as to whether or not the Board should proceed with hearing further information relative to the application; concluding that they agree to disagree.

Chairman Fluet expressed his concern regarding the pending court case and his charge to represent the people of Wakefield and he further stated that, if the attorney's could not agree on the legality of proceeding, how could the Board? Chairman Fluet is not comfortable hearing further information pertaining to the case until the Court ruling has been determined.

Chairman Fluet poled the Board and all Board Members state agreement to wait until the court ruling has been determined.

**(Selectmen's Rep., Blackwood returns and is seated)**

Chairman Fluet went on to explain the 65 day requirement. Attorney Bruton explained that the Application was accepted in July, continued in August and this being the third hearing; approximately 4 months. Chairman Fluet noted the continuances being at the applicant's request.

Debate regarding who continued when and the status of the 65-day period ensued, concluding that it is the Board's understanding and concurred by Town Counsel that if the Applicant requests to continue the 65-day clock stopped during the applicants requested continuance, and that past applicant have continued for numerous months.

Attorney Bruton disagrees.

Chairman Fluet explains that if the 65-day period has elapsed without the Board receipt of all evidence and data a vote on the application would have to be denied without prejudice based on the lack of information.

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Board Members and Counsels discuss the problem of the 65-day requirement, concluding that Attorney Bruton would still like to proceed with the case stating that the applicant would like to know what additional information is requested.

Chairman Fluet poses the Board questions if the Board would like to continue.

Town Counsel explained 676:4 (10) – which explains the 65 days which can be expended by appeal to the Board of Selectman or waived by the Applicant and that is what has occurred and that the 65 days starts today and if more time is required appeal can be made to the Board of Selectmen.

Attorney Bruton disputes the calculations and Counsels debate the 65-day period. Attorney Bruton concluded that application has been under review with the extension granted beyond the 65-day period to 90-days, which brings us to current date.

Chairman Fluet went on to explain that he made the Board's interpretation of the 65-day requirement clear with prior counsel, Attorney Bruton's partner to relieve any ambiguity pertaining to the time clock.

Counsels agree to disagree.

Attorney Bruton reiterates his request to know what further information is requested from the Board.

Town Counsel reiterates his discomfort with the Board acting further on the case until the pending court case is resolved.

Member Cools reiterate discomfort with the pending case and visual recording with regards to any effect discussions may have on the pending case.

Town Counsel feels that the 65-day period is a moot point because of the pending court case and the undetermined time of ruling.

Chairman Fluet for the record states that it has repeatedly been the policy of this Board and understood as correct that if an applicant requested the continuance for any reason the 65-day clock was halted. If the continued date came and the applicant was still not prepared and requested to further continue the 65-day clock was not started. Only when the Board requested the continuance was the 65-day requirement started with the understanding that the Board would have to act one way or the other prior to 65-days.

Board Members concur with the statement made by Chairman Fluet. The Board is acting in good-faith and has applied the same understanding with all applicants. And, as such the Board still has 65-days to act in this case.

With the 65-days available it is the Chairman's strong opinion, with concurrence of Counsel that the Board not act. However, out of civility and politeness, Chairman Fluet to hear is willing to hear what the applicant has to say and tell him what else the Board may request.

Member Cools stated with consideration of late hour, the Board's inability to act and the time consumed to hear evidence on a case the Board cannot act on with consideration to the two remaining discussions at this time the Board not expend too much more time.

Attorney Bruton request a few more minutes of the Boards time.

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**(Selectmen's Rep., Blackwood recused himself from the Board)**

Attorney Bruton went on to explain that the site walk conducted to outline the easements and the driveway lot to remain with the easements. The plan is two residential lots that are nicely configured and two lots albeit odd configured meet the regulations and the original lots have been in existence and remain in harmony with the residents and business that they will continue to share parking.

Attorney Bruton went on to explain that the concerns expressed in prior meetings regarding civil issues with regard to the oddly configured lots are not foreseeable in the future with consideration of the current existence of harmony.

Attorney Bruton addressed the test pit concerns, all data has been provided, and easement language has been provided for Board and Counsel Review and provided copy of the proposed language, reiterating the request for conditional approval tonight.

Chairman Fluet called for further discussion from the Board, hearing none; explained that since the site walk several merchants have expressed concern regarding the potential economic impact because of the splitting of the property lines and parking and without having data, are additionally concern about the possible impact to the business and real estate values.

Mr. McLaughlin asked which merchants and stated the concern indicating that discussion he has had with area merchants have been to the contrary adding that he would evaluate the shared parking status of the application.

Debate regarding the shared parking requirement ensued without definitive conclusion. Attorney Bruton disputed the real estate value concluding that there would be additional real estate value with additional lots.

Chairman Fluet called for further discussion from the Board, hearing none; asked Attorney Bruton if the Applicant would like to request to continue; the Applicant does not want to continue.

Chairman Fluet entertains a motion to continue the public hearing until November 17, 2005; under the advisement of Counsel to allow time for Counsel to address the BOS and request a 90-day extension. Additionally, Town Counsel will seek to clarify the 65-day statute.

Attorney Bruton suggests that the Applicant and Town file a joint motion to the court; Town Counsel is happy to review Attorney Bruton's motion. Counsel suggest continuing the hearing until December 15, 2005 to allow time for the courts to make a ruling.

Chairman Fluet entertains a motion to continue the hearing until December 15, 2005; ***Member Cools moved to continue the hearing until December 15, 2005, Member Blackwood seconds the motion as stated; the motion passed unanimously.***

Land Agent, Bryan Berlind provided the Board with revised copy of the proposed plan.

Having nothing further, discussions were concluded.

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***Secretary Tumas noted that Tom Dube had returned; Chairman Fluet explained that the Board had voted to approve the submitted waivers and it will be reflected in the minutes.***

**Public Hearing (Continued from September 15, 2005)**

- 1. The Applicant, Sidney and Virginia Silcocks, have applied for a Minor Subdivision Review in which they seek approval to subdivide the existing 8.5± acre parcel shown as Wakefield Tax Map 22 Lot 21 creating 1-additional 5.11± acre parcel. Said property is located on Bracket Road, East Wakefield, NH.**

Chairman Fluet recognized Sidney and Virginia Silcocks who are in attendance with Land Agent Kerry Fox.

Secretary Tumas reminded the Board that the application was continued because the Board needed to check the regulations during a previous subdivision that was approved in 1989. It has been determined that the regulations at the time did contain the same language as today prohibiting further subdivision of a parcel that has already been subdivided under a Minor Subdivision.

However, the April 20, 1989 Minutes of the Meeting state the following:

“Sidney & Virginia Silcocks Subdivision. Map presented as a minor subdivision. Not acceptable because of acreage of land (8 acres). Any area with potential of future subdivision will be considered a major subdivision. Map insufficient for approval. Preliminary hearing set for June 8, 1989.

The June 8, 1989 Minutes of the Meeting state the following:

“Sidney Silcocks Preliminary Subdivision -1- Lot Subdivision. Map presented. No abutters present. State approval for subdivision needed. Final hearing scheduled August 10, 1989.

The August 10, 1989 Minutes of the Meeting state the following:

“Final Sidney and Virginia Silcocks - 1 Lot Subdivision. Public Hearing opened at 7:33 P.M. No Abutters present. Map reviewed. Public Hearing closed at 7:38 P.M. Motion made to approve; seconded; Unanimously approved and signed by the Board.”

Following brief discussion, Chairman Fluet entertains a motion that the 1989 subdivision was considered a Major Subdivision.

***Member Cools moved that the Board determined the 1989 subdivision was a Major Subdivision, Member Morrison seconds the motion as stated; the motion passed unanimously.***

Following brief discussion, Chairman Fluet entertains a motion to conditionally approve the subdivision pending receipt of the revised plans.

***Member Cools moved to conditionally approve the subdivision pending receipt of the revised plans, Member Blackwood seconds the motion as stated; the motion passed unanimously.***

Having nothing further, Chairman Fluet thanked the Silcocks and Mr. Fox for attending and discussions were concluded.

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- 2. The Applicant, Mark Murphy has applied for a Minor Site Plan Review in which he seeks approval to operate a business office from the existing building shown as Wakefield Tax Map 28 Lot 35A. Said property is located on 1621 White Mountain Highway, Wakefield, NH.**

Chairman Fluet recognized Mark Murphy who came forward and explained the Board had done the site walk, DOT revised the driveway cut which is reflected on the plan along with the landscape and lighting plan as requested by the Board.

During the site walk a copy of the septic plan and approval were requested. Secretary Tumas provided the plan entitled, "Subsurface Disposal System Allegra Property, Route 16, Wakefield NH; Designed by, R. Mauser, Permit #958 dated 6-4-90 as well as a copy of the NHDES Approval for Construction, Approval # 181975 which states, "System approved with off lot water supply from Lot 2" Code Enforcement files. Board Members reviewed the plan provided.

Chairman Fluet requested the planting of trees/shrubs in the area of the abandoned egress and the state guardrail to prohibit further use of the abandoned area and to beautify the property. Mr. Murphy agreed to add the tree/shrub line from the abandoned egress to the guardrail and have the plan revised to reflect the tree/shrub line that will be planted.

Additionally, it was noted, if the Applicant were to place the tree/shrub line within the State ROW, permission from the state would need to be obtained. If the Applicant were to place the tree/shrub line within the property, no state permission would be required.

Chairman Fluet opened the public discussion, hearing none; closed the public discussion and redirected to Board discussion and entertains a motion to conditionally approve the application pending receipt of the revised plans to show the tree/shrub line from the abandoned egress to the State guardrail.

***Member Cools moved to conditionally approve the site plan pending receipt of the revised plan showing the tree/shrub line to be planted from the abandoned egress to the State guardrail, Member Smith seconds the motion as stated; the motion passed unanimously.***

It was explained to Mr. Murphy if he were to deliver the revised plans by November 3, 2005 the Board could sign the plans.

Mr. Murphy questioned if he could proceed with renovations of the building. Board Members agree that renovation work could be done as lawfully permitted through the Code Enforcement Department.

Having nothing further, Chairman Fluet thanked Mr. Murphy for attending and discussions were concluded.

**Insignificant Change of Use  
Preliminary Discussions**

- 1. Wakefield Tax Map 70 Lot 71, 71A, 72 – John Shaffer to discuss possible Boundary Line Adjustment**

Chairman Fluet recognized John Shaffer who came forward and explained he would like to do a boundary line adjustment between the indicated properties and explained the proposal to the Board.

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Board Members noted that the proposal would reduce road frontage of Lot 71 below the minimum required and possibly land lock the parcel. Additionally, the address change that would be required would have to be applied for through the Assessing Office.

Following brief discussion it was suggested Mr. Shaffer refer to the original subdivision done by Ernie Belleau for access on to Emerald Point instead of Vange Way.

Having nothing further, Chairman Fluet thanked Mr. Shaffer for attending and discussions were concluded.

**2. Wakefield Tax Map 42 Lot 138 – Julia Passamonti on behalf of Camille Passamonti, Trustee to discuss possible Subdivision**

Chairman Fluet recognized Julia Passamonti who came forward and explained that the property was merged in 2001 for tax purposes then following the revaluation and assessment changes the increase of tax has created a hardship and she would like to subdivide the property. Subdividing the property would create a small taxable lot and the newly created lot would be sold.

Ms. Passamonti went on to explain that at the time the lots were merged, she was unaware of the implications of the merge in that the cost of paving the road would be required if she chose to re-subdivide.

Chairman Fluet recognized Secretary Tumas who explained that the Assessing Department had the merger documentation that was signed and clearly states the requirements to re-subdivide. Additionally, the Assessing Departments Secretary Cindy Bickford clearly explained the paving requirements as is customary with all applicants seeking to merge property on private roads throughout the Town.

Chairman Fluet explained the paving requirements and that in the past the Board has made concessions with development on private roads when there has been a great benefit to the Town because of such concessions.

Board Members state understanding for the personal hardship, as explained, by Ms. Passamonti and agrees there is no foreseeable municipal benefit to dividing the lot and waiver of the paving requirements would not be possible due to past precedence.

It was suggested that Ms. Passamonti approach either abutting neighbor and see if they would be interested in a Boundary Line Adjustment as a means of making the lot smaller reducing the taxes and would also allow for the sale of property from either side. Excluding abutters across the roadway that is owned by the Walden Association.

Having nothing further, Chairman Fluet thanked Ms. Passamonti for attending and discussions were concluded.

**3. Wakefield Tax Map 66 Lot 34 John & Barbara White – Boundary Line Adjustment**

Mr. White called the Town Hall and requested to reschedule discussions.

**Board Business  
Code Enforcement Q & A**

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**Approval of the Minutes**

**1. October 13, 2005**

*Member Smith moved to continue approval of the October 13, 2005 Minutes of the Meeting until the November 3, 2005 Planning Board meeting, Member Cools seconds the motion as stated; the motion passed unanimously.*

**Correspondence and Miscellaneous  
Adjournment**

*Member Cools moved to adjourn the meeting at 11:20 pm, Member Smith seconds the motion as stated; the motion passed unanimously.*

Respectfully submitted,

Desiree Tumas, Secretary