

## PLANNING BOARD

Monday, July 23, 2007  
Belmont Corner Meeting House  
Belmont, New Hampshire

Members Present: Chairman P. Harris; G. Flack, W. Peterson, C. Patten, R. Caldwell and C. Long.  
Alternates Present: W. Rollins and R. Davis.  
Staff: C. Daigle, R. Ball and E. Murphy.

The chairman opened the meeting at 7p.m. and appointed W. Rollins as a voting member for tonight's meeting.

### **PLAN SUBMISSION MEETING AND PUBLIC HEARING – WINNISQUAM BEACH**

**CAMPGROUND UNIT OWNERS ASSOCIATION:** Request for subdivision amendment approval to allow the campground to remain open eleven months a year. Property is located on Grey Rock Road, Tax Lot 117-015 in the "RS" Zone. PB #3706

Atty. Rod Dyer, Atty. Catherine Broderick and Mr. Robert Slater presented the application.

Atty. Dyer explained that they are asking the Board to relax a condition that was placed on the subdivision at the time of the condo conversion. During the 1980's there were a lot of condo conversions taking place and a concern of many Planning Boards was that the seasonal uses could become the domicile for some of the residents. During that time bargains were being struck between the developers and the Boards where the developer agreed to restrict the time the development would remain open. The developers also agreed to close the sites for a set amount of time each year. Two conversions that had similar restrictions to Winnisquam Beach Campground were Clearwater Cove Condominium and Hillside-Lakeside Resort Condominium in Gilford. Clearwater Cove restrictions included the following language: "none of the cottage units which are not presently winterized shall be occupied after November 1 or prior to April 1 of any year. Another case is Totem Pole Park Campground in Freedom. In that case the Board imposed a blanket prohibition on winter use of the campground. When Winnisquam Beach Campground came before the Board, the Board imposed such a provision to keep the units from being used as a domicile. A condition of approval was that Winnisquam Beach Campground be closed from October 15<sup>th</sup> to November 15<sup>th</sup> and March 1<sup>st</sup> to May 1<sup>st</sup>.

Atty. Dyer explained that while it is appropriate to put restrictions on campground conversions so that they will not become the lawful residence of campers, many campers want to use their campers in the fall and in the spring. In recent years new language has been developed stating that no units may be

used as primary residence but can be used all year round. There is a relaxation on closings but not on the prohibition against turning the sites into primary residences.

Atty. Dyer explained that the units in Clearwater Cove have changed hands and the applicants went back to the Gilford Planning Board and the Board refused to amend the condition concerning the time restriction. The applicants then appealed the Superior Court and the Court ruled that the units cannot be used for permanent occupancy and to ensure this the court ordered only a one month safety valve be put in place. The unit owners from the Totem Pole Park Campground in Freedom went to the Planning Board seeking to remove the conditions the Planning Board had put on them to be closed four months a year. The changed declaration stated that "all campsites shall be used exclusively for recreational purposes by the owner and his family or the guest or authorized lessees of the owner and not for any business, commercial or primary year-round residential use whatsoever."

Atty. Dyer stated that there is a precedent for the one month restriction and that issue came up at the Zoning Board of Adjustment. Does reducing the length of time the park is closed constitute an expansion of a nonconforming use? There has been a precedent set with *Severance v Town of Epsom*. Mr. Severance bought a seasonal cottage that was not winterized and he wanted to use it year round. The issues were whether the seasonal residential use is a permitted use under the town's zoning ordinance and whether year-round use of the seasonal dwelling is a substantial change of a pre-existing, nonconforming use. Mr. Severance went to Supreme Court and the Court determined that the Zoning Ordinance made no distinction between seasonal and full time use. Belmont also doesn't distinguish between seasonal and full time use. The Supreme Court determined that it makes no difference when the units are occupied. If a town wants to regulate time of occupancy then they have to do so in an ordinance. Atty. Dyer stated in conclusion there is no legal basis to restrict the use other than to a one month hiatus. They are not seeking to change the use but to continue the use and have a one month safety valve in place.

Atty. Catherine Broderick explained that there are two properties that have easements to pass through the campground all year round. They have done a study and found that Mr. Mastenbrook and Mr. Minor used that easement approximately eighty-eight times over the winter. There are heavy delivery trucks including fuel and waste disposal trucks that make deliveries all winter. The campground roads have to be maintained all year because of the easement.

Mr. Robert Slater stated that he met with Fire Chief Davis on July 3<sup>rd</sup> to go over any fire department concerns. The campground has to label all the units with 911 numbers and put an additional gate guard up. He explained that about three years ago they switched to ledge pack for the roads and the roads have stood up well since they started using it. They grade the roads two or three times a year. They add additional gravel before the winter to maintain the road. He explained that he has been at the campground for thirteen years and there has been no issue getting through the park. The easement has to be maintained. Fire Chief Davis revisited the park and all the 911 reflective numbers and street signs will be in place by the end of the year.

Atty. Broderick stated that there are 149 units in the campground contributing \$189,000 to taxes.

Many of those owners go south for the winter. The water in the campground is shut off in mid October. The association doesn't want a year round park. They want to keep it a temporary residential park. DES has no concerns about extending the open time of the campground but the water testing will need to be done four times a year. Belmont Sewer Department noted that the sewage is adequate for the use as there is no physical expansion of the sites.

Atty. Dyer stated that he had the following suggestions for a motion to approve:

1. One permanent single family dwelling is allowed as part of the campground. Occupancy is limited to the resident care taker and his or her immediate family. No other domicile, residential use or year-round occupancy may occur.
2. No campsites shall be used for year-round or permanent residency or domicile. Occupancy shall be limited for transient recreational purposes, not occupancy to create a domicile or place of abode within the meaning of RSA 21:6 and 6-a for the purpose of establishing residency.
3. Campsites shall not be occupied for overnight stays during the period of March 16 through April 15 of any year.
4. An alternative 30-day period may be selected by the Condominium Association, subject to approval by the Belmont Planning Board and the recording of such approval in the Belknap County Registry of Deeds.
5. All roads which access campground units shall be maintained so that heavy emergency vehicles have access to the entire campground during all seasons. Maintenance includes, but is not limited to, plowing, sanding when conditions are icy, and re-grading and filling soft spots.
6. Belmont Police and Fire Department will be provided with sufficient access cards for the entrance gate.
7. All buildings shall be numbered in accordance with 911 standards by September 01, 2007.
8. All roads shall be properly and adequately posted with names by September 01, 2007.
9. The Belmont Police Department shall be provided with contact information for all property owners.
10. The Town of Belmont shall have the right and authority, but not the obligation, to enforce the Declaration and By-Law provisions that address non-establishment of domicile and residency by all lawful means in the event that the Association fails or otherwise elects not to enforce such restriction.

**BOARD'S ACTION – WINNISQUAM BEACH CAMPGROUND UNIT OWNERS ASSOCIATION:**

**MOTION:** C. Patten moved that the application be accepted as complete for the purposes of proceeding with consideration and making an informed decision. However, additional information shall be requested as necessary and must be submitted to complete review and  
act on the application. Action on this proposal shall occur by August 29, 2007 subject to extension or waiver.

The motion was seconded by W. Peterson and carried. (7-0)

The chairman opened the public hearing.

Elizabeth Brown, an abutter, stated that she has no issue with the campground being opened a few more months a year.

W. Peterson wanted to know if the water would still be shut off in October. Mr. Slater stated that the water infrastructure was not designed for winter use and would still be shut off in October. One bath house and manager's house are the only ones that have water during the winter months.

P. Harris stated that there has been a lot of talk about change of use and owners of other condominiums and his concerns were for safe access and that information has been submitted. A few years ago the roads were in poor condition but they have been upgraded.

C. Daigle stated that at the time of conversion the closing times were already in place and the applicant offered to continue those dates as a condition of approval to assure non-residency. The Planning Board did not determine the dates they were offered as part of the approval. She agreed that campgrounds have evolved and as a result Belmont has adopted regulations for RV Parks which may remain open 12 months a year, but those parks have to meet the road standards in the regulations. The State of NH has already started to overrule some residency requirements. She encourages the Board to look at the use of the land and the road conditions. The Fire Department doesn't have concerns about the road because their trucks are heavy enough to go through the standing water. The Police Department vehicles may not be able to get through in an emergency because of spring road conditions and that is why staff is recommending an independent review of the interior roads. If the Board tables the application then the proposed conditions submitted by Atty. Dyer tonight can also be reviewed by Town Counsel.

The chairman asked if anyone in the audience had any questions or comments.

- MOTION:** C Patten moved that the Public Hearing be tabled to August 27, 2007 for:
- a. an independent review of interior roads by a consultant appointed by the Board, at the applicant's expense to evaluate the use of the interior roads during the proposed periods to support emergency vehicles during expanded spring occupancy.
  - B. To allow the Board time to seek input from their counsel on information submitted by the applicant.

The motion was seconded by C. Long and carried. (7-0)

Atty. Dyer wanted to clarify that the Board is looking for an evaluation of the interior roads and for the applicant to address the drainage issues. Mr. Slater stated that the drainage is restricted as to where it can

drain because of the wetlands.

**PLAN SUBMISSION MEETING – LYMAN- BREWER PROPERTIES LLC:** Request for subdivision approval to subdivide one lot into eleven with interior road. Property is located on Horne Road, Tax Lot 209-002 in the “R” Zone. PB # 1207

Mr. Bryan Bailey presented the application.

Mr. Bailey explained that the request for waiver was to get this proposal before the Board in a timely manner. All the plans have been submitted and the checklist completed. He agreed with staff that this is a large property and there is a need for a Stormwater Management report. His son has done the report and the entire report is here tonight. He is not asking that it not be done or subject to third party review, it just was not completed in time to meet the deadline to get on tonight’s agenda. That is why they asked for the waiver to start the procedure but a waiver is not needed.

**BOARD'S ACTION – LYMAN- BREWER PROPERTIES LLC:**

**MOTION:** W. Peterson moved to deny the waiver for timely submission of stormwater management report due to the extensive on-site wetlands and slopes.

The motion was seconded by C. Patten and carried. (7-0)

**MOTION:** W. Peterson moved that the application is not complete for the following reason:  
Stormwater Management report was not submitted. Resubmission is subject to review by the  
Land Use staff for completeness and requires renotification.

The motion was seconded by C. Patten and carried. (7-0)

**PLAN SUBMISSION MEETING & PUBLIC HEARING – REALTY RESOURCES**

**CHARTERED:** Request for one year extension (8/28/08) on previous Site Plan approval to construct a 32-unit multi-family development. Property is located on Province Road, Tax Lot 204-023 in the “RM” Zone. PB# 1307

Mr. Terry Turner was present for the application.

**BOARD'S ACTION – REALTY RESOURCES CHARTERED:**

**MOTION:** W. Peterson moved that the application be accepted as complete for the purposes of proceeding with consideration and making an informed decision. However, additional information shall be requested as necessary and must be submitted to complete review and  
act on the application. Action on this proposal shall occur by 9/26/07 subject to

extension  
or waiver.

The motion was seconded by C. Patten and carried. (7-0)

The chairman opened the public hearing.

The chairman asked if anyone in the audience had any questions or comments. There being none, he closed the public hearing.

**MOTION:** W. Peterson moved that the application for extension be granted Final, conditional approval as it appears to meet all of the technical requirements of the Ordinances and Regulations of the Town of Belmont with the following conditions:

1. Extension is to 8/28/08.
2. All conditions of the previous approval remain in effect.
3. Any changes to the approved plans resulting from outside agency review/approval require Town review/approval.
4. Compliance hearing shall be held by Board as necessary.
5. The Planning Board shall have the power to modify or amend its approval upon its own motion to do so.
6. Approval is subject to expiration, revocation and changes in the Ordinances.

The motion was seconded by G. Flack and carried. (7-0)

**PLAN SUBMISSION MEETING & PUBLIC HEARING – PAUL L. FIELDERS & TAMMY & MICHAEL DONAHUE:** Request for Boundary Line Adjustment to transfer .487ac from Tax Lot 217/141 to Tax Lot 217/140. Properties are located at 96 & 104 Lamprey Road in the “RS” Zone. PB # 1407

Mr. Ron Johnson presented the application.

Mr. Johnson explained that the property is on the eastern side of Lamprey Road in an “RS” zone. Last year Blue Sky Enterprise was before the Board for a subdivision and it was discovered that the property that Mr. Fields occupied was not deeded correctly. This boundary line adjustment is to correct that problem so that the people occupying the site will be the owners of that site. This boundary line adjustment only involves about ½ acre. There is enough room on the site to replace a septic system and that will be noted on the plan.

**BOARD'S ACTION – PAUL L. FIELDERS & TAMMY & MICHAEL DONAHUE:**

**MOTION:** W. Peterson moved to grant the following waiver:

a. Soils & Topography.

The motion was seconded by G. Flack and carried. (7-0)

**MOTION:** G. Flack moved that the application be accepted as complete for the purposes of proceeding with consideration and making an informed decision. However, additional information shall be requested as necessary and must be submitted to complete review and act on the application. Action on this proposal shall occur by 9/26/07 subject to extension or waiver.

The motion was seconded by C. Long and carried. (7-0)

The chairman opened the public hearing.

Mr. Fielders wanted to know if this boundary line adjustment will make his taxes go up because if it does he does not want to go through with it. C. Daigle explained that he has to have that discussion with the with assessing office. If he goes to assessing and doesn't like the answer then he doesn't have to make the transfer to the Donohues. He has control of deciding to transfer the property or not. W. Peterson stated that this is to straighten out the situation and the net property transfer is close.

The chairman asked if anyone in the audience had any questions or comments. There being none, he closed the public hearing.

**MOTION:** C. Patten moved that the application be granted Final, conditional approval as it appears to meet all of the technical requirements of the Ordinances and Regulations of the Town of Belmont with the following conditions:

Conditions to be complied with or secured (as appropriate) prior to plan being signed and decision recorded. No site improvements or approved uses shall commence and no building permit shall be issued until plan is signed and decision recorded.

1. Final plans will not be recorded until transferring deed has been approved by the Town and are also signed and ready for recording.
2. Plans:
  - a. Show septic location for lot 217/141.
  - b. Include certification statements:
    1. "Meets all..."
    2. "Subject to revocation..."
    3. Lot 217/141 is exempt from NH DES review...area replacement septic system
  - c. Board signature block.
3. Copies of existing deeds.

4. Payment for 1 additional abutter 217/110/000/020-\$10.
5. Copy of most current survey plan for lot 217/140.
6. Payment of decision recording fee.
7. Compliance hearing shall be held by Board as necessary.

General conditions to be complied with subsequent to plan being signed and decision recorded:

8. No changes shall be made to the approved plans unless application is made in writing to the Town.
9. Approval is subject to expiration, revocation and changes in the Ordinances.

The motion was seconded by G. Flack and carried. (7-0)

**PLAN SUBMISSION MEETING – WJK REALTY CORP:** Request for site plan approval to expand vehicle display area and add vehicle washing and vehicle service uses. Property is located on 6 Farrarville Road, Tax Lot 224-038 in the “C” Zone. PB# 1507

Mr. Tom Selling presented the application.

Mr. Selling explained the lot is located at 6 Farrarville Road and accesses Farrarville Road. There is an existing on site septic and bedrock well. The proposal is for the existing sale and limo lot. DES approval limits vehicle washing to less than 30 vehicles a week. The site is not over the aquifer. They will have fencing around the dumpster within a year and will continue to operate year round. The existing driveway has 200’ sight distance. The parking space calculation is on the plan and includes 107 spaces with 3 spaces for employees at the rear of the property. It includes 12 spaces for the four bays and as many as 90 motor vehicle display parking spaces maintaining the 50’ wide open area for emergency vehicle access. Snow removal will be on the grass area and treated. There will be no excessive illumination of the area. Illumination will be for the display area. They have talked to the Belmont Fire Department and the owner will install fire alarms and fire rated doors. There will be no office space above the garage. There will be no changes to the existing facility. The septic is designed for two bedrooms. The dwelling has four bedrooms and they are in the process of evaluating the system. The Stormwater Management Report has been submitted. Mr. Selling addressed the pre and post conditions. They will install a grass area berm because the land slopes down from Farrarville Road to the wetlands. Runoff will dissipate through the existing lawn. The soils report shows there is very little native soil. It is mostly manmade soils.

W. Peterson explained to Mr. Selling that tonight they are only considering if the application is complete for submission this is not a public hearing.

**BOARD'S ACTION – WJK REALTY CORP:**

**MOTION:** W. Peterson moved that the application be accepted as complete for the purposes of

proceeding with consideration and making an informed decision. However, additional information shall be requested as necessary and must be submitted to complete review and act on the application. Action on this proposal shall occur by 9/26/07 subject to extension or waiver.

The motion was seconded by G. Flack and carried. (7-0)

**PLAN SUBMISSION MEETING – DANIEL DUNN & TONYA RAPTER:** Request for site plan approval to expand a contractor’s yard with a 40’ x 60’ building, related vehicle maintenance and gravel, asphalt and loam stockpiles. Property is located on Old State Road, Tax Lot 201-005 in the “C” Zone. PB # 1607

Mr. Paul Fluet was present for the application.

**BOARD'S ACTION – DANIEL DUNN & TONYA RAPTER:**

**MOTION:** W. Peterson moved that the application be accepted as complete for the purposes of proceeding with consideration and making an informed decision. However, additional information shall be requested as necessary and must be submitted to complete review and act on the application. Action on this proposal shall occur by 9/26/07 subject to extension or waiver.

The motion was seconded by G. Flack and carried. (7-0)

**OTHER BUSINESS:**

**BOARD'S ACTION-MINUTES:**

**MOTION:** On a motion by W. Peterson, seconded by R. Caldwell, it was voted to approve the minutes of the July 9, 2007, meeting as submitted. (6-0-1) C. Patten abstained.

**STAFF REPORT:**

**SUMMIT REHAB TAX LOT 205-005-004:**

C. Daigle explained that Summit Rehab would like to have a 12’x 12’ shed next to the dumpster on the far end of the parking lot. It was the consensus of Board that this could be done by a building permit and does not need additional site plan review.

**WAYNE DROUIN TAX LOT 116-043:**

C. Daigle stated that the Land Use Office has received a wetland application for Wayne Drouin on Union Road. It is for Agricultural and Forestry use. R. Ball stated that if it accesses the Roeder property for an RV trail they will need to cross 75' of prime wetland.

### **CAPITAL IMPROVEMENT PLAN(CIP)**

The Board received of a copy of the CIP letter and meeting schedule. C. Daigle explained that the CIP should be ready to review at the Board's September worksession.

### **SITE PLANS:**

The Board reviewed different site plans and noted the different qualities that are being submitted. They discuss the need for quality plans so they are able to understand what is being approved. Plans that are drawn at 50 scale and then blown up to 20 scale are difficult to read as information is shown on different pages. Staff needs quality plans to assure that that projects are built as they were approved. The purpose of the plan is to communicate the design. If that is not done then they can send it back. W. Rollins stated that they could ask for a pdf file, which is a photo of original plan. This is standard technology if you have a CAD program. It will modify the text and the applicant can also break down the plan into soils and wetlands sheets. It was the consensus of the Board that if the plans are unreadable they can reject the plan and have the applicant resubmit them.

### **TOWN AERIALS:**

R. Ball showed the Board the updated aerials of the town recently done as part of the road project. The Board was impressed with the detail of the photos

### **AMENDMENTS:**

C. Daigle explained that at the Board of Selectmen's meeting on public facilities the issue of growth control was brought up. The public present at that meeting stated that growth control would be the only way to save the community. The Board discussed the fact that if a Growth Control Ordinance were to be put on the ballot again it would only be triggered when a certain threshold was reached. If it was in place this year it likely would not be activated because there has not been enough new building being constructed to reach that threshold. This is a temporary measure with safety valves in place to turn on and off when needed.

Impact fees have also been a topic the public is concerned about. W. Peterson stated that it is the guy buying the house that ends up paying for it not the contractors or developers. W. Rollins stated that if they are collecting impact fees the town has the opportunity to collect money for improvements for six years so it doesn't burden the taxpayers so much. The Board discussed the fact that the money has to be returned in six years if the improvements are not done. It becomes a bookkeeping headache to keep track of the money when houses change hands. A project has to be decided ahead of time and completed on time or money returned. Additional staff may be needed to maintain the impact fees accounts. The larger problem is that all vested lots already approved would not have to pay the impact fee, further reducing the income. And new homes only pay their percentage of the cost of the facility that is built for growth. The large burden of paying for the facility, by far, is an existing taxpayer.

C. Daigle recommended that the Board consider both Growth Management and Impact Fees for the ballot if the town is even still eligible for them considering the drop in growth.

**ADJOURNMENT:**

**MOTION:** On a motion by C. Patten, seconded by R. Caldwell, it was voted unanimously to adjourn at 9:12 p.m. (7-0)

Respectfully submitted,

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Elaine M Murphy  
Administrative Assistant