

**TOWN OF ALTON PLANNING BOARD
MINUTES 2018
JUNE 19, 2018**

APPROVED

Members Present:

Roger Sample, Chairman
Scott Williams, Vice-Chairman
Russ Wilder, Clerk
Tom Hoopes, Member
Andrew Levasseur, Member
Dave Hussey, Alternate
Virgil MacDonald, Selectmen's Rep.

Others Present:

Nic Strong, Town Planner
Jessica A. Call, Recording Secretary

**Roughly 40 people in attendance.

CALL TO ORDER

Roger Sample called the meeting to order at 6:00 p.m.

APPROVAL OF AGENDA

Roger Sample asked if there were any changes to the agenda since it was posted; Nic Strong stated, no.

**Scott Williams MOVED to accept the June 19, 2018, agenda, as presented.
Virgil MacDonald seconded the motion, and it PASSED unanimously.**

1. Conceptual Discussion re: American Legion Post 72

Dave Hussey recused himself from this discussion.

Chuck Douglas, Esq., Dave Hussey, and Marty Chabot, Commander, came to the table.

Chuck Douglas, Esq., mentioned that he sent a letter to the Board, dated, June 13, 2018. He mentioned that when zoning ordinances changed, usually, unless there was a threat to public health or safety, the use would stay the same. In 2001, when the old restaurant was transferred to the American Legion, it was a permitted use as a restaurant under the zoning ordinance, and when it went to the American Legion, it was likewise a permitted use; it was a private club or lodge. He thought that the American Legion met the test as a group of people organized for a common purpose to pursue common goals; there were membership qualifications because not everyone could join the American Legion, members had to pay dues, there were regular meetings, and there was a Constitution and a set of By-Laws. He stated that he was a Legionnaire for 45 years at a post in Contoocook. He shared that his post did raffles, bingo, etc., to raise money, in addition to a bar and serving meals, in order to take care of the community and the local veterans. He stated that the American Legion was not trying to flout the law or ignore anyone. He mentioned that the American Legion came to the town in 2003 and presented a site plan for their poolroom. He stated that just because the Board added the new "Commercial Function Facility"

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ordinance, did not mean that changed things at the American Legion; they remained a private lodge/club and there was no reason for them to do a site plan now because their use was not an exception, it was always a permitted use. He thought that the use had been operating for many years since 2001, and if they wanted to add another 400 s.f. to their building, they would have to get site plan approval, but as long as they did not substantially change the use or footprint, they should be permitted to continue. He pointed out that was not only indicated under case law, it was also in RSA 674:19, which stated that changes in zoning laws did not apply to prior uses unless the person using the property had a substantially different use.

Chuck Douglas, Esq., shared that he prepared his letter and was here at the meeting on behalf of the American Legion and was not being paid for any of his services. He thought that the American Legion did not need a site plan and did not fit within the ordinance. He pointed out that the American Legion performed a lot of charitable work, for example, they offered several thousands of dollars to help students with tuition and scholarships, free turkey dinners for veterans and others, the Auxiliary, the Legion Riders, and uniforms were given to the Prospect Mountain High School band. The American Legion had 260 members, and they had done more for this community and surrounding towns than if they were just a commercial facility.

Tom Hoopes stated that there was a transfer of the property from a restaurant to a restaurant, but the use was never claimed. Chuck Douglas, Esq., stated he was not around back in 2001 and the only thing he could suggest was if he had a restaurant and sold it to the VFW or the American Legion, he knew what they did and it was going to be more than a restaurant. It was going to be a private group and their deed even stated that they recognized that they were a private, non-profit corporation. Tom Hoopes noted that in the past five years, the Board had some big cases dealing with commercial entities wanting to hold weddings and other events; therefore, it would not be right to treat people unequally. Chuck Douglas, Esq., stated that a use that was a permitted use was not subject to a change in the law in 2012. He noted that the Board, back in 2012, added a definition for a "Commercial Function Facility". Tom Hoopes stated that definition was added because many people in town wanted to put on services with catering, weddings, and outdoor events, so in order to define it, they Board had to add a definition. If that were the category, which something defaulted into, how else would it be handled? Chuck Douglas, Esq., stated that the American Legion did not fall into that category because they were grandfathered out of it. Tom Hoopes stated they were never grandfathered into it. Chuck Douglas, Esq., disagreed.

Virgil MacDonald read from a letter from Nancy McKay, who used to own the building, which was not submitted to the Board. Nancy McKay wrote, "We also rented out our space for parties and special occasions and never had a problem". Virgil MacDonald stated that the previous owners operated as a restaurant, which was what the American Legion was doing, the previous owners also rented the hall out, and now he thought that Board wanted them to do something different. Virgil MacDonald passed the letter around the table for the Board to read. Roger Sample talked about the American Legion getting a site plan and he noted that there had been offers to assist them to prepare one. He asked if the American Legion was going to lose out on something by submitting a site plan and wondered what the big issue was. Dave Hussey stated it had to do with money. Roger Sample stated that the Board had waivers for just about anything that had to do with an application. Dave Hussey stated that the Legion did not fit into the criteria for a "Commercial Function Facility". Chuck Douglas, Esq., stated that if the American Legion submitted a site plan application to be a good sport then the next person who had a vested

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permitted use might say that the American Legion did it, so why not go ahead and do it too. He stated that they were a fraternal organization that was non-taxable under the tax code and Alton did not tax the building because the American Legion was a non-profit. He pointed out that the Board could not go back in time because a law was changed six or seven years ago. He mentioned that if the American Legion did some substantial change in use, then he would agree with the Board that they needed site plan approval.

Virgil MacDonald suggested pictures should be taken of the American Legion and any changes that came up from here forward, they would have to come in for a site plan review, and it would settle the current issue. Roger Sample stated he would like to have the issue settled and mentioned that the Board was all in favor of the American Legion.

Scott Williams spoke about his knowledge of the history of the American Legion building. He stated he first started coming to Alton in 1958-1959 on New Year's Eve. He noted that there were only two places to eat, the Grey's down in Dot's Lunch, or the Edgewood restaurant owned by the Edwards. Somewhere in the late 60's they added on another room to the restaurant, which was their function room, and they owned the property until the mid-1970's when Norm Barrett purchased it. The Barrett's enlarged the property and held functions like weddings and the footprint stayed the same up until it became Everybody's Pub. He stated that every owner used to have functions, gatherings, weddings, etc., throughout the whole time they were in business.

Russ Wilder stated that the Board received some notes from the Planning Department, and one of the notes was when the American Legion purchased the property in 2001, they should have come in for a site plan because the property was zoned and used a restaurant, and they began to operate as a lodge or private club. No site plan review had ever been conducted on whether or not the American Legion's lot was at capacity to handle all their activities. He mentioned that in the letter from Atty. Douglas was the concept of Laches and the equitable barring of municipal enforcement of rules and ordinances years after they should have been enforced. Russ Wilder was wondering if Jim Sessler, Esq., Town Counsel, had seen the letter. Nic Strong stated that Jim Sessler, Esq., had seen the letter, but there was no response back yet. Russ Wilder thought that the Board was at a disadvantage until Jim Sessler, Esq., responded.

Chuck Douglas, Esq., mentioned that if there was a shoe store and it was turned it into a recycling collection center, it would be a very different use, but changing something from a commercial entity to a fraternal entity was the same as if you had a shoe store and wanted to turn it into another shoe store. Russ Wilder stated that the Board had Chuck Douglas, Esq.'s, opinion; therefore, Jim Sessler, Esq., should have the opportunity to either agree or refute him.

Roger Sample let Tim MacDonald speak, even though public input was not open. Tim MacDonald mentioned that when the American Legion bought the building back in 1999-2001, Warren Leary and Ray Nadeau worked with the Selectmen to make sure that all their "i's" were dotted and their "t's" were crossed and they were doing the right thing. He stated that now things were coming back on them because the Town did not know where their paperwork went. Roger Sample did not know what paperwork he was referring to.

John Dever, III, Code Official, came to the table. He stated that there was a lot of misinformation and his attempts to discuss this issue with the American Legion had been unfruitful and he wanted to take this

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opportunity to bring these issues forward. One of the misconceptions was that by getting a site plan as a “Commercial Function Facility”, it would endanger their non-profit status; this was not true and had nothing to do with how a business was owned or operated, it had to do with uses. The Board did not have any authority to give or take away someone’s non-profit status. There were many non-profit organizations in town that willingly complied and had participated in the site plan process; most recently Camp Kabeyun, Camp Brookwoods, and the Alton Bay Christian Conference Center. He then addressed the word “Laches” that Chuck Douglas, Esq., mentioned in his letter, which meant too little too late. The example John Dever, III, gave was if someone built a garage and it was two feet on their neighbor’s land and the neighbor knew about it, but decided to say nothing. The garage was built and everything appeared to be fine, then five years later both parties get into an argument and the neighbor now wanted to file a lawsuit to have the garage removed. The neighbor knew it was wrong at the time, but did nothing about it. The judge would most likely say that the neighbor had knowledge of the situation and had plenty of time to address it, so they should have dealt with it then. Since there were changes to the American Legion’s operations, like renting out the hall, and putting on concerts, their activities had increased over the last few years.

One of the ways John Dever, III, determined that there was an increase in activity was by looking at their water bill, which had doubled since 2015. He mentioned that the other major increase in activity was the expansion outside to hold outside concerts with big name bands. He mentioned that he was a member of the American Legion at two other posts, and he served in the Navy for 20 years. He stated that he wanted the American Legion to succeed and where they were located was not the best place in town to do what they do year round, like having indoor and outdoor music and renting out the hall for parties. He pointed out that the use had expanded. The occupancy of the building was 200 according to the Fire Department.

Tim MacDonald spoke up and stated there was only room for 150 people. Roger Sample stated that comments were not open to the public yet and asked for him to hold public input until the public input session was open. John Dever, III, stated for the sake of the argument he would say 150. There were only 34 parking spaces in their parking lot and the overflow parking they did have access to, which was at the carwash facility next door, had been taken away because the carwash property became developed. Now when the American Legion had large events, they had to park out on the highway and they were still parking on the property next door. Under parking in the Site Plan Regulations, it stated that it was not allowed to park on adjacent properties. If there were 150 people in the hall, there were probably going to be more than 34 cars in the parking lot. He mentioned that he was there last summer when DES did their certification training and there were probably about 150 vehicles there, which he had pictures of. Parking was a major issue and had an impact on public safety.

Virgil MacDonald asked if John Dever, III, was going to put a stop to all the parking on the highway at Mount Major, and thought he should shut that down. John Dever, III, asked the Chairman to have Virgil MacDonald recuse himself from sitting as a member of the Board because he had shown tremendous bias in both Selectmen’s meetings and Planning Board meetings when he used the term “we” when discussing the American Legion repeatedly. Virgil MacDonald stated that he was going to state his feelings in what he thought was right. John Dever, III, realized that Virgil MacDonald did not have to step down; he just wanted to make it known.

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John Dever, III, noted that having a 150-occupancy limit, there would most likely be more than 34 cars. The Fire Department issued a temporary occupancy permit for the outdoor concerts, which was for 400 people. He wanted the American Legion members to know that he was all for the concerts, but they had to think about the consequences. If 400 people showed up for a concert, where would they park; that huge activity was not part of a restaurant or a private lodge. He shared that the costs involved for a site plan and a special exception would end up being about \$474. He stated that when he met with Marty Chabot back in January of this year, Marty Chabot mentioned that he did not know much about the site plan or special exception process, so John Dever, III, suggested to have them talk to Cincy Balcus because she had done their wetlands permit, and Paul Zuzgo did their survey last year. John Dever, III, stated that between January and April Marty Chabot stated a few times that the American Legion was going forward with their applications, but by the end of April, all communications stopped and the American Legion never followed through with submitting an application. John Dever, III, never stated that the American Legion had to hire someone, and gave the analogy that if someone did not know how to put shingles on a roof, then they would hire a roofer. There was no need to spend \$3,000 for a site plan because they had a base site plan, which was the survey completed last year. The drainage was done as part of the wetlands permit to mitigate the drainage out back. He mentioned that he had not heard from anyone complaining about the music either coming from inside the building or outside. He pointed out that what triggered the need to look at a site plan was when things change, and the level of activity had increased substantially.

John Dever, III, wanted the American Legion to grow and not to be shut down, but there were public parking safety issues that had to be addressed. Parking on the highway was not a valid option. If someone was parked on the road and they came out of the American Legion to get into their parked car and were hit by an oncoming car, the first three entities being sued would be the Department of Transportation, the Town of Alton, and the American Legion. Virgil MacDonald stated that the town and state were indemnified. John Dever, III, stated that the injured party could still file suit, and there would have to be money spent to defend those suits. If the town knew about a safety issue and did not do anything about it, and when it got to court, the town was told they were indemnified, it was still going to cost money to go to court, when the Board could just address the parking issue. He stated that this was a huge safety issue.

John Dever, III, stated that this process could be done fairly easy because there were people available to assist the American Legion, and actually, Dave Hussey was capable of drawing plans, the drainage was fixed, which was a requirement for a site plan application. John Dever, III, stated that he was not trying to shut down the American Legion; he was trying to look out for the safety of the general public and them. Roger Sample noted that he mentioned earlier what was the problem with submitting a site plan; he then pointed out that by submitting a site plan, it would show that there were only 34 parking spaces.

Dave Hussey stated that the lack of parking spaces were not the problem. He stated that the problem was that John Dever, III, wanted to put the American Legion under a "Commercial Function Facility". Roger Sample thought that was not the problem. Dave Hussey read some of the regulations from the ordinance that included mitigation of noise, including, but not limited to music, through implementation...., establishment and enforcement of quiet hours, separation of sound..... He stated that by putting them under a "Commercial Function Facility", it put the American Legion in a position that if somebody down the road looked at the ordinance and brought up the fact that the American Legion was not following all

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of the criteria it would start more problems for them. He stated that they were a private club, they had occupied that building for 17 years, and asked the Board how they knew if the American Legion did a site plan or not back then because he went before the Planning Board when he was applying for his gravel pit application and the Town did not know where any of his paperwork was. Tom Hoopes mentioned that he had copies of everything. Dave Hussey thought that he should give them to the Town.

Virgil MacDonald asked if the American Legion could go under any other ordinance. John Dever, III, stated, no. Virgil MacDonald asked if they would fit under "Lodging". John Dever, III, stated, no, it was his job to find where people fit. He mentioned that there was no issue with the noise coming from either the indoor or outdoor music events. He stated that would be something that would be negotiated between the ZBA and the applicant. The ZBA had the authority to go back and forth. Dave Hussey asked what was wrong with staying the way the American Legion was. John Dever, III, stated that there were changes. Scott Williams asked if there were any other issues, or was it just parking. John Dever, III, stated that there were more and more people visiting the premises and parking was big issue. Scott Williams asked if that was the only issue. John Dever, III, stated, no. Scott Williams wanted to know what the other issues were. John Dever, III, stated that the American Legion's activities were a restaurant and a private club or lodge. He stated that they were actively renting the hall to outside entities and they were open a couple nights a week as a restaurant, which he could not say anything against the restaurant operations because that was what it was before the American Legion moved in. Virgil MacDonald stated it was not a change of use because other people had rented the hall before. John Dever, III, stated that they were actively renting the hall for whoever came in off the street, which he was fine with, but it brought a different set of concerns. Virgil MacDonald stated that was what all the previous owners had done. John Dever, III, stated that he had no record of that. He also noted James Montgomery and John Cafferty & the Beaver Brown Band had not been there 17 years ago, which were outdoor concerts that had the potential to have 400 people show up. Dave Hussey mentioned they would not have any more concerts. John Dever, III, stated that was not the point; they should make the provisions to take care of the people that would be attending the concerts. Dave Hussey stated that the American Legion was against the "Commercial Function Facility", because it put them out on a limb where somebody down the road could say that they were supposed to be doing everything listed in the ordinance. Roger Sample stated that the American Legion had an attorney with them and thought that he could speak on what Dave Hussey was saying.

Chuck Douglas, Esq., stated that the problem was not only the costs, but it had to do with the required criteria for a "Commercial Function Facility." Once the American Legion applied, they would be in a predicament because the first sentence stated, "The Zoning Board of Adjustment may grant a Special Exception for a commercial function facility upon review and consideration of..... He stated that the American Legion was going from a permitted use that was "grandfathered" to a possible maybe, Special Exception in front of the ZBA, and then the American Legion would be saying that they were a commercial facility and would be asking the ZBA for a Special Exception. He stated that site plans did not come out of the sky, there was a context for it and he was not advising the American Legion to go from a permitted use to a possible Special Exception in front of the ZBA. If in fact there were problems with outdoor concerts and parking, then the easiest way to deal with that was to say they were not going to hold them anymore so it did not create a problem. Scott Williams thought that the Board could come up with an "a la carte"; therefore, the Board could pick and choose areas of possible problems to try to work through this. Chuck Douglas, Esq., thought that parking was the major issue and wanted to see the

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American Legion and the Town sit down and work something out. In good faith, Chuck Douglas, Esq., did not want to tell the American Legion to give up their permitted use and 17 years of doing it, and then ask the ZBA for a Special Exception and take the risk of meeting all of the criteria. Roger Sample stated that if they did get approval, the American Legion would then go before the Planning Board with a site plan application and they would then have to deal with the 34 parking spaces. He mentioned that he would rather just deal with the 34 parking spaces. Chuck Douglas, Esq., thought that just dealing with the parking and coming up with some type of agreement was far better than having the American Legion go to the ZBA and ask for a Special Exception. He thought it was not as simple as taking an old set of plans, tweaking them, and then filing an application with the ZBA. He stated that he would talk to Jim Sessler, Esq., if he wanted to talk to him.

Scott Williams asked if the 34 parking spaces that were currently there were paved. John Dever, III, stated, that was what was striped. Scott Williams then asked about the gravel area. John Dever, III, stated that was not for parking. According to the American Legion's DES permit, it was supposed to be re-vegetated and recovered and that was not done. If the American Legion wanted to go back to DES and propose using the gravel area as parking, they could. He was told this week that the American Legion's neighbor, who owned the 30 acres of property behind the American Legion, had offered them an area behind their building to have parking to walk down into their lot. John Dever, III, stated that there were options and if the use was expanding, he wanted to see some accommodations. He stated that the whole time he had been working with the Town, he never saw a Special Exception get denied. Chuck Douglas, Esq., thought that if the American Legion did not meet all of the requirements, then they would not get their Special Exception. Chuck Douglas, Esq., thought that parking was in the jurisdiction of the Police Department. Tom Hoopes and John Dever, III, stated that parking was in the jurisdiction of the Planning Board to make sure there was enough parking for an establishment for a site plan.

Scott Williams stated that with accommodations for 150 people sitting, there was one parking space for every three seats; he saw 50 spaces. He asked if 16 more spaces were possible to add to the parking lot. John Dever, III, asked that what was going to happen when they have a large amount of people in attendance; were they going to be allowed to park in Hannaford's parking lot? Chuck Douglas, Esq., thought that parking appeared to be the big issue and there was no need to go before the ZBA and submit a full site plan. Scott Williams agreed.

Russ Wilder asked if there were any other issues besides parking. John Dever, III, shared that what triggered a look at something like this was when things were growing. Russ Wilder mentioned that their septic capacity might be a problem. John Dever, III, stated that their septic system, as far as he knew, their usage was well under their capacity, which was a fairly new system. Scott Williams asked how many gallons per day. John Dever, III, thought it was 2,500 gallons per day, and that was calculated on the water usage meter reading. If the reading were done on the number of seats, it would be 2,000 gallons per day. Russ Wilder mentioned that there were no comments about noise and there were no close neighbors nearby. John Dever, III, stated that according to the Police Chief, there had been no complaints. Russ Wilder brought up parking on the road; he thought it was up to DOT and State Police because it was not a town road. Scott Williams mentioned that the Alton Police Department would handle the road also. Marty Chabot stated that the American Legion asked about parking out on the highway, and the Alton Police Department mentioned that if they stayed within the white line, they were

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authorized to park on the highway. Scott Williams asked if they had that in writing. Dave Hussey stated that he was sure they could get it.

Dave Hussey stated that their canteen had more than ample parking because there were only about 20-25 people there during the week, but when they had celebrations of life, he had seen at least 300 people attend. He stated that the funeral homes could not handle the number of people so they were sending them over to the American Legion, because they had free food and were celebrating the person who died. He stated that the back of the lot that was filled in had been reclaimed and hydroseeded. Dave Hussey then referred to Scott Williams, who knew when ledge pack was laid down, that DES considered that reclaimed; that was what they had placed down in the gravel area. Dave Hussey stated that part of that area was ledge pack because they were driving trucks out back in order to get deliveries. The other side was loamed out and hydroseeded. Scott Williams asked if the State granted a permit to use that gravel area, and how many cars could park there. Dave Hussey stated 58. Scott Williams stated that the wetland permit the American Legion had did not allow parking. Dave Hussey asked if it stated that on the permit. John Dever, III, stated that area had to be revegetated. Dave Hussey stated it had been. John Dever, III, stated that when you revegetate, you did not normally do a parking lot. He stated that he mentioned to the American Legion in the beginning of all this to check with DES to see if they could park there. Chuck Douglas, Esq., thought that was reasonable and mentioned that it was a good time of year without snow on the ground to give them a chance to try to see if being allowed to park on the gravel area would alleviate 98% of the concerns. Marty Chabot stated that whenever there was a large event, the American Legion recommended people to park on the front lawn, which was well within the white line, and was backed up against the building. That would be enough space for about 30 cars. Scott Williams stated that the area Mary Chabot was referring to was within the State's right-of-way, so he probably could not claim that as legitimate parking. Roger Sample pointed out that would only be accessible in the summertime. John Dever, III, stated that people could not park in front of the building in the winter. Scott Williams asked John Dever, III, if he would be comfortable with this situation if the American Legion could solve the parking issue. John Dever, III, stated that he wanted it on record. Roger Sample stated that the Board would accept a drawing of the parking spaces. Dave Hussey stated that the American Legion's ex-commander had a CAD program. Dave Hussey shared that people used to park on top of the septic system, but they could not drive trucks over the septic system, and they did not have any place to plow their snow because their right-of-way was taken away from them. They had to do something, so they filled the hole in. Dave Hussey stated to the Board that if they had filled a hole in behind their houses, would they not park on it. Tom Hoopes stated it would depend upon whether the hole was a wetland or not. Dave Hussey stated that the American Legion filled the hole in the way DES wanted it filled in. Chuck Douglas, Esq., stated that the American Legion had their permit and now it was a question of whether they can change it. Tom Hoopes stated that he did not want to go any further on any comments until the Board heard back from Jim Sessler, Esq., Town Counsel. Roger Sample asked if the Board could send the American Legion off in a certain direction. Russ Wilder stated that the parking was an issue that the Board should be able to work through, but before they enforced the "Commercial Function Facility", they should wait to hear from Jim Sessler, Esq., to see how he responded to Chuck Douglas, Esq.'s, letter. Russ Wilder mentioned that after that happened, to have the American Legion come back and the Board could discuss things further.

Scott Williams mentioned that if lines could be drawn out to mark the parking spaces, the Board could take a site walk to view the parking. Tom Hoopes stated that nobody had it in for veterans, but the

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concept of equality had to be maintained and everyone had to be treated equal. Scott Williams mentioned that in theory that sounded good, but it did not happen that way. Russ Wilder pointed out that the American Legion should keep good records of whatever they decided to do, and why. Scott Williams also wanted them to include the rationale behind it because if it ever was challenged, a judge could look at the rationale.

Dave Hussey reiterated that he would be in contact with Cindy Balcius, who was their wetland scientist, to contact DES and see if the American Legion could park on the gravel area. Scott Williams thought instead of having someone do the plan with a CAD drawing, it would be best to have a surveyor do the work so they would have a stamp and signature on the plan. Marty Chabot said that would cost more money. Scott Williams stated that he used Paul Zuzgo and he was not that expensive. Russ Wilder mentioned that the layout of the parking spaces should conform to what was required, lane width, length, etc., and those measurements should be indicated on the plan. Scott Williams stated that while they were at it, that maybe they should look into being able to park on the septic system. John Dever, III, stated that the American Legion should talk to their neighbor about the land they offered for overflow parking. Dave Hussey stated that he had not talked to anybody at the American Legion. John Dever, III, stated that he was told differently. Marty Chabot brought up a time that the American Legion was hosting a celebration of life and they were having people park on the highway. On that occasion, their neighbor offered to have them park out back, but had not offered that at any other time. He mentioned that the neighbor had signs on his property that stated that cars would be towed from his lot if they were not doing business on his lot, but there were people from the neighbor's property that had parked on the American Legion's parking lot.

Roger Sample opened public input.

Nancy Hussey came to the table. She shared with the Board that the American Legion had suggested people park on the highway, and they did talk to Chief Heath at the Police Department and he had no problems with the parking. She stated that the Chief mentioned that if he had a spare cruiser, he would send his officer over to the American Legion. She noted that during the James Montgomery concert, their next-door neighbor across the street allowed them to park in the field. They were really trying to accommodate for the overflow parking.

Joe MacDonald spoke from the audience. He mentioned that he was present at the meeting as a taxpayer and not as an American Legion member. He stated that he just listened to everyone talk in circles, that they were not trying to close the American Legion, that they were not trying to shut them down, that they were not trying to do anything. In 1958 when the building was built, it had 34 parking spaces. The Town had let them change it to a restaurant; the Town let the American Legion buy it; the Town let them have their celebrations of life. He noted that the American Legion served meals and had celebrations of life when they were located on Main Street, which was the same as what they were doing now; nothing had changed. In the State of New Hampshire, anywhere off the white line, cars were allowed to be parked unless there was a no parking sign. The American Legion had done nothing different other than to have somebody in Town complain because they did not want them there and they wanted them to become a commercial use. This was a waste of taxpayers' money because nothing had changed and it was exactly how it used to be. Roger Sample stated that the Board was not being paid. Scott Williams stated that there were only two people present that were on the payroll. Joe MacDonald stated that the Board was

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calling a lawyer, which cost the taxpayers. He also pointed out that Town Counsel was probably on a retainer and that the Board should check to see how much he was paid last year above his retainer. Tom Hoopes stated that was because of lawsuits that were handled by the town. Roger Sample mentioned that he heard the same speech last time.

Andy Martin came to the table. He stated that his specialty was Administrative Law. He wanted to address Tom Hoopes' statement he made earlier about equality. Andy Martin stated that if an agency had taken steps in the past, which may have been erroneous or exceeded their regulations, that did not prevent the agency from changing their regulations or going forward in the future with a clearer understanding. He shared a story about a friend of his who was involved with DES in Belknap County. His case ended up in Supreme Court, there were years of bitterness and litigation and finally was settled last year with the Attorney General. The most important thing to do was to assume that everybody here in the room was operating in good faith, and not challenge each other's faith by saying someone had a motive or some suspicion because this issue could be settled with a little bit of "Yankee" ingenuity. Andy Martin stated that Tom Hoopes was right on the equal protection issue, but it could be dealt with. He thought that he heard during the meeting, the first steps towards good faith on all sides. He pointed out that New Hampshire was a state of law, but the residents were also practical people. He mentioned that he attended an event at a church in Manchester that not only had thousands of people attend, but there were tens of thousands of people who were literally parking throughout half of the city. Scott Williams stated that if the American Legion exceeded their occupancy then the Fire Department would put someone on post and be on a fire watch. Andy Martin stated that he respectfully disagreed with the view that the purchase by the American Legion changed the usage. He wanted to thank the staff who were very courteous when responding to him with the materials he requested. He read all of the materials that were very detailed and he understood them. He stated that the American Legion was a community asset and he had done a lot of mediating many times in the past and he offered to help. He thanked the Board and hoped the Board would make a just decision.

Tom Kenney had a question about parking in the back on the gravel area. Depending on what the weather was and what time of year it was would dictate how many cars could park back there, because after the next-door neighbor hot topped his parking lot, all that water ran straight down into the American Legion's property. Roger Sample stated that it could not. Tom Kenney stated that it did and that the Board should check it out. He stated whoever gave them the permit to run the water on the American Legion's property took away some of their parking. Scott Williams recommended that in order to get this situation handled properly, that the American Legion should write a letter to the Code Enforcement Officer stating that was what they believed and he would check into it, then he would render his decision. If that were the case, then it would be fixed because they were not allowed to discharge one gallon more water post-development than they were pre-development.

Scott Williams asked John Dever, III, if he would be all set if the parking situation was resolved. John Dever, III, stated that was one of the biggest issues, but the Board had to hear back from Jim Sessler, Esq., first, because no matter what, there had to be some provisions for parking because parking on the road in the dark in a snowstorm was not good practice.

Charles Noyes spoke from the audience. He stated that he heard a bunch of people not understanding changing the function hall to a commercial use and then today the American Legion was compared to

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other businesses who had venues for weddings, or for catering purposes, but they were for profit; the American Legion was for non-profit. He did not understand why the American Legion was compared to businesses who were for profit. Tom Hoopes stated that was not a factor.

Scott Williams stated that he thought the Board had a starting point to work towards. He suggested continuing the conversation to the next scheduled meeting in order to have this discussion on the agenda, that way Jim Sessler, Esq., would have time to submit his decision. Russ Wilder agreed because he thought it was unfair to everyone involved if it was to drag out any longer.

**Scott Williams MOVED to continue the American Legion conceptual discussion to the next scheduled meeting on July 17, 2018, in order to have Jim Sessler, Esq., Town Counsel, have the chance to respond to Chuck Douglas, Esq.'s, June 13, 2018, letter to the Board.
Russ Wilder seconded the motion, and it PASSED unanimously.**

DISCUSSION:

Russ Wilder mentioned that he and Tom Hoopes were interested in having a small workshop a half an hour before the next Board meeting began with Nic Strong, John Dever, III, and Jim Sessler, Esq., to have a general discussion on what triggered the request for a site plan for an existing facility. Roger Sample thought that John Dever, III, really should attend because he was the one who was making the decisions. Scott Williams was not sure if that was going to be beneficial because he thought that during tonight's discussion with the American Legion, both parties found some common ground. Russ Wilder stated that was one particular case. Scott Williams thought that the Board should work through the American Legion case first, and then the Board could talk to Jim Sessler, Esq., after if they still felt like they needed to. Tom Hoopes stated that the Board did not have a chance to get to all of the points that were listed in the Planner Review, and he wanted to hear about them. Scott Williams, Dave Hussey, and Virgil MacDonald all thought John Dever, III, stated everything he had issues with. Russ Wilder was more concerned with the process and procedure of requesting a site plan.

**Russ Wilder MOVED to schedule a workshop a half an hour before the next scheduled meeting on July 17, 2018, to review the non-case specific procedure of requiring a site plan for existing facilities when they change their use.
Tom Hoopes seconded the motion, and it PASSED unanimously.**

Dave Hussey asked the Board what his role was on the Board. Scott Williams stated that as an alternate, he could be involved in discussion, but could not vote. Tom Hoopes stated at this point, Roger Sample should appoint Dave Hussey because Peter Bolster was absent.

Roger Sample appointed Dave Hussey as a full voting member because Peter Bolster was absent.

2. Discussion re: Town of Alton Excavation Regulations, amended on April 18, 2017

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Roger Sample asked Nic Strong what exactly they were discussing. Nic Strong stated that at the last meeting, the Board requested to have the Excavation Regulations on the agenda to go through how they were adopted and to talk about the issues surrounding them.

Tom Hoopes also wanted to add that the reason why this was requested was that there were no permits issued this year for the gravel pits. Scott Williams stated that the permits have now been issued. Tom Hoopes understood that happened, but they had been signed with conditions. He explained that the reason for having this discussion was that there were misunderstandings about when and how things were to be filed. He noted that Dave Hussey's father, Robert Hussey, had always submitted the most thorough application that he had ever seen, and was the only application that went before the Planning Board. Scott Williams stated that he was wrong; his application was submitted two months after Robert Hussey had submitted his. Scott Williams thought that Keith Babb could confirm that Keith Babb's gravel pit application and his gravel pit application were submitted two months apart. Keith Babb stated, yes. Nic Strong stated that there were six or seven files in the name of Hussey for the Coffin Brook Pit and there were a couple of files in the Tanguay name in the filing cabinets. She noted that there were no recent permit applications in the files.

Russ Wilder pointed out that Dave Hussey mentioned something about the creation of the Excavation Regulations under RSA 155-E should have been on the town ballot. He read from the packet that Nic Strong prepared for the Board and noted that as a Planning Board, they could adopt and develop regulations just as they did with Subdivision Regulations and Site Plan Regulations. He further read, "The Planning Board was responsible for preparing and holding public hearings. The excavations are not a zoning ordinance, historic district ordinance, or a building code, they are a regulation that the Planning Board was authorized by statute to adopt; therefore, they do not require a ballot vote." He also pointed out that the recent Intents to Excavate were not signed because now that the Board had these new regulations, in order to have a completed form, it needed a permit number that came from the Planning Board. The Selectmen did not sign the Intents to Excavate because the permits needed a permit number according to the new regulations. Scott Williams stated that the Intents to Excavate and the reports had been filed timely since their inception and now things had changed. Russ Wilder stated that was because now the Board had Excavation Regulations. Scott Williams stated that the Board had regulations all along. Russ Wilder stated that the Board did not enforce them before and now the Board had new staff who were making sure the Board was following all current regulations. Tom Hoopes stated that the Selectmen could not sign off on the Intents to Excavate because they needed a permit number; therefore, they were incomplete. Scott Williams stated that was a State form and not a local form. Virgil MacDonald stated that was a tax document and the Board could not hold the Intent to Excavate form because the applicant had not submitted an application for a permit. Russ Wilder stated that the Board should refer to Page 10 in their memo; it listed four things that the Selectmen looked at before they signed the Intents to Excavate. Virgil MacDonald stated that the Selectmen signed the Intents to Excavate with conditions that required all paperwork and hearings must be completed by December of this year in order to receive their permits. Russ Wilder read from the memo and it indicated that at the June 4, 2018, Selectmen's meeting, the Selectmen had determined to sign the Intents to Excavate with a caveat that Green Oaks and Scott Williams would get their permits done by December 31, 2018. Scott Williams asked if the application needed to be submitted or completed by December 31, 2018. Russ Wilder read from the memo, which indicated that the approval of the Excavation Permit needed to be obtained by

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December 31, 2018. Nic Strong stated that Scott Williams' permit needed to be filed within 60 days after the Intents to Excavate were signed by the Selectmen on June 4, 2018.

Nic Strong stated that the issue was, as was pointed out, there was an Intent to Excavate, which was a tax document, and there was a set of regulations, which was a Planning Board run set of regulations. It was fine that the Selectmen put in that caveat on the Intents to Excavate, but it was the Planning Board's set of regulations that stated when those approvals had to be done. She stated that as the Planner, she could not state, legally speaking, that the two pits were going to be in compliance if they operated between now and the end of December without a permit from the Planning Board. Russ Wilder stated that the Selectmen made the decision to sign the Intents to Excavate, which was different because it was up to the Planning Board to determine whether they were in compliance or not. Russ Wilder wondered what the Planning Board was supposed to do. Nic Strong stated that she put together a packet so the Planning Board understood the process. The first part reviewed what the Statute was, how it worked, and why the Planning Board did what they did. The second part went over grandfathering, which was very specific, and the two pits in questions had never professed to be grandfathered and the fact of the matter was they filed their permits for Special Exception and the Planning Board in 1988 and 1989; therefore, they were legal at that time. The grandfathering did not exist for those two pits in question. The other parts went over how the Master Plan fit into this, how the Zoning Ordinance came into play, when the regulations were adopted, and then there were pages and pages of the drafts the Board members had received, the discussions the Board members had at meetings, and how the regulations were procedurally adopted in accordance with State Statute. Furthermore, she stated that there were specific excavations listed, which included two pits that were now closed down, and then there were the two that were in question currently. It also listed the dates of every event, the Special Exceptions, AoT permits, Planning Board permits, and one of the pits had a security that expired and one that did not. The last part had information about all of the questions that came up at the last meeting. An explanation for the holding of the Intents to Excavate and how and why that happened was included.

Nic Strong pointed out that the Green Oak pit was scheduled tonight and was continued to this meeting. Green Oak submitted revisions of their plan, and the Board was still waiting for the submission of an application from Scott Williams, which should be within 60 days of the June 4, 2018, Selectmen's decision.

Russ Wilder stated that the Selectmen made a decision, but did the Planning Board have to make a decision to support the Selectmen, or, just let what the Selectmen decided stand. Virgil MacDonald stated that the Selectmen did the decision because the Intents to Excavate were over their 30 days, which was illegal to hold. Scott Williams stated that an Intent to Excavate was not different from an Intent to Cut document. Nic Strong stated that according to the Selectmen, the Green Oak pit had to have their approval by December 31, 2018, and Scott Williams needed to file his application within 60 days in order to get his approval by December 31, 2018, and because that was not a regulatory process, the Board did not have to do anything. She pointed out that the only enforcement regulation that the Board had was that the failure to file a permit shall be considered a violation and operators who fail to file would be issued a cease and desist order. Russ Wilder stated that if the two pit owners in question did what was voted on at the Selectmen's meeting, then they would be in compliance. Nic Strong stated, no. She explained that she could not say that the two pit owners were in compliance and neither should the Planning Board between now and them getting their approval, because they needed a permit to operate. She further noted

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that the Selectmen had written that caveat because the forms had been sitting for longer than 30 days. The reason why this was brought to everyone's attention this year was that no one in previous offices and years had been enforcing the regulations. Tom Hoopes asked how long the permit was good for. Virgil MacDonald stated, 50 years. Nic Strong stated that the regulations had a section that indicated how long they were good for. She referred to the regulations, which stated, "Permit Validity. The excavation permit shall be valid for a period of fifty (50) years; or, until such time as the Regulator determines the excavation operation is no longer in compliance with these regulations; or, until such time as the operation shall be deemed to be abandoned as defined in these regulations; or, until such time as the owner informs the Regulator that they will no longer be running the excavation operation; or, until such time as the operation is depleted; or, until the completion date as determined by the Regulator in the regulatory process, in accordance with RSA 155-E:8, whichever first occurs. The permit shall specify the date on which it expires." She noted that if an application was filed and the applicant stated they had three years of material, a permit would not be issued for 50 years, it would be issued to when they said they would be done; there were several different ways to come up with an expiration date. Russ Wilder pointed out that the Board had previously talked about maybe having the expiration date of the excavation permit be the same expiration date as their AoT permit, and he reminded the Board that the pits needed to be inspected every seven (7) years. Nic Strong stated that the application packet would be reviewed, to be in compliance making sure that the Board had a copy of their updated AoT permit every five (5) or seven (7) years. Annually, a site inspection would take place by whoever the Board determined to be the inspector to make sure everything was being followed on the ground, which was why the Board did not have to do site walks every year to confirm it. Russ Wilder stated that if the pit owners got their paperwork together, they should be in compliance with all of the paperwork by the December 31, 2018, deadline.

Roger Sample opened up public input.

Keith Babb, manager of Green Oak, came to the table. He shared with the Board that he did not understand why the town was taking on all of these new Excavation Regulations, which were putting undue financial stress on the two (2) existing pits in town. Tom Hoopes stated that the town needed to follow the State's regulations and previous people did not enforce the rules. Keith Babb stated that the pit had been in existence for over 28 years; he noted that he had found an approved DES Dredge and Fill permit filled out by Robert Hussey that was back from 1987. He pointed out that with most new granite quarries, the permit process of reclamation in the end was to turn it into a pond. He was concerned because this new set of rules would force him to go before the Zoning Board of Adjustment to get a special exception in order to excavate 60 feet below the water table, and if he does not meet all of the criteria, he would not be able to excavate. Nic Strong stated that this was still supposed to be a general discussion and the Board was not hearing the Green Oak pit case yet. Russ Wilder stated as far as Keith Babb's comment about why was the town enacting these new regulations was because RSA 155-E was a state law that had statutory requirements and the town needed to adopt the rules; as a regulatory body, the Board needed to follow the regulations, and they were completely out of date. Keith Babb asked when the regulations were updated. Russ Wilder stated that the Excavation Regulations were updated last year, all pit owners were invited to the public hearing, but nobody showed up. He pointed out that all the materials were mailed to each owner, which included a fact sheet that explained why the regulations were being updated, and what the purpose was. Keith Babb stated that the Board was reaching back. Russ Wilder stated that the Board was not going backwards; they were just trying to do what they were

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supposed to do. Scott Williams stated that he had previously been to the ZBA to ask for relief from regulations that were imposed after the fact, and this situation should fall under that, but he was told it does not. He stated that the ZBA would waive the regulations if they had changed after someone purchased property, opened a business, an applicant could appeal it, which was their way to get relief. Russ Wilder stated that situation was different from a permit. He gave an example that if someone went to get a Wastewater Discharge Permit from the State, it had to be renewed every five (5) years, and if the State changed the requirements for that discharge permit, the new permit would look different from the old permit. This excavation situation was a permit, not about using a piece of property in a certain way; it was not a zoning issue. Scott Williams still thought it was a zoning issue. Russ Wilder stated it was not, it was a permit.

Tom Hoopes stated that the Board did not adopt the most stringent regulations, the Board adopted what they thought were the most liberal regulations they could possibly adopt to make things as easy as possible for pit owners, but the regulations needed to be adopted. He shared that the State mandates that the town have these regulations in place. Mary Pinkham-Langer came to the town and stated that the Board needed to get their regulations updated. Keith Babb stated that Mary Pinkham-Langer was only a Department of Revenue Agent, nothing else. Tom Hoopes stated that did not matter. Keith Babb stated she was not a regulatory person at all. Virgil MacDonald and Scott Williams stated that Mary Pinkham-Langer had a lot more authority than Keith Babb thought she did. Tom Hoopes stated that Mary Pinkham-Langer was the contact point that the Board had with the State, and with other planners throughout the State who had certain specialties, that the Board did not have. Keith Babb shared with the Board that he was bringing forward a very fundamental plan for them at tonight’s meeting in order to meet the Board’s regulations, but if he came back in with a plan looking to go 60 feet down into the water table, he wanted to know if he was going to need a special exception or would it be handled just by the Planning Board because it was an existing excavation. Russ Wilder stated that he thought that if Keith Babb got a permit and it stated that he was going to do certain things, that would allow him to operate, and then if he came back in later on in time and stated he wanted to go down an additional 60 feet, he would do the permit process with the Planning Board. Nic Strong stated that the Board was still supposed to be in a general excavation discussion; they were not discussing the Green Oak case yet. Keith Babb stated that he was talking as a citizen or a landowner in the town. He wanted to know what the regulatory process was when Green Oak came back in to go down below the water table; he addressed Nic Strong and stated that he knew she could answer that question. Roger Sample stated, no, because he was referring specifically to Green Oak. Dave Hussey stated that people could put a pond in anywhere as long as it was not in the wetlands. Tom Hoopes thought a resident would need a permit for a pond. Dave Hussey stated that he did not need one in front of his farm; Keith Babb would need a permit for the size of the pond he wanted to put in. Dave Hussey wondered if it went under the Planning Board or under the Army Corps of Engineers. Nic Strong suggested the Board move on to the Green Oak case.

3. Continued from April 17, 2018

<p>Case # P17-24 Thomas W. Varney, P.E., Agent for Green Oak Realty Development, LLC/Keith Babb, Manager</p>	<p>Map 5 Lot 72</p>	<p>Excavation Permit Application Rural (RU) Suncook Valley Road</p>
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The Chairman read the case into the record.

Present were Kate Varney, agent, and Keith Babb, managing partner of Green Oak Realty Development, LLC.

Roger Sample stated that the Board could pick up their prior conversation now that they opened the Green Oak case. Virgil MacDonald stated that they could not bring the pond conversation back up because now they were discussing a specific pit permit. Nic Strong stated that Keith Babb was asking for something specific, but he had a right to ask what was going to happen when he came back in the future to modify his permit to go 60 feet below the water table. She pointed out that the Board told Keith Babb that he needed a special exception when he first mentioned it because of the change in scope of where he was going, which would impact the water table, the wetlands, and the depth. If the Board had changed their mind about Keith Babb having to apply for a special exception, then the Board needed to decide that at tonight's meeting. Roger Sample stated that the Board must have had some reason for saying the special exception was required. Russ Wilder did not recall why either. Roger Sample stated that the Board was unable to answer Keith Babb's question because the Board needed to figure out why they required it in the first place. Keith Babb thought that needed to be taken care of tonight. Roger Sample stated that it could not be done tonight because the Board needed to have the time to review the minutes.

Keith Babb referred the Board to the plan for the deeper excavation. Scott Williams pointed out that Keith Babb's current excavation was indicated in red and ran along the Northerly property line going towards the Westerly property line, and this location was where he was proposing the deeper excavation. Dave Hussey suggested to Keith Babb to contact Cindy Balcius to see how he was able to install a previously existing pond. Keith Babb thought that a precedent was already set because there were previous digs below the water table at that pit. Russ Wilder stated that tonight the Board wanted to hear what was presented in the current plans in order to get Keith Babb his permit, and if he wanted to come back with a revised scope of excavation, the Board would address it then.

Russ Wilder asked Kate Varney to explain what the intent of the scope of excavation and operation was as presented in the current set of plans. Keith Babb stated that currently he was excavating along the Northerly property line and had the Board refer to Sheet 2, which showed existing conditions. Russ Wilder stated it showed ledge excavation and in red were the contour lines of the edges of the current pit. The area drained into the little pond right in the center of the plan. He asked if the water from the excavation ran to that little pond. Keith Babb stated, no, water was currently contained within the floor. Russ Wilder pointed out that the plan indicated an existing drainage outlet to the wetlands. Kate Varney had the Board look at Sheet 3 for the gravel swale, where a lot of the water drained. She indicated that the swale that went along the pit was existing; there were some proposed swales and some spring sediment basins, along with 3-4 swales that would go into those basins. Russ Wilder referred to the plan, which indicated existing and proposed drainage.

Russ Wilder stated that looking at the plans, there was some detail on page 4 that showed the gravel swales and the infiltration basin going to the existing drainage outlet. He then referred to sheet 6 that showed what Keith Babb was intending to do to get his permit and also how they would expand the excavation to where they would create the side slope against the Steele's property to the North. Kate Varney stated that the expansion was shown on sheet 2, and sheet 6 did show the reclamation. Russ

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Wilder confirmed that sheet 2 had the limits of excavation. Kate Varney stated that sheet 2 showed current conditions, but the plan was to expand to the Westerly side, approximately a 300' x 900' area on the Westerly portion of the site. She thought it was about one blast of material; Keith Babb stated it would be two blasts. Russ Wilder pointed out that was not indicated on the reclamation drawing. Kate Varney stated it was not shown very clearly on the plan.

Keith Babb stated that currently they were excavating towards the Western property line and would start excavating south towards the wetland buffer at the current depth. Tom Hoopes mentioned the 2:1 slope on sheet 6, which was 40 feet down from the neighboring property to the North. Kate Varney stated, yes, they had to go down 20 feet and put in a bench, but ultimately 40 feet overall. Tom Hoopes wanted to know what the span was. Keith Babb stated that on a 60-foot excavation there would be no reclamation slope because it would go straight to water. Russ Wilder stated that they were not currently talking about the 60-foot excavation. Tom Hoopes was trying to figure out how far Keith Babb could go in. Keith Babb stated it was a 2:1 slope, and if you had 22 feet, it would be 44 feet in. Tom Hoopes stated that what he was looking at for reclamation was about 100 feet width at the narrowest part of the area. He thought that if Keith Babb was going to go down 60 feet that was very narrow. Virgil MacDonald stated that the pond was a separate issue and Keith Babb would need another permit.

Russ Wilder stated that the current depth and the extent of the lateral excavation was shown on sheet 6, minus the slope bench because Keith Babb was going to have a vertical wall when he was done. Kate Varney mentioned that the bench would come down 20 feet, then have a 10-foot bench, then go down even further. She mentioned that the bench was a State requirement.

Russ Wilder asked about the missing items from the Planner Review. Kate Varney mentioned that the safety plan was missing. Keith Babb stated that the Federal regulations were a lot more stringent than the Town regulations. He stated that everything was bermed off at the height of half of a tire, and there was a berm down the road towards the gate because it had a four foot drop. Everything was rocked off that had a vertical drop of over three feet; he was held to a very high standard as far as safety went and he was inspected once or twice a year by the Federal Department of Labor. Russ Wilder asked Keith Babb to submit his safety plan to be added to his file. Keith Babb stated that he would submit it. Russ Wilder stated that submission would satisfy the Board's requirement. Keith Babb stated that was part 46 regulation for mining health and safety. Russ Wilder asked Keith Babb if that had been issued to him; he stated, yes, that he was in compliance and his staff did annual training, and site inspections were held once or twice a year.

Russ Wilder went over more of the Planner Review notes, and one note indicated that the application and plan should have the correct amount of material that would be removed because they were different. The correct amount was 36,000. Nic Strong stated that updated plans were submitted and they indicated the correct amount on the plans and on a revised application. Russ Wilder then went over the next item, which was that the area of the excavation site was listed as 12.2 acres and the allowable open area at any one time was five acres. There were some notes on the plan that said the reclamation plan was to be implemented when excavation was completed. One note in particular said that in no case shall no more than five acres be disturbed without stabilization. In addition, the ledge cut along the Steele property line would be incrementally restored with a 2:1 slope as the current operation continued. The notes should be uniform and clearly state when reclamation was required, and how it would be accomplished. The

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phasing note on sheet 6 should be discussed and approved. A note on the plan stated that the smallest practical area shall be disturbed during construction, but in no case shall it exceed five (5) acres at any one time before disturbed areas were stabilized.

Russ Wilder noted that the Planner Review stated that the description was missing for a diagram with breadth, depth, and slope for the existing and proposed excavation. He mentioned that the Board had just discussed that issue, but there was no indication of the horizontal extent. The only place the horizontal extent was indicated was on the reclamation sheet. Keith Babb stated that when he dug down for the pond, he was going to fence off that area. He had already been thinking about fencing that area off now for safety purposes. Kate Varney stated that if a fence was going to be installed, the majority of it would end up on the neighbor's property, which may or may not be a problem. Russ Wilder asked if Keith Babb's neighbor had been approached about the situation. Kate Varney stated that she had not spoken to the neighbor yet, but Keith Babb stated that he had. Russ Wilder stated if he were proposing to install the fence, he would need a written agreement with his neighbor giving him permission to do that. Tom Hoopes stated that the Conservation Commission walked Keith Babb's property every year.

Russ Wilder noted that the Planner Review indicated that previously reclaimed areas were not shown. Kate Varney stated they were shown on sheet 1, which were the blue areas. Russ Wilder then asked if the excavation plan showed all proposed areas for excavation, or were there areas that still could be opened up. Kate Varney stated that was indicated on the revised set of plans. Keith Babb looked at the plans again and pointed out that sheet 2 showed that he was coming from the Westerly property line to the North, and then they would go south towards the current wetlands. Tom Hoopes asked Keith Babb if he had ever investigated the two tiny wetlands beneath the stockpile on the Southern boundary, which was a low spot, with DES to see if they would let him remove those wetlands. Keith Babb stated that was a conversation to have when he came back for the creation of the pond. Russ Wilder stated that the lateral extent on sheet 2 for current excavation should be clearly shown on the plan.

Russ Wilder pointed out that there was a note on sheet 1 that indicated that, "Excavation operation to include retail and wholesale sale of construction and landscaping materials such as crushed stone, sand, gravel, topsoil, and fill." He asked Keith Babb if he offered those materials for sale now; he stated, yes. Russ Wilder stated that in order to meet the definition of excavation, as noted at the hearing in December 2017, the other uses would be something handled by a separate application for site plan approval for a "Contractor's Yard". Tom Hoopes shared that was what Jeddrey was currently doing; he was hauling in materials and crushing them on site. Scott Williams stated that if he was a gravel and stone operation, he did not have to come back in for a "Contractor's Yard" on top of that. Tom Hoopes was not sure. Keith Babb stated that he hauled in septic sand from Ossipee for septic systems because there was no septic sand available in this area. He did not feel that he fell under the criteria for a "Contractor's Yard." Scott Williams stated that what he was doing was inherent to his operation and the gravel pit permit would cover that. Virgil MacDonald stated that the Board was twisting the ordinances and they should not be because they were all black and white. Roger Sample thought that the "Contractor's Yard" ordinance was specifically for pits like Jeddrey's, who were not mining.

Nic Strong informed the Board that the State definition did not allow additional materials if they were not dug from that property. The Excavation Regulations had a waiver provision and she noted that the Board could consider a waiver to allow that particular pit and that pit only to continue doing what they had been

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doing, but the definition did not allow that process. Russ Wilder stated that the Board would have to grant a waiver for this type of operation. Virgil MacDonald stated that the “Contractor’s Yard” was only for places like Jeddrey’s or Greymont. Nic Strong stated that if Keith Babb dug everything he wanted to sell from his property and made piles of all those different types of material, it would be part of the operation about the second he brought in materials from the outside to his excavation site, it was not part of the State definition. She noted that the “Contractor’s Yard” ordinance was specifically set up to assist people like Greymont who were categorized under the retail definition, which was not a good definition for him to be under. Mr. Jeddrey was now going through the process to get a special exception, and then he would come before the Board with a site plan to be a “Contractor’s Yard.”

Keith Babb requested a waiver for the incoming sand products.

Scott Williams MOVED to grant the waiver that Keith Babb did not have to apply to be a Contractor’s Yard for the incoming sand products and that he submit the request in writing. Virgil MacDonald seconded the motion, and it PASSED unanimously.

Russ Wilder pointed out that the Planner Review indicated that some areas only had a five (5) foot or ten (10) foot setback, which was not permitted and should be addressed. He stated that those setbacks were up on top next to Dan Steele’s property. Tom Hoopes pointed out that these setbacks were only temporary until the site was re-sloped. Russ Wilder stated that there was an issue with those setbacks because if there was an approving abutter for an excavation, the excavation could be ten (10) feet from the property line, if there was a non-approving abutter, the excavation had to be fifty (50) feet from the property line. He did not think there was any record of whether Dan Steele or the Conservation Commission, who hold the conservation easement, had agreed to a five (5) or ten (10) foot setback. Dave Hussey stated when he owned the pit, he had a letter from Mr. Jackson that stated they could go five feet from the property line, but he never got that close. Russ Wilder asked if Keith Babb had that letter; Keith Babb stated, yes he did, and Mr. Jackson still owned the property when he purchased it. Russ Wilder was not sure if the letter went with the operation, or the property. Russ Wilder wanted to know when the ten (10) foot setback from an abutter went into effect. Nic Strong was not sure if that went into effect with the Statute from 1979 or 1989-1991. Dave Hussey stated it had to be when his father owned it because it was his father that obtained that letter. Russ Wilder stated that at that time, the town had a conservation easement, which was given by the Barbarossa’s. Russ Wilder asked if Dave Hussey’s father also got a letter from the town that they agreed with the setback. Dave Hussey stated that he would have only gotten letters from abutting property owners. Russ Wilder stated that as an easement holder of the property, the applicant would also need permission from the easement holder as well as the owner of the property. Dave Hussey stated that he did not get a letter from conservation. Scott Williams asked what required the easement holder to have a say. Tom Hoopes stated that they were the holders in title, and that property was listed with the Town of Alton Conservation Commission. Scott Williams stated that the Town only had a conservation easement; they were not the owners of the property. Russ Wilder stated that he was right, but the Town of Alton was an abutter because they were an easement holder. He shared that a conservation easement stated specific actions that could occur on a piece of property, and it also stated what could not be done on a piece of property. Scott Williams did not think that an easement had anything to do with ownership. Russ Wilder stated that it did because it took a value from that property. The Town owned a conservation easement, which prohibited houses from being built. He thought that the Board should consult with Town Counsel, as far as the easement was concerned. Scott Williams thought

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that was not how easements worked. If the Conservation Commission did not agree with the excavation, then Keith Babb would have to go back to fifty-(50) feet from the property line, and that was absurd.

Russ Wilder read another note from the Planner Review that stated that the reclamation plan that would install 2:1 slopes with benches would seem to require a lot of material to create. As listed in the Minimum and Express Reclamation Standards in RSA 155-E:5, areas other than exposed ledge needed to be loamed and seeded, and graded to natural repose, which is about 34 degrees or less steep than a 2:1. If these areas were exposed rock ledge, it appeared from the cross section that it might make more sense to leave them alone and with a fence along the top, or other safety considerations, to avoid accidents. Russ Wilder noted that Keith Babb placed boulders around the top of the slope.

Russ Wilder read the comment from the Planner Review about the issue of the bond. The Board should include a requirement in the approval that the bond was to be kept current. The Board should ask for an estimate of the individual operation based on the amount of stock piles of top soil, proposed steepness of slopes to remain, type of vegetation to be used to reclaim, etc. Russ Wilder noted that currently, there was a proposal for \$10,000 bond for the final reclamation, but it did not seem like that was enough. He read that there were no calculations of data that proved that the \$10,000 was adequate to reclaim what was currently disturbed. In addition, the bond needed to be recalculated every five (5) years, and that should be indicated on the plan.

Tom Hoopes stated that the amount the Board was looking for was if someone were to walk away from a project, how much would it cost to reclaim the property. Keith Babb added that currently 90% of the floor was reclaimed ledge pack and the only thing that was open was the bench where they were actually drilling. Technically, with what Russ Wilder just proposed with the vertical ledge wall being left alone, there were actually very little reclamation costs as it stood currently. Dave Hussey stated that the State allowed warm season grasses to be placed down instead of topsoil. Nic Strong asked Kate Varney if the benching was part of the State requirements. Kate Varney stated that a bench had to be created; there could not be a straight slope down. Nic Strong asked if the State was okay leaving the face there instead of them having slopes. Kate Varney was not sure, but she thought the State wanted the slopes. She mentioned that Tom Varney, P.E., was going by the State regulations as far as the slope/bench reclamation was. She thought that Keith Babb had enough material in the pit to do these slopes and not have to bring in any material. Russ Wilder stated that in order to keep the wall the way it was, he did not think the State was going to allow just a fence or just the boulders on top. He wondered who was going to maintain the fence or the boulders in the future. Virgil MacDonald stated that when the pit was reclaimed, Keith Babb was going to make sure that the boulders were evened out. Russ Wilder stated that they were just talking about not having the boulders there. Nic Strong asked if \$10,000 was going to be good enough. Russ Wilder was not sure if that was going to be enough. Roger Sample stated that he had the product for reclamation; it was just a matter of it being moved. Keith Babb thought for now since the bond existed and there were no issues that it should stand the way it was today. He mentioned that he would be coming back in with a modification to his permit. Russ Wilder stated that the bond needed to be based upon what was proposed in the current application. Nic Strong stated that Kate Varney just said that Tom Varney, P.E., designed the plan to meet state requirements.

**Virgil MacDonald moved to let the \$10,000 bond stand.
Dave Hussey seconded the motion.**

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Russ Wilder stated that if this application were to be approved, that meant that if Keith Babb abandoned the pit, the Town would have \$10,000 to create that slope and close up the pit; that would not be enough. Scott Williams asked Keith Babb if he was going to submit any alterations to what he had proposed tonight. Keith Babb stated that he would be back before the Board shortly. Scott Williams suggested amending the motion to let the \$10,000 stand for a period of six (6) months, and if he did not come back in, then the Board could revisit the bond amount.

Scott Williams MOVED that if within six (6) months the applicant did not submit a new or amended application, the applicant shall submit an engineer's estimate for the cost of the reclamation for the current excavation and the \$10,000 may require revision.

Virgil MacDonald seconded the motion, and it PASSED unanimously.

Russ Wilder mentioned that Keith Babb needed to get letters from abutters about the setback. Scott Williams stated Keith Babb also needed to get clarification regarding the easement holder. Keith Babb asked the Board if he needed to show them the future excavation in order get an approval. Russ Wilder stated that the only thing Keith Babb needed to show for future excavation was the work that this application covered from the South to the West, because it was not clear on the plans. Keith Babb asked if the Board would advise him to resubmit his plans and take the 2:1 slopes off for now. Dave Hussey asked if he was going to put a fence around it. Virgil MacDonald thought that if the plan stayed at 2:1, then the Board could make a decision when he brought the revised plan in. Tom Hoopes stated that the Board did not know whether the fence and the vertical wall were permitted. Russ Wilder stated that Keith Babb's engineer, Tom Varney, P.E., had recommended that in order to comply with the State he would have to stick with the 2:1 slope. Keith Babb stated that the vertical wall already existed because it was a granite quarry; therefore, it was not a gravel excavation.

Nic Strong mentioned that the Board should discuss the items from the December hearing. Keith Babb stated that he did clean up the blasting caps and det cord, and removed the rock debris by hand. Russ Wilder read from page 6 of the Planner Review and stated that the Board should discuss the regulation and permit administration schedule. Following initial approval of the excavation permit by the Regulator, the applicant should be required to be inspected every seven (7) years unless a different schedule was determined by the Regulators. Russ Wilder thought that the Board had already decided on an inspection every seven (7) years. The excavation permit shall be valid for a period of 50 years or until such time as the Regulator had determined the excavation operation was no longer in compliance. The permit shall specify the date on which it expired. He stated that Tom Hoopes suggested making the permit coincide with the expiration of the AoT permit. Tom Hoopes stated that the Board had talked about it, but it did not last that long. Keith Babb stated that the AoT permit lasted for five (5) years. Tom Hoopes asked if Keith Babb thought he would have more than five (5) years of work. Keith Babb thought the approval could be worded so that he would just submit a copy of his updated AoT permits to the Board. Russ Wilder stated that he would be inspected every seven (7) years for compliance, and he would update his AoT permit every five (5) years, and since the town knew what was going on as far as the excavation regulations went, he thought that having the permit expire in fifty (50)-years would be sufficient. Tom Hoopes stated that there was not 50 years of excavation. Scott Williams pointed out that in the regulations, if nothing were being excavated for a period of time, the permit would just die.

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Russ Wilder read from the Planner Review again regarding inspections. Nic Strong stated that the seven (7)-year inspection was for making sure that all of the application itself was current with the AoT permits, the annual, or more frequent site inspections had to do with making sure the edges had not fallen in any wetlands, or making sure that someone had not excavated further than proposed on the application. Scott Williams wanted to know if the Town Assessor would inspect the pits. Nic Strong stated it would be up to the Planning Board or their designee, like the Assessor, the Code Official, or whomever else they wanted to designate. Keith Babb stated that the Conservation Committee walked the full perimeter every year, because at least 50-58 acres of his property was in conservation. Russ Wilder stated that the Code Official could do it, or the Board could ask the Town Engineer to do the inspection; if it were the Town Engineer, they would have to charge the applicant. Scott Williams thought that the Board should predetermine costs, because some engineers could charge a lot of money. Russ Wilder thought that the Board should word it so that the Town would do the inspections. The Board agreed.

Russ Wilder noted that the Planner Review indicated that the Board still needed a safety plan. He pointed out that Keith Babb was going to bring in a copy of his safety plan. After a short discussion about how large this document was, he then thought that maybe there could be reference instead of having Keith submit the extremely large safety procedures. Keith Babb stated that in the Mining Safety Health Administration, Part 46, there was a whole section on how pits had to be run. Tom Hoopes asked Keith Babb if he had a number that was associated to his safety procedures. Keith Babb stated that Alton had its own mine ID with the Department of Federal Labor.

Russ Wilder went over the issue of fixing the area with the unsafe banking at the edge of the pit on Steele's property. He pointed out that there were boulders up at the top, and asked if Keith Babb needed to do more, should he construct a fence, and should there be signs posted. Virgil MacDonald thought that the Board prolonged this issue until Keith Babb submitted his revised application for the 60-foot deep pond. The Board agreed with Virgil MacDonald and stated that they gave him six (6) months. Right now, Keith Babb did not have to do anything more with the boulders or fencing, but it would be reviewed again in six (6) months.

Russ Wilder thanked Keith Babb for picking up the det cord and blasting caps. He stated that the Board needed a copy of the letter from Mr. Steele, an abutter. Dave Hussey asked about getting a letter from the Conservation Commission. Russ Wilder asked Nic Strong if she could find out whether the Town's Conservation Commission was an abutter.

Nic Strong pointed out that there was an additional abutter to the West that was affected by the setback some. Russ Wilder stated that Keith Babb would have to get a letter from that abutter also. Tom Hoopes stated it was the Knox Family Trust of 2016, Brian and Lynne Knox, and Martha O'Connor.

Russ Wilder MOVED that after due hearing, the Alton Planning Board hereby approves the above cited application for Green Oak Realty Development, LLC, for an excavation at Map 5 Lot 72, Suncook Valley Road, with the following conditions:

CONDITIONS PRECEDENT

The following conditions precedent must be satisfied prior to the Planning Board Chair signing of plans:

1. **Submission of revised plans in the number required by the Excavation Regulations and that include all of the checklist corrections, any corrections as noted at this hearing and waivers granted.**
2. **Addition of a note to the excavation plan prior to plan signing by the Planning Board Chair: This excavation plan contains a total of X sheets: [to be listed and dated by the applicant on the plan itself]. In combination these plans constitute in their entirety the excavation plan as approved by the Town of Alton Planning Board. All sheets are on file at the Town of Alton Planning Department.**
3. **Addition of a note to the excavation plan prior to plan signing by the Planning Board Chair: This excavation plan is subject to the Conditions of Approval itemized in the June 19, 2018, Notice of Decision on file at the Town of Alton Planning Department.**
4. **Submission of the surety for reclamation in the amount of \$10,000.00, and in the form of a bond. If within six months the applicant does not submit a new or amended application the applicant shall submit an engineer's estimate for the cost of the reclamation for the current excavation and the \$10,000.00 may require revision.**
5. **Receipt of letters from the abutters agreeing to excavation within the limits as shown on the plan.**

SUBSEQUENT CONDITIONS

The following subsequent conditions shall be met during construction and on an on-going basis:

1. **The applicant shall comply with all of the Town of Alton's Excavation Regulations.**
2. **The approval is based upon the application form, plans, specifications, documents and testimony submitted to the Planning Board. Any alterations, additions or changes to the plans are not authorized and require additional Planning Board approval.**
3. **Prior to the granting of any permit, or to the removal of any topsoil or other overburden material from a new area within an existing excavation site, the Applicant shall submit to the Regulator a bond with sufficient surety as determined by the Regulator. The purposes of the bond are to guarantee reclamation of the area and compliance with the permit. The security may be in the form of a performance bond, irrevocable letter of credit, cash, certified check, bank check, or any other form approved by the Regulator. The surety must be phased to coincide with the phasing of work, in an amount sufficient to guarantee reclamation of the applicable section, to**

be released as sections are completed. Prior to a new section being opened, new securities shall be posted. Town Counsel shall review the suitability and enforceability of the performance guarantee if it is in the form of a bond, irrevocable letter of credit or similar. The cost of said review shall be at the Applicant's expense. The security shall be recalculated every five years. The surety shall not be released until the Regulator is satisfied that all conditions of the site reclamation plan have been complied with. This shall be determined at a final site walk by the Regulator and/or its designee.

4. Amendments and Renewals

Permit renewal. The applicant may renew the excavation permit and continue excavation operations by making application to the Regulator following the same procedures as those required for the original excavation permit. The excavation permit application for renewal need only describe those information items which have changed in content from the previous application submission. Fees and bonding will be established by the Regulator for the renewal period.

Permit amendment. If adherence to the permit conditions (including the excavation/reclamation plans) cannot be maintained, or if the owner wishes to alter the size or location of the excavation or the rate of removal, the owner shall apply to the Regulator for a permit amendment following the same procedures as those required for the original excavation permit.

5. The Earth Removal permit is not transferable without the prior written consent of the Regulator.

6. A copy of the Earth Removal permit shall be prominently displayed at the site or the principal access to the site.

7. Regulation and Permit Administration

Following the initial approval of the excavation permit by the Regulator, the Applicant shall be required to be inspected every seven (7) years (unless a different schedule is determined by the Regulator during the approval process) to determine whether continued compliance with the conditions of approval and any other applicable standards is being maintained.

8. Inspections

The Regulator or its designee may conduct site inspections of all excavation sites, both permitted and exempt, to verify permit compliance on an annual basis unless a more frequent site visitation is necessary due to special characteristics of the excavation/reclamation plans.

9. Hours of Operation. Hours of operation associated with an Excavation Operation shall be seven days a week, normal business hours and in accordance with the Town of Alton Noise Ordinance.

10. **Stopping of Removal/Excavation Operations**
If removal/excavation operations stop for more than one year with no notice thereof provided to the Regulator and said stoppage is not in accordance with the approved excavation plan or due to bad weather, the excavation permit may be revoked and the performance bond forfeited with its proceeds used for reclaiming the land in accordance with the approved reclamation plan.
11. **Applicant shall submit one copy of any plans or reports that are approved by the NH DES Alteration of Terrain Bureau within 30 days of said approval.**
12. **The Earth Removal Permit is valid for a period of fifty (50) years; or, until such time as the Regulator determines the Earth Removal Operation is no longer in compliance with the Town of Alton Excavation Regulations; or, until such time as the operation shall be deemed to be abandoned as defined in the Excavation Regulations; or, until such time as the owner informs the Regulator that they will no longer be running the Excavation Operation; or, until such time as the operation is depleted; or, until the completion date as determined by the Regulator in the regulatory process, in accordance with RSA 155-E:8, whichever first occurs; in this case 6/19/2068.**

Dave Hussey seconded the motion.

Roger Sample opened public input. No public input. Roger Sample closed public input.

Roger Sample asked the Board for a vote, the motion PASSED unanimously.

Roger Sample stepped down as chairman for Case # P18-15, and Scott Williams sat in as chairman.

4. Design Review

Case # P18-15 Bradford Jones of Jones & Beach Engineers, Inc., Agent for Roger Sample, Owner	Map 9 Lots 53 & 53-2	Design Review/Major Site Plan Residential Rural (RR) 117 New Durham Road
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The Chairman read the case into the record.

Present were Brad Jones, agent, and Roger Sample, owner.

Brad Jones stated he had a set of revised plans to give to the Board tonight. Scott Williams asked that he pass them out to the Board. Brad Jones stated that back in 2007, this subdivision was owned by Mr. Spain, and he had originally proposed a subdivision with 20 lots, which ended up being revoked. He

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shared that the property had 66.17 acres, about 49 acres of it were uplands, and 17 acres were wetlands. He stated that he had drawn up a plan to remove the lot lines from the proposed subdivision and he wanted it to be recorded.

Brad Jones referred the Board to page C.3, which showed what they were proposing. The plan showed one townhouse with five (5) units. The development would be using the access road that was built for the subdivision. Brad Jones still needed to design a septic system. There was a detention pond in the same location that was proposed for the subdivision, which the water from the parking lot would drain into. Page C.4 showed the grading of the subdivision, riprap swales on either side of the road, an underdrain on one side, and there were slopes that carried into the adjacent property, but they were in receipt of an easement that was created with the old subdivision. Page C.5 showed all of the utilities. There was an existing overhead electrical line, but a pole would be added; the lines would run underground to the units. On page C.5, it indicated the 4,000 s.f. septic area and proposed leach field. The lighting plan provided details of the poles and LED lights. Scott Williams mentioned the lights needed to be dark sky compliant, 3,000k color; the Board liked the warm light versus day light. Brad Jones then talked about the sight distance, which was previously approved with the old subdivision.

Scott Williams asked if there were any architectural elevations; Brad Jones stated they were on the last sheet of the plan. The building would be 80 x 34 ft. Roger Sample stated the buildings had two different levels, the second floor cantilevered over the first floor. Dave Hussey asked what the square footage was for each floor; Roger Sample stated it was 16 x 34 ft. x 2.

Russ Wilder asked if Brad Jones had any pictures of what the structures would look like. He noted that the plans stated that they were going to be Westchester modular homes. Roger Sample stated that was where he got some of his ideas. Russ Wilder asked if it was stick built; Roger Sample stated, yes. Scott Williams stated if both floors were the same size, the unit would be 1,088 s.f. Brad Jones stated that the overall footprint of the building was only 2,720 s.f. Russ Wilder went onto the Westchester modular homes website and it looked like they had asphalt shingles and clapboard siding. Roger Sample stated he was going to use vinyl siding and asphalt shingles. Roger Sample shared that the building would have a 100-pound snow load.

Tom Hoopes asked if the property was going to stay as one lot. Roger Sample stated, yes. Russ Wilder pointed out that Roger Sample went from ten (10) units down to five (5) units, and indicated that the Planner Review needed clarification on a possible formal traffic study for traffic impact. Brad Jones wanted the Board to remember that the property had formerly been approved for fifty (50) units. Roger Sample stated he changed his proposal because of the AoT permit requirements. He shared with the Board that if he went with the ten (10) units, it would put him a bit over the AoT requirements, and he needed to get going with construction. Russ Wilder stated that the Conservation Commission saw the plan and noted that where the current road met New Durham Road, it was abutting a right-of-way that was established in the previous subdivision. He stated that the reason why it was questioned was because it encroached on the wetland buffer, and it appeared that he was locked in by the right-of-way. Roger Sample stated he was locked in by the two silver maple trees that he wanted to keep.

Russ Wilder wanted to talk about landscaping, and mentioned that he like the idea of keeping the two maple trees. Roger Sample stated that he had some apple trees and was planning to put in more.

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Russ Wilder asked about the lighting plan because it was not really detailed. Brad Jones stated that there was a lighting plan, but it did not have the light values; there were only two poles and the buildings would have their own lights. Roger Sample stated that there would be a pole out near the dumpster area and the power company would install a light. Russ Wilder asked if it was going to become a town road. Roger Sample stated, no.

Russ Wilder noted that the Board needed to talk about stormwater drainage and erosion control. He pointed out that there was a detention pond. Brad Jones stated that there was a drainage report that needed to be finished. If there were more units, he would look at the rest of the drainage as a whole. Russ Wilder thought if they were contemplating on doing more, the drainage report should anticipate the additional work. Scott Williams asked if Roger Sample was going to be burying the LP tanks; Roger Sample stated, yes. Brad Jones mentioned that they were also going to be putting in an underground trip. Scott Williams asked if a manifold system was going to be placed on the building and be metered; Roger Sample stated, yes.

Scott Williams then asked about the 112-foot well radius. He asked if, with the additional units being built in the future was he going to install a second well. Roger Sample stated, yes. Brad Jones looked up the gallons per day, and for two 2-bedroom, and three 3-bedroom units, it was 1,800 gallons per day. Scott Williams asked about a water manager. Brad Jones believed that the threshold was 10,000 gallons a day. Nic Strong thought that Brad Jones took the plans from the old subdivisions, so he probably should check this against the highway policies and regulations, because some of the cross-section things did not meet those requirements. She was not sure if waivers were granted, and if they were, they would have come from the Highway Department. Brad Jones stated that it was a private road. Scott Williams mentioned that Stone Meadow Commons was a private road that was similar in idea to Roger Sample's. Nic Strong stated that the Board should not let people build a private road to anything less than the Town's standards. Scott Williams stated that they had. He noted that Stone Meadow Commons had a 15-foot travel way and part of that was considered a sidewalk. Nic Strong asked what the Board had in place to make sure that the road never came to the town to be accepted as a town road. Scott Williams thought it would be part of their regulations. Tom Hoopes stated that it did not meet town regulation, so it could not be. Scott Williams stated that if they wanted to upgrade it they could. He thought it could be made a condition of approval that the road would never become a town road. Nic Strong thought that the Board just had this discussion about Hilltop Subdivision and that was not how things worked out with that. Scott Williams thought it was different because that owner was doing a subdivision, and Roger Sample was only doing a road. Nic Strong stated that the Site Plan Regulations stated that all public and private streets, roads, driveways, sidewalks, etc., shall conform to the requirements and standards of the Town of Alton Highway Policies and Regulations. Brad Jones stated that the road was twenty (20)-feet wide, with two (2)-foot shoulders, with a 3:1 slope, and he thought that met the town standards. Tom Hoopes questioned if a twenty (20)-foot road was acceptable if he was to build twenty (20) units.

Russ Wilder referred to the Planner Review about appropriate screening and buffers; he thought that the units were tucked back far enough that no screening or buffers were needed. He then shared that no details were provided as to how much dirt work was required for this application. He pointed out that information would be provided once the road was designed. Scott Williams asked if they were using slab construction. Roger Sample stated, no, there were going to be 4-foot frost walls. Brad Jones stated that the cuts and fills were indicated on the plan along with the grading. Russ Wilder went over another issue,

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which was the need for a recreation area. Scott Williams asked if there were any snowmobile routes nearby. Roger Sample stated that he did have snowmobile trails going right through the property, there were chickens, and gardens. Russ Wilder asked about a sign. Roger stated that there was only one sign out there now, which was Roger Terrace. Scott Williams asked if he was going to put up a business sign, like “Ferncroft Apartments”. Scott Williams stated that if he was going to put up another sign that it needed to be indicated on the plan.

Russ Wilder read from the Planner Review, which indicated that there was no deadline, but at a public meeting, the Board could determine when the Design Review was done, and if they had seen enough information. Once the Board deemed they had enough information, a letter would be sent out within ten (10) days stating that the design review part of the project was complete. Brad Jones mentioned that Roger Sample had been before the Board before for a conceptual consultation. He thought that he was here tonight to get an approval on his application. Scott Williams stated that this application was for design review. Nic Strong stated that for a major site plan, he needed to do a design review application first, and then come back in with a final application. She shared that the Board could not do a site walk until the Planning Board had jurisdiction on an application, which was at the final. Roger Sample was a bit confused about the process. Nic Strong stated that his application at tonight’s meeting was submitted as a design review and not a final application because design review was a required step for major site plans.

Scott Williams opened public input. No public input. Scott Williams closed public input.

Russ Wilder MOVED to notify the applicant that the Design Review process of his application had ended.

Dave Hussey seconded the motion, and it PASSED unanimously.

Scott Williams stepped down as chairman, and Roger Sample resumed his seat as chairman.

5. Voluntary Lot Merger

Case # P18-14 Thomas Fry, Owner	Map 19 Lots 62, 60, & 61	Voluntary Lot Merger Rural (RU) Rines Road
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The Chairman read the case into the record.

There was no one present for this case.

Russ Wilder mentioned that on lot 62 there was a 10-acre conservation easement to the Lakes Region Conservation Trust. Nic Strong stated that apparently that had been determined that it was not in fact on lot 62, it was located on lot 62-2; therefore, that did not apply to this application.

Nic Strong pointed out that the two (2) conditions precedent, were already taken care of. She noted that the taxes were not due until July 1, and could be considered current.

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Russ Wilder MOVED that after due hearing, the Alton Planning Board hereby approves Case #P18-14, Voluntary Lot Merger application for Thomas D. Fry, to merge Map 19 Lots 60, 61 & 62, for municipal regulation and taxation purposes. No such merged parcel shall hereafter be separately transferred without subdivision approval.

Scott Williams seconded the motion.

Roger Sample opened up public input. No public input. Roger Sample closed public input.

Roger Sample asked the Board for a vote, and the motion PASSED.

Other Business:

1. **Old Business:**
2. **New Business:**

Brad Jones came to the table to speak to the Board about High Point Drive, Alton Mountain Estates. He stated that they were getting ready to do the top coat. Last fall they were getting ready to pave and after contacting the Town and SFC Engineering, he was given an escrow amount of \$5,000 to inspect the top coat; he thought that was rather high. He wanted to know if he could switch engineers. Scott Williams thought there was a problem with the engineers and if things were not straightened out he was going to make a motion to get rid of them. Russ Wilder stated that SFC Engineering was no longer working for the Town. Nic Strong stated that there was more than just the top coat to inspect. She stated it was up to the Board to decide what they wanted to do. Russ Wilder stated that the Town now had Northpoint Engineering and KV Partners, SFC was no longer the town engineer. Brad Jones mentioned that CMA was working on the project in the beginning, and then Farmhouse Engineering took over. Brad Jones shared that he did not want to go backwards if things were already approved. He stated that there was a bond in place for the road. He was going to contact Nic Strong at the beginning of next week to work out what engineering firm he was going to pick.

Scott Williams MOVED that Brad Jones could select from one of our current engineers.

Dave Hussey seconded the motion, and it PASSED unanimously.

Brad Jones would contact Nic Strong about getting an engineer.

3. **Approval of Minutes:** May 15, 2018, Planning Board Meeting

**Russ Wilder MOVED to approve the minutes of May 15, 2018, as presented.
Tom Hoopes seconded the motion, and it PASSED unanimously.**

**Scott Williams moved to consider item 4.b first since the applicant was present.
Virgil MacDonald seconded the motion, and it PASSED unanimously.**

4. Correspondence for the Board's review/discussion/action:

- a.** Discussion re: Construction Monitoring Escrow Estimate from Northpoint Engineering, LLC, for Alton Bay Self-Storage, Map 38 Lot 21-1.

Paul George came to the table. He stated that \$22,000 was a lot of money to inspect the porous pavement. He thought the quote was written more like a construction management contract than it was just to oversee the porous pavement. He shared that this was the same company that he paid to review the plan, and they did not have it in time for the meeting. He pointed out that originally, the estimate was \$26,000, but he talked to them and they dropped it down to \$22,000. He stated that he was doing a project in Hollis right now with porous pavement. His total bill came in at \$4,500 for inspections. He thought this was outrageous.

Nic Strong shared that the approval from the Planning Board was that an estimate for construction observations for the installation of the porous pavement and drainage infrastructure be in place for this project. She stated that the set of construction observation guidelines included a checklist of points that should be inspected and that was what Northpoint used to prepare their estimate. It was their first job for the Town and so they went with those guidelines and regulations that were in place. Once Paul George got in touch with the office through his engineer, Northpoint went back over the estimate and changed their amount. Paul George asked why Steve Smith could not do this and certify the construction since he had already worked on the plans. Nic Strong stated that was a discussion that Kevin Leonard from Northpoint had with Bill Stack, P.E. and he did not have the impression that there was going to be any onsite monitoring by the design engineer company at all. Paul George stated that Bill Stack, P.E., was going to have to do some time out on the project.

Tom Hoopes asked if Northpoint listened to exactly what the Board had requested; did they understand what the Board asked them to do. Paul George stated that the estimate included \$7,500 for testing. Nic Strong stated that Bill Stack told her that he estimated \$8,000. Scott Williams asked what there was to test. Nic Strong stated that if you looked at the porous pavement, there were a myriad of layers, and in order to make this site work in this location for AoT purposes, the density of the buildings, runoff and stormwater, was to do porous pavement. The inspections based on the plan that was designed, all the layers of pavement, was what was broken down in the estimate. She noted that if the Board needed more information, they should talk to Northpoint to get their expertise.

Paul George stated that he would rather give his money to Steve Smith. Virgil MacDonald thought that the estimate was loaded. Dave Hussey asked Paul George if he was the one who asked for the estimate. Paul George stated it was the Planning Board. Roger Sample stated there was a choice between two Town Engineers. Virgil MacDonald asked why Paul George could not use the engineer that he had because an engineer had a stamp, and once he stamped the plans, he was sure that the engineer

would not want to lose his job over something. Tom Hoopes stated that the policy had been that one engineer represented the applicant, and the other engineer represented the town. Paul George expressed that he thought some of the items listed on the estimate were extremely high and he did not agree that some of those inspections would take as long as estimated.

Russ Wilder suggested to Paul George to get in touch with Northpoint to inform them that the estimate was high and to resubmit. Paul George stated that he did that. Scott Williams suggested having KV Partners review the estimate and have Steve Smith put together an estimate so he could have a comparison. Russ Wilder stated that the Board had a process that they needed to stick to; they could not make things up as they went along. Paul George asked if the Board required a third party engineer on every project. Scott Williams and Russ Wilder stated, yes. Paul George asked if he could have a third party bid the job. Russ Wilder stated that the Board had gone through a process to select engineers for the Town. Tom Hoopes thought there might have been a misunderstanding.

Russ Wilder asked if Ken Roberts knew what would be necessary if the Board had him look at this. Scott Williams stated, no. Paul George stated that maybe he could have Steve Smith write a guideline for what the engineers needed to be looking at. Russ Wilder stated he should go ahead with that and then submit it to Nic Strong. Virgil MacDonald stated that Ken Roberts did all of the research around the Bay for porous pavement. Russ Wilder thought it could be worthwhile to have Ken Roberts look at it.

- b.** Letter from Donald E. Card, Jr., dated May 22, 2018, to Nic Strong, re: changing the gift room portion of his store, the Alton Bay Corner Store, into a beer and wine pub.

Russ Wilder shared that Donald E. Card, Jr., was proposing a bar in his store. Virgil MacDonald asked if that constituted change of use. Scott Williams stated, yes, and he had to address septic loading. He had to install male and female bathrooms if he was going to serve alcohol. Russ Wilder stated that Nic Strong provided an email from back in May that included the Fire Department, Police Department, and John Dever, III, Code Official. Russ Wilder read a note from the Planner, which showed that this request would be considered a change in use under the site plan regulations and would require a minor site plan. Nic Strong stated that the owner wrote a letter dated May 22, 2018, to the Board because he did not agree with her determination that he would need a site plan. Russ Wilder thought it was an expansion or a change of use.

Dave Hussey asked if Mr. Card needed to go before the Selectmen first to see if he could sell beer and wine. Virgil MacDonald stated, no, the Selectmen only signed the license. Scott Williams stated that the Fire Department had to do their inspection and then the permit would be released. He mentioned that in that zone, the Town had approved off-site parking for all of the businesses in the Bay, so parking would not be an issue; he thought, yes, for a minor site plan. Mr. Card needed to check his septic loading and he would need separate men/women restrooms. Scott Williams stated that

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APPROVED

the back section used to be a laundromat. The Board agreed that a minor site plan was needed. Scott Williams thought that the letter proposed there would be room for 21 seats. If he was to use plastic, he would use 315 gallons of water a day, which was just for the bar area, not including the store or the deli. Virgil MacDonald mentioned that there was a three-bedroom and a two-bedroom apartment upstairs.

Dave Hussey noted that the plan proposed outside seating arrangements, for three tables with four seats each. He asked if they were planning on service alcohol outside. Tom Hoopes stated that Mr. Card thought that people might want to eat their sandwiches outside.

Tom Hoopes MOVED that the Board notify Mr. Card that he needed to come in for a Minor Site Plan Review.

Russ Wilder seconded the motion, and it PASSED unanimously.

5. **Correspondence for the Board's information:**

6. **Any Other Business that may come before the Board:**

Public Input on Non-Case Specific Local Planning Issues

ADJOURNMENT

At 10:18 p.m., Scott Williams MOVED to adjourn.

Dave Hussey seconded the motion, and it PASSED unanimously.

The meeting adjourned at 10:18 p.m.

Respectfully submitted,

Jessica A. Call
Recording Secretary

Minutes approved as presented: July 17, 2018