

Minutes of November 22, 2005

Members Present: Chairman: Thomas Hoopes, Ex-Officio: Alan Sherwood, Jeremy Dube, Jeanne Crouse, and Bruce Holmes

Alternates: Bonnie Dunbar

Members Absent:

Other Present: Town Planner: Kathy Menici, Secretary: Carolyn Schaeffner

Call to Order: Chairman Hoopes called the meeting to order at 7:03 p.m.

Appointment of Alternates: Chairman Hoopes appointed Bonnie Dunbar to replace Cynthia Balcius.

Approval of Amended Agenda - Kathy Menici presented the changes in the agenda. Noted amending the order of the agenda, recommended moving Profile Bank application to beginning representing a change of use from commercial office to commercial retail. Next P05-84 Saulnier, Caltaldo and Babcock requested to be continued to December 20, 2005 meeting due to personal circumstances with a break-in with his home. Also had a request from Attorney Tanguay representing Hank Brandt on P05-77 asked to be moved to the end of the meeting this evening? Concluded by asking for action to approve these changes in the agenda.

Motion Bonnie Dunbar, Second by A. Sherwood to accept the request to continue Case P05-84 to the December 20, 2005 meeting. No discussion. Voted unanimously.

Motion Bonnie Dunbar, Seconded by A. Sherwood to approve the agenda as amended. No discussion. Voted unanimously.

Public Input – seeing and hearing none, closed by Chairman Hoopes.

**Case#P05-82
Profile Bank, LLC**

Map 29, Lot 38-1

**Site Plan Review
31 Mooney Street**

Application submitted by Wendy Cruz for Site Plan Review for retail space to be located in an approved office building. The property is located in the Residential Commercial Zone.

Bruce Holmes stepped down from this case.

A. SHERWOOD: question to Planner as to the completeness of application.

K. MENICI: confirmed using all documentation from prior approved site plan. After consultation with applicant last month and the Board agreed that there was not a need to have new plans drawn because the standards for both uses were about the same.

A. SHERWOOD: confirmed that using all existing plans that all requirements have been satisfied.

K. MENICI: Confirmed Mr. Sherwood's question.

Motion: By A.Sherwood – Second by B.Dunbar to accept Case P05-82 as a completed application. No Discussion. Voted unanimously.

WENDY CRUZ: Stated she would like to put a flower shop on first floor with approximately 600 sq. ft. Parking is preapproved as commercial office and is the same for commercial retail. No sign changes will take place other than what is already approved. Profile Bank has already had a marquee style sign approved. This is really just a simple change of use not doing anything outside of the scope of what is already there.

T. HOOPEES: Concern from Road Agent did not want cars parking on the road, even for deliveries.

W. CRUZ: Confirmed acknowledgment of concern.

B. DUNBAR: Hours of operation question.

T. HOOPEES: Confirmed hours of Monday - Friday 9-6, Saturday 9-2. Open this case to the public. No public input seen or heard.

Motion – By J. Crouse – Seconded by B. Dunbar to approve the change of use from commercial to retail in Case P05-82. No discussion. Vote Unanimous.

At this time Bruce Holmes took his place back on Board.

Case #P04-49

Map 12, Lot 2

19-Lot Subdivision

Wentworth Cove Realty LLC

Pearson Road & NH 28

Application submitted by Randy Orvis, Orvis & Drew, LLC on behalf of Wentworth Cove Realty, LLC for a nineteen-lot subdivision. The proposed subdivision will result in the creation of an extension of Pearson Road and 19 new lots. The property is located on NH 28 and Pearson Road in the Residential Rural Zone. The application was accepted at the November 8, 2004 meeting and has since been continued.

Jeremy Dube is stepping down from this case.

New maps distributed.

Brad Hunter, Randy Orvis, and Melissa Guldbrandsen present to represent case.

K. MENICI: Stated changes in design of the drainage plan including a detention pond which is something that the Board had not seen before. Noted a meeting on the 21 of November between the applicant and his design team, Town Planner and the Town Review Engineer and will distribute a memo of the Town Engineers review letter on the proposed changes. The Review Engineer noted that there was an overall decrease of flow onto the Birdsee property. They noted the drainage easement on your plans on lot 5 and lot 6 in that area would be an increase of flow off of these subject parcel on to the abutters property and that Mr. Birdsee had actually made the Town Planner, and a number of other people that that was the side of the property they had been receiving the greatest drainage problems on. Development team went back after the DuFresne-Henry review and came up with the way to equalize the flow. There is no net increase anywhere

and the noted the overall affect is a net decrease from all of the points in which there is flow from the subject parcel on the abutter's parcels. There are five points on the property from where they were measuring the drainage flow and the goal was to have a net decrease across all five points and with this new drainage design which includes the detention pond, they finally succeeded in doing that.

M.GULDBRANDSEN: Points out the detention pond design is relatively shallow with just over a maximum of 3 feet deep and it is designed as a dry system which will drain in a total of 81 minutes. Town would have the ability to access the detention area.

T.HOOPES: Stated this is not something that stays with the land and the landowner.

M.GULDBRANDSEN: There will be an association in place to take care of both the roads and the detention pond until accepted by the Town of Alton. Intent is to have the right for Road Agent to maintain the detention pond. Renee from Dufresne-Henry was going to follow-up with details with Ken on this.

K.MENICI: Confirmed the request from Renee to determine the crossing over private property basically even though there is an easement, in order to maintain this detention pond. She has not heard from Renee or Ken regarding this follow-up.

A.SHERWOOD: Noted that in the past Ken Roberts has expressed a desire to avoid having maintenance responsibilities.

K.MENICI: Aware of this.

M.GULDBRANDSEN: The idea would be that it was temporary but it can be drafted so the Association stay in place indefinitely with an annual assessment for maintaining drainage.

A.SHERWOOD: At some future time the town may or may not want to take over this responsibility for maintenance.

T.HOOPES: What is the wording on the drainage easements? Do the land owners have use of the property as well? Is this being removed from the lot? Unsure of translation and meaning.

M.GULDBRANDSEN: The land owners simply own the land and have the responsibility of not interfering with the drainage pond.

A.SHERWOOD: Would this be grassed over?

M.GULDBRANDSEN: We discussed this at length at the meeting. Initial concept is yes, but there would be expectation of wetlands type of vegetation growing. Suggested to have a row of shrubs to mark boundary of pond:

T.HOOPES: Concern of space if there was a septic failure.

R.ORVIS: Yes. These lots are twice as big as they need to be regarding State requirements.

T.HOOPES: Question: The water, "report says pipe unknown locations in certain places." Will there be mapping of pipes after cut and fill?

R.ORVIS: It's located under the road.

A.SHERWOOD: Agreed, said that as built has to include the location and depth of the water main and should be noted at every intersection and every lot.

R. ORVIS: Confirmed good location on every lot.

T.HOOPES: Asked for any more questions.

A.SHERWOOD: The letter from the Town Engineer dated November 22, 2005, noted a couple of items pending. Recommendation for permits be applied for. Questioned if they have applied for a State subdivision.

R.ORVIS: Have not submitted State subdivision application but have submitted Wetlands, and Site Specific.

A.SHERWOOD: Mentioned items not complete. Item number 7, not sure of details but says comment not adequately addressed.

K.MENICI: When we met yesterday, Renee was very clear that there will still some issues that were left to be resolved. Felt most would be resolved when they got into the field. Stated Renee informed her that they had a very agreeable design engineer that he is working with and felt they were both coming from the same place but working on a few minor details.

A.SHERWOOD: Item 3, 7 and all sub-comments under Item 11 seem to be open.

K.MENICI: On number 7 we did have agreement from Bob Moynaham that this would be resolved.

A.SHERWOOD: Number 11?

J.CROUSE: question on number 7. Does this mean they will change plans accordingly?

K.MENICI: Confirmed yes.

J.CROUSE: Item number 9 is that Planning Board issue or Town issue?

T. HOOPES: Stated this is a Town road which is the jurisdiction of the Selectmen.

A.SHERWOOD: number 9 there was discussion at the Selectmen's meeting on this. They discussed grassing this over to make it look like a continuous road rather than a circle.

B.HUNTER: Willing to do whatever Ken Roberts would like us to do. Doesn't mind leaving the cul-de-sac. One abutter would like them to leave it. They had discussed putting up stop signs at the connector road

intersection.

K.MENICI: Compared Items to the estimate that was prepared by DuFresne-Henry for the road construction and associated drainage and noted that all items mentioned for in Item 11 a-f are accounted for in the estimate. Feels that this is a statement from DuFresne-Henry that they expect these items will be addressed as described in the letter.

T.HOOPES: Has one more topic to bring up, mitigation. Spoke with Jocelyn and she has not had a chance to look at this. At present he understands there is a disturbance of 14,000 square feet which means that there has to be some mitigation. Basically, he wants to be assured that the applicant is aware of the sizable funds that this is going to entail. If the cost of the mitigation is great enough the design may have to be change from a financial point of view.

R.ORVIS: Confirmed they are aware.

A.SHERWOOD: Had one other item to mention regarding ownership of the proposed road with a small portion where the applicant does not own a fee interest but has a deeded right of way. He discussed this with the town attorney and his opinion was that this is not a problem and at some time in the future when there is a proposal that the town accept the road, that the town would want a meets and bounds deed for all of the roadway that you have a fee interest in and a meets and bound right of way for the portion where you only have the right of way. If that meets and bounds right of way can be conveyed over to the town at a future date then there is no problem.

M.GULDBRANDSEN: Discussed with the owner of the underlying land that the ideal way to do this was to convey fee simple interest to the town of that portion and that this would be beneficial to her with the town maintaining the road.

A.SHERWOOD: The town attorney described that this is not an issue the fact that as long as you have a metes and bounds described right of way that could be conveyed.

T.HOOPES: Any other questions?

M.GULDBRANDSEN: She asked about possibilities of onsite mitigation to Jocelyn and she stated they do not do this anymore.

T.HOOPES: Open floor to public.

James Bureau: Abutter to property. If and when construction begins could access for construction vehicles to be on 28 not on Pearson Road.

B.HUNTER: Confirmed that they would make every effort to use Route 28 and Pearson Road only when necessary.

A.SHERWOOD: Town would like that also.

J.BUREAU: Can this be added as a condition?

T.HOOPES: Yes.

A.SHERWOOD: Question on traffic alternative.

J.BUREAU: It would be nice to have the islands that start as a point to 7 ft and go back and approximately 35 feet long as suggested from Ken Roberts.

R.ORVIS: Islands may interfere with access to driveways.

T.HOOPES: Suggested speed bumps.

R.ORVIS: Speed bumps are not conducive to winter plowing, noted another plan that he had seen in Vermont that had speed dips.

B.HUNTER: Island idea might be something nice that would differentiate the subdivision from Pearson Road; help create and entrance.

A.SHERWOOD: Suggest discussing this with Mr. Roberts and the local residence regarding plans to pursue this.

T.HOOPES: Thank you for your input. Inquiry for more public input. None seen or heard. Closes public input and go back to deliberations.

A.SHERWOOD: Stated he thinks we are close with a few loose ends.

K.MENICI: Stated she has an estimate with regard to the bond that would be required.

A.SHERWOOD: Would like to have well thought out conditions tonight.

K.MENICI: Shared she has the list of conditions included in report.

A.SHERWOOD: Have you had a chance to read through all the comments from Dufresne-Henry?

T.HOOPES: Questioned in the transfer of these lots will there be mention of the wetlands and the drainage easements and all other things because the lots are so small and putting up markers could be encouraged.

M.GULDBRANDSEN: Yes, they would be liked as subject to in the Deed. The covenants and restrictions can be adapted to . . .

T.HOOPES: Would like to make it clear for new owners what the description of a wetland is. Would like a copy of the 11 x 17 to be included in the closing packet.

M.GULDBRANDSEN: Confirmed this could be done.

T.HOOPES: Question of any signage depicting wetlands? Inquired as to the status of the application with

DOT for the usage of the road?

B.HUNTER: Just have had verbal conversations with Randy Talon but have not anything official yet.

R.ORVIS: State that the intent was in the future that a road was to go through there.

T.HOOPES: Concerned about double usage.

B.HUNTER: There was another entrance up towards Bay Hill Road that was given up.

T.HOOPES: Still the acquisition of a permit is crucial. Questions the conditions for hydrants?

R.ORVIS: There are three hydrants are on.

K.MENICI: Confirmed yes and availability is town water.

A.SHERWOOD: Making sure the applicant has the list of conditions.

M.GULDBRANDSEN: Condition number 4 is Certification of Organization for the Homeowners Association filed with the Secretary of State. States she had intended to do the Association as an unincorporated association which still has articles of agreement which is not filed with the Secretary of State. They can do it that way but depending how the road agent responds to maintaining the detention pond. The Association does not have any common land so there is no real purpose of the Association beyond the temporary maintenance of the road until it is dedicated to the town. Her analysis was there was no real need to have it incorporated with the Secretary of State and then later dissolved. If this Board feels strongly about that they will certainly do it that way.

T.HOOPES: Questioned is the Homeowners Association regulations are enforceable only by the homeowner.

M.GULDBRANDSEN: Confirmed.

K.MENICI: Stated that this is a standard condition and had been worded differently and had been worded as Melissa suggested and our attorney asked that we changed it to be recorded even though it was temporary given the length of time it needs to be in place.

M.GULDBRANDSEN: Has no objection to that.

R.ORVIS: Wanted to the Board to note that there are four hydrants, not three on plans.

A.SHERWOOD: Would like to additions to conditions:

1. Construction vehicles use Route 28 access rather than Pearson Road whenever possible.
2. Applicant to work with abutters and Road Agent to consider a traffic calming solution at current cul-de-sac location.
3. Homeowners Association agreement provides for maintenance for off road drainage structures.
4. The final as built is to include location of water mains.

Questions about number 1?

K.MENICI: States this is up to the Board. It is a standard condition on a site where there are wetlands impacts. There are a couple of areas of wetlands on lot 19. It not even a lot, it an easement area where there is a wetlands and also lot 4 and 5 that have small pockets of wetland and also lots 8, 9 and 11 have very small areas.

T.HOOPES: This was confirmed to be included in the deeds along with 11x17 maps to show this.

K.MENICI: They also extend on to abutting properties.

A.SHERWOOD: Any other suggestions?

T.HOOPES: One that DuFresne-Henry had which was to not to consider until all applications have been at least filed and the State Subdivision has not been filed yet.

K.MENICI: Wetlands and site specific have been filed. Subdivision and septic have not been filed.

R.ORVIS: Confirmed they will not look at this until they get the wetlands or site specifics.

A.SHERWOOD: Asked if there was any issue in meeting any of the items in the Town Engineer letter of November 22, 2005.

R.ORVIS: See no problem. Also on lot 19, rather than marking 25 ft for wetlands it may be more appropriate to mark the drainage easement boundary, which is more than 25 ft.

T.HOOPES: Agrees with that idea. Lot 19 is predominantly the road and the wetland?

A.SHERWOOD: So if there was a condition of approval that said applicant to satisfy all the items in the Town Engineers letter of November 22, 2005 that would cover it? There is a lot to be done on the final plans. I would just as soon reference that.

B.HUNTER: Bob and Renee's conversation was that all the issues are minor that are left to deal with. The detention pond is obviously something new, the level of spreaders were the original idea not on this side of the property was going to be a large butterfly shaped level of spreader and it was agreed that this would be adequate drainage. Someone else at DuFresne-Henry reviewed this and had a difference of opinion and came up with they were not some concern and he was of the opinion that was not the same. Brad stated he wants to do the right thing and if a detention pond is a better way, then he will do it.

M.GULDBRANDSEN: stated that to file a Certificate of Organization you need 5 signatures of members of the Association which can be done after the lots are sold out, so is this a condition subsequent?

A.SHERWOOD: Yes.

Motion: by A.Sherwood and Seconded by B.Holmes moved to approved Case P04-49 subject to 17 conditions. The first 12 of which are those included as an attachment to the Town Planner's report dated

November 14, 2005. That included on number 1 that "XXX" represent 25 ft., number 12 "xx" represent 23 sheets, and the next "xx" represent 4 and the last "xx" represent 6. The complete will read below.

1. Trees along the boundary of the 25 foot of wetlands buffer be flagged on the plat and in the field on trees approximately every 25 feet with permanent markers identifying them as the wetlands buffer. All proposed signage to be reviewed and approved by the Planning Board.
2. A note be added to the plat state erosion control will be in place prior to excavation or timber cutting.
3. The *Declaration of Covenants, Drainage Easement and Slope Easement* to be approved by Town Counsel.
4. Certification of Organization for the homeowner's association to be filed with the New Hampshire Secretary of State's office. Copy of certificate and proof of filing to be provided to the Planning Department.
5. The language and conditionals of the proposed easement deed for the detention pond to be accepted by the Board of Selectmen. If the Selectmen do not accept the language and conditions of the proposed easement deed, an Administrative Review will be required.
6. Security in the form of a letter of credit with self-calling features or cash to be submitted to and approved by the Town Attorney for the installation, maintenance and inspection of the detention pond and associated drainage, with amount to be determined.
7. Security in the form of a letter of credit with self-calling features or cash to be submitted to and approved by the Town Attorney for the construction and inspection of the roads for 23 months, with the amount yet to be determined.
8. A note on the plat stating the total acreage of each current use category for each lot number.
9. An amount necessary for inspections to be placed in an escrow account, amount yet to be determined.
10. As-built plans for roads and final engineering inspections to be completed and all boundary points to be set and prior to the release of the security for the roads and associated drainage system.
11. All necessary state, local and federal permits to be obtained prior to the beginning of excavation or timber cutting; copies to be provided to the Planning Department.
12. The following notes are added to the mylar and final plat sheets for recording:
This subdivision plan contains a total of 23 sheets, which in its entirety constitute the subdivision plan as approved by the Town of Alton Planning Board. Sheets Number 4 through 6 are recorded at the Belknap County Registry of Deeds; the remaining sheets are on file at the Town of Alton Planning Department.

This subdivision plan is subject to the Conditions of Approval itemized in the November 22, 2005, Notice of Decision on file at the Town of Alton Planning Department.
13. Construction vehicles use Route 28 access rather than Pearson Road whenever possible.
14. Applicant shall work with the road agent and abutters to consider a traffic calming solution at the current cul-de-sac location.
15. Homeowner's association agreement shall provide for maintenance of road drainage structures.
16. The final as-built is to include location of water main.
17. Applicant shall satisfy all of the items in the Town Engineer's letter dated November 22, 2005.

T.HOOPES: Asked for discussion. Marking the exact boundary of the drainage easement. Condition 1 – wetlands marked in the deed. Mark drainage easement in lot 18, so people would see that it was an easement area.

K.MENICI: Wetlands buffer proposed. Randy suggested particular for lot 18 to mark boundaries for

drainage easement area rather than the wetlands.

R.ORVIS: Confirmed this was correct and stated actually on lot 18 the driveway may come very close to this.

Amendment to Motion A.SHERWOOD: Amended to say with the exception of lot 18 driveway access with a 10 ft. buffer on Condition 1.

T.HOOPES: B.Holmes seconded corrected motion. No discussion. Voted unanimous.

J.DUBE resumed his place on the Board.

**Case#PO5-83
Daryl Breed Hoitt**

Map 34, Lot 37

**Site Plan Review
Mt. Major Highway**

Application submitted by Melissa Guldbrandsen of Alton Law, on behalf of the property owner for a Site Plan Review to reconfigure Unit 2 (The Alton Bay Pavilion) of the Pavilion Property Condominium to encompass seven (7) two-bedroom residential units and two (2) commercial retail units. The property is located on Mt. Major Highway in the Residential Commercial Zone.

K.MENICI: Stated no waivers have been requested or submitted so the Board can accept the application as complete and open the public hearing.

T.HOOPES: Asked for questions.

J.CROUSE: Questioned if the size of this plan is larger than the 3-lot sub-division.

T.HOOPES: Yes it is, but ZBA Variances were granted and are on record.

B.DUNBAR: Stated there is no indication as to parking and other configuration of other condos on the same property.

K.MENICI: With regard to site plan question, the IGMO specifically restricts subdivisions to 3-lots or less with all lots fronting on a class 5 road. This is a conversion of an existing building and not a typical sub-division. The ZBA has granted a variance to allow more than 4 residential units in a single structure. Because it is an existing structure and they are only reconfiguring the interior, with no changes to exterior or to the site the staff didn't feel there was any need any further than that. This Board does have the final say.

J.CROUSE: Does this fall into the Interim Growth Management Ordinance or not?

K.MENICI: Not necessarily. They are not creating or taking any new lots. The condominium is one lot as it stands and this is reconfiguring that lot.

J.CROUSE: Does not see this as that. She sees this as sub-dividing this lot in 9 units which is more than the IGMO allows this Board to look at.

T.HOOPES: That is also the question is this is a site plan. Are we dealing with a site plan or sub-division?

A.SHERWOOD: One comment – there need to be second application for subdivision to go along with the site review application.

M.GULDBRANDSEN: Understands but would like to respond to Mr. Sherwood's statement. Has met with the Town's Attorney to determine the best process to approach this. His suggestion was to start with the Zoning Board regarding variances. The discussion of whether this is a sub-division vs. some other hybrid type application is one that we did address and analyze with him. There is no division of land, as the Town Planner has stated. The unit that we are dealing with is already in a condominium. The Declaration for that condominium gives each unit owner the right to further divide the unit into additional condominiums.

J.CROUSE: Feels they are asking to change the use and propose further sub-division.

M.GULDBRANDSEN: This is already a condominium.

A.SHERWOOD: Feels this requires a subdivision application.

J.DUBE: Questions if there really is a difference since this is already in condominium ownership.

T.HOOPES: Questions how would they possibly sell something that is not demarcated.

A.SHERWOOD: It's the sub-division of one unit.

B.DUNBAR: States they can sell fractions of one unit. Stated they have not received a variance for 229.b If they were to sell new unit, the Pavilion itself, but you are planning new construction, this variance explicitly says the construction shall not exceed 4 units per building for all multi-family structures built after 2004. These units will be built after 2004. This variance needs to be achieved to do this.

M.GULDBRANDSEN: The variance from section 301 was specifically to permit more than 4-multi-family units within a structure.

B.DUNBAR: Understands that but this is another variance.

M.GULDBRANDSEN: This is not new construction with an existing structure which is being reconfigured.

B.DUNBAR: It is very different from a conversion. Conversion is an existing structure and uses and your use does not exist as you propose it. It is a new use, residential new use. It falls under new construction for a condominium conveyance. These units do not exist.

Daryl Breed Hoitt: The attorney' read of that was that the new construction was interpreted as new building instruction and reconfiguration meant existing structure of the building and led us to go forward under the 301 variance rather than the 229b variance. It would have been one or the other, not both.

K.MENICI: Confirmed that this is how the attorney explained it. There was a meeting of Daryl, me, Melissa, Jay and Mike, Brian Boyers and the Fire Chief. Kathy stated she could get this clarified for the Board.

A.SHERWOOD: The attorney read the paragraph from 672.14 sub-division, the division of the lot tract or parcel of land into two or more lots, plats, sites, or divisions of land for the purpose, whether immediate or future of sale, rent, lease, condominium conveyance or building development. . .

D.HOITT: Stated they were not dividing the parcel in anyway whatsoever.

A.SHERWOOD: Asked if she agreed it was being divided for condominium conveyance.

DHOITT: The lot parcel or plot of land has already been divided into three parts and that building lot is not being further divided in any way only the interior of the building and there is some case law on that too.

A.SHERWOOD: States this is being divided for condominium conveyance.

DHOITT: That is reference to the lot or parcel of land which has interpretation.

A.SHERWOOD: He is just going by what the attorney told the Board very explicitly. A site review will allow you to construct multiple units in that building that is under single ownership. But if you want to take those units and sell them to various parties, his opinion there needs to be a sub-division as well.

M.GULDBRANDSEN: Stated there is not an application in this building that fits a condominium project. They submitted a site review with the intention that this is more a hybrid application. They were not trying to skirt full analysis and review of this project.

A.SHERWOOD: In our zoning under conversion says that it is permitted in any district.

T.HOOPES: Even if you go to site plan how can you transfer if there is no definition of them?

M.GULDBRANDSEN: We need Planning Board approval. The condominium statute is very clear.

A.SHERWOOD: We agree with that. We are saying that we understand we need site plan application as well as sub-division application. We can ask the attorney if the Board's understanding is wrong.

T.HOOPES: In terms of legal process, the way it is defined and what Attorney Sessler told us was that any conversion, and this is not so much a conversation as it is the transfer of this one unit into 9 units. We can seek clarity from him.

A.SHERWOOD: Does not see a problem with the proceeding with a site plan application and then seeking clarification to see whether you need an additional application as a companion

M.GULDBRANDSEN: Confirmed in agreement.

Lee Maserian: Stated they were only looking for 8 units. One unit is two retail spaces.

K.MENICI: Confirmed this. But these are joined with one common access. The way the ordinance is written is it recognizes that there are two separate retail spaces even though those retail spaces are under a

single ownership.

M.GULDBRANDSEN: Confirmed this was how this was presented.

ASHERWOOD: Going back to the acceptance of the application, feels he does not have an issue with its acceptance.

J.CROUSE: Still sees this as a sub-division.

A.SHERWOOD: Sees it as a condominium conversion. The site review only gets them multiple units within under the same ownership.

T.HOOPES: Thinks they need to confer with Attorney Sessler.

A.SHERWOOD: Feels there are two separate legal questions.

T.HOOPES: Is this a violation of IGMO and or what has to be done to deal with the sub-division of a one-unit condo into 9 units.

J.CROUSE: Questions if this should be better to continue the cases and try to meet with Attorney Sessler before the next meeting rather than to accept what we have and then have to dismiss this?

K.MENICI: It would be a matter of continuing the discussion of acceptance which has been done in the past when there have been questions.

A.SHERWOOD: Two legal questions, the first having to do with the acceptability of this case allowable under IGMO and does there need to be a companion application for sub-division?

J.DUBE: Thought the attorney was very clear about the sub-division.

T.HOOPES: Feels there was still a question.

J.DUBE: The attorney put it into changing ownership.

K.MENICI: That was a slightly different situation it was with regard to the following case that the Board had that discussion.

J.CROUSE: Since the attorney for the applicant has met with the Town's attorney and seems to come away with a different opinion I think it would be in our interest to clarify this specific application with him.

J.DUBE: Does not feel this is sub-division for what they have proposed.

A.SHERWOOD: The question is whether or not creating 7 new living units fits within the IGMO that has a limit of three. That's the legal question.

T.HOOPES: What Jean is saying is she would rather not accept the case.

Motion. By J.CROUSE, Seconded by B.Dunbar moved that we continue the discussion of acceptance until the December 20 for Case P05-83. Discussed they are looking to have the two questions answered that have been stated by A.Sherwood. Vote was 5-1. Jeremy Dube opposed.

Case#P05-77

Map 36, Lot 28

Site Plan Review

Brandt Development Corporation

167-173 Mount Major Highway (Rte. 11)

Application submitted by William Tanguay, attorney, on behalf of the property owner for a Condominium Conversion. The property is located in the Residential Commercial Zone, The Town of Alton Shoreland Protection Overlay District and the NHDES Shoreland Protection District. The application was accepted at the October 25 meeting and continued.

Representing this case are William Tanguay and Henry Brandt

K.MENICI: Stated facing the same similar issue with this case.

A.SHERWOOD: Felt this was already a sub-division application.

Henry Brandt: Said he believes they did submit a sub-division application.

K.MENICI: Stated that was a site plan application.

H.BRANDT: Stated that the editorial letter that accompanies this application states in the letter that this is seeking sub-division approval.

A.SHERWOOD: Stated we have already accepted this case. My suggestion is that there are other things we have to talk about.

K.MENICI: The other issue that we have with this one, even though they are submitting plans for unit 1, 2 and 3 this is a 4-lot sub-division. If you notice on the plan there is also a unit 4 which is under construction and it's not yet completed and do not have a floor plan in front of us and we have an issue with IGMO that needs to be clarified.

T.HOOPES: We are in a legal conundrum

K.MENICI: The board can rescind the previous action if they feel necessary or can continue discussion pending discussion with legal counsel.

A.SHERWOOD: My suggestion is we proceed with issues we have questions on, ask the town attorney all questions relative to this.

J.DUBE: It contradicts with what we have already done with the previous case.

W.TANGUAY: You have already accepted our plan as being complete.

JDUBE: Says he doesn't think anything else should be discussed because of the action taken just previously.

T.HOOPES: The requirement that Jim Sessler said was that it has to come in as a sub-division.

W.TANGUAY: But you have accepted the plan and that changes all the ground rules. If we had violated the IGMO then you should have told us that before you accepted the plan.

J.DUBE: I understand that we have accepted this, but it may have been a mistake and we missed something and need to consider what we are doing.

A.SHERWOOD: Agreed.

T.HOOPES: The question is should we discuss some of our concerns.

WT: You have the plan and we are now in and it's too late to raise that issue.

B.DUNBAR: We can't judge what it is until you get into talking about the details.

H.BRANDT: When does that expire?

A.SHERWOOD: end of the year this year, December 31, once it is passed it is part of zoning.

H.BRANDT: May I throw a hypothetical to you. If this were a 3 unit sub-division would it comply with the IGMO?

T.HOOPES: No, because three units is two sub-divisions and the mother lot, this would be three units and mother lot.

H.BRANDT: We are currently proposing 4-units as you can see. If two were merged so you were looking at three.

K.MENICI: You run into two dwelling units on a single lot, and you can't do that in that zone.

W.TANGUAY: I think there is confusion when you use the word lots. They are not lots. What you have is one lot.

K.MENICI: We really need to get some clarity.

A.SHERWOOD: Agrees with the Board after thought that this needs to be clarified. We don't know.

W.TANGUAY: Unfortunately last month we needed to continue so you could talk to counsel. I would like to be able to meet with counsel but has not returned my phone calls. Now we come back tonight and sent away again because of unsure reasons.

T.HOOPES: One of the reasons is we requested that this be changed from site to sub-division.

W.TANGUAY: Doesn't believe that is correct.

T.HOOPES: Stated he wrote a long letter saying he didn't agree, we countered the letter why it did have to be a sub-division, and the wording in the minutes was conditional on being a sub-division.

HB: I personally penned most of the application, and stated that we didn't agree but would submit this application for sub-division as the town has required.

WTANGUAY: Felt that was what they were here to do.

T.HOOPES: What Attorney Sessler stated to us was how can you transfer different units if they are not sub-divided? You can't.

WTANGUAY: But you can. We have a fundamental difference of opinion as to what that statute means.

T.HOOPES: The State's Statute is not a variable on that.

W.TANGUAY: The State's Statute has been interpreted by the Supreme Court in a way that is different than what Attorney Sessler has told you. If you read what it says, it means the division lots, plats, sites, or other divisions of land. Anything has to be a division of the land. Condominium does not create a division of the land.

K.MENICI: Attorney Tanguay is reading from the State Statute with regard to land use law, he is not reading from the condominium act and there are inconsistencies between the two.

A.SHERWOOD: We are not trying to give you hard time, we are following what our Town Attorney has advised us and you agreed to go through a sub-division process. We need clarity if this fits within the IGMO and whether we in fact need to have this application changed to a sub-division application. I feel we did get clarity from the attorney that fundamentally what you are proposing to do is a change of ownership and the condominium conversion process is appropriate.

A.SHERWOOD: Fundamentally you are looking for a change in ownership.

W.TANGUAY: Correct, and that is done by addressing the condominium documents.

A.SHERWOOD: In the plan, correct. We should be consistent and get advice and come back next month.

WT: Questioned the use of the word lots and doesn't feel this violates the IGMO.

T.HOOPES: That's a question we are going to ask attorney Sessler.

HB: In getting back to my proposal, can the lots be combined.

T.HOOPES: We will need to ask that question.

A.SHERWOOD: We'll ask that question and ask for clarity on revising the application, yes or no.

W.TANGUAY: Is it possible we can find out what it is he required before we come back again?

A.SHERWOOD: We will make every effort to provide you feed-back in advance to the next meeting.

H.BRANDT: Is there any way we can be moved up on the agenda? Expressed concern for the longevity of this process.

T.HOOPES: Discussed the busy agenda and splitting these meetings.

K.MENICI: Explained the process they chose to use when deciding on the order.

B.HOLMES: Inquired as to time limits on getting information from attorney.

K.MENICI: the Board has never put a limit on this.

B. HOLMES: If the attorney comes back and states items to do, would they have enough time.

K.MENICI: This is an unusual application and allowances can be made regarding deadlines from the applicants.

A.SHERWOOD: In this case and the previous one we need to meet with the attorney and should set this up as soon as possible.

K.MENICI: In both situations, both would just have to change the title on the plat.

W.TANGUAY:

A.SHERWOOD: Would like to itemize the problems that need to be resolved.

1. Does this application fall within the exception of IGMO and is it allowed. If it is not allowed, if it was reduced to three ownership, 1, 1, and 2, 2 being under the same ownership would than then meet the requirement of the IGMO, that's the second question.

3. Do we need to have a separate subdivision application or can this application be re-titled as a site plan subdivision application?

T.HOOPES: Add what should be recorded.

H.BRANDT: I am quite sure this was submitted as a sub-division application.

K.MENICI: This was a site-plan application.

A.SHERWOOD: It is possible that they in good faith thought they were doing the right thing.

HB: You should have a letter from me in there stating that this was an application for sub-division application.

B.DUNBAR: Read from the letter stating that they stated site plan is attached.

A.SHERWOOD: Third question is given where we are can this be application be re-titled or reclarified.

Discussion regarding H.Brandt's feeling he did submit this sub-division application.

K.MENICI: Asked if a work session is needed to be scheduled.

Discussion when this could be scheduled with the Board.

Motion by J.Dube, Seconded by B.Dunbar to move we continue Case P05-77 to the December 20, 2005 meeting pending legal advise from counsel. No discussion. Voted unanimous.

No old business.

New Business:

K.MENICI: Marcella Perry presented the Capital Improvements Budget to the Planning Board which was voted in. We had discussion of Scott Williams request for an extension, this was not granted and he is out of the country and has not been able to be contacted to follow up on issues. Nextel and Gridcom information in your packets was simply informational. The third item was a request from Jeff Caley regarding a security for the road construction Bond at Merrymeeting Estates. We have had the Town's Review Engineer out there and they have recommended that the bond be reduced to \$27,343. Jeff told me that he had information that he wanted to present to the Board that would support a low assurity amount and he planned to be here but is not. So what would the Board like to do? We currently have no bond, it is expired and the Town is a risk right now.

There was discussion regarding self-calling bonds and when then have been put in place. There are other ones that have been expired and Kathy is taking action them.

Jeff has been in contact with the Community Bank in Wolfeboro and they are just waiting on notification of what the about is going to be. The Board needs to decide.

Motion by Bruce Holmes, Seconded by J.Crouse moved to accept the reduced rate of \$27,343 as recommended by the town Engineer, discussion by Alan Sherwood regarding to the choice of the form of the security. Voted unanimously.

T.HOOPES: We did not have a quorum at the last land use meeting. December 23 is the last date for zoning. Please notify when you cannot get to the meetings.

Discussion on revisions on the land use.

K.MENICI: Concerned on timing and focus should be on amendments and then take up issue on land use chapter.

General discussion on meeting again and setting a date.

General discussion on amended revisions.

General discussion on cell tower meeting.

Proposing a possible meeting for Tuesday or Wednesday afternoon to finish the residual new pages so the document can be presented for final form. It has been reduced tremendously.

Motion by B.Dunbar, Seconded by J.Crouse to adjourn. No discussion. Voted unanimously.