

## DRAFT MINUTES OF DECEMBER 3, 2008



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### **Hebron Planning Board** Minutes of Public Hearing 12/3/08

**Members Present:** Roger Larochelle (chair), Ellie Lonske (vice chair), John Matthews (selectman), David Wall, Chuck Beno, Martha Twombly (alternate), Mitch Manseau (alternate), Joe Hogan (alternate) and Sheila Oranch (secretary).

**Others Present:** Dan Merritt (building inspector), Ron Ward (Camp Berea), Roy McCandless (attorney, D'Amante Couser Steiner Pellerin, P.A.), Alan Barnard, Barbara and Richard Delaney (Limited Editions), Willard (Bud) Martin (attorney, Martin, Lord & Osman, P.A.)

**Time Convened:** 7:05 PM    **Time Adjourned:** 10:05 PM

**Next Meetings:** 12/15/08 work session; 1/7/09 hearing

#### **Agenda:**

1. Administrative Matters and Announcements.
2. Review minutes of prior meetings for additions, corrections and adoption.
3. Approval of the proposed subdivision regulations.
4. Continuance of Jaques ET AL subdivision and boundary adjustments.
5. Informational to discuss procedures for variance for Site Plan for Camp Berea, Tax Map 19A, Lot LVP-12 to add three 48-bed cabins
6. Informational to discuss procedures for continuance of Limited Editions (Rogers Ledge West)
7. Discussion about potential Zoning Ordinance amendments
8. Any other matters that come before the Board.

#### **Administrative Matters/Announcements**

Roger Larochelle welcomed John Matthews as Selectmen's Representative in John Dunklee's absence and noted that there may be work sessions in December and January to prepare for any warrant articles about zoning changes.

#### **Review Minutes**

Other than correcting pagination, there were no additions or corrections to the minutes of 11/5/08.

**Chuck Beno moved/Ellie Lonske seconded a motion to adopt the minutes of the November 5, 2008 hearing as submitted. PASSED**

#### **Approval of Proposed Subdivision Regulations**

Ellie Lonske was called upon to give some background about the changes and to describe the process. The dates of amendments are not on the first page, to make it easier for reader to know which version they have, and there are two appendices. The Planning Board has authority to modify and adopt Subdivision Regulations and holds hearings to obtain input and suggestions. Bud Martin asked if a reader could tell what was changed from previous versions. Ms. Lonske replied that it has to be taken as a new document. Richard Delaney asked about road curve radius. Ms. Lonske described her sources and considerable research and said that it is based on a good model. There were no further comments.

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**Chuck Beno moved/David Wall seconded a motion to adopt the proposed Subdivision Regulations. The motion was PASSED unanimously.**

Roger Larochelle requested that 15 copies be made for the Planning Board, Select Board and a few extra for interested parties. The Regulations and Appendices will be posted on the Town website for any to download and print. Previous versions are available in the Selectmen's Office.

### **Jaques ET AL**

Alan Barnard reported that the agreements have been sent for signatures and all parties have agreed verbally. Continuance was granted to 1/7/09.

### **Informational to discuss procedures for variance for Site Plan for Camp Berea**

Ron Ward and Roy McCandless were present to present information. Mr. McCandless said he had been helping out the camp since last spring about taxes and the Camp has agreed to \$17,500 in the PILOT program. He is continuing his service on the Site Plan review. He explained that when they went to the ZBA they discovered abutters who had called because they didn't get notice of the hearing. This was because they had bought small cabin lots on the Lakeview property since the list was generated. He gave history that Berea has been a camp since 1945, in 1973 they had a change of use, in 1998 they added more beds and in 2004 they installed an improved septic system, replaced a cabin to increase beds and expanded to year-round use. In 2007 they gave an informational about their vision to build three new cabins and eventually, as money becomes available, expand to 500 beds. They have reviewed the neighbors' concerns and are seeking a solution that pleases everyone. As there is currently not enough money to build the proposed three cabins, they are considering building a cabin closer to the administration building and taking out some old cabins, to it would be a bed-for-bed replacement. This would additionally result in moving facilities away from the lake shore, which addresses some of the concerns expressed. This action should not need ZBA review, only Planning Board approval as it is not an increase or change of use.

Roger Larochelle described what the Town Attorney had advised. Camp Berea is a non-conforming, grandfathered use. At the 2007 Site Plan Review the Planning Board judged it as a change of use and that it needed a ZBA variance. There has been a chicken-and-egg discussion online that leans toward requiring a variance first. If the Camp is proposing the same number of beds, the Planning Board can hear the application because it is not an expansion.

David Wall asked for clarification of the current proposal. Roy McCandless said they don't believe they need to go to the ZBA if they wanted to build three new cabins. In the long run, they are not abandoning that vision, but they are not taking it up now. What they feel they need now is the one new cabin with 48 beds, which will enable to remove three cabins containing a total of 48 beds, so no gain-no loss. Ron Ward said the concern of abutters about noise is due to having five staff cabins near the property line. Any time you have people living somewhere, there will be noise. Roger Larochelle said again if there is no expansion, it's a regular Site Plan Review. Roy McCandless said there is a 30-year history of the Town tolerating expansion within camps. Ellie Lonske said since she has been a Planning Board member, the Camp has come occasionally with a little tweaking, small increases and there has been no outcry. The new vision was to increase from 350 to 500 beds. The Board at this point can only adhere to ordinances and regulations and take advice of Town Counsel. Is the current proposal only the same number of beds? Both Mr. McCandless and Mr. Ward agreed that it is a bed-for-bed swap. David Wall said in that case, no harm-no foul.

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Ms. Lonske and Mr. Ward exchanged some further comments. Mr. McCandless showed the 3-cabin dream to build out to 500 beds which is what the State approved the upgraded septic system for. It cost upwards of \$200,000 to install. Mr. Lonske clarified how the vision was requested and presented. Mr. McCandless said again he frankly believes that someday, when there is money, the Camp may come in with a plan for more cabins. For now, they only intend to propose the one cabin that replaces the old cabins. John Matthews gave the opinion that this proposal will not require attorneys if there's no increase.

Roger Larochelle closed the discussion and said in defining jurisdictions, it is a Site Plan for a swap, so they can separate and act on this application without regard for any future plans. There is no issue. He asked the members of the Board to each state his/her opinion.

Ellie Lonske said she has no objection to the same number of beds. When you say the Camp went to the State to get a 500-bed septic system approval and installed it at great cost that is of no relevance to the current plan. If, in the future, you want to do more, that's a separate application.

David Wall said it is irrelevant what was spent on a septic system, although it is great for the Camp that they got it built at earlier costs.

Chuck Beno said you could look at this as similar to a phased subdivision. He would like to know about future plans.

Martha Twombly agreed with David Wall and Ellie Lonske that if there is no expansion or change of use it is just a Site Plan Review.

Joe Hogan and Mitch Manseau said they agreed.

Roger Larochelle asked for public comments.

Alan Barnard asked the Board's position on going to the ZBA before the Planning Board. Should any applications go to the ZBA first or to the Planning Board to get an administrative ruling first? Roger Larochelle said he would encourage an informational at the Planning Board first.

Alan Barnard described Special Exceptions from the ZBA for summer camps in the past. Summer camps are treated as a conforming use if they are grandfathered, had a special exception or variance. They have never needed a variance for expansion. Once there has been a variance (Section K), the camp is a permitted use and therefore conforming.

Roger Larochelle asked Roy McCandless if everything was clear. Mr. McCandless asked if he may communicate directly with Town Counsel. Ellie Lonske pointed out that John Matthews just said no legal advice is needed. Just get the updated abutters list and get on the agenda. After some discussion it was agreed that this item would most likely be submitted for the agenda in February 2009.

Roger Larochelle asked Mr. McCandless to confirm that the number of beds is the only factor. Mr. McCandless said it is the only one being considered.

Martha Twombly had one more question. Would a change of use include going from a summer camp to a year-round conference center? There was no discussion of this question.

8:07 PM Break

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**Informational to discuss procedures for continuance of Limited Editions (Rogers Ledge West)**  
Chuck Beno (abutter), Martha Twombly (Conservation Commission Chair) and Joe Hogan (petition signer) recused themselves from discussion of the Limited Editions application. Mitch Manseau stepped up as a voting member. Barbara and Richard Delaney, and Bud Martin represented presented information. Attorney Bud Martin said he had “submitted a motion to certify members of the panel” and referenced page 2 of the letter he had sent. Roger Larochelle pointed out that the three members who had reason had already recused themselves and taken seats in the public audience. He noted that the only member who had signed the petition came on the Board after the application was denied. He noted that Roger LaFontaine, who has never been a member of the Planning Board but is on the Zoning Board, was mentioned, and that should be corrected to Roger Larochelle. Martha Twombly is an alternate who came on the Planning Board after the denial. Chuck Beno, an abutter, has recused himself from the beginning and never signed the petition. Also, the correct spelling of his name is Beno, not Beano. Roger Larochelle and Ellie Lonske were on the Board all along and David Wall went from alternate to member last year. John Matthews and John Dunklee, currently serving as Selectmen, did not sign the petition. Mitch Manseau stepped up and that brings the Board to a quorum. The Board may have to recruit more alternates to assure all seats are filled when the continued application comes up for consideration again.

Bud Martin asked if the Board had met on this issue since the denial and if so if there are minutes. Roger Larochelle said there have been no meetings, no minutes. He asked if Mr. Martin wanted a written response to the Board certification question. Mr. Martin said that would be helpful. Mr. Larochelle said he would draft a statement. He said another item was a “motion for ruling and procedural history” and asked where they are going with that and what they are seeking. Mr. Martin said they wanted to assure that the Plan to be discussed was the one submitted in March 2006. Mr. Larochelle said that would be helpful because the Board needs to be clear about which materials are required to be continued. Mr. Martin said he identified that Plan as Application I, but there is no reason why the Board cannot take into account subsequent materials.

Ms. Lonske said it sounds reasonable and she would like to echo what Mr. Martin said. The Plan was reviewed with an application for a road waiver and when that was denied the next plan was much different. But it would be unreasonable to dismiss the Environmental Impact Study (EIS) and the Wetlands Study. They should be perfectly valid. Another part was a comparison of a later plan and is probably not relevant. The third part found fault with septic systems of abutters and is irrelevant. So a lot of the work (and expense) should not need to be redone. Just discard the parts that are not useful or relevant. We all learned a lot from the process. If the goal is to come in with a plan this Board can approve, look at the reasons the final plan was denied. Try to meet us halfway.

Bud Martin said this is a fluid process and in order to succeed we are not here to create a legal case. My role is to be a problem solver. As we move forward we may need to bring in people who know more such as Alan Barnard on road radius.

Roger Larochelle said we need additional clarification and terminology and should only examine information that is relevant. The Plan that best represents the application is the one used in Court. We will need to obtain that. One thing that is unsettling is the notion of multiple applications being considered. One is with the ZBA, another is in court. How can we be dealing with a single application so we can focus all our energy on moving forward with that?

Bud Martin said he agreed. The client felt aggrieved by the decision in March 2006. At that time, it made sense to start another proceeding. At this point, all those versions are in the public sphere.

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There is no reason their information cannot be considered. Let's use March 2006 as a benchmark and discuss materials as they seem relevant, reserving them to be made use of as appropriate.

Roger Larochelle said the onus is on the Applicant to bring up materials to be considered. Mr. Martin said in the planning process is appropriate to bring in anything the Board or the Applicant feels appropriate. Mr. Larochelle said as long as there are two other applications hanging out there, if this one fails they can still be brought forward. Mr. Martin said we would not want to dismiss good information such as the letter from the Fire Chief. Ms. Lonske said it an ideal world it would have been better for the first application to go through the court and come back. But meanwhile there was this other application with a lot of data considered and denied. It is intimidating to make the hearings more like a court of law with motions and recourse to lawyers. Mr. Martin said Mr. Delaney is also anxious and he wants to achieve an acceptable plan. Our goal is to come to conclusion of both matters; come to a plan the Board can endorse and drop the other proceeding.

Mr. Larochelle said this evening we really want to focus on process. We need to notify abutters at the Town's expense, break out the copy of the Plan we all agree on, and then determine which information is still relevant. Ms. Lonske asked which name should be used. Richard Delaney said to use Rogers Ledge West. Mr. Martin said but do use any materials of value. Mr. Larochelle said the Board could take this up on 1/7/09 with a refreshed abutters list. Alan Barnard said he will review the list for current accuracy. All parties should be provided with copies of the Zoning Ordinance at the time of the application. Sheila Oranch, secretary, said she would create an index of minutes relevant to the case. David Wall said as Board members are reading minutes they should funnel issues to Roger Larochelle. Richard Delaney said they would prefer to wait until February to give everyone a chance to get up to speed after the holidays.

David Wall said it would make sense to vet the documents for relevance and get deep into the materials before taking up the application, perhaps as a work session. Mr. Larochelle said the concern is the Freedom of Information Act (FOIA) and that the Board cannot discuss any case without full notice of a hearing. In January they can ask for a continuance to 2/4/09 but the Board must continue to 1/7/09 and then continue it again. Ms. Lonske said that any proposed zoning changes will be heard in January and on a tight schedule, so everyone will be very busy. David Wall asked whether the applicant would be comfortable waiting until after Town Meeting in March. Richard Delaney said they can't wait until April. They would very much like to dedicate some time to going through the materials. Ms. Lonske asked when a workshop becomes a hearing. Mr. Martin said from his experience on planning boards, generally the first hearing is to review what is before the Board. After that it gets more like a workshop.

Mr. Larochelle said going back to defining the process, first they must notify abutters. It has to be posted as an agenda item and then there can be a review of previously submitted materials to discover what may be relevant. Alan Barnard offered to make a copy of "the" plan used in court when Roger Larochelle gets it back from the attorney. Richard Delaney asked what version of Zoning and Subdivision Regulations apply to Plan I. He was assured that they are in the copy with the blue cover, which Alan Barnard has. Mr. Delaney said it was not their intention to intimidate when they went to court; it was just a business decision. Plan II had some better points and they would not want to waste the work invested. They are open to "fast forwarding" to make use of better information. Roger Larochelle said the Planning Board will review the information in February to see what is relevant. Notices to abutters will go out January 8. Mr. Martin said not to leave common sense at the door, if later thinking is better, take it into account.

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### **Discussion about potential Zoning Ordinance amendments**

Dan Merritt presented suggestions about terminology he had discussed with the Selectmen about using the term “accessory building” instead of “dwellings” in buffer zones. Ellie Lonske discussed a document sent to her by Peter Carey for the Zoning Board. Ms. Lonske will collate the suggestions. The Board agreed to hold a work session on December 15 to discuss suggested zoning amendments.

### **Other Matters/Announcements**

Alan Barnard informed the Board that he will submit for the 1/7/09 agenda the Cilley Brook Lane boundary adjustment that was previously discussed at an informational presentation.

Roger Larochelle noted that the Board also needs to discuss the CIP (Capital Improvement Planning) committee, the 2009 calendar of meetings, budget and administration.

**Ellie Lonske moved/Chuck Beno seconded a motion to adjourn at 10:05 PM. PASSED**

### **SUMMARY OF MOTIONS**

**Chuck Beno moved/Ellie Lonske seconded a motion to adopt the minutes of the November 5, 2008 hearing as submitted. PASSED**

**Chuck Beno moved/David Wall seconded a motion to adopt the proposed Subdivision Regulations. The motion was PASSED unanimously.**

**Ellie Lonske moved/Chuck Beno seconded a motion to adjourn at 10:05 PM. PASSED**

Respectfully submitted,  
Sheila Oranch, secretary