

**TOWN OF LOUDON  
ZONING BOARD OF ADJUSTMENT  
MINUTES OF  
JUNE 28, 2007**

**REGULAR HEARING**

Chairman Dave Powelson called the Loudon Zoning Board of Adjustment meeting of June 28, 2007 to order at 7:30 PM at the Loudon Community Building.

**ROLL CALL:**

The following members were present: Alternate Brenda Pearl, Howard Pearl, Roy Merrill, Chairman Dave Powelson, George Saunderson, Vice Chairman Ned Lizotte, and Alternate Jon Huntington. Dan Geiger and Bob Butler were present from the Conservation Commission.

**I. ACCEPTANCE OF THE MAY 24, 2007 MINUTES:**

Ned Lizotte made a motion not to accept the minutes until they include the proposed decision for consideration by Zoning Board of Adjustment that he read into the minutes and that was left out on page 5; seconded by Roy Merrill. Dave Powelson said he understood that Mr. Lizotte is intending to add the verbiage to the minutes. He said he had discussed this with Donna upon his return from vacation and the minutes had been printed. Mr. Powelson said he thought it would not be required that the full proposed decision be written in the minutes as it was part of the decision and part of the record. Mr. Lizotte said there is no clear identification of what was read. Mr. Merrill said he would like to see it done so that people can read the whole thing. Donna stated that the proposed decision has been attached to the official meeting minutes and is available to anyone who requests to see it. She explained that the full decision was not included in the minutes due to its length. Mr. Powelson suggested that the form of the motion be changed for clarification, asking if the intent would be served by saying to accept as presented with the insertion of this verbiage. Mr. Lizotte said yes. Roy Merrill said he would prefer to see the minutes printed before accepting them. Howard Pearl asked if they would prefer to see the minutes reprinted. Mr. Powelson said he believes it still leaves the form of the motion a little confusing. Ned Lizotte said he would like to make the motion to insert what was read last month from town counsel. Dave Powelson said he has no problem with the request but it seemed a little long and there is still the initial motion to deal with. Mr. Lizotte retracted his motion and Mr. Merrill retracted his second. ***Ned Lizotte made a motion to table the approval until next month pending the insertion of the verbiage to page five of the minutes; seconded by Roy Merrill.*** Bob Ordway asked what verbiage was being discussed. Chairman Powelson explained that it was proposed verbiage that was provided by the town attorney as part of a decision last month that was read into the minutes but not printed. He explained that a copy of the decision was attached to the official minutes and that some were of the opinion that it should be in the minutes. ***All were in favor.***

- II. MOTION FOR REHEARING:** Chairman Powelson stated that he contacted the town attorney about the motion for rehearing filed by Septic Disposal Solutions, Map 40, Lot 7, and the attorney recommended that the Board not act on it tonight. Mr. Powelson said that per RSA 677:3 II they could, if they chose to, suspend the order and take it up next month. He restated it as to suspend the decision. Ned Lizotte said he thought that was reasonable as that would give the attorney time to address the motion for rehearing. Howard Pearl said he would have to recuse himself if the Board was acting on the motion. Brenda Pearl also recused herself. Jon Huntington was appointed as a voting member. Roy Merrill made a

motion to suspend it to next month; seconded by Ned Lizotte. There was no discussion. **A roll vote was taken: Roy Merrill – Yes; Dave Powelson – Yes; George Saunderson – Yes; Ned Lizotte – Yes; Jon Huntington – Yes.** Chairman Powelson stated that the motion for rehearing is suspended until next month and will be taken up at that time.

Howard Pearl and Brenda Pearl returned to the Board.

### III. PUBLIC HEARINGS:

Case # 07-08, Matthew & Edith Benton – Special Exception for Reduced Setback, Map 41, Lot 10. Abutter Dan Garcia was present. Mr. Benton explained that he is requesting a reduction to a 15' setback and explained the location of the leachfield and house in relation to the proposed location of the garage that he wishes to construct. Mr. Benton said that he is working with the neighbor. He said there would be 220' from the road to the front of the building, 800' to the rear of the property, and 100' to the other side of the lot with the leachfield.

Chairman Powelson asked Mr. Benton to go through the application and explain how it meets the criteria. Mr. Benton read through the points of the application. George Saunderson asked if this is a replacement garage. Mr. Benton said it would be and explained that there is a three car garage on the house that has been converted to added living space. Mr. Saunderson said the Board has done site walks in the past and asked Mr. Benton if it would disturb the project if held up a month. Mr. Benton said he would be able to work with that. Ned Lizotte said a site walk would be consistent with what the Board has been doing. The site walk was scheduled for July 2, 2007 at 6:00pm. Mr. Benton gave directions to the property.

The chairman asked if there were any abutters who would like to speak in favor of the application. Mr. Garcia said he would like to walk with the Board. He stated that he is not sure he agrees with the 15' setback and would like to see it. The chairman asked if there were any abutters who would like to speak against the application. There were none.

***Ned Lizotte made a motion to continue the application to next Monday, July 2, 2007; seconded by George Saunderson. All were in favor.***

Case # 07-09, Harvey & Kathleen Bergeron – Special Exception for Major Home Occupation, Map 9, Lot 5. George Saunderson recused himself as an acquaintance of Mr. Bergeron. Jon Huntington was appointed as a voting member. Abutters have been notified; there were none present. Mr. Bergeron explained that he and his wife have a real estate business with an office in Hampstead. He said they would like to have a sign at their home to identify their location for when people from this area might come to their home office to sign paperwork or sit at their computer to look at MLS listings. He said they have had five or six people over the years come to their house for this purpose. Mr. Bergeron explained that the office is 6' x 9', has one computer and two chairs. He noted that it is only himself and his wife that work in the home office.

Chairman Powelson asked for questions from the Board. Roy Merrill asked if there would be employees. Mr. Bergeron said there would not be any employees in Loudon, just the seven at their Hampstead office. He said he has talked with the neighbors in the general area and none had a problem with the home office. The chairman asked Mr. Bergeron to go through the application. Mr. Bergeron went through the points of the application, reviewed the pictures of the office and proposed sign that he submitted with the application, and submitted a picture of the Hampstead office and sign.

Chairman Powelson asked if there were further questions from the Board or if a site review was needed. Ned Lizotte asked Mr. Bergeron why he felt this was a major home occupation and not a minor. Mr. Bergeron said that was how he was directed by the secretary because of the placement of a sign. Howard Pearl said he did not feel there was any need for a

site walk. Roy Merrill said he would agree. There were no further questions or comments. The chairman closed the public hearing; to be brought up under Unfinished Business.

George Saunderson returned to the Board.

Case # 07-10 and #07-11, Friedrich K Moeckel, Esq for Joseph T Bohi – Special Exception & Variance for Wetlands Buffer, Map 12, Lot 4. Web Stout and Shane Stewart represented the applicant. Mr. Stout reviewed the site on Bee Hole Road, noting that the Board has previously done a site walk of the area. He stated that there would be a 2300 SF impact to the wetlands. He said this is needed to construct the subdivision road to meet town criteria. He said there would be 2:1 slopes to keep the impact to a minimum and there will be guardrails and 60' of culvert. Mr. Stout showed the existing road and additional widening that is needed. Chairman Powelson said they have applied for a special exception for wetland and buffer impact as well as a variance for wetland and buffer impact. He said his recollection would be that in March of 2007 there was an approved amendment that allows the ZBA to grant encroachment in wetlands by special exception as well as in the buffers. Mr. Stout said that Mr. Moeckel just wanted to have it covered so submitted both applications and it is really a special exception that they are asking for. Mr. Powelson stated that the applicant has filed for a special exception and he is asking if the Board would agree that is appropriate. He said they also have the application for a variance and asked if they are going to withdraw that. Shane Stewart asked to withdraw the variance application.

Web Stout went through the points of the application. He stated that he spoke with an engineer earlier in the day and that the engineer had to do some calculations on the drainage. Mr. Stout explained that the existing culvert under the road is 18". He said there is no water running through the Cross Brook Road culvert but there was some in this culvert, approximately 52-53 cubic feet per second. He stated that the culvert will be upgraded in size.

Chairman Powelson asked if there were any questions from the Board or Conservation Commission. Dan Geiger asked about the size of the proposed culvert. Mr. Stout said it would be a minimum of 4' x 4' opening. Mr. Geiger he would suggest when applying to the state that they use either a buried culvert or a preformed arch culvert with open bottom. Mr. Stout said some specs have been done and would call for the bottom to be covered with natural material and that they are looking at using a 4' x 4' box culvert. Mr. Geiger said that should be fine if there is not a large hydrologic flow through there. He noted that this does not seem to be getting any closer to the pond. Mr. Stout pointed out the edge of the pond and the edge of the culvert and said there is about 25' that is needed for the 2:1 slopes for the road. Mr. Geiger stated that the state does not like to see rip rap and he recommended that vegetative cover be used. He said that Mr. Stout could call him and he would discuss this more with him. Mr. Geiger noted that this is an upgrade and an improvement. Mr. Stout said the next step would be to meet with the Conservation Commission. Chairman Powelson noted that Section 301.5 requires the Board to refer any special exception uses in the wetland district to the Conservation Commission, health officer, and Planning Board for review at least 30 days prior to the hearing. He said they should see if the Planning Board has any comments. Mr. Stout said the Planning Board has seen the plan three or four times. Shane Stewart stated that the Planning Board has walked the site as well. Roy Merrill said he does not see a problem if the Conservation Commission has no problem. George Saunderson asked Mr. Stewart if he was comfortable with what the Conservation Commission is recommending. Mr. Stewart said he was.

Dan Geiger noted that this was an intermittent stream and that he assumed they would apply for a standard wetlands permit and not expedited. Mr. Stout said it would be expedited. Mr. Geiger asked how many linear feet total from the edge of disturbed to the edge of disturbed. Mr. Stout said it would be approximately 85'.

Howard Pearl noted that the next ZBA meeting is in 28 days. He asked if the Board could hold them up for two months in order to make the timeframe noted in Section 301.5. Mr.

Powelson agreed that that does appear to be a glitch in the ordinance. Mr. Pearl asked if the intent was to hold the application to next month. Roy Merrill noted that the Conservation Commission is here tonight and they got prior notice by the packet that they received from the Zoning office. He said the 30 days is certainly covered for next month.

Chairman Powelson asked if there was anyone wishing to speak in favor of or against the application. There was not. **Howard Pearl made a motion to continue this application to July 26, 2007 at 7:30pm at the Community Building; seconded by George Saunderson. All were in favor.**

Case # 07-12, MDP Realty – Variance for Age Restriction, Map 29, Lots 7 & 93 and Map 20, Lot 3. Marco Plante represented MDP Realty. Roy Merrill and Ned Lizotte recused themselves as abutters to the property. Jon Huntington and Brenda Pearl were appointed as voting members.

Mr. Plante handed out a list of non-qualified interested parties that has been compiled by his office. He stated that MDP is asking for an exception to the age criteria because they are finding that with some parties only one member meets the age requirement. George Saunderson asked to clarify the location of the development and that they are not adding any homes but have made some minor changes at the location.

Mr. Plante went through the points of the application. He stated that there are four homes occupied at this time. He said that this change in age restriction would help move the project along, lessen the dust in the area as more work would be completed, shorten the duration of the construction, and complete the reclamation. Howard Pearl asked what year the approval was originally granted. Mr. Plante stated that MDP purchased the property in February of 2005, after the original approval. Mr. Pearl asked if the age requirement has changed since 2005. Dave Powelson said he believed it had remained the same. Roy Merrill said the age started out at 62 years and then was discussed in a workshop. He said it went before the town and the townspeople voted to lower it to 55. He said the location was not actually in the elderly district originally but was included in perhaps 2003.

Chairman Powelson referred to Section 701.2 A and said it should be clarified if this is an area or use variance. Mr. Plante said he felt it would be a use variance. Howard Pearl said it would be a use variance as they are not trying to change any setbacks. Mr. Powelson read the differences in the two types of variance. Howard Pearl stated that having 18 year olds in an adult community may not be in the spirit of the community. Mr. Plante said it could be raised to a minimum of 35 or 40 or within 10 years of the current requirement, noting that he is open to suggestions. George Saunderson said he felt they were going the wrong way. Mr. Plante stated that one interested 55 year old is not able to do his own maintenance but does not qualify because his partner is not 55. He said MDP is looking to push the project along and reclaiming the pit so they can control the dust.

Jon Huntington stated that people knew when going in that the development was not done and asked how many houses are sold. Mr. Plante said four houses have sold and all are working people. Mr. Huntington said he feels this request would change the whole picture of the complex by bringing in 18 year olds. Mr. Plante stated again that they could raise the minimum.

Chairman Powelson asked if there were any abutters who wished to speak in favor of the application. Hearing none, he asked if there were any abutters who wished to speak against the application. Ned Lizotte said he thinks the application is wrong. He noted that the original approval was for 62+ and because of issues coming in, it was lowered to 55+. He said he feels the town has already accommodated the project. Mr. Lizotte said the housing market is not the town's issue and that the applicant takes a chance with development, noting again that the age has already been modified once. Mr. Lizotte said that 18+ negates it as senior housing that was approved and opens doors to families with children and becomes residential.

Chris Tripp said she is very opposed to lowering the age even to 35/40 as that could put stress on the school. She said she envisioned a nice quiet retirement community and fears with younger people there would be traffic problems, garbage, and littering. Ms. Tripp said she feels

that 55 is low enough. John George said that everyone signed on for 55+ and does not want to see it younger. Stan Lloyd said that he agreed with previous speakers. He said in terms of population density there would be a smaller number of retired and less traffic. He said if the age is lowered there would be young couples, more kids and cars, and more use of the road. Mr. Lloyd said a lot of people have looked at the area and are not interested because the houses are too close. He suggested that the applicant could reduce the closeness of the houses and lower the prices rather than the age. Mary George said she could sympathize with the applicant but feels it would be wrong to readjust the age. She said she would be upset if she had already purchased in a 55+ community and the age was lowered. Ora George said the change would go against zoning, noting that contractors have to wait for permits. He said to put in these 100 houses is unfair to those contractors. Mr. George noted that the road is busted up and there is no enforcement of the bond for road maintenance.

Ned Lizotte said things become very different once the age is lowered. He said if someone has children after being in there, they can't be forced out. He said if the age was lowered and the elder partner passed away, it could also create a situation where the younger partner might remarry and children come into the picture. Lauraine Martell asked if younger people would have to leave or stay and add to the impact if the age is lowered and they go in and have families.

Mr. Plante said that was not their intention. He said he understands the concerns and suggested they might go with 50/55. He said the dust and noise are the purpose of pushing this along as they want to finish the project and give the owners a good area. Mr. Plante said there is a restriction of no children already in place. Chris Tripp asked who enforces that. Mr. Plante said the condo association would enforce the stipulation. He explained the documents and restrictions of condominium associations such as this. Ned Lizotte noted that the age has already been lowered. Mr. Plante said one way or another, the project will get done. He noted that the property is not creating the tax revenue that it could be. He reinforced that there are no children allowed as stated in the condo documents. He said they are reclaiming the pit which is a great improvement to the property and area. Ora George said that he thinks the town made a big mistake by allowing Heffron to leave town without reclaiming the area. He said he does not want to see another mistake.

Chairman Powelson closed the public hearing; to be brought up under Unfinished Business.

Ned Lizotte and Roy Merrill returned to the Board.

#### **IV. UNFINISHED BUSINESS:**

Case # 07-09, Harvey & Kathleen Bergeron – Special Exception for Major Home Occupation, Map 9, Lot 5. George Saunderson recused himself; Jon Huntington was appointed as a voting member. **Roy Merrill made a motion to approve the application; seconded by Jon Huntington.** Chairman Powelson stated that the applicant has to meet the seven points of the application. Howard Pearl said it appears to be pretty straightforward. Ned Lizotte said he felt it was unnecessary to do a site walk, noting that this is a minor home occupation but because of the sign it becomes a major home occupation. The chairman went through the points of the application, noting that the applicant stated there might be 4 to 6 people a year that would visit the office. Howard Pearl said he did not feel that it requires any special conditions. Roy Merrill said it would not be a problem even if it was 4 to 6 people a week. It was felt that the sign was appropriate. There were no further questions or comments. **A roll vote was taken. Jon Huntington – Yes; Ned Lizotte – Yes; Dave Powelson – Yes; Roy Merrill – Yes; Howard Pearl – Yes. Unanimous - APPROVED**

George Saunderson returned to the Board.

Case # 07-12, MDP Realty - Variance for Age Restriction, Map 29, Lots 7 & 93 and Map 20, Lot 3. Roy Merrill and Ned Lizotte recused themselves. Jon Huntington and Brenda Pearl were appointed as voting members. **Howard Pearl made a motion to deny the variance; seconded by George Saunderson.** Mr. Pearl said the biggest issue is that the town clearly voted 55+ prior to the purchase and start of this project and it would be detrimental based on that and the Zoning Ordinance. He noted that people are purchasing there with that intent. Dave Powelson said he would go through the five variance criteria in the order as they appear on the application.

1. *The proposed use would not diminish surrounding property values.* George Saunderson said he feels it would be detrimental to the neighborhood as do the neighbors because of the added traffic and noise. Howard Pearl stated that he agrees with Mr. Saunderson. 2. *Granting the variance would be of benefit to the public interest.* Howard Pearl said that he feels that it was voted as elderly housing district of 55+. Dave Powelson said there is a statement made on the application that said this would allow the development to move forward at a faster pace and the tax base would be increased with little impact to town services. The application also states that couples in which both husband and wife are not 55 or older cannot reside in this community, however the ordinance is written to benefit persons 55 or over. The chairman asked if that argument carries a lot of weight, or any weight. Comments were that it does not. 3. *Denial of the variance would result in unnecessary hardship to the owner/applicant because of the following circumstances of the property that distinguish it from other properties similarly zoned.* Dave Powelson noted that there are other properties in the elderly housing overlay district. He went on to say that by the use criteria of (Section 701.2 A 1a) zoning restriction as applied to the applicant's property interferes with the applicant's reasonable use of the property, considering the unique setting of the property in its environment. Mr. Powelson said he is following the zoning ordinance and handbook of ZBA and he does not believe there is anything unique about this property that would prevent its reasonable use as either ordinary residential use or elderly housing use. He read (Section 701.2 A 1b) that no fair and substantial relationship exists between the general purpose of the zoning ordinance and the specific restrictions on the property. Mr. Powelson said he has not heard any evidence of that. He read (Section 701.2 A 1c) that the variance would not injure the public or private rights of others. Howard Pearl said that was questionable. He said there certainly has been testimony from abutters that their rights would be injured. Mr. Powelson said there was no evidence of fair and substantial relationship between the general purpose of the zoning ordinance and the rest of the property. 4. *Granting the variance would do substantial justice.* George Saunderson said the Board cannot be guaranteeing absolute fairness. Jon Huntington said this could be changing the area to residential. Mr. Saunderson asked if this is a conflict with the growth ordinance. Dave Powelson said the elderly housing district does not count against houses for the growth ordinance. Mr. Saunderson said if they keep lowering the age, it is no longer elderly. Howard Pearl said that was his concern as it is clearly stated as 55+. 5. *The use is not contrary to the spirit of the ordinance.* Howard Pearl said the spirit was to have a 55+ in the community. Chairman Powelson said it would appear that #5 fails. Howard Pearl said he feels that #3 also fails. Dave Powelson asked if there is a benefit to the public interest. He said he feels that the Board has pretty well covered the five points of the application. There was no further discussion.

Chairman Powelson reminded the members that the motion was to deny. **A roll vote was taken. Brenda Pearl – Yes; Howard Pearl – Yes; Dave Powelson – Yes; George Saunderson – Yes; Jon Huntington – Yes. Unanimous - DENIED**

Roy Merrill and Ned Lizotte returned to the Board.

#### IV. DISCUSSION:

SPCA – Ari Pollack, attorney with Gallagher, Callahan, & Gartrell and director and treasurer of the shelter, spoke on behalf of the SPCA. Ana Gordan was also present to speak on behalf of the shelter. A conceptual plan was shown to the Board members. Mr. Pollack said they are looking at a lot on Route 106 in Loudon for the new home of the SPCA. He explained that their current location in Penacook is a converted house and that the residential neighborhood has built up around them. Mr. Pollack stated that they have approximately fifteen employees and several members and donors in Loudon. He said the shelter is open five days a week, being closed on Sunday and Monday, and they have approximately 1,000 animals per year go through their system. Mr. Pollack said that they have hired a professional fundraiser, a real estate broker, and an architect for this project. He explained that the property that they are looking at is owned by Jay Berwick and John Reardon. Mr. Pollack noted that the property has a broad right of way along the highway, has good sight distance, has sufficient acreage for buffers, is non-residential, and has a large amount of open space. He said the property has some challenges (wetlands and transmission lines) for traditional development but those would not be an issue for this project. Mr. Pollack said they would have one building and feel that this property would be ideal. He noted that kennels are not allowed in the C/I District but are allowed by special exception in the RR and AFP Districts. He said they would need a use variance and wanted to scope out the idea with the Board and they are looking for feedback.

Dave Powelson said his first thought would be that the Board is generally reluctant to consider variances so would suggest that the applicants look at other ways to deal with the issue. He said if this is a use that the town feels is appropriate for the district it could be changed at town meeting but there are no guarantees of what the town will think of the proposal. Mr. Powelson said he was not sure what kind of traffic would be drawn to the facility. Mr. Pollack said he has some statistics from the existing shelter and that they have no particular timeframe, noting that they got permission from the owners to talk to the ZBA. The SPCA is non-profit and does not pay property taxes.

George Saunderson asked if there have been any complaints in Penacook about noise or odor. Mr. Pollack said the chief complaint would be that they have no room to expand. A shelter employee said that the current shelter has been there since the late 1950s and homes have been built around it over the years. She said the main complaint would be barking dogs. She said this property would provide them a buffer. Mr. Saunderson asked how many acres are in this parcel. Mr. Pollack said it is a twelve acre piece. He said the architect specializes in shelters and has been doing this type of building for twenty years. He said they do not generate odors and there would not be much noise as the animals are kept inside.

Jon Huntington asked about the size of the building. Mr. Pollack said it would be 18,000 SF. Mr. Huntington asked how many animals they would handle. Mr. Pollack said last year they had 890 cats come and go, 340 dogs, and 50 other animals. Ned Lizotte asked how long they stay. Mr. Pollack said dogs are a matter of days to a couple of months. He said the building would be designed to have 20 to 24 indoor stalls for dogs.

Howard Pearl suggested that they go before the town to add kennels to the C/I District. Dave Powelson said they could do that. Mr. Pollack noted that kennels are allowed by special exception in other districts and figures it would probably be the same in C/I District. He said that special exceptions and variances are different but the arguments are similar. He said he is still interested in the Board's thoughts.

Ned Lizotte said that special exceptions are more favorable than variances. George Saunderson asked if it might be reasonable for the Board to look at the land to get a better sense of the location and then put it before town meeting. Howard Pearl said there are otherwise no provisions. Ned Lizotte asked where the parcel is located. Dave Powelson said it is just above Route 129. There was brief discussion about the RV business that had been interested in the parcel. Howard Pearl said he could not see any other option other than put it

before the voters. Ned Lizotte asked how that would affect the applicant. Mr. Pollack said the sooner, the better. He said that they have other properties from their search that they could probably explore. He noted that a zoning amendment would be discussed in December or January and go to town meeting in March so they could explore other options in the meantime. Ned Lizotte said it sounds like the only way. He said the Board's hands are tied and he suggested that the parties look at other places and if none have merit then they can come back to the Board in November or December for a zoning amendment. Mr. Pollack said he thinks this parcel is the best to serve their needs. He said he does not understand why a use variance would not be an option. Chairman Powelson said they could apply for the variance. Mr. Pollack said it would appear that the Board recommends that they approach the town for an amendment as a special exception or possibly a permitted use in the district. He said he appreciated the Board's time and they will consider their options.

ESMI – Mark Aubrey explained that they are looking at a site owned by Levi Ladd, Map 20, Lot 1. He said that Mr. Ladd approached ESMI to purchase the property. Mr. Aubrey said they would do more mining and reclaim the property. He said it does not fall under the uses of the District and he would like clarification for the state.

Dave Powelson noted that treated soil is still not allowed on residential applications. Mr. Aubrey asked about applying the soil but never building residential on the parcel. Mr. Powelson said it would have to fall under the permitted uses of the Village District. Mr. Aubrey asked about it being recreational or municipal. Mr. Powelson said that storing reclaimed soil is not allowed in the Village District. Mr. Aubrey said it would have to be a variance. Mr. Powelson said they are reluctant to do variances. He said they would have to come up with some end use to use the fill to reclaim the site, noting that there are not a lot of non-residential uses in the Village District.

Mr. Aubrey said that the Village Plan allows for the creation of a river walk, etc. George Saunderson asked if the soil can be used for recreational fields. Mr. Aubrey said it is not permitted for playgrounds but there is no definition of playground. There was discussion of how many storage sites ESMI has in Loudon, the uses for the soil, and the criteria that ESMI has to meet when using the soil. Mr. Aubrey said this opportunity came up and they wanted to discuss it with the Board. Jon Huntington asked what the soil can be used for. Mr. Aubrey said it was easier to list what it cannot be used for. He said it cannot be applied in the 100 year flood plain, wetland areas, residential, playgrounds, or areas of drinking water aquifers. Ned Lizotte asked if it could be used for a town park. Roy Merrill said another problem would be that they would have to determine the 100 year flood plain. Mr. Aubrey said they would have to delineate where it could go. Mr. Lizotte said it might be an Audubon area where they could build trails. Mr. Aubrey said it could be a nature area or boat launch.

Jon Huntington asked what the Board of Selectmen thinks. Steve Ives said that he thinks they are looking for another dumping ground. Dustin Bowles asked why they don't focus on getting it out of town. Mr. Aubrey said they have excavated it out for construction and use different material for foundations, etc. Mr. Bowles asked why keep it in Loudon. Mr. Aubrey stated that the soil is clean and asked what the issue would be with keeping it in town. Darlene Johnson asked why some other town should take it. Mr. Bowles said he would like to see some of the energy used on finding ways to truck it back out of town.

Roy Merrill stated that he noticed that ESMI has been digging on their other lot (Map 50, Lot 1-1) He asked if they were paying the town for excavation. Mr. Merrill said that ESMI had been giving approval to fill that area. Mr. Aubrey said that the town gets money for every ton that comes in. Ned Lizotte asked what is happening with the property on Route 106 after the track that is all scraped down. Mr. Aubrey said it is being graded to road level. He said he takes it that ESMI should stay away from the Ladd property based on the response of this discussion.

Rules of Procedure – Some Board members did not have their drafted rules with them so it was decided to table the review to next month. It was agreed to have a work shop prior to the regular meeting. The Board will meet at 6:30pm on July 26<sup>th</sup> for review of the rules.

Meeting time – There was discussion about beginning the monthly meetings at 7:00pm rather than 7:30pm due to the number of applications that the Board is seeing each month.

Court decision - Chairman Powelson informed the Board that a notice of decision was received today on the appeal by Chip Davis. He stated that the court affirmed the ZBA's findings.

## **VII. ADJOURNMENT:**

Howard Pearl made a motion to adjourn the meeting at 10:15pm, seconded by George Saunderson. All were in favor.

Respectfully submitted,

Donna White, Secretary