

TOWN OF LOUDON
LOUDON, NEW HAMPSHIRE

DRAFT

PLANNING BOARD MINUTES
OF DECEMBER 17, 2009

Meeting called to order at 7:00 p.m. by Chairman Tom Dow.

Attendance:

Chairman Tom Dow, Tom Moore, Steve Jackson, Vice Chairman Stanley Prescott, Henry Huntington, Gary Tasker, Alternates Bob Ordway and Jeff Green, and Ex-Officio Steve Ives

Conservation Commission: Bob Butler

Fire Department: John Reese

Acceptance of Minutes:

November 19, 2009 Regular Meeting – **Henry Huntington made a motion to approve the minutes as presented; seconded by Steve Jackson. All were in favor.**

December 1, 2009 Special Meeting – **Steve Ives made a motion to approve the minutes as presented; seconded by Tom Moore. All were in favor.**

December 9, 2009 Zoning Workshop – **Stan Prescott made a motion to approve the minutes as presented; seconded by Tom Moore. All were in favor.**

December 11, 2009 Site Visit – **Henry Huntington made a motion to approve the minutes as presented; seconded by Jeff Green. All were in favor.**

Conceptual Consultation:

Joe Bohi – Mr. Bohi spoke to the Board about a 245 acre parcel on Bumfagon Road. He said there is one house on the parcel at this time and log roads through the property. Mr. Bohi showed a conceptual build out of the property, noting that the wetlands have been delineated and the topography was done by Web Stout. He said he followed what previous owners had done, using forty-seven new lots and a lot with the existing house. Steve Jackson noted that the AFP District requires five acres and 400' of frontage per lot. Mr. Bohi said that he has laid these lots out at 200'+ and 2 ½ acres with 130 acres of open space. Mr. Jackson asked if Mr. Bohi would be able to get forty-eight lots with the character of the land. Mr. Bohi said he came up with forty-four lots but still has some wetlands work to do. Tom Dow asked Mr. Bohi if he has reviewed the open space development regulations. Mr. Bohi said that he has, noting that Mr. Stout did some figures a few years ago. Mr. Dow asked if the proposed road continues all the way out. Mr. Bohi said that it does and that the entrance is through the existing driveway. Steve Jackson asked how much road there would be. Mr. Bohi said it would be less than 5,000 feet. Tom Dow said that there would be some impacts on Bumfagon Road and that the road would not stand up to those impacts as it is right now. He said there is a lot of wetland and that will have to be looked into before knowing the number of houses. Mr. Bohi said they have some more wetlands to identify and they will work on that through the winter. Bob Butler asked if the wetland setbacks are shown. Mr. Bohi said nothing is laid out at this point. Mr. Butler stated that the setbacks and buffers would affect the number of lots. Henry Huntington said he feels

that the conceptual goes way beyond the intent of the open space regulations, pointing out that there is open space all over the parcel. He said he does not feel that this matches up at all with the regulations. Mr. Huntington said they would need to better understand the wetlands. Steve Jackson read from Section 401.3 of the Zoning Ordinance. He suggested that Mr. Bohi get a good grasp of the wetlands before spending a lot more on the project. Mr. Bohi asked the Board if they would like him to come back with a five acre layout and if there is a possibility of getting a waiver for the length of the road. It was agreed that a five acre layout would be a good idea. Tom Dow recommended that Mr. Bohi read the regulations carefully. Stan Prescott told Mr. Bohi to look at it from the technical aspect. Tom Moore said to delineate all of the wetlands.

Old Business:

New Business:

#09-20, New Hampshire Motor Speedway – Change of Use, Located on Route 106 in the C/R District, Map 61, Lot 9

#09-21, New Hampshire Motor Speedway – Amended Site Plan, Located on Route 106 in the C/R District, Map 61, Lot 5

Chairman Dow suggested that these two applications be taken together as they both relate to the proposed winter event. Board members agreed. Steve Jackson recused himself from the matter. The chairman explained that the first application is to temporarily change the use of a parking lot to an area to be used for the snow event and the second application is to address conditions set in 1999. Mr. Dow stated that a letter was received from the selectmen of Canterbury. He read a section of the letter where they asked him and any other Board members who are affiliated with the snowmobile club that is working on this event to step down. Mr. Dow said he was not going to step down from his position with the Board because he has not participated in any planning of the event. He stated that he has talked with town counsel and it was agreed that he has no conflict and there is no need for him to step down. Mr. Dow said he would not speak for other Board members. Tom Moore stated that he is a member of the Sno-Shakers and, under the advice of town counsel, will sit to represent the Town of Loudon as elected to do. Steve Jackson stated that he will recuse himself because of his relationship as a vendor at the track. Bob Ordway was appointed to sit as a voting member in Mr. Jackson's place. Mr. Ordway stated that he is also a member of the Sno-Shakers and had no intention of recusing himself from this matter. Chairman Dow asked if there were any abutters present. Bob Davis of 90 Lower Ridge Road identified himself as an abutter.

John Zudell represented NHMS. He gave an overview of the proposed winter event and showed the proposed location of the sno-bowl in a parking lot area of the property. Mr. Zudell explained that a sound study was conducted and he submitted copies of the study to Board members. He introduced Jeff Fullerton who represented *Acentech*, the company that conducted the sound study. Mr. Fullerton explained that they had some modified and stock sleds perform at the track as part of this sound study. He explained how the sound was measured, noting that they had the sleds do three runs in each direction. Mr. Fullerton went over the entire study, explaining that there would be various factors such as wind direction, terrain, ground cover, and vegetation that will affect the sound levels.

Gary Tasker asked what would relate to 44 dBA, giving a television as an example. Mr. Fullerton said it would be considering residential interior. He said the ambient was 42.5 dBA at the time of the test, with no traffic or other noise. He said there would be some fluctuation. Bob Ordway asked Mr. Fullerton to relate the numbers to daily types of sounds. Mr. Fullerton explained that the average sound level at 500 feet was 79 dBA and this would be like standing

next to a road, using Route 93 or 393 as an example, with traffic passing. He said measuring 5000 feet from the centerline of the activity averaged 53 dBA which would be similar to a quiet urban area, giving mechanical noise such as fans on the roof of Dunkin Donuts as an example. Mr. Fullerton said the numbers are an hourly average, noting that people will know when a race is starting. Bob Ordway asked if the numbers used were outside levels. Mr. Fullerton said that was correct, pointing out that the indoor levels were shown on the lower chart. Mr. Ordway asked Mr. Fullerton to go through those numbers as well.

Mr. Fullerton said that he didn't believe that there were any residences within 500 feet or 2500 feet. He said the next level of 5000 feet shows an average of 48 dBA indoors which is quieter than a television loud enough to hear. He said most would run their television or music in the 50s. Mr. Fullerton stated that the maximum estimated sound level at 10,000 feet would be 38 dBA which would be fairly quiet. He said a person might hear it but it would be much quieter than a television or stereo. Stan Prescott noted that there was nothing relating to race cars on the study. Mr. Fullerton said that the sound level of race cars at the track would be between the figures for a chain saw and rock concert. John Zudell said that the track is regulated at 100 dBA at 50 feet which would tie in at the upper level of the typical sound levels. It was noted that trees would make a difference in how the sound would travel. Mr. Fullerton said that the study showed numbers in the low 50s at Shaker Village with eastward winds, mid 60s with westward winds, and less on Loudon Ridge.

Hillary Nelson of Canterbury referred to a sound study done by Acentech in 1999. She said the level at the track was 95 dBA and with a 15 mph wind out of the east the level at Shaker Village was also 95 dBA. She said the norm at Shaker Village would be 35-40 dBA, and she does not feel that Mr. Fullerton is giving the complete picture. She said many people are outside skiing, fishing, etc and are exposed to this noise. Kim Bean of Loudon asked what the level would be when a snow machine goes by. Mr. Fullerton said that levels on the trails by Shaker Village would be 80 dBA. Mr. Bean noted that machines go by on the trails all the time. He stated that the noise could not be heard at the Storrs property on the day of the tests.

Tyson Miller of Canterbury asked for a clarification on what they want to change on the conditions, whether it would be all the time or just this event. Chairman Dow said that the application is for this event. He said the Board will listen to testimony and then discuss the options, noting that they are asking for a permit for this one event. John Zudell said they are looking for one weekend event. Theresa Wyman of Canterbury asked to confirm that they are asking for one time, one event, and one year. Chairman Dow said the Board can vote to decide how to go, noting that they could do a conditional event and it depends on what the Board wants to do.

Bob Davis asked for clarification on the proposed location relative to his house on Lower Ridge Road. Mr. Zudell measured the distance to be approximately one half mile. Mr. Davis asked where the trails run and where parking and race activities would be located. He asked how much of the activity would be contained to the track. Mr. Davis spoke of his concern about more noise and that this may be the beginning of other winter events. He asked the Board to use caution when considering the request. Mr. Davis asked about hours and if this would go into the evening. Mr. Zudell answered Mr. Davis's questions and stated that the hours would be from 9:00 a.m. to 4:00 p.m. on that Saturday and Sunday. Mr. Davis asked how this could be seen as an economic benefit to the community. He also spoke about safety concerns.

Linda Cote of Bumfagon Road, Loudon said that she is not against the event but does have concerns of more than one event, noting that sound travels and speaking of traffic control. Keith Brown of Canterbury said that he is the president of Sherwood Forrest, a 150 parcel residential development and large tax base in Canterbury, and he has not had one complaint from residents of noise from the track. He said he is not bothered by snow machines and this event is

of economic benefit, noting that large amounts of revenue come into the State through snowmobilers. Mr. Brown stated that most residents moved to the area knowing the track was there and that it is important to recognize the importance of business in NH. He noted that this event is not ongoing every day and he feels it should be permitted.

Jim Bassett of Canterbury spoke at the request of the Canterbury selectmen. He noted that he was the vice chairman of the Canterbury Planning Board in 1999. Mr. Bassett stated that the Canterbury selectmen did submit a letter as mentioned by Chairman Dow. He said there was the question of member connections with the Sno-Shakers but there were also other items mentioned in the letter. He noted that the selectmen thanked the Board for recognizing this matter as a development of regional impact and they appreciated the notice given. Mr. Bassett said that the noise study was informative and it appears that this is a one-time event. He said that the Canterbury selectmen feel that a deal is a deal and it was the understanding at that time (1999) that condition #2 was part of the deal and part of the approval. Mr. Bassett said that is the message he was asked to convey to the Board this evening.

Paul Johnson of Loudon said that he is supporting the event and is disappointed in those who oppose it. He said everyone has interests and it is not right for some to try to stop others from enjoying what they are interested in doing. He noted that the snowmobile club does a lot of fundraisers and donates to Easter Seals and other local groups. Mr. Johnson said it would be nice to give something back to the snowmobilers, pointing out that this type of event does not harm the environment. Dan Cabana of Loudon said that he is in favor of the event. He stated that he was president of the NH Snowmobile Association in the past. Mr. Cabana said that they did a study and found that snowmobilers brought \$1.2 billion into NH. He said this is a big business that brings revenues to Canterbury, Loudon, and other towns through gas and food sales and other related services. Bob Cole of Loudon said that he used to live on Clough Pond Road near the Sno-Shakers clubhouse and he had no problems with machines during all the years he lived there. He thanked the group for that.

Tim Meeh of Canterbury said that he, his brother, and Shaker Village have been allowing machines to use their land for trails for some time. He said in 1999 the objections were noise and traffic related. He pointed out that other businesses are negatively affected by those, Shaker Village being one. Chairman Dow reminded everyone that they are talking about snowmobiles, not cars. Mr. Meeh said that opening the season up could create more events and more noise. He said he expected the conditions that were created would remain in place. Kim Bean noted that a gentleman at the Creamery Restaurant at Shaker Village has snowmobiles come there and he is looking forward to more stopping by.

Judy Elliott stated that she lives uphill from the track in Canterbury. She said she is hearing a lot of anger as it appears to be snowmobilers versus non-snowmobilers. Ms. Elliott said she does not think it is like that and does not want this to create hostility between the communities. Jim Snyder stated that he is with the Canterbury Planning Board but represents himself this evening. He said he would echo Judy Elliott and would hope that the Board can craft a way to do it in a way that keeps the conditions intact. He said he would see that outcome as the least likely to be appealed.

Gail Beale stated that she lived on Lower Ridge Road for twenty-five years and moved because of the track but that was her choice. She said the 1999 negotiations were well thought out and final at that time. Ms. Beale said that a deal is a deal as Mr. Bassett stated earlier. She said there could perhaps be a way to compromise and not break the conditions as Mr. Snyder has suggested. Larry Hemphill of Staniels Road in Loudon stated that he was a small business owner in Hopkinton twenty-five years ago where he experienced 'snob zoning'. He said things change and he asked that consideration be given to businesses in town. John Cronin of Loudon owns the Eggshell Restaurant and said he felt he could speak for the business aspect of the

community by saying that they could all use a good shot in the arm in February. Mr. Cronin said the extra business would be much appreciated. Dave Ingraham of McKenzie Road in Loudon offered to show others where the event would be held if track representatives did not mind. It was agreed that Mr. Ingraham was welcome to show the area to anyone with concerns.

Theresa Wyman of Canterbury said that she agreed that a deal is a deal and there is a due process of changing a deal. She said she supports businesses but to change a deal that was carefully brokered bothers her. She asked how many other conditions can be changed. Ms. Wyman said she does not object to people doing what they like. Hillary Nelson said that part of trail #15 goes through her property and she thinks she heard that one half of the expected 5,000 riding in will be on that trail. She asked if that was true and noted that she has not heard anything about traffic patrolling. Kim Bean said that snowmobilers would be coming in from Gilmanton, Pittsfield, and other trails. He said he did not feel that many would be coming in on trail #15. Theresa Paradise of Chichester said that trail #15 runs right behind her property. She said she has a horse rescue facility at that location. Ms. Paradise said that she finds the snowmobilers to be very respectful, noting that she does not snowmobile but has done some work on the trail near her property. She said the trail is within 2000' of her house and when the machines pass at night with her windows closed she can barely hear them. Ms. Paradise noted that a lot of machines use that trail and she does not find it to be a problem for herself or the horses.

Preston Lawrence of Loudon said that he is not a race fan or a snowmobiler. He asked what the impact would be and if there would be limited traffic on the roads. John Zudell explained that they are estimating 5,000 people in attendance each day. Chairman Dow noted that traffic counts on Route 106 show 20,000 vehicles a day on a Friday any time after July 4th. Bob Bottcher of Loudon said that he is not a snowmobiler and pointed out that the applicants are not asking for a monthly event. He said they are only asking for two days to run this event. Mr. Bottcher spoke about the revenue that is brought into the State by recreational events and the fact that residents would have their windows closed. He said he was sure people would not hear the event, using the example of people with their car windows closed not hearing a fire truck behind them. Linda Cote spoke about deal breaking and that part of the deal is that there are not to be night concerts yet the new owners are having night concerts. She said they are having an issue with deal breaking. Dan Plourde of Loudon spoke about the beginnings of the track, the noise that has been part of the track, and the changes over time.

Hearing no further input, Chairman Dow closed the hearing to the public and opened it to the Board only. He explained that the Board would continue to address track representatives but there would no further comment taken from the public.

Tom Moore asked John Zudell to explain the traffic control plan. Mr. Zudell said that there is no traffic plan in place at this time. He said they estimate 2.5-3 people per vehicle and would think there might be 1,000 cars and 2,000 sleds. Mr. Zudell said that Fish & Game has been contacted and there will be six or seven message boards at crossings for higher awareness of the sleds. He said they have also talked with Chief Fiske. Mr. Zudell said that Gil Rogers is working on this aspect of the event. He said they have no real feel for numbers since they have never done an event of this nature. Bruce Stone said they have identified the snowmobile crossings with Chief Fiske and Gil Rogers, NHMS parking coordinator. Gary Tasker asked if the Board is in receipt of anything from Chief Fiske. Donna reported that Mr. Fiske called the office and stated that he would have a minimum of four officers on duty for the event and they have looked at the various crossing points. Nothing has been received in writing. Mr. Tasker asked if it was mentioned that Fish & Game has been contacted. John Zudell and Bruce Stone explained that there have been two discussions going with Fish & Game; one is with regard to water for making snow and the other is about assisting the track on their property at different

areas with speed compliance with the snowmobiles. Mr. Tasker asked if they would have personnel in the area. Mr. Stone said that they said they would. Mr. Tasker said he feels that is necessary and important.

Henry Huntington said that snowmaking was mentioned. Mr. Zudell said they are currently stockpiling snow but would make some if more is needed. He said that Rock Maple Racing has the equipment. Gary Tasker asked what the safety plan would be. Mr. Zudell said that Speedway Safety Services will be there as in summer events. Mr. Tasker asked if they would have inside security. Mr. Zudell said that internal security is involved now. Bruce Stone said the staff that is used for parking, security, and management during a cup race is what would be used for this event. Steve Ives asked if the number of people at a snowmobile race would be comparable to SCCA races where things are handled internally and nothing is needed from the fire or police departments. Mr. Zudell said this event will be even smaller.

Bob Ordway said that facts are unavailable and he would see the logical solution to be granting a conditional approval to run this event this one year and then have facts to use if they wanted to do it again. He said there is a lot of guess work at this point and they need some experience to go by.

Bob Ordway made a motion to grant conditional approvals on applications #09-20 and #09-21 for this sno-bowl event for February 20 & 21, 2010 only; seconded by Steve Ives. Mr. Ordway said they could come back for review after the event. Henry Huntington suggested that something be added to address concerns with safety issues. He said he would like to see letters from the Police Department and Fish & Game as to how they will support the event. **Mr. Ordway amended his motion to include the condition that letters must be received from the Police Department and Fish & Game Department with regard to how safety issues will be handled. Mr. Ives agreed to the amended motion.**

Jim Snyder asked if he could ask a procedural question. Chairman Dow allowed his question. Mr. Snyder asked if this approval leaves the 1999 conditions as written or if they will be amended. Gary Tasker said it seems clear that condition #2 is referring to cars as it refers to any race scheduled prior to October 31 being postponed due to weather conditions. He said it is hard to plan a snow event before October 31st. Bob Ordway said it was not his intent to change the condition. Mr. Tasker again stated that the condition pertains to auto racing. Chairman Dow stated that he was told by town counsel that it would be acceptable to do the revision this way with a special condition. Steve Ives said that a lot has been said about breaking deals with the twelve conditions set by the Planning Board in 1999. He noted that the Bill of Rights was a deal and there have been many amendments made. Mr. Ives said that times have changed and conditions change. He said this is an elected board making a decision to change something based on today's conditions and no deal is being broken. Stan Prescott said this will help the economic climate and he agrees with Mr. Ordway's motion and what Mr. Ives has said. **Chairman Dow moved the question. All were in favor.**

Steve Jackson returned to the Board. Bob Ordway returned to an Alternate position.

#09-22, New Hampshire Motor Speedway – Amended Site Plan, Located on Route 106 in the C/R District, Map 61, Lot 9 and Map 51, Lot 18. A letter was received from John Zudell asking that this application be tabled until the January meeting. **Tom Moore made a motion to table this application until the January 21, 2010 meeting at 7:00 p.m. at the Community Building; seconded by Stan Prescott. All were in favor.** There will be no further notification.

#09-23, BDJ Real Estate, LLC – Condominium Conversion/Subdivision, Located on Staniels Road in the C/I District, Map 1, Lot 58. Abutter Jack Earle was present. Jeff Green of J L Green Enterprises represented the applicant. Donna informed the Board that she spoke with town

counsel earlier in the day about reviewing the condo documents that were submitted with this application. Mr. Mayer told Donna that he has reviewed documents for other towns but does not feel that it is absolutely necessary as long as an association has been formed, condominium association by-laws, and a condominium declaration. He highlighted some areas to be reviewed in the documents, noting that most often they are written in a fairly standard format. Donna reported that she reviewed those areas and all seem to be covered. Steve Ives said that he felt that Mr. Mayer should review the documents at the applicant's expense; others concurred. Henry Huntington asked what the Land Development Regulations say about condominium conversion and what is required to meet those regulations. Tom Dow said that the conversion cannot be denied. Steve Jackson said, based on what an attorney told the Board when he spoke with them about condominium procedures, that a conversion is a subdivision of property so it has to go to the Planning Board with the documents and common areas outlined. There was discussion about the review of the documents.

Stan Prescott made a motion to accept the application as complete and move to public hearing; seconded by Tom Moore. All were in favor. Mr. Green gave an overview of the location and the site plan approval granted by this Board on September 17, 2009. He gave an update on the project with regard to the construction and status of work thus far. Mr. Green explained that the owner looked at options of renting, leasing, or selling the units of the building. He said the owner has interest from buyers for five of the units so he chose to go with condominiums. Mr. Green explained the common areas and spoke about the condominium declaration, explaining how each owner would be part of the association and responsible for one tenth of all common area maintenance and other related expenses. He said he spoke with the attorney who drew up the documents and there is no problem with having them reviewed if the Board feels that is necessary. He said they are of a fairly standard format, noting that RSAs dictate the details that must be included. Mr. Green said he would like a conditional approval based on the site plan that outlines the units and common areas. Tom Dow asked if the owner would be in agreement with paying the cost of the document review. Mr. Green said he could say yes based on his conversations with the applicant.

Gary Tasker asked if everything is on the condominium plan that was on the site plan. Mr. Green said this plan is more like an as-built. He said it shows the condominiums themselves as the plan is titled. He said the plan references the site plan that was previously approved. Steve Ives asked how the units and property would be taxed. Mr. Green explained that each unit is taxed individually and the land is taxed as one parcel. There was discussion on how this would be handled. Gary Tasker said that there should be some wording with regard to taxes in the documents. Henry Huntington said that he has no problem with the application but he does feel that the town attorney should review the documents. He said this seems to be a procedural process if the application cannot be denied. Jeff Green said it is open to the Board as to how they want the plan laid out and what they want shown on the plan. He said he would like to record the plan with the documents.

John Reese said that the Fire Department's concern is that they are notified prior to each unit being sold so that they can review the proposed use. He said the department approved the building for business occupancy. Mr. Reese said if the use is changed from business it would change the fire protection rating of the building. He said the department needs to be notified if any interior alterations, such as a closet or bathroom, are made so that they are sure it still meets the ratings that the building was approved for. Mr. Reese said he would like to see this written in as being mandatory that the fire department is notified. Tom Dow asked if this should be in the form of a letter or in the documents or some other method. Steve Ives said that this could be mentioned to the town attorney. Mr. Green stated that there is language in the documents about having to meet all town and state regulations. John Reese mentioned a conversation he had with

Bob Bollinger about a potential tenant doing diagnostic work on a vehicle. He referenced the codes and found this to be an acceptable use; however, if the tenant runs a business on vehicles, becoming an auto repair business, it would change the code and that individual is required to bring the entire building up to that code. Jeff Green said that the condominium association has certain control over what happens. He explained that there is one owner of the entire property now and that is regulated by the site plan that was approved in September. If that owner were to make changes from what was approved he would have to come back to the Board. Mr. Green said as condo owners they would have to do the same thing and also have to meet the condo regulations.

Jack Earle asked what is to stop them from making the units into two-bedroom residences. Mr. Green explained that the units are restricted to commercial uses and are condominiums in the sense of form of ownership, not a form of use. Firefighter Reese referred to the town's regulation that any subdivision over four units requires a cistern. He asked if this would now require a cistern because it is being subdivided into ten units. Mr. Green said that the building did not change, just the form of ownership changes. There was discussion as to why this option of ownership was not discussed at the time of the site plan.

Henry Huntington asked how broad the use of the building was left during the site plan approval process. He asked if it was left to anything permitted in the commercial district. John Reese stated that the fire department approved the building for business occupancy per the NFPA 101 Life Safety Code. He said that is strictly for businesses to have an office, store supplies, equipment, and vehicles. He said that does not include transactions of goods such as restaurants or stores. Gary Tasker said he thought the site plan was approved for anything permitted in that district.

Stan Prescott spoke about parking and uses permitted in the commercial zone, noting that the parking varies based on the use. Mr. Green said that the site plan approval cited the parking calculations; he read those calculations from the approved site plan. He said that the applicant had referred to small offices and small businesses, with no intention of retail, at the time of the site plan review. Mr. Prescott asked how the spaces would be divided per unit. Mr. Green said that the condo association is responsible for deciding that. He said they are not at this meeting to approve a site plan as that was already done. It was suggested that the approved parking and uses should be in the condominium documents. Mr. Green said those are set by the approved site plan. Discussion continued about how to regulate the parking and uses.

Steve Jackson said that the hardest part of this to grasp is the fire department's comments on uses allowed. Mr. Green said that the site plan was approved on the number of parking spaces for the uses presented during the initial discussions. He showed the approved site plan that outlines office space and storage, explaining how the parking was calculated. Mr. Green said that the building permit dictates some of this also and the declarations do state that they have to meet town regulations. John Reese said that each unit is sealed with 5/8" fire rated drywall that meets NFPA code for business occupancy. He said there is a common attic and there will be heat detectors in the building. He said they are working on getting a monitoring system. Mr. Green stated that the current owner will use two of the units for his own business and there is one contractor interested in two other units. He asked for a conditional approval based on there being no problems with the condo documents. Stan Prescott noted that the 250' Shoreland Protection line is not shown on the plan. Mr. Green said that he could put it and the buffers back on the plan.

Steve Jackson spoke about understanding the different uses under the town's definitions of commercial uses. He said the site plan as presented did not limit to non-retail. He said as a real estate agent he looks at this as ten units of real property and he sees any changes such as a closet or bathroom as building permit issues, not Planning Board or fire department. Mr.

Jackson said he is not sure that the Board has any control of uses based on zoning and the way the site plan was approved. Steve Ives said that it was built for specific uses. Stan Prescott said the owner needs to look at and know what is allowed and if converting to anything other than that they would be looking at a change of use. John Reese clarified that any use other than those approved would need to bring the entire building to standard for the hazard being created. He used an auto body shop as an example, stating that they would have to have a spray booth with a suppression system. Stan Prescott asked if the fire department puts this into writing to developers. Mr. Reese said they do to a point. He explained the process of how a set of plans is reviewed when brought to them by a developer.

Henry Huntington said he understands the concerns but feels that what was approved by the Board and what can be enforced is whatever was approved for uses. He said he is not clear on that, noting that it can be quite broad based on permitted uses in that zone. He said the Board has potentially approved any permitted use for the zone and he is not sure they can do more than that. Mr. Prescott said that he feels the Board has to get on the same page with the fire department. Mr. Huntington pointed out that the site plan has already been approved. Mr. Prescott said how the building is constructed dictates what it can be used for. Henry Huntington said that is code enforcement, not Planning Board. Donna read from the minutes of July's meeting where the applicant talked about housing office and storage space, some units having a second floor. That was the only discussion of uses found in the minutes. Stan Prescott said that it was his recollection that contractors such as plumbers or electricians were mentioned. He said anything above that type of business would require a change of use. Tom Dow agreed. Gary Tasker said they would be pretty limited under the permitted uses. Steve Jackson asked if it would be as simple as putting a covenant in the deeds or something in the condo documents. He said there is some enforcement with the condo association but his concern would be that a buyer would find out after the fact that they cannot use the unit for their business. Roy Merrill suggested that the Board could put conditions on it, relative to what it was determined to be rated to be. Donna read from the September meeting minutes about a letter from the fire department being required. Gary Tasker suggested that the occupancy could be determined by the fire code and parking. Stan Prescott recommended that the documents go to town counsel at the applicant's expense. Jeff Green said it could be tied to the original site plan.

Steve Jackson asked John Reese to explain what he said earlier about a potential owner having to upgrade the entire building to meet code if they were to change the use. He said this would affect nine other owners, possibly inconveniencing them with construction upgrades. Mr. Jackson said they could possibly plan for maximum uses and ratings. Gary Tasker asked if something could be inserted into the documents. Stan Prescott said they should be consistent with the initial site plan, meeting the parking planned and business originally thought to be approved. He said he has a pretty good handle on what was intended for this building, offering the example given during earlier hearings of a plumber with an office and warehouse. Tom Dow said they would have to go to the fire department if the use was different from what presented and they could be sent to the Planning Board if need be. Mr. Green explained that the parking calculations from the original site plan were based on proposed uses. He again read the calculations from the site plan approved in September. Henry Huntington said the uses could be any one of the uses listed in the Zoning Ordinance for this district, noting that leaves a wide range of possibilities that may not fall into the category intended with the site plan approval. He suggested that Mr. Mayer be asked if these issues can be put in the condo documents. Mr. Green pointed out that the site plan has already been approved and built. He said the uses have been approved and this application is not changing anything but ownership.

The following points/questions will be reviewed and/or posed to town counsel:

1. Can we restrict beyond what the site plan was approved for?

2. Based on discussions of the site plan what can be done there?
3. Clarification of what was approved/does parking meet that?
4. Review fire code documentation for uses approved by fire department

Stan Prescott made a motion to continue this application to January 21, 2010, 7:00 p.m. at this building; seconded by Gary Tasker. All were in favor. There will be no further notification.

Board Discussion:

Huckleberry Heating Oils, LLC – Chairman Dow gave an overview of the project that was before the Board in October and November. He reminded the Board that the approval was given on the condition that a letter was needed from the fire department. The chairman informed the Board that, after the approval was given on November 19, 2010, the fire chief told the applicant that they have to put in a cistern. He stated that the applicant had a fire analysis done. Chairman Dow told the group that a memo was sent from the Planning Office to Chief Burr asking for data on how he came to the decision to request a 15,000 gallon cistern. He said the applicants also requested the information in a similar letter to the fire chief.

Firefighter Reese stated that the data came from a document that was furnished by the company that did the fire safety analysis for Huckleberry Heating. He said this information was documented in a letter that Chief Burr sent to the applicant as well as the selectmen and planning office. Mr. Reese said that the fire analysis gave a recommendation of 750 gallons of water for ten minutes and there are 6,500 gallons of water available in town if all of the trucks got on the road at the same time. He noted that there are three full-time staff and they cannot guarantee that they will be available at any given time. Mr. Reese said that the 15,000 gallon cistern would give the coverage recommended with one truck responding. He said he went to Les Cartier at the State fire marshal's office and had the analysis reviewed. Mr. Reese stated that Mr. Cartier said it does not cover the need for engineered plans and items that Mr. Reese requested. He said the document was not received by the fire department until after the Board gave the approval. Chairman Dow said that the Board was repeatedly told by the applicants that they were working with the fire department.

Steve Jackson said that he did a timeline of the applicants' process through the planning and zoning boards. He stated that the applicants went to the ZBA in September and were before the Planning Board in October and November. Mr. Jackson noted that the fire department was given notice and packet information for each of those meetings. He said there were no representatives of the fire department at any of those meetings. Mr. Jackson said that there had been a letter received from the fire department with regard to another matter on the October agenda but nothing about this application. He added that a brief memo was received from the fire department in November stating that there were no questions on any of the agenda items. Mr. Jackson said that he could not understand why the matter of the cistern did not come up until after the final hearing. Mr. Reese explained that they did not have the fire analysis until after that hearing. Several members of the Board questioned why the fire department had not been in attendance or inquired about the application when they saw that it was for two 30,000 gallon propane tanks. There was lengthy discussion about what took place with this application and what the Board would like to see from the fire department and code enforcement on future applications. Mr. Reese said the bottom line is that this system will require a 15,000 gallon cistern through the authority having jurisdiction and the fire chief. Henry Huntington said that the letter from the fire department was the Board's last line of defense and they cannot change what has happened through the process. He said that condition was specifically put on the

approval. Mr. Huntington said that all agree that things should have been done differently but the fire department sent a letter as requested, they said no, and now the applicant needs to do what the fire department is asking. The members agreed to have the applicants come back before the Board. They will be notified with the explanation that a letter from the fire department requires them to install a 15,000 gallon cistern and they must show where it will be located and be approved by the fire department. Abutters will be notified that the application remains on the agenda and related costs will be covered by the Planning office.

A zoning workshop was scheduled for Wednesday, January 6, 2010 at 5:00 p.m. Donna will check on the availability of the barn and send reminders.

Report of the ZBA:

Donna reported that there are three applications before the ZBA this month; one is for fuel storage tanks at the store in the village, one is for ESMI soil application at Pleasant View Gardens, and one is for a special exception for a driveway in the side setback on Piper Hill Road.

Report of the Board of Permit:

Stan Prescott reported that the following items were on the agenda:

1. Road blockage complaint on Berry Road
2. Bee Hole Beavers Snowmobile Club wants to put a bridge over Bee Hole Brook at Wiggins Road; they were told to talk with the landowner.

Adjournment: A motion to adjourn at 10:45 p.m. was made by Stan Prescott; seconded by Gary Tasker. All were in favor.

Respectfully submitted,

Donna White