

PRESENT: Mack, Chairman; Hawkins, Haley; Pelczar; Joslin; Edney, Code Enforcement Officer; Tivnan, Clerk

Haley moved, Hawkins seconded, THAT WE APPROVE THE MINUTES OF APRIL 26, 2007, AS PRESENTED. Voted unanimously.

PUBLIC HEARING

2779A: Henmor Development, LLC: (Rep. Attorney Gartrell) On remand from consolidated appeals to the Belknap County Superior Court, Henmor Development, LLC seeks relief from the road frontage and access provisions of RSA 674:41 to allow its proposed construction of a single family home on, and 2-lot subdivision of, Bryant Island, Lake Wicwas, Tax Map R10, Lot 22. Also included in the applicant's development proposal is a separate parcel on Chemung Road, Tax Map R14, Lot 58. Both properties are located in the Shoreline District as defined in the Town of Meredith Zoning Ordinance.

Gartrell: Henmor was the intervener in a case involving the development of Bryant Island. Several cases were before this Board on a different question. The question was whether someone, not a successful applicant for a building permit, could appeal to this Board under RSA: 674:41 and this Board concluded that it was not within their jurisdiction; the cases went on to the Superior Court and after the initial hearing the Court ordered a remand of a particular question to this Board. The question is to have the Meredith Zoning Board of Adjustment have a hearing as to whether relief should be granted to Henmor pursuant to RSA: 674:41 Section II as to both the subdivision approval and the issuance of the building permit. We are seeking an affirmative answer to that. In 1983 the legislature adopted RSA: 674:41. The general subject of this was whether building permits should be granted for lots on streets unless they met certain standards. It says in the first section of the statute. "from and after the time when a planning board shall expressly have been granted the authority to approve or disapprove plats by a municipality, as described in RSA 674:35, no building shall be erected on any lot within any part of the municipality nor shall a building permit be issued for the erection of a building unless the street giving access to the lot upon which such building is proposed to be placed, shall have been accepted or opened as, or shall otherwise have received the legal status of, a Class V or better highway prior to that time." It goes on to address if it is a Class VI highway or a private road, it indicates in the statute that building permits may be granted if certain thresholds have been met. On a Class VI highway for example the local governing body after review and comment by the planning board has voted to authorize the issuance of building permits for the erection of buildings on said Class VI highway or a portion thereof; and a street or way abutting the lot and upon which the lot has frontage. In the statute there are two mechanisms by which the Zoning Board or Town Meeting could permit construction of a building. Section II of the statute says "Whenever the enforcement of the provisions of this section would entail practical difficulty or

unnecessary hardship, and when the circumstances of the case do not require the building, structure or part thereof to be related to existing or proposed streets, the applicant for such permit may appeal from the decision of the administrative officer having charge of the issuance of permits to the zoning board of adjustment in any municipality which has adopted zoning regulations in accordance with RSA 674. In passing on such appeal or application, the board of adjustment, local legislative body, or board of appeals may make any reasonable exception and shall have the power to authorize or issue a permit, subject to such conditions as it may impose, if the issuance of the permit or erection of the building would not tend to distort the official map or increase the difficulty of carrying out the master plan upon which it is based, and if erection of the building or issuance of the permit will not cause hardship to future purchasers or undue financial impact on the municipality." The second exception is "Municipalities may except any lot, including island lots for islands served exclusively by boats, from the requirements of paragraphs I and II by an affirmative vote of the local legislative body pursuant to RSA 675". The reason the Board concluded that you didn't have jurisdiction was that Henmor was not before you complaining that they had been denied a building permit. The Court has asked that you review it as if it was an initial application to determine if those criteria have been met to eliminate the requirement of a statute to allow the buildings on Bryant Island. People have suggested to you that the cases that have been decided on under this statute are evidence that the application should be turned down. It is selectively seeking language that is being quoted that has no bearing on the specific question about an island served only by water without any road. The case that has been most cited is Vachon vs. New Durham. This case did not address a piece of land which was not accessed by a road. In 1979, the Town of Meredith adopted a Zoning Ordinance. The Meredith Zoning Ordinance has expressly provided that single-family dwellings are a permitted use in the shoreline district, formerly the island district, including the shoreline frontage on Lake Wicwas and all the islands in the Town of Meredith. There are no streets or highways on Bryant Island and no apparent reason or an occasion to do so. Article V-D says that shoreline lots shall have a minimum of 150' of shoreline frontage. Referring to Article VIII for the definition. The definition of shoreline frontage is "The average distance of the actual shoreline footage and a straight line drawn between property lines, both of which are measured at the mean high water line. A Shoreline lot is defined as a lot where one boundary line abuts a body of water." In Section D-4, the General Purpose of the district is stated to be "It provides housing and recreation for a substantial number of seasonal and year-round residents who prefer to live in single-family detached housing with access to lake waters. This District shall include shoreline frontage on Lakes including Wicwas, and all the islands in the Town of Meredith. Under sub-section A, Permitted Uses, a Single-Family Detached Dwelling is the primary use with a (minimum on ground 500 sq. ft.) Section B, the minimum standards in the Shoreline District says : Minimum Area per Family (net density) 40,000 sq. ft. Width 150 feet, Front Setback - 65 feet from shoreline, Side Setback- 20 feet, Rear Setback- 30 feet from property line
Maximum Height (Waterfront Only) 38 feet (14 Mar 00)

Article VIII defines a lot - A lot is a parcel of land occupied or to be occupied by the main building or the accessory buildings or uses customarily incident to it. A lot shall be of sufficient size to meet the minimum zoning requirements for use, coverage and area, and to provide yards and other open spaces as are herein required. Such lot shall have frontage on an improved public street. Again, that seems to belie the recognition in the definition of the shoreline district, that there are islands in the Town of Meredith that have no streets. There is a lot frontage definition in the general definition section in the ordinance but not specific to the shoreline district. It says "No lot shall have a frontage of less than 50 feet." In interpreting the application of those requirements in the subdivision application, the Planning Board imposed on the two dwelling lot limits to the Town's responsibility and liability for maintenance of access to the island for the provision of emergency services to dwellings accessible only by water, while providing extensive requirements for alarms and maintenance of safety mechanisms by the owners of any dwellings to be built on Bryant island. The conditions imposed by the Planning Board require that the limitations of municipal responsibility and the assumption of risk for potential safety hazards related to the accessibility of Bryant Island for safety services shall be made a matter of record in the Belknap County of Registry of Deeds. The conditions require the provision for parking of vehicles on Chemung Road, ownership of that lot shall be deeded to the owners of the subdivision lots as tenants in common, subject to no other interests, and the interests in such lot, and in the subdivision lots, shall not be transferable separately from one another. To protect scenic views of the island from Route 104 there was a requirement for a 75-foot natural woodland buffer. The height of the structures on the island shall be limited to 32 feet in order to insure that such views are not affected by roofline projections above the tree line. Deed restrictions shall be submitted to prevent cutting of trees in such buffer or construction or filling in the buffer. There is also language in the deeds which refers to the easements and the responsibilities. For example, in the proposed deed it says conveying the lots subject to shades for septic system disposal and utility transmission lines. By accepting the deed; the grantee acknowledges that the lot is a residential lot on an island only accessible by water without the assurance of accessibility in the event of an emergency. There are also conditions for the provision of septic approval and a septic maintenance agreement. There needs to be electric power and protection of the loon population. There is a construction access plan. There are DES permits required for docks on the islands. Each house on the island shall have a monitored and maintained fire alarm system approved by the Fire Chief and they shall be recorded with the Registry of Deeds for each subdivision island lot and an acknowledgement and hold harmless agreement substantially similar to that which may be required by statute for development on Class VI roads. Deeds to the subdivision lots shall contain restrictions acceptable to the Board on outward and upward lighting from the island properties. NHDES shall have concluded that such dock and such actions do not violate law or NHDES regulations. The enforcement of the provisions of RSA: 674:41 in this case, with all of those conditions would entail unnecessary hardship and in this case don't require the proposed development to be related to or existing on proposed streets. No one has

suggested why or how a street is necessary to Bryant Island when it is unnecessary to all the other island dwellings that have been constructed in the Town of Meredith. The issuance of a building permit for two dwellings will not tend to distort the official map or increase the difficulty of carrying out the Master Plan nor will it cause hardship to future purchases or undue financial impact to the town. The conditional subdivision approval and the issuance of the building permits on Bryant Island meet or exceed the purposes that are imposed by RSA: 674:41. Furthermore, the situation in Meredith has been different for a long time. The first mention of island lots is found in Section II-a of the statute. It had to do with a broker having difficulty selling lots in one town on Lake Winnepesaukee. That led to the adoption of that amendment. Meredith has had since 1979 a provision that says that island lots could be developed primarily for single-family dwellings. This Board and the Planning Board have been applying that rationale in every island development that has occurred prior to this. For all of those reasons, we suggest that it is appropriate for this Board to say that the building permit and subdivision approval in this case is appropriate to meet all the purposes for which RSA: 674:41 was adopted. Elizabeth McCormack- I am here on behalf of the Lake Wicwas Association. We would like to show you why Henmor's request to be accepted from RSA: 674:41 should not be granted based on their failure to meet the requirements of the statute. I would like to express a different interpretation of the statute and the purpose of it. It was to give Town's the power to consider island properties on a case by case basis. One of the main concerns the statute addresses is the potential for building on an island to distort the official map or increase the difficulty of carrying out the Master Plan upon which it is based, and if erection of the building or issuance of the permit will not cause hardship to future purchasers or undue financial impact on the municipality. These criteria are to be followed and the applicant must show that they can be complied with. (Packets with a map and pictures passed to the Board) The plan I am showing you is a delineation of wetlands that was done in 1984 for the Town of Meredith. The lot in green is the Chemung access lot. Our concern is the effect this development will have on the Master Plan. The Master Plan for the Town of Meredith explicitly sets forth its vision that reflects what Meredith, as a community, is committed to achieving. Articulated as a key component of this vision is the following declaration: "The long standing environmental preservation and conservation ethic within the community will progress to an unparalleled level. Critical natural resources such as significant wetlands, undeveloped shoreline areas, scenic vistas, wildlife corridors, groundwater supplies, large forested areas and agricultural soils will be conserved. Natural resource protection efforts will complement economic development and be considered by the public as critical to a balanced growth policy." The Master Plan further goes on to warn the public about development pressures on environmentally sensitive land by saying, "As most of the readily developable land has already been developed, pressures on environmentally sensitive lands will increase. This, if unchecked, could have demonstrably negative impacts on critically important resources such as unfragmented habitat areas, wetlands, streams and small ponds." As you know, the point of access for the island is the parking area off Chemung Road. What may

not be known is the true extent of the designated prime wetlands surrounding that area and directly abutting the Chemung lot and docking area. You can see that the parcel is directly within the wetlands delineation. This area around here was designated prime wetlands on April 1, 1984 as the north portion of Wetland No. 39, Mud/Swains Pond Wetland. The photographs in your packet were taken by some Association members of the aerial and surface views of this particular area that show the wetlands and the high level of vegetation found there. Additionally, in the Natural Resource Inventory prepared for the Town by Rick Van De Poll in 2005, Rick indicates that this particular area is one of the highest co-occurrence areas in Meredith, meaning it holds the highest value for the occurrence of multiple natural resources. Rick also cites this very location, which he refers to as Wicwas and Chemung as being locales where conservation initiatives would be best served on a municipal basis. Much of these wetlands have been and will continue to be impacted by the use of motorboats in this area, which is the intended use. You can see from the aerial photos that a serious disturbance has occurred due to the intentional channeling through the vegetation for boat access to the island. In addition, there has been frequent intentional shoveling of soil and vegetation and extremely low water levels, which are often found along this particular area, brought about by dredging from boat motors, and all of this has negatively impacted the natural habitat in this section. Some Association members even witnessed the applicants intentionally digging up the channel to make it deeper by continuously driving the boat into the ground and using the motor as a shovel. Wetlands provide some of the richest habitat for wildlife in any given locale, and the Meredith Master Plan supports the preservation and conservation of these areas and even warns against the pressures of development. The Master Plan challenges the Town to maintain an unparalleled level of concern for areas such as the Chemung prime wetlands, and the association asks that you step up to that challenge and afford this significant natural resource the greatest protection possible by preventing further abuse of the area. Another goal that the Plan sets out is to maintain the landscape character of the Town. The Plan states that "the town contains a variety of significant, scenic attributes that collectively help define the visual character of Meredith. Landscape character, like environmentally sensitive land, is a resource that faces the challenge of development pressures." It's been mentioned many times that Bryant Island is a key feature in Meredith's landscape, and the Planning Board even accounted for this in protecting the view of Bryant Island and development of it will only serve to contradict the Master Plan's goal of protecting scenic attributes that make Meredith a special place. Development of the island will also bring about hardship on future purchasers. As mentioned before, the water levels surrounding the access area are frequently very low. Association members recently took measurements in the area where the applicants placed their dock and use their boat, which is presumably where future owners would also dock their boats. Where the dock would be located, the water ranged from only 16 to 18 inches deep, with the area near where the dock would end would be having only 16 inches of water. Going off the end of the dock about 10 feet, the water level only increased to 18 inches. In the middle of the channel the water is

only 21 inches deep. The whole channel was never above 2 feet deep. To paint a picture of what this means, the Thorpes took their small, 12 foot fiberglass boat out to the area with a 6 horsepower outboard motor and found that it drew at least 22 to 24 inches. This means that any boat larger than that, which presumably would be necessary to service families living on the island, would need a much greater water depth to even access the island and also to prevent dredging. Association members have witnessed the applicants' very own boat sitting on mud because the water depth is so low. We ask that you take the difficulty of using the Chemung access parcel into consideration when you evaluate how development will affect future owners of the island property. Finally, development of the island is also likely to have an adverse financial impact on the Town. Fire and other emergency services will undoubtedly be more difficult and more time-consuming to provide service to the island. Fire Chief Chuck Palm whose letter was submitted in a previous meeting has been provided for you in your packet. The costs of the extended time and extra personnel required to provide what Chuck calls "the customary degree of service to this location" would be borne by the Town and at some point, were there the need for additional equipment to make access easier, the Town would be financially responsible. Also, development of Bryant Island is anticipated to decrease surrounding property values for homeowners along the shoreline of Lake Wicwas, as Superior Court Judge Smukler even noted in the recent trial. The logical extension of that is that Meredith will suffer a negative financial impact in reduced tax revenues. An Association member has prepared a spreadsheet listing all properties having frontage on Lake Wicwas and their assessed values from the October 2006 assessment. That spreadsheet is also available in the packet. The total assessed value of these properties is not insignificant. Even just a 2% reduction in the assessed values as a result of development of the island would likely wipe out any gain that Meredith might expect from taxes assessed to potential Bryant Island properties. Therefore, the overall negative financial impact to the Town in allowing development should not be overlooked and warrants serious consideration. The Association and I urge you to keep these very important issues in mind in your deliberation. You, as members of this Board, have the power to protect not only the importance of Meredith's natural resources and landmarks as contemplated by the Master Plan but also the financial security of the Town and its ability to readily provide services and collect income. The Association respectfully requests that you consider their position and find that Henmor's proposed development cannot and will not satisfy the criteria set forth in the statute. Thank you. Brian Moriarty – I am a member of Henmor Development. I take great exception to Ms. McCormack's data that she says the Association has on the water depth. For the last 2 years we have driven a 13 foot Whaler in there and never hit bottom unless we took off too close to shore. When she says that members have seen either my partner or myself hand digging with an outboard, I take exception to that. It has never been done. We have a letter from the state stating that there is no violation whatsoever in that area. It is not a law or a crime to drive through weeds. This data is not accurate. Dave Thorpe – My wife and I were walking and saw Mr. Moriarty aggressively powering his engine going forward and back with the intent of

deepening the channel. We measured the water depths 3 days ago. Even though Mr. Moriarty takes exception, I saw it, witnessed it and took the measurements myself. Brooks Banker – (Handed packets to the Board) I speak in opposition of the application. The burden falls upon Mr. Gartrell and his clients to the extent that this Board does not feel that evidence was presented to substantiate the finding, then the Board must find against the application. Mr. Gartrell did correctly indicate that the statute requires four different findings by this Board. This Board must make an affirmative finding for each and everyone of those. If not, the Board must deny the application. Mr. Gartrell offered nothing in support of the four criteria other than his own testimony. He told us that the application and the issuance of the permit will not tend to distort the official map and will not increase the difficulty of carrying out the Master Plan. Those are not the hardest burdens to discharge. The hardest burdens are the final two. Those are the erection of the building or issuance of the permit will not cause hardship to future purchasers or undue financial impact on the municipality. For those two issues, Mr. Gartrell looks for a shortcut. He says we don't have to prove that because we are going to give you a waiver. We are releasing the Town of liability. This Board doesn't have to resolve this issue. The New Hampshire Supreme Court has already addressed it and resolved it against the position taken by Mr. Gartrell. The document I gave you refers to Vachon vs. New Durham. The decision itself does state what the law is. The issue was an application by two landowners for a reasonable exception under RSA: 674:41. In that case, the landowners sought to find a shortcut over the last two requirements in the statute by offering a release. The Supreme Court rejected that. In its decision it wrote. "The plaintiffs also make much of the fact that they offered to sign a waiver releasing the Town from any liability. The transcript of the testimony reveals that the plaintiffs offered an agreement to the Town, waiving rights to emergency services, school bus services, "maintenance responsibilities and liability arising out of a Class VI road." The court continued to say. "Even if we were to assume that such a waiver would bind the plaintiffs and their successors, it would not help the plaintiffs in their present predicament. The plaintiffs could not immunize the Town from any conceivable liabilities to third parties, who for any reason might occupy the properties in question, and furthermore the waiver language contained in the relevant statute and ordinance is directed at roadway maintenance rather than the broad spectrum of liability which the plaintiffs' proffered agreement contemplates." That issue is resolved. Mr. Gartrell's reliance upon an agreement with the Town has no basis in the law. In order to make that clear I gave you the background to that. Even if we were to assume that such a waiver would bind the plaintiffs and their successors, it would not help the plaintiffs in their present predicament. The plaintiffs could not immunize the Town from any conceivable liabilities to third parties, who for any reason might occupy the properties in question, and furthermore the waiver language contained in the relevant statute and ordinance is directed at roadway maintenance rather than the broad spectrum of liability which the plaintiffs' proffered agreement contemplates." Mr. Gartrell's reliance upon an agreement with this Town has no basis in the law. In order to make that clear I have given

you five decisions to assist the Board in understanding the Supreme Court's rejection of a "reasonable exception" based on an offer of a waiver or release. This is what the ZBA wrote. "These circumstances create a substantially increased risk for the inhabitants of such a proposed building, and an increased possibility of financial impact to the municipality in terms of increased liability or exposure to claims, injury to Town employees and/or damage to Town equipment in trying to reach those properties in emergency situations. The applicants have stated that they don't care about those risks. They do not want those Town services to which every citizen of this Town is entitled. The Town cannot ignore its responsibilities, but even given this "offer of waiver", the Town cannot preclude the possibility that these properties if built upon may sometime in the future be sold to future purchasers and these conditions would cause an undue hardship to them." The second document is the order by the Superior Court. The applicants having not been able to obtain in Vachon a reasonable exception took the ZBA denial to court and they lost. This is what they wrote. "To the extent that it becomes relevant, the Court does find that all of the concerns raised by the Town about the condition of Webster Road and the safety of any occupants of homes located on it are valid. A written waiver of liability is not much help to someone whose home is burning or who is in need of emergency medical assistance. Moreover, there is a real legal question as to the effect of such a waiver even if one were submitted." The third document in the packet is the brief by the landowners to the New Hampshire Supreme Court. The landowners make explicit that their application for reasonable exception pivots on their offer of a release. The fourth document is a brief by the New Hampshire Municipal Association against the applicants request for a reasonable exception. That New Hampshire Municipal Association wrote this to the Supreme Court "The Plaintiffs in their Brief make much of the fact that they have offered to release the Town from liability for snow plowing and providing emergency services. But such an offer does not alter the equal protection analysis. The Plaintiffs' argument rests on the assumption that relieving the Town of liability also relieves the Town of any legitimate governmental interest in regulating. The assumption is false. Municipal liability does not correspond to municipal authority. Towns have legitimate interests in protecting their citizens which extend beyond the mere avoidance of legal judgments against the taxpayers." "Indeed, in light of the fact that releases are generally not enforceable in New Hampshire, and only may be enforceable when there is no disparity in bargaining power, it is difficult to imagine that the Plaintiff's offered document could ever be enforceable as a release against the Town." That I think puts to rest the idea that any kind of release or waiver could offer any support for Mr. Gartrell's application. This Board should follow the Law of the State. You have a list of shorefront lots. There are 97 of them with a total of 292.02 acres with a total asset value of \$26,162, 071.00. These properties will suffer some diminished value if Bryant Island is developed and this will impact the Town of Meredith. Finally, the door you will be opening by granting this exception because right now there are no houses on any islands in Lake Wicwas. Next to Bryant Island is Sheep Island that

has several lots with about 26 acres. The owners of that island would be able to rely upon any special exception granted to Henmor to develop that island. Once you grant one, you would be obligated to grant it to others. You should not open this door. Mr. Gartrell's failure to support this application leaves the Board no choice but under the law, to deny this application for a reasonable exception.

Mack – With everything that you said, basically you are saying that nobody can build a house on an island anywhere because you can't give an exception in order to be able to do that? That provision put in there is a useless provision.

Banker – No, that is not true. There are two means of building on an island. One is to come before the ZBA. The other one is to go before Town Meeting. This Board does not have the right to assume the risk or side step its Municipal obligations.

Dean Dexter - I own property on Lake Wicwas. We have been through a long haul. I want to thank you for the time you have put into this. I served on the Oakland Cemetery Board of Trustees when the Association decided to clear land for future graves. Harold Wyatt marked all the trees worth saving, except the contractors cut all the good trees that he had marked. Accidents happen but there is an issue of safety on that island. I can contemplate someone getting hurt on that island and nobody is going to have any knowledge of what's on file at the Registry of Deeds. This is an issue you can address and the law gives you this as criteria to address. There is monetary value as to how this lake is now. We are not anti-development but we do feel it's a duty to take care of what we have and to use the rights we have under the law to come before you. It is about a road. We have been to Court and we have come before you and our concerns are real. Two houses on that island will affect values. I believe the law speaks to this.

Tom Crane – I have been through all of these hearings and one thing that is clear to me is that there is often a misconception of Lake Wicwas and how different it is than the other lakes that have islands and the reason behind RSA: 674:41 and why you have to make an exception. This lake has no facilities or Marina's to provide service. Before the Town of Meredith takes on these responsibilities, it needs to look at this. I think you need to look at the access lot and the water depth. That is going to create future hardship for future owners. The Master Plan talks about view lots. The key view point is Bryant Island. Development on that island will impact that plan. We set up a committee to try and raise money to buy out Bryant Island and virtually everybody in our Association has put up their own money.

Gartrell – Section II a. amendment was adopted and put on RSA: 674:41 in 1998 as part of the statute. Attorney McCormack said that this was set up so this Board could decide questions like the one before you tonight on a case by case basis. If the Town took the option that the legislature gave them in 1998 and adopted an ordinance following the adopted statute for a Zoning Ordinance to exempt all islands accessible only by water from the application of this statute. It would not be a case- by- case analysis. Every residence on every island would be exempted. This Town did that in 1979 and you have buildings on islands elsewhere. From the key visual point from Rte 104 you will not be able to see either one of the dwellings and the implication that has been suggested to you is that people will have to see these dwellings from all around the lake. That is not the case. The closest property is

owned by the Town of Meredith and is marshland. They come before you and they suggest there will be a diminution of value. Where is the evidence? There has never been any. These are emotional arguments and what they add up to is, I don't want to see any development. The question of the environmental area around the Chemung Rd lot is one that was raised with NHDES. They looked at the site in detail. There is no requirement in Meredith that you have to have mainland parking for your properties elsewhere on the lake. This was used by the previous owners. I was out there last year and the water was very high. Mr. Banker has suggested that the burden of proof is entirely on us. He talks about my lack of evidence. I am arguing from the law. I am talking about the language of the statute and the Zoning Ordinance. I do not think there is any distortion of the official map. It is embodied also in the ordinance and in the subdivision regulations. That was addressed by the Planning Board. The safety issue is a red herring. I also have a home on an island and we are dependent upon each other for medical care, emergencies, fire protection and that sort of thing. When you buy property on an island, you understand the limitations of the ability to deal with those issues. There is nothing unique about the liability of the Municipality. The owners will acknowledge that those services are not readily accessible. Unlike the Vachon case, they were offering a waiver. We were not offering, we were being told that it was a condition of the sub-division approval. I suggest that the people who chose to live on Bryant Island have a vested interest in what they would like to have. There has never been a specific offer to buy out Henmor Development. I believe we are back where we started. The issue is whether you should agree that RSA: 674:41 is not applicable to this case because of all the other conditions that have been provided through the Planning Board's decision.

Douglas Hentz – I have been a Meredith resident since 1985 when I bought an island in Winnepesaukee. I have listened to the safety concerns that the Association brings up relative to the island development. I went to the Planning Board for permanent residence status with my island as my address. I was granted that in 1990. The one requirement that the Town asked me was when I have kids to not ask for bus service. I would not even think to have that. I lived there for 9 years year round. I never asked or expected any kind of services in regard to safety or fire. When I bought that island I bought it with the acceptance of what the Town could actually provide. When my daughter got sick, I didn't call the Town for services. I put her in the boat and brought her over to the mainland and met the ambulance. When my wife went into labor, I didn't call the Town. It's common sense, that when you buy into an island, you don't expect help from the Town. To think that this hinges on services, it seems convenient that you bring these facts up now when these issues have been addressed by the Planning Board which is on the plan. To think that you are more concerned about sparks reaching your house from 700' than your own neighbor next door to you which are probably only 50' away. You don't show any concerns for the added development on the shore and for the homes that don't have adequate septic systems and probably never will. I have listened to this for 2 years and I had to say my piece.

Ann Morse – (12 Upper Terrace Ave) I am not here for this hearing however, in listening to this I am appalled that you could potentially diminish all these lot

owners values by denying this. I can't imagine someone telling me that I can't develop my property. Hearing closed at 8:48 PM.

2780: RCC ATLANTIC, INC FOR ELIZABETH ALMSTROM, TRUSTEE (Rep. Peter DeMarco) An appeal for a VARIANCE to construct a wireless telecommunication facility in sensitivity zone, Tax Map No. R11, Lot No. 1, located at 18 Hatch Corner Road in the Forestry/Rural District.

DeMarco – We thought we were in the correct zone that allowed towers up to 100' but after we filed, we are just inside the sensitivity zone. This is a GSM global mobile telecommunication that is being proposed. Because of the topography of the lot, if we moved it back to get the same type of coverage, the tower would have to be 130' tall. We are proposing a 90' monopole and we need a use variance. If we move it back, we are only allowed 100', so we would need a height variance. This is a 170 acre lot. Pictures presented to the Board showing where the tower will be and what it will look like. This is a heavily forested lot. Hudson Design did the engineering on this project. (George?? Consultant for RCC) - Maps passed to the Board identifying areas where sufficient coverage will exist and where it will not. Map 1 depicts RCC's GSM coverage footprint from all existing GSM sites adjacent to the proposed Meredith West site and from other RCC sites adjacent to the Town of Meredith. Map 2 depicts RCC's GSM coverage from the proposed Meredith West site in the Town of Meredith. Map 3 depicts existing RCC's GSM sites, alternate RCC's GSM coverage and proposed RCC's GSM coverage. Haley – What will I be looking at? Ron Pennimpede - (Hudson Design Group) This will be a monopole with a tubular structure. The lines run through the monopole and are concealed. David Larson- (Abutter) My question is how close is the tower to the power lines? Ron Pennimpede – 150' to the power lines. Larson – I understand that the Meredith Conservation Commission has suggested moving the present entrance to Route 104 approximately 200' in a westerly direction in order to avoid crossing some wetland areas. Is there a problem in doing that? Mack- We are hearing for a variance for the tower, next will be the special exception and that will be explained. Dave Almstrom – I have been monitoring this property for years. I don't plan to develop this property but this will help me pay the taxes and allow my kids to lease it as an undeveloped area. I am pleased with the area of where the tower will go. It is next to 60' power lines and I doubt most people know they are there. This will not be visible to anybody. If they do have to go further down, it will be right behind a development and the people in that development wanted cell service but I don't feel good about putting this there. This property has all been inspected by the United States Conservation and Forestry Service. Hearing closed at 9:10 PM

2780A: RCC ATLANTIC, INC FOR ELIZABETH ALMSTROM, TRUSTEE: An appeal for a SPECIAL EXCEPTION to construct a wetland crossing within non-

designated wetlands for installation of a culvert for driveway access, Tax Map No. R11, Lot No. 1, located at 18 Hatch Corner Road in the Forestry/Rural District.

DeMarco – The reason we picked this entrance to the site is because it exists. We know this is a state highway and I seriously doubt if the State would give us a driveway permit closer to that corner. We have an existing roadway; if moved, there is a lot of ledge that would require blasting. Larson – I seems to me that the Conservation Commission suggested this and I have no heard anything to indicate that this would constitute a hardship. I didn't hear any evidence that the site lines wouldn't be sufficient. I doubt that there is a road all the way in. Pennimpede – It goes in about 200'. I did look at where the Conservation Commission had asked us to look. Aside from the State highway permit issued, there are wet areas all along the highway and the topography is very steep with ledge. This would be very difficult to grade out for access. Larson – I think we should look at the alternate route and I think we have to find out how much of a hardship that would be. We need to have minimal impact to the environment. Almstrom – This is an access road to a sawmill that was located in 1938. This has a solid ledge base and there is some runoff in the spring from the snow. It is a non-wet area for the whole year. The forestry and the soils people out of Laconia suggested that I never cut it open or you will have people running through the area and you want the wildlife to live there. This would be an easy access and if you are looking for non-disruption of the environment, this is it. I don't want it to come down to my neighbors here. It will not look good and it will open it up to the public. I want to keep this area as it is and the location is very dangerous. This would be a blind access and not safe. We want to keep this as a wildlife area but if you blast this out every hunter in the world and hiker will say what a beautiful place and they will go up there. I have left the brush there so it doesn't look like it is being used. Hearing closed at 9:25 PM.

2791: LAND ACQUISITION, LLC: (Rep. Mark Derby) An appeal of an ADMINISTRATIVE DECISION of the Code Enforcement Officers interpretation and enforcement of the provisions of the Zoning Ordinance related to Article V C-2 (District Boundaries), Tax Map S17, Lot No. 2. located on Upper Ladd Hill Road located in the Shoreline and Central Business District.

Mike Pelczar stepped down.

Derby – For the record we will proceed with a Board of four. We are here for an appeal of a decision of the Zoning Administrator regarding his interpretation of Article V, Section C-2 of the Zoning Ordinance which governs treatment of lots which are divided by a zoning district boundary. This lot is 19.15 acres off of Upper Ladd Hill Road, of which 14.56 acres is located in the Central Business District and 4.59 acres are located in the Shoreline District. ARTICLE V- Section C-2 in the Zoning Ordinance says "If a lot or abutting lots owned by one person are intersected by a district boundary, the lots may be considered to be in that district

which comprises the majority of the lot area.” In this lot, a clear majority is located in the Central Business District as is detailed in the Zoning Administrator letter, dated April 10, 2007. He takes the position that for the purpose of calculating lot density; you take the two separate zones, calculate them separately and then add up to a total lot density for the entire development. In the plan we provided, you would get one lot for every 10,000 sq. ft. on the Central Business District lot, which would be a total of 63 lots and then another 8 lots on the Shoreline District with one lot per 25,000 sq. ft. We believe there is no support in the Zoning Ordinance or the statute for that particular interpretation. Where it says you go by the majority zoning in the lot, which is Central Business, all aspects of the Central Business zoning apply to the entire 19.15 acres. We believe it is inconsistent with the plain language of the Zoning Ordinance to carve it up and select one component of the Shoreline District that would carry over into the entire project. The case we have cited in our application is called *Duffy v. City of Dover*. There was similar language in this case. “if a lot or abutting lots owned by one person are intersected by a district boundary, the lots may”. It has the word may and the may language was held by the Supreme Court to apply to the owner of the property. The owner can decide whether or not to use the zoning district that applies to the majority of the lot. We suggest in this case that the majority of this lot is in the Central Business District and all aspect of this Central Business applies to all 19.15 acres. For those reasons and the written notice of appeal, we would request that this Board grant our appeal and overturn the April 10, 2007 letter. Hearing closed at 9:32 PM

2792: MSS REALTY TRUST OF 1995: (William Philpot) An appeal for a VARIANCE to allow a Nursing/Convalescent Home Tax Map S17, Lot No. 16 located on Rte./3 and Mile Point Road in the Shoreline and Commercial – Route 3 South District.

Philpot – I have 5 abutter letters speaking in favor of the application. I am handing out a traffic study also. The zoning of the property is split between commercial and shoreline. The commercial zone is an elongated ax handle shape. The abutting property is conservation land. Photos were displayed with descriptions. The road to this lot is existing. There will be limited or no visual impact on the residential environment. The topography of the site does not allow for construction of the necessary road network because of the number of cuts and fills which would be required for a permitted use in the zone. The architecture that is being proposed is consistent with what we have downtown. With regards to the criteria, what impact the facility would have in the neighborhood, the residential environment does not use the Mile Point Road; therefore you will not have a situation where this facility is coming into that environment. Aerial photo was displayed. The Pernaw report handed out deals topically with the proposed use. Based upon industry analysis at the highest peak traffic hour, a generation of 16 vehicle trips to the site would occur and with site traffic splitting, the net traffic impacts from the proposed development will not significantly impact traffic operations. Mack – Why are we talking traffic impact? Philpot – The residential location comes out in this vicinity and I wanted to

indicate that it won't be impacted and the road doesn't even go through the residential environment. William McLean (Appraiser) – Handed out report on the diminution of value. There are just a few points that were very important for me to address. One is visual impact. I could find no negative result from the visual impact of the proposed project. Second, I looked at noise impact. Again with this use there would be no adverse affect related to noise. You have the traffic study and I have studied it. You end up with a nominal increase in traffic. Then, what's the compatibility of the proposed use with the surrounding uses? The proposed use is a use compatible with the current mix of uses in the immediate locale. My conclusion was that there would not be a diminution in value of abutting properties as a result of the proposed facility. Philpot – We believe there is a need for these facilities. It provides an environment whereby a resident can stay close to family. In the Community Plan, it discusses the need to keep seniors in the Community and page 28 in the Community Plan discusses the visual landscape of the character and the preference for a New England village character. That is what we are going to strive for. Hearing closed at 10:10 PM

2793: ROBERT HALE ANDREW AND PHYLLIS ELDRIDGE TRUST: (Rep Carl Johnson)An appeal for a SPECIAL EXCEPTION to construct a driveway within the protective buffer of a non-designated wetland with possible underground utilities, Tax Map S02, Lot No. 1, located on Old Center Harbor Road in the Forestry/Rural District.

Johnson – As mentioned, the property is located on Old Center Harbor Road and Gilman Hill Road. It is about 17 acres and the applicants have decided to subdivide. It is in the Forestry/Rural Zone requiring 3 acres minimum density per lot. The wetlands were delineated and based on the topographic information and the wetlands delineation, we take the 50 'setback from the non-designated wetlands with a 75' septic system setback and we look at what areas of the site are available for development. In this property there is a large wetland complex to the west and there are two smaller ones central to the property. Mr. Eldridge met with Mike Faller and discussed possible entrance ways. We are trying to create a situation where we have safe entrances and an access to the buildable area what would be lot #5. The common driveway comes through and accesses lot #2 and continues down through a gap in the wetlands with no direct impact to the wetlands. The relief we are asking for is to be within the buffer area of the wetlands. There will be no additional relief from the wetlands ordinance for buildings sites, septic systems and for lot development. We feel this proposal is consistent with Section C of the ordinance. Hearing closed at 10:20 PM

2794: PAUL A. & ARDYCE W. PELTON: (Rep. Dave Dolan) An appeal for a VARIANCE to allow construction of an addition to an existing non-conforming structure by extending the existing building plane by 93%, 50% allowed, Tax Map U31, Lot No. 27-2, located at 22 Rockey Brook Road in the Shoreline District.

2795: PAUL A. & ARDYCE W. PELTON: (Rep. Dave Dolan) An appeal for a VARIANCE to allow construction of a bulkhead with a side setback of 11'. 20' allowed and a rear setback of 17.2', 30' allowed, Tax Map U31, Lot No. 27-2, located at 22 Rockey Brook Road in the Shoreline District.

2796: PAUL A. & ARDYCE W. PELTON: (Rep. Dave Dolan) An appeal for a SPECIAL EXCEPTION to expand a non-conforming structure by more than 400 sq. ft. within existing established setbacks, Tax Map U31, Lot No. 27-2, located at 22 Rockey Brook Road in the Shoreline District.

Ken Haley stepped down. Mack – We will hear all three applications together and deliberate on each one separately.

Dolan - It has about 100' of frontage on Lake Winnepesaukee and about the same amount of frontage on Rockey Brook Road. The depth of the lot from the lake to the road is about 95. Setback from the shore is 65', the setback from the road is 30'. The setbacks overlap each other and there is an existing one and half story dwelling that was constructed on the lot a number of years ago. They are hoping to expand the structure. We are proposing to construct an addition. The width of the addition exceeds the building plane by more than 50% so that is the reason for this variance. The total floor area will increase by more 400 sq. ft. We are not going any closer to the lake. The existing structure is 40.3' from the lake. The proposed one will be 42.5'. The septic system has been replaced. We have been granted a waiver for this project from the State. We need to do some landscape improvements to enhance the buffer. No portion of the proposed addition is located within the 25' natural woodland buffer. Pictures of the existing buildings were submitted to the Board. The proposed building is consistent with what has been constructed in that neighborhood. The project will result in the reduction in lot coverage – from 31.05 percent to 29.98 percent. Additional improvements to the property include vegetation along the shore front in accordance with a Shoreland Waiver granted by the State of New Hampshire Department of Environmental Services. Denial of the Variance would result in unnecessary hardship to the owner because the property is unique, and very small. The setbacks overlap. The depth of the lot is less than 95'. It is not contrary to the spirit of the ordinance. This is an existing developed lot. We are asking for a bulkhead variance. It will be a means of access to the basement. This is the only open area. The expansion is greater than 400 sq. ft. The existing footprint is 798 sq. ft. and a gross area of 1,730 sq. ft. Again, no portion of the proposed addition is located within the 25' natural woodland buffer. I think I have discussed all the other points. Haley – This has been 2 years in the planning and David has been involved for most of the 2 years. There are 6 of us sharing a very small peninsula and every lot is non-conforming. There is another one coming in right behind this so I want to make sure you treat this important. Mr. Sorbera wrote a letter in support and he is the next one. I hope you will give this favorable consideration. Hearing closed at 10:30 PM

2797: RAYMOND & BERNICE HACKETT: (Rep. James Vermeersch) An appeal for a SPECIAL EXCEPTION to expand a non-conforming structure by more than 400 sq. ft., Tax Map U17, Lot No. 12c, located at 105 Pleasant Street in the Shoreline District.

Vermeersch – We are applying for 375' over the 400' requirement. The homeowner is looking to retire here. We are looking to put the second floor addition over the existing footprint including the special exception that was granted in January. Hearing closed at 10:45 PM.

Mack moved, Haley seconded, that we deliberate all cases that we heard tonight on May 24, 2007 at 7:00 PM, site to be determined. Voted 5-0 in favor.

Meeting adjourned at 10:45 pm

Respectfully submitted,

Christine Tivnan
Planning/Zoning Clerk

Approved by the Meredith Zoning Board on _____, 2007.

John Mack, Chairman