

PRESENT: Vadney, Chairman; Sorell, Vice-Chairman; Bayard, Secretary; Worsman, Selectmen's Rep.; Finer; Kahn; Touhey; Dever, Alternate; Edgar, Community Development Director; Harvey, Clerk

Vice Chairman Sorell called the meeting to order at 7:00 p.m.

### APPLICATION SUBMISSIONS

1. **MICHELLE RICCIUTI FOR 38 MAIN, LLC** – Proposed Site Plan Amendment for a change of use from residential to commercial within an existing commercial building, Tax Map U07, Lot 131, located at 38 Main Street in the Central Business District.

Angela Labrecque – We received an application to convert an apartment to a small retail business (700 sq. ft.) on the second floor of an existing mixed-use building. There are currently four (4) commercial uses and 2 apartments. No changes to the exterior of the building or lot coverage are proposed. The application was submitted with a Site Plan, abutters list and the application fees have been paid. The application has been reviewed and is complete.

Finer moved, Bayard seconded, I MAKE A MOTION WE ACCEPT THE APPLICATION OF MICHELLE RICCIUTI FOR 38 MAIN, LLC, AS BEING COMPLETE FOR THE PURPOSES OF PROCEEDING TO A PUBLIC HEARING TONIGHT. Voted unanimously.

### PUBLIC HEARINGS

1. **B & N DESIGNS, LLC** - Compliance Hearing to determine amount of performance guarantee associated with conditional subdivision approval granted on November 13, 2007, Tax Map S25, Lots 30 & 38, located on Waukegan Street in the Residential District.

Labrecque – Part of the conditional approval in the Notice of Decision for B & N Designs, LLC, requires that a Performance Guarantee be posted for the purpose of site stabilization and road repairs associated with the sewer extension and connection. A cost estimate was received from Jeff Burd and was reviewed by staff, both Bob Hill and Mike Faller. The amount recommended is \$66,814.00.

Jeff Burd – I don't have anything further to add but I am available to answer any questions.

Dever moved, Finer seconded, I MOVE WE ACCEPT THE AMOUNT OF THE COST ESTIMATE FOR B & N DESIGNS SETTING THE PERFORMANCE GUARANTEE IN THE AMOUNT OF \$66,814.00 AND ALL OTHER CONDITIONS OF APPROVAL SHALL REMAIN IN EFFECT AS PER THE PLANNING BOARD'S DECISION DATED NOVEMBER 13, 2007. Voted 6-0 in favor of the motion.

1. **NDN 2005 REALTY TRUST AND NORTHVIEW DRIVE TRUST OF 1995 -**  
Compliance Hearing to determine amount of performance guarantee associate with conditional site plan approval granted on November 13, 2007, Tax Map S17, Lots 17D and 17E, located on Northview Drive in the Central Business District.

Labrecque – This is another Performance Guarantee for site stabilization so per the Notice of Decision, Condition #10 requires a Performance Guarantee for the 10,000 sq. ft. commercial building that's going in on Northview Drive. A cost estimate was submitted by Moser Engineering and reviewed by staff. I referred to the NHDOT for their weighted average unit prices and it seemed to be accurate and we're recommending the Performance Guarantee be in the amount of \$18,346.00.

Tom Holly – I'm representing the NDN 2005 Realty Trust and I'm here to answer any questions.

Finer moved, Worsman seconded, MR. CHAIRMAN, I MAKE A MOTION WE ACCEPT THE COST ESTIMATE FOR NDN 2005 REALTY TRUST AND NORTHVIEW DRIVE TRUST OF 1995, AND SET THE PERFORMANCE GUARANTEE IN THE AMOUNT OF \$18,346.00 FOR THE PURPOSE OF SITE STABILIZATION. ALL OTHER CONDITIONS OF APPROVAL SHALL REMAIN IN EFFECT AS PER THE PLANNING BOARD'S DECISION OF NOVEMBER 13, 2007. Voted 6-0 in favor of the motion.

3. **RCC ATLANTIC, INC. D/B/A UNICEL FOR MEREDITH NOMINEE TRUST NO. 1-**  
Compliance Hearing to determine amount of performance guarantee associated with conditional site plan approval granted on June 26, 2007, Tax Map R11, Lot 1, located at 18 Hatch Corner Road in the Forestry/Rural District.

Labrecque – Per condition #8 in the Notice of Decision for RCC Atlantic, Inc. d/b/a Unicel for Meredith Nominee Trust No. 1, a Performance Guarantee is required for site stabilization and erosion control. Though it's not noted in the Notice of Decision, per our Wireless Telecommunication Facilities Ordinance, they are required to post a bond to insure the removal of the cell tower should it ever be abandoned so for the Performance Guarantee we received a cost estimate for stabilization and erosion control from Hudson Design Group which has been reviewed by staff and we recommend the amount of the guarantee to be \$10,250.00. The cost estimate for removal of the tower and associated concrete pad, also submitted by Hudson Design Group, and that estimate is in the amount of \$48,590.00.

Touhey moved, Worsman seconded, MR. CHAIRMAN, I WOULD LIKE TO MAKE A MOTION THAT WE ACCEPT THE COST ESTIMATE THAT IS BEFORE US AND SET THE PERFORMANCE GUARANTEE IN THE AMOUNT OF \$10,250.00 FOR RCC ATLANTIC, INC. D/B/A UNICEL FOR MEREDITH NOMINEE TRUST NO. 1, FOR ERECTION OF A CELL TOWER ON HATCH CORNER ROAD. ALL OTHER

CONDITIONS AND APPROVALS SHALL REMAIN IN EFFECT AS PER THE PLANNING BOARD DECISION DATED JUNE 26, 2007.

I WOULD ALSO MOVE THAT WE ACCEPT THE COST ESTIMATE FOR REMOVAL OF SAID TOWER AND ITS BASE AND SET THAT GUARANTEE AMOUNT AT \$48,590.00. Voted 6-0 in favor of the motion.

4. **MICHELLE RICCIUTI FOR 38 MAIN, LLC:** (Rep. Carl Johnson)

Johnson – I'm representing 38 Main, LLC, with regard to the property located at 38 Main Street. It's a multi-use building containing both residential and commercial units. It was before the Board not too long ago to convert some portion of the building into additional retail space and the proposal before you this evening is to convert one of the existing apartment spaces of approximately 700 sq. ft. into a small accessory jewelry display area and retail sales area located upstairs in the portion of the building and on the plan before you noted as proposed commercial (up). The property as you know has no on-site parking, the building itself occupies most of the property. There is some parking available in the back which was used for the tenants in the building. The majority of the parking for the building is through agreements with the Mills Falls area and also the parking on Main Street and its in close proximity to other public parking area that's further down on Main Street and public parking that's across the street diagonally. The nature and character of the business that's being proposed is a jewelry sales area and actually the 700 sq. ft. is probably larger than the actual display, the display area is actually about 500 sq. ft. The kitchen area that was previously a part of the apartment is being left and it's an area where they can have small gatherings when they are discussing the particulars of the jewelry that they are purchasing. Again, as mentioned in the staff review that you see, the business is pedestrian oriented. The nature of the business is such that it doesn't generate multiple traffic trips per day and it is a conversion of an existing space, its not new space being created by the site plan. All of the uses in the building, the antique shop, the gift shop, the crafts area and the proposed use of the jewelry shop are all very low impact uses and are very adaptable to the types of businesses that are being encouraged on Main Street. Touhey – Carl, could you go over the entrance? Johnson – The entrance is through the one that's in the middle off of the walkway. If you look at the small diagram that's centrally located on the plan, you'll see a stairway going up. If you enter here you go up the stairway and enter into the proposed retail space. The space was previously an apartment and it's noted that the building had multiple uses that predated zoning or was an existing grandfathered situation and the acceptance of this site plan would abandon the residential use for that unit so you'd be left with the antique shop, the Bella Beads ornamental commercial and studio, one one-bedroom apartment and the Water Lily's Gift Shop so you would be down to one apartment in the building where formerly there were 3 apartments so you're giving up that residential use. In order to convert that back to a residential use, it would require further approvals. That's my understanding of Bill's take on it if I'm

reading that correctly. Dever – Are they still maintaining a fully functional kitchen in this unit? Johnson – It is a fully functional kitchen. In order to determine what is a dwelling and what isn't a dwelling, there are 3 components to that, there's a kitchen, a bedroom and a bathroom. This has the kitchen and a small bathroom but does not have the bedrooms obviously. Edgar – The way I understand it in discussing this with Bill is from a legal zoning principle point of view is that the request to go from residential to the retail shop would effectively result in a voluntary abandonment of that grandfathered right. You can have a kitchen in a non-residential, there's nothing illegal about that but if they wanted to re-establish that apartment, it would necessitate a density variance and would send them back before the Zoning Board. Worsman – You've got 3 businesses and a bedroom, where do the owners park? Johnson – The owners of the building? Worsman – No, each of the businesses. Johnson – They use the off-site parking. Johnson – It can be on Main Street, it can be at the parking across the street diagonally in the Calvary Bible Church lot and they have a reciprocal lease agreement with Mills Falls parking area in the back. Worsman – So there's no parking on this facility but that one spot as we saw in one of these pictures. Johnson – There is parking available back here but I'm not sure if that's available for the retail tenants. Worsman – What about the residential tenants? Johnson – That's where they park. There are how many spaces back there, do you know? Johnson – If the question is how many spaces are there, I can't answer that because they are not defined but there's enough room for 2 cars back there. There have been more cars there in the past but there is sufficient room for 2 cars. The existing drive right here is actually part of this property but there is an easement that's granted to this property to the North to use that driveway so you can't park in that driveway and that goes back to the 30's I believe when the properties were conveyed out. The building to the North was the Odd Fellows building. Dever – Does Abondante's take their deliveries through that alley? Johnson – Unknown. The nature of a 700 or 500 sq. ft. if you take out the kitchen in terms of display area is somewhat self-controlling in terms of how much can happen in there and also there is the site plan right to review and amend power that the Planning Board has as well as the ability of staff through the Certificate of Occupancy to control other businesses that may go in there. It's pretty much self-controlling as to what can go in there. Touhey – I'd like to encourage this kind of small shop-type business on Main Street. I get concerned when I see vacancies there. I think the greater variety of retail places that we have on Main Street, the more traffic they are all going to have. I think the likelihood that someone is going to be coming to this jewelry store and not going to other stores in the neighborhood is probably fairly remote, it's probably going to be browsing type tourists that are going to seek out these smaller shops and see what they have to offer them in their idle time so I am certainly in support of this. Johnson – One aspect of that is if you think about the available spots on Main Street to either be converted to retail space or that are vacant at the moment, there's not all that many. The Village Perk building is approved for commercial use. You have the buildings on the other side, the former Rust Building, the Bistro and Phu Jee's. There's one current vacancy where the candy shop was located. I don't see this happening too many more times, it's pretty much all determined

already by numbers so I don't really see this as a problem. Bayard – We've approved things like this before and it is sort of the nature of Main Street that most places don't come with a lot of parking so I agree with Ed, I think it's an improvement to the Town and I don't have a problem with it. Frank Vignent – I live at 44 Main Street which is right across the walkway from where the stores are. First of all I'd like to say that I'm also in favor of those stores going there, I think it adds to what Meredith has to offer and it is a very tough go for the stores that are there, Water Lilies has already closed after 3 months. My concern, however, is living directly facing the 3 businesses and the lighting in the evening essentially makes it impossible for me to have the quiet enjoyment of my home. There are spotlights on Bella Beads building and they were also on Water Lilies building, I have a deck, a living room with a window, a bedroom with 2 windows, a bathroom with a window and then another bedroom with a window and those lights at night, 1:00 in the morning, 3:00 in the morning light up my whole house and so while I'm not opposed to businesses going in there, I think its important that the Board manage the lighting in the evening, for example, Bella Beads is just an example because they have the most lights, they have probably 400-500 watts of lights shining. Her business hours on Sunday, Monday and Tuesday are Noon to 4:00 p.m., on Wednesday from 10:00a.m. to 5:00 p.m., Thursday from Noon to 8:00 p.m. and then on Friday and Saturday from 10:00 a.m. to 5:00 p.m. so there were spotlights that are on her building that reflect off the sign and literally light up my deck, my bedroom and send a light through the blinds across the ceiling and down right to the head of my bed on one window and it comes in the other window at another angle and lights up the whole ceiling and the bed. Even when I close the blinds, the light comes shining through and literally lights the room up, you don't need to put lights on at 1:00 in the morning. With Bella Beads they almost never have the lights on during the day when the business is open, they turn them on when they go home and then they are on all night until they get in the next day so that's a concern I have. During late November and early December I rode around Main Street and around Town and on Main Street there are over 30 either residential or businesses and not one business had any kind of spotlights on after 9:30 p.m. except for the Pizza Parlor that's open until 10:00. I personally have no objection if a business is open and they want to light their building up to attract business, that's not a problem for me at all but after they close it doesn't seem like they need to have the whole walkway lit up like a Christmas tree. I can count on one hand how many full night's sleep I've had since early November when they put the spotlights in. I think it's great, I think business is wonderful, I think its good for Meredith, I just think that somehow they should turn their lights off after 9:00 or 10:00 at night or put them on timers or something.

Johnson – I appreciate those comments and I was not aware of that and I don't know if the owner of the building is aware of that so I think its important that they be made aware of that and as a Board I know you're concerned about lighting and I know the owner of the building would definitely be sympathetic to going through whatever will be necessary to redirect the lighting or to make the lighting less intense or to put the lights on a timer so they would not be on during certain times of the day. I don't know how to handle that during the approval process, the actual application before you is the conversion to the jewelry business but I think in a

larger sense the whole building, whether its now or later, is part of the Planning Board's jurisdiction and the lighting aspect of it is important. The only thing I can tell you tonight is that I will definitely convey the gentleman's concerns to the owner of the building. The owner definitely has the right to dictate to the tenants to a certain degree what their signage lights can and can't do so I think Bella Beads seems to be the culprit in terms of the business but I think the owner has the ability to dictate the lighting and I will suggest that she do that. I know she would be very happy to speak with Mr. Vignent about his concerns and I think some times the personal aspect of it can be important for him to express his concerns directly to her, maybe more important than what I could do or what the Board could do because I know she definitely would be perceptive to his concerns. Touhey – John, could that be handled administratively? Edgar – There are a couple of different ways we could handle it, if you felt it was significant enough we could continue the application and have a specific resolution come back. Alternatively, as an administrative matter Carl's indicated the applicant's willingness to work something out and to approach Frank directly. One option would be to give them the opportunity to work that out recognizing that the application could get recalled under "review and amend" if it's not worked out so I think there would be a motivation to try to work it out in an amicable way without it having to be overplayed while still addressing the abutter's legitimate concerns in terms of some quality of life. It is a walkway and there needs to be a level of illumination to keep it safe, I'm sure there's probably a balancing act where some of the lighting could be redirected or the idea of turning off some of them at a certain time. Carl's representing that the applicant would be willing to talk with the abutter to work that out that may be sufficient for the Board, its all on the record to reserve the right to review and amend and if complaints continue and its not able to be worked out, we have the ability to amend it so its either that or just call time out tonight and have Carl and Michelle try to figure out the specifics and come back and deal with it. Touhey – I would propose to this gentleman does it sound amenable to you that if the Board were to approve this tonight that our condition of approval is subject to review and amend and we could bring it back if something isn't satisfactorily worked out? Bayard – This sounds like a fairly recent addition to this and we generally require cutoff lighting at least on new applications that reduces a lot of the glare. I definitely think this is something that if it doesn't get resolved, we could use the right to review and amend. Johnson – Mr. Chairman, I get the impression that its more the direct site lighting than any of the safety lighting like a wall sconce is not going to be the offending lighting, its more the direct light and the floodlights so that's what we would address. Hearing closed at 7:36 p.m.

Finer moved, Bayard seconded, MR. CHAIRMAN, I MAKE A MOTION WE APPROVE THE CHANGE OF USE FROM RESIDENTIAL TO COMMERCIAL WITHIN AN EXISTING COMMERCIAL BUILDING, TAX MAP U07, LOT 131, LOCATED AT 38 MAIN STREET IN THE CENTRAL BUSINESS DISTRICT, GIVING THEM A PARKING WAIVER FOR 3 SPACES, RESERVING THE RIGHT TO AMEND ANY APPROVAL AS PROVIDED FOR IN SITE PLAN REVIEW

REGULATIONS NO. 7 AND NO. 17, AND ASKING THAT CARL CONTACT THE OWNERS AND THROUGH JOHN WORK OUT THE LIGHTING ISSUE ADMINISTRATIVELY. Voted 6-0 in favor of the motion.

Chairman Vadney arrived and is now chairing the meeting. Minutes approved at this time.

Finer moved, Dever seconded, THAT WE APPROVE THE MINUTES OF DECEMBER 11 AND DECEMBER 19, 2007, AS PRESENTED. Voted unanimously.

### TOWN PLANNER'S REPORT

- 1. CLASS VI ROAD REQUEST – KELLER:** Labrecque –The Board of Selectmen received a request from Daniel Keller for a determination whether a Building Permit could be issued on this subject property (Tax Map R01, Lot 3). It is located on a Class VI road, Old Stage Road, and it would be accessed from Hatch Corner Road. The property is vacant and the access is relatively flat. There are wetlands there. Mike recommended that the road be upgraded so that emergency vehicles can access the property. The Fire Chief would require some sort of hammerhead turnaround for emergency vehicles. We made a site visit and inspected, we weren't exactly sure where the lot is, there was a lot of snow and we were unable to see any pins so we just kind of guessed. We went to the end of the maintained portion of Old Stage Road and walked in so it's hard to say exactly what's under there but we did observe both standing and flowing water. As required by RSA 674:41, a recommendation from the Planning Board to the Board of Selectmen is required for them to proceed on a determination of whether or not a building permit could be issued. Edgar – Mr. Chairman, if I could just add to that, actually not to be too technical, it's not actually a recommendation, it's just review and comment. The statute provides that before the Selectmen can issue a permit on a Class VI road, the prerequisite is review and comment and we had looked at the letter request a week or two ago and we didn't want to do it at 11:30 at night so we put the package together. We do have correspondence from Mike, Chuck and so forth so it is about 500'+ feet of upgrade so (a) it is accessible and (b) it's a creation of the subdivision of the Planning Board that dates back to the 70's. Lot 3 is a 10.9 acre rectangle positioned vertically so we're not out in the furthest extremes of the Town, we're basically between Winona Road and Hatch Corner Road so from a planning point of view the main question is one of access, the access is doable so there are no obvious prohibitive aspects about the access. There will be some requirements that Mike will be recommending back to the Selectmen as to the specifics of the upgrade, about 500 and some odd feet of improved roadbed to support vehicles and emergency vehicles. One thing that we don't know is the actual extent of the wetlands because of the snow cover so the comments back to the Selectmen would include the likelihood that there very well could be wetland permitting associated with the upgrade of the road. We don't know definitively until the snow goes so from a planning point of view those are basically the two issues as to whether or not there's any prohibitive aspect of this to the access and we

don't have the actual driveway located but they are coming in from the flatter side so they've come in to minimize any grades that they would have to deal with so any comments from this body as well as specific recommendations from Department Heads would all go back to the Selectmen should they want to pursue a Class VI Permit. That would also involve a waiver of liability that is statutorily required for any development on Class VI roads so we're just one piece at this level of a series of things that will get funneled to the Board of Selectmen so Chuck's and Mike's comments are sort of duplicative because they are important to you to understand whether there are any issues here from a planning point of view that would also be relevant to the Selectmen's consideration at a future workshop so this is a prerequisite, Colette, to a workshop coming your way so you'll hear a lot of the same things so other than flagging the fact there would be a requirement for a necessity to some road upgrades. The other thing we found in the file review was when the Town was granted a conservation easement by the Keller's it appear as though a portion of that conservation easement extends onto this lot so we would advise the Selectmen to advise the property owner that (a) there's the likelihood that upgrades would be required, (b) that wetland permitting is likely to be necessary once we can determine the extent of the wetlands and (c) just as an FYI that there is what appears to be a small portion of the rectangular lot encumbered by the conservation easement and you'll see an excerpt of that recorded easement plan on Page 82 of your packet. We don't necessarily need to make hard and fast recommendations, its more a matter of review which we're doing and if you have any comments you want to share with the Board particularly, we tried to lay out the staff review to give you some sense of what we thought would be relevant things to send back up the flagpole to the Board of Selectmen. Worsman – Looking at the conservation easement plan, as you're going up Old Stage Road towards the property, it looks like a significant area if I'm making the assumption correctly of wetlands and I know you've brought that to our attention but that looks like a fairly large wetland. Edgar – That's a good point but we're actually looking at different wetlands. All the crosshatch stuff, the reason why we went after these easements and the Keller's were good enough to grant them, is because this is largely prime wetland. When you come off Route 104, the first very big marsh that you see on the right-hand side as you're heading west is a lower extreme of this wetland complex called the Hatch Brook Prime Wetland. You can kind of see a little bit of a thread of the brook in that crosshatched area. There's a crossing on Old Stage Road and then it fans out up above Old Stage Road. The wetlands in the pictures are of a completely different character than this and my guess is they are probably not even directly associated with it but we won't know until the snows off anyway. Any development of that property is going to have to comply with wetland setbacks and if we have a prime wetland out in the back, that would get mapped and to the extent it comes into play with any building development, the setback comes into play so that's why we wanted to flag it, it's encumbered by part of the easement. We're in an area of prime wetland on the flank of the lot but the wetlands that were associated with Old Stage Road or nearby Old Stage Road were a different variety than this and whether they are hydrologically connected or not I don't know but I don't suspect they are the same



wetland complex, I do suspect there's wetlands that are out there. The wetlands we're talking about if you look at those pictures, that is not what we're seeing here in this crosshatched area, they are apples and oranges as far as that goes but until the snow goes and we actually know the extent of the wetlands and they specifically locate the driveway, we won't know exactly what the applicable wetland criteria are yet. Vadney questioned whether or not there was a building in one of the pictures. Edgar indicated that is an outbuilding on the Keller property so if you're going down the ROW and the rectangle's on the left this was looking to the right and this is an outbuilding at Judge Keller's old place. In terms of looking at that easement plan, if you're coming in from Hatch Corner Road and you take a right onto Old Stage where the thread of the brook crosses the road, that's still maintained at that point and then where it says approximate location of dwelling, that is the approximate location of what we refer to as the Keller dwelling and just past that is pretty much where we plow up the snow so the improved part of that road extends beyond the wetland to a dwelling and what we're essentially talking about is extending and opening up to one more building site. Sorell – That ROW says 200' from Winona Road, is that actually a ROW through there? Edgar – Old Stage Road goes through to Winona Road. In Herald Wyatt's discussion of the Old Stage Road, we don't have a formal layout for it and that's probably because it was an old range road and if you look at the Tax Map or look at a parcel map of the town you will see very distinct remnants of very long lines going through that part of town this way. Just like out on Meredith Neck, you'll see some very distinct remnants of these continuous lines and those are the remnants of the old stage roads, the old divisions when the Town was first subdivided back in the 1750's and so forth so this was one such of those as best as we can determine. There is no layout nor is there a discontinuance of it so kind of by default its assumed to be a Class VI road. Dever – So that's not developed or used as Class VI like the rest of it that section that comes off of Winona Road down there, is there actually a driveway. Edgar – The Winona Road is discernible, there's two walls and you could probably pick it out if you were paying attention, it's right opposite the Historical Society so my guess is there's more tree work on that end, there would be more upgrades and steeper grades so coming in this way was more practical from a safety and cost point of view and that's the way all this old stuff is couched to the best of our knowledge, it's a Class VI and to the best of our knowledge, we're not aware of any outright discontinuance where the public rights-of-way would have been extinguished and accordingly we're proceeding under the premise that it's a Class VI ROW following the law that prescribes how we go about building on Class VI roads. I'm not trying to be semantical, I'm not looking for any kind of approval. The statute says after review and comment, the Selectmen can do whatever they want so we've just done the review part and if there's anything you want to share with them, it could be as simple as passing along the staff report in terms of flagging the comments from Mike and Chuck, the likelihood of some wetland permitting and oh by the way it looks like part of the property might be encumbered with part of a conservation easement so quite frankly I don't think you need to do anything more than that. Not knowing exactly what the road upgrades are going to be, I don't know if you want to get into hard

and fast recommendations but just passing along any comments or observations that you have and go from there. Vadney – From a planning standpoint, we don't see a problem with it. Bayard – I do have a little bit of concern about whether the prime wetland might intersect in there's a wetland through there; it looks like perhaps there's an intermittent stream at least. The pictures are at the end and I think in the wintertime we'd have no idea whether it's connected with the prime wetland or not and it seems to me its something that should be reviewed during the spring. Edgar – That's kind of why we said what we said that we can't determine the extent of the wetland and the best we can do is flagging the proximity of the prime wetland, flagging the fact that there are other wetlands in the area and when we can make a determination or have a delineation done, then someone will go through that process. I agree, that's why we wrote it that way because we can't make actual determinations with the snow on the ground but we have wetlands in the area that have to be looked at and complied with to the extent there are any buffer or direct impacts associated with either the upgrade or the lot development. Bayard – What I'm getting at is if it is prime wetland whether it might not make sense to go in the other direction. I was not on the site walk and I'm not that familiar with the area. I understand it's probably not the ideal. Vadney – It is much steeper coming in from the Historical Society. That's probably why it was abandoned. Mike Faller – Basically, we plow in to the house site and from there its fairly level. It looks like there was a logging operation that went on, there's like a log landing there, just beyond that the road starts to climb up a little bit, its nominal slope, its not very steep. We do know that we've had several 100-year events in the last year and a half and it appears there are stonewalls on both sides of the road, the road is washed out and I think a lot of the water from up above has meandered its way down through and kind of sought its own path in the road which is not uncommon for old range roads and stuff like that but I did bring it to John's attention that it should be at least looked and reviewed. The Class V portion of the road does go beyond that brook area that's shown on the map. We do plow through that area, it is maintained by us so that's not a concern but basically just the road from up above, a lot of the water is flowing down the roadway and just creating a problem at this point. Edgar – They are different catchments too. If you're coming in off Hatch Corner Road, the road eventually goes down towards this brook crossing, a very discernible drop down to the culvert and then it rises back up towards the house. The house is pretty well high and dry but then you've got this drainage that I photographed that kind of comes around that outbuilding. Just from reading the landscape, it's hard to say with actual snow on the ground but it looks like its coming like Mike said from the other side of the property that's draining back because the wetland crossing is clearly a lower elevation than the other wetland that we're looking at. It's a good point, the prime wetlands are nearby, there are other wetlands nearby and we wouldn't know the extent of the permit requirements until the snow goes. Worsman – It was originally part of a 3-lot subdivision, what are the lots, John? Edgar – As you look at the tax map, it was Lot 1 (R01-3) of the subdivision, the lot immediately to the right was the second lot (R01-6) and the lot immediately below that lot was the third lot (R01-3) so those were the 3 lots approved by the Planning Board in the 70's. Worsman – So the

other 2 lots exit off Winona Road. Edgar – Yes, and whether they are developed or not at this point I don't know, but they go that way. We looked back in the minutes to see if there are any clues as to whether access was an issue or any discussion of it but there was nothing so there's nothing in the subdivision approval that neither the plan nor the minutes provide any insight as to anybody's thinking other than the fact that the subdivider was going to sell this lot to Keller who owned the adjoining property and a month or two after the approval he did sell it to the Keller's but it was sold as a separate lot of record and now the Keller folks are looking to sell it. Vadney – I guess what we need is a motion; a simple way would be to take this staff review and map to the Selectmen.

Bayard moved, Dever seconded, I MOVE THAT WE FORWARD THE STAFF COMMENTS AND TAX MAP TO THE BOARD OF SELECTMEN FOR THEIR ACTION ON THIS REQUEST, ALONG WITH THE PLANNING BOARD COMMENTS. Voted unanimously.

2. **ZONING AMENDMENTS:** As you know next week, we go to a public hearing on a petitioned zoning change on Accessory Apartments and there are several reasons to go forward with it, first is the law. All the Planning Board does is vote whether to support or not support and we do not have the right to stop it. If it meets the criteria, number of signatures and it meets the legal requirements, it does go forward. We say yes or no, we agree with it or disagree with it so that is the legal aspect. The public hearing is next week but we have cleared with our Town attorney that in the interest of just our general mandate to discuss zoning that we can discuss it here tonight. This isn't the public hearing, there will still be a public hearing next week but we can discuss things that are in it that we might want to bring up at the public hearing next week or any direction we want to go. More of that will come out at the public hearing but this is so we all know what we're talking about when we get to the public hearing. Along with that John and I have had a couple discussions and John has talked with Lou and there are a couple of things, in general, I personally have supported expanded use of accessory apartments for some time and I'm not particularly troubled with the amendment the way it is although there are a couple of things in it that might make it less effective. The petitioned amendment cannot be changed that's the way the petitioners signed it so when it goes to the Town it goes as written. What we can do is possibly send another amendment to the zoning that we would do that could actually be very similar and we could say we would recommend this one because we could pick up on a couple of things and I think Mike is aware of those but we can talk about those right now. Edgar – Lou wondered if the Planning Board would have the time to promulgate an alternative to the petition to try to address what some of the soft spots might be and so I looked into the timeline and with the 10-day statutory requirement we do have a very narrow window of opportunity to hold one more hearing. Lou had drafted what you are looking at there, it has been shipped over to Tim in anticipation of whether or not we wanted any legal review but essentially the concept would be that if the Board wanted to, it could promulgate a change, have a hearing on the petition and at a later date on its own proposal. The two

kickers, at least in terms of process, is if you had a hearing on the 29<sup>th</sup> of January on your own Accessory Apartment proposal, there would be no opportunity to change it because we're out of time and the warrant has to be to the Town Clerk a day or 2 after that so whatever you post you'd take to hearing and go with it or pull the plug because you don't have the opportunity to change your own proposal this late in the game. The second kicker is what you would do if you had two proposals and they both passed and Tim was very clear that you can advance both but the Planning Board's proposal would need what he calls a poison pill, it would need a clause in it that clearly states that if both were to pass, yours dies in favor of the petitioners so that's how you would avoid having two competing approved amendments so it could get a little confusing but that's how you would deal with it from a legal point of view. One of the obvious conflicts and its not a showstopper but one of the conflicts is that the petitioned amendment does not change the definition of an Accessory Apartment and in the definition section of the ordinance it refers to them as being attached. The proposal would permit under certain circumstances detached Accessory Apartments, in other words Accessory Apartments in garages so you'd have a conflict between how we define an Accessory Apartment and how we would potentially permit them. Tim's view clearly is that the law would be in favor of a petitioned amendment if it were passed and that would be what would govern so if someone denied a permit based upon the conflict that would not be a smart thing to do because the Courts would uphold the last vote taken on the petitioned amendment so you do have a conflict, it could raise some questions, it's not a fatal flaw and Tim has suggested that if the petition were approved, it would be prudent to clean up the definition section of the ordinance after that. On more of a substantive basis, the petition amends the current special exception criteria and inserts language to allow Accessory Apartments in detached structures but in inserting that language they deleted a clause that currently allows Accessory Apartments in new construction. In other words, if you built a house brand new, you could design it with an Accessory Apartment in it and we made that distinction from conversions. You could convert the old Victorian home on Main Street into an Accessory Apartment or you could build new. The build new clause was I think inadvertently deleted when they inserted the clause allowing for the possibility of detached Accessory Apartments so how significant that is to the Board or not would be something you would have to come to your own conclusions on but there is a substantive aspect of that. Those are two of the obvious ones, the petition seeks to increase the square footage from 25% of combined area to 40% so what Lou was trying to do in his draft was to create some safeguards to put a cap on the size of the apartment because if its always 25% of something, the bigger you make your barn or garage or outbuilding plus your house, the bigger the apartment and at some point given some of the large structures we have on the shoreline and other places, you could have a very large combined floor area and therefore 25% of that could be a very large apartment or 40% as proposed in the petition. The point is on a percentage basis, the bigger the combined area, the bigger the apartment so if we went to 40%, then the flip side is should there be at least some reasonable cap so its 40% but not to exceed X. Lou wanted to be here proffering up some of his ideas but he

had built that in as kind of a safeguard. The concern that Bill Edney had expressed in prior meetings was the concern about the ideas that these are owner occupied and there is some level of control that's exerted by the property owner to kind of keep things under control so we don't spoil the neighborhood or spoil somebody's experience in an abutting property to kind of let these things ease into the community without creating any issues. When you go to detached, the question is what if they are far removed from the house, would a property owner exert any control over the tenants in a context like that so one of the questions that Lou had was should we put a proximity requirement to say that it can't be on the back 40 somewhere, it's got to be within a certain reasonable distance of the house. It's supposed to be related, it's an accessory use in an accessory structure so there's supposed to be some relationship to the primary use, it just can't be an absolute free-standing dwelling unit on the property that's not what an accessory structure is by definition so Lou in this draft was trying to come up with some clauses that would open up as Herb has suggested some opportunity on detached Accessory Apartments but in a way that builds in controls that weren't in the petitioned amendment. Whether we have the time at this stage of the game to consider this thoroughly or not and how it affects the petitioned amendment, your position on that are all things we have to think through but that's sort of the background. Vadney – A couple of enhancements or additions to John's statement, keep in mind the traditional Accessory Apartment called in-law apartments or family type set aside apartments pretty much make good sense, caregivers could live in them, young families can rent them, work force housing if you will but obviously they should be incidental to the main property. One of the things in the old way and in the new way, Accessory Apartments have to be owner-occupied, that is the owner of the property has to live in one of the units. He can live in the small unit and rent the big one but the owner has to be on premise. That's one of the advantages or beauty of them, you're not going to usually have a slum lord living there, it's a guy living on his own property and is going to insist on proper behavior and upkeep. One of the things, John mentioned the 100' distance, you could dream up all kinds of situations but one that's in everybody's recent memory, think of the Atteberry property where we had some house lots up on the hill and then some lots that went way down the hill toward the lake. If we don't put some kind of a proximity to it, you may end up where there's one of our gerrymandered properties so to speak with a 10-acre lot or 3-acre lot or whatever it is but stretches over a long distance and they put that Accessory Apartment or accessory building down on the lakeside or something so that's one reason to try and put some kind of a 100', 80', 150' or whatever you pick as an arbitrary number but don't let them go to the extremities of the property for an apartment. One thing John, Lou and I have discussed is whether or not this whole thing should exempt shoreland and particularly island properties and we're a bit hesitant to include it here this year because this isn't directly related to Mike's proposal, we don't want to throw in a bunch of bells and whistles but at the same time I just want to mention it here tonight and you can think about it this week and come back to the public hearing next week having thought about it. Would that be a down side, I suspect we don't want island properties that are already crowded together pretty well to

start putting a second residence on there in an Accessory Apartment kind of thing and yet right now they can put Accessory Apartments out there but they have to be attached to the building that's out there and if they can become freestanding, would that open up an opportunity for 5, 10 or 20% of those buildings to go to a second place so that's one of those things, we don't really want to open that issue because its not directly related to the petition but at the same time I think its something we ought to be thinking about in the back of our head. John was mentioning the win and lose situation on the island property kind of thing. It's not one that's directly related with the petitioned proposal and yet its one that if we started allowing freestanding on islands it could lead to an expansion of residences on the islands. Edgar – And that sort of by extension raises a couple more questions that you'd sort of need to create a district within a district to say that we don't want this to apply to island properties within the shoreline district and generally not that that's an exclusive comment, but generally you try to not create districts within districts. Vadney – We could do it to shoreline and avoid that. Edgar – Another consideration that sort of raises is if you're in the camp that thinks that detached structures may represent potentially more risk certainly larger ones, then you might want to think about whether anything should be done on a district-by-district basis or not. Mike Faller - Basically just to make it for the tape, I am in the Shoreline District. The Zoning Board recently just heard a proposal within the past week or two on the house behind me, the house is now zoned a duplex. The landlord lives in California and both sides are rented. This all started with me for my father now 80, my mother 70 to have an in-law apartment. Yes, at some point whether they were there or not, I would rent it in the meantime and when they were ready to move in they would have a place to go to. I tried to work within the spirit of the original ordinance, I guess my question to the Board is what's considered an attachment. It's pretty gray when you read through the ordinance. I built a raised walkway over to it and I felt that was well within the spirit of the ordinance, it didn't jeopardize the Town, the Zoning Board approved it to then have it appealed. Anyway my intent for the ordinance that's in front of you coming next week was to basically get the ball rolling. Herb you and I have had several conversations on this and I had hoped it would come from the Planning Board because I look at whether it's attached vs. not attached. I actually see some benefits to it clearly on the safety side. If your house burns and its unattached, the likelihood of the Accessory Apartment burning is a lot less than having it attached. Fire separation and all of these things are good. The fact that it looks like a barn, its got a huge garage door on the front and you really don't even know there's anything over it, it doesn't look like a second dwelling unit so I always felt that's why you have a Zoning Board, that's why you have the special exception process, that's why people need to come before them and say this is what I've got but anyway its in front of you. I've got some questions with Lou's comments here and changes. One is #4, I'd like that being that he's the attorney in the group to explain that a little bit better. In the event the article effecting these amendments (inaudible). Dever – I think that's the poison pill that John was talking about where if we submit this and you submit yours, yours gets approved and ours gets approved, ours dies and yours takes precedence. Kahn - We cannot under NH Law interfere with your

petitioned article, all we can do is say is we approve or disapprove it, but that's all we can do. Faller – My intent is to have the Planning Board support this. I understand there are some gray areas there and some omissions that were done inadvertently. I did have legal counsel look at it who is familiar with our ordinances, he's not a town lawyer he's a private personal friend that has done things here in the town so he's familiar with the ordinances. He basically gave his stamp of approval. The intent is to have an in-law apartment and have some place in the future for my parents to go when the time arises. I don't know what legality I can get into by withdrawing my amendment, I don't even know if it's capable legally, that's a question I'm asking. Kahn – My guess is unless everybody who signed that petition agreed to withdraw it, you can't. Edgar – That was the comment I shared with Mike this afternoon. I have the same opinion, it's just like if you have a covenant that someone wants to violate and you want to get rid of the covenant, you need to have the release from everyone else that shares the covenant. Everyone on that petition is entitled for that petition to go forward. Faller – The people I had sign the petition I think support the spirit and intent of it, I don't think they are so worried about the wording of it. I have no problem going to the 42 signatures and getting those signatures to withdraw mine. Vadney – I'm not even sure you can do that. Faller – I'm not sure but that's a question within the next few days could be asked I'm willing to do. I'll be honest, I'm not going to withdraw my petition if what's in front of me here is not going to give me what I need to get. Vadney – One of the bigger things is that your petitioned one wouldn't allow new construction; you couldn't build new construction and have it. Faller – What you could do is build a new house, make an area for it and then once the house has its C.O. come in and say I want to do an in-law apartment, it's an existing dwelling at that point. Kahn – Mike, the impression I had was that was accidental on your part, the language was there that said you could build a house and an accessory apartment at the same time and the language got dropped. My guess is since it didn't do anything for you, it didn't hurt you and it was accidental. Faller – It clearly was accidental. Again, the intent here is to have something in an unattached structure. I still think its attached. The only other thing I have here and I think, Lou, you and I touched on it earlier was the size and I think the larger of the 3 which would be 1,200 sq. ft. is not totally unreasonable with 2 bedrooms, a living room and a kitchen, you're pushing 900 to 1,000 sq. ft. anyway and the bedrooms and bathrooms a little bit bigger, it's not uncommon to get closer to 1,200 sq. ft. so I would support the 1,200 sq. ft. Kahn – My view is there's very little point in our putting forward a competing proposal that Mike opposes and particularly to do it over 200 sq. ft. or 100 sq. ft., I don't have a problem with 1,200 sq. ft. that's not an enormous apartment what I was concerned about was there was no cap on the size at all and if the cap is 1,200 sq. ft., it doesn't trouble me in the slightest. Vadney – If you do the numbers for 40% of the sum of the two, a 1,200 sq. ft. accessory apartment could be built based on an 1,800 sq. ft. regular. There are many houses being built in Meredith far bigger than 1,800 so that's why Lou's cap of something like 1,200, whether its 1,000 or 1,200 is trivial but I think we should be careful if we don't put some cap on it because some of these buildings are now up close to 8,000 of living space and if you calculate off of that you could have

roughly a 6,000 sq. ft. accessory apartment. Twelve hundred (1,200) would be something I would think most honest in-law apartments or parent apartments, 1,200 would be substantial. Faller – I think it would be adequate for an upper end, I don't think everyone would do that, I'm pushing 1,200. Vadney – I don't think a 1,000 or 1,200 that's a meaningless difference. What I think we have to be careful of is doing something that would allow 5,000 or 7,000 sq. ft. accessory apartments. Faller – If it were maxed at 1,200 that would pretty well cinch it. When I was drafting it up, I was having discussions with Carl Johnson about having some sort of cap, unfortunately at that point it was already drafted and moving forward and I was getting signatures. Not knowing 100% of the process, what I thought is you come in and work through it. I didn't realize the petition was that binding, however, what I want is the Board's support, I'd like to move forward on this and if it meant having an ordinance that's going to protect the Board, protect the Town and achieve what I need to achieve, I'm willing to do whatever it takes to make it right and if that means getting 42 signatures and drafting something up, I would be happy to work with John on a very quick term and I'm sure I could have it by the end of next week back to you. Bayard – Just a few things, we aren't trying to craft this just so it fits you, but on the other hand it sounds like your situation is what we're interested in. Frankly, I'm kind of glad you brought this forward because it did cause us to react so you're sort of accomplishing this negotiation process that you thought would happen indirectly so we have to look at some of the bigger picture and I know there are some questions about whether there are in-law apartments occurring off-site anyway. We have to look at the big picture where could it go wrong and I think that putting the cap on, putting the distance on and things like that make a lot of sense. I think the way we have it so far, like the 1,200 sq. ft., 100' or 120' something like that is pretty reasonable, it's supposed to be an accessory so I think that's why having it relatively close, not everybody has an attached garage. We're thinking in a lot of cases it would be a barn or garage and they are not necessarily going to be attached and to have to build an additional structure out to it, I think it makes sense to have the 100' or something like that. Faller – With some of the recent attachments or conversions, some of them are pretty scabbed onto the side of the house and don't look very attractive when you drive by. An attachment means butting up the physical corner of a house and building another house but literally the corner boards on the house touch, is that an attachment? Technically, yes it is but its two dwelling units that to me it doesn't give you the curb appeal of what rural New Hampshire is. Vadney – I agree with you that one over a garage sitting 50' to 75' away or 100' looks more like just a typical farm yard. Worsman – To go along with what Bill was saying, I understand where your position is but after sitting here I can tell you that developers and individuals can be pretty creative so to try to put a corral around this is pretty important from this Board's point of view because we could really get into some real issues if we don't. It sounds like you're willing to work with some of this and leads me to a question to John. John, when we put forth the cluster ordinance, we held a public hearing and if there are any substantive changes, we have to hold a second public hearing. If we're holding a public hearing on his petition and there are substantive changes to it as of next week... Edgar – There cannot be a



change to a petitioned proposal. Worsman – He can't do it? Vadney – He can't change it either. Edgar – The petition window is closed so there's no change coming back from any petitioners and the petition's fixed so that is what it is unless there was some legal way to withdraw it, its pretty much direct drive. You are a hearing officer and have to take a position in favor or against so that is fixed. In terms of the timeline, if you were to give the Chairman some guidance or Lou some guidance on anything you wanted changed, assuming you want to do this, you would probably discuss that more thoroughly and publically on the 15<sup>th</sup> as a response to the petition, then we would go to publication on the 18<sup>th</sup> of the Planning Board's option, give you the 10-day separation for a hearing on the 29<sup>th</sup>. What I was saying, the petition went forward on the 15<sup>th</sup>, on the 29<sup>th</sup> if you have a fatal flaw you get input from anybody and you'll probably have contrary input, I think that's probably at least coming from Code Enforcement, we've heard Bill's position before on this so you'll hear some other points of view. If you wanted to change something on the 29<sup>th</sup>, you can't, it's either go with what you posted or you pull the plug if you don't have confidence in your own proposal at that point, you can't amend your proposal at that point because within a couple days after that, the finished warrant has to be to the Town Clerk by statute. That's sort of the calendar box we're in if you were to go down the road and offer up this kind of a change. Faller – The other option you could do is support the ordinance the way its drafted, the way the petitioned article is and then next year come in and change it to try to tighten it up a little bit to get what you need. That's another option. Worsman – What's your opinion of the duplex behind you? Faller – I supported the duplex. Worsman – Owner/occupied? Faller – The owner has left and rented the other side so that's legal under the duplex laws. If we take your proposal as you put it forth, how can it not be equal to a... Sorell – Because it's a duplex not an accessory apartment. Faller - He had over a 4,200 sq. ft. house that has two basically 2,100 sq. ft. apartments in it unoccupied by the owner. I support it because I understand the spirit and intent and we've got to look at ways to do this but I support this more because the owner has to be there and its important that. Worsman – We have petitions that come in and what is written in our ordinance is what we have to follow and it ties our hands and we've seen and you are well aware of some of the proposals that we've had that we could not corral because the ordinance didn't allow us to. If we pass this as it stands, we can't corral anything as far as an accessory apartment. Faller – What's the difference if I attached it, I could have built it attached to my house and we wouldn't be here tonight. Worsman – Don't we have a limit on the size of that attachment? Faller – 25%. Worsman – And yours is 40%, that's a big addition. Faller – Depending on how you actually add up everything. Vadney – The trouble with the 25%, actually in town we have relatively old lots with small houses and some of those houses are 1,000 s.f. that were built 80-100 years ago so the biggest apartment they could have would be less than 300 sq. ft. so the 40% makes some sense, that way on a small building, you can make an accessory apartment that is a little more to modern standards. Today, the smallest apartments are probably 700 sq. ft. and those are considered small. The 40% doesn't bother me a whole lot. We have to find a way to bring this to an end. If we put in a Planning Board proposal with a

1,200 sq. ft. cap, a maximum 100' separation distance, we don't touch the island issue even though it worries me a little bit and we'd leave it so it does apply to new construction. Kahn – The other thing is the petitioned article didn't change the definition of Accessory Apartment so this one cleans that up. Vadney – If we made those 4 things in a proposal, several things have to be answered (1) can you legally withdraw yours and I'm not recommending that you do, if you can legally withdraw yours by getting signatories to withdraw their signatures or sign one saying they want it withdrawn, if that's all legal, then you could do that, hold it in abeyance, we take it to a public hearing and we vote in a public hearing to go forward with the second public hearing where we've already discussed it but its going to public hearing for discussion, we go with the intention that it will pass and move forward. In that case you withdraw yours, if something jumps up and gets in the way, you go forward with yours. I'm trying to get these changes in so we do have a square foot limit, we do have a proximity control, the definition's right. Edgar – The draft has been sent to Tim but I haven't had an opportunity to discuss it with him so that's a major question relative to the relationship of this to the petition and how all that works. I don't have first-hand experience with that particular aspect of all this. Sorell – Is there any way Tim can tell you whether his can be withdrawn. Kahn – You've got another chicken and egg issue though and that is if you went to the public hearing on the 29<sup>th</sup> with the poison pill in it, you can't get the poison pill out although the poison pill then becomes meaningless if the petitioned article has in fact been withdrawn but that strikes me as about the only thing you might want to get out but you won't be able to get it out but its meaningless. Dever – In that case if Mike's in favor of withdrawing and it turns out he can't withdraw his and we go forward but he's in agreement with what we're doing so it gets what he wants but it also keeps the other controls in that we should have, he can get up at Town Meeting and say he supports it. Vadney – He could do it through the newspapers but this doesn't go to Town Meeting, this is done by ballot vote the day before. Finer – Another way to handle that, can we put his forth saying the Planning Board does not recommend this, put ours forth saying the Planning Board does recommend this with the assumption that the petitioned article would fail and ours would pass. Vadney – And that's why the poison pill is in there in case his does pass and ours passes. That's a good option but if there would be a way to do it, I hate to send something that's as complicated as that just from a process standpoint to the voters because I like to put things before them that are simple enough to understand. We can do it and I don't mind doing it but if there's a way to do it that's a little smoother, I think it would be good for everybody. Edgar – One thing we can try to do is if there's any comments you have on this draft, if there's a consensus of this Board to support this whole concept because it is last minute and Lou and Herb and I have talked about it individually but this is the first you all have heard about it and the first determination is if this is something you're interested in. I don't need to spend time with legal counsel if there isn't a consensus to at least take the next step and then if there's any tweaking to the draft, then at least you'd have that going into the 15<sup>th</sup>. Vadney – We can say we don't even want to talk about Accessory Apartments in which case his goes to the voters and if it passes we live with it. Edgar – And as

Mike suggested one option is to then look at amending that next year. Bayard – Would this apply to a duplex situation also? Faller – No, that's totally separate. Bayard – What I meant is can you have a duplex and then an Accessory Apartment? Vadney – No. Edgar – This revised draft says in a principle residential dwelling, meaning the house and that's distinguishing a principle structure from a secondary structure, you know the house from the garage and under 1.b. it's either incorporated within that principle structure or incorporated in an accessory structure so I guess the legal question would be is there any way a duplex could be considered a principle residential dwelling and probably the answer is no. Kahn – Whatever the answer to that question is, this doesn't really change it from the way it is in our ordinance right now. Edgar – Theoretically, it could be a multi-family at that point when you get 3 in one building. One of the issues Mike's raised is this notion of guest quarters, think of them as a bunkhouse and some of them are pretty fancy basically a cottage with a  $\frac{3}{4}$  kitchen and the petition or our thing passes, could you convert? Then you've got a full-blown standing dwelling unit and that's one of the issues, you end up with two full-blown principle dwelling units on one property and just because one is bigger than the other doesn't necessarily make it accessory. Kahn – This language says the accessory apartment shall not be a free-standing residential dwelling unit. Vadney – That's the one I was trying to think of and I knew I was missing something. Kahn – You have your guest quarters over the garage right now and instead of the microwave, you put in a stove. If it fits this and you can get it past the ZBA, you're fine. Edgar – I'm picking up on Colette's line of thinking about pushing trucks through loopholes. What if you have guest quarters and here's a clause that says you can't convert that, could you add an apartment to the guest quarters? Sorell – That's not the primary structure. Edgar – It's an accessory structure, guest quarters by definition is an accessory structure so we add on to it. That's the kind of logic somebody's going to come up with in the result of all this. Faller – I guess I don't see your point, it's not the principle dwelling unit. It keys around the principle dwelling unit, that's the trigger here. Vadney – John has a point though, you've got a 5,000 sq. ft. house and hooked to it or even separate from it, you've got a little building which is a bunkhouse, it's not a full residence, however, it could be a garage that the guy converted to a bunkhouse now he wants to pop a second floor on it, put in a stove on the second floor and call that the accessory apartment, downstairs is a bunkhouse that's the one that makes it violate Lou's proposal. Faller – That's got to come in to the Board, it's got to be reviewed and that's why we have zoning. Kahn – I've got something in here that says the net floor area of the accessory apartment shall not exceed the net floor area of the accessory, non-residential use of such accessory structure. Edgar – But it's a bunkhouse. Kahn – Is that a residential use? Edgar – It's certainly not a garage. Mike raised the issue of these things being converted, why don't we legitimize them as one of the rationale. I'm saying it may not be that simple, you may have something that's designed like a house, looks like a little cottage but by definition its guest quarters so someone's going to say we fixed this so I want to convert and then we're going to come back to these clauses and say wait a minute, you can't have convert to create 2 free-standing dwelling units on your property. Sorell – Right. Edgar – So

then someone says, OK I won't convert that I'll add on and keep the bunkhouse. Mike, you made your own point about the walkway thing. Faller – It's happening out there and the point is Colette I could have attached this thing but I wanted a barn that's pretty big and I didn't want it stuck to the side of my house because when you drove by it would have looked terrible from the road, but setting it off a little bit and giving a little bit of space and having some trees in between and some nice landscaping with a nice walkway changed the whole curb appeal. Bayard – That's not the issue we're trying to resolve, we're trying to what if types of things and where those can go and we want to see what we can do to limit them if that's what we want to do. The what if's not the case of what I would call a traditional detached accessory apartment. Faller – You've got what if's in the ordinance now. Bayard – Yes, and we've seen some people try to drive some trucks through some awful small needles and that's one of the reasons why we're changing the cluster. Vadney – John, existing rules today, somewhere out on an island we've got a main house and you've got a bunkhouse, can the main building add on an accessory apartment today. Edgar – Think of the bunkhouse as a non-issue, they're bedrooms and as long as your septic can handle the bedrooms that's its own animal so you could put an attached apartment onto a dwelling in the context that you described. Accessory Apartment by definition really doesn't come into the density, it's all kind of under the umbrella of the primary structure. A bunkhouse like I just said is just bedrooms basically, that's what the intent was. Vadney – Are there any members of the Board that wouldn't support any change in accessories no matter what. I personally think that if we can expand this to a degree, it would be good for the Town but that's just my opinion. You have the fear on islands and stuff that it could get out of hand knowing what people will pay for property out there. Faller – Currently, there's an amendment that's going forward. Vadney – One thing we know for sure, Mike's is going before the voters the day before Town Meeting for a ballot vote. One thing we have to do is say we recommend it or we don't recommend it, that's by law, we can't do anything else but we can put up a second one that would clean up some of the things that may have been oversights or things that would control it a little bit better that would add the complexity even though the poison pill on ours would keep it from being a legal problem. Do keep in mind, Mike's petitioned article will be before the voters in March. The question is can we do anything that would make it better for the Town and still support Mike and the petitioned position. Dever – (inaudible – no mike). This still fixes other things in the ordinance that some people wanted fixed and it also fixes the exclusions that were left out of his petition (inaudible) than try to deal with the exclusions but my issue with that is during the next year when we're trying to fix this problem, how many are we going to get. People who want to build a new house and put in an apartment can't and the people who want to put in a 5,000 sq. ft. apartment and they've got the cash to do it, they can't and to me that's the problem we're waiting until next year to fix. Faller – I'm here trying to work with the Town, I've been trying to work with the Town and that's the whole reason of coming forward to begin with and then to find out that it got shot down, I basically waited 3 years hoping that something would come from the Board but it didn't. Finer – I would agree with John, if the petitioned one cannot be withdrawn, I would

like to see them both go forward with a non recommendation for the petition and a recommendation for the Planning Board and if his can be withdrawn, then just put ours forward. Vadney – And we would vote to go ahead with it and support it, you'd have to know we were doing it before you withdraw. Edgar – That's a good summary where we're at. Bill will probably testify at the hearing and he will explain why he doesn't think the petition should go forward for different reasons and he has suggested that the Board members commit to the petitioners that it would be a priority for the next amendment cycle as opposed to this coming March for the following cycle. You don't have to discuss that tonight but you'll probably get that point of view expressed at the public hearing. If you have your idea ready to go, then you could still pull the trigger on your own and as Bill suggested still have the 2. Finer – Has Bill looked at ours? Edgar – He's seen a draft of it. I didn't really get anything substantive out of him. The general concern that he has that I think might be addressed with the proximity issue is the distance, you know the whole idea of the owner occupation and the attachment was think of it as if you're sharing a wall with someone you're renting to, you're likely to be more in control of the unit that you rent. It's more likely to be self-controlling and more likely to not be disruptive and keeping in mind that we have all kinds of different neighborhoods, densities and relationships between structures so I think that's part of the thinking in terms of the whole attachment and I don't know if 100' does it in his opinion or not but at the end of the day it shouldn't be specifically about Bill's concerns or specifically about Mike's folks concerns, it should be what's good policy for the Town as a town. Finer – The reason behind my question was you said Bill is probably going to testify because he's against the petitioned article, would he also testify that he's in favor of this one. Edgar – I don't know at this point. Faller – Just leaning to what John was saying, if you can approve a duplex that doesn't have owner occupancy, the owner's not on the property, whether you're sharing a wall or not that's in my eyes pulling it a little bit. Without a doubt here's a piece of property, the owner's not even around and you've got two renters doing whatever they want. At least with this scenario, the owner is still on the property, to me that's a plus, but yet we can approve the duplex because its attached and doesn't require the owner to be there but we're not going to support this. I think that's a little gray area there. Bayard – The concern I have with your petition when you say the owner's going to be there, they might be but they could leave too. Edgar – That provision is on the books already. Bayard – I think the thing is we don't want to have defacto subdivision, we're looking for accessory apartment use as opposed to what I think we can have with this. Faller – I agree with that Bill, when we go that approach about sharing a wall and having the owner there, we've got to take that for what its worth. Bayard – That isn't what we're looking for here. We have one or two specific questions that we kind of have to look at, is there an issue with the islands, is there an issue with a guest house, does it matter for a duplex, a few technical things which are things we have to look at, but other than that in my own opinion, I think that the proposal as we have it right here is pretty good with the 1,200 sq. ft., roughly 100' or something like that and I think we've fixed up the new units. It gives us a little more flexibility with accessory use which I think is something we're going to see more and more of so I think it's important to have it.

Vadney – I would oppose Bill Edney’s apparent suggestion that we attempt to torpedo this year and say that we’ll take it up and discuss it over the next year and then come back at next year’s Town Meeting (a) I don’t think its fair to the petitioners they are going to go ahead anyway, (b) there’s may well pass and I’d probably vote for it anyway even under those conditions and I honestly don’t see what we could do in the next year that Lou mostly, John and I haven’t done and we’ve all discussed here now. I don’t know what we would do differently if we worked on it for a year, it would be pretty much these same 4 or 5 points. Edgar – Another thing you can do too is you’re going to have a hearing on the 15<sup>th</sup>, if you promulgate a change and we post it for hearing on the 29<sup>th</sup>, you do not have to take a position on the petition until you’ve completed a hearing on your own amendment. I guess in terms of the withdrawal thing, you would need to do that earlier on but you won’t have a hearing on your own until the 29<sup>th</sup>. Vadney – That’s why we have to give a pretty darn firm this is the way it is, it’s not going to be changed and we’re going to vote for it unless some major thing comes up at public hearing that this is simply illegal. I guess I would summarize this saying. First thing, if Mike finds out if it’s legal to withdraw your petition. Faller – That’s a question for John and the attorney. Edgar – I’m going to rely on my attorney. Second, if its legal and what you would have to do to do it and whether you could do it and hold it in abeyance until we have taken action because we don’t want to double-cross you. We’ve got to vote up or down at the public hearing on whether to say yes we approve it or no we recommend non approval. The next thing is if we include the square footage limit, the 100’ distance and the Accessory Apartment definition inclusion and the free-standing part and we go forward with that and in that case we would say recommend not approving the petitioned one, recommend this one by the Planning Board, they both go to the public and we could through newspaper articles and stuff to explain why there are two in there and the petitioners could help as well, assuming they hadn’t withdrawn theirs altogether. I don’t know what more we can do tonight other than say as near as I can tell, our hearts are in the right place. Faller – I think we all are. Kahn – I think we ought to ditch exceptions for islands and I can take a look at the issue of whether or not guest quarters are something we have to deal with. I have a feeling that’s kind of a nightmarish sort of issue, if there’s a neat way to deal with it, I will try to come up with it. Kahn – John, you and I can talk about this but it can’t be freestanding. Faller – I’ve got approved guest quarters and like what you talked about earlier, as long as I have a comfort level going forward that this is going to cover at least my needs and protect the Town on 99.9% of the other ones out there and I get that comfort level from this Board, then I’ll go forward. Kahn – I can give you assurance that what you’ve got there is a barn or garage and that your apartment upstairs is smaller in square footage than the garage use, you’re in, that is what I intended to do. That you were using it as guest quarters to me is not really the issue, the question they are raising is somebody’s got guest quarters that stand on the ground and then tries to attach an Accessory Apartment to that, that’s not what you’re doing and this I am convinced will take care of your problem. Faller – I just don’t want to get to the Zoning Board and have an issue come up. Kahn – This doesn’t say that it doesn’t go to the ZBA but I can tell you that it is my

intention that everything you were trying to achieve for yourself with your petition, this will do for you. Edgar – I think what Mike's saying is that this is all in the context of a special exception criteria so Mike if this were to pass and if Mike were to pursue a special exception, he's back to the ZBA in a hearing environment and he's basically saying he doesn't want to find out at that time that others conclude differently. Dever – At that point this is what the Zoning Board has to use for criteria. Vadney – I don't think there would be a problem. Are you saying because what you have now are guest quarters, you don't want something that says you can't convert that. Vadney – Say you've got an island property and you've got guest quarters, that's all you're authorized right now because its freestanding but if its over a garage that's freestanding, once this passes either yours or this one, it could then be converted to an Accessory Apartment. John's issue was a little bit different, he's saying you've got guest quarters, does that qualify as the other use say a barn, garage or whatever so now you can put an accessory above the guest quarters and have both. Kahn – It's John's little zoning nightmare, it has absolutely nothing to do with what you are proposing. Edgar – The way it does though is that Mike in his petition had language that said garage, barn including but not limited to. We are saying what other kinds of accessory structures will the game be played. If we're just dealing with what we're all talking about, garage apartment or barn apartment, we can all visualize that. We have people with antique car storage buildings and we have sheds, equipment bays, the creative juices will flow in somebody's to label some other accessory structure and wrap a house around it. Kahn – I can tell you in terms of the sheds, antique car barn, you can do it but you may have a huge antique car barn but if this were to go forward, you're limited to 1,200 sq. ft. so you've got 50,000 sq. ft. of storage for cars, 1,200 sq. ft. Accessory Apartment, have a great time. Mike, this was intended to deal with your problem not specifically but it was intended to make an accessory apartment in a barn or garage that is not too big and not too far from the house OK. Whether or not we have to come up with some language to deal with this other nightmare, the other nightmare is not your problem, it would not affect you so let me think about that. If something can be done neatly with a couple of words, I will try to do it. I thought maybe non-residential would do it but we can quibble about that. Vadney – A week from now come to a public hearing for Mike's petitioned article. At that we can bring this up as an alternative, we will vote whether to recommend approval or disapproval on his and that will be somewhat dependent on whether we've decided to go forward with t his or not. At any rate his goes to a vote unless he can withdraw. Finer – What happens to next week's meeting and he finds he can withdraw and has the signatures for the meeting. Vadney – He won't withdraw simply because that would be putting too much faith in us. Faller – One other question, if for some reason you don't go forward with yours, will the Board support mine. Edgar – I wouldn't pre-judge it, we haven't even had the public hearing yet. Kahn – I have considered it in drafting this and I have significant problems with it in terms of size of the apartment, proximity of the apartment, etc., I can't say I'm absolutely going to oppose it but I do have significant problems with it which are obvious because I tried to draft around them. Vadney – I would probably support it with the idea we could modify it a year later

although I don't like that method of doing business. Mike – That's just like the cluster that's been modified, a year or two after it was developed. Worsman – Yes, but we did have some tractor-trailers go through that one. Bayard – I'd like to go through the public hearing process but I'm much more supportive of this than what is out there, I think there are too many loopholes. Vadney – You're supportive of the Kahn position more than the petitioned one? Bayard – Yes.

Meeting adjourned at 9:17 p.m.

Respectfully submitted,

Mary Lee Harvey  
Administrative Assistant

The minutes were reviewed and approved at a regular meeting of the Planning Board held on \_\_\_\_\_.

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William Bayard, Secretary