

PRESENT: Bayard, Chairman; Sorell, Vice-Chairman; Dever, III, Secretary; Brothers, Selectmen's Rep.; Lapham; Kahn; Touhey; LaBrecque, Town Planner; Harvey, Adm. Asst., Community Development

Kahn moved, Dever seconded, I MOVE WE APPROVE THE MINUTES OF JUNE 28, 2011, SITE WALK MINUTES OF JULY 16, 2011, AS PRESENTED. Voted unanimously.

### APPLICATION SUBMISSIONS

1. **VIRGINIA COTE** – Proposed two lot subdivision of Tax Map S15, Lot 30, into two lots (2.32 ac. and 1.93 ac.) located at 464 Daniel Webster Highway in the Central Business District.

LaBrecque – The Application is to split in half a lot on Route 3 North, it has 2 dwelling units on it currently and they just want to split them up into individual lots. The plan and abutter list is on file, fees have been paid and the application constitutes a major subdivision due to the ability for re-subdivision potential so we have to accept it and schedule a public hearing on a subsequent evening so its recommended the application be accepted as complete for the purpose of proceeding to a public hearing on August 23, 2011.

Dever moved, Brothers, MR. CHAIRMAN, I MOVE WE RECOMMEND THE APPLICATION BE ACCEPTED AS COMPLETE FOR PURPOSES OF PROCEEDING TO A PUBLIC HEARING ON AUGUST 23, 2011, IN THE CASE OF VIRGINIA COTE FOR A 2-LOT SUBDIVISION, TAX MAP S15, LOT 30, LOCATED AT 464 D.W. HIGHWAY IN THE CENTRAL BUSINESS DISTRICT. Voted unanimously. Bayard, this is just the notice, the hearing will be next month.

**NOTE:** A public hearing may be held this evening on the above application submissions indicated by an (\*) should the Board accept the submission as complete.

### PUBLIC HEARINGS –

1. **185 REALTY TRUST LLC** – Continuation of public hearings held on May 24 & June 28, 2011, for a proposed Site Plan Amendment to replace an existing structure with a new 80' x 70' building and add a 22' x 65' addition to an existing structure, Tax Map S25, Lots 11A and 13, located on Waukewan Street in the B&I District.
2. **185 REALTY TRUST LLC** – Continuation of an Architectural Design Review of a proposed new commercial building and a proposed addition to an existing building, Tax Map S25, Lots 11A and 13, located on Waukewan Street in the B & I District.

Carl Johnson, Jr. – I think you are all familiar with the details of the site plan. We were before the Board at the last hearing and at that time the Board directed the applicant to pursue some engineering review primarily dealing with the drainage that's coming off the existing lot as well as analyzing a little bit of the relationship of the adjacent lot which is to be merged with this lot, primarily with regard to how the drainage comes off the site and enters into the existing swale which runs down the westerly side of the road accessing the condominium development into the existing drainage structures on that property. Subsequent to that hearing, Mr. Leighton retained Erin Darrow from Right Angle Engineering, we provided her with some additional topography information and additional mapping of the small drainage which is crossing from essentially the division of the 2 properties to the existing fence along the roadway as well as some information regarding the relationship between the adjacent lot and the lot to be developed. There was a plan developed which was also submitted along with the application that was given to the Board this time and Erin had quite a few discussions with Angela so perhaps Angela has a little bit more information she can give you on this but I'll give you the basic details of the analysis of the situation regarding the development of this property. In a nutshell, what Erin is proposing is the existing grade of this site is about at 104, she is proposing to add about 11/2' of fill which would raise it up a little bit for two reasons, one of which is to lessen the relationship of the topography from the adjacent site to this site, there was about a 3 1/2' to 4' difference in elevation and by raising this up, this softens the relationship between those two properties and makes it a little more on the same grade. Along this edge of the new building, there will be a wall where the grading will essentially go into the wall on that building and be a short drop in elevation from the existing parking lot, dropping down into the parking lot in front of the building as well as a short drop from the existing parking lot on this section down into the back lot. It also facilitates the construction of what are called infiltration trenches (highlighted in blue on plan) and you can see it pretty much circles the amount of disturbed area that's going to be redeveloped so there would be an infiltration trench starting here, coming along the front of the building along the parking lot picking up the drainage that's coming off the front and that infiltration swale would enter into a culvert. The culvert would cross underneath the proposed driveway coming off the existing roadway into a continuation of the infiltration trench, that infiltration trench would come around into the structure here (highlighted in yellow which is a rain garden). To pick up some of the drainage that's coming off this site and any possible drainage that's coming from essentially the center of the building back, there would be an additional culvert that's crossing under the driveway that's sloping down and would enter into a short infiltration swale as well which enters into a small rain garden located in this portion of the property. If there were any continuous drainage here, it would drain towards this direction which is the direction of the flow now, enter into a continuation of the infiltration trench into the rain garden. The rain garden would then treat whatever water may be in essence resulting from the infiltration trenches coming around, if any, and any overflow would enter into an additional infiltration trench which would connect to the existing drainage. As you saw on the site walk, the existing drainage now comes through the fence and the design plan that was designed for the big property with the

condominium development is for that roadside swale, it's a grass treatment swale, would treat whatever drainage is coming off the site and entering into the existing catch basin system and going into the treatment ponds that are to the northeast. Erin did some drainage calculations and shared some of that information with Angela so she probably has a better ability to comment on that than I do but from a practical standpoint, we all knew the total amount of drainage coming off the site wasn't going to change, the main concern was to somehow treat, impede, infiltrate some of that drainage such that it doesn't have a negative effect when it exits the property and goes off into the abutting treatment structures that are on the adjacent property. I think those infiltration trenches, looking at the detail sheet, it's a grass treatment swale and then from 1½'-2' there's a permeable soil mixture underneath that allows some of the water to soak down into the soil. There's a filter fabric and then ¾" stone at the bottom of the trench and that allows some of the water instead of treating it and sending it off, it actually infiltrates it into the soil so it lessens the amount of runoff that may be exiting the property. When the capacity of the infiltration trench in a 100-year storm becomes to the max, then it acts essentially as just a grass treatment swale where the water would just keep running and that's why the rain garden structure is located here (pointed out on plan), the fairly large substantial rain garden is located to pick up any of that excess water and then again that structure would attempt to infiltrate it into the soil and the overflow, if any, would enter into the existing drainage structure. Basically, that's what this plan is trying to do. Angela may want to make some comments on that plan because that's pretty much the major concern that the Board had at the last meeting. LaBrecque – Per the request of the Board at the last meeting, the applicant did consult with Erin Darrow from Right Angle Engineering and she came up with this plan. It was rather rushed so there are some details that are missing. She and I did meet once and looked over the plan and she's supposed to get me some additional information in the way of drainage calculations and assumptions that were made because she wasn't able to get on the site and dig a soil pit to see what the groundwater was or to see the water table or the infiltration rate. She made some assumptions that were conservative so everything is sized a little bit larger. There were some things I noticed on the plan that could probably be improved a little bit like spot elevations and so she and I talked about that because you want your outflow obviously lower than your inflow that goes into the rain garden when you're talking about the drainage swale that goes around the site and also we don't have a specific plant list or location so adding some more details to the detail sheet and consulting with Randy Shuey who has lots of experience in the types of plants needed for rain gardens. Actually, I think he recommended the plant selection across the street at the Nurse's Association as well. LaBrecque - As you can see on your staff report, Items 1-5 I suggested being added to the plan and those were things like the elevation, location of the silt fence, inserting the rain garden and swales into the construction sequence. Everything is probably oversized and the infiltration swale will probably take care of the majority of the water. Should there be a large storm event, I'm sure any overflow will go into the rain garden. Johnson – Erin did get in touch with Randy and he is forwarding her a plant species list to be added to the plan for the rain garden. Obviously, should this get approved this evening, there will

be some administrative work that will have to happen. LaBrecque - Because there isn't a performance guarantee being recommended, I also suggested in the staff report that prior to a Certificate of Occupancy, the engineer go to the site and certify that everything was installed according to plan and upon their review, it would function as they anticipated it would per their design. Dever - These are observations we made during the site walk. (1) The catch basins up there on Waukegan crossing, they don't land in the pond, they go directly to the ditch to the south of the pond so they don't go up into the detention pond. Johnson - That's by design, correct. Dever - You had mentioned earlier that they go into the pond that's there. Johnson - They go into the drainage treatment but that is a design intent for those to go to the south of that pond. Dever - One of the questions that came up is in regards to the potential sheet flow coming off the upper lot. We don't have any topography on that so we don't know exactly how but I know by standing down there, you're looking uphill when you look back towards Vutek across Overhead Door Options back parking lot, all that goes downhill and maybe potentially you should consider relocating the small rain garden just to the north of the new drainage ditch just outside that wetland area and further back to accommodate any of the sheet flow to be coming off there, it could hit and head over towards that direction in front of the debris pile that they might want to use a sediment trap or berm or something in there to help guide that flow back towards the infiltration area they are trying to design. Johnson - I don't know if Erin mentioned this to Angela, but they also talked about possibly creating a berm here to direct that down into the existing rain garden area. Right now there is some vegetation in there but there's no topographic barrier for the water to go in that direction so I know when that came up, Erin had talked about the potential of just having a slight berm and it wouldn't take much but that would direct the water down into this rain garden. Dever - There was another issue that came up that's not really wetlands but it is something I mentioned to Randy that had to be addressed is along that fence line, there are substantial amounts of knotweed that will have to be addressed, its starting to creep under the fence. Johnson, That's an invasive species and I know Randy has recommended a process to Brad to deal with it. That would be part of the plan that is to be finalized with the state. Finalize whatever restoration they have with the state and then also deal with the eradication of the knotweed. That was part of Randy's notes he took at the site walk. Brothers - I think John mentioned several of the issues I had particularly the difference in elevation between the lot to the west vs. the subject and that topography to me looked like it was a solid 3' or so on average above it but just about where the swale is, it appeared like there had been a wall of stones where that had been disturbed to help direct water down through and I guess we didn't have anything in terms of topography on this, its fairly flat but its flowing down into this area. The knotweed was another observation, it looks like its almost having a hard time going under the fence at the present time, and John made another point that the actual roadway drainage doesn't go into that pond so it is being diverted south of it if you will. I was there on the 14<sup>th</sup> and I took a couple photos and what I was questioning is whether or not the bottom picture is that riprap final drain that crosses thru to the retention pond, it looks like the elevation of that down on the last 30' or so actually starts to increase rather than being sloped down and into the swale because

there was a fair amount of debris that had washed through from the last storm was laying in grass. When they do the swales down, are they going to make sure the elevation is decreasing as it goes into because even where that grass has been planted, it appears there is a rise in the topography rather than a further grade all the way down through to what appears the riprap culvert headwall is a pretty significant piece to get that water under and into the retention pond. Bayard – I'm not sure he has ownership but I assume they could discuss it with the owner and I'm sure they wouldn't mind having it cleaned up a little bit. Brothers – Obviously, what comes from up above is from Inkware down through, they don't have control of that but if we're looking at it in terms of how it impacts the watershed and how it gets to it and where its diverted to spread the load out, I think that's worthy of mention. I'm not saying they can dig that out but it would probably be worth a conversation once they start to put the final design into it that they make sure that's cleaned up a little bit and it looks to me like it needs to be lowered in order to really make headway in on an average basis into that riprap culvert. Johnson – The ownership ends at the pin that we staked out so any of the structures that are outside of that, Mr. Leighton doesn't have any direct control over, that would be part of the treatment structures that are on the condominium association property. There may be associated with that approval, some type of a maintenance schedule and maybe a call could be made in terms of whether or not that's being properly maintained. I didn't happen to take a look at that and I wasn't directly involved in that project but I know the engineers that worked on it and I could make a call. Mr. Leighton doesn't have any direct control over that, it would be something the town may have to pursue if there's an issue there. I do know the calculations for the total water flow, not the peaks but the total from all the properties upslope were taken into consideration when they did that design. If you walk down the sidewalk on this edge of the property, you will see about a 4 1/2' buildup. This road essentially was a berm constructed to affect any of the drainage that was heading in this direction and they had to calculate the total amount of water they would be picking up and heading into these structures. The main pond deals primarily with the drainage that comes from a closed catch basin system that's on the developed property that comes down through of which this culvert is picking up a little bit of it and then sending that into the other treatment structure which is part of that whole developed area. The swale and catch basins on this side of the road and the other side of the road all connect and go into that treatment area Mr. Dever was talking about at the south of the pond. The concern I think from the drainage standpoint was not so much there's going be any more water but if there's anything you can do to reduce the flow which is what infiltration does, but primarily to intercept the peak flows although the total amount of water going off the site from the beginning of the event to the end may be the same, that water is slowed down, treated and dealt with prior to entering into the swale like it enters in now. When they did this roadway, they actually did topography on this site and mapped this and the entire portion of what is wetland now was not identified as a wetland. There was a small portion that was shown up here but one of these was not shown as a wetland so essentially what's happened when they put that berm in, what used to flow across the wooded area at the same elevation down and across the back of Mr. Leighton's other property and into the big wetland was essentially

slowed down because of that roadway being in there and that actually created one of these wetlands and did not show up on the original plan as being a wetland. When they did the mapping that identified this existing site prior to their construction the culvert that Mr. Graham installed was shown and this area was shown as a wetland. The area down here was not shown as a wetland, it was not a jurisdictional wetland, and it was just draining out of the culvert. When Mr. Shuey went out to map this, it now is a jurisdictional wetland because that water was held back and encouraged the vegetation to grow and turn it into a wetland. This was not at the time they did that construction. Brothers – When you look at it now, you wouldn't come to that conclusion. The previous owner did quite a bit of the regrading of that site beyond what was here when they did the mapping which exacerbated the situation a little bit. Brothers – My point is if you look at what's there now regardless of what was on the map back then, that's what we should be dealing with. When you physically go onto the site and you can see it looks like wetland from one end to the other, then it goes down, passes underneath the fence, follows along the fence and then gets to a grassy area and eventually drains into a stone culvert. Kahn – I wanted to come back to the issue of the surface water coming across the gravel on Lot 13. It seemed to me it was apparent in our second site walk that there was quite a bit of a flow north of the former wetland and it was going across the property although there were all sorts of piles of things there that were interrupting it but when you said something about putting a berm along the line between 13 and 15 and directing water back off the parking lot into the smaller of the two rain gardens, I just don't see that the smaller rain garden can handle that capacity. It looked to me that you really needed some structure at the corner north of the wetland and sort of at the corner of the parking area, it seemed to me you needed something there in terms of something to interrupt the flow and slow it down and capture some of it there and directing it back to the south into the smaller rain garden isn't going to work. I'm not saying we should stop everything, we did discuss this to a certain extent at the site walk and concluded that if this is what we decide is necessary then it would be handled administratively. Johnson – What we could investigate with Erin, there is a little bit of room and because of the over abundance of parking, they could actually pull this banking back a little bit if they had to and instead of having a rain garden here, have this infiltration swale go to the left-hand side of the wetland and continue and move the rain garden up here and direct whatever flow was here and maybe add a short infiltration swale to pick up whatever is there. Kahn – I think that's a very good idea. Brothers – It makes good sense. Johnson – We'll note that and make sure Erin takes a look at it. Kahn – Can we condition it to be handled administratively or how would we handle it. Bayard – I think Angela would be comfortable handling that. Dever – What about dumpsters? I see the existing dumpster is taking up 3 parking spots on the bank of Overhead Door Options. Do you have any ideas on a new dumpster location? At one point in time, we had some tenants we knew about and they weren't going to be generating significant trash to be in a dumpster. I think what Angela's staff review says, is when we identify the use that goes in there and it does require a dumpster, it should be located in an area not adjacent to either one of the roadways and also be screened and there would be a note added to the plan to that effect. Dever – My only other

question is, the rest of the debris pile in the back of the lot, is there a plan to thin that out some or get some of the worst of it out of there? I think the applicant stated in the first public hearing that he intended on clearing out those debris piles because it is unsightly and a mess. Dever - They actually do add some screening once they are growing things on top of them but there is some stuff in there that probably should come out. Mr. Shuey said at the last site walk that those piles and piles of timber were all going to be removed. A lot of that vegetation is all new growth so imagine if left alone, all sorts of things would come back fairly quickly. Dever - I was thinking about the stumps and logs and stuff like that. Johnson - To answer your question, I think it would be appropriate to have a note on the plan that the debris that's located there currently is to be removed to grade, in other words the dirt pile removed. I think the intent hopefully is if that dirt is of sufficient quality to be used as part of the fill, it can be used in the front because there's about 1 1/2' of fill to be used in the front. The timbers and all that stuff I think its appropriate just to say that stuff has to be removed and then I think even though that may create a temporary reduction in the alders that are growing all over that stuff, I think the note should say this area should be left to vegetate naturally. It will grow fast in there, the pioneer species are already in there and I think that will grow up nicely and provide a fairly significant buffer on its own. Mr. Leighton is under the direction of the NH DES now to finish that restoration plan and to get that put to bed and I would be happy to add that note regarding that debris. The exit onto the Waukewan Village condominium complex is pretty wide right now between one trench and the other and is just a one-lane exit, I think it would be helpful if something was done to continue the fence. Right now as Mr. Touhey mentioned, this is a wide gravel entrance not very well defined and one of the things that was developed in the architectural plan was trying to discourage coming in and entering the site from this road which is discouraged by making it a one-way, do not enter, and also to discourage any trucks from exiting onto that road by this unusual configuration which is fine to get a car around but if you have any type of a large delivery truck, you wouldn't be going out this way and that just discourages any additional adverse travel on that road. In terms of the fence, the fence will come up right to where the entrance is going to go, that's existing right now, it will come up right there and then what's being proposed here is landscaping on this side of the building to try to screen this and there is some existing landscaping at the front and there will be additional landscaping here and will be a lawn area which would try to screen the building from that area and that's what's being proposed currently. Lapham - Mr. Chairman, I want to agree with Mr. Touhey, I think that was something at the end of our site walk we noticed and that's quite a gap and even visually from Waukewan Street looking in, something that would have a little better shrubbery or extend that fence another 3' or higher up would be better, but I just want to second Mr. Touhey's comments. Johnson - The entrance right now looks to be about 30' and that's going to be narrowed down to about 12' There's going to be an infiltration trench and lawn in there now as per this plan, plus there's a significant improvement in the general quality of the building that's going to be there. No public input. Public Hearing closed @ 7:42 p.m.

Dever moved, Sorell seconded, MR. CHAIRMAN, IN THE CASE OF 185 REALTY TRUST, LLC AND LINDSEY LU, INC. FOR A PROPOSED SITE PLAN AMENDMENT, TAX MAP S25, LOT 13 AND 11A, 183 AND 185 WAUKEWAN STREET, LOCATED IN THE WAUKEWAN WATERSHED AND B & I DISTRICT, I MOVE WE GRANT APPROVAL FOR THE PROPOSED SITE PLAN AMENDMENT, SUBJECT TO THE FOLLOWING CONDITIONS:

- (1) ANY FUTURE CHANGE IN THE USE OF THE SITE MAY REQUIRE PLANNING BOARD REVIEW. A NOTE SHALL BE ADDED TO THE SITE PLAN INDICATING THE REAR PORTION OF THE LOT IS NOT TO BE USED IN CONNECTION WITH ANY COMMERCIAL OR INDUSTRIAL USE ON THE SITE.
- (2) THE SUBJECT WETLAND RESTORATION FILE NUMBER 2009-01435 SHALL BE NOTED ON THE SITE PLAN.
- (3) THE PARKING INDICATED IN THE FRONT SETBACK WILL REQUIRE A SPECIAL EXCEPTION FROM THE ZONING BOARD OF ADJUSTMENT
- (4) THE OWNER OF LOT 13, LINDSEY LU, INC., SHALL BE NOTED ON THE PLAN.
- (5) LOTS 11A AND 13 SHALL BE MERGED PRIOR TO FINAL PLANNING BOARD APPROVAL AND PRIOR TO ISSUANCE OF ANY BUILDING PERMITS.
- (6) CONTROLLED OR HAZARDOUS MATERIALS SHALL BE KEPT AND STORED INSIDE. A NOTE SHALL BE ADDED TO THE PLAN STATING FLOOR DRAINS ARE NOT PERMITTED.
- (7) DRAINAGE CALCULATIONS SHALL BE SUBMITTED FOR STAFF TO CONFIRM THE ANTICIPATED STORMWATER TREATMENT AS WELL AS THE ASSUMPTIONS THAT WERE MADE. THE FOLLOWING INFORMATION SHALL BE ADDED OR CLARIFIED ON THE PLAN:
  - THE SIZE AND LOCATION OF EACH RAIN GARDEN.
  - DETAILED PLANTING INSTRUCTIONS AND LOCATIONS ALONG WITH MAINTENANCE DETAILS FOR THE SHORT AND LONG TERM OF ALL PLANTINGS USED FOR INFILTRATION.
  - INSTALLATION OF THE SWALES AND RAIN GARDENS SHALL BE ADDED TO THE CONSTRUCTION SEQUENCE.
  - A DETAIL OR DESCRIPTION THAT SPECIFIES HOW THE SWALES TIE INTO THE RAIN GARDENS THAT PROVIDE FOR A LOWER ELEVATION FOR THE OUTFLOW VERSUS THE INFLOW OF WATER.
  - LOCATIONS OF THE SILT FENCE(S) SHALL BE ADDED TO THE PLAN.
- (8) THAT STAFF HANDLE ADMINISTRATIVELY SOME OF THE ARRANGMENTS AFTER CONSULTING WITH THE ENGINEER THAT WERE DISCUSSED TONIGHT SUCH AS MOVING THE RAIN GARDEN TO THE NORTH TO HANDLE SHEET FLOW FROM THE PARKING LOT.
- (9) A LETTER FROM THE ENGINEER CERTIFYING PROPER INSTALLATION AND ANTICIPATED FUNCTION OF THE SWALES AND RAIN GARDENS IS REQUIRED PRIOR TO A CERTIFICATE OF OCCUPANCY.
- (10) IT IS RECOMMENDED THE SUGGESTED LANDSCAPING AS ON HERE IS PUT IN AND MITIGATION OF ANY INVASIVES ON THE SITE BE COMPLETED.



(11) THE DEBRIS AREA LOCATED ON-SITE, MOST OF THE LARGE DEBRIS IS TO BE REMOVED AND THE DEBRIS PILE IN THE BACK IS TO BE MITIGATED AND ALLOWED TO REVEGETATE NATURALLY.

(12) A NOTE SHALL BE ADDED TO THE PLAN STATING ANY SITE LIGHTING OR BUILDING LIGHTS SHALL BE CUT-OFF LIGHT FIXTURES AND A CUT SHEET OF THE LIGHTING DETAIL SUBMITTED FOR APPROVAL.

(13) THE FINAL PLAN SHALL NOTE THAT ALL PROPANE TANKS ARE ABOVE GROUND AS WELL AS THE SIZE OF THE TANKS.

(14) A NOTE SHALL BE ADDED TO THE PLAN THAT STATES A FUTURE DUMPSTER SHALL BE SCREENED FROM PUBLIC VIEW BY FENCE OR THE EQUIVALENT ON BOTH SITES.

(15) THE PLANNING BOARD RESERVES THE RIGHT TO REVIEW AND AMEND ANY APPROVAL AS PROVIDED FOR IN SITE PLAN REVIEW REGULATION NOS. 6 AND 17.

(16) IN LIEU OF A PERFORMANCE GUARANTEE, ALL CONDITIONS PRECEDENT MUST BE MET PRIOR TO A CERTIFICATE OF OCCUPANCY.

(17) ANY FUTURE CHANGE IN USE OF THE SITE MAY REQUIRE PLANNING BOARD APPROVAL. THE SITE SHALL BE USED FOR WAREHOUSE, ACCESSORY SALESROOM, IN SIDE STORAGE, LIGHT MANUFACTURING AND BUSINESS OFFICES UNDER 5, 000 SQ. FT. PROVIDED THERE'S AN APPROPRIATE ZBA APPROVAL FOR THAT SO WE DON'T HAVE TO DEAL WITH A TRUCK REPAIR FACILITY. Voted 5 in favor - 2 against.

2. **185 REALTY TRUST LLC** – Continuation of an Architectural Design Review of a proposed new commercial building and a proposed addition to an existing building, Tax Map S25, Lots 11A and 13, located on Waukegan Street in the B & I District.

Kahn moved, Brothers seconded, MR. CHAIRMAN, WITH RESPECT TO THE ARCHITECTURAL DESIGN REVIEW FOR 185 REALTY TRUST LLC AND LINDSEY LU, INC., ARCHITECTURAL DESIGN REVIEW APPLICATION, TAX MAP S25, LOTS 13 & 11A, I MOVE WE APPROVE THE PROPOSED DESIGN AS IT DEMONSTRATES SUBSTANTIAL CONFORMITY WITH THE GENERAL AND SPECIFIC CRITERIA SET FORTH IN THE ORDINANCE. Voted unanimously.

3. **DUSTIN G. HARPER** - Public Hearing to discuss the conditional site plan approval for a home occupation associated with the site at 78 Plymouth Street, Tax Map U10, Lot 3, in the Residential District.

Bill Philpot – As you know, the driveway has been repaved and the net result is there's less impervious material. Originally, there was 56.1% coverage and now its down to 51%. The paving in the back of the private garage has been removed. There was an island in the driveway and that was made smaller but I guess there were some drainage issues and the water was coming down and going into that island and undermining the pavement in front so that was compacted when the

existing pavement was removed because it was all cracked so its not flowing under the pavement anymore. A question was raised by the Board with regard to the new garage doors that were installed previously on the building being used and is limited to the home occupation. I have a copy of the previous door setup vs. the new setup which he provided to the Board. The original doors were not insulated doors, the replacement doors are and if I'm reading the Board correctly, the rule of thumb used previously when asked and I was at the last hearing, as I indicated what size boat are you going to put in there, it was indicated only what would fit. The structure will accommodate a 28' lengthwise and it's not the intent to create a situation where you can jam a bigger boat in there and there's a limitation on the height too. That was not changed. If I recall correctly, there was some question about illumination of the sign, the sign was approved and installed and it's a much smaller sign than was originally approved, but there were some solar lights affixed to that and they've been removed. LaBrecque – I think you probably read the minutes from our last meeting so that's where a couple of those points came from. I think in general being such a visible site with everybody driving by all the time, and with just the smaller increments of change, I think the Board generally felt there had been the situation with the coverage that Bill reviewed and that held up the signing of the site plan which hasn't been signed yet, but I think all these incremental changes that happened so soon after the approval, leading up to not even having the plan signed yet, I think some of the Board members were wondering what would be next with the pavement, because the applicant had indicated they can't fit anything out there to sell or to consign because they don't have the room. Now they have the room so before anything got out of hand, I think the Board's general feeling was to review the approval, because it's a review and amend, to make sure we're all on the same page as far as what's permitted, what we expect, what's anticipated and just clear it up before it gets to a point where the Board feels they should have spoken to them y before things escalate to a point beyond what was approved, either on the plan, in the testimony or in your letter so I think that's why we're here tonight. Philpot – If I recall, I put together a list of uses and limitations which was incorporated into the Board's approval back in January which is still in play as far I'm concerned. Touhey – Mr. Chairman, In January there was an agreement that your website would be closed down until it was modified to reflect what would be acceptable under an accessory home occupation. Philpot – In other words, it was my understanding in my representations to the Board that (1) I indicated to the Board it was closed down and (2) it would not be inconsistent with the limitations associated with the approval. I would hope that's not an issue, I'm not aware that it is. Touhey – I did not visit the site in January, I did visit the site this afternoon at 5:00 p.m. and the uses that are listed there and the items for sale, consignment and what not is much more than I ever expected for a home occupation. I realize there's some informal agreement with M & M on Jenness Hill Road but I understand that's a verbal agreement and if the extent of what goes beyond a home occupation as listed in the website is going to be done on the M & M site, then I feel this Board is going to have to look into a site amendment for the M & M site so to me there's a major discrepancy in several related issues from what's presented on the website currently and a home occupation or an extension into the M & M site. Philpot – Let me cut to the chase, I

personally made the representation to this Board that what I said would be implemented and there would be no change so I'm being educated tonight and that doesn't please me. Bayard – There was some change to the original, but there is still a considerable amount of things listed for sale like Mr. Touhey saw and that's the concern he's expressing. The original website has been changed some, there was a lot more, but what you're addressing is the current one has items for sale that are above and beyond anything what we had anticipated. Touhey – My indication from what was presented was that 2 or 3 boats would be worked on at a given time on the site, maybe 1 auto in a year that was stated. What the website represents is so much more, it certainly triggers other ramifications. Harper asked to speak. Philpot – I wish you would because I'm standing here and I'm blindsided and I don't like it. Harper – First of all, I altered the website so it doesn't have anything to do with Plymouth Street, just that I have a few boats for sale and its all of 3 or 4 boats, nothing's on consignment at my property, there's never been anything there and never will be anything there. I got rid of the shrink-wrap and all the stuff we did a long time ago and what's going on at M & M isn't what's happening on my property. I don't even list it as being an address to have stuff on consignment. Touhey – I beg to differ, if you look at your home page, the very first page, it announces you've moved to downtown Meredith and then it goes on with the entire description of what you do. Harper – It doesn't say 78 Plymouth Street because I moved to downtown Meredith and the stuff is not on my site. Bayard – I'm sure you know your website but it does have directions and it does talk about... Harper – Directions to find me but they are not going to find anything there, its just to find me personally whether it's a friend, family or business acquaintance or whatever else. If somebody wants to look on map quest, they can find me, it's not in the right location, if you notice where the pointer is, it's not even on my property but it's on Plymouth Street itself. We got rid of all the services and everything and as I said, I've only got 3 or 4 boats, there's practically nothing left on the site to sell because everything is gone. Lapham, what about all the motors that are offered for sale? Harper – They are at M & M's in a big truck body. As you notice if you drive by, it looks like it's not lived in unless there's a car out there. Philpot – In part, what the Board's concerned about is M & M's activities vis-à-vis this website. Harper – I'm pretty much not doing a whole lot of anything anymore, I'm just doing a little bit of work in the shop and whatever is left there is just stuff I've had in the past, I don't know how many boats I've got there, there's maybe 3 or 4 boats and they have never been on my property, they have always been there and all my stuff is way up back on his property, the piece of property he gave me to use and there's nothing in any of my buildings down there, all the engines are in a big truck body and I'll probably end up selling all the engines to George because I really have no use for them and I'm working with him now to buy the engines because I don't have a use for them. LaBrecque – The result of all this additional paving isn't to have more things stored there, park or consign? Harper – How would I store anything? As you can see there's no place to put anything, just my vehicles, it's just to make it a nice looking area and a place to plow snow as well. LaBrecque – I think if we had gone back to the hearing we had back in January and you said, I'm going to take out the center island and pave all of this and have my home occupation here, I think the Board would have had

something more to say. Harper – It was kind of an obstacle course last winter to try to plow, because when you get snow in front of the plow blade, there's no place to put it. Dever – Your quote from the 12/28/10 meeting is I want it to look just the way it looks right now. Harper – And it does. Dever – So after saying that and we gave you an approval, the first thing that happens is you strip the site, dig everything up, hack out the doors, put in new doors, change everything that's going on, I'm going to scrape some pavement from behind, all of a sudden before the ink is dry, you're out there wailing around and thrashing around, scraping and digging and changing the configuration of the site. I understand moving equipment and plowing snow, I've gotten a great re-education since I came home after being gone 30 years and forgot how hard it is to live here in the winter and move snow so I understand the concept of moving snow, I understand the concept of moving vehicles in with trailers on them to gain access to a garage, I'm sure that probably was somewhat restrictive previously with the areas that were there. I also have somewhat of an issue as to whether or not this is enough of a substantive change to come back before us to have us take a look at it. You come to us, this is why I want to do all this, and you're making these changes on a site you said you weren't going to change. I wasn't aware that was changing the site because when I was thinking site change, I was thinking having boats, trailers or cars all over the yard, right now it looks like it has always looked like no one is living there other than what I felt were improvements in getting rid of the cracked hot top that was undermining itself and putting an island there that I felt was attractive to make the place look nice and the doors as I said weren't insulated doors and in the winter they frosted up, if you get a warm day, they would be full of moisture and condensation and I would have to clean them off with a squeegee and the center post between the 2 doors were getting belly rot on the bottom so I decided to put 2 doors in instead of 4 even though I would have liked to close the building in 5 or 6' on each end because I didn't need doors that wide. I didn't want to make it a major project because it was the middle of winter. We got green to match the building and I didn't think it looked any more commercial or any more different than it did, 4 doors vs. 2 doors and if I had known it was a problem, I wouldn't have done it, of course, but I didn't know it would be an issue. LaBrecque – Has the area of pavement been removed behind the private garage? Harper – Yes. LaBrecque – You have grass there now? Harper – Yes. That's a larger area than what I took away from the front. Bayard – I don't want to get into a full-blown argument here, but I will put in a point or two, I think the concern we had is this as a very grey area dealing with a home occupation, yours is sort of borderline. We try to encourage home occupations so maybe we do touch in a grey area a little bit, but this is about as grey as we've gotten and we specifically were concerned about what we consider creep and that's sort of you do a little something here, a little something there and eventually if you took the initial step and looked at it, this is now a commercial operation, whereas nothing in itself triggers the change. We haven't even signed it, yet we see two what we consider fairly substantial changes which are the garage doors and the paving and there's still a little bit of question about the website and that's even before it's approved. We can't have the Code Enforcement Officer going out there every 3 months to make sure there were absolutely no changes and no boats out in the yard. It's a concern that we've already had so

many changes without having the plan signed yet. Harper – I understand, I guess, it's just that I didn't realize I couldn't repave and in the process of digging it up, I didn't realize it would be a problem to change it. I didn't consider that was creep because I wasn't making it look commercial, I wasn't stacking boats, trailers or whatever would look commercial out there, it still looks like a residential place as far as I'm concerned, only I think it's a lot neater and nicer looking and I put in what I felt was an attractive island with a couple of little bubblers and some fancy trees and all my neighbors are tickled pink with it, but I didn't know I was doing anything wrong. The same way with the doors, I was trying to get a door that I could heat the shop with because the existing doors were just made to keep the draft out because the shop was never heated. They were the worst least expensive doors anybody could possibly ever purchase, its unfortunate but that is how they were. Touhey – I guess I would disagree, I think if someone puts in an expansive area of pavement and then they also open up the garage such that larger boats can go into it, then what we thought was going into it is a change in what you indicated was going to happen there. Harper – Just because the doors are bigger doesn't mean you can put in a bigger boat because I only have 28' to put it in. The whole front of our shop could open up and I still couldn't necessarily put a bigger boat, boats are only 6', 8', 9' wide whatever the case may be so just because a door is wide doesn't mean you can put in a bigger boat. Philpot – What was the width of the old garage doors? Harper - Do you remember Dustin? D. Harper – 9'. Touhey – I'm sorry I hear you but I don't believe you. I know I can push a longer boat into a wider garage door opening than a narrower garage door opening. Harper – 28' is 28' so a 28' Chris Craft is no wider than the door that was already in there, it would be tight. Touhey – What's the depth of the garage. Harper – It's 28'. Touhey – But if you have a wider garage door and you put it in kitty-corner... Harper – I could do that with my other door, I could do it with either door for that matter but I was supposed to be able to put whatever I can put inside the building as long as the door is closed so I should be able to put it in the building shouldn't I? Touhey – It's just a suggestion here, we're concerned about creep and we're talking about the size of the paved area, relate that to opening up the garage through larger garage doors concerned us and then when I look at the website and I see what's represented as a home occupation and what you're representing in your website of what you are doing as a business and you're operating the business from there and the directions direct people there, I'm sorry there's a credibility gap. Harper – I understand but there hasn't been and never will be boats all over the yard and I explained that back in January and there hasn't been boats all over the yard, no trailers, no boats, no engines, no cars, there's nothing there that pertains to anything that's there, just our own personal vehicles and if you've driven by, that's all you would have seen since I moved in last fall. Touhey – Any formal relationship with M & M Salvage? Harper – Oh yes, great. We help each other out. One hand washes the other, scrub each other's back, you know. Touhey – You had represented in January it was only a verbal agreement with M & M Salvage. Harper – Yes, that's all I need, George is willing to sign something, that's not the issue and even if I couldn't put stuff there anymore, I would just have to dispose of it or give it to him, I've got no place to put it, I don't expect that to happen and as I said, there's only 3 boats. I'm not trying to pull the wool over

anybody's eyes, I thought I was doing right and I didn't consider myself creeping because I wasn't making it look like commercial, I was doing what I felt was an improvement, I couldn't heat the shop the way the doors were and the pavement just destroyed itself this spring, I don't know if it was the amount of snow we had or what it was, but it was just like a frog pond in there. I didn't want to go to the expense of paving but I didn't have a whole lot of choice and I hadn't planned on doing it all, I was just going to do the lower section and we got into such a mess, I didn't have any choice but to do the rest. I'm glad I did it because I think it looks very nice and the pavement was thin, it wasn't really done correctly and it's certainly a much nicer job. Dever – I guess the only thing I can say is perhaps and they say hindsight's 20/20, in this case it should have been foresight, you might have stopped in to see Bill Edney prior to any of your activities saying this is my intention. You shifted operations from a commercial zone where you were where its expected to do certain things into the middle of a residential neighborhood so the focus is very different and your level of activity is much more obvious and I do this in my other life, I deal with people all day long and I tell them I'm more than happy to answer questions beforehand because I'm not big on begging forgiveness. I was quite upset with the paver because I had no idea I was doing anything wrong and I was surprised when Bill called me, I was floored and I complained to the paver, why don't you guys know you're supposed to be doing this and doing that and he says we don't need to. Dever –The property belongs to you and onus is on you. Pavers roll in and roll out and once they are laying asphalt, they are happy boys. Harper – They just want to pave. Dever – They don't need to worry about that, it's not their concern. Harper – I know nothing about it, I'll make sure I take care of it and everything we did was based on Bill's approval as far as removing the hot top behind and he wanted me to do a complete site plan that cost me \$1200 and I said OK, I'll do that and he said everything is fine, go ahead and pave it and that's what I did. I did check with him and kept in touch with him and with Carl. That's why it took so many months to get the thing paved because I was waiting to get approval of the site plan done and get approval from Bill to be able to do it. When I called Bill, he's got it done and everything looks fine so do it. Harper – I didn't mean to step on any toes. LaBrecque – We still don't have the plot plan, this one still isn't signed because I was waiting for a resolution with the paving situation to get resolved with Gerry and Bill. Alicia came in and because that had changed, I told her before this gets signed, let's figure out what's going on with the lot coverage because you can't become more non-conforming. That's something that still needs to be done. I don't know if its possible, I hate to have the Planning Board sign a plan that doesn't exactly represent what's on the site anymore so I don't know if possibly we... Harper – This plan here which is what you wanted, but Bill wouldn't accept it and that's when I had to make up a whole new site plan. LaBrecque – I wouldn't accept it because it didn't reflect everything... Harper – Everything you asked for at the January meeting is on this plan and I gave it to Bill and he wouldn't accept it, he indicated I needed to have a professional site plan prepared. Initially, the Board waived the requirement for a formal site plan because nothing was to change. Bill was not speaking for the Planning Board, he was speaking for himself because he needed to verify that the site was not becoming more non-conforming with respect to coverage. Alicia – When I had first brought this

one to you, you had passed it to Bill and I had put on here all the requirements of the conditional approval and then it was sent back to us because it wasn't approved with setbacks and everything and that's why Bill told us we needed a professional one. LaBrecque – That was to determine the lot coverage because you couldn't calculate it. Alicia - We had gotten the percentage from Carl at first but then he wanted to see (inaudible), I had stated the coverage on here. LaBrecque – Right and Bill wanted to see Carl's plan, because he didn't want to say he just called me with a percent. Bayard – I think there were some changes here and that was the concern, it was brought up that there was a change with the pavement, the doors and I think perhaps Bill decided at that point when you originally came in, there really wasn't going to be any changes. That was the initial thing that was stated to us that there would be no changes whatsoever. There were some changes, you may argue they are cosmetic, but as far as we're concerned, there are some changes, some lot coverage changes as far as the pavement, some added, some removed, so I think that's probably when Bill decided this would be a good idea to have this plan. Do you have a copy of this plan, Angela? LaBrecque – I just got one tonight, only one was submitted to Bill and he wrote all over it. My only point is that the Planning Board hasn't signed a plan yet and they need to. Your home occupation is in use and if the Planning Board is still willing to stick with their Notice of Decision for their conditional approval, we still need a signed plan so I just wanted to get a readout from the Planning Board if they do intend to uphold the conditional approval, if they would sign the plan Alicia did or if it would need to be the plan that Carl prepared. Alicia – This is not professional but this shows where we have replaced everything with so I don't know which one you guys would want to sign. Dever – We had the plan that we conditionally approved in January, there have been changes, they have done another plan to show the changes to accurately reflect what's on the ground as we speak which is Carl's survey plan to do a site plan showing all of this so you're asking which one of these plans we want to sign off on. Here's another part of my confusion, my understanding was Bill took this plan and said this is OK on behalf of us, strictly for lot coverage, so I think the Board should sign off on the most accurate plan available, I don't see that the conditions have changed, we've just reinforced why we're here and I have no urge to change the conditions as they stand unless someone else wants to add something. To me this represents what is on the ground today, this is our baseline going forward from today. Bayard – As Chairman, I would prefer to sign off on the professional plan. The question may be, do we need sort of a verbal motion that this is the plan we'll be signing off on. LaBrecque (inaudible) Philpot – Carl may be able to shed some light, Mr. Chairman. Johnson – Just to clarify, I was contacted by Mr. Harper to satisfy a condition that was being mandated by Bill Edney which was to confirm the lot coverage because the lot coverage in the zone only allows 30%, we know we were way over that to begin with so the concern was that if there was additional pavement added above and beyond what was there, there had to be an equal or greater amount of pavement removed somewhere such that the amount of impervious surface he ended up with was equal to or less than what he started with. The purpose of the site plan at that point was not to prepare a site plan as per the regulations because it was a home occupation and wasn't necessary, however, that being said if the Board is more comfortable

with having my plan reproduced at the large scale for the file, I would be very happy to add whatever information the Board would like to my plan that carried over from the original approval of the Board and any other conditions the Board may impose that they feel necessary tonight to my plan with a signature block so you would be able to have that as the plan. I would be happy to do that. That way you would have a plan that's to scale, it was all mapped professionally. One thing I would do before I put my stamp on it would be to confirm that the amount of pavement removed is as was recommended or as Mr. Harper stated a little bit more than what they did to make sure that holds true. Other than that I'd be happy to do that.

LaBrecque – At this point, the home occupation is in use and they need to get a plan signed. I don't want to come in with Alicia's plan and the Board say what happened to that survey we saw and then another month go by.

Brothers – Mr. Chairman, I understand we have two things going here, the first is do we use the hand drawn one or do we use this. I agree with John, we should have the more professional one. It still misses the point, that being what was originally approved has been exceeded, it has been altered. He's done what he wants to do now and we're going to be signing off on that, that's not the point, he's exceeded what we originally intended it to be so I think the dialogue about the two plans is kind of moot, this one should do it but the fact of the matter is, it exceeds the original intention that was related to us by the applicant, that's another story. Let's not get caught up in the semantics of which plan to sign off on, the better one is the one that's here, that could prevent shall we say further improvements and making it more commercial.

Lapham – Just to get back to that grey area you talked about, this has really been bothering me because we had a full-blown commercial business up on Route 3 that then became a residential home occupation. I have a home occupation and I went through all these hoops and if there are any other changes to be made to this, is this automatically looked at by the zoning officer or can we write something in there that foresight would have been better to check this out first. How do we prevent suddenly there's a little addition put on the end of the approved boat repair facility and it seems to me we really have put a commercial business in a home occupation and that probably was not a good decision so I want to prevent to the commercial part of this business from ever being anything more than a home occupation.

Kahn – t seems to me we could sit around and talk about this all night, we made a mistake, this should not have been a home occupation. If you look at our zoning ordinance, it talks about things that are customarily carried on in the home, like real estate agencies, seamstresses and even hairdressers, but we made a mistake and we're kind of stuck with it now and the applicant has made it a little bit worse because he said he was going to leave everything exactly like it was and then he didn't and to me, it seems fairly clear that he was intending to get some larger boats into that garage but he's done it so the question is, are we going to say this is not a home occupation and we won't sign off and his business is now out of business, I don't think we have the guts to do that and I wouldn't recommend doing it. Are we going to tell him to put the 4 doors back and to rip up the pavement that he has, does that really make a lot of sense so let him have 35' boats that he can back into the garage but let him know that if he makes one more change, he's going to be out of business and Mr. Philpot and Carl, don't ever bring us another one of these



because we won't approve it, OK? If it's not a seamstress, a real estate agent, a lawyer or an accountant, don't bring it to us because we're not going to approve it. Mr. Harper, do not make another false move or you will be out of business, have you got the message? We're not going to tell you to rip up your pavement, we're not going to tell you to put the 4 doors back but don't be such a smart guy that you're going to keep playing around with us because if we find that you're looking like a commercial operation and you sure as \_\_\_\_\_ do now, we will have to shut you down.

Kahn moved, Brothers seconded, MR. CHAIRMAN, I MOVE WE AMEND THE ORIGINAL APPROVAL OF THE HOME OCCUPATION TO PROVIDE THAT ANY FURTHER CHANGE IN THE PREMISES HAS TO COME BEFORE THE PLANNING BOARD AND THAT NO BOATS, ENGINES OR OTHER ITEMS FOR SALE ARE TO BE LOCATED ON THE PREMISES AND WE ACCEPT THE ADVANCED LAND SURVEYING CONSULTANTS PLAN AS AMENDED. Voted 5-2 in favor of the motion.

Bill Philpot – Mr. Chairman, I would like to make a comment. Carl is an innocent bystander and he's a friend of mine and he just got in the middle of this. In Bill Edney's defense, I've worked with the guy over the years and he's a good code officer and a benefit to the town and I don't think he intended to overstep his bounds in any way. He was just trying to get some control here and come up with a practical solution and any which way you look at it, that's a positive individual and that's a benefit. I'm from New Jersey so you have to take me with a grain of salt but those 2 guys are golden so don't lose sight of that even though you have some differences here tonight. Bayard – I didn't want to state I don't think we adhere to what we said and go to the Planning Board, its because Bill is an enforcement officer and he's trying to enforce issues that come up and in his mind they may not rise to a big issue and in this case we're making a special exception here because we feel we've perhaps crossed the line to begin with and we don't want to lose focus of anything further on this. I'd kind of like to relieve him of any responsibility of having to decide whether this is a change. Harper – I just want to let you know, God strike me dead, I didn't do any of this stuff to mislead anybody. It bothers me a little bit that you think I put larger overhead doors in to accommodate larger boats because that wasn't the issue. If I had known I was doing something wrong, I would have talked with somebody. As far as the paving, I certainly didn't want to jeopardize any source of income since I lost everything I own after 35 years so whether you believe me or not, I didn't go into it to pull the wool over anybody's eyes or to try to do the kind of stuff that's been mentioned tonight. I guess ignorance of the law doesn't count. I decided to change the overhead doors because I needed the heat during the winter months. I didn't do it to put bigger boats through the doors. I'm sorry if everybody thinks I was doing something illegal or underhanded because that wasn't my intention. Johnson – The applicant needs a plan that actually demonstrates what's on the site. Nobody really hired me to do a site plan so this is an existing conditions plan. There are issues, one is the lot coverage and the other one is that this is a home occupation.

Meeting adjourned at 8:47 p.m.

Plan Signatures: L. Lakehouse LLC – Boundary Line Adjustment Plan (U18-12 & 13) Thomas & Marsha Fairbrother & Timothy L. Whiting – Boundary Line Agreement Plan (U05 - 43 & 46).

Respectfully submitted,

Mary Lee Harvey, Adm. Assistant  
Community Development Dept.

The above Minutes were read and approved at a regular meeting of the Meredith Planning Board on 8/23/11.

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John W. Dever, III, Secretary