

PRESENT: Bayard, Chairman; Sorell, Roger, Vice-Chairman; Dever, III, Secretary; Brothers, Selectmen's Rep.; Lapham; Kahn; Touhey; LaBrecque, Town Planner; Harvey, Adm. Assist, CD Dept.

Meeting called to order @ 7:05 p.m.

Dever moved, Lapham seconded, MR. CHAIRMAN, I MOVE WE APPROVE THE MINUTES OF AUGUST 23, 2011, AS PRESENTED. Voted unanimously.

1. **PRIMROSE REALTY TRUST AND DIANE RAMSDELL FAMILY REAL ESTATE TRUST** (Rep. Walter Horton) – Proposed Boundary Line Adjustment between Tax Map U19, Lots 26 & 27, located at 53 & 55 Pinnacle Park Road in the Shoreline District.

LaBrecque – The proposed Boundary Line Adjustment is between Lots 26 and 27 for the purpose of exchanging 125 sq. ft. for 125 sq. ft. in order to increase the length of the shoreline. A waiver has been requested for topography and given that both lots are developed and the exchange of land is small, the waiver request is recommended to be granted. The plan, application and checklist are on file, the fees have been paid and its recommended the application be accepted as complete for the purpose of proceeding to a public hearing t his evening.

Dever moved, Brothers seconded, MR. CHAIRMAN, I MOVE WE ACCEPT THE APPLICATION AS COMPLETE. Voted unanimously.

2. **D & D REALTY, LLC** (Rep. Carl Johnson, Jr.) Proposed Site Plan Amendment for reconfiguration of existing warehousing use and accessory showroom, Tax Map R02, Lot 32, located at 177 NH Route 104, in the Business & Industry District.

LaBrecque – This Site Plan Amendment is for the purpose of reassigning or reconfiguring the allocation of warehousing space at this site. Its where the Flightcraft is currently located and the current use is warehousing and accessory showroom and they are proposing to have another tenant move in and reallocate the space or share a lot of the space. Application, checklist and abutter's list are on file, fees have been paid and it's recommended the application be accepted for a public hearing this evening.

Dever moved, Sorell seconded, MR. CHAIRMAN, I MOVE WE ACCEPT THE APPLICATION AS COMPLETE. Voted unanimously.

3. **MICHAEL CASEY, ROBERT HOFEMAN, ROBERT CASEY** (Rep. Proposed condominium subdivision of 4.29 acres with 7 existing rental cottages located at 19 Pollard Shores Road in the Shoreline/Lake Waukewan Watershed Overlay District.

LaBrecque – The proposed subdivision application is for the purpose of converting these 7 rental cottages which date back to the 1930's, 1940's to change the form of

ownership to a condominium and the applicant has requested a waiver for topography, soils and wetlands due to the site already being developed. There are no proposed changes to the site. The subdivision plan and abutters list are on file, the fees have been paid. It is recommended the application be accepted as complete for the purpose of proceeding to a public hearing this evening.

Dever moved, Sorell seconded, MR. CHAIRMAN, I MOVE WE ACCEPT THE APPLICATION AS COMPLETE. Voted unanimously.

PUBLIC HEARINGS

1. PRIMROSE REALTY TRUST AND DIANE RAMSDELL FAMILY REAL ESTATE:

Walter Horton – We are proposing a Boundary Line Adjustment for two existing, non-conforming lots. The reason for the BLA is currently Tax Map U19-26 had some landscaping that was encroaching onto Tax Map U19-27 and an equal area swap for the same amount of property down at the shoreline to gain more lakeshore because as the lot is currently, it doesn't meet the regulations for a seasonal dock and with the additional shore frontage, they will be able to have one. At the same time, we're not creating any more encroachments than what is there now.

LaBrecque – As was described, they are just swapping out 125 sq. ft. for 125 sq. ft., one at the area of the driveway for the area by the shoreline in order to get the 75' of shoreline needed for some DES permits. There's no non-conformity being created with respect to zoning. The areas are staying the same; lot coverage is staying the same because it's an even swap. The setbacks are changing it a little bit but it doesn't effect the existing structures and it's pretty straightforward. No easements, it's fairly simple. They are both existing, non-conforming lots. Bayard - Should we have granted the waiver earlier with the acceptance? LaBrecque – It can be done as part of your decision. There is over 150' being maintained on the other lot so essentially its becoming a little bit more conforming by the few feet they are gaining. No public comment, public hearing closed.

Touhey moved, Dever seconded, MR. CHAIRMAN, IN REFERENCE TO THE PRIMROSE REALTY AND RAMSDELL FAMILY PROPOSED BOUNDARY LINE ADJUSTMENT, I MOVE WE APPROVE THE BLA SUBJECT TO THE FOLLOWING:

- (1) GRANTING OF THE WAIVER FOR TOPOGRAPHY.
- (2) A NOTE SHALL BE ADDED TO THE PLAN UNDER ZONING STATING THAT 30% IS THE MAXIMUM LOT COVERAGE PERMITTED IN THIS ZONE.
- (3) THE APPLICANT SHALL PROVIDE A DRAFT CONVEYANCE DEED FOR STAFF TO REVIEW. THE EXECUTED DEED SHALL BE RECORDED WITH THE MYLAR. THE APPLICANT SHALL VERIFY IN WRITING WHETHER THERE EXISTS A MORTGAGE ON LOTS 26 OR 27. IF THERE ARE ANY, THERE SHALL BE A SATISFACTORY RELEASE OR MODIFICATION RECORDED IN CONJUNCTION WITH THE CONVEYANCE DEED.

- (4) THE SURVEYOR OF RECORD SHALL PROVIDE WRITTEN EVIDENCE THAT ALL PINS HAVE BEEN SET PRIOR TO RECORDING THE MYLAR.

Voted 7-0 in favor of the motion.

2. **D & D REALTY, LLC** (Rep. Carl Johnson, Jr.)

Carl Johnson – The property is located on NH Route 104, the access comes off Winona Road across a private strip of land which is the old Route 104 and the property abuts a commercial property on the right and on the left by other land of the owner. Currently, right now the existing approved site plan for D & D Realty consists of primarily the storage of boats by the applicant as well as an accessory showroom and small office in the front and previously a portion of the storage area was occupied by Keepsake Quilting so the entire back section of the building is storage, the downstairs section of that in the back includes a small shop. There's a small amount of light maintenance to the boats that occurs in that shop and the rest of it currently is storage. The seasonal nature of the business is such that in the winter, not a lot is happening out here on the site so the proposal is for a company called "Mack Studs" that primarily deals with 2 things, the major product is a stud that is attached to snowmobile treads for grip and also an apparel line that they sell from a website they have. The proposal is for Mack Stud to be a second tenant in the building. Keepsake Quilting is moving out and there will be a reallocation of the storage areas between East Coast Flightcraft and Mack Stud and Mack Stud will also be sharing a small portion of the shop for some of the installation of the studs that they do. There is no change to the actual size of the building, the actual nature of the storage is the same with the exception of who's storing what when and is actually no change to the nature of the accessory showroom except in the summer time primarily there would be disproportionate summertime boating type accessories and in the winter time you may be disproportionate wintertime accessories but the showroom will remain the same. There's no change necessary for parking, no change to lot coverage, no change to lighting and all the corners of the site plan remain the same. The sign that's out front will be the same except its going to be divided into two instead of East Coast Flight Craft occupying the entire sign, the signage will be shared with Max Stud and there's a representation of that included in the packet. In terms of the use of the building, the primary use is storage, the accessory use is the small showroom that's in the front of the building as well as a small office space for each one of the companies depending on the year. This was a combination of an old mechanical drawing plan and a hand drawn plan that was prepared by Associated Surveyors a little while ago and it was a little bit hard to read, we cleaned the plan up a little bit in terms of making it easy to read and Angela had some problems with some of the copies and what the numbers were actually saying so we darkened it up a bit and made a bunch of better prints to be on file with the town. Angela has a brief description of the zoning issues and the parking and so forth and there was a note about any new or changes to the lighting should be cutoff fixtures but there's no

change to the lighting being proposed. I reviewed the plan even though the copy you have is probably faded on the right-hand side that was from a previously approved site plan that is on file with the town so I was able to read everything off the original. Bill and I sat down with the applicants and reviewed the scope of Mack Studd's business and after the meeting and getting a couple descriptions of the use, it was determined they are indeed warehousing which by definition is a structure or part of a structure for storing goods and merchandise. The accessory showroom is also permitted within that district, its accessory to the warehousing use. Like Carl mentioned, they will be sharing it. I believe it was mentioned there will be a small workshop where they possibly do studding the tracks that they send out to whatever retail stores or have on display. The amount of work that Flight Craft does on boats is minimal and the amount of work Max Studds would be doing on snowmobiles is minimal, its strictly just doing the studs, there's no engine repair or anything like that. The showroom is to show the studs and the tracks and some of the apparel. Nothing on the site is proposed to change. I think there will be less of a parking demand given the amount of employees Keepsake Quilting had there vs. what Max Studds intends to have so there's relatively no change other than the occupancy. Johnson – This particular marriage is perfect for this site in that you have a summertime use and then a wintertime use because in the winter there's not a lot going on at this site so it will be good to have people in there and the site will be maintained and then in the summertime, it will revert back to the East Coast Flight Craft. Touhey – Mr. Chairman, if I recall when this came before the Board the last time for Flight Craft I believe, a certain area was set aside in the front of the building on Route 104 for outdoor display. I assume that area then will be display for the stud tracks in the wintertime. Johnson – That wasn't brought to my attention. Currently, essentially that's a display area for one boat and what's there is a single boat. I didn't do the presentation last time but I was in the house so to speak and I remember the discussion about the display area and there is an identified display area and essentially it's for a boat. I'm not sure if there's going to be any use of that display area by Mack Studd for having a machine out there, none that we know of. Touhey – Sometimes there are two boats out there, but I'm not going to make an issue over that at this point but just a reminder that's what the display area was set aside for and the Board assumes that will be for one boat in the future. Pete Leach – I live across the creek and my only question is and I think its been answered is, will any vegetation or trees or anything be removed from that stream or should it all basically look the same. Johnson – There's no proposed changes to the site at all in terms of cutting any trees or removing any landscaping, it will be the same as it is right now. Johnson – If there aren't any major issues with the plan and we move towards an approval tonight, I do have sufficient copies for signature. I don't believe there are any plan changes that have to be made. If there are and because Mack Studd would like to move in as quickly as possible as opposed to waiting 30 days until the plan would be signed, I would request that we might be able to have that signed outside of a meeting to get them in sooner than 30 days. Bayard – I'm not sure we can sign it tonight; it looks like there might be a couple of things that need to be added. The calculations that were faded on the plan have been fixed on the new plan. The lot coverage of 69% is noted on the

plan and there's no new lighting. Bayard - Previously, there was a restriction against putting boats and trailers along the visual side of the property, I don't know if that's on there. Johnson - There is an area identified on the plan that says no boats to be displayed within Area A and is noted on the plan. Bayard - I assume that could also apply to storage of snowmobiles on trailers and I think that should be made part of the approval. Kahn - I think what you're very politely trying to say is that there are boats constantly being displayed along the side of that building and that was not the spirit of the approved site plan. Where there is supposed to be one boat in front, there are constantly two. We have here someone who is constantly trying to see how far he can push it before we have to send Edney so Bill's being very polite, I'm being less polite. Why don't we knock it down, no boats along side the building period. No boat storage, display or otherwise along side the building. Bayard - Would you also add snowmobiles and RV's and whatever else this fellow comes up with? Bayard - There is one small exclusionary place. Johnson - On the westerly side of the building in the back, there is an area for boats awaiting service so I'm assuming that's still OK. Kahn - If we're talking about the back of the building, fine, but what I'm talking about is the front and side of the building. Johnson - So the area that's existing between the accessway to the back and what we'll call the front portion of the building is the area you're concerned with. Kahn - Do we want to call the back corner of the building Point B or Point A or something like that, nothing south of Point A. Johnson - There's an existing parking area right here, is that the area you're concerned with? Kahn - I'm concerned about this entire area. Johnson - This is a wooded screen, this is a roadway that goes to the back and I don't think you can see this very well so I think you're thinking about this so that's the area you're primarily concerned with. Bayard - There is also a side area. I understand there is a little side area next to the building that allows some waiting storage but over on the side... Johnson - That's already restricted from boats and it shall be restricted from snowmobiles also. Bayard - I'd like to explore a little bit about the accessory use. 90% of the sales of their product occurs off of the internet, they have a website and their products will be stored here and then their products are shipped either directly from the internet or to distributors. They have distributors that sell their apparel, they don't necessarily want floods of people coming to this site because their business is to warehouse this material, get it to the vendors or sell directly to the internet. That's what their business is and it's roughly 90% that and potentially 10% having the accessory salesroom on the site. This generally is not a retail type business where people are coming here specifically for the purchase of apparel so that's why its accessory to the warehousing use and they had a meeting with Angela and we also wrote two letters redefining that particular use to have Bill make the determination that the use was an accessory use. Bayard - The proposed use appears to be acceptable. Johnson - As with any approval the Board should entertain, they reserve the right to review and amend that approval and if it became something the Board did not want it to be, then they would have the right to review and amend that approval. Bayard - Bill has been made aware of what it's supposed to be so if he finds some issues... Johnson - He was the primary contact before we made this application to the Planning Board. Touhey - There's a dumpster on that lot line that we've been talking about in

regards to parking. Johnson – There’s actually a dumpster shown on the plan there but there’s currently no dumpster in that location that I’m aware of. Touhey – Is there a dumpster on the property and there’s no plan to have a dumpster on the property for your new tenant. Johnson – Yes, there will be a dumpster that will be located in the back of the building as opposed to the slot shown on the front of the building. Touhey – I think we’ve got to be a little more specific. Johnson - We would know to place on the plan in the back “screened from public view” for the dumpster. Touhey – I would suggest on the plan here, the area we’re talking about or Lou was talking regarding the parking of boats. Touhey – There are supposed to be 12 spaces there for parking, I would assume that we’re talking automobile parking. If we come to an agreement that there be no storage of boats or whatnot forward of the dumpster that appears on this plan, I think we can live with some storage beyond that point. Lou might want to comment. Johnson – Just let me touch on the evolution of that area for 12 spaces. In the past, we were faced with, it’s a big building and when you go through the parking calculations, it comes up with a big number like 45 spaces required and there’s no way the site generates the need for 45 spaces. In order to minimize the number of spaces that the original application was requesting to be waived which I believe was 20, we show parking in that space primarily to comply with the parking regulations. Neither one of these businesses generates any type of parking demand, right now with the revised calculations; it says we’re required to have 42 parking spaces. There’s no way, based on the current use, those spaces were put in there primarily to comply with the parking regulations and then restricted from putting anything in there other than cars. Touhey – Carl, what I’m driving at is to define a line where there will be no boat parking forward to Route 104. Johnson, that’s currently identified, Area A is from a point at the front of the property, all the way to a point that’s beyond where that dumpster is shown that you’re looking at on the plan, that’s Area A that’s restricted from any boats. Touhey – That area then would be restricted as we have discussed. Johnson – No change to that. Kahn – Carl, does Area A include the spaces that are shown south of the loading dock? Johnson – I think it includes only the area shown here, but what you’re saying is you would like it to apply to that area in between the shrubbery and the building in the front. Johnson – Understood. Public Hearing closed at 7:39 p.m.

Dever moved, Brothers seconded, MR. CHAIRMAN, I MOVE IN THE CASE OF D & D REALTY, LLC FOR A PROPOSED SITE PLAN AMENDMENT, MAP R02, LOT 32, LOCATED AT NH ROUTE 104 IN THE BUSINESS & INDUSTRY DISTRICT, THAT WE APPROVE THIS APPLICATION SUBJECT TO THE FOLLOWING CONDITIONS:

- (1) THE PERMITTED LOT COVERAGE OF 75% AND THE EXISTING LOT COVERAGE OF 69% SHALL BE ADDED TO THE PLAN.
- (2) THE PARKING CALCULATIONS WHERE THEY WERE FADED FROM THE PREVIOUS PLAN SHALL BE ADDED AND UPDATED.
- (3) ANY NEW LIGHTING OR CHANGES TO LIGHTING SHALL BE CUT-OFF LIGHT FIXTURES.

(4) A DUMPSTER LOCATION SHALL BE ADDED TO THE PLAN AND BE INDICATED WHERE IT WILL BE LOCATED OUT OF THE PUBLIC VIEW.

(5) THE ORIGINAL PLAN ALLOWS FOR THE SHOWING OR THE PROVISION OF ONE AREA IN THE FRONT (8' X 30') AS A DISPLAY AREA. THERE SHALL BE NO DISPLAY OR STORAGE OF BOATS OR ANYTHING OTHER THAN AUTOMOBILES ANYPLACE LOCATED IN AREA A, THE PRESENT PARKING AREA IN FRONT OF THE LOADING DOCK SECTION OF THE BUILDING AND AGAIN OUT FRONT WITH THE EXCEPTION OF THE 8' X 30' AREA INDICATED ON THE PLAN.

(6) THE REQUEST HAS BEEN MADE TO AUTHORIZE THE PLAN TO BE SIGNED TONIGHT, OR AS SOON AS POSSIBLE BASED ON STAFF RECOMMENDATIONS PRIOR TO THE NEXT MEETING.

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

Voted 7-0 in favor of the motion.

3. **MICHAEL CASEY, ROBERT HOFEMAN, ROBERT CASEY** (Rep. Dave Dolan, Michael Casey, Bob Hofeman, Bob Casey and Attorney Alvin Nix)

This is an application for subdivision approval for the purpose of a condominium conversion of an existing cottage colony located on Pollard Shores Road. This plan shows the portion of the property located to the north of Pollard Road, Lake Waukegan. Again, the property's just over 4 acres, about 2½ acres is located to the north of Pollard Shores Road and contains the 7 existing units, labeled on the plan 19A thru 19G right to left and 19E. There are 4 docks located on the property, a couple of beaches. Across the road on the south side of Pollard Shores Road is the remainder of the property, to the south is the railroad ROW and most of that is wooded. There's a cleared area that's been used for boat and recreational vehicle storage. The plan note is the same as the note that was on the most recently approved site plan for the property which I think was 5 or 6 years ago. There are no proposed physical changes to the site, everything is developed as is, there are no proposed additions, expansion of any parking areas or buildings at all, its merely to change the form of ownership to condominium. The units are surrounded by these shaded areas that are highlighted in blue and those are limited common areas that are expanded around the building and in a lot of condominiums, the building is the only limited common area and in this case, they want to have a little privacy with a yard area surrounding each unit and that's the purpose of these limited common areas. Mr. Nix will speak to most of the issues that were raised in the staff review regarding clarification of some of the terms and the condominium documents. As far as Angela's staff review, she makes reference to the fact that we need to include reference to the Waukegan Watershed Overlay Protection District, as well as setting a monument. Typically, in a condominium you don't monument the limited common areas, all these limited common areas are tied to monuments on the exterior boundaries of the property. We will verify that they are

all still in place and set any missing exterior boundary monuments and verify that in writing prior to any final approval if that's acceptable if I'm understanding Angela correctly. As far as the site plan goes, if there are any questions regarding that I'll attempt to address them and if the Board has questions regarding Declaration documents, etc. , Mr. Nix is here to address those. If we didn't mention it in the acceptance of the application, we did request a waiver of topography, wetland and soils. Bayard – We'll add that to any decision. LaBrecque – This property goes back quite a ways, there have been site plan approvals, zoning relief, I think the earliest cottage goes back to the 30's. Some of them were rebuilt in the recent past. I think there were 8 or 9 cottages and now there's only 7, a couple have been removed, some have been moved back from the shoreline and rebuilt. They have been seasonal rental cottages since anybody can remember. More recently, there was an application made to the Zoning Board for density and I think this was an attempt to do a traditional subdivision or maybe it was still to do a condominium but nonetheless that was denied, an appeal was made and an interim decision was made and then ultimately the appeal was withdrawn, correct me if I'm wrong Mr. Nix. Nix – (inaudible, no mike) They've been rental cottages since the 30's and 40's so that definitely predates our zoning ordinance which was adopted in the 70's. There's nothing to be changed on-site physically, the only change is the form of ownership so with that being said the only things to review here are the legal documents, the Declarations. We look at that obviously for protection of the future owners so they know exactly what they are buying, maintenance of common elements such as the well that's there and the sewer service lines and things like that. There are several things to be clarified or maybe defined a little bit better. I know that in the condo docs the cottages are referred to as dwelling units, also referred to as a unit or lodging unit so to provide some consistency in the document, it would be helpful in nailing down exactly what the grandfathered use is. There's also a couple other things which I'd be glad to sit down with the applicant and go over the tweaks that need to be made. For instance, it talks about a public sewer, the lines that go from unit to unit to unit are all private, it is connected to the municipal sewer system, however, so clarification like that I wouldn't want anybody thinking they are getting something that might be maintained by the town but in fact is not. There's a statement here that the purpose of the condominium is for dwelling purposes and for dwelling use and just to clarify that to be rental cottages for transient people, not for residential folks. This is well documented in all of our files, letters from the assessor stating that they are rental cottages, they are intended primarily for transient occupancy. Our definition also of rental cottages talks about accommodations primarily for transient occupancy and when the definition says primarily I think it gives a little bit of latitude, I believe there's a caretaker, Mr. Casey lives there so to have somebody on the site, I'm sure if you owned one of the units, you could come up and visit your own unit but not fully occupy it for residency but if you own a rental cottage, you may be inclined to use it for a couple weeks in the summer. Touhey – The question I have is, "Are these going to be timeshare units, are they going to be selling weeks in these units?" LaBrecque – Seven (7) cottages individually owned. Right now this is one piece of property that has 7 cottages on it so then it will be 7 individually owned cottages

and the property is common. Nix – There’s no plan to make these timeshare units, in fact, just as a bit of history, these units are owned by these 3 gentlemen as joint tenants and with all due respect, as they grow, they want to make sure this property can be transferred without having those types of issues that joint tenancy brings about so there is no plan on putting these properties into a timeshare. Dever – Mr. Chairman, so if I buy one of these, the absolute requirement is that I have to rent it out. That’s correct, but you can as an owner occupy it but you can’t use it as a full-time residence. I think that’s what Ms. LaBrecque is pointing out. You can use your property. Dever – Are these seasonal, i.e., when I say seasonal, I mean spring, summer, fall or are they occupied year-round? Nix - Snowmobilers come, ice fishers come, leaf peepers come, and spring fishers come. Dever – I see the recommendation of the Planner is that we continue this because there is some lack of clarity and consistency with the uses referred to in the Declarations and also it says review by Town Counsel may be needed. I would strongly suggest that review by Town Counsel is needed. I’m not of a good enough education to review a condominium document and make sure its right, I’ve learned that all too recently so I don’t know if we want to continue or to move to continue this? Bayard – I was thinking maybe we could open it to the public and get their input. Nix – Mr. Chairman, I read the staff report provided by Ms. LaBrecque and I think in large part there are a lot of recommendations on there with respect to change to the documents that I think the applicant is in agreement with, the only issue is going to come down to this term “transient residence”. There’s one paragraph in there where she addresses that and that’s something we’re going to have to iron out because who’s definition of “transient” is in there. We understand transient, does transient mean somebody comes in for 5 days, somebody comes in for 3 days, two weeks, at one point in fact the applicants had rented out a unit for 3 months to a person who was brought up to work at Lakes Region General Hospital. I think in large part, I think we can reach agreement on those, that’s really the nub of the issue as to how we’re going to work that language itself. Bayard – I think its something you will have to work out because there is a zoning issue if it’s not considered the rental units; I believe that’s the issue though. The problem is it rubs up against the no change in use which there is no change in the land, the question is what was the existing use and we’re willing to work with people on that. Dever – Mr. Chairman, I will add this note that I do know that if under the State of New Hampshire Rooms & Meals Tax Laws if you reside in some type of rental unit, it’s supposed to be a temporary rental unit for more than 184 days, you’re considered a permanent resident of that facility. Bayard – I think that’s a good reason for having it go in front of legal counsel and I think it is something we’d like you to work out with the staff. Brothers – Mr. Chairman, just a question of where the documentation will appear. If we’re looking for that definition of transient, is that going to be in the Condominium Documents or is that going to be displayed on the plan or in conjunction, both places. I didn’t see any reference on the plan and I certainly haven’t read the documents but based on what I’m hearing and listening to, it would seem like it would be appropriate. Nix – There’s a paragraph, not 7:100 but I think it’s the paragraph just before that I think is the language Ms. LaBrecque was concerned about so we’ve taken a look at that. Kahn – I think very strongly

that the reference to transient rental use should be on the plan and in the condo agreement and ought to be in the condo agreement that it cannot be changed without the consent of the Planning Board, otherwise, you have a meeting of the condo association and change it. Brothers – I'm hearing you. Bayard – We've had that in the past in some of the documents. Kahn – Probably the Great Escape which is a similar situation, only this is a more difficult situation because those are basically motel units, these are houses on Lake Waukegan. It was always represented that these were rental units and thus they must stay. Nix – If it's a mere recitation of what the law requires, there's no issue with that. Bayard – I think we'll be able to work that out hopefully with town staff and our attorney so we'll see what we see in October. John Mack, 11 Pollard Shores Road – I would request any approval, if there is one, includes all the restrictions that were infringed on the property from all the past zoning and planning board approvals. They define as far as I know, they define the transients, they define what they can use them for, they define previous uses, they define "no year-round" residency and I think every single bit of that should be included by reference on this approval. The town has put a lot of effort into this piece of property for a long time and everybody had investigated and come up with a solution that I think everybody has been living with and I don't think its any time now to change it just because they are going to be condos doesn't mean we can't have the same restrictions from my understanding of what the Planning Board can do so that would be my request. The second request I would have too is secondary, I've been to several meetings on this, I was on the zoning board as everybody's aware but I've been told Mike Casey is the caretaker, I've been told Robert Hofeman is the caretaker, who is the caretaker that can live year-round on the property, I would like that defined by somebody also. Mike Casey – First off, the plan was approved with certain restrictions numbering 1-12 here, we're not changing anything physically on the property and we don't feel we should have to put more restrictions on the plan. One of the comments made at the staff meeting talked about in the documents we used the word residential. As an example, in 2-702 it says the common area shall not be used in a manner which is inconsistent with the residential character of the condominium. What that simply means is somebody renting for 2 weeks, 3 weeks, 4 weeks should not be allowed to go up there and display their art work for sale on the property, should not decide to fix a car for somebody, in other words we don't say permanent residents in any of the condo documents, , again, residential means non-commercial, it doesn't mean permanent residency. We talked about it in 2-702 that it's for transient use, it doesn't say permanent residency anywhere in the condominium documents. As far as the last comment went, certainly you wouldn't put in any of the documents who is going to be caretaker, you could have a caretaker XYZ on week one and a new caretaker 2 weeks later, you're certainly not going to identify the caretaker in any documents. What we will tell you is we have never in the past ever had more than one occupant caretaker any more than the owners being up there to fix things or on a temporary basis. In the past that's happened, in the future you'll have maybe a caretaker but you don't have to identify that caretaker by name, certainly he's been told its Michael Casey, he's been told its Robert Hofeman, I don't know who's telling him that but we have one caretaker on the property and that's Robert

Hofeman. I have never been the permanent caretaker, I'm an owner, I have a vested interest in the property but I wouldn't be considered the caretaker. I don't do anything of that nature, I don't register my cars in Meredith, I don't vote in Meredith, I'm actually a Massachusetts resident. So again, getting back to the staff meeting, some of the comments involved around that description of whether or not we're transient and whether or not that has to be spelled out better in the documents and I just want to reference that 2-702 does say its for use by resident transient rental use and that no other commercial use will be allowed other than that transient rental use. This again is to protect us if it is sold to other individuals, they know what restrictions are on the property, they can rent the property but they can't operate a business out of the property, that's spelled out in the condominium documents. I'll reiterate what Attorney Nix said, we don't have any intention of doing any type of timesharing. There won't necessarily be 7 owners, there may be less than 7 owners at any one point, a new owner could own 2 units, 3 units without putting restrictions on how owners use the property, what we are saying is we're changing only the ownership, we're applying to just go from the structures as they are now to individual condominiums of 7 condominiums. Also in the condominium documents is referenced living units and that is simply to identify the living units vs. the other structures on the property, the sheds, the garage and things like that, it doesn't reference permanent residential living units so I just wanted to point that out, we do not in these documents put down anywhere permanent residential units when we refer to residential, we're referring to the character of the neighborhood as it is and the type of use you would have in these condominiums. Bayard – I think we're both on the same page here where your intent is what we're trying to get at, I think we just want some clarification of the wording and things like that and there are probably little aspects also of this that will be required, it's a legal document and like any legal document, there's a lot of t's to cross and i's to dot. Mike Casey – There were also some comments made about putting into the documents some language as to no permanent residential use would be allowed. As I understand it, that is against the current zoning and the current zoning applies and if that was to be done on the property, again the zoning inspector of the town would have an issue with that. I don't feel we need to put in language in the declaration that is already covered by the normal zoning regulations within the town. We don't want any more restrictions on this property that other properties don't have and we'll live by the zoning. Bayard – We'll let the attorneys work on that because these documents are usually pretty explicit so I think its something that can be worked out. We try and get everything spelled out up front because you don't like to leave grey areas where Mr. Edney has to be going out all the time to make a decision whether this person's been here too long or not. It's clearly not his role so it can be taken care of I'm sure. Your intention is pretty much what we're looking for anyway, at least from what I'm hearing so I don't think there will be, the wording may have to change but I think the intent will stay close to what you're trying to do here. John Mack – I was the chairman of the Zoning Board for 12 years, that property was considered non-conforming rental cottages so year-round use is not allowed by the zoning just in case somebody doesn't know that so it was totally misrepresented. Bayard – I don't want to get into a contest here, I don't think that's what is intended here and

maybe it wasn't worded too well but I think the intention here is for it to be transient rental type property. There were some other words about residential vs. commercial and things like that and that can be clarified. Mack – Just a point of clarification, what you just said I agree with, but he will not accept that they can't be used for year-round occupancy so what is the difference between the two that we just said. Bayard – We'll see what the document says, we're the ones who are going to vote on it and yes, I will ask that Ms. LaBrecque look at prior decisions by zoning and planning on this so if need be, we can incorporate them into the current decision or the current plan, then we can add them as necessary. Pat Mack – I would just like to speak against this, I know there may be legal reasons why they can change the ownership, I have several concerns if this goes to 7 different owners in a condominium type fashion. One is the increased use both on the road and on the sewerage. I also have a concern about the lot that is across the street from my house which is a field that is reserved for storage of boats and whatnot. Currently, there's 3 people who own that parcel, the 2 Caseys and Mr. Hofeman so the number of boats over there is limited. I'm concerned how we're going to keep a handle on that lot from becoming a junkyard looking type place if we have 7 owners with all their toys and then perhaps their friends who want to store something there, that's a concern. In the past, when they went for their last approval, they discussed the fact that they wouldn't rent to people with dogs, again that's something we're going to lose that kind of control over, additional dogs in the neighborhood running wild or barking all hours of the day and night which we currently have a problem with, not due to them but on our road. Again, on the piece of property across from my house, a commercial vessel was stored there all winter which I understood was not appropriate, I thought this was purely for their storage use and I'm a little confused by the fact that Angela stated that the original application to the zoning was denied and then appealed. I didn't even realize that was appealed, I thought it was withdrawn from zoning. LaBrecque – It was. Mack – You indicated it was denied and then appealed. Bayard – I believe the appeal was withdrawn. Mack – OK. Those are my concerns, I don't understand how we're going to enforce limited use with 7 different owners down there and I think just to clarify, we're not looking for someone to state who their property manager is, its just that tonight there was mention of two different people being the property manager so we're just trying to figure out how many people should be living there year-round. Currently, Mr. Hofeman as far as I know is living there year-round and he is now the manager so we don't want a moving target and I would like to know what kind of controls or how we're going to control it. I don't see Bill Edney going down there every day and counting how long people are living in a seasonal, temporary cottage. Fred Ward, 17 Pollard Shores Road, my property abuts the property in question and I am totally in favor. The people over the years, I've been there like 9 years, have kept the property just perfect all the time. I don't have any problems with the tenants or anything like that. There has never been an issue. Of all the properties on the lake, its one of the best kept. Doug Hatch, 33 Water Street, I've known the owners of the property in question for probably 40 years, I've known them since they've bought the property, since they've improved upon the property, since they put the sewerage in and they pay a great deal of money to

maintain the property. The people that come there, if there's a problem, they handle it, I don't know how many times the Police have ever been called there, if they have been. I'm in favor of them going condo. Nix – I'd like to respond to some of Mrs. Mack's questions. With all due respect, there are certain restrictions the Board can place on it, but I'm not so sure the Board can go to the point of micro-managing how they run their operation. I'm sure there are things we want to look at, the concerns with increased use; you can't put restrictions on what we call the alienability of property. If you have property, you can sell it, if you want to sell each unit to 7 different owners, I believe they can do that but does that really increase the use, if the properties are being used what's the difference. It seems to me you probably have more consistency with one person, not that we're asking for that, just for sake of argument trying to explain that, but if people are renting and using the property, using the 7 of them as they already are, I don't see how that changes use whatsoever. It's just a continuation if you will. The concern about the field for storage, yes there was a commercial vessel there last year, it was a friend of theirs, a neighbor in fact, and they allowed him to do it. The town said, hey what's that boat doing there, it was removed and I think Bill Edney would agree with that. I recall that myself and I think that was addressed. They have been granted the right to store boats, snowmobiles, to use that as storage and I think that's in prior approvals so, again, I think that's been addressed. The issue with dogs, there's no prohibition of dogs, in fact, if you heard her, it wasn't with them its with other dogs on the road so and the two other gentlemen, Mr. Ward and Mr. Hatch testified they have dealt with problems if there's an issue with respect to animals, that's what the people who manage the property are supposed to do is to reign in that kind of a problem in and it seems as though they've been doing that and I think we've been through the ZBA and finally and not leastly, I don't want to bore you with the case law with respect to this, from what I hear from the Board already, I think you're aware as long as there's no change in the land, there really shouldn't be any denial of the conversion and there is no change in the land but I respect the other questions and concerns that the Board has and will address those. Bayard – I think it is important that we get the language right, that's one of the controls. Touhey – OK, I can see all the sewer lines tying into the town line is that what we have here? Nix – Yes. What about the electric lines, I think they are all private lines are they not? Are they separately metered per unit and I see a plastic pipe going down to the beach area, are we drawing water from Lake Waukegan? No, we have wells. Dever – It's a 4" and would be a drainage line of some kind, correct? Mike Casey – Yes, that drains out during some heavy flooding in the basement of that unit, we have a sump pump in there and it drains onto the area that you're looking at so that's a sump pump drain. Touhey – That's been previously approved? Nix – I think that's what Mr. Dolan's indicating, yes. Dolan – There was an as-built submitted I think in 2006 when all the building construction was finally completed for all the units. Nix – We'll double check that, so there's no question about that. Touhey – There's individual water service to all of these units? Is it a single community well that you're proposing? Dolan – There's an existing well, pump house and underground lines that distribute the water to each of the units from one well. Its one line running this way on the south side of these 3

units... Touhey – Are they below the frost line? Dever- I'd like to address Mr. Nix's comment that if someone's living here, if its one person all the time or a bunch of different people, there's no difference, well there is a very specific difference in that if they are single-family dwellings, they are not allowed which is why, if I understand correctly, they went for the variance to begin with for density? Nix – It was a density request but as transient cabins that restriction doesn't exist which is why you withdrew the application for the variance or the appeal. Correct me if I'm wrong, but you made the comment, what does it matter, what matters is the use is transient rental cabins. Nix – She was talking about increased people use, that's what I understood her to say. That's what I was addressing. Kahn – I guess my question is where are we going from here? We're talking about something that needs to go on the plan about transient rental use, we need to do some rewriting in the condominium documents, I think it would be good in the condominium documents to deal with the storage area and the management but also with the use as a transient rental use so where do we go from here Angel? LaBrecque – I suggest we continue, that town staff meets with the applicant and their attorney, we iron out those parts of the Declaration that we've taken note of and possibly bring in our town counsel, hopefully try to squeeze all this in before the next meeting. Bring in town counsel if we have questions regarding transient definition and then come back October 25th for another meeting. Bayard – I think Lou had a good point about the storage. There was a statement in here about any change to the cleared storage area shall require site plan amendment. I think its something that perhaps should be in the condo docs because it will be something that will be brought up as a question I'm sure in the next hearing. LaBrecque – That cleared area is part of the previous site plan approval and just because there are different ownerships, any of the previous zoning approvals or site plan approvals, those approvals, conditions, restrictions and all of that will run with the land regardless of the ownership. All of the previous approvals will run with the land and those conditions previously approved that cleared area was defined as storage. If they were to expand that cleared area, it would be in violation of a previous site plan approval. We could incorporate into this approval again but that cleared area has already been defined so if they started cutting down trees tomorrow, they would be in violation of that site plan approval and Bill would go say something or they would have to come back here. Brothers, Mr. Chairman, just a question, I guess I've kind of had the same thing here on the storage area itself and I understand that was the language that's on that second sheet, its not very limiting, its not very specific and however it happened to be what was approved, the question I have is you have an area and right now you have 3 owners who are entitled to use it, if you have 7 owners who are entitled to use it and they choose to do so, it would seem to me that would be an expansion of that storage area so I'm having a little bit of a difficult time with that on the basis of just the sheer numbers. If I have potentially 7 different units, I may be able to have a boat on each one that I store during the winter and other vehicles. It could end up being more extensive. LaBrecque – I thought of that Peter and I notice they had a boat launch so I was thinking that possibly some of these people who come up and rent are like the same people every year and they bring up their boat because I think sometimes there are more trailers and

boats there depending on in the summer time, I think some of the rental folks come up every year with their boats because they have a launch here. Brothers – But Angela, I'm not necessarily referring to the transient piece because what I'm thinking of is the winter long-term use by owners, now we're going to have potentially 7 owners, I'm not saying there will be 7 but there's potentially 7 owners and if 7 owners put a boat on there a piece, then it will be a more extensive use of that area and is that characteristic for the neighborhood. I happened to go down there several times in the last month and there's been varying degrees of the use of that back lot for storage. I happen to have seen the larger vessel as well and I questioned that but that was a friend of an owner, but who has the right to use it and how extensive will it be. I think it's a reasonable question and if any of the Board can think of a way to clarify that's acceptable, it might eliminate Bill Edney or anybody else going down to the site. LaBrecque - Page 43 of your packet actually shows a photograph of that storage area and there are other photographs too starting on Page 40. Kahn – Regarding Peter's concern, it seems to me that there's a solution since we're talking about transient rental, the storage area ought to be available for those who are transient rentals and it should not be used as year-round storage by owners. Brothers – That at least is a definition. Kahn – That will assist in the use as rental and it will also see to it that space is available for those who are renting. Bayard – It may be good to note the concerns we have so they get written and dealt with in the condominium documents. Michael Casey – Right now we have an approved site plan that does put a restriction on the use of that section of the property that is on the south side of the property and just to clarify, that restriction which says it can be used for recreational vehicles, trailers, boats, overflow vehicle parking is not restricted to the owners or never was intended to be for owner use only. This area is used by the entire Pollard Shores Association's 7 rental units. We do have many visitors that come up with trailers and they park the trailers there, they park the boats there so naturally you'll see more during the summer period, you'll have more boats in that field, other times you have less boats in that field, but again I think if we go back to the point, this is strictly a request for change of ownership, not change of use so I would say that to put any restrictions on how many boats could be in here, how many trailers could be in here would be putting a further restriction on that piece of property which right now allows boat, recreational vehicles, trailer parking and overflow automobile parking. We have the ability to put them there by a site plan that was approved and for the Board to say as part of this approval, we want to somehow limit the number of trailers, boats or even length that a boat would stay there, would be putting further restrictions on an approved site plan. Kahn – Mr. Casey, I would point out to you that on our site plans we always reserve the right to review and amend and if the circumstances are such that we think a review and amendment is appropriate, we make it. Nix – As I mentioned earlier and this could just end up... I understand and respect the power of the Board but as I did at the Zoning Board I cited 3 cases and the statute. What we're talking about here is disparate treatment. Why should somebody else be able to use their property differently from the way this has been used previously simply because we're converting to a condominium. The cases that I'll rely on and I'll get these to the Board are Cohen

vs. Town of Henniker, 134 NH 425; Town of Rye Board of Selectmen vs. Town of Rye Zoning Board of Adjustment, 155 NH 622 (2007), Divaro 12 Atlantic LLC vs. Town of Hampton 158 NH 222 (2009) fundamentally says if you've got no change to the land, there isn't any reason for the Board to deny the use because for the Board to put restrictions on it is disparate treatment. These are issues I will talk to town counsel about when the time comes. They are law precedent that we're going to stand on in terms of how this property is treated. I respect people's concerns but that's the state of the law and I know what the statute says and I know the statute empowers the Planning Board but the State Supreme Court has also weighed in on these issues and that's important and that was a big part of our discussion that we had with the Zoning Board over the 2 or 3 hearings we had and those were issues we talked to town counsel about and so they are fully aware of it and unfortunately you don't have these cases in front of you and I will make sure you get them so you understand where we're coming from on that. Kahn – There is nothing in the law that says that we have to go along with you if you want to change from what you have always represented as transient rental cottages if you want to turn this into a residential subdivision, you don't have the density so when we're talking about putting into the agreement and putting notes on the plan that these are transient rental units, it is to see to it that you conform to our Zoning Ordinance and it's not a change because you're in that situation right now. Nix – Mr. Kahn, I cited the 3 cases and I'm going to provide them to you. You have a pre-existing non-conforming use, nothing is changing on the use, they didn't ask for residential. That's been an issue but what the language is in the documents and I'm going to work on trying to get that language straightened out. They are not going to change how the property is used compared to how it was used yesterday, it's not going to change tomorrow. The issue about residential is just an issue of what language is being used and for what purposes and that's really something we need to compare and straighten out, but that's all we're trying to do is to change the ownership from joint tenancy to condominium ownership. Lapham – I just want to request since some pages are missing in the Declaration, can we be sure that after the discussion is done, can we get a complete condominium agreement in a packet. Bayard – I would request that the document that's going to be filed on the 11th presumably is going to be the final edition and it be e-mailed to us and/or mailed if necessary. Hearing no objection that we grant the waiver of topography and other things which were implied in our acceptance of this. If there is no objection from the Board, I will consider the implied was in fact done.

Dever moved, Touhey seconded, MR. CHAIRMAN, I MOVE IN THE CASE OF MICHAEL CASEY, ROBERT HOFEMAN, ROBERT CASEY FOR THE PROPOSED SUBDIVISION APPLICATION, THAT WE CONTINUE THE HEARING TO A DATE SPECIFIC WHICH WILL BE OCTOBER 25, 2011, AND THE APPLICANT SUBMIT REVISED DECLARATIONS BY OCTOBER 11, 2011, AND THAT DECLARATION BE REVIEWED BY TOWN COUNSEL IN ADDITION TO TOWN STAFF AND BE BROUGHT BACK BEFORE US AT THAT TIME. IF NOT ALREADY DELINEATED IN OUR REGULATIONS THAT THE REVIEW BY TOWN COUNSEL BE AT THE COST OF THE APPLICANT. Voted unanimously.

Kahn – Should the applicant pay Town Counsel fees in this situation? I would think that's what we normally do. Dever – I believe its standard procedure. Brothers - Its a technical review, right? Bayard – I know for engineering and other reviews it is done that way normally and I believe that's also true for legal fees. Dever – I know in my other world, it is required. Dever – If not already delineated in our regulations that the cost of review by Town Counsel be at the expense of the applicant. OK'd by second.

TOWN PLANNER'S REPORT

LaBrecque – At our next meeting, John will be back to go over the Lot Merger Form. We made note of the comments and I followed up with LGC regarding Lou's comment on the Lot Merger Form and if something is split by a zoning district and I spoke to a Christine Filmore @ LGC and she said if you want to address something in zoning, you'd have to do it via the Zoning Ordinance. She said, however, if you'd like, you could have something on the application that asks the question, "Are you creating a lot that will be split by a zoning district, (Yes or No) and that flags the fact for both the town and the applicant because maybe they will ask what this means and get informed. Other than that, I think there was Peter's comment which was the Water & Sewer fees and any other liens the town might have and to have those fees all current and then figuring out a range for the fee that goes with it. We'll have our official public meeting and put out that Notice of Subdivision Regulation amendment and adoption of the application.

Zoning – The ZBA is wondering if we're going forward with any zoning amendments. We're still working on the wetlands with Rick Van de Poll. The more information we get, the more questions we have so we've met with him a couple of times and we're hopefully getting a finished product, although I guess John's budget for Rick's work is maxed out at this point so we're getting a final report from him so we can then brief the Board and not have him come all the way over here for any future meetings so we're going to put that out for public consumption so people can see what's being changed and if it affects them, ask questions, put it on our website, do a press release, put it out there for awhile so people don't think we're springing anything on them because prime wetlands are sensitive with some folks. There were questions last year about adjusting the shoreline setback. We have a 65' setback and the state has 50' and we spoke about making it the same as the state for consistency. Our 65' was established before the state had a setback from the shoreline and before the Shoreline Protection Act came into play. Now that the Shoreline Protection Act is being somewhat compromised and challenged, maybe we want to wait to see how that all turns out. Kahn – I didn't know we were pushing to change it? Lapham – Yes, why would we do that? Kahn – We said we didn't want to do that. LaBrecque – I thought there was a general consensus that night. I think there was a question why would we want to. Kahn – I don't think we want to. LaBrecque – I think the ZBA was in favor of changing the 65' to 50' when we met with them. Bayard – They had gotten very strict on them for awhile, now they

are rather loose. LaBrecque – DES? Bayard – Well, the current statutes right now have been loosened up significantly, perhaps even more than they were before this recent change. LaBecque – Yes, the pendulum has swung. Bayard – I think you're right, there's no point in changing them at the moment. Dever – Are there other areas of the ordinance that need to be addressed? LaBrecque – Like looking at accessory uses, maybe, redefining that or home occupations. Dever – What I find in my work world is that we shouldn't go any year without doing something with the zoning ordinance because it changes so what area should we look at and if we're not to it this year, what area should we start looking at for next year? LaBrecque – Definitions is something fairly easy to tackle and I know the accessory use and home occupation both have been something that the Board has had concern over. Kahn – The definition of home occupation in the ordinance is a pretty good one. LaBrecque – It's within the ordinance though, not in definitions. Bayard – I think to the extent it can be tightened up any to give Bill additional direction, I think that's good. In those cases where you can give direction so they have the basis for everything and there's nothing muddy that makes it difficult. Tomorrow, there is going to be a Law Lecture series on accessory uses and they do take walk-ins so if anyone's interested it's tomorrow night from 7-9. LaBrecque – If anybody between now and the next meeting has any zoning related issues you want to bring to my attention, I can work on them and bring them to the next meeting, we still have time before Town Meeting to do this. Dever – What's going on at Jerry Harper's old place. We've got complete demolition of all the buildings, new buildings constructed, paving done and no site plan whatsoever. LaBrecque - I do not know, I never go down there. We have one two-car garage and large enough to fit 15-20 cars in, brand new structures, the house is demolished and they are in there today paving. LaBrecque – For the record, we're looking up what's happening at Jerry Harper's old site now owned by Acme Choppers. LaBrecque – We'll officially give you a response to that. Dever – There's no site plan, every building is gone, new ones constructed, no architectural review, no site plan review, new paving. Bayard – Was this all done by building permit? Dever – When you go north, the lights Family Dollar has may be cutoffs but there are two big lights, they are not bad but to me they seem to shine out in the road. The blue shrink-wrap boat is still sitting on Terry Graham's site. He did get the stuff out of the setback.

Meeting adjourned at 8:53 p.m.

Plan Signatures: Hampshire Hospitality Holdings – Site Plan Amendment
Dustin G. Harper – Home Occupation Site Plan
Virginia Cote – Two-Lot Subdivision

Respectfully submitted,
Mary Lee Harvey
Adm. Assistant, Community Dev.

The above minutes will be reviewed and approved at a regular meeting of the Planning Board on October 25, 2011

John W. Dever, III, Secretary