

OSSIPEE ZONING BOARD
Regular Meeting & Public Hearing Minutes
May 9, 2017

Minutes were recorded by and transcribed by Laura Nash, Board Secretary.
Revisions of these minutes are noted by ***bold/italic*** type.

Call to Order: Stanley Brothers, Chairman called the meeting to order at 7:00 p.m.

Members Present by Roll Call: Chairman - Stanley Brothers, Ralph Wurster, Bob Freeman (Selectmen's Rep), Jim Rines, Bill Grover (alternate) and Steve McConarty (ZEO). **Absent:** Ski Kwiatkowski

Meeting Minutes:

Review and Approve Meeting Minutes of April 11, 2017.

A **Motion:** By Rines to approve the April 11, 2017 meeting minutes as distributed.

A **Motion** by Brothers to raise Bill Grover to voting status. Rines seconded. No discussion. A unanimous vote was taken.

Brothers seconded to approve the April 11, 2017 meeting minutes as distributed. No Discussion. Wurster abstained. All others voted in the affirmative.

New Business:

Chairman - Stanley Brothers: addressed the Applicants (under RSA 674:33) – If there is not a full 5 member board, even with alternates serving. The applicant has the option of postponing the hearing until all members are present. If the applicant chooses to proceed with the hearing, he/she should be advised that a 3- or 4- member board will not be grounds for an appeal hearing in the event the application is denied.

Case # 17-3-V: Robert Perry – 4 Forest Lane. Tax Map: 65 Lot: 023 Sub: 33 – has applied for a Variance from Article VI Section: 6.4.1. A & 6.4.2.A of the Ossipee Zoning Ordinance to replace an existing shed and construct a new utility shed within the 40 ft. frontage setbacks.

Perry presented his case to the Board. The existing shed is an 8 x 16 ft. in poor condition, property is a quarter acre lot and the shed is located about 27 ft. from the road in front of the driveway and blocks the view of the golf course. Perry would like to build a new 10 x 16 ft. shed and locate it about 22 ft. from road edge on the left side setback and to make it more aesthetically pleasing. Will need the association's approval before he is able to obtain a permit to build new shed. Board discussion about the location and the rational for its location were heard.

Open to Public: No discussion approving or opposing were heard. Brothers closed public discussion.

Perry read the five criteria's to the Board. Grover brought attention to question criteria #5 which has section (A) or (B) for answering. Perry had selected section (A) but had only completed Aii but section Ai was blank. Perry was given the option to either verbal testimony for the record his explanation for this section or the application would be denied for being incomplete. Perry chose to narrate his response as follows: **"Owing to the special conditions of the property, set forth above, that distinguishes it from other properties in the area:**

(i) No fair and substantial relationship exists between the purposes of the ordinance applicable to the application and the specific application of that provision to the property because: The lot is a quarter acre lot and the setbacks are at current standards it would make it very limited to what's available to whether you build a house, a shed or whatever. Also, keeping with the neighborhood and it's not going outside the boundaries of what's reasonable and customary in this area."

A **Motion** by Rines to approve **Case # 17-3-V**: Robert Perry – 4 Forest Lane. Tax Map: 65 Lot: 023 Sub: 33 for a Variance from Article VI Section: 6.4.1. A & 6.4.2.A of the Ossipee Zoning Ordinance to replace an existing shed and construct a new utility shed within front and side setbacks and comply with all Federal, State and Local Regulations. Freeman seconded.

Board discussion concerning location, size and pre-zoning ordinances. Wurster *asked* Rines to amend his motion to included "within 30 days of the new shed be erected the old shed would be torn down and removed." Grover seconded. No discussion. A unanimous vote was taken to amend the previous motion.

Rines restated his **Motion** to approve **Case # 17-3-V**: Robert Perry – 4 Forest Lane. Tax Map: 65 Lot: 023 Sub: 33 for a Variance from Article VI Section: 6.4.1. A & 6.4.2.A of the Ossipee Zoning Ordinance to replace an existing shed and construct a new utility shed within setbacks, also within 30 days of the new shed being erected the old shed would be torn down and removed and comply with all Federal, State and Local Regulations. Freeman seconded.

Criteria Vote:

1. The variance will not be contrary to the public interest because:

Grover – Yes Rines – Yes Freeman – Yes Wurster – Yes Brothers – Yes

2. The spirit of the ordinance is observed because:

Grover – Yes Rines – Yes Freeman – Yes Wurster – Yes Brothers – Yes

3. Substantial justice is done because:

Grover – Yes Rines – Yes Freeman – Yes Wurster – Yes Brothers – Yes

4. The values of surrounding properties will not be diminished because:

Grover – Yes Rines – Yes Freeman – Yes Wurster – Yes Brothers – Yes

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because the "Special Conditions" of this property that distinguish it from other properties in the area are as follows:

Grover – Yes Rines – Yes Freeman – Yes Wurster – Yes Brothers – Yes

Ai. Owing to the special conditions of the property, set forth above, that distinguishes it from other properties in the area:

(i) No fair and substantial relationship exists between the purposes of the ordinance applicable to the application and the specific application of that provision to the property because:

Grover – Yes Rines – Yes Freeman – Yes Wurster – Yes Brothers – Yes

Aii. The proposed use is a reasonable one because:

Grover – Yes Rines – Yes Freeman – Yes Wurster – Yes Brothers – Yes

Motion GRANTED for Variance, with the conditions that within 30 days of the new shed being erected the old shed would be torn down and removed and must comply with all Federal, State and Local Regulations.

Chairman Brothers noted there is a 30 days appeal process of the ZBA decision which starts tomorrow morning. The Selectmen or any party to the action or any person directly affected has a right to appeal this decision.

Brothers moved to Public Hearing at 7:32 PM

Public Hearing

Carroll County Superior Court has issued a Court Order for a Motion to remand to the Ossipee Zoning Board of Adjustments to hold a Public Hearing on the case listed below:

- *Town of Freedom: Board of Selectmen – per RSA 677:2 previously filed an Administrative Appeal against Ossipee ZBA's denial on 10/08/2016, for an Administrative Appeal of the Planning Board's Conditional Site Plan Review Approval of Case #16-3-SPR – Northgate Ossipee, LLC for expansion of Westward Shores Campground and Resort on 9/20/2016.*

Representation for the Town of Freedom and Northgate Ossipee, LLC as well as several Ossipee Planning Board members and about 45 other mixed attendees of abutters and conservation groups were present.

Steven Keach of Keach – Nordstrom Associates, Inc. was here representing the Town of Freedom and Freedom Board of Selectmen. Keach proceeded to hand several reference materials he would address with the ZBA.

1. Letter of Authorization signed by the Freedom Board of Selectmen giving Keach authorization to represent the Town of Freedom. Dated: 5/08/2017 ZBA Received: 05/09/2017
2. Letter by John Ratigan, Attorney from DTC Lawyers representing the Town of Freedom stating information Keach-Nordstrom Associates, Inc. will present to the ZBA.
Dated: 5/09/2017 ZBA Received: 05/09/2017
3. Keach-Nordstrom Associates, Inc. letter addressing the areas they feel are flaws in the Ossipee Planning Boards decision in reference to the Zoning Ordinances. Dated: 5/08/2017 ZBA Received: 05/09/2017
 - a. The Approved Site Plan does not comply with Ossipee's Floodplain Development Ordinance section 4.10.8.(2) (c)
 - b. The Approved Site Plan does not comply ensure compliance with Ossipee's Zoning Ordinance Requirements for the Construction of Septic Systems
 - c. The Approved Site Plan does not comply with Ossipee's Floodplain Development Ordinance section 4.10.8.(2) (b)
4. Tom Carr of Meridian Land Services, Inc. Carr is a Certified Wetlands Scientist, Certified Soil Scientist and a licensed septic designer in the State of NH will present an analysis of soil studies using reference data from Jan/Feb 2011 for test pit results
Dated: 1/15/2016 ZBA Received: 05/09/2017
5. Anne Cunningham of Freedom Planning Board presented Goal of Freedom's petition.
Dated: 5/09/2017 ZBA Received: 05/09/2017
6. Meridian Land Services, Inc. peer review of SFC Engineering and Jones & Beach Engineering studies in reference to soil studies. Dated: 4/24/2017 ZBA Received: 05/09/2017

7. NHDES Subsurface Systems: Enviro-septic Waste Water Treatment System Report
Dated: 3/28/2008 ZBA Received: 05/09/2017
8. Forrest Bell of FB Environmental Associates submitted a letter on water quality analysis
Dated: 5/08/2017 ZBA Received: 05/09/2017
9. Ossipee Planning Board minutes of September 20, 2016
10. Peter Malia, Attorney representing Northgate Ossipee, LLC submitted updated Site Development Plans for Westward Shores Campground Dated: 9/20/2016 Received: 05/09/2017

Keach started his presentation by reading reference item #5 addressing the goals of Freedom's petition. **Keach** stated Freedom is not against the expansion as long as it does not create a threat to Ossipee Lake. **Keach** spoke of three items addressed within 30 days of the Site Plan Review approval that Freedom feels are a clear departure from the Zoning Ordinances. Tonight's public hearing will only address those items addressed in the original appeal application under RSA 676:5 as follows:

1. The Approved Site Plan does not comply with Ossipee's Floodplain Development Ordinance section 4.10.8.(2) (c)
2. The Approved Site Plan does not comply ensure compliance with Ossipee's Zoning Ordinance Requirements for the Construction of Septic Systems
3. The Approved Site Plan does not comply with Ossipee's Floodplain Development Ordinance section 4.10.8.(2) (b)

Grover asked Chairman Brothers in light of the amount of information just presented to the Board, is requesting a few minutes for the Board members to review the material before proceeding.

Chairman Brothers agreed and granted a recess at 7:38 PM.

Grover asked the secretary for a copy of the Ossipee Planning Board minutes of September 20, 2016 (reference item #9). The meeting where the Planning Board approved a Conditional Site Plan Review.

Brothers reconvened the Public Hearing at 7:58 PM

Point 2: The Approved Site Plan does not ensure compliance with Ossipee's Zoning Ordinance Requirements for the Construction of Septic Systems

Keach introduced **Tom Carr**, who presented his finding on the soil studies done by Gove Environmental. Carr referenced Table 3 Soil Map of the Ossipee Zoning Ordinance, (NRCS) NH State – Wide Numerical Soil Legend Issue # 10 dated January 2011, definitions for “somewhat poorly drained soil and moderately well drained soils” and Westward Shore CG test pit log dated 1/15/2016.

Carr stated the focus was on septic system # 3 which will supply the peninsula area. Carr states Gove's report indicates the soil in this area is “Podunk Variant.” According to Carr “Podunk Variant” is a somewhat poorly drained soil equivalent to Podunk Soil which is moderately well drained soils and is “Not Permitted” according to table 3. Carr notes, Podunk Variant soil is not *on the list* in table 3 but *contends* it is still not permitted according the NRCS legend. The soils of Podunk and Podunk Variant are similar in consistency and texture class except for different water drainage tables. According to the Test Pit Log done by Gove, the E.S.H.W.T. (Estimated Seasonal High Water Table) is at 25 inches. Carr states this tells him the soil is actually “Podunk” and not “Podunk Variant.”

Brothers opened to Board discussion.

Grover stated *in light* of the amount of material submitted tonight, those present in favor and those in

opposition to the expansion, he wanted to clarify the Board is not here to decide soil types and that. The Board is here to determine if the Planning Board erred in any decision or determination of the zoning ordinance, or upon any construction, interpretation, or application of the zoning ordinances. Grover asked Carr directly with these test pit results what would Carr suggest be done if this was a possible site if he was the applicant. **Carr** replied he would approach the ZBA for a Variance for the septic system to be at this location before applying to the Planning Board.

Rines questioned what would be smallest unit of measurement used for soil mapping. Carr presumed this soil mapping was done at 1 in = 100 ft. The NRCS measurements are based on 1 in. = 2,000 ft. which are broad scaled maps that can't be used. Carr cannot confirm Gove Environmental's report is wrong because he, himself has only reviewed the paperwork and has not been on the site for himself.

Brothers asked Peter Malia if Northgate would like to respond these findings. Malia replied, he would prefer to wait until all 3 points are presented.

Keach requested all the documents submitted be applied to the official record.

Point 1: The Approved Site Plan does not comply with Ossipee's Floodplain Development Ordinance section 4.10.8. (2) (c)

Keach stated the site plan confirmed most if not all of premises is within the Special Flood Hazard Area, FEMA designates as AE. Which is considered within the 100 year Flood Zone with an elevation level of 414 *feet*. The property is cataloged in the Ossipee Flood Ordinance 4.10.

Keach read the following definitions from the Ossipee Zoning Ordinance section 4.10.1 Definition and Terms: **4.10.2 Permit Required.** All proposed development in any special flood hazard areas shall require a permit.

RECREATIONAL VEHICLES: (Added March 1994) A vehicle which is:

- a) built on a single chassis;
- b) four hundred (400) square feet or less when measured at the largest horizontal projection;
- c) designed to be self-propelled or permanently towable by a light duty truck and;
- d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

MANUFACTURED HOME: (***This section omitted by Keach when reciting** - A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities.*) For floodplain management purposes, the term "manufactured home" includes park trailers, travel trailers, and other similar vehicles placed on site for greater than one hundred eighty (180) days. (***This section omitted by Keach when reciting** - This includes manufactured homes located in a manufactured home park or subdivision.*)

Keach commented many of the campers located at Westward Shores take on the form of "park model RV, Camping Cabins, etc. Because most of these recreational vehicles and manufactured homes have appendages such as, stick built decks, three season rooms, carports, sheds, roof structures, etc. Which would indicate these units are not transportable and are there more than 180 days.

Keach read ZO 4.10.8 (2) (c)

- a) All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood level; (***This section omitted by Keach when reciting** – "and be securely anchored to*

resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces”;) recreational vehicles placed on site within Zones A1-30, AH and AE shall either: (Added March 1994)

- i) be on the site for fewer than one hundred eighty (180) consecutive days;
- ii) be fully licensed and ready for highway use; or
- iii) Meet all standards of Section 60.3 (b) (1) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for “manufactured homes” in Paragraph (c) (6) of Section 60.3.

The elevations vary from a low of 409 ft. upward towards 411 – 412 ft. with median elevations around 410 ft. indicating the concrete pads are several feet below the flood levels and the existing “manufactured homes” (RV’s) would not be movable because of structures built on them.

Point 3: The Approved Site Plan does not comply with Ossipee’s Floodplain Development Ordinance section 4.10.8. (2) (b)

Keach read ZO 4.10.8 (2) (b)

1. that all new construction or substantial improvements of non-residential structures have the lowest floor (including basement) elevated to or above the one hundred (100) year flood level; or together with attendant utility and sanitary facilities, shall:
 - i) be flood proofed so that below the one hundred (100) year flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
 - ii) have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
 - iii) be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section;

Keach addressed 3 areas he believes are non-compliant with section 4.10.8 (2) (b) of the Ordinance.

1. The approved site plan depicts (4) non-resident structures which includes 2–bathhouses, an amenities/common building and a pavilion. Keach noted 3 of the 4 buildings have a finished floor elevations that are properly set at or above base flood elevation. The pavilion’s finished floor elevation is listed at 412.5 ft.; roughly 1.5 ft. below base flood elevation of 414 ft. indicating it is non-compliant with section 4.10.8 (2) (b) of the Ordinance.

2. The attendant, utility and sanitary facilities shall be flood proof. These sites are served by subsurface waste water disposal systems. The effluent disposal system areas are for the most part compliant with section 4.10.8 (2) (b) of the Ordinance. But, the leaching areas and other disposal system structures associated with the effluent system are not compliant with section 4.10.8 (2) (b) of the Ordinance according to Keach. Implying the Planning Board glossed over or missed these areas.

3. Jones & Beach peer review addressed these concerns but were not addressed by the Planning Board.

4. FEMA has set the 100 year flood elevation at 414 ft. and most areas of the development are between the 409 – 412 ft. range, well below the requirements for section 4.10.8 (2) (b) of the Ordinance. Keach – Nordstrom Associates, Inc. request on behalf of the Town of Freedom, the ZBA remand this application back to Ossipee Planning Board to fix any items the ZBA feels departs from the Zoning Ordinances to not create any undo harm to the lake or public health.

Rines asked several questions as follows:

1. Once the Site Plan is approved, Building permits would be required for any of structures. Steve McConarty – ZEO, confirmed permits would be required at that point and all regulations would have to be complied with at that point.
2. Asked Keach if in his business, if he approves a subdivision is it his contention that all individual lots demonstrate to the Planning Board, they will comply with all Zoning Ordinances when building a house on the lots. Keach replied yes, but referenced a prior applicant who casted fill into a flood area to meet requirements. Keach believes this could potentially create other issues.
3. Noted the Planning Boards conditional approval #4 states: must comply with all Federal, State, and Local Regulations and Ordinances. If the Planning Board was silent on many items contained in the zoning ordinances, it does not mean it was not addressed. By adding condition #4 to the approval, the applicant has to show compliance with the Federal, State and Local Regulations in order to get final approval. **Keach** agreed. **Rines** continued, so if they don't comply with this condition, their Site Plan Review is not valid. So, how is the ZBA to determine the Planning Board erred in their decision and remand the application back, if the approval has conditions? **Keach** recommends the grading in the area of the pavilion could and should be raised and Freedom would not have an issue and just wants the zoning ordinances up held.

Brothers moved for a 5 minute recess at 8:45 PM

Brothers moved to reconvene at 8:50 PM

Rines commented on a statement by Keach, that any fill in the flood zone requires compensatory mitigation. According to Ossipee Zoning Ordinance, if the fill is going to raise the flood elevation in any other point in the community by more than a foot, compensatory mitigation is required. But if less than a foot, compensatory mitigation is not required. **Keach** replied to cast fill in that there would require consent from others. Stating if there was a volume metric analysis done, which would be requested by others.

Anne Cunningham of Freedom Planning Board, wanted to present a video and photos for the Board to look at of a drone video footage of the flood zone at Westward Shores peninsula on April 18, 2017.

Point of Order by **Rines** stating the Board has heard from the applicant and the appellant *that* this area floods and no one disputes the flooding. Rines noted he has gone to Green Mountain Conservation Group website and has viewed the video. If this video is the same one, it just demonstrates the area floods and it is common knowledge that area floods.

Cunningham asked if the Board would review the photos. **Brothers** initially replied yes.

McConarty noted the peninsula area was already stripped before the Court Ordered a Cease and Desist. The top surface is probably down a foot.

Brothers recanted his acceptance of the photos since the area has already been stripped, it is common knowledge the said area floods and since this case is based on the 3 points addressed in the Town of

Freedom's letter of Appeal from October 18, 2016.

Cunningham wanted to reiterate Freedom's motivation in this case is to protect the water quality of Ossipee Lake. Cunningham claims there were no discussions to address flooding, accessory structures and feels if these are addressed it would put a lot of minds at ease. **Rick St. Jean** blurted out they are on the plans.

Brothers stated it must comply with all Federal, State and Local Regulations, and then it has been addressed.

Dan Flores of SFC Engineering and **Peter Malia**, of Hastings-Malia, attorney for Northgate Ossipee, LLC presented revised plans dated September 20, 2016 and will address the 3 key points from Freedom.

Malia first, for the record, we are withdrawing the Motion to Dismiss filed back on October 27, 2016. It addressed some procedural issues with Freedom appeal. We withdraw the Motion to Dismiss because we just as soon have this heard on the merits.

Malia will address the 3 Concerning Points from Freedom but first wanted to address some important facts in the Planning Board's process because Freedom is alleging the Planning Board dropped the ball along the way and failed to apply certain sections of the Town's Zoning Ordinance.

1. Planning Board held 5 Public Hearings between April 5 and September 20, 2016
2. The Plan was changed several times by SFC Engineering
3. Certified Record is 1,207 pages which is the record forwarded to Carroll County Superior Court
4. Planning Board hired Jones & Beach to review the project. Dan Flores addressed each concern with Jones & Beach.
5. Northgate Ossipee, LLC received conditional approval by the Planning Board in 2016
6. Northgate Ossipee, LLC received a Special Exception approval by the ZBA in 2016
7. Northgate Ossipee, LLC received a Variance approval by the ZBA in 2016
8. Northgate Ossipee, LLC received Alteration of Terrain permit in 2016
9. Northgate Ossipee, LLC received Shoreland permit in 2016
10. Northgate Ossipee, LLC received Wetland permit in 2016
11. Northgate Ossipee, LLC received Well location approval for all 3 wells in 2016
12. Northgate Ossipee, LLC received Army Corp of Engineers permit in 2016
13. Northgate Ossipee, LLC put aside 45 acres of land for a conservation easement in 2016

Malia believes this project was thoroughly reviewed not only by the Ossipee Planning Board but also by numerous Federal and State agencies. **Malia is** recommending the ZBA deny this appeal and send it back to Superior Court for oral arguments **and** Judge Ignatius' determination, **since** the Town of Freedom has already filed an appeal with Superior Court at the same time, they filed for a public hearing with the Town of Ossipee.

Malia addressed Town of Freedom's 3 Concerns as follows:

Point 3: The Approved Site Plan does not comply with Ossipee's Floodplain Development

Ordinance section 4.10.8. (2) (b) "Argument concerning New Non-Residential Buildings." The Zoning Ordinance reads:

c) *that all new construction or substantial improvements of non-residential structures have the lowest floor (including basement) elevated to or above the one hundred (100) year flood level; or together with attendant utility and sanitary facilities, shall: (Which is 414 ft.)*

Malia referred to pages 4 & 5 of the plans to demonstrate that 3 non-residential structures proposed for the property are compliant with the zoning ordinance of being above the 414 ft. flood zone. The proposed pavilion is not considered a structure per zoning ordinance definition because the pavilion does not have walls. Thus, it's not subject to this zoning ordinance and this issue should not be taken up by the Planning Board any longer.

Point 1: The Approved Site Plan does not comply with Ossipee's Floodplain Development

Ordinance section 4.10.8. (2) (c) "Argument concerning Manufactured Homes not being properly anchored on the peninsula" Freedom's main concern according to documentation is the peninsula area.

The proposed plan is for placing 15 new sites for the peninsula and will be occupied by park model RV's (as shown on page 7.) **Malia** referenced page 7 - Note #7 "Minimum finish floor elevation of the new permanently installed peninsula units shall be elevation 414 ft."

Malia addressed the second part of the zoning ordinance which refers to manufactured homes being properly anchored. Freedom claim is that there are no plans, within the plan set, identifying how the manufactured homes would be anchored.

Malia refer to section 4.10.3 (i) of the Zoning Ordinances stating when Northgate is ready for a building permit for the 15 sites the Zoning Enforcement Officer will be the one to make sure Northgate complies with the zoning ordinance. Section **4.10.3 (i) reads**, "*Zoning Enforcement Officer shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in a special flood hazard area, all new construction or substantial improvements shall:*

- i) *be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;*

Malia also stated that Zoning Ordinance **4.10.8 (2) (c)** addresses the anchors and compliance with Section 60.3 (b) (1) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for "manufactured homes" in Paragraph (c) (6) of Section 60.3. Without complying with these regulations, Northgate would not be able to be insured by the insurance company.

d) All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood level; and be securely anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces"); recreational vehicles placed on site within Zones A1-30, AH and AE shall either: (Added March 1994)

- iv) be on the site for fewer than one hundred eighty (180) consecutive days;
- v) be fully licensed and ready for highway use; or
- vi) Meet all standards of Section 60.3 (b) (1) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for "manufactured homes" in Paragraph (c) (6) of Section 60.3.

Malia notes the Planning Board did not overlook this section, the Zoning Ordinance does require addressing the anchors until the building permit stage. The Zoning Enforcement Officer would be responsible for making sure standards and regulations are met. Malia notes Freedom's letter was unclear if Freedom was only addressing the 15 peninsula site (shown on page 7) and/or the 246 non-peninsula sites (shown on page 3.) The non-peninsula site which are further from the lake and campground will not have park model RV's. These sites are for transient campers either tents or recreational vehicles and not subject to the anchoring requirements.

Point 2: The Approved Site Plan does not comply ensure compliance with Ossipee's Zoning Ordinance Requirements for the Construction of Septic Systems "Argument concerning Podunk & Podunk Variant Soil, Soil Maps in Zoning Ordinance page 88 & 89 and section 15.1.4 – Recreation Camping Park Performance Standards."

Malia notes Freedom is claiming septic area #3 that services the peninsula is located on soils which are prohibited for such septic system. Malia referred to page #3 of the site plan; septic area #3 contains PT 10 (perc test) and TP 10 (test pit) and rectangular area shows the leech field area and the nitrate setback area required by NHDES.

Malia stated Freedom cited "Rumney Soil," Malia states there is no Rumney Soil in the septic or setback areas.

Malia agreed there is Podunk Soil in septic area #3 and have Dan Flores designed a septic system in this area. Malia refer to the Soil Table and noted Podunk Soil is not listed but referred to section 6.3.2, which states; **6.3.2. Wastewater Disposal Approval Area:**

"Wastewater Disposal Approval Area for non-residential uses on any lot shall be adequate for disposal of waste generated by said uses in accordance with WS 1000 of the Water Supply and Pollution Control Division, unless employing an on-site disposal system using innovative alternative technology acceptable to the New Hampshire Department of Environmental Services for lots of the proposed size, based upon the requirements of Env-W's 1024."

Which is the type of system Dan Flores has designed and referred to page 29, General Design Notes #1 of the site plan. The **Presby** waste water disposal system is approved as an innovative, alternative technology system by NHDES. Northgate Ossipee received permit # 2008-03-01 and meets the Ossipee Zoning Ordinances.

Malia addressed the letter by Meridian Land Services, Inc., stating there is no mention of a vent. Malia referred to page 29 Note #21 which states, "All vents must be placed a minimum of 3 ft. above flood elevation."

Malia noted Keach addressed "stick appendages." Malia believes this refers to the existing campground which is not a part of this hearing but that campground is "grandfathered" Northgate Ossipee inherited what is already in existence. But read a letter dated August 1, 2016 by Chelsea Bossenbroek of Northgate Ossipee, LLC addressing ancillary and accessory structure on seasonal campsites and the phasing out of these structures. The new campground will not have these non-conforming structures.

Point 4: Keach raised concerns about the elevation of the septic system infrastructure.

Malia noted this was not part of the 3 issues raised by Freedom in their appeal but wanted to address the issue. Keach's claimed there was no attempt to make the septic infrastructure water tight. Dan Flores replied this was addressed numerous times with the Planning Board. Site Plan Notes on pages 24 – 26 note the tanks are to be water tight system and page 29 addresses the caps, tanks and pipes are to be water tight.

Malia commented that if you're not seeing something in the Planning Board minutes does not mean it was

not addressed. It very well mean it's noted within the 31 pages of the site plan.

Rines questioned Malia about appendages on the non-peninsula site. Malia stated there will be no physical appendages on the peninsula and non-peninsula sites. But Northgate also proposed within the letter on the non-peninsula sites, campers with permission by the ZEO and in accordance with section 4.10 be allowed to erect a camper size shed.

Rines questioned camp sites on the peninsula be above flood elevation of 414ft. is the responsibility of the camp owner to remove. Flores noted these sites are permanent site with Northgate owned models for renting out to campers.

Wurster questioned if there will be recreational vehicles on these site longer than 180 days. Malia noted they can be there longer than 180 days as long as they are licensed and movable. The non-peninsula sites have been designed for recreational vehicles but also available for rent by transient campers at the same cost.

Keach addressed some statement by Malia. Keach acknowledged Freedom as filed with Superior Court. Part of the appellant process is to try and resolve the issues at the local level before addressing to Superior Court. Keach noted the primary reason Freedom is here is to appeal at the local level.

Keach also contested the definition of manufactured home/park model on the peninsula sites **and** does not coincide with the Zoning Ordinance of "not greater than 180 days."

Keach also pointed out on page 7 Note 7 of the site plans reads "Minimum finished floor elevation of new permanently installed peninsula units shall be elevation 414 ft." Keach contested the practicality of how tight the 5 ft. difference in elevation between the parking space and the RV. Claims there seems to be disconnect from how the campers going to get up into the RV.

Keach concluded by stating Freedom would prefer to avoid elevating to Superior Court and resolve this at the local level and with a little more thought, instead of shirking the responsibility for implementation off beyond the level of the land use Boards and on to your Code Enforcement Officer and Northgate who has to implement this. It could be easily resolved to everyone's satisfaction.

Malia wished to reply by stating Freedom has already elevated it to Superior Court. There is already an appeal pending there. These cases are expedited through the courts with oral arguments. **Malia feels** it's unfortunate to suggest the Planning Board should have given it more thought after 5+ public hearings, 1207 page certified record, and several months **of review**. According to section 4.10.8 (2) the peninsula and non-peninsula sites comply with the Zoning Ordinances.

Rines addressed the gravel pad and if the stairs would be contained within the pad or outside. **Flores** stated the steps up to the campers would be outside the gravel pads.

Chairman Opened Discussion to Public Input:

Greg Howard asked if there is subsurface approval from NHDES for the **leach** field. Flores replied no. Howard questioned if there was a variance approval to allow the septic system # 3 in the Podunk variant soil using the innovated alternative technology. Rines replied the section of zoning ordinance referenced by Malia that by using innovated alternative technology WS 1,000, no variance is needed.

Howard **stated** that covers the non-peninsula sites but **questioned** what about the peninsula sites. Rines noted according to NHDES if a single family home is a **residence** anything else is non-residential by NHDES definition.

Carr noted innovated alternative technology is a non-conventional system that NHDES is constantly changing the requirement vs. a conventional system.

Roy Barron stated the Planning Board said no **accessory** structures would be allowed.

Ed Greene addressed the quickness of the floods and not being able to evacuate in time.

Donna Veilleux of Madison questioned if there was an Emergency Evacuation plan, septic during the winter months, season schedule. Malia noted there is an Emergency Evacuation Plan on file on noted the season schedule is located on page #3 of the site plans.

Danny Fischbein asked type of cribbing, septic connection there will be from the pipe to the camper and type of closure when not connected to a camper. Noted he had cribbing every year at Westward Shore and his camper moved every year. Flores stated there are self-closing caps on the pipes.

Les Babb, Freedom Selectmen – stated Freedom has been waiting seven months for this meeting and the Board to please use their reasoning and express their reasoning when making their decision tonight. Because this may or may not go to court and thanked the Board for hearing the case.

Dennis Legendre, Ossipee Planning Board – did not care for the remark by Mr. Babb of having to wait 7 months to hear this case. Legendre stated Mr. Babb could have come to any meeting. The Planning Board meetings are open to the public, anyone can come, and the Board is more than willing to listen to anybody and taken questions from anyone. To claim you were not invited or able to do so, is no right.

Someone asked for the aquifer to be addressed as well.

Brothers Closed Public Discussion

Brothers called for anymore Board discussion. No further discussion.

A **Motion** by Freeman to Deny the Appeal of going back to the Planning Board because they did an exceptional job. Rines seconded for the purpose of discussion.

Rines addressed section 4.10.8 (2) (c) if all manufactured homes and park models would be considered manufactured home shall be placed on a permanent foundation. But does see how permanent foundation is defined in the ordinance. There has been testimony that permanent foundations could be piers or cribs and Rines does not feel this justifies a permanent foundation. **He believes** it's covered in condition # 4 of must comply with all Federal, State and Local Regulations. The Planning Board **knew** the elevation, approved it, and would require going to the Code Enforcement Officer for building permits and feels the intent has been met. We have heard testimony of well what if something drops through the cracks, and judging by the amount of people here tonight, it **would surprise** Rines that anything with this case would drop through the cracks. The case has had a tremendous amount of scrutiny, and **he** does not think it's going to cease any scrutiny. The Town of Freedom is concerned for the quality of the lake and **he** believes everyone in the room is concerned for the quality of the lake and the developers, who paid multimillions of dollars for their property, are concerned for the quality of the lake.

As stated in January, at apparently a public meeting but not a public hearing, Rines did not think the Planning Board **misinterpreted** any regulations. **They** may not have considered some, but they did not **misinterpreted** any regulations. Therefore does not believe it should be before this Board.

Now having heard almost two and half hours of testimony, Rines notes his decision has not changed, in spite of the fact, Steve Keach has made his comments and Peter Malia made his rebuttals. Rines feels the Planning Board did the best job they could and don't see errors that have been made requiring the case to be remanded. Rines stated the appropriate venue is the Superior Court, where it sits.

Grover the discussion of 3 points of contention of the Planning Boards conditional approval, where they failed to properly comply, construe and interpret the Ossipee Zoning Ordinances for manufactured homes

and several other things. Having serve on the Planning Board for several years previously, there are a lot of things that come before a Site Plan Review that don't get brought up, that don't get put onto a plan, because it's already in the ordinance. We don't need to have things like tie downs in there because it's already in the ordinance. Grover feels the developers have done up a heck of a plan. They have addressed a lot of the things within the Site Plan Review Regulations and Zoning Ordinance and a lot of it is not necessary because it's already written and part of our Town documentation we already have here. Per the testimony tonight, Grover feels most everything has been addressed. The Zoning Enforcement Officer is the person responsible for following up to make sure what was draw up and what was built is correct, and if not he is the one to make sure it does get done correctly before signing off on the project.

Grover addressed complying with the septic system – The Town of Ossipee includes those soil types in our regulations and ordinances, not for the Planning Board to be the enforcement of it because no one on the Planning Board is qualified to do it. The State of NH DES is the only one to approve a septic system. We have standards, regulations and ordinances of what needs to happen. So if you don't meet a particular soil type, it's going to come up when you apply for a septic design. If the septic design fails through the State, it's not up to the Town. If the septic design passes the State, it's not up to the Town, either. Each Board puts in there approvals "Must meet all Federal, State, and Local Regulations and Laws," the Town is not there to govern regulations other departments are responsible for.

Grover commented everything we have had brought to us tonight has been covered either addressed by what's in the plans, addressed by our ordinances and regulations and feels the Planning Board did everything it was required.

Wurster agrees with Rines and Grover's summation.

Brothers believes the Planning Board did not error in any decision or determination which is based upon the terms of the zoning ordinance, or upon any construction, interpretation, or application of the zoning ordinance.

Brothers ended discussion and called for a vote by roll call:

Those in favor of denying the request for appeal and send the case to Superior Court, answer by a Yes vote.

Those in favor of granting the request for appeal to remand the case back to the Planning Board, answer by a No vote.

Rines – Yes Grover – Yes Freeman – Yes Wurster – Yes Brothers - Yes

A **Motion** passed unanimously to Deny the Appeal. Chairman Brothers noted there is a 30 days appeal process of the ZBA decision which starts tomorrow. The Selectmen or any party to the action or any person directly affected has a right to appeal this decision.

Brothers Return to Regular Meeting at 9:35 PM:

Financial:

- Sager & Smith, PLLC – Invoice received for ZBA – Westward Shores - \$175.00
- Sager & Smith, PLLC – Invoice received for ZBA – General Matters - \$17.50
- Sager & Smith, PLLC – Invoice received for ZBA – Freedom vs. Ossipee – ZBA Appeal - \$1,210.00

A **Motion** by Rines to approve payment of invoices to Sager and Smith, PLLC. Freeman seconded. No Discussion. A unanimous vote was taken.

Brothers moved to Public Hearing at 9:37PM

Public Hearing

- **ZBA Fee Schedule** – Brothers read changes to the fee schedule for Variance and Special Exception applications.

Open to public: No discussion

A Motion made by Rines to approve the \$75.00 Application Review Fee, \$210.00 Public Notice Fee and Current First Class Postage plus \$1.00 along with Certified Mail Fee and Return Receipt Fee (for each abutter, owner, applicant, agent) for both the Variance and Special Exception applications. Grover seconded. No discussion. A unanimous vote was taken.

Brothers Return to Regular Meeting at 9:39PM:

Old Business:

- **Variance** instructions & application – **A Motion** made by Rines to approve the revised Variance applications. Grover seconded. No discussion. A unanimous vote was taken.
- **Special Exception** instructions & application – **A Motion** made by Rines to approve the revised Special Exception applications. Grover seconded. No discussion. A unanimous vote was taken.
- **ZBA Board Member Vacancies:**

Brothers started to address discussion of a replacement for Ski Kwiatkowski. But Sam Martin (in audience) informed the Board that the Board of Selectmen via Ellen White has sent a letter to Ski asking of his intentions. Brothers has put the discussion on hold pending communication from Ski Kwiatkowski.

Any Other Business Which May Come Before This Meeting

Connie Billings – Planning Board Chairman, addressed the ZBA about the Planning Board's agenda to revise the Zoning Ordinances to current standards prior to updating the Master Plan. Billings is asking the ZBA Board for suggestions they want addressed concerning the Zoning Ordinances. Billings asked for suggestions to be sent to either himself or the secretary to bring before the Planning Board for discussion. All potential revisions will be kept on file until January's Public Hearing and then to the voters at the next Town Meeting for voting on.

Next Meeting: June 13, 2017 @ 7:00 pm

Adjournment:

Motion by Rines, and seconded by Brothers to adjourn the meeting.
All in favor, motion passed. The meeting adjourned at 10:12 p.m.

Minutes approved by majority vote of the Board on:

Stanley Brothers, Chairman

Date