

**TOWN OF KITTERY  
PLANNING BOARD MEETING**

Thursday, May 12, 2005

APPROVED  
Council Chambers

Meeting called to order at: 6:12 p.m.

Present: Chairman Russell White, Megan Kline, Scott Mangiafico, Janet Gagner, Jerry Solich  
Present from the Town Council: Councilor Frank Dennett, Rich Balano, George Heilshorn, Ann Grinnell

Also Present: Planner Jim Noel, Mark Eyerman, Earldean Wells, Town Manager Jon Carter

**1. ROLL CALL**

Roll call noted.

**2. APPROVAL OF PREVIOUS MEETING MINUTES**

The minutes of 2/28/05, 3/17/05, 3/24/05, and 4/21/05 are all approved as amended.

**3. DISCUSSION 6:30 to 8:30 p.m.**

See Action Items 5-12-05

Break 8:40-8:46 pm.

**4. PUBLIC COMMENT ON NON-AGENDA MATTERS**

None.

**5. PUBLIC HEARING: DARREN LAPIERRE, BADGERS ISLAND MARINA. APPLICANT IS PROPOSING TO CONSTRUCT A SEASONAL AWNING AND SECURITY FENCE AROUND AN EXISTING DOCK. APPLICANT IS ALSO PROPOSING TO LOCATE AN ICE MACHINE AND LOBSTER TANK ON THE EXISTING DOCK. MAP 1, LOT 30, ZONED BADGERS ISLAND.**

Chairman White introduces the application.

Ms. Gagner steps down, as she is an abutter.

Mr. LaPierre talking about the security fence and awning. Everyone on the Board has the diagram. Should he hang it up? There's nothing really to it. He puts up his diagram. The request is to construct a security fence at the entry way for the summer season April 1 - October.

It will be 60" tall, built of solid pine, with a 12" lattice top border. The security gate will be permanent. The easterly side of the fence will be seasonal. The awning structure will be removable. He wants to put in an ice machine, a lobster tank, and pumps. The awning will give customers shelter from bad weather and hot sun. He has had constant requests for this. It will allow people waiting for friends to stay dry. They have lost several customers for this reason - they have no shelter. It is very inconvenient. There is no place to stay. The location of the ice machine is vital. They are popular because of their amenities and services to boaters. Lobster sales would be an amenity to marina. It would not be accessible to the open public, as the tank would be on the opposite side of a secured gate. You will not really see it. There have been some noise concerns raised. It is a 110 volt pump and it is at such a low decibel level that the manufacturers give no readings for it. It is comparable to a common household refrigerator. The awning will give the marina its own independence. The awning height has been raised as a concern. He is trying to solve several issues and concerns. They have boats tied there that exceed the requested height by 10' or more. He asks the Board to understand that sport fisherman bring rods and reels up to 9' tall. The boats at the marina range from \$10,000 to \$1,000,000 in price. He has had 3 serious thefts in recent years. There is more public access to the marina, and more foot traffic down there. His insurance company strongly promotes security. There has been a concern raised with respect to extra car traffic. They do not plan on putting up a road sign, so the public would not know about them. They would only know by accessing the public access in front of the marina. If the Board has any questions, he will go from there.

Chairman White asks if we have a larger site plan.

Mr. Mangiafico asks the date of the plan.

Mr. LaPierre says this is the plan from the last approved hearing. He does not have the date for it.

Chairman White is thinking of members of the public that are not familiar with it. No one is raising their hand. The board is familiar with it. Is the proposal to remove three sides of fence to leave a post structure but also to remove the awning and awning frame seasonally?

Mr. LaPierre says 16' of fencing will be removed every season along with the aluminum framework. The entry gate and two four-foot sections will stay.

Chairman White asks if it is illustrated on the plan.

Mr. LaPierre shows which will stay and which will be removed.

Mr. Mangiafico asks if that is the plan dated 1-21-05. Mr. Mangiafico asks if this was reduced to 72". On this, it says 89". Mr. Mangiafico assumes there will be 12" of cross-hatch.

Mr. LaPierre says that the total combined height will be 12.5 feet.

Chairman White opens it up for public comment.

Danielle Wes-Chuda wants to speak. She provides hand outs to the Board. One is a letter from another owner at Badgers Island Condominium. Another is a packet she prepared. She represents Mr. and Mrs. Beavers and Mr. and Mrs. Jones who own condos at Badgers Island Condominium. They abut this marina. Their property will be affected by the structure significantly. She will first discuss the waivers he requested. Most of them do not concern her. Only a couple do. She asks the Board to take special note of the waiver re: noise. She feels the documentation he provided is not adequate. He says there is no decibel reading that can be provided. She feels that is not adequate. He has requested a waiver re: vehicular traffic. In his presentation, he said there

would be no control over foot traffic in the area. Therefore, the public would have access to the lobster for sales and would be coming for that. She thinks that waiver should be denied. As for the substance of the application, there are numerous violations of 16.32490, which provides that the dimensions must be consistent with the existing use and character of the area. The size of the structure, as you can see, is very large and, in comparison to other structures on another marinas in area, larger. The other marinas have smaller structures, so he can do it on a much smaller scale. In some instances, the proposal is eight times larger than others. She would also like to address the portion of the ordinance re: necessity. He has operated for 3 years. A lobster tank and ice machine and a structure to provide shelter are not needed. Pursuant to 16.32850, a structure should not be larger than necessary. Title 38 standards should also apply. That is visual access to the shoreline. She provided a copy of Title 38 standards in the packet she passed out. Visual access to the shoreline is obstructed from their residences looking out into the channel. The boats are out and downward looking, while the structure would be straight out their window. The tide comes in and out, which is very different from a permanent structure on the dock. Functionally water dependent use would mean that it must need direct access to the water. The structure, lobster tank, ice machine, do not need direct access. A boat house does not need that access, so this does not. The definition of marina does not allow for structures similar to this. The law mentions boats and related sales. A lobster tank is not in compliance with that definition. She also passed out a statute that provides that to in order to do retail selling of lobsters, one must obtain a permit. She does not know of Mr. LaPierre obtaining a permit. The ordinance requires that the proposal and structure be in keeping with the Comprehensive Plan. That specifically lays out that scenic vistas should be preserved. This structure hinders that view and vista. Given the scope and size, noise concerns, traffic concerns, violation of the ordinance, Comprehensive Plan, and ME statutes, the Board must deny the application. She would like to stress that his representations today and in a previous letter that the public would not have access is disingenuous. He said that it would be difficult to police.

Chairman White asks whether it was to be behind a locked gate.

Ms. Wes-Chuda says there would be keys provided and without someone there, she does not know how it could be policed.

Chairman White asks if there are any other members of the public wishing to speak.

Jessie Akeman of Back Channel Canvas has been there since 1997. She works at a lot of different marinas. She also makes awnings. On the issue of security, all of the nicer marinas in the area have locked gates. It makes boat owners feel much more comfortable. People won't be coming in the middle of the night. As a contractor, she has been given keys to the Wentworth and has had to check in. She thinks that it is a wonderful asset, especially with nicer boats. Great Cove, the Wentworth, and Kittery Landing all have awnings over their entrances. It provides a place where someone can keep ice, a grill, or a cart to carry things down to the boat. Structures are used all the time. She worked with Mr. LaPierre closely to come up with a structure that would enhance the look of the marina. She wanted to do something that would blend in and create a functional and attractive structure to welcome people and allow them to stay dry. She really thinks that he has worked hard at trying to create a nice place at Badgers Island. A lot of people have been working hard to create a nice neighborhood there.

Mr. LaPierre says that you can't compare apples and oranges. He is trying to come up with a

multi-use function. He is very limited for space. Everything was done for the condos. He is now realizing that he has no place to put customers out of the elements. Kittery Landing has a place for its customers to be in from the elements. Badgers Island Marina was not designed that way. The Wentworth has multiple areas to gather out of the elements. They did not put that in the design when they did the condos. Badgers Island Marina stands alone. He is trying to enhance it for customers to come back year and year again. It is not nice having customers try to stand by the garage and almost get hit by someone coming out. The gate will have a key and lock on it. People rent space at the marina. The public will not be coming and going to buy lobsters. Why do that when you have Warren's? Marina personnel will have to be there to make the sale and accept the money. You can buy lobster from 10-6. There will be a locked lid on the tank. As far as the public enjoying the public access in front of the condo, he does not foresee them carrying a cooler down there. This is for people loading up their car and taking a couple lobsters home with them. To have a lobster pound two miles down the road is not an amenity to the marina. As for the license issue, why bother if he can't do it to begin with? It is his intention to do it. He jumped through a lot of hoops to get where he is now. He needs to see where this goes. Mr. Solich asks if the public comment period is closed.

Chairman White says no. He asks for more at this point.

Ms. Wes-Chuda wants to follow up. She heard comments that the structure is intended to blend with its surroundings. It clearly stands out and blocks her clients' view. Her clients care about it and that is why they want to see an appropriate structure erected. He said you can't compare apples to oranges. That is what the ordinance requires. You have to talk about that. If the Board has any questions, she is happy to answer them.

The public hearing is closed.

#### **A. Board Deliberation**

Chairman White asks about formal waivers. Chairman White thinks this is under the threshold for a traffic waiver.

Planner Noel says that Mr. LaPierre could run through this faster, but Planner Noel will run through it. On the second, he asked for a waiver to the boundary survey requirement - not affecting boundaries; lot - not applicable; sewage - not applicable; water access - not applicable.

Chairman White wants to know how Mr. LaPierre will get the water to make the ice.

Mr. LaPierre says that it will be bag ice.

Planner Noel continues with the inapplicable requirements: open space, paved or parking areas, setbacks, outdoor lighting and signs - not applicable, machinery - nothing permanent, storage and dumpsters, landscaping, temp markets - not applicable, the site walk has been done, there is no land dedicated to public use, encumbrances, water district letter, erosion, soil survey - not applicable, vehicular traffic - no additional, septic, additional submissions, independent review - not applicable.

Chairman White says that the machinery he understood would be permanently installed.

Mr. LaPierre clarifies that he would not leave the ice machine out, or lobster machine pump. The idea is to have a permanent storage locker to keep the wires there, but protected.

Chairman White says machinery is seasonal, but there is concern over noise.

Planner Noel says that what is not provided for by the applicant must be provided for in a waiver. Chairman White knows from going to the lobster pound that the pumps do have a continuous running noise. Was there any decibel level on that?

Mr. LaPierre says the tank is only 4x8. The pump size usually is 220. With the size of the tank, this will only need a 110 that you plug into a wall. That's why it's not coming up with any decibel readings. They are not there.

Chairman White says it will run continuously.

Mr. LaPierre is asked whether the pump will be behind the fence and in a storage locker. He says yes. You will hear the air conditioning units on the condos over that.

Chairman White says there is a concern about the lobsters being delivered over land. The applicant will need restrictions on when those service trucks can be there.

Mr. LaPierre says it is a 4'x8' lobster tank. You could replenish the inventory with the back of your car. This is nothing in comparison to the tractors he uses to haul boats. The hours of operation are 10-6. Deliveries will be made within those hours and he will try to do them during the week, as weekends are hectic.

Mr. Mangiafico on the waivers does not see a large increase in vehicular traffic that would trigger a traffic study.

Chairman White agrees.

Mr. Mangiafico thinks that the pump and the freezer won't make that much noise.

Mr. Solich says that they are most restrictive at night from 9 pm to 7 am in that zone.

Chairman White says we don't have anything but anecdotal evidence, but it seems that it would fall below the threshold.

Mr. Mangiafico thinks we can take care of the waivers. *He moves to approve the waivers as submitted January 21, 2005.*

*Mr. Solich seconds.*

Ms. Kline would like to specify that the pumps be shielded.

Mr. Mangiafico says we can do that later.

Mr. Mangiafico says this is specifically for noise.

Chairman White says we are not waiving our ability to place conditions on the application. We would like them enclosed because of the noise.

Mr. Mangiafico says that the machinery is specifically located on one of the plans.

Chairman White asks if that should be condition of the waiver.

*All in favor.*

Chairman White feels that the primary issues here is whether this is a water dependent use. He looks at marina and it seems to contemplate a principal use and accessory services. The definition says "such as" and does not limit it. Within the confines of the definition, bait sales could be offered. That might be more objectionable than lobster sales. He does not see that the definition excludes sales of lobsters as an accessory use. He thinks that we need to have it only be for marina members and their guests and only during the hours of operation. Another question that occurred repeatedly is height and size. As he understands it, the combined height was 12'5" and he lowered it to 12'.

Mr. LaPierre says that at the last meeting, he said that could lower it to 12' if that would please the board, but he would be going after 12'5". He would have to re-engineer it to lower it. He did

not go into this to negotiate. He is doing the bare minimum to fit the need. Kittery Landing is up to 13'5" almost 14'.

Chairman White is confused because the plan shows a height of 12'1".

Mr. LaPierre says there is a letter attached to it. The pitch is needed to shed rain.

Chairman White says that in this proposal, the height of the security fence is 89" and now seems to be 72"

Mr. Mangiafico says that is just the wood.

Mr. LaPierre agrees. He needs that to secure the awning.

Chairman White thinks there is some issue about blocking the views from the shore. We have to balance the encouragement of water dependent uses with the unnecessary impairment of views from the shoreline. If we provisionally say that this is a necessity to have some shelter there, you want to make it as small as you can for the use you are proposing.

Mr. Solich says that when he went on the site walk, one of the residents let him go in their unit. The metal frame was on the structure. You could look over the metal frame and still see the last piers.

Ms. Kline says that the metal frame was not on there. It was just the wooden structure.

Mr. Mangiafico says they were there. People went at different times. He wants to talk about different requirements. This zone came about - there was a commercial zone at the end of Badgers Island.

Ms. Kline says Badgers Island West was commercial.

Mr. Mangiafico says that it had two sides that were commercial, and residential at the end. With commercial, if it is functionally water dependent, there is 0 setback. We wanted to encourage existing homes to expand their capabilities. Most homes there are pretty small, while also having commercial development. There is a general development zone with a 25' setback. To go closer, you need a public access or benefit. That zone as defined is almost exclusively for commercial use. These residences would not be that close to the water if they were in a solely residential zone. The state would not have allowed it. The general development one district shall be at least a 25' setback. It includes the following: areas of 2 or more contiguous acres devoted to commercial, recreational, or mixes thereof, including areas devoted to wholesaling, retail trade, service, commercial, recreational development,... Our current ordinance has to almost mirror this. Chairman White says that is a point well taken. The ordinance takes these and puts them in the same zone. We created that zone and have seen it evolve in some ways we don't like and in some ways that are complimentary. We are not sure everyone loves that zone. He does not see what is being proposed as being outrageously in the way of the view. Commercial marine use has been there for 100's of years. They used to build ships there. Our ordinance recognizes that. Selling lobster and ice and having canvas use is accessory to the use.

Mr. Mangiafico says that is where he was heading. There is one and two. It may also include residential development. You cannot do as a residential area and get the 25' setback. You would not be as close as you are and have as big units. We respect the condo owners. Part of the character of the island is that everyone has a business on the water. Everyone along that side is commercial.

Ms. Kline says that now that everyone has had their chance to chit chat, go to permitted uses where it excludes those with any retail sales or storage outside.

Mr. Mangiafico says that there are a couple areas where it is in conflict with the state statute.

Chairman White says a marina is allowed to have accessory uses.

Mr. Mangiafico says that functionally water dependent uses are allowed.

Ms. Kline says this is waiving a permitted use for an exclusion.

Mr. Solich says that in 256-3, b.6. is retail business and 16 is marina.

Mr. Mangiafico says that going by the state, it should be in there. A marina is allowed in that zone. It should be an accessory use. The marina can sell bait and that is retail sales.

Ms. Kline says to see if you can match it together rather than seeing your natural proclivity.

Mr. Mangiafico says that you have a main use and an accessory use that goes along with it.

Ms. Kline says that accessory uses are allowed.

Chairman White says that there is no definition for retail business. Retail use is defined. Is this a service establishment? We don't have that in the current ordinance. We have a permitted use with two uses that are not defined. We are trying to fix that but it is not fixed right now. The ordinance excludes those with any outdoor sales or storage. He is looking for definitions and we don't have them.

Ms. Kline says it is a permitted use. Are we the ones that can say to him that it is an accessory use? She asked him if he could put his lobster tank or ice machine in the building and he insisted it had to be on the dock. If he could put it on land or indoors, it would be OK. You have to go to the retail use in order to sell.

Chairman White says he is only selling one thing as an accessory.

Mr. Solich thinks that typically retail sale is to the general public.

Ms. Kline asks if a golf shop would not qualify under retail use. She is not being argumentative.

Mr. LaPierre is saying that he is selling to people that arrive in boats.

Mr. Solich says it is to members of the marina.

Mr. Mangiafico says there is a retail sale component of a golf course. They all have a golf shop. It is such a small accessory use to the overall zone.

Chairman White says we need to resolve it when we vote.

Ms. Kline's second issue is regarding the height of the structure. Every height imaginable can be set up to handle canvas. A hip roof would allow him to stay within the framework and still have head height for everyone to walk around at the level of the wood which is 7' tall.

Mr. Solich says that the rods and reels are long. Going through the door with a pole, you either stick it up or you have someone hold the door for you.

Ms. Kline says that the gates are not 12' high.

Mr. Mangiafico says he is not asking for a 12' high gate.

Ms. Kline feels that it could be a bit lower. She also was at the site walks. When you look at the structure from water or land, you can see even at low water, the condominium the way that the architect meant for it to be viewed from the water. You can see the decks that people have. She does not know any of the people that live there. When you are at the condos and look at the water, the view with the wooden structure, it does not really impair a big view of the river. But when the 12' high structure is there, it really does occlude large amounts of view scape there. The other examples that she knows of, such as Chauncey Creek, are all down at a level so that you don't see them.

Mr. Solich says the shore is much steeper there.

Ms. Kline feels the applicant should make a much greater effort to accommodate the abutters. He is getting change of use, private for his business only, that is not available to the rest of the owners and the public, and if he makes it much less intrusive, his customers will get protection without having a big structure that he has to find storage for if he is going to remove it at the end of the season. She thinks that he could lower it.

Chairman White says the proposal is for 12'5". Do we have standards for this?

Mr. Mangiafico says that the DEP says that structures extending beyond should not exceed 20' in height. We have not done that. There are a few structures higher than 20'. We stipulated that he needs a 7' doorway. With 6' oars, that is not unreasonable. He said that to get a decent watershed, he needs 5'. That is not unreasonable. The view was previously blocked by a house boat. It is supposed to be a working waterfront. It still has to be functional and useful. With tall equipment to be brought in, you need this.

Chairman White thinks we may need to resolve this issue by vote.

Mr. Mangiafico wants to.

*Mr. Mangiafico moves to extend the meeting to 10:30 pm.*

*Mr. Solich seconds.*

*All in favor.*

Mr. Mangiafico going down the list of items they mentioned. He does not think there will be a large amount of noise. There are pumps all along that waterfront. It will be behind a fence and used for the season. Traffic is not at a level that will be major concern. There is parking available. The lobster sales will not be open to the general public. The marina is partially public access.

Ms. Kline says no, it's not.

Mr. Mangiafico says anyone that can use the facility and can pay can use his services. He will accept them with certain restrictions. Mr. Mangiafico has the ability to anchor sometime at his marina. He could do it in an emergency. It is partially public access that needs to be maintained. It is a commercial enterprise. He is not asking for anything outrageous. It will affect the condo owners, but they would not be in that location if it were not for the commercial use of the waterfront. He feels for the residents that were there before. As far as visual access, if this were a boat house, it would be excluded with having to blend in, painted in a muted shade of color, etc. He agrees with the applicant that the marina needs a place for people to have shelter. The inside building is not big enough. People's equipment should be sheltered when people are going back and forth. He considers it functionally water dependent. If we allow the sale of lobsters, then he needs a tank. As for the ice machine, almost all marinas have it as close to the floats as possible. As for whether there is public access, he has questions about it. There is limited public access for those that want to use the marina. It would be nice if everyone had access out of that pier. He fought for that originally. It is an operational necessity. Anything that enhances the experience will hopefully keep it active. If we did not allow it, Mr. LaPierre could not make enough money to keep that public access for a marina. We would see that railway go away. It is underutilized now.

Chairman White asks if we are ready to propose conditions.

Mr. Mangiafico says it fits the existing uses on the waterfront. If you look down the bridge, there is one house down there that has to be 12'5" high, a bait storage building, so it is not inconsistent.

Residents will lose a little view of the water, but not much of Portsmouth. He thinks it is a necessity.

Chairman White wants to ask one question of Ms. Akeman. Is it feasible to lower that roof pitch by a foot?

Ms. Akeman would say not. She was concerned with the area that was there and wanted to be sure that there was plenty of pitch for water run off. He really needs the height. She references heights at other structures and on Badgers Island.

## **B. Motion**

Chairman White says we have already heard this. We have all heard the Board discuss and deliberate this. We have thoroughly looked into this. He will propose some conditions: 1. The hours of operation are 10 am - 6 pm and shall be placed on the plan and all deliveries will occur then. 2. Lobster sales shall be restricted to marina users. 3. The removal of all fence structure for the off season except the security gate. The season is April 1 until October 31. The Port Authority has already put that restriction in there. 4. Pumps for the lobster tank will be located within an enclosure. 5. All machinery will be removed during the off season. That would be the pump and ice machine. He would include with # 3 that metal structures and canvas are also to be removed for the off season.

Mr. Mangiafico has a question on the hours of operation. Is that just for lobster sales?

Chairman White thinks it's the marina.

Mr. LaPierre says those are the dock master hours.

Mr. Mangiafico does not think we need to restrict the hours of operation for the marina, just for the lobster sales.

Chairman White amends note 1 - Lobster sales shall only be to marina users between 10 am and 6 pm. There are a total of 4 notes now. He asks for a motion.

Mr. Mangiafico says 1. Lobster sales to marina users. How do you define that? Will there be an enforcement issue?

Mr. LaPierre says marina customers.

Chairman White asks for any other thoughts.

*Mr. Mangiafico moves to approve a plan drawn by Mr. LaPierre, tax map 1, lot 30, that is in the Badger Island District Zone along with the Shoreland Zone dated 1-21-05 with the following:*

- 1. Security fence only 72" tall and 60" shall be pine*
- 2. The combined total height shall be no greater than 12'5"*

*Conditions:*

- 1. That the removal of the fence, awning, and metal structure will be taken off at the end of the season as defined in the KPA approval, the season being 4/1 - 10/31*
- 2. That the pump for the lobster tank be within the enclosure*
- 3. All machinery shall be removed during the off season except that which is there now*
- 4. Lobster sales shall only be to marina customers during the hours of operation, 10 am - 6 pm, with a dock master on site*

*We are doing this having found this is a water dependent use that we approve as amended.*

*Mr. Solich seconds.*

*Chairman White proposes that we authorize Chairman White to sign the plan when it is ready.*

*Mr. Mangiafico accepts that amendment.*

*Mr. Solich seconds.*

*Chairman White asks that the motion be amended to reflect that the application was found in compliance with the Comprehensive Plan and the Kittery Land Use and Development Code in general and specifically Section 16.36.070.C.*

*Mr. Mangiafico accepts that amendment.*

*Mr. Solich seconds.*

Ms. Kline says that when she reads the definition of marina, it provides things that are associated with the running of the marina. She agrees with the KPA decision that it is a change of use. Ms. Kline also is concerned that again we have this, and Mr. Mangiafico was there during the formation of the ordinance, and we have an exclusion of outdoor sales and storage, and this may be something that would require a ZBA visit. She is not comfortable just tapping it like this because she cannot make this work. This crosses into retail sales and restaurant.

Mr. Mangiafico thinks it is a compatible use.

Ms. Kline says it is a conclusion and she is not comfortable with it.

Chairman White thinks that you look at the types of businesses with large items stored outside.

Ms. Kline says marinas do.

Chairman White says marinas can sell boats if they have the room.

Ms. Kline thinks that we have to acknowledge this is a change of use. That is how the KPA saw it.

Mr. Mangiafico says that is the opinion of the KPA.

Ms. Kline says that he goes to the meetings.

Chairman White asks if anyone is proposing an amendment to the motion on the floor. He asks if Ms. Kline is proposing a requirement that it go to the ZBA.

Ms. Kline asks Planner Noel for input. She is stymied. It is an unusual one. It is an extremely small condo and existing business.

Planner Noel says it may be a change of use. On the point of whether it is outdoor sales, he feels that is a question. Whether this is an enclosure with a roof and four walls, he will leave that to the Board.

Chairman White says we have to infer what retail sales means. If there are no amendments, he will call a vote.

*3 in favor. Ms. Kline opposed. Motion carries.*

Chairman White needs to ask if Mr. LaPierre will accept the minutes of the meeting as findings of fact when they are approved. He indicates to anyone in the public that the decision can be appealed within 45 days to the Superior Court. We need to have an amended plan submitted.

Mr. LaPierre nods to indicate he will accept the minutes of the meeting as findings of fact. He asks if that is it.

Break 10:17 pm - 10:20 pm.

**6. PRELIMINARY PLAN: CLD CONSULTING ENGINEERS, INC., FOR LYNN SEWARD. APPLICANT IS PROPOSING TO CONSTRUCT A DRIVEWAY FOR A SINGLE-FAMILY RESIDENCE THAT INVOLVES A WETLAND**

**ALTERATION OF APPROXIMATELY 1,800 SF, MAP 56, LOT 12, ZONED RURAL RESIDENCE.**

Chairman White introduces the application and asks if this is potentially a scheduling hearing.

Jim Marchese, land surveyor, is here to represent Mrs. Seward. He would like to present to the Board some new information. Through a more intensive review of ordinance, he found some relief with respect to access to the parcel. It is going over an existing way. 16.28.410.F allows for maintenance and upgrade of an existing way on the parcel. He is researching the archives. He has an aerial photo from 1987 that shows the way on the parcel that they intend to upgrade and it shows the fields where they would like to build a home. He shows a photo. What they are here for tonight is a waiver for the wetland alteration application. They would be upgrading the existing way for access to the house lot. The only suitable soils are in this area of the parcel. He did include a drawing to follow. What they would need to do is run a 2" low pressure force main. They would need to use Charles Hill Road for access and get access temporarily over the wetland there. They would be installing a utility under the wetland. They only anticipate disturbing 60 sf. It would be a small trench through the wetland area. They would use a ditch witch, a small machine that you walk behind. There would be no heavy machinery. There are a lot of unique characteristics with the parcel and the granting of the waiver would fit within it.

Mr. Mangiafico says it says repair and maintenance of existing road. He assumes the road will have to be upgraded to make it where what our town code would consider a driveway.

Planner Noel says there is no minimum standard.

Mr. Mangiafico thinks that will require a slight expansion.

Chairman White says it looks like it was a farm road. He does not see it as grounds for a waiver. It is just his opinion based on this. As for repair and maintenance of existing ways, roads, driveways . . . is it a way or a road and is it repair and maintenance?

Mr. Mangiafico thinks it is a road. Road in our definition is vague.

Chairman White reads the definition of road. This is all vegetated over. Clearly the tracks exist. Vehicles have traveled there.

*Mr. Mangiafico moves to extend until 11:00 pm.*

*Mr. Solich seconds.*

*All in favor.*

Chairman White thinks the applicant needs to know we would go through and parse the ordinance as it is. There is a fairly strong presumption in favor of applying the wetland ordinance whenever applicable or possible to do so. We would not waive that lightly.

Mr. Mangiafico says that if it were a full season road at one point, that would be one thing. This does not appear to be that.

Chairman White thinks this is a very creative argument. Getting out of this requirement would save a lot of fussing around with us. We can't prevent you from pursuing that argument. However, he thinks that it will not get a good reception.

Ms. Gagner asks about the roadway. We are talking about a septic system that will have to be maintained. They may have to get in there to pump that septic system.

Mr. Marchese says that the septic tank would be near the home and the leach field would be effluent from the tank. The septic tank would be accessible near the home.

Ms. Gagner says that could require maintenance of the leach field.

Chairman White says that they are asking for a temporary crossing of the wetland. They have enough area for a reserve leach field. They should designate that as well. Does the existing way cross Charles Hill now?

Mr. Marchese says yes. Both entrances to the site are blocked by piles of gravel.

Chairman White thinks we should do a site walk.

Mr. Marchese was hoping we would consider this as a waiver. It is a substantial size lot greatly impacted by wetlands. They are only proposing a single family dwelling on the lot.

Chairman White does not see a great problem with the proposal. It's a reasonable use. It would help us to have a site walk. We should schedule it to happen in the next few weeks.

Ms. Gagner says not to wait too much longer.

Chairman White says it has been pretty wet.

Ms. Kline wants to know the issue - she could have a house and septic system on one acre of land.

Mr. Marchese says that there are no suitable soils for a septic system within that area. There may be within the 100' setback. He did not look for that.

Ms. Wells wants to know whether the building on there is there or is proposed.

Mr. Marchese says it is proposed.

Chairman White asks for any other issues the Board wants to bring forth. We should schedule the site walk as soon as possible.

Mr. Marchese wants to know if the Board needs anything else regarding the waiver.

Planner Noel says that Mr. Marchese needs to take care of the appropriate form, but he has provided the necessary information in the application.

Ms. Wells asks to be included in the site walk.

There is a discussion re: what day will work. The site walk will take place Tuesday the 24<sup>th</sup> at 5:00 pm.

**7. SKETCH PLAN: ALTUS ENGINEERING, INC. FOR LEWIS FARMS, LLC, AND RICHARD JOHNSON AND ASSIGNS. APPLICANT IS PROPOSING A MODIFICATION TO THE APPROVED LEWIS FARM SUBDIVISION. MAP 61, LOTS 25 AND 26. ZONED RURAL RESIDENCE.**

Dick Johnson, Craig Wilson and Jeff Clifford present the sketch plan.

Jeff Clifford says that roads have been built on the site. As part of that work on the site, a lot of the effort that went into the site was to try to minimize the impact on the site. They wanted to save the field out in front and preserve the character of the field. They want to change lot 20 because that would have put a house in the field. All the others were putting the house in the woods instead. The proposal is that they combine the lots and make them into one. There is a bigger lot that would be made into two lots. There would be no increase in lots. They are just making them change. That is the major amendment. The other component are some small items like putting some driveways in and avoiding the trees that they are trying to save. As part of the cluster, they have the ability to use different widths for frontage on site. This reflects how the lots will be configured. They wanted to open up the cul de sac so that it worked better. A few

other minor things were done on site. Lot 29 was somewhat reconfigured. The lots would be renumbered, as lot 20 became lot 31. The as built location of the cistern has been moved because of what Chief O'Brien wanted. The right of way of road C, utility easements for as built locations on the subdivision plan, road C was a 50' ROW, and now they are bringing it further. There are a couple of reserved parcels. He points them out. There will now be a couple of other reserved parcels. The calculations have been reworked to address these issues. The common open space issues have new areas. The plans are for the subdivision plan. There are plans dated March 28. These plans that you have for the subdivision are not stamped. The project was approved by ME DEP 3/2/04. Because of the reconfiguration, they have to do an amendment. The application period is over and the application is being reviewed now. They had to revise the TSS calculations. This lot, by moving it from here to here, actually resulted in a slight improvement on the site. They were at 45.1% and the criteria is 40%. Reviewing the regulations of the Town for approval, it is not clear that they need to go for public hearing. They would like approval tonight for the project.

Planner Noel suggests to the Board that the only thing required to not have a public hearing is the establishment of a ROW. Every other application, he thinks, goes to public hearing.

Mr. Wilson says 16.16.040.B, modification to an approved plan, provides that a developer shall obtain approval from the Board for major modifications. It does not say the Board shall hold a public hearing. Skipping to 16.36.080.D, plan revisions after approval, as for any modification made to any approved final plan, there are to be no changes without Board approval.

Chairman White would agree in terms of the history. Three to four years ago, he remembers plans coming in without public hearing and the Board would look and determine if it required a public hearing. If we can justify it in the ordinance, he would like to approve it tonight. He would like to know what the reserve lots are and what they are for.

Mr. Clifford says that lot 29 was configured to connect to another proposed development. This one had to do with maintaining control of a 50' ROW, rather than the 40' provided, which gives the association ability to expand if necessary.

Chairman White says that the modifications are within the existing character and quality. He does not see any reason to have a public hearing.

Mr. Wilson says the idea of a public hearing is to serve the public's interest. Does calling the public together serve the public's interest? Not in this instance. These are relatively minor modifications. The problem with the abutter has been solved. There are no questions from the abutters. There is no expansion. There is no encroaching. The public interest is not served by drawing out the application process further.

Mr. Clifford says the abutters did get notice of the DEP process. Everything is still under ownership of the original owners.

Chairman White thinks we can approve this tonight.

Planner Noel says as a caveat that there has been a great deal of concern from the abutter that Mr. Wilson has identified. Planner Noel takes Mr. Wilson's word that he is satisfied. He has been to the office in quite an animated fashion re: what he perceives as deviations from the approved plan. From his understanding of the plan, he thought there was a difference in what was actually happening on the field.

Vic Johnson says the issue with the Evans has been resolved, it's been done in writing, the suit is

resolved. The biggest issue was the location of the entrance. They wrote a letter. He should have a letter from their attorney apologizing for calling him a crook. He does have a letter from them in support of the sketch plan.

Chairman White does not know what their issues were. This seems to be an improvement if nothing else. It is a relocation of the house out of that field, and they are putting the cistern where the fire chief wants it.

*Mr. Mangiafico moves that we approve a modification to the approved Lewis Farm Subdivision, Map 61, Lots 25 and 26, zoned Rural Residence, modified plan dated March 1, 2005, noting the plan C-1, 3, 4, 5, 6,7,8, and 9.*

*Mr. Clifford says the actual stamped plan is dated 3-28-05.*

*Mr. Mangiafico amends to reflect that and that we approve it as we have already held a public hearing on the original plan and notice has been given to the abutters through the DEP. Chairman White will sign the Plan for the Board.*

*Mr. Solich seconds.*

*All in favor.*

Chairman White says that parties can appeal the decision within 45 days to the Superior Court.

## **8. OLD BUSINESS**

Town Council is having a meeting on the 23rd to relinquish public access.

Mr. Mangiafico says that is like Old Ferry Lane.

Ms. Gagner thinks that we need to discuss the language for assessment fees and level of review.

## **9. PLANNERS TIME**

Planner Noel says we have a request to name a private ROW. The Board approved alternate access to the Seward Property. They are proposing naming it Seward Farm Lane. He has a note from the Police Dept. and Commissioner of Public Works.

*Mr. Mangiafico moves to approve the name.*

*Mr. Solich seconds.*

*All in favor.*

## **10. ADJOURNMENT**

Ended at 11:00 pm