

**SHAPLEIGH PLANNING BOARD**

**MINUTES**

**Tuesday, July 13, 2010**

Members in attendance: Roger Allaire (Chairman), Madge Baker (Vice Chairman), Roland Legere, and Barbara Felong (Secretary). Code Enforcement Officer Steven McDonough was also in attendance. Board Members Maggie Moody and Diane Srebnick were unable to attend.

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**The Planning Board meeting started at 7:30 p.m.**

**The minutes from Tuesday, June 22, 2010 were accepted as read.**

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**Best Possible Location – Replace Structure with 30% Expansion – Map 17, Lot 6 (14 29<sup>th</sup> Street, Mousam Lake) – Sharon Herbert, Applicant**

Sharon Herbert was in attendance for the review of the application, along with a friend, Bruce Albertelly. Board members did a site inspection prior to this evenings meeting.

Roger A. began by stating the applicant was before the board to replace the existing structure along with a 30% expansion. Roger said because the board did a site inspection they were more aware of what would be taking place on site. He said he would like to see a more detailed plan regarding how the height of the structure would be addressed and he wanted the landscaping plan to show how all the property affected would be reclaimed after the construction.

Roger A. stated also the board members noted the retaining walls on site and how they needed to be addressed due to the poor condition. He thought their reconstruction should be integrated with the reconstruction of the house. He said the DEP would need to be notified as well. He said the DEP has a 14 day wait period for the Permit by Rule, so if they applied to the DEP to replace the railroad tie walls if they don't hear from the DEP within 14 days they will be able to proceed with their reconstruction after they get their PB and CEO permits. He said they would get a booklet from the DEP on what would need to be adhered to during construction.

Roger A. stated his other concern was with respect to doing the foundation. He wanted to know how the earth would be retained for the daylight basement.

Mrs. Herbert asked who could provide her with the information for earth moving around the foundation? Would that be the person putting in the foundation? Roger A. stated the contractor should know what would be necessary to put the walls in and retain the soil.

Roger A. stated when redoing the retaining walls or the foundation it is possible the trees on site will be affected. The contractor should have an idea as to whether or not the excavation will impair the trees and if they will need to be taken down. Roger said the board needed to know whether or not any trees would be removed from site.

Roger A. reminded the applicant that whatever is on the approved plan must be adhered to. The location of the foundation, retaining walls, trees removed, etc. He said if the applicant deviated from the approved plan she would have to come back before the board prior to proceeding with anymore construction on site. Roger said the approved plan needed to be precise.

Roger A. noted that at the site inspection it was discussed that it would be possible to move the structure back from the high water mark 6 feet. Roger said this needed to be noted on the final plan.

Roger A. stated the landscaping plan the board received wasn't sufficient. The board needed to see a reclamation plan for all areas that would be disturbed, not just alongside the new foundation.

Mrs. Herbert said the location of the new retaining wall also needed to be on the final plan. Roger A. stated, yes. Mrs. Herbert asked where she would get the DEP Permit by Rule? CEO McDonough gave her the telephone number of the DEP and told her to ask for a Permit by Rule application (207-822-6300).

CEO McDonough asked if they had a General Contractor? Mrs. Herbert stated they would be using Shawn Woods but he was waiting to find out the outcome of the Planning Board ruling before he did anything. CEO McDonough explained to Mrs. Herbert that she needed to discuss the retaining wall placement along with the reconstructed home because he may have an idea that would work best for the placement of the new walls. If it isn't what was approved by the Planning Board it is going to be a problem. CEO McDonough thought she should get more concrete plans from the professionals that are going to do the job before the board's final approval.

Roger A. noted again the large pine tree on site, he thought the roots would be disturbed and tree will have to be removed. Roger said if the contractor agrees it needs to be noted on the final plan that the tree will be removed. Mr. Albertelly stated she didn't want to remove the tree. Roger said he understood but it might have to come down because of the construction on site so they needed to talk to the contractor and get his opinion.

Roger A. stated again the applicants need the exact location of the new home on the final plan. He said once the board approves the location there are no variables. The home has to go exactly where approved so it is important to discuss with the contractor where that final location will be.

Mrs. Herbert thought she had some leeway as long as she didn't come too close to the lot lines. She gave an example that if the board said she could be no closer than 23 feet to the side lot line, she could be 24 feet from the line but not any closer than the 23 feet. Roger said no, the final location is exact. Roger reminded Mrs. Herbert that the measurement of the roof overhang to the lots lines also counted so it needed to be on the final plan.

Mrs. Herbert asked if she understood correctly that she would need a surveyor to come in again to verify the location of the new home? Roger A. said yes, the surveyor had to get the exact location of the new home on the property and verify it was located where approved.

Mrs. Herbert asked if she needed to have the house plans for the new house before coming back to the board? Roger A. said she needed the footprint of the foundation, the exact dimensions, so they can place the exact location on final plan. The actual building plans go to CEO McDonough.

Mrs. Herbert gave the board a copy of a plan showing the location of the existing camp on the lot, using the roof overhang as the outside dimensions. Also on the plan were the square foot and volume calculations of the existing camp which included the roof.

Barbara F. asked if the board wanted the applicant to move the camp back? Roger A. stated it would be nice if the house was moved back six feet.

Mrs. Herbert asked if she needed a new survey plan done with the roof line? CEO McDonough stated no, he didn't see why the board could not use the existing plan; just state the location of the new home with respect to the lot lines in the final approval.

Roland L. believed the board should have the location of the new retaining walls shown on the final plan. The board members were concerned with soil disturbance with respect to the daylight basement. Because new walls are needed, perhaps the walls could be incorporated so they help to retain the soil around the daylight basement.

CEO McDonough asked if the surveyed plan was the existing home location or the proposed. Mrs. Herbert stated the survey showed the existing home but the new home was going to be in the exact same location. The footprint would be a little different. She showed CEO McDonough her sketch plans depicting the existing foundation and the proposed.

Mrs. Herbert noted the board spoke about moving the home back at the site inspection. Madge B. stated yes, normally you try to disturb as little area as possible but it was noted when the area is disturbed for the new foundation a large area would be affected causing some problems on site, requiring some relocation of the existing retaining walls, therefore, moving the home back might be a good idea. Roger A. pointed out on the plan where the existing walls are located. Roland L. noted the walls were ready to come down. Mr. Albertelly agreed stating they were listing quite abit.

Mrs. Herbert wasn't sure it was necessary to put a retaining wall in the area where the daylight basement would go. She thought the lay of the land was such that it could be gradually tapered. She asked who could tell her what was necessary; did she need a structural engineer? CEO McDonough stated no. He said the board noted that the existing walls were deteriorating at this time. They also noted that there would be a daylight basement going in. He believed they wanted her to consider integrating the repair of the walls, redoing the walls, to accept the daylight basement. Madge B. stated the concern is the area is going to be disturbed during construction so putting up new walls to retain the earth that will be disturbed might be best. She added that she did not feel the plans they have received addressed the amount of disturbance that is going to take place. Mr. Albertelly asked what they needed? CEO McDonough stated that they needed to show who would be doing the work. And considering the walls will need to be replaced, the contractor may want to integrate the new walls with the daylight basement. He said the board would also like to see the new home moved back six feet. If that happens there will be a lot of disturbance on site and therefore the new walls will help stabilize the area. Those walls need to be engineered in such a way they don't fail. CEO McDonough stated they need to talk to the person doing the job so they can present a more detailed plan as to how the walls will be replaced. He said when talking to the contractor about replacing the walls perhaps tell him it would be a good idea to integrate the new walls with the construction of the daylight basement. Mr. Albertelly stated they had no problem with this. He just wanted to know who should draft the plans, should it be the contractor, Shawn Woods? CEO McDonough stated yes, talk to Mr. Woods and ask him if the retaining walls should be replaced where they are or should they be integrated with the daylight basement because the new home will be moved back six feet. CEO McDonough stated the final plans may change somewhat once they consult with the contractor.

Mrs. Herbert asked if the home can be moved? CEO McDonough stated they could not go any closer to the high water mark but it can be moved back. Roger A. believed it would be to the applicant's advantage to move the home back due to the trees on each side of the existing structure. Mr. Albertelly stated he didn't want to lose any trees but if the large tree has to come down it would be o.k. with him. CEO McDonough stated the board needed to know if it was going to come down or not. Roger agreed, if the contractor decides the tree comes down and the board didn't approve that, all work would stop until they came back before the board for approval. That is why it's important that everything be presented to the board for approval that will take place on site, so you don't have to come back.

CEO McDonough stated the landscaping plan would need to be more detailed than the one presented. Barbara F. mentioned York County Soils and Water Conservation District with respect to a replanting plan. Coincidentally Joe Anderson from YCSWCD was in the audience so he gave the applicants his card.

Mrs. Herbert summarized where she thought she should go from here. She said she needed to talk to the house plan person so she knows exactly what she is building. Then go to the contractor/builder so she can have the plan laid out. CEO McDonough didn't think she needed a new set of plans, he thought they could work from what she has presented.

Madge B. noted that as long as the dimensions of the new building met the 30% rule, the board didn't care what the building looked like. Mrs. Herbert thought she needed to know what the building looked like so she would know where she was putting it. Madge said yes, she needed to know where she was putting it. Madge said she thought Mrs. Herbert had the footprint and the building she wanted? Mrs. Herbert stated she had a rough layout. Madge said that was fine as long as it met the 30% rule. Mr. Albertelly stated it did.

Mrs. Herbert stated she needed to have the outside dimension of the new home on the plan. Madge B. stated, correct.

Roger A. stated they also needed the location of the new septic system on the plan. CEO McDonough reviewed the septic design drawn up by Albert Frick; he said there were numbers on that plan showing its location on site. Mrs. Herbert wasn't sure if the plan she presented had the septic system depicted accurately. She said the surveyor did speak with Mr. Frick.

CEO McDonough stated there needed to be building plans to be able to calculate the 30% expansion. Then they need to talk to the contractor to create the site plan. Mr. Albertelly stated he spoke with the person creating the building plans and he already calculated the size of the building in order to be able to meet the 30% . He said that they then talked with the contractor who sent them to the Planning Board first. Mr. Albertelly stated the only thing not considered with the contractor was the retaining walls but they should be replaced. He said they were also unaware of the tree issue.

It was concluded that the board would wait to hear from Mrs. Herbert as to when she was ready to return. CEO McDonough noted that he did not feel the applicant needed a new survey plan, the board could approve the location of the new structure using the existing survey, moving it back six feet. He said that the surveyor would have to come back on site to establish that the new structure is exactly six feet back and that it meets all the side setbacks approved by the board.

Mrs. Herbert asked if the board approved her as moving back 6 feet from the high water mark and she went back 7 feet, would that be a problem? Roger A. stated yes, the building must be set exactly where approved. Roger said if she wants to move it back 7 feet, or turn the building on site, they can. But it must be on the final plan because the new structure had to be exactly where approved. CEO McDonough agreed, there is no envelope to play with. CEO McDonough stated again, if the new structure is going to be moved back six feet from where it is now, then they can use the existing plan. If they play on turning the building they would need to show that on a new plan.

CEO McDonough reminded the applicants how imperative the landscaping plan would be. He said with the amount of construction on site it would look like a bomb went off on the water front. The board again noted the expertise of YCSWCD and that they could help devise the landscaping plan.

Roger A. noted that the plan Mrs. Herbert presented this evening, showing the existing structure on site was fine. He said if she could create a new plan, such as this, showing the location of the proposed structure that would work. She did not need to have the surveyor redo the plan for the board.

Mrs. Herbert mentioned the DEP permit for the retaining walls. CEO McDonough said yes, call the DEP and they will send the information she needs. He said it was not a difficult permit to get.

Mrs. Herbert stated she would call Barbara F. when she was ready to come back before the board. Board members agreed this would be fine.

Nothing further was discussed.

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**Best Possible Location – Replace Existing Shed and Build Outdoor Cooking Area – Map 33, Lot 7 (34 Treasure Island) – Ronald Cote, Applicant/Owner**

Mr. Cote did not attend the meeting. Barbara F. will try to contact him to see if he will be ready to attend the next meeting.

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**Conditional Use Permit – Regrade, Resurface Parking Area, Establish Shoreline Buffer Area – Map 30, Lot 59 (63 Treasure Island Road) – YCSWCD, Applicant; TILOA, Owner**

Joe Anderson represented York County Soils & Water Conservation District; Kathy Morgan represented Treasure Island Land Owners Association.

Joe Anderson began by stating he, along with members of the Treasure Island Landowners Association, were proposing a project for the parking lot for the TILOA Ferry Parking Area. He said they were proposing a large scale project to correct a runoff problem on site and an engineered plan had been drafted. He said they would be raising the grade in one area, installing a rain garden in the median to get water to flow into it, and also buffer erosion control mix would be added to stabilize existing soils. He pointed out the areas on the plan presented.

He said the rain garden was engineered and the specs were on the plan. He said the soil was a filter medium and there was an overflow pipe.

Mr. Anderson provided the board with a copy of the stormwater calculations done by Will Savage, PE, which stated, “the rain garden shall infiltrate the rainfall for a 2 year storm event (3” in a 24 hour event). A larger storm event lets say a 25 year storm (5.4” in a 24 hour event) would both infiltrate and flow out of the overflow pipe.” Mr. Anderson stated he didn’t think they could engineer a perfect solution but he felt they could cure 80% of the existing problems.

Mr. Anderson also provided a planting plan for the Buffer Islands. There would be a total of five. He pointed out on the plan where they would be located and he said didn’t want to make a blanket planting due to the amount of traffic both in the summer and in the winter.

Mr. Anderson stated they were thinking about using reclaimed asphalt to help to stabilize the parking area. He said they didn’t have the budget for paving but he believed the reclaimed asphalt would prevent erosion. He pointed out the areas they would be placing the product down on.

The specs given to the Planning Board showed the detailed plans for the Rain Garden; Erosion Control Mix Slope Protection & Stabilization; Siltation Fence; Riprap Outlet; and Erosion Control Berm Mix.

Roland L. asked if there would be standing water in the Rain Garden? Mr. Anderson said it was designed for the water to infiltrate and the mix was designed to treat the rainwater. He said the plans were engineered for stormwater.

Mr. Anderson stated ponding should be eliminated in the parking lot during a big rain. He stated they did apply for the DEP Permit by Rule and he had a verbal o.k. and he believed the paperwork should be in the CEO's office shortly. (It was received by the CEO 7/21.) He said the DEP did have some specs that they wanted them to follow. The specs would be given to the contractor doing the job, Bob Daigle.

Mr. Anderson stated the parking lot is used heavily so it was important to address existing conditions to help mitigate the stormwater issues.

Roland L. asked when the project would be done? Mr. Anderson stated the project would be started right after Labor Day and it had to be completed, along with all the paperwork by the end of September in order to receive the Grant money. He said they would probably close one half of the parking lot at a time. He pointed out the area he would provide for parking and what area the project would begin in. He knew they had to allow for access and would have to do the project in stages. Mrs. Morgan noted that the ferry didn't run midweek after Labor Day.

Roger A. asked where the fill was coming from? Mrs. Morgan said there would be some fill taken from the site but wasn't sure how much extra they would need. Mr. Anderson concurred that some cut and fill would be done on site but he believed they would have to bring some in from off site. Roger said the board would like an estimate of the amount of fill to be brought in.

Mr. Anderson stated that he wanted to use erosion control berms instead of silt fence. He said they would be probably 3 feet in height by at least 12 inches wide. He said this soil would be kept on site after the project was completed.

Mr. Anderson said because the grant was from the DEP, they would be using native plants that were suggested from that department. Mr. Anderson stated Wendy Garland would be overseeing the project. He added that it was a 60/40 Grant. The DEP would be putting up 60% of the money and TILOA would be paying 40%. Mr. Anderson noted that this project has to have a measurable benefit/outcome in order for the DEP to provide the grant.

Mr. Anderson asked if there were any questions? Roger A. stated the slope on the plan was 3:1, he said the Zoning Ordinance only allows a 2 ½:1 slope (§105-61 Mineral exploration and extraction). Roger also noted that with respect to stormwater runoff, for a 50 year storm he believed it was 6" in 24 hours. Roger said in the ordinance the design period was for a 50 years storm (§105-26 Stormwater runoff).

Mr. Anderson stated they accommodated for 5.4" and then there is the overflow pipe to allow for over that amount. Roger A. stated that if he could get the engineer to state the specs would meet the criteria for the 50 year storm or that 6" is not correct for the 50 year storm, it is a lesser amount, then the plan would be fine. It can be addressed in a letter.

Madge B. stated that the engineer may have accommodated for the 50 year storm but it doesn't say so on the plan. Roger A. agreed, he said the board just needed something in writing that verified that fact.

Roger A. asked again how much fill would be brought in? Mr. Anderson was not sure but he could calculate it for the next meeting. Roger asked if they had a back lot they could pull fill from? Mrs. Morgan stated no, they rented the back lot, they didn't own it.

**Roger A. stated a Public Hearing would be held at 7:00 p.m. on Tuesday, July 27<sup>th</sup>. A Notice to Abutters will be mailed as well. A site inspection was scheduled for 6:00 p.m., Board members will meet at the town hall.**

Nothing further was discussed.  
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**Conditional Use Permit – Move Greater than 10 Yards of Material to Reconstruct Retaining Wall – Map 23, Lot 2-3 (27 Meaders Lane) – Robert Gore, Applicant; Linda LeBlanc, Owner**

Mr. Gore was present to review the application.

Board members began by reviewing the plan drafted by Mr. Gore, PE #3904. It was noted on the plan there were two plan options to replace the existing stone wall which has collapsed into Mousam Lake.

Madge B. asked what the applicant proposed to do? Mr. Gore stated one of the reasons he was before the board was to have the board help determine what would or could be done to replace the collapsed wall. He stated they have a section of wall, 17 feet in length, that has fallen into the lake. He said the owner was convinced that if they simply put the rock wall back up it would stay in place. He said in his opinion it would not stay in place, it would eventually collapse again. He said the DEP position is that if the wall is replaced as is, using the same material, it is permissible without any permit.

Mr. Gore showed a picture of the collapsed wall and the profile looking up the hill toward the cottage showing there were actually two tiered walls holding back the earth on site. He stated that because the surrounding camps all have limited frontage and have part of this retaining wall in front of their homes, anything done to the wall in front of the applicant's camp might also affect the neighboring walls.

Mr. Gore stated that he spoke to CEO McDonough and he said that whenever a wall was rebuilt the Planning Board required an engineered plan for anything over four feet in height if there is a slope behind it. He said therefore, he has provided a plan showing the repair of the 17 feet that has collapsed and another plan depicting the replacement of the entire wall in front of the LeBlanc home.

Mr. Gore noted the lines on the plan that depict the natural recline of the soil on site. He believed eventually everything on the slope would be moved downhill, including the existing retaining wall and camp. He said when looking at doing the excavation to repair the wall there was a serious risk of everything shifting down toward the lake. He said the other problem is, if nothing is done, there is a risk that will happen as well. He said the abutting walls are also in the process of failing.

Mr. Gore stated the optimum replacement would require a large unsightly wall and it would require moving the building or shoring it up so it isn't displaced and somehow anchoring the soil. He said in addition all the adjacent lots are in a similar situation.

Mr. Gore stated the engineered wall he would stand behind as working is a concrete wall and the DEP has stated no concrete or mortar can be put into the water. He said the options therefore are:

- 1) "The wall is replaced using the same material and hope it stays for some time in hopes that all the neighbors will get together to figure out a solutions to the problem that affects everyone along the retaining wall."

- 2) He thought another option is to move all the camps back from the water, let the soil settle and put in smaller retaining walls.

Mr. Gore noted that Plan Option 1 was not an engineered wall; he could not guarantee the wall would hold up. Mr. Gore stated that Plan Option 2, it was a designed wall and the contractor was responsible for means and methods, but he didn't know how it would be accomplished.

Mr. Gore told his client to get a mason on site a.s.a.p. to lift the stones into the hole to help prevent more erosion. Mr. Gore asked CEO McDonough if Ms. LeBlanc had contacted him and he stated, no.

Roger A. asked if the DEP would accept an earthen dam to be able to pour some concrete? Mr. Gore stated the only way to do it would be to do a coffer dam and he didn't see how you would be able to drive a coffer dam into the lake. Mr. Gore stated the DEP rule was you are not able to pour concrete in the water, you can only use aged concrete.

Mr. Gore stated in terms of executing the plans, the concrete wall would not be allowed. He said they can put the stones back into place that have fallen into the water. Mr. Gore wondered if the board could approve doing this with a condition that in five years something more would have to be done. He added that he didn't know if putting the existing wall back into place would last five years.

Roger A. asked about the blocks from Pepin's. Mr. Gore stated that he hadn't thought about that. And he asked if Roger was talking about just as a temporary fix? Roger said yes. Mr. Gore thought they could think about doing that temporarily. He thought it would work just as well to put the existing stones back into place and mortar the top ones that aren't in the water.

Roger A. asked if a machine would be able to place the blocks if they were used? Mr. Gore didn't think so because of the lay of the land. He worried it would shift the existing earth and it could move the camp. He said a crane was possible but you would have to drop the blocks over the top of the camp.

Mr. Gore thought the best solution was to lift up the existing camps, remove some of the soil to drop the elevation and move the camps farther back. He said that would surely take some coordination all along the retaining wall. He said repairing the deteriorating wall 45 feet at a time was not going to work from an engineering perspective. Roger A. agreed.

CEO McDonough asked what Mr. Gore was asking the board to approve? Mr. Gore stated at this point in time he wanted the board to say to go ahead and put the existing wall back into place and give the applicant a time limit to deal with the issue long term. Madge B. asked if there needed to be an engineered plan to put the wall back into place? CEO McDonough stated that was correct according to the building code. Madge said therefore, Mr. Gore would have to sign off that the replacement wall was engineered. Mr. Gore stated he could not state replacing the wall using the existing stones, using the same design, was engineered to specs. Madge did not see how the board could approve that plan if it wasn't engineered. Mr. Gore believed the CEO had the ability to approve the wall as designed if he felt there was no alternative. CEO McDonough believed that there was no way to put an engineered wall in this location without spending at least \$100,000. He thought if that were the case and he was the applicant he would leave the wall as is. Mr. Gore didn't disagree but the problem with that is there would be trees ending up in the lake, earth, more of the wall will collapse and eventually the camp could shift.

Madge B. stated that it looked like Mr. Gore was before the board to say, 'what do I do?'. Mr. Gore in his cover letter to the board basically states that, that he needs CEO and Planning Board input. Madge asked where the engineered requirement was noted? CEO McDonough stated it was in the building code, it was

not in zoning. Madge asked if the applicant needed a permit to just restack the existing walls? Mr. Gore stated, no.

Roland L. was very concerned about the wave action against the wall.

CEO McDonough read from the 2003 International Residential Code, Appendix J, Existing Structure, Section AJ102.7, Other alternatives, which read as follows: “Where compliance with these provisions or with this code as required by these provisions is technically infeasible or would impose disproportionate costs because of structural, construction or dimensional difficulties, other alternatives may be accepted by the building official. These alternatives may include materials, design features and/or operational features.”

Mr. Gore believed that it was important that anything CEO McDonough permitted he was comfortable with. CEO McDonough stated he agreed and he did not believe he would approve only replacing the stones by hand to rebuild the wall.

Roger A. did not think Mr. Gore would certify that the wall would hold up if rebuilt as it was in that area. Mr. Gore stated, correct, it does not currently comply with code and there was no way to design the wall the way it is and expect it to stay in place. He said the engineered numbers are not there.

Mr. Gore stated all he needed from the Planning Board was a permit to move more than 10 cubic yards of earth. He stated again the CEO needed to be comfortable with what was approved. Mr. Gore said if they were allowed to replace the existing wall as is, the applicant wasn't out of the woods because they need to have a long range plan to decide what would happen next.

The board members and Mr. Gore continued to go back and forth with ideas on what or what might not work, citing different ways to retain the earth but all the alternatives were very expensive and would be difficult to administer. Mr. Gore noted there were different things used at the big dig that would work but again the cost to set up was exorbitant.

Madge B. stated the board's job is to permit moving more than 10 cubic yards of earth and then the wall issue is for the CEO. Mr. Gore stated it would be between 10 and 20 yards. Madge said something has to be done for this wall but she wasn't sure exactly what.

Mr. Gore stated the wall actually required more time than they had before it became a big mess, with more wall and earth falling into the lake. Mr. Gore felt replacing the wall as is or dropping waste blocks into the water would both be a temporary fix. He stated both ideas didn't meet the qualifications for a professional temporary construction in the IBC. Roger A. stated he has seen the large blocks used and they have held up due to the weight of them. Roger agreed due to the steep grade they would only work temporarily.

**Roger A. stated they would do a site inspection on Tuesday, July 27<sup>th</sup> at approximately 6:30 p.m. A Notice to Abutter will be mailed as well.**

Nothing further was discussed.  
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**OTHER:**

Roger A. noted that it was brought to his attention by Barbara F. that the Subdivision Known as Deer Run, located on Map 8, Lot 55A, owned during the time of approval by Patrick Frasier, was never recorded at the York County Registry of Deeds within 90 days as required by the board as part of his approval. Therefore, a letter shall be drafted to Mr. Frasier stating that the subdivision is null and void as stipulated under Item #3

of Planning Board Action in the Findings of Fact. All board members agreed this is the course of action to be taken.

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Roger A. stated the board had received a copy of the Declaration of Restrictions from Hissong for the property on Map 7, Lot 28. He noted the document appeared to be in order with respect to the PB approval, stipulations mandated by both the DEP and MDIFW. His only suggestion was on Item 5 of the declaration he would like to see the Town of Shapleigh added as follows:

“Amendment. Any provision contained in this Declaration may be amend or revoked only by the recording of a written instrument or instruments specifying the amendment or the revocation signed by the owner or owners of the Restricted Buffer Area and/or Reclaimed Buffer Area and by the MDEP and/or the Town of Shapleigh.”

Madge B. reviewed the document and agreed the Town of Shapleigh should be listed to keep the document consistent with the approval for the Gravel Operation.

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Roger A. asked about the cell phone tower approved on Owl’s Nest Road. He wanted to know if a bond was ever issued to the Town for the cell tower and what was the approval date. He noted that if work on the cell tower was not commenced within two years of the date of approval then the permit would expire (see §105-73.F(2)). Barbara F. will review the application to see what the status is. She did note that she was certain a bond was never accepted by the Town to date. She remembers she made several attempts to contact the applicant on this issue but in the end the applicant stopped returning phone calls.

Roland L. asked if it was a policy to remind applicants that their permit was about to expire. Barbara F. stated no, it was the applicant’s obligation to follow thru with the process once permitted.

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**Review Zoning Ordinance §105-39 ‘Earth removal and filling’ and §105-61 ‘Mineral exploration and extraction’**

Madge B. began by stating at a previous meeting, it was Roger’s initial thought that the board could combine the two ordinances into one ordinance, but she did not agree. She believed §105-39 should be “Earth removal and filling” for moving earth on site and that §105-61 should be for “Mineral extraction, including sand and gravel”. Madge thought the board needed to strengthen §105-61.

Roger A. stated he believed §105-39 answers a lot of the criteria that the board needs to use. Roger thought if the board keeps §105-61 it needs to incorporate much of 39 and for that reason he was thinking of combining them into one ordinance. He thought whether you were moving earth from point A to point B, it is all earth removal whether staying on site or off site, so again he thought it could all be addressed under one ordinance.

CEO McDonough did not agree. He said he agreed moving earth is moving earth regardless of the distance and it needed to be addressed. He said §105-61 applied to a commercial operation whereas §105-39 applied to the homeowner on the lake. Madge B. agreed. Roger A. disagreed, the location in his mind didn’t matter. CEO McDonough stated when moving earth under §105-61, you had to be 100 feet from a property line, he noted that many landowners would not be able to move any earth on site with this criteria but he believed a commercial operation should be 100 feet from a property line. Madge agreed. CEO McDonough noted

under §105-27 ‘Erosion control’ you only have to be 10 feet to an adjoining property line. He believed this made much more sense to a lakefront lot.

Madge B. stated there were items in §105-39 that should be under §105-61 such as ‘Surety and terms of permit’. CEO McDonough agreed. Madge stated also the ‘Optional conditions of permit’ should be addressed in §105-61. Roger A. stated that is why he always applied both §105-39 and §105-61 to an earth moving permit. CEO McDonough stated he understood the theory but you can’t pick and choose when an ordinance will apply and when it will not and what sections will and won’t apply. He said that isn’t being consistent with each applicant. He believed it would be best to gear one ordinance toward the homeowner and one toward a commercial enterprise.

Roger A. stated that the Conditional Use Permit does not state that the board cannot apply both §105-39 and §105-61 at the same time, you can apply the entire ordinance to an applicant. Madge B. agreed stating that it can be written that if the Planning Board needs to apply both ordinances they can apply both. She said much of the time an applicant should be reviewed under one or the other. Roger agreed but he didn’t feel you should have a lot of duplication from §105-39 go into §105-61. Madge thought there may be some things in 39 that only belong in 61.

CEO McDonough didn’t see an issue with duplication. He noted that some of the conditions in §105-39 are also under §105-73 and that wasn’t a problem. Again he pointed out not all the criteria in one would be duplicated in the other. He felt a commercial operation should be different from everything else with respect to the review process. He didn’t see a need for a bond to be mandatory under §105-39, only optional, but it should be required under §105-61. He noted that you can’t pick and choose sections for each applicant, the board has to be consistent with everyone. Madge B. stated that she believed §105-61 should be for commercial operations whether they are using the earth for themselves or selling it to someone else.

Roger A. stated if both were combined there could be a sub-chapter stating that if it were a commercial operation then the distance to the property line must be 75 or 100 feet. CEO McDonough stated as long as the board is consistent with their review.

CEO McDonough stated there were three things that stand out as being different between the two:

#1 – Requiring a bond, this belongs in §105-61.

#2 - §105-39 should be titled, “Earth removal and filling for other than commercial mineral extraction and exploration.

#3 – The setbacks are an issue but if the two ordinances are separated then it isn’t an issue.

Roger A. and Madge B. agreed.

Madge B. stated that under §105-39.F ‘Application for permit’, she thought much of this section should be under 61 and not 39. She stated that the conditions here were geared toward a major operation. CEO McDonough agreed but he wasn’t sure you would want to take all of F out of 39. Madge said only some doesn’t seem to belong. CEO McDonough noted (4) which states, “The proposed provisions for drainage and erosion control, including drainage calculations”, he believed this must stay. Madge agreed.

CEO McDonough thought each member should really review the ordinance and cut and paste what they think would work.

Madge B. believed there might be occasional duplications in both ordinance but she still thought two separate ordinances were needed. CEO McDonough agreed.

CEO McDonough said under §105-27 “Erosion control” it addressed the top of a cut or the bottom of a fill section shall not be closer than 10 feet to an adjoining property line. Barbara F. asked if you couldn’t refer to §105-27 under 39? Madge B. said you could, she would like to think about it.

CEO McDonough reviewed §105-39.G (11), and said this should only apply under 61. Madge B. agreed.

In conclusion members will work on changes and the possible changes will be discussed again in the near future.

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Barbara F. brought up a concern she had with respect to time limits and bonds. She noted two applicants that have not presented a bond to date and their approval was over six months ago. She asked that perhaps in the future the board could put a time limit on when a bond needs to be presented and approved by the Planning Board and Board of Selectmen. Madge B. stated that was a good idea and perhaps she could remind the board during the approval process.

Roger A. and CEO McDonough stated it might be a good idea to address this under §105-73.I(1) which addresses the performance guarantee. This way the board members would not overlook a set time period. Roger and CEO McDonough thought a 90 day window was more than ample to acquire a bond. This will be addressed again in the near future.

Nothing further was discussed.

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**GROWTH PERMIT(S) – Map 12, Part of Lot 15 (Newfield Road), was issued G.P. #05-10**

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**The Planning Board meeting was adjourned at 9:50 p.m.**

Respectively submitted,  
Barbara Felong  
Land Use Secretary  
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