

**NORTH BERWICK, MAINE, 03906**

**MINUTES OF PLANNING BOARD JULY 8, 2010**

**Present:** Chairman R. Todd Hoffman, Julie Fernee, Shaun DeWolf, Barry Chase, Patrick Raftery and Lawrence Huntley, CEO.

**Absent:** Christopher Karcher

**Also Present:** Brain Rayback (Attorney), James Anderson, Jane Barnum, Steven Barnum, Anne Whitten, Wayne Whitten, David Harper, Paulette Harper, Ina Brother, Earnest W. Santosuosso, Kyle Stucker, Bruce Jordon and Sheila Jordan.

**1. Call To Order:**

Chairman R. Todd Hoffman opened the Planning Board Meeting at 6:36 p.m.

Chairman R. Todd Hoffman moved Patrick Raftery to full voting member.

**2. Current Business:**

**A. Wayne & Anne Whitten---**Applicant proposes to place a Temporary Seaplane Landing Ramp on the south shore of there property on Bauneg Beg Pond. 121 West First Street. (Map 13, Lot 43)

Chairman R. Todd Hoffman spoke that this Planning Board meeting is not a Public Hearing and will don't be entertaining discussions from the public, however there maybe pertinent information that we may want to ask.

*Chairman R. Todd Hoffman read into the record:*

***Finding of Fact of North Berwick Planning Board***

*RE: Whitten Site walk, 121 1<sup>st</sup> Street, North Berwick, ME. Map 13 Lot 43*

*DATE: June 28, 2010, 6PM*

***PLANNING BOARD MEMBERS PRESENT: R. Todd Hoffman, Julie Fernee, Barry Chase***

*The following items were clearly evident:*

- *A cleared path down to other structure – seaplane -- site on southern Lake Edge of Whitten North Berwick property from drive area on top of property.*
- *Several large white pine stems were wind snapped 15' to 30' up.*
- *Evidence of one white pine cut (18" to 24") with roots well pulled – wind damaged.*
- *All downed stems were removed from site.*
- *One small red marking flag at southern edge of cleared remediation area on Lake Edge.*

- *Two dead oak saplings in cleared remediation area.*
- *No silt screens of any kind – hay bales or silt socks or plastic sheeting – near Lake Edge.*
- *One newly built other structure – seaplane ramp in front of cleared remediation area.*
- *No credible evidence of previous other abutting structure – seaplane ramp.*
- *Lily pads- 30' off remediate area.*
- *Site was cleared after storm damage.*

Lawrence Huntley, CEO spoke that he will interject the situation with the erosion control. That was discussed with Mike Morse DEP and he thought that there would not be any reason to have any erosion control methods, because there was so much under growth that had been cut and laid down on the top that the rain would bounce off of that protecting the soil.

Barry Chase spoke that the overall take of his property in general was very natural and did not appear that there was anything maliciously done.

Chairman R. Todd Hoffman explained I did hear the word clear cut, but I didn't see this as a clear cut, however we know in that in the aquifer protection area Zone B for any kind of clearing you need a permit.

*Chairman R. Todd Hoffman read into the record:*

## ***Zoning Ordinance***

### ***ARTICLE 1 – GENERAL***

#### ***1.2 Purposes***

- a. To promote the general welfare of the town;*
- b. To establish a fair and reasonable set of standards for evaluating each development proposal impartially, and on its own merits;*
- c. To provide local protection from those particular nuisances which are not governed by State law or regulations;*
- d. To help preserve the peaceful rural surroundings which make North Berwick an enjoyable place to live;*
- e. To balance the right of land-owners to use their land with the corresponding right of abutting and neighboring land owners to live without undue disturbance from noise, smoke, fumes, dust, odor, glare, traffic, storm water run-off, and other nuisances;*
- f. To encourage new development to be integrated harmoniously into the community;*
- g. To establish a local appeals system whereby aggrieved parties may appeal decisions to the Town's Zoning Board of Appeals under this ordinance;*
- h. To protect property values;*
- i. To reduce the adverse off-site impact of development thereby increasing the cost of municipal facilities, maintenance and improvement; and*
- j. To accomplish the above objectives with the least possible regulation.*

### ***ARTICLE 5 - PERFORMANCE STANDARDS***

#### ***Ordinance – 5.2.13.f.1.2***

*f. Administration and Enforcement*

1. *No activity of land use may be conducted except in accordance with these provisions. Failure to conform with these provisions shall constitute a violation and shall be subject to the penalties set forth in Section 6.6 of the North Berwick Zoning Ordinance.*
2. *Conditional use permit review shall be conducted by the Planning Board. A conditional use permit shall be granted as the Planning Board determines that the intent of this Ordinance as well as its specific criteria are met. In making such determination, the Planning Board shall give consideration to the simplicity, reliability, and feasibility of the control measures proposed and the degree of threat to water quality which would result if the control measures failed. No activity of land use may be conducted in Zone B until a conditional use permit for such activity or use has been approved by the Planning Board.*

***Ordinance – 5.2.17***

***5.2.17 Shoreland Districts Standards***

*These standards are in addition to all performance standards of the underlying districts. Where these standards are in conflict with any underlying standards, the more strict shall prevail.*

***a. Piers, Docks, Wharves, Bridges and Other Structures and Uses Extending Over or Below the Normal High-Water Line of a Water Body or Within a Wetland.***

- (1) Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.*
- (2) The location shall not interfere with existing developed or natural beach areas.*
- (3) The facility shall be located so as to minimize adverse effects on fisheries.*

***Ordinance – 5.1.2.c***

***5.1 BASIC REQUIREMENTS***

***5.1.2 Noise***

*The following uses and activities shall be exempt from the sound pressure level regulations:*

- c. Traffic noise on public roads, or noise created by airplanes and railroads.*

***Ordinance – 5.2.13.c.2.5***

***5.2.13 Aquifer Protection with the Aquifer Protection District***

5. *Boat and motor vehicle service or repair facilities.*

2. *Zone B prohibited and conditional uses.*  
*(Conditional Use Permit Required)*

Ina Brother spoke that one of the planes went up 4 or 5 times and you could not talk to the person next to you. I have a suggestion. Is it possible when you're doing all this? That any plane that is in that area must be registered to that person of that home.

Chairman R. Todd Hoffman replied no; the Planning Board cannot do that.

Brian Rayback asked why do you think that you do not have the authority to do that.

Chairman R. Todd Hoffman replied because we do not have any regulations dealing with the water bodies and this water body is bordered by Sanford and North Berwick.

Brian Rayback spoke that you certainly have the ability to condition any permit to comply with the ordinance.

Chairman R. Todd Hoffman replied that I offer that a person may speak once; Thank you.

Barry Chase spoke that a lot of people that have boats on their dock up there that don't belong to them, but belong to a friend of theirs.

Chairman R. Todd Hoffman spoke that the Town has no ordinances dealing with boats.

Ina Brother asked can we have an ordinance dealing with how many seaplanes.

Chairman R. Todd Hoffman replied no.

Chairman R. Todd Hoffman spoke that what we have in our ordinance book and what you heard us talking about. We have ordinances regulating docks, piers, wharves and other structures. That is the only thing that we can regulate. That is what the Whitten's have to get a Conditional Use Permit for. We cannot regulate their boats or airplanes.

We have a specific ordinance that says we cannot regulate traffic noise, railroads, or airplanes.

Ina Brother spoke that you did state values of homes, noise, traffic and that is what we are all losing and that is what you are regulating.

Chairman R. Todd Hoffman replies that you go from the general to the specific and the specific says that you protect this and you do harmonious integration of various activities, but you can't regulate the sound of an airplane. The Planning Board can only regulate piers, wharves and other structures. This is what the permit is for.

Chairman R. Todd Hoffman asked for comment from the Board:

Patrick Rafter spoke that you can't regulate boats and so you can't regulate the seaplane.

Barry Chase spoke I m there, you can't regulate boats.

Lawrence Huntley, CEO spoke that he talked with the Town Assessor and whether they would be affected. What does affect property values and it is all in the matter of; who lives there now and sells their home and then somebody else moves in and that is already established and they just accept it.

I also asked the assessor; that seeing a seaplane take off lowers property values and he said absolutely not.

Ina Brother commented that maybe one won't.

Shaun DeWolf asked Wayne and Anne Whitten if they only have one plane.

Mr. Whitten replied that I own two and one is not there right now.

Mrs. Whitten replied that we've had it about three years

Shaun DeWolf asked that you have two ramps now already; one ramp in North Berwick and one in Sanford.

Mr. Whitten replied that I have one ramp in North Berwick this will be the second one. There are two ramps in Sanford.

Shaun DeWolf asked why do you need the second one in North Berwick if you already have three in Sanford.

Mr. Whitten replied that they are all utilized.

Shaun DeWolf spoke by your planes.

Mrs. Whitten replied that our airplane has been there since 1990. The other airplane that is there has been there way before we have ever been there and Jacque has been there about four years. The other gentleman that asked to put his seaplane there. We would like to let him put his seaplane there.

Ina Brother spoke it is not true.

Julie Fernee commented that if we could say that you can only bring in your own planet, but we can't do that.

Chairman R. Todd Hoffman spoke that we do not have any kind of ordinance that regulates the number of docks, piers, floats and other structures. There is no regulation on there setback from property lines.

Ina Brother spoke that it is clear that you are not seeing this as a business. We have and are getting affidavits.

Chairman R. Todd Hoffman replied that this is not a business it is a Conditional Use Permit. And what they are applying for is another structure.

They are not applying for a Conditional Use Permit for a maintenance operation, a commercial landing zone.

Ina Brother commented because they already have it. Why apply.

Brain Rayback spoke it is like permitting the parking lot and ignoring the Walmart.

Chairman R. Todd Hoffman asked about months of operation for conditions. One is the impact on the shore. I would like some kind of condition on how and where this other structure is taken out of the water.

Shaun DeWolf replied that DEP says it is seven months for a temporary structure and anything that is over seven months is a permanent structure. They have to come up with a seven month schedule.

Chairman R. Todd Hoffman spoke that it should be taken out in the same place. I should not be dragged, it should be carried out and it should be the same place that these other structure is. So that only one site is disturbed, one area.

Barry Chase asked Mr. Whitten his opinion on how he would store them.

Mr. Whitten replied that I would probably bring them all to the Sanford area and I can pile them on the other ones. The other ones are all left in. This is something new to me. The rest of them are all left frozen in. That way there I don't disturb anything.

Chairman R. Todd Hoffman asked so you have a permanent structure in now.

Mr. Whitten replied they are all permanent.

Chairman R. Todd Hoffman asked so there all permanent Sanford and the one in North Berwick and do you have a permit for that one.

Mr. Whitten replied that was way before.

Lawrence Huntley, CEO spoke that was before. The Town sent out a flyer about a month ago and said everything was grandfathered as of that day and that anything new had to be permitted. It grandfathered that situation. Now anything new that were doing right now has to be permitted.

Mr. Whitten spoke that one thing I have about taking this out where I m going to be floating this on the other side. I don't mind that at all. I have a little concern with the weather about floating this thing along the side. If it is coming down towards the 31<sup>st</sup> I don't want someone sitting there with a clock. I will get it out the best I can and it will probably be out before then.

Shaun DeWolf asked if the structure could be broken up into two sections for removal purpose.

Chairman R. Todd Hoffman spoke that it is one solid piece and I don't think it should be dragged up where it is. The structure has to be out of the water.

Mr. Whitten replied that it only has to be out of the water in North Berwick. I can take it over to Sanford and lay it on the other ones

Mrs. Whitten spoke that it is going on the other ones.

Ina Brother asked that Anne Whitten is a former Select Woman how come she didn't know that she couldn't clear this land.

Chairman R. Todd Hoffman spoke I don't know.

Sheila Jordan spoke you stated when you opened a meeting that you didn't see where there was an existing ramp there when you did the walk through. So when you say you can give permission at the last meeting you were discussing replacing an existing. What are the measurements for a other structure that can be allowed in there.

Chairman R. Todd Hoffman replied there is none.

Sheila Jordan asked what falls under other structure. Can I put a boat house down there if I want to?

Chairman R. Todd Hoffman replied no, if they were asking for a boat house we would say no.

Barry Chase spoke that DEP doesn't allow boat houses.

Shaun DeWolf asked how far is the ramp from your property line.

Mr. Whitten replied about 50 feet.

Shaun DeWolf asked CEO the setback in that area.

Lawrence Huntley, CEO replied that it is 25 feet on the side for a building.

Steve Barnum spoke that I want to point out something you brought up was Lilly pad. This is something I pointed out at the last meeting. The protocol for the seaplane operator is not traverse heavily vegetative area. To avoid transfers of invasive species and as you noted this particular site is located in an area of heavy vegetation. This aircraft cannot traverse that area without going through heavy vegetation.

The protocols to prevent this, is not to traverse through heavily vegetated areas, which is where the site is located.

*Chairman R. Todd Hoffman read into the record:*

***Ordinance – 5.2.13.f.1.2***

***f. Administration and Enforcement***

*1. No activity of land use may be conducted except in accordance with these provisions. Failure to conform with these provisions shall constitute a violation and shall be subject to the penalties set forth in Section 6.6 of the North Berwick Zoning Ordinance.*

That means if there are commercial activities going on then we will have to impose penalties.

Ina Brother spoke that you had enforced penalties for clearing land. They cleared land and it was; oh well.

Shaun DeWolf asked Mr. Whitten why he can't place this ramp on the Sanford side.

Mr. Whitten replied I have no other room; you have to have a space in-between each one of these.

**Condition:**

- 1. Close off the damaged area with yellow caution tape until November 30, 2010.**
- 2. The permitted structure must be removed from the water from November 30<sup>th</sup> to May 1<sup>st</sup> and stored on other permanent structure.**
- 3. No commercial use of the permitted structure allowed.**

Barry Chase moved to grant the Conditional Use permit with the conditions; 1. Close off the damaged area with yellow caution tape until November 30, 2010; 2. The permitted structure must be removed from the water from November 30<sup>th</sup> to May 1<sup>st</sup> and stored on other permanent structure; 3. No commercial use of the permitted structure allowed, Patrick Raftery seconded a motion. Vote, 3-2

Chairman R. Todd Hoffman spoke motion passes.

**3. Preview Next Agenda**

**4. Other Business:**

**5. Review Previous Minutes:**

Shaun DeWolf moved to approve May 27, 2010 Planning Board minutes, Julie Fernee seconded a motion. Vote, 3-0

Tabled: June 10, 2010

Shaun DeWolf moved to approve June 24, 2010 Planning Board minutes as corrected, Julie Fernee seconded a motion. Vote, 4-0



## 6. Adjournment:

Shaun DeWolf moved to adjourn the Planning Board Meeting of July 8, 2010 at 8:30 p.m., Julie Fernee seconded a motion. Vote, 5-0

Lawrence Huntley, CEO  
Planning Coordinator

Respectively Submitted  
Anita Lambert

Chairman R. Todd Hoffman

Barry Chase

Julie Fernee

Shaun DeWolf

Christopher Karcher

Patrick Raftery

Chairman R. Todd Hoffman  
Barry Chase  
Julie Fernee  
Shaun DeWolf  
Christopher Karcher  
Patrick Raftery  
CEO  
Town Manager  
Post Inside/Outside  
File