



# MADBURY PLANNING BOARD

13 Town Hall Road, Madbury, NH 03823

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## Approved

### OFFICIAL BUSINESS

**Minutes of:** September 21<sup>st</sup>, 2022

**Meeting Convened:** 7:04 pm

#### **Members in Attendance:**

Marcia Goodnow - Chair  
Douglas Hoff - Vice Chair  
Mark Avery-Ex Officio  
Michael Card - Secretary  
Thomas Burbank  
Casey Jordan (absent)  
Beverly Ketel (absent)

#### **Support Staff:**

Elizabeth Durfee - Contract Planner  
Daphne Chevalier - Recording Secretary

#### **Meeting Attendees:**

Andrew Losee - 16 Huckins Rd  
Daniel Gordon - 175 Packers Falls Rd, Durham  
Dan Moynahan - 68 Sargents Ln, Eliot Me  
Kevin Poulin, Berry Engineering Representative -  
53 Stillwater Circle, Rochester NH  
Tom Ballestero - 45 Evans Rd  
Kevin Baum - 127 Parrott Ave, Portsmouth  
Eric Fiegenbaum - Town of Madbury Administrator  
Janet Wall - Selectwoman for Town of Madbury

#### **1. Seating of Alternates**

Chair Goodnow states there is an alternate pending, but that person is not present this evening.

#### **2. Approval of Minutes**

**Motion** made by Member Hoff to accept the minutes as amended for September 7<sup>th</sup>, 2022.

**Seconded** by Member Burbank. **Motion passed unanimously.**

#### **3. Correspondence**

Chairwoman Goodnow received two correspondences to enter into the record. One message is from Tom Perley, stating he has reviewed the proposed site plan submitted by LandCare Associates and has no questions or concerns. The other message is a reforward email from James Hewitt with a reminder that the LandCare Associates site will require the submission of a NHDOT driveway permit application.

#### **4. Site Plan Public Hearing: LandCare Associates Inc., 282 and 284 Knox Marsh Road (Tax Map 9, Lots 3 and 4)**

Chair Goodnow reads the public notice for the site plan review and conditional use permits review for the LandCare Associates Inc. property.

Attorney Baum states that LandCare Associates Inc. has not made any changes to the plans that would affect acceptance.

Having already accepted the application once, Chair Goodnow calls for a motion to accept the application.

**Motion** made by Member Avery to accept the application.

**Seconded** by Member Burbank. **Motion passed unanimously.**

Chair Goodnow opens the public hearing at 7:25 pm.

Attorney Baum explains there was an errant filing which led to the confusion about the status of the application. LandCare Associates Inc.'s intention was to submit an updated set of plans not a new application. The board has received an updated set of plans. Baum states LandCare received Ms. Durfee's memo on Thursday and submitted a response to address the concerns stated in the memo.

Member Hoff states the Board has not had an opportunity to review the updated plans as they were received that day. He asks for a general overview of the changes from the 9/19/2022 plan through the 5 revisions and states the Board has yet to review the plans dated 8/28/2022. Attorney Baum will do a large overview by walking through the response letter and let Mr. Poulin chime in as needed. Mr. Baum says based on comments from the Board regarding the overlay and overlay buffers, the storage has been pulled out so it is no longer in the overlay buffers. Some of the older site features, mostly parking and driveways, remain intact. Mr. Baum states LandCare received relief from the zoning board for the remaining impact and pulled out the wetland crossing.

Mr. Poulin reviews where the storage, parking, and driveway areas are. The Aug 29<sup>th</sup> plan revision responded to Dr. Ballestero's review of the project. Dr. Ballestero's suggestions have all been addressed in the updated plans. A few storage bins have been moved out of the flood hazard zone, as indicated on the map.

Mr. Baum says Dr. Ballestero's follow up letter includes a comment about the comparison of the site as if it were undeveloped. AOT guidelines are for a 10 year look back. Mr. Baum states LandCare Associates Inc.'s intent is to meet all the recommendations of the followup report with the exception of the undeveloped land area, instead using the AOT guidelines.

Dr. Tom Ballestero states he reviewed the plans and highlights some of his findings. After the development of the stormwater system, there will be more penetration than before. He said it's not something to use to deny a project like this, but that it is something that should be considered moving forward. This is similar to his earlier comments from July, 2022. The other recommendations made were incorporated into the designs, and Dr. Ballestero feels the applicants met the major concerns.

Chair Goodnow asks for the definition of impoundment. Dr. Ballestro says the Board will need a definition so it can be regulated. Dr. Ballestro states the classic definition in case of infrastructure features something that would retain water, but size is not indicated. Dr. Ballestro said he could get more technical definitions for the Board. The Board accepts the offer for the technical definitions.

Chair Goodnow calls for questions from the Board, the applicants, and Ms. Durfee. Member Hoff is concerned about whether the Board has heard from the Conservation Commission and Water Board. Mr. Fiegenbaum states the Water Board has not addressed this yet. He calls for clarification of the definitions. Dr. Ballestro confirms stormwater is not considered an impoundment.

Ms. Durfee requests moving through the memo items before discussing how those were addressed by LandCare Associates Inc. to ensure that the Board has the opportunity to discuss the items before examining LandCare's responses.

Mr. Baum goes through each point of the response letter from Berry Surveying & Engineering to highlight Ms. Durfee's concerns and Berry's responses.

Concerns around the shed have been addressed; plans have been updated to include the shed and LandCare received sign off from the building inspector for the shed. Ms. Durfee has concerns about the lack of consistency with the terminology used to refer to the shed. According to the Zoning Board variance approval, the item is referred to as a shed, but on the plans, it's called a checkpoint station. Mr. Baum agrees it makes sense to use similar language.

Member Hoff asks about the reference to the 8/29 plans and if that date can be rewritten to 9/19 to reflect the most current plans for the project. Mr. Poulin clarifies that the references in the response letter to the memo refer to the half scale non-color set, not the color set.

Ms. Durfee asks about the changes to the page numbers, as they do not align with the previous set of plans, and wants to know what has been left out of the half scale set. Mr. Poulin says there has been no change to the plans; nothing has been added or removed from the project.

Regarding the response to the overlay districts concerns, Mr. Baum believes they've incorporated everything. Regarding the note questioning whether LandCare needs a separate variance under Article IX Section 5(A), Mr. Baum states LandCare believes what was requested meets the requirements. Alteration of surface configuration within wetland overlay is met in the variance request under Article IX Section 4. The applicants went to the Zoning Board, showed them the plans with a small portion within the 20' buffer. Mr. Baum understands in hindsight the applicants could have asked for additional relief, but he feels that going back to the Zoning Board would not be necessary. They have the same plans the Planning board has. Their approval was based on the application submitted. Mr. Baum's position is that the applicants have adequate relief based on the Zoning Board approval. Member Burbank asks for the total square

footage of the disturbance within the wet area. Mr. Poulin states Sheet 7 of color set shows 8980 square feet. Sheet 8 of the color set shows just the buffer and the setbacks.

Member Avery asks Attorney Baum if the broadness of the zoning variance doesn't matter because the only disturbances the applicant would ever do are what's shown in the plan. Mr. Baum confirms that is the applicant's intent.

The Board expresses concerns that the variance would not prohibit the applicant from making additional disturbances. Mr. Baum states NH law indicates it's an implied condition based on what the Board has presented. The applicant's understanding is that they are limited to what is on the plans. The applicants will include a link to the variance as a note on the site plans. The language of the variance will be included on the site plans to make clear the limitations of the variance.

Ms. Durfee questions why the applicant is applying for a variance for a permitted use. Mr. Baum replies the applicants received variance approval from the Zoning Board, but to alleviate the concerns of the Planning Board, will tie the variance to the plans. The applicants asked for relief within that 25' buffer, which is clear on the plans and the meeting minutes. Mr. Baum states if that was ever violated, it would be a violation of the site plan. The Zoning Board's approval cannot be changed, but Mr. Baum understands the Zoning Board's intent and can tie in language to the approval that shows the limitations of the plan.

Member Avery reads from the Zoning Board meeting notes for Article IX and states it does appear from the minutes it was discussed "as presented." Ms. Durfee's concern is that the section is not included in the application. Mr. Baum is amenable to the board seeking legal counsel on this issue, but he is comfortable moving forward.

In regards to the nuisance concerns around noise, Mr. Baum states the cut shop is on the western side of the property; the closest abutters are DOT and a metal recycling facility. He states that some noise is appropriate but will be limited to the cut shop, which is largely enclosed and pretty well buffered from surrounding properties. Member Avery states there will also be truck noise, but there isn't really much that can be done about it. Mr. Baum says the best way to address the truck noise is with the hours of operation and the commercially zoned property.

Mr. Baum says the driveway permit application has been submitted to the DOT. The applicant understands that will be a condition of approval.

Regarding the landscape retaining wall, Ms. Durfee asks how a retaining wall is considered decorative. Mr. Poulin says retaining walls over 4' are considered structural. Because this retaining wall proposed on the plans is not that large, it is considered decorative.

Regarding hazardous materials, Mr. Baum states there are no hazardous materials other than the 550 gal max refueling station shown on the site plan, which was shown to the fire chief. Ms. Durfee asks if there is an oil tank located on the adjacent property near the checkpoint station. If so, she suggests it be moved to lot 3. Mr. Baum says if containment is needed, they can address

it. Mr. Gordon said the oil tank is on the property. Mr. Baum said they will confirm if it is on the property or not.

At Ms. Durfee's suggestion, a table of proposed disturbances has been added to the most recent plans on sheet six of the color set. Mr. Poulin asks if Ms. Durfee would also like the table placed on the site plan as well as the color set. Ms. Durfee says that is a question for the board. The suggestion to add the table was so the Board would have an idea what the proposed changes to the overlay are. If the information is kept on file, it will be available if needed.

Regarding Ms. Durfee's recommendation that the Conservation Commission be provided sufficient time to review and comment, Mr. Baum states the overall proposal has been made in response to the previous comments made by the Conservation Commission. The applicant believes they've addressed concerns and do not feel it is necessary to meet with two additional boards to move forward. Chair Goodnow asks if there was any formal feedback from the Water Board members after the site walk. Mr. Baum says he's not aware of any specific comments after the site walk.

Mr. Baum says wayfaring signs have been added to the plans and bin storage categories for loam and salt have been called out, indicating where they will be stored and that they are to be covered; however, items that don't pose an environmental concern are not addressed specifically because, due to the nature of the business, those materials may change.

Mr. Baum would like to discuss the memo item to list previous conditions of approval on the plan. Any former conditions the Board feels should be carried over, the applicant would be happy to add; however, he doesn't want to carry over historic conditions that are no longer applicable. If the intent is to include conditions of approval going forward, the applicant will include them on the plans. Ms. Durfee wants it to be clear what is no longer applicable as part of the Board's discussion. Mr. Baum wants it to be clear that this approval supersedes any prior approvals so as not to confuse this plan with previous plans.

Chair Goodnow asks Ms. Durfee if there are any issues that have not been addressed or have been inadequately addressed. Ms. Durfee suggests the Board may want to revisit the CUP application and criteria; otherwise, she believes everything was addressed.

Chair Goodnow calls for public comment at 9:10 pm. No members of the public come forward to speak in favor or in opposition of the plan. Mr. Fiengenbaum comes forward to speak in general about the plan. Mr. Fiengenbaum believes there are a number of comments in Dr. Ballestero's document that need to be addressed. The applicant has said they would address all of the recommendations in the plan before this Board and the Zoning Board. Mr. Fiengenbaum advises getting a list of the recommendations to ensure none of the recommendations are missed. He states the shoreland ordinance discusses the district and why there are rules about what can and cannot happen in the district. He asks if it is appropriate to ask Dr. Ballestero to comment on the gravel wetland. Mr. Fiengenbaum also states the applicant said they were going to fill in the central area wetlands described as marginal and would like Dr. Ballestero to comment on that as well. He asks if the subsurface gravel is in the district or in the buffer. Mr. Poulin states they are

not within the 50' but between the 100' and 50' mark. Mr. Fiegenbaum says the minutes say it was in the buffer and, with the legislature asking for more specifics, he believes the plan should go before the Zoning Board again. Mr. Fiegenbaum recommends a 3rd party to oversee the construction to see it's built to specification, as the building inspector may not have the expertise needed to oversee this project.

Mr. Baum comments the applicant did seek relief to alter the configuration within the district. In their application, the applicant asked for relief for construction within the 75 ft building setback and wetland buffer and some existing parking. Mr. Baum doesn't see a list of recommendations as necessary. Since Dr. Ballestero is here tonight, if he thinks there is something missing from his report, the applicant would be happy to address it. The applicant is not proposing to fill the central area wetlands; that area will remain as is. The applicant has included notes on the site plan stating the ditch line remain free from obstructions to allow for passage.

Chair Goodnow asks Dr. Ballestero if he'd like to address any of the concerns. Dr. Ballestero says three of the four "nice to be addressed" comments from his Aug 29<sup>th</sup> response were addressed. He didn't opine anything about shoreland versus buffer, as he felt it was out of his domain.

Ms. Durfee says the issue the Zoning Board has decided on has been decided. The Planning Board can't change that. She suggests the Board come up with a definition of water impoundment as part of their to-do list for the future.

**Motion** made by Member Hoff to close public comment at 9:24 p.m.  
**Seconded** by Member Burbank. **Motion passed unanimously.**

Chair Goodnow asks the applicant for the priorities for the next meeting. Mr. Baum would like to get approval at the next meeting. The applicant believes all comments have been addressed and all that's left is to further connect the Zoning Board approval to the plans as well as a few other minor updates he's noted and will change. The applicant would like a vote on the conditional use permits, the waiver, and final approval. Mr. Baum requests the applicant receive any additional needs for the plans promptly so they may be addressed in time for the next meeting. Chair Goodnow asks the board members to send to her any additions they would like to see added

Member Avery asks if there is a spill response plan. He knows there is containment for the fuel tank, but wonders about the vehicles parked on the lot. He asks for the number of heavy equipment vehicles and a spill response plan in case of hydraulic spills. Ms. Durfee says the Allegro vehicles should be included as well. Mr. Gordon says Allegro is no longer on site. Mr. Gordon said there is a maximum of eight heavy equipment vehicles, and they have a spill response plan. Mr. Baum says the applicant will send a copy of the spill plan to the Board.

Due to another application on the agenda for the Oct. 5<sup>th</sup> meeting, Chair Goodnow offers the applicant the Oct 19<sup>th</sup> meeting.

**Motion** made by Member Hoff to continue this meeting at 7 p.m. on Oct. 19<sup>th</sup> at the Town Hall.

**Seconded** by Member Card. **Motion passed unanimously.**

Member Hoff asks if an extension is needed. Chair Goodnow asks the applicant to make a motion for extension. Mr. Baum requests an extension.

**Motion** made by Member Hoff to extend consideration of the application for 55 days.  
**Seconded** by Member Avery. **Motion passed unanimously.**

Chair Goodnow asks Mr. Gordon if he would like to speak. Mr. Gordon requests that anything else the Board needs for approval be presented to LandCare as soon as possible so they can come in and get approval at the next meeting. Mr. Gordon expresses this has been a financial hardship for the business. The applicant wants to get approval at the Oct 19<sup>th</sup> meeting. Mr. Baum says they want to come to that meeting giving the Board everything the Board needs.

Chair Goodnow says the Board is missing two members that the Board will need to hear from. She asks the board members to send to her any items to be considered by Monday, and she will send those to Mr. Baum.

Member Avery asks for signage to be placed to discourage encroachment. Mr. Poulin states there is a white chain link fence around the parking area.

Mr. Fiegenbaum asks if there are any additional items the Water Board and Conservation Commission need to review, as those boards will need any such information as soon as possible to resolve any issues prior to the approval. If there are no further action on conditional use permits, then the applicants should be all set. Mr. Baum doesn't see a reason for additional meetings, as it is further expense and time for the applicant.

Mr. Gordon asks if they will need to go before any additional boards. Member Hoff says he can't give a definitive answer about not asking for additional information until he does his due diligence by reading through the materials. They only just received the response letter hours ago and he needs time to review it thoroughly.

Mr. Baum asks the Board if, based on tonight, the applicant needs to go back before the Conservation Commission. Mr. Fiegenbaum reviews the minutes from the last Conservation Commission meeting and believes the issues that went before the Commission were met by the applicant.

Mr. Baum says that while he understands there are no absolute promises, he wants to confirm that there is no expectation the applicant needs to go before the Conservation Commission or Water Board this month. Mr. Fiegenbaum confirms this.

Mr. Gordon asks what is the length of time the applicant has to complete the project once it is approved. Member Avery says that is a conversation that needs to be held. Member Card says they usually ask the applicant when they will be done.

Chair Goodnow acknowledges the speed with which Mr. Baum addressed the Board's concerns.

The Board discussed concerns about not being able to have much discussion about the issues presented. Member Hoff has concerns that the Board didn't vote on Dr. Ballestero's report.

The Select Board could appeal the Zoning Board decision. Ms. Durfee notes the Zoning application and the public notice both cite LandCare and not the owners. The owners should be listed, not the business. She is also concerned the applicant sidestepped the issue of impoundment. The applicant applied assuming it wasn't permitted. There is no need to go to the Zoning Board for a permitted use. Member Hoff says the decision of whether or not it is an impoundment and permitted use should have originated with the Planning Board. There is concern that the scope of the notice of decision is very broad. Member Hoff reads the notice of decision and states this could be read as a blanket approval to go in and enter the terrain. Member Avery suggests talking with the Zoning Board about being more specific in the future. Ms. Durfee has spoken with the Zoning Board chair about this. Member Avery wonders if the Zoning Board would have looked at the issue differently if they had more information, but he doesn't want to second guess other Boards. It might be helpful for the Planning Board to give the Zoning Board information moving forward.

Ms. Durfee isn't sure if the application meets the zoning ordinances, which is why she suggests consulting an attorney on that issue. Member Avery mentions the wetland buffer is not explicitly listed. If that was not something specifically approved, the Board should not approve the application.

The Board should also ask the attorney about who signed the paperwork, the owner or the business.

#### **5. Other Old Business**

No other old business discussed.

#### **6. New Business**

Member Hoff would like to have a discussion regarding the policy about how long the Board needs to receive materials prior to meetings in order for them to be considered. There was also a discussion about how to ensure meetings do not run too late.

**Meeting adjourned:** 10:14 p.m.

Respectfully submitted by Daphne Chevalier.