

**Town of Warner – Planning Board  
Minutes of the Meeting and Public Hearing**

**Monday, April 3, 2006 7:00 PM  
Warner Town Hall, Lower Level**

**Members Present:** Barbara Annis, Andrew Serell, Derek Pershouse, Russ St.Pierre, Phil Reeder, Wayne Eigabroadt  
**Members Absent:** Mark Lennon  
**Alternates Present:** Brian Patsfield, Ed Mical  
**Alternates Absent:** None  
**Presiding:** Barbara Annis  
**Recording:** Sissy Brown

- I. Open Meeting at 7:00 PM
- II. Roll Call

Ms. Annis asked Mr. Patsfield to take Drew Serell’s place, and Mr. Mical to take Mark Lennon’s place. [Mr. Serell arrived shortly after the roll call.]

**III. Conceptual Consultation: Site Plan Review**

Property Owner: R.A.W. Investments, Ray Wentzell

Property Location: South side of NH Rt. 103 West, West Main Street, Warner, NH Map 35, Lots 4-1 & 4-2, C-1 Zoning

Purpose: Each lot to have a 10,080 sq.ft. building with multiple rental units for commercial use in accordance with Use Table 1 of the Zoning Ordinance. Anticipated uses fall under the “Retail and Services” category and include: Retail establishments, eating and drinking places, personal and consumer service, professional and business offices; and under “Accessory”, any accessory structures in connection with those uses. The lots will share an access driveway from NH Route 103 as approved by the New Hampshire Department of Transportation and will share driveways, loading area, parking, drainage and utility services through cross easements on the lots.

Ms. Annis stated that the applicant had only 30 minutes to present their case due to the very full agenda.

Mark Feenstra for RAW Investments.

Mr. Feenstra stated that after the last meeting’s discussion, he had a rendition made of the proposed buildings and the proposed driveway cut. He asked if anyone had any questions about the stakes that had been placed on property:

Ms. Annis: What is the grade stake that is on the Park and Ride side?

Mr. Feenstra: That is the center between Demoulas and North Road.

Ms. Annis: That’s not where your driveway is going to go in on the property?

Mr. Feenstra: It is. That stake is 668 feet from the two openings. That is the center of the driveway, as you asked for at the last meeting.

Ms. Annis: Is the line down the middle where each lot ends?

Mr. Feenstra: Yes, where the string is.

Ms. Annis: How far down into your property does the state right of way come into your property?

Mr. Feenstra: I believe that it is just over 50 feet.

Ms. Annis: How much impermeable soil now that the buildings are moved back? You can only have 70% covered by tar and buildings. How are you going to do that?

Mr. Feenstra: That’s my concern – but is the driveway where everyone wants it?

Mr. Reeder: It’s also what we do with the Park and Ride driveway.

Mr. Feenstra: I spoke with DOT and they said that they wouldn’t have a problem with us realigning the Park and Ride driveway. It’s not a big project on their side. It’s about 15 feet.

Ms. Annis: I'll go back to my question. How do you plan to increase the size on the same lot – you're increasing the size of the building and the parking, so how are you going to do it and not cover more than 70%?

Mr. Feenstra: I'll have to do the calculations on that. I wasn't really taking that into consideration at this time and I don't remember what we had when we started. I was more concerned with the location of the buildings and that the buildings fit.

Ms. Annis: I went down and flagged it, because you couldn't see it. I'm looking that the bigger building – it doesn't have much room behind there.

Mr. Feenstra: That's right. I'll have to fill in more and put more drainage swales at the back of the lot.

Mr. Pershouse and Mr. Mical had questions concerning the connection with the abutting Citgo property, and if there would be any connection with the other lot owned by RAW. Mr. Feenstra stated that there is a smaller building will be smaller than shown and two story – probably 80 x 100 or 90 x 90. It could be a colonial style with a porch, and turned a little bit. Susan Smith-Meyers is the designer.

Mr. Reeder: If you turned the building, I think it have better views to the store frontage. There could be 2 sides with store frontage and parking around it. This would break up the straight line look that everyone doesn't like.

Mr. Feenstra: I'd have to make sure that there is enough setback. There is a road on the back of the lots that connects the lots, but we need to stay away from the stream.

Ms. Annis: Mark Lennon can't be here tonight but he sent an email:

*I had a chance to walk the property this weekend. A couple of thoughts:*

1. *As you know, I like and really want the driveway to split the difference between the Market Basket driveway and North Road. I'm glad this is how they laid it out.*
2. *As laid out on the lots, the fronts of the two buildings still line up on the same line like*

*\_\_\_\_\_*  
*I would very much like to seem them offset, like*  
*\_\_\_\_\_*

*\_\_\_\_\_*  
*I would like to see the building closer to Citgo set further back from 103 to allow the traffic lane from Citgo to reach RAW driveway, and the building closer to town to be closer to Route 103.*

3. *As previously proposed by RAW, there was no landscaping in front of either building. I would like to have landscaping (grass, shrubs, etc.) in front of at least one of the buildings; that is, between the front of the building and the parking for the building. I like Russ's idea of some seating or something that encourages people to linger.*

Mr. Feenstra: If we could shift the parking away from this here, it wouldn't be an issue. We've talked about that, and we can talk to our designer about it.

4. *The site plan has to incorporate sidewalks.*
5. *RAW and Citgo: As I said, I think it is imperative that these properties be joined so folks can get from one to the other without having to get back onto 103. Wayne said the Selectmen would approach the Citgo owners. I would like to know what is our authority to approach the Citgo owners as the Planning Board. If we can approach them in addition to the Selectmen, I think that would be good, but I recall there's an issue with the Planning Board doing things like this because of all of our actins, including meetings with landowners, would have to be noticed and open to the public. Which would make such a meeting impossible. If we are unable to meet directly with the owners, I think it might be valuable to have a discussion and vote from the Planning Board encouraging the Selectmen to approach the owner, and a letter to the owner outlining the reasons we think the lots should be connected. In short, I think that connecting the lots is very important and we should do as much as we possibly can to make this happen.*

Mr. Eigabroadt said that he hadn't contacted the owners of the Citgo, but he will and will invite them to come to a meeting when Mark Feenstra is in attendance. Mr. Reeder said that it would definitely clean up the trash in the swale between the two properties. Mr. Serell said that the smaller building should be off-set and not facing directly at the street and that landscaping should be placed in front of the larger building to break up the appearance.

Mr. Eigabroadt: Since we have about 15 minutes left, do we want to discuss some of the parking?

Mr. Feenstra: I just want to know that if I go ahead with these drawings, that the Board is ok with the location of the driveway and that it is not going to be a problem. Do you need to vote on that or something – that the driveway as presented on this sketch – equidistant between the two roads -- is acceptable to the Board?

Ms. Annis: As long as it is directly across from the Park and Ride.

Mr. Reeder: This is a conceptual consultation, so we won't be voting on anything.

Ms. Annis: My question to Rich, which I didn't receive an answer to, is that if the driveways don't line up can you still put turning lanes in.

Mr. Feenstra: You can't have turning lanes unless the driveways line up.

Ms. Annis: We know that some members of the Board have a problem with parking in front of the buildings. I do not have a problem at this point because they are retail establishments. If they were office buildings, I might have a problem with it. Does anybody else have a comment? We all know how Russ feels.

Mr. Feenstra: The shrubbery in here will hide a lot of the parking. You're not going to see it when you drive by, like you do at the Park and Ride.

Ms. Annis: Does anybody else agree with me?

Mr. Reeder: I agree. I think that it is imperative for retail establishments to have parking in front of the buildings.

Mr. Feenstra: We need to keep the ends open for snow removal.

Mr. Mical and Mr. Serell also agreed with the parking.

Mr. Pershouse: I agree with the concept of parking in front of retail, but I don't want that aspect of the design to limit the position of the buildings.

Ms. Annis stated that Mr. Feenstra needs to be aware of the setbacks because buildings are now different.

There was a discussion about the possibility of having additional office space in the second story of the buildings. There was a question regarding fill in the back and how far back they could go with the parking area. Ms. Annis said that Provan and Lorber would have to be consulted to know the correct area that can be used and filled in. Mr. Feenstra said that he didn't have those drawings with him at the meeting

Mr. Eigabroadt said that the important thing is that they are moving forward, and Ms. Annis said that she liked the proposed plan. Mr. Feenstra thanked the Board.

#### **IV. Public Hearing: Site Plan Review**

Applicant: New Cingular Wireless PCS, LLC, 580 Main Street, Bolton, MA 01740

Agent: Jeff Roelofs, Anderson & Krieger LLP, 43 Thorndike St., Cambridge, MA 02141

Property location: Map 24, Lot 1, within Rollins State Park. Existing tower on the summit of Mount Kearsarge. Warner, NH 03278 OR-1 Zoning District

Property Owner: State of New Hampshire, Division of Parks and Recreation, P.O. Box 1856, Concord, NH 03301

Purpose: Co-locate wireless telecommunications equipment on and next to the Kearsarge tower in Warner, NH. Up to 12 panel antennas mounted in three sectors of 4 antennas each at an antenna centerline height of 155' above ground level with existing whip antennas relocated to sector mounts., 3 6' microwave dishes mounted in there separate sectors at an antenna centerline height of 40' AGL, tower mounted amplifiers for the antennas, 12' x 20' lease area with a wireless communications equipment shelter in place of a larger equipment shelter which will be removed, coaxial cables running from the antennas to the equipment shelter, standard electric and telephone utilities.

Mr. Roelofs, Jonathan McNeal of Cingular and Mr. Leary from the State of New Hampshire were in attendance. Photos were handed out showing the tower with the dishes as proposed and without them as it currently stands. It was stated by the applicant that there is very little visual difference between the two photos, and that at the height that they will be, it won't have any impact. The photos show the microwave dishes have been moved up a little higher on the tower than originally proposed to minimize the visual impact – at 58 feet, 86 feet and 90 feet.

Mr. Roelofs said that what has bogged them down since the previous hearing is the building on the mountain that they proposed to take down and replace. The State Historic Preservation office (SHIPO) wants Cingular to document the building architecturally before it comes down. There has been no final determination on the old building from SHIPO because the applicant needs to get a design to them for the replacement building. They want to replace the building with something that looks fairly similar – height, same general design including the porch. The building will be mostly utilized for Cingular's equipment. The State would maintain the porch and the small area behind it so that it would be available for shelter in case someone got caught up there or the maintenance crew. The differences would be ice bridges across the roof to prevent damage from the ice falling from the tower. There will be air conditioning in the building and will be located between the new shelter that Cingular would put in and the existing US Cellular building, to minimize the noise. They typically have the same noise as a residential A/C unit. Mr. Roelofs said that he prefers to get approval from the town and then work with state on the design of the shelter/building. He stated that they will need to have both approvals before anything can be done. Mr. Leary agrees with the presentation of information regarding the shelter and SHIPO. Once the Town approves the tower and they've received a stamp of approval from SHIPO, contracts will need to be drawn up and taken before the Governor and Council for their signature as a final step.

Ms. Annis: So you haven't gotten a determination on the historical nature of the building?

Mr. Roelofs: No, we haven't gotten the final written decision from SHIPO, but the informal word is that they've looked into this and the State has looked into it previously, and the message we're getting back is that based on what they know right now, they don't believe that this is a structure that is not fit to be preserved even if it should be preserved, and so that means that we're probably going to be required to hire an archeological photographer to document what is there before we take it down and replace it with something else.

Ms. Annis: Someone was meeting with Rebecca Courser of our local Historical Society. Was that you? They were going to be getting pictures, etc. a couple of weeks ago.

Mr. Pershouse: Why don't we give them Rebecca's number and they can coordinate it.

Mr. Roelofs: The State has probably been in touch with the local Historical Society.

Mr. Serell: Has the State looked into the co-location of the antennas in respect to the fire tower?

Mr. Leary: Yes. The new antennas would not interfere with the fire tower at this time, but they may need to be slid a foot or two at a later date. It would be very close to what it proposed; it wouldn't be noticed in a photograph.

Additional information presented:

- Approximately a 6 week construction schedule
- There will be a few days of helicoptering of materials to the tower location and the removal of the existing building materials.
- Area will be taped off with orange tape during those times so that no one gets injured.
- Ideally, construction would be done in the summer months, but could be done in the fall or spring.
- Staging area for the helicopter is the parking lot on the mountain; it has been used in the past for other reasons and it is sufficient.

Ms. Annis closed the Board meeting and opened the Public Hearing.

Joanne Hinnendael: Is the mountain closed for visitors for the entire time, 6 weeks, of construction?

Mr. Roelofs: The only time the access to the top would be roped off would be when the helicopter is moving equipment to the top. The area around the base of the tower would be roped off when the workers were there. Mr. Leary said that it is minimized with the knowledge that it does affect the general public.

Ms. Hinnendael: Who benefits financially from this? Does the town get tax money? Is it the State as well as Cingular? Who pays the taxes? Is it tax exempt?

Mr. Leary: RSA 72 says that the tower is owned by the state and is tax exempt. But equipment owned by private entities is taxed by the town, county and state. The State receives money from Cingular by having the arrays on the tower. The fees to the State help to cover the costs of the administration of the site itself.

Mr. Richard White: Could you explain the reason for the microwave dishes?

Mr. Roelofs: The dishes are the replacement for having a land telephone line running up to this tower.

Mr. White: Why three?

Mr. McNeal: They can be directed to other sites – King Ridge, Davisville and Waldron Hill, potentially -- to get telephone communication there. If the telephones are down at one site, they can send a microwave to this site, which can be relayed to another site.

Mr. White: They're basically back-up then?

Mr. McNeal: Potentially, yes.

Mr. Roelofs: Aren't there some antennas that are coming down from the fire tower?

Mr. Leary: Yes. I finally got the ok from the state police – since 1996 when they implemented a state-wide radio system – they left three microwave dishes on the fire tower. Three of them should be removed this summer or fall. It is a long process, but we're working to get the fire tower more aesthetically pleasing.

Bob Humphrey: You said something about a tower on Waldron Hill? Is there a proposal for a tower on Waldron Hill?

Mr. Roelofs: There is. There is an application pending before the Zoning Board right now. I happen to live on Waldron Hill. Where is it going?

Ms. Annis: By Sky Island.

Mr. Roelofs: The application is in the Zoning Board office and I encourage you to take a look at it. We did a balloon test this last Saturday, April 1.

Ms. Annis said that discussion of the Waldron Hill tower was not for the Planning Board to discuss, but stated that the next meeting of the ZBA is on Wednesday, April 12<sup>th</sup>.

George Pelletieri, Chairman of Citizens for Smart Growth: I would like to submit a letter to the Board. We're addressing two towers, and the letter is also addressed to the ZBA and the Selectmen. I won't read the whole letter, but I'll address our concerns. We feel that the technical issues of these towers – we're discussing one tonight – the technical issues of these towers are beyond the capacity of the Board to understand and the RSA 674:G and the Site Plan Review regulations both allow for the cost of independent analysis or assistance to the Board with the cost to be borne by the applicant. We would like for the Board to consider that. Citizens for Smart Growth are not opposed to towers in the town, but think that the technical input is necessary. In addition, we would like to voice two other concerns: One is the possibility of a land line being brought to the tower via the Wilmot side, which already has a variety of utility lines servicing some of the mountain. If that was possible we might be able to eliminate the dishes. We also have a concern regarding the need for a Master Plan for the Town of Warner and surrounding counties with an analysis for the need of the number of towers being brought before the Board, possibly done by Central New Hampshire Regional Planning. This is important for understanding the need for towers so that Warner doesn't end up looking like a pin cushion. My last concern is not expressed in this letter, but it has to do with procedure. My understanding is that State RSA's do not allow for an application cannot be accepted as substantially complete with the kind of additional information is still being brought forth by this applicant. I believe that this information should be available to the public at least 15 days prior to the public hearing. This information being brought forth by this applicant needs to be reviewed by the public. If it has already been accepted you might want to check with the Town attorney as to whether that is legal, but at the very least, I would hope that as information continues to be brought forth you allow the public to speak.

Mr. Roelofs: I'd like to address that now. With respect to an independent review, that is commonly done with applications for new towers. Co-location facilities – particularly when you have a tall tower with lots of antennas on it and the local ordinance encourages the use of that tower as a way to serve coverage needs, I think that is not something that should delay this proceeding. With respect to the land line issue, we are putting a very incremental level of additional antennas on a tower that has a lot of antennas on it. I don't think it would be reasonable to require us to run a land line up to this tower for a co-location facility. If the State is inclined to do that, or if there is a way to compel the state to do that separately, that's fine, but I don't think it is reasonable to impose that kind of additional cost upon someone that is just looking to co-locate on an existing tower. As for the Master Plan, I don't have any comments on that. With respect to whether the application is complete, that was a determination that was properly made at the last hearing. The public had a chance to review all of that information. What we're proposing has not significantly changed since that last hearing. We've provided additional details and information in response to the questions, so I

think that your previous determination was proper two weeks ago and continues to be today, and we're in a position to move forward.

Chris Connors: The last time you were here you said that the proposals for Waldron Hill and Mt. Kearsarge weren't connected to one another and were in fact co-dependent, and now you've said that one of these microwaves would be placed toward the Waldron Hill tower. Would the dish mentioned for Waldron Hill be eliminated if that tower is not approved?

Mr. McNeal: There's also a tower on Eaton Grange Road that I had forgotten about. We also have a facility on that one, and it is a couple of degrees – I want to say about 2 miles – closer than the Waldron Hill site. So we would utilize that site.

Victor Kumin: The questions were raised the last time you came before the Planning Board. There are other approved sites in town – one is on Parade Ground Cemetery Road. What happens if the Waldron Hill site is not approved?

Mr. Roelofs: If the Waldron Hill site is not approved, there would still be a significant gap in our coverage for the area that we're trying to serve with that site.

Mr. Kumin: The question is whether you would still go forward with the Kearsarge Mt. site.

Mr. Roelofs: Yes, we would. They serve different coverage areas. We would go forward with each one independent of the other.

Mr. Kumin: The other half of the question is, there is an 80 foot tower already approved but not built. Why can't that be used even if it were heightened? That was talked about at the last meeting, but it wasn't clear to everybody.

Mr. Roelofs: It doesn't exist, and the company that has the rights to build it won't build it. We aren't the holder of the rights to build that tower.

Mr. Kumin: I understand that. But the owner of the land has indicated that he has the legal right to cancel the lease with Sprint and substitute another company by transferring the lease if certain legal arrangements are made.

Mr. Roelofs: The owner of the property has told you that?

Mr. Kumin: That is my understanding.

Mr. Roelofs: Ok. That isn't our understanding. In fact, our understanding is that that land owner is actually getting rent even though the tower isn't built...

Mr. Kumin: That's a whole other matter.

Ms. Annis: Yes. We're getting way off the subject. Thank you.

Ms. Hinnendael: If this application is approved, I would like to see the Board put some restriction on when the tower could be built because we have a lot of activities and wouldn't want them interrupted.

Mr. Pelletieri: Just to be clear, Warner Citizens for Smart Growth are not opposed to the concept of having additional service on Kearsarge Mt. or having other towers in town if needed. What we would like is for technical assistance in evaluating the need and additional information being brought forward. The attorney has stated that there weren't any substantive changes, but I raised the question last time about what the nature of the equipment was going to be and whether there would be any noise involved and we're hearing tonight for the first time that there are going to be air conditioners.

Mr. Eigabroadt: He mentioned air conditioning the last time, too.

Mr. Pelletieri: The question raised was whether they were going to be housed inside or outside, and if outside whether there was going to be fencing...

Mr. Eigabroadt: So they were mentioned.

Mr. Pelletieri: We would just like some technical assistance in evaluating that information.

Hearing no further comments, Ms. Annis closed the Public Hearing and reopened the Board meeting.

Mr. Eigabroadt: I've been thinking about what Mr. Pelletieri said with respect to the technical issues. All of that information has been supplied to the Board – all of the technical information, the effective radiated power, all of the federal limits that are put on it and where they fall in the federal limits. There is a huge difference in what they're actually putting out and the federal limits; even if we did have somebody else look at it I think that the changes of it being that far off are slim to none. But certainly if the Board felt strongly enough about it, maybe we could take the technical information that has been provided and have a technical person review it and see if it is in line with the norm that is out there rather than redo all of it. That's an extremely expensive process, and I would hardly think that these people would be willing to invest the money into these sites if a needs assessment hadn't already been done. Why else

would they spend the money to put the towers here if they weren't needed? I think the needs assessment is a given, but the technical aspect of it I'm not sure of.

Ms. Annis: Phil, you and Derek know more on this line than most of us.

Mr. Reeder: Technically, the applicant is licensed by the FCC, and to be licensed by the FCC you have to follow strict guidelines that have been tried and tested for the last 20 years.

Mr. Pershouse: I agree with Phil. I also don't see any real need for the tower we're discussing, which is the Kearsarge tower. There are no people living there that would have any long term exposure. My real concern is for the welfare of the inhabitants and I don't have a concern with this site. I have a different view of the other site on Waldron Hill, which I will express at the appropriate time.

Mr. Patsfield: I have a background in electronics and I don't see any issues with this site.

Mr. Serell stated that he would like to see a restriction on the construction for the entire fall foliage season and not have it torn apart for the period of September 20<sup>th</sup> to October 20<sup>th</sup>. He would like to see that be a condition of approval.

Mr. Pershouse asked if the applicant was suggesting late fall when there wasn't much going on on the mountain.

Mr. Roelofs: We don't have any problem limiting the construction during the peak season, but as we get further into the fall it gets windier and it's a more dangerous activity. We'd like to keep it more in the summer months if we can.

Ms. Annis: Columbus Day is a big weekend in Warner. That's out.

Mr. Roelofs: That's fine. And the level of activity is much lower when the helicopters aren't there, and that is only a few days.

Mr. Pershouse: Can that be kept to Monday through Friday?

Mr. McNeal: We're flexible. At the expense of antagonizing the construction supervisor, it could be more than six weeks but spread out as a day here, 3 days there, during the summer or around whatever activities that you have.

Mr. Pershouse: Could we work out some kind of casual construction schedule where we can let them know if an activity is going on in town?

Mr. McNeal: Yes.

Mr. St.Pierre: Our Wireless Telecommunications ordinance encourages applicants to co-locate on existing facilities, and this facility is an existing facility so I can't fault them for that. But what I do have a concern with is that the plan as presented could essentially destroy a potentially historic resource of the town and even though it is probably beyond our control, the final determination hasn't been made and a vote by the Board could be construed by the SHIPO as the Board not caring about the structure. There are a lot of people in town who do care a lot about the structure. I would like the vote held off until a decision has been made by SHIPO. They'll look at the building and make their determination.

Mr. Eigabroadt: Is there any reason why we can't make an approval a conditional approval?

Mr. St.Pierre: But why? The process is going to go that way anyway and they're waiting for us. They'll look at the resource and make their determination.

Mr. Eigabroadt: I don't see the difference in making it a conditional approval or waiting for the state to make their determination.

Mr. Serell: I guess if we gave it a conditional approval, they would have to modify their plan to meet the condition and then they would have to come back to us because it is a new plan.

Mr. Serell **made a motion to approve the co-location of Cingular on the cellular tower on Mt. Kearsarge with the conditions that:**

- 1. The plan receives approval from State Division of Historical Resources.**
- 2. Construction does not occur during the period of September 20<sup>th</sup> through October 20<sup>th</sup>, 2006 or any other holiday periods.**
- 3. The applicants must consult with the town for appropriate construction periods.**

**Mr. Eigabroadt seconded the motion.**

**Ms. Annis called for a vote: Mr. St.Pierre: No; Mr. Serell: Yes; Mr. Mical: Yes; Mr. Eigabroadt: Yes; Mr. Reeder: Yes; Mr. Pershouse: Yes.**

V. **Conceptual Consultation: Commercial Subdivision**

Property Owner: Alan Wagner, Jr. and Lee Ann Wagner, 33 Newmarket Road, Warner, NH 03278

Agent: Stefan Toth, Granite State Surveying, Inc., 1 Wire Road, Merrimack, NH

Property Location: Intersection of Route 103 and I-89 Southbound off-ramp, Map 14, Lot 10, C-1 zoning district

Mr. Toth and Allan Brown, the Public Works Director for Warner, were at the meeting and discussed the plan.

Mr. Toth said that they were back for a second conceptual consultation for the commercial subdivision and had asked the Board at the last meeting for some feedback and comments. He went over the following while showing the Board a colored plan of the proposed project:

- The blue on plan is entire tract
- Shifted the road away from the lots to allow for more buildable areas
- Revising the town's standard cul-de-sac because we want to be able to have a tractor-trailer go around it and also to reduce the diameter of the cul-de-sac and would reduce the cuts involved in the road construction
- Went over the revised cross section with Alan Brown, Public Works Director
- Slope itself is set up in a very conservative way
- If you have a 40 foot rise or cut, you have 20 feet of vertical distance
- If you look up at the site now, it is about 50 feet to the top of the embankment.
- Buffers of mature tree growth will be left in place
- If the town's cul-de-sac had been used, the tractor-trailer would not have been able to stay on the pavement. Used the template for 35 miles per hour.
- Allan felt comfortable with the changes to the town's cul-de-sac, the 15 foot cleared area and the ledge cut
- 10% drainage gets the snow melt into the ditch faster

Mr. St.Pierre: This is the first road proposed since I've been on the road. What is the process and who approves a road?

Mr. Toth: The Planning Board sets the bond and accepts the plan and the Selectman accepts the road when it's complete.

Mr. Brown:

- Don't want ledge hanging out over the road because if it should fall we'd have to clean it up
- Slope not in the town's right of way
- This road exceeds the length of a cul-de-sac allowed in our regulations. I think we only allow a 600 foot cul-de-sac and this is 1300 feet. But it has been done in Brook Meadow. That is up to the Board.
- Covered the cul-de-sac in great detail
- Drainage plan will be shown to me at a later date – Mr. Toth said that the state told him that as long as the state's drainage can handle the drainage on the plan, they don't have a problem with it.
- Discussed the ability to have drainage into state ditches

Mr. Toth stated that additional engineering will be done before the next meeting.

- Average slope is 10%. Begins at 10%, then goes to 8% or less.
- 10% is 10 feet in rise over 100 feet. A handicapped ramp is 8%.
- Mr. Brown said that there are several roads in town that exceed 10%
- Mr. Brown said that his biggest concern was the ledge. But it is tapered back where it won't land in the areas of the road.
- Md. Annis had a concern about the ledge coming down as it did on other roads in town after the roads were built and accepted by the town.

Mr. Eigabroadt: Where the proposed roadway is, at the entrance, have you done any bore testing down to see if you are sitting on solid ledge, or if you have 5 or 10 feet of soil?

Mr.Toth: We had Allan Wagner and one of our licensed septic designers out there. We went probably 14 or 16 test pits looking to see if they would pass state requirements for septic and the other was to probe along the proposed roadway. We were pleasantly surprised to see that in many places, it was 6 to 8 feet before we started hitting any rock. I don't see a need to do borings.

Mr. Eigabroadt: So you're comfortable that you've got the depth to install your storm drain systems?



Mr. Toth: Storm drain systems actually are independent of that. They're actually collecting the water from the sky and the roadway. When we get to this type of cut, you're not taking care of any subsurface drainage. You just blast through to the depth you need and build catch basins.

Mr. Eigabroadt: That's what I mean. You're comfortable that this will suffice?

Mr. Toth: Yes.

- Plan has been modified since the last meeting
- Now there are wider lots with more area – 4 lots instead of 6 lots.
- There was discussion about the ability to connect to another road on an abutter's property in the future; this was designed in for such a possibility.
- Met with the Rich Radwanski re: what location they could have for a curb cut. The applicant has a letter from the State of NH saying that by right they have an access
- Because it is a commercial subdivision, whatever businesses are in the subdivision would have to go to the State and get their permit based on use.
- There is plenty of right of way on the side for turning lanes.
- Plan is subject to the town's corridor study

Mr. Mical asked about the PSNH easement. Mr. Toth said that they will meet after the Board's decision and once the final plan is completed and approved, PSNH will determine where their poles will be located.

Mr. St.Pierre asked about icing on the road and Mr. Brown said that they had discussed that and that whenever you cut through stone like this there will be drafts through the stone walls. He said that he didn't know what could be done about that. That was one reason why such wide ditches were made there. Mr. Toth said that the plan was designed to take advantage of the sunlight also.

Mr. Toth pointed out the buildable area on the map.

Mr. St.Pierre: I assume that you're planning to build the road to town standards and then have it taken over by the town. I don't know how the Selectmen feel about it, but I guess I should caution you that it is longer than our standards, it is at the extreme slope in our standards, that it is a dead end road that serves only 4 lots – so I don't know how anxious the town would be to take this over.

Mr. Toth: But it will provide tax revenue as commercial property.

Mr. Eigabroadt: The Selectmen haven't discussed it. But everything that has been mentioned on both sides of the issue will be looked at.

Mr.Toth: I'll meet with the Selectmen if that's what you're suggesting.

Ms. Annis asked about the legend and asked that everything shown on the plan is in the legend. Mr. Toth said that he will address that as plans go forward. Ms. Annis went over the process for bonding, an escrow account, a deposit and getting an estimate from CNHRPC on what the deposit should be. The money is in the hands of the Town Treasurer.

Mr. Brown: You're no looking to build this within the next 6 months, are you?

Mr. Wagner said that he would like to get the plan approved by this Board because time is money.

## **VI. Public Hearing: Minor Subdivision**

Property Owner: Gerald and Gretchen E. Leone, P.O. Box 607, Cataumet, MA 02534

Property location: Pumpkin Hill Rd. and Old Pumpkin Hill Rd., consisting of 13.13 acres, more or less.

Map 15, Lot 15 Zoning District: R-3

Purpose: Subdivide a 3-plus acre lot from a 13.13 +/- acre lot with frontage on Old Pumpkin Hill Rd. Proposed driveway access is from Old Pumpkin Hill Rd. Existing 13-plus acre lot has existing house, barn, well, septic system. Proposed 3.65 acre lot is for construction of a single-family residence with septic, well, driveway and a retention basin to retain additional storm runoff on-site.

Brian Patsfield is voting in place of Derek Pershouse, who recused himself because he is an abutter.

Ms Annis said that this is a little bit different than most subdivision because it is a subdivision within a 5 year period, and we can treat this in one of two ways. An individual can ask for a waiver to treat the subdivision as a minor subdivision or they can go ahead and have it treated as a major subdivision. A waiver is only needed to treat it as a minor subdivision. Mr. Leone has requested a waiver and has asked to have it treated as a minor subdivision. We've only granted one other one within the 5 year period. In talking to Town counsel, we could have had a public hearing on just the waiver and then proceeded with the subdivision depending on the outcome of the waiver. However, we did not get a response back from Town counsel in time to put an ad in the paper for a public hearing on just the waiver. So the Town counsel has told us the way we should proceed tonight is to accept the plan if it is complete, have a public hearing, and in the public hearing we will address both the subdivision and the waiver. Then the Board will have to vote on granting the waiver and then the Board will have to vote to accept or deny the subdivision. So we will start from there. You'll have the floor to make comments, and then the Board will go through the checklist to make sure everything is here and we will proceed from there.

My name is Dave with Granite State Surveying. With me here tonight are Gerald and Gretchen Leone, as well as Stefan Toth of Granite State Surveying.

- Note #12 on the plan is the subdivision approval from the State
- There is a waiver request that will be presented tonight to treat the subdivision as a minor subdivision.
- In 2004 the Stanleys' owned 16 acres of land and subdivided the land, taking one 3+ acre lot
- We also ask for waivers for the large lot only for; (1) significant natural features, perennial streams and wetlands, and (2) location of water courses, ponds, rock ledges, tree lines, etc.
- We'll be asking for several waivers, which are spelled out in the application
- The Leones are the new owners and that is the extenuating circumstance to approve the waiver
- Dave went over the application and the drainage situation as mentioned by several abutters at a previous meeting
- Excess water generated by the roof and driveway, etc. will be taken care of by a roof drain into a subsurface trench system
- There is also a catch basin being proposed

The Board discussed how to proceed with the application – to accept the application as complete and then open it up to the public on whether or not to grant a waiver for a subdivision.

Mr. Patsfield: How can we vote on the completeness of the application before granting a waiver because minor and major subdivision requirements are different?

Mr. Eigabroadt: If we decide on the completeness of a minor subdivision application and then we don't grant them a waiver, don't they have to come back with a major subdivision application?

Mr. Serell: Brian raises a good point. I think technically we can vote on whether it is complete as a minor subdivision application, which doesn't bind us unless we accept the waiver request.

Mr. Patsfield: But you could do it the other way – you could vote first on the waiver to see if you want to accept it as a minor subdivision, and then you look at the application to see if it is complete.

Mr. Serell: I think the problem in doing it that way – technically, we don't get public input until we've accepted it and we want to hear from the public on the waiver request.

The Board continued to discuss how to proceed.

Mr. Eigabroadt: In the applicants' cover letter, it does say that "we hereby respectfully request a waiver of Section 4B Resubdivision and allow the Leones to apply under the Minor Subdivision procedure." Does that have any bearing on which way we approach this?

Mr. Serell: I don't think it matters.

Ms. Annis asked the Board to divide into two groups and go over the application check list to see if it is complete.

Mr. Pelletieri: Point of order, Madame Chairman?

Ms. Annis: Yes.

Mr. Pelletieri: Were all of the materials with the application with the Planning Board at least 15 days?

Secretary: They were turned in by the deadline and the plan has been posted upstairs and the application has been in my office.

Mr. Pelletieri: Everything has been there?

Secretary: With the exception of the letters received from abutters, yes. It is a very large file.

Mr. Pelletieri: Thank you.

Mr. Serell: Going back to the basic point of can we determine whether the application is complete until we determine whether we can grant a waiver – maybe we can't. Maybe we as a Board have to vote on the waiver request before we can make that determination.

Ms. Annis: That is the problem because some of the abutters have requested to address the waiver, and Don is aware of this.

Mr. Serell: Did Don say we may or we could?

Ms. Annis: Don said we can't have it – we can't address the waiver because we didn't post a public hearing on the waiver.

Mr. Serell: But he also said we could allow it. Normally a public hearing is not required on a waiver request.

Ms Annis read from a memo from Town Counsel regarding the normal procedure, stating that determining an application's completeness is not required to be open to a public hearing, but that the determination of granting a waiver is usually done after the application has been accepted as complete and is therefore open to public discussion. An abutter that wants to be heard on the waiver process would typically be heard before the Board determines to grant the waiver and proceed with the rest of the application.

Mr. Serell: But I don't think we can in this situation because we can't determine whether it's complete until we've acted on the waiver application. If it is a major subdivision, the application is not complete.

Ms. Annis: I'm just going by our legal counsel that we pay big bucks for.

Mr. Serell: Yes, but we didn't ask him this question.

The Secretary said that the notice was posted for the application, but that Town counsel said that a specific notice for the waiver had to be noticed. Mr. Serell said that Don is saying that the Board can take public comment on the waiver before determining whether the application is complete. Mr. Eigabroadt said that he agreed. Mr. Serell said that he didn't think that there was a public hearing issue because we could take public comment period. He said that he thought that it should be opened up to the public for the waiver issue and then the Board should vote on the waiver issue.

Ms. Annis closed the Board meeting and opened a public hearing specifically on the waiver.

Richard White: My wife and I are the owners of the abutting lot, Lot 15-15-2. The way I see this in the regulations, after studying them, is that the resubdivision article provides an alternative; namely, the major subdivision. I think issuing a waiver to the 5 year period sets a dangerous precedent for the long term. It shortens the period between establishing one subdivision and then a resubdivision 3 years later. If that happens on this land, which is a special piece of land – it is high, it is open fields – it more properly should be reviewed more thoroughly under the provision of a major subdivision.

David Karrick: I have brought in two letters this evening; one from myself and one from the Heatons, and I would like them read into the record. And I'm also wondering -- if one is requesting a waiver of this sort, does one also have to show in the application for a waiver why not granting this waiver would cause undue hardship to the applicant? And has the applicant done this?

Ms. Annis: No, the applicant has not, and I don't know that in the waiver portion of a resubdivision it has to be in writing. There are parts that have to be in writing, but I don't believe this part does.

Mr. Karrick: What type of thing would an undue hardship be?

Ms. Annis: I'm not going to guess on that one.

Derek Pershouse, Old Pumpkin Hill Road: On the subject of a waiver, can I read Section IX – Waiver of Subdivision Regulations?

Ms Annis: Yes.

Mr. Pershouse: *Section IX: Waiver of Subdivision Regulations*

*The proposed subdivision shall conform to the Zoning Ordinance of the town of Warner. Where strict conformity to these Subdivision Regulations would cause undue hardship or injustice to the owner of the land, a subdivision plan substantially in conformance with these regulations may be approved by the Board, provided that the spirit of these regulations and public convenience and welfare will not be adversely affected. All requests for waiver of any part of the regulations shall be in writing, stating the undue hardship or injustice strict application of these Regulations would impose on the Applicant.*

Ms. Annis stated that she hadn't read it correctly and that she was incorrect in her earlier statement. She agreed that the waiver should be in writing.

Jim Zablocki, Pumpkin Hill Road: Allowing the waiver allows you to start flipping property on an annual basis. That is the concern that I have with this process. You could transfer property from one spouse to another, back and forth, to allow for this type of subdivision. I assume that there is a reason why the town put this in place in the first place.

John Heaton: I completely agree with what this gentleman just said. It makes no sense at all to allow a waiver on this ruling. The Master Plan for Warner is set up to prevent this sort of thing. It is just wrong to ignore it.

Mr. Heaton asked to have his letter read into the record. Mr. Eigabroadt said that all of the letters would be in the minutes.

Steve Hall: I fail to see where the hardship is here. I feel that we should go along with a major subdivision.

George Pelletieri: I hate to sound like a broken record, but my understanding that in order for any appeal or any court case to advance, only what is presented on the record is able to be considered during those cases. And so it is critically important that any information be part of the record. If a letter is not read into the record, it should be noted specifically who it is from, the date – something so that it is significantly identified. That's point number one. Point number two is that I don't believe -- speaking on the public hearing on the waiver -- that you can have a public hearing on the waiver. As I think the Town attorney, it is supposed to be part of the application and I understand that there is some confusion out there. My understanding of the RSA is that the Board cannot accept an application as complete if they have not had all of the materials for at least the notification period. That's to give the Board sufficient time, and the public sufficient time, to understand the application and be able to raise their concerns. If any information comes forward in that intervening time, a public hearing or public notification has to take place in order for the public to address whatever the application is. So I'm concerned here – I can't quote the RSA – but I want to make sure that it gets into the record that there is some discrepancy here in what the Board is able to hold a public hearing on and what you can accept as a completed application.

Mr. Eigabroadt: George, what information are you referring to that has come in in the interim time?

Mr. Pelletieri: The question of the waiver.

Secretary: That is in the application.

Mr. Eigabroadt: It is in the application. It is in the cover letter of the application that was submitted. Everything that Sissy stated when you ask her the first time was in by the due date with the exception of some of the abutter stuff. The abutter letters can come in at any point because if not, then you'd have to stop the process and keep holding it up so you could get new notices out saying you had new abutter information.

Mr. Pelletieri: That's fine. I thought that I understood that the request for the variance was not a part of the application.

Ms. Annis: No, it's right here.

Member of the audience: Didn't Mr. Pershouse just read the fact that there has to be a filing – a letter from Mr. Leone expressing his hardships? And that that would be part of the application process? And if that's not in with that filing, then you shouldn't even be talking about it because the application is incomplete.

Mr. Eigabroadt: We're not talking about the application.

Audience member: You're talking about the waiver. The waiver must be accompanied by a letter stating what the hardship is to grant the waiver.

Mr. Eigabroadt: That's what we're doing right now.

Audience member: But Mr. Leone's application for the waiver must be adjoined with that letter of hardship, as stated by Mr. Pershouse. And I believe that goes back to Mr. Pelletier's statement that the public must be made aware of this at least 15 days ahead of time so that there can be public discussion about it.

Mr. Pelletieri: The public can't raise appropriate questions if they don't know what the application consists of. And a letter has to be part of the application.

Ms. Annis: It is.

Mr. Serell suggested that the public hearing be brought to a close and that the Board discuss the matter among themselves. Ms. Annis asked if anyone else wanted to speak for the first time.

Rick Davies: Just being a little bit redundant, but every time there is a subdivision like this if there was a waiver asked for, then every time you approve the subdivision, there would be a possibility of a new owner. You're subdividing pieces of land and there's a new owner each time and it doesn't make sense to have this waiver on these grounds.

Mr. Pershouse: Back to the substance of the waiver request, you held up a letter saying, "Here's a request for a waiver." But again, in that application letter it does not state in writing what the hardship is and the reason for the waiver, and as others have pointed out this evening, in order for the process to be valid for all of us that application has to be made public 15 days prior to the hearing. That's the technical number of days, but it can't be discussed meaningfully if the public doesn't know what the hardship is or the reasons for requesting the waiver.

Mr. Eigabroadt: With all due respect, all I'm trying to point out to you is, not like an application, a waiver doesn't have a step one where we determine the completeness of it and then move on to accept it or reject it. What we're doing right now is exactly what you are talking about, but you're trying to jump one step ahead of the Board. If it ever comes back to us and we get our chance to speak, I personally was going to bring up some of the things that you're talking about right now. And I have other comments in the wording that lends itself to what you're talking about.

Mr. White: It seems to me that the application is the first step, and then you proceed from there. If you accept it it is one thing, then in my book per the regulations you have to reject it. Thank you.

Mr. Leone: We're not looking for any special consideration from the Planning Board. I initially called Barbara Annis, the Chairman, and she said she didn't see any problem in subdividing this parcel and having this lot on Old Pumpkin Hill Road. Shortly after that, she checked with other members of the Planning Board and she said that there might be more involved than just an acceptance, which was fine. Then we waited for legal opinion from your attorney, which didn't come for a very long time if it ever came. Finally since we were on hold for a long period of time, I talked with Granite Surveying and engineering. They suggested an attorney and I contacted an attorney in Concord who called your attorney to see if he could at least get an opinion ruling. That's the process we've been going through. Nobody ever asked me for a hardship factor. I'll be happy to share that with you tonight – I'll even put it in writing. It's not something that we didn't want to give you a hardship factor or a hardship letter. We were never asked to do that.

Ms. Annis: That's correct.

Mr. Leone: Is there anything else, or do you want to hear any other aspects of this?

Mr. Eigabroadt: I think we should get the discussion back to the Board.

Dave: I think somebody said earlier that the reason for this subdivision was to keep from flipping lots by the same owner. This obviously is not that situation. He didn't own the land 2 years ago; the Stanleys did. So obviously he is not in violation of the resubdivision regulation.

Ms. Annis: There is only one other thing for the abutters. There are letters here that will go into the record: A letter from Mr. and Mrs. Richard White, a letter from the Heatons, a letter from David Karrick, and letter from Derek Pershouse, and a letter from Scott Hogan on behalf of the Halls. There is also a letter from Mark Lennon, who couldn't be here tonight, and if he were here tonight he would have to recuse himself because he is an abutter.

Ms. Annis started to read Mark's letter, and Mr. Serell suggested that it be treated the same as everyone else's and attach it to the minutes. She agreed.

Ms. Annis said that the public portion of the meeting was not closed and that the meeting would go back to the Board.

Mr. Eigabroadt: As several of you have pointed out, there is information missing. The information is required to be in writing. It is in the regulations and they're available to anyone who wants them and they are posted on the website. It's not this Board's priority or responsibility to educate every member of the public on every aspect. If this is something you want to do, it is incumbent on you to review the regulations and see that you are as complete as possible

with the information you are submitting, not us. The Board does have a duty to assist, but not to educate every individual. We don't walk everyone down the path; you have some ownership in that yourself. The hardship is part of the piece of that is missing and your comment about the ordinance and what it was intended for – the intent of the ordinance or the spirit of the ordinance is not just so that the current land owner won't keep flipping the lots; it is so that nobody can. It is designed so that you can't just keep flipping the land. If you have 50 acres in a parcel of land and it keeps getting sold and then that person decides that he wants to divide that into smaller lots, the same thing happens and it snow balls. The spirit of the ordinance was to prevent the flipping of the lots, period. In my opinion, I think that this should be rejected because it is incomplete and it should be rejected under the merits of the 5 year waiting period. I think that it should be resubmitted as a major subdivision.

**Mr. Reeder made a motion to reject the request for a waiver of Section IV-B: Resubdivision because it does not meet the criteria for a waiver of the 5 year waiting period. The motion was seconded.**

Mr. St.Pierre: There are issues related to all of three waiver requests. Are we speaking about waivers in general?

Ms. Annis: No.

Mr. Serell said that they were discussing the waiver for treating this as a minor subdivision because if it were denied they would have to come back with another application for a major subdivision.

Mr. St.Pierre: I guess that we can deny this because of lack of information and then the applicant can come back next time with the information.

Mr. Eigabroadt: The motion wasn't lack of information.

Mr. St.Pierre: We've only discussed one of the three and there are issues with the other two.

Mr. Reeder: I think we should go individually, and let's get number one out of the way first.

Mr. Serell: I think that we could vote to deny the waiver on the grounds that they haven't put the reasons for their request in writing and I'd go further and say that their reason as being a change in ownership as the reason for the waiver, even if put in writing, is not a sufficient reason to grant the waiver.

Ms Annis called for a vote.

Mr. Serell: Just to be clear, we're voting on the request for a waiver of the 5 year waiting period which would require that they do a major subdivision.

Ms. Annis: Yes.

**Mr. St.Pierre: Yes; Mr. Serell: Yes; Mr. Mical: Yes; Mr. Eigabroadt: Yes; Mr. Reeder: Yes; Mr. Pershouse: Yes.**

Ms. Annis told the applicants that they would need to come back with an application for a major subdivision. The applicant asked of the Board was going to vote on the application, and Mr. Serell said that the Board could vote that the application wasn't complete because it doesn't contain the information required for a major subdivision.

**Mr. Serell made a motion to deny the application as incomplete because it does not meet the requirements for a major subdivision. Motion was seconded.**

**Ms. Annis called for a vote: Mr. St.Pierre: Yes; Mr. Serell: Yes; Mr. Mical: Yes; Mr. Eigabroadt: Yes; Mr. Reeder: Yes; Mr. Pershouse: Yes.**

Dave: May we attend the next meeting with a major subdivision application?

Ms Annis: Yes. You'll have to get your application in on time.

Dave: Yes.

## **VII. Public Hearing: Minor Subdivision**

Property Owner: Kathy Ratcliffe, 190 Waldron Hill Rd., Warner, NH 03278

Property location: same as above; Map 10, Lot 26 Zoning District: R-3

Purpose: Subdivide 2 new lots: 3.26 ac and 3.17 ac, from a 29.1 ac lot, with frontage on Waldron Hill Rd. and Gould Rd.

Fran Brown, Realtor, presented the application for Ms. Ratcliffe.

- Kathy Ratcliffe and Bob Humphrey bought this land so that it wouldn't be subdivided into a lot of smaller lots

- They need to sell the house that is on the property because they live across the street and already have a home
- In order to recapture some of the money, by selling the house and this piece of land they can keep this land from being subdivided
- They don't want anyone living across the street and have spent a lot of money to keep this from happening.

The Board went over the check list for a minor subdivision and found several items missing from the plan:

- Date of survey
- Scale of location map
- Report from New Hampshire Natural Heritage letter
- Wetlands are delineated, but there is no legend to show what the dots mean and what other marks mean
- Contours on 20 foot intervals, not 10 as required
- One of the bounds for a lot is missing.

Allan Brown: I have absolutely nothing against this subdivision. I was pointing out to Sissy the other day – When I was up there looking at this thing the other day, because we've been having a dispute up there with Public Service about right-of-way, I was looking at these markers there and some of them were just set in small rocks. It's been corrected now; they've been set in rebar. But your subdivision regulations require a certain bound to be set, and you haven't been following that. The thing is he's paying through the nose to get this done and he doesn't want to come back in a year from now and discover that some kid has pulled these iron pins out of the ground or that somebody has hit them. These bounds that are described in your rules and regulations are pretty much unmovable. They're required to go down into the ground 3 feet. I'm only pointing this out; I'm not saying that we need to start with this one. Maybe from now on we need to look at these plans and tell them that they need certain types of bounds. He's already got these set. I'm not trying to pick on this one.

Ms. Brown: I would like to make a comment on that as well. He [Jeff Evans, Surveyor] said that you haven't been requiring it and he said that if you are going to require it he is going to charge more money because it is more difficult to set those in than it is rebar.

Mr. Brown: It is an actual task to put that kind of monument in the ground. You have to have a backhoe or you could conceivably end up blasting the rock. I only brought it up because that is what is in your rules and regulations. But I know that there have been a lot of subdivisions go in that haven't been made to do this.

Ms. Brown: Jeff thought it was for new subdivision where new roads are put in.

Mr. Brown: A subdivision to me is a subdivision. He had some of these marked in rocks the size of a basketball and that would be easy to pickup and move. But he took care of the bounds that were missing on this corner.

Mr. Eigabroadt: Is the Board willing to continue the way we have been until we can revisit the regulation for bounds?

The Board agreed to continue with this application as it is. Ms. Annis said that there are several things still missing from the plan and she needs to get them in to Sissy in time for the next meeting.

### **VIII. Conceptual Consultation**

Irving Oil Corporation

James N. Fealtman, Bohler Engineering for Irving Oil Corp.

Full site image upgrade of Irving Gasoline facility located at 32 West Main Street (aka Route 103), Warner, NH

Item not discussed because no representative came to the meeting.

### **IX. Sign Change**

Allan Jones, Owner of Knoxland Equipment, Exit 7, I-89, Warner, NH

Change of Terex sign to Knoxland sign

Mr. Jones wants to change the sign that currently is internally lit and says Terex. The sign that is there suggests that is the only product he sells and that is not true. Also, he would like to be identified as Knoxland. The front of the sign will be the only thing that changes.

**Mr. Mical made a motion to allow Mr. Jones to change the Terex sign to Knoxland. The motion was seconded. All agreed.**

The Board discussed that the lighting wouldn't change, there would be no more internally illuminated signs on the property, and the light would be turned off by 11:00 p.m. as the current Terex sign is.

**Ms. Annis called for a vote: Mr. St.Pierre: Yes; Mr. Serell: Yes; Mr. Mical: Yes; Mr. Eigabroadt: Yes; Mr. Reeder: Yes; Mr. Pershouse: Yes.**

**X. Voluntary Merger**

Property Owner: Clyde J. and Kathleen A. Carson, 33 Kearsarge Mt. Road

Property Location: same, Map 31, Lots 33-1 and 33

**A motion was made and seconded to approve the voluntary merger.**

**Ms Annis called for a vote: Mr. St.Pierre: Yes; Mr. Serell: Yes; Mr. Mical: Yes; Mr. Eigabroadt: Yes; Mr. Reeder: Yes; Mr. Pershouse: Yes.**

**XI. Communications and Miscellaneous**

**Election of Officers**

**A motion was made and seconded to postpone the election of officers until the Selectmen have completed their appointments.**

**Ms. Annis called for a vote: Mr. St.Pierre: Yes; Mr. Serell: Yes; Mr. Mical: Yes; Mr. Eigabroadt: Yes; Mr. Reeder: Yes; Mr. Pershouse: Yes.**

**Work Session**

The Board will hold a Work Session on Monday, April 17<sup>th</sup> at 7:00 p.m.

**Procedures**

Mr. Eigabroadt and Mr. Serell will be working on the Planning Board's Policies and Procedures.

**CIP**

Ms. Annis said someone needs to be in charge of the CIP and asked for a volunteer. No one came forward. Ms. Annis asked the members to think about it and it would be discussed at the next meeting. It was stated that three members have terms that are up and that they should wait until the new appointments to see if someone might be willing to chair the CIP

**Approval of the Minutes of the March 6<sup>th</sup> Planning Board meeting**

**A motion was made and seconded to approve the minutes as amended. The motion passed by a unanimous vote of the Board.**

**Information on How to Run a Meeting**

Ms. Annis attended a seminar and has information available to the Board. Mr. Eigabroadt said that he would like a copy to keep in the Selectmen's office.

**Letters from Abutters**

The following letters were received by the Board in conjunction with the Leone subdivision application and are made a part of the record.



Joan M. White and Richard C. White – March 31, 2006

40 Old Pumpkin Hill Road, Warner, NH 03278

Letter to Town of Warner Planning Board, Attn. Barbara Annis and Board Members

*Subject: Proposed Resubdivision, Lot 15-15, Pumpkin Hill Road*

*Ref: Town of Warner Subdivision Regulations, a) Section IV B; b) Section IX*

*Mrs. Annis and Board Members:*

*As abutters, we urge the Board to reject the requested waiver to the five (5) year requirement. Section IV B provides an alternative which is available to the applicants. In addition, per Section IX the application is clearly incomplete in that no hardship or injustice is given by the applicants.*

*Very truly yours, Joan M. White and Richard C. White*

Derek Pershouse – April 2, 2006  
Letter to Barbara Annis, Chair, Warner Planning Board  
Subject: Leone Minor Subdivision Application, Lot 15-15  
Dear Mrs. Annis:

*I am writing as a resident of Old Pumpkin Hill Rd., and as an abutter to the property, Lot 15-15 currently owned by Gretchen and Gerald Leone. I have owned my property since 1970 and have been living in Warner full time since 1993.*

*The subdivision Regulations clearly state that a parcel of land previously subjected to a Minor Subdivision, cannot be re-subdivided within five (5) years of the subdivision unless the applicant applies for and meets the requirements of a Major Subdivision. There is no stipulation as to ownership.*

*I think that you, and the Board, are aware that there are significant issues related to this application that would not be addressed in the Minor Subdivision process. There is potential, in the current application, for serious impact on: existing properties, the residents, the road, and the character of the neighborhood that we have all worked very hard to build and maintain over the years.*

*The current application as a Minor Subdivision disregards many aspects of great import to us all, and threatens the integrity of one of Warner's most attractive landscapes and properties.*

*As an abutter, I strongly urge the Board to support the regulatory requirements for Major Subdivision at this time. This way the vital issues will be addressed in an appropriate and intended process commensurate with all regulations and ordinances.*

*Respectfully, Derek Pershouse*

Mark Lennon – 4/3/2006:  
Email to Barbara Annis  
Subject: Meeting Tonight [text only from the section of the email related to the Leone Subdivision]  
Barbara --

*I have to recuse myself from this discussion. But I want to make sure my thoughts get into the record as a neighboring landowner. This is exactly the kind of premature re-subdivision I think the five-year provision was enacted to address. This is clearly an instance of a property owner with no connection to the town attempting to subdivide simply to maximize the dollar value he can take out of the property, without regard for neighbors, historic land use patterns, other potential uses of the property, etc. The Leones knew (or should have known) about the five year limitation before they purchased the property. I DO NOT believe any waiver from the major subdivision requirements (which apply to a second subdivision within five years of an initial minor subdivision) should be granted. I believe this is an excellent instance in which to apply the new Open Space Zoning article. If the Leones want to subdivide, they should be required to adhere to the purpose and requirements of the Open Space article. Specifically:*

- 1. After subdivision, 50% of the land needs to be permanently protected as open space.*
- 2. A buffer (part of the open space) of 75' should be left between the new lot and any existing road (Pumpkin Hill Road or Old Pumpkin Hill Road). Since there's only one lot being created, I'd have no problem if a driveway went through this buffer.*
- 3. The lot should not go in the field at the top of the hill, for at least two reasons: 1) The field is part of Warner's agriculture heritage, one of the few fields left in town. As such, it deserves preservation. This is specified as a goal of the ordinance and is embodied in the accompanying regulations, which have received a public hearing and await only finalization and a vote by the Planning Board. 2) The proposed lot is on a ridgetop, and a specific goal of the ordinance and regulations is to preserve ridgetops from development.*

*The Leones have ample space elsewhere on the property to create a lot which meets these requirements. That they propose the lot in the field on top of the hill simply reinforces that they are looking to maximize their return without regard or consideration for any other factors important to the town.*

David B. Karrick, Jr. – 4/1/2006:  
P.O. Box 328, Warner, NH 03278  
Letter to Barbara Annis  
Re: Public Hearing: Subdivision, Leone Property, Map 15, Lot 15  
Dear Mrs. Annis:

*I am concerned about the application to Resubdivide the above referenced property. As I am sure you already know, this property was approved for subdivision under Minor Subdivision procedures in 2004. The Warner Planning Board's Subdivision Regulations for Resubdivision in Section IV, Subsection B clearly state that "A parcel of land*

*which has been subjected to minor subdivision (not more than 3 lots) shall not be eligible for further subdivision under the Minor Subdivision procedures within a five (5) year period. Such subdivisions shall be subject to the requirements for Major Subdivisions as outlined in Section V.*

*The above Subdivision Regulation makes no reference to the current or former ownership of the parcel of land but only that it has been previously subjected to minor subdivision.*

*There are other issues raised with the potential Resubdivision of this property such as Drainage, the current condition of Old Pumpkin Hill Road, and proportionality of the proposed new lot to the other lots in the neighborhood. I therefore request, as a concerned resident of Warner and a property owner and resident of Pumpkin Hill, that the application to Resubdivide under Minor Subdivision procedures be rejected by The Planning Board and that the application of Gerald and Gretchen Leone can only be resubmitted under the requirements for Major Subdivisions. Thank you for your consideration.*

*Sincerely, David B. Karrick Jr.*

John and Beverly Heaton – 4/3/2006:

53 Old Pumpkin Hill Road, Warner, NH 03278

Letter to Barbara Annis, Planning Board Chair

*We have learned that Gerald and Gretchen Leone have requested permission from the planning board for a minor subdivision of their land on Pumpkin Hill that would subdivide a 3-plus acre lot from their current 13.13 +/- lot. We strongly object to this resubdivision. We believe that this subdivision is against the best interest of the current residents of Pumpkin Hill and the Town of Warner at large.*

*We purchased our 15-plus acre lot in 2000, moved to Warner from Massachusetts, and built our retirement home. We built it 100 feet down the side of the hill and roughly in the center of the lot with the intention of minimizing the impact of our new home on our neighbors, and precluding subdivision of our potentially multi lot parcel in the future. This new home and land cost us every penny we could afford, but we feel it's worth it to live in this wonderful setting in this fine community.*

*We feel that the Leone's requested subdivision, if accepted by the Planning Board, will begin a nasty trend of chopping up Pumpkin Hill, completely defeating what everyone here has worked so hard to preserve, and it must not be allowed. This small parcel of land is just the sort of thing the Warner Master Plan was crafted to prevent. Currently the hill is composed of large lots and retains the rural feeling that drew us here, and this must be maintained. We feel that the only acceptable subdivision, if one just be granted, should be something much larger, perhaps two or three times what is currently being requested.*

*On another point, the Warner Subdivision Regulations clearly state that "A parcel of land which has been subjected to minor subdivision (not more than 3 lots) shall not be eligible for further subdivision under the Minor Subdivision procedures within a five (5) year period. Such subdivisions shall be subject to the requirements for Major subdivisions as outlined in Section V". With this regulation on the books how can the requested waiver of the 5 year subdivision waiting period be granted? The ordinance is clear as written and the interpretation that the 5 year period gets reset with each new owner makes no sense at all.*

*If the planning board feels that it must allow this subdivision, then it should follow the planning ordinance and require that this follow all the procedures required of a Major Subdivision and address all of the issues such as lot size, drainage, traffic, etc.*

*Respectfully, John and Beverly Heaton*

The Law Office of Scott E. Hogan – March 30, 2006:

27 Riverside Farm Drive

28 Lee, NH 03824

Letter to the Town of Warner Planning Board

Re: Application of Gerald and Gretchen Leone, Pumpkin Hill Road

Dear Planning Board Members:

*This firm represents Stephen and Wendy Hall, who own property and reside at 366 Pumpkin Hill Road. For several years the Halls have been trying to get the Town to address drainage problems that exist in the area of Pumpkin Hill and Old Pumpkin Hill Roads. The lack of property drainage and road engineering continues to result in extensive sedimentation, erosion and flooding of the Halls' property; sands and gravels have filled the natural swale above and along the tree line and have changed the natural flow and wetness of the property, affecting both the use and the value of it. Rivers of sand and sediments now exist on the Halls' property. The unstable condition of the road, together with the Town's pattern of placing large amounts of loose fill on it results in massive migration of the road material onto the Halls property during every rain event.*

*The Halls are concerned that the Leone subdivision will contribute additional runoff onto Old Pumpkin Hill Road, which will worsen the already intolerable conditions in the area.*

*Almost a year ago I wrote to the Board of Selectmen (BOS) in an effort to resolve these issues. See April 22, 2005 letter, attached. Please review this letter to further familiarize yourselves with the issues and history. I have attached only selected photographs, as there are dozens of them documenting the conditions over the past year alone. In that letter I stated, "Engineered plans for the proper handling of stormwater and sediments in the Pumpkin Hill and Old Pumpkin Hill Road area must be prepared, and a schedule to install those improvements and mitigate the current damage to the Halls' property must be implemented." The BOS responded on June 7, 2005, in part saying, "We concluded that short of completely rebuilding both roads at substantial cost, an interim solution could be tried, that being to install a deep sump catch basin on the opposite side of the road from the Hall property... Detailed engineered plans would have to wait".*

*In response to the BOS's letter, I stated in part, that, "Clearly engineered plans could be developed to implement a stormwater management system under current road conditions. While rebuilding the roads in question might be the only long-term solution to solve all of the drainage and safety issues, engineered plans for stormwater management could be developed and implemented immediately to address the ongoing erosion of Old Pumpkin Hill Road, sheet flow onto the Halls property, and the continuous deposition of silt, sand, rocks, sediments and other debris."*

*The BOS responded that "We feel we have addressed all of your concerns in our letter dated June 7, 2005."*

*Given the severity of the conditions on Old Pumpkin Hill Road and at the intersection of Old Pumpkin Hill and Pumpkin Hill Roads, there can be no additional runoff contributed to Old Pumpkin Hill Road until such time as these issues are properly addressed. I will be asking to be placed in the agenda of the BOS to discuss these issues, but the Planning Board cannot approve a subdivision plan that allows any increased runoff onto Old Pumpkin Hill Road until these issues are resolved.*

*Respectfully submitted, Scott E. Hogan, Esq. cc: Clients, Warner Board of Selectmen, Donald E. Gartrell, Esq.*

The Law Office of Scott E. Hogan – April 22, 2005

Letter to the Town of Warner SelectBoard

Re: Property of Stephen and Wendy Hall

Dear SelectBoard Members:

*I represent Stephen and Wendy Hall, who reside at 366 Pumpkin Hill Road in Warner. As you know, for some time the Halls have been trying to get the Town to address the drainage problems that exist in the area around the corner of Pumpkin Hill and Old Pumpkin Hill Roads. The lack of proper drainage and road engineering continues to result in extensive sedimentation, erosion and flooding of the Halls' property; sands and gravels have filled the natural swale above and along the tree line and have changed the natural flow and wetness of the property, affecting both the use and the value of it.*

*The Halls have been asking the Town to address these issues for a long time. I have visited the site and have documented the extensive siltation plumes, erosion channels and flooding that has resulted from the condition of the surrounding roadways and drainage infrastructure. Many of the Halls' mature trees are not jeopardized by the extent of siltation and flooding. When I visited the site I saw the recent work performed by the Town at the intersection of Pumpkin Hill and Old Pumpkin Hill Roads, which the Town has apparently described as an interim step. The day I viewed the area it was clear that there was sheet flow of stormwater coming down Old Pumpkin Hill Road going directly across the roadway at the intersection of Pumpkin Hill Road, emptying on the Halls' property. This stormwater was also carrying significant sediments from an unculverted driveway, uphill on Old Pumpkin Hill Road. The culvert under Pumpkin Hill Road discharges stormwater and sediment directly onto the Halls' property. There were also pools of standing water on the up-hill side of Pumpkin Hill Road before the intersection with Old Pumpkin Hill Road where the Town's recent work was done. Any stormwater that was not flowing onto the Halls' property directly below the intersection was flowing onto their property through another culvert under the Pumpkin Hill Road further downhill from the intersection. The day I viewed this culvert it was filled three quarters of the way up with sediment and debris.*

*Additionally, the Halls have noticed that the Town has increased the application of sand to the road during winter maintenance this year, which has exacerbated the existing sedimentation problems, now covering the Hall property. Beyond the drainage issues, the Town is also aware of the traffic safety issues related to the current design of the Pumpkin Hill and Old Pumpkin Hill Roads intersection, given the slopes and configuration. All of these issues have been documented with numerous photographs; the process the Halls have followed with the Town attempting to resolve these issues has also been documented.*

*The Town initially represented that it had an "easement" on the Halls' property that allowed the Town to flow stormwater onto it, referred to by the Town as the "Harriman easement". The Town also stated it had a similar*

*“easement” for the Bridgewater property. When I requested this information through a 91-A request, I received a copy of a letter from your Director of Public Works, Allan Brown, attached. The “easement” produced by Mr. Brown for the Bridgewater property, also attached, is obviously not an easement, AND does not even address the issue of flowing water for stormwater drainage management. Mr. Brown stated that he is not currently able to locate any document relative to Harriman, which is now the Halls’ property. Even if the Town did have a document similar to the Bridgewater document for Harriman, it clearly would not allow the Town to take or use the Halls’ private property without compensation, which would have required the Town to negotiate an actual easement, or to take the property by eminent domain.*

*My clients have their own extensive documentation of the conditions that have caused the current damage to the property, and the changes which have occurred due to the lack of proper drainage and road engineering, the sediments contributed from the unculverted driveway at the new residential construction permitted by the Town uphill on Old Pumpkin Hill Road, and the Town’s road sanding practices. Recent rains have caused such heavy sedimentation and washout of Old Pumpkin Hill Road that large rocks have also been transported onto the Hall property along with heavy sediments, clearly traceable to their source on Old Pumpkin Hill Road. Given the significant and continuing negative effects on their property, and the amount of time that they have been attempting to get the Town to rectify them, the Halls cannot wait another season to have the problems resolved. I have enclosed a sample of the photos collected, which clearly demonstrate the critical nature of the problems.*

*There is no question that the issue relating to drainage and the roadways themselves must be addressed by property engineered plans. The current damage to the Halls’ property must also be mitigated. I would note that in his letter your Director of Public Works stated that “We have been back to address drainage problems with the Bridgewater family more time than I like to think of...” The Halls are committed to finally resolving these problems, and to having the damage to their property rectified. Engineered plans for the proper handling of stormwater and sediments in the Pumpkin Hill and Old Pumpkin Hill Road area must be prepared, and a schedule to install those improvements and mitigate the current damage to the Halls’ property must be implemented.*

*I ask that the Board take up this issue at its next regular meeting, and provide a specific response to the issues and requests made in this letter, and a specific timeline for the process. My clients noted to me that your town attorney rose to speak at this year’s Town Meeting regarding another area of town requiring road improvements, and argued in favor of the expenditure due to the liability and safety issues involved. Given the extensive history at the intersection of Pumpkin Hill and Old Pumpkin Hill Roads, and the extent of damage to the Halls’ property, I trust this issue will be addressed promptly, without the need for an adversarial process. I look forward to your response.*

*Sincerely,*

*Scott E. Hogan, Esq. cc: Clients, Donald E. Gartrell, Esq.*

*[Attachments mentioned in the letter were not given to the Planning Board at this meeting.]*

## **XII. Adjourn**

**A motion was made and seconded to adjourn the meeting. The meeting was Adjourned at 10:23 p.m.**

**Minutes approved: May 1, 2006**