

PRESENT: Mack, Chairman; Hawkins, Dever, Haley; Pelczar, Edney, Code Enforcement Officer, Tim Bates, Town Counsel, Tivnan, Clerk

Hawkins moved, Dever seconded, THAT WE APPROVE THE MINUTES OF NOVEMBER 10, 2005, AS PRESENTED.

PUBLIC HEARING

2717: AMES ASSOCIATES FOR VALERIE & LAURISTON CASTLEMAN: (Rep. David Ames) An appeal for a VARIANCE to construct a leaching area 39' from a non-designated wetland, 75' required, Tax Map U08, Lot No. 17 & 14A, located at 92 Water Street in the Shoreline District.

Ames – We are lucky to have two pieces of property. One on the down slope side of Lake Waukegan with a home and the other a little parcel of land with a garage on it, which turned out to be our escape route. We did soil testing on the lake front, hopeful that something could go up beside the road. Ledge conditions were to shallow. At that point, we went across the street and dug two test pits to the side of the garage. This was the best soil condition that we could find. This property is 65' x 100' with a seasonal runoff at the rear. We then discussed a clean solution that is about a \$7000.00 investment. It treats the sewage to the point that it is pretty much particulate free. We are 39' from a non-designated wetland. Hearing closed at 7:10PM

2718: DAVID C. & NANCY OLSEN SMITH: (Rep. David Smith) An appeal for a VARIANCE to construct a garage with a rear setback of 4.65', 40' required and a side setback of 4.91', 10' required, Tax Map U06, Lot No. 30, located at 10 Waukegan Ave. in the Residential District.

Jack Dever and Mike Pelczar stepped down.

Mack - We only have three members. Do you still want to continue? Smith – Yes. We had an existing garage that we took down this spring. We did leave the slab with the idea that we would reconstruct the garage on the existing slab. We did a survey a couple of years ago and found out that property lines were a lot closer than people realized. We border Swazey Park. The existing slab is in poor shape. It has a crack in it. The existing slab is 20' x 28'. We would like to go for an additional 4'. We would like to take up the old slab and install a frost wall foundation with a slab and reconstruct the garage above it. We hope to one day with the proper permits, possibly have an accessory apartment above. We have been working with Bill on this. Mack – How far is the existing edge of the garage to the house? Smith – I believe about 6' or 7'. Haley – You mention an

accessory apartment but you would have to connect it to the house. Smith – Yes. Haley – What was the discussion, if that took place? How would you do it? Smith – Possibly with a breezeway, but that is something that would be years from now. Hearing closed at 7:20PM

2719: AMES ASSOCIATES FOR MEREDITH REALTY

PARTNERS:(David Ames) An appeal for a VARIANCE to construct a leaching area 25' from a non-designated wetland, 75' required, an appeal for a SPECIAL EXCEPTION to allow construction of a driveway 5' from non-designated wetlands, 50' required and an appeal for a SPECIAL EXCEPTION to construct a house 5' from non-designated wetlands, 50' required, Tax Map No. U39, Lot No. 25, located on Veasey Shore in the Shoreline District.

Jack Dever and Mike Pelczar returned to the Board.

Ames – This lot is 680' deep from Veasey Shore Rd. all the way to Cottage Rd. You are looking at the front of it. That is the only dry section other than some small isolated pockets. The soil conditions are well drained. We mapped the wetlands and discovered that we have an odd shape of wet but a larger pocket to the north side of the lot where a structure could go. The leachfield is at the far right front corner. The property is 2.32 acres in size with 89% of that being jurisdictional wetlands and 11% being upland soils. The only area available is along the frontage on Veasey Shore Rd. To avoid filling of the wetlands, a special exception has been requested to allow the construction of a modest home and parking area 5' from the nearest point of the non-designated wetland. No excavation will commence until erosion and sediment control measures are in place. Conservation Commission has written a letter. Their concern is that they would like to see nothing on this lot, but since this is a Town approved lot of record, they suggested some physical structure or an extension of a retaining wall. Because of the drop in the lot, in order to get this home high enough so we can park a car and get back into the road, the back of the house has to be a walk out foundation. I can't think of a way to build a structure that separates the house from the wet at the back. Having a retaining wall at the back might be something to work out. Edney – In scaling off the driveway, the 35' of deep and 48' of width, it seems to me there are other configurations that could ease the buffer impact. During the construction process that 5' is probably going to go away. I share the same concerns as the Conservation Commission. This is a tight fit. Ames – We don't have 25' and I understand the Boards torture. If we leave 25', we will have a house that will become conspicuous in that neighborhood. The house will turn into a shanty. It's a small footprint. Bill's right, there may be a different configuration. Although we are limited to the width on the left and right, we are willing to do whatever measures in the field. I agree this is tight. Burke – What impact to the back of the lot? Ames – Frankly not much. Pisapia -

(Meredith Conservation Commission) Would building the house have any affect on the wetland as far as water? Ames – Yes, building the house will create impervious surfaces, so there will be more water in that wetland. Pisapio - We suggest, if the Board does approve, it include some mitigating measures such as a permanent hard structure to prevent anymore encroachment to the wetland. It needs a strong line of demarcation. Another option is to ask the applicant to reduce the house from a 4 bedroom to a 2 bedroom. We understand this is a lot of record. Just to be clear, the Meredith Conservation is speaking against it as proposed. Ames – Mr. Pisapia commented on the number of bedrooms. The house is what it is. If I call it two bedrooms, it is still a small house. The configuration of it is a box. We looked at different size leachfields. No one has commented that more bedrooms are a bigger leachfield. The problem is, if you draw a radius of this wet, you don't appreciably change the setback for the leachfield. So calling it two bedrooms doesn't have an impact on the size of the house unless the Board decides to say that a two bedroom house can only be 24' x 24'. Hearing closed at 7:40PM

2720: BROOKS BANKER, APPELLANT: This matter is an administrative appeal which challenges the following three matters: (1) the issuance of "Preliminary Building Permit" #2005-01177 on September 6, 2005 to Henmor Development, LLC; (2) the decision of the Meredith Selectmen on November 7, 2005 concerning the "Preliminary Building Permit"; and (3) the "Pickering Park Launch Ramp Construction Access Agreement." Each of these matters concerns property of Henmor Development, LLC, being Bryant Island in Lake Wicwas, Tax Map R10, Lot No. 22, located in the Shoreline District.

Banker – At the last meeting, the Board mentioned that, concerning the preliminary permit appeal, you didn't understand that that appeal encompassed the objection based upon the Zoning Ordinance. Therefore, looking to what happened when the Selectmen reviewed the conditions relating to the preliminary building permit, acting upon those conditions and then signing the Pickering Park agreement, my grounds are straight forward as I state in my papers. The Selectmen improperly took action on November 7th. Mr. Edney conditioned the permit by agreement between the Selectmen and Henmor Development stating that failure to achieve that within 60 days shall null and void the permit. Sixty days expired either on November 4th if you count the day of issuance or November 5th if you don't. That being the case, the Board of Selectmen acted outside of their due authority. The Selectmen and Mr. Edney should both, through the preliminary permit and final permit, recognize minimum requirements for a lot in the Town of Meredith under the Zoning Ordinance that states a lot must have 50' of frontage. Frontage is on a street or road. Obviously, Bryant Island being an island, does not have frontage on a street or road, therefore it could not fit within the Zoning Ordinance. The Selectmen failed

to recognize the purpose of the Shoreline District, which is to preserve water quality, adjacent shorelines and maintain privacy and tranquility of residents. The Pickering Park agreement violates the Shoreline District purpose. The construction will degrade the water quality, harm the shorelines and affect the privacy and tranquility of the residents. Edney – The building permit was issued on September 6th, the initial appeal to that permit was filed on September 27th. That was a total of 21 days. There is a stay provision for filing an appeal. That provision also stayed the Town clock on the 60 days. The ZBA's dismissal of that appeal happened on November 14th. The Selectmen's decision was signed on November 7th. So in total, there are 21 days out of the 60 days that actually count. Also, there seems to be some confusion on reading the Ordinance. Lot frontages, as defined in the Ordinance, are lots required to have road frontage. However, in the Shoreline District, frontage is the waterfront. Water doesn't have any road. In that circumstance, we rely on the definition of access. The definition of access "It shall be adequate for its use or purpose". Bates (Town Counsel) – I am here representing the Zoning Board Of Adjustment, not Bill Edney. Just for the record, Mr. Edney said the ZBA denied the initial appeal on November 14th which is not correct. The date was November 10th. The Notice of Decision was November 14th. Banker – In response to Mr. Edney's comments on the Zoning Ordinance that frontage, as defined in the Zoning Ordinance, is referring to access upon a street or road can somehow be interpreted to mean water frontage. The definition states that no lot in the Town of Meredith shall exist and shall be acted upon, improved or shall anything occur to it unless it has the minimum frontage. It doesn't even exist, as a lot without that frontage and the frontage is the 50'. Edney – There is a requirement for shoreline lake frontage to be 150', so there is a requirement. Banker – The shoreline frontage for that was to prevent one lot from being split up and having 10' of shore frontage. That has to do with crowding on the frontage side, not with frontage for access. The Legislative history of RSA 674:41 makes it clear that they were addressing the absence of road frontage on lake lots. The Moultonborough Zoning Officer was denying permits because there was no road frontage. Therefore, there was no mechanism for an owner of a lake lot to access the property. Gartrell (Rep. Henmor Dev.) – There are some general considerations that you should consider about this appeal and others. The systems of appeals from zoning decisions narrow the field. At the time of a noticed hearing, certainly the abutters are entitled to notice and the general public. The right to seek a rehearing in the zoning matter is limited to another class of people. It includes persons who are being aggrieved by that decision, including the Selectmen and other Boards or Agents of the Town. The field gets even narrower beyond that, if it goes to the Superior Court. We have made the objection in each instance that making the arguments and appealing these decisions, Mr. Banker lacks standing as defined in the laws of New Hampshire. The Courts have looked at that and

have said that there must be a determination of whose rights are involved. This applicant is no more affected by the development on Henmor's land than by similar development anywhere in the Shoreline District. Land Use regulation is not a drawbridge against further development. We are told that Mr. Banker has a view of Bryant Island. That he fishes, swims, boats, and eats the fish around Bryant Island. That he launches boats at the boat ramp. That he parks on Chemung Road and participated in the hearings. To the latter I will concede. But I suggest the Board look at the question of standing and determine whether any of these allegations give him a right or standing to complain in any way that is not shared by most everybody else in the Town of Meredith. Is there a right to undisturbed view from his property? If that were true, then would that not be true for anybody looking at any vantage point across the lake. Does he have the right to the exclusive use of or convenience of launching at the boat ramp? We know people launch there who don't live in Meredith. Does the Zoning Ordinance restrict boating on Lake Wicwas? I think not. He claims a right against fire and smoke should there be a fire on the house that may be built under this building permit. Is that not true on any house that is built on the lake or anywhere else in town? He then says he has fear that the septic tank might float from its mooring and spill human waste into Lake Wicwas. Where does that idea come from? What septic system would be approved by the State of New Hampshire that would be susceptible to that type of failure? That he would be disturbed by the increase of traffic and noise on Lake Wicwas. I submit that none of those are rights for standing for Mr. Banker to raise this kind of appeal. He cites as reasons for his complaints that the Zoning Ordinance prohibits some of what has been done here. He cites "Brennan v. Winnepesaukee Flagship Corp." It was not a case on standing; it was a case about interpreting the Zoning Ordinance. The claims here are that because of a definition of lot that happens to mention road frontage that no lot on an Island in the Town of Meredith could be built. If you look at that language, the general purpose says "the District provides housing and recreation for a substantial number of seasonal and year-round residents who prefer to live single-family detached housing with access to lake waters." The District is defined to include shoreline frontage on all of the lakes, including Lake Wicwas and all the islands in the Town of Meredith. In determining the District boundary it says "the District boundary line shall extend from the shoreline approximately 300 feet in depth to the boundary line or the centerline of a street, road, or right-of-way." On an island, if there is no street, the lot boundary would carry from the shore 300' to the lot boundary. On the shore side, it would be to the centerline of that street or roadway. That would define the lots in the Shoreline District. The permitted uses in the Shoreline District are detached single-family dwellings with a minimum of 500 sq. ft. To suggest that no island that does not have a public street could have a building permit issued does not make sense in the context of the provisions of that district. The logical extension of this is that you would have to create public

highways on the islands of the Town if you were going to allow development. That has never been required. Bryant Island is never going to have a public street on it. The Board has already made a determination about appellate rights and jurisdiction in regards to RSA 674:41. Applicability of that statute is very clear. In Section I, it uses the language that no building permit should be issued for any lot for the erection of the building unless the street giving access to which the building is going to be placed meets certain criteria. What they never tell you when reciting the statute is that the definition "street giving access" is the purpose of that paragraph. That is found in Section III of the statute. It says, "for purposes of paragraph 1, the street giving access to the lot, means a street or way abutting the lot and upon which the lot has frontage." With that definition in mind, this statute would apply if there were a street giving access to the lot. They cite the Vachon Case. In that case, the Court said clearly that the legislative policy of permitting Towns to restrict development on inadequate roads is reflected in RSA 674:41. That would be the beginning and the end of it were it not for the fact that there is a provision in the middle of that statute that says Town's may except islands from the application of this statute. That's a permissive option but you don't have to do that. It's a red herring to suggest that either your Zoning Ordinance or the statute forbid development on an island. When we were pursuing the agreement with regard to the use of the launch ramp, the Town Manager said to us in a letter dated around October 20th that because there have been appeals filed against the building permit, the permit has been stayed. Nonetheless, they pursued with us the terms of an agreement. That agreement embodies rights and obligations that are shared by all members of the public for the use of that launch ramp. We have rights to use it to get to the water. We also have obligations to repair any damage, and we proposed terms that we felt were fair to the Town and ultimately they were embodied in an agreement with the Selectmen. This is no different than if loggers tore up a Town road. We agreed to limit our use. There is nothing in there that violates Zoning. There is nothing in there that either gives or takes rights that we wouldn't already have as members of the public traveling on a public highway. This is my objection to the appeal. Banker – Mr. Gartrell raises many interesting arguments. They fly in the face of the established law in New Hampshire. The Supreme Court said that you don't have to be next door; you can be down the road or across town. Physical adjoining property is not relevant to standing. The Supreme Court will always look to standing when it considers any appeal. The law is what it is. In regards to the septic system breaking loose, floating into the lake and contaminating it, did not come from me. It is in Henmor's papers. Their septic designer put it at the bottom of the plan warning, "be sure that the tank is not emptied fully. If the tank is emptied fully, it may elevate upon rain, break loose and float into the lake." Just because an island is separated from the shoreline, it is not exempt from the law. Ames – I'm sorry to add to this but I am the septic designer, David Ames, of that plan and nowhere on my plan does it

say that the septic tank will float to the top and go into the lake. They are plastic septic tanks because of access and trying to disturb as little as we have to. We use plastic because we are taking it to an island by boat. Anyone who has tried to hold a beach ball under water would realize that a plastic septic tank 50' – 60' from the lake if the water table ever comes up around it and somebody emptied it, it could push up. But nowhere on a plan and if it is there, I would be embarrassed that I said it, would it say it would float to the top and go into the lake. The breaking away from a mooring, I have no idea where that came from. It is not on my plan that says it will break, float to the top and go into the lake. Gartrell – The Weeks Case was one of the early cases about standing. I am very familiar with that case as I was the unsuccessful appellant in that case in which the Supreme Court reversed its decision. What it does say is you look at the impact. Prior law was that only abutters had standing. The Weeks Case said that someone across the circle had as much right but the leading case in standing now is the Exeter Case in which the Supreme Court went further and said that someone who has a general public interest (in that case, a competitive interest) in a proposed development does not have standing if the only impact on them is business competition. In the Brennan Case, Brennan was a direct abutter to the property that was being developed, there was no question on standing, but what happened was a code petition from someone who owned property across the bay was filed. That wasn't an issue on standing. The issue was the intensity of the use compared to other uses permitted in the same district. Dever – Mr. Banker, what other town in the Lakes Region treat island lots the way you suggest they be treated? Banker - Tufonboro has their Zoning Ordinance on line. They have followed the procedure to exempt island lots. Dever – What do you want to see happen on Bryant Island? Banker – Henmor bought a lot that they knew was problematic. I would say they have to comply with the law. They have to go to Town Meeting to exempt it. If Town meeting rejects that, then they can do nothing. Dever – Say the owner of the island now wants to build a house? Banker – I am saying the law doesn't allow it. Dever – So if the Town exempted islands and they then came in for a building permit, all of this stuff that you are saying would go away? Banker – I don't know if the Town exempted it, how it would affect the ... Dever – How would it affect you? Banker – I want the law followed. Dever - So they follow the law, so all of this stuff you have thrown at us goes away? Banker – If the Town meeting decides to exempt the islands then that may be so. Kennedy – There has been some discussion about the legislative history of RSA 674:41. The history I am talking about is Section II-a. That was added to the statute in 1998 as a result of a Building Inspector who was not granting permits on islands because of what was said in RSA 674:41. In 1998 a bill was submitted. Mack - Hold on one second. I will let you go a little bit but not all the way. We are jumping into RSA 674:41 and this appeal has nothing to do with RSA 674:41. I don't want to get into the whole argument of RSA 674:41. Kennedy – That is my only comment. It

was created to allow Towns to exempt islands from the building permit from RSA 674:41. We have very clear language. Bates – Can I ask a question? It was my recollection that there weren't building inspectors involved; it was the Town Planner in Wolfeboro. That was tacked on to some other bill. It wasn't a separate piece of legislation was it? Dexter - A lot of people were buying islands at the time. The Municipal & County Committee as a house keeping measure to deal with a town vote on exempted roads originally filed the Bill. The remedy, Mr. Gartrell, is not to build roads on islands but to go to Town Meeting and deal with it. Mr. Bridges came in at the end and said, by the way I am trying to sell house lots and I have to go to the ZBA for every one of the. Bates – So, is it your opinion Dean that if John Bridges had gone through the court system instead of the legislature, the New Hampshire Supreme Court would have agreed with the Building Inspector in Wolfeboro with RSA 674:41 dealing with road frontage applied to islands. Dexter – I could not answer that but I would say that the Building Inspector in Wolfeboro said, Johnny, if you want to take care of this problem, go down to the legislature and fix the law. That is what he did. Gartrell – My position is clear. As I read the operative section of the statute, if there is a road that gives access to a lot, it must meet the standard of that statute. It begins with the IF. There is a provision next to the statute for obtaining relief from the application of that statute if it fits. The statute says that Town may exempt any lot for adopting such an exception. John Bridges came in as a Real Estate Agent; his problem was not the enforcement from a regulating standpoint. So they got a procedure where the Town could create an exception or waiver for island lots or other lots where the statute doesn't apply. Dexter – I don't understand how you guys don't think you have to follow the roadblocks. There is a remedy in the statute to overturn a Planning Boards decision through Town Meeting.

2721: BROOKS BANKER, APPELLANT: This matter is an administrative appeal of the Planning Board's approval on October 25, 2005 of Henmor Development LLC's subdivision application for Bryant Island in Lake Wicwas, Tax Map R10, Lot No. 22, located in the Shoreline District.

2725: NORMANDIN, CHENEY` & O' NEIL, PLLC FOR LAKE WICWAS ASSOCIATION, INC. & DEAN DEXTER: This matter is an administrative appeal of the Planning Board's approval on October 25, 2005 of Henmor Development LLC's subdivision application for Bryant Island in Lake Wicwas, Tax Map R10, Lot No. 22, located in the Shoreline District.

Banker – I will rely upon my prior statements and add only that the building permit issued raised in connection with the Selectmen was twice as bad. We have two lots instead of one. There is a subsection in the Zoning Ordinance under Lot and it mentions the creation of a lot. It says “ a parcel of land described by metes and bounds, which was so recorded prior to zoning”. My objection to the Chemung Road lot of the Planning Board is

that as a condition of its decision to grant the subdivision, it has burdened the Chemung Road lot with a use that is beyond the Zoning Ordinance. The Planning Board said that the Chemung Rd. lot would be used solely for parking. I would submit that a lot in the Shoreline District that front on the lake couldn't be restricted in its use to solely a parking lot. Dever – Has the plan been recorded? Banker – I have no idea. Dever – Can anybody tell me that? Gartrell – The subdivision plan has not been recorded because it is under appeal. One of the concerns raised about the subdivision was parking in the road. Now each one of the lots on Bryant Island will have a place to park their cars. This would be a public benefit. Dever – There were conditions assigned to this approval? Gartrell – Yes, quite a few. Dever – Have those conditions been met? Gartrell – A lot of them are subsequent such as alarms in the building, respecting Loon Preservation, etc. Dever – Has the plan been signed by the Planning Board? Gartrell – I don't believe it has. Mack – Is there a rehearing for compliance for those requirements prior to recording? Gartrell – Final approval is conditioned on a Compliance Hearing. Bates – Mr. Gartrell, if the Planning Board has granted conditional approval and has specified a compliance hearing before final approval, do you think there is a question about whether the Planning Board's decision is right for an appeal to the Zoning Board of Adjustment? Gartrell – As a practical matter, I do not. Bates – In the copy of what appears to be the Planning Board's decision, it appears to have 12 conditions? The twelfth one says, "There shall be hearing of the Board to determine compliance with conditions 1-4 and 9, 10 and 11." That sounds like there are conditions precedent to final approval and signing off on the plan. If there are conditions preceding and the Planning Board has not signed off on the plan, I question whether the matter would in fact be right. Gartrell – That depends on the conditions. I don't know how a developer could go forward and meet all those conditions without the risk that someone comes forward, not with standing everything you have done, that this decision should not have been granted. Banker – I do think Mr. Gartrell is right there. I don't think it would be fair to have Henmor be at risk to invest a large sum of money. Hearing closed at 8:40 PM for cases #2720 and # 2721.

2722: KEVIN JOHNSON: An appeal for a VARIANCE to establish a Home Occupation with 48% floor space, 25% allowed, Tax Map U06, Lot No. 06, located at 137 Main Street in the Residential District.

Johnson - This past summer when I first approached you on this proposal, it was for the special exception and a variance to build a structure. At the time I didn't know the numbers for the home occupation. I have now done that and the sq. footage is over and above what is allowed. I am now back hoping to get final approval on the business as presented. I need the variance to get the building permit. Mack – What's the difference between what you plan on now and what you planned on in August? Johnson –

Nothing, I didn't know I needed a variance. Mack – We talked about percentages before. So what has changed? Did the building get bigger? Are you using more of the existing building for your business? Johnson – I may have been thinking at the time that the 2080 sq. ft. footprint of the building was the used number for the home occupation. I want the second floor available for storage and that number is incorporated also into the use for the home occupation. I didn't think the second floor was going to be incorporated into it. Dever – You want us to believe that you did not consult with the Code Enforcement Officer to find out what the requirements were for a home occupation? He didn't tell you there was a 25% requirement? Johnson – Yes he did. This is a second plan. The first plan that we worked on provided for 1087 sq. ft. for me to use as a home occupation. Dever - Did that fall within the 25% range? Johnson – Yes, that one did. I wanted to build what was suitable for the business. I thought this was approved in good favor and the question of home occupation percentage came up in front of the Planning Board. I hadn't done those calculations. When I came in front of you this past summer, the footprint, aside from storage would have kept me within the limits. By incorporating the storage area into the number for the home occupation the number is much larger. Dever – But that is part of the business? Johnson - Yes Dever – I think we are going beyond what a home occupation is considered. You are in a residential zone. I think this is way overkill for a home occupation in the residential zone and you should have realized this. This was explained to you pretty clearly about the 25%, correct? Johnson – Yes, I was aware of that factor but there are exceptions to rules, which I am applying for. Mack -Where are you running your business out of right now? Johnson - 3 Winona Rd. Mack - What are the two storage trailers in your front yard for? Johnson – One has building material, sand stock and the other has business materials. Mack – How many sq. ft. are you renting at 3 Winona Rd? Johnson – Almost 1800 sq. ft. Dever – You have a number of vehicles. Mack – How many vehicles parked out there are waiting to be worked on? Johnson – Personal? Mack – No, at 3 Winona Rd. Johnson – Two. Mack – Two? Did you just move 3 out in the last week? Johnson – The Pontiac is inside right now, my boat is now at my house and two BMW's are outside. Dever – How many vehicles are at your house? Johnson – Nothing to be worked on. Dever – How many vehicles are at your house now? Johnson - My boat, a Pathfinder, two Camaro's and two GMC Jimmy's. Dever- Are they all registered and inspected? Johnson – The Pathfinder is registered, the boat is registered. The Camaro's and the GMC Jimmy's expired in June. Dever - Do you know how many unregistered vehicles you are allowed to have on your property? Johnson – Three? Dever – Try again. Johnson – Two? Dever – Correct. Hearing closed at 8:55PM

2723: ASSOCIATED SURVEYORS FOR PATRICIA SAURIOL: Rep. Carl Johnson) An appeal for a SPECIAL EXCEPTION to allow professional

office space in the Residential District, Tax Map U06, Lot No. 89, located at 118 Main Street in the Residential District.

Johnson – This property is located on South Main Street. Prior to this proposal the property was used as a single-family residence with approval for a home occupation. The home occupation that previously existed was a light shop. We are proposing the residential use of the property be eliminated and a small office space for legal offices be utilized within the building. The type of business will be a law firm that deals primarily with environmental litigation. They do not have day-to-day clients. They have offices in Londonderry, New Hampshire and also in Connecticut. This office will be limited to three attorneys and two staff members, but most of the time it will be occupied by one or two attorneys and one staff member. We have received conditional Site Plan approval from the Planning Board. There is a paved driveway with a couple of existing spaces, with municipal parking on Main Street. The nature of this business will be low impact in terms of traffic coming to and from the site. The hours of this business will be Monday – Friday, 9:00 AM – 5:00 PM. In terms of the overall use of the property, this will be used less than the previous owners with residence use attached to it. There will be no outside renovations and very little inside renovations. We have existing lot coverage with no change involved. The Planning Board restricted it to five employees. This is a permitted use in the residential zone. We believe this use is very low impact. This is a large building. There will be no outside dumpsters or visibility of the business. A small sign will be located on an existing lighted signpost. Dever – The deck that is on the side, how long has that been there? Johnson – I don't know. Hearing closed at 9:10PM

2724: CHRISTOPHER WILLIAMS ARCHITECT FOR JAMES & ANNE ODOARDI : (Rep. Ken Tatro) An appeal for a SPECIAL EXCEPTION to expand a non-conforming structure by more than 400 sq. ft, Tax Map U39, Lot No. 2-86, located at 7 Hagopian Road in the Shoreline District.

Tatro – We have looked at several options for this property. This is a non-conforming structure. It is currently 21' from the rear setback. Part of the application requires some modification to the existing leachfield. The application is for a proposed addition of 660 sq. ft. They also want to expand the deck to the front of the building. The design is to be determined. We did approach an abutter for a boundary line adjustment to make the property more conforming but they wanted no part of that. Dever – Is this part of an Association? Tatro – Yes. Pelczar – How many stories to this addition? Tatro – It is a basement level that will have a garage and it is a main level extension. Pelczar – So you are going to match the existing building? Tatro – Yes Mack - Are you continuing the deck along the front of the garage? Pelczar – So you drive underneath the deck? Tatro- Yes

Mack – What is the existing setback to the front of the deck from the road?
Tatro – I am not sure. It is less than the 30'. Hearing closed at 9:20PM

2726: DMC SURVEYOR FOR EDWARD & CHRISTINE MORSE: (Rep. Dean Clark) An appeal for a SPECIAL EXCEPTION to construct two wetland crossings within designated & non-designated wetlands for installation of two culverts for driveway access and associated impacts within the protective buffer of a designated wetland, Tax Map R08, Lot No.78, located at 10 Livingston Road in the Residential & Forestry/Rural Districts.

Clark – We have approval from the Planning Board for the subdivision. We have proposed a common drive for two lots on the back portion. The work will involve only temporary impacts to wetlands and to a water body. There is an existing hydrant. We are proposing to extend the hydrant. Irene Garvey is a Certified Wetland Scientist who did the entire mapping on this. The direct impact to the wetlands where the two culverts are going to be is 980 sq. ft. and the indirect impact is 11,124 sq. ft. because of the 50' area. The waterline crossing will have a direct impact of 183 sq. ft. and the indirect impact will be 10,886 sq. ft. Garvey – We have two impact areas. We have minimized these two areas by setting up a two-culvert system with a headwall at the driveway crossing, The utility line work will involve removal and stockpiling of topsoil, creation of a trench, installation of the utility line, then replacement of the sub and topsoil to original depth and contours. I believe this meets the criteria for a special exception. Defranc-(abutter)- Who is going to put the driveway in? Garvey – No contractor has been named at this point. Defranc – There is a lot of water that goes through there. We do not want our stonewall to be affected. Garvey – We are maintaining the 15' setback away from that wall with two culverts, plus we can oversize the culverts. Mack – How did you come up with 15" culverts? Did anybody do a drainage or watershed study? Garvey – No, it is not required as per any regulations that I know of. I size them according to the culverts that are functioning in the vicinity. It's easy to change the size of the culverts if that is a concern. Hearing closed at 9:35PM

MOTION FOR REHEARING

Bates - On cases #2710, #2712 and #2709, the Board adopted a decision on November 10th to deny those three appeals but it did not explain its decision. It just voted to deny them. My suggestion tonight is to suspend that decision which you are entitled to do and consider the matter further. At your request, I have drafted a decision that I believe captures your thinking. I would ask that you review this draft and take whatever action you want to, in the hope that we end up with a better explanation of what your thinking

was on those three appeals, two of which are represented by the motions for rehearing. My advice would be to entertain a motion to suspend the decision that you made on November 10th.

Haley moved, Dever seconded TO SUSPEND THE DECISION OF NOVEMBER 10TH ON CASES # 2709, #2710, AND 2712. Voted 5-0 in favor.

Bates- Having the decision of November 10th suspended, it's now before you to consider further that decision. This would be the appropriate time to review the draft.

In Re: Appeals of Lake Wicwas Association, Mary Ann Morse, and Dean Dexter
Case Nos. 2709, 2710, 2712

REVISED DECISION AND ORDER

Each of the appellants filed an administrative appeal which challenges the grant of conditional building permit No. 2005-01177 issued to Henmor Development, LLC ("Henmor") on or about September 6, 2005. The permit would conditionally allow the construction of a single-family home on Henmor's property, being Bryant Island in Lake Wicwas, Tax Map R10, Lot 22. For the following reasons, and having considered the oral and written statements offered at the public hearings and submitted to our counsel, we find and rule that: (1) we have no jurisdiction to entertain these appeals to the extent they allege a violation of RSA 674:41; and (2) the zoning ordinance frontage requirements do not apply to island lots accessed solely by watercraft. These appeals are therefore dismissed.

Under RSA 674:33, we have authority to hear administrative appeals, authorize variances from the terms of the zoning ordinance and, to the extent provided in the zoning ordinance, grant special exceptions. Further, both RSA 674:33, I(a) and RSA 676:5, II make clear that the subject matter of an administrative appeal must consist of a decision involving construction, interpretation, or application of the terms of the Meredith Zoning Ordinance. Thus, although the ZBA is the final

local authority on the interpretation of the zoning ordinance, plainly our jurisdiction does not extend to hear and resolve disputes based upon allegations of violations of other local ordinances, or state or federal laws or regulations.

Each of the three appeals as originally filed rests on the exclusive argument that the issuance of the building permit to Henmor violates the provisions of RSA 674:41, I because Bryant Island does not have any road frontage at all, let alone road frontage that would satisfy the statute. However, once the question of our jurisdiction was raised by our counsel's letter dated October 12, 2005 to Attorney Kennedy, the appellants shifted their ground and sought to characterize the grant of the building permit as a violation of the zoning ordinance, alleging, for example, that the permit contravenes Article III, Section I of the ordinance which states that "Accessways shall be adequate and safe for intended use." See Supplemental Memorandum dated October 17, 2005 by Attorney Kennedy. Similarly, in a letter dated November 2, 2005 Mr. Banker argues on behalf of Appellant Morse that the definition of "Lot Frontage" in Article VIII of the zoning ordinance prohibits the issuance of a building permit for island properties such as Henmor's because those properties lack the required road frontage. In spite of these afterthoughts, we think it is quite clear that the attack on the permit is fundamentally based upon the interpretation of RSA 674:41, not upon the Meredith Zoning Ordinance, and because of that reality we simply do not have jurisdiction to hear and decide the appeals. However, to the extent that any element of the appeals is construed as legitimately based on the zoning ordinance, we find and rule that the ordinance is not intended, nor shall it be interpreted, to require road frontage for lots on islands that are accessed solely by watercraft.

Finally, we note that RSA 674:41, II grants a person who is denied a building permit under the statute a right of appeal to the ZBA, but there is

no equivalent statutory appeal for persons, like the appellants in these cases, who claim to be aggrieved by the issuance of a building permit which allegedly violates RSA 674:41. We are not the arbiters of the legislature's wisdom in deciding not to provide a statutory appeal to the ZBA in such circumstances, and cannot create jurisdiction where none exists.

For the foregoing reasons, these three appeals are **DISMISSED** because we lack subject matter jurisdiction to decide whether the issuance of the building permit is in violation of RSA 674:41 as the appellants allege, and because we find that the zoning ordinance frontage requirements do not apply to island lots accessed solely by watercraft.

[Revised 12/08/05]

Haley moved, Dever seconded, I MOVE WE ADOPT THIS DECISION IN THE CASES OF # 2709, 2710 AND 2712. Voted 5-0 in favor.

Bates – Having suspended the original decision, considered the matter further and adopted this revised decision; you would still need to decide what you want to do with the motion for the rehearing on #2710 and #2712.

2710: BROOKS BANKER, ORIGINALLY FOR MARY ANN MORSE, NOW PRO SE, APPELLANT: This matter is a Motion For Rehearing of a decision of the ZBA on November 10, 2005 which denied the administrative appeal from the issuance on September 6, 2005 of a conditional building permit #2005-01177 to Henmor Development, LLC, concerning Bryant Island in Lake Wicwas, Tax Map R10, Lot No. 22, located in the Shoreline District.

2712: DEAN DEXTER: This matter is a Motion For Rehearing of a decision of the ZBA on November 10, 2005 which denied the administrative appeal from the issuance on September 6, 2005 of a conditional building permit #2005-01177 to Henmor Development, LLC, concerning Bryant Island in Lake Wicwas, Tax Map R10, Lot No. 22, located in the Shoreline District.

Mack – Based on our actions of adopting this decision, I did not see any new information and they have not seen all of our reasons for this decision. I don't believe we should grant them a rehearing at this time. Haley – Nothing new.

Dever moved, Hawkins seconded, IN CASES # 2710 AND #2712, BROOKS BANKER, ORIGINALLY FOR MARY ANN MORSE, NOW PRO SE, APPELLANT AND DEAN DEXTER, I MOVE, BECAUSE THERE HAS BEEN NO NEW INFORMATION TO US AND WE DO NOT BELIEVE WE MADE ANY MISTAKE IN THE MATTER OF LAW, WE DENY THE REHEARING ON THOSE TWO CASES. Voted 5-0 in favor.

2711: LEONARD A. TREMBLAY, JR.: An appeal of the Board of Selectmen's decision to deny driveway access over Old Stanton Road, a Class VI road, in accordance with RSA 674:41, Tax Map No. R17, Lot No. 41, located on Chemung and Old Stanton Roads in the Forestry/Conservation District.

Dever – The question I have on this is his appeal states that we are denying him access across that Class VI road that Dr. Hamlin deeded him access to. How can you deed access on a public road? He has access to a Class V Road that has more frontage. I feel the Selectmen made the right decision on this. Mack – I still don't see any new information. It's what he said before and I don't see where we made a mistake.

Dever moved, Haley seconded, IN CASE # 2711, LEONARD A. TREMBLAY, JR. FOR THE REASONS JUST STATED, WE DO NOT HAVE ANY NEW INFORMATION AND I DO NOT BELIEVE WE MADE ANY MISTAKES IN THE LAW. I MOVE WE DENY HIS APPEAL FOR A REHEARING. Voted 5-0 in favor.

DELIBERATIVE SESSION

2717: AMES ASSOCIATES FOR VALERIE & LAURISTON CASTLEMAN:

Haley moved, Dever seconded, IN CASE # 2717, AMES ASSOCIATES FOR VALERIE & LAURISTON CASTLEMAN, I MOVE AN APPEAL FOR A VARIANCE TO CONSTRUCT A LEACHING AREA 39' FROM A NON-DESIGNATED WETLAND, 75' REQUIRED, TAX MAP U08, LOT NO. 17 & 14A, LOCATED AT 92 WATER STREET IN THE SHORELINE DISTRICT INVOLVING A HOUSE LOT ON ONE SIDE OF THE STREET, GARAGE LOT ACROSS THE STREET, WHICH WILL HAVE THE LEACHING SYSTEM PUT ON IT AS MENTIONED IN TESTIMONY AND DISCUSSION IS THE BEST PLAN AVAILABLE TO SOLVE AN OLD SYSTEM THAT IS TOO CLOSE TO THE LAKE BE GRANTED, AS IT MEETS ALL THE CRITERIA. Voted 5-0 in favor.

2718: DAVID C. & NANCY OLSEN SMITH:

Mack – I don't see where taking 4 ft. and giving him a reasonable size garage is going to hurt Swazey Park. There were no neighbors here. He's 8 feet away anyways, so now he will be 4½ ft. Haley – It is a two-story affair. Do you say anything in the motion, as a condition, that he would have to come back if he ever attempts to make an apartment out of it? Edney – He would have to anyways. Mack – It is also on record because the question was asked.

Haley moved, Hawkins seconded, IN CASE # 2718, DAVID C. & NANCY OLSEN SMITH, I MOVE AN APPEAL FOR A VARIANCE TO CONSTRUCT A GARAGE WITH A REAR SETBACK OF 4.65', 40' REQUIRED AND A SIDE SETBACK OF 4.91', 10' REQUIRED, TAX MAP U06, LOT NO. 30, LOCATED AT 10 WAUKEWAN AVE. SURROUNDED ON 2 SIDES BY CONSERVATION BE GRANTED, AS IT DOES NOT IMPOSE UPON ABUTTERS, IT WILL IMPROVE THE PROPERTY AND IT MEETS THE SPIRIT AND INTENT OF THE ORDINANCE. Voted 3-0 in favor.

2719: AMES ASSOCIATES FOR MEREDITH REALTY PARTNERS:

Haley – It seems to me the topography down there fits the whole area. The question is the 4 bedrooms. Dever – I can understand the Conservation Commission's concerns, however, in lieu of them reducing the size of the house, I would rather see, prior to any construction, installation of a barrier that will keep the excavators out. If they construct a suitable barrier at the edge prior to construction, that will keep them out of there. Edney – Are you suggesting Jack, that they put that at the 5 ft. mark? Dever – Whatever will protect the wetland. Edney – Granting that 5 ft., that is where the line is. Dever – I don't want to see them reduce the size of the house. Mack – There was discussion regarding extended wall protection from the Commission's letter. Are you talking the 5 ft. where he shows the wall or all the way around the encroachment? Dever – I say the construction area of the house. Not from property line to property line. Do you agree with that Bill? Edney – In the construction area of the house.

Dever moved, Hawkins seconded, IN CASE # 2719, AMES ASSOCIATES FOR MEREDITH REALTY PARTNERS, I MOVE AN APPEAL FOR A VARIANCE TO CONSTRUCT A LEACHING AREA 25' FROM A NON-DESIGNATED WETLAND, 75' REQUIRED BE GRANTED, AS IT MEETS THE REQUIREMENTS FOR A VARIANCE. Voted 5-0 in favor.

Dever moved, Hawkins seconded, IN CASE # 2719, AMES ASSOCIATES FOR MEREDITH REALTY PARTNERS, I MOVE AN APPEAL FOR A

SPECIAL EXCEPTION TO ALLOW CONSTRUCTION OF A DRIVEWAY 5' FROM NON-DESIGNATED WETLANDS, 50' REQUIRED AND AN APPEAL FOR A SPECIAL EXCEPTION TO CONSTRUCT A HOUSE 5' FROM NON-DESIGNATED WETLANDS, 50' REQUIRED BE APPROVED AS SHOWN ON THE PLAN. THE HOUSE BE APPROVED AS SHOWN ON THE PLAN WITH THE STIPULATION THAT A SOLID UN-REMOVABLE BARRIER BE PLACED AT THE 5' SETBACK MARK FROM THE WETLAND AND THAT IT BE PLACED PRIOR TO ANY EXCAVATION OR CONSTRUCTION ON SITE AND BE APPROVED BY THE CODE ENFORCEMENT OFFICER. Voted 5-0 in favor.

2720: BROOKS BANKER, APPELLANT: This matter is an administrative appeal which challenges the following three matters: (1) the issuance of "Preliminary Building Permit" #2005-01177 on September 6, 2005 to Henmor Development, LLC; (2) the decision of the Meredith Selectmen on November 7, 2005 concerning the "Preliminary Building Permit"; and (3) the "Pickering Park Launch Ramp Construction Access Agreement." Each of these matters

concerns property of Henmor Development, LLC, being Bryant Island in Lake Wicwas, Tax Map R10, Lot No. 22, located in the Shoreline District.

2721: BROOKS BANKER, APPELLANT: This matter is an administrative appeal of the Planning Board's approval on October 25, 2005 of Henmor Development LLC's subdivision application for Bryant Island in Lake Wicwas, Tax Map R10, Lot No. 22, located in the Shoreline District.

2725: NORMANDIN, CHENEY & O' NEIL, PLLC FOR LAKE WICWAS ASSOCIATION, INC. & DEAN DEXTER: This matter is an administrative appeal of the Planning Board's approval on October 25, 2005 of Henmor Development LLC's subdivision application for Bryant Island in Lake Wicwas, Tax Map R10, Lot No. 22, located in the Shoreline District.

Bates –Clearly # 2720 and the two appeals from the Planning Board decision raise similar if not identical issues to the ones that you have heard at length and considered several times. I would suggest that I should be instructed to draft decisions for you in these three cases and that you would defer final decision until your next meeting date. However, it's important for me to have guidance from you as to what the sense of the Board is. Dever – I don't think the building permits are an issue. Mack – When an appeal comes in, the permit is stayed. That is not an issue. Dever - I feel the same way about the boat launch. The subdivision plan has not been approved. Mack – When you talk about the launch ramp, we as a Zoning Board do not have a Zoning Ordinance governing public boat launches. Therefore, we do not have jurisdiction over that. That's between the

Selectmen and them. That has nothing to do with zoning. The “preliminary building permit”, this is the same argument and concerns we had about everything else. I don’t think the Selectmen did anything wrong. It is our job to interpret what is the meaning and intent of the Ordinance when they wrote it. We never questioned building permits on islands because that was the intent of the Shoreline District. Haley – I leave on the 30th. Mack - I would suggest, if the Board agrees, is to have Tim draft the decisions, get it into Kens hands and Ken can give comments to us. We will still have a quorum at the next meeting.

Haley moved, Hawkins seconded, IN CASES #2720, #2721, AND #2725, I MOVE THAT TOWN COUNSEL DRAFT A DECISION FOR THE BOARDS CONSIDERATION WHICH THEY WILL CONSIDER AT THE JANUARY 12, 2005 MEETING. Voted 5-0 in favor.

2722: KEVIN JOHNSON:

Dever – If he doubles that, it violates the spirit and intent of the Ordinance. We are trying to keep it looking residential. Haley - He has as much up at Thorndikes building now. What we did prior will still allow him to make a living without all of this stuff that will become a collection in his front yard. Edney - If you deny this one, it kicks him back to the original. Which is where it needs to be.

Dever moved, Hawkins seconded, IN CASE # 2722, KEVIN JOHNSON, I MOVE AN APPEAL FOR A VARIANCE TO ESTABLISH A HOME OCCUPATION WITH 48% FLOOR SPACE, 25% ALLOWED, TAX MAP U06, LOT NO. 06, LOCATED AT 137 MAIN STREET IN THE RESIDENTIAL DISTRICT BE DENIED, BECAUSE IT VIOLATES THE SPIRIT AND INTENT OF THE ORDINANCE. Voted 5-0 in favor.

2723: ASSOCIATED SURVEYORS FOR PATRICIA SAURIOL:

Haley - If these lawyers decide to abandon the practice and another group such as a tattoo artist want to come in; we start from square one? Edney – Yes, it is a change of use and if it’s another lawyer, they can only have five people.

Haley moved, Hawkins seconded, IN CASE # 2723, ASSOCIATED SURVEYORS FOR PATRICIA SAURIOL, I MOVE AN APPEAL FOR A SPECIAL EXCEPTION TO ALLOW PROFESSIONAL OFFICE SPACE IN THE RESIDENTIAL DISTRICT, WITH A MAXIMUM OF FIVE PEOPLE WORKING IN THE ATTORNEY CLIENT OFFICE BE GRANTED, AS THERE HAS BEEN A HOME OCCUPATION ON THE PROPERTY AND THE NEIGHBORHOOD IS OF MIXED SMALL COMMERCIAL VENTURES

AND UNDER THESE CONDITIONS MEETS THE SPIRIT AND INTENT OF A SPECIAL EXCEPTION. Voted 5-0 in favor.

2724: CHRISTOPHER WILLIAMS ARCHITECT FOR JAMES & ANNE ODOARDI :

Dever – They meet lot coverage. Mack - We have been all over this place.

Hawkins moved, Dever seconded IN CASE # 2724, CHRISTOPHER WILLIAMS ARCHITECT FOR JAMES & ANNE ODOARDI, I MOVE AN APPEAL FOR A SPECIAL EXCEPTION TO EXPAND A NON-CONFORMING STRUCTURE BY MORE THAN 400 SQ. FT, TAX MAP U39, LOT NO. 2-86, LOCATED AT 7 HAGOPIAN ROAD IN THE SHORELINE DISTRICT BE GRANTED, AS IT MEETS THE CRITERIA FOR A SPECIAL EXCEPTION. Voted 5-0 in favor

2726: DMC SURVEYOR FOR EDWARD & CHRISTINE MORSE:

Hawkins moved, Dever seconded, IN CASE # 2726, DMC SURVEYOR FOR EDWARD & CHRISTINE MORSE, I MOVE AN APPEAL FOR A SPECIAL EXCEPTION TO CONSTRUCT TWO WETLAND CROSSINGS WITHIN DESIGNATED & NON-DESIGNATED WETLANDS FOR INSTALLATION OF TWO CULVERTS FOR DRIVEWAY ACCESS AND ASSOCIATED IMPACTS WITHIN THE PROTECTIVE BUFFER OF A DESIGNATED WETLAND, TAX MAP R08, LOT NO.78, LOCATED AT 10 LIVINGSTON ROAD IN THE RESIDENTIAL & FORESTRY/RURAL DISTRICTS BE GRANTED, AS IT MEETS THE CRITERIA FOR A SPECIAL EXCEPTION. Voted 5-0 in favor.

Meeting adjourned at 10:45 P.M.

Respectfully submitted,

Christine Tivnan
Planning/Zoning Clerk

Approved by the Meredith Zoning Board on _____, 2005.

John Mack, Chairman