

PRESENT: Mack, Chairman; Hawkins, Dever, Pelczar, Joslin, Edney, Code Enforcement Officer, Tivnan, Clerk

Hawkins moved, Joslin seconded, THAT WE APPROVE THE MINUTES OF JANUARY 12, 2006, AS CORRECTED.

### PUBLIC HEARING

**2731: MCFARLAND-JOHNSON, INC. FOR TOWN OF MEREDITH: ( Rep. Fred Mock)** An appeal for a SPECIAL EXCEPTION to allow construction of a Pedestrian Boardwalk and Bridge from Meredith Community Center to Prescott Park and a SPECIAL EXCEPTION to allow interim improvements to Prescott Park parking lot within the 150' prime wetland setback, Tax Map No. U11, Lot No. 50 and Tax Map No. U 10. Lot No. 31, located at 1 Circle Drive and 367 Daniel Webster Highway in the Central Business and Residential District.

Mock – A year or so ago, a special exception was granted for the Community Center and at the time we had in place several activities for the future. One was the Boardwalk to a Pedestrian Bridge crossing Hawkins Brook and the reconfiguration of the parking lot. This project had received approval from NH Wetlands Board for a major permit within the wetland buffer. We are continuing the process of what we outlined for future construction the last time we were here. We plan to improve the existing parking lot for Prescott Park. Activities include all construction within the prime wetland setback, filling of the wetlands and the crossing of Hawkins Brook within the prime setback for the Boardwalk and Pedestrian Bridge. The Boardwalk and Pedestrian Bridge provide no direct impact to the wetlands associated with Hawkins Brook. We are just in the 150' buffer. The filling is in the middle of the parking lot. The wetland isolated in the parking lot is not within a prime wetland. The functions of this wetland include vegetation, wildlife, food chain productivity/ecological diversity, soils, forestry, hydrology and water quality, historical/archeological /scientific importance, geomorphological features and aesthetic/ recreation/educational importance. The conclusion we have drawn, with regard to assessing the impacts from the functions and values, is that there is no adverse impact. There is no direct impact to the wetlands on the northerly side and because this particular wetland has been isolated in past activities from the prime wetland, it provides no functional value in support of the much larger and more important wetland complex to the south. This area just collects runoff from the parking lot. When we were doing this originally, Joslin Daigler from the Department of Environmental Services Wetland Board visited the site and her view at the time, because it was isolated, it did not have the value that it had when it was part of a much

larger complex. It is our conclusion that we are not impacting any of the functions or values of either the wetlands associated with the Brook or the wetlands associated with the much larger complex south of here. Mack – You say building the road isolated the wetland. Were there permits given to isolate that wetland? Mock - Yes. The permits were issued. On C2-1 it says, previously filled road access crossing - NHWB 1999-1215. Mack – Before it was isolated, it was not considered a prime wetland? Mock – Correct. This project will enhance water quality adjacent to wetlands and enhance the safety of the lot. We feel we have met the test for a special exception. Article V Section A says that the proof of the final decision by this Board is that there will not be detrimental impact to the character and enjoyment of the neighborhood. With regard to the neighborhood, this is an extension of the recreational activities that exist on those two areas today. We think we have avoided any detrimental impact to the neighborhood. The use will not be injurious, noxious or offensive and thus detrimental to the neighborhood. Again, we believe we have met this test. The use will not be contrary to the public health, safety or welfare impact. We think we are providing a positive impact. If you parked your car in that parking lot last summer, you knew it was a haphazard alignment of cars. We think we have enhanced the safety of this area. Relative to the issue of waste, neither of these two activities generates any wastewater disposal. We do have an erosion control plan. Mack – Have you obtained State permits for this? Mock - We have made applications for this. We have received a favorable comment from the Conservation Commission and they have passed that along to the State. The State has received this and they are now starting their review. Joe Dever – Back in the late 70s, early 80s, the Park Commission purchased land where the road now goes through to the back property. At that time, we joined that piece of the land with the parking lot that we are talking about now. When it was done, there were no wetlands. Basically, the Town has let it go and not kept it up. That is what caused the wetlands. Flanders – This is another step in the Master Plan that we have for this site. This is a necessary step towards the goal to enhance walking trails for the future. Andre Kloetz – Another thing is that this will be an improvement in bringing children from the Community Center into the Park complex and not along Rte 3. Hearing closed at 7:35PM.

**2732: MCFARLAND-JOHNSON, INC. FOR TOWN OF MEREDITH: (Rep. Fred Mock)** An appeal for a SPECIAL EXCEPTION to allow construction of a building and related site development within the 150' prime wetland setback, Tax Map No. S15, Lot No. 8. located at 400 Daniel Webster Highway in the Central Business District.

Mock - There are a lot of similarities between the two projects, predominately because this is also along Hawkins Brook. This site is along Rte. 3 & 25. The test for a special exception include not only the activity

within the designated 150' prime wetland setback but Article V Section V. The sign shop is on this property. Ames Associates did the wetland mapping. Ninety percent of this project is within this 150' setback. That includes the building and the parking. There is no direct impact to the wetlands. We are just within the 150' setback buffer. Just westerly of the parking lot, both in short term and long term, we are providing storm water quality treatment and a detention with a discharge back to Hawkins Brook. From the impervious surfaces, we are collecting that all through a catch basin system to one location. In summary, there is no direct impact as far as dredging and filling. We are providing storm water treatment before we get there. There will be some replanting of vegetation that will provide shelter and forage for wildlife. We have tried to replicate the area west of the parking lot and northwest of the proposed building. In conclusion, there is no adverse impact to any of the functions or values of Hawkins Brook.

Mack – A brief summary in layman's terms. How can you build this Police Station in the 150' protected buffer of a prime wetland and not have adverse impact? Mock - The key word is adverse. For two reasons: When you go through the functions and values there are really two areas that we focused on. 1. Removing trees and therefore removing some shelter for wildlife. 2. We believe we have attended to the issues of water quality since this ends up in Lake Winnepesaukee by providing a natural system to enhance storm water infiltration into the soil and provide vegetated strips to prevent runoff from the parking lot. The greatest impact we could have, was related to water quality and the removing of trees. We have specific planting of high and low bush blueberries. This would replicate the conditions of the trees we remove. Because we have chosen a range of high and low shrubbery, we are providing a diversity that doesn't exist on that site today. You can't have any activity and not have impact. This will be an impact but not an adverse impact and that is the proof that we need to provide. We looked at alternatives. We looked at minimization and mitigation. There is no direct impact. We have moved everything as close to the road to minimize tree clearing. Some of this is unavoidable. There isn't a way to avoid being in the buffer. With the issue of mitigation, we have a diversity of plants and avoided an adverse impact.

Mack – What is the smallest dimension to the actual edge of the wetland of this project disturbance? Mock – I would say 60' to 75' other than the parking lot behind the edge of the building. Mack - Isn't that closer to 30'? Mock – It maybe 30' to 45'. The other area north of the parking is a future condition.

Andre Kloetz - On that site now is snow storage and debris. I'd say this is an improvement to what is there now. Mack – Does the State allow you to dump snow in a wetland buffer? Mock - The State does not have control as far as wetland buffers. Mack – They have no setbacks as far as dumping snow, salt, and sand? Mock - They don't want you dumping in the wetlands but no setbacks. Flanders - This site has a long history. We know salt has gotten into Hawkins Brook. This is an improvement. With these improvements to the site, it is a much better situation with water

quality coming out of Hawkins Brook into Lake Winnepesaukee. Mock – The Conservation Commission had a positive response. Dever – That sign shop was built in 1930. Mack – The point I am trying to make is when someone comes up and says you are improving the site just because the Town did not follow the rules, is not an excuse to grant something. This could potentially come up. Flanders – The Town of Meredith does follow the rules. We don't have to be here tonight. We are here because we are adamant that the Town should follow the same standards everybody else follows. Dever – Excuse me. You do have to be here. Flanders – Well, some rules but we don't have to go through the (inaudible). We do it because we feel that we have an obligation. I take exception to the statement that the Town does not follow rules. Mack – From what you just said, I would like you to respond to this. If this were not a Police Station for the Town of Meredith, but a development for a shopping center and they were building 90% within the 150' prime wetland setback, what would be the reaction to everyone in Town? We have to consider that also. Flanders – This is a lot of record. It has a history of uses. If someone came to the Zoning or Planning Board and wanted to redevelop this site with improvements to the same level we are proving, we would be hard pressed not to allow this. Don't you agree? Mack – My concern is setting up a precedent of allowing a development to go completely within the 150' setback. Mock – The tests for that kind of decision-making process are pretty clear in your ordinance. I can go through each one if you would like. It's a permitted use with conditions. We feel as though we have met the tests. Doug Hentz - I am trying to do something out on an Island and I haven't had to go before the Zoning Board for a special exception or variance, yet I have been scrutinized more than you can imagine for a project that has vastly less of an impact than this. How many people are here? This place is packed for my two-house subdivision on an island compared to this project. I can't believe there is no one here. If I came in as a developer, with a proposal like this, I can't imagine what I would go through to get approvals. I don't want to speak against this but there needs to be some balance between the two different parts of the scale. Dever - If you go through the same drill that they are going through, you are not going to get opposition from the Board. Your project is totally different. You are dumping in someone's back yard and they don't like it. Hentz – Obviously, but there are other people who live around this project. Dever – Yea, but they don't live on Lake Wicwas. This is not apples to apples. Edney - C-5 is the erosion control section and they are pretty extensive. Hearing closed at 8:03PM.

**DELIBERATIONS****2731: MCFARLAND-JOHNSON, INC. FOR TOWN OF MEREDITH:**

Mack – I don't have a problem with this one at all. I like the idea of the elevated walkway. In regards to filling in the parking, that was why I asked the question about proper approvals to isolate it. It was determined that it was not a functional wetland.

Dever moved, Joslin seconded, IN CASE # 2731, MCFARLAND-JOHNSON, INC. FOR TOWN OF MEREDITH, I MOVE AN APPEAL FOR A SPECIAL EXCEPTION TO ALLOW CONSTRUCTION OF A PEDESTRIAN BOARDWALK AND BRIDGE FROM MEREDITH COMMUNITY CENTER TO PRESCOTT PARK AND A SPECIAL EXCEPTION TO ALLOW INTERIM IMPROVEMENTS TO PRESCOTT PARK PARKING LOT WITHIN THE 150' PRIME WETLAND SETBACK, TAX MAP NO. U11, LOT NO. 50 AND TAX MAP NO. U 10. LOT NO. 31, LOCATED AT 1 CIRCLE DRIVE AND 367 DANIEL WEBSTER HIGHWAY IN THE CENTRAL BUSINESS AND RESIDENTIAL DISTRICT BE GRANTED, AS IT MEETS ALL THE REQUIREMENTS FOR A SPECIAL EXCEPTION PER OUR WETLAND ORDINANCE AND BE CONTINGENT UPON STATE APPROVALS. Voted 5-0 in favor.

**2732: MCFARLAND-JOHNSON, INC. FOR TOWN OF MEREDITH:**

Dever - I think they have done an excellent job on this one. Mack – I have a moral fight inside my body. I don't question the fact that they did a proper job in their design but they are trying to do a complete development within the 150' setback of a prime wetland. We try and protect our wetlands as much as possible and I am concerned that this might set a precedent to a point. I think, if this were a private development, building within the 150' setback, we would do our best to change the design and try not to have it have such an impact. That's my concern. Joslin – Don't you have to look at what they are using the property for now? Mack – So your saying, that if I have a piece of land and I am within the 150' setback of a prime wetland, that I should start dumping snow there, let it run into the wetlands and then come before the Board for a development and say that I want to build something that will be an improvement? That was what I was saying to Bob. By following the rules, I don't necessarily mean a written one, but a common sense one, that says you don't dump snow within a prime wetland whether it is allowed or not. Dever – But they are making improvements and I don't think we would look at this any differently than anyone else coming in. If they meet all the requirements of the ordinance, it

doesn't make any difference who they are. The wetland ordinance was adopted back in the 1980's and the Conservation Commission was adamant that the Town would have to meet all the requirements of everyone else. Joslin - I have some concerns on the back parking lot. Mack - The 30'? Joslin - Who monitors to make sure they do what they say they are going to do? Is that you Bill? Mack - That's Bill. Dever - The ordinance is what it is. Mack - My comment to that is, we have said it over and over again that variances and special exception, whatever it is, we work our best to have the least amount of impact. Is this really the least amount of impact for a development on that piece of land? I don't know whether it passes the test or not. It's not a written test in our ordinance but it is a test we have used as a Board. Should they come in with a 5000 sq. ft. building with less parking? That would be less of an impact. Dever - If they come in with a bigger building and they meet the requirements of the ordinance, we would still be hard pressed to deny it. It says, is this the least impact for this project? It doesn't say, is this the least project for the property? If it said that, you could deny anything that came in. Mack - We had an applicant come in on Blueberry Hill for a house and a garage and we said it was going within the buffers. The argument you gave me was for the project. So, why did we say his project for him was building that size house on that lot? Why was that not criteria enough for us to grant it? Dever - That is a different ball game. There were more things he could have done and kept the size project he wanted. He moved it around to create the least impact.

Dever moved, Hawkins seconded, IN CASE # 2732, MCFARLAND-JOHNSON, INC. FOR TOWN OF MEREDITH, I MOVE AN APPEAL FOR A SPECIAL EXCEPTION TO ALLOW CONSTRUCTION OF A BUILDING AND RELATED SITE DEVELOPMENT WITHIN THE 150' PRIME WETLAND SETBACK, TAX MAP NO. S15, LOT NO. 8. LOCATED AT 400 DANIEL WEBSTER HIGHWAY IN THE CENTRAL BUSINESS DISTRICT BE GRANTED, AS IT MEETS THE REQUIREMENTS FOR A SPECIAL EXCEPTION SUBJECT TO APPROVAL OF ANY STATE AND OR OTHER PERMITS. Voted 4 -1 in favor.

### **MOTION FOR A REHEARING**

**Jan Joslin stepped down.**

**2720: BROOKS BANKER, APPELLANT:** This Motion is for a Rehearing of a decision of the ZBA on January 12, 2006 which denied 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.

Mack – I don’t see that we made any mistakes or have been presented with new information.

Hawkins moved, Dever seconded, IN CASE #2720, MOTION FOR REHEARING DATED JANUARY 23, 2006 FILED BY BROOKS BANKER. BECAUSE THE MOTION FOR REHEARING DOES NOT CONVINC ME THAT WE MADE ANY ERROR OF FACT OR LAW IN OUR ORIGINAL DECISION ON JANUARY 12, I MOVE THAT THIS MOTION FOR REHEARING BE DENIED. Voted 4-0 in favor.

**2721: BROOKS BANKER, APPELLANT:** This Motion is for a Rehearing of a decision of the ZBA on January 12, 2006 which denied 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.

Mack – I feel the same as on Case # 2720. Dever - I feel the same way.

Dever moved, Hawkins seconded, IN CASE # 2721, MOTION FOR REHEARING DATED JANUARY 23, 2006 FILED BY BROOKS BANKER. BECAUSE THE MOTION FOR REHEARING DOES NOT CONVINC ME THAT WE MADE ANY ERROR OF FACT OR LAW IN OUR ORIGINAL DECISION ON JANUARY 12, I MOVE THAT THIS MOTION FOR REHEARING BE DENIED. Voted 4-0 in favor.

**2725: NORMANDIN, CHENEY` & O` NEIL, PLLC FOR LAKE WICWAS ASSOCIATION, INC. & DEAN DEXTER:** This Motion is for a Rehearing of a decision of the ZBA on January 12, 2006 which denied 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. .

Mack – Again, we have listened, we’ve seen, we’ve researched and I haven’t seen anything new and I don’t believe we made any mistakes.

Hawkins moved, Dever seconded, IN CASE #2725, MOTION FOR REHEARING DATED JANUARY 17, 2006 FILED BY ATTORNEY KENNEDY FOR LAKE WICWAS ASSOCIATION & DEAN DEXTER. BECAUSE THE MOTION FOR REHEARING DOES NOT CONVINC ME

THAT WE MADE ANY ERROR OF FACT OR LAW IN OUR ORIGINAL DECISION ON JANUARY 12, I MOVE THAT THIS MOTION FOR REHEARING BE DENIED. Voted 4-0 in favor.

Meeting adjourned at 8:20 P.M.

Respectfully submitted,

Christine Tivnan  
Planning/Zoning Clerk

Approved by the Meredith Zoning Board on \_\_\_\_\_, 2006.

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John Mack, Chairman