

MADBURY PLANNING BOARD

13 Town Hall Road, Madbury, New Hampshire 03823

**Site Plan Review Application of
David Redfearn and Three Sons Realty, LLC
Madbury Tax Map 3, Lot 44 (Old Stage Campground)**

Notice of Decision

Applicants' Site Plan Application was first filed with the Madbury Planning Board in August, 2007. By a 2 to 2 vote, the Application was disapproved on February 6, 2008. Applicants appealed pursuant to RSA 677:15. See, David Redfearn and Three Sons Realty, LLC v. Town of Madbury, Strafford County Superior Court Docket No. 08-E-0073. By Judge Tucker's November 26, 2008 Order, delivered by the Superior Court's December 5, 2008 Notice of Decision, the case was remanded to the Planning Board for further consideration and such further proceedings as the Planning Board deemed appropriate in light of Judge Tucker's Order.

The Planning Board met to review Judge Tucker's decision on January 21, 2009. The Planning Board twice met in non-public session, pursuant to RSA 91-A:3, II (a) to discuss this case with counsel, on February 4 and February 18, 2009. On March 18, 2009, the Planning Board met with its planning consultant to discuss the scope of potential traffic and other environmental studies. At its March 18 meeting, the Planning Board also discussed member DiBerto's recommendation that the current status of Old Stage Campground be documented to specifically define its currently existing non-conforming use.

The Planning Board subsequently conducted public hearings on April 1, May 6 and May 20, 2009. Minutes of all three meetings reflect the Board's receipt of public testimony and inquiry of Applicants and counsel, and deliberations concerning traffic and environmental issues. At its April 1 meeting, the Board unanimously determined a need for a formal traffic analysis and debated its scope. At its May 20 meeting, the Board voted to accept the May 19, 2009 scope of study recommended by Civilworks, Inc., Applicants' consultant.

To facilitate a traffic study of actual conditions during a July weekend with a high population of campers, the public hearing was continued to August 19, 2009, at which the Board heard from Dana Lynch of Civilworks, took more public comment, then deliberated proposed findings and conditions.

At its September 2, 2009 continued public hearing, the Planning Board considered all its past deliberations, and made the following findings of fact, on which it based conditional approval of Applicants' Site Plan Review Application:

Findings of Fact

1. Old Stage Campground presently exists as a pre-existing non-conforming use, classified as a "commercial enterprise" under Madbury's current Zoning Ordinance.
2. Old Stage Campground has been owned and operated as a seasonal family campground, typically populated from approximately Mother's Day until some time following Columbus Day. A few campers access the campground during the fall months. The campground's potable water and sewer systems are winterized, so as to be in non-use during cold winter months. Those who don't remove their campers from rented sites in the fall winterize them so as to be in non-use during cold winter months.
3. Applicants rent campsites to campers. Some rent sites for the season (many have repeatedly rented the same site year after year). Others rent sites for lesser times, including overnight campers.
4. Applicants admit that Old Stage Campground meets the definition of a recreational campground or camping park, as defined and regulated by N.H. RSA Chapter 216-I.
5. Madbury's Zoning Ordinance has no comparable recreational campground or camping park definition.
6. Old Stage Campground fits the definition of, and is most appropriately characterized as, a "commercial enterprise" under Madbury's Zoning Ordinance, which says:

Any activity which provides a product or service to the public for reimbursement or fee, whether for profit or non-profit, such as professional services, retail stores, recreational facilities, automotive service stations, or any other venture which could reasonably be determined as such.
7. As so classified, it is important to characterize the scope of Applicants' pre-existing non-conforming use because this Application for Site Plan Approval is the first stage of Applicants' two-board (Planning Board and ZBA) Request for Special Exception to enlarge its non-conforming use.

8. Specifically, Madbury's Zoning Ordinance Article XIII, Section 1 (C) states that:

A non-conforming use may not be enlarged or changed except as a Special Exception by the Board of Adjustment, as provided in Article XV, Section 1.B.1.b and Section 1.B.2 and following Site Plan Approval by the Planning Board as provided by Article XV, Section 1.B.1.a.

9. Because Applicants have characterized its proposed expansion, as evidenced by its Site Plan, as allowable under N.H. common law and the New Hampshire Constitution (referencing New London v. Leskiewicz, 110 N.H. 462 (1970)), the facts and legal principles of which the Planning Board has consulted with legal counsel), the Planning Board feels it is important to quantify and identify the scope of the present non-conforming use to assist the ZBA and to establish a benchmark from which any future expansion shall be measured.

10. The Planning Board finds that future expansion requests should not be quantified as expansions as a matter of degree from the campground as expanded by this approval, but rather from the non-conforming use as the Planning Board establishes it to be currently.

11. Applicants submitted a revised Site Plan, originally dated August 1, 2007, last revised June 4, 2009, received July 15, 2009, which the Planning Board formally accepted as an amendment to the Site Plan Application. This revised Site Plan shows the existing, pre-existing non-conforming campsites (158 in number), the access road and other improvements (together, the scope of non-conforming use). The same Plan shows 19 new lots, together with the elimination of one old lot for access to the new, for a net increase of 18 more lots (proposed expansion), bringing the total campsites number to 176.

12. Many existing campsites have been improved by tree and other vegetation clearing. Existing campsites are temporarily/seasonally occupied by vehicular, movable campers, and other movable improvements. No permanent structures (other than those shown on the above referenced Plan) are recognized or authorized by Applicants' current non-conforming use.

13. The Planning Board finds it to be in the Applicants' as well as the Town's best interests to more thoroughly document the scope of Applicants' existing non-conforming use, including the scope of vegetation clearing for campsites, particularly in the vicinity of the Bellamy River. The Planning Board finds that the best way to document such existing conditions is for a representative(s) of the Planning Board, with Applicants' consent, to photograph the extent of current campsite clearing, and other permanent improvements depicted on the above referenced Plan which are now within areas where such clearing or improvements would not be allowed, to create a record of pictures, to be inventoried or referenced to the above-referenced Site Plan, which, with the amended Site Plan, establish an historic benchmark of Applicants' present pre-existing non-conforming use.

14. The campground is accessed by a privately owned gravel road, partly on land of abutters Dan Dodd and Leslie Stein (the "Abutters").

15. The Applicants' and Abutters' respective rights to said private road, and its specific location, are governed by a Strafford Superior Court approved Stipulation dated July 9 and 15, 2003, on file with the Superior Court in Arnold M. Redfearn, as Trustee of the Forty-Six Old Stage Road Trust v. Dan Dodd and Leslie Stein, Strafford County Docket No. 01-E-0164. A copy of the Stipulation is a part of this Planning Board's Record, and recorded at the Strafford County Registry of Deeds at Book 2827, Page 876.

16. The Abutters have expressed concerns with respect to increased usage of the road (safety, noise, dust), and have conceded the Applicants' right to pave the road. (See Minutes of May 6, 2009 Planning Board Meeting. See April/May hearing Minutes. See also Attorney Roberts' May 8, 2009 letter to Planning Board/Chair).

17. The Abutters' concerns were a focus of this Planning Board's prior non-approval, as well as a focus of this Planning Board's deliberations on remand from the Superior Court.

18. Applicants retained the services of Civilworks, Inc., who submitted a traffic study dated August 18, 2009.

19. Based upon Civilworks' traffic study and August 19 presentation, the Planning Board finds the current road to be adequate with respect to vehicular safety given present and projected traffic loads. Civilworks' study and Mr. Lynch's testimony acknowledge a linear increase in traffic (approximately 11%). To assure against noise and dust increases on account of gravel roadway deterioration and/or excessively dry conditions, the Planning Board finds the best and most cost effective means of minimizing existing and any future noise and dust, and assuring long term maintenance of the road (to prevent further noise and dust) is for that portion of the access road running through the Abutters' private property (over Applicants' easement) to be paved, with appropriate crowning, and with minimal gravel shoulders. While Applicants may pave their entire access from the edge of pavement of existing public roads to its campground entry as a matter of right, the Planning Board does not find it necessary to require paving all of the private access as a condition of approval.

20. The Applicants have expressed their willingness to pave the road. See Meeting Minutes generally, specifically May 6, 2009. See also Attorney Roberts' April 7, 2009 letter to Abutters, with copy to Attorney Wyskiel, counsel to Planning Board.

21. As an alternative to paving, or perhaps even in addition to paving, the Applicants are willing to erect a fence or other buffer along the road perimeter closest to the Abutters' home. (See Attorney Roberts' April 7, 2009 letter to Abutters referenced above).

22. The Applicants represent themselves to be without the financial ability to immediately pave that portion of the campground's access road which runs over Abutters'

private property, or the entire access (from edge of existing pavement to gated campground entry way). Applicants may rely upon additional revenues generated from the new campsites during at least a couple of summer seasons to fund such paving.

23. The Applicants have submitted a current set of Rules and Regulations to the Planning Board.

Conditions of Approval

1. The Site Plan shall be amended to add a note referencing this "Notice of Decision," with the requirement that it, together with the "Site Overview Plan" and "Site Development Plan" sheets of the Site Plan, shall be recorded at the Strafford County Registry of Deeds.

2. Upon final non-appealable Town approvals to expand the campground, mylar copies of "Site Overview Plan" and "Site Development Plan" sheets of the Site Plan, signed by the Planning Board Chair, together with a copy of this "Notice of Decision," shall be recorded at the Strafford County Registry of Deeds.

3. Applicants shall pave that portion of the campground's existing access located on Abutters' property within Applicants' easement (approximately 650 linear feet). The existing roadbed shall be prepped and appropriately crowned to receive paving. Applicants shall submit a typical cross section of the proposed roadway's crown, paving width and thickness, together with proposed paving specifications, to the Planning Board and Madbury Building Inspector.

4. Applicants shall complete the paving requirements of Condition 3 above on or before the last day of May which follows two summer camping seasons which follow any final, non-appealable order of the Madbury Zoning Board of Adjustment, granting a Special Exception to facilitate the campground expansion and access paving contemplated by this Conditional Site Plan Approval.

5. If, prior to the paving deadline referenced in Condition 4 above, Applicants provide written notice to both the Madbury Planning Board and Building Inspector of their intent to pave the approximately 1200 lineal feet of campground access, from edge of existing paving to the gated entry way to the campground, then, the paving requirement of Condition 3 shall be for the entire above described approximately 1200 linear feet, and the paving deadline referenced in Condition 4 above shall be extended by one (1) year.

6. Applicants' failure to comply with the paving deadline of Condition 4 above, or as extended by Condition 5 above, shall be enforceable pursuant to RSA 676:17, and/or 676:17-a. Applicants acknowledge the reasonableness of the civil penalty provisions of RSA 676:17, I, having requested the Planning Board not to require the posting of financial surety for such paving at the time any building permits for the installation of water and sewer lines to proposed/new campsites are requested.

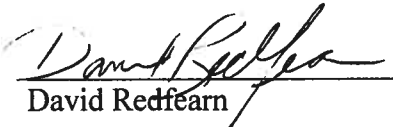
7. Final Site Plan Approval shall be contingent upon Applicants' delivery to the Planning Board and Madbury Building Inspector of copies of all state permits required for Applicants' anticipated expansion, including but not limited to permits applicable to campground operation as required by RSA 216-I, state approvals for septic construction, and state approval for vegetation clearing (complying with New Hampshire's Comprehensive Shoreland Protection Act, RSA 483-B). This requirement is imposed pursuant to Madbury Site Plan Review Regulations, Article VII.

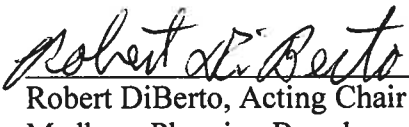
8. Final Site Plan Approval shall be contingent upon completion of the documentation of Applicants' current non-conforming use as contemplated by Finding 13 above.

9. The Applicants and any future owner of the campground shall maintain campground Rules and Regulations for all campground renters and visitors, including, but not limited to, speed limits for campground access road, and within the campground site, policies and/or rules for proper siting, storage and handling of fuel tanks, including off-season removal from the flood plain of all portable tanks, rules for recreational vehicle storage, pet restrictions, quiet time, use of recreational vehicles and fire restrictions.

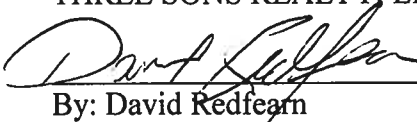
10. The Applicants and/or any future owner(s) of the campground are encouraged to cooperate with the Madbury Conservation Commission to educate campers and their visitors about protection of the Bellamy River from pollution and contamination.

**CONDITIONALLY APPROVED AT THE PLANNING BOARD MEETING OF
SEPTEMBER 2, 2009:**

 9/30/09
David Redfearn Date

 9/16/09
Robert DiBerto, Acting Chair Date
Madbury Planning Board

THREE SONS REALTY, LLC

 9/30/09
By: David Redfearn Date
Member, Duly Authorized

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