

PLANNING BOARD MINUTES  
APRIL 23, 2014

Chairman Johnston called the Meeting to Order at 7:00 P. M. Chairman Johnston asked everyone to please be sure they have signed in, since we don't have a Secretary present at the Meetings. The following members were in attendance: Ms. MaryLou Fitzgerald, Mr. Dwight Anson, Mr. Ken White and Mr. Chris Maron. Alternate, Ms. Cynthia Fairbanks was also in attendance. Also present, Mr. George Hainer, Building Codes/Zoning Officer. Guests in attendance, Ms. Nancy Page. Chairman Johnston asked Alternate, Ms. Fairbanks to fill in this evening for Mrs. Evelyn Brant. Mrs. Brant may not be here for a number of meetings, so I would like to appoint you to fill her position until she returns. Thank you.

MINUTES: First order of business is to approve the Minutes of the March 26, 2014 Meeting.

Ms. Fitzgerald – I so move.

Chairman Johnston – Thank you. Second.

Mr. White – Second.

Chairman Johnston – There's a correction, Cynthia, you need to add your name.

Ms. Fairbanks – Yes. (Ms. Fairbanks's name was not on the March 26, Sign-In Sheet.)

Chairman Johnston – Is there anything else regarding the Minutes? All in favor, carried.

Next, we have three (3) Resolutions, correct, four (4) Resolutions that were approved at previous meetings, and the exact language of the Resolutions was prepared at the time of the meeting. I would like you to look at the Resolutions.

Ms. Fitzgerald – Please read them and then we're done with it.

Chairman Johnston – Alright, the first one is **Paul Mudie and Kathleen Kelley**. Mr. Johnston read all the Resolutions and they are attached to these Minutes.

Ms. Fitzgerald – I move that we accept it.

Mr. Anson – Second.

Chairman Johnston – All in favor, carried.

**Anna Sherman** – Mr. White – Move to approve.

Chairman Johnston – Thank you, Second.

Ms. Fitzgerald – Second.

Chairman Johnston – Any discussion, all in favor, carried.

This one is the **Grant** project.

Mr. Anson – I'll move.

Chairman Johnston – Second, Cynthia. No discussion. All in favor, carried.

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The last one, and I'm not going to read this, it's the Permit that was issued last year for the Barber Sand Pit Extension. We passed a Resolution, renewing the Permit, and there were some blanks because the DEC had not actually issued the Permit. The DEC has now issued the Permit and we have inserted the blanks, the dates of the blanks.

Mr. Anson – Inserted what.

Chairman Johnston – We have inserted the dates. There were blanks. When we passed our resolution we didn't know the dates, the DEC permit was issued and we wanted our Permit and the DEC Permit to run simultaneously.

Mr. Anson – Right.

Chairman Johnston – So we passed our resolution with the blank and the DEC Permit has just arrived, so now we can insert the dates.

Mr. Anson – Ok.

Chairman Johnston – Should I read the whole thing, George?

Ms. Fitzgerald – I don't think it's necessary.

Mr. Hainer – No.

Chairman Johnston – We're just inserting the date. Everyone ok, with that? Motion to accept the date as inserted.

Mr. White – So move.

Ms. Fitzgerald – Second.

Chairman Johnston – All in favor, carried

Let's move on to Item four (4) of the Agenda:

**Robert McGee – Tax Map No. 66.2-2-24.200** – Discussion of Complaint – I learned something, as part of this process. Being Chairman of the Planning Board is always a learning process. When I was informed that the complaint had been filed, I assumed that Section 8, Enforcement would kick in. For those of you who don't have your Zoning with you, I'll just briefly read Section 8 Enforcement (attached, Page 2A). I thought that was going to kick in, I was advised by George, that there is actually another provision in our Law that kicks in first. That's actually in the Special Permit Section and there's a section in the Special Permit Section that is, Section 5.039 Expiration, Change of Use, Revocation, and Enforcement, c.(attached, 2B). So, it lands on our table first.

Mr. Maron – I have a question about that. Because, looking at local law, it states, that no individual junk automobile shall be located as to be visible from public roads, trails, boat or canoe routes or from neighboring properties.

Chairman Johnston – What Local law is this, Chris?

Mr. Maron – 32.040 on page 67 of Town Law. It also says as to the effective date of this local law, no new automobile junk yards or junk yards shall be permitted within the Town. Within one year the effective date of this local law, all existing automobile junk yards and junk yards shall be screened by an opaque fence, so that to be as substantially invisible from the public highway. Such fence shall be constructed with such material that is in itself not an eye sore. Then within five years of the effective date, of this local law, all

Where a project for which a project permit has been lawfully issued, but no certificate of compliance has been awarded, would be rendered noncomplying or nonconforming by an amendment of this local law, such project shall have the right to be completed and to be awarded a certificate of compliance pursuant to the provisions in effect when the project permit was issued only if, in the case of a project primarily involving a building, the foundation has been completed prior to the effective date of the amendment, and, in the case of a project not primarily involving a building, a substantial amount of construction has been completed prior to the effective date of the amendment.

## **SECTION 8 ENFORCEMENT**

### **8.010 Zoning Inspector**

This local law shall be enforced by the Zoning Inspector and the Town Board.

### **8.020 Complaints of Violations**

Whenever a violation of this local law occurs, any person may make a complaint in regard thereto. All such complaints shall be made to the Zoning Inspector who shall properly record such complaint and immediately investigate and report his findings thereon to the Town Board. The Zoning Inspector shall have authority to serve upon any person owning, leasing, controlling or managing any building, structure or land in which a violation of this local law exists an order to cease or remove such violation.

### **8.030 Penalty**

8.031 Any person owning, leasing, managing or otherwise controlling any building, structure, or land in which a violation of this local law shall exist or is committed and any person who commits or assists in the commission of any violation of this local law or any conditions imposed in any project permit or certificate of compliance, or who undertakes any project contrary to the plans or specifications submitted to the Zoning Inspector and on the basis of which a project permit shall be given; any person who shall omit, neglect, or refuse to do any act required by this local law, and any such person who, having been served with an order to cease or remove such violation, shall fail to comply with such order within 10 days after such service, shall be guilty of an offense and subject to a fine as authorized in Section 268 of the Town Law. Every such person shall be deemed guilty of a separate offense for each week such violation, disobedience, omission, neglect or refusal shall continue.

8.032 For the purposes of this Section 8, where a "person" is an entity other than an individual, the principal executive officer or partner or agent or manager of such entity may be considered to be such person.

### **8.040 Injunctive Relief**

In case of any violation or threatened violation of any of the provisions of this local law, or conditions imposed in any project permit or certificate of compliance, the Town may, by resolution of the Town Board, institute an action for injunctive relief to prevent, restrain, correct or abate such violation.

### **8.050 Misrepresentation**

Any project permit or approval granted under this local law which is based upon or is granted in reliance upon any material misrepresentation, or failure to make a material fact or circumstance known, by or on behalf of an applicant, shall be void.

## **SECTION 9 REGIONAL PROJECT REVIEW**

### **9.010 Purpose and Intent of this Section**

#### **9.011 Purpose**

The purpose of this Section is to establish requirements and administrative procedures for the review of Class B Regional Projects by the Planning Board or the Adirondack Park Agency, and to set forth the Town's role when Class A or Class B Regional Projects are reviewed by the Adirondack Park Agency.

#### **9.012 Special Permit Uses**

It is the intention of the Town to avoid duplication of review processes for Special Permit uses. Therefore, if the Adirondack Park Agency reviews any Special Permit use as a Class A or Class B Regional Project, the Town Planning

- a. Upon receipt of application materials it deems to be complete, the Planning Board shall refer to the Essex County Planning Board any application for a Special Permit affecting real property within 500 feet of the boundary of the Town of Westport, the boundary of any existing or proposed County or State park or other recreational area, the boundary of any existing or proposed County or State roadway, the boundary of any existing or proposed right-of-way for a stream or drainage channel owned by the County for which the County has established channel lines, the boundary of any existing or proposed County or State-owned land on which a public building or institution is situated, or the boundary of a farm operation within an agricultural district as defined in Article 25AA of the Agriculture and Markets Law, pursuant to General Municipal Law, Article 12-B, Sections 239-l and 239-m, as amended.
- b. No action shall be taken on applications referred to the County Planning Board until its recommendation has been received, or 30 days have elapsed after its receipt of the complete application, unless the County and Town agree to an extension beyond the 30-day requirement for the County Planning Board's review.
- c. County Disapproval. A majority-plus-one vote of the Planning Board shall be required to grant any Special Permit which receives a recommendation of disapproval from the County Planning Board because of the referral process specified above, along with a resolution setting forth the reasons for such contrary action.

#### 5.037 Notice and Hearing

- a. If an agricultural data statement has been submitted, the Secretary of the Planning Board shall, upon receipt of the application, mail written notice of the Special Permit application to the owners of land as identified by the applicant in the agricultural data statement. Such notice shall include a description of the proposed project and its location. The cost of mailing the notice shall be borne by the applicant.
- b. The Planning Board shall hold a public hearing on a complete Special Permit application within 31 days for a Minor Project and within 62 days for a Major Project. The applicant shall give public notice of such hearing by causing publication of a notice of such hearing in the official newspaper at least five days prior to the date thereof.

#### 5.038 Action

- a. The Planning Board shall grant, deny, or grant subject to conditions the application for a Special Permit within 62 days after the hearing for a Major Project and within 31 days for a Minor Project. Any decision on a Major Project shall contain written findings explaining the rationale for the decision in light of the standards contained in Section 5.042 of this Local Law.
- b. In permitting the development, undertaking, reconstruction, enlargement or substantial alteration of a use allowable by special permit, the Planning Board may impose any conditions which it considers necessary to protect the health, safety and welfare of the Town and its present and future citizens and the best interests of the surrounding property, the neighborhood or the Town as a whole. These conditions may include increasing dimensional or area requirements, specifying location, character and number of vehicle access points, requiring landscaping, planting and screening, requiring clustering of structures and uses in order to minimize the burden on public services and facilities, and requiring action by the applicant, including the posting of performance bonds and furnishing of guarantees to insure the completion of the project in accordance with the terms and conditions applicable thereto.

#### 5.039 Expiration, Change of Use, Revocation, and Enforcement

- a. A Special Permit shall expire if the Special Permit use or uses cease for more than 24 consecutive months for any reason, if the applicant fails to obtain the necessary Project Permit or fails to comply with the conditions of the Special Permit within 18 months of its issuance, or if its time limit expires without renewal.
- b. A Special Permit shall apply to the use for which it has been granted, as well as to any subsequent use of the property which complies with all terms and conditions of the Special Permit (as determined by the Zoning Inspector in issuing a Certificate of Compliance) and which does not involve any new construction, enlargement, exterior alteration of existing structures, or changed use of outdoor areas. Any other change to a use allowed by Special Permit shall require the granting of a new Special Permit or a Special Permit amendment.
- c. A Special Permit may be revoked by the Planning Board if the permittee violates the conditions of the Special Permit or engages in any construction or alteration not authorized by the Special Permit.
- d. Any violation of the conditions of a Special Permit shall be deemed a violation of this Local Law, and shall be subject to enforcement action as provided herein.

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existing automobile junk yards and junk yards shall be removed and their sites cleaned of all materials associated herewith.

Chairman Johnston -- This is Town of Westport, Local Law?

Mr. Maron -- Yes.

Ms. Fitzgerald -- Chris, can you define junkyard?

Mr. White -- I don't think that's junkyard.

Mr. Maron -- "Automobile junkyard", is any place of storage or deposit whether in connection with other business or not where two or more unregistered vehicles, no longer intended or in condition for legal use on the public highways are held whether for the purpose of resale or used parts thereon. It goes on and on, but anyway, I guess the question here is whether the vehicles there are unregistered. That's all on automobile junkyard.

Mr. Hainer -- So, here in the Village Section ---

Mr. Maron -- I'm in the Town Section, page 67.

Mr. Hainer -- Junkyard?

Mr. Maron -- So, on the one hand, we have a Permit, under the Planning Board, but I think this is also something that is land use law.

Chairman Johnston -- Is this a single-purpose local law that you're reading from?

Mr. Maron -- This is from the green book that we have.

Chairman Johnston -- What was the section number, again?

Mr. Maron -- 32.040 and 32.050.

Chairman Johnston -- That's on page 67 and my copy is lacking that page.

Mr. Hainer -- I have it on page 45.

Mr. Maron -- You're looking at Village Law.

Mr. Hainer -- No, I'm looking at --

Chairman Johnston -- I have an old copy and for some reason.

Mr. Hainer -- Town of Westport, I have the Land Use Law March 9, 2010. The Village Section defines Automobile Junkyard (page 3A).

Mr. Maron -- Is this property in the Village --

Mr. Hainer -- No, no. The Town part describes Junkyard (page 3B), automobile junkyard --

Chairman Johnston -- Chris, could I see that.

Mr. Hainer -- Do you have the amended, states, including amendments through March 9, 2010"?

Mr. Maron -- Maybe not, but I just got my green book from downstairs.

**PART TWO: WESTPORT VILLAGE DISTRICT REGULATIONS**

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**SECTION 20 CONSTRUCTION OF LANGUAGE AND DEFINITIONS**

**20.010 Construction of Language**

The following rules of construction apply to the text of this local law:

- a. The particular shall control the general.
- b. The word "shall" is always mandatory and not discretionary. The word "may" is permissive.
- c. Words used in the present tense shall include the future; words used in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary.
- d. A "building" or "structure" includes any part thereof.
- e. The word "used," when employed in the phrases "used to," "used for" or "used as" includes the following words when employed in similar phrases: "designed," "intended," "maintained," "occupied."
- f. Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the conjunction "and," "or," or "either...or," the conjunction shall be interpreted as follows:
  1. "And" indicates that all the connected items, conditions, provisions, or events shall apply.
  2. "Or" indicates that, the connected items, conditions, provisions, or events may apply singly or in any combination.
  3. "Either...or" indicates that the connected items, conditions, provisions, or events shall apply singly but not in combination.
- g. The word "includes" shall not limit a term to the specified examples, but is intended to extend its meaning to all other instances or circumstances of like kind or character.

**20.020 Definitions**

When used in this local law, the following terms shall have meanings set out below.

**Accessory Apartment:** An accessory apartment is a short-term accessory use to a single family dwelling. It is a separate living space within a single family dwelling to be occupied by family members or caregivers. An accessory apartment shall constitute a principal building however it does not need to comply with the intensity or minimum lot size requirements of the district. (amended 2010)

**Accessory use:** See use, accessory.

**Adirondack Park Agency:** The Adirondack Park Agency created by Section 803 of the Adirondack Park Agency Act.

**Adirondack Park Agency Act:** Article 27 (800 et seq.) of the Executive Law. For purposes hereof, the numbering of sections of the Adirondack Park Agency Act is as it appears in the Executive Law.

**Agriculture:** The use and management of land for the raising of crops, including timber, or livestock. The term includes the sale of products grown or raised on such land and the construction, alteration, and maintenance of fences, agricultural roads, agricultural drainage systems, and farm ponds or of a barn, shed, silo, garage, produce sales stand, or other building, or structure customarily found with agriculture.

**Area variance:** The authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.

**Automobile junkyard:** Any place of storage or deposit, whether in connection with another business or not, where two or more unregistered, old, or secondhand motor vehicles, no longer intended or in condition for legal use on the public highways or in agricultural activities, are held, whether for the purpose of resale of used parts therefrom, the purpose of reclaiming for use some or all of the materials therein, whether metal, glass, fabric, or otherwise, the purpose of disposing of the same or for any other purpose. The term shall include any place of storage for any such purposes of used parts or waste materials from motor vehicles which, taken together, equal in bulk two or more such vehicles. For the purpose of this definition, "motor vehicle" shall mean any vehicle propelled or drawn by power other than muscular power originally intended for use on public highways or in agricultural activities.

**Board of Appeals:** The Board of Appeals of the Town, also referred to as the Zoning Board of Appeals.

# TOWN REGS

**Agriculture.** The use and management of land for the raising of crops or livestock. The term includes raising of cows, horses, pigs, poultry, and other livestock, beekeeping, horticulture, orchards, the sale of products grown or raised directly on such land, the construction, alteration, or maintenance of barns, sheds, stables, silos, garages, produce sales stands, fences, agricultural roads, agricultural drainage systems, farm ponds, and other buildings or structures customarily associated with agriculture.

**Area variance:** the authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.

**Automobile Junkyard.** Any place of storage or deposit, whether in connection with another business or not, where two or more unregistered vehicles, no longer intended or in condition for legal use on the public highways or in agricultural, forestry, or mining activities, are held, whether for the purpose of resale of used parts therefrom, for the purpose of reclaiming for use some or all of the materials therein, whether metal, glass, fabric, or otherwise, for the purpose of disposing of the same or for any other purpose; such term shall include any place of storage or deposit for any such purposes of used parts or waste materials from motor vehicles which, taken together, equal in bulk two or more such vehicles provided; however, the term junkyard shall not be construed to mean an establishment having facilities for processing iron, steel, or non-ferrous scrap for sale for remelting purposes only. For the purpose of this definition, "motor vehicle" shall mean all vehicles propelled or drawn by power other than muscular power originally intended for use on public highways or in agricultural, forestry, or mining activities.

**Bed and Breakfast.** An owner-occupied residence offering overnight accommodations in the principal building or an accessory structure, with no more than four bedrooms in the residence for transient use, and serving no meals other than breakfast.

**Board of Appeals.** The Board of Appeals of the Town, also referred to as the Zoning Board of Appeals.

**Boathouse.** A structure with direct access to a navigable body of water (1) which is used for the storage of boats and associated equipment and (2) which does not have bathroom or kitchen facilities and is not designed or used for lodging or residency.

**Building.** A permanent, fixed structure (not including a mobile home) having a roof or other overhead cover and intended for the shelter, housing, or enclosure of persons, animals, or other property.

**Campground.** An area designated for transient occupancy by camping in tents, camp trailers, travel trailers, motor homes, or similar facility designated for temporary shelter. This term includes a travel trailer camp and related facilities.

**Cemetery.** A place for burial of the dead, including crematory facilities and morgues as accessory or commercial uses. Commercial uses may require a permit.

**Class A Regional Project.** A land use or development which is classified and defined as such in Section 810 of Act, listed in Appendix A of this local law.

**Class B Regional Project.** A land use or development which is classified and defined as such in Section 810 of Act, listed in Appendix B of this local law.

**Class A Regional Subdivision.** A subdivision which is classified and defined as such in Section 810 of Act, listed in the town subdivision regulations.

**Class B Regional Subdivision.** A subdivision which is classified and defined as such in Section 810 of Act, listed in the town subdivision regulations.

**Clearcutting.** Any cutting of all or substantially all trees over six inches in diameter at breast height over any ten-year cutting cycle, involving four or more contiguous acres of land.

**Commercial, Large Scale.** A commercial use which occupies more than 10,000 square feet of floor area or more than one acre of land.

**Commercial Resource Extraction.** Any extraction from the land of more than 50 cubic yards in any two-year period of sand, gravel, topsoil, or other mineral deposit.

**Commercial Resource Extraction Structure.** Any mine hoist; ore reduction, concentrating, sintering, or similar facilities and equipment; administrative buildings; garages or other main buildings or structures.

**Commercial Use.** Any use involving the sale or rental or distribution of goods, services, or commodities, either retail or wholesale, or the provision of recreation facilities or activities for a fee. The term shall not include uses of the above nature which are separately defined in this local law.

**Community Water/Sewage Disposal Facility.** Water and/or sewage disposal system shared by a group of property owners, owned privately by the property owners or another entity under applicable provisions of State Law.

**Community Facility.** Any facility, college, school, library, hospital, animal hospital, place of worship, museum, playground, firehouse, meeting hall, park, post office, group home, nursing home, municipal office, meeting hall, or similar facility maintained by a public or by a not-for-profit association primarily for social, recreational, welfare, or educational needs of the community.

**Conservation Easement.** A perpetual restriction on the use of land, created in accordance with the provisions of Section 49, Title 3 of the Environmental Conservation Law or Section 247 of the General Municipal Law, for the purposes of

conservation of open space, agricultural land, and natural, cultural, historic, and scenic resources.

**County.** Essex County.

**County Planning Board.** The Essex County Planning Board, established pursuant to Article 12B of the General Municipal Law.

**Day.** Calendar day, including Sundays and holidays, unless otherwise specified.

**Dwelling Unit.** Any one of the following: single-family dwelling, mobile home, each unit of a two-family dwelling or multi-family dwelling.

**Family.** A single individual occupying a dwelling, or two or more individuals occupying a dwelling and maintaining a common household.

**Farm Operation.** Land used in agricultural production, farm buildings, equipment, and farm residential buildings.

**Forestry.** Use or management, including logging, of a forest, woodland, or tree plantation, and related research and educational activities, including the construction, alteration, or maintenance of roads, skidways, landings, fences, forest drainage systems, barns, sheds, garages, and research, educational, or administrative buildings or cabins directly and customarily associated with forestry use.

**Group Camp.** Any land or facility for seasonal housing and recreational, educational, or business related use by private groups or semi-public groups, such as boy or girl scout camp, fraternal lodge or university, or college conference center.

**Group Home.** A residential facility for children or adults who require special care or supervision, such facility being operated by, under contract with, or licensed by a state or county agency.

**Guest Cottage:** Not more than one residential structure which is associated with an accessory use to a single family dwelling located on a lot that meets the minimum lot size for the district where proposed and which: (a) is used only on an occasional basis; (b) is used only by guests of the resident(s) of the associated single family dwelling; (c) is not for rent or hire separately from the associated single family dwelling; and (d) contains one-half (1/2) or less of the enclosed floor space of the associated single family dwelling or 1,250 square feet, whichever is less. (amended 2010)

**Home Occupation.** Professional office or business use of a residential property by the occupant, conducted within the residence or an accessory structure, occupying no more than 3,000 square feet of floor space and/or outdoor yard space, which does not change the residential character of the premises or employ more than 5 non-resident employees.

**Hunting and Fishing Cabin:** A cabin, camp, lean-to or other similar structure designed and used only for occasional occupancy and primarily for hunting, fishing and similar purposes that (a) is a one-story structure but may include a sleeping loft; (b) is built on posts or piers and does not have a permanent foundation; (c) is served by a sanitary pit privy or chemical toilet and does not have a conventional, on-site waste water treatment system; (d) does not have pressurized or indoor plumbing except for a kitchen sink with appropriate graywater leach pit; (e) is not connected to any public utilities such as electric, phone, cable television, water or sewer systems; (f) is less than 500 square feet in size (g) not more than one (1) is allowed per 20 acres; and (h) meets a 150 foot shoreline building setback. (amended 2010)

**Industrial Spring/Well:** A spring or well, its accessory structures, intended to supply a large quantity of water to supply an industrial use. (amended 2010)

**Industrial Use.** Any manufacturing, production, or assembly of goods or materials, including any on-site waste disposal area directly associated with an industrial use. This term does not include mineral extractions, private and commercial sand and gravel extraction, sawmills, chipping mills, pallet mills, and similar wood-using facilities. An industrial use may include product display, wholesale, warehousing, and retail operations as accessory uses, provided such activity is incidental and subordinate to the principal use to which it is accessory. This term shall not include uses of the above nature which are separately defined in this local law.

**In Existence.** With respect to any land use or development, including any structure, that such use or development has been substantially commenced or completed.

**Junk Automobile.** Any unregistered, old, or second hand motor vehicle, no longer intended or in condition for legal use on the public highways. For the purpose of this definition, "motor vehicle" shall mean all vehicles propelled or drawn by power other than muscular power originally intended for use on public highways or for use in agricultural, forestry, or mining activities.

**Junkyard.** Any open lot or area for dismantling, storage, or sale, as parts, scrap, or salvage, of used or wrecked motor vehicles, machinery, scrap metals, waste papers, rags, used or salvaged building materials, or other discarded material.

**Land.** The earth, on or below the surface of the ground, including water and air above, the flora and fauna.

**Land Use Area.** Those areas delineated on the official Adirondack Park Land Use and Development Plan Map adopted under Article 27 of the Executive Law of the State of New York and designated thereon as "Hamlet," "Moderate Intensity Use," "Low Intensity Use," "Rural Use," "Resource Management," and "Industrial," and such portions of those areas as are located within the town, and delineated on the Adirondack Park Land Use and Development Plan Map.

**Land Use or Development.** Any construction or other activity which materially changes the use or appearance of land or a structure or the intensity of the use of land or a structure. Land use and development shall not include any landscaping, grading, or excavation which is not intended to be used in connection with another land use, or ordinary repairs or

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Mr. Hainer – It's probably too old. Then "junkyard", (page, 3C). Why don't I give you my report.

Chairman Johnston – George, let me try to steer us back on course here.

Mr. Maron – Ok.

Chairman Johnston – In any event, George is going out and investigated this and he is going to give a report.

Mr. Hainer – And, it is technical, there's a lot of little gray areas, there's a lot of facets to this, it's not cut and dry. Everybody thinks it's cut and dry, just going to go out, get the hammer out. (A copy of said report is attached to these Minutes.) This is the draft, there are some areas in it that I'm still contemplating the nature of what's happening down there. In any event –

Mr. Anson – Have you been by there, George.

Mr. Hainer – Yes, I've taken some pictures this afternoon, after lunch, maybe one-o'clock, one-thirty. He's cleaned it up substantially from what it was.

Mr. Anson – Right now, for the kind of business he's doing, man. The thing of it is, there might be some cars there that doesn't have license, but most of them are wrecked and somebody comes and gets those.

Mr. Hainer – Right. Those are the issues here. First of all you have the Special Permit, let's wait for Chris to come back.

Mr. Maron – Had to get the green book.

Mr. Hainer – That's old, I think we're using these little books now. That may have the old law. It's still basically the same. What you're saying is basically, it's not word-for-word, but the intent is there. I called Bobby on April 22<sup>nd</sup>, went down there about 4:30 and met with him, went over the complaint I received on his home lot and the adjoining lot, explained to Mr. McGee that I was going to report to the Planning Board on Wednesday, April 23, with regard to the complaint, he could attend this meeting. Mr. McGee was very accommodating and explained to me that he was in the middle of cleaning up his house lot and that he was moving some of his possessions to the adjoining lot. He said eventually he would have a fence up that would screen all the cars that he owns, that the areas would be grassed in and landscaped. The ground is very wet and he is unable to work in that area. Runoff from the County Highway drains directly out that property. He's asked the County to install some drainage to divert it and until the soil dries out he can't continue to put the fence up.

Looking at the house lot it is apparent that he has cleaned up and organized it, it's a lot better than it was. His Special Permit allows for storage of the tractors and small engines to be located behind the fence to the left of his house. He's moved this area to his adjoining lot, he expressed to me that he may merge the two lots, but was unsure of what this would do to any building rights. He also intends some day to erect a garage on the adjoining lot. Mr. McGee expressed to me that he is trying to do this on a pay-as-you-go basis as it is very tough to make a living in this area while being in too much debt. He's a struggling small businessman, providing a needed service to the surrounding community.

I asked him about the solid waste that was discarded over the bank, he stated that it was some of his personal possessions that he pointed to the swimming pool and his house lot that had been struck and destroyed by a tree. He stated that some of the metal liner was thrown over the bank, including pallets and brush, household solid waste. I told him that according to DEC regulations, that he was in violation because it wasn't his house lot.

Evidently, under the DEC you can discard any waste generated on the site (house lot) you can bury. But because this is an adjoining lot, it's not merged with his house lot, he's transporting waste onto another lot, it becomes a violation under DEC.

The small area that has solid waste in it was completely covered over as Sheehan is digging a trench along Mrs. Lopez's property and they brought in four or five truckloads of fill and they filled in that whole area. Mr. McGee said he was not throwing anything over the bank, he was making a habit of throwing branches

and leaves, etc. I'm not sure about that stuff, if it's legal, I'm sure you can chip, it's biodegradable, I don't know why you couldn't throw that stuff over, I'll have to look into that. I asked him about the tires, the pile of tires back there, he stated that the tires have about 78 per cent good rubber on them, that they were all his tires and that he would relocate them to get them out of sight, stack them up. I asked him about the junk vehicles on his adjoining property, he stated before the vehicles were his, the other ones were going to George Moore to crush them the accident cars, ones that he pulls off the Northway, etc., have to be kept 30 to 90 days and await release from the State Police before he can transport them. I asked him about his current small-engine repair and sales business, he says he no longer is selling equipment as he can't be competitive with the big box stores. He still does some repairs for people, but his main business is mowing, home care all as well as towing and car hauling. He plans on erecting a fence along the back of the adjoining property and then placing vehicles and personal possessions behind the fence, out of sight. So, here you have a dual use of this property, some for personal stuff, some of it for the tow truck business. He also stated that he could move everything from over there back to, everything from the adjoining land back to his house site, if need be, if you don't like that I'll move it back to my house site. But, that's a dangerous corner and he'd prefer not to. He bought the second piece of property so he could regain his house site and then located other stuff on the adjoining land where it would be better hidden from site and make a safer entry on to the County Highway. Way back in 2006, if you read the Minutes, that was the reason back then, although at that point he couldn't buy the piece of property for financial reasons and because the person didn't want to sell.

That was the interview I had with Bobby.

Now, as regards to the complaint, failure, and this is the tricky part, here. Failures to comply with Special Permit, Section's 5,7,8,9 of Mr. McGee's Permit, Special Permit deals with small engine repair and the sales business. It doesn't really deal with the Zoning or the car-hauling business or his mowing business, home lawn care business. **The number 5**, (attached, 5A), The business will be limited to the current garage that measures approximately 24 feet by 28 feet and will include the addition of a 12 feet by 16 feet. I believe the small engine repair business is still using the structure and is not expanded in any way. I don't see a violation there.

**Number 7**, The number of pieces of new lawn and garden equipment that will be on display will not number more than 10 at any given time. There is no lawn and garden equipment on display and he's no longer selling it, new equipment.

**Number 8**, A six (6)-foot fence shall be constructed to screen all equipment to be serviced. I didn't see any small equipment that was being serviced and a six-foot fence was moved from his house site to the adjoining lot. Mr. McGee plans on doing very little repairs to equipment. But he's erected a fence on the other lot.

**Number 9**, All powered equipment shall have an engine rating not exceeding 30 horsepower (or such equivalent). As far as I saw there wasn't any lawnmowers around there, except his personal stuff, exceeding 30 horsepower.

The second part of the complaint had to do with regards to the adjoining lot, Change of Use, no permit for new land acquisition, between 10 and 20 cars and trucks in the driveway, dumping over bank, three times as large as original permit. The Change of Use, there may be a permit needed for Change of Use on the tract of land, the land is classified as Residential Vacant Land, it adjoins his house lot, but it's not merged with his house lot, so there's two separate lots there.

As far as a Permit for new land acquisition, I'm not aware of any permit you need to buy a piece of land or want to clear it or clean it up.

Ten to 20 cars in a driveway. Cars and trucks on his house driveway lot are not regulated by Special Permit. Is it a home occupation? Other cars on his lot had to do with his job. We have never regulated people bringing home their work vehicles and parking them in the driveway. If we did they would have to be considered home occupation, because otherwise they would not be permitted in most parts of the Town. Some places regulate large commercial vehicles be required them to be parked elsewhere or else being located in garages. Other vehicles on the adjoining lot are accident vehicles, still registered and licensed. Some are personal vehicles and others are work related. There is a lot of things going on, here.

Now, the accident vehicles, you certainly could make a case that they shouldn't be there, you could make a case that if you did issue a Special Permit for it you could allow so many, but they would have to hidden out of sight, either in a garage structure or behind a fence and they can only be there for a certain number of days. That's something that's going to have to be dealt with, and that's a Planning Board issue.

4. This permit shall be non-transferable to a subsequent applicant or property owner.
5. The business will be limited to the current garage that measures approximately 24 feet by 28 feet and will include the addition of a 12 feet by 16 feet.
6. There will be one business sign that will be externally lit and the lighting will be on a timer that will not cycle on before 4:00pm and will cycle off on or before 10:00pm.
7. The number of pieces of new lawn and garden equipment that will be on display will not number more than 10 at any given time.
8. A six-foot fence shall be constructed to screen all equipment to be serviced.
9. All powered equipment shall have an engine rating not exceeding 30 horsepower (or such equivalent).
10. Product deliveries and customer parking will use the existing driveway and parking area.
11. All conditions stated herein shall apply to any hired contractor who shall also be responsible for compliance. The applicant shall provide a copy of this permit and approved site plans to the contractor.

### **TOWN MONITORING**

The Town of Westport Zoning Officer on behalf of the Planning Board may conduct such on-site investigations, examinations, tests and evaluations as he deems necessary to ensure compliance with the terms and conditions hereof. Such activities shall take place at reasonable times and upon advance notice where possible.

### **SIGNS**

One project sign will be permitted. It must be eternally lit and shall not be lit before 4pm or later than 10pm. All signs shall comply with **Section 10** of the Town of Westport Local land Use Law.

### **DRIVEWAYS**

The appropriate Highway Department(s) shall approve access from and egress to public highways; to the extent that said Highway Department(s) have jurisdiction over such access.

All structures shall be accessible by emergency vehicles.

The junk car section of our Law, Section 32.040, (attached, page 6A), so theoretically if you put a big enough fence up and hide everything behind it, it seems to me you're complying with the intent of the Law, if you can't see it from a public road.

Dumping over the bank, all solid waste is covered over, he will not dump any more solid waste over the bank.

Three times larger than original Permit, this business was not permitted. Here again, it's been a home occupation, if not, if you figure it's too big, it's not a home occupation anymore, then we have to treat it as a regulated business, then a Special Permit has to be generated and we go through the Special Permit process and we get all these people in Town that have complained or have concerns about it and then they come for a Public Hearing and voice all their concerns and then we write a Special Permit that's very direct and exactly spells out can and can't be done, or else we say, "no", and they can't do it.

Conclusions of the Complaint – With regards to his Special Permit except for relocating his fence to his adjoining property, I don't believe he is in violation of the Special Permit as written.

With regard to use of his adjoining lot, as a new land use. He purchased this land as he stated in the minutes when first applying for his Special Permit. He is using it partly for personal use and partly for business use.

I believe that he needs to amend his Special Permit to extend to his adjoining lot and that any temporary storage of vehicles due to his towing and car hauling business (if allowed) should be included in his Special Permit. If not allowed or a limited amount allowed then the Special Permit should state the conditions.

I believe that Mr. McGee has made a very strong effort to comply and clean things up and that he will continue to do so. I believe that we have to express in a letter what our expectations are and give him some time to comply with our regulations. In the event he doesn't comply, then we can turn this over to the Attorney for the Town.

I've spoken to Gary, he's on board with everything that I've emailed you so –

Ms. Fitzgerald – May I make a comment.

Chairman Johnston – Go ahead, MaryLou.

Ms. Fitzgerald – As far as I'm concerned, what I see, if he had a fence that's high enough and clean it up and looks good enough and he puts everything else behind the fence, I think that would go a long way and be I compliance.

Mr. Hainer – I took pictures on the 14<sup>th</sup>, unfortunately, my color printer ran out of, some of them are in color, some of them are black and white, and then I took some today, on the 23<sup>rd</sup>, there's quite a bit that's cleaned up.

Ms. Fitzgerald – I don't think the original Permit ever completely covered all that he had that should have been behind the fence.

Mr. Hainer – Probably not, the house lot site is a small site, a congested site and corner. Unfortunately, he's in an area that's highly visible.

Ms. Fairbanks – It's a very dense residential area.

Mr. Hainer – Yes, but "commercial" is allowed in that area, there's a lot of uses allowed there, it's a very congested area, it's a bad area where that fork is and the traffic that comes in and out of it.

Mr. White – George, I take it from your report, that he's agreeable to work on it.

Mr. Hainer – I think he has done quite a bit in the last few days, he intends to grass everything in and to make it look nice.

Chairman Johnston – George, what concerns me is that it took an individual to file a complaint to cause all this to happen.

the project to the community.

- i. Commercial, Industrial, and Research Parks should be designed in accordance with site planning guidelines as recommended by the Urban Land Institute or similar source.

### **32.020 Special Flood-Prone Areas**

Construction on and alteration of flood-prone lands is subject to the provisions of the Local Floodplain Law adopted on April 7, 1987 (Local Law Number \_\_\_ of the Year 1987 of the Town of Westport).

### **32.030 Special Shoreline Regulations: Applicability**

The regulations set forth in Sections 32.031 through 32.033 shall be applicable in all Town zoning districts.

#### **32.031 Special Shoreline Regulations: Minimum Setback for On-Site Sewage Facilities**

In the case of all lakes, ponds, rivers, and streams, or any swamp, marsh, or wetland, the minimum setback of any on-site sewage drainage field or seepage pit shall be 100 feet from the mean high-water mark irrespective of zoning district or land use area classification. The local body or officer having jurisdiction, or the Adirondack Park Agency in its review of a Class A or Class B Regional Project, shall have authority to require a greater setback, upon a determination that soils or other environmental conditions require such greater setback to protect water quality.

#### **32.032 Special Shoreline Regulations: Cutting Restrictions**

In the case of the shorelines of all lakes and ponds and the shorelines of any river designated to be studied as a wild, scenic, and recreational river in accordance with the Environmental Conservation Law or any river or stream navigable by boat, including canoe, the removal of vegetation, including trees, shall be permitted on shorefront lots provided the following standards are met:

- a. Within 35 feet of the mean high-water mark no vegetation may be removed, except that up to a maximum of 30 percent of the trees in excess of six inches diameter at breast height existing at any time may be cut over any ten-year period.
- b. Within six feet of the mean high-water mark no more than 30 percent of the shorefront may be cleared of vegetation on any individual lot. This provision shall be adhered to in addition to a) above.
- c. The above cutting standards shall not prevent the removal of diseased vegetation or of rotten or damaged trees or of other vegetation that present safety or health hazards.

#### **32.033 Special Shoreline Regulations: Minimum Shoreline Frontage for Deeded or Contractual Access**

In the case of the shorelines of all lakes and ponds and the shorelines of any river designated to be studied as a wild, scenic, or recreational river in accordance with the Environmental Conservation Law or any river or stream navigable by boat, including canoe, the following minimum shoreline frontages shall be required for deeded or contractual access to all such lakes, ponds, rivers, or streams for five or more lots, parcels, or sites or multi-family dwelling units not having separate and distinct ownership of shore frontage:

- a. Where five to twenty lots or multi-family dwelling units are involved, a total of not less than 100 feet.
- b. Where more than twenty and not more than one hundred lots or multiple dwelling units are involved, a minimum of three feet for each additional lot or multiple dwelling unit in excess of twenty.
- c. Where more than one hundred and not more than one hundred fifty lots or multiple dwelling units are involved, a minimum of two feet for each additional lot or multiple dwelling unit in excess of one hundred.
- d. Where more than one hundred fifty lots or multiple dwelling units are involved, a minimum of one foot for each additional lot or multiple dwelling unit in excess of one hundred fifty.

### **\* 32.040 Individual Junk Automobiles**

No individual junk automobiles shall be so located as to be visible from public roads, trails, or boat or canoe routes, or from neighboring properties.

### **32.050 Automobile Junkyards and Junkyards**

- a. As of the effective date of this local law, no new automobile junkyards or junkyards shall be permitted within the Town.
- b. Within 1 year of the effective date of this local law, all existing automobile junkyards and junkyards shall be screened by an opaque fence so as to be substantially invisible from a public highway. Such fence shall be

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Mr. Hainer – Yes, he did start putting a fence up before hand, I know he's been up and down.

Chairman Johnston – I drive past that property regularly, probably once a day, so I can see what's going on there and I must say that if you ever want to go out of your way to bring attention to focus on what you're doing, he's done,

Mr. Hainer – Yes.

Chairman Johnston -- and the trash that went over the bank, was the last straw, in my opinion. When I saw that, I couldn't believe it.

Mr. Anson – What kind of trash.

Ms. Fitzgerald – Everything.

Chairman Johnston – Junk, I don't know what it was, but, what kind of community do we live in –

Mr. Anson – Well, if it's over the bank and covered.

Ms. Fitzgerald – But, it's not covered.

Chairman Johnston – It was not covered until this got started.

Mr. Anson – I don't know about that.

Chairman Johnston -- It was an egregious eyesore.

Mr. Hainer showed the pictures.

Ms. Fairbanks – His original Permit was for a whole long repair and sales business and now he's starting the Triple A, and now he's doing the car thing, was that all under that original permit, no.

Mr. Hainer – No, he always had, he had the towing right around the same time that he had the mowing business, he got a tow truck. The storing of the cars, those are actually cars that they use to store behind the troop barracks, when the troop barracks were here and Pierce used to do all the work at the Northway and he used to store them out there and when Fred died and they stopped with the tow truck, other people had to pick it up. It's just one of those natural things, you bring it back. That's not saying that he has to bring it back here –

Ms. Fairbanks – It's just the kind of business you wouldn't have in a residential area, so many houses and kids.

Mr. Maron – Which is a point people made in the public comment.

Mr. Hainer – So, let's eliminate bringing the cars in and storing the wrecked vehicles, say he's not bringing the wrecked vehicles in, the man has the tow-truck business, someone has the excavation business, --

Chairman Johnston – I think there's a difference here, George. The fellow that drives the Gordon truck, brings it home, parks it in his driveway, he's not parking four or five Gordon trucks in his driveway.

Mr. Hainer – No, he's not.

Chairman Johnston – He's parking the one truck he drives. You have a fleet of trucks, there. It's not the guy that works for Champlain Valley Plumbing & Heating parking his truck in front of his trailer, there's more than one truck there.

Mr. Hainer – Then what is the threshold, cause you can have somebody with a dump truck, backhoe and excavator, what happens if he was in the excavation, like Irwin Barber, he parked all his equipment behind his house and that's where he worked out of. He brought all his equipment home. Loggers, have logging trucks, they have two or three trucks and they have the big grabbers and hooks, they drive them home and they have all –

Chairman Johnston – I'd like to try and refocus this discussion, on what we can do to improve this situation. I don't feel that we should just do nothing, today. That we should wait another meeting or another couple of meetings and wait and see what happens. I think we need to send a message to him that he has to deal with the situation and we have to focus on what specifically are the violations and request that these violations be addressed, removed, if not, turn it over to the Attorney for the Town. That's what we have an Attorney for.

Mr. Maron – After I got that, I started looking into it, it's been bugging me. To me, we're the Planning Board and we have a certain responsibility and exercising that responsibility we gave him a permit to do a certain activity that pertained to one property, one tax parcel and we gave a permit to use an existing 24 x 28 foot garage for conducting a lawn and garden equipment sales and repair shop and construction of a 12 x 16 foot extension off the back for the same purpose. So, that's what we gave the permit for, we didn't give a permit for hauling business or storing cars or even anything on the adjoining lot, we just approved what he could do on one lot. The fact then that he bought the adjoining lot, which he mentioned doing, back in 2007, and we even said back then, that if anything happened there he had to come back. He didn't come back to revise the permit, he took the new lot and has all sorts of vehicles there and turned it into a junkyard. To me that's a violation of what our permit is. We also set a number of conditions for that. The first condition was (attached, pages, 8A & B).

Mr. Maron read the Conditions. Number 1 -- Mr. Maron stated if you look at the Permit and what he is doing isn't following what is described in the application.

Condition 2 – We didn't authorize him to build a fence on the adjoining lot, even though that's something he could do to hide the vehicles. But, we didn't authorize him to do anything on the adjoining lot.

Condition 5 – His business there is not confined to the current garage.

Condition 7 – He doesn't have lawn and garden equipment anymore, he certainly has a lot of vehicles out there that are on display.

Condition 9 – He did put a fence on his property and he put a half a fence on the adjoining property, but all that stuff is visible.

Mr. Anson – What do you mean by “display”?

Mr. Maron – “Display” is to show all the lawn and garden equipment he's supposedly selling and I guess he's not selling that equipment anymore, but he has an awful lot of vehicles, could be stretching it a little bit.

Mr. Hainer – You have his home lot, where he lives.

Mr. Maron – On his home lot, he can do what he's doing, but on the adjoining lot he doesn't have a permit to do that.

Mr. Hainer – He originally had all the stuff on his home lot, all his tow trucks and everything, so now he's moved them over there. This is what we have to deal with, ok, he needs to come in for a special permit or apply for a special permit to extend his operation there and we'll go through the process, either deny or grant it or whatever the process brings. Get the public involved.

Chairman Johnston – Let's list specifically the violations, or what we're going to ask him to do. Let's get this down to a list, if we can.

Mr. Anson – Could I just say something?

Chairman Johnston – Go ahead.

site preparation will be required to ready the site for the shed addition required for the project.

### **Project Proposal**

The project proposal is described in the application and was discussed in the minutes of the Planning Board dated November 15, 2006 and December 13, 2006. Mr. McGee explained his need to display a few new lawn and garden tractors in front and beside the garage. He also expressed a need to construct a pole barn behind a fence so that the doors could be closed and the tractors could be hidden from view. He explained his intention to construct a 6-foot, stockade fence with two doors for storage of equipment to be serviced. Also requested was a sign measuring 30 inches by 30 inches. The applicant stated that the hours of operation of the business are 8am to 5pm Monday through Friday and 8am to 1pm on Saturday. Mr. McGee explained that the hours of delivery are 10am to 3pm and the most of them are around 9am. He also explained that the delivery vehicles and customers would be using the existing driveway.

### **Project Impacts**

Objections and concerns were raised during the public hearing.

During the Planning Board discussion following the close of the hearing, and in the process of filling out the SEQR Part 2 form, impacts were considered from the size of the garage, the traffic on the Lake Shore Road, the business sign and lighting of the sign, the hours of operation, the hours of delivery to the business, the number of tractors to be displayed, and the size (as evidenced by engine horsepower) of the equipment, the adequacy of on-site parking, and the construction of a screening fence.

### **CONDITIONS**

- ✓1. The project shall be undertaken as described in the Application and Findings of Fact herein, and in compliance with Conditions herein. Failure to comply may be a violation of law and grounds for revocation of the permit.
- ✓2. No construction of buildings, subdivision of land, or other "land use or development" as defined by the Town of Westport Local Land Use law not expressly authorized by this permit shall be undertaken without an additional permit from the Town of Westport Planning Board as may be necessary.
3. This permit is binding on the applicant and any person undertaking the project. If the project is not substantially commenced within 2 years of the date the permit is recorded, it may not be undertaken or continued unless a new or renewed permit is issued.

4. This permit shall be non-transferable to a subsequent applicant or property owner.
- ✓ 5. The business will be limited to the current garage that measures approximately 24 feet by 28 feet and will include the addition of a 12 feet by 16 feet.
6. There will be one business sign that will be externally lit and the lighting will be on a timer that will not cycle on before 4:00pm and will cycle off on or before 10:00pm.
- ✓ 7. The number of pieces of new lawn and garden equipment that will be on display will not number more than 10 at any given time.
8. A six-foot fence shall be constructed to screen all equipment to be serviced.
9. All powered equipment shall have an engine rating not exceeding 30 horsepower (or such equivalent).
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