

Town of Milton
424 White Mtn Highway
Milton NH, 03851



Zoning Board of Adj.
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Meeting Minutes
September 6, 2018
6:00 PM

Members in Attendance: Larry Brown, Stan Nadeau, Brian McQuade, Michael Tabory, Steve Baker, Chris Jacobs Alt. Andrew Rawson Alt. Also in Attendance Dana Crossley Land Use Clerk, Town Attorney Walter Mitchell

Public Attendance: Bruce Woodruff, Brian Boyers, Dan Flores, Attorney Peter Malia, Attorney Christopher Boldt, Bob Carrier, Ronald Sands, Elaine Sands, Jim Holway, Jen King, Roland Meehan, Janice Carlson, Daryl Carlson, Stan Berry, Holly Berry, Joel Ponte, Steve Hayes, Marilyn Hayes, Judy Boucher, Gene Boucher, Bill Thurber, Pat Thurber, Richard Burke, Rhonda Burke, Attorney Peter Malia, Attorney Roy Tilsley, Andy O'Tash, Kaye Maggart, Deborah Blair, Elizabeth Karchoris, Carol Bridges, Frank Bridges

Chairman Tabory called the meeting to order at 6:01 pm.

Public Comment: No public comment.

Public Hearing: Case2018-3 Appeal of an Administrative Decision issued by the Land Use Office regarding Milton Zoning Ordinance Article III, Section 3.5 by Barry & Karen Barkow et. Al. (Represented by Christopher Boldt of Donahue, Tucker & Cindella, PLLC) for a property owned by Three Ponds Resort LLC, MiTeJo Campground, 111 MiTeJo Rd Milton NH (Map 28 Lot 4) located in the Low Density Zone:

S. Baker stepped down as an abutter, alternate C. Jacobs was brought to the board as a full voting member. Chairman Tabory asked the secretary if the application was complete, everything being accurate, D. Crossley replied yes.

Attorney Boldt introduced the concerns of the abutters group in regards to the administrative decision issued from the Land Use Office, felt it had to be appealed to the ZBA due to the terms interpreting the Milton Zoning Ordinance (MZO) were such that it seemed to undue many of the concerns that the board had denying the underlying Special Exception (SE) (Ref. Case2017-7). Document in essence the developer could have their accessory uses and buildings despite the denial of the SE, clearly references a decision, posted on the Town's website as a decision, no doubt it is an administrative decision. Expressed knowledge of certain amenities such as waterslide, mini golf and bouncy house that is there without permit, that things have been going on onsite without proper building permits, want to make a clear line for the developer and successors of the definition of camping ground and that recreational facilities requires another SE, concerned the decision if allowed to stand would mean they could do whatever they want to do. Still concerned about park models. Atty Boldt continued that the decision incorrectly asserts that amenities were not involved in the underlying ZBA case, not case clearly

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referenced in each application, site plans, and key issue by abutters, and part of board decision to why the SE should be denied, to say it was not involved is reason the decision must be revoked. Expressed the Bruce Woodruff's (B. Woodruff) involvement in the decision, recognize his right to defend it, calls into question that he was originally a member of this board and eventually recused himself in the September 2017 meeting, at the Strafford County Regional Planning Commission he gave some testimony including that he is a camper at MiTeJo, expressed that he should not be involved in the decision that is now before the board, felt he should recuse himself from all and that the decision is suspect. Recognized the decision could be made procedurally by the Code Enforcement Officer (CEO), proper person normally designated by the Town is the CEO. Not saying the three individuals do not have the right to defend their action, saying they are not supposed to be involved going forward making decisions on the case, made their stance. Felt Brian Boyers (B. Boyers) in particular should not be involved moving forward as he has the roles of CEO and Planning Board (PB) Chair, felt he should not be involved in site plan reviews. *Atty Boldt* felt the application should first come to the ZBA for SE and then to PB without B. Boyers and then have the Selectmen approve building permits for the site, reviewed all documents on May 31st were able to views, no permits for the bouncy house, or the park models concern to them. Expressed that could not understand why Dana Crossley (D. Crossley) was involved in the decision, asked that going forward she not be involved in any decisions involved here, not saying she cannot take minutes. Addressed the developers objections they had been provided and the case referenced (*Accurate Transport, Inc. v. Town of Derry*, 168 NH 10 [2018]). Addressed the response document from B. Woodruff, not contesting evidence from 1990's, presented to the board the 2012 settlement agreement underlying document referenced by the applicant in the previous case that they had been approved, the site plan of 2012 was part of the resolution of litigation brought by the then owner against the Town starting as a tax abatement matter, problem being they had expanded some buildings, Town resolved the matter by having a clear site plan, get a snap shot of what was there, no agreement that they get to do whatever they want. *Atty Boldt* continued should be no question when the ZBA makes a decision that becomes the law of the case for the property, a SE has been denied by them, to say they can do part of what they are asking makes no sense to him. Expressed concern that this is a run-around the ZBA decision, the claim that the staff of Land Use Office is authorized to make the decision in the three part not supported by any documents attached in B. Woodruff's response, is documentation that the CEO doing some, but none for the Planner or Land Use Clerk or the three being authorized by Selectmen to take such actions. Expressed that the ZBA gets to make the decision if it is an expansion and then would go to PB and then Selectmen for building permit. The why the amenities are included on the ZBA application is not important, is there. Finalized that the decision is not proper in light of the year long process the board took considering the SE, ask that it be revoked and their appeal granted, if only for the error that says amenities and park models were not part of the underlying decision, ask their decision to be clearly stated so the developer and successors know they have to come to the ZBA, then to PB for site plan, then to Selectmen for building permit approval so his clients know their rights are not given an end-run, requested to be able to speak after everyone else had spoken.

Board Comment: L. Brown: the application seemed to undue the decision that went against it, (*Atty Boldt* replied the decision of the land use board undid the ZBA decision) his understanding is that accessory buildings for an entity in operation are required at that point to meet only the requirements of the code enforcement officer, accessory use for his house could be obtained even if he decides to expand his house, questioned when does an accessory use stop in *Atty Boldt*'s view (*Atty Boldt* replied commercial setting is far more restrictive, especially with a SE allowing the use, an expansion of the existing use in such a way that there can be clear lines of demarcation, a shed is different to 12-200 park

models that create impervious coverage need significant approval for those, matter of degree and context of the year long process before the board that creates the concern) second point being that recreational uses require a second SE to whom is the power to recuse, (Atty Boldt replied it's the members in a voting power to decide, if a judge decides a wrong decision has been made, starts back at beginning.) L. Brown's understanding that the ZBA as an elected board is not an agent of the Selectmen, (Atty Boldt agreed) then the board in its own authority for own statutory uses may request materials or comment from any individual who it seems as being useful (Atty. Boldt agreed) that would include giving a delegated clerical responsibility or asking a question based on the previous knowledge of an individual, as for example the Land Use Clerk.

Attorney Mitchell: offered some focus to the board discussion, has been discussion so far of recusing of B. Woodruff labeling his involvement suspect- this board has no role in making a judgement on that; B. Boyers the observation made in presentation that he should be recused from participating at PB level if this made it to PB again board does not have authority to speak that, urged them not to; discussion of lack of permits not an enforcement body; in regards to D. Crossley Atty Boldt handled it nicely as far as the task she is performing tonight not disrupted, thinks in reflection she would agree she does not have the authority to make a decision and maybe she should not have signed it, but is really unimportant in the big picture; what is the question that is before this board, as characterized by Atty Boldt sees the labeled administrative decision as a decision that if the campground wants to proceed with the amenities as discussed in previous cases, sees it as a ruling that the campground does not need to come back for an amended SE to do that alone, if that is the question that is what should be addressed.

B. Woodruff questioned when he would be able to speak. Chairman Tabory allowed him to speak now. B. Woodruff feels the Town Council is right, need to get to the question if whether what he wrote after communicating and talking over what the ZBA decision for the SE meant and the rights of campground were in the frameworks of the MZO, we came to a similar conclusion, expressed disappointment in Atty Boldt, been in the business for 35 years and never had anyone question his character or integrity always looks at what the Zoning Ordinance says. Read into the record his prepared response (ref. Staff Response to Narrative Appeal from Abutter's Group) which attempts to answer their questions and attempts to clarify the position of staff also what they expect out of this case. B. Woodruff stated the claim that staff "misinterpreted" what constitutes a campground is false. A decision was previously made that Mi-te-jo is a camping ground, first in a decision letter dated June 30, 1992 from Executive Administrator Robert Belmore, followed by a corroborating letter dated July 17, 1992 from Code Enforcement Officer Scott Berry. Finally, at their regular meeting on August 12, 1992, the Zoning Board of Adjustment by consensus agreement decided that there was no need for a special exception for the reopening of the campground. These written decision letters and record do two things; first, they constitute the interpretation of Mi-te-jo as a campground, and second, they establish the decision that the 210 seasonal site campground is an allowed use without the requirement for a special exception so long as it is not expanded. The claim that the Decision is contrary to Article I, D. of the MZO is incorrect because it is not in conflict with another federal, state or local statute, ordinance or regulation. The ZBA's decision on the special exception is none of the foregoing. The claim that the Decision is contrary to Article I, E. of the MZO is incorrect because staff of the Land Use Office are duly authorized by the Board of Selectmen to administer, implement (interpret) and enforce provisions of the MZO. The question becomes; if not duly authorized to do so, who in Town would be? Residents do not have the authority to interpret, nor do residents of other Towns around Northeast Pond, and in normal everyday ministerial affairs, neither does the Zoning Board. Their role is to be the final arbiter of ordinance

interpretation only when written decisions are appealed to them. It is then that the ZBA decides on the facts whether to uphold or overturn such a decision by duly authorized officials. The claim that the Decision is contrary to Article I, F. of the MZO is incorrect because no permits have been submitted, let alone issued. The decision simply states that applications for site plan review may be made, followed by permit applications if the site plan is approved by the Planning Board. And the Decision explains why the proposed accessory structures (which are customary and incidental to the principal use of a campground) meet all the requirements of the MZO. B. Woodruff continued that the assertion that the Decision was contrary to the ZBA's Decision is incorrect because of the following: The ZBA's jurisdiction on Mi-te-jo's special exception request was limited to the actual required request, which was to allow them to be able to expand the campground in both area and in the number of new sites. The special exception request was not for whether accessory structures or amenities could be built on the existing campground. That issue was not before the Board (even though speakers at the multiple public hearings tried very hard to convince the Board that it was) and should not have been part of any special exception decision. Adding accessory structures has been part of the campground's right since 1992 by written decisions because it is an allowed use in its current size (number of sites and area of lot developed). The accessory structures were depicted on the site plan only to give the ZBA a complete picture of all the improvements being contemplated, not to seek approval for said accessory structures located within the existing campground area. In fact, it was staff who decided to require the owner of the campground to obtain a special exception because they wanted to increase the number of camp sites and the area developed as a campground on their parcel. This was the sole reason for their requesting a special exception. The campground as it exists today is an allowed use, and as an allowed use must be allowed to construct accessory structures as shown in Section 3.5, Table of Principle and Accessory Uses, C. Services, where accessory structures are allowed in all zones for those uses contained in the section. That said, this is how Mi-te-jo has been treated since 1992; namely, permits for accessory structures have routinely been issued, precisely because it is an allowed use as decided by the written decisions from 1992. The Decision to acknowledge the continuation of long-standing same actions by administrative officials in this matter was a nod to NOT being accused of administrative gloss by the owner of the campground. It was not a disregard, nor an abridgement of jurisdiction of ZBA authority because the Decision does not affect or alter the ZBA decision not to allow an expansion of sites or area of the campground at all. It simply reaffirms the campgrounds right as an allowed use to follow the regulatory path to obtain approvals to construct accessory structures in their existing campground. The Decision was posted in Town Hall and on the website for the express purpose of daylighting the issue before applications and submissions got too far along, and so that anyone aggrieved of the decision could use the appeal process so the ZBA could be final arbiter in this matter. The allegation of subterfuge and impropriety is preposterous and frankly disrespectful of duly authorized officials just doing their jobs. Language such as this is not called for in presenting arguments to a quasi-judicial body trying to decide to either uphold or overturn an administrative decision. Finally, it must be stated that the ZBA's role is not to interpret the zoning ordinance in the day to day ministerial dealings in land use administration that falls to the Board of Selectmen's "duly authorized" staff. The ZBA's role is to be the final arbiter in interpreting zoning issues only on appeal of the duly authorized staff's written administrative decisions. That is what is happening in this proceeding, and that is what staff hoped would happen. It goes without saying that staff will wholeheartedly abide by the Board's decision, whichever it is.

Board Discussion: Chairman Tabory clarified what he heard B. Woodruff saying is that he does not agree with the ZBA's decision that the amenities had anything to do with the decision and would

override that, thinks he's hearing no but wanted to get it out there so the board would address it directly. (B. Woodruff replied does not know what avenue could have taken officially to the ZBA to come in advance and say think they've made a mistake by adding the words and amenities to the decision, this will fix it one way or the other, board with either decide that SE was only for the expansion of the campground number of sites and in an area not developed before and that request to them really did not include accessory structures that have been always going on, like the tennis court, ball field and basketball court)

C. Jacobs started that it gets to what is or is not an amenity, (B. Woodruff inputted that the MZO talks about accessory structures, which could be a pool or pavilion etc.) questioned how many years B. Woodruff had been a planner (B. Woodruff replied roughly 35) C. Jacobs continued state law with respect to who the Building Inspector (BI) and where he gets his power has it been the same over that time (B. Woodruff replied he thought so) would he agree or disagree the BOS have the right to hire a BI (B. Woodruff yes) and in the absence of the BI the BOS are the de facto BI (B. Woodruff agreed) Continued discussion of role of BI vs. Town Planner. (B. Woodruff added that he met with the BOS in nonpublic session where they indicated they wanted him to be the Zoning Administrator)

S. Nadeau made an announcement that he is personal friends B. Woodruff, and if anyone thinks he should step down, he will.

Chairman Tabory motioned for a short recess, S. Nadeau seconds the motion, all in favor, recess at 6:50pm. Meeting brought back in at 6:55pm.

Applicant expressed they had no issue with S. Nadeau remaining on the board for this case.

Board Comment: C. Jacobs questioned B. Woodruff, accessory uses, at what point does the main use on a property become secondary and the accessory use become the main use. (B. Woodruff replied does not think there is a specific number assigned) asked if it was a perception thing (B. Woodruff replied it would go beyond perception. B. Boyers noted that an example of a pool being used that is a structure and before that can be installed it requires a permit, commercial projects it would become a PB project. B. Woodruff added that if the example pools meet the setbacks and the principal use of the property is a residence and pools remain an accessory use which is clearly incidental and customary to the principal use it would be fine.)

Chairman Tabory stated when looking at definition of accessory structures or outdoor recreation which requires a SE, questioned if a waterslide, pool or mini golf would be considered outdoor recreation rather than accessory structure, being used for leisure time at a specific site and location. (B. Woodruff replied if it was opened up to the public to non-campers, the principal use of that property is a campground, it has accessory uses and structures that are clearly incidental and subordinate to the principal use because it is only offered to those who go there, no to the general public, still accessory uses and structures) C. Jacobs questioned on that basis if the ZBA in their decision could limit no outside uses on the accessory structures, the control the predominate use. (B. Woodruff agreed) C. Jacobs stated that statement opens the door to the board does need to see the plan of amenities to open the proportionality between a primary and secondary use i.e. Accessories, discussion of previous discussion about outside use of the campground from previous case. (B. Woodruff added that the reason why the decision letter doesn't just allow them to get building permits, directs them to PB for their review and the PB would ask the same questions the ZBA asked and would take appropriate action whether by conditions or notes on the plan, which is what the decision was about) Discussion on the

statement of Town Planner (TP) advise to include the amenities on the original ZBA application for SE. (B. Boyers stated that most of the issues addressed for amenities, size shape etc. would be done at the PB level) Chairman Tabory questioned if a ZBA decision clearly specified during the deliberation the amenities listed were a concern, should that not made that decision regarding this. (B. Boyers replied that the MZO says those structures and uses are acceptable in that zone) Chairman Tabory felt it was how they are defined. (B. Woodruff added that goes back to needing a zoning administrator who makes those administrative decisions to issues those decisions and in writing when requested to allow people to appeal the decision, a duly authorized person makes the determination, addressed that zoning cannot be static or interpretation of definitions or what is customary to the time we live in, difference from 1989 to 2018) (B. Boyers stated that Park Models are considered campers by the state and therefore do not require permits) C. Jacobs confused that the letter asserts the ZBA has no authority here because a decision has not been rendered. (B. Woodruff did not say that, zoning decisions that are appealed to the board, they are the final decision makers in the interpretation of the MZO) Chairman Tabory even if the decision of the SE clearly stated, even though they denied a rehearing, did make a determination of their interpretation of the zoning thought relatively clear in the decision. (B. Woodruff sees this as a chance to fix a decision [Atty Mitchell advised board not to do that at this point, if the board made a good decision or bad decision, the decision has been cast in regards to previous SE])

L. Brown stated he is disturbed at the unnecessary spirited cross conversations not fully controlled by the chair, own view thinks the board has to be looking at the distinction between expanding the accessory structures on the site, or whether the content of the filed precluded the accessory structures. S. Nadeau hung up on the accessory structures, googled definitions details sheds place to store, not one thing says an accessory structure is a pool, would consider a pavilion an accessory structure, does not consider a pool an accessory structure. B. McQuade noted he should look at the definition of accessory as well, accessory to what situation.

L. Brown referenced a previous case also with their authority to impose conditions and restrictions. (B. Woodruff read to the board the definition of accessory structure.)

Atty Malia introduced Attorney Roy Tilsley of Bernstein Shur Law Office who also represents Three Ponds Resort LLC, Atty Tilsley: what the board denied previously was a SE request to expand the campground add additional campsites and develop new portions of the campground, the ZBA does not deny a plan denies a request, which was to expand, May 24th meeting board asked for more details on the accessory structures applicant provided that information, not part of request, amenities area was showing that there was a place for the expanded campground to congregate centrally located in the campground, not a request to approve the amenities, part of what is happening tonight, asked where they would go if they want to do just amenities have not detailed what it is yet, part of the argument is that it should go to PB for site plan which Town Staff set up, PB would make those determinations if they are accessory uses, PB would decide how many pools could be had, if someone is unhappy with the PB determination it would come back here for Admin. Appeal, two issues before the board, is the July 25th Land Use Office decision an appealable decision or is it premature pending PB review, if appealable is it contrary to law, issue is are the decisions legally correct, feels objection is pre-mature referenced case (Accurate Transport, Inc. v. Town of Derry, 168 NH 10 [2018]) feels it is the same fact pack, that the appeal now is premature without having gone before the PB, discussion and decision making process would be easier if there was a plan in front of the board. C. Jacobs questioned if they felt the plan that SFC Engineering prepared for the SE was not adequate enough. Atty Tilsley replied that was an expansion plan, showed proposed amenities as part of the proposal to expand, application that would be presented for amenities would not necessarily be the same have not done it yet, request was simple if

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they wanted to add accessory structures could they go to PB, answer was yes, too early to hear this case now, under case law PB should get the site plan see the specifics make a decision and if someone feels the PB has interpreted the MZO incorrectly could appeal then. An amenities only plan may be different than the expansion plan.

Board Comment: L. Brown questioned with the applicant not objecting or refusing or appealing the inclusion of amenities and accessory structures in the application the information presented becomes part of the actionable record yes or no. (Atty Tilsley agreed it was part of the record, would not agree just because it is on the plan that the denial of the SE to expand the campground includes a denial of other things they could do as a matter of right, showed amenities on the plan as part of the context to why they thought the expansion was appropriate) the discussion of the amenities presented without objection or appeal by the applicant makes it part of the discussion (Atty. Tilsley replied it is part of the discussion does not think it is part of the decision) Chairman Tabory questioned if it was stated in the decision as being part of the reason it was denied would it not suddenly be part of the decision. (Atty. Tilsley replied it may be part of their reason for denying the SE to expand the campground, may or may not be good basis but put aside, if part of the decision does not mean their decision changes the right to build accessory structures under the zoning ordinance, denial was the expansion, the reliance of the amenities as part of the denial they do not think can change their right under the MZO to construct accessory structures without obtaining a SE)

S. Nadeau questioned if it was to go to PB the new site plan would have either different amenities or in a different location or size of amenities. (Atty. Tilsley replied those things are possible do not have a plan yet, request was asking if they wanted to do just amenities could they go to PB) S. Nadeau felt that if they went to the PB with the same plans the ZBA looked at was part of their. B. McQuade noted they wouldn't be able to do that because that was an expansion plan. S. Nadeau if the amenities were different might make a difference to him.

Atty Tilsley if the board decides tonight this is right time to hear the appeal, the decision made in the letter is the correct decision, accessory structures are allowed under the MZO as a matter of right, these are accessory structures to a campground in 2018, intention for structures is to be used by campers and allowed guest only, not to be opened to the public, these are the amenities campers are looking for, principal use is camping and accessory structures for camping to provide recreational opportunities for campers are standard at campgrounds have changed over the years are incidental and subordinate to the campground use makes them accessory structures, have the right to put accessory structures in subject to site plan review by PB which would address some of the concerns. MiTeJo is allowed 223 campsites have currently and have had for many years, can have accessory structures as a matter of right. C. Jacobs asked for clarification, they stated they are allowed 223 campsites, but the 1992 letter says 210 how they got the increase. Atty Tilsley replied that his understanding from the case history is that they have 223 sites currently, does not know but does know that is the number that's been put before this board and it has not been challenged.

Board Comment: S. Nadeau asked for a copy of the case law (a copy was provided to S. Nadeau)

L. Brown questioned the distinction is that an application may be modified by whatever board with jurisdiction, but only the final action of the board can be appealed. (Atty. Tilsley replied that is what the case says and what makes sense, their request is vague at this point, site plan will make it precise)

C. Jacobs what worries him at the moment, he can look at a set of plans with a certain set of representations led to the conclusion or imply how things will be laid out, contention that amenities

layout could be used for campsite space, erroneous and misleading. (Atty Tilsley replied that not here to litigate the SE, thinks he hears that the board is saying that because the amenities are shown on the SE plan and that plan was denied they have denied the applicants right to have the amenities) C. Jacobs stated that he voted to deny the package presented, for the planner to imply that the amenities are none of their business and probably should not be used in forming a decision is disingenuous, it is what the applicant presented. (Atty Tilsley asked for SE to expand the campground, not asking for approval of amenities, does not think the fact that the amenities as put in the plan means when the SE request was denied takes away the applicants right to have accessory structures)

L. Brown noted the ZBA from his view is an intensity of use board for the land that exists, safety valve of compromise, trying to assess the nature, extent and right of neighborhood against applicants right of full value use of land, not certain where the new application for a few amenities fits. (Atty Tilsley thinks it fits where they should submit to PB and have them act on it and if someone appeals here they get to serve role as safety net for compromise)

Chairman Tabory, asked the public to not reiterate what has been stated over and over again to please present new fact. S. Nadeau requested that any individuals that Atty Boldt represents, should have Atty Boldt speak for them.

Frank Bridges expressed a point of order that he has been to all the hearings and Atty Boldt has not and has things he would like to express. Chairman Tabory expressed that they are not re-litigating the previous case.

Chairman Tabory motioned for a 5 minute recess. L. Brown seconds the motion. All in favor, carried. Recess at 7:50pm. Chairman Tabory brought the meeting back to order at 8:05p.

Chairman Tabory opened to the public:

Frank Bridges withdrew his point of order.

Judy Boucher: expressed her concerns with the Land Use (LU) employee's decision that it was created with an altered definition from the MZO and is contrary to the citizens desires based on the intent of the Master Plan (MP). Felt that the MZO is current and represents the standard residents want, as it was updated in 2018. Expressed concern and alarm that the LU employees were not using the proper definition of accessory use or structure, referenced an email reply from the LU clerk and the use of terms 'customary and incidental', vehemently explained that 'customary and incidental' is not used the in definition used by the MZO, subordinate is not being used by the LU office. Referenced various dictionary definitions of customary. Felt that the LU decision should be determined inappropriate due to not using correct definitions, being it is inaccurate.

Ron Sands, Sewell Shores Lebanon: treasurer of NE Pond campers association, expressed concern of boats and invasive plant species (Chairman Tabory stated that boats are not part of this discussion, that was part of the last case which was denied) that is his point, there are lots of boats tied up along MiTeJo (Chairman Tabory stated not part of the discussion)

Barry Barkow Lakeside Dr.: addressed the previous case applications and that they always referenced amenities and were always discussed, expressed ruled on not just expansion of sites but amenities as well. Felt there were three sides of the argument now, LU office, campground owners, and abutters, expressed that felt the decision was unfair and a backdoor process. Found the 1992 letter to be helpful, felt issues raised by LU office and campground should/could have been issues in the argument for rehearing, understanding from first hearing the campground had a choice where they would start, (Chairman Tabory clarified that they were informed they needed to come to the ZBA first) ZBA clearly

turned them down, had opportunity to appeal and should have raised amenities concerns in rehearing request.

Atty Boldt: request for rehearing filed with the board did not challenge the statements on amenities, have a remedy to come back to the ZBA with an amendment with just the amenities, amenities is in all of the versions. The ZBA previous decision has been made, not an ability to overturn, not something to just go to PB, PB is supposed to say does it meet within site plan checklist, the Town voters are the only one that change those terms in MZO, process is clear under statute, respectfully request to grant the appeal and inform the campground applicant that would have to come back before ZBA for amenities SE approval.

S. Nadeau questioned if the applicant only wanted to get only amenities would they have had gone through what they did for the past year. (Atty. Boldt felt they would have still because of the definition of campground in the MZO and that outdoor recreational facility is defined as well, feels the Admin Decision was a runaround the ZBA decision)

Atty Tilsley: expressed that if the ZBA found this appeal to be premature it would allow abutters to appeal after it went to the PB. Reiterated what the SE denial was for and that the accessory structures are permitted noted it will not add people to the site because it will be for camper's owner. (Chairman Tabory questioned his definition of incidental) Atty. Tilsley replied something that is below or minor to the major use. Accessory use doesn't draw any people to the site just for the use, incidental because it is for the campers.

Atty Boldt a point of order: it does draw folks to the site, because it is part of the package. Disagrees with Atty. Tilsley who was not involved in the preparation of the SE application ref. narrative.

Chairman Tabory closed the public comment portion of the hearing.

S. Nadeau motioned to suspend meeting for discussion with attorney, L. Brown seconds the motion. All in favor motion carried. Board entered non-meeting session with legal counsel at 8:35pm. Chairman Tabory brought the meeting back into session at 8:50 pm.

Board Discussion: S. Nadeau stated he has faith in the Planning Board, they can make it happen or stop it in its tracks, thinks the appeal is premature and knows the ZBA not the only board in this town. B. McQuade questioned if essentially he is looking for a plan. S. Nadeau felt it was premature because the campground representatives themselves said they do not know specific details of the amenities, being no plans how can any decision be made without one, need to trust other boards.

Chairman Tabory questioned if one could argue a decision like this to go before the Planning Board should have some detail, shouldn't the people who made the decision know what they are saying yes you can go to the planning board with that or if they need to go the zoning board first.

C. Jacobs thinks the decision was premature, in a number of years never seen working in other communities never seen a decision letter come from a zoning officer without a plan or something specific, has to be some specificity to an applicant to render a decision, has to be details of the accessory uses, found disturbing the decision preceded something the PB had seen or could have been different to what the ZBA had already seen, not with it, not comfortable with the decision letter, do not agree with some of the contentions that the board does not have authority in particular instances, does have authority because a decision was made in writing, the appellants had the right to appeal to this board, decision tonight is if the order the letter came out is right or wrong.

L. Brown would like to suggest that the Town Planner was working in full belief that in nonpublic session of this town board he had been given the necessary authority and signatory power and it was

based on the specific action of this Zoning Board, enjoys and respects his work, wants to make sure the nature and extent of development at MiTeJo is fully vetted, referenced and enforceable.

Chairman Tabory stated without a specific design going forward and this decision being made he would have to interpret it was made based on the designs from the denied application, which is where he draws exception to that, if in fact what they want to do for amenities now is substantially different then it was before would argue okay maybe that is an acceptable avenue, part of him that says approve the appeal and say fine bring back designs of what they do want to the Code Enforcement Officer then see what the plan is and make a determination if they still agree that the PB is an appropriate place to go or should go to ZBA, what grounds does the board have to know what the decision was made on other than what has been presented to the board. Leaning to overturn the decision, let them without prejudice go back with what they are actually proposing to put in place and then let the Planning Office determine where it should go.

B. McQuade noted he had nothing to add.

C. Jacobs motions to grant the appeal of Barry and Karen Barkow et al. to revoke and overrule the decision of the Milton Land Use Office dated July 25, 2018 with respect to the allowance of amenities at the Three Ponds Resort LLC campground Map 28 lot 4, the decision was premature because it was made without a specific plan. L. Brown seconds the motion.

No discussion. Vote: (3 Yes-Chairman Tabory, L. Brown, C. Jacobs- 2, No S. Nadeau & B. McQuade) motion carried in favor of revoking and overruling the decision.

Atty Boldt procedural question- there is a request to waive fees under the ZBA jurisdiction, and will they be given notice of any such decisions if made on any plan submitted since it would not necessarily be with an application. Chairman Tabory replied he was not sure they had the authority to make that happen, questioned if abutters are normally notified. Atty Boldt replied he did not think they would need to inform all of the abutters, but if the ZBA could instruct if application came to the Land Use Office that they give him a copy. Atty Mitchell requested that the two attorney's share with each other. Atty Tilsley added they should share information.

Board discussed that the applicant had submitted a request to waive the fees associated with this case, ZBA has jurisdiction over the application fee. S. Nadeau motioned to deny the request.

Attny Boldt withdrew the applicants request to waive filing fees under ZBA jurisdiction.

Discussion and Approval of Minutes:

- May 24, 2018: Chairman Tabory noted that pg. 7 the last paragraph, felt it should spell out what the picture was, important to specify it was a large floating device on a lake. Pg. 8 should specify that Norm Turgeon does not have feelings about Lebanon that it was the applicant's attorney speaking. S. Nadeau motions to approve with changes, L. Brown seconds the motion. (4-0-1 B. McQuade abstained) motion carried.
- August 23, 2018: S. Nadeau motions to table to the next meeting. B. McQuade seconds the motion. All in favor, motion carried.

Other Business: D. Crossley informed the board that they would have a new case for the regular meeting at the end of the month.

S. Nadeau motions to adjourn, L. Brown seconds the motion all favor meeting adjourned at 9:05pm.

9.6.18 ZBA

Respectfully Submitted, Dana Crossley, Land Use Clerk