

---

## ZONING BOARD OF ADJUSTMENT MEETING MINUTES JUNE 12, 2012

### CALL TO ORDER:

Chairman G. Kriebel called the meeting to order at 6:00pm.

### ROLL CALL:

N. Decoteau read the roll and the following members/alternates were present:

G. Kriebel, Jim Demeritt, Harry George, David Gravel and William Rose.

Chairman G. Kriebel stated that alternate William Rose shall serve as a member in the absence of member D. Day.

Others present included the following:

Chris Boldt, Esquire	Rodney, Stark, ESQ	Walter Mitchell, Esq.
Daniel Lunedet	Brad Benton	Bob Tunley
Susan Marston	Bryon O'Donnell	Steve Alder
Paul Steele Sr.	Marianne Peabody	Steve Morton
Beverly Chappell	Reggie Tawaies	Brad Benton Sr.
Parker Uhlman		

### APPROVAL OF MINUTES:

Motion: "To approve the minutes of June 4, 2012 as presented."

Motion: J. Demeritt

Seconded: H. George

Passes 5 -0

### PUBLIC MEETING:

G. Kriebel continued the Public Meeting of June 4, 2012 and reminded the audience that the Public Hearing was closed on June 4, 2012 and that the Board would not be accepting any additional input from the audience. He stated that the Public Meeting would be a discussion among the ZBA members.

G. Kriebel suggested the Board address the seven points the ZBA determined it has jurisdiction over and suggested starting with the two areas of jurisdiction in the *Appeal of Administrative Decision by the Board of Selectmen on April 18, 2012 to approve Special Events Permits for the Boogie'n Blues Festival and the 2012 Pemi Valley Bluegrass Festival to be held on property owned by Bradford Benton and Helen Steele at Tax map 10 Lot 3-37 on NH Rt. 175* and then proceed to the five areas of jurisdiction in the *Appeal of Administrative Decision by the Planning Board to approve the site plan review of Bradford Benton and Helen Steele to construct a permanent stage for the purpose of having special events on their property at Tax Map 10 Lot 3-37 located on NH Rt. 175*.

G. Kriebel suggested that the Board members would discuss exactly what question needed to be answered for each area of jurisdiction and then make a ruling.

G. Kriebel began with the third paragraph of the Special Events Appeal:

*The basis for the appeal is that the Board of Selectmen violated the Zoning Ordinance and Night Sky Ordinance by issuing permits for activities that constitute a commercial event business: a use prohibited in the General Residence zone. By issuing these permits the Board has created a nuisance that results in devaluation of property and substantial interference with the right to peace and quiet enjoyment of surrounding properties.*

G. Kriebel stated that since the Night Sky Ordinance is not in the Zoning Ordinance it would not be part of the discussion. He further stated that what would be discussed is whether or not these events were permitted in the General Residence zone.

G. Kriebel asked if these events meet the definition of Special Events as defined in the Zoning Ordinance. The Board agreed that is the question that needs to be answered.

D. Gravel read the definition of Special Events into the record:

*“Special Events” A group activity including, but not limited to, a performance, meeting, assembly, contest, exhibit, ceremony, or non-routine activity, within the community that will bring together a large number of people and requires additional planning and preparedness, and is in accordance with RSA Chapter 286 and the town of Thornton Special Events Regulations to operate such activities.*

H. George stated in his opinion the events do meet the definition.

G. Kriebel stated that they are performances. G. Kriebel noted that the phrase ‘non-routine activity’ as it is written in not a modifier of the other items on the list.

G. Kriebel asked if since the Special Events Regulations and RSA Chapter 286 are referenced in the Zoning Ordinance is there a need to make sure the events are consistent with the Special Events Regulations and RSA Chapter 286.

C. Boldt stated the language of RSA 286 authorizes Selectmen to adopt regulations and the Board of Selectmen has done so.

C. Boldt advised the Board that it was their call to make as to how detailed they make any review of RSA 286 and the Special Events Regulations.

W. Rose stated the phrase “in accordance with” almost begs the Board to clarify whether the event is in accordance.

G. Kriebel stated that the question that needs an answer is does this event violate the definition of Special Events as defined in the Zoning Ordinance.

D. Gravel stated that in his opinion the events in question do meet the definition of a special event.

**MOTION: “That the Board of Selectmen did not violate the Zoning Ordinance by issuing permits for the White Mountain Boogie N’ Blues Festival and the Pemi Valley Bluegrass Festival according to the Special Event Regulations.”**

Motion: D. Gravel      Seconded: H. George      Passes 4 – 1 ( W. Rose )

W. Rose asked if the motion needed to declare that the events do not constitute a commercial use.

G. Kriebel noted RSA 286 refers to people performing for a fee and the Special Event Regulations refer to charging an admission fee and that he was not sure the ZBA needs to make a determination on the commercial aspect one way or the other.

D. Gravel stated it is included by referencing the Special Event Regulations because they specifically mention charging an admission fee.

The Board moved to the next area of jurisdiction.

G. Kriebel read paragraph 7:

*The Board of Selectmen acted outside their authority by creating Special Event Regulations that violate the Zoning Ordinance by including special events which [1] involve the rent or lease of a site*

*for an event, and [2] special events which charge an admission fee. These activities constitute a business use which requires a variance to operate in the General Residence Zone.*

G. Kriebel stated the question to be answered here is whether the Board of Selectmen violated the Zoning Ordinance by enacting the Special Events Regulations as they are written.

G. Kriebel stated the ZBA needs to consider whether the Special Event Regulations are consistent with the Zoning Ordinance in the two specific areas listed in the appeal: the rent/lease of a site and charging an admission fee.

C. Boldt reviewed RSA 286 as requested by G. Kriebel.

G. Kriebel stated another point to be clear on is that the complaint does not allege there is a violation because these are repetitive events but rather because there are site rentals and an admission fee charged.

D. Gravel stated the claim alleges that the rent/lease of a site and charging an admission fee constitute a business use which requires a variance in the General Residence zone.

C. Boldt suggested the ZBA consider the timing of the allowed events in making the determination as to whether it is a commercial use.

C. Boldt stated a commercial use is more or less continual and a special event by regulation is limited to less than twelve days a year.

W. Rose stated consideration should be given to the intent of the voters in allowing special events in all zones.

G. Kriebel stated as a general rule the voters knew that it was events like the White Mountain Boogie N' Blues they were voting to allow/disallow in the General Residence zone.

D. Gravel asked for clarification if the ZBA is being asked to rule on whether these events constitute a commercial use and would therefore require a variance.

G. Kriebel stated the question is did the Board of Selectmen act outside their authority by permitting these events which rent/lease a site and charge an admission fee and therefore constitute a commercial use.

**MOTION: "The Board of Selectmen did not act outside their authority in creating the Special Event Regulations."**

Motion: J. Demeritt

Seconded: W. Rose

Passes 5 – 0

The Board moved on to the five areas of jurisdiction regarding the *Appeal of Administrative Decision by the Planning Board to approve the site plan review of Bradford Benton and Helen Steele to construct a permanent stage for the purpose of having special events on their property at Tax Map 10 Lot 3-37 located on NH Rt 175.*

G. Kriebel stated that the ZBA found that they have jurisdiction under only section one of the claim: *Failed to Adhere to a Standard of Review*

1. *Require a variance for a permanent event venue business operating in the general residence zone.*

G. Kriebel asked if the stage was approved does that mean the owners can use it for anything they wish.

J. Demeritt stated the stage is temporary in nature and can only be used up to twelve days a year for events that draw two hundred people or more which constitute an event permitted by the Board of Selectmen.

J. Demeritt stated the Special Event Regulations make provision for allowing a stage for Special Events approved by the Board of Selectmen.

A lengthy discussion followed regarding the allowed use of the permitted stage and enforcement issues relative to a structure approved for temporary use not being torn down between each permitted Special Event.

W. Rose stated the Zoning Ordinance requires a variance for a permanent structure.

J. Demeritt stated the Special Event Regulations allow for temporary structures in support of permitted Special Events.

G. Kriebel noted the Zoning Ordinance specifically states buildings and structures may be erected for Special Events. He further stated the definition of structure is something built with a fixed location on the ground or attached to something with a fixed location on the ground and include but are not limited to a building, swimming pool, billboard, pier and deck.

W. Rose stated the Special Event Regulations only allow for temporary structures.

G. Kriebel stated there is a conflict between the enacted Special Event Regulations and the Zoning Ordinance and asked C. Boldt which would take precedence in such a conflict.

C. Boldt noted the "more stringent standard shall be controlling" statement in the Zoning Ordinance.

C. Boldt noted defining which would be more stringent is difficult.

J. Demeritt suggested including in part of a motion the temporary aspect of the use of the stage.

G. Kriebel noted the Board of Selectmen would be responsible for enforcement.

C. Boldt encouraged the ZBA to define what they are approving and agreed that it is not the ZBA which is responsible for enforcement.

J. Demeritt asked if the motion can include a clause which states the approval is null and void if a violation occurs.

C. Boldt referred to a 1997 case *Peabody vs, Windham* where the court ruled that the Zoning Board of Adjustment may impose conditions to prevent improper expansion of non-conforming uses.

C. Boldt stated there is a legitimate concern because there is a structure approved with a clearly defined use that is allowed but if it is expanded it moves to a use that is not allowed.

G. Kriebel summarized by stating that in accordance with the Zoning Ordinance the ZBA has determined that Special Events are an agreed upon use for the General Residence zone, structures for agreed upon uses are allowed, and the stage meets the definition of a structure.

**MOTION: "A variance is not required because the stage may only be used up to twelve days a year for Special Events permitted by the Board of Selectmen and in fact if this use is violated the permission to use it is revoked per RSA 674:33(II)."**

Motion: J. Demeritt

Seconded: D. Gravel

Passes 4 – 1 (W. Rose )

The Board moved on to the next area of jurisdiction: Violation of the Purpose of the Thornton Zoning Ordinance Article II Section I and Article V Permitted Uses. Failure to regard the application in a manner to protect property values and Article V Permitted Uses: by stipulating that the "stages" were a permitted use when in fact the Zoning Ordinance is a permissive one and does not permit commercial stages to be constructed in the general residence zone.

G. Kriebel stated the issue relative to Article V Permitted Uses has already been dealt with which leaves the issue of regarding the application in a manner to protect property values.

D. Gravel asked what testimony was received regarding the issue of protecting property values.

G. Kriebel read a portion of the letter from Thornton's Assessor, Gary Roberge dated March 23, 2012 to the Chappells :

We met back in 2010 in response to your 2009 abatement request. Based on our meeting and your description of the issues regarding the campground, claimed illegal events, trespassing and trash being blown onto your property, I recommended adding a temporary economic depreciation and granting the abatement until I had enough information from the town, future events or evidence of any affect on your market value.

Since that time, the town has become very active in the control and regulations of the activity at the campground and the several visits I made to investigate the most recent event proved to be dramatically different than what I felt was described to me at our 2010 meeting.

It is my opinion that as of 4/1/12, the previously recommended economic depreciation will be removed as I have concluded that the campground and occasional events, as currently regulated and controlled, have little to no impact on your market value. As such, your assessment which was reduced to \$226,479, will be returned to \$247,879 as of 4/1/12, as I have removed the economic depreciation on the building and the land site value, both relating to the campground issues, which I believe no longer exist or impact your market value and that the \$247,879 is fair and accurate for your property.

J. Demeritt stated there is not enough information presented to make an educated decision on the issue of the impact the events have or don't have on property values.

C. Boldt stated the ZBA has to base decisions on the facts presented by the interested parties during the Public Hearing.

**MOTION: "Based on evidence presented the Zoning Board of Adjustment does not find that there was a failure to address the adverse impact on property values."**

Motion: W. Rose

Seconded: J. Demeritt

Passes 5 -0

The Board moved on to the next area of jurisdiction: *Permanent Stages and Permanent Event Areas Require a Variance to Operate in the General Residence Zone.*

D. Gravel stated the ZBA already made a ruling on this issue in the last appeal in dealing with the stage.

J. Demeritt stated that as a structure approved for a Special Event the stage does not require a variance.

G. Kriebel stated the stage is permitted only for Special Events, and that it is a permanent structure that can not be operated in an ongoing basis.

**MOTION: "That a ruling on this issue is not required because the issue was covered in the ruling on the subject of does the stage require a variance."**

Motion: J. Demeritt

Seconded: D. Gravel

Passes 4 – 1 (W. Rose)

The Board moved on to the next area of jurisdiction: *Violation of Thornton Floodplain Management Ordinance; Section III Permits/Development Permit. The Board did not require the applicant to obtain the required permits to construct in a flood hazard.*

G. Kriebel stated specifically Section III states that all proposed development in any floodplain hazard area shall require a permit.

G. Kriebel raised the question as to what permit is required.

J. Demeritt stated that none of the testimony presented documents whether this permit was or was not issued.

G. Kriebel stated Building Permit 2011-28 was issued and the Board of Selectmen placed the following three conditions on it: 1.) file a Site Plan Review Application before the Thornton Planning Board 2.) submit a signed engineered plan showing compliance with the Town of Thornton Flood Plain Ordinance 3.) it is

understood that construction will not begin until the Planning Board reports back to the Board of Selectmen that all requirements are satisfactorily met.

G. Kriebel stated the Site Plan Review Application was submitted and that a signed engineered plan showing compliance with the Town of Thornton Flood Plain Ordinance was submitted.

G. Kriebel asked a Planning Board member present if the Planning Board reported back to the Board of Selectmen.

S. Babbitt responded he did not know for certain.

G. Kriebel asked the Selectmen present if the Planning Board reported back to the Board of Selectmen. Selectwoman Peabody stated it is her opinion that there would be a statement to that effect in the Planning Board minutes.

Selectman Morton stated the Board of Selectmen received a Notice of Decision from the Planning Board.

G. Kriebel read the Notice: "I am writing to inform you that on April 19, 2012 the Thornton Planning Board motioned to approve your application for site plan review for PID 10-03-37 to build a permanent stage contingent upon a safety review from Police Chief Moller and Fire Chief Tobine."

B. Chappell stated her opinion that the Planning Board did not approve the site plan to build a stage but only accepted the plan.

Selectman Morton stated Planning Board consul, M. Maher, did offer his legal opinion that the Planning Board approved the site plan for the stage.

G. Kriebel reminded those present that the meeting was not a Public Hearing and that the ZBA must make a determination based on testimony presented at the Public Hearing held on June 4, 2012.

C. Boldt directed the ZBA back to the claim and area of jurisdiction regarding compliance with the Floodplain Management Ordinance.

C. Boldt stated the ZBA is being asked whether or not the Planning Board erred by not requiring that a permit be issued concerning construction in the flood hazard area.

C. Boldt asked if the lack of the Planning Board requiring a permit means that the stage can be built without the permit.

G. Kriebel stated the Zoning Ordinance does not state that the Planning Board needs to issue a permit, but rather the Zoning Ordinance states that it can't be built without a permit.

C. Boldt stated the text of the Zoning Ordinance points to the Building Inspector as the agent that reviews these things.

C. Boldt explained that in Thornton the Building Inspector is agent of the Board of Selectmen and the permits are actually issued by the Board of Selectmen.

G. Kriebel suggested that the building is allowed once the Board of Selectmen have reviewed the documentation and assured that all necessary permits are in place.

G. Kriebel suggested there is no violation because the Planning Board is not required to have the applicant obtain the required permits.

D. Gravel noted that the Zoning Ordinance simply says that a permit is required and says nothing about who issues the permit.

G. Kriebel stated that the ZBA agrees the building can not be built without a permit and could charge the Board of Selectmen with insuring the necessary permits are in place.

**MOTION: "The Planning Board did not violate the provisions of the Floodplain Management Ordinance in this instance so long as the Board of Selectmen issue a Building Permit that fully complies with the Floodplain Management Ordinance section of the Zoning Ordinance."**

Motion: D. Gravel

Seconded: J. Demeritt

Passes 5 – 0

The Board moved on to the next area of jurisdiction: *Violation of the NFIP Management Requirements: Section C. Permits/Building Permits. The Board did not require the applicant to procure a Development Permit required to construct new structures, excavate, fill, grade or provide permanent storage of materials in the flood hazard.*

J. Demeritt stated there was no testimony received regarding this issue.

W. Rose asked if this falls under the same rationale as the previous claim and that the ZBA finds that there is no merit to the claim but does want to insure the proper permit is issued.

**MOTION:** "The Planning Board did not violate the provisions of the NFIP Management Requirements: Section C. Permits/Building Permits in this instance so long as the Board of Selectmen issue a Building Permit that fully complies with the Floodplain Management Ordinance section of the Zoning Ordinance."  
Motion: W. Rose                      Seconded: D Gravel                      Passes 5 - 0

**OTHER BUSINESS:**

W. Rose stated that at some point in the near future the ZBA should be sending correspondence to the Planning Board and the Board of Selectmen asking them to address the issues of conflict between the Special Event Regulations and the Zoning Ordinance.

The ZBA determined to meet for a workshop session within a couple of weeks.

B. Chappell thanked the ZBA for how they handled the Appeals.

**ADJOURNMENT:**

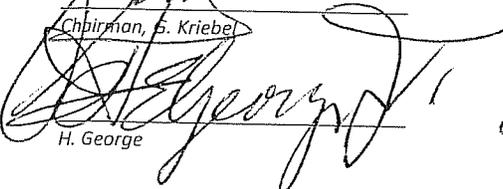
At 8:45pm the following motion was made:

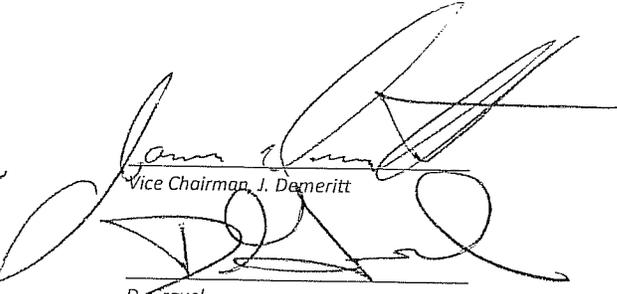
**MOTION:** "To adjourn."

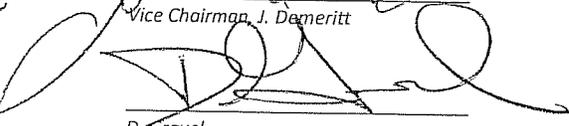
Motion: J. Demeritt                      Seconded: D. Gravel                      Motion Passes (5-0)

Respectfully Submitted,  
Nancy Decoteau, ZBA Secretary

  
\_\_\_\_\_  
Chairman, S. Kriebel

  
\_\_\_\_\_  
H. George

  
\_\_\_\_\_  
Vice Chairman, J. Demeritt

  
\_\_\_\_\_  
D. Gravel

\_\_\_\_\_  
W. Rose

Approved on 6/26/2012