

**Pittsfield Planning Board  
Town Hall, 85 Main Street  
Pittsfield, NH 03263  
Minutes of Public Meeting**

**DATE:** Thursday, October 5, 2017

**AGENDA ITEM 1:** Call to Order

Chair Clayton Wood called the meeting to order at 7:05 P.M.

**AGENDA ITEM 2:** Roll Call

Planning board members present:

Clayton Wood (chair),

Jim Pritchard (secretary),

Paul Nickerson,

Carole Richardson (selectmen's ex officio member), and

Adam Gauthier (alternate)

Planning board members absent:

Daren Nielsen (vice-chair),

Leroy Corson (alternate),

James Hetu (alternate), and

Jim Adams (alternate for the selectmen's ex officio member)

Pittsfield town officials appearing before the planning board: None.

Members of the public appearing before the planning board: Jim Gamble, Bill Miskoe, and Mark Riel.

“Members of the public appearing before the planning board” includes only members of the public who spoke to the board. It does not include members of the public who were present but who did not speak to the board.

**AGENDA ITEM 3:** Public Input

No public input.

**AGENDA ITEM 5:** Development of a recommendation under RSA 41:14-a, I, on Jim Gamble's proposal to buy town-owned 33 Main Street

Adam Gauthier sat in place of Daren Nielsen.

Clayton Wood invited Bill Miskoe and Jim Gamble each to speak for five minutes.

Bill Miskoe said that he supported the general intent of Jim Gamble's proposal to revitalize 33 Main Street but that the planning board should recommend against the proposal because the proposal depended on the town's getting a zoning variance before the sale and because the board of selectmen did not have standing to apply for a variance.

Jim Gamble said that he would remove the requirement for a zoning variance from his proposal, that he would be responsible for applying for any variance that he might need, and that he would apply for any such variance after he acquired the property.

Paul Nickerson moved to make a recommendation of "them" first applying for a lot line adjustment between 33 Main Street (tax map U-03, lot 45) and 37 Main Street (tax map U-03, lot 44) so as to transfer some of the land from 37 Main Street (tax map U-03, lot 44) to 33 Main Street (tax map U-03, lot 45), and then, second, selling the resulting 33 Main Street. Paul Nickerson said that his proposed transfer and sale of land in current 37 Main Street was possible because "the town owns all of that property," and because "the only thing that the library owns is the books and the building."

Bill Miskoe objected that "the selectboard cannot sell the lot that the library had donated to it." Bill Miskoe cited RSA 41:14-a, II, (c), denying the board of selectmen authority to sell "Any real estate that has been given, devised, or bequeathed to the town for charitable or community purposes..."

Clayton Wood called a brief recess from 7:28 PM to 7:34 PM to give Jim Pritchard time to make and distribute copies of Bill Miskoe's survey plan of his lot line adjustment of 33 Main Street (tax map U-03, lot 45) and 37 Main Street (tax map U-03, lot 44) (Merrimack County Registry of Deeds plan number 201600023629), which the board approved on November 17, 2016.

The purpose of distributing this survey plan was to let board members understand Paul Nickerson's proposal.

After board members reviewed Paul Nickerson's proposed lot line adjustment, no board member seconded Paul Nickerson's motion.

Clayton Wood moved the board to repeat the recommendation to sell that the board made for tax map U-03, lot 45, on July 26, 2016, before Bill Miskoe's lot line adjustment. (The board's recommendation of July 26, 2016, is attached at the end of the planning board minutes of July 26, 2016.)

Jim Pritchard asked Clayton Wood to revise his motion to have the following two additional conditions: first, Jim Gamble's proposal will be for dwellings above business and, second, that Jim Gamble's proposal will remove the requirement for a zoning variance from the purchase and sale agreement.

Clayton Wood agreed to the revised motion.

Jim Pritchard seconded the revised motion.

Discussion:

Bill Miskoe objected that the board was recommending on a proposal that Jim Gamble could not satisfy.

Adam Gauthier suggested excluding paragraph 2 of the July 26, 2016, recommendation. Paragraph 2 of the July 26, 2016, recommendation says as follows:

“The planning board's recommendation to sell the property assumes that the Josiah Carpenter Library, which abuts 37 Main Street and is on a very small and narrow lot (tax map U-3, lot 43), has no interest in acquiring land or any building from 37 Main Street. The planning board assumes that the library has no interest in acquiring land or any building from 37 Main Street because neither the library nor the board of selectmen has told the planning board that the library has such interest. If the library does have interest in acquiring land or any building from 37 Main Street, then the planning board's recommendation to sell the property is cancelled.”

(Comment of recording secretary Jim Pritchard: The property under consideration now, 33 Main Street, tax map U-03, lot 45, was known as 37 Main Street on July 26, 2016, before Bill Miskoe's lot line adjustment.)

Adam Gauthier said that the current recommendation did not need paragraph 2 of the July 26, 2016, recommendation because the library had expressed no interest in the property.

Adam Gauthier said that Jim Gamble would need a zoning variance only if Jim Gamble were to build an access in the rear. Adam Gauthier said that Jim Gamble would not need a zoning variance if Jim Gamble were to build an alternate access in the side.

Carole Richardson said that the current recommendation should include paragraph 2 of the July 26, 2016, recommendation because the library had not stated a position on 33 Main Street.

The board discussed whether 33 Main Street actually was 33 Main Street or whether 33 Main Street was 37 Main Street. The board agreed that the recommendation would specify the property by tax map and lot number to eliminate ambiguity.

Jim Pritchard said that the current recommendation's condition on the zoning variance should be revised to remove the requirement for a zoning variance from both the land use proposal and the purchase and sale agreement.

Vote to repeat the recommendation to sell that the board made for tax map U-03, lot 45, on July 26, 2016, except that the current recommendation will have the two additional conditions that, first, Jim Gamble's proposal will be for dwellings above business and, second, that Jim Gamble's proposal will remove the requirement for a zoning variance from both the land use proposal and the purchase and sale agreement: carried 5 - 0 - 0. Voting "yes": Jim Pritchard, Adam Gauthier, Clayton Wood, Paul Nickerson, and Carole Richardson. Voting "no": none. Abstaining: none.

The approved recommendation statement is attached at the end of this minutes document.

Mark Riel said that he had come to watch the board develop its recommendation. Mark Riel said that the historical society still had some interest in 33 Main Street.

**AGENDA ITEM 4:** Approval of the minutes of the September 7, 2017, meeting

Paul Nickerson moved to approve the minutes of September 7, 2017, as written in draft.

Jim Pritchard seconded the motion.

No board member stated any problems in the draft minutes.

Vote to approve the minutes of September 7, 2017, as written in draft: carried 5 - 0 - 0. Voting “yes”: Jim Pritchard, Adam Gauthier, Clayton Wood, Paul Nickerson, and Carole Richardson. Voting “no”: none. Abstaining: none.

**AGENDA ITEM 6:** Report on the Loudon Zoning Board of Adjustment’s meeting of September 28, 2017, regarding the New Hampshire Motor Speedway

Clayton Wood said that he and Jim Pritchard had sent a letter to the Loudon Zoning Board of Adjustment on behalf of the Pittsfield Planning Board opposing the variance to extend camping. The Pittsfield Planning Board’s letter to the Loudon Zoning Board of Adjustment opposing the New Hampshire Motor Speedway variance to extend camping is attached at the end of this minutes document.

(Comment of recording secretary Jim Pritchard: The essence of the letter’s objection was that the speedway’s security to control camp firewood coming from off site was inadequate to prevent campers from bringing to the campground camp firewood infected with injurious invasive insects.)

Jim Pritchard said he had attended the Loudon Zoning Board of Adjustment’s meeting on September 28, 2017, and that the Loudon Zoning Board of Adjustment had approved both the special exception for concerts and the variance to extend camping. Jim Pritchard thanked the Pittsfield Planning Board for authorizing him and Clayton Wood to send the letter

opposing the variance to extend camping. Jim Pritchard briefly described the security to control camp firewood coming from off site, which depends on campers voluntarily admitting that they are carrying firewood unlawfully. Jim Pritchard stated his opinion that the Pittsfield Planning Board's letter had forced the Loudon Zoning Board of Adjustment to discuss the problem of invasive and destructive insects. Jim Pritchard stated his opinion that the Loudon Zoning Board of Adjustment had ignored objections from certain Canterbury residents.

**AGENDA ITEM 7:** Review of zoning amendment 3, currently in rough-draft form, for article 4, Nonconforming Uses and Lots

Jim Pritchard said that the first phase of his development of zoning amendment 3, which the board reviewed on September 7, had presented quotes from New Hampshire case law on nonconforming uses. Jim Pritchard said that the second phase of his development of zoning amendment 3, which the board is reviewing tonight, was to codify this case law into the local regulations. Jim Pritchard said that state law requires the local regulations to agree with the state case law (*Ray's Stateline Market, Inc. v. Pelham*, 140 N.H. 139, 665 A.2d 1068 (1995)) and that the local regulations currently do not agree with the state case law.

Clayton Wood said that the case law was confusing about the test for permissible changes to nonconforming uses.

Jim Pritchard said that the difficulty in applying a test for permissible changes to nonconforming uses was why he had quoted so many supreme court cases. Jim Pritchard said that H. Bernard Waugh had addressed this very problem and had said, "The best approach is to look at the decided cases."

(Comment of recording secretary Jim Pritchard: The full quote from H. Bernard Waugh's treatise on the law of nonconforming uses is as follows: "The Court's test in the New London case, using words like 'substantial' and 'a natural activity,' may seem about as easy to grab hold of as a greased pig. The best approach is to look at the decided cases:" (*Grandfathered - The Law of Nonconforming Uses and Vested Rights* (2009 Edition), chapter 4, section 4-B, page 19).)

Jim Pritchard said that he had annotated the latest version of amendment 3 with comments to say, for each supreme court case, why he had included that case.

Clayton Wood said that the planning board should have a good way to explain to other town boards why the planning board is proposing new article 4 as the planning board is considering it.

Jim Pritchard suggested that board members should read *Grandfathered - The Law of Nonconforming Uses and Vested Rights* (2009 Edition). Jim Pritchard said that this treatise would help board members understand why Jim Pritchard had proposed to revise article 4 as he had proposed it.

Carole Richardson asked about the various time periods that the proposal states to define abandonment under various conditions.

Jim Pritchard said that some of these time periods were initial suggestions but that the two-year period for abandonment of a destroyed nonconforming structure is to be consistent with the state law on variances (RSA 674:33, I-a) and special exceptions (RSA 674:33, IV).

Clayton Wood said that proposed article 4 includes exceptions to abandonment of a nonconforming use in violation for a certain time in order to give someone in such violation a warning and a chance to correct the violation.

Clayton Wood said that the proposal's listing of different nonconforming use types was helpful in clarifying what is permitted and what is prohibited.

Clayton Wood said that the board needed Jesse Pacheco's input.

Clayton Wood said that the board should have a public hearing on the tentatively finished amendments 1 and 2 and on the concept of amendment 3.

**AGENDA ITEM ADDED:** Bed-and-breakfasts as home occupations

Jim Pritchard said that he had recognized that bed-and-breakfasts are home occupations by definition:

“BED-AND-BREAKFAST” means a SINGLE-FAMILY DWELLING with a HOME OCCUPATION offering transient lodging in the SINGLE-FAMILY DWELLING.

(Pittsfield Zoning Ordinance, article 2, section 3, Definitions)

and that zoning amendment 2, for home occupations, should propose to permit bed-and-breakfasts by right at least in the Suburban zoning district in order to be consistent with the proposal to permit home occupations in general by right in the Suburban zoning district and in the Rural zoning district. (Comment of recording secretary Jim Pritchard: Unlike home occupations in general, which are currently permitted as special exceptions in the Rural zoning district, bed-and-breakfasts are currently permitted by right in the Rural zoning district.)

The board agreed to propose changing the permitting of bed-and-breakfasts as follows to make the permitting of bed-and-breakfasts more consistent with home occupations in general and to make the permitting of bed-and-breakfasts more consistent with the permitting of single-family dwellings:

Change current Urban District/special exception to Urban District/by right.

Change current Suburban District/special exception to Suburban District/by right.

Change current Commercial District/special exception to Commercial District/prohibited.

Change current Light Industrial/Commercial District/special exception to Light Industrial/Commercial District/prohibited.

The board decided to propose to prohibit bed-and-breakfasts in the Commercial zoning district and in the Light Industrial/Commercial zoning district because the zoning ordinance currently prohibits single-family dwellings in these two zoning districts.

The board scheduled a public hearing for November 2, 2017, on (1) the proposed building code repeal, (2) the two zoning amendments (for the definition of “agriculture” and for home occupations), and (3) the concept of amendment 3, for nonconforming uses.

**AGENDA ITEM 8:** Discussion of amendments to the subdivision regulations

- a. Report on input from the fire department
- b. Discussion of adding a requirement to show topography within 50 feet of any highway

Jim Pritchard said that he had talked to Pittsfield fire marshal Captain Don Tyler and that the fire department would probably suggest some revisions to the subdivision regulations. Jim Pritchard said that the fire department had not formally developed its suggestions yet.

Jim Pritchard said that building inspector Jesse Pacheco had alerted Jim Pritchard to a problem in the requirement to show topography. The regulations require topography to be shown where construction is proposed, but residential construction projects could avoid the requirement to propose construction by applying for subdivision approval without proposing any construction at the time of subdivision, and then building the houses later. Jim Pritchard said that Jesse Pacheco had recommended requiring topography to be shown within 50 feet of a highway boundary whether construction is proposed or not.

Clayton Wood suggested getting input from the highway department on the topography requirement.

Jim Pritchard said that highway agent George Bachelder had not answered Jim Pritchard's e-mail requesting information on class V highways that do not conform to the state fire code. Jim Pritchard said that he and Captain Tyler had determined that the state fire code requires a traveled way width of 20 feet, not 24 feet as the board had previously thought.

(Comment of recording secretary Jim Pritchard: The state fire code has two conflicting requirements for traveled way width: NFPA 1 (2009), section 18.2.3.4.1.1 ("Fire department access roads shall have an unobstructed width of not less than 20 ft (6.1 m).") and NFPA 1141 (2008), section 5.3.6 ("Fire lanes intended for one-way travel shall provide a minimum of 16 ft (5 m) in width of traveled way. Fire lanes providing two-way travel shall be a minimum of 24 ft (7.3 m) in width of traveled way.") NFPA 1 (2009), section 17.3.7.1 includes NFPA 1141 (2008), section 5.3.6 by reference ("The provisions of 17.3.7 and NFPA 1141, Standard for Fire Protection

Infrastructure for Land Development in Suburban and Rural Areas, shall be used to determine the design, clearances, and provisions for emergency access (ingress and egress).”) Therefore, Jim Pritchard and Captain Tyler concluded that the 20-foot requirement of NFPA 1 (2009) controls over the 24-foot requirement of NFPA 1141 (2008) because NFPA 1 (2009) is a higher level code and is a more recent code.)

Jim Pritchard said that the board should consider very seriously putting a regulation in the subdivision regulations requiring access roads to satisfy the state fire code. Jim Pritchard cited the Bicknell subdivision on Governor’s Road, where highway agent George Bachelder had complained (on July 6, 2017) that the access road was nonconforming. Jim Pritchard said that the board had not required the Bicknells to improve Governor’s Road because the town would have had to pay for most of the improvements. (Land/Vest Properties v. Plainfield, 117 N.H. 817, 379 A.2d 200 (1977).) Jim Pritchard said that the town’s burden to improve Governor’s Road to the Bicknell subdivision would have been much less if the board had made the earlier subdivisions of AHG Properties and Mark Quimby improve Governor’s Road from Governor’s Road’s intersection with Tan Road.

Jim Pritchard said that someone buying property on a class V highway would assume that the access road would not be a bar to a building permit because the belief was common, even in the fire department, that the town is responsible for adequate access on a class V highway. Jim Pritchard said that the town has no such responsibility and that the town’s responsibility is limited to making the highway passable in some safe manner, even if that manner is just walking. (RSA 231:90, II and III. RSA 231:90, III, says, “A highway or sidewalk shall not, in the absence of impassability or hidden hazard as set forth in paragraph II, be considered ‘insufficient’ merely by reason of the municipality’s failure to construct, maintain or repair it to the same standard as some other highway or sidewalk, or to a level of service commensurate with its current level of public use.”)

Jim Pritchard said that the town would have better roads if the board had a regulation requiring developers to improve class V highways to meet the state fire code.

Carole Richardson asked Jim Pritchard to explain what information he wanted from George Bachelder.

Jim Pritchard said that he wanted to know what George Bachelder knew about travel-way-width nonconformities and dead-end-road-turnaround nonconformities to the state fire code. Jim Pritchard said that he would send Carole Richardson his e-mail to George Bachelder.

Paul Nickerson said that he had measured the traveled way widths of roads all over town.

Carole Richardson asked whether the fire department already had the information on road nonconformance to the state fire code. Carole Richardson said that the fire department should know which highways the department's vehicles can or cannot travel safely.

Jim Pritchard said that he thought that the fire department did not have this information. Jim Pritchard said that he would ask the fire department.

**AGENDA ITEM 9: Selectman's Report**

Carole Richardson had nothing to report.

**AGENDA ITEM 10: Members' Concerns**

Clayton Wood said that Barnstead would have a work session on how to regulate so-called tiny houses. Clayton Wood suggested that he and Jim Pritchard attend the work session.

Jim Pritchard said that any object permanently connected to the public electrical service meets the zoning ordinance definition of "structure" and that tiny houses are regulated structures because tiny houses are permanently connected to the public electrical service.

**AGENDA ITEM 11: Public Input**

No public input

**AGENDA ITEM 12: Adjournment**

Jim Pritchard moved to adjourn the meeting.

Clayton Wood seconded the motion.

Vote to adjourn the planning board meeting of October 5, 2017: carried 5 - 0 - 0. Voting “yes”: Jim Pritchard, Adam Gauthier, Clayton Wood, Paul Nickerson, and Carole Richardson. Voting “no”: none. Abstaining: none. The planning board meeting of October 5, 2017, is adjourned at 9:10 P.M.

Minutes approved: November 2, 2017

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Clayton Wood, chairman	Date
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I transcribed these minutes (not verbatim) on October 7, 2017, from the digital audio recording that Chairman Clayton Wood made during the meeting on October 5, 2017, and uploaded to the Internet.

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Jim Pritchard, planning board recorder and secretary

Attachments:

1. The planning board’s approved recommendation, of October 5, 2017, on the board of selectmen’s proposed sale of the town-owned property at 33 Main Street, tax map U-03, lot 45, to Jim Gamble.
2. The Pittsfield Planning Board’s letter to the Loudon Zoning Board of Adjustment opposing the New Hampshire Motor Speedway variance to extend camping.



TOWN OF PITTSFIELD  
Planning Board  
c/o Town Hall  
85 Main Street  
Pittsfield, New Hampshire 03263

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October 9, 2017

Board of selectmen  
Town of Pittsfield  
85 Main Street  
Pittsfield, NH 03263

Dear board of selectmen,

Following is the planning board's recommendation on the board of selectmen's proposed sale of town-owned property at tax map U-03, lot 45, to Jim Gamble according to the proposal dated August 7, 2017, that town administrator Cara Marston submitted to the planning board:

The planning board recommends in favor of selling the property on the following conditions:

1. The planning board's recommendation to sell the property assumes that the Josiah Carpenter Library, which abuts tax map U-03, lot 45, and is on a very small area of land (tax map U-3, lots 43 and 44), has no interest in acquiring land or any building from tax map U-03, lot 45. The planning board assumes that the library has no interest in acquiring land or any building from tax map U-03, lot 45, because neither the library nor the board of selectmen has told the planning board that the library has such interest. If the library does have interest in acquiring land or any building from tax map U-03, lot 45, then the planning board's recommendation to sell the property is cancelled.
2. The planning board's recommendation to sell the property assumes that neither the land use proposal nor the conditions of the sale will include a zoning variance on the property. If the land use proposal or the conditions of the sale continue to include a zoning variance on the property, as they do in the proposal dated August 7, 2017, then the planning board's recommendation to sell the property is cancelled. The board of selectmen has not told the planning board who would have standing to apply for a variance on the town's behalf, and the planning board knows of no such person or agency. Jim Gamble attended the planning board meeting of October 5, 2017, when the planning board developed this recommendation, and Jim Gamble said that he would be responsible for applying for any variance that he might need and that he would apply for any such variance after he acquired the property.

Planning Board Members  
Jim Pritchard (Secretary)  
James Hetu (Alternate)  
Carole Richardson (Selectman Ex Officio)

Clayton Wood (Chairman)  
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Daren Nielson (Vice-Chairman)  
Adam Gauthier (Alternate)

Jim Adams (Selectman Ex Officio Alternate)

3. Do not impose covenants restricting the use of the property.
4. Require the buyer to sign a statement that he claims no rights to dwelling units as nonconforming uses of the property and that any such previously existing rights are abandoned. At the planning board's meeting of September 7, 2017, Jim Gamble said that he planned for the ground floor of the existing building to be a coffee shop, and for the second floor to have two apartments, which the zoning ordinance calls dwellings above business, and which the zoning ordinance permits by right in the Commercial District. If this use proposal changes, then the planning board's recommendation to sell the property is cancelled. Rights to existing dimensional nonconformances, if any, such as nonconformance to frontage, area, or minimum setbacks, will continue as long as there is no future abandonment of these rights.

Discussion:

This recommendation is substantially the same as the recommendation that the planning board developed on July 26, 2016, after the board toured the property. No intervening conditions have happened since July 26, 2016, to change the board's basic recommendation.

Sincerely,



Clayton Wood  
Chair  
Pittsfield Planning Board

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TOWN OF PITTSFIELD  
Planning Board  
c/o Town Hall  
85 Main Street  
Pittsfield, New Hampshire 03263

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September 22, 2017

Loudon Zoning Board of Adjustment  
P. O. Box 7837  
29 South Village Road  
Loudon, NH 03307

Dear Loudon Zoning Board of Adjustment:

Because of potential regional impact to Pittsfield, the Town of Pittsfield has abutter status to the New Hampshire Municipal Motor Speedway's application for a variance "to permit overnight camping and tenting in conjunction with a recreational concert." (Loudon Planning Board minutes, May 18, 2017; Loudon ZBA minutes, May 25, 2017; and NHMS variance application, page 1.) After careful consideration of testimony given at the Loudon ZBA's hearing on August 24, 2017, and after research into the implication of that testimony, the Pittsfield Planning Board officially opposes the variance for expanded camping.

The Pittsfield Planning Board opposes the speedway's variance for expanded camping because the security at the speedway campsites is inadequate to avoid the importation of injurious invasive insects, and in particular, to avoid the importation of the Asian longhorned beetle. The Asian longhorned beetle has already infested the relatively nearby city of Worcester, Massachusetts, and could potentially devastate New Hampshire's maple population and the related maple-syrup production and autumn-foliage tourism industries, the latter of which undoubtedly dwarfs the economic benefits of the speedway's races. Inadequate security against the importation of injurious invasive insects makes the variance application fail the "will not be contrary to the public interest" requirement for a variance. (RSA 674:33, I, (b), (1).)

On Friday, September 15, 2017, Pittsfield Planning Board secretary Jim Pritchard e-mailed Brad Simpkins, director of the division of forests and lands, New Hampshire Department of Resources and Economic Development (DRED), and asked for a written statement of the security practices to monitor and control the movement and use of campfire wood into, on, and out of the speedway campsites. As of today, one week later, Mr. Simpkins has not answered Mr. Pritchard's e-mail. Neither has Douglas Miner or Captain Bryan Nowell, both of whom Jim Pritchard e-mailed in the division of forests and lands asking for a written statement of the firewood security. Both Tim Fleury (Merrimack County forester) and Piera Siegert (state entomologist) said that Captain Nowell was the immediate chief of firewood security at the speedway.

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But when Mr. Pritchard spoke to Piera Siegert, who was answering an earlier telephone message, she described the firewood security. DRED security has checkpoints where cars entering speedway campsites must stop. A DRED officer asks the driver whether the vehicle is carrying firewood. If the driver answers “yes,” then the driver must produce permits for the firewood. If the driver answers “yes” but does not have permits for the firewood, then DRED confiscates the firewood and issues a warning for first offenses and a summons for second and subsequent offenses. If the driver answers “no” to whether his vehicle is carrying firewood, then the vehicle may pass.

This security is very weak and certainly a far cry from the National Football League’s clear-bag policy. All that a would-be speedway camper needs to do to evade speedway firewood security is to say that his vehicle is not carrying firewood, which people familiar with the speedway firewood security—people such as repeat campers—could be expected to know.

The New Hampshire Department of Resources and Development, Division of Forests and Lands, has identified campers bringing firewood from home as a major source of invasive insect pests in New Hampshire:

“In the past ten years research has definitively shown firewood to be a major pathway for the long distance movement of forest pests across the United States. Here in NH the Division of Forests and Lands has conducted many surveys and research projects and found over 40% of the out-of-state campers were bringing firewood from home. Transporting firewood from California, New York, Florida and other distant locations was common. Out-of-State firewood the Division has confiscated and studied has averaged 35 insects per stick of wood. Additionally the breadth of species has been amazing. Species from the smallest flies to the largest longhorn beetles have been found in firewood.”

<http://www.nhdf.org/forest-health/firewood>

The speedway’s camping opportunity attracts the kind of person that DRED has identified as being “a major pathway for the long distance movement of forest pests across the United States,” and the campfire wood security is unreliable in preventing the importation of infected firewood. Furthermore, documented incidents of dangerous disorderly conduct, such as the use of airborne untethered Chinese fire lanterns, has shown that speedway security is ineffective in preventing activities destructive to the land. Finally, the variance application itself states no means whatsoever that the speedway or anyone else will take to prevent the importation infected firewood.

The speedway could prohibit the importation of *any* firewood into the campsites, and the speedway could deny access to the campsites to any would-be camper who refused to allow his vehicle to be inspected. Such inspections would not violate the Fourth Amendment against unreasonable search because would-be campers could avoid the inspection simply by choosing not to enter the campsite and because neither the federal supreme court nor the state supreme

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court has decided that camping is a fundamental right. Furthermore, the inspections could be limited so as to exclude vehicle contents that could neither be nor contain firewood.

Holding the speedway to campfire-wood-security standards higher than what other campsites may have to meet does not discriminate against the speedway because the speedway seeks to expand its camping activities via a variance, not by right, and because the applicant for a variance bears the burden to prove that the variance will not be contrary to the public interest. (RSA 674:33, I, (b), (1), and Grey Rocks Land Trust v. Hebron, 136 N.H. 239, 614 A.2d 1048 (1992).) Furthermore, the speedway has imposed this burden of proof on itself because the speedway could have petitioned the Loudon Town Meeting to permit the proposed camping activities by right—the speedway property and the speedway zoning district are one and the same—but the speedway has chosen to seek a variance instead of a town meeting vote to change the way uses in the district are permitted.

Sincerely,

A handwritten signature in black ink that reads "Clayton Wood". The signature is written in a cursive style with a large, sweeping underline that extends across the width of the name.

Clayton Wood  
Chair  
Pittsfield Planning Board

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