



# TND ENGINEERING

TRAFFIC, TND, TRANSPORTATION AND CONSULTING

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February 11, 2025

Via Email Only

Re: Wabanaki Campground

Gentlemen:

As requested, I have reviewed the recent plans submitted for "Wabanaki Campground Conversion LLC" prepared by Horizons Engineering. My review has focused on relevant parts of the Freedom Zoning Ordinance, Site Plan Review requirements, Subdivision Regulations and related State statutes.

## **JANUARY PLAN SET**

The most recent plans are a five-page set with sheet 1 of 5 being entitled "Site Plan of Proposed Improvements prepared for Wabanaki Campground Conversion LLC" dated April 2024, and revised through 1/29/25. This same title is on sheet 2, while sheets 3 and 4 state "Utility Plan" instead of "Site Plan of Proposed Improvements" and all sheets 1 through 4 have an approval block in anticipation of Planning Board approval and signatures. The approval blocks do not indicate what approval is anticipated to be given (such as, for example, "Site Plan Approved").

Sheets 1, 3 and 5 of 5 in this set of plans also bear a stamp "Date of Print January 30 2025 Horizons Engineering." Sheet 5 depicts floor plans and building elevations for "Hut Three, Hut Six, Hut Five and Hut Eight Cottage" along with a table of areas, including for each "Site" a "Lot Area" in square feet (SF) for all Sites 1 through 64 plus unnumbered "WF Steps" and a "Shed (Near 16)".

I think it is important to look at the details of these plans in order to better understand what has been presented to the Planning Board for its review. The plans contain septic disposal, water lines, well radii and other features that I have not reviewed; the focus of this review is on the "lots" proposed for various uses and the other buildings depicted on the plan set.

Beginning at the northwest corner of the property around the apartment building, Figure 1 shows the apartments and the adjacent area labeled "7☆". I direct the Board's attention to the "Unit" labels highlighted for each apartment and surrounding land in Figure 2, which is identical to Figure 1, except with the land around the

apartments highlighted in blue, with the lines between the “units” darker, and the land around the 7☆ in red.

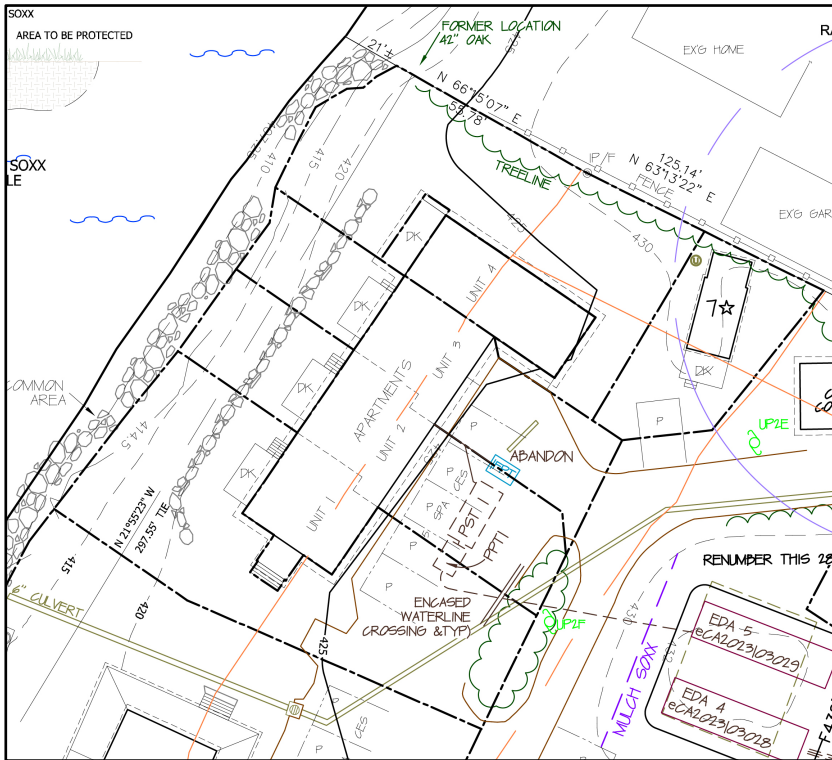


Figure 1: Area Around Apartments

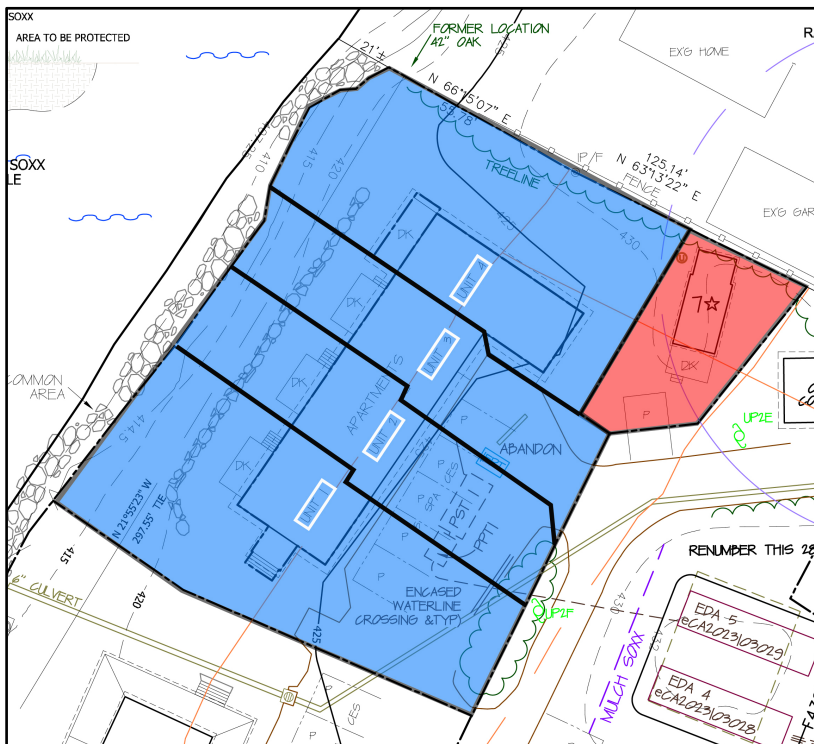


Figure 2: Area Around Apartments, Highlighted



It is my understanding that the apartments are in a building that at one time was the building used as the recreation hall. That building was first converted to 3 apartments, with a State-approved septic system in 1978. A 4<sup>th</sup> apartment was then added after a fire in 2007.<sup>1</sup> However, the 4<sup>th</sup> apartment was apparently added without Town approval or additional State septic approval.<sup>2</sup>

There are other matters that relate to this fourth apartment, discussed below, but this increase from 3 to 4 apartments resulted in an increase in design septic flow by 33%. A revised septic system was not designed, reviewed and approved for this increase in flow until 2023. That represented a 33% overloading of the leach field for approximately 16 years, all inside the Shorefront overlay area.

The State subdivision plan shows what appears to be essentially the same building, with a note about 3 apartments being a part of the density calculations used for the State subdivision approval.

What the current plan presented to the Planning Board shows, and is most evident in Figure 2, is the division of the building and surrounding land for the apartments into four units on four parcels. Since I have not seen any proposal to create a condominium, this sort of division is usually termed a “zero lot line”, where the ownership lines go through a building with no setbacks. While there are no metes and bounds on the division lines, the depiction of the lines, and the labeling of units 1-4 to me makes clear the intent to depict a subdivision of the land and of the building in that fashion.

Why this - and other depictions on these plans - constitute a subdivision, by both State and town definitions, is critically important and as a result I have provided more discussion and explanation of this aspect of the proposal below.

The 7☆ site is one of eight numbered and starred sites, all including the so-called hutnicks that are shown with the star which is described in the map legend as indicating a “wood frame structure”.<sup>3</sup> The table on Sheet 5 shows “site 7 and 2 decks” with a lot area of 5431 sq. ft., but that is for the most southerly shorefront site. The area shaded in red in Figure 2 around hutnick 7 is approximately 1,870 sq. ft.

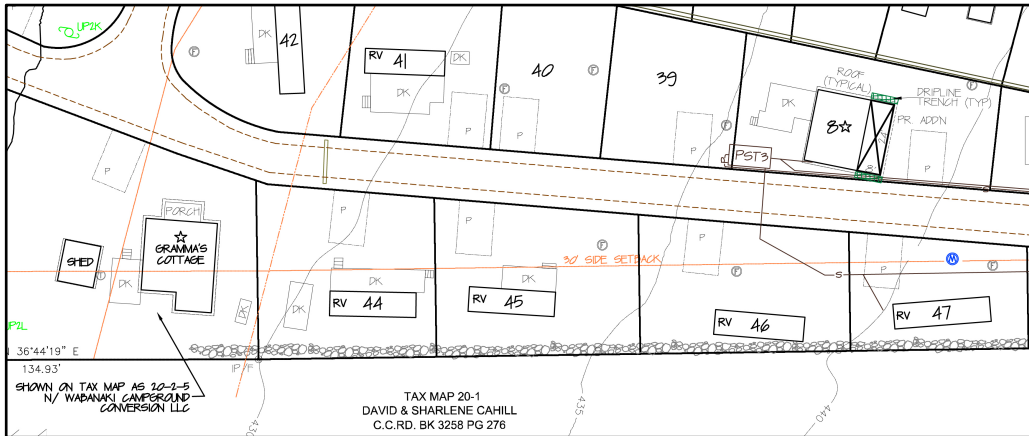
I have extracted the portions of sheets 1 and 2 that depict the two areas that show starred sites (aka “hutnicks”) 1-6, inclusive, and #8. The starred site #9, or Gramma’s Cottage has also been extracted and may be seen in Figures 3 and 4.

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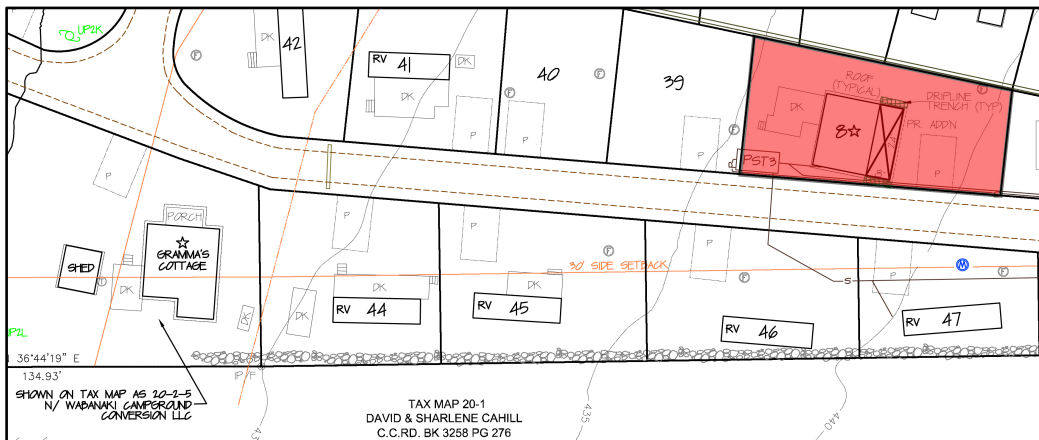
<sup>1</sup> Wabanaki Campground Conversion LLC letter to Freedom Planning Board, August 28, 2024, pg. 1. “WCC letter” hereafter.

<sup>2</sup> WCC letter, Ibid, pg. 1.

<sup>3</sup> The set of plans revised through 12/26/24 show nine numbered and starred sites, with site #9 also being labeled “Gramma’s Cottage” on sheet 2.



**Figure 3: Area of Hut 8 and Gramma's Cottage**



**Figure 4: Area of Hut 8 and Gramma's Cottage; 8 highlighted**

The plans show closed parcels (listed as “lots” on sheet 5) around several sites labeled as “Campsite Perimeter (Typ)” to the right of 3☆ as may be seen in Figures 5 and 6. In addition, these “campsites” are tabulated on sheet 5 by site, with sizes of structures, RV areas and “Lot” areas for each site or lot.

Referring back to the area of the apartments (Figure 1), and as noted above, the plans also show a similar “perimeter” lines going through the apartment building and then dividing the land outside the building into units and parcels, as touched on above.

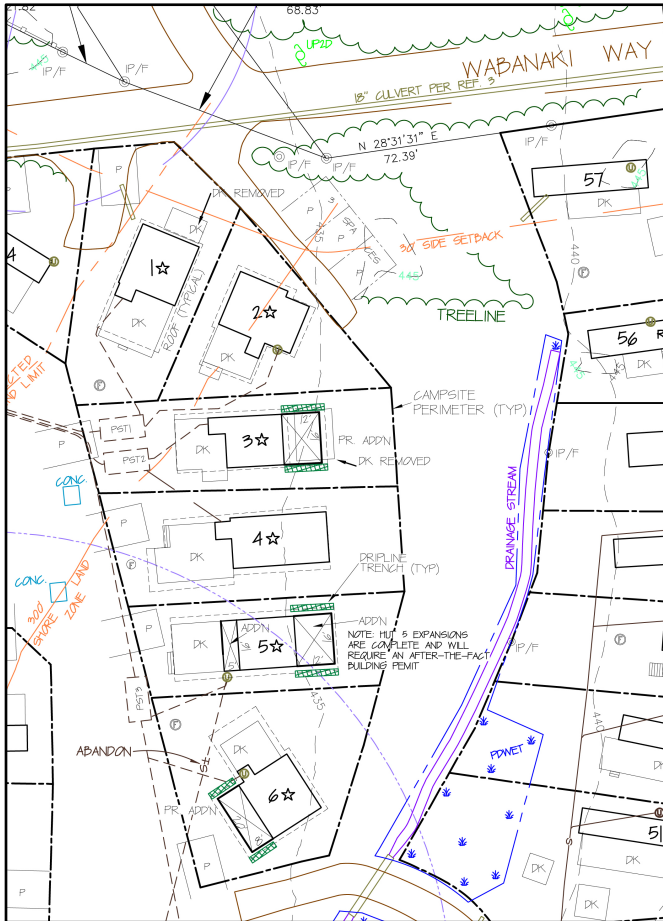


Figure 5: Area of Huts 1-6

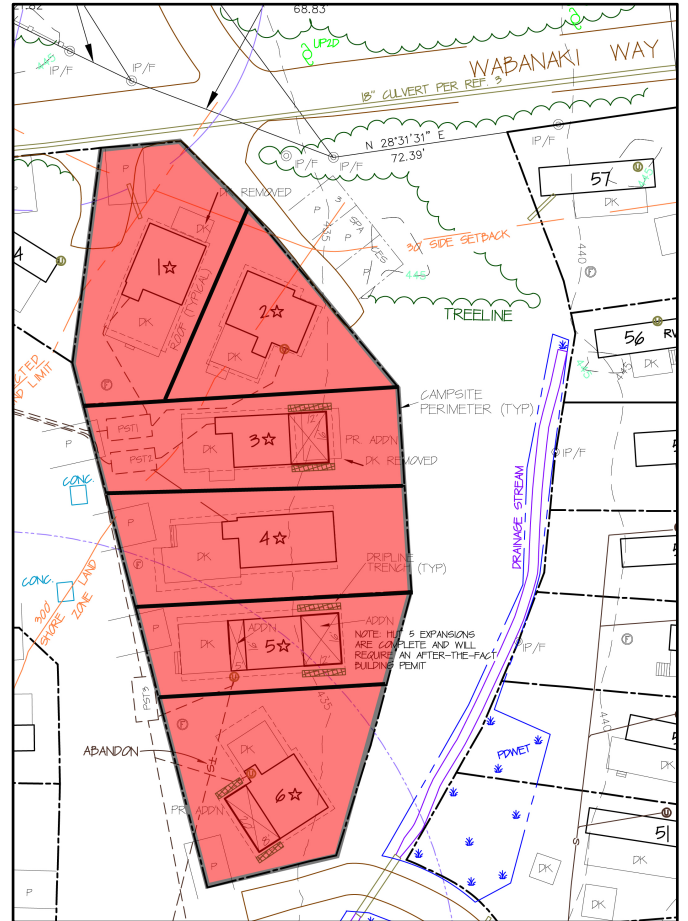


Figure 6: Area of Huts 1-6, Highlighted

## ONLINE INFORMATION

More information about this property is shown online

### A Beloved Family Camping Destination

Wabanaki Campground, located on the shores of Lake Ossipee in Freedom, NH, has been a beloved family camping destination for over 50 years. With its stunning surroundings and friendly atmosphere, it's no wonder families have been returning year after year to this beautiful location.

But there's more to Wabanaki Campground than just its scenic setting. Recently, the campground has filed to become a co-op, with each campsite soon to be available for purchase. This means that families can now own their own little piece of paradise at Wabanaki Campground and make it their home away from home.

One of the most attractive features of Wabanaki Campground is its private beach. With crystal clear waters and soft sand, it's the perfect spot to relax, swim, or play with the kids. And for those who love boating, there's a dock and moorings available for use, making it easy to explore the beautiful Lake Ossipee.

[Click Map To View Remaining Co-Op Sites](#)

PLEASE NOTE: Campsite availability is subject to change as lots are sold

**Want To Learn More?**  
Please Fill Out The Form Below

Figure 7: From Camp Wabanaki Website

(<https://www.campwabanaki.com>) where it is noted “each campsite soon to be available for purchase” so that “families can now own a little piece of paradise” (Figure 7).

In addition, a plan similar to the one before the Planning Board is also on the website showing “Remaining Co-op Sites” with a note to viewers that “availability is subject to change **as lots are sold** (emphasis added)”- see Figure 8.

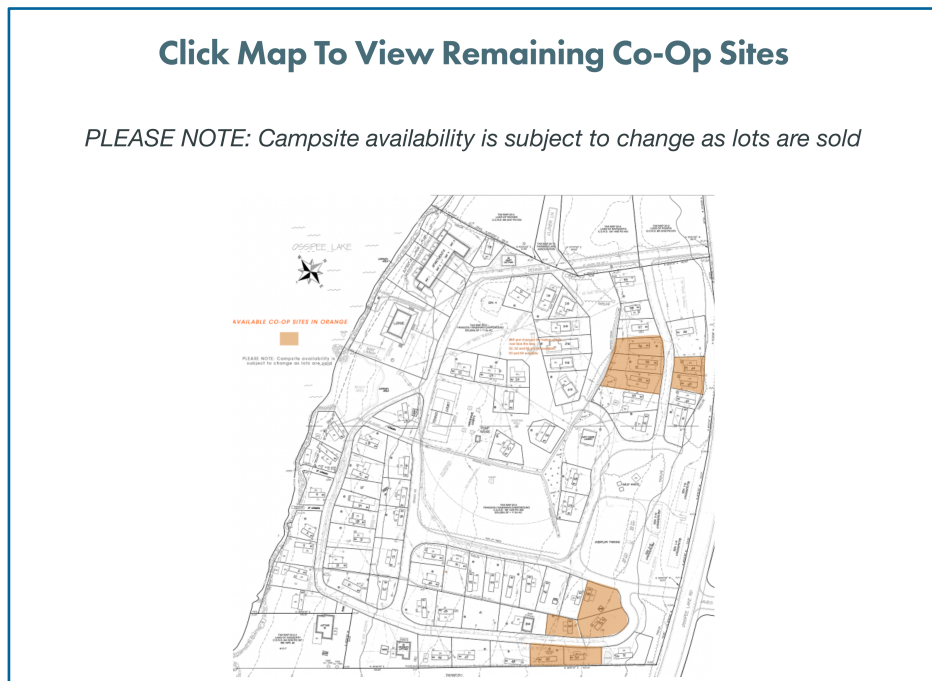


Figure 8: From Camp Wabanaki Website-Note: "As Lots Are Sold"

## **PLANNING BOARD REVIEW**

Returning to the plans and materials submitted to the Planning Board, the cover letter with the most recent plan set describes some of what is shown on the plans, and it contains the following paragraph, extracted as an image from the letter:

This plan is not to approve the whole campground but to allow approval to the four hutnick expansions being Hutnicks 3, 5, 6, & 8. We note the Hutnick 5 expansion has occurred and the applicant will seek an after-the-fact building permit for that issue.

This request to “focus” or perhaps more plainly, limit the Planning Board’s attention to only those 4 “hutnicks” which represent only a small part of the information shown on this set of plans does not conform the town’s regulations, which require a broader view and a complete review of what is submitted. It is unclear to me if the above paragraph was intended to misdirect the board, or if it was written due to a lack of

understanding of the regulations. In any case, the submitted plans depict fundamental noncompliance with town and State regulations that the applicant seeks to remove from the Board's attention, namely the zoning ordinance, the site plan review regulations, the subdivision regulations and State statutes.

As noted above, the applicant is seeking to define areas of the site for sale as a part of a scheme of conversion into a co-op or cooperative.<sup>4</sup>

The Subdivision Regulations of the Town of Freedom, revised through May 16, 2024, define subdivision as follows in Section 3.25:

**Subdivision. Means the division of a lot, tract, or parcel of land into two or more lots, sites, or other divisions of land for the purpose, whether immediate or future, for sale, rent, lease, condominium conveyance or building development. It includes resubdivision and when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided.**

This language tracks the statutory definition contained in RSA 672:14 I. RSA 356-A:1 VI contains a very similar definition:

**"Subdivision" and "subdivided lands" mean any land in this or another state which is, or has been, or is proposed to be, divided for the purpose of disposition into lots, parcels, units or interests and also include any land whether contiguous or not if said lots, parcels, units or interests are offered as a part of a common promotional plan of advertising and sale... [the definition goes on to exclude condominiums which are described in RSA 356-B].**

Here, and as described above, the applicant is proposing to sell what are described in the submitted plans and the online descriptions as "lots" "units" and a "piece" of the campground to prospective buyers. Whether paradise or not, whether for sale or lease, or rent, this is all very clearly a subdivision proposal as defined by the town and the State.

The Site Plan Review Regulations of the Town of Freedom, as revised through May 16, 2024, require the applicant for a site plan review approval to comply with the requirements of *"the Freedom Zoning Ordinance, Subdivision Regulations or any other ordinance which pertains to the proposed Development."*<sup>5</sup>

This same requirement extends to the Board's review of the plan submitted for Site Plan Review: a lack of compliance with these other regulations and requirements of the town results in immediate noncompliance with the Site Plan Review Regulations

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<sup>4</sup> NH RSA 301-A:34 restricts the use of the term "cooperative". It is beyond the scope of this report to know if the proposal conforms to those requirements.

<sup>5</sup> Freedom Site Plan Review Regulations, Section 2.1.



as defined. Any such proposal must either be revised to be in compliance or denied due to the noncompliance.

The WCC letter states that in 2000-2001 subdivision approval was granted by the Town and NHDES for “69 sites, 2-2Br Cottages (these were at the time offsite), 2-1 Bedroom Cottages, 1 4BR Lodge in addition to the 3 apartments. That was 77 total units consisting of 69 sites and 8 buildings.”<sup>6</sup> Note that the State subdivision approval itself notes in all capital letters: THIS APPROVAL DOES NOT SUPERSEDE LOCAL ORDINANCES OR REGULATIONS”.

The applicant claims the subdivision of the campground was approved by the town at about the same time the State subdivision approval was granted in 2001. However, I have not been able to locate any town approval of a subdivision for that time, or for any time after a residential subdivision plan recorded in 1970.<sup>7</sup> Town-approved subdivision plans must be recorded at the Registry of Deeds as a part of vesting a plan from subsequent changes to town regulations (NH RSA 674:39 I). Again, no such recorded plan has been found.

Therefore, and despite the applicant’s representations to the contrary, the submitted plans propose a new **subdivision** in addition to the other details shown. As a result, the applicant has the burden of conforming to the requirements of the zoning and subdivision regulations for those aspects of the proposal, in addition to complying with the Site Plan Review Regulations. The submitted plans do not conform with those requirements, which renders the proposal unlawful and unreasonable as submitted.

### **Subdivision & Zoning Compliance**

For sake of the following, I will assume this property contained a campground in 2000 since one is shown on the State subdivision plans. It is unknown to me, but as is explained below it is important for a full understanding of this campground to know if there existed a campground on this site on March 10, 1998.<sup>8</sup>

This property is in the General Residential District in the town’s zoning, with the first 300 feet from Ossipee Lake also being in the Shorefront overlay district. Recreational Camping and Camping Parks are allowed in the General Residence District by Special Exception, but not in the Shorefront overlay zone.<sup>9</sup> In addition, the apartments are a multi-family building and those are not permitted in either the General Residential or Shorefront overlay districts, so those are non-conforming unless construed somehow as accessory to the campground.

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<sup>6</sup> WCC Letter, pg.1.

<sup>7</sup> This plan, recorded at CCRD at book 18, page 49 was for some 16 lots and was later dissolved.

<sup>8</sup> That date is the threshold for allowing a Special Exception to be “deemed” to have been granted for prior uses under the town’s zoning., Section 1605.

<sup>9</sup> Freedom Zoning Ordinance, Sections 304.2 and 304.5.



The language in a zoning ordinance is critical to understanding it, and specific terms are often defined for use in zoning ordinances, where such definitions must be used. The Freedom Zoning Ordinance defines, under “Campground” a “Recreational Campground or Camping Park” as: “A parcel of land on which five (5) or more campsites are occupied or are intended for temporary occupancy for recreational dwelling purposes only.” Note that this use is defined to occur on a parcel of land, singular.

Since this use is defined as being on a single parcel of land, a Recreational Campground or Camping Park, as defined in the Freedom Zoning Ordinance, is no longer such a use if subdivided. All the campsites must be on one parcel of land in order to qualify. While the applicant’s representations seem at times to describe the property all as “common”,<sup>10</sup> the plans, the descriptions of lots and units and the marketing scheme noted above all make it clear that this is not the case: as submitted, these plans represent a subdivision.

Such a careful reading of the language of the ordinance has been stressed, as a matter of law, to properly understand its provisions, by the NH Supreme Court. In fact, the NH Supreme Court has repeatedly held that its well-established rules of statutory construction apply equally to matters of zoning, planning, and other regulatory interpretation. In the recent matter of *Town of Conway v. Kudrick*, 175 N.H. 714 (2023), the Court addressed questions involving short-term rentals, which required the interpretation of the Conway Zoning Ordinance. Citing *Working Stiff Partners v. City of Portsmouth*, 172 NH 611 (2019), the Court (“We” below) stated:

- **We use the traditional rules of statutory construction when interpreting zoning ordinances.**
- **We construe the words and phrases of an ordinance according to the common and approved usage of the language, but when the ordinance defines the terms in issue, those definitions will govern.**
- **We determine the meaning of a zoning ordinance from its construction as a whole, not by construing isolated words or phrases.**
- **When the language of an ordinance is plain and unambiguous, we need not look beyond the ordinance itself for further indications of legislative intent.**

See *also* Loughlin, P., 15 New Hampshire Practice, Land Use Planning and Zoning (4<sup>th</sup> Ed.) § 6.01. Critically, the New Hampshire Supreme Court has also explained that in interpreting statutes or ordinances, “we give effect to every word” and will not consider what the legislature *might* have said or add language that the legislature did not see fit to include. We also “construe all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result.” *Town of Lincoln v. Chenard*,

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<sup>10</sup> Email of Bryan Berlind to [office@townoffreedomnh.gov](mailto:office@townoffreedomnh.gov) with submission package dated 1/30/25 @ 12:30 PM.

174 N.H. 762, 765 (2022).

The minimum lot size in this zone is 2 acres, with 200 feet of road frontage. None of the proposed units, sites or lots conform with these requirements. Therefore, without a variance, to seek approval of a self-imposed condition of non-conforming small lots in a campground, this depiction of a subdivision, which is a part of what is shown on the submitted plans, must be denied for lack of conformance with the zoning ordinance.

Reading further in the Zoning Ordinance, the requirements for a special exception in Article 16 include a minimum size of 25 acres for such a use (1602.2). With less than half that acreage, the subject site is nonconforming in that regard.

However, if the applicant abandons the notion of a subdivision, then Section 1605 of the Zoning Ordinance contains the following language:

**All Residence Camps and Recreational Campgrounds or Camping Parks existing on March 10, 1998, shall be deemed to have a Special Exception conforming to the requirements of Article 16 as amended on March 10, 1998. That Special Exception may be amended in conformity with the applicable conditions of Section 1603 applicable to the subject of the amendment. Existing accessory buildings may be expanded without any amendment of this Special Exception. Existing accessory buildings may be removed and replaced with a new accessory building without any amendment of this Special Exception.**

My reading of this unusual provision is that if a Recreational Campground or Camping Park existed on this property on March 10, 1998, then it is “deemed” to have a special exception for that use. Amendments to such a special exception are allowed provided the provisions of Section 1603 are followed. “Existing” accessory buildings may be expanded, removed and replaced as noted.

Accessory buildings are not, however, campsites in a campground. Once again, this is a defined term in the Freedom Zoning Ordinance:

**Accessory Building or Use: A building or use subordinate and customarily incidental to the main building or the permitted use or Special Exception use on the same lot.**

The “permitted use” to which such accessory buildings and uses pertain, is the campground and campsites. Examples of an accessory building in a campground might include a utility building to house campground maintenance equipment and recreational fields.

These provisions and definitions pertain to a few aspects of the property, returning first to the apartments.

## **Apartments and Nonconformity**

Based on the information outlined above, the building containing the apartments near the lake was formerly a recreational hall. In 1978, it was converted to 3 apartments.

Since the Freedom Zoning Ordinance did not come into effect until 1987, the conversion of the building and the creation of the 3 apartments, pre-dates zoning. Since they are consistently described as 3 apartments, including in the WCC letter, I will assume each apartment has “living, sleeping, cooking and eating” facilities. If rental is or was allowed for 30 days or more, that made them “dwellings” under the Freedom Zoning Ordinance (Section 2402 19).

3 or more dwellings in a building constitute a “Multi-Family Dwelling” under Freedom’s zoning (Section 2402 18 & 19), and this is not a permitted use in the General Residential District. Depending on how this multi-family building has been used since 1987, it may, under Freedom’s regulations, constitute 3 “sites” in a campground, or it may be a 3-unit non-conforming multi-family dwelling. By either interpretation, in my opinion the expansion to a 4<sup>th</sup> apartment in 2007 was impermissible under Freedom’s zoning without relief from the Zoning Board of Adjustment.

Given the provisions of RSA 216, discussed later in this report under “Statutory Issues” I do not see how the apartments can qualify as a part of the campground as a matter of State law. The following section focuses on the town’s regulations.

If the 3-unit building containing the apartments is considered a part of the campground, then Section 1605 may pertain, and is quoted above. If a part of the permitted primary uses of the campground, then the 3 apartments could continue, but an expansion to a 4<sup>th</sup> apartment should have required a Special Exception, as an amendment to the “deemed” Special Exception in Section 1605.<sup>11</sup> Again, sites where patrons rent to stay overnight in campsites are primary, not accessory uses in a campground, and only accessory uses are allowed to be expanded without an additional Special Exception.

If the apartments, which are physically different from, and located much closer to the lake than most other portions of the site, were operated as a separate rental building, then they would constitute a pre-existing nonconforming multi-family structure and/or use.

If that is the case, then the addition of a 4<sup>th</sup> apartment would constitute an expansion of a nonconforming use, since multi-family dwellings are not permitted in that zone.

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<sup>11</sup> Freedom Zoning Section 1605, allowing amendment to the “deemed” Special Exception for certain uses existing on March 10, 1998, by seeking a Special Exception under Section 1603 as applicable to the amendment.

Section 9 of the Zoning Ordinance addresses non-conforming uses and structures, but its language does not seem to contemplate such a conversion or an expansion inside an existing footprint (if that was the case).

I advise that the Board request the Zoning Officer to review how this expansion may be treated under Freedom's regulations in light of this analysis. The Zoning Officer should also consider the implications of RSA 216, again discussed below.

In any case, it seems apparent that:

- 1) Relief from the Zoning Board of Adjustment may be required to bring the 4<sup>th</sup> apartment into zoning compliance, either in the form of a Special Exception, or a variance, or possibly both, depending on facts unknown to me; and,
- 2) Absent such relief, the application is not ready for Planning Board review since the apartments do not conform with the zoning ordinance.

### **Hutnicks and Nonconformity**

Some structures labeled as hutnicks are shown on the 2000 State subdivision plan, where they are described as "simple enclosures (walls and a roof) with no sanitary facilities within."<sup>12</sup> All of those hutnicks were proposed to be removed at the time of the State approval, and an important additional point here is that in 2000 none of these buildings had sanitary facilities.

To better understand how the current hutnicks, as depicted on the Horizons plan compare with the hutnicks shown on the State subdivision plan prepared by White Mountain Survey Co. (White Mtn.) in 2000/2001, a digital overlay was prepared (Figure 9).

The sequence showing how this overlay was prepared is attached as an appendix, and a larger version of Figure 9 may be seen there for additional detail. It is apparent that the hutnicks on the Horizons plan are in very similar locations to the locations shown on the White Mtn. plan.

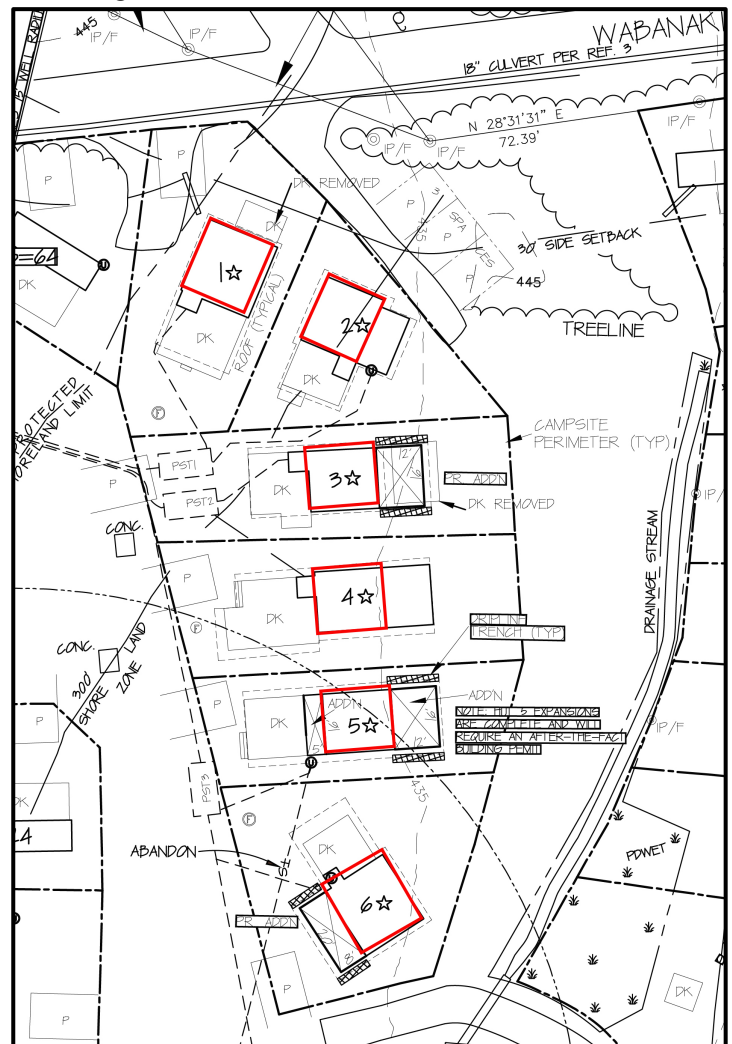


Figure 9: Hutnicks From White Mtn. Plan on Horizons Plan

<sup>12</sup> What is currently shown as hutnick #8 was shown as an existing cottage on the 2000 State subdivision plan.



Equally apparent is how much larger the hutnicks are today.

I was given some photos from Wabanaki Campground's Facebook page of some of the hutnicks taken in 2011. Figure 10 is one of those images, showing hutnicks 5 and 6. I have not been on the property, so I am unaware of the current appearance of the hutnicks, but from Figure 10, I would label the front additions as "porches" and not "decks" at that time. I would also term the "hutnicks" as cabins - as did my program's AI when I inserted the image, but I will use both terms in this report.



Figure 10: Hutnicks or Cabins 5 and 6 in 2011

Sheet 5 of the current set of plans shows floor plans for huts 3, 5, 6 and 8. **All** of these floor plans show "bath" facilities for these huts or hutnicks that appear to be existing. In addition, the floor plans show expansion areas for each hutnick of various sizes. Further, sheet 1 shows that hutnicks 1 and 2 are in the Shorefront overlay and General Residential Districts, where such uses are not permitted without a Special Exception.

In my opinion, and as is apparent in Figure 9, the existing conditions of these huts with bath facilities represent an expansion of what existed in 2000 as described on the State subdivision plan. That comparison of the plan views of these buildings in the current plans shows the expanded bath areas as compared to the footprints of the buildings in 2000.

Further in my opinion, from the available information, these expansions should have required at least a modified special exception to be allowed as an expansion of the

“deemed” special exception, identical to what is discussed above under the apartments. In addition, the applicant should bear the burden of proof of whether the expansion of huts 1 and 2 can now, or did at the time, conform with the requirements of Article 9 of the Freedom Zoning Ordinance. It appears, again based on the available information, that these hutnicks are not in conformance with the town’s zoning.

### **Statutory Issues**

In addition to zoning, subdivision and site plan regulatory issues, there are two significant statutory matters that relate to the hutnicks and likely also to the apartments.

The State subdivision approval (SA001001551) granted in 2001 was for a campground and the approval itself notes it was “granted under the following provision of RSA 216.” The approval then quotes the statutory definition of a “Recreational Campground or Camping Park” under which the approval was granted, “for temporary occupancy for recreational dwelling purposes only.” The approval also excluded “Recreation Camps” as defined by statute.

Some statutes have changed since 2001, but Recreational Campgrounds and Camping Parks (hereafter Campgrounds) remain defined in RSA 216, and the definitions there are informative to analyzing the Wabanaki proposal.

Campgrounds by definition contain “Campsites” which are themselves defined as including sites “rented for placement if a **tent, recreational vehicle, or a recreational camping cabin** for the overnight use of its occupants (emphasis added)” (RSA 216:I:1 II). Thus, three types of sites in a Campground are contemplated and allowed by statute.

Clearly, the hutnicks are not “tents”, which are “portable canvas or synthetic structures” nor are they “recreational vehicles” which are of several types, none of which describe the hutnicks (RSA 216:I:VIII and X). However, “recreational camping cabins,” the only remaining option, are also defined in RSA 216:I:1 VII-as a:

**structure on a campsite, 400 square feet or less, calculated by taking the measurements of the exterior of the cabin, including all siding, corner trim, molding and area enclosed by windows, but not the roof or porch overhang, or log overhang at corners. It shall be designed not for use as a permanent dwelling but as a temporary dwelling for recreational camping and vacation use.**

This definition is the only one of the 3 types of sites in a campground that could potentially qualify as “campsites” and that may also fit the hutnicks. However, as defined it has a 400 square-foot limitation on size. Above that size, a structure (or, in this case, a “hutnick”) is no longer a cabin that is one of the 3 defined and allowed types of campsites in a campground.



Going back to the hutnicks shown on the White Mtn. plan, all 6 of the hutnicks shown are depicted as being less than 400 sq. ft.<sup>13</sup> Based on the information submitted, it is not clear to me if all or most of the hutnicks exceed the 400 sq. ft. limitation, because it is not clear to me which of the additions have been constructed since the information in the materials submitted to the Planning Board seems internally contradictory.

Sheet 5 of the current set has a tabulation of the areas of “Existing Enclosure” for the 8 hutnicks, which lists 4 as more than 400 sq. ft. (1, 2, 4, and 8). However, that same list shows #5 as less than 400 sq. ft. not counting the “New Enclosure” which if included places #5 over 400 sq. ft. as well. Since Hut #5 is also indicated as having its expansion as “complete” it seems #5 is also already over the 400 sq. ft. limitation. Looking at the areas of the huts listed under “Total Enclosure”, all but hut #7 are over the 400 sq. ft. limitation. See Figure 11 for where on sheet 5 this information is shown.

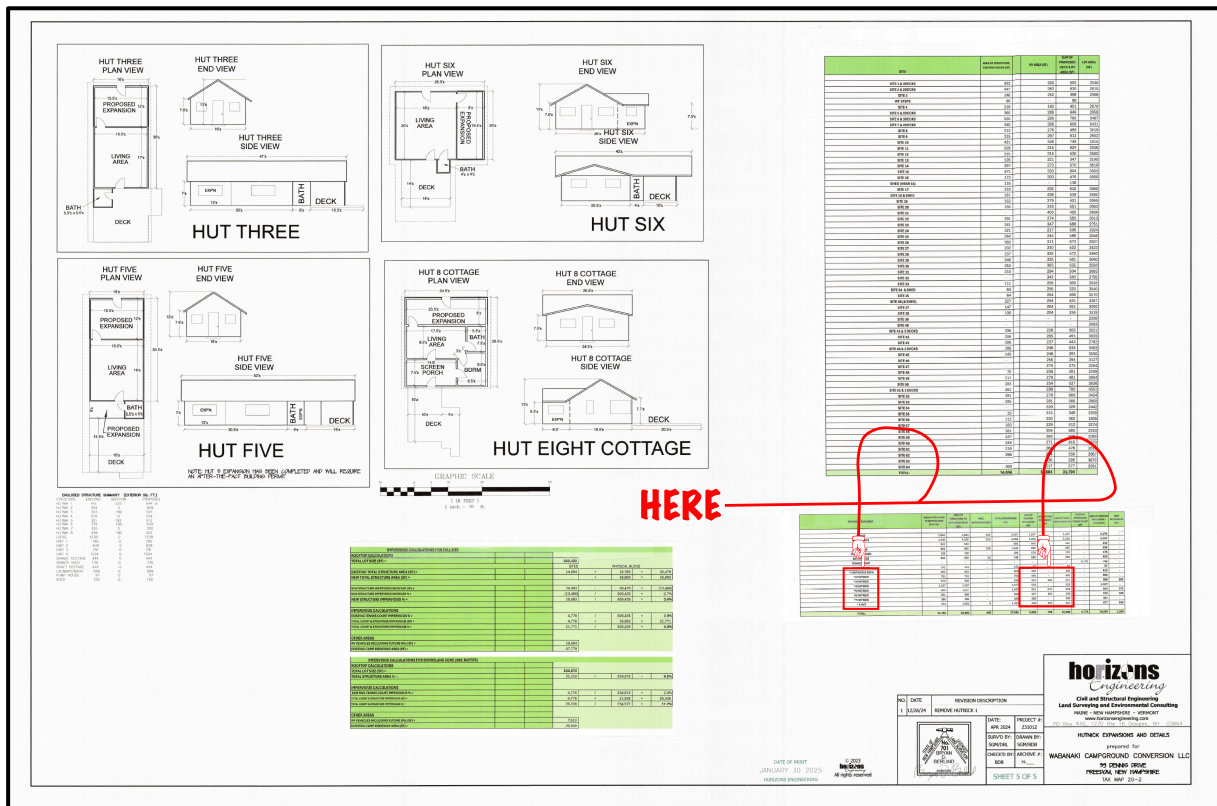


Figure 11: Sheet 5 of Current Horizons Set, Showing Where Hut Sizes are Tabulated

If hut #5 is included, as seems logical, then at least 5 of the 8 hutnicks appear to exceed the 400 sq. ft. limitation to qualify as one of the 3 allowed types of campsites by statute. If the additions have already been constructed (it is not clear which have and which have not been built) then all but one exceed the size limit.

<sup>13</sup> I calculated the areas based on the sizes of the hutnicks shown on the scaled plan.

Returning to hut #5, it is also noted that an “after-the-fact” building permit is required and requested.

That brings up the next statutory problem with this application.

RSA 674:41 prohibits buildings to be erected or permits for buildings to be issued for buildings not on streets as are defined in the statute (these include class V or better highways and streets on approved subdivision plats).

I have re-inserted Figure 5 here for convenience (Figure 12) where it may be seen that hutnicks 2-6 do not front on any street or even any defined access (except possibly #2 which seem to have a driveway indicated, but that likely does not qualify as proper access).

The provisions of this statute in my opinion make clear that the town is prohibited from issuing the otherwise required building permits for these huts that do not have proper access, which appears to include #5.

This same statute also outlines steps for relief where its provisions would entail hardship and practical necessity. These steps include seeking relief from the Zoning Board of Adjustment.

Finally, as noted above, the current definition of “subdivision” in both Freedom’s regulations and the current State statute, include “lease” as a part of how land may be divided to constitute a subdivision (quoted on page 7, above).

Prior to *Town of Tuftonboro v. Lakeside Colony, Inc.* 119 NH 445, however, “lease” was not part of the statutory definition of a subdivision. More to the point of the Wabanaki application, the underlying scheme in the *Lakeside* proposal was for a corporation to own a parcel of land on Lake Winnepesaukee, and for shareholders to have “exclusive rights to use” portions of the property. Both the trial Court and the Supreme Court held this to be a subdivision, subject to review by the Planning Board.

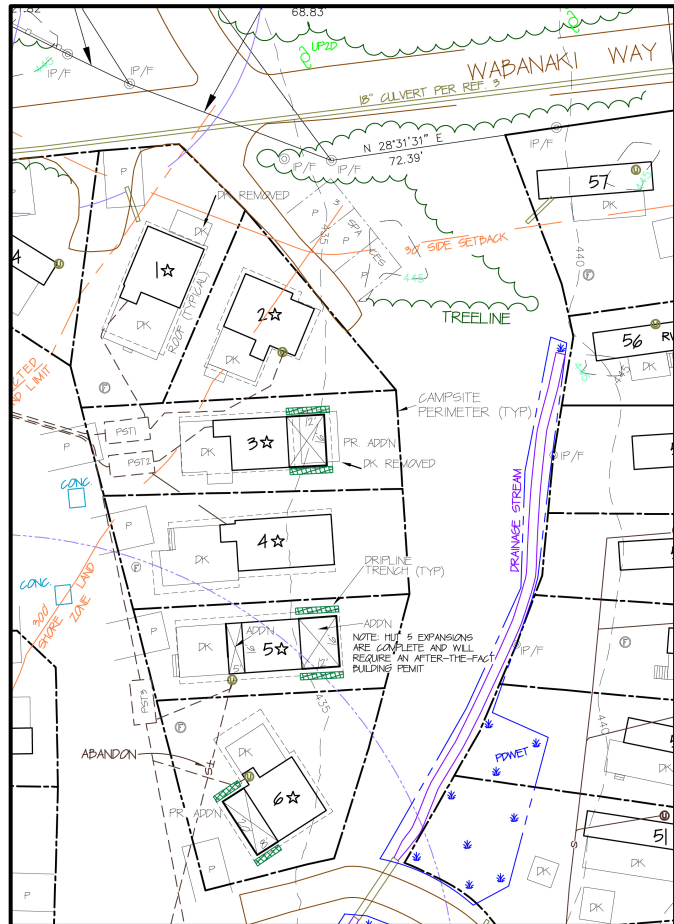


Figure 12: Figure 5 Showing Hutnicks Area Re-inserted for Convenience

The Supreme Court, in part of its decision that such a scheme represented a subdivision, added:

We see little reason to deny the Planning Board jurisdiction when a developer concocts an artificial scheme for the purpose of evading subdivision regulations. By its scheme, one tract of land has been parcelled into fifteen tracts. Each shareholder has the right to exclusive use and occupancy of a specified tract...

The Lakeside proposal was determined to be a subdivision. The Wabanaki proposal that has been presented to the Freedom Planning Board is also a new subdivision, and it must be reviewed and considered as a new subdivision. Obviously as depicted on the current plans, the proposal does not meet the requirements for subdivision approval as noted above.

I encourage the applicant and the town to determine how best to address these statutory and other requirements. It appears that in order for the hutnicks to remain either as they are or as they are desired to be enlarged, they will need to be: approved by the Zoning Board of Adjustment; reduced in size; or potentially even removed depending on additional facts and information I do not have to review.

## **Conclusion**

I especially urge the board to reject the applicant's request to focus on a small part of what has been submitted for its review. Doing so could result in the continued failure to address matters that seem to be a part of the history of this property not fully complying with various requirements.

In fact, it seems this property has something of a history of noncompliance with regulations. Rather than a continuance of after-the-fact actions, which necessarily place all parties in awkward positions, establishing a proper set of procedures going forward in time seems in the best interests of the town and as a matter of public policy.

In summary, in my opinion and experience, this application has so many inconsistencies and regulatory problems that the cleanest way to address it is likely one of the following options:

- 1) For the applicant to withdraw the application;
- 2) For Planning Board to deny the application and request the applicant submit a new application in conformance with the many regulatory requirements; or,
- 3) Request an extension of the review period to allow the applicant to seek relief from the Zoning Board of Adjustment.

I am mindful that the 65-day review period will soon toll and that is one reason for these suggestions.

I am concerned with option #3, above, as I think there should be a new application,

based on additional background information and research, likely including Zoning Board of Adjustment action and Zoning Officer input, for the Planning Board to properly consider any application for this site.

As an additional option, the town may wish to request a review of several of the questions raised with town counsel for additional guidance. In particular, if the town agrees that relief of any form from the Zoning Board of Adjustment is required, then that process should be completed before any further Planning Board review. In fact, I encourage the town to consider engaging town counsel to assist with several of the underlying matters addressed above.

Respectfully submitted,



Rick Chellman, P.E., L.L.S.





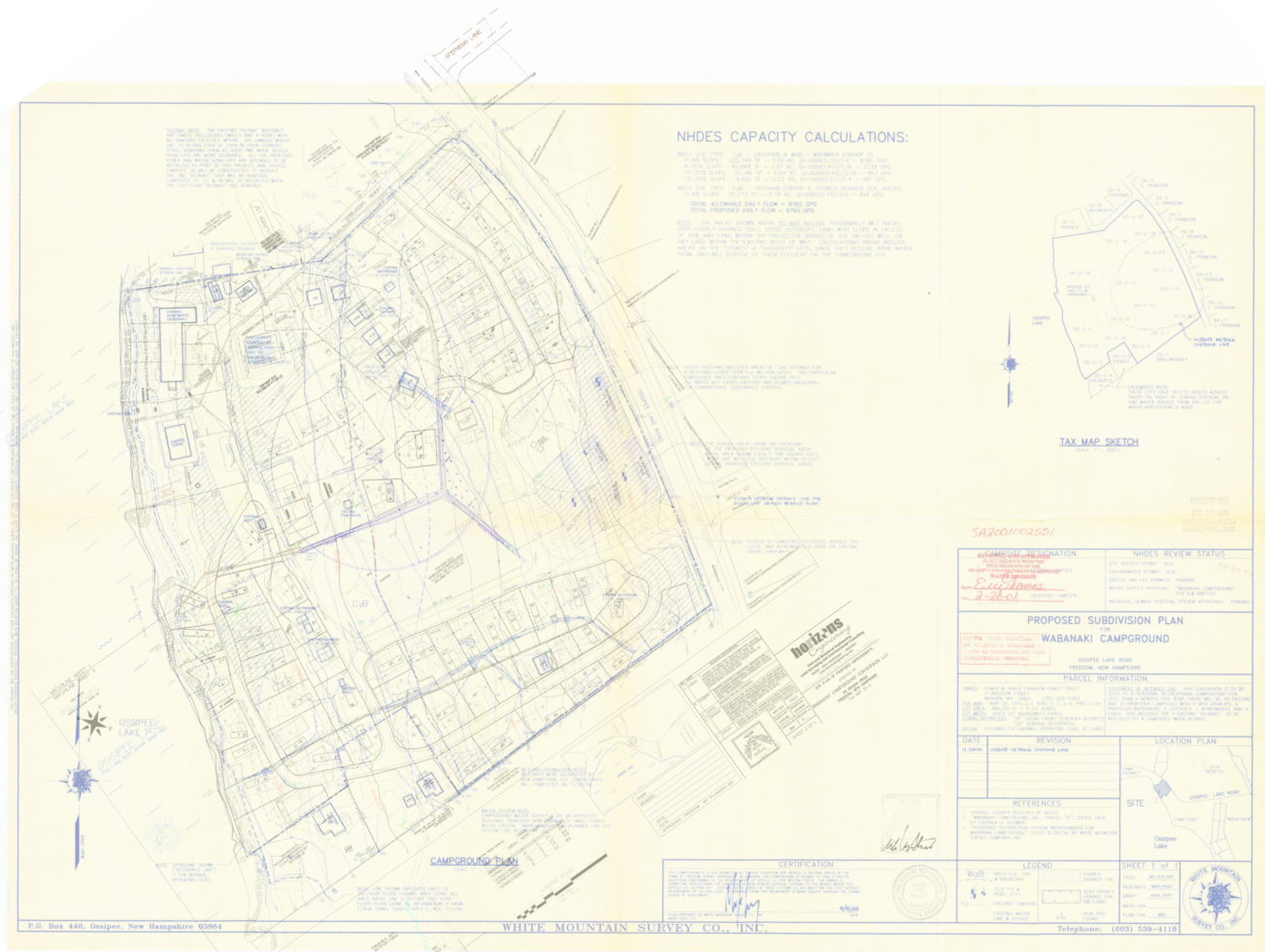


Figure 4: Horizons Plan Under 2000/2001 White Mountain Survey State Subdivision Plan- White Mountain Plan Partially Transparent





Figure 5: 2000/2001 White Mountain Survey Plan with Hutnicks Outlined in Red

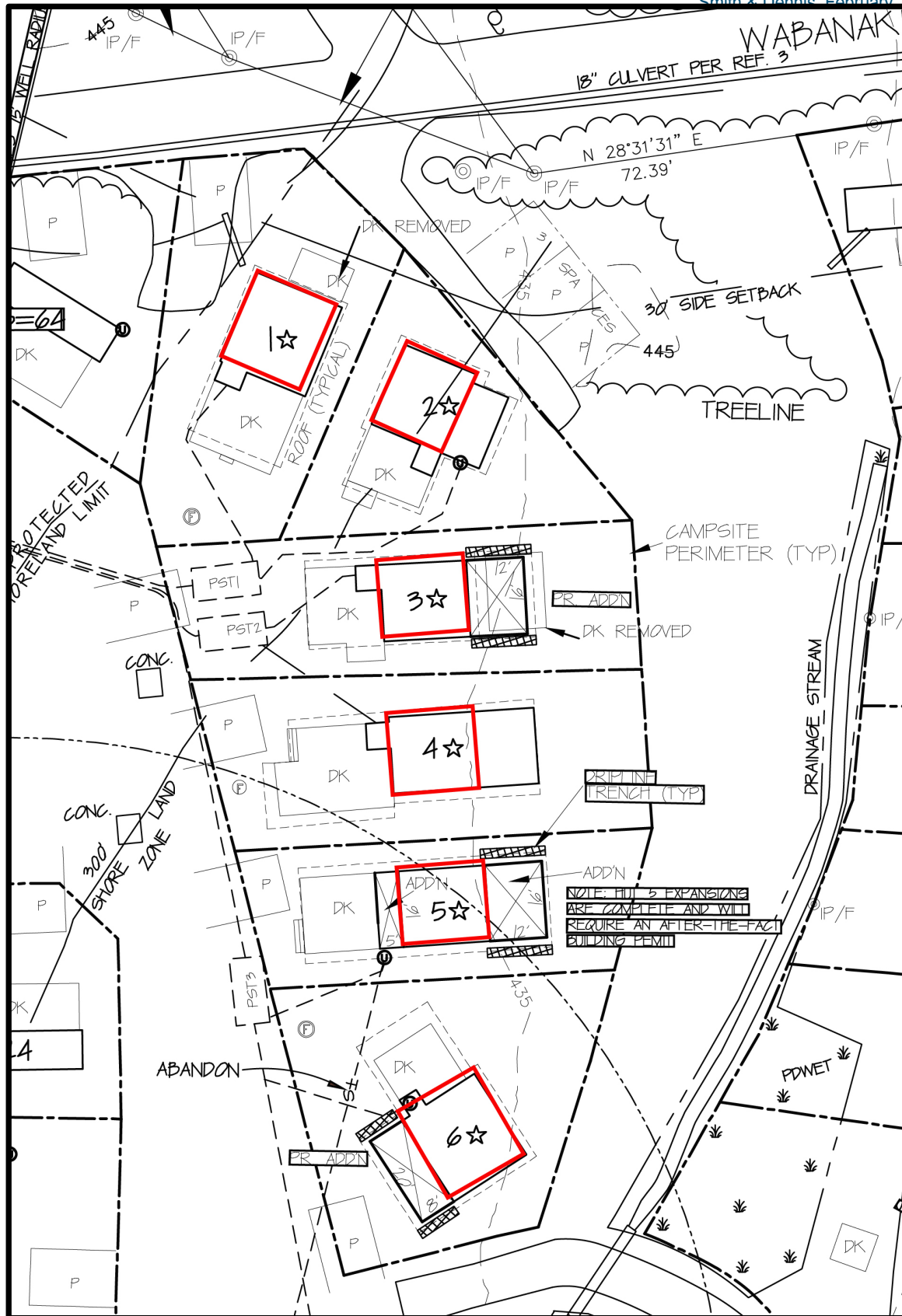


Figure 6: Red Hutnicks Traced From White Mountain Survey Plan Transferred to Horizons Plan