



RINDGE BOARD OF ADJUSTMENT

30 PAYSON HILL ROAD

RINDGE, NH 03461

Tel. (603) 899-5181 X100 Fax (603) 899-2101 TDD 1-800-735-2964

www.town.rindge.nh.us

MEETING MINUTES: May 10, 2012 **APPROVED**

Regular members: Janet Goodrich (Chair), David Drouin (Vice Chair), Marcia Breckenridge, Phil Stenersen, and Bill Thomas
Alternates: Charlie Eicher, Joe Hill, Rick Sirvint
Absent: None
Recusals: None

The meeting convened at 7:00pm with the Pledge of Allegiance.

Case # 1039: Sunridge Neighbors; Andrew & Heidi Graff, 111 Sunridge Rd., Rindge, NH 03461, Map 1 / Lot 11-4 and William & Maryann Harper, 154 Sunridge Rd., Rindge, NH 03461, Map 1 / Lot 11-7,10,11,12,14,15-3 Appeal of an Administrative Decision by Rindge Board of Selectmen concerning the properties of John Hunt, 165 Sunridge Rd., Rindge, NH 03461 Map 1 / Lot 11-8 and part of the 1994 Sunridge Subdivision titled Plan of John B. Hunt with Sunridge Castle and John & Lynda Hunt, 63 Sunridge Rd., Rindge, NH 03461 Map 1 / Lot 11-1 and part of the 1982 original Sunridge PUD Subdivision.

PUBLIC HEARING

Also present: Attorney Sam Bradley representing the Zoning Board of Adjustment, Attorney Joseph Hoppock representing the Sunridge neighbors, and Attorney Michael Bentley representing John and Lynda Hunt.

Goodrich: First we will hear the applicants, and please state your name and address when giving testimony. Rick Sirvint will read the case and Charlie Eicher will summarize the related ordinances.

Attorney Hoppock: This is an appeal of the Selectmen's Administrative Decision regarding the use to which the Hunts are putting the property at this time. We disagree that the primary use of the Hunt Castle is residential; we think it's a business use prohibited by the zoning ordinance. We have five witnesses for the applicants, and I suggest you take the 30 days allowed to make your decision. The Hunts acquired the Castle in 2005 and started renting it in 2009. The development consisted of 15-18 homes and modest residential traffic until that time and no strangers were impacting the neighborhood. Since then, the large parties have destroyed the quiet character of the neighborhood.

Attorney Hoppock: There are two types of zoning ordinances – permissive and prohibitive: In a permissive ordinance such as this, uses expressly permitted are permitted, and those not listed are prohibited. This zone is agricultural and residential. Only farms and single or two-family dwellings are allowed unless a special exception has been granted. The volume and intensity of the use of Sunridge Farm has increased volume in the area. Is the Hunt's use a business? Our answer to that is "yes." This is a vacation rental business in a residential and agricultural zone. What is a business? This venture is marketed and advertised – on the internet, in the Jaffrey and Rindge Chamber of Commerce newsletters; Sunridge Farm has its own LLC; it has employees; it is a for-profit entity offering year-round rentals; and it is an ongoing business. The Hunts refer to their rental activity as a business, as does the Chamber of Commerce. Your ordinance only permits a business in certain zones. In the residential and agricultural



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use ordinance the word “business” is not there. So we’re asking you to enforce the ordinance. We think the evidence is incontrovertible.

Attorney Hoppock continued: Is this venture an accessory use? Our answer is “no.” First, the criteria for accessory use is that it’s secondary to a permitted use – and only farms and residences are permitted in this zone. Is a rental business customary and secondary to a farm or family dwelling? An incidental use is minor--the same as a garage is incidental in relation to the permitted principal use of a home. You’re going to hear tonight that it’s an accessory use and it’s not. It’s on a 500-acre parcel run on a year-round basis involving large numbers of parties – it’s not minor, incidental, or subordinate to the principal use of a residence.

The accessory use must be minor and in reasonable relationship to the primary use. It could be argued that people are allowed to rent their homes by the lake, but that’s not near to the scope and size of what’s going on here with this rental. The Hunts run the equivalent of a Bed and Breakfast or a tourist home which is allowed only by a special exception.

John Hunt lists his address as the Castle. But you’ll hear information about the events there. The Selectmen prohibited banquets, weddings, and receptions. But they did not prohibit medieval parties in costume. My clients want the zoning ordinances enforced.

Maryann Harper: We have a new binder full of material—some of it replicates the earlier binder we prepared but not all of it. We would ask that the notebook be submitted for the record. The first thing is that this isn’t about just a few of us; this is a group of neighbors who are all here and we all signed the application. After the Selectmen made the decision, as a group we felt we needed to educate ourselves on the issue of accessory use, and I think the best way for us to share with you what we found out is to go through these sections. [For the next two hours, the neighbors took turns reading from the binder.]

Harper: As Joe [Hoppock] said, I wanted to talk about the fact that we feel that the Hunts’ rental enterprise is a business and as such is not permitted in the agricultural/residential district without further permitting, such as through a special exception. The first thing is what the definition is of a for-profit business—engaged in profit-making activity. The Hunts themselves call it a business. Sunridge Farm, LLC has been a registered name since 2008 and the rentals started in early 2009. You will find advertising on various websites including their entry under “Lodging” on the Jaffrey Chamber website. Their link on one website generated 20,580 hits. The Hunts have membership in the Jaffrey Chamber of Commerce and hosted an after-hours Chamber event; they pay Room and Meals Tax and have employees. You have to register as an operator--as someone who provides lodging and meals--to pay Meals Tax. But if it were rented to a family 181 days or more then those taxes could be refunded. The IRS considers this a business.

The IRS rules for passive rental activity are about renting your home, and you can claim losses. However, they have six exceptions, including:

- Customer use for seven days or less (in this case the IRS considers it as an active business, not a passive rental);
- The amount of rent charged (case in the city of Binghamton – the amount of rent was three to four times the rent paid by a family in that house under normal conditions) – and the Castle rents for \$10,000 per week over the holidays, and if the family lived there a year, it would be \$363,000



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per year and I would ask if that's a typical rental rate. In three years, the gross revenue would be \$1M and that's not typical. The Holloway House was added as a rental later.

Not only are they renting out the dwellings but promoting the recreational aspect, buying into this whole resort package. The Holloway House has two rates – one for families and one for “adult families.” This means \$1,600 for a six night rate - \$97,328, and the Hunts paid \$180,000 to buy it. Unlike the Castle, this house is a typical size for the neighborhood, but is this a typical rental rate? The businesses they're grouped with on the website are other bed-and-breakfasts. By circumventing the permitting process, the Hunts are free to do as they please. How can this business exist in a residential neighborhood without a permitting process?

The Jaffrey Chamber newsletter shows the business name. After John and his five children grew up the Hunts decided to redefine their lives and get into the rental business... see the quotes in the binder. The amenities of the Castle are amazing. Here John and Lynda promote local businesses, including coupons. And the more successful their venture, the more employees they can bring on. How long is this going to last? In the January, 2012 Jaffrey Chamber of Commerce newsletter, Lynda Hunt notes, “The house now has a life of its own, the business is already here.”

Harper continued: In the Hunts' Letter on Intent in which they tell the neighbors what they intend to do with this property: “We're also looking into building another beach, especially if this proves to be a profitable business venture.” By now, you can see they have improved the renter's beach without getting any permits.

The LLC was created in 2008, then appeared the VRBO listing for the Castle itself. In the first binder we made a copy of all the reviews, mainly from weekend guests. Here, the number of people it can sleep shows it is primarily a resort destination – it can house 30 people at \$6,900 per week. Dates are available year-round. Then they tell about all the great nearby amenities that guests can visit (and these guests travel our road to get there and back) including the golf course, etc.—another resort aspect. The gorgeous four-bedroom guesthouse (Holloway House) sleeps 8-14 people and has all the benefits of the trails and the beach. Holloway is the second house on the left and so the Castle and Holloway House are almost as far away from each other as it's possible to be in Sunridge so you have the traffic back and forth. And, there's now hunting in Sunridge even though it's posted as non-hunting.

The next is an ad from finerentals.com – the thing to see is all the bedrooms listed – the eight bedrooms sleep a max of 22 people, etc. On the Jaffrey Chamber website, it says they've been a member since 2011 and it lists the features including a hot tub and swimming pool. Next is the IRS exception to the rental definition for a place that people rent temporarily; in this case you're very involved in your business.

Harper then read other cases, including *The Bayroom v. City of Binghamton* – a landlord rented his dwelling out to a large group of college students and they were trying to decide whether it met the single-family residential criteria. Goodrich: That was not a New Hampshire case? Harper: No, it was New York, 2010. Since the rent was three to four times the rent that would be paid by a family to rent and live there, it was deemed a business.

Re: Permissive and prohibited zoning ordinances: In a permissive ordinance, a use must be listed as a permitted use or it's prohibited. In a prohibited use, you list what's prohibited and everything else is



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permitted. An accessory use must be occasioned by and subordinate to the primary use. The permitted use in RES/AG is farms and typical family dwellings only. Everything else needs another type of permit, such as a special exception so that the issues of noise, safety, etc. can be reviewed with all abutters having the opportunity for input.

Does the Hunts' residential business allowing 14 people at Holloway and up to 30 people at the Castle fall into the "family dwellings" category? And they offer two rates – one for families and one for adult dwellings – so how does this fit into "family dwelling" use? The NH Supreme Court ruled that if the zoning ordinance does not define "family," the historical definition must be used – persons living together by blood, marriage, or adoption. "Accessory use" is not defined in the Rindge zoning ordinance. Accessory use must be customarily and incidental to the principal use. From the Planned Use Law Handbook – the character of the primary use determines the character of the accessory use.

This is a business which is not an allowed use in this zone. And the use has to be customary and subordinate to a lawful primary principal use. But the frequency and proportional area of Sunridge used is not: 100% of the property is available to rent year-round. They're not subordinating the use of the property to its primary use as a residence. Dave DuVernay's letter says the Hunts occasionally rent out the property. Hunt said he collected Rooms and Meals Tax and had about 20 bookings. He is collecting Rooms and Meals Tax in anticipation of renting the Castle for as much of the year he is able. And the use is not restricted to single families. So this is a business, a resort rental to provide temporary lodging to travelers.

Is this use customarily incidental (something established commonly and by long practice to be incidental to the primary use)? DuVernay said about seven lake owners rent their property and that people staying two nights, no more, is customary for an accessory use. But the Holloway House rental is not located on a lake. How many other property owners rent their homes for no more than two nights over and over during the year?

The Selectmen said we'd have to go after other folks in Town who are doing this. At the March Town Meeting I asked the Supervisors of the Checklist how many registered voters there are in Rindge: there are 3,531. That seven people rent their homes does not alter the meaning of the ordinance. The burden of proof that this is a lawful accessory use is the burden of the property owner, not the Town. Hunt's advertisement is available to the public; it invites non-families to stay on a temporary basis, year-round.

Can a business be an accessory use of a residence? A business use of a residential property cannot be an accessory use. Accepting this use would set the precedent that any business operated out of any home could bypass further permitting by claiming it is an accessory use of a principal dwelling.

Harper then described the principal and main uses of the property. She said we can use the common law definition of "accessory use" since Rindge doesn't define it: "subordinate, customary and incidental." Rindge has a permissive zoning ordinance. We're saying it's a business involving non-family groups that is not subordinate, not customary, and not just incidental to the primary use of a single family home.

The next person who will speak is Sunridge neighbor Don Pyke who has worked in hotel management for years.



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Section 3 of the binder: Donald Pyke, 22 Sunridge Road in Rindge. As Maryann said, I spent 15 years with Hilton and with different sizes of hotels and inns. The Hunts are just not renting a vacation home in Rindge; they're renting a year-round operation similar to a small hotel and in a RES/AG area without a permit. See the examples of what a hotel is, what a resort is, in Section 3 and, on the next page, the Rindge Castle resorts overview. It has eight bedrooms and sleeps 22, and the bed setup includes 10 pullouts. The property size is 11,000sf. Look at the vacation rental description in yellow: miles of walking and cross-country ski trails, an outdoor hot tub, a 5,000-gallon swimming pool. It says the facility is great for weddings, reunions, and retreats. The amount of people in the Castle for an event is 30 people but sometimes it's actually more than that. Look at the vacation rental policies including "Check-in" which is normally 4:00pm and "Check-out" which is normally 11:00am. The required stay is two nights, and Sunridge Farm has a cancellation policy: the fee is fully refundable prior to the week of the reservation or 20% of the rate if Sunridge fails to rent it by that time. Under furnishings, etc: "linens provided" -- this is like any hotel, inn, resort. One of the things in a hotel atmosphere is when you check in, you are given a number of a room or possibly names of a room, and these rooms have names. It's a small hotel. Under Recreation activities, "corporate and executive lodging" is highlighted as well as "group and family reunions." Some amenities on the property are a PGA golf course, a private beach, a 50-acre lake, cross-country skiing, hiking, snowshoeing, paddle boats, sunfish, and kayaks.

Next speaker: Heidi Graff from 111 Sunridge Road. I'll talk about whether this is a tourist home or a vacation rental. One definition of a "tourist home" is where rooms in someone's house are rented to travelers, or a building in which more than one, but not more than five, rooms are provided to transient guests (B&Bs are included). The formal definition of a dwelling unit as distinguished from residence: the intent of an occupant to stay for a short-term visit, as to a vacation place rather than a permanent residence, and the use of a system of reservations and other forms of electronic payment which is clearly part of his business.

A "vacation rental" rents out a furnished apartment or house on a temporary basis. A vacation property contracted for temporary use usually has more property and privacy than a hotel room. They're often referred to as villa rentals in Europe and many rent on a nightly basis. See the bullet list.

The tourist home and vacation rental definitions are similar. Both terms signify the rental of a home to overnight guests. The Town of Rindge insists on a special exception to operate this type of venture. If a business similar to the Hunts must adhere to such strict guidelines, how can the Hunts be permitted to operate theirs without one?

At one time, they applied for a special exception but then withdrew it. DuVernay said the Castle does not qualify as a tourist home because it's not rented to transients or travelers, but what would he consider these renters to be then? If a dwelling of no more than five bedrooms requires regulation, shouldn't a rental for more than five bedrooms be regulated? The State of Indiana says the operation of a tourist home requires a special exception and an annual permit. I think the Hunts' rentals fall under the definition of a tourist home.

Next speaker: Andrew Graff of 111 Sunridge Road. I want to describe how the events held at the Castle pertain to our Appeal. Section 5 of the binder: see the bullet point listing rental properties--events, weddings, and receptions are not permitted as per the Selectmen's Decision. The Hunts have hosted many different types of events. According to the Board of Selectmen's Decision, banquets, weddings, and



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receptions are not customarily associated with a residential use. One meaning of “events” is a planned public or social occasion or a gathering (a ceremony, marriage, competition, corporate or business function, sporting event). Since that Decision, the Hunts have hosted several events, and the ones we’re aware of are the FPU and MIT reunions, Wiccan gatherings, bachelor parties, office parties, and business retreats. And a medieval role-playing event was held there a few weekends ago. Are these events permitted under the Selectmen’s Administrative Decision? The medieval event occupied both the Holloway House and Castle but DuVernay said it was not a prohibited event since it was not a wedding, banquet, or reception. The wording in the Rindge zoning ordinance for tourist homes and bed-and-breakfasts is that special and ancillary events, weddings, and other similar events are prohibited. So why would the Hunts be allowed to accommodate ancillary and special events that are prohibited to tourist homes and B&Bs in Rindge? The medieval costumers said it was a weekend-long, role-playing event with a name tag, bonfires, etc. It seems clear that the zoning ordinance prohibiting events in a residential area was created to prevent the situations now impacting the neighbors of Sunridge. The Hunt property attracts far more people than a B&B would.

Sirvint: My understanding of the role of the Zoning Board of Adjustment is that they have to interpret whether or not the Select Board followed the ordinance in making their Administrative Decision – that’s more of a procedural issue rather than whether this situation is good or bad.

Goodrich: The ZBA may issue a modified decision that is different. Sirvint: I was married in a private residence as was my brother. I have a problem with “not customarily associated with a private dwelling.” The key word is “such as” – could you explain more about why you are having a problem with events “such as.”

Andrew Graff: It’s not just limited to those, but events “such as” are going on. You’re questioning the Town ordinances that say those things are prohibited to tourist homes. Maryann Harper added that this isn’t the same as having your daughter married in your home; with the Castle, strangers are paying the owners money to rent the place for the purpose of having a wedding – and that’s a business. Andrew: And there’s a difference in size and scale here from what goes on in a regular home.

Section 6 of the binder: Phil Preston, 77 Sunridge Road, spoke on the impacts on the neighborhood of the business. The Hunts’ resort rental business started in 2009 and has had a noticeable impact on the neighborhood. Prior to the rental, there were about 35 people in the neighborhood, but the occupancy doubles with the temporary guests who have little concern for the noise and traffic they create. The Hunts are operating two short-term residential properties in this area. As to traffic safety – the number of cars using the road nearly doubles and little attention is paid to the posted speed limit—this is a hazard to children, pets, and walkers. The renters get lost and some end up in neighbor’s yards, while others joyride through the fields and get stuck. And there are security issues since it’s impossible to enforce a crime watch; most of the vehicles are driven by strangers. Then there’s the maintenance issue for Sunridge Road and littering by the renters. Noisy parties take place late at night. Such disruptions should have no place in a residential neighborhood. The outdoor hot tub is used late at night, and fireworks are common at both properties. Sunridge is no longer a quiet residential neighborhood – it was a residential development comprised of single-family homes in 1982 and nobody could have expected this.

With hunting and firearms encouraged, a quiet walk in the woods could become a dangerous venture. And some Sunridge members have deeded access to the beach. Golfers from other places are regularly in



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Sunridge and sometimes go on neighboring properties. There were 200 people at one time in our neighborhood.

Summary statement: We thought Sunridge was solar and there would be a limited number of generously sized houses and a farm project that would allow us to keep horses. Snowmobiles and hunting were prohibited. Development of the farm fell by the wayside, but we had nice neighbors who respected each other's privacy. Now that Sunridge has become a commercial venture, it has changed for the worse. A table was created showing the safety issues, occupancy, number of vehicles, and the effect of the rental business on Sunridge property values. All 18 owners of Sunridge have frontage on Sunridge and Little Meadowbrook Roads and are responsible for the maintenance of the roads through an association. Hunt promised he would deed the road and open space to the land owners and he has failed to do that.

Then there was the meeting with the Town Administrator, Code Enforcement Officer, and Selectmen – the CEO defended the position that the Hunts were not running a tourist home and had a permit by notification of expanding his beach and reported only two incidents with the police, but we think there were more. After that meeting, the CEO prepared a memo indicating that the Hunts were not running a tourist home but the Sunridge residents didn't see it. There are three parts to the CEO's letter – a background outlining what the Rindge ordinances are and some recommendations. In his background remarks, DuVernay said the Hunts have been renting a year or so – but they've been renting for years. It was the Holloway House that was added in the last year. He says that some neighbors object when actually seven of nine families in Sunridge object. The definition of tourist home is vague. I can't see that it's vague to say that any homeowner that rents for compensation is running a tourist home. The ZBA hasn't changed this ordinance. DuVernay's next recommendation says the Castle is slightly larger than most residences. At 11,000 square feet it's many times larger than most homes in Rindge.

We remember people suggesting that if the Hunts were only renting to families in the summer they wouldn't need a special exception, but this was not the recommendation of the entire ZBA. And now it's a venture that often serves large, non-family groups. He says that the renters can't be called travelers and transients – but they're traveling from other places and staying only a few days, so how could there be a better fit? He said the Hunts are not in residence when the place is rented, so how could "owner-occupied" in the zoning ordinances apply? And if the Hunts do not occupy the residence, then how can it be called their primary residence? A violation of the zoning regulations should not be ignored because enforcing them is inconvenient. This goes far beyond the normal renting of a lakeside home. DuVernay's suggestion that this is a neighborhood spat demeans the concerns we presented to the Zoning Board in 2009 and which have magnified since then.

William (Bill) Thomas Harper: 154 Sunridge Road – Section 8 in the binder: This is a brief history of broken promises. See their Letter on Intent. These are things the Hunts have said to us verbally or by email: We will only rent the Castle until the dam is paid off... will only rent in the summer... will only rent to families like ours... we have contacted a lawyer to write up contracts to ensure that our neighbors are not affected in any way... we will pay extra to the road fund if the beach is used... we will send dates of every event to our neighbors... we welcome input from our neighbors... we offered to give Sunridge residents the roads as a stipulation of the subdivision approval... the maximum occupancy will be 22 people... Sunridge neighbors have seen 30 at the beach and that was before the Holloway House was being rented as well. Lynda said the Castle has taken on a life of its own; that's true and the life it's taken



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on is not a good one. The Hunts are often in Rhode Island so they really have no idea of what goes on during these parties.

Maryann Harper: We've been part of Sunridge since 1981 before the subdivision. John Hunt built Castle in 1993 with an exit strategy and knew that the home would be expensive to maintain – he used the rentals to help with the expense of reconstructing the dam. DuVernay expressed his concerns so Mr. Hunt withdrew his application for a special exception but not his plans to proceed. Attorney Silas Little outlined additional state regulations that Hunt might be violating, and we informed DuVernay about the beach enhancement without a permit and he said he would watch it. The Hunts' business was growing and they bought a second residence. The summer of 2011 was miserable for the neighbors because of the rentals and meanwhile the Hunts were away in Rhode Island. Complaints were made to Mr. DuVernay. When the Hunts dismissed our concerns, we decided to take action because the character of our neighborhood will be forever changed. Selectman Barry pondered at the Feb. 15th Selectmen's Meeting – would the Sunridge neighbors have built their homes there now under the current conditions, and we replied "no." We were dismayed with the Selectmen's decision, and the accessory use argument was used to sidestep the issue – how can this business require no permitting when it is not among those businesses allowed in a RES/AG district?

Chairman Goodrich: We will now provide the Hunts the opportunity for a rebuttal. John Hunt: We will try to address what the meeting was about and then address the concerns around this matter. But if we just gate off our property, eliminate our entrance completely from Sunridge Road, evidently that would solve the problem because there would be no traffic on the road except for Sunridge residents. We can cut off Sunridge from my remaining 500 acres.

Attorney Michael Bentley: The first issue the Board needs to recognize is what role are you playing in this proceeding? We've just heard two hours of testimony that have nothing to do with this meeting. You're deciding whether the conduct you're hearing about today conforms to your ordinance or not. This is not a meeting about enforcement. When you act in your appellate capacity hearing an appeal on an Administrative Decision, enforcement has nothing to do with it. I've heard the word "enforce" mentioned half a dozen times and I'm not sure why. I also heard "you need to consider the spirit of the ordinance" – this is not a variance, and that is also not in front of you today. The NH Supreme Court has said it is erroneous to consider only the spirit of the ordinance in reviewing an Administrative Decision. We're convened to determine whether the decision made by the Selectmen, who have clear authority to enforce the ordinance, is a proper one.

A tourist home is defined in your ordinance, as is a bed-and-breakfast, and both are owner-occupied. Some in the audience think that does not mean the owner has to be there when the residence is rented. But the owner occupies a tourist home and the owner occupies a B&B. We've told the Selectmen, Mr. DuVernay, and the neighbors that, when the Castle property and the Holloway House are rented, Mr. and Mrs. Hunt are not there. They rent 100% of the property. They are not in residence. And, frankly, in two hours you haven't heard a suggestion by any of the neighbors that they were living in either property while the properties were rented because the simple fact is they are not in residence during the rental periods.

Does your ordinance regulate the renting of property in the Town of Rindge? If there were such an ordinance, I'm not sure I would be here tonight because Attorney Hoppock and I would have been talking



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about that ordinance instead, but there is no such ordinance in the Town of Rindge. Could you have one that regulates rental property in the Town of Rindge so you have enforcement authority? Yes, but the way to do it is someone proposes an amendment to the Zoning Ordinance, you have the hearing, and the people vote on it, “yes” or “no.” And then you’d contact Dave DuVernay to enforce the ordinance and, sooner or later, the use would get restricted.

In the absence of such an ordinance, what do we hear tonight? It’s clear that the use of the word “business” (I stopped counting at 20 mentions) is a basis of controversy, but it doesn’t make a difference. Say the Hunts wanted to open a pizza shop at the Castle. Is there anybody that thinks that would be a permitted use? No. But the Hunts are renting their property—nothing more or less. We’ve heard references to a case in New York where an ordinance defined the number of unrelated people that can occupy a structure. Keene has an ordinance about that, too—Keene says that no more than four unrelated people should occupy a structure. Could Rindge have such an ordinance? Sure, but you’ve got to amend your zoning ordinance, and these seven families should not try to control the municipality.

It’s not been a pleasant occasion for the Hunts to listen to their neighbors tonight. The complaints started only after the dam was built, the water came back, and there was a beach. The reality is that if you’re going to regulate the Hunts’ activity you need to regulate the activity of everyone who rents in Rindge. One size fits all. Adopt an ordinance that regulates rental properties in Rindge and everyone plays by the same rules. These concerns were presented to Mr. DuVernay and then to the Selectmen and you have the decision in a memo. Mr. DuVernay wrote a memo to Susan Wessels. You heard something about the medieval weekend issue – this followed the decision of the Board of Selectmen, so then we have the April 14th email from Mr. Graff to Mr. DuVernay which was followed by Mr. DuVernay’s response of April 16, 2012. What it indicates is that, regardless of what the Hunts do, the neighbors are not going to like it. I was particularly taken aback by the comments that the Hunts were encouraging firearms and hunting. I defy anyone to point out anything in the material presented that in any fashion suggests that is the Hunts’ position. In fact, they have posted “No Hunting” signs.

You also heard comments regarding police reports. I think I counted four in the binder and you’d almost think that, if this were such an outrageous enterprise, there would have been a heck of a lot more. So someone drives off into a field and gets stuck—and that’s a big deal in New Hampshire? Our bottom line is that you do not in your ordinance regulate the rental activity of properties. This is what it is, no more or less. And this is a Selectmen’s enforcement action over which you have no jurisdiction.

The Selectmen’s position sets forth their decision concerning the activities conducted. You say if we can’t regulate it, why should there be an issue? John and Lynda believe the conditions imposed by the Selectmen were reasonable – rules they are willing to accept. There is a lot of uncertainty around the word “event.” If someone wants to rent the Castle for a one-day wedding, that’s not allowed. You can’t plan for a festivity without staying overnight. The Selectmen also dealt with the issue of frequency—can the Hunts rent it every day? No, there’s a limitation of one rental per week. We thought those conditions were reasonable under the circumstances. Your job is to look at the ordinance, not to be persuaded by the number of cars or people. You must decide whether the activity is subject to regulation under the ordinance you have. Under the terms of your jurisdiction, you can do anything you like – your authority tonight is to hear this thing as a whole new ballgame. You’re not bound by anything that anyone has done. It’s in your hands as an appellate board to see that the Administrative Decision of the Select Board was appropriate.



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RINDGE, NH 03461

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John Hunt: I want to say that all through this process we have been listening to our neighbors and it's frustrating because every step forward is thrown back in our face. I am sorry that we're here and I wish there were some instant way we could solve this, but our neighbors just don't want us to rent. This is the same problem I had when I first came before the Zoning Board of Adjustment and asked what does this definition of "tourist home" mean. The answer was, whatever you're doing is not what "tourist home" means, and there are no regulations in Rindge relative to people renting their homes, so if you want to rent your home, have at it. Since then, I have learned more about what a tourist home is. Mrs. Smith's tourist home was on West Rindge Common. A tourist home was something invented before the bed and breakfast; it's a boarding house. Are we a tourist home? The owner is present in a boarding house because they have to tell you what room you're in, check you in, and be there when you have problems. But that's not what we're doing. This is a residential application.

Is this a business? We don't have anything a business has. We don't take credit cards, and there's no sign. The Chamber said, "Wouldn't it be nice for you to join?" Jaffrey said, "You rent your house so you can join the Chamber." Did I know it would be thrown back in my face to say it's a business? From day one, the Sunridge neighbors asked us to not have weddings except for our daughter's wedding. People rent the house. There are no rental laws in Rindge, let alone how many people we can have there. Let's see what the townspeople think if you want to limit rentals. But I think Rindge has always been a summer community renting out houses. To try to make a law to say this is a business is a total stretch.

And Holloway House is for adults only. Right now, we're no longer taking rentals for the Holloway House to respect our neighbors' concerns. Regarding the beach, renters were supposed to use the other beach. Unfortunately, our groundskeeper didn't like sending people to our beach. And so he just fixed our beach without a permit—but now we're getting a permit. We're really trying. If it comes to gating off Sunridge, we'll do that. And I still own the road. Sunridge Farm, LLC was created before the rental business, if you want to call it a business. The lawyers said there was a liability issue on that road which is why the LLC was created. When I said we'd create the association, the neighbors didn't want it. When it comes to doing the road, I'm the one who's patching it. I've not sent the neighbors a single bill for patching the road and I've waived their fees for recreation. What the neighbors didn't tell you is that this didn't happen because of the dam; the date we decided we needed to do something was when Alcoa, my family trust, cut its dividends by 90%. Yes, then we were looking for something to do. And yes, the Holloway House was a steal at \$180,000, and with its rental income.... My wife thought it made sense and I bought it because Mr. Holloway begged me to do it. He wanted out from that house. Maybe I've got to stop saying "business." But there's nothing in any Rindge ordinance that regulates rental businesses. If people think there should be, then let's go to Planning and put it on the warrant. But we're not a boarding home. It is a residence and it is my residence and it's where I go at night to sleep. We rent weekends and stay at the Holloway House.

Half of Sunridge isn't even developed. And talk about recreational use; it's the icing on the cake to see how the Harpers are selling building lots by promoting all the recreational uses of our 'fancy resort.' Yes, we will continue to work with our neighbors; we now have signs to point renters to the right beach, and there's a sign saying they will lose their deposit if they set off fireworks—even though there's no noise ordinance in Rindge. If we get a call from our neighbors about noise or disturbance, the renters will lose their deposits. And there are road signs up and down the roads. The golf tournament happens once a year and brings people from all over. And now we have a sign saying that you can't use this beach unless you



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have a pass. We're sorry our neighbors feel this way, but we can block Sunridge off so there are no cars on the road. The neighbors had an obligation to help pay for the dam, but they never offered. We've made offers, and they've made crazy counteroffers, but if they would just help us pay for the dam, we'd get out of the rental business altogether.

Dave DuVernay: I didn't know that code enforcement was going to be on the agenda. DuVernay then mentioned he had a letter he could show the Board. Hoppock: Anything from the Code Enforcement Officer has to be submitted to us seven days in advance, so you can't distribute that letter; we object.

Goodrich to DuVernay: You may present it orally.

DuVernay: We never heard about the special exception to run a business there. The Board of Selectmen believes it made the proper decision on Feb. 22nd. Their reasons include the idea that every Rindge homeowner has the right to rent a room or their entire property. The Hunts eat, sleep, and play in their residence. It isn't a tourist home or B&B since the Hunts vacate the premises when they rent it and both tourist homes and bed-and-breakfasts require owner occupancy. Events such as banquets, receptions, etc. were prohibited, and renting more frequently than weekly was prohibited as well. Several ZBA members may remember when the Hunts withdrew their application for a tourist home because they determined that their use did not constitute a "tourist home." I suggest you do a thorough job of documenting your decision.

Goodrich: Are there any further comments from the Hunt family? Lynda: Yes, when the neighbors mention several incidents, there are some that happened only once. And they thanked us for giving them use of the beach, the boats that John provides, and the use of the trails we maintain; that's what our employees do. Mike is now a lot older and he can't keep up with what he was doing before – we have land that needs to be mown and weeded. So, I'm saying that these incidents were one-time things. This land John bought years ago he keeps in good condition. The neighbors aren't billed for what Mike does to pick up the branches and patch the roads for free. And there are several more things we do. When Heidi Graff did not want the Harpers to plow her driveway, Bill Harper plowed her in, but Mike went and cleared the driveway and never said a word. The other thing that was very hurtful is that Tyler and Lizzie were the original children in the home. And Tyler and Lizzie still keep some of their things there. To say, in such a way, that the rooms have names.... On several occasions we've tried to solve things with our neighbors yet we've been told by some of our neighbors that they will not speak to us. But we continue to do everything they want us to do. Sunridge is open to the people of Rindge – we don't allow guns, firearms, or snowmobiles. Yes, we do rent our home but we respect our neighbors' privacy. And the workers there have nothing to say but nice things about the people who stay there. The medieval people mostly just drank apple cider that weekend – they were grad students in their 30s and they were trying to figure out their scenario. We asked them to park all their vehicles at the Holloway House so that's why you saw all the cars there. Now, every move we make someone's running to the phone or distributing a letter.

John Hunt: Regarding the comment about hunting – there's a list of area activities, and we must have checked off that hunting is available in Rindge, but there is no hunting in Sunridge.

Attorney Sam Bradley: I just have a brief comment. The duty of the Zoning Board tonight, since this is an appeal regarding the Board of Selectmen's decision, is to decide two things: the Selectmen found that the primary and principal use of Sunridge is residential, and the Zoning Board needs to decide tonight



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whether it agrees that the primary use is residential and that the rental is accessory, or whether you've heard enough to decide that the Selectmen misunderstood and that its primary use is business, not residential. That's entirely up to this Board.

The other issue as I read it is whether the way in which this use is conducted is operating a tourist home or not, and that goes to what "owner-occupied" means, and that's a pretty broad term. My understanding is that Mr. and Mrs. Hunts' position that it's not owner-occupied because they're not there when the tenants are – the applicants made much of vacation rentals and all the other things, but you need to stick with what's in your ordinance. It's up to this Board to determine what that ordinance means and what "owner-occupied" means. Is it occupied by the owners or does their not being there excuse them from the term "owner-occupied." Those are the two issues before the Board tonight. It's obvious that the neighbors have a lot of complaints, but those aren't the issues before the Board tonight. For the purposes of this Appeal, you have to decide whether you agree with the decision of the Selectmen, and why.

Attorney Hoppock: Attorney Bradley is correct. You have to decide whether this is a residential or a business use. The things that have happened are evidence of misuse of the zoning regulations and evidence of the evils that your ordinances were supposed to protect against; it has nothing to do with the dam. They say it is an owner-occupied facility, but John Hunt said he was there in the Holloway House when he was away in Rhode Island. Mr. Hunt minimizes his activity and blames everyone else. It's the neighbors' problem about the wetlands violation. He blames his wife for buying the Holloway House. I find his attitude troubling. He is running a business – he has an LLC and extensive advertising, he posts his rates, and it would appear from his advertising that he has a credit card. Mr. Bentley said you don't have any regulations on rental property. Technically that's true, but it's too narrow. Article 5 states: It shall be a district of farms and single family dwellings ONLY. Why do you put the word "only" in there? What other uses are permitted? Is the Hunts' use of the Holloway House and Castle subordinate or customary to a farm or dwelling? No – we've given you a binder of evidence that they're running a business, and in an irresponsible, not-permitted fashion; this is not a residential use, it's a business use. Business uses are specifically mentioned in other parts of your ordinance. You interpret the ordinance by the language that's in it. In the business district, the Gateway District, the word "business" is used. Mr. Hunt stopped himself from saying "business" on three occasions. He knows he has a business, and a business is not a permitted use and not an accessory use to the residential use in this district. You do have regulations to interpret and you can send this back to the Board of Selectmen for enforcement. Mrs. Hunt refers to the employees employed by them "for years" and that's another characteristic of a business. It's inconceivable that it can be considered any other way.

Goodrich: Now there will be respectful discussion. Bentley: Under Article 20, the term "business" is not defined. Even if it's not a multi-tenant business, other things could be construed as "non-business." The gorilla in front of the Board is whether this is a residential use or not, even if you don't define what a "business" is.

Lynda Hunt: I'd like to say something with regards to my husband (John asked her not to continue). John Hunt: It's a residence, and if someone rents their home for a year it's still a residence even if they're not there. It's still owner-occupied. When they wrote the ordinance, they were thinking about Mrs. Smith's boarding house, and she had to be there. In our case, our renters are renting a home.



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Breckenridge: The binder says, “If it quacks like a duck...” and “The IRS defines this as a business.” Is it typical to cite the IRS definition of a business? And is it typical in this district for people to rent out? Hunt: If you want to fully deduct your operating expenses you can’t be in there less than two weeks, otherwise you can prorate your income against those rentals. Breckenridge: If the IRS calls it a business, is it a business?

Attorney Bradley: The IRS regulations are not binding on this Board. It is one of the factors the applicants brought before this Board to bolster their contention that it is a business. Breckenridge: Is the IRS criteria simple? It’s if you make money. The other part of my question: Is it a legal requirement, the norm, to have a separate name for a business if you rent your place out for a week?

Attorney Hoppock: Having a separate name makes tax and liability issues easier. It’s an established practice – you file a separate tax return as a business. He’s making profits and deducting expenses. Breckenridge: So the norm for a resident to rent out their home would not be to establish an LLC? Attorney Hoppock: No. Hunt: We created the LLC for liability. We’re filing the tax returns personally. But for all our employees, I have to have an employer number to deduct their FICA, Medicare, etc. so if there were a lawsuit on my property we could try to separate some liability. It’s only coincidental that we use that entity.

Attorney Hoppock: Businesses normally do that because he runs a business on his property. He would have general comprehensive business liability. He can buy insurance. Hunt: The road was the problem. I own the road. It started out that the road was the issue which is why I formed the LLC.

Sirvint: Article 1 of the zoning ordinance mentions preserving the health and welfare of the residents. So the purpose of the ordinance is not relevant? Attorney Bradley: Not tonight. Sirvint: So all the evidence of unpleasant things happening is irrelevant? Attorney Bradley: Correct, regarding the issue tonight.

Hunt: A maximum of 30 people is allowed on the Castle property but 22 have to still be there that night.

Goodrich: You have an unusual home, a larger-than-typical home, and it stands to reason that there are more people there. Hunt: When we had our nuclear family there – five people with the relatives and mother-in-laws—we had 30 people. And we had Bastille Day parties with 100-200 people on the beach.

Eicher: I’d like to understand what percent of the time it is occupied by you vs. the renters. Hunt: Last year, the total rental days were 1/3 of the year.

Drouin to Dave DuVernay: Does your memo mean it cannot be rented two weekends in a row, because that would be renting it more than once a week--if they rent it Friday to Sunday, then five days later Friday to Sunday, that’s two rentals in one week. So it’s not permitted to rent more frequently than once a week?

DuVernay: No more frequently than once a week. He could rent it for a span of days in one week but not the rest of the days that week. I wrote the letter using the exact words the Board used. He can’t rent it two days beginning of the week and two days at the end of the week.



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Drouin: So is he able to rent two weekends in a row? DuVernay: It depends on how you count – Sunday to Saturday?

Attorney Bradley: if you decide the Board of Selectmen is correct in their interpretation, you can set your own conditions. You have to get by the first and second questions. Then you can put in any conditions you feel are appropriate.

Drouin: Isn't that equivalent to granting some relief which is not what we're here for? Attorney Bradley: That's something you're permitted to do, nevertheless. You can bolster the Selectmen's decision or determine they didn't decide correctly.

Maryann Harper: On the fourth page of Section 6, there's an email from me to Mr. Hunt saying that we don't need extra liability coverage. The liability came about when you're charging people to come into Sunridge which we feel is a business. It's our belief that the Selectmen did spot zoning and the granting of a variance without a hearing to allow a business to exist within a residential district.

Selectman Jed Brummer: Having listened for the last 3.5 hours, I want to make one comment. The Code Enforcement Officer works for the Selectmen, so some of these questions should be addressed to them though we're not fully represented tonight. This hearing is just about whether the Selectmen made the right interpretation or not of the ordinances that are on our books.

Sirvint: We need clarification of the definition of a tourist home. If it's a tourist home, it would need a special exception, but you think it's not one? Hunt: Tourist homes are boarding houses and this isn't one.

Attorney Hoppock: It is a tourist home. And you're stuck with interpreting your ordinance. A tourist home is defined on p. 34 – it provides temporary overnight lodging (a boarding home is not mentioned anywhere) for compensation. It's a tourist home.

Sirvint: The language says it's an owner-occupied residence. Is it owner-occupied? There's no definition. So if I leave my house, is it unoccupied? Attorney Bradley: You have to decide this.

Attorney Bentley: "Occupy" from our perspective means somebody is there, and "owner-occupied" specifically means the owner is there. As an appellate court, you have the authority to decide what "owner-occupied" means. At the end of the day, whatever any of us say, you by your decision have to say what you think it means.

Goodrich: Is there any new information coming from the audience?

Breckenridge: I am trying to determine whether this is a business or a home – Mr. Hunt, you mention a third of the year you rent it out. Is it your intent to increase that? You mentioned that you needed an income producer and a business is one way to increase income. Are you looking at a growing business?

Hunt: The rentals can't be for more than half a year because it's my residence. I think the Selectmen did a wonderful job saying where a business begins and ends. And they said no more than 52 rentals per year.



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Drouin: There's the term "owner-occupied rental unit," and then there's an "absentee landlord." If it's not owner occupied, is Mr. Hunt an absentee landlord? Attorney Bentley: He's a landlord but he's not there. Drouin: So is this a business?

Hunt: But you're posing whether anybody in Rindge who rents a home is running a business. Attorney Bentley: An absentee landlord is someone who rents a property 100% of the time and never occupies it as his home.

Drouin: What about his employees who manage the property while he's not there, like a landlord's agent for the owner, protecting the owner's interest? Attorney Bentley: But the employee is not the landlord. "Absentee" means a piece of property rented to others is never occupied by the owner.

Harper: Earlier, West Rindge Builders ran a business in Sunridge. When it became a bother to our neighbors, we spent half a million dollars to move out, and we followed the zoning ordinance – the Hunts are operating a business in Sunridge.

MOTION: Hill motioned to close testimony and enter the deliberative phase, Thomas seconded, and all members were in favor.

Breckenridge cited the late hour and the need for a recess or continuation to properly prepare for the decision. Attorney Bradley: You have to set a time and date. Stenersen agreed but Goodrich, Drouin, and Thomas were against a continuation as Chair Jan Goodrich was scheduled to be out of town on May 22nd, the ZBA's next scheduled meeting date. Alternate dates were discussed.

MOTION: Vice Chair Drouin motioned to continue the hearing's deliberative phase at 7:00pm on Monday, May 14th with the condition that, if Stenersen is unable to attend, Hill would be appointed as the Alternate. The Conservation Commission, normally scheduled for the meeting room at that time, would be approached about using other space. Breckenridge seconded and all were in favor.

MOTION: Breckenridge motioned to adjourn, Thomas seconded, and all were in favor.

The meeting was adjourned at 10:45 pm.

Minutes respectfully submitted by Linda Stonehill, Clerk .