



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 14, 2012 **APPROVED**

Regular members: Janet Goodrich (Chair), David Drouin (Vice Chair), Marcia Breckenridge, Phil Stenersen, and Bill Thomas
Alternates: Joe Hill, Rick Sirvint
Absent: Charlie Eicher
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 – CONTINUED FROM MAY 10TH

Also present: Attorney Sam Bradley representing the Zoning Board of Adjustment and Attorney Michael Bentley representing John and Lynda Hunt.

Chair Jan Goodrich: RSA 634:43 allows the Zoning Board to modify or reverse the decision and have the powers of administrative appeal. The testimony of the meeting has been closed, and the deliberative session will begin.

It seemed many of the decisions hinge on definitions, and some definitions are not clearly stated. Perhaps we should share thoughts on some of the definitions of the terms in the case.

David Drouin: I think any Board is hesitant to reverse the decision of any other Board. Everyone's taking this very seriously. I wish we had more information from the minutes of the Selectmen's meeting (I know they went into non-public session). We have Pat Barry's motion and the CEO's enforcement of it. So we have to get the question right without knowing how they arrived at the decision or what their intent was, so we're just left with their final answer.

Stenersen: I think one of the issues of concern is whether this is a business or not, and whether renting out a house is a business.

Goodrich: We all did our homework but, based on the testimony we heard presented, we know that the term "business" is not defined in the Rindge Zoning Ordinance, but multi-tenant is defined as two or more and business is defined in that phrase as "non-residential" use. So my definition of business hinges significantly on the non-residential use.

Drouin: So a landlord that has an apartment complex doesn't have a business? Goodrich: We have to use our definitions.



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Drouin: But do we want to mix the use vs. the product provided? You could have a landlord that's renting out a house but also owns apartments. Just because he's renting out a house does not mean that's a residential use.

Breckenridge: I looked up the origin of the word "business" and the various things described in the commercial district as businesses. The only things that came close were B&B's and tourist homes. And our ordinances indicate that those are owner-occupied, and the testimony we heard indicated that the Castle is not owner occupied: when the tenants were there, the Hunts were not there. And I looked very seriously at what the Board can or cannot do: we can't enforce and we can't make regulations, and if it's not written here and clearly defined.... Last time I asked how the IRS defines a business and whether its criteria would apply. And I looked at what in our regulations match the IRS's definition of a business and I could not come up with a clear-cut answer.

Then I looked at our responsibility in terms of what the Selectmen said – they said their decision was made based on what was currently in the Rindge zoning book. I feel that this residence has some very unique features and I would want some restrictive language that addresses what the abutters have said. And I have to see a place to understand it, so I took a ride to look at it. I would very much like the restriction that the primary entrance to Sunridge be restricted to the people who live there. Also, that access to the Castle be by the other road. The other concern that seemed to be unique to this residential property is that the beaches not be shared. I don't think it would be difficult to say that, "This beach is strictly for use by the Castle or Holloway House." And another thing that makes this unique is the fireworks and the noise factor. I drove down their long road and think there's a good noise buffer, but I would feel comfortable with restricting fireworks to not after 9:00 or 10:00 at night. I felt I would personally be making regulations because I cannot find a definition of business here.

Goodrich: You mentioned two terms: "tourist home" and "owner-occupied" and we may go back to that later.

Breckenridge: I have to go along with the Selectmen who said, according to the ordinance now, it is not a business. But some of the wording the Selectmen used was not at all clear to me.

Thomas: I have a hard time with the idea of "accessory use" here—it's not a subordinate use as far as I can determine—and the idea of a permissive ordinance (if it's not prohibited, it's permitted). If it is a business, it's prohibited in the RES/AG zone. And the idea that other people rent their house out for the summer doesn't hold water with me. It's like non-enforcement of the code to say "other people do it so it's okay." So I can't put any weight on that argument, and that was the basis for the decision – the Selectmen put it under accessory use and I'm having a hard time with that. I guess, too, it seems to me that it would be classified as a business. Because if I have a car and sell it, it's a one-time transaction—it doesn't mean I'm in the business of selling cars. But if I buy cars and resell them, it would sound like a business. It's one thing to rent out a room once or something, but to advertise your house year-round and figure you've got half a year to rent it sounds like it could be called a business.

Breckenridge: I wrestled with that, too. If you say that a person who rents is conducting a business, does that mean that all people who rent are conducting a business?



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Thomas: I don't know if houses on the lake are even in the same zone. Goodrich: they're strictly residential which is more restrictive. Thomas: The Selectmen say that Rindge residents have the right to rent their houses out, but I don't know how that's stated—is that something in the zoning ordinances? I haven't seen it. I don't want to be the cause of people not being able to rent their houses out, yet it doesn't seem like it would be a reason to not make a decision in this case.

Goodrich: Now we're back to non-residential uses... residential simply means "used or designed for residency" and residency means "using or occupying or staying in a particular place" and that's what the guests at the house are doing. The fact that we don't have clear language in our regulations leads me to believe that this is a residential use since people are staying there. And the Hunt family and their residential guests are residing at that Castle. They eat, sleep, and play there consistent with a residential use. So from my perspective, it's a residential use, not a non-residential use.

Thomas: It seemed like the Hunts were living there 60% of the time so it seems it was an owner-occupied house. Maybe they weren't there while the guests were there, but they were there 60% of the time. And "owner-occupied" is not defined either.

Goodrich: And an event is defined as "something that takes place" in the Webster Dictionary. That's more than a tad vague. Maybe we have to zero in on one of the other definitions because they're all comingled.

Drouin: I think the whole discussion has been caught up in what's an accessory use. If the use is the rental activity (people are staying there) that would seem to be equal to the primary use which is residential. So I don't see how the use of the property could be subordinate—two equals can't be subordinate. And I'm confused by the idea that, if it doesn't meet all the criteria for the tourist home or B&B, it must be okay. If it's not either of those, then what is it? The Hunts are charging people for a service. The hotel industry calls their customers "guests," implying an intimacy that isn't really there. I don't charge compensation when guests come to my house. Merchants have customers. I think the Board made a mistake in saying it doesn't meet these two criteria so it must be okay, so let's put some limitations on it. I think it's a business. If you put your kid's car in the driveway and sell it, that's not a business. But if you put a new car there every week, that's a business. If you're marketing your venture with other dealers, it makes you a car dealer. So in summing it up, there's an LLC that was created for personal liability protection that wasn't necessary.

There's a brand, Sunridge Farm, which is a standalone farm that includes the Castle and the Holloway House, and there's a marketing plan to grow the business. And the reservoir is called Sunridge Lake; this is the building of a brand. And there's been an attempt to expand the market – in acquiring the Holloway House they moved into a more affordable arena for those who couldn't afford the primary product. And there's been expansion of the amenities – the beach and hot tub to make the destination more attractive to more markets. Plus there was a cost/benefit analysis done before the acquisition of the Holloway House about expanding capacity by 50% to cover the mortgage, etc. It's called a "business" by the landowner and by the Chamber in Jaffrey, by the Letter on Intent, and in communications to the residents. It's been treated as a standalone entity. This is like selling cars or guns on the internet and growing the brand to sell more. Like a guy who has a house on a lake and markets it for four weeks' rental, then decides to expand the house so he can rent it for more, and then acquires another house to expand it more. That's what they did, and it's a business; it's not allowed.



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Breckenridge: If we as a Board decide it's a business, are we making the regulation and precedent that any Rindge homeowner that has paying tenants is in business? Sam Bradley: I don't think that's necessarily so. What you're saying is that this operation is different at least to a significant degree from someone who just rents their lake cottage.

Drouin: Some of it is a matter of degree, and some of it is about business activities. I don't think anyone with a house on a lake is going to create a brand – like “Sunridge Farm” – to expand their business and acquire other assets to grow it. If a person on a lake says, “Okay, we'll acquire another house to expand our rentals.” Sunridge is being marketed as having new, expanded amenities including a new, renter-only beach and a hot tub at the Holloway house.

Attorney Bradley: This Board is not the Supreme Court. You do not set precedents. So whatever you decide, you decide on this specific case and its facts only. And this doesn't affect any other property owners in Town. You do not set precedent: only the New Hampshire Court does that.

Breckenridge: Are we agreed that “business” is not defined in the ordinances? Drouin: Does it have to be? Goodrich: I think it's implied there even though it's not spelled out. That multi-tenant business clause is in the definitions section- page 30. Drouin: Isn't that related to the definition of the physical building itself? It's just about what the building contains. There are many businesses that are residential. Would you say that the Woodbound Inn is not a business?

Breckenridge: There are 37 definitions, yet several important ones are missing; it defines Bed and Breakfast, front yard, etc. Drouin : But it doesn't define “inn,” “lodge,” “motel....”

Goodrich: You said you did not see a primary and subordinate use. Drouin: The doctrine of accessory use is: “a use occasioned by the principal use and subordinate to it.” All accessory uses have one common characteristic – they must be subordinate.

Goodrich: We've heard testimony that the Hunts reside there most of the time. Subordinate means not primary, so the rental of the property would be the subordinate use.

Drouin: But the people renting it are not changing the use. The activity there is that people live there, so what is subordinate? I'm saying the activity, the renting, is a commercial enterprise.

Thomas: Either the Hunts are living there or the renters are living there; it's a residential use, it's just different people. They're not renting it out so people can build widgets; they're renting it out for living.

Drouin: Yes, people are still living there. I'm saying the error is that it was not recognized as a business, and for the activities of that district, it's not allowed. You can have a home occupation in the building and service trades. Tourist homes and B&B's are permitted by some relief. So you have five things allowed by special exception including a home occupation in the building or service trade and a tourist home which may include a B&B; anything else is not allowed. An activity can be allowed, restricted, permitted, or prohibited. And if you look at this, they don't have to define everything that's not allowed. For instance, “motor lodge” is not here. So it's not listed as being allowed. It's not prohibited, but some relief



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can be granted by special exception. This appears to have the activities of a business, so it's called a business. Their product is renting the facilities.

Goodrich: I'm still caught on the phrase "non-residential."

Attorney Bradley: The Selectmen decided that the primary use of the property is residential, and I think the Chair feels that's correct. Now I think you need to clarify in your minds whether the venture that is being conducted (if you agree that the primary use is residential) is a qualified accessory use incidental to the primary use, or is it not really accessory and not permitted. If you decide that the primary use is residential, then you have to decide about the primary use – is it occasioned by the principal use and subordinate to it? If it is, it is a legitimate accessory use and if it's not, it's not.

Thomas: It doesn't sound like an accessory use because if the Hunts are living there, then how can having guests there be a subordinate use? They need a dishwasher or garage if they're living there. A garage is an accessory use, but how is having tenants an accessory use?

Drouin: The accessory use is the running of the business. It doesn't need to be a full-time use. The secondary use to their living there is renting it out.

Breckenridge: What are you relying on in the Rindge Regulations?

Drouin: This is in a district of farms and single-family dwellings. And these activities I would recognize as a business. If I had a business, I would engage in these activities. But they're in a totally different district here. In the same way, residential units are not allowed in a commercial district.

Breckenridge: When their paying visitors are there, it's no longer a residential use.

Drouin: The house doesn't change; it's still the same house. It's the other use—renting it out. It's a business, it has a brand, and there are full-time employees that act on their behalf when they're not there. There's a limited LLC to protect them that suddenly was created just months before this renting started up. And the exposure has gotten larger.

Breckenridge: I don't see it as a business as defined in our ordinance.

Drouin: There is no definition of business in our ordinance. If you're saying it's not a business, then you're granting them relief that's not allowed in that district. You are not allowed to make exceptions to the ordinance. So if you are going to assign conditions, you either agree with the Board of Selectmen who have given their approval or you are granting their approval with conditions and you can't do that.

Thomas: Business is not defined in the Rindge ordinances, so we're going to go with the common law definition of what a business is, and what is that? Personally, I think David put forth a clear idea of what a business is.

Attorney Bradley: When a term is not defined, the courts grant "ordinary and customary" meaning. That means you have to decide on what's an ordinary and customary definition of "business." If you decide that it's not a business, then I think you've answered the question. If you decide it is a business, is it a permitted accessory use? Again, if it is a business, is it a use occasioned by the principal use and subordinate to it?



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Thomas: To me, what David said constitutes an ordinary definition of what a business is. It doesn't bother me that it's not in the Rindge ordinances. They probably didn't feel they had to define "business."

Breckenridge: But there are so many people who rent in Rindge, and the long term is of concern to me.

Drouin: Each case stands on its own. Breckenridge: I do see your viewpoint about the proportion of it.

Drouin: For me, this could be any product or service, not just those who are renting out their home.

Stenersen: The question I have is of degree. The fact that somebody rents out a small cottage and has the same renter in it for 10 years, that is overall a totally different thing than we have going on here. On the other hand, it's exactly the same but on a much larger scale.

Drouin: Whether it's rented $\frac{1}{4}$ year, $\frac{1}{2}$ year, or a full year, how is this entity being treated? It's not just for a few weeks from an ad in the paper. It's their whole business plan on how to grow a business. As a business, you would have targets—"We're going to test the waters and see how it works out, and if this works, we'll market it and grow it. We'll give the business a name and a logo. If it goes well, we should look at expanding. Can we afford to acquire a certain percentage for more capacity?" You wouldn't expand a factory by 50% unless there were a return. Buying the Holloway House was an expansion—into the "affordable model." Those activities would make it a business regardless of the product or service. I don't think the frequency applies because a lot of people just come to us for special exceptions for part-time ventures like expanding a hobby. And then it's likely going to grow. So the frequency doesn't concern me; it's the activities that look like a business to me. Regardless of whether they're renting or providing a service.

Drouin: No matter what they're getting compensation for, these activities to me constitute a business. The Castle is being advertised with other known commercial ventures of the same kinds. These activities would appear to be a business to me.

Stenersen: So are the activities much different than what the family is using it for? Drouin: No, it's the same activity. Stenersen: So, if we're not differentiating between a tiny rental and a huge rental, then aren't we going back to the fact that it's the same as an owner who markets his or her house to rent by the lake and then adds a bedroom or cuts down some trees for a view that might bring in more money?

Drouin: I think you're right, but where you're acquiring another property and making a name for the venture – that's Sunridge. All of these activities in totality look like a business.

Goodrich: Did I hear that the Holloway House was no longer being rented? Someone: No.

Stenersen: We should state if it's a residential use or not. Drouin: Is the use residential or are the activities residential? The tenants are behaving in a residential manner. I believe it's the business being run from it that's not residential.

Goodrich: We have to have a ground to build from here.

Attorney Bradley: I think the first straw vote you should take is whether the primary use is residential. And the next vote might be if you find the rental use of that property is or is not a business. And if you



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decide that it is a business, you still have to take the next step and say whether that type of business, that rental business, qualifies as an accessory use. That's three votes.

Drouin: That's breaking down the letter from the Board of Selectmen and Code Enforcement Officer.

Goodrich: STRAW VOTE: All those in favor of stating that the primary use of the Hunt property (Castle and Holloway house) is residential? All were in favor. So, all agreed that the Selectmen were correct in their statement.

Drouin: Two more questions: What is the primary use and what is the secondary use.

Goodrich: The second component is whether the rental of the Hunts' property is a business. And the third question would be whether it's an accessory use.

Stenersen: Does this decide the magnitude?

Drouin: So is the renting of this a business per the common understanding of the term "business?"

Stenersen: If we're not talking about magnitude, then it's cut and dry. But when we start talking about magnitude, it's a horse of a different color. So can we talk magnitude? I'm saying this as part of trying to define this ordinance. The scope of the rental – is that brought up anywhere in here?

Drouin: I think the scope of the rental is a function of the success of the business. A business might not be successful. You might have all the activities of a business but might not be good at it – overexpansion, bad price point, etc.

Breckenridge: Phil, what I hear you saying is that the magnitude of this rental may or may not make it a business. Stenersen: Does the magnitude of an activity determine whether it's a business or not? Then you have to determine what the line is that's to be crossed. If you rent out a property, it's a business. There's a difference between mowing someone's lawn and having a truck with your name on it, your own t-shirt, and expanding your activities and equipment to try expanding your business. The act of mowing a lawn doesn't make a business.

Stenersen: If we use that definition, then it can't be a business because its primary activity is a rental. Renting property out has been an accepted business around here forever. In our definition of what we're looking for, it's still like trying to differentiate between stealing \$1,000.00 vs. \$1.00. Does any rental become a business?

Drouin: If people stick an ad in a paper, it's different than an entity that's referred to in the third person, that has an expansion plan, an LLC, employees, a marketing plan, and increasing capacity to grow the business.

Breckenridge: I don't like vague regulations. Drouin: Unless it's permitted, it's not allowed. Where does it say that you can run a business in RES/AG?



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Goodrich: So the question is, is this a business? Drouin: It's permissive zoning. Goodrich: I would say it's not a business based on the implied definition of a business in our ordinance. All those that say it's a business: Drouin: Yes, Stenersen: No (the Clerk asked for clarification of who else said yes or no, but did not get it), Drouin: it's not the rental of a property that's the issue. It has become a third entity. In the straw vote, three to two voted that it's not a business.

Attorney Bradley: If you decide it's not a business, then you don't need to go to the next question. The Selectmen decided that what the Hunts are doing is an accessory use.

Drouin: Would the accessory use be people renting the place? Attorney Bradley: What's the difference? Drouin: Is the accessory use renting or living there? If they're residential people residing there, how can that be accessory?

Goodrich: I see it as primary use by the Hunts and residence by guests. Other uses of it would be subordinate to that primary use. Ancillary use would be secondary to that primary use. If it is a business, and it's decided it's not, is that the appropriate point to address what the Selectmen said?

Attorney Bradley: I don't think you have to decide whether it is a business to do that. It is a rental operation. But having reached the point that the primary use is residential and the rental operation is a proper accessory use, your next step is to say that some of those accessory uses are unacceptable—that it's unacceptable to permit certain of those uses. So you can put conditions on the accessory use that won't be permitted.

Drouin: So we should decide whether we're in agreement with the Board of Selectmen? Bradley: Yes, that's the final decision. Drouin: And if we feel that's not enough, we could impose further conditions? Bradley: Right. Stenersen: Or we can find that their decision was correct. Bradley: Yes.

Goodrich: You feel that some conditions need to be discussed. Breckenridge: Yes, at best it's a unique case for residential use. Drouin: Shouldn't you decide whether the Selectmen made the right decision first? Breckenridge: I don't know whether to support it because their decision is ambiguous. I don't know whether it can be rented every weekend or not.

Attorney Bradley: I think you can say you agree with the action of the Select Board except that...you feel the following restrictions or conditions would have to be addressed in order for it to be a legitimate accessory use of the property.

Breckenridge: Do we need a formal vote on whether it's a business?

Drouin: You can make a motion that says the Board is or is not in agreement with the Selectmen's letter of March 5th --or if there's a condition you don't agree with, you'd have to specify the modification.

Stenersen: We can affirm the first two points of Dave DuVernay's March 5th memo, but the part concerning frequency of rental needs to be cleaned up.



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Goodrich: You should say that the rental should remain a subordinate use. Breckenridge: I don't think that Sunridge Road should be used at all by the occasional renters. If you came in from another direction, I would think the people would not notice.

Drouin: It seems strange that if it were a residence it would be burdening the road.

Goodrich: One of the primary concerns we heard repeatedly was the presence of guests on Sunridge Road.

Drouin: It seems you're giving relief for something that doesn't exist: it's not a tourist home and it's not a B&B. It's also not a guest house but you're putting conditions on it. Goodrich: To give relief to those neighbors, the rental visitors to the Castle should access it via another entrance.

Stenersen: If we were to do that, how would that affect other lots for sale in there? If we say the road can't handle the traffic that would create... There are more lots for sale in Sunridge, so how do you restrict one residence from using it but not others?

Breckenridge: These vehicles are clearly not driven by people related to those that live there permanently. When I rode down the Castle area, they were some distance away from the lots for sale.

Goodrich: Didn't we have testimony from the Hunts that they were willing to have their guests use an alternative road?

Drouin: If this were a special exception application, you couldn't grant it because it would affect the neighboring properties with noise, etc. Here's this thing that's undefined. You're not willing to accept the usual and customary definition of a common word such as business, and you're basically granting him a special exception.

Thomas: If they were talking about putting in a beauty parlor and neighbors objected because of the traffic, etc., we wouldn't grant it.

Breckenridge: The best I can do is address their primary concerns – the road coming in and strangers there, and that is within the Board's right and responsibility.

Drouin: You're essentially granting a special exception. If I accept your premise that it's not a business-- if it's a special exception of this unknown entity, you are addressing those things that would not be approved under the special exception.

Goodrich: We're addressing an issue that was raised, and we have an alternative access that was mentioned other than Sunridge Road. Drouin: We should take care not to do more damage in trying to do good.

Stenersen: My point is that if we require the Hunts to have another form of access, how many more lots can be sold without having another form of access?



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Drouin: The original plan had that number of lots and had to accommodate the number of cars associated with those lots.

Stenersen: But you need a road a certain width. Whether that road is adequate for what's there – which is 14 lots. Whether your road is serving 14 houses or 100 houses, it's the same size. I'm saying the road is adequate.

Breckenridge: But I wasn't addressing the adequacy of the road. It's that strangers are coming in there and there's concern about the kids, the intrusion. The neighbors didn't expect this when they bought their homes. Stenersen: It wasn't a gated community when they bought it; it was for residents and their guests only. You would expect there to be less traffic on Sunridge Road than another road. The Hunts' guests are going to be more numerous than the others.

Breckenridge: It seems this particular residence is unique and the conditions put on it are designed to address the extraordinary uniqueness of the Castle which, by our regulations, can't be defined as a business.

Stenersen: If it's not a business and it's a residence, though a big one, I voted in agreement with that. So, how can we tell Mr. Hunt he can't use the road he built?

Breckenridge: When the people originally bought their homes, were they anticipating this kind of traffic? No, and I think this is a way to address that within the responsibility of this Board.

STRAW VOTE on adding a condition to access the Castle by an alternative to Sunridge Road: Drouin no, Stenersen no, Thomas no, Breckenridge yes, Goodrich yes.

Drouin: I think you're trying to please everyone; this might be part of the Planning Board's purview and it may not be doable. Maybe we can move onto statements two and three. The applicants had listed conditions (Tab 5 in the black folder, or page 2 of Section 8: "only access the property by the back road").

Goodrich: I didn't hear the total language – maybe rental visitors to the Castle will access it by the back road. #2: Marketing materials directing visitors to use the back roads sounds like an appropriate condition. #3: Putting directionals on road pointing to Sunridge, that's appropriate. #4 Noting the private road, okay. #6: The beach – "visitors" could be construed as guests of the Hunt family and it should be more specific to indicate paying guests.

Breckenridge: This says "beach area" and it should be more specific. There are two beaches. Drouin: One of those beaches has not yet been approved by the State and may not be since it was put in in error and may be converted back to wetlands. Goodrich: Maybe there should be language saying that the main beach is restricted to residents' use.

Drouin: This is a piece of property limiting their use of it. If you say upfront that the use is residential but part of that use is to not use the land they own, that sounds like taking the land.

Breckenridge: But could the renters use the Castle property. Drouin: The landowners have ownership of the beach.



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Goodrich: If there is a residents' beach and a potential Castle beach, are we doing a taking of land if we say the rental guests at the Castle are restricted from the residents' beach?

Attorney Bradley: I think you're discussing a permitted accessory use. The Selectmen said some of these accessory uses are permitted and some are not permitted. I would have worded it as so long as the accessory use is conducted under these conditions, it's a permitted use. However, there are other conditions that this Board would find not acceptable for permitted accessory use. You're setting conditions on permitted accessory use. So, whether you can say the accessory use is okay as long as they restrict the use of the beach, I think that's legitimate. If either party feels you've done this incorrectly or have imposed conditions that are unenforceable, they can appeal to the Superior Court or ask for a rehearing by the ZBA. I see the Board trying to work out a reasonable compromise that will satisfy everyone, and if everyone's dissatisfied, they can always ask for a rehearing or appeal to the Superior Court. It's not the final, so give it your best shot.

Thomas: I think it should say, "Do not permit access to the residents' beach."

Goodrich: We talked about using the back road, but that was shot down. Drouin: So do you have an agreement related to access? No, so we moved on. Now we're just talking about access to the beach.

Stenersen: Going back to the alternative road: if the Hunts are willing to fix up the alternative road, it seems like it would be a good thing to do. Drouin: I heard him say he would grade it off, but I never heard the Hunts say they would upgrade the road. Goodrich: I think they said they would access it "via." Breckenridge: I recall that Mr.Hunt said Thursday night that, if need be, he would close off that road to people renting the Castle. Stenersen: Could we ask Mr.Hunt about it? Attorney Bradley: You have the right to open up the meeting to further testimony, but the question is whether you want to do it.

MOTION: Stenersen moved that we open the back up to testimony for the sole purposes of addressing the back road issue: Breckenridge seconded. Discussion: Drouin: Never have I recalled opening up the session for testimony; I don't think this is the time to make deals. It's a slippery slope. Thomas, Goodrich, Drouin, and Breckenridge decided against opening the hearing back up to testimony. Breckenridge withdrew her second and the Motion did not pass.

Goodrich: Do we want to make a condition that rental visitors to the Castle access the property by alternative roads to Sunridge Road? Stenersen: I struggle with that because it's a huge condition, but I understand it would address a major concern of the neighbors and he has said he's willing to do it.

Goodrich: I support a condition requiring an alternative access. Breckenridge: I support that, too. Drouin: If this use is usual and customary for a residential property, it doesn't warrant it.

Thomas: If more lots are sold, the people are going to be more dedicated to keeping the road well. Right now, there are more people who don't care about the road that are traveling on it. I'm still back to whether it's usual or customary and whether it's a business or not.

Drouin: But we had to move on from there. Thomas: But the neighbors in 2009 wanted to put that condition on it. Mr. Hunt said he'd go along with it, so I guess I will. Stenersen: I'm 59% against it and 41% for it.



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30 PAYSON HILL ROAD

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It's a 3-2 vote, so there is a majority for restricting access.

Goodrich: If there is a condition restricting access, there was a second question saying that all marketing materials direct the renters to that alternative road. I think that's a reasonable alternative.

GENERAL CONSENSUS: All correspondence, marketing material will direct the renters to the alternative road.

GENERAL CONSENSUS: Rental visitors may not be allowed access to the residents' beach.

GENERAL CONSENSUS: The Hunts shall post signs that the beach is restricted to residents only.

Regarding, "There will be a sheet of guidelines or rules of conduct for deeded common recreational areas." Drouin: What if the rules of conduct are not what you think they should be? Fireworks are legal. Goodrich: Okay, I withdraw my agreement regarding the code of conduct because of the problem of making a list and enforcing that list of conduct. GENERAL CONSENSUS TO SKIP THIS.

Post boundary lines? Stenersen: Private property owners can post their land, but the information packet renters get when they arrive says where the boundaries are. Goodrich: Are we satisfied that these conditions are appropriate? Drouin: Who is going to enforce these rules? If these are not zoning conditions.... Breckenridge: That's not our purview.

Breckenridge: You raised a question about frequency. Dave DuVernay's memo, line item 2a: "Rentals of the premises that occur no more frequently than once a week." Would that allow two weekends? I would like to delete that part. Goodrich: We want to make sure that this property use remains a subordinate use. The primary use is the residence. Breckenridge: I would like to delete 2a and 2b. (Under permitted uses, 2b states: "Rentals of the premises for a term of more than one week.")

Goodrich: I think it should say that rentals must remain subordinate to the primary use. I would not ever want it to become anything more than subordinate. Breckenridge: I don't want to go near that because we've not seen any restrictions on rentals. What would the Code Enforcement Officer do?

Drouin: If you rent it every weekend, that's less than 50% of the time. What if the Holloway House is rented 26 weekends and the Castle is rented 52? Sunridge Farm is both dwellings.

Goodrich: Regarding allowable "events," we have to come up with something less vague. When the neighbors talked about the number of people at the events.... Thomas: But how could we pick a number of allowed guests? Are you suggesting we need to specify the events? Drouin: Having a wedding at your house for family is different than hiring your house out for events. These are essentially unenforceable. We could say "events limited to overnight guests." The Selectmen didn't want it advertised for wedding receptions.

Drouin: The Hunts already allowed a medieval gathering considered an event by neighbors but the Code Enforcement Officer said it wasn't an event. Breckenridge: Maybe we should go along with what the Selectmen said.



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Regarding the frequency of use of the Hunt Castle premises mentioned in 3b and 2b of Dave DuVernay's memo – these are connected: The Selectmen permitted renting it for a term of more than one week. Drouin: Then, according to our permissive zoning, it would not be permitted to be rented for less than one week. I think you have to clean up 2a and 2b. Drouin: There's a two-day minimum rental. If renters leave on Sunday, no one else can come in the following Friday because the week is Sunday to Saturday and there's no more than one rental per week.

Breckenridge: I don't think the frequency is the issue if we're talking about access to the property and they're following the rules.

Goodrich: Consecutive weekends aren't allowed according to this memo. Drouin: If we aren't willing to define a business, why are we defining a different week than Sunday to Saturday? Breckenridge: I think we should just say the rentals would be secondary/subordinate to the primary use.

Stenersen: But every weekend would qualify. Drouin: If the neighbors are worried about traffic and safety, they could have different people in the Holloway House next to them every weekend. Sunridge Farm consists of two buildings.

Goodrich: Is there consensus to leave #2 and #3 as worded? Breckenridge: I would get rid of 2a and 2b - the frequency other than the residence's primary usage. Drouin: #3b says it can't be rented for more than once a week. So you couldn't have a party coming in for three days and another for four days. 2a and 3b are in agreement. What's not permitted are rentals more frequently than once a week.

All those in favor of leaving 2 and 3 as written say Aye: Drouin abstained, Thomas said yes, Stenersen said yes (since the wording is not clear but its spirit is clear), Breckenridge said no and would delete 2a and 2b and 3b and instead put that, "The Hunt property rental use must remain subordinate to the primary use." All agreed to that but Drouin abstained.

#4 and #5 okay: The consensus is that neither the Castle nor the Holloway House is a Tourist Home or a Bed and Breakfast. #6: The consensus is that the Zoning Board cannot speak to this item since it's a Selectmen's issue.

Goodrich: It's time to formally vote on this.

Motion relative to the Selectmen's decision:

Drouin MOTIONED: That the Rindge Board of Adjustment agrees with the Decision of the Board of Selectmen as stated in the March 5, 2012 letter from the Code Enforcement Officer summarizing the Board of Selectmen's Administrative Decision. The Board of Adjustment agrees with that letter with the following modifications and conditions:

- The deletion of Items 2a, 2b, and 3b and the addition of the following conditions:
- All rental visitors to the Castle are to access the Castle by the alternative road.
- All marketing materials should contain specific directions to the property via the alternative road.
- No directional or informational signs shall be placed on Sunridge Road or Little Meadow Brook Road indicating the Castle's location.



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- Information indicating property bounds and restricted areas shall be included in all marketing materials.
- Rental visitors shall not be granted access to the Residents' beach and the same shall be posted.
- Rental usage will remain subordinate to the primary use of Sunridge Farm.

Stenersen seconded. Breckenridge, Goodrich, and Stenersen – YEA / Drouin and Thomas - NAY

Drouin: I still think it is a business and it should have been called such; it does not belong in a RES/AG district.

Stenersen motioned to adjourn the public part of the meeting, Breckenridge seconded, and all were in favor.

Attorney Bradley: A request for a rehearing can be considered in a public meeting, or a hearing. The Board can deny a rehearing if they believe there was no substantively wrong decision-making. The neighbors may have thought it was a business--was it a business, and is that type of business an acceptable accessory use? It can also be appealed by the other party. If you agree you made the right decision, then you can deny their request and they have to appeal to Superior Court.

Drouin: In a meeting, you don't accept public input but in a hearing you do. Attorney Bradley: I suppose you could invite testimony, but why would you? It's a meeting unless you decide to open it. You have to be careful because they don't have to attend a meeting, but if you open it up to testimony you may be faulted for not notifying the abutters. So you really have to decide in a vacuum. A rehearing is an opportunity for this Board to correct errors. You're not opening it up all over again. If you hold a rehearing you do the notices again and start all over again. Goodrich: We were all sincere in the positions we took. Bradley: You absolutely were.

Goodrich: The Planning Department is likely to be hiring a Secretary in June or July and has explored with us the possibility of having the land use Secretary serve as Clerk for this Board. Are you comfortable with sharing a Secretary with Planning? We experimentally added this role to Linda's job and saved the cost of a Clerk but she has too much on her plate. Joe is doing a lot of the work now. Drouin: Now our monies will help the Planning Dept. And, since Planning and Zoning are related, it will help the applicants to the Zoning Board to be able to speak with someone in Planning--the customer service side works out better. I think the communication between the two Boards will be helpful. There was general consensus on this.

A motion to adjourn was seconded, and all were in favor.
The meeting adjourned at 10:13pm.

Minutes respectfully submitted by Linda Stonehill, Clerk