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July 11, 2007

HAND DELIVERED

Mr. Barry Watson, Chair
Zoning Board of Appeals
Town of Gray
6 Shaker Road
Gray, Maine

Re: Twin Brooks Camping Area LLC, "Twin Brooks Campground", Gray Maine

Dear Chair Watson and Members of the Board:

We are submitting with this letter Twin Brooks Camping Area LLC's requested Findings and Conclusions for the Board's consideration.

Twin Brooks also wants to thank the Board very much for its considerable time and effort in this matter. We want to reiterate how important it is for Twin Brooks to be able to continue with its campground business as it has for over 40 years in this beautiful location.

We also want to preserve for the record and bring to the Board's attention a few legal points that have been raised and discussed, as follows:

1. We believe that the burden of proof regarding the grandfathered status is that it is Twin Brooks' burden in the first instance to show that the campground sites 6 through 14 were lawfully in existence as of 1968 (or 1974, the date of the first Comprehensive Plan). Once the fact of those campsites' grandfathered status is shown, however, it becomes the Appellants' (the Town's) burden to prove that the campground sites lost their grandfathered status due to discontinuance for a period in excess of one year. Town of Orono v. LaPointe, 698 A2nd 1059.

2. The Appellants have asserted in both hearings that the letter identifying violations from then Code Officer Paul White in 2006 has a preclusive effect. Under established Maine law, the letter did not have the legally required notice to my client that it could

Jensen Baird
Gardner Henry

July 11, 2007
Page 2

have such a final effect and is not binding or preclusive. Town of Freeport v. Greenwood. Moreover, the questions raised in that letter were resolved with Mr. White's subsequent determination that no violations existed as evidenced by the October 13, 2006 email from Michael Morse, addressed to Al Frick.

3. It is our position that the Board is acting in an "advisory" role to the Code Enforcement Officer in this matter, as we set out in our May 25th letter to the Board. The Salsbury and Saborn cases noted by the Appellants in their May letter are cases involving the issuance of permits, not enforcement matters.

Twin Brooks looks forward to meeting with the Board at the July 25th meeting during the Board's deliberations on this matter, and we will be prepared to answer any questions the Board may have at that time.

Very truly yours,



Leslie E. Lowry

cc. Kevin Beal, Esq.; Michael Hill, Esq.
Calvin Austin; Andrea Maloney; Albert Frick

Twin Brooks

Twin Brooks Camping Area's
Requested Findings and Conclusions

1. **Grandfathered Sites.** Based upon the record of Affidavits from the Town files provided to the Board, including those submitted by the Appellants and Twin Brooks, based upon the live testimony provided at the hearings held on May 25th and on June 27th, including, particularly, testimony by various people who camped at and are familiar with Twin Brooks for many years, and including testimony by Mrs. Ruth Foster and Mr. Cliff Foster, the Board finds that Twin Brooks has demonstrated that camping sites 6 through 14, inclusive (as shown on the Plan prepared by Albert Frick Associates dated September 11, 2006), were lawfully established and in substantial existence prior to December, 1968. The Board finds that the many people who testified personally to their knowledge of the existence of these sites during the 1960's were persuasive and certain in their recollections of the existence and use of those sites. Each person testified directly with reference to the Plan prepared by Albert Frick Associates showing the locations of sites 6-14 in question. Some of that persuasive testimony included the following:

- Carol Desco testified to her knowledge of sites in the area of sites 7, 8 and 9.
- Betty Bayley testified to clearing sites in this entire area all the way to the property boundary as early as 1963.
- Bob Daigle testified to the existence of all of the sites shown on the plan from 1963 through the early 70's, and to their continuing existence from the early 1980's on.
- Dan Fossett testified to camping at Twin Brooks since 1968-69 and that there were either 8 or 9 campsites in the area in question.
- Frank Monroe stated he camped from 1965 to 71, and while he could not recall the exact number of sites he was certain there were several sites in the area.
- Jean Millington testified that she camped at Twin Brooks since 1964, that she remembers the campsites being in the area in question, and that campers were there every summer.
- Mary Chandler testified that she agreed with all of the prior testimony and recalled all of her memories of summers at Twin Brooks.

Twin Brooks

- Calvin Austin, owner, testified as to the earliest creation of sites and his efforts in 1971 to provide small amounts of fill to these campsite areas that had traditionally been damper.

In addition to such live testimony, the November, 2006 affidavits of Ruth Foster, Calvin Austin, Andrea Maloney, Clifton Foster, Daniel Fossett, Arthur Mason and Gary Foster, and of Peter Jacques dated June 27, 2006, clearly demonstrated and evidenced that the campsites have been in continual use by tents, campers and RV's during the period since the 1960's and continuing to the present day.

The Board therefore concludes that sites 6 through 14 as shown on the Plan were lawfully in existence prior to December, 1968, and that all of such sites are grandfathered non-conforming sites under the Zoning Ordinance and Shoreland Zoning Ordinances.

2. **Discontinuance of Sites.** The Board finds, based upon the testimony cited above and the record of documents provided at the hearings, that the Appellants have failed to carry their burden of proof in showing that the subject campsites were discontinued for any period of time since their establishment and existence following 1968. While not all campsites were used every day during a camping season, there is no indication that the use of a site was discontinued. There was credible testimony that all of the sites in question have been used each year since 1968 or earlier through to the present day. It is the Board's finding that Twin Brooks has shown credible evidence of such continual use, and the Board concludes that none of sites 6 through 14 have been discontinued for a period that would cause it to lose its status as a grandfathered, non-conforming campsite under the provisions of the Zoning Ordinance and Shoreland Zoning Ordinance.

3. **Shoreland Violations.** The Board finds and concludes that, while the Appellants' photos and supportive testimony indicate a "change" in the vegetation in certain areas of the Twin Brooks Campground, no showing of any violation of the applicable Town Zoning or Shoreland Zoning Ordinance has been demonstrated.

The permissible scope of removal and harvesting is expressly set forth in the Shoreland Zoning Ordinance, and a determination of a violation requires specific measurements. The

Twin Brooks

Board received testimony and a letter dated January 23, 2007, from Greg Foster, a Maine licensed professional forester, who personally reviewed the tree removal with Code Officer Paul White in 2006. Both the testimony and the letter evidence that the tree removal did not exceed that permitted under applicable ordinances and regulations.

The only area where the any significant tree removal appears to have taken place (Sites 9 through 12) is more than 100' from the shore. The Ordinances provide that in such areas up to 40% of trees 4" in diameter can be removed every 10 years. The Ordinances also allow cleared openings aggregating up to the greater of: (i) 10,000 square feet or (ii) 25% of the total area of the lot in the Shoreland Zone (in this case, 25% = 30,000 sq. ft.). The Board finds little, if any, evidence of tree removal within the 100' shoreland setback area. A few (3 perhaps) trees were removed with a permit.

The Board finds persuasive the articulated findings of no violations by Mr. Michael Morse, Shoreland Zone Expert of the Maine DEP, in his letter to Albert Frick dated June 25, 2007, copied to Kinderly Hodgdon. Likewise, the Town Code Enforcement Officer testified that she found no violation of the applicable Ordinance provisions regarding these standards. The Appellants' aerial photos, taken at differing times of year with indeterminate scale and without any specific resolution, do not prove that a violation has taken place.

4. **Expansion of Use.** The Board concludes that under the Town Zoning and Shoreland Zoning Ordinances, a campground site is lawful for tents, campers or recreational vehicles. Once a "site" acquires its grandfathered status, it is a campsite for all such allowed camping facilities, and there it is not a legally different or expanded "use" whether it is a tent, an RV or a camper. As a matter of the history of campsites and campgrounds, the exact "boundaries" of the sites has never been required to be mapped out. Areas within an old campsite that were wooded or vegetated were still part of the campsite, however. The Board finds and concludes that the tree removal and the providing of fill, by themselves, do not constitute an unlawful expansion or extension of a non-conforming use, especially in this case where such activities are lawful.

5. **Gravel; Service Drops.** The Board finds that the placement of gravel on certain of the subject sites is permitted maintenance of campsites allowed under the Gray Zoning Ordinance and the Shoreland Zoning Ordinance. Normal maintenance of sites is expressly allowed without

Twin Brooks

a permit. The Board heard testimony that the placement of gravel, for the first time in many years, was needed to rectify existing dampness on certain of the sites and to maintain suitable access.

The Board finds and concludes that the providing of electric service and similar services to sites are expressly permitted under the Ordinance, and that if such services are being newly provided, the same are not expansions of nonconforming uses. The Board also finds no evidence to indicate that any service drops were unlawfully installed.

6. **Shoreland Zone Setback.** Based upon the testimony Mr. Frick, Kinderly Hodgdon and the applicable DEP Guidance document, the Board finds and concludes that the wetland area in the southeast corner of the campground shown on the Plan is not a wetland adjacent to Little Sebago Lake that requires an additional setback to be imposed. Based upon that determination, the applicable setback for sites and for certain Shoreland Zoning provisions are properly shown on the Plan. Based upon the measurements made during the site visit and measurements from the submitted Plan, the Board finds that only site 7, a small portion of site 8 and a portion of site 6 are located within the 100' Limited Residential portions of the Shoreland Zone. Those sites are grandfathered sites as found above.