



## COMMUNITY DEVELOPMENT

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### Draft Zoning Board of Adjustment Minutes June 26, 2012

#### Board Members:

Mark Samsel, Chairman - Present  
Heath Partington, Vice-Chairman - Present  
Elizabeth Dunn, Member - Present  
Jim Tierney, Member - Excused  
Jay Yennaco, Member – Arrived at 8:20 pm  
Mike Scholz, Alternate – Excused  
Mike Mazalewski, Alternate – Present  
Tony Pellegrini, Alternate - Excused

#### Staff:

Nancy Prendergast, ZBA/Code Enforcement Administrator  
Cathy Pinette, ZBA Minute Taker

#### Call to Order/Attendance

Chairman Samsel called the meeting to order at 7:30 pm, introduced the Board Members and staff, and explained the meeting process.

The Chairman appointed Mr. Scholz to sit for Mr. Yennaco and Mr. Mazalewski to sit for Mr. Tierney.

#### Public Hearings

##### Lot 25-G-20, Case #21-2012 (continued from 6/12)

Applicant – Edward N. Herbert Associates, Inc  
Owner – Crayton Irrevocable Trust of 1999 – Lucille Crayton, Trustee  
Location – 30 Marblehead Road  
Zone – Residential A

The following variances are requested from the Zoning Ordinance to permit the existing lot to be subdivided into three lots: **Section 702** and **Appendix A-1** – to allow one lot 141.83' frontage where 175' is required.

Ms. Dunn read Case #21-2012 into the record and the abutter list.

- Mr. Shane Gendron, Herbert Associates, on behalf of the applicant, Crayton Irrevocable Trust of 1999 – Lucille Crayton, Trustee, addressed the Board. He stated the existing lot has a house on it. They are proposing to subdivide the existing lot which is 8.6 acres into 3 lots. The existing home will remain on one lot and conform to the Zoning Ordinances with the

exception of the frontage. They are asking for a variance to allow this lot to have 141.83' of frontage where 175' is required. He stated that this 8.6 acre lot has the maximum potential to be 5 lots. He read the 5 criteria into the record. Mr. Gendron showed 6 photos on the wall board to the Board.

- The Chairman stated that Mr. Gendron commented that this lot has a maximum of 5 lots and questioned how that would happen. Mr. Gendron stated they would put in a road and disperse the houses.
- The Chairman asked what the distance was between the existing driveway and the new driveway. Mr. Gendron stated 30 feet.
- Ms. Dunn stated that the applicant would have 1 lot at the top of Marblehead Rd and 1 lot in the middle which would have 141.83 feet of frontage. Mr. Gendron stated yes, the middle lot would have 141.83 and the other two lots would have 175'. Ms. Dunn stated a concern is that the visibility on that road is not that great and the applicant would have to go to the Planning Board for this if approved. She stated it would be a tough driveway to get in and out of.
- Mr. Peter Zohdi, Herbert Associates, addressed the Board. He stated that they sent the surveying crew to make sure they had the proper site distance. Right now they are not asking the Planning Board for a waiver for the site and driveway. He has to work with the Road Agent.
- Ms. Dunn asked Mr. Zohdi to show her where the McMann house and the other house are on the pictures. Mr. Zohdi did not have that information. Ms. Prendergast showed the Board on the CAI Query Manager online.
- Mr. Partington asked how wide the skinny part on the plan was. Mr. Gendron stated approximately 60 feet.
- Mr. Zohdi stated Mrs. Crayton wanted to sell 2 lots. He stated he could make the skinny part bigger. They can do that according to the soil.

The Chairman opened the public hearing at 7:47 pm, hearing no comment, public comment was closed.

**The Chairman entertained a motion to go into Deliberative Session. Motion by Mr. Partington, seconded by Mr. Scholz. Motion passed 5 – 0.**

- Ms. Dunn stated that this is a significant sized lot, to use it for 3 lots is not unreasonable, it meets all the Subdivision Regulations except for the 141.83 feet of frontage, there is no diminution of the surrounding properties, the request is a reasonable one and the variance from the ordinance is not that great.
- Mr. Partington, Mr. Mazalewski and Mr. Scholz agreed with Ms. Dunn.

- Mr. Partington stated that the Planning Board would handle the driveway issue. He stated we should approve as presented making a note that the Planning Board has jurisdiction over the driveway.

**Mr. Partington motioned to grant Case #21-2012, in consideration of the 5 points presented by the applicant, Section 702 and Appendix A-1 – to allow one lot (25G20) 141.83’ frontage where 175’ is required.**

**Ms. Dunn amended and motioned to the proposed reconfiguration of Lot 25G20 to allow 141.83 feet of frontage where 175’ is required. Motion seconded as amended by Mr. Scholz, Motion passed 5 – 0.**

The Chairman advised all of the 30 day appeal process.

- Ms. Prendergast will bring the Board’s concerns to the TRC regarding the location of the driveways on the other lots.

**Lot 18-L-450, Case#22-2012** (moved from 6/12)

Applicant – Attorney John Cronin of Cronin & Bisson, PC on behalf of Cafua Management, LLC

Owner – Estate of Ruth I. Bohne, C/O Janet Weigel

Location – 43 Range Road (18-L-450)

District – Professional, Business and Technology District & Cobbett’s Pond & Canobie Lake Watershed Protection District

An Application to Appeal an Administrative Decision has been filed against a decision made on April 18, 2012 by Ms. Nancy Prendergast, ZBA/Code Enforcement Administrator regarding her interpretation of Section 614.2.12.

Ms. Dunn read Case#22-2012 into the record. Attorney was running late so this case was moved to after the next case.

**Lot 12-A-532, Case #23-2012** (continued from 6/12)

Applicant – The Dubai Group, Inc.

Owner – MacThompson Realty, Inc.

Location – 125 Indian Rock Road

Zone – Gateway Commercial District

The following variances are requested from the Zoning Ordinance: **Section 706.8** to allow the free-standing sign to be 12 feet in height where 8 feet is allowed; and **Section 706.4.2.2** to allow two wall signs for one tenant where one is allowed.

Ms. Dunn read Case #23-2012 into the record.

- Mr. Carl Dubay representing MacThompson Realty, Inc., addressed the Board. He stated that other people at the meeting for this case would be the sign company representative, the Thompson’s, and Max Puyanik, of ConvenientMD. Mr. Dubay asked to have admitted Exhibit A (Summary Graphics) and Exhibit B (DOT Permit that the Board had asked for). The Chairman accepted these.

- Mr. Dubay stated that they had applied for 2 variances and would like to talk about them together as they are both part of this case. He stated that the site is under construction now, the left side has a roof and they are pouring the concrete on the right side now. The right side will be an urgent care facility. There is a free standing sign in the corner and they have a couple of designs that were approved by the Planning Board. The variance before them is for a free standing sign that is 12 feet where only 8 feet is allowed. The other variance for sign relief is for the urgent care center and is for 2 wall signs, one facing the front and one facing the side. They have spoken to DOT about the sign. They have been instructed to remove any signs that could obstruct the site line and provide restrictions that only automobiles are to park there. RT. 111 has been rebuilt the lot as a “swoop” as opposed to a “T”. This was originally a corner lot and land was taken by DOT. As part of that, Mr. Dubay worked with DOT. DOT wanted to make sure the sign was up enough so that people could see under it. DOT also wanted low vegetation and they have put that on the plan. Mr. Dubay showed the Board a drawing of the sign. The original sign proposed was a long sign and met the 8’ to the top and it was 60 sqft. He told the Board that they wanted something more aspect ratio and would like a 12’ sign. The Board could consider the unique areas of a 12’. They want to keep it at 60 sq ft but want to make it so that you can see under the sign. He would like to have Peter March, the sign maker, address the Board.
- Mr. March stated his company designs metal signs with aluminum and vinyl and only the letters would be lit at night. He stated the squat sign is unattractive; aesthetically it doesn’t conform to the architecture. It is so wide, an unnecessary use of land and more expensive to build. The larger sign takes up less space, this new sign is a normal size and it would not be contrary to the public interest. With the number of tenants the new proposed sign would work better.
- The Chairman asked if the design up top is 1/16<sup>th</sup>. Mr. March stated yes. Mr. Dubay stated the architectural feature addresses 1-1/2’ and they moved the street number up on the sign. The Client wants to make it look good.

Mr. Yennaco arrived at 820.

- Mr. Dubay stated that they are not adding a lot of extra stuff, just a clean look. He stated there were unique characteristics to this lot. He stated he needed to make the bottom of the sign so people can see through from their cars.
- Ms. Dunn asked Mr. Dubay if the space under the proposed sign is enough so a driver could see through it. Mr. Dubay stated the topography is flat and they wanted to make sure all cars can see each other. The squat sign does not perform well. The Thompson family worked hard with DOT for the site distance. Ms. Dunn asked if the sign could be moved. Mr. Dubay stated that it really needs to be in the middle of the lot.
- The Chairman asked Mr. Dubay if he needs to conform to DOT plan on location. Mr. Dubay stated yes, parking large trucks is not allowed.
- The Chairman asked the applicant to speak to the wall signs.

- Mr. Max Puyanik, of ConvenientMD addressed the Board. He stated that this site was chosen because it was on a corner. They are dealing with patients who are bleeding, anxious, and need to identify where the building is. Many patients will be coming from more than 20 miles away. They want people to be able to see the sign before they get to the medical center. They believe it is clearly in the best interest of the patients to see the sign when they are coming from the West.
- The Chairman asked Mr. Puyanik what the hours were for the medical center. Mr. Puyanik stated 9 – 9, 7 days a week. He stated they have gone with the most expensive sign available.
- Ms. Prendergast stated that channel lettering was part of the approval of the Planning Board.
- Mr. Dubay explained to the Board what channel letters were. He stated the sign meets all the requirements. Tenants are allowed 2 wall signs on corner lots, the question now is, is this a corner lot. Mr. Partington read the ordinance looking for “corner lot”.
- Mr. Dubay read the 5 criteria for the variances into the record.
- Mr. Mazalewski stated that the wall sign on the building was lit by LED but on the plan it stated face lit, will it be surface lit. Mr. Dubay stated no. Mr. Puyanik stated they are basically handmade channel letters in boxes that project forward.
- Ms. Dunn stated regarding the free standing sign was that one of the reasons is because the DOT re-configuration was forced on the applicant. She asked what is different about this site and this sign that DOT is telling you as opposed to other signs. Mr. Dubay stated DOT without this unique area they would have either taken more of the property for site lines or an easement. DOT said they would add site lines to the permit due to the site issue.
- Ms. Dunn stated that Note 14, Exhibit B states the sign shall be elevated on posts to provide clear visual heights. She asked if that was why the applicant put it in. Mr. Dubay stated that you want to be able to see as much as you can. They go from pavement to 3’9’ or 3’ 6” depending on the criteria. The applicant wants to have that openness. This was unique to the sign cone. It ends up being a better, safer sign instead of the squat sign. Ms. Dunn asked why they didn’t want to bring it down to ground level. Mr. Dubay said it would block the site. Ms. Dunn stated that at other sites you wouldn’t have this issue. Mr. Dubay stated that there are stressors that are involved in a healthcare facility at intersections and the curvature was considered by the DOT. Mr. Dubay stated he doesn’t think the Board will see this issue with any other lots in town. The DOT recognized this with this unique lot.
- Mr. Mazalewski questioned the sentence in the 5 criteria that reads “The alternative is an unattractive long squat sign board that is elevated along the bottom to meet NHDOT special site distance clearance criteria”. Mr. Dubay stated the sign does meet DOT's requirements. He does meet the 3’6” but there were other factors that play into his. Mr. Dubay and the applicant though this was the right thing to do.

The Chairman opened the hearing to the public at 8:47 pm.

- Mr. Puyanik stated from walking the site, the wall is an issue. If you are trying to get in and out of the lot the tall sign is safer.
- Mr. Partington asked Ms. Prendergast if 706.4.2.2 is applicable. Ms. Prendergast stated that was the request from the Planning Board.
- Mr. Scholz stated he is not convinced it doesn't meet the criteria of 706.7.2.2

**The Chairman entertained a motion to go into Deliberative Session. Motion by Mr. Scholz, seconded by Mr. Partington. Motion passed 5- 0.**

- Mr. Scholz stated he doesn't think the Board needs to grant relief because there are two cross roads, Rt. 111 and Range Rd.
- Mr. Partington stated that the way you read the ordinance it doesn't even speak to two roads.
- Ms. Dunn stated that if it is facing more than 1 ROW it doesn't need a variance.
- Mr. Scholz stated he thinks it does. But he agrees with Mr. Partington, he can make the argument supporting both.
- Ms. Dunn read the ordinance. She stated they could have two signs on two sides if they have two roads.
- Mr. Scholz stated that if a person was coming from Range Rd they would see the sign; if they were coming from Indian Rock Rd. would see a sign. He doesn't think relief is needed.
- The Chairman stated he agrees and stated the Board should grant relief. He stated the Planning Board could challenge their decision.
- Mr. Shultz stated they could provide the Planning Board with why they didn't think it required relief.
- Ms. Dunn saw some of the Planning Board meeting and it seems some discussion was to send it to the ZBA for decision.
- Mr. Mazalewski asked what the harm was in granting the variance if the Planning Board suggested it. The Chairman stated the variance goes with the land, and it could set a precedent.
- Ms. Prendergast stated that she thinks this is one of those cases where they weren't sure.
- Ms. Dunn stated that this keeps coming back to whether or not this is a corner lot. People still think of it as a corner lot. It does have a castle wall.

**Ms. Scholz motioned for Case #23-2012, in consideration of the 5 points presented by the applicant, in light of the testimony, the facts given, the Board's interpretation of the**

**ordinance (706.4.2.2) relief is not necessary for both wall sign facades facing a public ROW, seconded by Mr. Partington. Motioned passed 5 – 0.**

- Mr. Scholz addressed the safety concerns and sign placement is in a good spot.
- Mr. Partington had concerns with hearing if they are changing they sign for safety or aesthetics, he doesn't think the taller sign will change the characteristics of the property, no diminishment of surrounding properties, the uniqueness is this is a rounded lot with a rock wall and you will have longer sigh lines.
- Ms. Dunn agrees with Mr. Partington and stated it is unique with the historic wall.
- Mr. Scholz agrees with Ms. Dunn and the Chairman concurs. Safety is critical if you are seeking out the medical center.
- The Chairman stated it has come up before and proportion needs to be considered in our ordinances.

**Mr. Scholz motioned to grant relief for Case #23-2012, in consideration of the 5 points presented by the applicant, from Section 706.8 to be 12 feet in height where 8 feet is required as submitted in Exhibit A on page 2, seconded by Mr. Partington. Motion passed 5 – 0.**

The Chairman advised all of the 30 day appeal process.

The Board took a recess at 9:10 pm and was back in session at 9:15pm.

**Lot 18-L-450, Case#22-2012 (moved from 6/12)**

Applicant – Attorney John Cronin of Cronin & Bisson, PC on behalf of Cafua Management, LLC

Owner – Estate of Ruth I. Bohne, C/O Janet Weigel

Location – 43 Range Road (18-L-450)

District – Professional, Business and Technology District & Cobbett's Pond & Canobie Lake Watershed Protection District

An Application to Appeal an Administrative Decision has been filed against a decision made on April 18, 2012 by Ms. Nancy Prendergast, ZBA/Code Enforcement Administrator regarding her interpretation of Section 614.2.12.

Ms. Dunn read Case#22-2012 into the record.

- The Chairman addressed Attorney Cronin. He stated that the Board had concerns with the initial variance and the subsequent appeal and has confirmed with the Town attorney that the Board needs Attorney Cronin to give the substantial difference with the original request and the current one. Attorney Cronin stated that the ordinance was changed regarding low density traffic and that gives the applicant an opportunity to proceed.
- Mr. Partington stated that Attorney Cronin's appeal speaks to something different than the language change in the ordinance. He stated the appeal points to something that is entirely

different than the ordinance. He stated they are appealing something the Board discussed previously and reasonably long at the original hearing. Attorney Cronin stated he doesn't think it makes a difference. it is a separate application that was filed and a separate opportunity to appeal. He thinks they have the right to move forward.

The Chairman asked for comments from the Board.

- Mr. Scholz does not believe the Board has jurisdiction to hear the case as what was posted as the changed language. The language was available for the applicant in January.
- Attorney Cronin stated that they did not get the benefits of that in the underlining hearing. Ms. Dunn stated at that time the basis of her denial was low density.
- The Chairman stated that it did fail on two points and denial was based on two of the 5 criteria. Attorney Cronin stated he doesn't know why there is a move not to hear this. It can be heard here or in Superior Court and that is the Board's option.
- Mr. Scholz stated for the record he doesn't think he has heard anything compelling that makes him want to hear an appeal of an Administration Decision where there is an application that has been denied on record.
- The Chairman stated that the Board did meet with Attorney Campbell earlier this evening and had a recommendation from him and followed it.
- Ms. Dunn stated that it does not meet the re-do over, the request is basically the same, and the request does not meet the appeal filed with Superior Court. She stated the main issue in the case was whether or not the proposed use was an allowed use in that spot and it is not, and that was the decision of the Board based on the spirit and intent and the hardship criteria. She thinks the Board should not take action on this case.
- Mr. Shultz stated that the reason the ordinance has changed but 614.2.12 was not changed. This was posted and there was an admission by Attorney Cronin to that fact. This was available for the January 24<sup>th</sup> meeting
- Ms. Dunn stated that at the January 24<sup>th</sup> meeting there was a discussion of what the proposed ordinance would be and whether or not that would effect the Board's decision and that was already dealt with by this Board.

**Mr. Scholz motioned not to proceed with hearing Case#22-2012 because the Board does not have jurisdiction, this case is not materially different that the case on January 24<sup>th</sup> which was denied by the Board, the request for rehearing for case 5-2012 was denied and currently in Superior Court on appeal. Seconded by Mr. Partington. Motion passed 5 – 0 to not hear the request.**

Mr. Yennaco was seated for Mr. Scholz. Mr. Scholz was seated for Mr. Mazalewski,

**Application for Re-Hearing:** Case #14-2012, Lot 17-L-82, 3 Grove St. (moved from 6/12)



Ms. Dunn read Case #14-2012, Application for Re-Hearing into the record.

- The Chairman stated that a rehearing can be asked for if there is an error, omission or a technical error. The Chairman will go through each item on the re-hearing request. The Chairman read Mr. Peter Coffin's rehearing request letter.

#### 1. Technical Error – Height & Size of the Proposed Building

- The Chairman state it sounds like the applicant thinks the Board made a technical error. He asked if the Board was clear on the size.
- Mr. Shultz stated he was clear that the basement was a walkout.
- Mr. Yennaco stated he gave an approximate of rough numbers and that was equal to the current building. Mr. Partington stated there were several discussions about the scale of the building.
- Mr. Scholz stated the Board had a discussion about the scale.
- Mr. Yennaco stated the Board asked questions that were answered.
- The Chairman stated there is an inaccuracy under the height that he is talking about
- The Chairman stated there is not a technical error, Mr. Partington agreed.
- Ms. Dunn she doesn't think there was an error with the drawings submitted, but the heights were horrifying to her. Ms. Dunn asked if the plan matches the numbers he gave us at the hearing, they probably do. The part facing the water is substantial. What anyone is told verbally before the hearing is not factual. The plans and what we have at the hearing is what is record.

Vote on Technical Error 5 - 0

#### 2. An Error Of Omission – Well & Drilling

The Chairman stated that the location of the well and water table was discussed and it is not under the Board's jurisdiction.

- Mr. Partington does not remember the discussion on the well but doesn't feel it would have made a difference.
- Mr. Scholz stated there was discussion regarding blasting.
- Mr. Yennaco stated the applicant stated they would take precautions if needed.
- Ms. Dunn stated she didn't see anything in the minutes but she was unhappy with the well.

Vote on An Error Of Omission 4 – 1 (Ms. Dunn)

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### 3. An Error Of Omission - Drainage

- Mr. Yennaco stated the Board discussed impervious. He does not recall a discussion on the swales.
- The Chairman stated it is not under the Board's jurisdiction.

Vote on An Error Of Omission 5 – 0.

### 4. Technical Error – Neighboring Homes

- Mr. Scholz stated even three homes away can be used. Testimony can be given at the hearing.
- Mr. Yennaco stated that the terminology “neighboring homes” can be a home in close proximity. He didn't think the pictures were the neighbor's house.
- Mr. Scholz stated no rebuttal at the hearing.

Vote on Technical Error 5 – 0.

### 5. Technical Error – Tower – Turret

- Mr. Scholz stated he empathizes with Mr. Coffin but this is not new information, the information was available at the time of the hearing.
- Ms. Dunn stated the files and drawings were checked and they do match, and that is what the Board has to decide on and is on record.
- Mr. Partington stated that the front of the building wasn't the focus, the rear of it was.
- Ms. Dunn stated the tower part walking out to the water.
- Mr. Partington stated the roof line was going to be a little bit higher. Ms. Dunn said there is a huge difference in the peak of the roof plus the tower.

Vote on Technical Error 5 – 0.

### 6. Technical Error - Garage

- The Chairman stated this is a design issue not the Board's.
- Mr. Partington stated the Mr. Maynard was speaking figuratively not literally about the garage.
- Mr. Partington will vote to deny. He will vote on a re-hearing on this case for none of the issues presented. He stated the Board did make a technical error. The Board treated the

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project like it was being developed on a un-developed lot and it didn't give proper deference to the existing structure and the conditions on the lot and what sounded like a constitutional right to create a 2<sup>nd</sup> non conforming use because they had the first one. He stated the Board talked about this was the best place for the structure but the abutters have been living with this structure for a long time. Mr. Partington stated that some if the justification for the 5 criteria, this was the best place for the house; he read some of the Board comments. It is a small lot but in this case they already use this lot. This wasn't an expansion of the existing non-conforming this was a razing entirely and building a new.

The Chairman asked the Board if this was a technical error.

- Mr. Partington stated that it was.
- Mr. Scholz stated he looked at the 5 criteria. He looked at the land and the landowner has a right to do this.
- Mr. Yennaco is comfortable with the 5 points.
- The Chairman was comfortable with the 5 points.

Vote on Technical Error 4 – 1. (Mr. Partington)

**Mr. Scholz motioned to deny Case #14-2012, Application for Re-Hearing as well as the concerns presented by Vice Chairman Partington. 2<sup>nd</sup> by Mr. Yennaco.**

Ms. Dunn stated yes, and she wanted to make a record of why, she was opposed to the original granting of the variance and it was a wrong decision. Mr. Partington's argument on constitutional rights to do whatever you want is completely valid. But that is an error that was made by this Board before. It did not meet the 5 criteria and the decision did not address Mr. Partington's concerns. . Those things were discussed but don't meet the criteria for rehearing

**Vote 4 – 1 to deny (Mr. Partington)**

**Review and Approval of Draft Meeting Minutes – 6/12/2012**

The Board amended the draft minutes of 6/12/12 and would like to see the amendments.

**Binder Updates – Tab 9 – Legal Q and A “The Inside Scoop on Nonpublic Sessions”**

**Old/New Business**

**Board Presence at Court**

- The Chairman stated that at the last meeting there was discussion regarding a question of when the Board's Attorney is going to court if he would bring someone from the Town with him. He stated that if there is a Board member who sits at the table with Attorney Campbell we need to have a formal process of how that takes place.

- Mr. Scholz stated that he is fine with the process and it should be added to the By-Laws. He would like to see one Board member attend.
- Mr. Yennaco agrees with that to a point. He is not forecasting but if the order was in such and you were in agreement you are already biased.
- Mr. Scholz stated that could be addressed in the By-Laws.
- Ms. Dunn stated that when there is a hearing and it is strictly on the record it is not necessary for any Board members to attend. Attendance is to put a face to the Board. It is good to be able to provide information and have someone there. It would depend on what the issue is. When Attorney Campbell notifies the Board that there is a hearing the Board should decide who will attend.
- Mr. Yennaco agreed with Ms. Dunn. He stated a procedure is good but a discussion at the time would be warranted.

### **Board Member Contact Sheet**

- Mr. Scholz had some changes to the Board Member Contact Sheet that he gave to Ms. Prendergast.

### **By-Law Discussion**

- Mr. Partington suggested the By-Law discussion happen at the next meeting. Ms. Prendergast stated she went to the Town Hall and they have the same set as the Board.

### **Adjournment**

**Motion by Mr. Scholz to adjourn, seconded by Mr. Yennaco. Motion passed 5 – 0.**

Meeting adjourned at 10:28 pm.

These minutes are in draft form and respectfully submitted for your approval by Cathy Pinette,  
ZBA Minute Taker