

PLANNING BOARD MINUTES June 17, 2003

Members Present: Helen Lemoine, Ann V. Welles, Carol Spack, Thomas F. Mahoney, Laurence W. Marsh

Also present: Jay Grande, Planning Board Administrator

I. Miscellaneous Administrative

A. Televising of Planning Board Meetings.

Possibility of asking Jay to have the board meetings televised? Wondering if the Board would be ready for a motion asking Jay to inquire into the feasibility of doing that? The Board has been asking for many years to be televised, and the reason we haven't been other than for very controversial and large issues is for the most part, it takes an enormous amount of volunteers and then simply a lack of funds for a second night of the week on a regular basis. So, we can continue to ask and if they find that they have it in their scheduling budget, I certainly have no problem. I'm all for advocating it, I think all boards should be on it at least once a month, live, so that the whole community can really get a feel and understanding of what all the boards do. I'd like to second the motion so that we can discuss it. First of all, I think it's a great idea. Second of all, I think the absence of a newspaper about meetings makes it even more important now. Jay is to draft a letter from behalf of the Board requesting public access to t.v. coverage be initiated at a date certain in accordance with a contract to fulfill the community's requirements.

B. CVS, 1280 Worcester Road

Any other administrative items that we need to bring up? Is CVS still on for tonight? No, they are not on for tonight.

2. Approval Not Required Plans (ANR)

A. ANR Plan For 70 Fenwick Street

We have the applicant here from Fenwick here. Good evening. My name is John Well, Jr. and I work for the Fenwick development and we have the ANR application for Fenwick Street. If any of you in the audience can't hear because the acoustics are bad, feel free to jump up and yell and let us know to speak up. We will have an opportunity for questions and input from the residents after. Basically, here are the plans for Fenwick Street. As you can see, plans for a flood lot. They all comply with zoning, they all have the requisite 8,000 square feet of area, the contract requirement is met on all the lots, there is adequate access to all of the lots, and they are all on the street front. There will be down the road a scenic road hearing necessary when we site the driveways depending on where housing is going to be located on the lots and we anticipate coming back to the Board to do that and to try and structure everything to preserve the trees that are there. As it turns out, I also asked for a 10 foot easement across the front of the

properties along the street which my clients want to give ~ the idea is to preserve as many trees in a 15 value width possible along the street. My clients are also going to take an additional 20 foot easement for themselves. We will have more detail on that when we do the scenic road, when we have the actual driveways designed.

There was a female from neighbors inquiring whether that wasn't a wet area that has standing water? We observed water in the lower area there and (shuffling of papers) ~ So are you suggesting that none of this is in the wetlands? There are no conservation issues here?

No. There are no wetlands or conservation issues. You do have communication from the Conservation Commission Agent in the packet here, Cindy Dion, doc. 629. (Short memo) For the record: "For follow-up, I went out to 31 Anderson where there was a report of potential wetland area, however, the homeowner was not there and I didn't have their pitch and access to site. At this time, our maps do not show any wetland areas adjacent or on the site. I would like to contact the applicant to perform a site visit with the representative to ensure there are no resource areas." When you come for the scenic road, the rest of the trees will be indicated on a plan? The trees on the front part of the lot. There are substantial maples in front and I'm just wondering why they aren't represented on the plans? Is that because you didn't mark trees in the right of way or is it because the symbols are wrong or is it an oversight? I may have missed this ~ did I hear you say you had contacted the Historical Commission about the buildings on 8 and 7? Are they over 50 years old? Yes, I think. We have not been in contact recently regarding a permit. We wanted to make sure that we have the lots ~ So, you are aware that over 50 years old? Yes, over 50 years old, we have to. Do we have a topo requirement? Not for ANR, only for a certain slope. But we haven't had anything confirmed in the rear of Lot 9? I was just wondering if it does hold water if there is a slope involved. So, you are saying there isn't that much of grade change from the rear of 9 to the front of 9? There is a grade change, I'm not sure what you mean by much of a change, what do you mean? What is the slope that we have? It says: location of all man-made structures and significant mass of features including existing building and structures, stone walls and guard rails, rock out crops, steep slopes, wetlands, easements, right-of-way water courses, drains, street ways, scenic roads, major streets, trees and such other references known to the applicant to sufficiently identify the land in which the plan relates and to sufficiently identify any existing impediments to access upon the land. A topographic plan at 2 foot contour shall be provided where slopes exceed 15%. That may impede access upon the land between the street and the proposed location of the structure. I just wanted to confirm what the topography was in the rear ~ I can't even imagine that the slope is 15% back there ~ it isn't even close. My only last question is that the wire fence that is on the North side doesn't line up with the survey line ~ does that in any way represent a property or lot line dispute? This wire fence is on the inside of the survey edge of Lot 12. I'm not sure on the derivation of that fence and the property line is established and the fence is just indicated as to where it is on the ground. I don't believe it is a dispute.

For the record, could you please give your name and address? Christine Bragdon and Rebecca Halston at 18 Fenwick ~ it is our impression that when we bought the property, that was the property line. That fence has been there for over 25 – 50 years and we are in

jeopardy of losing property if that isn't the case. Do you have your plot plan that shows the property line being the fence line, or no? No, it does not show that, it just shows a line. If she is correct about the lot line, does that change the status of the lot from a buildable lot to a nonbuildable lot? That lot would have to change the plot lines ~ but it would qualify for a buildable lot.

For your information only, because if I recall in the Emerald Valley case, we were advised by Town Counsel that we couldn't approve or disapprove lot based on disagreement over lot lines. The Town Engineer is here tonight to let us know that he does recommend endorsement with no specific conditions it meets all the requirements for approval of a lot required, required the frontage of each lot, doesn't have any access problems and as far as the law of the Town Counsel. The only issue I have ~ I wish the conservation agent had been able to walk through, only because we have the requirement where the lot area is concerned and although the applicant and Engineer indicate there are no wetlands on this lot, it would just give me a little level of comfort if conservation agreed. The wet area in question that had temporary bonding was on Lot 9 and that was part of the reason why that is in that shape. So, basically, this is where we could build a house is depicted on where that topography is. I guess we should wait on public input and Cindy Dion suggests that we try to get additional time for her to take a look at it ~ let me just follow that up with Jay and the law ~ should Cindy find some kind of a resource area in there, how does that effect an ANR? I think under our ANR requirements ~ at a minimum, are you saying there is no wetland and that you have certification?

We have the opinion of our wetland botanist who has ample experience in this matter who says that this doesn't qualify as a wetland. So, the only thing that would change this is if Cindy went out there and determined that it did need to have a determination than you would need to reflect a calculation on the plan ~ so I guess there is time to allow that to happen.

You have to have 100% of the minimum lot area as upland of which 70% has to be contiguous. I don't think that sounds like an issue here but in light of that email, we need to confirm.

I just want you to understand if it is an issue ~ it's not an issue of whether they are entitled to the ANR, it's definitely an issue of whether they have to show it on the plan. I just don't want people to think that that might be a reason for withholding approval. This is between an ANR and other types of reviews that we do. Yes, for those of you who may not be familiar with an ANR is short for Approval Not Required that is in and of itself, to this Board and a lot of other people, ridiculous. Why do you have to come to the Board to get an approval that is going to prove not required, but it's one of these crazy parts of MA state statute and has nothing to do with the Town of Framingham Zoning By-Laws. A lot of people are always puzzled why we don't change it if it is so ridiculous and the reason is that, we as a Town can't change it because it's a state statute. We do, however, have a wonderful group of people, one of whom is sitting here tonight, who have been working for the past 2 years trying to change it at the state level and hopefully we will have some success with that in the not-so-distant future. Helen Lemoine stated that but for now, we have to follow the Approval Not Required statute and that means, as

you might have guessed from the discussion tonight, that if a property owner has the required frontage within the district that they are in, in this case it is 65 foot frontage, for any and all lots and the lots also have the required amount of acreage and they don't need to build a road to get to a lot, therefore not subdivisions, and therefore no approval is required. The job of the Planning Board is to determine and secure that this is not a subdivision, that every lot has access through a street, has the frontage, and has the required minimum lot area. We have no authority or ability to withhold approval. As much as we as a Board or group do not like a particular group of lots that are being created, we have to go by the statutes and if they meet all the requirements, we have to approve it. Questions?

Isn't it true a Town can deny or decline a possible ANR because of public-right-of-way is not able to handle the increased traffic? I read that in your email and you have taken it just a little bit beyond the scope of what it really means.

Basically, it means viable access, interpreted it means, you have to be able to get an automobile or some kind of emergency vehicle to the lot. It doesn't mean that that street has to have all the capacity in the world and not have extra traffic added to it, it doesn't have to be a perfect street, it just has to have viable access. It has nothing to do with traffic, we wish it did, but it doesn't. There is in fact a case law that tried to base it on that and the finding of the court was that because the street was like many other streets in the Commonwealth, which are traveled every day whether they are dangerous or not, that you couldn't call it not viable access, because it was like every other street in the Commonwealth essentially.

Like Helen says, it may not be the best street for the number of cars traveling or even the on-street parking, for example, it is not much different than a lot of streets in that neighborhood. It is heavily traveled and you could probably find 50 streets in Framingham just like it and the courts rejected that argument on that basis.

Other questions from residents? Can you define possession? ~ notorious occupation of land owned by others for a period of 20 years or longer ~ there are 5 criteria you have to meet. I think we have come to 2 situations here: one is needing the time to get Cindy Dion, the Conservation Agent, to the site to give us a clean letter if indeed that is what is coming, if not, then you would be aware that you would need to come back with those markings on the plan. And if you have a written response from your botanist, I think that you should take a copy of that. Jay, as far as process goes do you need anything else from the applicants? Not at this point ~ just that we are bringing it back for that issue and hopefully Cindy can get out there and see the site. By requirement, they would have to notify the Historic Commission if they plan to take it down. Before they can, they have to. It would be a demolition delay ~ it's an opportunity for the Resource Commission and the applicant to come to sort of agreement to tear it down but there is no way to stop it. In fact, part of the demolition delay by law requires the applicant for the demolition permit make a good faith effort to try to preserve the building. If they can prove they can't...Do they need to contact our botanist or us so they can postpone at the same time? Judy can call her directly ~ 508.628.1302. We will be back same time, same place, next week for the final installment ~ thank you all for being here. If you have any other

questions, please feel free to call the Planning Board office or any of the PB members. If I have a problem with a property line, do I ~ it's a civil matter that you have to show documentation of your deed vs. what they are claiming they have from their surveys to show it's on your property. This matter is continued to June 24, 2003.

B. ANR Plan For 14 & 24 Second Street

Helen Lemoine stated that I need an extension, Motion, and I'm going to send it down. I need the Board to agree. Motion by Tom Mahoney. Seconded by Ann Welles to grant an extension for review of the Approval Not Required Plan to July 16, 2003 extension to July 16 of the 2nd Street ANR that was supposed to be on tonight ~ all those in favor?

All right, thank you.

3. Interchange 12 Update, Rte. 9 Temple Street

Decision for informal hearing with Mass Highway present because funding for project so grand ~ decided to have preliminary hearing on July 22 because all of the Board members will be present. Need to get an assessment of what has to be done and how to do it in a timely manner. ?

4. Continued Public Hearing, Special Permit for Mixed Use Complex 4 Bishop St.

Reviewing document, Q&A. Do we feel that we are at the point where we could vote on it, and then while people are reading it to make sure that all of the notations we make tonight are included in that document? Yes.

Motion by Tom Mahoney to Approve the Special Permit for use, dated June 17, 2003 as noted in document 621-03 as modified here tonight with the understanding that the final edits will be made and reviewed for compliance with the Planning Board. The Motion was Seconded by Laurence W. Marsh with addition of address on the face of the decision document. All those in favor of the Motion with amendment. 5 in favor, 0 opposed.

5. Public Hearing, Definitive Subdivision Plan Review, Special Permit for OSRD, Modification to a Scenic Road, and Public Way Access Permit, Ford's Meadow, 45 Nixon Road

Originally, we thought we would be moving forward with some substance on the project itself, it appears that will not be the case and the discussion will be a little more general in terms of how we can and will progress with the Public Hearing process. We need to talk about information that has not been forthcoming in a timely manner from our own department and also we need an update on the 593 Consultant as well and then some feedback from the applicant.

Some stresses and divergent were discussed over lack of progress in project ~ Some issues need to be considered here, first a letter came in from engineering but the bigger

issue is the actual process and getting this kind of letter from engineering, we need to be prepared to talk about each item as a waiver and address the 2 criteria. 593 Consultant needs to be discussed as well as the time issue. On June 9, the Board discussed the 2 proposals that we received: a GZA and the C Consulting, 2 different styles in terms of proposals. The GZA proposal was more soup to nuts. I asked them to initially just give me a proposal for septic with the understanding that it would have to address all the other issues, but my understanding from the Board is that we had the most concern with septic initially and then we would quickly move into the other sections once we had a certain comfort level with the septic system design. C Consulting focused entirely on septic and there was a cost differential between the 2 proposals. I faxed those to Stu Mair. I hesitated because we hadn't finalized the GZA proposal and I tried to reach Peter Baril from the GZA to follow up with the Board's question with respect to experience. Tom Mahoney was concerned that in the proposal they did not address the specifics of their knowledgebase on that type of septic. Also, there were some other comments regarding drainage and grading being included in the review and I need to connect with Peter on that. Initially, I thought we were doing the septic first and then we would obviously move into that and I don't know if we've broken the price out accordingly. Was the GZA proposal formerly chosen but with the caveat? There was a conditional approval to verify that. It kind of moved rapidly that evening, to be honest. I didn't get an opportunity to tell you that John Bertorelli and Bob Cooper expressed that they didn't look at the GZA proposal and I have not had an opportunity to run that proposal by them or the C Consulting, but they did voice that when I proposed a number of different firms to them, that the one they picked out of the crowd was C Consulting. Another concern expressed: is the treatment facility proposed appropriate? Wanted to know if GZA had the capability to do that ~ thought the price was reasonable. If you can touch base with Peter, and get information ~ the only question then that wasn't answered: assuming we get the okay, how long will it take to turn this around? If for some reason, they are not able to get back to you in a timely manner, are we in a position to use the fallback? I don't think so. Hopefully, GZA will work out. Regarding the letter dated June 13, doc. 628 ~ the applicant is looking at Oct. 15 as the day to make up their minds to withdraw from Special Permit process if we haven't gotten to the end of the process by then and moving on, which is something none of us would be happy with. Any comments?

I remember hearing someone that originally you weren't going to have the Wells information until June anyway and if I remember correctly, one of the reasons we didn't hire a 593 earlier on is because the applicant didn't want to. I respect the decision to withdraw with the application; we certainly have no control over it. I don't know what we are expected to do with this information. I don't see us changing the process and yet I don't know why the letter was written unless it was to notify and perhaps change the process. A deadline is a deadline and if we miss it, well, I don't know what to say. There is nothing good that comes from it.

I agree. I'm not willing to miss it and I take it as a means for us to figure out why it has taken longer than it has ever taken. I'm very uncomfortable with the fact that we have not been given information on this side of the table and aren't prepared to make the decisions that we make on a regular basis when we have other projects in front of us. I look at it as a wake up call for us.

From my point of view, that is where I want to see a change in the process. I've been pushing to get responses, either pro or con ~ we did get a letter tonight but I think this was held in terms of labors, but as I'm looking at the letter of Feb. 11. There were a number of items that were not shown. I know there has been a submittal in May. But I rectified that. I distributed those plans, everyone had them ~ what I was hoping was not only to get the waiver, this was a supplemental I requested, I also requested that we go through this list of items that are enumerated here, and as we do with other reports, get a status update: incomplete, not addressed, whatever. That piece still needs to be done, with items that aren't necessarily wavered issued, but are plain content items. Is this happening on any other projects?

I think getting these letters at this time is the best we can do with all the projects and staff reduction, there are a 101 reasons why letters are coming in later. This was supposed to be addressed by someone else, not John.

I had an inquiry on clarification, doc. 622-03, who had what plans? There was some serious confusion on which sets of plans had been seen by whom and that revision dates were not put on the plans. These are basic steps that were not done, not just on our side, but they too have had deficiencies. It seems as if, it is possible, that Cindy Dion and Con Comm has yet to see a set of plans with a septic system on it.

I believe she has it from the submission from May 5th. I can't verify that but I made sure that these departments had the same plans in May. The point I'm trying to make is that the set of plans distributed in March, that Cindy saw, did not have the septic. In May, it says that these new plans were submitted with septic and that is when it went to Con Comm. but meanwhile on April 23, copies of plans were submitted to Cooper and Bertorelli and reviewed then. The Conservation did not receive new plans with the septic system until May, so I don't totally believe this is our routing problem. I think it's also partially a submission problem. It's very frustrating because I think we will be quick to take the blame when it is not entirely our fault. Let's all get on the same page, let's all move the project forward, let's all get the same set of plans. We work way too hard to let this be the end result of this very long process. Considering we thought this process would be over in April, I think looking forward to Oct. 15 as a target date for this Board to work for, is a very healthy thing to do.

Sent package of materials, including May plans, to Town Counsel ~ they have had for several weeks, includes questions raised by applicant, the Board. There are some discrepancies on the plans: lot areas need to be rectified which are easily explainable and then there are other sheets which are more current which have the survey information. I would hope these would be picked up by the department in the review, but not made a hindrance. What is your level of confidence that the discrepancies will be picked up? I think the departments could miss them, I think I should do it to make sure it isn't overlooked (Jay). It probably would be missed. The lack of allocation and resources of the Planning Board just doesn't make any sense. With the importance of what you are considering every week, and you've mentioned other projects. I've sat at other meetings and anyone else may have very legitimate and there are different reasons, and the cut-backs. Well, there's that and also red-tape.

Questions and frustrations discussed from the audience.

What about the construction approval from the Board of Health? I've advised Bob Cooper because he's granted the requested extension, that he contact Town Counsel regarding the status of those extension as he goes forward. He's requested one recently. This Public Hearing will be continued to July 22, 2003.

6. Continued Public Hearing for Definitive Subdivision Plan, Modification to a Scenic Road and Public Way Access Permit, The Sanctuary at Hop Brook, 49 Edmands Road.

49 Edmands Road ~ Jay Grande stated we went through a draft decision document at the last hearing and since that time I had an opportunity to revisit it and make some changes. There were a number of comments that the Board had and I don't think the Board was comfortable at that point with the number of changes to make a definitive vote. I've underlined where the changes occur. I don't think there are necessarily controversial changes. The applicant has received a copy and has an opportunity to review the changes. I recommend that we go through this page-by-page and review the document. Changes discussed. We need votes on the waivers and then separate votes for each of the items there in the back, it can be one motion.

Motion by Thomas Mahoney that the Planning Board grant the waivers identified in document 625-03 relative to the requirement for which the right-of-way by reducing the right-of-way 50 feet. Motion was seconded by Laurence Marsh. All those in favor. 4 in favor, 0 opposed. Let the record show, 4-0, because Carol is was not at this hearing. Motion by Thomas Mahoney to that the Framingham Planning Board Approve the Definitive Subdivision Plan entitled The Sanctuary at Hop Brook and Modification to a Scenic Road as indicated in doc. 625-03 with amendment to the public hearing decision date to be changed to June 17, 2003 as modified tonight, and further that the document be reviewed one more time prior to signing to make sure that the changes made tonight are indicated in the document. The Motion was seconded by Laurence Marsh. All those in favor of the Motion. 4 in favor, 0 opposed. Motion by Thomas Mahoney that the Framingham Planning Board approve the application for Public Way Access Permit for the Definitive Subdivision Plan entitled The Sanctuary Hop Brook Subdivision dated June 17, 2003 as indicated in doc. 625-03. The Motion was Seconded by Laurence Marsh. All those in favor? 4-0.

7. Continued Public Hearing for Amendments to the Appendices of the Subdivision Rules and Regulations ~ pg. 460, There is a statutory covenant, which is everything that disappears when they give you their bond, but then there is also the supplemental and that will really be tied to your decision. Within the supplemental, you can take out whatever you want. The statutory is more specific because that is pretty much the language they use in their decision. Read and discussed the Amendments. We would release the statutory restrictions when we release the lots ~ 6A are the items that have time limits and 6B are the items that go on in perpetuity, which is basically what a home owner's agreement is modeled on.

(Helen) Number 10 is a problem because the first sentence is inaccurate, the sewage system has to be approved by the Board of Health prior to the Planning Board's decision. It is not subject to the Board of Health's approval and this is saying the opposite, that you can't release the lot and that has to have happened already. **(Tom)** No, it doesn't. You've just approved all the subdivisions. You get the letter from the BOH and subdivision approval that says the land is okay. Ten years down the road you don't build your septic system, until you are ready to build the house. **(Helen)** I understand that, but if you see here it talks about "no certificate of occupancy shall be granted without first obtaining BOH's approval" so that percentage is backwards, it needs to be modified. It basically has to be reversed. You can't release a lot if you haven't already had the approval of the BOH and the septic system earlier on. **(Laurence)** Let's just flag it and move on.

(Jay) Number 12 is a problem. There should just be a disclaimer on these 2 documents saying that basically these are model covenant contracts subject to modification based on the application forms. But the conservation one doesn't apply.

(Karen) Number 13 ~ I don't know if you want to keep that in **(Jay)**. I think this is very good Karen but in our subregs we do talk about making a determination about the construction of the way. I don't have any problem with it, I'd leave it in.

(Ann) Number 14 ~ does this have to have the same double option for filing? So. Middlesex County Registry of Deeds and does it also have to be in the Land Court if it's Registered Land? And then whatever the language was for the Land Court.

(Karen) Number 15 ~ There is something here that you have to report within 6 months, and there is language this tightens up because you have people who actually ~ so you add that.

(Karen) 6B – This is something where in your decision this shall be included in the supplement or covenant contract. This is something that will continue on with perpetuity, you want them to sign on to it in perpetuity in the supplemental and that document lives.

(Helen) The contract is fine, but the language just doesn't work. An owner can't require a developer's approval if you own the lot, then you own the lot. If the developer still owns the lot, then the resident is not going to increase that and even if it's in your RGS, how are you ever going to enforce after someone lives in the house ten years down the road you can't ever enforce that. **(Ann)** Strike it and renumber. **(Jay)** Number 4 needs to be deleted. We may want to have common driveways, am I reading that right? I think we need a definition of common driveway, how many units, etc. **(Karen)** So, we are getting rid of 4.

(Ann) On 5, when it says we have provides light poles on the plan, does that mean we always have to remember for it to appear on the plan that we have to provide an extra poles? **(Helen)** Five doesn't work, we have already changed that. **(Ann)** The way it reads is that they have to provide streetlights as set forth in the plan. So, if these are decorative streetlights, and we require multiples, it means that we are always going to be beholden to make sure there is a note in the plan that extra decorative ones are in the..it's a simple

yes or no? **(Jay)** I think 5 is another condition of approval, it's spelled out to some extent and it's necessary to be here. Why don't we move that flex a little so we can add it?

(Karen) The point of the supplemental is that it's the model. **(Jay)** But it's not consistent with the decisions we issued. I don't mind any of this stuff but I think there needs to be a disclaimer on both documents. Someone is going to take the ball and run with it at one of our hearings. **(Ann)** I can see that happening. **(Jay)** We had people here tonight who could throw it in our face. Someone will stand up and say "this is your model covenant and your deviating from it" so just a caveat to say something. I think 14, 15, and 16 we have standard conditions of approval. I'm not saying these are bad, just structured differently. **(Karen)** Maybe you put model right on the document. **(Helen)** Yes. **(Tom)** I would put SAMPLE right across the front.

(Helen) 7 and 9 don't happen, 11 shouldn't be in there at all **(Ann)** So what you're saying is that somebody would lift that particular clause as if that were the truth and copy it verbatim? **(Helen)** If it's something we know doesn't happen in town, then there is no reason not take it out, no reason to leave it in. You could say "where streets are intended to remain private..." but if they are intended, and they usually say so at the hearing that they are ending which way they are going to go. Some towns enforce that, they don't pick up the trash or the snow until they're expected and that is an encouragement for the developer's to do it and in Framingham, they do. **(Ann)** It becomes a liability issue, you can't send a fire truck onto a road that isn't plowed. I think 11 should come out. I like 12.

(Helen) 22 is weird. **(Karen)** This is part of the sample covenant. These are things that in part apply or not but this doesn't mean we have to put everything that applies. **(Helen)** 23 is the same issue with the trash. Flag that. **(Karen)** In regards to on-street parking, sometimes developer's ask for on-street parking because the driveway will be turned into open space.

(Ann and Jay) 29 (?) Date, time and stamp needs to be added, registered mail a necessity, otherwise it's meaningless and it needs to be proven.

(Karen) There is a change in 4B. Basically he was saying that we can't create a new submission. We can require them to complete form 9 if they are handing in new required material and then leave it up to Jay to tell them how long they need to extend it to, but we can't say we will consider it a new submission. This isn't a done deal until you vote it. It has to get done.

Motion by Helen Lemoine to approve the documents subject to final acceptance of the language. Motion seconded by Laurence Marsh. It is still voted unanimously.

Motion by Laurence Marsh to go into an executive session for purposes of discussing negotiation strategy with the Village of Bon Bon (?). Motion seconded by Jay Grande. As a result of a phone call that Jay had with the ownership of Bon Bon, it became obvious that we are about to approach some very critical deadlines and they are looking for some type of proposals from us and I would think that it would not be in our best interest to have that on public record where they can see what our strategy and thinking is. **(Helen)** I told Larry earlier tonight, I'm not completely certain that this is an

appropriate reason for going into an executive session. **(Larry)** We don't know for sure right now, but I think it is, but if not, we can check with Town Council tomorrow and just release the information. **(Jay)** It's very sensitive stuff.

(Helen) In that case, there is a Motion and a Second. All those in favor? **Carol? Yes. Tom? Yes. Ann? Yes. Larry? Yes. Helen? Yes.** Thank you for your help tonight Sue.

EXECUTIVE SESSION
June 17, 2003

(Jay) To bring everyone up to speed. We have sent the letter requesting the \$500K for the community building. We wanted the cash payment vs. them constructing a community building on-site. They have responded that they will give us a formal letter on that and that they are working through their internal process with the corporate headquarters for the company. This is with Dave Deeds, the current CFO. The prior CFO, Paul Dendy, had notified me that they had a construction loan for the project which they have access to make the prior payments. One was for the Park & Rec parking lot, Chapel Parking Lot, and the other was for the Master Plan with 50,000. In that discussion with Paul Dendy, the predecessor, he let me know that a critical date for them is June 30 and that is my recollection of the discussion. Their construction loan basically dissolved. I know they are recapitalizing the company, which they already did once when they went from Cushing to Parkside and now they are looking for new investors. Basically, the economy plus the fact that they need capital and new investors will be shaking out in September of this year, in terms of new buyers, there is no movement on Phase II, which is significant. That timing doesn't necessarily jive with our timing. I think we've really learned a lot about the project and it's impacts in the interim but I won't go off on that. We have this June 30th upset date and we also have a performance guarantee. But the amount of the construction loan and the cash that is in that loan is not the same as the security. I'll stop there. **(Larry)** There are really 2-3 things that are critical for tonight" the \$620K in the account that we think, based on prior financial officers through Sue and I and through Jay, expires June 30th. When that loan expires, we have lost our ability to go after immediate cash and then we would call it bond in order to get money out of them. The conversation that concerned me most with Jay was the one that happened this week when they talk about recapitalization. That clearly suggests that they are running out of cash and they did make a reference to selling the project or finding new investors. We are in a position where we only, if you read the agreements and covenants carefully, we only have Phase I accomplished because Phase II mitigation is dependent on future development. If anything should happen here, we really don't have much of a comeback. When we asked them for the \$500K, they said, "we're willing to do that, provided we can cut this other agreement on the mitigation". What they are looking for is a proposal from us. **(Jay)** At this point, they need a proposal from us in order to move it through their mitigation. **(Larry)** If you think about why they would do that, they are going to the investment community, they have a 5 year old agreement for mitigation that says you have to do all these things and based on what the costs were in 1998. Now, I'm on the receiving end. I've got this commitment that in 1998 was \$1M worth of construction, but in 2003 it is probably 20-30% more but I'm not even going to be developing this property until after I get recapitalization. My investors are going to look at this and get wiped because it is an open-ended thing and so they clearly want to cap it so they can go to the investors. **(Ann)** Did they give a number? **(Larry)** No. They are looking from a proposal from us. Let's take a look at the numbers and then I'm going to make a suggestion. Everyone got in their packet over the weekend ~ it's the republication of the mitigation. I divided it down into page 1 and 2 for you. I broke out the page into Phase I and Phase II and other. Phase I mitigation which was basically \$196K, had we told them to go ahead

with that, they would have had to construct that. It was our call in the covenants. We recouped it and they agreed to continuances. Phase II is \$328K, but if you read in detail, what you will find is Phase II, that they don't have to give us that money until they build the first building in Phase II. If they go for recapitalization, they are not about to build anything, until they get the money. And if they don't the money, they probably will go belly-up like many others in their industry. Those 2 items total \$524K and then the Community Center, which I think is a straightforward item, and I think they have to give us \$500K. What it actually says in the documentation, they must give us \$500K to us within 60 days of when we ask for it, and we've asked for it. They are basically saying, "we'll give it to you, but we'd like to cut this other agreement on the mitigation". We could fight them and make them give us the \$500K. But the point that Jay made me this afternoon, which I think is very, very important, is that up until June 30, they have access a loan account to draw \$640K and give to us. After June 30th, they don't have the account because the loan and approval expires. So even if we go and ask them for the money, they won't have it! What we are going to try to do is make a proposal to them that they can find acceptable and hopefully give us the \$620K in cash right away. We can do anything we want, this is just for discussion purposes. What Jay and I are suggesting to do is to take a cash settlement for the Community Center right away, \$500K and ask them to settle that, which we already have and then settle the traffic, the Phase I, dollar for dollar, what was in the original commitment. Instead of asking them to actually do it, we just take it, for \$696K. \$620K of that is in their loan account, so we'd have to ask them for a note payable for the other \$76K with a date certain so, for example, we would take \$620K in cash and let them give us a formal note payable for the current corporation ~ I just want to get the \$620K before we go too far. If they can refinance, they will be fine. What they probably feel is that in order to get refinanced, they shouldn't have these open-ended commitments for millions of dollars. I address Phase II this way: they have \$338K of commitments in Phase II, we probably wouldn't see that for years anyway, but \$328K was in 1998 dollars, but they have to do it now or 2 years from now, or 5 years from now, and that is likely to be 50-100% more. They are looking for a cap and I thought maybe we would throw out a \$500K cash settlement meaning we would take in the \$500K, put it in an escrow account and decide later on what we really have to do. If everyone thinks this is okay, and if they bought into this, we would be sitting with \$1M in an escrow account for all mitigation that they are required to do and they would be able to walk away from their responsibilities. They save whatever the inflation costs would have been to construct it when they have to construct it. They are not saving anything in real 1998 dollars. The catch here is that they aren't going to have any cash for Phase II so we are going to have to take a note payable pending refinancing and recapitalization or sale of the unit, so I thought we would write something in there that says if they don't pay us by December 31, 2004 we have the right to rescind and go back to the original agreement for Phase II mitigation. I'm not suggesting at this point that we turn this money over to anyone, we need to put it in our own account. **(Ann)** If they have \$620K in cash, then if we want a date certain for the \$76K, why not make that note due December 31, 2003 and that gives them 6 months to find financing? They could always present it to their creditors that they are out of debt for an additional \$76K and if necessary liquidate the whole deal. **(Larry)** They are going to get a much cleaner mitigation package so that they can go to their investors. First, we need to make sure that

is what we want to do. Next, we have to have Town Council do something with Jay. **(Jay)** What if I identify on an outline on what the Board is thinking about and acknowledge the idea that Town Council has to be involved, with no agreement or proposal, just an outline. **(Larry)** I agree. Let's go through you at first. Basically, we are trying to get our money up front in exchange for their responsibility to do the work. **(Helen)** I think it makes a lot of sense. I think we actually have a shot to do this. We are giving them an opportunity to put parameters around their outstanding liabilities. **(Ann)** And at the very least, we are giving them a dollar figure. We can litigate on a dollar figure. **(Larry)** There is one other thing I should mention. Phase I is really easy for us, we are entitled to that money. We don't have to go to Town Council for that. It's in the covenants ~ it says right in there at the Planning Board's discretion it may request payment and then be allocated to their discretion. Phase II is a little more dicey. So, if they don't want to do the Phase II part, we will just take the \$620K. We wouldn't gain anything or lose anything, but they still have to give us the money. The bottom line is we would like \$620K before the end of June. **(Jay)** I agree. **(Helen)** Sounds like a very good first step. **(Ann)** I'm skeptical about the sincerity of yes, we have \$620K and we will pay you. I'm prepared for the conversation taking a different tone once a specific request is made. **(Larry)** On the \$620K, we have a lot of clout. The leverage we have in Phase I is very insignificant, because if they say no cash to us, then we simply say we want you to complete the mitigation, build a 5,000 s.f. Senior Center on the site and do the traffic mitigation. The 5,000 s.f. Senior Center alone, in today's dollars, is \$200 s.f., without land. We've looked at 17 different centers, so I have a pretty good feeling on that. That is twice as much as they have committed and that is just the Senior Center. There is no way they will want to do that. Let Jay take the first pass at it. I can't see how we can lose on the \$620K, I don't know about the second part. **(Jay)** They definitely want Phase I improvements resolved and I think this will help them react. I'm going to send an outline after Larry reviews it. **(Larry)** We need to make sure they understand Phase I. We don't need to go to any other contracts for Phase I. Phase II is different. **(Jay)** And we have a performance bond that backs up Phase I.

(Helen) Consensus okay? All in favor. Everybody agrees.

Motion by Helen Lemione to adjourn from executive session for the purpose of going back into public session? Motion seconded by Larry Marsh. Role Call vote. Carol? Yes. Tom? Yes. Ann? Yes. Helen? Yes. Back in regular session, but due to the hour, we are going to adjourn.

Respectfully submitted,

Jennifer Adams
Recording Secretary

**These minutes were approved with changes and/or amendments at the Framingham Planning Board meeting of July 6, 2004.*

Thomas F. Mahoney, Chairman