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5 **Stratham Planning Board**
6 **Meeting Minutes**
7 **June 3, 2015**
8 **Municipal Center, Selectmen's Meeting Room**
9 10 Bunker Hill Avenue
10 Time: 7:00 PM
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13 **Members Present:** Mike Houghton, Chairman
14 Bob Baskerville, Vice Chairman
15 Dave Canada, Selectmen's Representative
16 Jameson Paine, Member
17 Tom House, Member
18 Christopher Merrick, Alternate
19 Nancy Ober, Alternate
20

21 **Staff Present:** Lincoln Daley, Town Planner
22

23
24 **1. Call to Order/Roll Call.**

25 The Chairman took roll call.

26 **2. Review/Approval of Meeting Minutes.**

27 a. May 6, 2015

28 Mr. Paine made a motion to accept the minutes of May 6, 2015. Motion seconded by
29 Mr. House. Motion carried unanimously.

30 b. May 20, 2015

31 The May 20, 2015 minutes were tabled for the next meeting.

32 **3. Public Hearing(s).**

- 33 a. **Christopher M. Phillips, Trustee of Christopher M. Phillips Rev. Trust, 16 Patriots**
34 **Way, Stratham NH, Map 17 Lot 1 and Copley Investments, LLC, 7 Charles Drive,**
35 **Stratham NH for the property located at 125R Portsmouth Avenue, Map 17 Lot 8.**
36 Subdivision Application to construct a 5-lot Subdivision development. (*Continuation*
37 *from May 20, 2015*).

38 Mr. Daley said at the last meeting, the application was deemed as complete and the Board
39 requested that staff draft a notice of decision to reflect the discussion and conditions that
40 talked about at the previous meeting.

1 Mr. Gier, Jones and Beach said they had now received the State Subdivision approval,
2 they have updated the Homeowner documents as requested by the Board, and they
3 reviewed the draft notice of decision; they have no issues with it.

4 Mr. Canada made a motion to close the public hearing. Motion seconded by Mr. Paine.
5 Motion carried unanimously.

6 Mr. Daley said the 2 items that needed to be included as part of the notice of decision
7 included the requirement that the 5 lots have language in their deeds and covenants
8 stating that they are located in proximity to an agricultural property. In addition there
9 was one more revision which was discussed with Town counsel about the future
10 connector road way to the abutting property. He added that the applicant has been
11 working with the Town's Highway Agent on the construction bond for the subdivision
12 roadway. The surety should be received in the next 30 days.

13 Mr. Daley said it was worth noting that under conditions precedent, the applicant is still
14 required to receive NHDES subsurface subdivision approval and the EPA Notice of
15 Intent.

16 Mr. Paine made a motion to approve the subdivision application for Copley Investments
17 LLC and Christopher M. Phillips Revocable Trust 5-Lot subdivision at 125R Portsmouth
18 Avenue, Stratham, NH Map 17 Lot 8 and 16 Patriots Road, Stratham, NH Map 17 Lot 1
19 with the conditions stated in the Notice of Decision. Motion seconded by Mr.
20 Baskerville. Motion carried unanimously.

21 **b. Rollins Hill Development, LLC. P.O. Box 432, Stratham, NH for the property**
22 **located at 20 Rollins Farm Drive, Stratham, NH, Tax Map 3 Lot 24, Tax Map 3 Lot**
23 **7, and Town of North Hampton, NH Tax Map 15 Lot 24.** Subdivision Application to
24 construct a 47-lot, over 55 Retirement Planned Community Development

25 Mr. Daley recommended having a focused discussion to whittle down the outstanding
26 issues associated with this application and plan. On October 1, 2014 the Board
27 conditionally accepted the application as complete identifying 3 items that were still
28 missing; a stamped survey boundary plan, resolution of the test pits, and the submittal of
29 the storm water and drainage plan for the entire property. Mr. Daley continued that the
30 applicant has satisfied 2 out of 3 of those; the issue of test pits had not yet been satisfied
31 and he suggested discussing that.

32 Mr. Daley explained that it is a requirement under the Subdivision regulations that the
33 applicant provide test pit data witnessed by a Town designee. This was discussed last
34 year and the Town and applicant had a difference of opinion on which sections of the
35 Ordinance trump which ones in the regulations. The Board needs to make a
36 determination on this issue prior to accepting the application as complete.

37 Mr. Daley said the applicant is proposing that the Town accept the Jones and Beach
38 witnessing of the test pits. They are certified licensed individuals with many years of
39 experience. In addition the applicant is proposing that the Town's designee be on site
40 to witness the test pits at the time the homes are constructed. In discussions with the
41 Town's counsel, the Planning Board has options; they could accept the applicant's
42 proposal or have the Town's designee witness the test pits again. Historically for
43 something like this, the Town has used RCCD for the majority of witnessing test pits.

1 Mr. Stevens said there may be some confusion. They have gone out there and done two
2 test pits on every lot already. It has been done under the State regulations so not the
3 Town's regulations. The Town voted to change the zoning of this property in March
4 which would affect a subsequent development, but not this one. Mr. Stevens suggested
5 a compromise in which the applicant would agree prior to the Board signing a plan to
6 have witnessed test pits by the Town's designee. He would like to do one additional test
7 pit if the receiving area is within the boundary of where they originally did their test pits.
8 If that test pit agrees with the test pits already done there, another test pit wouldn't be
9 needed. He would be happy if two test pits are done if the area is outside of where they
10 originally did their test pits.

11 Mr. Merrick said he was happy to go with Jones and Beach.

12 Mr. Baskerville said some of the lots are going to be tight and possibly close to vernal
13 pools or areas where there are going to be large cuts; instead of digging extra holes to
14 confirm something already done. He suggested the Board pick a group of lots they have
15 concerns about and at Planning Board approval conditional, but before signing the Mylar,
16 a design should be done for those lots and submitted to the State for State approval. The
17 Planning Board would then see a design which is something the applicant will use. Mr.
18 Baskerville would like to see erosion control shown on the plan also. Mr. Merrick
19 supported the idea.

20 Mr. Deschaine said he is presuming the State would not approve a septic system on a lot
21 unless there was already State subdivision approval. Mr. Baskerville said that wasn't the
22 case. Mr. Daley said he wants to make sure the Town is protected and while it's highly
23 unlikely, what if the test pits that are done again fail for some reason and that lot is
24 deemed to be unbuildable.

25 Mr. Stevens said if a lot is unbuildable then so be it and at that stage the plan won't have
26 been signed so they will make that change to the plan. Mr. Daley felt comfortable with
27 the solution presented by Mr. Baskerville who suggested meeting with Mr. Daley to firm
28 up the idea and present it as such to Mr. Stevens.

29 Mr. Daley felt the Board could now accept the application as complete. Mr. Houghton
30 agreed.

31 Mr. Baskerville made a motion to accept the application as complete stating that the
32 applicant has agreed with his suggestion that before the Mylar is recorded, the septic
33 system will be designed and approved by the State for the lots the Board chooses
34 according to the process discussed. Motion seconded by Mr. House. Motion carried
35 unanimously.

36 Mr. Daley suggested discussing the environmental elements associated with this
37 application and then the design elements on the interior part of the property. He stated
38 that there have been a number of waivers provided to the Board which were received on
39 Friday so Mr. Daley said it was up to the Board to accept this information for discussion
40 this evening or because of the subdivision regulations postpone that discussion until the
41 next meeting.

1 Mr. Daley said the applicant met with the Conservation Commission at their May 27,
2 2015 meeting to discuss the mitigation measures and the buffering around the natural
3 resource areas. The Commission submitted a letter with several recommendations.

4 Mr. Houghton proposed the waivers be moved to the next meeting as the Board hasn't
5 had an opportunity to digest the requests. Mr. Baskerville agreed.

6 Mr. Houghton said that the Conservation Commission members feel that a third party
7 review should be conducted on the site. The Commission is in favor of a 750' buffer
8 around the vernal pools and they have referenced a number of studies in their letter. At
9 that meeting, there was a detailed discussion about porous pavement with Rob Roseen
10 who talked about the merits of what the applicant is proposing to do. The Commission
11 was very supportive of Mr. Roseen being involved in the process.

12 Mr. Stevens said they don't agree with the Commission's recommendations and feel that
13 they are excessive. Mr. Stevens said they presented a plan that is a little bit different than
14 the plan the Board has currently. They handed out said plan to the Planning Board. He
15 explained that Pat Elwell and Brad Jones suggested they eliminate 4 lots to create a
16 continuous habitat with another couple of acres of upland. Mr. Roseen strongly
17 recommended that they remove the 4 lots.

18 Mr. Jim Gove, Gove Environmental took the floor. He said the applicant is allowed up
19 to a 25% disturbance in the critical habitat. He clarified that the November 6, 2014
20 natural resources report, was based on the plan at the time which had the road going
21 directly through two vernal pools. There has been no change to the flags that were on
22 the property in November 2013. In best management practices, which they have added
23 to the plan, talks about the application of directional buffers and that they are more
24 valuable than a concentric circle process of providing a buffer around a vernal pool. The
25 May 29, 2015 plan is the result of the application of directional buffers which extend well
26 over 750' in one area. There was discussion also about the white cedar swamps and the
27 protection efforts..

28 Mr. Gove further explained that a site walk was arranged with Frank Richardson from
29 the NHDES which took place yesterday. They provided him with both plans; the old plan
30 and most current one with the removed lots. Mr. Richardson looked at the area where
31 the road is currently proposed and the environmental impact to the systems based on what
32 is now the directional buffer concept. Mr. Gove read Mr. Richardson's report dated June
33 3, 2015 into the record; "Close inspection of the soils and vegetation at low lying sections
34 of the roadway were found not to have the characteristics required to be hydric soils and
35 there is not a dominance of wetland vegetation and therefore not subject to DES Wetlands
36 jurisdiction. He was very pleased to see the realignment of the proposed roadway which
37 has eliminated four lots (#s 22, 23, 24&25 on the 5/22/15 plan) as this area provides a
38 significant upland habitat between the western vernal pool complex and the eastern
39 vernal pool within the Atlantic White Cedar swamp. He recommends that the cleared
40 area which would have accessed this section of the development be restored by seeding
41 and planting native tree and shrub species like those in the immediate environs. (Mr.
42 Gove showed the area on the plan.) The no cut zones will provide good upland habitat
43 for vernal pool species and he noted that the surrounding forest habitat provides adequate

1 shade, deep leaf litter and an abundance of woody debris which the vernal pool species
2 depend on for most of their seasonal activities when not breeding in the pools.

3 He found the location of the vernal pool complex & cedar swamp is such that it will not
4 be surrounded by development, but rather opens up to a very significant directional
5 wildlife corridor to the southeast which transitions into a large undisturbed area of
6 wetland and upland wildlife habitat. This is a far more preferable setting for vernal pool
7 species habitat preservation and protection than the concentric circle buffer concept with
8 the limitations of surrounding development. In addition, the developer has agreed to
9 erect conservation fencing with signage and markers clearly indicating the boundary of
10 the vernal pool/cedar swamp conservation area(s) prior to construction activities such as
11 road building and lot development taking place. This conservation fencing should be
12 maintained in perpetuity so homeowners do not stray into these sensitive areas for any
13 reason.” Mr. Baskerville asked what the conservation fencing was made from. Mr.
14 Graham said they were suggesting a ribbon steel bolt with a black, vinyl coating on it, it
15 can be used without digging and it will be a single timber rail at the top about 2’ from the
16 ground. It would be badged to inform people what it means.

17 Mr. Daley referred to the house layout plan/ring plan and asked if the percentages of
18 100’, 175’ and 250’ include the construction of the septic systems and the 4000’ reserve
19 areas. Mr. Gove said they do. Mr. Daley asked if the no cut area also include the 4000’
20 reserve areas. Mr. Graham said the reserve area plans are not keeping pace with the
21 revisions that have been made because they have put the conservation plans first. They
22 will have to work out the reserve areas as they go along.

23 Ms. Allison Knab, Conservation Commission said the Commission was not aware of the
24 site walk yesterday. She doesn’t feel this meets the third party review request of the
25 Commission; they wanted more guidance on the buffers. She likes the idea of the
26 directional buffer, but it doesn’t address what the buffers are going to be around the rest
27 of the lots.

28 Peter Wiggin, resident Bunker Hill Avenue asked if there were minutes from the meeting
29 that took place yesterday. Mr. Gove said there was an email. Mr. Daley said he could
30 provide a copy of that. Mr. Wiggin asked who was at that meeting for the record. Mr.
31 Gove said Dr. Richardson, Rob Graham, himself and Brendan Quigley. Mr. Gove said
32 he had informed the Town of the date, but at that point, they didn’t have a time.

33 Mr. Rob Roseen took the floor. He was engaged by the applicant to support this project
34 regarding the use of porous pavements and how they relate to the water quality and
35 hydrology aspects in respect to the protection of the vernal pools. He said they have been
36 looking at the construction process, how they can provide assurances to the Town and
37 the long term life of the system. With the elimination of the 4 interior lots, the impacts
38 to the vernal pools will be pushed back. As a comparison there was about 16.3 acres of
39 disturbance within the 250’ zone; that impact has been reduced to 14.3 acres. Within that
40 250’ zone, the D.E.P. are looking for less than 25% impact on disturbance and the
41 applicant is at the 20 – 25%. In the 100’ zone they are looking for little or no impact and
42 they are around 1% or less for the two areas. If you re-evaluate it in terms of the
43 directional buffer, it is now 50 plus acres when you consider its connection to the
44 surrounding area. The other elements are two main areas; what is the best non-structural

1 best management practices for protection of the vernal pools, and activities that are going
2 to be restricted or prevented within these buffer zones. Mr. Roseen said they will be
3 coming forward with some of those, but they will basically follow the categories of
4 fertilizers and pesticide limitations, usage of native plants, identification of no
5 disturbance areas, restrictions with respect to chloride or deicing applications and then
6 the significant issue of storm water management. The storm water management will be
7 substantial; all of the roof tops, driveways and roadway will be managed through
8 infiltration mechanisms. There should be no surface run off of any of these lots into the
9 buffer zones from the impervious areas. This is particularly significant for vernal pools
10 which are fed by ground water. The technology used for permeable pavement is second
11 to none.

12 Mr. Roseen moved to the usage of conservation easements. The project has offered to
13 put all the vernal pools, wetlands, and open space into a conservation easement that
14 would be managed by a land trust. The best management practices for vernal pool
15 protection will be put together as language that would go in 2 places; the home owners'
16 restrictions and deeds, and covenants so the homeowners' association can enforce those.

17 Mr. Merrick asked Mr. Roseen how he would handle the over sights of the porous
18 pavement project. Mr. Roseen said quality assurance would be constructed, there would
19 be someone on site making sure the base construction is appropriate and all the various
20 elements, such as compaction and infiltration testing are done. There will be a third party
21 review to make sure that you are getting what you paid for. Lastly there is oversight of
22 the placement and production so making sure the material is going down at the right
23 temperature and at the proper level of compaction. There will be a maintenance plan in
24 place also. Mr. Baskerville said he wanted to be clear that there will be engineering
25 documents prepared on how to maintain the road and also condominium documents on
26 how they are responsible for this. He imagines that the costs would be more than normal
27 because of the maintenance. He suggests the Town review them. Mr. Daley agreed and
28 said it would be good to have those ahead of time.

29 Mr. Paine asked if there was a life span expectancy. Mr. Roseen said from a structural
30 standpoint, the road beds are typically 25% - 50% stronger than regular asphalt because
31 the road bed is deeper. He said he would have to guess 15 plus years. Mr. Baskerville
32 asked how failure is determined. Mr. Roseen said it's when you can observe run off from
33 your average rain fall event.

34 Mr. Paine asked Mr. Roseen if he had any concerns with high ground water with it being
35 porous pavement with the road way construction. Mr. Roseen said yes, so they will have
36 to design around high ground water. D.E.S. requirements for separation from ground
37 water are a 2' minimum from the base of the system, so at low points there will be some
38 fill to achieve that separation. Johnathan Ring, Jones and Beach added they had designed
39 it with elevated road sections which Mr. Roseen will review.

40 Mr. Wiggin said with the 2' or 3' of fill he was wondering about the impact to the
41 shoulders and adjacent buffer areas. Mr. Ring said there are no impacts to the buffers
42 from the road. Mr. Robin, resident said he knew initially impervious pavement was going
43 to be used for the driveways; Mr. Graham said they will probably use standard pavement
44 for the driveways and then they will manage the run off from the roof tops as well as the

1 driveways. Mr. Robin said the senior citizen community likes to walk so he asked if this
2 type of pavement was conducive to walking and how the applicant was going to address
3 such issues as senior citizens walking at night time. Mr. Graham said there will be
4 signage. The main difference is that not so much black ice forms on these surfaces and
5 although more salt is required during a winter storm event, because of how the pavement
6 handles water, less is required overall.

7 Mr. Jeffrey Friedman, resident North Hampton, asked Mr. Roseen what the difference in
8 cost is between porous and standard application. Mr. Roseen said around 25% up sale,
9 but there are other cost savings such as not having to install storm water infrastructure.
10 Mr. Friedman asked about when it needs to be redone. Mr. Roseen confirmed that when
11 it needs to be replaced then the 25% more would still apply. More cost savings will come
12 from the life cycle of the road and the maintenance shouldn't be more than for a standard
13 pavement. Mr. Friedman asked at which stage during building the porous pavement gets
14 laid down. Mr. Roseen hasn't organized the construction phasing yet, but he said timing
15 would be important.

16 Mr. Baskerville added that when they do need to repair/replace driveways, he assumes
17 there will be money put aside every year into a fund for that. He wants the homeowners
18 to be prepared and informed of that. Mr. Graham wasn't sure requiring the homeowners'
19 association to carry a bond for this would be the solution.

20 Mr. Houghton brought the conversation back to the wetland issues. The Conservation
21 Commission does feel strongly a third party review should be done other than the one
22 used by the applicant's representatives. Mr. Canada said he felt that Mr. Richardson from
23 the NHDES had done a pretty good job and someone else might draw a different line,
24 but he would expect them to say what Mr. Richardson has said overall. He added that
25 he was disappointed that the Conservation Commission had requested a 750' buffer; that
26 is about 10 acres of land. He is happy to accept the current plans.

27 Ms. Knab said she understands that a 750' buffer in a concentric circle may not be the
28 best solution for this project, but this is the recommendation from a lot of sources. They
29 would like a third party person to aid them with this as nobody on the Commission is a
30 soil scientist. She thinks the directional buffer idea might work really well, but they feel
31 very strongly about using a third party reviewer who is independent of the applicant.

32 Mr. Paine concurred with Mr. Canada about the 750' buffer, but Ms. Knab did clarify the
33 need for further scientific information. Based on the information from both the
34 applicant's professionals he would have less concern with the storm water consideration
35 and the impact on the adjacent wetlands. A directional buffer would probably work, but
36 putting a property up to the back side of that may not be appropriate. She further stated
37 that some of the dimensions on the plan should be looked at by a third party. Mr. Daley
38 said a third party could be used for validation purposes too.

39 Mr. Baskerville referred to the Conservation Commission's letter and stated that he wants
40 to support them. He is familiar with Frank Richardson and Jim Gove so doesn't think
41 there is an issue with the delineation of the wetlands. He does think asking for 750' as a
42 buffer is too much, but the applicant's 100' isn't enough so a resolution hasn't been
43 achieved yet.

1 Mr. House asked if Mr. Richardson wasn't already a third party. Everybody confirmed
2 he was. Mr. Houghton said his understanding is that the Commission is seeking
3 validation. They acknowledge the applicant has done some really positive things. Mr.
4 Merrick suggested the Commission contact Mr. Richardson directly.

5 Mr. Wiggin said from day one the Conservation Commission has been looking for that
6 third party input. He wants to know why the Commission wasn't privy to the site visit.
7 Mr. Paine seconded Mr. Merrick's idea of the Commission meeting directly with Mr.
8 Richardson. Ms. Knab said that now that there are no more bio retention ponds, the
9 Commission would like to look at it again, but things were stalled as Mr. Stevens doesn't
10 want to work with the RCCD or have them on his property. A resident said there have
11 been so many changes made to the project, and he has respect for Mr. Gove, but when
12 you have a second person observe a test pit, it is for a reason. He said the Town needs
13 to get this right so unless they get better information from an independent party, it has to
14 go with a 750' buffer.

15 Mr. Houghton suggested getting focused on exactly what the third party should look at.
16 Mr. Canada asked if it was typical of the Town to use a third party for soil related issues.
17 Mr. Daley said the Town does use RCCD occasionally. Mr. Baskerville stated that in
18 this case the applicant has requested the Town doesn't use RCCD. Mr. Daley suggested
19 a peer review; the applicant has done a good job to address the concerns raised by the
20 Conservation Commission and Planning Board.

21 Mr. Stevens said if the Conservation Commission is looking for a 750', it wasn't going
22 to happen. The plan provided tonight offers a 100' no cut which is four times the
23 requirement of the Town. It meets the State of Maine and EPA requirement for disturbed
24 areas. He feels that they are done. Mr. Daley explained that the regulations allow the
25 Planning Board to identify sensitive resource areas to apply a larger buffer. Mr. Stevens
26 said he didn't think that applied to the RPC zone. Mr. Daley disagreed.

27 Mr. Deschaine said there is a lack of understanding which is why the Conservation
28 Commission is requesting the third party. There are many studies out there about buffers,
29 some say 900', others 100', and the Conservation Commission did their research. Mr.
30 Deschaine said they want to know can you take those studies and apply them to this
31 particular development. Mr. Baskerville asked if a third party reviewer is hired, could
32 the cost fall on the Town and not the applicant. Mr. Deschaine said it's not the norm.

33 Mr. Merrick asked Ms. Knab if the Commission would be willing to meet with Frank
34 Richardson. Ms. Knab said she would prefer a different person. Mr. Canada said you
35 can't get anybody more independent than DES. Mr. Wiggin asked why the Board wasn't
36 supporting the Conservation Commission's request to have the RPC as the third party.

37 Mr. Paine suggested that the third party not validate the boundaries, but what they feel in
38 their professional opinion would it be for a boundary.

39 Mr. Victor Manougian, attorney representing the applicant took the floor. He said he is
40 quite disturbed by what he has heard the Conservation Commission say. He has looked
41 at the regulations and the RPC guidelines have a 50' setback from the wetlands; he read
42 from Section 5.6.2. It doesn't talk to buffers. There was a state person who gave
43 recommendations and if the Board didn't approve this application, he feels if there was

1 an appeal, the State would back the applicant. A resident said that Mr. Manougian hadn't
2 been present at earlier meetings and there has been give and take from both sides. He
3 added there are other areas in the regulations that allow the Board to request larger
4 buffers.

5 Mr. Stevens said if there is a defined scope of work for the third party review they could
6 agree to Cindy Balcius.

7 Mr. Baskerville suggested the soil scientist go to the site alone, then visit the site with
8 the Conservation Commission and then she can write a report and be at one meeting with
9 the Board to discuss what she feels is appropriate. Mr. Stevens confirmed that the
10 boundaries won't need to be reviewed. Mr. Houghton said the Board have weighed in
11 on the boundary issue and are satisfied with the boundaries. The main things are the
12 wetlands, vernal pools and appropriate buffer which is somewhere between 750' and
13 100'. Mr. Paine said to make sure everything is available for Ms. Balcius.

14 Mr. Daley talked about timing. Mr. Stevens wanted to be on the next Planning Board
15 agenda so other things can be discussed. Mr. Stevens asked Mr. Daley if he would
16 contact Ms. Balcius and keep them informed. Mr. Daley confirmed he would do that.

17 Mr. Stevens said some waivers requested originally are being withdrawn.

18 Mr. Houghton said that going forward handouts that are not part of the submission
19 package received 10 days prior likely won't be accepted in the meeting. He added it was
20 not a productive use of the Board's time and their help with this would be appreciated.

21 Mr. Baskerville made a motion to continue this meeting until June 17, 2015. Motion
22 seconded by Mr. Paine. Motion carried unanimously.

23 **4. Public Meeting(s).**

24 a. **Crockett Hill Farms Subdivision** – Point of Rocks Terrace Landscape Entrance Plan.

25 Mr. Daley explained that Mr. Jamie Marsh located at 22 Scamman Road, and an abutter
26 to the Crockett Hill Farms Subdivision, was before the Board on April 15 raising
27 concerns about the landscape entrance design for phase 3 of that development. The
28 question is has it been built in accordance with the 2003 April 16, subdivision plan which
29 includes a note on the approved plan which states: "Landscaping on Tansy Lane and
30 Scamman Road rights of way shall be completed reasonably consistent with the
31 photographs submitted to the planning board dated August 26, 2002 and August 17,
32 2002."

33 Mr. Daley continued by stating that the main issue is the location of the stone wall. The
34 photograph rendering was labelled as a preliminary landscape design and that the
35 approved engineered plan does not show an actual landscaped element so there is a
36 discrepancy on the rendering versus what was actually part of the engineered design.
37 When Symes Associates bought the development in mid to late 2000s, this issue of the
38 entrance came about. In meeting with the Road Agent, the developer and himself, Mr.
39 Daley, on site, they looked at the topographical conditions of that area and the associated
40 swale. It was apparent that it would be challenging to construct the photograph rendering.
41 They made an attempt to design a plan that would fit within the context of the approved
42 subdivision plan and tried to be reasonably consistent with the preliminary landscape

1 design shown as part of the 2003 plan. At that time the Planning Board Chair determined
2 that it was a minor change to the conditions of that subdivision plan and didn't really
3 merit a public hearing so they chose to go with a public meeting to look at what
4 opportunities there were to work with the developer to redesign the wall to fit the
5 conditions out in the field. A plan was created dated 6/22/11 which showed the full
6 length of the wall being constructed and 8 additional trees. It shows also the conveyance
7 of right of way property to the abutting property owners, one being Mr. Marsh. It became
8 apparent that the Planning Board didn't have the authority to deed property to an
9 individual land owner; it requires Board of Selectmen and Town approval to do so and
10 as such the plan was revised with that understanding. On July 6, 2011 they came before
11 the Board with a modified design which required the wall to be pushed back further away
12 from the mailbox shown on Mr. Marsh's property. Various concerns were raised, one of
13 them being the raw conditions of the property which prohibited the location of the wall
14 being the full length of the property to Mr. Marsh's property. Additionally there was a
15 concern with the height of the wall given the slope and it could cause a safety issue if
16 children or people decide to climb the wall and jump off. The road agent at the time
17 preferred not to alter the drainage swale itself and determined the swale should not be
18 touched associated with this rock wall. That meeting was continued to July 20, 2011. At
19 that time the Board felt it should be expanded to allow abutters a chance to comment on
20 this topic at a public meeting. Prior to the August 17 meeting there was a site walk
21 conducted on July 20, 2011 which incorporated the neighborhood and abutting property
22 owners as well as planning board members. It was a good opportunity to see the swale.
23 The first draft of that plan was shown on 7/13/11, at that time the developer hired a
24 landscape architect to improve the landscape elements associated with the center island
25 which was not shown on the draft rendering, and also to provide additional mitigation for
26 the abutting property owners. At the same time part of the discussion was drainage; the
27 preliminary rendering did not provide an opportunity to show any kind of drainage; it
28 was going to be a solid rock wall and as such it required weep holes to allow drainage to
29 occur into the drainage swale. The developer was to use his engineering consultant to
30 improve the drainage so water would not sheet flow straight down the road and be treated
31 appropriately. Mr. Daley continued that on August 17, 2011, the discussion revisited the
32 issue of the rock wall and understanding the reasons why the wall wasn't closer to Mr.
33 Marsh's property. The same reasons were stated as before.

34 Mr. Canada asked Mr. Daley if the Planning Board had asked him that day to resolve the
35 issue. Mr. Daley said that at the August 20, 2011 meeting, the Planning Board essentially
36 directed him to work to resolve this issue and work with Mr. Marsh and his family and
37 Mr. Rhuda from Symes Associates to find a solution. Mr. Daley said the minutes reflect
38 that the Board stated that the swale would not be touched, but the location of the wall
39 was still in question. Part of the resolution from the October 19th meeting was that for
40 the rock wall to go the entire length it would be contingent upon Mr. Marsh hiring a
41 consultant to re-grade and draw up a drainage plan to handle the drainage in that swale
42 area so the wall could be extended. From October 19 to December, the Town continued
43 to work with Mr. Marsh while he attempted to enlist services of a consultant. It took
44 longer than anticipated so there is a question around distribution of information. Mr.
45 Daley understands that Mr. Marsh did hire a consultant around the time of January or
46 February. At that time, Mr. Rhuda was wanting to move forward with the construction

1 of the rock wall and there was a disconnect to some degree about Mr. Marsh providing a
2 plan to the Town. The plan never materialized and of April until July, Symes worked
3 toward a plan with fencing dated 4/20/12. It works to the wall theme, but three white
4 picket fence sections are added to the end section bridging the gap of about 18 feet to Mr.
5 Marsh's mailbox. As part of that negotiation, Symes agreed to install a granite column
6 to replace his current mailbox.

7 Mr. Daley said he was asking the Board this evening to make a determination whether
8 the constructed plan meets the intent of the 2003, April 16 subdivision plan and satisfies
9 the condition that references the landscape elements.

10 Mr. Canada said it states in the August 17, 2011 minutes that the Board voted to send
11 Mr. Daley away to resolve this issue. Mr. Canada feels that what was built does meet
12 the intent of the original plan. Mr. Baskerville recalled the difficulties with the wall when
13 he attended the site walk and he remembers that what was built instead was a good
14 alternative. Mr. Merrick wondered why the wall wasn't just done. Mr. Paine said there
15 were issues about the drainage behind it and the height. Mr. Merrick said the abutter
16 may have understood and been happy with a lower height. Mr. Daley said it is a structural
17 issue; if there is no backing behind it, it might be deemed to be structurally unsound. Mr.
18 Merrick said it seems to him the developer could have built the wall longer, but they
19 fought it which is too bad. Mr. Paine said he agreed with Mr. Canada and this was a
20 compromise. Mr. Merrick said he has walked it and he feels a lot of things could have
21 been done better with that entrance. He doesn't know who is going to fix the vinyl fence
22 that breaks every winter. Mr. Daley said the Town took responsibility for maintaining
23 the fence. Mr. Merrick doesn't agree that a vinyl fence is adequate and it's close to the
24 roadway. The power pole couldn't have been put in a worse spot; if it was a plan coming
25 in today that would have definitely been looked at.

26 Mr. Daley asked Mr. Merrick if he was recommending the removal of the white fence.
27 Mr. Merrick asked Mr. Marsh what he thought. Mr. Marsh said he agreed.

28 Mr. Paine said looking at the notes, there did seem to be some coordination between both
29 parties and the information provided states that Attorney Hogan says that Mr. Marsh is
30 prepared to go ahead with the proposal to install the stone wall starting by the mail box.
31 He is willing to consider the new idea to have 2 or 3 sections of white wooden fencing
32 starting near the Marsh mail box instead of a stone wall. Mr. Merrick said the fencing
33 looked terrible after this winter and he wouldn't want it at his house.

34 Mr. Houghton said back in 2011, there were a number of meetings that thrashed out these
35 issues and discussions that took place with the developer that Mr. Marsh was part of. The
36 minutes do reflect the Board expressed a sincere hope the parties could work together
37 with Town staff to resolve the issues. There were discussions about the wall that Mr.
38 Marsh engaged in that included the redesigning of the wall and inclusion of some fencing.
39 Mr. Houghton asked Mr. Marsh where he felt that all of this had fallen apart.

40 Mr. Marsh said that the history provided was not very accurate and the report he provided
41 at the April 15, 2015 meeting was more accurate. He said a lot of what Mr. Daley had
42 said was wrong. He continued that there was no way Mr. Daley was given authority by
43 the Board to negotiate a deal. Mr. Marsh said what happened was the Board said to try
44 and go work something out and if not they were to come back. Mr. Houghton read from

1 the August 17 minutes which confirmed that Mr. Daley was given the authority by the
2 Board to aid an agreement all parties would agree upon.

3 Mr. Marsh asked why he would be asked to provide a plan to the Town or hire a
4 consultant as stated by Mr. Daley. He asked what kind of mediated plan was that. He
5 then referred to the telephone pole and said it was located where it was so the people in
6 the new subdivision didn't have to look at. The road up to the subdivision is too steep
7 according to code. Mr. Marsh asked how drainage affects the stone wall and the height
8 being a safety issue. He asked Mr. Paine if he had even seen the wall which would have
9 been 1.5 feet high. Mr. Paine said he had and that he doesn't think it's the front side that
10 is being referred to but the back side and the drainage. Mr. Paine said as stated in the
11 minutes there are right of way issues and other components that the planning board don't
12 have control over. Mr. Marsh said they built a stone wall for Tansy which had all the
13 same issues. He continued that why was it up to him to hire a consultant and pay for a
14 plan so the developer could build the wall?

15 Mr. Marsh confirmed that Mr. Houghton had stated the 2011 plan supersedes the 2003
16 one. He said it doesn't supersede the conditions of 2003 and he has been shown nothing
17 despite the previous meeting being 6 weeks ago. He hasn't heard a thing. He asked
18 where the conditions of approval were superseded. Mr. Daley read the conditions, notes
19 9 and 10 verbatim from the 2003 plan which stated the Tansy and Scamman Road rights
20 of way will be completed reasonably consistent with the photograph submitted to the
21 Planning Board dated August 26, 2002, August 17, 2002. Mr. Daley said he didn't know
22 if there was an oversight by the Planning Board back in 2003, but it is hard to build
23 something based on a photograph; it has to be engineered. The engineered plans do not
24 include a rock wall or landscaping at the entrance way. In order to build those things, an
25 engineering and landscaping plan are required. Mr. Marsh said that they came up with
26 one and it had the stone wall going all the way. He said what happened was that Scott
27 Martin from Symes came to him and said that if they made them go back in front of the
28 Planning Board, they would do nothing for them.

29 Mr. Marsh continued that there were many discussions and one of the things that none of
30 the neighbors wanted was a parking lot at the entrance way. At the time, Mr. Daley said
31 it wasn't a parking lot, but a parking area. Mr. Marsh spoke with Mr. Martin (Contractor
32 from Symes Associates) about it who said he wouldn't do anything for them if they had
33 to go back before the Board. The next plan that came out now had the stone wall no
34 longer going all the way.

35 Mr. Daley said the reason it was suggested that Mr. Marsh hire an engineer was because
36 in order to construct the wall, the grading would have had to go onto his property. In
37 addition there were questions about the underground drainage from Mr. Marsh's property
38 into the swale. Mr. Marsh said that was the Town's right of way not his property. Mr.
39 Daley disagreed as it was stated as part of the October discussions. He clarified that the
40 wall would be in the right of way, but the grading needed to construct the wall would
41 have been on his property. Mr. Rhuda from Symes was very uncomfortable about going
42 onto Mr. Marsh's property.

1 Mr. Marsh said he didn't know what this had to do with the swale, he didn't understand.
2 Mr. Marsh stated the reason they didn't do the wall had nothing to do with the drainage,
3 it was because he was holding them to the terms.

4 Mr. Houghton repeated that Mr. Daley was asked to work with Mr. Marsh and the
5 developer to resolve the issue. He confirmed with Mr. Marsh that the issues have not
6 been resolved to his satisfaction. Mr. Marsh confirmed that was the case. He then
7 referred to the April 15, 2015 minutes and said he had made a comment that his lawyer
8 had questioned the integrity of the Board and had advised him to cut his losses as he
9 wouldn't get anywhere.

10 Mr. Houghton agreed that the landscaped entry doesn't reflect the 2001 rendering in its
11 entirety, but the plan that came before the Board in 2011/2012 does.

12 Mr. Merrick said in 2011 the revised plan with the shortened wall was presented. Mr.
13 Baskerville said there are 3 plans; the first one has the wall going to the mailbox. His
14 recollection was that when they met on site, the drainage concern was water going down
15 the road, after the catch basin there is nowhere for it to go all the way to the mail box.
16 The road agent wanted the water to go into the swale and culvert and wanted the wall
17 shorter which is when the second plan came into being which shows the wall ending
18 about 20' before the mailbox. A third plan was created which had the fencing added to
19 go to the mailbox. Mr. Marsh disagreed that the road agent had said all of that. He
20 requested to see an approval from the current road agent who went out recently and
21 compared what is on site with the approved plan. Mr. Baskerville explained it was
22 approved administratively. Mr. Marsh said when he spoke to the Code Enforcement
23 Officer, she said it hadn't been approved, that she needed some background information
24 and then she can make a decision on it. Mr. Daley explained that it doesn't fall under the
25 Code Enforcement's Officer's purview; it is the Town Planner.

26 Mr. Canada asked if the Board needed to make a motion on this. Mr. Daley
27 recommended that the Board make a determination that the plan dated 4/20/2012 meets
28 the requirements and intent of the April 16, 2003 subdivision approval for the Hills at
29 Crockett Farms more specifically meeting condition number 9: "Landscaping in the
30 Tansy Lane and Scamman Road rights of way shall be completed reasonably consistent
31 with the photographs submitted to the Planning Board dated August 26, 2002 and August
32 17, 2002".

33 Mr. Canada moved to adopt the motion that they find the 4/20/2012 plan meets the
34 4/16/2003 requirements for the Hills at Crockett Farms, condition number 9 and that the
35 Board find it to be satisfactory. Motion seconded by Mr. Paine. Motion carried
36 unanimously.

37 Mr. Marsh asked what the next step was for him to appeal. Mr. Deschaine advocated the
38 Board not to provide any direction to Mr. Marsh because the discussion had taken on an
39 unprecedented tone. He wouldn't want to misdirect Mr. Marsh in any way, and if Mr.
40 Marsh feels it is necessary to appeal he should consult his own legal counsel.

41 Mr. Marsh said at the April 15, 2015 meeting one of his main points was inaccurate and
42 incomplete meeting minutes by design. He continued that lo and behold the April 15,
43 2015 are totally inaccurate and don't represent what was said. He requested an audio of

1 the April 15, 2015 meeting. Mr. Houghton said that was public information and if he put
2 in a request, Mr. Daley would make sure he got a copy.

3 **5. Miscellaneous.**

4 a. Report of Officers/Committees.

5 i. Technical Review Committee

6 Mr. Daley informed the Board that Mr. Hyland's term as a member of the Technical
7 Review Committee (TRC) was now up and he was asking for a recommendation
8 from the Planning Board to the Board of Selectmen that Mr. Hyland is reappointed.

9 Mr. Houghton said he would like to recommend the reappointment of Mr. Hyland to
10 the TRC. Seconded by Mr. Paine.

11 **6. Adjournment.**

12 Mr. House made a motion to adjourn the meeting at 10:11 pm. Motion seconded by Mr.
13 Baskerville. Motion carried unanimously.

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