

Essex Planning Board

December 5, 1990

Present : Dana Story, Chairman; George Bragdon; Frances Dunn; Joseph Ginn;
John Knowles; Rolf Madsen (8:00 p.m.)

Meeting called to order at 7:50 p.m.

Building Inspector Richard Carter submitted a building permit application for Ellen Cabot, 22 Winthrop Street, for the construction of a shed dormer on the right side of the dwelling (Map 36, Lot 47).

Ginn moved to allow the building inspector to issue a building permit to Ellen Cabot, 22 Winthrop Street, for a dormer, pending approval from the Board of Health as it will be considered another bedroom, finding under By-law 6-4.2 that it is not substantially more detrimental than the existing nonconforming use to the neighborhood. The motion was seconded by Knowles, with Bragdon, Dunn, Ginn, Knowles and Story voting in favor.

A building permit application was submitted for Thomas and Lucinda Foley, 43 Pond Street, for the construction of a one-bedroom addition.

Ginn moved to allow the building inspector to issue a building permit for Thomas and Lucinda Foley, 43 Pond Street, for an addition, as it meets all regulations. The motion was seconded by Dunn, with Dunn, Ginn, Knowles and Story voting in favor. Bragdon was not present for the vote.

Attorney Michael Shea met with the Board to submit a Form A for Sharon B. Means, Belcher Street, for the conveyance of two small parcels of land back to Augustus Means. One parcel is being conveyed to straighten a boundary line and both will be placed into conservation. Both lots will not constitute buildable lots.

Dunn moved to approve the Form A, subdivision approval not required, of Sharon B. Means, for Lot 7, off Belcher Street. The motion was seconded by Bragdon, with the Board voting unanimously in favor.

Peter Van Wyck met with the Board to resolve the length of his preliminary subdivision road for Low Land Farms. Van Wyck said when he submitted his preliminary plan with a 1500 foot road, the vote was three for and three against. He would like to go over the reasons why approval was not given. The length of the road is 1450 feet to the turn around and 1520 feet including the turn around. Van Wyck said he wants to use part of this land for farming and feels it is a good use for the land. Dunn said she felt the impact would not come from the farming but from the subdivision itself. Madsen - "The reason for the length of the road is really a public safety issue and also to restrict the density. Is there any way the density will be restricted and can you show us that this will be done if we agree to the waiver?"

Van Wyck - "I am going to put on the plan that this road is restricted to

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fifteen houses." Van Wyck then said he wanted to have a subdivision with the lots on one side of the road and at the end, and the other side left for farming.

Madsen - "Will you put a deed restriction on the parcel for farming?" Van Wyck - "I will restrict it to fifteen house lots."

Klopotoski said the fifteen house restriction will be by covenant and not be deed restriction.

Madsen - "If the applicant can come before us in his definitive plan to show that the density will be no greater than what a 1200 foot road would be then I would not vote against the waiver. I am not going to modify this."

Story - "I agree with Rolf (Madsen)."

Ginn - "I agree with Rolf."

Knowles - "I would have to see it."

Dunn - "I agree with Rolf."

Bragdon - "I would have to see what the covenants are."

Ronald Ober, Pine Ridge subdivision - Ober told the Board that his present house will be sold in April and he would like to build one house there for himself and his family. A discussion followed as to whether the subdivision could become one lot. Madsen said that once the plan is filed with the registry the property is now a subdivision. Ginn asked where would the Board be granting the frontage. Ober said, "My attorney, David Babson, said it would now be a 15½ acre house lot." Madsen said that this has never occurred before and that Ober should return with plans showing the house lot.

Sally O'Maley asked, as a member of the public, when was the last meeting that Board member Mark Hall attended. Upon review of the Minutes, it was found that he last attended a Planning Board meeting on September 19.

Story updated the Board on the informal ad hoc group who have been working on the preliminary draft of the overlay watershed district by-law, created to protect the watershed area of Chebacco Lake. Story said, "Before we go to a public hearing we would like to get professional advice from an engineer. We hope to get this accomplished to be presented to the Town meeting in May. We have suggested using Phil Herr because there are monies left for the Planning Board to utilize." Madsen felt the by-law should be left with Town Counsel for his comments. Story said it would not affect single family dwellings, but any commercial property will be very carefully looked at. He added that they did a study and had people come from all areas, and the people from the Chamber of Commerce were highly in favor of it.

Madsen moved to forward the proposed draft of the Essex Water Resource Protection Zoning Amendment to John Tierney for legal comments. The motion was seconded by Ginn, with the Board voting unanimously in favor.

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Madsen moved to forward the by-law and map for counsel review; seconded by Knowles, with the Board voting unanimously in favor.

Planning Board member Frances Dunn left the meeting at this time.

A discussion was held to consider a modification to the subdivision rules and regulations 6.01(1) to add that the Board may require an engineering review of the definitive plan to be performed by an engineering firm designated by the Planning Board, with the expense of the professional services to be borne by the applicant.

Madsen moved to hold a public hearing for comments on the modification of the rules and regulations of the subdivision control law; seconded by Bragdon, with the Board voting as follows - Bragdon, Ginn, Knowles, Madsen and Story voting in favor.

Ginn moved that the Planning Board do not hold a meeting on December 19; seconded by Knowles, with Bragdon, Ginn, Knowles, Madsen and Story voting in favor.

Knowles moved to adjourn; seconded by Bragdon, with Bragdon, Ginn, Knowles, Madsen and Story voting in favor.

Meeting adjourned at 10:30 p.m.

Respectfully submitted by:



Gillian B. Palumbo

A G E N D A

- 7:45 p.m. ... Paul Desmond - wood cutting business
off Western Avenue
- 8:00 p.m. ... Lucy Petrovich - introduction to Board
as engineering consultants
- 8:15 p.m. ... Sandra Osborne, Main Street - bed and
breakfast residence
- 8:30 p.m. ... James Kroesser, Glovsky and Glovsky -
estate of Etta Irving, Wood Drive
- 9:00 p.m. ... Clay Morin - CDMR (Low Hill) - release
of bond for road
- 9:15 p.m. ... Sandy Weatherall, 139 Main Street -
request for home occupation

Business:

Next meeting is evening before Thanksgiving - do you
want to meet or change

Essex Planning Board

November 7, 1990

Present : Dana Story, Chairman; Frances Dunn; George Bragdon; Joseph Ginn;
Rolf Madsen (8:40 p.m.).

Meeting called to order at 7:50 p.m.

Paul Desmond, Western Avenue, who had an 8:00 p.m. appointment with the Board did not appear. The Building Inspector, Richard Carter, said he had received a letter from Desmond's attorney, Michael Shea, dated October 24, 1990, stating that he would not be attending the meeting, but the Planning Board was never notified of this cancellation. Desmond had been asked to attend the meeting to discuss the wood cutting business he is running from his property off Western Avenue. Members of the public, and abutters to the property were present at the meeting. Story asked the abutters what had been bothering them about the business. A Cease and Desist Order had been placed on the business by the building inspector, and Mrs. Leaman said that Desmond had not been operating his machinery since the Order had been issued, but a new load of wood had been delivered and another piece of equipment had arrived. Charles Drake, an abutter, said, "The noise is deafening and I feel the property values have dropped twenty-five percent in the area." Story said he has walked by it and has heard the noise and is well aware of it. Mrs. Drake said there was not word of there being a commercial venture going in there when Desmond came around asking the neighbors for approval of a variance he was requesting from the Board of Appeals, and feels it was very deceitful. Desmond had requested a variance from the Board of Appeals for lack of frontage. Mrs Drake added that Desmond told them he would build on the next lot when they had enough money, and felt he was deceitful because he never mentioned that it was going to be a two-family house. Charles Drake told the Board that the place where the machinery is being used is right on the edge of the stream. The abutters who appeared for this appointment were as follows: Mrs. Tripp, 62 Western Avenue, Mr. and Mrs. Charles Drake, 63 Western Avenue, Mr. and Mrs. Stanley Leaman, 15 Walnut Park, Phyllis Downs, 9 Walnut Park, Mr. and Mrs. Eli Young, 3 Walnut Park, and Edward Whittemore, Western Avenue.

Young asked the Board if the activity started up again what their recourse would be. Story said the building inspector is the Planning Board's enforcement officer and he should speak to him. Young said the constant use of a chain saw is a public disturbance. Bragdon felt that the ingress and egress of trucks is very detrimental to the area as it is in a school zone.

Scott Petrovicz met with the Board. He told them he is an engineer who is starting a business where he offers reviews of Town's plans, etc., and that his rates are competitive. He is currently working on a project in Lancaster where he is the developer's engineer. He reviewed with the Board the projects he had been working on. He said he does wetlands replications. He asked that if the Board is on a project by project basis that he be notified because he would like to submit a price. He also added

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that he does construction inspections as a clerk of the works. He said he would send a letter with samples of his work.

Sandra Osborn, 1 Main Street, met with the Board to ask questions about changing her house into a Bed and Breakfast. The Board said they would want to see a plan of her property to see if she had sufficient room for parking. Osborn told the Board she has six spots and has also made an entrance to the property from Pickering Street. She can make more spaces according to the requirements of the Planning Board. Story said he wanted to see a plan showing off street parking. Osborne was told she would also need to have the following: 1) approval of the Board of Health, 2) letters from abutters that they have been notified of her intent, and 3) Fire Department approval.

James Kroesser, an attorney from Glovsky and Glovsky, met with the Board to receive Form A approval for the estate of Etta Irving, Wood Drive. Kroesser had submitted the Form A at the previous meeting and the Board felt they should receive an opinion from Town Counsel before making a decision. Story said that after speaking with Counsel he said the Board could approve it.

Bragdon moved that the Board approve the Form A subdivision plan believed not to require subdivision approval, plan of land in Hamilton and Essex, property of the estate of Etta M. Irving, dated October 1, 1990. The motion was seconded by Dunn, with the Board voting unanimously in favor.

The Board discussed whether they should hold the second meeting in November because it fell on the day before Thanksgiving.

Madsen moved to cancel the regularly scheduled meeting on November 21, 1990; seconded by Bragdon, with the Board voting unanimously in favor.

CDMR, Lowe Hill subdivision - Clay Morin met with the Board to request a reduction on the Letter of Credit for the roadway. Morin said the finish hot top is on the road.

Madsen moved that upon receipt of a letter from James Stelling, Clerk of the Works for Lowe Hill subdivision road, that the road is built according to the specifications of the definitive subdivision plan road design and road profile layout that the Letter of Credit be reduced from \$43,200.00 to \$2,000.00, to hold in reserve for wetland replication. The motion was seconded by Bragdon, with the Board voting unanimously in favor.

Sandra Weatherall, 139 Main Street, met with the Board to ask permission for a home occupation at 139 Main Street to make cookie dough to sell. There will be no people other than family working with her. She said she will be selling it to stores herself, and nobody will be coming to her house to buy. She does not plan to hire anyone to work with her. The Board could not find a problem with this home occupation and gave their approval.

Story said he wanted to let the Board know that they will be involved in a

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new development by East Point Associates for property behind the Chaval Skating rink, known as Deer Hill Estates. The applicant will be going to the State for their approval as a site for low income housing.

The Minutes of the meeting of October 17, 1990, were read. Madsen moved to accept the Minutes of October 17, 1990; seconded Dunn, with the Board voting unanimously in favor.

Madsen moved to adjourn the meeting; seconded by Ginn, with the Board voting unanimously in favor.

Meeting adjourned at 10:10 p.m.

Respectfully submitted by:


Gillian B. Palumbo

A G E N D A

- 8:00 p.m. ... Peter Van Wyck - submittal of definitive
subdivision plan for Low Land Farms
- 8:30 p.m. ... George Herbster - storage of antique cars
in car barn, former Industrial Cab Company,
Western Avenue
- 8:45 p.m. ... Clay Morin - change of lot line at 31 Belcher
Street
- 9:00 p.m. ... Attorney James Kroesser, Glovsky and Glovsky,
Estate of Etta M. Irving, 85 Wood Drive

Discussion :

- Paul Desmond wood cutting business, off Western Avenue
- Sign bills payable voucher

Essex Planning Board

October 17, 1990

Present : Dana Story, Chairman; Frances Dunn ; George Bragdon; Rolf Madsen; Joseph Ginn (8:10 p.m.)

Meeting called to order at 7:50 p.m.

Building Inspector Richard Carter submitted a building permit application for Vincent Caravella, 34-36 Main Street, for the enclosure of a porch.

Bragdon moved to approve the issuance of a building permit to enclose a porch for Vincent Caravella, at 34-36 Main Street, finding under By-law 6-4.2 that it is not substantially more detrimental than the existing nonconforming use to the neighborhood. The motion was seconded by Madsen, with Bragdon, Dunn, Madsen and Story voting in favor.

Peter Van Wyck told the Board his definitive subdivision plans for Low Land Farms were not ready and asked to be placed on the agenda for the following meeting on November 7.

The Minutes of the October 3 meeting were read. Bragdon moved to approve the Minutes of October 3, 1990. The motion was seconded by Madsen with the Board voting unanimously in favor.

George Herbster, Scandatronix, Western Avenue, met with the Board to discuss the use of the car barn on his property. Herbster said the building has been vacant since Varian left and he would like to use it for the long term storage of antique cars. The car, once it is left on the property, will not be driven but will be moved by hand on dollies. Nothing will be done outside of the building. It was the consensus of the Board that they had no problem with this use.

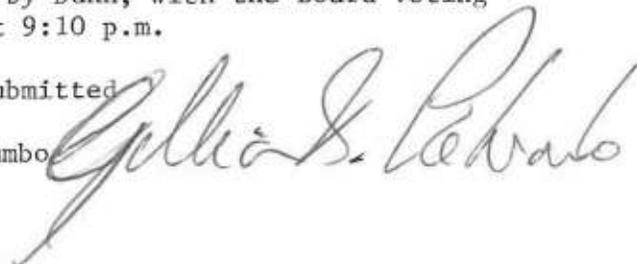
Attorney James Kroesser, representing the estate of Etta Irving, Wood Drive, submitted to the Board a Form A. The property consists of two acres with two cottages on it. Part of the parcel is in Essex, the other portion is in Hamilton. Kroesser said he submitted a Form A because there is a state law, M.G.L. Chapter 41, Section 81L, which states that a person is allowed to divide a piece of property with dwellings on it providing it predates the subdivision control law. The lot in Essex has 99' feet of frontage and is 30,800 square feet in size.

The Board felt they should have an opinion from Town Counsel John Tierney before acting on the plan. Kroesser gave the Board an extension to the time frame for action on a Form A until November 8 in order for Town Counsel's opinion to be obtained.

Ginn moved to adjourn the meeting; seconded by Dunn, with the Board voting unanimously in favor. Meeting adjourned at 9:10 p.m.

Respectfully submitted

Gillian B. Palumbo



A G E N D A

- 8:00 p.m. ... East Point Associates - Paul Chisholm/
Manuel Rabbitt - property behind skating
rink, Western Avenue
- 8:30 p.m. ... Form A submittal - David Lane, John Wise
Avenue
- 8:45 p.m. ... Clay Morin - property on Belcher Street
- 9:00 p.m. ... William Fitts - winterize home on Lufkin
Point

Essex Planning Board

October 3, 1990

Present : Rolf Madsen, Acting Chairman; George Bragdon; Frances Dunn;
Joseph Ginn; John Knowles.

Meeting called to order at 7:50 p.m.

The Board discussed complaints which had been received regarding the wood cutting business being conducted at the residence of Paul Desmond, off Western Avenue. Building Inspector Richard Carter was instructed to check on this.

Paul Chisholm and Manuel Rabbitt, representing Eastern Point Associates, met with the Board for an informational discussion on land in Essex, off Western Avenue, the site of the former Deer Run Development. Chisholm said they have preliminary discussion with the Selectmen of Hamilton and Essex and the Planning Board of Hamilton. They have made no formal application with the Town, but will be making a formal application with the Massachusetts Housing Authority in a few day.

The parcel in question is a 39 acre site behind the skating rink, plus a parcel of land in Hamilton 27.9 acres in size. The current owner is Ford Hill Corporation. The proposal is for 248 rental units. 25% of the units will be low income and 75% will be at full market rates. There will be a total of 20 buildings. Chisholm then showed the Board a design of the buildings and a layout of the site. He said there will be 37 one-bedroom, 186 two-bedroom and 25 three-bedroom units. The density in Essex would be 213 units and the remainder would be in Hamilton. The layout also includes two tennis courts and recreational buildings. The buildings range in size from ten units to 22 units in Hamilton. 58 units have at-grade access. Parking consists of two cars per unit. Heating will be by natural gas. There will be 79% open space coverage in Essex. Chisholm said if the plans go forward they will be filing with the Conservation Commission. Ginn asked why such a density was proposed in Essex and not Hamilton. Chisholm - "Density is 5.4 units per acre in Essex. The rest of the area in Hamilton is in conservancy and contains wetlands. We avoided it by staying out of it."

Chisholm said they propose using town water. The private sewage disposal unit is sized for 18,000 gallons per day, but can be sized larger if needed. 62 units of 2/3 bedrooms will be low income. The price range is from \$750 for a one-bedroom unit to upper 800's for three bedrooms. Some units will be flats, and some will be townhouses.

William Holton - "What is the profile of a customer who may be purchasing one of these units?"

Chisholm - "Young adults, single; newly married; all the way to senior citizens, retired or semi-retired."

Bragdon - "What is the impact on our schools?"

Chisholm - "We are compiling some impact data on the community and would

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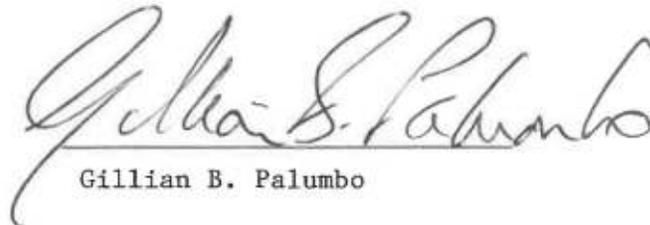
like to come back with figures at a later date." Chisholm said that Massachusetts Housing Authority has 75 days in which to respond to their application, but it can be as little as a month. That does not negate the Town's regulations, but just states that the State approves the siting.

David Lane, Trustee, Curlew Cove Realty Trust - Engineer Clay Morin submitted a Form A for Lot #8A, 1.364 acres in size. The entire parcel is 70 acres in size. Lot 8B encompasses the remainder of the parcel except for Lot #4, Lot #7, and the proposed Lot #8A. Morin said the lot was at its particular location because it was the only place a percolation test could be found. The deeded right of way is 50', but Madsen wanted to be sure that the Board was not signing off on a lot with frontage on a road which did not meet the Board's standards of adequacy. Morin presented photographs showing the road from John Wise Avenue to the proposed lot. He also submitted soil borings data. Dunn asked that if any more subdividing occurs, then the road be further upgraded.

Ginn moved to approve the Form A for Lot 8A for Curlew Cove Realty Trust, David Lane Trustee, at rear of 55 John Wise Avenue, finding that the existing Lane's Road is adequate under approval of subdivision control law not required. The motion was seconded by Bragdon, with the Board voting unanimously in favor.

Knowles moved to adjourn the meeting, seconded by Bragdon, with the Board voting unanimously in favor. Meeting adjourned at 9:10 p.m.

Respectfully submitted



Gillian B. Palumbo

Essex Planning Board

September 19, 1990

A G E N D A

7:50 p.m. ... Deborah Kuffel
8:00 p.m. ... C.T. Male
8:30 p.m. ... Kerry Kaplon - Discussion on Peter
Mugford's property
8:45 p.m. ... Lorraine Hardy - Hatchery
9:00 p.m. ... Peter Van Wyck

Business:

Sign voucher

Essex Planning Board

September 19, 1990

Present : Dana Story, Chairman; George Bragdon; John Knowles; Frances Dunn;
Mark Hall; Rolf Madsen (8:20 p.m.)

Meeting called to order at 7:45 p.m.

Building Inspector Richard Carter submitted a building permit application for Edward N. McFayden, 29 John Wise Avenue, to enclose a porch at the rear of the house. Lot size is 11,500 square feet. Letters of approval were received from abutters.

Bragdon moved to approve the enclosure of the porch for Edward N. McFayden, 29 John Wise Avenue, finding under Essex By-law 6-4.2 that it is not substantially more detrimental than the existing nonconforming use to the neighborhood. The motion was seconded by Dunn, with Bragdon, Dunn, Hall, Knowles and Story voting in favor.

Richard Carter said he wished to check with the Board to see if their permission was needed for the schooner Evelina Goulart to be temporarily stored at the town landing. The Board did not think any decision regarding this project was required from them.

Robert Klopotoski, representing Deborah Kuffel, submitted a Form A, for property at 127 Western Avenue. Lot 1 was cut out with Lots 2 and 3 remaining. At present there is a 30' driveway to the property.

Hall moved to approve the Form A application and plan as presented by applicant Donald and Linda Markham, 127 Western Avenue, plan dated August 15, 1990, approval under the subdivision control law not required. The motion was seconded by Dunn, with Bragdon, Dunn, Knowles and Hall voting in favor; Story voted present.

Paul Connelly of C.T. Male met with the Board for an informal discussion. Connelly said he wanted to thank the Board for choosing C.T. Male as their technical review agent and that the purpose of this meeting was to see if there were any questions the Board might have. Connelly said he would be, primarily, the person who would make presentations to the Board. He then reviewed the projects that C.T. Male had been involved with in Essex. Connelly felt there would be a conflict with the William Tyler project off Addison Street, and therefore would have to be excused as technical review agent. They have also worked for David Sabatini but could not foresee any conflicts there. Hall asked, "Have you come up with anybody who would be a substitute when you are involved with a project in Essex?" Connelly - "Yes, I can think of one who does work for the Town of Ipswich." Hall - "How far can the technical review be carried?" Connelly - "As far as the Board requests and as far as it is deemed ethical."

September 19, 1990

Kerry Kaplon, Lake Shore Drive, Gregory Island, met with the Board to discuss the Board's approval of Peter Mugford's property as a dwelling on Lake Shore Drive. He requested Minutes pertaining to this approval.

Lorraine Hardy and Frank Kaminski met with the Board to discuss Kaminski's interest in purchasing the hatchery to use as an auction barn. Kaminski said he does a lot of business out of the Ipswich V.F.W. hall; he also does estate appraisals, etc. When asked how many cars are generated at an auction, he said there are usually about 125-200 cars at the V.F.W. hall on auction night. The hatchery lot size is 5.3 acres. Hall asked how much of the land would need to be hot topped. Kaminski said he would not want to hot top too much. Kaminski said he could have as many as 12 people working for him. Hardy said there is a septic system in the building. Hall felt Kaminski should come in with plans showing exactly what he wants so that the Board has something definitive to work with. Bragdon said he had no problems with an auction barn. Dunn also said she did not have any big concerns with it. Madsen said that the way the by-laws read Kaminski could put in an auction barn. Story said he felt the Board could not give a definitive answer until Kaminski had a definitive plan to present to them.

Peter Van Wyck, together with Robert Klopotoski, met with the Board for a review of a preliminary subdivision plan for Low Land Farms which was submitted at the last meeting. Klopotoski said the reasoning behind the length of the road (approximately 1450') is we could quite have a standard size road, but would have a very long driveway to the end house. We felt it would be better to have a long road with hydrants/water services closer to the house. The same number of houses will be shown whether the road is 1200' or the length shown on the plan. Hall moved to approve the preliminary subdivision plan as submitted by the applicant Peter Van Wyck, entitled Low Land Farms, dated August 7, 1990, and to approve the waiver to allow the length of the road to be fifteen hundred (1500) linear feet. The motion was seconded by Dunn, with the voting as follows:- in favor - Hall, Dunn, Story; opposed - Bragdon, Knowles, Madsen. The motion failed to carry.

Madsen moved to approve the preliminary subdivision plan entitled Low Land Farms dated August 7, 1990, as submitted by the applicant, Peter Van Wyck, without making a finding on the requested waiver. The motion was seconded by Hall, with the Board voting unanimously in favor.

The Minutes of September 5, 1990, were read. Dunn moved to accept the Minutes of September 5, 1990; seconded by Bragdon. Madsen moved to amend the Minutes to indicate that the action taken on the change of use to the AmVets building for Stephen Payne was made under Essex By-law 6-4.2, that the change of use was found not to be substantially more detrimental than the existing nonconforming use to the neighborhood. The motion was seconded by Dunn. Dunn moved to approve the Minutes as amended; seconded by Bragdon, with Bragdon, Dunn, Knowles Madsen and Story voting in favor. Hall had left

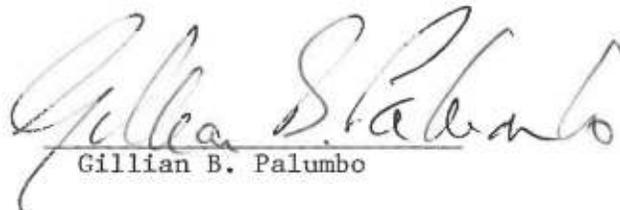
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the meeting prior to the reading of the Minutes.

Madsen moved to adjourn the meeting; seconded Dunn, with Bragdon, Dunn, Knowles, Madsen and Story voting in favor.

Meeting adjourned at 10:10 p.m.

Respectfully submitted



Gillian B. Palumbo

Essex Planning Board

September 5, 1990

A G E N D A

- 8:00 p.m. ... Peter Van Wyck - submittal of preliminary
subdivision plan, Low Land Farms
- 8:15 p.m. ... Stephen Payne - conversion of AmVets building
to residence
- 8:30 p.m. ... Jeff Legendre - Jim's Rubbish Disposal -
Scot's Way
- 8:45 p.m. ... Bentley Building Corporation - Brook
Pasture Road
- 9:00 p.m. ... William Pascucci - boundary line change,
Grove Street
- 9:30 p.m. ... Robert Coviello - deck at 44 Main Street

Business:

Sign bills payable voucher

Essex Planning Board

September 5, 1990

**Present: Dana Story, Chairman; Frances Dunn; Joseph Ginn;
Joe Knowles; Rolf Madsen; George Bragdon.**

Meeting called to order at 7:40 pm.

A building permit application was submitted to the Board by Building Inspector Richard Carter for Michael Hopgood and Annette Kawecki to finish a basement with a bedroom and office at 21 County Road. Madsen moved to allow the Building Inspector to issue a building permit to Michael Hopgood and Annette Kawecki under "6-4-2". The motion was seconded by Bragdon and carried unanimously.

A building application was submitted for John Duncan of 22 Rear Western Ave., for a 4 bedroom, single family "log cabin style home". Ginn moved and Madsen seconded a motion to allow the building inspector to issue a permit to John Duncan of 22 Rear Western Ave. for a 4 bedroom, single family "log cabin style home". The motion carried unanimously.

Building Inspector Carter submitted an application for Mark H. White of Waltham, Mass., and Bentley Building Corp., 503 Main Dunstable Road, Nashua, New Hampshire, for the construction of a wood framed, 2 family house on Lot 58-C, Map 36 (Lot size of 46,715). Ginn moved to allow the Building Inspector to grant the permit for the above named applicants for the construction of a wood framed, 2 family house on Lot 58-C, Map 36. Dunn seconded the motion which carried unanimously.

Discussion followed, initiated by Ginn, concerning the screening of commercial properties and storage trailers. Madsen said that the town bylaw classification of trailers is ambiguous. Ginn said that his understanding is that a storage trailer needs a permit. Carter said that if a trailer is registered (for \$12), then it doesn't need a permit.

Ginn said that he was concerned that customers walking across the Causeway to and from Calahan's Restaurant were doing so at a poorly lit section of road. He said that a spotlight on the roof of the restaurant was not turned on. Story responded by saying that he thought that was the jurisdiction of the Police or the Board of Selectmen.

Peter Van Wyck met with the Board and submitted a preliminary plan of subdivision to be called Low Land Farms, off Apple Street. The plan entails a dead end road. Van Wyck asked for a waiver from the Board to allow a longer dead end road than town bylaws allow, from 1,200' to approximately 1,450' to 1,500'. Van Wyck said he would create three lots initially. The presentation made, it was decided that the request would be scheduled for discussion at the Board meeting on September 19, at 8:30.

Stephen Payne met with the Board concerning his plans for converting the Amvets building on School Street to a private residence. Payne returned with a site plan, having appeared at an earlier Board meeting. Payne said he would not be changing the footprint and not making the lot more nonconforming than it is. He reported that a boundary line thought to be within a distance of 12' was actually shown to be a distance of 9'6". Madsen moved to approve the change in use from business to a two family house. Bragdon seconded the motion which carried unanimously.

Nick and Debbie Kuffel appeared before the Board and requested that they be scheduled for the next Board meeting, which was done for 8:00 pm, September 19.

Jeff Legendre, together with attorney David Gardner, returned to ask that the Board reconsider its earlier decision of August 1 to deny the siting of a 60' by 90' building for Jim's Rubbish Disposal on Lot 7 of Scot's Way for the parking of trucks and light maintenance of said trucks and storage containers. Gardner said they were seeking approval under 6-7-2 and recounted two earlier applications to the Board. Madsen moved to reconsider the application. Ginn seconded the motion. The motion carried, with Madsen, Ginn, and Dunn voting in favor; Knowles and Bragdon voting against; Story voted present.

Gardner listed the numerical requirements of the town bylaws, stating that the applicant fits the requirements and that the Board had and has no basis for denying siting on a subdivision already approved. He accused the Board of acting outside the bylaws already on the books. Story said he cast his vote with the best interest of the town in mind and that his vote was consistent with his opposition to the Scot's Way project at earlier meetings. Knowles said he had reasons for voting the way he did at the previous meeting. Ginn recommended that Legendre make a concession on the number of trucks involved, to make the process easier. Gardner said that his client had done everything the Board had asked of him, including asking the neighbors for their sentiments on the siting of the building and its use. Dunn said that she asked that the neighbors be talked to as a courtesy. Madsen made a motion to terminate debate, saying that Gardner was hurting his cause by talking on too long. Story asked for a motion to approve the siting of a 60' by 90' building on Lot 7 of Scot's Way, (Lot 7, Map 8) for Jim's Rubbish Disposal, Inc., for the parking of trucks and light maintenance of those trucks and containers, subject to the approval of the Conservation Commission and that screening as discussed at the earlier meeting be provided. Ginn made the motion, seconded by Madsen. Knowles, after questioning Madsen, reported that he would vote in favor of the motion, saying that the Board had no bylaw with which to deny the siting. The vote followed, with Ginn, Madsen, Dunn, Bragdon, Knowles voting in favor; Story voting against.

William Pascucci met with the Board to request a boundary line change for his property on Grove Street. The changes would have produced a new nonconforming lot. Madsen said that state law would not allow it.

Robert Coviello, 44 Main Street, met with the Board to ask its permission to display furniture on his new deck at 44 Main Street. Madsen made the motion that the Board lift the restriction on Main Street Antiques against the display and sale of furniture with the understanding that should he wish to enclose the deck at a future date, Coviello will return to the Board to ask its permission to do so. Knowles seconded the motion which carried unanimously.

Madsen moved that the reading of the Minutes of August 1, 1990 be waived. **Ginn** seconded the motion. The motion carried unanimously. **Madsen** moved to approve the Minutes of August 1, 1990. The motion was seconded by **Dunn**, with the Board voting unanimously in favor.

Ginn moved to adjourn the meeting; seconded by **Madsen**, with the Board voting unanimously in favor.

Meeting adjourned at 10:10 p.m.

Respectfully submitted by

John H. Knowles, Jr.

A G E N D A

- 7:45 p.m. ... Robert Coviello
- 8:00 p.m. ... Scott Savory - auto repair shop, Scot's Way
- 8:15 p.m. ... Joan Enos, Eastern Avenue - Home Occupation
- 8:30 p.m. ... Jeff Legendre - Jim's Rubbish Disposal,
Scot's Way
- 8:45 p.m. ... Steven Payne
- 9:00 p.m. ... Amory Aldrich, Coral Hill - apartment
- 9:15 p.m. ... Low Hill - release of bond money
- 9:30 p.m. ... Chris Hammond, Pickering Street - shed dormer
- 9:40 p.m. ... Review of preliminary subdivision plan of
Peter Van Wyck

Business

Building Inspector's report on Pigeon Cove Canvas Co.

Essex Planning Board

August 1, 1990

Present : Dana Story, Chairman; Frances Dunn; Joseph Ginn; Joe Knowles;
Mark Hall (7:55 p.m.); Rolf Madsen.; George Bragdon.

Meeting called to order at 7:45 p.m.

A building permit application was submitted to the Board by Building Inspector Richard Carter for Christopher Hammond, 36 Pickering Street, for the construction of a shed dormer. Letters of approval were received from the abutters. The lot is non-conforming.

Ginn moved to allow the Building Inspector to issue a building permit to Christopher Hammond, 36 Pickering Street, for a shed dormer to be built on the rear of the property, finding it not to be substantially more detrimental than the existing nonconforming use to the neighborhood. The motion was seconded by Knowles, with Story, Ginn, Knowles and Dunn and Bragdon voting in favor.

A building permit application was submitted for Alfred Brosch, 143 Main Street, to move a bay window.

Ginn moved to allow the building inspector to issue a building permit for the installation of a bay window, with letters from the abutters showing they have no concerns to remain on file. The motion was seconded by Bragdon, with Bragdon, Dunn, Ginn, Hall, Knowles and Story voting in favor.

Pigeon Cove Canvas Company - Building Inspector Richard Carter said he checked with the Canvas Company regarding the parking of cars. They told him they were in the process of renting another facility, but they were not sure how soon. They said they had not received any complaints about parking, but they have made arrangements to park some of the vehicles in Robert Marculewicz's yard next door. Ginn said he had a telephone call from an abutter who had no concerns, and in fact like to see some parking along the side of the road as she felt it actually slowed down the traffic. Ginn said his concern was the ability to get a fire truck down the street. Dunn asked if the number of employees was also a concern. Carter said he also checked on the Marculewicz property as the Board had requested. Marculewicz sells engineering sound proofing and runs the salt marsh gallery from there. Marculewicz said the business has been there for thirty years.

Thomas Dietrich property, Western Avenue - Carter said he checked the property and found Dietrich had cleaned it up. Dietrich also told him that within a week he would have two other cars off the property.

Robert Coviello, 44 Main Street, met with the Board on the request of Board Member Mark Hall to discuss the fact that in spite of Hall's motion that no furniture be displayed on the new deck Coviello had constructed, it was. Coviello said this came about because the building permit was not physically picked up until a week later. On the telephone the Building Inspector had told him the building permit had been issued but no mention was made of the

August 1, 1990

restriction and therefore he was not aware of it until he picked up the permit. Richard Carter said, "The mix-up was that over the telephone I told him the permit was issued and he started the deck before he picked up the building permit." Hall said, "I made the motion specifically because along the causeway I see decks become an extension of the business." Bruce Fortier said, "There is a by-law which says you cannot have a display of your business outside so there is no need to consider this." Coviello was told nothing will change but that he could come into the next meeting to ask for a reconsideration of the restriction.

Scott Savory, together with attorney Frank Flatley, met with the Board to submit a building permit application for the construction of a building on Lot 2 of Scot's Way subdivision. Flatley said, "The Board requested us to notify the abutters to the property as a courtesy, which we have done. The application involves Lot 2 of Scot's Way subdivision. Scott intends to erect a metal building with three garage bays facing the parking area. The building will be on a cement slab, 60' by 40' in size, 2,400 square feet, and approximately 25' high. There will be no gasoline storage on site. It is simply an auto repair garage. With an area of 2,400 square feet, a minimum of five spaces is required and the plan shows ample area. We do not have a sign planned as yet; it has not been finalised." The owner of Lee's Misty Acres Restaurant, Lee Aspesi, an abutter to the property, told the Board that he did not have any problems with Savory having his business there. He did have one concern which was a water concern. Aspesi said, "It is my opinion that with the work done there it has increased the water table. I ask that any business in there does not aggravate the problem." Ginn - "Are you saying that the work done has increased water in the area?" Aspesi - "It has been told to me. I am having to raise my septic system, up 3' or 4'. It seems to have occurred when work started." Ginn - "The Conservation Commission worked very closely on this so I'm surprised to hear that." Hall - "Do you think this will generate a lot of traffic?" Flatley - "I think the traffic will be fairly moderate. As there is no gasoline sales it will not attract drive-bys." Hall - "With two industries going in perhaps tonight, and five or six more lots available, when do we have to start worrying about the traffic that is generated from this subdivision or when a traffic light becomes necessary. I feel the Board perhaps should soon require some traffic analysis." Dunn said she did not think it would be much of a problem with the garage as one car will be driven in and left. Flatley also mentioned that there will be no floor drains in the building. An oil and gas separator will be placed in the catch basin.

Ginn moved to approve the siting of the building for Lot 2 of Scot's Way subdivision for a proposed 40' x 60' building for use as an auto repair shop, with the entire paved area to be graded to the catch basin, with a berm at the perimeter of the paving so that water will run to the drain.* The motion was seconded by Madsen. Ginn also said he wanted to be sure that the area would be screened. Madsen said there had been discussion

*and that screening be put in place.

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about cedar trees or shrubs being placed on the line. The voting was as follows: In favor - Bragdon, Dunn, Ginn, and Madsen; opposed - Hall, Knowles and Story.

Knowles said his reason for denying the project was because he felt the impact of this on the environment and the area was not known.

Hall - "I ditto Joe Knowles comments. Also after speaking with the water department and knowing where the watershed is, this is something I am not prepared to vote on tonight. I feel this is a very sensitive area."

Story - "My reasons include that of Joe Knowles and Mark Hall, plus I want to be consistent. I feel it is wrong to build an industrial park in the watershed area of Chebacco Lake.

Joan Enos, 81 Eastern Avenue, met with the Board to request permission to have a home occupation to sell crafts. Madsen asked if there would be more than two employees that were not family members. Enos said it would just be her. The Board approved the request.

Jeff Legendre, together with attorney David Gardner, met with the Board to present plans for the construction of a 60' by 90' building on Lot 7 of Scot's Way subdivision for the storage of Legendre's rubbish trucks.

Gardner said, "The building will consist of four bays and light maintenance will also be performed on the trucks. Jeff has parked his trucks at other locations in Essex, Chaval Rink and across from the Red Barrel. The Board was concerned that the abutters be notified and Mr. Legendre went personally to see them and received letters from them stating they had no objection to his project. He has also received a letter from the Board of Health stating their approval. He has also obtained a picture of screening he will use if it meets the Board's approval." Lee Aspeci of Lee's Misty Acres Restaurant said he had no concerns with this project except for the one he had raised before. Dunn said she felt her concerns had already been addressed. Madsen asked Legendre how many trucks he had. Legendre - "I have presently six trucks, but I hope to grow. Three or four more would not be unrealistic." Legendre also told the Board he owned 275 rubbish dumpsters, and that he would keep perhaps seven or eight on the site. He added that he could fit six trucks there but they would not all be in there at once. When asked about washing the trucks Legendre said they will be cleaned in Peabody. Ginn said, "There was a slot drain proposed. What is the status of that?" Engineer Clay Morin said, "It has been eliminated. A catch basin has been placed in the corner of the parking area. There will be paving to within 60' to 70' of the building."

Madsen moved to approve the siting of the 60' by 90' building for Jim's Rubbish Disposal on Lot 7 of Scot's Way for the parking of trucks and light maintenance of said trucks and storage containers; subject to the approval of the Conservation Commission, and that adequate screening be provided. The motion was seconded by Ginn. The voting was as follows:- In favor - Dunn, Ginn and Madsen; opposed - Bragdon, Hall, Knowles and Story.

August 1, 1990

Bragdon said he opposed the motion because he takes every project separately. "The earlier one took into account a certain amount of traffic. This one does not. I do not know what traffic there will be. I am concerned about the impact on Western Avenue."

Hall said, "I repeat the opposition to the project as I had for Scott Savory's."

Knowles - "I'm not limiting my reasons to this. We do not have any reading of the impact of this on the aggregate. I'm trying to plan as much as I can without adequate by-laws."

Story - "My position has been consistent. I am opposed to anything going in there because it will ultimately end up in the Lake."

Hall - "My reasons are the same. After speaking with the Water Department and finding where the water shed is, I feel a proposed industrial area will have a potential threat to our water."

Madsen said although he did not particularly approve of Legendre's proposal, he really had no grounds to vote against it. He said the subdivision was approved as a commercial one and Legendre's application did not violate any of the by-laws.

Stephen Payne met with the Board to discuss a proposal to convert the American Veterans building on School Street to a residence. The lot size is 20,000 square feet. The building comes to within 12' of one of the boundary lines. Payne said he wants to build a two-bedroom house with a one-bedroom apartment. The Board told him to return with a site plan.

Amory Aldrich told the Board he has a house on Wood Drive, built four years ago with a cottage attached, and he would like to rent the cottage. The Minutes of August 7, 1985, were read. Madsen said that Aldrich has to prove to the Building Inspector that his lot is conforming. If not he would have to return to the Planning Board for a finding.

Engineer Clay Morin, representing Low Hill subdivision, told the Board they will be putting on a finish coat on the road, then let it sit for a year. They want to ask for a reduction of the bond, but would like to set some of it aside for the replication area. Morin said he would like to come back to the next meeting to make a formal request.

The Board reviewed the preliminary plan of Peter Van Wyck for a subdivision road 1340' in length, with two lots at the end. Elizabeth Frye said, "The State required that Peter provide an Environmental Impact Report on this property (Low Land Farms). A draft was submitted on this but it was a draft and was deemed unsatisfactory. Peter should also show on the plan the coastal restriction." Van Wyck said he would like to have a waiver of the length of the road to make it longer.

Madsen moved to deny the Low Land Farms applicant's request of a waiver on the preliminary subdivision plan of Low Land Farms dated June 15, 1990, for the length of the road, and further to deny the road as drawn on the plan because it exceeds the length required under the Essex

August 1, 1990

Subdivision Regulation 7.02.4c.2. The motion was seconded by Knowles, with Bragdon, Dunn, Ginn, Knowles, Madsen and Story in favor; Hall voted present.

The Minutes of July 11, 1990, were read. Hall moved to approve the Minutes of July 11, 1990, as read. The motion was seconded by Dunn, with the Board voting unanimously in favor.

Madsen moved to adjourn the meeting; seconded by Dunn, with the Board voting unanimously in favor.

Meeting adjourned at 10:03 p.m.

Respectfully submitted by



Gillian B. Palumbo

A G E N D A

- 8:00 p.m. ... James Sullivan - to sell antiques from
barn at 21 Martin Street
- ***
- 8:30 p.m. ... Mark Hall - Essex Reach, Eastern Avenue
- 8:45 p.m. ... Joan Enos - request for home occupation
permit at 81 Eastern Avenue
- 9:00 p.m. ... Jeff Legendre, Jim's Rubbish Disposal
- 9:15 p.m. ... Scott Savory - auto body shop at Scot's
Way subdivision
- 9:30 p.m. ... Arthur Hatfield - release of covenant for
Doyle Acres
- 9:45 p.m. ... Peter Van Wyck ?

Business:

Sign bills payable voucher

Next meeting August 1, 1990

- *** 8:15 p.m. ... Nicholas DeCoulas - Southern Avenue
property - discussion on last meeting's
denial

Essex Planning Board

July 11, 1990

Present : Dana Story, Chairman; George Bragdon; Frances Dunn; Joseph Ginn;
Mark Hall; Rolf Madsen (present at 8:10 p.m.)

Meeting called to order at 7:50 p.m.

The Building Inspector submitted a building permit application for Robert Coviello for the construction of a 68' x 10' open deck at 44 Main Street.

Hall moved to approve the open deck for Robert Coviello, being 68' x 10' in size, with the understanding that this deck is to be used for open space and not for retail or display of goods, finding under Essex By-law 6-4.2 it is not substantially more detrimental to the neighborhood than the existing non-conforming use. The motion was seconded by Dunn, with Bragdon, Dunn, Ginn, Hall and Story voting in favor; Madsen voted present. (Building Permit Number 77).

The Board discussed the Pigeon Cove Canvas Company located on Dodge Street, and its violations of the home occupation by-law. Ginn said he felt from a safety factor that it is a dangerous situation because fire trucks would not be able to pass with the number of cars parked along the road.

Madsen moved to ask the Building Inspector to check whether the Pigeon Cove Canvas Company is in violation of the Home Occupation By-law, 6-6.2(d). The motion was seconded by Hall, with the Board voting unanimously in favor. Madsen asked to amend the motion to include that the Building Inspector also check the property next door to the Pigeon Cove Canvas Company, which is owned by Robert Marculewicz. There was no second to the motion.

James Sullivan met with the Board to discuss a proposal to sell antiques from a barn at 21 Martin Street, property he is intending to purchase. Area of land is 13,000 square feet. Dunn said his only concern would be parking. Ginn was concerned that the residence is across the street from the fire station and when there is a call the volunteer fire personnel must park in the general area. Sullivan indicated that he could make the business as one 'by appointment only'. Story told him that if he wanted to pursue this then he should bring in a plan showing the parking area he has and then make a formal presentation.

Nicholas DeCoulas submitted an Application for Endorsement of a Plan believed not to require approval (Form A) for Southern Avenue Realty Trust, Trustees Steven G. Demeter and George F. Lasquade. A Form A had been submitted to the Board three years ago for the same parcel of land. The Minutes of December 30, 1986, were read, which referenced the Board's action to the Form A at that time. DeCoulas indicated that the earlier plan had never been filed at the Registry.

Hall moved to approve the Approval Not Required plan Form A, applicant Southern Avenue Realty Trust, Trustees Steven G. Demeter and George F. Lasquade

July 11, 1990

drawn by John J. DeCoulos, dated May 18, 1990. The motion was seconded by Ginn, with Bragdon, Ginn, Hall, Madsen and Story in favor; Dunn voted present. The plan was signed by a majority of the Board.

Robert Klopotoski submitted a preliminary subdivision plan for Low Land Farms. The plans will be reviewed at the next meeting on August 1, 1990;

Essex Reach, Eastern Avenue - Board members Joseph Ginn and Mark Hall excluded themselves from the discussion. Engineer Clay Morin submitted an as-built plan. He said a catch basin was removed from the location shown on the original plan because they found the run-off did not flow towards that area. The catch basin was placed further down the road. D.P.W. Superintendent Bruce Julian was an unofficial Clerk of the Works and inspected the work done, which met his approval.

Bragdon moved to accept the as-built plan of the subdivision road of Essex Reach and to release the balance of the performance bond for the road in the amount of \$14,000. The motion was seconded by Dunn, with Bragdon, Dunn and Story voting in favor; Madsen opposed; Ginn and Hall voted present.

Jeff Legendre, of Jim's Rubbish Disposal and Trucking Company, together with attorney David Gardner, presented a plan to the Board showing construction of a 60' x 90' building on Lot Number 7 of Scot's Way subdivision. A letter from the Board of Health was read which stated their tentative approval of the project. Gardner said 'they have come before the Board for a determination of the use. Jeff had been before the Board and was told to come back with more definitive plans showing what he plans to do.' Engineer Clay Morin said they had interpreted the use as a business use and not as an industrial use. Ginn asked why the Board of Health had denied them a floor drain. Morin said the state has said that no floor drains can be put in any business or commercial property. Ginn asked, "Why did they require you to put in a slot drain in front. Isn't it the same? Doesn't that tie into the septic system?" Morin - "No, it is just a container below the surface." When asked if all the trucks will be stored in the building, Legendre said two trucks will be in the building and the rest will be outside. Dunn said her only concern was the hours of business, because there are residences in the area and it would be unfair to them to have trucks starting up at 5 a.m. Morin was asked if the lot was in the watershed area. He said the Town did not have a watershed area, but that this area does lead into Chebacco Lake but has to travel 3,500 to 4,500 feet. Gardner then asked for a finding by the Board. Ginn said he disagreed with the slot drain going nowhere. Madsen noted that the by-laws state that either the trucks must be parked within the building or that the area be screened from the public. Dunn said she wanted to reiterate that she would like to see some consideration shown to the neighbors with the starting of the trucks. Gardner said that if anyone would give consideration it would be Jeff.

Madsen moved that if this plan is submitted and meets the existing by-laws

July 11, 1990

that the Board would approve it. The motion was seconded by Dunn. Hall said, "I would ask the applicant that even though we do not have a formal procedure for notifying neighbors, before the night of the submittal of a building permit application they be notified. I will not vote approval if I hear from neighbors that they have not been notified. The vote on the motion was as follows: Dunn, Ginn, Madsen in favor; Hall, Bragdon, Story present.

Scott Savory, together with attorney Frank Flatley, met with the Board to submit a building permit application for the construction of a motor vehicle repair garage on Lot Number 2 of Scot's Way subdivision. Flatley said they had received permission from the Conservation Commission. Savory is proposing a 40' x 60' building. The septic design is presently before the Board of Health but as yet has not received approval. Savory said the cars will be stored in the parking area as shown on the plan. Madsen noted that the cars must be screened according to the by-law.

Madsen moved to approve the siting of the building for an auto repair garage on Lot Number 2 of Scot's Way as presented by a building permit application dated July 11, 1990 for Scott Savory, with the added stipulation of by-law 6-6.5(c) - Storage: All storage shall be in an enclosed building or screened from abutter's view, and subject to the approval of the Board of Health. The motion was seconded by Ginn. Hall said he felt the abutters should be notified on the use and have an opportunity to respond to respond to additional issues so he could not vote for it at this time. The voting was as follows: Dunn, Ginn and Madsen in favor; Bragdon, Hall and Story opposed. The voting was tied and therefore the motion did not carry. Story said the reason he opposed is on environmental grounds and that he has consistently opposed anything like this in this area. He added that he was satisfied with the details of the plan, but that this has always been his general objection.

Arthur Hatfield submitted as-built plans for the subdivision known as Doyle Acres.

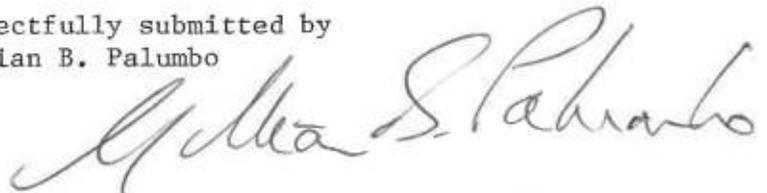
Hall moved to accept the as-built plan submitted by Arthur Hatfield dated July 11, 1990 and that the covenant be released. The motion was seconded by Dunn, with the Board voting unanimously in favor.

The Minutes of June 20, 1990 were read. Madsen moved to approve the Minutes of June 20, 1990, with the following amendments: 1) for Steven Avenue Realty Trust Madsen moved but did not submit, and 2) Bragdon removed himself from the voting on Donald Metcalfe's plan as he was an abutter. The motion was seconded by Dunn, with the Board voting unanimously in favor.

Madsen moved to adjourn; seconded by Ginn, with the Board voting unanimously in favor.

Meeting adjourned at 10:25 p.m.

Respectfully submitted by
Gillian B. Palumbo



A G E N D A

- 8:00 p.m. ... Mass Audobon
- 8:45 p.m. ... David Swett - one bedroom over garage
- 9:00 p.m. ... Peter Van Wyck - preliminary plan
submittal
- 9:15 p.m. ... Arthur Hatfield - release of covenant
for Doyle Acres
- 9:30 p.m. ... Donald Metcalf - Attorney Michael McCarron -
Form A

Business:

Discuss Pigeon Cove Canvas Business, Dodge Street

Essex Planning Board

June 20, 1990

Present : Dana Story, Chairman; George Bragdon; Frances Dunn; Joseph Ginn; John Knowles; Rolf Madsen.

Note: Due to the absence of secretary Gillian Palumbo, the Minutes of the meeting were recorded by Board member George Bragdon.

Meeting called to order at 7:50 p.m.

John A. Mansfield, Jr., 6 LeBaron Road, requested roof to be raised and full shed dormers. Ginn recommended under By-law 6-4.2, Non-Conforming Lot, and approved.

David G. Swett, 22 Conomo Drive, - 2-car garage with in-law apartment on 4 3/4 acres with over 150' frontage, approval of septic system on June 2, 1985. No Board action was required.

A change of use was requested by attorney Paul Shea for South Essex Village complex. The proposed use for the barn will be for storage of machinery and not for storage of antique cars. Attorney Shea presented facts on the lot history and clarified the parking conditions. No covenant in deeds for parking. No retail usage is requested. Dead storage only. No curb cut could be produced and Karen Gertsch of Haskell Court noted that the state will not approve a curb cut. The electrical power has been increased in the past week. The only issue in front of the Board is the change of use (plan dated May 21, 1990). No motion is required.

An ANR plan submitted by Steven Avenue Realty Trust. Boston Land Court will confirm the title. Materials submitted by the applicant is incomplete and we are unable to confirm Form A, Section 4 - 4.01 of the subdivision regulations, and not adequate copies of Form A have been provided. Submitted by Rolf Madsen and approved.

Mass. Audobon presented a talk on wetland pollution and the destruction of the shell fish (clam) area. Per ortho photo maps.

Arthur Hatfield has completed road off County Road. Robert Campbell, Clerk of the Works, has affirmed that the road has been constructed. As-built plan is not available and a future visit is recommended on July 11, 1990, at 9:00 p.m.

Donald Metcalfe, represented by Attorney Michael McCarron, Danvers, presented a plan to create three new lots from three old lots owned by Richard Carter, Carlton Carter and Donald Metcalfe. The plan for re-forming the three lots had been presented at the last Board meeting, but the applicant was asked to resubmit with clearer representations and square footage totals. Madsen moved and Hall seconded the motion to approve the plan which was voted unanimously.

Essex Planning Board

June 6, 1990

A G E N D A

- 7:50 p.m. ... Russell Hodgkins -Story Street
- 8:00 p.m. ... Clay Morin - Pine Ridge subdivision
- 8:15 p.m. ... Donald Metcalf - submittal of Form A
- 8:30 p.m. ... John O'Brien - change of use - 131 John
Wise Avenue
- 9:00 p.m. ... Peter Van Wyck - informal discussion on
preliminary subdivision plan

Essex Planning Board

June 6, 1990

Present : Dana Story, Chairman; George Bragdon; Frances Dunn; Joseph Ginn; Mark Hall; John Knowles; Rolf Madsen.

Meeting called to order at 7:45 p.m.

Building Inspector Richard Carter submitted a building permit application for David Doane, 73 Western Avenue, for the construction of a garage. It was found that the garage was 10' from the sideline setback. Madsen said the sideline setback should be 20' because the garage is attached to the principle building and therefore is not an accessory building.

Hall moved to deny the building permit application of David Doane, 73 Western Avenue, finding that it does not meet the side yard of 20' under By-law 6-6.2(a). The motion was seconded by Madsen, with the Board voting as follows: in favor - Dunn, Hall, Knowles, Madsen and Story in favor; Bragdon abstained from voting because his mother is an abutter to the property; Ginn abstained from voting because he is moving a septic system on the property.

The Building Inspector presented a plan to the Board for the South Village Center which showed the barn being on a separate lot than the shops. Because of this plan Carter said he issued a building permit for the construction of the loading dock. Hall said the plan presented was a sketch and not an engineers plan because it did not have an engineer's stamp, and so could not be used to indicate a subdivision of land. He also said the original building permit for the barn was issued in 1985 with the motion stating that it be used for the storage and sale of antique and classic cars only. Early Planning Board Minutes indicated that an approval not required plan was submitted but it could not be located.

Russell Hodgkins, 44 Story Street had been asked by the Board to meet with them to discuss the removal of a portion of the stone wall on a scenic way, i.e. Story Street. Hodgkins said he had removed twelve rocks in order to get a bulldozer into his yard to remove trees on his property. Hodgkins said he would definitely put back the rocks when his work is complete. He reassured the Board that they had his word on it.

South Village Center - The Board continued discussion on this after trying to locate the approval not required plan mentioned in Minutes from 1985. Hall said, "If this is a separate lot (containing the barn) then how can you approve the parking for a project on one lot that will utilize another lot for its parking." Story said the issuance of a building permit by the Building Inspector was done inadvertently because he felt with the plan he had sufficient information. Madsen read the Minutes from 1985 to the Board which indicated a Form A had been issued, and added that if the plan had not been filed at the Registry then it would not be valid. The Board then requested that a plan be submitted which has been stamped by an engineer.

June 6, 1990

Hall asked that an answer be given as to whether work will continue or stop until this issue is resolved.

Attorney David Babson, representing Ronald Ober and Charles Richard, Trustees of Wheeler Street Riverside Realty Trust, and Attorney Ted Regnante, representing Bank of New England, who holds the mortgage for the property, met with the Board to discuss the final resolution for the Pine Ridge Subdivision.

Babson said the issues to be resolved were i) that certain repairs and/or improvements be made to Pond Street, ii) that certain additions and improvements to the road in the subdivision for the purpose of providing an access area to the pond for fire apparatus, iii) that sprinkler system be installed in each dwelling unit. Babson submitted a covenant to the Board which, he said, states that the applicants cannot sell any lot in the subdivision or erect or place any building on any such lot until the ways and other improvements necessary to serve adequately that lot have been completely constructed and installed as specified in accordance with the covenants, conditions, agreements, terms and provisions. Engineer Clay Morin submitted the plans with the mylar for endorsement by the Board. Morin told the Board that the access to the pond had been signed off by Fire Chief Everett Burnham. He indicated they would go through a dry run with a fire truck. Ginn felt the access road to the Board should be marked off indicating that it is the access to the fire pond so that drivers of the fire truck will know where it is.

Morin said the Fire Chief seemed concerned that a good base be established and the road have a little hook in it. The Department of Environmental Protection has also issued a superceding Order of Conditions on an appeal made by an abutter. They requested that the roadway be widened at a certain point and a change in a culvert be made. Babson said the covenant will be filed at the Registry with the mylar. He noted that Rider 'A' in the covenant is for the sprinkler system, and conditions for the subdivision. Madsen indicated that a Clerk of the Works must be obtained to oversee the work, paid for by the applicant. The Clerk of the Works will then update the Planning Board on the project. Madsen then wondered when the appeal period would begin. Babson said he did not think there should be an appeal period because they were just clarifying the Board's statement, that it was definitely not a modification but a clarification.

Hall moved to accept the covenant submitted by the applicant, Ronald S. Ober and Charles F. Richards, as Trustees of the Wheeler Street Riverside Realty Trust, and to endorse the plan for final filing. The motion was seconded by Madsen, with Bragdon, Dunn, Ginn, Hall, Madsen and Story voting in favor; Knowles voted present. The plan and the covenant were signed.

Donald Metcalf submitted a Form A, approval not required subdivision plan to the Board for property on Martin Street. The square footage of the new lots was not shown on the plan and Madsen said this must

June 6, 1990

be shown before the plan could be approved. Metcalf was told that the way the plan was drawn he was making a non-conforming lot, and that it had to be indicated that one lot would be added to an existing lot to create the new lot. The plan was withdrawn by Metcalf.

John O'Brien met with the Board to discuss his proposal to purchase the barn at 131 John Wise Avenue, on the corner of John Wise Avenue and Island Road, and to renovate it to sell antiques. The lot size is 31,447 square feet. Hall indicated that he would not, he felt, approve another antique shop. O'Brien then indicated he wanted to build a residence on the same lot. He was told that although the barn was conforming as an accessory building he could not have both and he would need to have a minimum of 60,000 square feet of land to have both a residence and a business on the same lot.

Peter Van Wyck, together with Robert Klopotoski, met informally with the Board regarding a preliminary plan for the subdivision of Low Land Farms. Klopotoski said he had questions for the Board - 1) Scale of plan; 2) the measurement of a dead end street without a cul-de-sac. The Board felt it would be where the end of the frontage was. 3) Did the Board want to see all marshes and wetlands on the plan. Madsen told him everything should be shown on the plan.

Jeff Legendre of Jim's Rubbish Disposal met with the Board to discuss a proposal to purchase Lot #7 of Scot's Way subdivision and to construct a 60' x 90' building for storage of his trucks and to perform light maintenance on them. He said there would be no rubbish on site at any time. He also indicated he would like to have a small office there. Hall - "I hear you don't store rubbish in your trucks, but most operations I have seen do not always make it to the dump by closing time." Legendre said he had six trucks, four packers and two roll-offs. All outside storage, he said, could be screened and all equipment will be fenced in. It will not be a transfer station. His primary customers were commercial restaurants. Bragdon asked about the cleaning of the trucks because the area is in a watershed area. Legendre said the trucks are presently cleaned on Route 1, Peabody. Legendre was questioned when his business would be operating in the morning. He said the trucks usually leave about 5:00 a.m. Dunn said she would have a concern about the trucks leaving at that time because there are residences in the area. She was also concerned with the trucks leaking. Story asked that Legendre bring in a plan showing siting and parking.

The Minutes of May 16, 1990 were read. Madsen moved to accept the Minutes of May 16, 1990; seconded by Hall, with Story, Bragdon, Dunn, Hall, Knowles and Madsen voting in favor; Ginn voted present.

Madsen moved to meet once a month in July and August, with the meetings being held on the second Wednesday of July and the first Wednesday of August. The motion was seconded by Hall, with the Board voting unanimously in favor.

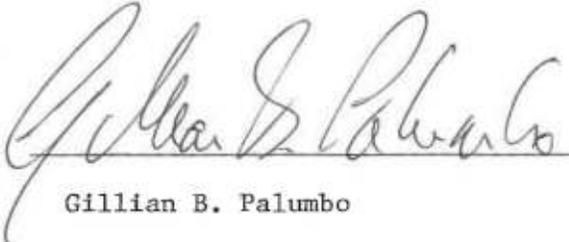
June 6, 1990

Karen Gertsch asked the Board how the abutters would know if the Building Inspector issues a Cease and Desist Order. Story said 'by watching him.' The question was in reference to the loading dock that John Coughlin wanted to put on the barn at South Village Center.

Madsen moved to adjourn the meeting; the motion was seconded by Hall, with the Board voting unanimously in favor.

Meeting adjourned at 10:20 p.m.

Respectfully submitted by

A handwritten signature in cursive script, appearing to read "Gillian B. Palumbo", written over a horizontal line.

Gillian B. Palumbo

Essex Planning Board

May 16, 1990

A G E N D A

- 7:45 p.m. ... Appointment of new chairman and clerk of the Board
- 8:00 p.m. ... Engineer Clay Morin - Essex Reach
- 8:15 p.m. ... Damon Boutchie - Water Department - land for water tower
- 8:45 p.m. ... Sheldon Pennoyer - Forest Avenue property

Business:

Sign voucher

Essex Planning Board

May 16, 1990

Present : Rolf Madsen, Chairman; Frances Dunn; George Bragdon; Mark Hall;
Joseph Ginn; Dana Story; John Knowles (not sworn in so could
not vote on motions)

Meeting called to order at 7:50 p.m.

Building Inspector Richard Carter indicated to the Board that John Coughlin, owner of South Village Center, 65 Eastern Avenue, was going to construct a loading dock for heavy machinery to the rear of the red barn which is located behind the South Village Center. The Minutes of February 20, 1985, referenced the permission granted to Phillip Budrose, previous owner of the property, on the condition it only be used for the sale and storage of classic and antique automobiles. There is no plumbing in the barn. A discussion followed as to whether there was a change of storage use. Madsen said he felt that because this property is so controversial that a finding be made by the Board.

Ginn moved that the construction of a loading dock be allowed for the red metal building at the rear of South Village Center, property of P.M.C. Realty, to be used for the loading and unloading of storage materials. The motion was seconded by Story. Hall said, "no matter what they want to store in there, even though the Board issued a permit for antique cars." The voting was as follows:- in favor - Dunn, Ginn, Story; opposed - Bragdon, Hall, Madsen. With the vote of three in favor and three opposed the motion did not carry.

Essex Reach, Eastern Avenue - Because Engineer Clay Morin was not able to attend the meeting, Joseph Ginn told the Board the single catch basin which was proposed for the roadway on the original plan needed to be moved. No water was going to that area and therefore Morin had proposed moving the catch basin further down the road and to the opposite side of the road. The Board members had no problem with this change.

Damon Boutchie, of the Department of Public Works Water Department, submitted to the Board an approval not required subdivision plan for a portion of land to be used to construct a new water tower.

Hall moved to approve the approval not required plan dated March 26, 1990, submitted by the Town of Essex for land taken by eminent domain off Story Street. The motion was seconded by Bragdon, with the Board voting unanimously in favor.

Ronald Ober, Wheeler Street Riverside Trust, Pine Ridge Subdivision, He said the Board had requested that an area be provided beside the fire pond so that the pumper from the Fire Department would have adequate access. He submitted plans showing this. He also presented a plan showing the intersection of the subdivision road and Pond Street.

May 16, 1990

Sheldon Pennoyer presented to the Board a plan for property off Forest Avenue. He told the Board that he had applied to the Board of Appeals twice and withdrew twice. The Board of Appeals felt he should be working with the Planning Board on this. He said he would be getting a 44 foot easement by Josie Febiger to meet the subdivision standards of the Planning Board. Madsen said that with land that is landlocked he would have to come before the Board with a road that meets their standards of adequacy. Pennoyer said he would be willing to put some of the land into conservation if could have some leniency on the roadway. He was getting the 44' easement but would rather not put in the full subdivision road. Madsen said, "When we put the regulation on access adequacy into the subdivision regulations a few years ago, we became more lenient for situations such as this without standards for 1-10 houses." The Board also discussed with Pennoyer the possibility of gaining access to his land from Southern Avenue.

A letter was read to the Board which was received from C.T. Male who indicated that as the Board's representative for site plan reviews which projects they had in Essex which they thought to be in conflict of interest or not.

Election of Chairman, Vice Chairman and Clerk - Dunn moved to elect Dana Story as chairman; seconded Bragdon, with five members voting in favor and one opposed.

Dunn moved to elect Rolf Madsen as vice-chairman; seconded by Hall, with the Board voting unanimously in favor.

Hall moved to elect George Bragdon as clerk; seconded by Dunn, with the Board voting unanimously in favor.

Story gave an update of the Zoning Committee's activities. He said they are looking at the zoning by-laws and have come up with an idea for the watershed district. They have had four meetings so far. They were given samples of the Wenham by-law. Story indicated they will be coming in with a sample and, depending upon what comes from that, they will draw it up in its final draft and submit it for a public hearing. There will be an overlay area of what is considered by the Department of Environmental Protection as a recharge area.

Ginn discussed with the Board the New England Telegraph pad to be constructed on Eastern Avenue. He said they were going to erect a fence to hide it but he felt shrubs would be more appropriate and less apt to block the view of the river. He wondered if there was anything in the by-laws to cover blocking views of the marsh by fences such as was suggested by the Telephone Company.

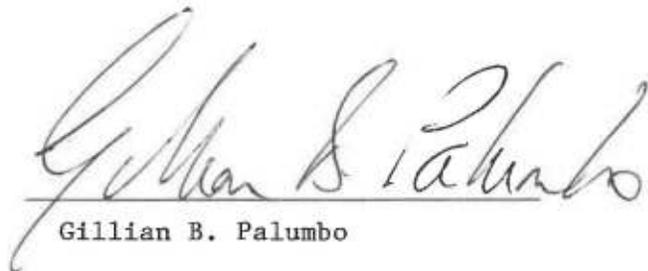
Story wondered if the docking of the Evelina Goulart schooner on Town land would need a finding by the Board.

May 16, 1990

Dunn moved to adjourn; seconded by Story, with the Board voting unanimously in favor.

Meeting adjourned at 10:00 p.m.

Respectfully submitted by:



Gillian B. Palumbo

Essex Planning Board

May 2, 1990

A G E N D A

- 8:00 p.m. ... Pine Ridge subdivision - discussion
with Town Counsel
- 8:30 p.m. ... Attorney Philip Cahalin - Peter Mugford
property, Gregory Island

Essex Planning Board

May 2, 1990

Present : Rolf Madsen, Chairman; George Brgadon; Frances Dunn; Westley Burnham; Joseph Ginn; Dana Story.

Meeting called to order at 7:55 p.m.

The Planning Board went into executive session with Town Counsel, John Tierney, Fore Chief Everett Burnham, and Fire Engineer Richard Carter to discuss the Pine Ridge subdivision (Wheeler Street Realty Trust) litigation against the Planning Board.

Upon voting to leave executive session, the Board met with Ronald Ober and Charles Richards, applicants for the subdivision, and their attorney, David Babson. Town Counsel, John Tierney, told them, "If proper access is made to allow a 30,000 pound fire truck to within ten feet of the pond in all seasons, twelve months of the year, then there is no problem with fire protection.

David Babson - "I would ask that the fire engineers sit down with us and give us an indication of what is adequate."

John Tierney - " I want to make sure you understand that you will receive no permits unless certification is given of potable water."

Madsen said he would encourage Ober and Richards to meet with the neighbors to try to have Town water taken down there. He also wondered where the water was coming from for the sprinkler system.

Daniel Swift, representative from Metro Swift Sprinkler System, explained to the Board how the sprinkler system to be installed operated. He said the water would come from tanks in the basement and that this method has proven to be adequate. Madsen asked how much the system cost. Swift told him between \$5,000 to \$7,000.

Burnham - "We are obligated to know that this subdivision is covered for fire protection. It would seem to me that given the price of the sprinkler system and the cost of the wells for each lot that you will be spending more money that if you were to bring down a water line."

Ober - "We are looking at what is marketable at the moment. With the flat real estate market this has found to be a good selling point. We have no estimates on wells at the moment. "

Madsen - "Has any attempt been made to bring a water line up street with the neighbors?"

Ober - "Yes, and I received zero response. I spoke to three individuals, left my number and said call me. I checked back a week later and they had not talked to one soul. "

John Tierney- "If your client wants to proceed in that fashion, then he should come back with engineering plans showing the adequate access to the pond. We can then wrap up this litigation and have the plan amended."

Babson wondered if they would have to go through a formal filing for an amendment of the plan or bring in the plan with the bond.

Madsen - "Have we seen a plan for the intersection?"

Ober - "The D.P.W. has seen it and approved it."

May 2, 1990

Burnham - "But we haven't seen it."

Madsen - "Are you offering to put sprinklers into the covenant?"

Babson - "Yes."

Madsen - "Prior to the start of the process, I urge you to look at the water line again. I live at the end of the street and I know there is a real water problem there. Talk to the D.P.W. Sometimes they are willing to help a developer. I know those lots will sell a lot quicker if there is town water."

Attorney Philip Cahalin representing Peter Mugford of Hamilton met with the Board. Cahalin said, "I asked for this meeting because questions have been raised by Peter's neighbors as to the status of the property at Gregory Island. I would like to clear this matter up. A finding in the Planning Board Minutes of November 5, 1989, deemed it a camp, but there is nothing in the by-laws to indicate what a camp is. I would like to have a more clearer definition."

Burnham moved that the Planning Board make a finding that property owned by Peter F. Mugford, at 24 Lake Shore Drive, meets the minimum standards for a single family dwelling as defined in the Essex Town By-laws 6-3.10. This finding is based on the Minutes of December 5, 1984, where the Board recognised the building as a reconstruction of an existing camp which had burned down in 1973, and also based on the Town of Essex occupancy permit number 1-85 issued January 16, 1985 by the Building Inspector. The motion was seconded by Ginn. It was noted that the kitchen was put in the building when it was rebuilt in 1973. The Board voted unanimously in favor of the motion.

Burnham moved to adjourn the meeting; seconded Dunn, with the Board voting unanimously in favor.

Meeting adjourned at 9:00 p.m.

Respectfully submitted by



Gillian B. Palumbo

Essex Planning Board

April 18, 1990

Present : Rolf Madsen, Chairman; Westley Burnham; Joseph Ginn; George Bragdon, Mark Hall.

Meeting called to order at 7:52 p.m.

At the beginning of this meeting the Board felt they should go into executive session to discuss the litigation of the Pine Ridge subdivision against the Planning Board. After a motion was made to go out of exdcutive session the Planning Board continued with their open meeting.

Mark Hall, representing Howland Development Company, for the Essex Reach subdivision, Eastern Avenue, submitted a bond to the Board for completion of the roadway. The bond was in the form of a passbook in the amount of \$14,000.

Burnham moved to accept the passbook in the amount of \$14,000 cash, issued from Northern Bank and Trust, Account Number 0100017946, as a performance guarantee for the required upgrade for the subdivision of land known as Essex Reach, the improvement to be made as per plan dated September 29, 1988, revised March 10, 1989. The motion was seconded by Bragdon, with Bragdon, Burnham, and Madsen voting in favor. Ginn and Hall voted present. It should be noted that Ginn and Hall removed themselves from the discussion because of a conflict of interest.

A building permit application was submitted for Howland Development Company for a single family dwelling on Lot 2, Essex Reach subdivision, Eastern Avenue. Hall and Ginn removed themselves from the discussion on the application. Size of building, length 48', height 29', width 28', no. of stories - 2. Distance from street line 255 feet, right side line 56', left side line 49', rear line 125'.

Burnham moved to approve a building permit for a single family dwelling located on Lot 2 of Essex Reach Road for the Howland Development Company, Wilmington, Mass., as shown on plan dated February 18, 1989, revised April 15, 1989, and April 12, 1990, finding it meets all required setbacks and access adequacy requirements. The motion was seconded by Bragdon, with Bragdon, Burnham, and Madsen voting in favor; Ginn and Hall voted present.

Burnham moved to go into executive session to discuss the litigation of the Pine Ridge subdivision; seconded by Ginn. The Board members were polled and all approved the motion.

After the Board had voted to leave executive session the Board met with Priscilla Ramsdell, Choate Street, who wanted to discuss a proposal to attach an existing barn on her property to the principle dwelling by a 55' covered walkway; the barn would then be converted to a dwelling. Burnham felt that a covered 55' walkway did not constitute a breezeway.

April 18, 1990

Ramsdell was told she could either go to the Board of Appeals or submit a new plan to the Board,

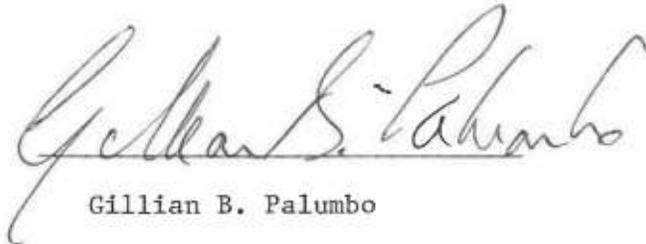
Friedl Brosch, 143 Main Street, met with the Board to discuss the requirements so that he could sell the furniture he makes and restores from his home. The dwelling is presently a two-family and he would like to add a business to it. The lot size is 7,737 square feet. The Board told him to show that he had adequate parking for the two-family dwelling plus a home occupation.

Allen Waller, Main Street, delivered a letter to the Board from the Board of Health which they had requested at their last meeting with Waller.

Ginn moved to adjourn the meeting; seconded by Hall, with the Board voting unanimously in favor.

Meeting adjourned at 9:20 p.m.

Respectfully submitted by

A handwritten signature in cursive script, reading "Gillian B. Palumbo". The signature is written in dark ink and is positioned above the printed name.

Gillian B. Palumbo

Essex Planning Board

April 4, 1990

A G E N D A

8:00 p.m. ... Jack Schwartz, Lot #2, Essex
Reach

Business:
Sign pay voucher

Essex Planning Board

April 4, 1990

Present : Rolf Madsen, Chairman; Westley Burnham; George Bragdon;
Frances Dunn; Joseph Ginn; Dana Story.

Meeting called to order at 7:47 p.m.

Jack Schwartz, Story Street, Rockport, met with the Board to discuss the construction of a dwelling on Lot 2, Essex Reach subdivision, Eastern Avenue. Upon review of the plan by the Board they found there was only 50 feet of frontage for that lot, because the extension to the road from the existing hammerhead had not been completed. Schwartz was told the road would have to be upgraded before the lot could be deemed to have sufficient frontage and therefore make the lot a buildable lot. It was the Board's opinion that under By-law 6-6.2(a)2 - Lot frontage minimum 150 feet and Regulation 3.05 of the Essex subdivision regulations - Access Adequacy - it has not not been met, and that the modification made on a vote by the Board on March 15, 1989, has not been met (the road to be 20 feet wide) and therefore at this time the road did not meet the frontage requirements. Schwartz requested that this finding by the Board be sent to him in a letter.

The Minutes of March 7, 1990, were read. Dunn moved to accept the Minutes of March 7, 1990; seconded by Story, with the Board voting as follows: Bragdon, Dunn, Ginn, Madsen and Story voting in favor; Burnham voted present because he did not attend that meeting.

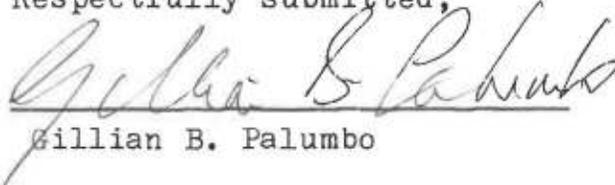
The Minutes of March 21, 1990, were read. Ginn moved to accept the Minutes of March 21, 1990, as read, with the Minutes from the executive session be forthcoming; seconded by Bragdon, with the Board voting unanimously in favor.

Story reviewed with the Planning Board the committee meeting to consider zoning in the Town.

Burnham moved that the Chairman request of the Open Space Committee a copy of the map they have developed of the open space at this time, annotated with any information they have compiled; seconded by Ginn, with the Board voting unanimously in favor.

Dunn moved to adjourn the meeting; seconded by Bragdon, with the Board voting unanimously in favor. Meeting adjourned at 9:15 p.m.

Respectfully submitted,


Gillian B. Palumbo

Essex Planning Board

March 21, 1990

A G E N D A

8:00 p.m. ... Donna Gauthier, Coral Hill -
apartment over garage

8:30 p.m. ... Robert Oppenheimer

8:45 p.m. ... Max Callahan's

9:00 p.m. ... George Stavros

9:15 p.m. ... Alan Waller, 140 Main Street

9:30 p.m. ... Discussion of Pine Ridge lawsuit

Essex Planning Board

March 21, 1990

Present : Rolf Madsen, Chairman; George Bragdon; Westley Burnham;
Joseph Ginn; Frances Dunn; Dana Story.

Meeting called to order at 7:50 p.m.

The Building Inspector submitted a building permit application for Friedl Brosch, 143 Main Street, for construction of an 11' x 26' 2-story addition. Distance from street line 12', right side line 6', left side line 22', rear line 40'. Area of land 7,737 square feet.

Story moved that Mr. and Mrs. Friedl Brosch, 143 Main Street, be given a building permit to construct an 11' x 26' 2-story addition at 143 Main Street, finding it not to be substantially more detrimental to the neighborhood than the existing non-conforming use. The motion was seconded by Dunn, with Bragdon, Dunn, Ginn, Madsen, and Story voting in favor. Burnham was not present at this time.

Donna Gauthier, Coral Hill, met with the Board to discuss a proposal to construct a small studio apartment above her garage. Gauthier said she did not have, at this time, approval from the Board of Health. Madsen said he felt that the density at the lake was such that to increase it would be more detrimental. He felt more density should be avoided until the problems of the lake are corrected. Story said he felt the same way, and that he has consistently voted against anything in the watershed area. Gauthier was told she should seek approval from the Board of Health if she wanted to pursue this, and then return to the Board.

George Stavros, John Wise Avenue, met with the Board to discuss a proposal to remodel an existing apartment in a dwelling near the golf course on John Wise Avenue. The area of land is 82,000 square feet. It was the consensus of the Board that the apartment was grandfathered and could find no reason why a building permit should not be issued.

The Minutes of February 21, 1990 were read. Dunn moved to accept the Minutes of February 21, 1990. The motion was seconded by Burnham, with the Board voting as follows: Burnham, Bragdon, Dunn, Madsen and Story in favor; Ginn voted present as he did not attend the February 21 meeting.

Story moved to go into executive session to discuss the Pine Ridge lawsuit; seconded by Ginn, with the Board members being polled and voting unanimously in favor.

Story moved to go out of executive session; seconded by Dunn, with the Board voting unanimously in favor.

March 21, 1990

Alan Waller met with the Board to discuss a proposal for construction of an apartment on the second floor of his antiques shop at 140 Main Street. He told the Board, "The last time I was at the Planning Board meeting you sent me to the Board of Health for their approval and certification. David Hidden met with the Board of Health and told them the system was adequate. The, in turn, want to view the tank itself because of the amount of construction work next door at John Coughlin's building. This means digging up the parking lot. If I were to go through this I would like to ask the Board if they would grant permission for the apartment pending approval of the Board of Health." The lot is non-conforming.

Burnham moved that the Board make a finding that the proposed use of the second floor of property owned by Alan Waller at 140 Main Street being used as an apartment will be substantially less detrimental to the neighborhood than the existing use, final approval for his building permit to occur when Board of Health approval is received and a final building permit application is presented to the Planning Board. The motion was seconded by Ginn, with Bragdon, Dunn, Burnham and Ginn voting in favor; Madsen and Story opposed.

Ginn said he felt Board of Health approval was very important on mixed uses, and if there are any expansions to the building the Board of Health should be notified.

Story moved to adjourn the meeting; seconded Dunn, with the Board voting unanimously in favor.

Meeting adjourned at 10:00 p.m.

Respectfully submitted


Gillian B. Palumbo

Essex Planning Board

March 7, 1990

A G E N D A

8:00 p.m. ... Decision on engineering company
for site plan review

Essex Planning Board

March 7, 1990

Present : Rolf Madsen, Chairman; George Bragdon; Frances Dunn;
Joseph Ginn; Mark Hall; Dana Story.

Meeting called to order at 7:45 p.m.

The Board discussed the proposals of C.T. Male and BSC Group, engineering companies who would like to be the Planning Board's consultant on site plan reviews.

Ginn moved to accept C.T. Male as site plan review engineers for the Planning Board based on the fact that, although both companies are equally qualified and capable, C.T. Male is a local company doing the same work for the Town of Rowley and in the past has done all the percolation tests for the Essex Board of Health, with the understanding that if C.T. Male is retained for us on any projects, they will not work for any other parties for that particular project. The motion was seconded by Story, with Bragdon, Dunn, Ginn, Hall and Story voting in favor; Madsen voted present.

Hall moved to adjourn the meeting; seconded by Dunn, with the Board voting unanimously in favor.

Meeting adjourned at 8:40 p.m.


Respectfully submitted
Gillian B. Palumbo

Essex Planning Board

February 21, 1990

A G E N D A

- 8:00 p.m. ... BSC Group - discussion with Board
on re view of subdivision plans
- 8:30 p.m. ... Thayne Symmes
- 8:45 p.m. ... Alan Waller, Main Street -
apartment - change of use
- 9:00 p.m. ... Tom and Debbie Griffith, County
Road - single family/apartment
change of use.

Business:

Budget

Planning Board report

Old Funeral Home - Can it continue its present use -
can it be used for retail - can it be changed to
a 2/3 family home - Lot size 30,000 square feet

Essex Planning Board

February 21, 1990

Present : Rolf Madsen, Chairman; Westley Burnham; George Bragdon; Frances Dunn; Dana Story.

Meeting called to order at 7:45 p.m.

Clay Morin met with the Board to present an amendment to a Letter of Credit No. 01401 from Boston Trade Bank for CDMR Realty Trust. The amount will be reduced from \$86,000 to \$43,200.

Story moved that a letter of credit No. 01401 from the Boston Trade Bank in favor of Richard Penta, Trustee for CDMR Realty Trust, be reduced from \$86,000.00 to \$43,200.00, all other terms and conditions to remain unchanged. The motion was seconded by Burnham, with the Board voting unanimously in favor.

Information was sought from the Board on the status of what used to be the funeral home on Martin Street. Questions asked - Can the existing use continue? - Yes; Could it be retail? - Yes; Could it be change to a two-family? - It would require a finding by the Board; Could it be changed to a three-family - No.

Richard Cook and Douglas Miller, representatives of the BSC Group, Bedford, Ma., met with the Board to present their Company as consultants to the Planning Board for subdivision site plan reviews. Madsen explained that the Planning Board had sent a number of letters to various companies asking whether they would be interested in helping lay boards review subdivision plans. The Board needed someone to be put on retainer to review the plans which would be paid for by the applicant. Cook explained that the BSC Group had been in existence for twenty-five years, with offices in Boston, Norwell, Worcester, and Bedford. They were familiar with the area of municipalities because he had been on the Planning Board for eleven years on the South Shore. His work has involved subdivision plans and site work. Cook said he has a civil engineering background with a planning background also. He deals mostly with environmental planning and is into the conceptual area of planning. Madsen asked if the BSC Group was currently doing this for other Planning Boards. Cook said their Norwell office was reviewing plans for the Towns of Hanson and Norwell. The Board was given a brochure outlining the work the BSC Group was involved in. Madsen asked what type of fees are involved for a typical Essex subdivision. Cook said a six-lot subdivision with no significant drainage issues in a reasonable location with no problems of access would cost \$700 - \$900. Cook and Miller were told the Planning Board would make their decision at another meeting.

February 21, 1990

Thayne Symmes met with the Board to discuss a proposal to construct a new home on property off Centennial Grove. There is already an existing house on the property. Symmes was told if he retains ownership of the whole lot then there would be no problem having another house on the lot.

Burnham moved to approve the building permit application for Thayne F. Symmes, Lake Road, for the construction of a single family residence as a second principal residence on land off Centennial Grove Road as shown on plan dated July 22, 1989, finding under Essex By-law 6-4.2 the proposed change will not be more detrimental and the lot area is sufficient to cover the requirements under Essex By-law 6-5.5 - Erection of more than one principal dwelling on a lot, the Building Inspector to issue the permit upon receipt of letters from abutters voicing no objections. The motion was seconded by Story, with Burnham, Dunn, Madsen and Story voting in favor; Bragdon opposed.

Alan Waller, 140 Main Street, submitted a building permit application for the construction of an apartment within his antiques shop. The Board then discussed mixed uses, i.e. an apartment and an antiques business. The Board felt they could not act on this at this time because a letter had not been received from the Board of Health stating their approval of the project. The documentation with the building permit application was also incomplete.

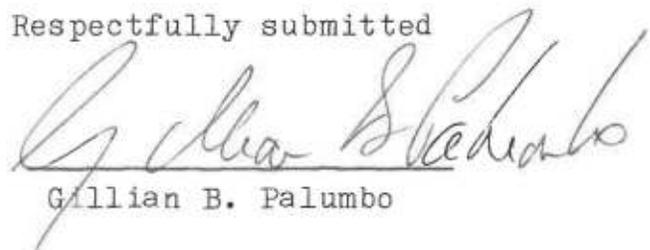
Deborah Griffith met with the Board for a change of use from a single family to a two-family dwelling at 43 County Road. She showed the Board a plan indicating the parking area.

Story moved a building permit be issued to Tom and Deborah Griffith, 43 County Road, to create a two-family residence. The motion was seconded by Dunn, with Bragdon, Dunn and Story voting in favor; Madsen opposed; Burnham voted present.

After discussion, the following is the Budget for Fiscal Year 1990 - 1991: \$200 - telephone; \$300 - Advertising and Supplies; \$1700 - clerical; making a total budget of \$2200.00.

Burnham moved to adjourn the meeting; seconded by Dunn, with the Board voting unanimously in favor. Meeting adjourned at 10:40 p.m.

Respectfully submitted



Gillian B. Palumbo

Essex Planning Board

February 7, 1990

A G E N D A

- 8:00 p.m. ... C.T. Male - discussion on site plan review for the Planning Board
- 8:15 p.m. ... Allen Waller, 140 Main Street - to create an apartment
- 8:30 p.m. ... Claude Presutti - property on Spring Street
- 8:45 p.m. ... Tim Hollander, Craigston Cheese Company to locate on Lot 6, Scot's Way subdivision
- 9:00 p.m. ... Thomas Corkery - Brook Pasture subdivision Road, Off Martin Street
- 9:15 p.m. ... Deborah Griffith, 43 County Road - change of use
- 9:30 p.m. ... David Pitman, Southern Avenue - informal discussion of one lot subdivision

Essex Planning Board

February 7, 1990

Present : Westley Burnham, Chairman; George Bragdon; Frances Dunn;
Joseph Ginn; Mark Hall; Rolf Madsen; Dana Story.

Note: Administrative Clerk arrived at meeting at 8:30 p.m. No Minutes
have been given to her for the earlier part of the meeting.

February 7, 1990

Claude and Dean Presutti met with the Board to discuss a proposal for the construction of a single family dwelling on property at 21 Spring Street. The lot is non-conforming. At present there is a two family dwelling on the property and a barn. Presutti proposed to tear down the barn and replace it with a single family structure. He said if it was necessary he would be willing to turn the two-family house into a single family in order to put the new proocosed dwelling on the property. Burnham told him that under By-law 6-5.5 - Erection of more than one principal dwelling on a lot - he would have to meet the requirement of 30,000 square feet per dwelling. Presutti asked if he wanted to have two separate houses on the property if he would have to go to the Board of Appeals. Burnham said he couldn't see any other way. Presutti then submitted a building permit application for a single family dwelling at 21 Spring Street. Distance from street line 250', right side line 43', left side line 30', rear line 40'. Size of the building, length 36', height 20', width 24'. No. of stories - 2. Area of land 28,191 square feet.

Hall moved to deny the building permit application for Claude Presutti, 21 Spring Street, as it does not meet lot area requirements under Essex By-law 6-5.5, and that an approved septic system plan from the Board of Health was lacking with the submittal. The motion was seconded by Madsen, with the Board voting unanimously in favor of the denial.

Tim Hollander of the Craigston Cheese Company met with the Board to discuss the purchase of one of the lots in the Scot's Way subdivision, off Western Avenue, as a new site for his cheese company. Hollander would like to have a building about 7,000 square feet in size and to employ about nine people. The lot size is approximately 65,000 square feet. Hollander was told that under the by-laws this could not be done.

Burnham said for future business he would like to discuss the size of buildings on industrial class A vacant lots.

Thomas Corkery, Martin Street, gave the Board a letter from Clay Morin, Clerk of the Works for the subdivision raod, regarding the status of the road. Morin's conclusion was that the road had been completed according to the plans with the changes noted in his final report dated October 16, 1989.

Madsen moved to accept the road based on Morin Engineering, Inc.'s final report that the road has been built to the specific-ations accepted and approved through the subdivision process and the Board namely releases any need for a performance guarantee as of this date. The motion was seconded by Dunn, with the Board voting unanimously in favor.

February 7, 1990

Thomas Corkery submitted a building permit application for the removal of the barn from the existing site to a proposed site on Lot 3, of Brook Pasture subdivision, off Martin Street.

Ginn moved that the building inspector issue a building permit for Thomas Corkery, Jr. to move the barn to Lot 3 of Brook Pasture subdivision for the purpose of a two-bedroom apartment in the cellar and the rest of the barn to remain in its present use. The motion was seconded by Hall. Hall asked Corkery what the present use of the barn is. Corkery said it was for storage mainly, and he also uses it as a workshop. The Board then voted unanimously in favor of the motion.

Tom and Deborah Griffith met with the Board to request a change of use of their house on County Road, from a single family to a two family. They were told to check with the Board of Health for their approval, and then to return to the Board with a plot plan showing parking.

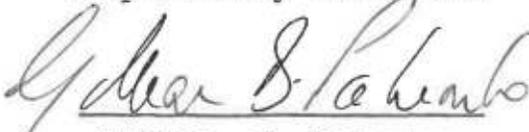
David Pitman, Southern Avenue, met with the Board to discuss the division of a 20-acre parcel of land he owns on Southern Avenue. He wanted to know how many lots he could have. The parcel did not have sufficient frontage, so Pitman was told he would have to build a subdivision road to obtain the necessary frontage.

The Minutes of January 3, 1990, were read. Madsen moved to approve the Minutes of January 3; seconded by Dunn, with the Board voting unanimously in favor.

Madsen moved to accept the Minutes of January 17, 1990; seconded Bragdon, with the Board voting unanimously in favor.

Madsen moved to adjourn the meeting; seconded Bragdon, with the Board voting unanimously in favor. Meeting adjourned at 10:30 p.m.

Respectfully submitted


Gillian B. Palumbo

Essex Planning Board

January 17, 1990

A G E N D A

- 7:45 p.m. ... David and Joan Folsom
- 8:00 p.m. ... Stephen Payne - change of use of
American Veterans building to a
single family
- 8:30 p.m. ... Zoning discussion
- 9:00 p.m. ... Nancy Dudley - South Essex Center,
Eastern Avenue

Essex Planning Board

January 17, 1990

Present : Rolf Madsen, Chairman; George Bragdon; Westley Burnham;
Frances Dunn.

Meeting called to order at 8:00 p.m.

The following building permit applications were submitted to the Board by the Building Inspector:

Building permit application for Trescott L. and Donna J. DeWitt, Lakeview Road, for a 16' x 10' kitchen addition in place of the existing open deck with office loft on the second floor; enclose second floor deck; replace foundation with poured concrete; finish off attic to consist of one bedroom and one bath. Area of land 8,125 square feet.

Bragdon moved to approve the building permit application of Trescott L. and Donna J. DeWitt, Lakeview Road, finding that the proposed addition is no more detrimental to the neighborhood than the existing non-conforming use under Essex By-law 6-4.2. The motion was seconded by Dunn, with the Board voting unanimously in favor.

Building permit application for Stephen Walker, 145 Bridge Street, Osterville, Ma. for construction of a two story single family residence on Lot 16, Island Road. Area of land 75,745 square feet. Distance from street line 160', right side line 25', left side line 60', rear line 100'. Size of building, length 99'6", height 28', width 46'. No. of stories - 2.

Burnham moved to approve the siting of a single family dwelling on Lot 16, Island Road, for Stephen Walker, 145 Bridge Street, Osterville, Ma., on the condition that the house be moved so that it will not encroach on the buffer zone and said movement conforms to all setbacks required by the Town of Essex by-laws. The motion was seconded by Dunn, with the Board voting unanimously in favor.

David Folsom, Eastern Avenue, met with the Board to discuss the decision made by the Board to his building permit application. Folsom said he spoke to Richard Cairns, chairman of the Board of Appeals, who felt that the Appeals Board need a finding by the Planning Board before a hearing could be held. Folsom said he felt, upon looking around his neighborhood, that his proposed addition was not more detrimental to the neighborhood under By-law 6-4.2.

Burnham moved to approve the proposed addition consisting of the removal of an existing garage, and the construction of a 20' x 42' 2-bedroom apartment and subsequent change of use of a single family to a two family dwelling for David L. Folsom,

January 17, 1990

Eastern Avenue, finding under Essex By-law 6-4.2 that the proposed addition is not more detrimental to the neighborhood than the existing non-conforming use. The motion was seconded by Dunn, with Bragdon, Dunn and Burnham voting in favor; Madsen opposed.

Stephen Payne met with the Board to discuss a change of use for the American Veterans building on School Street. Payne wants to change the use to a single family residence with an apartment. The lot is non-conforming. Payne said there will not be any change in the footprint at present, but later he may want to add a garage. Madsen asked if there would be a shop, to which Payne replied no. It was the consensus of the Board that as presented the change of use would be less detrimental and would have less of an impact to the neighborhood as a two family than its existing use.

Nancy Dudley, Eastern Avenue met with the Board to discuss with them the South Village Center, Eastern Avenue. She said at the Conservation Commission meeting John Coughlin indicated that the reason he extended the parking lot was because of the Planning Board and the use of the third floor of the building. She wanted to know if a public hearing had been held and whether abutters were notified of this. Madsen told her there was no public hearing held because it came to the Planning Board under a building permit application. Madsen said it was up to John Coughlin to get Conservation Commission approval before commencing work. Coughlin had to show the Planning Board that parking spaces were available in order to use the third floor. Michael Cataldo said that one of the concerns they have had is that there seems to be another road being created. He feels as the paving area increases and Coughlin tries to get another access on to a state road, a M.E.P.A. process should be triggered. Cataldo added that he can see a weakness in the Town by-laws, in that we do not require an environmental impact report to be made by an applicant. Nancy Dudley said she was at a hearing where two floors were approved and not three. She also said she was not at this meeting to ask anything specific of the Board, except to let them know her concerns.

Zoning - Thomas Ellsworth, Lorraine Hardy and Maria Bennotti met with the Board to discuss forming a zoning committee. The Board was told that David Lane has also requested to be on the committee, if one is created. Cataldo said he would like to ask that the Open Space be brought in to let the Board know what they, also, have been discussing. Ellsworth said, "I feel very strongly that it would be very complicated and controversial to attempt to do an overall zoning of the Town. I would ask that the group initially create the agricultural district. If the Town votes it in then they take the residential or downtown area zoning and do it for Phase II. It is a

January 17, 1990

tremendous amount of work and would be too much to absorb in one dose." Hardy said she felt before a committee is formed that they look at the Open Space reports, which will take in the whole Town. Ellsworth said that instead of taking just the north end that they expanded it for open space for the whole Town. Cataldo then showed the Board a map created by the Open Space Committee. Hardy said she is definitely against spot zoning and her feeling is that the whole Town should be zoned.

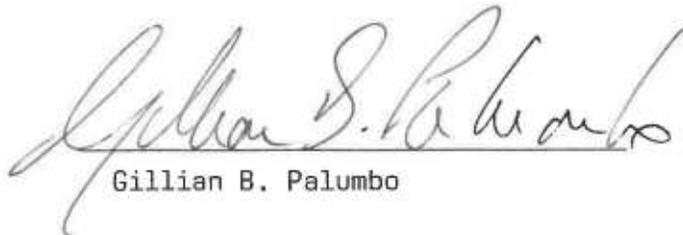
Burnham moved to create a committee as an advisory source for potential zoning in the Town of Essex. The motion was seconded by Bragdon, with the Board voting unanimously in favor.

A Form A application, subdivision approval not required, was submitted for Augustus Means, Jr. for new lots created as shown on plan of land, Belcher Street, dated January 8, 1990.

Burnham moved to approve the Form A subdivision plan for Augustus G. Means, Jr. plan of land, Belcher Street, dated January 8, 1990. The motion was seconded by Dunn, with the Board voting unanimously in favor.

Burnham moved to adjourn the meeting; seconded by Dunn, with the Board voting unanimously in favor.

Meeting adjourned at 10:00 p.m.



Gillian B. Palumbo

Essex Planning Board

January 3, 1989

A G E N D A

- 8:00 p.m. C.D.M.R. Associates - Low Hill
Reduction of bond
- 8:15 p.m. Augustus Means, Jr.
(Cancelled)
- 8:30 p.m. Eli Young, Walnut Park
- 9:00 p.m. Tom Ellsworth - zoning

Business:

Engineers for plan reviews

Essex Planning Board

January 3, 1990

Present : Rolf Madsen, Chairman; George Bragdon; Frances Dunn;
Dana Story; Joseph Ginn.

Meeting called to order at 7:45 p.m.

Building Inspector Richard Carter submitted the following building permit applications to the Board:

Applicant Gordon Wright for a building permit for Frieda Arkin, 1 Winthrop Street, for a proposed addition, 14' x 15', to be used as a dining area.

Story moved the Building Inspector be authorized to issue a building permit to Gordon Wright to be used to construct an addition for a 14' x 15' dining area at the home of Mrs. Frieda Arkin, 1 Winthrop Street, finding under the provision of Essex By-law 6-4.2 that it is no more detrimental than the existing non-conforming use to the neighborhood. The motion was seconded by Dunn, with the Board voting unanimously in favor.

A building permit application for Cathy Ann Beattie, 166 Main Street, to rebuild the staircase on the left side of the house, to include stairs and platform at the top of the stairs and the door on the second floor.

Bragdon moved to approve the building permit application of Cathy Ann Beattie, 166 Main Street, to rebuild the staircase on the left side of the house under the provision of Essex By-law 6-4.2, finding it to be no more detrimental than the existing non-conforming use to the neighborhood. The motion was seconded by Story, with the Board voting unanimously in favor.

A building permit application for David Folsom, Eastern Avenue, to remove the existing garage attached to the residence, and construct an attached addition 20' x 42', a two-bedroom apartment, with a change of use from a single family to a duplex. Size of building, length 42', height 30', width 20'. No. of stories - 2. Distance from street line 50', right side line 23', left side line 50', rear line 50'. Ginn said he felt this building permit application should go to the Board of Appeals because there was quite a substantial change. He felt the Planning Board would setting a precedent for similar construction in Town on non-conforming lots.

Ginn moved to refer the building permit application of David Folsom, Eastern Avenue, to the Board of Appeals because of the change of use from a single family to a duplex. The motion was seconded by Dunn. Madsen said he felt the Board could not make things more non-conforming. That would be the responsibility

of the Board of Appeals. Story said he felt the motion should include the denial of the application for whatever reason. The voting on the motion was as follows: In favor - Bragdon, Dunn and Ginn; opposed - Madsen and Story.

Eli Young met with the Board to discuss his property at 3 Walnut Park. Young said his property consists of a house and three lots, 9, 10, and 11. He has owned the property since 1978. He asked if Lot 12, belonging to Bruce Dean, could be combined with Lot 11 to make one lot. The Board told him that the two lots together would not meet the requirements of a buildable lot. They also told him that lots 9, 10, and 11 have now merged under State laws to become one lot.

The Minutes of the meeting of November 15, 1989, were read. Story moved to accept the Minutes of November 15, 1989. The motion was seconded by Dunn, with the Board voting unanimously in favor.

Thomas Ellsworth met with the Board to discuss zoning for the Town. He said he had talked with the Open Space Committee and found they wanted to zone non-commercial heavily wooded areas and to also include the area around Chebacco Lake. Ellsworth then showed the Board a plan of the Town with the area outside of the yellow lines marked on the plan deemed agricultural. Southern Avenue was included, Essex Conservation Commission, Farnham's area on Eastern Avenue, the Essex River including marshes was open space. Ellsworth said it was more extensive than what he had planned. His intention was to take certain parcels of land which were obviously open space and prevent them from becoming commercial. Lorraine Hardy said she felt the whole Town should be done and not just parts of it. Ellsworth said he felt the time to do it is now and not when some of the open spaces start to be developed. Madsen asked if they felt it would be better to carve out agricultural and residential areas and leave the rest of the Town as Phase II, or should the whole Town be done. Hardy stated again she felt the whole Town should be done. Story also felt the whole Town should be done and not a piece at a time. Ellsworth asked if a committee should be created to take this a step further. The Planning Board favored going ahead and forming a committee and suggested that Lorraine Hardy work with Ellsworth on this, to which she agreed. Further discussion will be held at the next Planning Board meeting on January 17.

Decision on Gateway Definitive Subdivision Plan - Engineer Clay Morin represented Gateway Realty Trust. He was asked if the Order of Conditions issued by the Conservation Commission still stood. He told the Board the Order of Conditions still stand and was not appealed by them to the Department of Environmental Protection. Story said his objection to the plan was not based

on the subdivision control laws but on environmental grounds. He said, "I oppose it as I have all other projects, because it is in the watershed area of Chebacco Lake. I think it is in the best interests of the Town that nothing go there."

Bragdon said that Coughlin had been asked to produce alternative plans at the public hearing for the use of the property but that they had not heard from him.

Dunn moved to deny the definitive subdivision plan of Gateway Realty Trust, 239, Western Avenue, Essex, for the following reasons:

1. Rules and Regulations relative to Subdivision Control 6.05, Paragraph 2, Conservation Commission Review. The Conservation Commission stated that "the wetlands on this site are potentially some of the most sensitive and significant in the Town of Essex. They are located within the recharge area to the Essex Town wells and immediately adjacent to Chebacco Lake. The project proposes more than 8,000 square feet of filling within the Essex Wetlands District as defined by the Essex Zoning By-laws, and a total of 12,680 square feet of bordering vegetative wetlands as defined by the Wetlands Protection Act. The proponent has requested a Limited Project Status under the Wetlands Protection Act. Under the Essex Wetlands By-law (Section 6-10) no filling shall be allowed within the wetlands district. There is no Limited Project Status under this by-law. This project may not qualify as a Limited Project under the Wetlands Protection Act since there may be alternatives with less wetlands impact for accessing and developing the land. The project proponent has been unwilling to commit what type of land use is proposed for the project. Given the extent of the building envelope proposed, associated parking areas, and the significant regrading of the site to accommodate the project, water quality and wildlife impacts cannot be avoided. The proposed project has not adequately overcome the presumptions of significance." The reasons given by the Commission would either require bridging or significant modifications in road layout, which would require the submission of a new definitive plan.

2. 6.06(1) Paragraph B. In the opinion of the Board the proposed development would have an adverse effect on the environment, i.e. the watershed district of Chebacco Lake.

3. The project itself does not comply with the Town of Essex Wetlands Act, By-law 6-10.

The motion was seconded by Story, with the voting as follows: Story - in favor; Dunn - in favor; Ginn - in favor of denying the project as presented; Bragdon - in favor; Madsen - in favor; the Board, therefore, voted unanimously in favor of the motion to deny the project of Gateway Realty Trust.

C.D.M.R. - Lowe Hill, off Story Street - Engineer Clay Morin met with the Board to submit a cost estimate of the remaining work to be conducted at the Lowe Hill subdivision on Story Street. Morin said they have the finish paving to put down and have to start a wetlands replication area. He requested that a reduction of the bond for the road be made from \$89,000 the present figure. The Board felt the figure for the remainder of the work should be set at \$43,200. Morin said he will bring in a letter for \$43,200 at the next meeting.

Engineers for review of subdivision plans - Ginn had been asked to review literature mailed to the Board from various companies willing to perform subdivision plan reviews. Ginn said his first choice would be C.T. Male and his second choice was B.S.C. C.T. Male, he felt, had the advantage of doing work for the Town (perc Tests) and were located in Ipswich, where the growth of that Town is similar to that of Essex. Representatives from both companies will be asked to meet with the Board.

Ginn moved to adjourn the meeting; seconded Dunn, with the Board voting unanimously in favor.

Meeting adjourned 10:45 p.m.



Gillian B. Palumbo

Essex Planning Board

December 18, 1991

A G E N D A

Appointments:

- 8:00 p.m. ... Peter Van Wyck, represented by
Attorney Charles Clark, Low Land
Farms subdivision plan
- 8:30 p.m. ... Ronald Ober, Pine Ridge subdivision
- 8:45 p.m. ... Attorney John Guerin for:
i) Stephen Gersh, Conomo Point Road
ii) Ruth Simonds, John Wise Avenue

Business:

Review correspondence

Meeting dates for month of January

Sign payroll voucher

Sign bills payable voucher

Essex Planning Board

December 4, 1991

A G E N D A

- 8:00 p.m. ... Paul Connelly, C.T. Male - report for
Pine Ridge subdivision
- 9:00 p.m. ... Review of Spring Peeper subdivision plan
(preliminary)
- 9:15 p.m. ... Tom Goetner for Tom Shea's Restaurant -
additional seating

Business:

Review correspondence

Essex Planning Board

November 20, 1991

A G E N D A

- 8:00 p.m. ... Review of preliminary subdivision plan,
Spring Peeper Way, off Pond Street,
applicant Susan Cain
- 8:30 p.m. ... Clay Morin - submittal of definitive
plan, Soginese Creek
- ... Stephen Walker, Island Road - submittal
of Form A

Business:

Review correspondence

Review report from C.T. Male for Pine Ridge subdivision

Essex Planning Board

November 20, 1991

Present : Frances Dunn, Chairman; George Bragdon; Joseph Ginn; Mark Hall; Rolf Madsen; Dana Story.

Meeting called to order at 7:45 p.m.

Building Inspector Richard Carter submitted a building permit application for William Tyler, off Addison Street, for the construction of a new dwelling, creating a second principal structure on a single lot. The lot size is 16 1/2 acres.

Madsen moved that the Board approve the siting of the dwelling for William Tyler, off Addison Street, finding that it meets all zoning requirements and by-law 6-5.5, Erection of more than one principal structure on a lot. The motion was seconded by Story, with Bragdon, Story Ginn and Madsen voting in favor; Dunn and Hall voted present.

A building permit application was submitted for John Cushing, Martin Street, for the construction of an addition to the barn. No plumbing will be installed. Cushing said he wants to move his home occupation, presently being conducted in his home, into the barn. The lot size is 19,000 square feet. Cushing did not have letters from abutters regarding the addition to submit to the Board, therefore the Board would not act on the application until they were received.

The Board discussed the reconstruction of the deck at Max Callahan's restaurant, Main Street, damaged by a storm.

Mary Ann Burns, 5 School Street, submitted a building permit application to add a second story to the existing dwelling, consisting of three bedrooms. Hall felt an as-built plan should be submitted so that distance from the lot lines could be determined. The lot size is 21,770 square feet. The Board of Health had not given their approval of the septic system at this time, until the leaching system had been checked. Burns was told to come back to the Board's next meeting with a plan showing setbacks. Charles Burnham, an abutter, said he basically had no objection to the addition, providing it stuck to the plan. Madsen, noting the letter which the abutters had signed, suggested that the plan submitted to the Board be referenced, rather than carte blanche approval.

A Form A, Application for Endorsement of a Plan believed not to Require Approval, was submitted for Stephen S. & Romaine Walker, Island Road, to convey a parcel of land to Edwin and Laura Howard. Lot 2 consists of 83,795 square feet, and belongs to Stephen and Romaine Walker; Lot 2A, consisting of 1,125 square feet, will be conveyed to the Howards to become part of lots 13, 14, and 20. Lot 2A is not to be a separate building lot.

Hall moved to approve the Form A plan of Stephen S. and Romaine L. Walker, plan of land on Island Road dated November 18, 1991, finding approval under the subdivision control law is not required. The motion was seconded by Ginn, with the Board voting unanimously in favor.

Robert Campbell, Clerk of the Works for Pine Ridge Subdivision, submitted his report dated November 20, 1991 to the Board. The Board then discussed the report received from their technical review agent, C.T. Male. The Board was not sure whether the drainage calculations submitted with the plan had been reviewed and recommended that the chairman call C.T. Male to ask if this had been done or if the calculations had changed.

John Cushing, 113 Martin Street, met again with the Board at 9:15 p.m. to submit letters from his abutters regarding the proposed addition to his barn. Cushing said the only signature he could not obtain was Edward Saltzberg who could not see the barn from his property. Ginn said he wanted to state that he felt this was what the Town intended with regard to a home occupation.

Ginn moved that the building permit application for John Cushing, 113 Martin Street, be approved by the Board, finding under Essex by-law 6-4.2 that the proposed addition to the barn relative to his home occupation will not be more detrimental to the neighborhood than the existing non-conforming use, and that letters from his abutters approving the project have been submitted to the Board. The motion was seconded by Madsen, with the Board voting unanimously in favor.

Madsen moved to adjourn the meeting, seconded by Ginn, with the Board voting unanimously in favor.

Meeting adjourned at 9:30 p.m.

Respectfully submitted by:


Gillian B. Palumbo

Essex Planning Board

November 6, 1991

A G E N D A

- 8:00 p.m. ... Ellen Neilly, Main Street - parking area
in rear of antiques shop
- 8:10 p.m. ... Ronald Ober, Pine Ridge subdivision
- 8:45 p.m. ... Timothy Smith, representing George Alsberg,
off Pond Street
- 9:00 p.m. ... Robert Coviello - change property from
residential to commercial on corner of
Southern Avenue and Eastern Avenue
- 9:30 p.m. ... Attorney Charles Clarke - discuss Peter
Van Wyck's Low Land Farms subdivision plan

Discussion:

Signs - Richdale Stores

Building permits for non-conforming lots

Sign bills payable voucher

Sign payroll voucher

Essex Planning Board

November 6, 1991

Present : Frances Dunn, Chairman; George Bragdon; Joseph Ginn;
Dana Story; Rolf Madsen (8:15 p.m.)

Meeting called to order at 7:55 p.m.

Building Inspector Richard Carter submitted a building permit application for James L. Mulcahey, 5 Main Street, for the addition of a deck to the rear of the property.

Story moved that a building permit be issued to James L. Mulcahey, 5 Main Street, for the addition of a deck to the rear of the house, finding under Essex by-law 6-4.2 that the proposed change will not be more detrimental to the neighborhood than the existing non-conforming use. The motion was seconded by Ginn, with Bragdon, Dunn, Ginn and Story voting in favor.

Ronald Ober, owner of Pine Ridge subdivision, together with James Klopotoski, Robert Campbell and Clay Morin, met with the Board to discuss the progress of the subdivision road. Campbell submitted his inspection report in his capacity as Clerk of the Works. He asked the Board how they wanted to address the ledge in one section of the road. He also felt the sight distance was poor coming from Pine Road onto Pond Street. He suggested cutting back the bushes and felt that clear up the problem. Ober said he would take the responsibility of cutting the brush, even though the property belonged to the Town. Bragdon was concerned that the brush cutting would go into wetlands. Story said he felt the report submitted tonight was much better than previously submitted reports because it gave a better picture of what was going on with the construction. There was a discussion on the slope and what the Board required should be done. It was felt a 1:1 slope should be created and cut back to the stakes, which was agreed upon at the site visit. One area was a straight face and the Board agreed that if it was dressed up and made as close as possible to a 1:1 slope it would be acceptable. Campbell said they had got to station 8+50 on the water line installation and the ledge had been removed up to station 9. He felt there had been no increase in the water table even with the storm that occurred the previous week. Engineer Clay Morin submitted a plan dated November 4, 1991, showing changes to the drainage system, to correct an error in the definitive plan. One section of the road was two feet lower than it should be. Morin said the profile of the road has to come up a foot, because if the road had been put in as proposed there would not have been enough pitch for run off. Ginn said, "I had a problem with this at the Conservation Commission meeting the previous night. This is the third change on the drainage. I wonder if the blasting is causing water to go into this drainage, and there-

November 6, 1991

the calculations will be off. I saw a tremendous amount of water running on the surface. I was told it was a pooled area running behind the ledge. I have a concern that this will not work. I'm not sure the drainage is adequate because of the changes. I recommend that this be sent to the consulting engineer for review. I do not feel comfortable with this." Story said he felt Ginn was more competent to speak on this than the rest of the Board members. Ginn said his fear is that the drainage may not be adequate, although it may not show this year or next. He wondered if the drainage could handle a major storm or whether the water would be pouring out of the catch basins. Dunn asked if the Board could get the answers it needs from C.T. Male. Madsen said it would be just another engineer's opinion. Ginn felt the plans should be reviewed by an outside consultant.

Ginn moved that the revised drainage plans for Pine Ridge subdivision be sent to the Planning Board's outside consultant, C.T. Male, for their review of drainage, existing water table and conditions, to ensure that the drainage facility will function as per plan dated November 4, 1991, Sheet 6 of 8. The motion was seconded by Story, with the Board voting unanimously in favor.

Ober asked that C.T. Male try to review this in two weeks so he could continue with the road.

Timothy Smith met with the Board representing George Alsberg, for property off Pond Street. Smith said he wanted to discuss with the Board the possibility of subdividing the property. The lot size is approximately 10 acres. Madsen abstained from any discussion on this matter as he is an abutter. Smith was told he ought to retain an attorney concerning the subdivision because there is no frontage.

Robert Coviello met with the Board to discuss the change of use of property owned by Russell and Ethel Rose, 4 Southern Avenue. Coviello said he intended to use the property for antique shops and has no plans for mixed use. The lot size is 10,100 square feet. Dunn said she has a concern with more commercial property in that area, because of the considerable congestion. The entrance to the property is from Southern Avenue and Coviello said he would keep it there with a few changes to the existing driveway. He had not notified any of the abutters regarding his proposed changes. Madsen said he would not want to see parking in front of the building. Ginn felt a water main should be brought in to sprinkle the building. Coviello said he feels it would be a plus for the Town. Coviello will meet with the Board again after receiving input from the abutters.

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Attorney Charles Clark, Gloucester, representing Peter Van Wyck, met with the Board.

Clark said, "I have been retained by Peter Van Wyck to assist him with the Low Land Farms subdivision. Peter may or may not come to subsequent meetings depending on my need to have him here and your need to have him here. He had scheduled this appointment tonight so I thought it would be a good opportunity for me to come to explain what I know about the case, where I think it is procedurally and what I plan to do with it, as far as getting it through the technical and procedural process, and then come back. As I understand it, Peter submitted a plan that was denied in July for a couple of reasons, reasons that are contained in the report by C.T. Male that Paul Connelly brought up to you, and also because of the procedural flap over the payment of the consultant, whether he could consider the report in a timely fashion. I gather that is water over the dam and Peter has now come and submitted a plan in September, which at your last meeting on October 21 you wrote him a letter saying that the resubmitted application was incomplete because it did not have a second review by C.T. Male. I've been through all your Minutes for the past year and realize it's been a long process. I've read the denial letter, I've read the C.T. Male report, I've read the counter report by Mr. Van Wyck's surveyor and I would like to propose the following. I realize, and Peter now realizes that this proposal is going to go nowhere unless you get sufficient technical advice from C.T. Male, because there are a host of technical issues. I'm not a technical person; most of you are probably not technical people, that's why you have hired a technical consultant. I think, procedurally, rather than saying the resubmitted plan is incomplete, in order for C.T. Male to take up the plan again it has to be submitted to the Board. I don't know whether you have discussed this with Town Counsel, because C.T. Male will not, since they work for the Town, consider the plan if I or Peter just bring it over to them. What I propose on doing is to let you reconsider accepting the plan and I'll work with Peter to give you as much time as you need to get the technical parts done and we will work with the technical consultant. It may take some time, with some back and forth, and then come back in once we have had the technical review, so that we can get all those issues out of the way. Then you can deal with substantive issues after the technical and procedural issues which I think is taking up all your time."

Dunn - Well, this is what Peter refused to do, wasn't it?"

Clark - "What I understand from C.T. Male's report is that the plan which was submitted initially back in March or prior to March had a host of technical imperfections that were easily fixed and have been fixed on the plan, according to Peter and according to Robert Klopotoski. You as a Board have not been able to determine whether that's true or not because you required him to get the okay from the technical consultant that that is in fact true. We received a report back on March 6. Robert Klopotoski has submitted, I believe to you, his response to it line by line, but this has not

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gone back to the consultant and you do not want to deal with it until it has. Is that about right?"

Madsen - "The bottom line, absolutely. Because of the adversarial role that Mr. Van Wyck chose to take with the Board rather than trying to work in a business relationship we were unable to get the technical support which is required for us realistically to make any type of decision on the plan. Yes, Mr. Klopotoski has responded to C.T. Male's review, but because he didn't make payment in a timely fashion to C.T. Male, we were unable to send it back for review."

Clark - "I understand the record."

Madsen - "For us realistically to review this plan properly, what would have to happen is this plan, along with that report, to go back. If he had given us, by the way, the extension at the time we would have taken care of all the engineering points at that time."

Clark - "So your view is, that in July, rather than force a vote....."

Madsen - "Which he did - we asked him for time to review."

Ginn - "That's all behind us now."

Clark - "It's helpful to me because I'm the new person on the block here."

Ginn - "I would hope he would know all this."

Madsen - "I take it he's asking us where to start from."

Ginn - "If he read the Minutes of the meeting from the past years he would know."

Madsen - "From my point, we can't take this plan any further until it goes to C.T. Male for review. We do have a denial but we also have a resubmittal. Part of the thing in our denial letter was that the engineering review was not complete and we were unable to make a decision. That has to be remedied."

Clark - "Meaning that the second pass on the review has not been done."

Madsen - "That's right, it hasn't been remedied. Mr. Van Wyck, by the way, on his own without the Planning Board, could have sent that to C.T. Male for the review. I don't see any reason why he can't do that. He could contact C.T. Male."

Clark - "I don't think he can in this instance because that would be a conflict. C.T. Male cannot work for Peter Van Wyck and the Town directly. I think we will work with him as the technical consultant for the Town. That would be the proper way to do it. What I propose to recommend to Peter Van Wyck is that with your approval you accept the plan as a submittal, the new September plan, and recommend to C.T. Male that they review for technical compliance. I'll work with Peter and the technical people to get that technical review done and bring it back. I'll make sure that the clock doesn't start running for you until we bring it back. Then you'll have an opportunity to review it for substantive and policy reasons, the reason we are here, rather than technical issues that are best left to the engineers."

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Madsen - "Why would you not recommend to Mr. Van Wyck that since he has redrawn this plan and there has been a significant modification the way the plan has been redrawn, in other words, we had a 1400/1500' road before and now we've got a 1200' road, he just create the submittal as a definitive plan. Why would he choose not to do that?"

Clark - "My review of the plan is that the submittal in September is in direct response to the denial of the Board at the July meeting, so that I would consider a modification of the existing plans rather than a resubmittal."

Madsen - "What I'm trying to say is that we've got some technical issues. How do you remedy one of the reasons for the denial, which was no engineering review, without opening it up? How can we realistically contact C.T. Male if you say its a conflict of interest; if you realistically cannot reopen up the old plan which is what we would be doing."

Clark - "I don't follow you."

Madsen - "He would be reviewing the second submittal which would not be....."

Clark - "What I'm trying to do is to save you and everyone some time, and I think the submittal in September was in direct response to your July denial."

Madsen - "But not fully remedied though, would you agree with that. What our analysis is, that he has not met all the issues in our denial of the plan, has he?"

Clark - "It's contained in the September plan but I don't think we know until we have....."

Madsen - "One of the remedies was, because we felt that there was some technical deficiencies in the engineering of the plan that we required additional help from our consultant. He, by his inaction to making payment, made it impossible for us to do that. In order for him to do a new submittal, or actually take our denial, fix all the issues in the denial through a modification, one of the things he has to do is remedy that part. He has yet to do that, wouldn't you agree?"

Clark - "Remedy which part? If he takes that intial plan, submit it for technical review, come back with some issues....."

Madsen - "That hasn't been taken care of."

Clark - "What I'm suggesting is that I think you can leap-frog this. Take the September submittal, send it to C.T. Male. I think what he tried to do, or what he did, was bring his report directly to the Board without going to C.T. Male."

Ginn - "Why would you feel that this Board should leap-frog that? Why shouldn't C.T. Male review what Klopotoski has changed "

Clark - "What I'm trying to avoid is reviewing the plan that's not on the table. Let's review the one that was submitted in September which I think is the one that was considered, which is a direct response to the July denial. What do you suggest?"

Madsen - "My suggestion would be, if you want a clear and easy fix so you can get a review, is to take what was presented to us

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in September and present it as a new definitive subdivision plan, a proposal for a new subdivision plan, a brand new filing."

Clark - "I don't think it is a brand new filing."

Madsen - "That's fine. Then we have a legal issue that's going to go between us and between you and John Tierney, because what I'm trying to say is, he hasn't, with that filing in September, made full remedy and we said that to you in our letter."

Clark - "What hasn't been done?"

Madsen - "He has not allowed us to do the engineering review so we can have the technical report back to us to make sure...."

Clark - "That's what we are proposing to do."

Madsen - "You are proposing to leaf-frog that."

Clark - "No, I'm trying to get this back on track and to make it easier for the Board to do it."

Ginn - "What you have to do is you have to do two reviews of the initial plans, that's basically what we need. What Rofl is saying is to to a brand new definitive plan."

Clark - "I'm still confused. You had the one pass of the plan way back last winter. We came up with a host of issues that have been addressed or not addressed by Robert Klopotoski. We don't know, because you want C.T. Male to determine for you whether or not he has. This report has not technically gone to C.T. Male because of the payment issue."

Ginn - "And that was one of our reasons for denial so that has to be cleared before we can consider his modified plan. It has to have its review and it has to have its report back to us from C.T. Male; or you have the choice, as Rolf has explained three times now, to take the new plan and file it as a brand new submittal."

Clark - "So you are saying you will not consider the September submittal until we have comments from the response to the initial C.T. Male report and they have been reviewed again."

Ginn - "Because that was part of our denial."

Madsen - "The reason for this was, if you read the report from C.T. Male, in it he says you either disapprove a plan or require an entirely revised submittal with an additional technical review. We haven't gotten to that point. We've got an additional revised plan. We have some other issues. The development on that property is extremely sensitive to a number of abutters and for us to anyway shortcut the process, we would be terribly remiss in doing it. I have told your client a number of times that what he really has to do is when he comes in and presents this plan to us to just make sure everything is done; all the 't's' crossed and the 'i's' dotted. Realistically, he should not have a real problem with this Board. My suggestion to you again is do a definitive submittal. Make sure all the issues that were brought up in the C.T. Male report are addressed and will go quite easily through an additional review by C.T. Male. That way there is no problem or question in our mind concerning any technical engineering problems on the plan. The rest of the issues are something the Board is

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very willing to discuss and make a recommendation which we feel will be in the best interests of the Town. We have never really been able to work within that forum."

Clark - "I understand the process has been mired in the procedural and the technical and you really haven't been able to deal with the subject."

Madsen - "And I'm trying to say to you, realistically for us to flip-flop it or do it, bad plan; something I'm adamantly against."

Story - "His has been an adversarial relationship with the Town for the last twenty years."

Clark - "That's irrelevant. That's one of the reasons why I am here to eliminate Peter as an issue in the process so that you can focus on the plan itself."

Madsen - "You've really got a good place to start here with a definitive submittal. Realistically, by the way, I think there is such a severe modification in the plan, in the resubmittal, the September submittal, that the only way we can address it is with the definitive submittal as well."

Clark - "So what you would want C.T. Male to review is the plan that goes along with Robert Klopotoski's."

Madsen - "If you want to go along without a resubmittal, but not as a submittal of a definitive plan, you would have to get that thing first reviewed and then we will have to take a look and get the new one submitted in September also reviewed. There are two reviews."

Clark - "Unless the first one deals with all the problems."

Madsen - "We are going to have to have the engineer look at the resubmittal as well, because that's changed. You have some drainage issues which have changed, etc. Now if you want to go with the new definitive submittal you get one review."

Clark - "All of the issues that are a problem with the Board are addressed in the July 17, 1991, letter from the Board to Peter Van Wyck."

Clark then requested the names of Elizabeth Frye and Donald Browning of Apple Street, who attended the meeting and who also are abutters to the property. It was felt at this time that Clark had sufficient information from the Board.

It was brought to the Board's attention that signs on the windows of Richdale Stores could be in violation of the sign by-law. Upon review of the by-law, 6-3.6, signs must be outside of the building to come under its jurisdiction.

The Board discussed the attendance at meetings of Board member Mark Hall. It was felt it should be made clear to Hall that with his erratic attendance it sometimes becomes difficult obtaining a quorum if other members are sick or on vacation.

The Minutes of August 7, August 22, and October 2, 1991, and

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October 16, 1991, were read.

Story moved that the Minutes of August 7, August 22, October 2, and October 16, 1991, be accepted as read, with the following amendment: on page two of the Minutes of October 16, the motion for William B. Tyler should read ".....be denied on the grounds that the cul-de-sac as shown does not create the frontage required." The motion was seconded by Ginn, with the Board voting unanimously in favor.

Madsen moved to adjourn the meeting; seconded by Story, with the Board voting unanimously in favor.

Meeting adjourned at 10:45 p.m.

Respectfully submitted by:



Gillian B. Palumbo
Administrative Clerk

Essex Planning Board

October 16, 1991

A G E N D A

- 8:00 p.m. ... Ronald Ober - Pine Ridge subdivision
- 8:15 p.m. ... Review and decision on definitive
plan of Noah's Hill subdivision
- 9:00 p.m. ... Stephen Woods - Richdale Stores -
remain open 24 hours
- 9:15 p.m. ... Review of Peter Van Wyck's modified
definitive plan for Low Land
Farms subdivision

Discussion:

Propane tanks on parking area side of Richdale
Stores

Accessory building of Robert Sanford, Island Road
Sign bills payable voucher

Essex Planning Board

October 16, 1991

Present : Frances Dunn, Chairman; George Bragdon; Joseph Ginn; Mark Hall; John Knowles; Dana Story; Rolf Madsen (9:00 p.m.)

Meeting called to order at 7:45 p.m.

Building Inspector Richard Carter submitted a building permit application for Thayne F. Symmes, for construction of a dwelling on property off Centennial Grove Road. Symmes said he had received approval for this project at the Planning Board meeting of February 21, 1991. The Minutes were reviewed to confirm this.

Ginn moved to approve the building permit application for Thayne F. Symmes, Lake Road, for the construction of a single family dwelling as a second principal residence on land off Centennial Grove Road as shown on plan dated July 22, 1989, finding under Essex by-law 6-4.2 the proposed change will not be more detrimental and the lot area is sufficient to cover the requirements under Essex by-law 6-5.5, Erection of more than one principal dwelling on a lot. The motion was seconded by Hall, with Dunn, Hall, Ginn, Knowles and Story voting in favor; Bragdon said he had some concerns about issuing a building permit for this and therefore voted present.

Ronald Ober, owner of Pine Ridge subdivision, together with Robert Campbell, Clerk of the Works, met with the Board to update them on the construction of the subdivision road. The Board noted from Campbell's report that on October 11, 1991, a change of plan occurred, i.e. the installation of two 8" cross drains in place of a single 12" drain. Ginn voiced concern about the engineering of the whole project. He said he had heard that one of the abutters is not happy with this project, and changes in the original plan is a cause for concern. Ober said he came here to apply for a permit to construct a foundation. Hall said, "We have no covenants on the road and I feel we cannot allow any building at this time." Ober said the reason he wants to put in a foundation is because he has heavy equipment on site at the moment and has blasting to do, and it will be half the cost to do it now. Story - "Mr. Campbell, although your report tells me what has been happening with regard to the construction of the road, it does not tell me how much of the road is done." Campbell - "It's almost to grade. The road has gravel on it. Blasting is done up to grade 9.0. About ten percent of the road is done. There is no access to the pond at present but it has been started. More drainage will be put in at the top of the hill for drainage on the lower part of the hill. I'm happy with the work that has been done so far, but I'm not ready to release the road yet." Ober - "Would the Board have a different thought to releasing a foundation permit if the road has been completed ten percent?" Dunn - "I would be opposed to issuing a permit for anything until the road is completed because the Board does not have a bond on the road." Ginn said he has concerns with the work done on Pond Street because it was not done according to the plan signed by the Board. It was decided that Board members would make a site visit to the property on Sunday, October 27, at 12 noon.

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The Board reviewed the definitive subdivision plan of Noah's Hill, off Addison Street, property of William B. Tyler. Story read Essex by-law 6-3.18, Lot - ".....Such lot shall have frontage on a way or a street." He said he felt that unless the circular cul-de-sac is not constructed as shown on the plan then Tyler would not have adequate frontage.

Story moved that the definitive subdivision plan of Noah's Hill dated June 21, 1991, owner and applicant William B. Tyler, be denied on the grounds that the cul-de-sac as shown does create the frontage required, and further to deny the waiver 7.02(4)a.2 - travelled way to be 12 feet wide. The motion was seconded by Bragdon.

Ginn moved to amend the motion to also deny the waiver 7.07 - Monuments. The amendment was seconded by Hall, with the voting as follows: Dunn, Bragdon, Hall, Ginn, Knowles and Story voting in favor; Madsen voted present. The Board voted on the motion with the amendment as follows: Dunn, Bragdon, Hall, Ginn, Knowles, and Story voting in favor; Madsen voted present.

Harry Mandragouras, District Manager of Richdale Stores, and Stephen Woods, Manager of Essex Richdale Stores, met with the Board to inform them that they will be opening Richdale's on Main Street 24 hours per day. Woods was asked if there were any restrictions on their common vendors license issued by the Board of Selectmen. Woods said there was no mention of hours of operation. Story - "I don't think this is anything this Town needs. It's a step down. There are neighbors who will be subject to this coming and going in the early hours of the morning. It will be like Salisbury Beach." The Board told Woods to go before the Board of Selectmen with their intent to open 24 hours. Woods said he felt the community would benefit from this. Knowles said he has not seen too much community spirit oriented around the store and felt this will create more of a hangout for kids. Hall also asked Woods about the propane gas tank cage installed on the parking area side of the store. Woods said they have a license for it from the Fire Department. Hall said he had a problem with the location of the gas tanks and felt from a safety standpoint it would have been better to have had the cage installed on the other side of the building where there are no cars. Woods said the present location was approved by the Fire Chief who felt it was safe because of the concrete post barrier between the parking area and the cage.

Story moved that a letter be sent to the Board of Selectmen from the Planning Board expressing the opinion that allowing Richdale's to remain open twenty-four hours is unacceptable. The motion was seconded by Hall, with Dunn, Ginn, Hall, Knowles, Bragdon and Story voting in favor; Madsen opposed.

Peter Van Wyck, Low Land Farms subdivision plan. Knowles said he spoke to the Attorney General's office who said Van Wyck has to come in with a plan correcting the reasons for denial but without changing the plan severely. It is up to the Board to decide whether the plan is severely modified.

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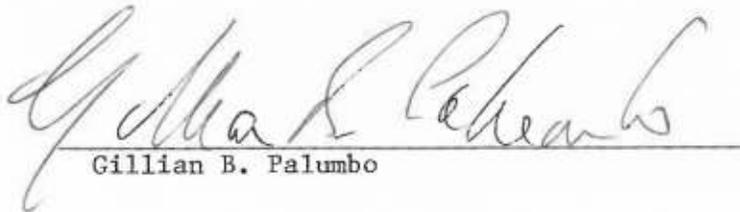
Madsen moved that based upon preliminary review of the resubmitted subdivision plan for Low Land Farms dated September 10, 1991, the applicant has failed to provide the Board with the report that was specified in the letter of denial dated July 17, 1991, therefore the filing is incomplete. The motion was seconded by Story, with Dunn, Hall, Ginn, Knowles, Madsen and Story voting in favor; Bragdon abstained.

The Minutes of the meeting of September 18, 1991, were read. Knowles moved to accept the Minutes of September 18, 1991, as read. The motion was seconded by Ginn, with the Board voting unanimously in favor.

Hall moved to adjourn the meeting, seconded by Story, with the Board voting unanimously in favor.

Meeting adjourned at 10:25 p.m.

Respectfully submitted by:



Gillian B. Palumbo

A G E N D A

- 8:00 p.m. ... Ronald Ober - Pine Ridge subdivision
- 8:15 p.m. ... Peter Van Wyck - Low Land Farm
subdivision
- 8:30 p.m. ... Judy Schroeter, John Wise Avenue -
mixed use
- 8:45 p.m. ... Clay Morin - review of preliminary
subdivision plan for Susan Kane, Pond
Street
- 9:00 p.m. ... Robert Marquis - 121 Eastern Avenue

Business:

Sign bills payable voucher

Date for review of Noah's Hill subdivision plan for
decision

Date for review of Peter Van Wyck's subdivision plan/
hearing date

Should Administrative Clerk request building permits list
each month from building inspector?

Essex Planning Board

October 2, 1991

Present : Frances Dunn, Chairman; Joseph Ginn; John Knowles;
Dana Story.

Meeting called to order at 7:57 p.m.

Building Inspector Richard Carter submitted a building permit application for Mary Ann Burns, School Street, for a two-bedroom addition to the garage. There followed a discussion on the number of units within the dwelling, as the existing house also has an apartment above the garage.

Story moved that the building permit application of Mary Ann Burns, School Street, be tabled, in order for a plot plan to be submitted, together with information as to the number of units in the dwelling. The motion was seconded by Ginn, with the Board voting unanimously in favor.

The building inspector was asked for his input on the dry cleaning business on Eastern Avenue, particularly regarding the number of parking spaces that would be available. Carter said there are forty spaces on the lot. He added that a permit had been issued for the building to be used as a storage area. Ginn said he had spoken with owner Robert Marquis, who said he had gone over the by-laws with his attorney who felt they did not need to come before any boards.

Ronald Ober, Pine Ridge subdivision, reported to the Board that work is progressing on the subdivision road. Clerk of the Works Robert Campbell submitted his report to the Board, which was then reviewed. A letter from the Department of Public Works was read into the meeting stating, "On Friday, September 27, 1991, Poole Construction Company of Rockport, Ma., who is now working on the Pine Ridge project, regraded one hundred feet of banking on the right side of Pond Street. As a result of the regrading, a sight distance of approximately two hundred and eighty feet has been obtained coming from Western Avenue approaching the hill prior to the entrance to Pine Ridge. I was on the job from start to finish to make sure that the best possible results were obtained." The letter was signed by Bruce Julian, Superintendent of the D.P.W. Ginn asked if the work done on Pond Street was done according to the plan submitted to the Board. Campbell said it was not, that it was done according to the D.P.W. requirements. Ginn said he thought Pond Street had to be widened. Ober said that was not correct. Dunn said, "Shouldn't we have this change shown on a plan?" She asked Ginn if that would satisfy him. Ginn - "I'm not sure. The plan provided 'x' amount of work being done and only half the plan has been done." Campbell said that some of the drainage on the plan had to be changed because it will not work.

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Dunn said she felt that before these changes take place they should be run by the Board. Knowles - "How much change?" Campbell - "Not a lot, Some existing culverts have to be replaced because they are not working. If anything drastic has to be done, I will have a plan submitted to the Board. I will not give you anything that will not work, because my name has to go on it. There will be no major changes of grade, just a change of elevation."

James Monahan, representing Noah's Hill subdivision, asked if an emnded plan could be submitted at this time for the subdivision. He was told that the Board has to make their decision on the definitive plan already before them. The Board will review the plan and make their decision at the October 16 meeting.

Peter Van Wyck - Low Land Farms subdivision plan. Dunn said she spoke to Town Counsel who said we have to take Peter Van Wyck's plan and look at it now. If the modification satisfies the Board then it can be treated like a new filing. Knowles said he would like to have Town Counsel's comments in writing. Story said he felt it should be considered a new submission. It was felt that the original plan that was denied should be submitted to Town Counsel, together with the modified plan and a copy of the Minutes when the decision was made on the definitive plan. Story, to Peter Van Wyck - "Why don't you resubmit it?" Van Wyck - "I've paid \$3,500 on this so far and I want to continue." Klopotoski (representing Peter Van Wyck) - "There are procedural advantages for us to submit a modified plan."

Paul and Judy Schroeter, John Wise Avenue met with the Board to discuss the conversion of a two-family house to a mixed use, i.e. residential and commercial. Schroeter said her mother occupied the first floor apartment no longer lives there and they felt the most appropriate use for her apartment would be to convert it to an antique shop. There is also an antique shop in the barn on the property. The area of land is 40,374 square feet. There are eleven parking places on the property in addition to a two-car garage, as well as eleven parking places on a private road on the other side of the barn.

Ginn moved to allow the expansion of a second antique shop in the existing first floor apartment of the dwelling on Lot 1, property of Paul and Judy Schroeter, John Wise Avenue. The motion was seconded by Story, with the Board voting unanimously in favor.

Engineer Clay Morin met with the Board for a discussion of a preliminary plan for Susan Cain, 26 Pond Street. The subdivision consists of two lots from a two-acre lot, with one existing house on the parcel. The total length of the road is 346 feet to the right of way. The width of the road is 16 feet.

October 2, 1991

Ginn asked, "What is the potential for any other development that would be using the right-of-way?" Morin said, "We are creating frontage for two more lots." Part of the road is in wetlands so the plan has to go before the Conservation Commission. An extension of time was requested.

Ginn moved to grant an extension of time until November 21, 1991, for the preliminary subdivision plan of Susan Cain, Pond Street, dated February 6, 1990, revised September 2, 1991. The motion was seconded by Knowles, with the Board voting unanimously in favor.

Robert Marquis, 121 Eastern Avenue, met with the Board to discuss the drycleaning business he is planning to open. Marquis said, "I bought the property in 1979, opened up Puna's Market, and ran it until 1986. I sold the business (Puna's) but retained the property. I applied for a permit for a back building and rented it out for a short time. I decided to then open a drycleaning business. I was under the impression that I was under a retail business and could open up this business. I felt I did not need to come before the Planning Board. I have gone to the Board of Health, who have granted me a waterless toilet. It is state of the art equipment that has been installed. Everything is confined. The waste, which is not very much, is picked up by a hazardous waste company." Story - "It wasn't so much the drycleaning business as that it was a storage business which became a drycleaning business." Marquis - "The idea of storage, I think, came from the proposal I once had to have storage containers there. Puna's has plenty of storage. I was under the assumption that if you had a business you didn't need permission from the Board." Marquis was then questioned about the number of parking spaces he has. Marquis said, "I took Puna's on the first and second level, the pet store on the first and second level and the business for a total of 6,050 square feet. That requires 34 parking spaces. At present I have 36 lined parking spaces, and 6 unlined spaces." Story noted that an accessory building can be 10 feet from the lot line but a business must be 20' from the line. Ginn said he wanted a letter from the Board of Health regarding the waterless toilet. Marquis told the Board that all cleaning fluids are contained and the marginal amount of waste is taken away by a hazardous waste company.

The Board discussed having all building permits printed in the Essex section of the Gloucester Daily Times. It was noted that this procedure was followed at one time.

Story moved that the Board request a copy of the building permits from the Building Inspector; seconded Ginn, with the Board voting unanimously in favor.

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It was noted by the Board that one of the members has been frequently missing from the meetings, and it was felt the chairman should speak to him about his attendance.

Story moved to adjourn the meeting, seconded by Ginn, with the Board voting unanimously in favor.

Meeting adjourned at 10:15 p.m.

Respectfully submitted by:



Gillian B. Palumbo
Administrative Clerk

Essex Planning Board

Building Permits issued

Period of September 23 through October 21, 1991

9-23-91	...	Scott & Donna DeWitt, Lakeview Road 2-story addition, deck	\$20,000
9-23-91	...	Salvatore Pusateri, 162 Eastern Avenue Chimney	\$250.00
9-23-91	...	Madeline Sanford, Island Road Storage shed	\$3,000
9-24-91	...	Jean Teel Woodstove	
9-30-91	...	Alfred Brosch, 143 Main Street Chimney	\$2,000
9-30-91	...	Kevin Sousa, 76 Southern Avenue Replace windows	\$8,000
9-30-91	...	Essex School Department Door	
9-30-91	...	Edith Wilson, 46 Southern Avenue Repair barn	\$20,000
10-2-91	...	Edward Lane, Coral Hill Garage	\$3,000
10-7-91	...	Jennie Mears, 85 Pond Street Roof	\$4,400
10-7-91	...	Nancy Roberts, 77 Eastern Avenue New roof	\$1,200
10-7-91	...	Dean Richards, 4 Winthrop Street Storage addition	\$1,000
10-7-91	...	Daniel & Janet Rice, 34 Lake Shore Dr. Dormer	\$4,000
10-7-91	...	Mark Hall, 9 Western Avenue Garage	\$37,000
10-7-91	...	Judd & Tina Lane, Off John Wise Ave. Woodstove	
10-7-91	...	Joan Buklin, 16 Story Street Deck	\$4,000

Page Two

Building Permits

Period of September 23 through October 21, 1991

10-16-91	...	Thayne Symmes, Lake Road New dwelling	\$75,000
10-21-91	...	Gus & Elinor Carlson, 12 Maple Street New siding	\$3,000
10-21-91	...	Dorothy Lumken, 64 Eastern Avenue New pool	\$20,000

A G E N D A

- 7:45 p.m. ... Kerry Kaplan - discussion on
building permit issued to
Myles Rigney, Gregory Island
- 8:00 p.m. ... Public hearing for the Watershed
Protection by-law
- 8:10 p.m. ... Continuation of public hearing -
Noah's Hill subdivision
- 8:30 p.m. ... Ronald Ober - Pine Ridge subdivision
- 8:50 p.m. ... Jay Willard -business sign
- 9:00 p.m. ... John Bennett - submittal of Form A -
Brook Pasture Realty Trust
- 9:30 p.m. ... Peter Van Wyck

Essex Planning Board

September 18, 1991

Present : Frances Dunn, Chairman; Joseph Ginn; John Knowles;
Dana Story.

Meeting called to order at 7:55 p.m.

Building Inspector Richard Carter submitted a building permit application for Scott and Donna DeWitt, Lake view Road, for the construction of a 10' x 23' 2-story addition and the removal of an enclosed porch and reconstruction of a 2-story addition to the front of the house.

Story moved to issue a building permit to Scott and Donna DeWitt, Lakeview Road, to remove existing deck near the kitchen and build a 2-story 10' x 23' addition, and removal of an existing enclosed porch in front of the house and rebuilt two stories, finding under Essex by-law 6-4.2 that the proposed alteration is not substantially more detrimental to the neighborhood than the existing nonconforming use. The motion was seconded by Ginn, with the Board voting unanimously in favor.

A building permit application was submitted for Daniel and Janet Rice, for construction of a dormer and a sundeck on an existing sunporch at 34 Lake Shore Drive. There will be no change in the footprint. Letters were received from abutters. Story moved that a building permit be issued to Daniel and Janet Rice, 34 Lake Shore Drive, for construction of a dormer and a deck on an existing sunporch, finding under Essex by-law 6-4.2 that the proposed alteration is not substantially more detrimental to the neighborhood than the existing nonconforming use. The motion was seconded by Ginn, with the Board voting unanimously in favor.

Kerry Kaplan, Lake Shore Drive, met with the Board to discuss the issuance of a building permit to Myles Rigney, an abutter. Kaplan said the Planning Board approved the expansion of the Rigney property and no one objected. It then went to the state because they were enforcing Title V for the septic system and no one was allowed to do anything until approval had been given by D.E.P. The Rigney's were going to keep to the original footprint and go up, but now footings have been put in with a deck above. There also appears to be three floors now. Attorney John Guerin, representing Myles Rigney, said his client has received approval from the Town boards over the past two years. Kaplan said he has no problem with the building permit providing that construction remains as shown on the plan submitted with the building permit application. The building inspector was also told that at present there is an Enforcement Order on the property issued by the Department of Environmental Protection.

September 18, 1991

A public hearing was held at 8:28 p.m. to consider an amendment to the Essex Zoning By-laws to create a Water Resource Protection District. The purpose of the Water Resource Protection District is to protect the public health, safety, and welfare, by preserving and maintaining the existing and potential groundwater recharge area, groundwater supply, and municipal wellfields providing water supply for the Town of Essex. The Water Resource Protection District will comprise all areas within Essex which are within the drainage basins of either Chebacco Lake or Cedar Swamp.

Story said the reason the hearing was held again was because the Town Clerk, by her own admission, did not post the hearing for the required fourteen days. The Attorney General had no problem with the by-law, but returned it because of the posting error. Bruce Fortier questioned whether the Attorney General had actually read the by-law, or just returned it without reading it after finding the posting error. Fortier felt the state law puts the initiative on the town for identifying the boundaries, but the by-law states that the onus is on the public to do this. He said he found it difficult to find where the boundary was for his property and whether it was within the resource protection district. It was only after checking the map with the assessor's maps that he determined he was outside of the district by three hundred feet. Fortier then asked Story to show him where Cedar Swamp crosses Southern Avenue. Story said, "How can we, we are not surveyors." Westley Burnham asked regarding paragraph 13, Residential Development, if it had been discussed with the assessors as to how many lots it might entail. Story said they did not. Burnham then asked who was going to enforce paragraph b (7). He felt it put far too much burden on the building inspector. Burnham felt the by-law should be withdrawn and re-written, simplifying it so that lay people could understand it. Story said, "On the advice of our engineers, this has been simplified so that the lay person can understand it.

Story moved to close the public hearing; seconded by Ginn, with the Board voting unanimously in favor. The hearing closed at 8:50 p.m.

Story moved that the Planning Board go on record in support of the Water Resource Protection District By-law; seconded Knowles, with the Board voting unanimously in favor.

A continuation of a public hearing was held at 8:50 p.m. under M.G.L. Chapter 41, Section 81, and the rules and regulations relative to the subdivision control of Essex, to consider a subdivision of land known as Noah's Hill, off Addison Street, applicant William Tyler.

A letter was read into the meeting from the D.P.W. stating that

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after meeting with engineer Vasek Talacko it was decided that a drainage swale should be placed at the entrance of the proposed driveway to direct run-off to catch basins along the shoulder of Addison Street to prevent water from draining onto the street. Comments were received from the Fire Department and Police Department. Both approved of the subdivision, but the Fire Department stated that if further dwellings are constructed then a water line and hydrant must be installed. Story said he still feels that the circular cul-de-sac shown on the plan should be constructed. Talacko said he provided a different way, a 'T', to accomplish the same thing, i.e. provide a turn around for vehicles. Story said he does not agree with it because part of the circle is used for frontage. To show a 'T' within the circle to be used as a turn around for vehicles was not good enough. Tyler - "I object vehemently to what you are suggesting. To the neighbors it is extremely important that the area not be changed extensively. What has been proposed is sufficient for a vehicle to turn around and to put in a circle like that would be a travesty. You have the waiver power for this." Talacko - "We came here with a preliminary subdivision plan. Why wasn't it brought up then." Westley Burnham - "Are you extending hydrants up to the cul-de-sac?" Talacko - "The D.P.W. asked that it not be done." John Champi - "I would like to see what has to happen with a minimum amount of tree cutting." Tyler then read into the meeting a letter from Paul Ashley who asked that the Board grant the application with the waivers requested. The Ashley's stated that they hoped the Board's decision would take into account their wish that the environment, i.e. land and trees, be disturbed as little as possible. Ginn moved to close the public hearing; seconded by Story, with the Board voting unanimously in favor. The hearing closed at 9:20 p.m.

Ronald Ober, Pine Ridge subdivision - Ober said, "Clerk of the Works Robert Campbell could not be here tonight, so I am here to update you on the progress of the road. We are laying in the water main and repairs are being made to Pond Street, as requested. At the last meeting I said we were going to bond the road, but now I have decided not to post a bond but to use the money directly towards the construction of the road.

Jay Willard met with the Board to discuss erection of a sign on property he rents at 26 Eastern Avenue. The sign would advertise Willard's company in Wenham and would consist of the company's name and telephone number.

Dunn - "Why would you want a sign here?"

Willard - "It will invite people to use the business."

Dunn - "I would have a problem with people taking their eyes off the road to read a telephone number."

Sally O'Maley - "The by-laws state that billboards are not allowed."

September 18, 1991

Westley Burnham - "If he was operating a home occupation in town then he could fall under that by-law."

Dunn - "I feel it is a very dangerous area to have a distraction such as a phone number."

Story - "I do not see that a sign would be permitted under these circumstances. There might be a dangerous precedent."

Knowles - "The town draws a distinction between hanging a shingle and advertising a business."

It was the consensus of the Board that this would not be allowed.

Engineer John Bennett met with the Board to submit a Form A for Brook Pasture Realty Trust, Martin Street. The Board reviewed the plan.

Story moved that a Form A be approved and signed for Lot 4A, 40,020 square feet, with frontage on Brook Pasture Lane, and Lot 4B, 41,528 square feet, with frontage on Martin Street, finding that approval under the subdivision control law is not required. The motion was seconded by Ginn, with the Board voting unanimously in favor.

Peter Van Wyck, together with surveyor Robert Klopotoski, met with the Board to discuss the amended plan for Low Land Farms. Klopotoski said, "We have decided to dispense with all waivers and to file a revised plan which includes all items on C.T. Male's report and all items from the denial." It was suggested that the Planning Board seek legal advice from Town Counsel. The Board accepted the submittal of a revised set of plans. Story moved that this matter be submitted to Town Counsel relative to the necessity for a hearing and what the hearing can deal with, and whether the Planning Board needs to begin the submittal process all over again for the amended plan dated September 10, 1991. The motion was seconded by Ginn, with the Board voting unanimously in favor.

It was brought to the Board's attention that a dry cleaning business was going to open behind Puna's store on Eastern Avenue. The Board questioned why it had not come before the Planning Board, Conservation Commission, and Board of Health. Dunn said she had spoken to building inspector Richard Carter about this and was told that no permits were needed because it was a commercial property. Ginn said he had no problem with the business but proper procedures must be followed. He thought the building where the cleaning business was going to be was supposed to be an accessory building for Puna's, and wondered how they could open without permits. Knowles said he thought there were wetlands behind the building and questioned the use of chemicals. Dunn said she would speak with Carter again about this matter voicing the concerns of the Board.

The Minutes of September 4, 1991, were read. Story moved that

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the Minutes of September 4, 1991, be accepted as read; seconded by Ginn, with the Board voting unanimously in favor.

Elizabeth Frye said she would like to mention to the Board in regard to earth removal that it does not mean taking soil out of town; it also means taking it from one place to another within town.

Story moved to adjourn the meeting; seconded by Ginn, with the Board voting unanimously in favor.

Meeting adjourned at 11:00 p.m.

Respectfully submitted by:



Gillian B. Palumbo
Gillian B. Palumbo

A G E N D A

- 8:00 p.m. ... Public Hearing for Noah's Hill
subdivision, applicant William
Tyler
- 8:45 p.m. ... Ronald Ober
- 9:00 p.m. ... Attorney Alan Swan for Frederick
Markham - submittal of Form A
- 9:15 p.m. ... Submittal of preliminary subdivision
plan for Susan Kane, Pond Street
- 9:30 p.m. ... John Bennett - submittal of a Form A
for Brook Pasture Realty Trust,
Martin Street
- 9:45 p.m. ... David Hidden for Ashley Thompson,
46 Eastern Avenue
- 10:00 p.m. Peter Van Wyck

Business:

- Update - Jim's Rubbish, Scot's Way
Desmond property
- Sign bills payable voucher
- Sign payroll voucher

Essex Planning Board

September 4, 1991

Present : Frances Dunn, Chairman; George Bragdon; Joseph Ginn;
Mark Hall; Dana Story; Rolf Madsen (9:30 p.m.)

Meeting called to order at 7:50 p.m.

Building Inspector Richard Carter submitted a building permit application for Kevin and Kathleen Burke for construction of a single family dwelling on Lot 2, Low Hill.

Ginn moved that the building inspector issue a building permit for a single family dwelling on Lot 2, Low Hill, for Kevin and Kathleen Burke. The motion was seconded by Hall, with Dunn, Bragdon, Ginn, Hall, and Story voting in favor.

A public hearing was held at 8:00 p.m. to consider a subdivision of land known as Noah's Hill, Off Addison Street, applicant William Tyler. Engineer Vaclav Talacko of Hancock Survey represented William Tyler. The total acreage of the parcel of land is 42 acres. The proposal is to divide the property into two lots, with Lot 1 41.7+ in size and Lot 2 - 1.6 acres. Lot 1 also has a conservation restriction on part of the acreage, leaving 15.2 acres unrestricted. A waiver of the 16 foot roadway to a 12 foot roadway has been requested. Story said he felt the cul-de-sac should be constructed as shown on the plan as it is being used for frontage.

Hall - "Obviously the Board has granted numerous waivers in the past. We look at each subdivision on an individual basis. We have to consider the proximity to the Essex River. Any additional paving would put a burden on this area here. I think if they are only putting two houses there it would be considered overkill."

Bragdon - "I agree we do not want any more environmental problems in that area but we do have to consider the regulations."

Ginn - "I can understand what the applicant is trying to do. What you are trying to lay out on paper is a road for frontage for two legal lots. There are concerns about drainage here. The list of waivers requested were read into the meeting. Four waivers were granted under the preliminary application, and the following are waivers requested beyond those agreed to under the preliminary plan: a) gravel road width to be 12 feet with variable width shoulders, not 20 feet as required; b) road crosssection to be as shown on the enclosed plan, sheet 3 of 3 and to 1"=4' as required; c) permanent monuments to be set on right side of road only, not at all changes of direction as required. Comments were received from the Board of Health, Conservation Commission, and Board of Selectmen, and read into the meeting. A letter was received from the D.P.W. stating that they did not want an 8" water main in there at this time. If there is further

September 4, 1991

construction then a minimum 8" water main would be required. The D.P.W. felt the drainage patten on the north side was unclear and felt a possible solution to the possibility of sediment and siltation be carried onto Addison Street would be the installation of a culvert in that area. Talacko said he had had a further meeting with the D.P.W. regarding the culvert but no memorandum, to date, had been received by the Board from the D.P.W. on this matter. When asked about the drainage flow, the engineer said the drainage enters the culvert directly or flows down hill to a drainage swale and into a culvert.

Talacko - "There will be no increase of run-off, because although a house and driveway will be constructed they will be removing a portion of the existing driveway. The D.P.W. has requested a swale across the street so that the water will flow there and not into Addison Street which could create an ice problem in winter."

Dunn said she did not like gravel roads, and prefers to see them hot topped. Tyler said he hoped that the Board would not make him hot top the road.

Betty Ewing, Southern Avenue - I like the idea of the gravel. I do not understand why someone has to put in a road for one house. It is more pervious and I feel it would look better."

Tyler - "You are going to learn from Mr. Welch that we have been there for forty years and welcome our neighbors to walk around the base of the hill. I'm sure they want to keep things the way they are."

Ginn - The Board has to look at this in the same light as a dozen houses. I'm not against a country driveway servicing two houses. I do disagree with the engineer that there will be no more run-off. I would not want to see an increase in run-off sheeting off the driveway and roof, and flooding a neighbor's property."

Tyler - "Let me assure you that if any of this would cause a problem for a neighbor I personally would see the problem corrected. I have to rely on the engineer's word."

Story - "I have no argument with the plan as a plan or a two-lot subdivision. My argument is that a theoretical line is being used to create frontage and I feel it should be constructed. I really am not concerned whether it is gravel or hot top. I do not sympathize with putting in a 12' road. I feel strongly that it should be 16'."

Peter Van Wyck, an abutter - "I feel this is a very aesthetic plan. What Mr. Tyler wants to do is to save as much of the natural setting as possible. I could quite easily stand before you and say what I have to doand, therefore, he should, but I don't believe that in this case. I feel this plan is in the town's best interest. I feel there should be some consideration given."

September 4, 1991

Harold Heussi, Addison Street - "Based upon Mr. Tyler's guarantee that if it doesn't work he will fix it, then I feel it is a good plan."

Because comments had not been received from the Fire Department and the Police Department, and a memo from the D.P.W. regarding the culvert had not been forwarded, it was felt the hearing should be continued until the next meeting to give time for this information to be submitted to the Board.

Hall moved to extend the public hearing to September 18, 1991, at 8:00 p.m; seconded Ginn, with Dunn, Hall, Bragdon, Ginn and Story voting in favor.

Pine Ridge Subdivision - "Ronald Ober, together with engineer Clay Morin met with the Board to discuss the upgrade of the drainage system. Morin said from the last meeting they have gone to the D.P.W. and the Conservation Commission regarding the modification to the plan. The D.P.W. and Conservation Commission could see no problem with it. Morin then presented a plan showing the section of the property where the change will take place. Ober also told the Board that he has three estimates for construction of the road, averaging \$130,000. As, he said, in excess of \$15,000 has already been expended into the road so far, he plans on putting \$115,000 in the form of a bank book to be held by the Planning Board. Hall asked who was going to confirm these figures for the Planning Board. Ober said he felt the Clerk of the Works could. Story felt the Board should receive three estimates for the road. Ginn asked if work was also required to be done on Pond Street. Morin said that Bruce Julian, Superintendent of the D.P.W., felt that it was not such a major project that the work would be required to go out on bid. The cost estimate included that work. Ober will return to the next meeting with estimates and bond.

Attorney Alan Swann submitted a Form A to the Board for Richard L. Taves for property on Pond Street. Parcel A is 3.22 acres with frontage on a 44' way. Parcel B is 7,580 square feet with frontage on a 44' way. It was noted on the plan that parcel B is being conveyed to owner of the lot, Frederick W. Markham, 32,429 square feet in size, as a contiguous lot, creating a total new area of 1.407 acres, and is not to be a separate building lot.

Hall moved to approve the submittal of a Form A, Planning Board approval under the subdivision control law not required, for plan of land in Essex, Mass., property of Richard L. Taves, dated March 25, 1991, showing that two lots are being formed, Parcel A 3.22 acres with frontage on a 44' way and Parcel B 7,580 square feet with frontage on a 44' way. The motion was seconded by Ginn, with Hall, Dunn, Ginn and Story voting in favor; Bragdon abstained.

September 4, 1991

Engineer Clay Morin submitted a preliminary subdivision plan for Susan Cain, 26 Pond Street, for a two-lot subdivision. The Board accepted the submittal.

David Hidden met with the Board to request a home occupation for Ashley Thompson and Rebecca Laughlin, at 46 Eastern Avenue.

Hall - "I have taken the position that I am very much against any kind of home occupation on this part of the road. Any kind of additional traffic will cause a traffic hazard."

Hidden - "We aren't creating any additional traffic patterns."

Hall - "You have six parking spots."

Hidden - "We only need two, but we have to back out."

Story - "How many employees do you have?"

Thompson - "It is only me and my wife. There will not be any retail sales."

Hall - "I would be open to listening more if I can be convinced that this will not change from a home occupation to a business."

Thompson - "My wife and I are artists. We create sculpture, make furniture, create things in stone. Most of my deliveries are made with my own van. When I take out a finished product it will be with my van."

Story - "Unfortunately, we have had so many people have a home occupation which has grown and become a business."

Ginn - "I am not endorsing this plan one hundred percent, but there are some advantages out of this. The barn will be repaired and raised so it is above the road. The driveway will be in a better location that it is right now."

Laughlin - "We hope to live there if we can get a home occupation. If not, we won't be."

Hall - "I'm looking at a plan that does not show me lot dimensions or a curb cut."

Madsen - "The only section of the home occupation by-law that is of concern here is the traffic generated. That is subjective to the number of trips the applicant will say occurs."

Frederick Fawcett - "I feel that if it is/going to be a home occupation then no more than two parking spots are required."

Story - "The same thought occurred to me. If five parking spots are shown then it tells me that in essence you plan on traffic."

Bragdon - "I am reluctant to vote on a home occupation when it is not in effect."

Ginn - "I'm not so sure this is as detrimental as we are making it out to be. Chief Platt said that when cars are parked on the side of the road that traffic slows down."

Bragdon - "I would like to see the business in operation before I voted on it, but because I can't, I have to say it would not be a good place for a home occupation."

Ginn - "I feel it would enhance the area and not be detrimental."

Hall - "My decision is based on section 3 of the home occupation by-law, where I believe it would generate traffic detrimental to the area, and therefore I would be opposed to this."

September 4, 1991

Story - "I would be opposed to this because we have been severely burned by something like this before. The traffic is also a concern to me."

Dunn - "I would be opposed because of the traffic, and because we don't have any way of really enforcing any violations. I am extremely concerned about the wetlands."

Peter Van Wyck and Robert Klopotoski met with the Board to discuss the submittal of an amended subdivision plan for Low Land Farms. Klopotoski said the applicant is supposed to return the plan with all the reasons for denial corrected on the plan. Klopotoski indicated that the corrections had been made except the length of the road.

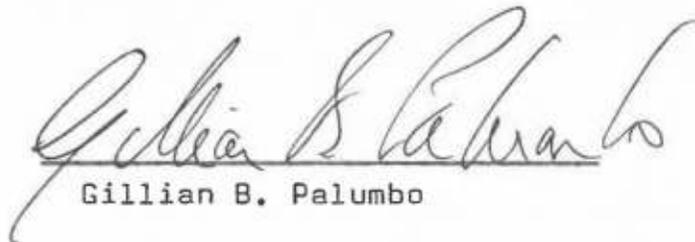
Madsen moved to return the documents to the applicant until they are completed as required; seconded by Hall.

Frederick Fawcett asked to read in the meeting an excerpt of a letter written by Gregor I. McGregor on the submittal of a revised plan. Klopotoski said it sounded as though the submittal was being turned down. He told the Board, "You accepted it at the last meeting and therefore you must take action on it." Madsen withdrew his motion.

Hall moved to adjourn the meeting; seconded by Ginn, with the Board voting unanimously in favor.

Meeting adjourned at 11:00 p.m.

Respectfully submitted by:



Gillian B. Palumbo

Essex Planning Board

Building Permits issued

Period of August 27 through September 16, 1991

8-27-91	...	James Donavon, 90 Conomo Point Road Replace foundation	\$1,000
8-27-91	...	Scott Woodward, 78 Main Street Repair building	\$2,000
9-3-91	...	Frank & Helen Story, Addison Street Addition	\$19,000
9-3-91	...	Eugene Bohnwagner, 17 Winthrop Street Second egress	\$2,000
9-3-91	...	Dr. Stephen Price, 74 Martin Street Ramp	\$3,000
9-9-91	...	Kevin & Kathleen Burke, Low Hill New dwelling	\$105,000
9-9-91	...	Gerald Parady, 17 Prospect Street Deck	\$1,000
9-9-91	...	Blake Story, 17 Story Street Addition	\$18,000
9-9-91	...	Nicholas/ Deborah Kuffel, R141 Western New dwelling	\$75,000
9-9-91	...	Richard O'Leary, 1 Prospect Street Storage shed	\$300.00
9-9-91	...	George Johnson, 38 Wood Drive Repair foundation	\$7,500
9-9-91	...	Anthony Sanchez, 2 Deer Hill Farms New dwelling	\$146,000
9-9-91	...	Gardner Butman, 21 Apple Street Remodel	\$9,000
9-16-91	...	Francis Poole, 16 Harlow Street Reshingle	\$500.00
9-16-91	...	Mstr. Davids Realty Trust, 44 Pond St. Repairs	\$500.00
9-16-91	...	Phillip Frank, 7 Patriots Lane Remodel	\$8,000

Essex Planning Board

Thursday, August 22, 1991

A G E N D A

7:45 p.m. ... Special meeting to discuss new hearing
for Watershed Protection By-law

Essex Planning Board

Thursday, August 22, 1991

Present : Frances Dunn, Chairman; George Bragdon; Joseph Ginn;
John Knowles; Dana Story.

Meeting called to order at 7:45 p.m.

Dunn - "This meeting is called to discuss the rejection of the watershed protection by-law.

Story - "Sally (Town Clerk) suggested two dates to me for the hearing. When is the Town meeting going to be?"

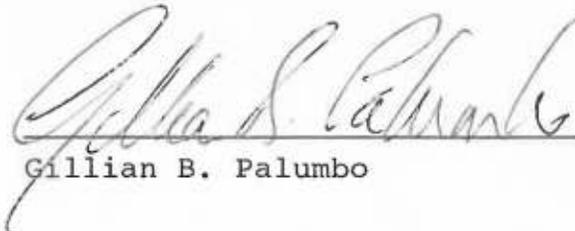
Dunn - "The Town Meeting is going to be September 23, that is definite. Gill called me tonight to say we could not hold our public hearing on September 11; we should hold it September 18, at 8:00 p.m. She also said she would advertise the public hearing on August 27 and September 3, and that would set up our timing. Does that sound fine."

The Board was in agreement with the dates.

Story moved that the Planning Board hold a public hearing on Wednesday, September 18, 1991, at 8:00 p.m. in regard to the overlay watershed by-law, pursuant to the rejection of the Attorney General's office of the passage of the law at the Annual Town Meeting on May 6, 1991, which necessitated holding the hearing on September 18 on the proposed by-law. The motion was seconded by Knowles, with the Board voting unanimously in favor.

Story moved to adjourn the meeting; seconded Knowles, with the Board voting unanimously in favor.

Respectfully submitted by:



Gillian B. Palumbo

Essex Planning Board .

August 7, 1991

A G E N D A

- 8:00 p.m. ... Review of definitive plan for
Noah's Hill subdivision (Tyler)
- 8:30 p.m. ... Peter Van Wyck
- 8:45 p.m. ... Diane Bragdon
- 9:00 p.m. ... Ron Ober, Pond Street subdivision
Pine Ridge
- 9:15 p.m. ... David Hidden for property at
46 Eastern Avenue

Business:

- Jim's rubbish, Scot's Way
Sign mylar for Tyack/Markham
Lighting at Max Callahan's restaurant
Sign bill's payable voucher
Sign payroll voucher

Essex Planning Board

August 7, 1991

Present : Frances Dunn, Chairman; George Bragdon; Joseph Ginn;
John Knowles; Dana Story (8:20 p.m.)

Meeting called to order at 8:00 p.m.

Building Inspector Richard Carter submitted a building permit application for Peter and Kim Rutherford for construction of a single family dwelling at 87 Martin Street. Size of building - length 40', width 27', height 30'.

Ginn moved to approve the building permit application and plan of Peter and Kim Rutherford for a 27' x 40' 2-story cape at 87 Martin Street. The motion was seconded by Bragdon, with Dunn, Knowles, Bragdon voting in favor; Ginn voted present.

A building permit application was submitted for Dennis A. Nunes, 16 Harry Homan's Drive, for construction of a 2-car garage.

Bragdon moved to approve the construction of a 2-car garage for Dennis A. Nunes, at 16 Harry Homan's Drive. The motion was seconded by Knowles, with Bragdon, Dunn and Knowles voting in favor; Ginn voted present.

Kevin Burke - review of a plan for Lot 2, Low Hill. There will be further review at the Board's next meeting on September 4.

It was brought to the Board's attention that Jim's Rubbish, Scot's Way, has been parking filled trash trucks on site creating a bad odor. When Jim's Rubbish applied for a permit for the business the Board was told that every truck would be emptied and cleaned in Peabody every night before being parked. The Building Inspector said he would check on it even though rubbish and odor are Board of Health issues. Carter said he had heard the business was being sold, but Ginn said it should make no difference; the permit was issued contingent upon the trucks being emptied and cleaned before being parked on that site.

An informal review of the definitive plan of the Noah's Hill subdivision was made. A letter was received from the D.P.W. stating they did not want to see an 8" water main go in there at this time. If there is future development then the minimum 8" water main will have to be constructed. The D.P.W. also felt that the drainage pattern on the north side of the proposed driveway was unclear. Vasek Talacko, an engineer from Hancock Survey, presented a plan of the drainage showing how the water will flow under normal conditions. The D.P.W. had suggested a culvert to correct the possibility of water running across the

August 7, 1991

proposed driveway carrying sediment and siltation onto Addison Street. Talacko said he had not checked with the D.P.W. regarding their suggestion of a culvert. Story said he felt the Board should go along with the D.P.W.'s suggestion. Talacko said they were still asking for the following waivers:

- 1) Gravel road 12 feet wide, with a 6' shoulder on one side and a 12' should on the other. The varying shoulders is because the road is not centered because they are trying to avoid trees;
- 2) Permanent monuments to be set on the right side of the road only;
- 3) The road crosssection to be shown on the enclosed plan, sheet 3 of 3. In the future if the land is divided then the Planning Board has the option to require more bonds. Story said he felt a lot of the waivers that were being requested were requested of other subdivisions. The Board was told that the intent was to try and create the look of a driveway and to save the trees.

A public hearing was set for September 4, 1991, at 8:00 p.m.

Robert Klopotoski, representing Peter Van Wyck, submitted to the Board an amended subdivision plan for Low Land Farms. Klopotoski said the subdivision road can be built without the three requested waivers, length of dead-end road, scale on plan, and profile and amount of cover on culvert. Story moved to receive the resubmittal of the amended subdivision plans of Low Land Farms, dated September 1, 1990, revised August 1, 1991, applicant Peter Van Wyck. The motion was seconded by Ginn, with the Board voting unanimously in favor.

The Board discussed the day-care home operation of Diane Bragdon, 24 Apple Street. For this discussion Board member George Bragdon removed himself from the Board and became a member of the public to represent his wife. The Board was told that Diane Bragdon has been issued a license from the state to run the day-care. The The home occupation consists of one other employee. Two Apple Street residents attended the meeting and neither had problems with the operation. It was the consensus of the Board that they had no problems with Bragdon's day-care home occupation.

Ronald Ober, Pine Ridge subdivision, met with the Board to discuss new drainage plans and to make an appointment at the next meeting for procedures he plans to use for bonding the road. He introduced the Clerk of the Works, Robert Campbell. Campbell said there has been no work since the last letter was sent by him. The change in drainage was made because they found the water table was higher than anticipated, and therefore at certain times of the year the leaching area would be in water. Rather than minimize the leaching area, they made it shallower but wider. Ginn said, "Awhile ago, I had asked about a monitoring well for observation and was reprimanded by Mr. Ober for the suggestion. I feel if it had been done, it would have prevented this."

August 7, 1991

Nicholas and Deborah Kuffel, R141 Western Avenue, submitted a building permit application to the Board, for construction of a 28' x 34', with 14' x 18' sunroom, 2-story, gambrel roof log cabin.

Ginn moved to allow the building inspector to issue a building permit for Nicholas and Deborah Kuffel, Lot 3 of Form A dated June 19, 1991, for a single family dwelling, pending receipt of a letter from the Board of Health approving the plan. The motion was seconded by Bragdon, with the Board voting unanimously in favor.

The Board discussed the poor lighting in the vicinity of Max Callahan's Restaurant and expressed concerns for public safety. Story said he spoke to the Police Chief who feels a light should definitely be lit. The Board felt a letter should be sent to Robert Offenberger, owner of Max Callahan's Restaurant requesting the light in front of the restaurant be illuminated again.

Deborah Kuffel submitted a new mylar for property owned by Frederick Markham for the Board to sign. She said the bank needed a new mylar. When the Board placed the new plan over a blueprint of the original plan it did not match; therefore the Board refused to sign the new plan and returned it to Kuffel.

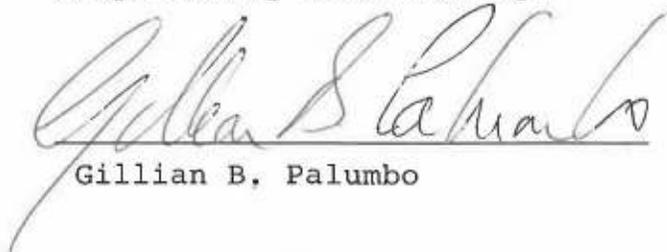
Knowles brought up for discussion the parking in front of Blackwood Antiques on Southern Avenue. He felt it made the corner dangerous.

The Minutes of July 10, 1991, were read. Story moved that the Minutes of July 10, 1991, be approved, with the following amendment: on page six - Story was not on the Planning Board when the plan was submitted in December 1980. The motion was seconded by Ginn, with the Board voting unanimously in favor.

Story moved to adjourn the meeting; seconded by Knowles, with the Board voting unanimously in favor.

Meeting adjourned at 10:45 p.m.

Respectfully submitted by:



Gillian B. Palumbo

Essex Planning Board

July 10, 1991

A G E N D A

8:00 p.m. ... Continuation of public hearing -
Peter Van Wyck

Essex Planning Board

July 10, 1991

Present : Frances Dunn, Chairman; George Bragdon; Joseph Ginn;
Mark Hall; John Knowles; Rolf Madsen; Dana Story.

Meeting called to order at 7:50 p.m.

A Continuation of a Public Hearing was held at 8:00 p.m. under M.G.L. Chapter 41, Section 81, and the rules and regulations relative to subdivision control of the Town of Essex, Section 6, to consider a subdivision of land known as Low Land Farm, applicant Peter Van Wyck.

Hall asked of the Planning Board's engineer for site plan review had reported back to the Board.

Knowles - "Only that he has been paid."

Hall - "That was it. So he never gave us any review of the plans resubmitted to him."

Dunn - "I have not heard anything from them."

Van Wyck - "I gave him a check about a week ago, the day before the 4th of July."

Hall - "With most communities, there's an ongoing exchange between the applicant and the consulting engineer. and obviously that's not what is going on. That's the whole purpose of us hiring under the statute a consulting engineer, to guide us through this process. Maybe it's not us instructing the applicant or the consulting engineer."

Madsen - "The problem was that the consulting engineer had not been paid for services rendered, which is a real problem. If he cannot review future plans for non-payment, one of the things I question would be the viability of the applicant and his financial condition to have a plan come before us if he cannot come up with \$1,400 to pay the engineer."

Hall - "We are relying on this individual for his expertise and if we cannot rely on it, I'll be frank with you, I'm not in a position to make a recommendation on this plan."

Knowles - "You raise the point that this maybe somehow our responsibility. I'm looking at a letter from then chairman Dana Story, 'Please pay the bill in full to avoid interruption of the subdivision plan review process,' that's what has happened. This was clear from the start. There was also some dispute as to what communication was delivered from C.T. Male to me. He is happy to put that communication in writing if there is any more question about it."

Story - "My recollection of the comments made at the last meeting, it seemed to be the unanimous opinion of this Board that we did not want to ask this man for any more reviews of any kind until he had been paid, because I felt that the credit rating, if nothing else, of the Town of Essex was in jeopardy. Therefore, until this bill had been paid we shouldn't ask for

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anymore advice. Now it has been paid, I do think it is incumbent upon us to say we would like to have further review so that he will know we want him to proceed and he can tell us then what his feelings are."

Van Wyck - "I would like to bring to the Board's attention that two meetings ago it was decided that C.T. Male would not be asked for a further review. Just review the records of that. The next time it did occur the Board reversed themselves and they wanted to have a further review."

Madsen - "I think the records would indicate, and I don't want to get into a semantic argument here, that the opinion of the Board was that we would not ask C.T. Male for further review until we had confirmation that payment in full had been made for services already rendered. I know that's the way it went."

Westley Burnham - "It is my understanding that you are going to stop the hearing process because you haven't heard from a third party and you haven't requested a review of the revised plans."

Dunn - "We requested it but they would not do it until they were paid. Now they have been paid but there wasn't enough time."

W. Burnham - "We went through the hiring process to get this engineer. It is my understanding they were expecting to be working for us."

Madsen - "They are."

W. Burnham - "Now the billing process is between the applicant and them."

Knowles - "No, the billing process is not between the applicant and the engineer. It's between us, the Town and the engineering firm. When he says they will not perform any more work until they are paid in full for the work already done, that stops the process. That was the gist of the letter going out on May 14 which warned of that."

W. Burnham - "I'm trying to get clear where you stand on this. It doesn't sound fair to me because Massachusetts General Laws are set up for time frames for both the protection of the applicant and you to allow the Planning Boards time to deal with this. He's already extended at least once judging from the gist of the statements, and now you are saying because the Planning Board cannot get their engineer to review his plans...."

Dunn - "No, he wanted to get paid first."

W. Burnham - "I'm just painting a picture of what it looks like, that you are trying to hold him up."

Knowles - "No, we are not supposed to pay his bill."

Hall - "You know and I know that if we wanted to stop the time frame even if we do not have the proper information to make a decision, we'd close the public hearing and base our decision on what we have in front of us tonight. Now I don't think the applicant wants that, nor do we want that. That's the purpose

July 10, 1991

of the statute, to allow for the expertise."

Story - "Mr. Burnham, this hearing was extended with the written consent of the applicant."

W. Burnham - "It would have to be."

Story - "I know it, but don't imply that we are being unfair to him and doing things arbitrarily. We asked permission to extend it; he gave it to us in writing."

W. Burnham - "I was just looking at the possibility of another extension."

Madsen - "We are getting the technical support that we need to do a proper evaluation of a plan on its engineering merit. Being the lay board that we are, we don't have the expertise and all we are doing is protecting the town. In a sense, what C.T. Male has come back with is something that is not really unattainable for the applicant to do; somethings were just simple paperwork errors. It just makes sure everything is correct. In a sense, we are protecting the applicant as well as the Town of Essex."

Ginn - "It was my understanding at the last meeting a motion was made that the public hearing be continued to enable the engineering firm to receive payment so they could, at this meeting, give their report to us on the status of the new plan. I think I made that motion and everyone was in favor of it as well as the applicant. I am a little disappointed that, whoever's fault it is, whether it be ours, the applicant's or C.T. Male's, that information is not in front of us tonight. There are a number of people from the public who have come here for a hearing tonight, anticipating we were going to have a public hearing, and in all probability closing the hearing tonight and making a vote on it. Now we are faced with either closing the hearing tonight without the proper review that I think we would all anticipate, or another continuation. I don't know whose fault it is. Maybe the Board should have followed up on it a little bit closer."

Dunn - "I don't know whose fault it is, that is not the point; the information isn't on the table so should we set up another date to be here."

Madsen - "I would recommend the Planning Board suggest to the applicant that we really cannot make a determination until we receive the report from C.T. Male with our subjective opinions and their response. I don't think it would be fair, either to the applicant or to us to make a decision tonight. Should the applicant request that we make a decision tonight, that's fine. Before we take it any step further I think that's what we should do."

Van Wyck - "I think, first of all, the extension I did give you was for the 17th of July which is six or seven days from now. You are asking me to extend this meeting and I would like to point out to you that we should get the public hearing over tonight and then....."

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Dunn - "I don't think we should do that. We've already discussed it and we all want to see C.T. Male's report. We cannot shut the public out of that."

Madsen - "We cannot make comment or read the engineer's comments into the record if the public hearing is closed."

Van Wyck - "What do you expect C.T. Male to give you?"

Madsen - "Do you have something in this plan that you are uncomfortable with, that will not pass through an engineering review?"

Van Wyck - "It's just that we go on and on and on."

Madsen - "If you had paid him within a timely manner I wouldn't be sitting here tonight, would I?"

Van Wyck - "I think we are relying too much on what he may or may not say. He's given a report."

Hall - "He's got to review your plan relative to the rules and regulations of the Planning Board."

Robert Klopotoski - "What he was hired for was a technical review. He said it right on his report; nothing to do with Planning Board policies. The technical review was more or less taken care of. I took care of all the technical points."

Hall - "He has not responded to us that you have done it."

Klopotoski - "What is left is policy decisions the Planning Board has to make and you haven't even started that process yet."

Dunn - "We have all agreed that we need C.T. Male's review in front of us to act on this plan. All we are asking right now is whether or not we can have an extension from the applicant. I think everything else has been discussed."

Story - "Is it not true that until the state allows you to you cannot turn a shovel."

Van Wyck - "I'm glad you asked that question. I have my attorney here. I will have him address this question, because it's my nickel."

Attorney Michael Casey was introduced to the Board.

Story - "Is it not true that until Peter gets permission from the state he cannot turn a shovel?"

Casey - "No, that's not true. As a matter of fact I have brought with me tonight a copy of a letter from the attorney general which indicates this in a nutshell."

Knowles - "Is this the complete decree. As I understand it, it has not been accepted by the court yet."

Casey - "The consent decree, in my understanding, is also that it is not formally entered."

Knowles - "I was asked specifically today not to mention that because it has not been filed with the court."

Casey - "Then you have knowledge of that."

Knowles - "No, I got this from the secretary of the attorney general's office. I think it's straight forward. I've been told not to bring it up because it has not been accepted by the court."

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Casey - "The consent decree, as signed by both parties, as contemplated to be filed with the court, if that is indeed the status, does not contain any provisions in it which prohibit Peter from doing any work on the Low Land Farms parcel, other than those three specific areas that were the subject of the proceedings. Again, I have a letter confirming that, written to me on June 21, 1991, from Jim Milkey, the assistant attorney general, which was the day we signed the consent decree, and again, it indicates exactly what I have said, with the exception of the three specific areas on the parcel which were the subject of the proceedings. There is no other restraint against Peter going forward and doing anything he wants to do within the bounds of the law on that property."

Knowles - "Would it be appropriate for us to see the full 38 pages."

Casey - "I ordinarily would say yes because these are public documents. However, based on what you informed me tonight, if indeed it has not been, as yet, finalised by the court, I would not care to pass it around. Once it has been formalised - we went into Boston on June 21, which, I think, was a Wednesday or a Thursday, and we had a hearing date of the 25th when the entire matter was supposed to be brought to a head finally and forever, and Jim Milkey was supposed to run across the street and file with the court - if that hasn't been done yet then that is entirely within the province of the Attorney General's office."

Knowles - "How long does it take the courts to accept the decree?"

Casey - "Normally it would be virtually immediately. In a case where both sides have agreed and there are no issues left outstanding, no disputes, and the court is presented with a document which says this is what the parties have agreed to, it's been worked out over many months, it's been very carefully drafted, this is in lieu of two or three weeks of trial, unless the clerk found some serious legal problem with the decree, something that was put in there that didn't belong there, there would be no reason why the court would not read it within a reasonable time, a day or two. If he found no problems with it he would sign off on it. What I'm saying is there would not be any further proceedings in court, there would not be any further litigation, there would be nothing else which would delay the process, so it should be a matter of a very few days from the time it is filed in court until the time it becomes a matter of record, two or three days I would say is average."

Story - "Counsellor, what you are saying is that actually nothing, in fact, has happened."

Casey - "Based upon what I've been told tonight, which is news to me. I was not aware that Milkey had not run across the street that afternoon or the morning after, but that's fine. Maybe he has had other fish he has had to worry about. If, in fact, that is the case, then you are correct, the consent decree does not, as

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yet, have legal binding status. This works both ways too; he's under no obligation to do anything according to it either. Right now, the whole thing would be in limbo, if it has not been filed with, or approved, by the court. All I can tell you is it was signed back on June 21 by both parties. Peter waived all appellate rights, which guarantees there would be no further proceedings, and as drafted and as agreed to and as signed by the parties, with the exception of the three specific areas on the parcel that were the subject of the proceedings, there is nothing in there that keeps Peter from going forward with any of the project on any other areas of that parcel that he desires to go forward on."

Story - "I would like to ask the applicant to what extent this plan differs from the one which was turned down by the Planning Board in 1981. This was turned down for a host of reasons."

Van Wyck - "Bear in mind that I had given the Board a traffic study."

Story - "Just for the record, I was on the Board when a similar plan which was submitted in December 1980 was turned down in a three-page decision by the Planning Board. I'd like to know what the difference was between the plan which was turned down and the one you propose now."

Van Wyck - "Actually, there is very little difference. I don't recall exactly how that plan looked, but I think this plan incorporated a to the dump land which I had a right-of-way which came up and the road would go down and over the dump. In this case, it doesn't do that, it just goes down the long side of my property. There are the same number of lots. Other than that it's the same thing. Second guessing what the Board might want to know, I did have this done so the Board would be aware that the juncture between Apple Street and Turtleback Road and Apple Street and Low Land Farms is not a dangerous intersection in regards to safe traffic patterns. I think that's the major difference. I've come before the Board with a plan that's safe with regards to normal traffic patterns as we know it now."

Story - "The traffic patter was one of the principle objections of the previous board."

Van Wyck - "You asked me the difference. Before I never had a traffic study; now I've come to the Board with a traffic study."

Klopotoski - "Back then the subdivision rules required a 50 foot right-of-way for a dead-end street. At that time Peter did not have a 50 foot right-of-way. Now the regulations only require 44 feet, which is the width of the existing right-of-way. So it's been a rule change more than a land change."

Bragdon - "Have you shown the traffic study to the D.P.W., the police department and the fire department?"

Van Wyck - "I think the D.P.W. does have it and this Board has it too."

Bragdon - "Have they reviewed it. Do we have their recommendations?"

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Dunn - "Which, the D.P.W.?"

Bragdon - "All boards which have anything to do with it."

Dunn - "Did they ever deny it?"

Story - "Yes the D.P.W. and the Conservation Commission."

Ginn - "The Conservation Commission has not reviewed the plans as submitted in depth. They reviewed the plans for this Board and have written a letter to this Board stating that additional requirements were necessary."

Dunn - "So it was not denied."

Ginn - "The Commission has not denied the plans because they have not formally filed a Notice of Intent to the Conservation Commission. We stated that in a letter to this Board." Concerns were then expressed by the public as to the dangers of the road in that area.

Van Wyck - "I'd like to say I also feel your concern. It is for that reason that I decided to hire a consultant to get a technical view on just what the situation is. He is a registered consultant and that is why I had him here to address that very serious concern. We have taken into consideration what the problem was and addressed it. There are some things we can do. I have asked the D.P.W. for instance, to allow some of the clearing of the brush that you see."

Bragdon - "We are all familiar with the road, we are all familiar with the curve in the road. One of the D.P.W. members informed me this is the narrowest road in town right at the curve point, so I'm more interested in finding out what the D.P.W. said on the evaluation of this plan that was currently submitted."

Story then made a motion to close the public hearing. The motion was seconded by Knowles.

Hall - "Obviously we have gone a long way with this plan. We've submitted it to C.T. Male and the applicant has incurred some cost. We've incurred a considerable amount of time whether it's been productive or not, but we have all endured and spent the time to try and review this plan. I think we've taken it this far that for us to close the public hearing, and obviously I remember reading the Minutes and you, Mr. Story, read a 14-page document, is to take five steps backwards. The applicant can turn around and resubmit this thing, and you and I know, he probably will, so why should we close the hearing, reopen the hearing and start the process all over again. It doesn't make any sense. Why don't we continue the hearing so we can try and get it at least to a point where we can have the proper information in front of us, and then we make a decision whether it is in favor or not in favor and vote accordingly; but for us to take the steps backwards...."

Story - "I made a motion. It's up to the Board to vote on it."

Ginn - "I would like to ask the applicant if he would allow the public hearing to be continued to our next scheduled meeting and that way I think that that will probably tell the answer."

July 10, 1991

Dunn - "I think the next meeting will give us the answer too."

Van Wyck - "I would like to point out that the next scheduled meeting is a month from now. I find that time lapse unacceptable as much as this is the summer time."

Hall - "We didn't put ourselves in that position, Peter, you put us in that position by not paying until you did."

Dunn - "Do we have an extension to our next scheduled meeting?"

Van Wyck - "I think you can vote on it now, either for or against it."

Bragdon - "Because my wife babysits the Van Wyck child, I am not going to vote because there may be a conflict of interest." The vote on the motion was as follows: Dunn and Bragdon abstained from voting; in favor - Hall, Ginn, Madsen, and Story; opposed - Knowels.

Madsen - "I moved to hold a special meeting July 16, 1991, to review all comments from the public hearing so we can make a determination and decision."

The motion was seconded by Ginn.

Madsen - "I'm not concerned procedurally. What I'm concerned about is that I do not have an engineering review."

Hall - "We are not going to have it by the 16th."

Madsen - "I know, but I'm going to take some time to review this before I make my decision on whether it is yes or no, because I do not have the benefit of an engineering report. Before I put my vote on the table I want to take a real close look at this and look at his revision."

Hall - "You could deny it on his waivers."

Madsen - "That's true, but is that what we want to do."

Hall - "I'm suggesting that if you want to go through that whole process of reviewing the engineering comments, and then his engineer, his comments..."

Madsen - "That's not my problem, it's Mr. Van Wyck's, because he chose not to."

Hall - "But what you're afraid of is that under the statute that each time we will be relying on a third party engineer, that that is not enough to stand up in court if we don't have documentation that we as a Board, elected by the people, will make a decision."

Madsen - "We can, in turn, if you want, not have a special meeting; we can do it tonight."

Two members could not be present on July 16 and one member could not vote, so there was a discussion on whether another date should be set. No agreement could be reached on a date for the special meeting so Madsen withdrew his motion.

A member of the public whose name was not given said she would like to have assurances that no other individuals on the Board were in conflict.

Dunn - "Nobody else has a conflict of interest."

Story - "Not to my knowledge."

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Elizabeth Frye - "Do you, Pat?"

Dunn - "Why"

Frye - "Because your son has worked for and been paid by Mr. Van Wyck. That's the way the law works."

Van Wyck - "Who have I hired?"

Frye - "Who worked on those(could not be heard on tape)"

Van Wyck - "That's Apple Street Farms."

Dunn - "We don't want to do anything here that is in conflict. When was the last time that David was up there, Peter?"

Madsen - "B.J., you've been into this before, you know the procedure to file when you think a person has a conflict of interest, you go through Town Counsel."

Frye indicated that the public had attended three meetings and had not been able to speak.

Dunn - "I think the public has had quite a lot to say in this."

The Board then reviewed the engineer's report against the revised plan. Each step was checked to see if it had been complied with.

Madsen - "Here we have four waivers. Of those things, what are issues?"

Hall - "The other deficiencies besides the waivers were under Section 6.01(1)B; the waivers are identified under section 6.03, 6.06(a), 6.06(c), 7.01 - underground utilities are not shown, 7.02 - the waiver request for width of roadway, 7.04 (1) (2) - some question whether the specs. are required, waiver on the coverage of the drain at the culvert under 7.03, that's the fourth waiver, question on the 1991 testing not available, and the final, sidewalks - is that a waiver?"

Van Wyck - "Are sidewalks required?"

Klopotoski - "I think somewhere it says it shall be required only on the Board's determination that that class of street needs a sidewalk in conformance with existing pedestrian patterns."

Hall - "My opinion is that this hearing should have been extended but I will vote on it though."

Ginn - "I would like to have seen this continue. I voted to close it because Peter did not want to extend and give us permission to extend the public hearing to our next scheduled meeting. I have a problem with the waiver of 16 feet of paving. I feel it should be at least 20 feet. I think there are some issues and concerns here that the Conservation Commission will have to address and I think that could change some of the drainage as presented to this Board. I'm not saying that it will."

Dunn - "I have a problem with voting on this since the public knows far more about what my family is doing than I do. Nevertheless, I'm not going to put myself in a bind and vote on it because I don't know what was done; I don't know if the family has worked up here or not. Since I don't have the time to find out whether or not he was paid or what, if he was I do not want to put myself in a spot. I fully intended to vote because I did not know about this. Anything to get rid of a

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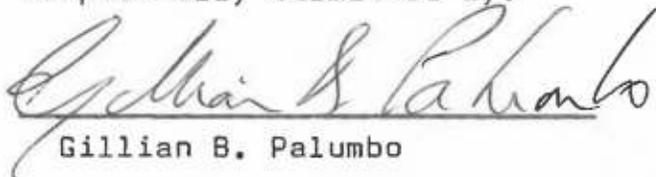
vote and it's been done, so what can I say. It's going to be too costly for me. I'm sitting here for nothing. When somebody tries to do something for the town and you think you are doing something fair and square that choice has been taken out of my hands, and I can't afford to pay the piper, so I would just as soon not vote."

Story - "I take serious issue with this traffic study. I walk Apple Street probably three times a week and I guess I'm as familiar with the contours and the nature of Apple Street as anybody is, and I think the six lot subdivision that empties onto Apple Street or enters from Apple Street is a serious mistake. The statement of this engineer, not to the contrary nor withstanding, I think there would be a serious traffic problem there and I'm also concerned with some of these reservations of our engineer. This lot has the potential for twelve dwellings, six lots and six duplexes, and the traffic that entails I think would be a bad thing for Apple Street."

Madsen moved to deny the plan of Low Land Farms due to 3.04, because the submittal fails to comply with Section 6.01-1, plan fails to show typical road cross section electrical easements; 6.03, to deny the requested waiver for road profile scale requirements; 7.024, as the Town's minimum width of roadway requires 20 feet, 16 feet is provided, and 20 feet based on potential development should be required; 7.024C(2), to deny the requested waiver for the length of the road, due to public safety concerns for the intersection of Low Land Road and Apple Street, the road should be no longer than 1,200 feet; 7.03, to deny the waiver for coverage over the culvert; 6.03, 6.06(A), 6.06(C), as to reflect the feeling within the Board that the plan is not technically adequate and lacks conformity to the Board's design and construction standards, based upon the Board's engineering report; and that the Board was effectively precluded from receipt of the second engineering review. The motion was seconded by Story. The Board was polled for their vote as follows: Story - yes; Hall - yes; Madsen - yes; Ginn - yes; Knowles - yes; Dunn and Bragdon abstained. The vote was five in favor of the motion and two abstentions, therefore the motion carried.

Madsen moved to adjourn the meeting, seconded by Hall, with the Board voting unanimously in favor.

Respectfully submitted by:



Gillian B. Palumbo

Essex Planning Board

June 19, 1991

A G E N D A

- 8:00 p.m. ... Continuation of public hearing -
subdivision of Low Land Farms,
applicant Peter Van Wyck
- 9:00 p.m. ... Deborah Kuffel - submittal of Form A,
Western Avenue
- 9:15 p.m. ... James Sullivan, 21 Martin Street -
Home occupation (antiques)
- 9:30 p.m. ... Clay Morin submittal of Form A,
lot line change for property on
Belcher Street
- ... Submittal of Form A - Donald Burnham,
Western Avenue

Business:

- Sign bills payable voucher
Sign payroll voucher

A G E N D A

- 7:50 p.m. ... Joel Thomas - division of ship yard
Informal discussion
- 8:00 p.m. ... John Janes, Western Avenue
- 8:15 p.m. ... Athen Vontzalides - Holden Bottled
Gas, Scot's Way
- 8:30 p.m. ... Deborah Kuffel - review of preliminary
subdivision plan, Western Avenue
- 9:00 p.m. ... Dr. Price, 74 Martin Street
- 9:15 p.m. ... Richard Tomaiolo, Form A - property
at Spring Street
- 9:30 p.m. ... Submittal of preliminary subdivision
plan - Susan Kane, Pond Street
- 9:45 p.m. ... Review of definitive subdivision plan
of Peter Van Wyck, Low Land Farms

Business :

Sign bills payable voucher

Sign payroll voucher

Essex Planning Board

June 5, 1991

Present : Frances Dunn, Chairman; George Bragdon; Joe Knowles;
Joseph Ginn; Rolf Madsen; Dana Story.

Meeting called to order at 8:00 p.m.

Joel Thomas, of the Shipyard, met with the Board for an informal discussion on a proposal to divide the property. Thomas said Crocker Boatyard has been leasing a quarter of the property and wanted to lease more, so they decided to see if they could own it outright instead of leasing. Thomas said, "There would be no change of use. Crocker will still be repairing and maintaining boat equipment. The plan was reviewed by the Board and it was found that the lot Thomas wanted to retain would be made non-conforming, which, the Board told Thomas, they could not approve.

Building Inspector Richard Carter submitted a building permit application for Myles Rigney, 31 Gregory Island Road, for the construction of a 24' x 26' addition with foundation. Ginn asked Rigney what the status of his septic system was. Rigney said he had not yet received approval from the state but, he added, if approval is not soon received then it will be declared a failing system and will fall under an emergency repair. At that time the local Board of Health decision will override the state. Madsen asked how it would affect the siting of the proposed addition. Ginn said it would not have any affect. Kerry Kaplon, an abutter, said he would not sign a letter of approval, not because he disapproved the construction of the addition, but because the Conservation Commission requested that both his and Rigney's septic systems be upgraded at the same time. He felt if he signed the letter of approval he may jeopardise that agreement and allow Rigney to go ahead with his work. Madsen explained that the letter of approval was for the siting of the addition and had nothing to do with the septic system.

Story moved that the building inspector be empowered to issue a building permit to Myles Rigney, 31 Gregory Island Road, to construct a 24' x 26' addition with foundation to the existing house, finding under by-law 6-4.2 that the proposed alteration is not substantially more detrimental to the neighborhood than the existing nonconforming use. The motion was seconded by Ginn.

Madsen moved to amend the motion by adding that the building permit be issued pending approval of the permit by the Board of Health. The amendment was seconded by Story, with the Board voting unanimously in favor. The Board then voted unanimously in favor of the motion with the amendment.

June 5, 1991

John Janes, Western Avenue, together with Mark Cushman, met with the Board to discuss the business being run at the former Plegge property. Janes said when Plegge owned the property he had had a home occupation there, and he had purchased it to gain access onto Scot's Way. He owns the property next door to it and wants to maintain the integrity of the property. The lot is one acre in size. Madsen said the auto shop is grandfathered, but if Cushman should create traffic any greater than existed prior to his occupation of the property then he is in violation of the by-law; everything must be done in accordance with the by-law.

Attorney Athen Vontzalides, representing Charles Holden of Holden Bottled Gas met with the Board to discuss the proposal to construct a 30' x 45' building on Lot 9 of Scot's Way. The building will be used for storage and an office facility. Also proposed was the installation of a 30,000 gallon above ground propane storage tank. The setback requirements imposed by the state for the storage tank is 50' from the lot lines. The tank will be 8 feet high and a security fence will be placed around it. Building permit applications were submitted for both the building and tank.

Madsen moved to approve the building permit application for a 30,000 gallon propane storage tank on Lot 9, Scot's Way, for Holden Bottled Gas. The motion was seconded by Story, with the Board voting unanimously in favor.

Madsen moved to approve the building permit application for Holden Bottled Gas for a 30' x 45' building for office use and storage of equipment at Lot 9, Scot's Way. The motion was seconded by Story, with the Board voting unanimously in favor.

It was noted that there were no plans to park trucks overnight on Lot 9, Scot's Way, but, Holden said, if the business grows then they may.

Deborah Kuffel met with the Board for a review of a preliminary subdivision plan for property on Western Avenue. Ginn said one of his concerns was the run-off, particularly with a gravel road. The length of the road is approximately 540 feet servicing five lots. Kuffel said they would like to ask for a waiver on the standards of adequacy of the road because three of the lots have frontage on Western Avenue and one lot has frontage on the subdivision road. Another requested waiver would be the grade. Madsen said he did not like the grade with a gravel road and country drainage. He added, "By approving this we are approving what in essence is a five-lot subdivision no matter what you tell me."

June 5, 1991

Dr. Price met with the Board to discuss a proposal to open a medical office at 74 Martin Street. Price said there would be two other doctors with offices in the building and he would also like to maintain the residential section. Madsen said he felt it was important that any visitors parking will be confined to the rear of the building to uphold the look of the neighborhood. It was the consensus of the Board that this was an acceptable use of the property.

Richard Tomaiolo, Spring Street, met with the Board for an informal discussion regarding the subdivision of his property. He said it had come to his attention that there is a subdivision plan before the Board for property on Spring Street. He wants to divide his property into Lots A, B, and C. Lot A would have frontage on Spring Street; Lots B and C would have frontage on the road which runs through his property. Madsen said Tomaiolo would have to come back to the Board with proof of the adequacy of the road. Also the number of lots that will have frontage on that road will also indicate the adequacy of the road (i.e. less than/more than ten houses).

A preliminary subdivision plan was submitted for Susan Kane, Pond Street. Upon review of the plan, it was found Lot 2 had insufficient frontage.

Madsen moved to deny the preliminary plan for a subdivision of Susan Kane, Pond Street, Essex, Ma., because Lot 2 lacks sufficient frontage. The motion was seconded by Knowles, with the Board voting unanimously in favor.

The Board discussed whether they should go on a summer schedule for the months of July and August.

Story moved that the Planning Board meet on the second Wednesday of July, July 10, 1991, and the first Wednesday of August, August 7, 1991. The motion was seconded by Ginn, with the Board voting unanimously in favor.

Story said he would be willing to be vice-chairman of the Planning Board.

The Minutes of April 3, were read. Story moved that the Minutes of April 3, 1991, be accepted as read; seconded Knowles, with the Board voting unanimously in favor.

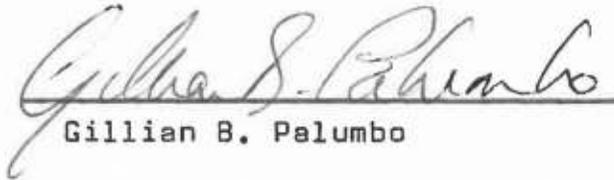
The Minutes of May 1, 1991, were read. Story moved that the Minutes of May 1, 1991, be accepted as read; seconded Knowles, with the Board voting unanimously in favor.

June 5, 1991

Ginn moved to adjourn the meeting; seconded by Madsen,
with the Board voting unanimously in favor.

Meeting adjourned at 10:15 p.m.

Respectfully submitted by:


Gillian B. Palumbo

A G E N D A

- 7:55 p.m. ... Deborah Kuffel - submittal of preliminary subdivision plan - Western Avenue property
- 8:00 p.m. ... John Janes - property on Western Avenue
- 8:15 p.m. ... Ron Ober - Pine Ridge subdivision
- 8:30 p.m. ... Attorney John Guerin - submittal of Form A, Gallant/Rust property, 152/154 Main Street
- 8:40 p.m. ... Paul Donahoe - submittal of Form A, Quinn Bros. - lot in Misty Acres subdivision
- 8:50 p.m. ... Peter Van Wyck
- 9:10 p.m. ... Review of Tyler preliminary subdivision plan, off Addison Street

Business:

Discussion on Lambros property
Update on Desmond property
Misty Acres Restaurant
Sign bills payable voucher
Sign payroll voucher
Election of chairman and clerk
Soil removal permit - Joe Ginn

Essex Planning Board

May 1, 1991

A G E N D A

- 7:45 p.m. ... John Janes, Western Avenue
- 8:00 p.m. ... Public Hearing - Special Permit -
Gallant Rust, 152/154 Main Street
- 8:30 p.m. ... Ron Ober, Pine Ridge Subdivision,
off Pond Street
- 8:45 p.m. ... Deborah Kuffel, 143 Western Avenue -
submittal of preliminary subdivision
plan
- 9:00 p.m. ... Peter Van Wyck
- 9:15 p.m. ... Clay Morin - submittal of Form A,
Donald Burnham, Western Avenue

Business:

Sign payroll voucher

Approval of Minutes of March 27, 1991

Review preliminary subdivision plan of Tyler, off
Addison Street

Essex Planning Board

May 1, 1991

Present : Dana Story, Chairman; George Bragdon; Frances Dunn;
Joseph Ginn; John Knowles; Rolf Madsen; Mark Hall (8:20)

Meeting called to order at 7:50 p.m.

John Janes met with the Board concerning a business which is operating from his property on Western Avenue. Janes said he has an office on the property next to it and runs a business from there. He bought the property in question from Mr. Plegge about three years ago and rents the house for residential purposes and also rents the garage. Story said, "How come I counted thirteen cars there one day?" Janes said, "I rent it to someone who has a used car business in Beverly. He brings cars to the property to do body work on them. I didn't realize when I rented the garage that there would be as many cars as that. I have told the tenant that he can have six cars only and they must be neatly parked. I will not allow more than six cars." It was noted that under the Home Occupation by-law there may be no more than two unregistered cars. Ginn also mentioned to Janes that there is supposed to be a 6' mound of dirt with trees to have a sound and visual barrier between the properties and the Misty Acres subdivision. Story said he would like Janes to return to the Board with a plan of the property showing the house and business. Janes scheduled an appointment at the next meeting on May 15.

The Planning Board as the Special Permit Granting Authority held a public hearing at 8:10 p.m. on the application by Andrew and Nancy Gallant and Donald and Norma Rust for a special permit under Section 6-6.9 and 6-4.2 of the Zoning By-laws and M.G.L. Chapter 40A, Sections 6 and 9, to correct an encroachment of an existing addition for clear title at 152/154 Main Street. Attorney John Guerin represented both parties at the hearing. Guerin said, "The reason we are here under a special permit application and not coming under a Form A is because both lots presently are non-conforming lots and there is no mechanism under Section 81A of Chapter 41 to increase or decrease the size of a lot. That's why we are coming in under Chapter 40A, Section 6. Currently existing on the ground is a house consisting of two homes in a single structure. One home is owned by Donald and Norma Rust, located at 154 Main Street, and the other is owned by Andrew and Nancy Gallant, located at 152 Main Street. A portion of the home owned by the Rusts, to the rear of the property, was constructed after the main building around 1968. Since that time there has been an encroachment upon the property located at 152 Main Street. The Rusts now want to convey their property, but in order to do so they must correct the encroachment. In turn, Andrew and Nancy Gallant also want to have the encroachment

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corrected so as to cure their title. 838 square feet of land is being transferred from the Gallants to the Rusts in order to correct the encroachment. Had the loan been a conventional loan we could perhaps have gone with an easement, but with a veterans loan involved they required us to go this route. Therefore, the Gallant's property will be decreased by 838 square feet and the Rust's increased by 838 square feet. We are requesting that the following be waived with regard to the formal Special Permit Issuance Rules:

- A(1) - in part be waived regarding building dimensions, floor areas and distance from lot lines, and
- A(2) - no construction will take place."

The Board reviewed the special permit application and attached plan, Plan of Land, Essex, Massachusetts, 152 and 154 Main Street, dated February 27, 1991.

Madsen moved to close the public hearing, seconded by Ginn, with the Board voting unanimously in favor.

Ginn moved that the Planning Board as the Special Permit Granting Authority allow the land of Andrew and Nancy Gallant at 152 Main Street be decreased in size by 838+ square feet under M.G.L. Chapter 40A, Section 6 and 9, and the Essex Zoning By-laws 6-6.9 and Section 6-4.2. The motion was seconded by Dunn, with the Board voting unanimously in favor.

Madsen moved that the Planning Board as the Special Permit Granting Authority allow the land of Donald and Norma Rust at 154 Main Street be increased in size by 838+ square feet under M.G.L. Chapter 40A, Section 6 and 9, and the Essex Zoning By-laws 6-6.9 and 6-4.2. The motion was seconded by Bragdon, with the Board voting unanimously in favor.

Ronald Ober, Wheeler Street Riverside Realty Trust, met with the Board to discuss the Board's decision of the proposal he submitted for the Pine Ridge subdivision. Story said, "We have two things we can do - we can deny what he is asking or change it to a single family. It doesn't have frontage so it will have to go to the Board of Appeals for a variance for a single family on a 10-acre lot. I have thought about it a great deal. It is my feeling that in order to grant what Mr. Ober is asking for would be to set a dangerous precedent. We have always required people who came in with a subdivision to put in a road. We have certain practices for subdivisions and for us to make an exception would be wrong. Our Town Counsel has said in a letter that we have certain rules and regulations for subdivisions and they should be adhered to." There is an existing building on the property and Dunn asked if it would be considered abandoned.

May 1, 1991

Dunn was referencing the by-law of abandonment which states that a non-conforming use which has been abandoned or discontinued for a period of two consecutive years shall not be re-established, and any future use shall conform with all applicable provisions of this Zoning by-law.....(6-4.3). It was the consensus of the Board that they could not allow Ober's proposal because it would be compromising the subdivision rules and regulations. Madsen felt the best way would be for Ober to submit a building permit application to the Board and have it denied and then for him to go to the Board of Appeals for a variance on the frontage.

Deborah Kuffel met with the Board for an informal discussion on a preliminary subdivision plan for property on Western Avenue. The subdivision would create four lots; one has a dwelling on it. Three of the lots have frontage on Western Avenue and one lot will have frontage on the subdivision road. The other lots could access the new road. The road will be 540 feet in length. One requested waiver will be the grade which is slightly more than 8%. One other waiver may be the standards of adequacy for a road to service one lot. Kuffel will return to the next meeting to submit her plan.

Peter Van Wyck met with the Board. He said he would like to come before the Board at their next meeting and talk to them about his subdivision plan for Low Land Farms and to cover areas that are in conflict. He feels C.T. Male's interpretation of the drainage does not follow the subdivision regulations. Van Wyck will meet with the Board for this discussion on May 15 at 8:45 p.m.

A voucher was received by the Board from C.T. Male for payment for their review of Peter Van Wyck's subdivision plan. Ginn moved that the bill prepared by C.T. Male for the Planning Board for technical review of the Low Land Farms definitive subdivision plan be sent to Peter Van Wyck, with a request for prompt payment so as to avoid interruption of the Board's subdivision plan review process. The motion was seconded by Hall, with the Board voting unanimously in favor.

A letter was received by the Board from the Board of Selectmen requesting information on the removal of top soil and the issuance of a soil removal permit for property at John Wise Avenue. Ginn removed himself as a member of the Planning Board for this discussion, as he was involved in this project. Ginn told the Board that all the work that is being done is with the approval of the Conservation Commission under regulation 310 CMR10.04 - Agriculture, which permits maintenance of drainage ditches and ponds used for agriculture. Ginn had been taking the soil removed from the John Wise Avenue property to the dump, permission

May 1, 1991

being given by the Department of Public Works Commissioners for this activity. Ginn said he had had the soil tested and it is an approved dump cover material, meeting the state regulations for porosity.

Madsen moved that the Planning Board recommend that the person involved with soil removal seek a soil removal permit from the Board of Selectmen and the Planning Board. The motion was seconded by Hall, with Dunn, Bragdon, Hall, Knowles, Madsen and Story voting in favor.

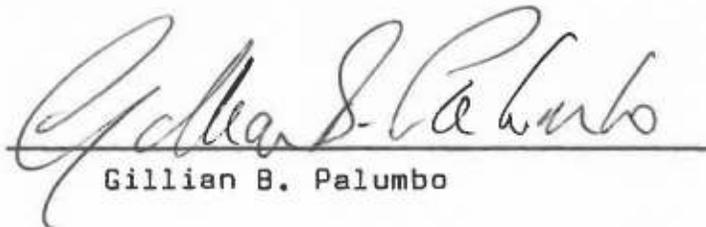
There was a discussion on the Desmond property on Western Avenue. Hall moved to send a letter to the Board of Selectmen regarding the property at 64 Western Avenue because of the numerous letters received from neighbors. The Board would like an update of its present status. The motion was seconded by Dunn, with the Board voting unanimously in favor.

The Minutes of March 27, 1991, were read. Dunn moved to accept the Minutes of March 27, 1991, as read. The motion was seconded by Madsen, with the Board voting unanimously in favor.

Ginn moved to adjourn the meeting; seconded by Dunn, with the Board voting unanimously in favor.

Meeting adjourned at 10:30 p.m.

Respectfully submitted by:



Gillian B. Palumbo

Essex Planning Board

April 17, 1991

A G E N D A

- 7:50 p.m. ... 'White Elephant' Antique Shop -
dormer and second exit
- 8:00 p.m. ... Soginese Creek preliminary
subdivision plan review
- 8:30 p.m. ... Robert McPhail - home occupation
at 7 Eastern Avenue
- 9:00 p.m. ... William Downey - Business at
74 Martin Street

Business:

Discussion on the method C.T. Male will receive
fees from applicant on technical review for plans

Essex Planning Board

April 17, 1991

Present : Dana Story, Chairman; George Bragdon; Frances Dunn;
John Knowles; Joseph Ginn (9:00 p.m.); Mark Hall.

Meeting called to order at 7:50 p.m.

Building Inspector Richard Carter submitted a building permit application for Tom Ellis, of the White Elephant Antique Shop, for the reconstruction of a stairway and addition of a dormer. The White Elephant had been involved in a fire last month.

No finding by the Board was necessary as they felt it was the reconstruction of an existing structure.

A building permit application was submitted for Dr. Charles Swanson, Lufkin Creek Road, for the reconstruction of an existing dwelling.

Dunn moved to approve the demolition of the existing building and to approve the building permit application and plan of Dr. Charles Swanson, Lufkin Creek Road, Essex, for the reconstruction of the dwelling, the height of the building not to exceed 35 feet from the existing grade under by-law 6-3.9. The motion was seconded by Bragdon, with Story, Bragdon, Dunn, Knowles, and Hall voting in favor.

A discussion was held with the building inspector on the former Pledge property, Western Avenue. An autobody shop is operating there and cars are being towed in. Carter said the owner is supposed to be meeting with the Planning Board at a future date.

The Board reviewed the preliminary subdivision plan of Soginese Creek, off Spring Street. The following is a list of requested waivers:

- 1) Minimum centerline radius reduced to 100 feet at station 5 + 0
- 2) No curb radii at the intersection of Spring Street, station 0 + 0
- 3) Length of dead end street to be 3550+ linear feet.
- 4) No sidewalks
- 5) County drainag along some sections of the proposed road, with catch basins at locations indicated.
- 6) Grade of road at intersection of Spring Street ro remain at 5½%
- 7) Proposed road to remain private.
- 8) Topography - to be at 2 foot intervals, however, only along proposed roadway and to a distance of 75 feet off center line of road.

April 17, 1991

The Board was told that the water main may be looped or extended from David Lane's property to Soginese Creek subdivision, and then to Spring Street. There have been discussion of easements, but no formal agreements have been reached yet. The plan indicated eight lots but only seven are buildable lots.

Hall moved to approve the preliminary subdivision plan of Soginese Creek Realty Trust with the following modifications: 1. The applicant present covenants that no further subdivision of this parcel is possible and each lot shall contain only one dwelling, and 2) That there be no more than seven buildable lots on the subdivision and the 'non-buildable' lots be so labelled. Further we accept the following requested waivers: a) Minimum centerline radius reduced to 100 feet at station 5+0, b) No curb radii at the intersection of Spring Street, Station 0 + 0, c) length of dead end street to be 3,550 linear feet, d) no sidewalks, e) County drainage along some sections of the proposed road, with catch basins at locations indicated, f) grade of road at intersection of Spring Street to remain at 5 $\frac{1}{2}$ %, g) Proposed road to remain private, and h) Topography - to be at 2 foot intervals, however, only along proposed roadway and to a distance of 75 feet off center line of road. We request the water main be looped/extended from David Lane's property to Soginese Creek subdivision, then to Spring Street. The motion was seconded by Dunn, with the Board voting unanimously in favor.

Robert McPhail met with the Board to discuss his proposal for a home occupation at 7 Eastern Avenue. The home occupation, Sebert Fisheries Importing and Wholesale Distribution, will be conducted on the telephone and fax machine. There will be one additional employee and no traffic will be generated. The Board could see no problem and that it conformed to by-laws 6-3.14 and 6-6.2(d).

William Downey met with the Board to discuss his proposal for a home occupation at 74 Martin Street. He wants to live in the right hand side of the building, and rent the apartment on the left of the building. The home occupation, designing, manufacturing, and assembling electronic equipment used in scientific research will be in the basement. Downey said later on he would like to make home exercise gyms. Within two years he would like to expand the home occupation to a business, thereby seeking to enlarge the existing barn. The business would employ three to ten people. Story said, "To the extent to which you comply to the home occupation by-law, we cannot object, but it is turning the barn into a business that we run into problems." When asked what materials, if any, would be shipped to the dwelling, Downey said there would be a shipment of steel about once a month. It was the consensus of the Board that they would be uncomfortable with that coming under a home occupation. William Pascucci, 80 Martin Street, said, "It sounds like there will be two businesses - an

April 17, 1991

electronic business and a steel fabricating business. I have no objection to a two-family house and home occupation, but I was not too thrilled with the trucks. Being an abutter I am concerned with what goes on there." Downey said he had been reassured by Edwin Bjork that he could do all what he had said he wanted to do with the property. He also felt his business would be an asset to the town. Ginn said he felt that perhaps Downey would be an asset to the town, but the Board was a little gunshy because it has been known for home occupations to become far more expansive after a period of time.

There was a discussion on Paul Desmond's wood cutting business, off Western Avenue.

Hall moved to send a letter to the building inspector requesting information on the wood cutting operation at Western Avenue. The motion was seconded by Knowles, with the Board voting unanimously in favor.

There was a discussion on the procedure which should be adopted for payment to C.T. Male by applicants for site plan review.

The Board received paperwork from engineer Michael Angieri for a dock and walkway on the property of Dr. Charles Swanson, Lufkin Creek Road. Dr. Swanson is applying for a Chapter 91 license and a signature was required from the chairman of the Board on a document.

Ginn moved that the Chairman of the Planning Board sign the application for a dock and walkway of Dr. Charles Swanson, 24 Lufkin Creek Road, Mass. Department of Environmental Protection Transmittal Number 22098. The motion was seconded by Dunn, with Bragdon, Dunn, Knowles, Ginn and Story voting in favor; Hall voted present.

A letter was submitted from Attorney David Babson for Ronald Ober, Wheeler Street Riverside Realty Trust, for the application for building one house at the Pine Ridge Subdivision.

Ginn moved to have the Board of Selectmen refer the letter of Bagshaw and Babson referencing Pine Ridge Subdivision to Town Counsel for his review. The applicant has agreed to pay Town Counsel's fees for this review. The motion was seconded by Hall, with the Board voting unanimously in favor.

Ginn moved to adjourn the meeting; seconded by Bragdon, with the Board voting unanimously in favor. Meeting adjourned at 10:30 p.m.

Respectfully submitted by:


Gillian B. Palumbo

Essex Planning Board

April 3, 1991

A G E N D A

- 8:00 p.m. ... James Monahan - - submittal of preliminary plan for Noah's Hill, off Addison Street
- 8:30 p.m. ... William Downey -- business at 74 Martin Street (CANCELLED)
- 9:00 p.m. ... Ronald Ober -- Pine Ridge subdivision, off Pond Street
- 9:30 p.m. ... Attorney John Guerin -- informal discussion on preliminary plan for Donald Burnham

Essex Planning Board

April 3, 1991

Present : Dana Story, Chairman; Frances Dunn; George Bragdon;
Joseph Ginn; John Knowles; Rolf Madsen (9:00 p.m.)

Meeting called to order at 7:50 p.m.

Dunn questioned Building Inspector Richard Carter whether the Voyager Marine business should have come before the Board with a building permit when the retaining wall to the rear of the property was built. Upon review of the by-laws it was found that a building permit was necessary under 6-7.2.

James Monahan and William Tyler met with the Board to submit a preliminary subdivision plan for Noah's Hill, off Addison Street. The property is 43/44 acres in size. The whole acreage was bought in 1944, including an existing house and barn. The proposal is for a two-lot subdivision. The hill rises approximately 80 feet above sea level and all land outside of the dotted line on the plan will be under a greenbelt restriction. Monahan said, "Lot 2 is 1.6 acres in size. The only frontage is on Addison Street but there is not enough frontage for two lots, so we are proposing a small cul-de-sac for frontage. The waivers we are requesting are. i) minimum road width is 16 feet and we would like to ask for a 12 foot travelled width, ii) minimum water main diameter is 8 inches and we are asking to install a 6 inch diameter main, and iii) we are asking for a minimum center line radius of 100 feet instead of 200 feet as called for in the regulations. We can provide the sight distances, but there will not be much traffic because of the size of the subdivision. The drainage flows down the hill to a culvert on the side of Addison Street." Tyler said he has one other concern. He would like to have an extension of the water main but the area shows signs of being ledge, and therefore he would like to relocate the hydrant. Ginn - "The hammerhead going up the driveway is really not going to be functional at all except to provide frontage." Monahan - "Yes. The existing driveway will be left as is when one gets around the corner." A 38 foot wide easement was shown on the plan which Monahan said could be changed to 44 feet wide. Abutters Percy and Emile Parisi have an easement over the road. Story then asked to see the waivers written onto the plan. Ginn asked whether they were planning on tying into a new water main for water to the houses. Tyler said no, that water to the houses will be by wells.

Ronald Ober, of Pine Ridge subdivision, and Robert Klopotoski submitted to the Board a proposal for Lot 1 of the subdivision. Klopotoski said, "The proposal is to raise part of the funding for the subdivision road by building a house on Lot 1. To do this we will need a modification of the covenant to allow the

April 3, 1991

placement of that dwelling and then sell it." Klopotoski then submitted a letter to the Board which read as follows:

"A request is made to modify the third paragraph (#1) of the existing covenant relating to the sale of lots and the placement of buildings on lots so as to allow the building of a dwelling on Lot #1 and the placing of additional conditions on such allowance as follows:

1) At the time of the sale of Lot #1 a bond or other surety will be posted to cover the cost of all improvements necessary to adequately service Lot #1 and are not already constructed or otherwise covered by bond or surety. Such bond or surety is to be based on a construction schedule and cost estimate prepared by the owner or subdivider and acceptable to the Planning Board.

2) No occupancy permit will be given for the dwelling on Lot #1 until the portion of the subdivision serving Lot #1 is complete or until such services and utilities for the dwelling on Lot #1 are acceptable to the Planning Board and any remaining improvements are covered by bond or surety.

3) A new covenant will be placed on the remaining land in the subdivision to allow, in case of the failure of the owner or subdivider to complete the subdivision, for a suitable turnaround to be constructed at the end of the way serving Lot #1 and the fire pond on Lot #8 in a manner suitable to the Planning Board. Such re-subdivision and construction cost is to be included in the bond or surety covering the release of Lot #1 for sale in 1) above.

4) Nothing in this modification is intended to affect the provisions of the original covenant with respect to either Lot #1 or the remaining land except with respect to the building on and sale of Lot #1 as specified above. All other provisions of the covenant and attached rider remain in full force."

Ginn asked Ober, "Is this Lot #1 going to be built on and sold, because I thought you were going to build on it for yourself?" Ober - "It will be sold unless I sell my house, then I will move there. I have to leave a way to get the funding." Ober added that he is not interested in taking any money out of the project until the road is completed. Klopotoski said he tried to write up the proposal so as not to jeopardize the Planning Board's protection of the road. Knowles - "So you are looking for an incremental option?" Klopotoski - "Yes. The purpose of doing this is not to have to come up with an eight-lot subdivision." Dunn - "So you are saying you want to have a paper road?" Klopotoski - "Yes." Ginn - "I don't have a major problem with it because I feel there is enough provisions to protect the Board." Knowles said he felt it should be passed to Town Counsel for his advice and that the time expended by Town Counsel on this problem should be paid for by the applicant. Story agreed with Knowles

April 3, 1991

that Town Counsel's advice should be sought before any action on the proposal was taken. Klopotoski said, "If you look at classes of adequacy one is a road in existence and another is a road approved by the Planning Board." Madsen - "I disagree - it's a road on a plan approved by the Planning Board, the road itself has not been approved by the Planning Board." Ober said that before an occupancy permit is granted on the dwelling the road binder will be put in place to access it. He also added that he would be willing to absorb the Board's legal costs. Story - "The problem I have with this is the precedent is sets. I do not recollect doing this before. I certainly would recommend we have advice from Town Counsel."

Ginn moved that the applicant, Ronald Ober, Wheeler Street Riverside Realty Trust, submit his lawyer's draft so that the Board can review what he intends to do as well as Town Counsel, and that Town Counsel can guide us to a proper and legal decision. The motion was seconded by Bragdon, with the Board voting unanimously in favor.

Knowles moved to see if we can pass on direct legal costs to the applicant, Ronald Ober, Wheeler Street Riverside Realty Trust, on the motion just passed. The motion was seconded by Bragdon, with Dunn, Bragdon, Ginn, Knowles and Madsen voting in favor; Story voted present.

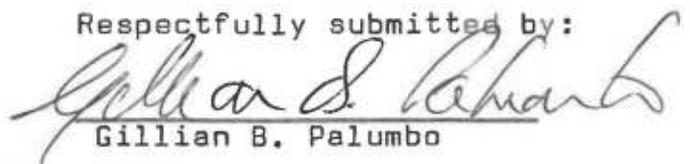
Attorney John Guerin submitted a Form A for Donald Burnham, Western Avenue. Madsen said, "I went to look at the site in question and I thought of what came up on Conomo Drive. We had a situation where a road had been used for a long time. My problem was that there was no layout, nothing was defined and we were asked to make a decision on it for frontage. One of the things we go out of Conomo Drive was that all the subdivisions were Form A's. Frederick Richardson was able to give us a road layout so we knew that the frontage being used was very clearly defined. On David Lane's road there was a road layout, but I don't see that here. The issue is, where is the frontage. I do not want to make a determination when I don't know where the frontage is. I want to make sure the road bounds are clearly defined. I need proof of frontage to grant a Form A." Guerin withdrew the Form A.

Guerin then discussed with the Board the Special Permit application for Donald Rust and Andrew Gallant at 152, 154 Main Street. He was requested to put it in writing as to what the problem was so that the Board could have it reviewed by Town Counsel.

Madsen moved to adjourn the meeting, seconded by Dunn, with the Board voting unanimously in favor.

Meeting adjourned at 10:15 p.m.

Respectfully submitted by:


Gillian B. Palumbo

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A G E N D A

- 7:45 p.m. ... William Downey - Home Occupation
- 8:00 p.m. ... Public hearing - Peter Van Wyck, subdivision at
Low Land Farms
- 9:00 p.m. ... John Duncan - submittal of Form A
- 9:10 p.m. ... Ron Ober
- 9:25 p.m. ... John Guerin - submittal of preliminary plan
Don Burnham, Western Avenue
- Submittal of Form A, Shirley
Burnham, Landing Road
 - Special permit - Gallant/Rust
property, 154 Main Street
- 9:45 p.m. ... Clay Morin - review of preliminary plan,
Soginese Creek

Business:

Review correspondence
Bills payable voucher

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Present: Dana Story, Chairman; George Bragdon; Frances Dunn; Joseph Ginn; John Knowles; Mark Hall; Rolf Madsen (8:30 p.m.)

Meeting called to order at 7:40 p.m.

Richard Carter, Building Inspector, submitted a building permit application for Eric and Patricia Clarizia, Lot #3, 199 John Wise Avenue, for construction of a single family dwelling; area of land - 42,000 square feet; Map 22, Lot 26 (assessor's map).

Ginn moved that the Building Inspector issue a building permit for Eric and Patricia Clarizio, Lot #3, of a subdivision at 199 John Wise Avenue, for a single family three-bedroom dwelling. The motion was seconded by Bragdon, with Story, Bragdon, Dunn, Ginn, Knowles and Hall voting in favor.

A building permit application was submitted for Wayne Baldwin, Lot #5, Essex Reach Road, for construction of a single family dwelling, 56' x 28' x 29' in size, total number of rooms - 9.

Ginn moved that the Building Inspector issue a building permit for Wayne Baldwin, Lot #5, Essex Reach subdivision for construction of a three-bedroom single family dwelling. The motion was seconded by Bragdon, with Story, Bragdon, Dunn, Ginn, Knowles and Hall voting in favor.

William Downey met with the Board to discuss his proposed purchase of the building at 74 Martin Street (a.k.a. Old Funeral Home). He plans to live in the building and have a small business in the basement with the maximum of ten people. He submitted a description of the business to the Board. Downey said he plans to manufacture scientific research instruments and to design and make exercise bicycles. He wasn't sure whether this would be considered a home occupation. Story said, "In my view, it could hardly be called a home occupation. I feel we would be in deep trouble especially with the neighborhood as it is a strictly residential neighborhood. I rather feel the Board might agree with that." It was noted that the previous use was a business with one apartment. Downey said he would live in the building, plus rent the apartment and have the business. Story said the funeral home business has now expired so Downey would have to resubmit for a permit for a business. Downey said he had spoken to the neighbors who indicated they did not find his business objectionable. They said they know there is going to be a business in there eventually. It was decided that Downey should return to the next Planning Board meeting to give the Board time to consider his proposal.

The Planning Board held a public hearing at 8:10 p.m. under M.G.L. Chapter 41, Section 81, and the rules and regulations relative to subdivision control of the Town of Essex, Section 6, to consider a subdivision of land known as Low Land Farm, applicant Peter Van Wyck.

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Peter Van Wyck - "I would like to suggest to the Board that this is a big issue and I don't want the Board to feel they are under the gun and they need more time. If there should be some changes, 'i's to be dotted, and 't's to be crossed, I think we should take the time to do all of these things so the plan is letter perfect, so we don't just judge the plan on the fact that it might be in error because some small thing has been left out. I'm perfectly willing to correct the plan if we find there are some things wrong with it. We are under a time schedule and I am perfectly willing to let you have as much time as you want to have. If it requires another meeting or two then just take it, just so that we don't judge the road and if there are some errors in there we should be able to correct the plan. I'm trying to use the amount of houselots the Planning Board, in 1984, indicated they would be receptive to seeing on this land. They said the land looked like it could hold fifteen house lots, so I have more or less judged what I can do on the fact that in 1984 it was acceptable for the Planning Board at that time to see fifteen house lots on this tract of 78 acres of land. That was a given a started with. The second part I started with was if, in all possibility, I would have liked to have seen the development of the property on this ridge along this side here, and leave this side open to some farm use. The plan only shows there are four lots that are broken up on the bottom here. I have indicated to the Board what I intended to do was to put the house lots on this side, leaving this side open. You notice the arrangement of frontage was done on this plan as was done on the property down by the lake, where you take the frontage from one side of the street and add it to frontage on the other side of the street. That was a concept that was allowed at that time so we more or less followed it. If the Board will go along with using the frontage on the opposite side of the street for a lot on this side of the street like you did there, I could then proceed. In a sense we would have a cluster type use of land on one side, while on the other side it will be relatively free. That is a given. We have more or less said that in as much as this was done on this project a few years ago that this would be acceptable to the Board. I think that is an issue we should discuss and rather than going further what is the Board's feeling on it."

Story - "I think our feelings should only be directed to the plan we are looking at. What transpired years ago is not particularly relevant at this point. We have a definitive plan, which you filed, before us to consider and discussions should be confined to that plan."

Van Wyck - "I'm just giving you the overall concept of what we are after. It is the broad issues rather than the specific issues that I was talking about. I'm trying to tell you what my concepts are, what I'm hoping to do. After that, I think then it becomes an issue of specifics, what you might have against it."

Robert Klopotoski, surveyor with Surveyor Associates of Gloucester, which is the record surveyor of the project - "This evening I made myself a set of blueprints and went through the items prepared by your consultants to familiarize myself with all the things that are on his several pages of what, at first, looks like a large number of deficiencies. On a set of blueprints of my own, going over with a red pencil, most of the things on that are

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technical deficiencies, omissions, and so forth. In a matter of forty-five minutes I was able to add to my set of drawings a lot of the things that were on one drawing but not copies on to another for, in my view, reasons of clarity. Other things were just odds and ends that needed to be either added to, changed or addressed. Some of the items are simply items of clarification that are requested. Almost all of the items mentioned in the report can be taken care of very easily and very quickly. There are very few items which are which I consider substantive. If it gets down to that point I would be glad to go over them, either one by one or in groups, that I can show on this set of drawings that most of the items on that list can be taken care of easily. There are very few remaining items on that list that can be considered of a substantive nature which may require discussion by the Board."

Frederick Fawcett - "I suppose what I would like to ask or say is somewhat in the nature of a point of order. This is a definitive plan here, and the regulations state that there is a method whereby a preliminary plan comes in, and it seems to me that is the time when this sort of thing goes on. At the time the definitive plan comes in it either contains within itself, all in one little package, all the things that are required or it does not. If someone chooses to hopscotch and jump over the preliminary plan procedure then he has to be very careful that his plans, as were proposed for the definitive, are absolutely complete, and if they are not absolutely complete, and C.T. Male has indicated they are not, then I think the Planning Board has no choice but to reject the definitive plan and suggest the applicant file a preliminary plan, hopefully including some of the things which C.T. Male has indicated should be included and then go through the preliminary plan procedure and then to the definitive plan. I think it is unwise and unusual to treat this definitive plan as a preliminary plan and have the bargaining go on between the applicant and the Planning Board at this particular procedure."

Mark Hall - "Most people submitting preliminary plans are not going to go into the detail that you are looking for on a preliminary plan because of the expenses required. I think what we have tried to do in the final planning stages of the definitive, we still have the authority, as you pointed out, to deny it for lack of information on this plan. What we can do is extend under his permission the right to approve his plan or disapprove his plan. This is a workout kind of thing we allow the developer to come through. C.T. Male is the one we requested to come up with these comments and as his engineer has pointed out, if you go through them one by one, there is probably five or six issues here of any substance; the other ones are technical. I'm prepared to go through everyone of these, but I don't think we have to. C.T. Male is here tonight to at least pin point the real major issues we have and should address that aren't typically covered in the rules and regulations of our Planning Board and also the subdivision control laws."

Frederick Fawcett - "I understand what Mr. Hall is saying, but I think it is procedurally incorrect to take a definitive plan and change it. I think the proper procedure would be for the submission of a preliminary plan, then have C.T. Male accept this as a preliminary plan, but tonight

we are thinking this is a preliminary plan and the hearing on it should be of an ordinary plan. I think, since it is not a definitive plan, properly it should be turned down and then accepted, perhaps, as a preliminary plan."

Story - "Mr. Fawcett, I'm inclined to agree with you."

Van Wyck - "I would like to point out that we did, in fact, bring before you a preliminary plan and we talked about it and the length of the road, which we clarified that the Board would go along with a longer road than usual. I have to say that issues which were brought up here were correct. We had to produce the definitive plan before C.T. Male would then look at it. This is the first time you have had an engineer look at these plans and I think the next time around you ought to have the benefit of C.T. Male check the plans and any corrections we need to make we will correct it; then you will have a letter perfect plan. This is not what has happened."

Hall - "Obviously we have hired a professional. C.T. Male has come up with two recommendations, either we deny the subdivision plan as submitted or we require the applicant to revise the submitted plans as per his suggested changes. We have two choices tonight. Do we want to go through an entirely new hearing starting from scratch, and I suspect that this plan if we deny it tonight, is not going to come up much different that this as it is presented tonight as a preliminary plan, or are we going to spend the money of going through an additional hearing expense to Mr. Van Wyck and time to us. I think this is a process that takes a little give on each side, and the subdivision laws allow it, and obviously C.T. Male has provided us with those two options tonight. With the second option we can go through and address the various issues he has pointed out to us on these plans, and maybe get into a little bit better review of the issues that he technically can't address and is more of a policy type decision that the Board has to make. I, quite frankly, would like some comments from C.T. Male."

Story - "With the permission of the Board I would like to read into the record the report which came from C.T. Male."

"The submitted Definitive Subdivision Plans have been reviewed for compliance and conformance with the Rules and Regulations relative to subdivision control and the zoning by-laws of the Town of Essex. The plans have also been reviewed for technical completeness and adherence to good engineering practices. Our review comments are keyed to the sections and subsections of the Rules and Regulations that are applicable. Comments that are not particular to anyone specific section are itemized under the heading "General".

Section Comments

3.04 A certified statement must be provided by the applicants engineer representing that municipal water supply presently exists which will furnish adequate water flows and pressures for fire fighting and domestic supply purposes. Specific flow, residual pressure and static pressure values should be ascertained and furnished by the applicants engineer as part of the certified statement.

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- 6.01(1)B Locus Plan provided does not have a specified scale. Provide Locus Plan at 1"=800' scale. Show proposed roadway on Locus Plan.
- 6.01(1)D Proposed road cross sections have not been submitted (except for typical road cross section).
- 6.01(1)G Stormwater drainage analysis and design calculations have not been submitted.
- 6.02(1) Record Owner and Subdivider not identified on plans. Registered Professional Engineer's seal is absent from plans. Owner's title reference is absent from plans. North arrows are missing on the "Existing and Proposed Topography Plan" and the roadway "Plan and Profile" sheet. Legends are incomplete (e.g. what is M.S.L? How does M.S.L. tie to U.S.G.S?) Scale dimensional unit not called for on bar scales.
- 6.02(4) The name of the proposed road is not shown on the plan. Street numbering is confusing (e.g. 4-22, 3-17?).
- 6.02(5) Boundary perimeter closure ties are not shown on the plans. Lots 5 and 6 have missing metes and bounds descriptions. There is a missing bearing on one of the boundaries of Lot 1.
- 6.02(7) Proposed lot numbers are not shown enclosed in circle.
- 6.02(8) No monumentation, existing or proposed, is shown on the Definitive Subdivision plan. Where are the distances along the creek and Essex River taken? (edge of low water, top of bank?)
- 6.02(10) The Essex River has not been called out on the Definitive Subdivision Plan.
- 6.02(12) This section states that the Definitive Subdivision Plan submission shall contain the following: "Existing and proposed drainage including drainage areas inside the subdivision, areas outside the subdivision which drain into it, and the route, for all existing and proposed drainage discharging from the subdivision, to the primary receiving watercourse or other body of water. Calculations shall be figured on the modified soil cover complex method, unless the Board agrees to some other method, using a 10 year storm frequency for street drainage** Cross sections of each drainage ditch or pond shall be included." None of this information has been submitted. **(omitted) ...and a 50 year storm frequency for cross culverts.
- 6.02(13) The "Town Clerk" certificate (and signature line) is absent from the Definitive Subdivision Plan and should read as follows:

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I certify that 20 days have elapsed since Planning Board Approval and that no appeal has been filed in this office.

- 6.03 Road plan and Profile: scales required are 1"=40' horizontal and 1"=4' vertical. Scales are 1"=50' horizontal and 1"=5' vertical. Waiver required to allow non-specified scales.
- 6.03(1) Owner's name and address are not identified. North point not shown on road Plan and Profile. Boundary lines of proposed roadway are not completely shown and are not at all described.
- 6.03(2) Road Plan and Profile is not sealed by a Registered Professional Engineer.
- 6.03(3) Bearings, distances, radii, arcs, central angles and stationing are either not shown or are incomplete.
- 6.03(4) The grade of the road at Sta. 1+100 is not shown. The "K" values between Stat. 0+50 and Sta. 2+20 and Sta. 14+10 and Sta. 15+10 are quite small and unacceptable unless the proposed roadway is posted at a 20 m.p.h. speed limit.
- 6.03(6) The proposed stormwater drainage system appears to be substandard. The roadway should be designed at a higher elevation in several areas.
The bottom of the left and right side road swales should be shown on the profile.
Additional roadway cross culverts are desirable at approximately Sta. 11+50 and Sta. 14+25. The culvert proposed at Sta. 2+00 is too low and should be raised along with the road grade at this area.
- 6.04 Construction plans are missing lot lines and lot numbers.
- 6.04(2) Proposed contours are incorrect with regard to street grading and road side swale drainage.
- 6.04(3) Flood Plain areas are not shown upon the plan. The existing wetland at Sta. 2+00 Left is not shown.
- 6.04(5) Roadway centerline stationing is not shown.
- 6.04(6) Stormwater drainage swales, detention basins, etc. not shown.
- 6.06(A) The submitted plans are neither complete or technically adequate.
- 6.06(C) The submitted plans lack full conformity with the Board's design and construction standards.

- 6.06(D) The submitted plans lack full conformity with applicable zoning requirements. Specifically, there is inadequate lot width on Lot No. 3.
- 6.06(E) The submitted plans lack full conformity with the Board's Rules and Regulations.
- 7.01(5) Access and utility easements are absent to serve Lots No. 2 and 3.
- 7.01(10) Underground utilities are not shown on the typical roadway cross section.
- 7.02(4)a(2)b Minimum width of roadway required is 20 feet. 16 feet is provided.
- 7.02(4)a(6)b 12 foot shoulder shown is encumbered with the drainage swale. This should not be the case.
- 7.02(4)a(9) Road base gravel compaction specifications are absent.
- 7.02(4)a(10) Road base gravel should be graded with the same roadway cross slope as finished grade. Hot bituminous concrete pavement should be applied at a consistent 3 inch thickness.
- 7.02(4)a(11) Cross slope for shoulders is not shown.
- 7.02(4)e Curb radii not shown at road intersection.
- 7.02(4)h Shoulder material should include a gravel mixed with loam composition.
- 7.02(4)j Specifications for loaming and seeding are absent from the plans.
- 7.02(4)k(1)(2) Specifications for road base gravel and hot bituminous concrete are absent from the plans.
- 7.02(4)l Reference to Massachusetts Department of Public Work's specifications should be made on the plans.
- 7.02(8) Proposed street trees are not shown on the plans. Tree planting specifications are also absent.
- 7.03 Stormwater drainage analysis and design calculations have not been submitted.
There is inadequate cover over the proposed culvert at Sta. 2+00. Post-development drainage runoff should not exceed pre-development drainage runoff discharge amounts.
There are no proposed stormwater detention structures shown.
- 7.07 Permanent boundary monuments (to be set) have not been identified on the plans.

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General Comments are as follows:

1. The layout of Lots No. 2 and 3 are poor. It is highly unlikely that the 20 foot wide access "alleys" proposed to serve these lots could actually be used for vehicular access thereto. As such, it would seem prudent to (at a minimum) add access and utility easements to Lots No. 2 and 3 over Lots 4 and 5. Moreover, it would be preferable to provide road frontage for Lots No. 2 and 3 in such a way that direct vehicular and utility access could be achieved for both lots without the benefit of easements over other lots.
2. Soil test information (deep observation holes and percolation tests) has not been provided for any of the proposed lots. Therefore, it is impossible to determine if the proposed lots are suitable for on site subsurface sewage disposal systems.
3. Road underdrains are not called for on the proposed plans. Given that the predominant soils types in the vicinity of the proposed road on the subject parcel appear to be moisture sensitive, it is strongly suggested that underdrains be provided to assure the lasting integrity of the proposed road.
4. Existing pathways and trails are not shown on the submitted plans. They should be added to assist the planning and review process.
5. The submitted plans lack many construction details such as:
 - flared end sections/headwalls
 - Stormwater silt collectors and energy dissipators
 - temporary erosion control
 - underdrains
 - plantings details
 - drainage swales
 - vegetative cover specifications
 - water main details
 - thrust blocks
 - fire hydrants
 - typical trenching sections
 - typical service connections
6. The submitted plans lack a temporary erosion control scheme.
7. Street signage (proposed) is absent from the submitted plans. The following should be shown : stop sign, street identification sign, speed limit sign, dead end sign.
8. Sidewalks are not shown. Perhaps a sidewalk on one side of the proposed road should be provided.
9. The proposed road horizontal alignment is pleasant and seems to fit well with the lay of the land. The proposed horizontal alignment also respects the existing natural and manmade features such as the stone wall, trees and topography present at this site.

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Story then read into the meeting a letter from the Essex Department of Public Works, as follows:

1. Road not properly laid out.
 - a) Proposed width of road does not meet Town by-laws.
 - b) Drainage pattern unclear as to where the road drainage will go (page 4 of 5)
 - c) Slopes or grades on proposed road, not clear.
 - d) We would require 18" depth of gravel in the area plus stabilization fabric because of the clay and wetness of the area.
2. Water comments are indicated on the drawings.
 - a) Water Department would like an easement so that, in the future, the water main could be looped to the Transfer Station.
 - b) A certified piping contractor must be employed to install the water main.

The overall plans, as prepared, are unclear and not detailed enough and therefore have been rejected by this Board.

Paul Connelly, C.T. Male - "We offered this report to your Board and in summary would like to say two things. The first four sheets of the comments were specifically from the subsection of your subdivision rules and regulations and would consider it pretty important that all those are addressed satisfactorily. The last two sheets of comments which are under the heading "General Comments", although they do not make specific comments to specific chapters or subsections of your regulations, I believe they are just as important as the technical comments. Our reaction and response on seeing the plans and what our vision of the plans are, are relative to and in relationship to my experience of the past fifteen years. I also had another engineer in the office look at the plans and these comments are reflective of both our views upon looking at the plans."

Frederick Fawcett - "I would like to ask formally of the Conservation Commission chairman, as he happens to sit on this Board also, has there been a Request for a Determination been filed on this plan by the applicant, or is it intended or are you going to require that."

Ginn - There has been no filing with the Board. I cannot tell from the developer if he wants to submit this to the Board, but it definitely will be required by the Conservation Commission."

Frederick Fawcett - "Then you are going to require it, having looked at these plans. As chairman of the Conservation Commission you have determined, unofficially, that the plan would require a submission."

Ginn - "Very definitely."

Frederick Fawcett - "Also the Executive Office of Environmental Affairs has demanded an approved Environmental Impact Report on this property, and, indeed, a draft Environmental Impact Report

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was filed on this property by the applicant. I would like to know if the draft Environmental Impact report has been approved and if it has not, what the applicant has done to gain such approval. I would also like to point out, just for the record, that there are Enforcement Orders from the D.E.Q.E., what is now D.E.P., on this property dated July 1985, August 1985, and there is also an Enforcement Order from the Conservation Commission dated May 1985, and I do not believe that any of these Enforcement Orders have been lifted or waived. I would also point out that Mr. Klopotoski has pointed out that most of what C.T. Male has requested could be taken care of in his office in a matter of about 45 minutes. I should like to point out that it is probably highly unlikely and rather impossible for him to have taken care of the deep holes and the percolation tests in his office in 45 minutes and I think those have to be on the definitive plan prior to its being accepted."

Elisabeth Frye, Apple Street - "Having heard that report, I can't believe that Mr. Van Wyck and Mr. Klopotoski, having worked together for years and years getting plans, could submit something with those errors. All they had to do was open the regulations and check their plan with that. Public safety, the access road - that to me is an unsafe location for a subdivision road and certainly will not be eligible for waivers in length beyond 1200 feet just adding to the number of houses. The visibility is practically non-existent there. The hill comes down sharply by Brownings. It's very difficult to get out of Brownings driveway and this is more or less the same thing. If you look at the purpose of your subdivision regulations, first paragraph, you will find what I'm talking about. If you look at page 26 at the bottom, it cites such things as grounds for denying a plan. It is the safety factor that is very important here. Donald Browning wasn't able to be here tonight, but he asked me to bring up the 1981 problem, which still exists, which is the drainage of the water down the hill onto his property, which was brought about by Peter Van Wyck raising the level of his road and bringing up the shoulder of the town road in preparation for a subdivision that has not been approved. As the water comes down it goes off to the left to be absorbed on to Donald Browning's land. Now this is something that used to go on at Planning Board meetings long before my day and repeatedly the board asked him to make a correction that would not be a furtherance of a subdivision. A simple thing. I think Mr. Klopotoski drew a simple plan that would have taken care of that and it was promises and broken promises, like the ground was frozen until April, tweaking the nose at the Planning Board and never doing it. That is one of the things which is supposed to be taken care of before the stipulation of 1981 is lifted, so that the drainage ought to be included in the beginning of his road."

Paul Connelly, C.T. Male, asked what the triggering mechanism was to require a draft Environmental Impact Report. He was given a copy of the report to review.

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Peter Van Wyck - "When I started this evening, I requested the Board to make a delay on the plans so we could make the corrections, and I still think that is what the Board should do, take some time. If you turn it down we will just have to come in again, and I think we all have better things to do than to keep going back and forth. Let's just correct it and bring it back."

A discussion followed on whether to continue the hearing or not.

Robert Klopotoski - "I want to make sure that everyone is clear on the process that we are going through now under the statute, I think it's 41-81U. Following a public hearing, the Board must do one of three things; they either approve it, approval with modifications, or deny it. Following that, under the provisions of the statute, we are allowed to make whatever modifications are suggested in approval with modifications, or whatever modifications are required by a denial, and resubmit for a public hearing under the same rules and regulations. Under a resubmittal the only items that are up for discussion are those issues that come up with approval with modifications or in the denial. Regardless of what the Board's action is tonight, the attempt is to focus the scope of the discussion to a point where the substantive issues matter as far as approval and denial go. Your action tonight is going to be one of those three things, and, I suspect, it's not going to be approval, so you are left with either approval with modifications or a denial; either way the issues are going to be the same. It's going to be what's in the report or whatever else you can come up with, and those are the issues that will come up the next time around and nothing else. It would be much easier if we were to extend the time frame of the public hearing for one or two meetings to allow us to tackle that report, get all the small stuff out of the way. The drafting errors, the drafting omissions, some of the additional information and clarifications required, we can boil it down to maybe the last two pages of the report and decide which of that the Board wants to go along with or attest as far as our presentation goes."

Story - "It would seem, if I may say so, that to do what you are suggesting would be tantamount to treating this as a preliminary plan and having the plan you bring back again as a definitive."

Frederick Fawcett - One thing which Mr. Klopotoski brought up and which I think should be thought of is that if this is denied with further things required by the Planning Board, or if it is approved with certain things being required by the Planning Board, both of which would then require another public hearing, Mr. Klopotoski said at that time and at that public hearing nothing other than what was discussed and put into the requirements, either as a result of approval or denial, could be addressed. The point of going back to a new preliminary hearing is that the hearing is de novo and everything is wide open for discussion or addition. They may well have something else come up, particularly if we are not going to try and do our perc tests in our office, which might want to be addressed at a later time."

Elisabeth Frye - "This is what happened, I believe, on the extension to Turtleback Road, the loop."

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Story - "What is the wish of the Board, whether to continue the hearing, or close the hearing and make a finding. You can reject the plan or accept the plan with modifications?"

Peter Van Wyck - "I would like to point out to the Board that this is the first time that you have had an engineer such as C.T. Male do this and it is certainly a very fair way of doing it. I would like to suggest to the Board that if this is the approach to take, that you are going to hire another engineer to represent the Board, that the applicant should have the benefit of what he finds. I think this is an important point. If you are going to hire an engineer to do the corrections it is only sensible that the applicant has the benefit of those corrections."

Story - "You did have."

Van Wyck - "Yes, we did, but now I'm asking for permission to incorporate these corrections on our revised plan. That's what I'm asking. That's why we are here today. I want to extend the meeting, I want to correct, I want to clean up this plan we have, make use of the corrections that were made. This Board has a lot better things to do than to just go through the procedures over and over again."

Story - "I'm interested in hearing you say that. I'm going to say something right now, but maybe I shouldn't say it. I've been around this Town Hall now for maybe something over twenty years. I first came in here in 1970 and one of the first people that came in was you. You've been coming in ever since then and we are still having problems."

Madsen - "I would like to ask a question of our engineer. You have reviewed these plans. Would the applicant taking these plans back and doing a revision seriously create a modification which would be construed as too great a modification to be reviewed again, or would what he comes back with would be significantly different from what he has now. In other words, would what he comes back with be significantly different than what he has now."

Paul Connelly - "Several of the words contained in your question have a broad definition of meaning, such as 'significant'."

Madsen - "As our consultant, what would you recommend. You have two recommendations in your review. If the applicant should comply with this how much of a modification would that be?"

Connolly - "In my opinion, the plans will require substantial modification to bring them in full compliance with your subdivision regulations and also with your zoning by-laws."

Hall - "Why don't you ask him directly if it would constitute a re-filing of a preliminary plan. Would it be totally different?"

Connolly - "No, because the fundamentals of the plan set forth 'x' number of feet of roadway in six months. That's not going to change as I see it. Ultimately, as a Planning Board, of course, you are interested in different aspects of the plan, but you have to be interested in other things to the community that go beyond the purview of our review, including health, safety,

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welfare, impact to the community, both on an environmental and fiscal basis, etc. That's a job I do as a lay person in the town I live in, but it's a job I really can't do as a professional working for your board."

Madsen - Peter, do you have any perc tests scheduled?"

Van Wyck - "I have one day of percing and will add to what I have here."

Story - "I want to read two paragraphs which I did not read before and are contained in Mr. Connolly's covering letter: 'After completing our technical review of the submitted plans, our recommendations are as follows:

1. Disapprove the submitted Definitive Subdivision Plans on account of noncompliance and nonconformance with Sections 6.06(1)A., 6.06(1)D. and 6.06(1)E., of the Rules and Regulations relative to subdivision control. Require complete plan resubmission for future consideration of subdivision approval at the subject premises.

or 2. Require the applicant to entirely revise the submitted plans in order to fully address the plan deficiencies identified in the attached report. Require resubmission of the revised plans and technical review (and report preparation) on same. Consideration of final plan approval should not be given until after technical review is performed on the revised and resubmitted plans.

Van Wyck - "I find the last part very interesting - 'until the technical review has been done'. It's exactly what I was saying. You go hire an engineer to do this thing and get the benefit of having a clean plan go before you. Right there is the reason why you should let us correct it, clean it up and make the thing, at least, engineering correct. That's why this Board should extend the time, let us correct it and resubmit a clean plan." Story then asked for a motion.

Hall - "I move to continue the public hearing if we receive proper authorization from the applicant, which would give him the opportunity to address the comment that are spelled out in C.T. Male's report and that we extend the public hearing to Wednesday, June 26, 1991, so that everyone will have sufficient time to address the deficiencies. The motion was seconded by Madsen, with Bragdon, Dunn, Hall and Madsen voting in favor; Ginn, Knowles and Story opposed. The voting was 4-3 in favor, and therefore the motion carried.

John Duncan submitted to the Board a Form A for property at 21R Western Avenue, 2.033 acres, for a correction to a boundary line. The plan does not constitute a subdivision because (1) it provides access for fire, police, emergency, (2) frontage provides actual access on a public way, and (3) in all other aspects it conforms to the local zoning requirements.

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Bragdon moved to approve the Form A, approval under the Subdivision Control Law not required, submitted by John Duncan, for property at 21R Western Avenue, plan of land in Essex property of John C. Duncan and Mary Duncan dated March 1, 1991, drawn by North Shore Survey Corporation. The motion was seconded by Madsen, with the Board voting unanimously in favor.

Ronald Ober, Wheeler Street Riverside Realty Trust, met with the Board to discuss a proposal to build one home at the proposed Pine Ridge subdivision, off Pond Street, without completing the subdivision road. The house would be sold to help finance the construction of the remainder of the road. Robert Klopotoski, representing Ober, said they would like to submit a covenant stating that the house will not be occupied until the home is properly serviced. The other alternative would be to ask for a modification in the plans to turn the subdivision into a single family on a 10-acre lot. Ginn questioned the frontage of the existing lot. Story said he wanted the proposal spelled out a little more. Ober said, "I am proposing to take the road with base coat hard top to station 4. What I'm hoping the Board will allow me to do is build a second house; I have someone interested in buying Lot 8. The Board said they needed more time to review this proposal and did not make a finding at this time.

Attorney John Guerin submitted a Form A for Shirley Burnham for the division of a 3-acre parcel on Landing Road into three lots. Bragdon said he would not be voting or discussing this matter as he is an abutter. The reason the plan did not constitute a subdivision is that each lot has 150 feet of frontage on Landing Road, a paved road which meets the Planning Board's standard of adequacy. Lot 1 - 31,440 square feet, Lot 2 - 72,246 square feet, and Lot 3 - 34,274 square feet.

Ginn moved to approve the Form A, approval under the Subdivision Control Law not required, for the creation of three lots on Landing Road, property of Shirley Burnham, plan of land Landing Road dated December 1, 1990, prepared for Shirley Burnham by Survey Associates. The motion was seconded by Hall, with Dunn, Ginn, Hall, Knowles, Madsen and Story voting in favor; Bragdon abstained.

Attorney Guerin submitted for an informal discussion a preliminary plan of Donald Burnham, Western Avenue. Frontage was shown on a road which the Board questioned was acceptable under the subdivision standard of adequacy. Madsen said that it was up to the applicant to prove that this road is adequate. Guerin suggested the Planning Board review the site.

March 27, 1991

Attorney Guerin then discussed with the Board the Gallant/Rust property at 152/154 Main Street. An addition made to the Rust property was found to be encroaching on the property at 152 Main Street. The Rusts would like to convey their property but cannot until the encroachment is corrected and clear title is obtained. 838 square feet is being transferred from the Gallants to the Rusts to rectify this encroachment. Guerin said the attorneys of both parties felt they should go through the Special Permit process. Madsen felt this matter should be sent to Town Counsel for his opinion.

The Board reviewed the preliminary plan of Soginese Creek Realty Trust. The Board was told that discussions were being held with Curlew Cove Realty Trust, Trustee David Lane, John Wise Avenue, to continue the water line. Length of the dead-end street is over 3,000 feet. Date of submittal for the plan was March 6, 1991.

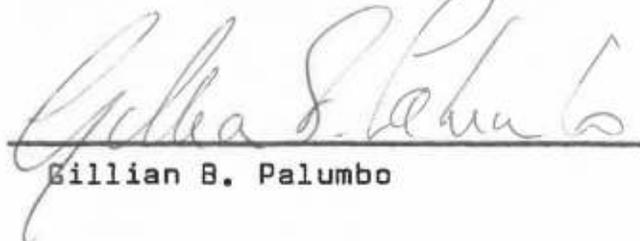
Discussion on the watershed protection by-law. Madsen moved that the water resource protection by-law be approved by the Planning Board and submitted to the annual town meeting. The motion was seconded by Knowles, with the Board voting unanimously in favor.

The Minutes of March 6, 1991, were read. Madsen moved to accept the Minutes of March 6, 1991 as read. The motion was seconded by Bragdon, with the Board voting unanimously in favor.

Ginn moved to adjourn; seconded by Hall, with the Board voting unanimously in favor.

Meeting adjourned at 11:00 p.m.

Respectfully submitted by:



Billian B. Palumbo

Essex Planning Board

March 6, 1991

A G E N D A

- 7:45 p.m. ... Submittal of preliminary plan - James
Monahan - Tyler property
- 8:00 p.m. ... Public Hearing - Peter Van Wyck - Low Land
Farms
- 9:00 p.m. ... Public Hearing - Watershed Protection By-law

Essex Planning Board

March 6, 1991

Present : Dana Story, Chairman; Frances Dunn; George Bragdon; Mark Hall;
Joseph Ginn; John Knowles; Rolf Madsen.

Meeting called to order at 8:00 p.m.

A public hearing to consider a definitive plan for a subdivision at Low Land Farms, applicant Peter Van Wyck, could not be held due to a procedural error, i.e. the abutters were not sent public hearing notices. The public hearing was rescheduled to March 27, 1991, at 8:00 p.m.

Ginn moved to hold a public hearing to consider a definitive subdivision plan for Low Land Farms, applicant Peter Van Wyck, on March 27, 1991, at 8:00 p.m.; seconded Bragdon.

Betsy Fawcett asked if there had been a filing under M.G.L. Chapter 131, Section 40, with the Conservation Commission. Ginn, chairman of the Conservation Commission, told her that the Commission has comments on the Planning Board's definitive plan, but no filing had been made. The voting on the motion was unanimously in favor.

Story received comments from C.T. Male, the Board's plan review consultants, in the form of a letter and wanted it so noted in the Minutes.

The Minutes of January 16, 1991, and February 6, 1991, were read. Bragdon moved to approve the Minutes of January 16, 1991, as read. The motion was seconded by Madsen, with the Board voting unanimously in favor.

Ginn moved to accept the Minutes of February 6, 1991, as written by George Bragdon, with the following amendment to be made: that the voting by the Board on a plan submitted by Donald Metcalfe for three houses should read - Story, Madsen, and Ginn were affirmative in the motion to deny the plan; Bragdon voted present. The motion was seconded by Hall, with the Board voting unanimously in favor.

Madsen moved that the meeting of March 20, 1991, be cancelled and that the business of that night be moved to March 27, 1991. The motion was seconded by Hall, with the Board voting unanimously in favor.

A public hearing was held at 9:00 p.m. to consider an amendment to the Essex Zoning By-laws to create a Water Resource Protection District. The purpose of the Water Resource Protection District is to protect the public health, safety, and welfare, by preserving and maintaining the existing and potential groundwater recharge area, groundwater supply, and municipal wellfields providing water supply for the Town of Essex. The Water Resource Protection District will comprise all areas within Essex which are within the drainage basins of either Chebacco Lake or Cedar Swamp.

Story - "A little background on this, perhaps. This has been done on the auspices of the Planning Board. It has been felt for a long time that the

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Town of Essex by-laws needed an amendment in some form. It is not zoning as such; and that the best way, perhaps, to begin might be with a plan such as this. A purely informal ad hoc group has been helping the Planning Board for the past year and a half, I guess, to devise some such plan as this. After long involved discussions, and going around and around, through the courtesy of our D.P.W., Mr. Damon Boutchie gave us a copy of a similar law which is presently in effect in the Town of Wenham. With that somewhat as a base of operations, we proceeded essentially to adapt that to our own purposes, which I think we have done very well here, and also with the help and advice of Mr. Phillip Herr, who has been a consultant to the Town on a number of occasions and who has helped us greatly in drawing this law. I think that the by-law, if you read it carefully, pretty much speaks for itself. I think it addresses all of the questions someone may have, but I would like to ask if anyone who was here, looking at Tom Ellsworth, who, by the way, has helped us a great deal in our planning, can add to what I have said."

Ellsworth - "I don't think so. I think one of the things we were very concerned about was to have a law which everyone in Town could understand. It is a law we badly need."

Story - "We tried very hard to have it appear in a language which we hope everyone can understand. It seems to us to be clear enough, but perhaps questions of some sort arise in somebody's mind. At this point I would like to receive your comments in favor or against it and hopefully to get your support when the time comes. I might say at the outset that we have at least the tacit approval of the Chamber of Commerce, which we thought was important to get. They feel this is something which is necessary for the Town, especially in view of the fact that we have so many restaurants and eating places. In that degree we have their support."

Betsy Fawcett, Apple Street - "I think it is wonderful. I think there is one place where there could be a small clarification, where you cite the Special Permit Granting Authority, so that novices do not have to go to a by-law book to see who that is. You might put in to see the Planning Board or that the Planning Board is the Special Permit Granting Authority, just so that it is clear without any cross referencing."

Story - "Your point is well taken. We assume that everyone knows in this town that the Planning Board is the Special Permit Granting Authority."

Michael Matheson, 158 Western Avenue - "On the first page, third paragraph, the way it is worded plays into the hands of large developers who can afford the survey costs, but somebody who wants to build a small house or a small business, it is going to be very expensive for them to do a survey. On Page 2, number 3, where it says, "the disposal of liquid or leachable wastes, except residential waste disposal systems" that is the only thing you are allowed. If any one wants to have a small business with a toilet in it, by the way it is defined here that would mean that a small septic system for a business is illegal. It would have to be reworded, otherwise you cannot even put in a toilet for a business. Number 4 outlaws all commercial uses with a septic system on site. It should define whether it is above ground, whether the water is going to leach off, or whatever, because 'on site' means all commercial and industrial uses that use any

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kind of water at all above or below ground, like a legal septic system, are outlawed. No. 8 - "the treatment, storage, discharge or disposal of hazardous material" - the way that is written means that anyone who has two cans of paint in their garage is breaking the law. If you have seen the books like I have of what is considered hazardous waste, half the stuff in the houses is hazardous waste. No. 9 - "automobile or motor vehicle service, washing, or repair shops, used parts, and salvage yards" - I don't understand what that means; only if this happens at repair shops or if you wash your car in your driveway. That should be more clearly defined. Automobile repair work is so restricted now, with what you have to do with drain oils, etc., I don't see why this one business should be one of the ones picked on if they should be in the district. Nowadays, the waste from automobile repair work is so tightly regulated I think it should be allowed in the district. Repair shops - does this mean automobile repair shops or does this mean repairing anything. I feel it should be defined because people repair boats, appliances, etc. Page 4, Number 1, where it says 60 gallons per day, I agree with that. I've seen what houses use. An average one-family house can use 1,000 gallons per week. I've seen up to 1,500 gallons per week. That's getting a little restrictive, so you may want to go for a few more gallons above the 60, may be up to 100 gallons."

Story - "My general answer to a lot of your questions is that admittedly this is restrictive, and it is restrictive purposely because we are dealing with the area from which our drinking water ultimately comes. If we are going to take steps to protect that, things have got to be a lot stricter now than they have been hitherto. It seems to me that the permitted uses are quite generous and as far as I am concerned, I think that we have got to be very restrictive with what goes on in that designated area if, in fact we are going to preserve our water supply. Specifically, you addressed point number 9 - that sentence is in the automotive context and I would say that the references there are all addressed to automotive sources of pollution."

David Lane, John Wise Avenue - "I would like to say I support this, and I think it is a very important thing for Essex to do, to preserve its water supply. I worked on the subcommittee and spent more than a year, I think, trying to make sure that this was drafted properly, and it was both fair and restrictive, so that we wouldn't have any potential damaging of our water resources in Essex. Mr. Matheson made a good point. He said that item 4, page 3, there is a typo. In the word processing we left out a word - it was in one of the drafts - 'commercial or industrial uses which discharge waste water on site' should read '...which discharge process waste water on site.' It is not designed to eliminate all septic systems of commercial and industrial because later on it allows them under certain conditions."

George Bragdon - "On page 3, number 12, says, "residential development which renders impervious more than 15% of a building lot" - in this Town I have a little problem with commercial development which exceeds 15% of a lot. There is one developer, I won't mention his name, who, when in doubt, hot tops everything. It would appear that we should add residential and

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commercial development."

Story - "You feel it should be residential and/or commercial development." Upon review of the by-law it was found that this was addressed on Page 4, Number 7.

Matheson - "Page 3, Number 3, I don't get the end of it. Does it mean any business cannot put in a septic system. Is it worded wrong? The way I read it all septic systems, period. Does that mean you cannot put any business in this water district at all, only if you are going to put in a bathroom for your employees' use. That's the way I read this. Oh, so I do understand this correctly - you don't want any business at all to have a septic system?"

Story - "We aren't saying that. There seems to be some ambiguity in the interpretation of number 3."

Matheson - "If you somehow say as long as it is not more adverse than a residential use then it is allowed. That would be a little more lenient and it would be a clearer definition."

Ginn - "I think number 3 should be eliminated. Number 4 would take care of the commercial/industrial usage."

Maria Burnham, Southern Avenue - "I think the intent of that, and I think Michael has a good point, was that we do not want them dumping stuff on the ground. If you don't say that then I think you need to put it in there."

Story - "I think it is ambiguous the way it is worded."

Maria Burnham - "Yes, and the whole purpose of this hearing is to try and clear up points that people may feel unclear about."

A discussion followed as to how number 3 should be worded.

Hall - "I have a question on the prohibitive uses. I don't know whether junk yards is encompassing enough to include transfer stations or other facilities. I would like to see something that says transfer stations or other facilities which handle discarded household waste, unless you feel we have it covered in another area."

Story - "The definition for junk yards is contained in the by-laws as they presently exist."

Hall - "I know, but I have a problem with the by-laws as they presently exist. I'm suggesting there should be some reference to transfer stations or other facilities which handle discarded household waste. It could become number 16."

John Guerin, Belcher Street - "This is another by-law zoning amendment we would like to put into effect, but it doesn't have any teeth though, because there is no penalty if someone violates something like this. I think there should be a discussion whether there should be a penalty imposed for violation of this type of thing. I've worked for a company in the past that did this kind of thing. This is a very minor type of change for the Town of Essex. I've seen some communities go up to four acre zoning in certain areas. That's been upheld in Massachusetts. Increasing from 30,000 square feet to 40,000 square feet is a minor thing. Perhaps after this gets through you can narrow down the area a little but closer to the lake that will even require larger lot zoning in certain cases. I feel this is a good start."

March 6, 1991

Story - "Are you suggesting we append some penalties to this?"

It was noted that there are penalties in the existing Town by-laws, so it was felt this point was covered.

Madsen - "This is a zoning regulation enforced by the Building Inspector. Fines are already defined for zoning by-laws violations and already set forth in our by-law book."

Betsy Fawcett - "Wetlands zoning as well?"

Madsen - "I'm not sure about wetlands zoning. All I'm saying is this particular by-law is being written to be placed within the section Town of Essex Zoning."

Betsy Fawcett - "Wetlands Zoning is too, and I don't think the Building Inspector has any ----- to do that."

Frederick Fawcett - "Technically, you haven't any zoning except for wetland zoning and HUD zoning, so if this is going to go in with your regulations, fine, but if you are actually proposing it as a by-law, I think you want to do something about making it stand on its own, because it is going to have to stand on its own. You cannot reference your regulations. I think this is a good point that at least the Planning Board has the power to adopt such regulations as necessary to enforce this by-law."

Canan Hewson, Redgate Road - "Page 2 - I feel all those areas as being very populated and I don't see any maintenance program for all the existing septic systems. If this is going to be effective some kind of plan should be added and a check up on what's already existing."

Story - "I think what you are suggesting is already within the preview of the Board of Health and doesn't need to be addressed by us. That's a separate issue and responsibly is theirs no matter what we do. In fact, much of what we do has to be with the agreement and approval of the Board of Health which is there anyway. If you are talking about septic systems that are already in existence around the lake, that is their responsibility and not the responsibility of the Planning Board."

Canan Hewson - "I just feel it would make more sense if you had something like that."

Story - "We would be infringing upon their territory. Their responsibilities are already carefully defined in the by-laws and for us to come along and pre-empt some of their responsibilities would be wholly improper on our part."

Matheson - "I would just like to recommend the addition of a word on Page 3, Section 8, either before the word 'treatment', add the word 'commercial', or after the word 'materials', add 'commercially'. If we don't put something in to the fact that it is commercial, someone may take us to court. I think commercial should be put in there so it is defined as business and not residential."

Story - "If I may say so, I disagree with that because, I think, that embraces anything."

David Lane - "I think under the definition of Hazardous Material (Page 5) it is covered."

There was a discussion on the enforcement of the wetlands by-law, and whether that was the jurisdiction of the Building Inspector.

Maria Burnham - "I don't see any problem with putting in an enabling clause."

March 6, 1991

Story - "For the record I would say Town Counsel has reviewed this and made no comments other than the hope that we proceed properly. He made no reference to what is in the by-law."

Bill Holton, Maple Street - "I would like to commend the Planning Board and those who helped in this. It is something we have needed for a long time. I don't have to tell you how difficult it is to get this through a two-thirds vote at Town meeting. The only recommendation I can make is to try and educate the people as much as you can before you go to town meeting."

Story - "We made overtures to members of the Chamber of Commerce when we began this and they indicated at that time that they would view favorably a by-law of this kind, so we have in a sense approached what might have been strong opposition to begin with."

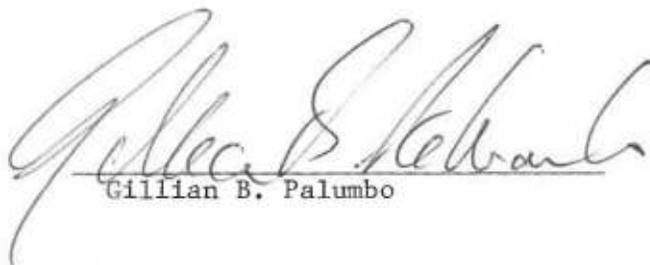
Madsen then wanted to know the consensus of the people at this hearing as to whether it should go to town meeting. The sense of the meeting was that it was favorably received.

Ginn moved to close the public hearing; seconded by Dunn, with the Board voting unanimously in favor. The hearing closed at 9:40 p.m.

Hall moved to adjourn the meeting; seconded by Ginn, with the Board voting unanimously in favor.

Meeting adjourned at 9:45 p.m.

Respectfully submitted by:



Gillian B. Palumbo

Essex Planning Board

February 20, 1991

A G E N D A

- 7:50 p.m. ... Evan Fairbanks - submittal of Form A,
Lufkin Point Road
- 8:00 p.m. ... Clay Morin - submittal of preliminary
plan for Soginese Creek
- 8:30 p.m. ... Myles Rigney - building permit
application - property at Gregory
Island

Essex Planning Board

February 20, 1991

Present : Dana Story, Chairman; George Bragdon; Frances Dunn;
Joseph Ginn; Mark Hall.

Meeting called to order at 7:50 p.m.

Evan Fairbanks submitted a Form A for an exchange of land between him and his abutter, Martin A. and Joanne P. Laschi. Parcel 'A', as shown on the plan, is owned by Phyllis R. Fairbanks and is now being transferred to the Laschis. Parcel 'B' is owned by the Laschis and is being transferred to the Fairbanks'. The Laschis land area will remain the same, 63,300 square feet, since Parcel 'B' has the same area as parcel 'A'. The transfer of Parcel 'B' to Fairbanks will increase their lot size to 44,962 square feet from the existing 38,620 square feet. The property is located on Lufkin Point Road.

Hall moved to approve the Form A, plan of land of Martin A. and Joanne P. Laschi and Phyllis R. Fairbanks, approval under the subdivision control law not required, subject to adding the locus and making note of the abutters on the opposite side of the road. The motion was seconded by Dunn, with the Board voting unanimously in favor.

Myles Rigney, Lake Shore Drive, met with the Board to submit a building permit application. No finding was made at this time.

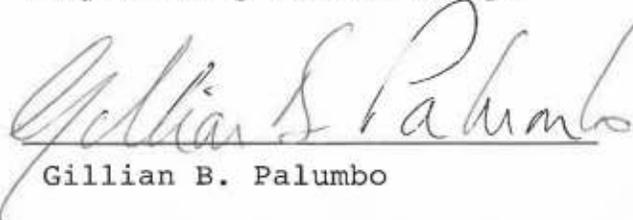
There was a discussion on the application of the Bulkie Restaurant at the South Village Center for a liquor license.

Ginn moved to write a letter to the Selectmen stating that the Planning Board is not in favor of a liquor license being granted for the proposed expanded use of The Bulkie to a full service restaurant, finding it to be more detrimental to the neighborhood than the present existing use. The motion was seconded by Hall, with Dunn, Ginn, Hall and Story voting in favor; Bragdon opposed.

Dunn moved to adjourn the meeting; seconded by Bragdon, with the Board voting unanimously in favor.

Meeting adjourned at 10:00 p.m.

Respectfully submitted by:



Gillian B. Palumbo

A G E N D A

- 8:00 p.m. ... Donald Rust - property on Main Street
- 8:15 p.m. ... Donald Metcalfe - review of building permit application
- 8:30 p.m. ... Evan Fairbanks - submittal of Form A for property at Lufkin Point
- 9:00 p.m. ... Myles Rigney - review of building permit application for property at Gregory Island

Business:

Set public hearing date for overlay watershed by-law

Sign bills payable voucher

Essex Planning Board

February 6, 1991

Present : Dana Story, Chairman; George Bragdon; Joseph Ginn; Rolf Madsen.

Meeting called to order at 3:00 p.m.

Note: Minutes of meeting taken by Clerk George Bragdon.

Reviewed plan submitted by Donald Metcalfe for three houses on under three acres. The proposed lot was under the allowed size and the plans were denied (6-5.5). Frontage is also under 150 feet. Motion was made to deny by Madsen, Bragdon voted present.

8:25. Evan Fairbank plan, under Form A. Area appearing in square feet is not shown in detail. No locus is pictured. No abutter is shown on the opposite side of the road. Withdraw Form A and requested time at next meeting.

Peter Van Wyck - public hearing - March 6, 1991, at 8:00 p.m. on Low Land Farms. Must be posted.

Hearing on draft of Water Resource Protection Zoning Amendment to be held on March 6, 1991 after Peter Van Wyck hearing at 9:00 p.m. Seconded and voted. Forward copy through chairman to Town Counsel for comments prior to public meeting.

Madsen moved to adjourn, seconded by Ginn, with the Board voting unanimously in favor.

Respectfully submitted by

George W. Bragdon
Clerk

Essex Planning Board

January 16, 1991

A G E N D A

- 8:00 p.m. ... Discussion of the overlay watershed
district by-law
- 8:45 p.m. ... Donald Rust/Neal Dagle - property at
154 Main Street

Essex Planning Board

January 16, 1991

Present : Dana Story, Chairman; Frances Dunn; Mark Hall; John Knowles; (left 8:15)
Joseph Ginn (arrived 8:30)

Meeting called to order at 7:55 p.m.

Story told the Board that the draft of the watershed protection by-law was not quite ready to be presented. He said, "It has been my expectation that the by-law would be ready to present to you. It is with Phil Herr at the moment for a second review. The group did not like what Herr had originally done and sent it back with changes. We want the by-law to be in simple laymen's terms. The reason for taking out some of the things Herr had put in was purely political. As soon as I get it I will bring it around to all Board members for their review."

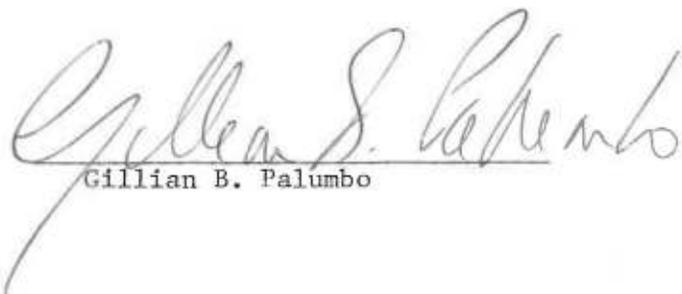
Donald Rust met with the Board for a discussion on his property at 154 Main Street. The Board told Rust they still were not clear as to what was required of them and told Rust to have his attorney write to the Board stating exactly what he wants.

The Minutes of January 2, 1991, were read. Ginn moved to accept the Minutes of January 2, 1991, as read. The motion was seconded by Dunn, with the Board voting unanimously in favor.

Ginn moved to adjourn the meeting; seconded by Dunn, with the Board voting unanimously in favor.

Meeting adjourned at 9:00 p.m.

Respectfully submitted by:



Gillian B. Palumbo

Essex Planning Board

January 2, 1991

A G E N D A

- 7:45 p.m. ... Public Hearing for change in subdivision regulations
- 8:00 p.m. ... Peter Van Wyck - submittal of subdivision plan
- 8:30 p.m. ... Charles Mulcahey - property on Grove Street
- 8:45 p.m. ... Neil Dagle - acceptance of easement for Don Rust/Gallant property

Business:

Sign bill payable voucher

Essex Planning Board

January 2, 1991

Present : Dana Story, Chairman; George Bragdon; Frances Dunn; Joseph Ginn;
Mark Hall; John Knowles; Rolf Madsen (3:30 p.m.)

Meeting called to order at 7:45 p.m.

A public hearing was held at 7:45 p.m. to consider a change to Regulation 6.01 - Application Procedure, of the Rules and Regulations relative to subdivision control, the change to read "the Planning Board may require an engineering review of the definitive plan be performed by an engineering firm designated by the Planning Board with the expense of professional services to be borne by the applicant.

Story - "We are requiring what the Charlottee Partnership did voluntarily and this will be added to subdivision regulation 6.01.

Hall - "I originally pushed for this and never took it one step further to adopt it."

Hall moved to adopt as part of the Rules and Regulations relative to Subdivision Control, Town of Essex, that the Planning Board may require an engineering review of a definitive plan be performed by an engineering firm designated by the Planning Board with the expense of the professional services to be borne by the applicant. The motion was seconded by Ginn.

Peter Van Wyck - "It seems very timely as I am about to submit a plan. It is expensive enough with the fees, although I think it is a good idea. There should be some consideration to getting something for this money. My taxes are around \$20,000, and although I don't mind paying taxes there is a limit to what goes to the Town. I do think it is a good thing, but I do think that the money from filing fees should be taken for these services."

Story - Whether professional services are needed depends on the plan. The fees of the Town are very modest compared to other towns. If someone comes before us with a plan, it is obviously for something for themselves, so why should it not be borne by that person."

Van Wyck - "I have an argument with the \$100 fee. I find it is a heavy fee and what do I get in return? I am being taxed a heavy amount. It is important that a plan should meet the aesthetic (ascetic) rules of the Town, but the filing fee should be part of it."

Dunn - I feel that if you buy property it is an investment and you are taxed on it. I think this is a good thing, but if you want to use the land for other things such as farming, then there are alternatives such as Chapter 61A."

Bragdon - "I have my problems with the original intent, especially for small subdivisions. Each case varies."

The vote was then taken on the motion - in favor, Bragdon, Dunn, Ginn, Hall, Knowles, and Story. Madsen was not present for the vote.

The public hearing closed at 8:00 p.m.

January 2, 1991

Peter Van Wyck, together with Robert Klopotoski, met with the Board to submit a definitive subdivision plan for Low Land Farms. A check was received in the amount of \$1,700.00 for a filing fee.

Hall moved to submit the plans of Peter Van Wyck to our review engineer and give him a thirty-day deadline in which to make comments on the plan submitted. The motion was seconded by Madsen, with the Board voting unanimously in favor.

Charles Mulcahey met with the Board to ask them to consider the final lot on the Indian Rock subdivision. Mulcahey had been before the Board on this matter at another time, and was told then it was a Board of Appeals issue. The Board reiterated that he would have to go to the Board of Appeals.

Mark Hall, 9 Western Avenue, submitted a building permit application for construction of an addition for a garage and family room.

Ginn moved to approve the building permit application of Mark Hall, 9 Western Avenue, for construction of an addition, pending approval of the Board of Health, finding that under By-law 6-4.2, the proposed alteration is not substantially more detrimental than the existing nonconforming use to the neighborhood. The motion was seconded by Dunn, with Bragdon, Dunn, Ginn, Knowles, Madsen and Story voting in favor; Hall did not vote on this matter.

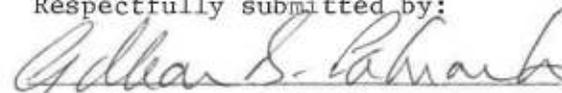
Donald Rust met with the Board to discuss an easement on his property at 154 Main Street. Rust said, "Thirty years ago an addition was placed on the property and it has been found that part of the addition was on the boundary line of Gallant's property. The property has been sold three times and this was never picked up until now, with the property being sold to Neal Dagle. Gallant owns the land on which a part of the addition stands and is now granting us an easement so that the house is on this property legally." The Board felt that as this was not a conveyance of land they could not act on this. They felt it was a legal issue and had nothing to do with the Board. Rust asked if a letter could be sent to him from the Planning Board stating this.

Hall moved that a letter be sent to Donald Rust stating the Board had reviewed the easement and felt they could not consider this matter as they believed it was not under their jurisdiction. The motion was seconded by Ginn with the Board voting unanimously in favor.

Brook Pasture subdivision, Martin Street. - It was brought to the Board's attention that a house that was approved by them has now become two houses joined by a breezeway.

Madsen moved to adjourn the meeting; seconded by Knowles, with the Board voting unanimously in favor. Meeting adjourned at 9:40 p.m.

Respectfully submitted by:


Gillian B. Palumbo

Essex Planning Board

December 5, 1990

A G E N D A

- 8:00 p.m. ... Peter Van Wyck - resolution of the issue of the
length of the road of the new subdivision
- 8:30 p.m. ... Sharon Means, Belcher Street - Form A
- 8:45 p.m. ... Ron Ober, Pine Ridge Subdivision
- 9:00 p.m. ... Zoning Committee

Essex Planning Board

December 16, 1992

AGENDA

Appointments:

- 8:00 p.m. Public hearing, John and Priscilla Coughlin/PMC Realty Trust,
239 Western Avenue
- 8:30 p.m. Attorney James Kroesser, Pine Ridge Subdivision sprinkler
systems
- 8:45 p.m. Jamie Richardson, Form A subdivision, Island Road,
Property of Lucy Richardson
- 8:45 p.m. Diane Stockton, Essex Shipbuilding Museum, affiliated study with
Boston University
- 9:15 p.m. Ronald and Robin Pydnykowski, Forest Avenue, Home occupation
business
- 9:30 p.m. Attorney Charles Clark for Peter Van Wyck, Low Land Farm

**Essex Planning Board
December 16, 1992**

PRESENT: Rolf Madsen; Chairman, Joe Ginn, Sheldon Pennoyer, George Bragdon, Mark Hall

Building Inspector Dick Carter meet with the Board to submit the following building permits:

Peter Perrigo, 71 Wood Drive. He is not increasing the foot print, includes 7' x 12' section for a sewing and extended dormer on the back. He has a half dormer now. The Board of Health is all set on that.

Bragdon moved to approve the building permit application of Peter Perrigo, 71 Wood Drive, for an addition finding under the Essex bylaw 6-4.2 that the proposed extension or alteration was not substantially more detrimental than the existing nonconforming use to the neighborhood, within the existing foundation. The motion was seconded by Pennoyer, with the Board voting unanimously in favor.

Madith Henderson, 34 Water Street, location 103 Main Street, Texaco Gas Station, change of use from a gas station to a tackle shop, Fin & Feather Bait and Tackle store, to replace overhead doors with 5'x 8' picture windows, and replace the floors.

Statler W. Gilfillen, Architect, A.I.A., 37 Apple Street, for home occupation, architectural office, to 2'x3' sign, 4.7 sq. ft., mount sign on the pole. He is renting an office. He is present. He doesn't employ anybody and he has plenty of parking up there.

Pennoyer moved to approve the home occupation for Statler Gilfillen, on 37 Apple Street, as home occupation as an architectural office. The motion was seconded by Hall, with the Board voting unanimously.

David Pereen, and Lorna Conneen, 4 Pine Ridge Road, Map 5, Lot #7, Lot size 1.222 acres, construction of a new single family home, 32'x38', building height 30'.

Pennoyer moved to approve the building permit application of David Pereen and Lorna Conneen, 4 Pine Ridge Road, for a new single family home as shown on the drawings dated November 19, 1992. The motion was seconded by Hall, with the Board voting unanimously in favor.

John Coughlin/PMC Realty Trust meet with the Board per scheduled Public Hearing for a Special Permit regarding paved parking lot and 35'x100' building at 239 Western Avenue.

The following discussion took place:

MADSEN: I would like to call the Public Hearing to order for John Coughlin, PMC Realty Trust, to construct a paved parking area and 35'x100' building in the water protection resource district.

COUGHLIN: In essence to get everybody updated to where we are, there is a locus here that's not to clear on it, but it's up to Quinn Brothers property on Western Avenue. It's basically the land directly behind Misty Acres. The area in question is right here. That is the area that C.T. Male has defined on their plan, which coincides with that sketch that was filed with the special permit application. That's issue number one, the paving of that area. Issue number two, is to

construct off of this paving a 35'x100' building. We have approximately 5 acres. What happened was the Misty Acres site was purchased. It went all the way to the back. Misty Acres was spun back off of that and sold as a separate deal and the land that we're looking at right here, is the rear of Misty Acres. That approximate two acres was added to it. And that was done through the Planning Board back about a year/year and a half ago.

HALL: So you have seven and a half acres now?

COUGHLIN: Yes, approximately.

GINN: What are you going to do with the catch basin?

COUGHLIN: The catch basin is going to have to be relocated. And I imagine that's going to be a conservation issue.

GINN: Will that be brought out?

COUGHLIN: Yeah, that would have to be brought out and then we'd have to go underneath that.

PENNOYER: What's the use for the building proposed?

COUGHLIN: The only use for the building is going to be storage of our vehicles. The vehicles are presently parked in a fenced area. It's just going to be a garage to take them out of the outside and put them inside.

GINN: Are you going to have any floor drains in the proposed building?

COUGHLIN: Nothing.

GINN: I think that's helping the overall area. If you park out here now you're going to have some drippings. But, if you were in a building all that would be self-contained.

HALL: Are you going to work on them inside?

COUGHLIN: No, this is just going to be an unheated building to store the vehicles.

HALL: No, petroleum storage, or anything like that.

COUGHLIN: No, that's all over the other end of the building.

PENNOYER: Given the sensitivity of the area, what would be the procedure if this building that's 35'x100', had multiply uses for storage. What is the procedure if it suddenly became a storage building instead of a building which houses some vehicles?

MADSEN: Well, actually during the special permit process we can limit the use of the proposed building.

HALL: If you are to take your overall acreage, and I know you already passed the threshold of 2500, so let's look at the next threshold. What's your coverage? Do you have any idea?

COUGHLIN: Yeah, Dick and I did this. We went through the thing. With the added acreage we're well within the guidelines. When I brought this before Dick Carter, we looked at the setback. We didn't address any conservation issues, but we went over the lot coverages, and we're well within the guidelines. To give you the exact, I don't know off the top of my head.

GINN: Would that have to go before the conservation commission?

COUGHLIN: I'm going to go anyway, whether it has to or not. I feel right now we've already flagged it and we're out of the buffer zone. So, I thought my order of sequence on the building would be to come before this Board for a special permit. If, indeed, we prevailed here, we would go before the conservation, show them the building, show them the layout. The wetlands have been flagged. We are not in the resource area. But just make sure they don't have any problems with it because as you brought up this drain here does go into their wetlands. Once we get a clean bill of health with them, we'll get an architect to draw up the building and go to Dick Carter. That's my plan.

MADSEN: Before you pave this area where did the runoff of the water go?

COUGHLIN: Just where it's going now.

MADSEN: There is no change?

COUGHLIN: No change whatsoever. This is an actual swell drain that exists. We went before conservation on this issue and they felt that it came into their domain because I was increasing the runoff to the wetlands. That's where the catch basin and trap came in, which we put in.

HALL: Well, I guess that's the whole issue. The additional runoff is really what we're concerned with.

MADSEN: Use of the building because it's included in the special permit process, and also what's happening with the runoff.

HALL: So if you do a calculation of the additional impervious space you'd have to basically compensate that with a recharged system, as though you haven't added that impervious space.

MADSEN: That's right.

HALL: So you have to some how design your system to show that the water area runoff has been recharged to compensate for the additional impervious area. So there has to be a system design for that.

GINN: I think what is happening you are taking a concentrated amount of water, instead of having it go into the loom and the field that is there, it is now being directed to a single point discharge which is then discharging to the ground. It appears it's like a French swale drain.

COUGHLIN: I think that's what we attempted to do. I was more concerned this was a conservation issue more than a Planning Board issue. But that was the intend of what C.T. Male designed here. First off the catch basin went in with the trap to pick up anything before it went in there. The drain went in. All this area that was the existing drain was filled with rock, which was done per these plans. It was just like having a catch basin porous on the bottom.

PENNOYER: Was that designed based on a non-paved parking area?

COUGHLIN: No, it was based on a paved parking area. Even the building now is out of the resource area. So what basically happened was, it was a conservation issue and it wasn't a conservation issue. The catch basin and all this work was done prior to the paving. So when we went before the conservation commission we had satisfied their requirements by doing it first. If I had paved and then didn't do it, I had a conservation issue because of the way the water was charging.

HALL: I have no problem with this. All I want is to be assured that, you know, come twenty years from now that area which recharges our water supply is going to continued to be recharged properly. That's all I'm concerned with. If an engineer can certify that to me, no problem.

COUGHLIN: I have the same concerns, but I don't think I have the expertise to say it can or cannot happen. But I certainly know we can get C.T. Male involved in it.

HALL: I think that's the simple way.

MADSEN: My suggestion to you would be that we need certification that the system put in place here will compensate for the additional recharge needed that was taken away from the proposed impervious surface.

HALL: From the building, paving, or whatever has taken place.

MADSEN: We need that from you.

COUGHLIN: Give me exactly what you want?

GINN: Runoff calculations from the paved parking area, proposed building as discharged to the ground subsurface. And how those calcs will make sure there is the recharging of the area that has become impervious.

MADSEN: Any other comment?

FRYE: As I understand it, Mr. Coughlin didn't go before conservation. He was called before conservation and the Board felt the parking lot was not in the wetlands or the buffer zone. So that is okay. But, that when paved perhaps there would be a question of gas. This work was done in the wetlands before he had permission.

GINN: You just said that that wasn't wetlands, though.

FRYE: As I understand it, it goes from buffer to wetlands. It runs into the wetlands. Now, Mr. Coughlin, and you can check the minutes of the conservation meetings, that he was not planning any hottop in the near future. And according to Ms. Hewson within a few weeks the area was hottopped. He had not gone back to the Board for this. And my point is, he shouldn't have been working in that ditch in the first place. And now you say, "Well, I didn't know what I was doing." You told them you wouldn't hottop it without going to the Board, but you didn't." And that's my understanding.

COUGHLIN: The first thing I would say to you is that if indeed I did something I wasn't suppose to do, don't you think the conservation board would have been out there to stop me from doing it.

FRYE: When they found out about it they called you before them to explain.

COUGHLIN: Let me just clear the air. Before I started this, granted I didn't arbitrarily go out that and start hottopping this. I went all over this with Dick Carter. Conservation Commission did not call me in for doing anything wrong. I called the Conservation Commission. I called Ms. Hewson and told her what I was proposing to do. Would you come and meet with me and look at it.

FRYE: That was after the ditch was done.

COUGHLIN: The ditch was always there. I didn't touch the ditch.

FRYE: No, but the work in it. The cleaning it ----

COUGHLIN: The ditch was never touched. The drainage ditch was never touched until this plan was submitted to Conservation. That's issue number one. We were out of conservation and we still are with all of this work out of their area. We are well past the one hundred foot area. I called her down to look at it. She said I would appreciate the fact that you would come to our Board and explain to them what you plan to do, which I did. I showed her the flagged wetlands. I had Larry Graham from C.T. Male at the meeting on a Friday afternoon. I had C.T. Male draw out this plan. I went before the Board and explained the whole situation to the Board. And they're sitting there saying well, what do we do. It's nothing that our Board has any jurisdiction on. We came to the fact that, if I was going to pave this, I would increase the runoff into the resource area. So if I was going to do that then I should submit a plan to them on how I would handle the water. I had C.T. Male draw up the plan with the catch basin, which has an MDC trap in it to grab the oil and water, separate with the storm drain. If that's done prior to the paving you don't have to file a notice of intent. You've taken care of any drainage that you're putting into the resource area. If you do that before you pave, that's all you have to do. I went ahead and did that work per plan and I did pave. Now, what you're saying is I arbitrarily went and did all this stuff. They would have shut me down.

MADSEN: We're losing sight of what we're doing. We are in a public hearing for a special permit for paving, which has been done prior to the public hearing, and we're doing this process because it was a new bylaw since the work was done. What we're discussing right now is how this application effects the water resources. I don't want to talk about anything else. I think that as Board members, and what I would like to do is that I think Mr. Coughlin needs to get some engineering documentation for us to act on this. Also, as a Board I think since there is 35'x100' building in the water resource district we should take a look at that. And he has already made his presentation what his intended use of that building is, if we do grant him a special permit, how we would word that. And unless someone else has any other comments, I would like to take a motion to continue this public hearing.

HALL: I move that we continue the public hearing until January 6, 1993, at 8:00 p.m.

MADSEN: Patty, I would suggest also that based upon Mrs. Frye's comments that we get conservation commission minutes.

GINN: Are we in discussion on this?

MADSEN: We have a motion without a second. We are in discussion. We are going to continue this public hearing.

GINN: I'd like to add one thing, that John could also bring us some information on his proposed use of the building. You're going to have discharge of water from the building. The calculations on the runoff of that. And the proposed uses of the building.

MADSEN: Is there a second to the motion?

PENNOYER: Yes, I'll second it.

Hall moved to continue the Public Hearing until January 6, 1993, at 8:00 p.m. Pennoyer seconded the motion, with the Board voting unanimously in favor.

Attorney Jim Kroesser, met with the Board to discuss release from sprinkler systems for Pine Ridge subdivision. Also present were lot owners, David Preen, Joseph DeSilva, and Patricia Pierro.

The following discussion took place:

GINN: My initial suggestion was that each lot donate a fire hydrant. What you're doing then is putting the responsibility on the town. Let the town supply the pipe. You know, that's not a real big thing. Fire hydrants, yeah. They're a little bit more involved.

HALL: So what's a fire hydrant cost?

GINN: My suggestion was that each lot donate a fire hydrant to the town. Then the DWP is responsible for each year putting a fire hydrant somewhere, and that means extending a line. If you gave them a part of the materials to do some work. Like Rockport every year does something to their water systems. Some of them quite involved.

HALL: But how can we assure that these residents are going to get their water to them.

GINN: We can't. I think that the DPW would probably put the water in the easiest areas. I don't think it's necessarily going to be put in on Pond Street unless we mandate that the DPW do just that.

MADSEN: And we can't mandate it.

GINN: Well, suggest very strongly, not mandate.

MADSEN: My feeling would be if you donate the pipe and water hydrant, there is really no reason for them not to take it down the street.

HALL: It's not as though they don't have coverage. Because you have the pumper goes up there and pumps into there and covers them. So, we as a Board should only care of the intent, which is what you're saying. So, if the intent is that let's just have the fire hydrant donated and it's the will of the DPW to put them in. Because the people up there are still going to be protected one way or the other. So if they put the water in or not, I know what you're trying to do but you're not going to be able to do it.

GINN: I don't think you're going to see the DPW themselves bring water down Pond Street.

HALL: I don't think so either.

GINN: I think that's a little bit beyond them to go underneath the brook there. I think that's a little bit more involved than what they can handle realistically. But, I don't care if they work backwards from that development and go toward the brook and toward the Home Center. If they wanted to do it that way. I don't care. But I think if you gave the town a fire hydrant and strongly suggest that every year the DPW install a fire hydrant somewhere in town, and that means going down John Wise Ave., that means going down Pond Street, that means going down Southern Ave., whatever that end is. Let them do that.

MADSEN: A hydrant is?

GINN: If I bid a job I carry fifteen hundred dollars to purchase the hydrant, the valves, the stem boxes that come off the valve, and so on. A bare hydrant itself, my guess is about seven fifty/eight fifty for a bare hydrant. And that's not a whole lot of money.

MADSEN: Are you suggesting they should buy a bare hydrant?

GINN: If you can get more I think it's great. I would like to use in my own mind a thousand dollar figure, and whatever that would buy to town specs. And I don't want anyone to incur any more costs up there, but I think spending a thousand dollars to benefit the town and as a whole, versus a four to seven thousand dollar outlay for a sprinkler system. You know, that's a pretty good trade off. And the unfortunate thing is that the developer put the carrot in front of the Board's nose here to chew on, and that was all part of dropping the lawsuit and putting all to bed, and now he's walked away.

MADSEN: We've heard enough. What do you guys think?

PEREEN: I think it's slightly unfair, for the simple reason that more houses have been built far beyond this new development and they haven't been required to install sprinkler systems.

GINN: No subdivisions have.

PEREEN: But if I had come along and bought the whole place, and put one house in there I wouldn't have been required to put a sprinkler systems in. All eight houses aren't going to burn down at the same time.

GINN: You're looking at one house lot going in and that's fine. You can do that. The Planning Board has a certain amount of responsibility to public safety in an approved subdivision. And that's what that was. And the public safety issue was it was not safe without a hydrant or water. Now, there has been other subdivisions in town that were required to put water in.

HALL: And that cost would have been conveyed on to you one way or the other. You would have seen it either in the cost of the purchase of the lot, instead you're seeing it in the cost of the purchase of the construction of the sprinkler system in your house, which when you bought the house there was a covenant; correct. That you're lawyer said are you familiar that you had to have a sprinkler in. And you said, yes, we do. And you factored that into the cost of the construction of the house at the time you purchased.

KROESSER: I'm not going to argue the case all over again. I've done it seven times in a row now. You had no legal authority to require a developer to make off site improvements as a condition of getting a subdivision approved. It's a hundred thousand and something, to run that water line

down Pond Street. If it's a trade-off for the sake of getting out of what would have been two years of litigation, it was a mistake on Ober's part we admitted it. I think it was a mistake on the Board's part to take the sprinkler systems as a trade-off instead of putting town water out there.

HALL: It was an agreed trade-off. At that time the deal was done.

KROESSER: It was strictly in lieu of putting town water down Pond Street. And that's illegal.

MADSEN: Do you want to do this all over again tonight.

KROESSER: I'll make a suggestion. And I can't speak for any of those homeowners up there. If you want to vote to release the covenant upon payment of a certain price by each of those lot owners. And if they want to pay it they'll get together and pay it, and if they don't, it won't get released. You can hold the release until you have the money. You can do it anyway you want.

DESILVA: We have water in the Summer. Is it just the Winter we're concerned with?

GINN: You don't have adequate water supply in the Summer to fight a hydrant. You have a two inch Summer water service. The pipe that's sits on top of the ground along Pond Street. That's not adequate to provide water to a fire hydrant. There is water up there. Supposedly the line itself is full of water. So if a fire were to happen, Summer or Winter, what happens is the fire department can hook onto the fire hydrant down near the Home Center. Run a line and a pumper, or whatever they do, and tie it into the proposed fire hydrant that is not yet installed at the bottom of the subdivision road, and that line goes up through, you know, that all the lots are on will have water pressure to fight fires, Summer or Winter.

MADSEN: What's the Board want to do? Do you want an amount? Do you want to put a hydrant donated from Pine Ridge?

HALL: I think we should just put an amount, like Joe said.

PEREEN: Say I'm willing to pay my amount, but my neighbor isn't. Can it be worded that I'm released and the person that doesn't pay isn't?

GINN: I feel that each lot should agree to the same amount.

PENNOYER: So it's all or nothing?

KROESSER: Some of them maybe just can't afford it. There is only three people with enough interest to even show up to talk about here.

MADSEN: Let's do something with this. Can I have a motion, please.

GINN: I'd like to make a motion that the lots of the Pine Ridge subdivision be required to, or the Planning Board will release the covenant on the lots requiring a sprinkler system be installed in all new house construction be released in return for one thousand dollar -- purchase of material. I really want to see that the materials are purchased and given to the town.

KROESSER: If you're given a check for "x" amount of dollars made out to the treasurer of the Town of Essex, that ought to get them a release signed; shouldn't it?

GINN: One thousand dollars per lot to be used for the purchase of water line and fire hydrants and valves to be donated to the DPW.

HALL: I'll second that motion.

GINN: This has to be given to the town before a full occupancy permit will be granted for each lot.

Ginn moved that the Planning Board will release the covenant on the Pine Ridge subdivision lots requiring a sprinkler system be installed in all new house construction in return of one thousand dollars in kind contribution per lot to be used for purchase of water line and fire hydrants and valves to be donated to the DPW. This has to be given to the town before a full occupancy permit will be granted for each lot. Hall seconded the motion, with the board voting unanimously.

Jamie Richardson met with the Board to present a Form A for Lucy Richardson, Island Road to divide 59 acres into two lots.

The following discussions took place:

PENNOYER: Being on the ConCom and the open space committee, they looked at this thing, just so the Planning Board knows both Board's are very much in favor of the restrictions being put on, which is tied into this Form A. So, I should say that they are in favor of the Form A as well. And I've looked at it and it seems to meet all of the intent of the Form A subdivision.

GINN: I looked at this as well.

PENNOYER: He is dealing with a time restriction.

PENNOYER: I make a motion to approve the Form A subdivision for Lucy W. H. Richardson on Island Road for the division of the parcel of land into two lots. Lot one being 1.76 acres and lot two being 57.34 acres.

HALL: I second that motion.

Pennoyer moved to approve the Form A subdivision for Lucy W. H. Richardson on Island Road for the division of the parcel of land into two lots. Lot 1 being 1.76 acres and Lot 2 being 57.34 acres. Hall seconded the motion, with the Board voting unanimously.

Diana Stockton, Essex Shipbuilding Museum, met with the Board to discuss the Town of Essex participating in a study affiliated with Boston University for a Planning and Survey Grant.

The following discussion took place:

STOCKTON: Some time in the Summer a professor at Boston University asked us if we would be interested in participating in a program at BU, an American Studies program. They would like to study a town that they feel is on the threshold of significant change. I am here to ask if Essex is interested in participating in this survey. The finished document, Survey and Planning Grant, could be used as a tool in helping the town with planning. Massachusetts Historical Society can provide two thousand five hundred, if the Planning Board can provide two thousand five hundred for the project.

PENNOYER: Aside from the money issue, I think, that with this type of tool, being on the open space committee, is something that's we've been talking about trying to get money for other studies. It is something that can be well used. And, of course, I would be concerned that it would fall into a closet somewhere and never be used as a tool.

HALL: What I would suggest since this only a letter of intent, find out if you get the commitment from the Massachusetts Historical Society then we should run around, even if you have to do a little fundraiser or something.

STOCKTON: I needed to hear that this sounds like something you can use. I don't want it falling into the closet either. That's why I'd like to see Greenbelt and the other organizations that have a vested interest in Essex get involved. So that this becomes an effective tool.

MADSEN: If we are chosen, when do we have to come up with the funds?

STOCKTON: My experience is at the end of the project.

MADSEN: So in other words, if we're chosen we have time?

STOCKTON: You have time.

HALL: I make a motion that we support Diana Stockton's endeavors to obtain some additional funding for this Massachusetts Historical Society commission. And I think a document like this would be helpful in the future. Any information that can be provided to us and future planning boards, I think, is helpful. I make a motion that we support her endeavors to pursue this money.

GINN: I'll second that motion.

Hall moved to support Diana Stockton's endeavors to pursue additional funding for the Survey and Planning Grant. Ginn seconded the motion, with the Board voting unanimously.

Robin and Ronald Pydnykowski, Forest Avenue, were requested to meet with the Board to openly discuss complaints made by neighbors regarding their home occupation business, tree and landscaping business. Marc Fagen and Charles Hillner, abutters were present.

The following discussion took place:

GINN: These folks came into the planning board a couple of meetings ago. I think that I was the active chairman. They explained that they wanted to purchase the property on Forest Street. They would like to have their business run out of there. We gave them a copy of the home occupation bylaws. We told them to read them, study them. If they could comply with those then we really would not have any problems with that. Suggestion would be to have a letter written and go around and talk to the abutters. They did that. They came back into a meeting and said that they had touched base with most of the abutters. The last meeting that we did not have a quorum, all of a sudden there was some abutters that came and said we weren't notified. We weren't aware of this. We're concerned. We don't fully understand what's going on. So it was on my suggestion that the planning board write a letter, so it is out in the open what is going to happen and what isn't going to happen.

FAGEN: My name is Marc Fagen. I live at 48 Southern Ave. And it's my understanding that it's an operation where they are going to building another exterior barn building to store some of their materials. They have two one ton dump trucks and one bucket truck.

HALL: Are you going to expand the business or add another building?

PYDNYKOWSKI: A garage for storage.

MADSEN: The diesel trucks, what size are they?

PYDNYKOWSKI: One ton dump, 350 and 450. We have a larger truck with a larger engine which is twice as quiet.

GINN: I think, from what I've seen, are no worse than any other vehicles going up and down Forest Street.

BRAGDON: Do you have a brush cutter?

PYDNYKOWSKI: Is there a concern about starting that equipment in the morning?

BRAGDON: It could be.

PYDNYKOWSKI: Because that is not started until it gets to a job?

FAGEN: Is that something that would be stored in the barn or the exterior of the barn?

PYDNYKOWSKI: In the barn.

MADSEN: Do you have a letter from all the rest of the abutters?

PYDNYKOWSKI: No, I didn't get them signed. We just went around and introduced ourselves.

MADSEN: I would suggest that you do that. The second thing I suggest to you, did you realize your trucks were going to be stored inside all the time. You're not going to be able to store things like mulch on the outside. Just so you know. Because working under a home occupation, essentially the property is suppose to be used is as if the business isn't really there at all. So any outside appearance, whether it is generated by traffic or storage of vehicles, or storage of materials, is no one knows it is going on. The idea of the home occupation bylaws is if someone wants to run financial services out of their house, they can do that without effecting the quality of the neighborhood. My feelings is that if you can do all those things it's not going to effect you at all. Otherwise, you will be in violation. So what you're going to have to demonstrate realistically for a home occupation business is that you are in compliance with all these. If you're not you won't be able to operate.

HALL: I'll take it one step further. I think all you're neighbors should be notified. I'm not going to vote on anything until such time I see a letter signed by every individual with their concern. I just want to make sure everybody is aware, that so, if in fact, we do vote for this thing, that these neighbors aren't going to come back to us. You should get a letter signed by them that their in support of your home occupation as you've described to us.

Attorney Charles Clark, representing Peter Van Wyck, met with the Board to discuss Low Land Farms.

The following discussion took place:

CLARK: I'm here to just inform you what Peter has decided to do in light of the vote of the Board because of his decision not to go with the traffic study. Basically the reason why Peter did not want to do the study because obviously the cost was high. I think, higher than any of the Board members thought. He's laid out a lot of money on this plan already. About fifty-five hundred dollars incurred so far to C.T. Male. Secondly, he had already done a traffic study by Gilbert Nelson. The earlier scope of the work was very general and once Peter made the decision to go with it, Gilbert Nelson came up with some ideas that would clarify the scope of work. And these have been shared with C.T. Male. And this morning this letter and the scope of work was faxed to Paul Connelly, who in turn told me late this afternoon that he faxed it out to New York to the people that are actually going to oversee this study. And they had no problems with the scope of work and protocol. So that's where we are. I think where we are procedurally is that the plan has been turned down and so long as Peter deals with the reason for being turned down, the project can get back on track.

MADSEN: In a sense in representing Peter, you're saying that you will do a traffic study based on this scope.

CLARK: You'll notice the scope outline is the C.T. Male scope outline. Under each of the courses is a clarification as to methodology with particulars, and clarification about, you know, how measurements are going to be taken, and that sort of thing.

HALL: You're saying C.T. Male agreed on the methodology.

MADSEN: I made four copies of this. I would like the Planning Board to review this, and at the next meeting we'll go from there. I'd like to schedule twenty minutes to a half hour at the next meeting to discuss this, just Board Members.

Hall moved that the Planning Board meeting be adjourned. Bragdon seconded, with the Board voting unanimously.

The meeting was adjourned at 10:30 p.m.

AGENDA

Appointments:

- 8:00 p.m. Public hearing, John and Priscilla Coughlin/PMC Realty Trust,
239 Western Avenue
- 8:45 p.m. Diane Stockton, Essex Shipbuilding Museum, affiliated study with
Boston University
- 9:00 p.m. Jamie Richardson, Form A subdivision, Island Road,
Property of Lucy Richardson
- 9:15 p.m. Attorney Charles Clark for Peter Van Wyck, Low Land Farm

Essex Planning Board
December 2, 1992

Present: Joe Ginn, Acting Chairman, Pat Dunn, George Bragdon

Meeting called to order at 8:00 p.m.

GINN: I would like to have it noted that the Board does not have a quorum. Three members are present and four are needed for a quorum. So, therefore, we are unable to make any decisions, and we will have to continue all appointments from this evening to our next meeting, December 16, 1992. One public hearing that we have for John Coughlin/PMC Realty Trust will not be readvertised but will be posted as a continued hearing.

Meeting was adjourned at 8:20 p.m.

Essex Planning Board

November 18, 1992

AGENDA

Appointments:

8:00 p.m. ... Peter Van Wcyk

8:15 p.m. ... Jim Kroesser, Pine Ridge Subdivision sprinkler systems

8:30 p.m. ... George Benoit, Patriot Landing Subdivision, review changes

9:00 p.m. ... William Tyler, pick up signed A&R

**Essex Planning Board
November 18, 1992**

Present: Rolf Madsen, Chairman; Sheldon Pennoyer; Joe Ginn; Pat Dunn; John Knowles. George Bragdon was absent.

Meeting called to order at 7:30 p.m.

Building Inspector Richard Carter submitted plans for David Hurd, 19 Winthrop Street, to change the preexisting roof line to a different roof line. The house is being replaced after fire damage. It would not exceed the height limitation, but he is going to exceed the two-and-a-half stories because it would be three full stories. It would not increase in bedrooms. It's on a 14,000 square foot lot.

The Board told him the bylaw clearly states two-and-a half stories, therefore he must get a variance from the Board of Appeals to change existing roof line. Carter will deny and contractor was told to go to the Board of Appeals.

Attorney Jim Kroesser, representing Ron Ober developer for the Pine Ridge subdivision, met with the Board to discuss the the sprinkler systems for that subdivision. Richard Carter, Fire Chief, was also present regarding this matter.

The following discussion took place:

MADSEN: Have you reviewed the sprinkler system plan? Do we have your letter regarding this matter?

CARTER: We're working on the letter. You will get it soon. The sprinklers are great. It is an insurance thing and up to the individual. But with the pond maintained and the hydrant out there, we feel that we could adequately supply the water pressure and the gallonage that would be needed with the new vehicle that was purchased for the Town. We have 32,500 gallons of water on the initial attack. The sprinkler systems would be strictly up to the owner until the town fully adopts 26I, or something like that. The town has never adopted that and we feel we have sufficient gallonage to meet their service requirements.

MADSEN: Did you bring a copy of the covenant that you want released?

KROESSER: Yes.

MADSEN: Can you leave a copy of that?

KROESSER: Yes. And also in supplying that hydrant to the corner Ober would meet with any DPW conditions they want to impose on that. The hydrant has always been part of the plan.

KNOWLES: Is there no practical reason not to do it?

CARTER: Again, the sprinkler systems are great for the individual, but we also feel that we can adequately take care of it. The town bought that vehicle for that specific reason, to reach the outlying communities.

MADSEN: I suggest that before we sign off and actually release this from the covenant, if the Board is inclined to take it in that direction, that the hydrant be in place and we have received the letter from Carter.

CARTER: That's the stipulation in our letter to the Board.

GINN: I don't feel very comfortable with having other subdivisions in town be required to put water mains and hydrants in to service them. Now, this particular one did not do that and had the suit against the town. Part of the way of resolving that problem was to put a sprinkler system in. And I don't know if that's the correct approach to handle a fire situation. I think the town's fire department has grown with equipment since then, and it probably can better serve that area now with the equipment that it has now. The problem that I have is to get a plan approved and through the Board. Fine, we are going to give you this and give you this and give you this. Well, now comes the time to pay the piper and the piper isn't going to get paid for some of those things. They say, well, we really don't want to do this. It's not very comfortable. You know, it's a lot of money. The town can probably take care of it, as it is now. And I think that's a backwards approach to take. And there has been other developers in town that have been required to put water through their subdivisions. Do they want to make a donation to the fire department to buy additional equipment?

CARTER: Well, Joe I think there has been other subdivisions and they had to water it, but there has been subdivisions and a lot of new homes. Take for example, Conomo Drive, up through there. Single homes. Nothing. They just go to work and put them in.

MADSEN: Actually the problem with that is that clearing a part of the planning process is that the Board isn't empowered to prevent allowing an A&R there because it is not in the process of our review.

CARTER: I mean if we had it down in the bylaws of the Town, then it would be a different story.

MADSEN: I think from a consistency point of view, for the last seven or eight years every subdivision that we've put through has had the requirement of water be brought down to it.

CARTER: But they have all been on the end of the water line. Where they haven't had to run it 1900 feet.

GINN: I think there is a gentleman right over there that brought it down Apple Street at some point in time. I mean, that was well before my time. There wasn't a water line down Apple Street to his subdivision at that time, was there?

PENNOYER: I find it very difficult to require private citizens to put sprinkler systems in their homes?

GINN: But that was one of the ways that swayed the Board to drop the suit and allow everything to move forward.

MADSEN: Carter what would you prefer?

CARTER: Naturally to keep the lines charged.

KROESSER: You can't legally require somebody to do improvements in a town owned street. You can't say to the developer for the sake of an eight lot subdivision run a water line 2400 feet and we'll approve your subdivision. I think that's what got lost in the shuffle way back when. And I wasn't there any more than you were, so I don't know for a fact. But you can't require an off-site improvement to be made at a developer's expense and when you get someone who agrees to do it, it's generally because it's cost effective for the subdivision to go along with that. If it had been cost effective here, I suspect it would have been the solution that you had. And the sprinkler solution, which was a bad one from the beginning, was a less expensive solution to a lawsuit that really shouldn't have happened in the first place.

KNOWLES: That's why I say it's tough to revisit a negotiation that happened a long time.

KROESSER: Yes, I'll agree with you. We are in a bind on that score. But I think that the arrangements that were made with the Water Department way back when, are the right arrangements and the ones that Ron has agreed to do. The only thing left is to provide that hydrant on Pond Street, and you've got the fire protection that subdivision needs. The sprinkler systems are six or eight grand a piece and I think that's the bottom line.

MADSEN: Okay. What's the Board want to do?

PENNOYER: I tend to agree with Joe. I think it sets bad precedence. As ridiculous as the issue is. If it was something to deal with open space and them coming back and saying they want to developed it now. I'd stand on a totally different position. It sets precedents for the future. Another Board doesn't care about open space and say it doesn't matter anymore.

KROESSER: If I may, I think the precedent that you don't want to set is to talk about sprinkler systems in private homes as being a solution to a town water problem. That's the precedent that shouldn't have been set here and shouldn't be set for future subdivisions. Dick is right. The solution lies in town water.

PENNOYER: Yeah, but that's just tax dollars. That's going to raise the homeowner's tax.

KROESSER: The water lines get paid for by water bills. And the simple fact of the matter is there isn't a subdivision in this Town that you can require to go off-site. There is cases all over Massachusetts about it. You cannot require a developer to go outside the limits of his property to improve town facilities for the purpose of gaining a subdivision approval. It's basic subdivision law. It couldn't have been required back then, and it can't be required today. And if that had been clear at the time we wouldn't be having this conversation tonight. You couldn't do it then and you can't do it now. And the solution, was this solution, I grant you, and it was the wrong one and you're being told that now. And all we're asking you to do ----

KNOWLES: Are you saying we can't enforce this?

KROESSER: I'm saying -- Well, I'm not certain of that. Frankly, I hope it doesn't come to that. I don't believe it's a valid condition to have imposed on a subdivision regardless of who did what. But, I understand who proposed it, and I understand, I think, what went on back then. The simple fact of the matter is, it shouldn't have been offered in the first place, because the subdivision should not have been denied for water pressure or water portability reasons, or any such thing. It's just not a proper ground for denial of a subdivision plan. It's not the property owners problem. It's not his ball to carry. It requires a financial solution that you cannot pin on the back of one developer. Because it provides benefits for property -- If there wasn't a single house between

Homan's Drive and this subdivision, and you required a developer to put a 2400 foot water line, and there was a hundred developable house lots between that point and his point. He's just paid the entire ticket for providing town water to all these homes. You can't do it. It's perfectly clear. I could cite you the cases off the top of my head. It was a bad deal at the time and it's a bad deal today. And he did everything that was asked by the water department and by your building inspector to provide the fire protection out there that would take care of those homes. The bad precedent is not lifting this condition. It is having put it in place in the first place. And we'll take half the blame for it. No question about it. It wasn't your fault any more than it was his. It was because people didn't understand what you could and couldn't require of a guy putting an eight lot subdivision in. And one thing you can't require is 2400 feet of water line at God knows how much a foot. That's really the way it comes down.

OBER: I just want to say that this issue ends for me tonight. I'm finished with it. What happens with the people that own the lots, I don't know. The only reason I'm here is because I talked with your Fire Chief, and he told me what he felt. I don't want to put words in his mouth, if I'm saying anything wrong just correct me. He felt it would be a good solution. That good solution is going to cost money. It's not going to happen without spending money. If we go the sprinkler route then what your Fire Chief has recommended probably will not be implemented due to limiting my resources. And tonight is my last night here, as far as pursuing the issue. I have no interest in pursuing it any further than tonight.

DUNN: I agree with Joe. I do believe we are setting a precedent because every subdivision we approve we go through these things and I think we go through them quite thoroughly. And I think the developer knew what he was accepting on his subdivision plans and his approval. I think that when the people bought the lots I think they knew that this was one of the conditions there. So it was either buy the lot with those conditions on it, or if you don't like the conditions then don't buy the lot.

GINN: I don't think we can act on this anyway. Either way. We don't have any information in front of us.

MADSEN: Do you have a copy of the covenant? Did you bring a release?

KROESSER: Yes.

MADSEN: Can you leave it with us?

KROESSER: Yes.

MADSEN: And we'll get your letter?

CARTER: Yes, you'll get your letter.

Attorney James Kroesser, also asked the Board to sign a confirmatory for Lot 7, Pine Ridge subdivision, the acreage was incorrect.

KROESSER: Can I impose on you for one more minute. Only because one of the lots that we have yet to close that you released from the covenant has an incorrect reference on it and I wonder if you can sign a confirmatory for me, and I will get out of your hair.

DUNN: I don't know anything about this. I don't think I want to sign anything that I don't know anything about it.

KROESSER: You can see that the acreage is incorrect.

MADSEN: Do you have a copy of Pine Ridge here someplace? Just so we can take a look.

KROESSER: They have all been released.

MADSEN: I know they have.

GINN: I make a motion that we sign the release for Lot 7 and to tear up the initial release that was signed on August 5th, 1992, stating that Lot 7 was 2.8488 acres, where in reality the plan of December 7th, 1988, that Lot 7 contains 1.2337 acres. Dunn seconded the motion, with the Board unanimously voting in favor.

The minutes from the meeting of November 4, 1992 were read.

KNOWLES: I motion to accept the minutes from the November 4th, 1992, meeting. Ginn seconded the motion, with the Board voting unanimously.

Attorney Clark met with the Board to discuss Low Land Farms. Also present regarding this matter was Peter Van Wcyk and Paul Connolly from C.T. Male.

The following discussion took place:

CLARK: We've been at this about 14 months since I came into this process with you. And 14 months ago Peter Van Wyck came to me seeking help to get this subdivision approved. And he said at the time he wanted to do it right. He wanted to give the town a chance to plan and come up with the best subdivision that could be provided for that space. I know there has been a lot of history between the town and Peter, and between certain residents and Peter. I think we really have to focus on the plans and the process and the outcome. I think that's really what we're talking about for use in the future. He hired a lawyer. He hired a consultant. In fact, he hired a wetlands consultant. On his process he came up with studies that were not required by the Board at the time.

Peter has done all that has been necessary with the subdivision rules and regulations to get a subdivision passed by this Board, or any other. Now, at the last minute following of a public hearing he was required to do the traffic study. And there seems to be no end to it, as to how much the Board might require of an applicant. There comes a time where I think you have to say stop. What's going on here. Until three meetings ago, I think things were on track, at least for the majority of the Board. I think you recognize the rights of the land owner, and by the same token get the best subdivision for the town that you might get. And I think that was in the nature of the traditional approval process. But that's gotten way off track the last three meetings. We're back to where we were 14 months ago. I cannot in good conscience recommend to Peter Van Wyck, or any client, they have a better shot at getting a subdivision through a planning board process, if this is going to continue. You either have a political process or a legal process. And I

think it's the Board's responsibility to determine whether or not it's going to be a planning board, or just wants someone to play the planning board function.

Now, two things which would encourage me to recommend that Peter fund this study. First of all, he's agreed to fund a study that would look for mitigating factors needed to be done on Apple Street, so long as we can lean toward an approval of the plan. Let's get on with it. But, to have this open ended, what comes next process that we've degenerated into. I can't recommend that he do this. Now, if the Board wanted to finish the subdivision process, and make the approval of this process contingent upon certain events, that certain of the waivers that we've discussed, and certain of lots, all the things we've talked about for 14 months. We're willing to talk about that. But it seems wasteful after 14 months that we are obviously going to court, if that is what the Board is pushing to decide this issue. On whether, in fact, the study is needed. I think if you really drill your traffic consultant about whether it is necessary, at least as to the traffic impact part of it, that given how many additional cars will come on Apple Street, whether or not that is even significant, I think you'll find that asking for that is senseless. I hope that you turn it around and get control of the process again, so we can have an initial approval process that satisfies the needs of this particular land owner, the neighbors and the town.

GINN: What was the gist of that. Is the developer willing to pay for the traffic study, or not?

CLARK: Not as presented. There are two parts to it. Apple Street, condition of, mitigating factor, yes. The part of it that deals with the impact of the subdivision on Apple Street, no. He has hired a consultant who provided the evidence. It has not been contradicted by a professional. And we would stand by ----

GINN: Who has not been contradicted by a professional? Is that what you just said?

CLARK: He is the only one that has provided a study. And those people who wanted to provide a study had the opportunity. The Chairman gave it to them before the opposed at the public hearing. And no study was done. No counts were done by anyone else except for the Gilbert Nelson report. And Peter Van Wyck stands by that.

VAN WYCK: I've been very quiet over the past 14 months. But I would like to point out as I have in the past, that the reason that I wanted to present the Board with an option for a longer road is purely because the result would be a better subdivision. I have not added any more lots. It's more expensive to put extra length of road in there. It would satisfy ascetic advantages in the fact that we would have open space adjacent to Apple Street, and for that reason I have spent a lot of money. And I don't regret spending the money, but it was spent to try to present a professional opinion and reasons that were backed up by professionals that a longer road, would make a better subdivision. And I'd like to point out to you that your engineer has basically said the road would work. The police and fire department have said because of the fact of safety issues the hydrant would be closer to lots and serviced by a road. About three weeks ago the Board seemed to be waiving on going back to their option of making decisions politically rather than professionally. And I guess at that point when the Board starts to consider a political decision on this subdivision, that my interest in working professionally, as to why the Board should do a certain thing diminishes. And that's where we are now. I've spent a lot of money to consider way a road should be done a certain way for professional reasons. And that's what I've done and I think the Board really in one sense can appreciate the professional reasons for a land owner to make the right decisions. There are members of the Board who are waiving for a political solution. And so at that point, I have to say I've done what I could and you've got to decide what you want to do.

DUNN: Since we still seem to speaking publicly, may I say something here?

MADSEN: Absolutely.

DUNN: I don't understand this whole process with this subdivision. I've been on the Board, and everyone knows I came on here very green, and might be slow catching on to things, but every subdivision plan that we've had we've had it sit on this table. We've studied it. We've had our public hearings. We've closed our public hearings. The Board has discussed and voted on it. And we've got 14 months into this one, and I'm reading, and please correct me if I'm wrong here, on this report of September 23rd, Page 6, Mr. Van Wyck has agreed to revise the restrictor plate detail drawing on Page 6. Once it is clear how the Board will deal with the waiver request and bylaw interpretations all the drawings will be revised as necessary, and on, and on. To me I almost think of this as an incomplete plan. Because I am not looking at a plan with what he says he is going to do in front of me. I don't see any of that. What I'm reading here is, you approve it and then I'll do it. Is this what is going on, or am I wrong? He and his lawyer are coming in and they are saying what do you want me to do. Well, if we're going to sit here and do this plan for them, why don't we get paid for it. We're not getting paid to do the plan. All these changes, the only thing being done we've come up and said, we really don't like this. Okay. So, we'll revise this. We'll do this. We will do it. It should done and lying in front of us. That's what we vote on. What do we have here. We have, to me, to amend, which is to correct, to improve, to revise. He supposedly had an amended plan. Is it amended, or what? Because in here it says he will revise it. This is all cockeyed to me. I don't understand why we're continuing to play with this plan, and continuing to go through traffic studies. If he doesn't want to do the traffic study. Fine. Let's vote on the plan. Because we're double talking. We're just putting time after time after time into this. We're repeating ourselves. And it still isn't done on the plan. I'm still not looking at that plan to see where he has revised it. It says here he has agreed to revise it. Now, if I'm wrong tell me. But that's my feelings. And I think this plan should be laid out here and I think the Board should vote on it.

PENNOYER: I agree with you Pat. I'd say at this point now, let's get on with it. I suppose I agree with it to the point where I basically jotted down a motion to read out tonight if the traffic study was decided not to go forward. I didn't want to leave this meeting if he decided not to go forward with all of us standing looking at each other. It's time to deal with it. Maybe somebody else wants to say something beforehand, but I'll be ready to make a motion.

KNOWLES: I agree with Pat. And I think part of the 14 months was trying to figure out what we were looking at. Whether it was a submittal or a resubmittal.

DUNN: Because we're not looking.

KNOWLES: I also would go back to the public hearing. It was the main reason for a traffic study. It was the comments from the public. And I would repeat that reason for going to that length was because of our responsibility to public safety in the town as it was voiced at the public hearing. It did not erupt from this Board. It was in response to, I think, three sessions of the public hearing. That's where it came from and that's why it's important. That's why I would, before you make your motion Sheldon -- It was, in fact, the last time that this plan was denied part of the motion was based on noncompletion of an engineering study that was required.

GINN: If the applicant is not going to submit what the Board wants. We've had a couple of different motions on this. And I still think that a traffic study is important. I was the one that initially brought this up, and I think it's going to come back to haunt everyone, however we vote. If

we were to approve this I think it would be appealed. I think if we were to deny this it would be appealed. I'm trying to eliminate this going to court, or this is my thought and reasoning on it, to go court, on whatever way that we vote on this. And it also is going to tell us, yes, is that road adequate to handle this or not. That's basically the answer that I'm looking for because I think there is a safety issue. I've said it all along that I think that the traffic would be able to proceed up there and go up there. But I don't know that. And that's why I've asked that. Now, the applicant apparently has decided that no, he does not want to put anymore money into pursuing this.

VAN WYCK: Can I elaborate a little more on this?

GINN: Sure. I think we should get to the heart of this.

VAN WYCK: If you review the study that was done by a professional traffic consultant, if the car issue doubled from what he had stated that these counts indicate, that Apple Street still is not coming anywhere close to where it would be saturated. And so if it was an issue that was fairly close, in other words if it was really maxing out, then I would say to you that maybe there might some error in that count that would have some bearing on the fact. But the fact of it is, the number of cars doesn't even come close to where Apple Street, would be considered safe by the number of cars that this development would be concerned with. And because of that that is a professional opinion. If this Board remains at a professional level, you will come to the correct decision. But if you waiver to the political choices, now I have no control over that.

GINN: No, I'm not waiving to the political pressure, or whatever. And this is something that I think is of relative importance to the Board. The Board is a whole. When I made that motion the entire Board went along with it. It wasn't just me, or two or three of the board members. It was the entire Board. There was quite a lot of discussion from the public itself of traffic and of safety. I think that we all know that the professional opinions are going to sway or lean one way or the other. You're not going to get two architects that will design the exact same house for you. Nor will you have two safety engineers give you the exact same readings.

CLARK: There is no question just on the counting issue that Peter's subdivision will have an adverse impact on Apple Street. I think if you ask your own consultant, he'll agree. I think the issue that came out in the public hearing was Apple Street, and it came out from the police chief and the fire chief. Apple Street hasn't had the up keep and improvements that is required of a public road. It carries not only the traffic that it's already carrying, but the other traffic that could come because of all the A&Rs that could possibly occur down the road.

GINN: I can't project what the A&Rs, and where that water over the dam is going. We have to act with what is here in front of us.

CLARK: I think if it was at all close on the number, I think Peter would say yeah, we're going do that. But it's so far out of the realm of reality that ----

MADSEN: Well, it's apparent your position. I don't want to blow anymore time on this. Because it's apparent the Board has asked for it and we're not going to get. Whatever the reasons may be, so be it. Okay. No sense in talking about. I'm not going to waste the Board's time.

PENNOYER: Can I make a motion?

MADSEN: You want to make the motion? If you like sure. I'll take a motion.

NOV. 18, 1992

GINN: I'd like to ask just one thing before you do make that motion. Town counsel said that we had every right to ask for this study from the developer; is that correct?

KNOWLES: Yes.

MADSEN: Any reasonable fees for employment of outside consultants, any such rule or regulation must provide for an Appeal state of process to the Board of Selectman concerning selection of the consultant.

CLARK: I talked to John Tierney. John Tierney really has not been involved in this process to the extent that I have asked and hoped for. This is a complicated issue. And when I talked to him he was asked, Do the subdivision regulations allow for the Board to hire a consultant? He looked them up and said obviously they could do it. He has not been given the context of this, or what is necessary, and what is reasonable. And that's the issue that the Board has to decide, I think, to rely on that to say under these circumstances that you should require a traffic study.

PENNOYER: I would like to make a motion on what I feel the Board, and I think as I read these things off, you might want to add to this.

MADSEN: Maybe I would suggest that if you are not a hundred percent comfortable where you want to take this thing, I think you should suggest some discussion as to what you'd like to see the motion include, and then if we could add something, then it could be added. I think we could use both systems here.

PENNOYER: So in other words I'm going to say that we should have a discussion after I make the motion.

Based on the issue regarding traffic and pedestrian safety as outlined in the most recent review of the Gilbert Nelson report by Rodney C. Emery, P.E., dated October 7, 1992 and comment to the Board by Police Chief David Harrell on October 21, 1992, I move to approve the definitive subdivision submitted by Peter Van Wyck known as Low Land Farms dated September 1, 1990 and revised March 18, 1992 subject to the following conditions and waivers:

1) Section 7.02 (4) C (2) of the regulations is hereby waived subjected to the following provisions:

- a) The length of the road shall not exceed 1523 feet.
- b) The total number of developable single family dwelling type lots placed on said road shall not exceed six.

2) A Natural Vegetation Buffer Zone at the eastern edge of the property starting at the line shown as the wetlands flagging as shown on Drawing 3 of 6 running west for a distance of 200 feet shall be preserved. No trees or shrubs over 4" caliper shall be removed.

3) Sections 6.01 (1) b.6.01 (1) and 6.03 of the regulations are hereby waived and the scales used on the referenced plans are hereby adapted.

4) The approval is contingent upon review by the Board of Health as stated under Section 6.05-1.

5) The approval is contingent upon review by the Conservation Commission to determine if the proposed subdivision is affected by the Wetlands Protection Act as described under Section 6.05-2.

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MADSEN: I have a couple points. Are there perk holes in all these lots that are shown on this plan?

CONNOLLY: I believe there are. They are shown right here. All except the big lot. (Indicating.)

MADSEN: There is no perk shown on there. Got a problem there. Doesn't it say in our "regs" that for each lot shown on the plan there has to be adequate septic.

(This discussion is just between the Board Members and Mr. Connolly and no one else.)

Do you already have Conservation Commission approval there?

GINN: No.

MADSEN: In our "regs" it asked that we have concurrent review with the Conservation Commission. The applicant chose not to do this and that's obviously within his privy. I would suggest, however, that in our motion, if we do have a motion to approve, that one of the conditions on the approval is approval by the Conservation Commission.

PENNOYER: I said that earlier.

MADSEN: You said, review.

PENNOYER: Technicality.

MADSEN: Big one. And I think that would be something that would make sense here due to the fragile nature of this particular environment.

PENNOYER: The reason I worded it that way Rolf, was because I was looking at this particular drawing that's in front of me. There are so many drawings on this piece of property describing different areas of sensitivity.

MADSEN: I think this specific thing should be an approval with this to the ConCom.

PENNOYER: What I'm saying is, at looking at this I could see that this could come before the Board given what this drawing shows us right here. I don't think it's sufficient information for the ConCom. But that this particular drawing they would look at and an overview would tell them that the infrastructure would not affect this.

MADSEN: My opinion is there should be an approval of ConCom before there is a final approval with the Planning Board.

PENNOYER: Please, change that.

Line number five of potential motion from Pennoyer amended to read as following:

The approval is contingent upon approval by the Conservation Commission to determine if the proposed subdivision is affected by the Wetlands Protection Act as described under Section 6.05-2.

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CONNOLLY: I was going to add about four or five different extra clauses to Sheldon's motion that covered those bases.

MADSEN: Okay. Why don't you go ahead. What would you add?

CONNOLLY: Very simply to incorporate by reference into Mr. Pennoyer's proposed motion referred in the correspondence to the Board from C.T. Male, dated October 7, 1992, and in Point 3, which is suggesting the motion take Subsections 1, which speaks to Section 7.06 (6.), that's the lot line issue. Incorporate that into Sheldon's motion. Take Point 5 which deals with the restrictor plate. Take Point 6, which deals with trimming vegetation close to the ground in accordance with the suggestions put forth by the Town Police Chief. And incorporate Point 8, which states that all invoices and fees billed by the Planning Board's Review Agent be paid in full prior to that. I didn't incorporate verbally just now the security issue. Because it is already contained within your regulations and as far as I know has to be adhered to in any event.

MADSEN: This is a potential motion not an actual motion because Mr. Connolly cannot make any motions or anything in that regard.

KNOWLES: I don't know. I get tired of threats of lawsuits. Two in one night is a little rough. It makes me want to deny it just on the basis of the threat. The best thing is to pay no attention to them, any of them.

MADSEN: I agree.

KNOWLES: On the other hand, I'm looking at minutes from the last meeting, which shows a second unanimous motion or vote requiring a traffic study based on comments duly taken from the public hearing. And then we got into a little bit of a wrangle about which traffic study the applicant would agree to fund and which one he wouldn't. And I don't think we have much choice, but to deny on that basis. If only that basis. The applicant's refusal to fund a study that we've asked and required of him. We don't have any choice. And it's a reasonable request. It's born of fears that aren't new on the part of neighbors and other town people. It goes back years. Fourteen months is nothing in the history of this. I was amazed to see what the history was made up of. And traffic and public safety is not a new issue. It is not a political issue, as far as I can tell. It's a true fear and I think it's required of us that we gather as much information as we can. And that's what came out of the public hearing. That's what public hearings are for. That's what we reacted to. And we have. And to turn-tail now and say let's approve it, regardless of the conditions put on that approval, I don't see how we can do that reasonably. Just to pick one issue. I don't want to get into any other ones because I think other people have taken them up better.

GINN: I still feel there should be some traffic studying done. I think that would make me feel better. If we could put a condition in on this, I don't have a major concern with this.

PENNOYER: Put a condition that a traffic study be done.

GINN: Yes, because the way that this is presented and proposed right now, there basically having this subdivision. And I think that should take into account to do a traffic study.

MADSEN: I think if we're going to limit the number of -- In a sense what we're doing is limiting density in the proposed subdivision and the density issue relative to the safety issue is the factor. We have one party that says it's not a problem. We have one party that says it is. We've received plenty of public comment in the form of letter, and also, in the verbal comments at public hearings

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that says they are very much concerned about the traffic issue. And I realistically don't think we should ignore that.

PENNOYER: I think as I said at the beginning of that motion, based on the issues regarding the traffic study, that says look there is a problem. We could deal with it in density.

MADSEN: What is on the table, is this technically sufficient?

CONNOLLY: No.

MADSEN: What has to be improved?

CONNOLLY: As far as I'm concerned it would have to provide a 10" diameter restrictor plate detail.

DUNN: Rolf, I have quite a bit to say about this, if you're willing to listen. I, in no way would put my approval on anything like this because, I said my first concern, rather is the refusal of the traffic study. But, also, I think, Sheldon has covered a lot, but there are so many other considerations. Number 1, even earlier we sat here and said, we did not want to set a precedent. So here we have a bylaw book that says twelve hundred feet. Are we setting a precedent that says, we say this road is -- we say twelve hundred feet, but go ahead. Go along with it. Because the applicant says I can make this look pretty, if we just put it two thousand feet. Never mind your twelve hundred. And it's going to get longer and longer and longer. I think that's a safety issue. And I think it's a good reason for a denial.

The other reason is the DPW here. None of us have discussed the DPW. The swells. I've talked to Bruce Julian. He did not like the swells. There is a twelve inch gravel. He wants eighteen inches. Those might be smaller points to deny it on, but if none of those are here. I mean should we be approving a plan. We've asked for these people comments. We've asked the DPW to give us their comments, but we're not looking at their comments. And I mean I realize that it's a smaller thing here. You people are talking about probably far more important things, but I do think some of this stuff should be looked at, too.

The other thing is in that traffic study. And he's got some pretty good size lots here. And we can sit here now and say oh but, you can only put one home. What about all these homes, these people that are coming in now and just adding on to the sides, such as the one up by me. Add up a little bit. We could have a potential there of three dwellings on every lot alone, which would not be fifteen lots. They are saying fifteen lots. They're not telling us how many dwellings.

MADSEN: This particular motion is for single family dwellings, with the total number of six lots there. Total six single home dwellings.

DUNN: Okay. I guess that's probably all I have. I just think that a little more should be looked into other than just the traffic study. I realize how important that is, too. On the issue of the whole plan sitting here with basically no revision. I guess what I'm saying is I'm not in agreement with an approval in any way because I just don't see an approval here in anyway. Not with a plan that I can't look at. What can I approve?

MADSEN: If you can write a denial and essentially include all these areas except for the traffic study, the lack thereof.

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CONNOLLY: I wouldn't suggest incorporating the traffic study within as a condition of an approval. This doesn't allow for the next steps to happen after the study.

KNOWLES: In other words, depending on what it says.

CONNOLLY: Discussions of recommendations. A motion with a condition attached is kind of a chop, final type of action. So it would allow for the study, but it doesn't allow for all those next steps.

KNOWLES: And then the study only becomes an exercise.

MADSEN: A denial could include a lot of the things that are included in an approval of conditions.

CONNOLLY: Conversely I think your motion still needs to be disposed of one way or the other.

PENNOYER: The traffic study.

CONNOLLY: In other words, if you were to go forth with actually making the motion that we're discussing.

MADSEN: Yes, if we go forth with what we're discussing it would have to be disposed of. If we go forth with the denial it doesn't have to be disposed of.

CONNOLLY: Because basically the denial, as I hear it from you, might tie directly to the nonsatisfying of the requirement for the traffic study.

KNOWLES: The exercise to write the premises of the motion that would deny, if we were to reverse the traffic study motion.

CONNOLLY: That was discussed earlier. They were talking about 15 lots, but now we talk along the lines of 6 lots. That would be the premise as I hear it. Six being so minuscule, that it doesn't follow to require the traffic study, therefore it would allow for the reasonable release of that requirement.

MADSEN: Do you want to make a motion, Pat? How about you, Joe?

KNOWLES: I can't pinpoint all the things that would go into a denial.

DUNN: I don't mind making a motion I'm just afraid as Joe, that something is going to be left out there.

MADSEN: Do we have any further discussion with Mr. Connolly?

PENNOYER: Unless you want to discuss denials? The option of denial openly just as we've discussed the option of an approval.

MADSEN: (Ten minute break.)

MADSEN: Back on the record.

KNOWLES: I move that we deny the plan of Peter Van Wyck dated September 1, 1990, and revised March 18, 1992, for Low Land Farms subdivision based on the applicant's refusal to pay for the traffic study as required by the Planning Board.

MADSEN: Discussion.

GINN: Now, you are limiting the denial to that one reason; right?

KNOWLES: Right, but I'd listen to ----

GINN: No, no. The reason I'm asking that is if the Board votes to deny this plan then he can go through a resubmittal process and would then correct just that reason for denial.

KNOWLES: That was what I was asking earlier, if in that motion we should include ----

PENNOYER: The restrictor plate.

KNOWLES: Among other things.

MADSEN: I would suggest that maybe in your motion you would say that due to the inability of having the information we were unable to make the determinations and requests on waivers, requests on engineering and requests on density. So all those issues that have been raised can come right back.

KNOWLES: So it's not implied in the motion. It has to be explicit.

CONNOLLY: That's right. In other words, by denying based upon your lack of submission of the requested traffic study, you don't box yourself out in eliminating the Board from eliminating itself to address waiver issues, the restrictor plate issues, if he comes back and he changes his mind, and says we will fund a traffic study.

KNOWLES: Does it imply that everything else is okay with the plan?

CONNOLLY: No, not at all.

MADSEN: Just for clarification ----

KNOWLES: Are you amending the motion?

MADSEN: I can't as Chairman. Somebody else can. But in my discussion phase and I can discuss anything I'd like. I would suggest that there might be added to the motion some of it, to include that we lack the information to make good decisions on some of those issues that have been brought up in our discussion, which is density, which is public safety, which is request of waiver for length of road. All the issues that we keep coming back at. In a sense, I think, what you're saying is now the traffic study is done, applicant comes back with the results of the traffic study ----

DUNN: And then we would have to approve it.

KNOWLES: It was implied in the motion the results of that would than be considered.

MADSEN: Right. For us to take in all these other issues. But we can't take these issues because we don't have that information.

KNOWLES: Right. So the motion is amended, or would be amended.

MADSEN: That without information provided by the traffic study the Board was unable to make a determination request of waiver, issues of density in the development, and public safety concerns.

KNOWLES: I move that the Board deny the plan for Low Land Farms dated September 1, 1990 and revised March 18, 1992, based on the applicants refusal to supply the traffic study, that without that information provided by the traffic study the Board was unable to make a determination on the request of waiver, issues of density in the development, and public safety concerns, based on but not limited to that language. Dunn seconded the motion, with the Board voting as follows: Ginn and Knowles in favor, and Madsen and Pennoyer, against.

George Benoit met with the Board to discuss Patriots Landing subdivision.

The following discussion took place:

BENOIT: I would like to find out how the Board feels about my making some changes with some of the lots, and as far as moving the cul-de-sac by twenty-five feet. First of all, I would like to change the lot line on this Lot 2B. The dotted line is the existing lot line and I would like to propose a change that would create a lot with access all the way down to the lake.

PENNOYER: So it's still the same number of lots?

BENOIT: The same number of lots. I'm not changing any of the lots. Everything is going to stay basically the same. And the same with Lot 7A. We'd like to change this existing lot line. They don't have access to the lake. This is my new lot line that gives them access down to the lake. And the other change would be moving the cul-de-sac by twenty-five feet. And the reason for that is because they have a problem with putting the septic system on Lot 4, which is over here. I believe, it's 4A. By moving it twenty-five feet it would enable him to put in the septic system.

PENNOYER: I don't see any problem with that. You're not creating any more lots.

MADSEN: Where is the actual pavement?

BENOIT: This is a hundred and twenty-five feet across and I believe it's paved at a hundred twenty-two, or so.

MADSEN: Did someone do a drawing here? First of all, you can change your lot lines. There is no problem changing your lot lines.

BENOIT: I understand that.

MADSEN: I'm just saying when you come back what I want to see is the actual as build and how it effects where that turnaround is now.

BENOIT: Sure.

PENNOYER: Just confirm whether this is, in fact, right, or if it changes as an as built.

BENOIT: I've talked to the engineer that did this and he told me as far as he knows it was designed and built real close.

MADSEN: My point is if you're moving the circle, where is the pavement now and where's it going to be?

GINN: The whole purpose of the circle, hammerheads, turnarounds, whatever, is for the safety of a vehicle to turnaround.

MADSEN: And it's also being utilized as access to the lots.

GINN: Frontage to the lots.

BENOIT: We're going to be creating new frontage on the new circle. Plus, I'll have to repave the circle.

MADSEN: Okay.

PENNOYER: This doesn't extend the road more than twelve hundred feet?

BENOIT: No.

GINN: I'm sure there will be some complications on there that you're aware of. Water services, gas services, fire hydrant. Stuff that's already there underground.

BENOIT: The hydrant is presently right about in this location. Do you think it would be all right to leave the hydrant there without moving or without extending the water lines. I will have to extend the service for the water line or move it.

MADSEN: That is not a problem.

GINN: Actually the town doesn't have any requirements for services to be brought off of main lines.

MADSEN: I don't see any problem. Does anyone on the Board see any problem?

PENNOYER: No, no problem.

BENOIT: Now, if we wanted to have this road approved and maintained by the town what do we have to do?

MADSEN: You have to get us an as built. There are seven steps. If the road is good, I don't think there will be a problem with town approval. I think the width is not wide enough.

GINN: I'm personally not in favor of the town taking over any roads. The biggest reason that I would vote against it is that the town is incurring more costs.

PENNOYER: It's expensive.

MADSEN: The town will have the final call. Through the planning process and the DPW, we're going to make sure the road was built as specified for the subdivision regulations.

And we need the as builts for that. GINN: One thing, there may be a problem with that stone retaining wall on the right-hand side. I know that there is a requirement for a certain slope, and I don't know if that's too vertical. I don't know. But that would be something we should look at.

BENOIT: The other question I had was are there any covenants that were approved with this subdivision, and if there were can I get a copy of them.

MADSEN: They would be in your deed, if there are any. I don't remember any.

William Tyler's A&R for Noah's Hill was brought forth for approval and signatures.

GINN: I make a motion that we approve the lot line change on the plan of William B. Tyler, dated August 29th, 1992, to create Lot 1 of 21 +/- acres and Lot 2 of 22 +/- acres. Both lots have their frontage as shown on the roadway. Pennoyer seconded the motion, and the Board voted unanimously in favor.

The meeting was adjourned at 10:20 p.m.

Essex Planning Board

November 4, 1992

AGENDA

Appointments:

8:00 p.m. ... John and Marilyn, property on Wood Drive

8:15 p.m. ... William Tyler - Form A, Noah's Hill

8:25 p.m. ... Karen Hatch - property on Milk Street, boat storage

8:45 p.m. ... Tom Ellsworth

9:00 p.m. ... Jim Kroesser, Pine Ridge Subdivision sprinkler systems

9:15 p.m. ... Peter Van Wyck

Essex Planning Board
November 4, 1992

Present: Ralph Madsen, Chairman; Sheldon Pennoyer; John Knowles; Joe Ginn; George Bragdon

Meeting called to order at 7:45 p.m.

Building Inspector Richard Carter submitted a building permit application for Dr. George Evans, 10 Lufkin Pt. to install a new foundation under the existing house at 10 Lufkin Pt.

Pennoyer moved to approve the building permit application of Dr. George Evans for installation of a new foundation under existing house at 10 Lufkin Pt. finding under Essex by-law 6-4.2 that the proposed extension or alteration was not substantially more detrimental than the existing nonconforming use to the neighborhood. The motion was seconded by Bragdon, with the Board voting unanimously in favor.

A building permit application was submitted for Everett Reed, 40 Southern Avenue for replacement of existing garage.

Ginn moved to approve the replacement of existing garage for Everett Reed, at 40 Southern Avenue finding under the Essex by-law 6-4.2 that the proposed extension or alteration was not substantially more detrimental than the existing nonconforming use to the neighborhood. The motion was seconded by Bragdon, with the Board voting unanimously in favor.

A building permit application was submitted for Mark Ricci, Belcher Street for construction of a new single family house, 28' x 40'.

Pennoyer moved to approve the construction of a new single family house for Mark Ricci, at Belcher Street. The motion was seconded by Bragdon, with the Board voting unanimously in favor.

John Heath met with the board to request the Board deny his subdivision plan for three lots on Wood Drive. He presented plans to the Board in July and one lot lacked frontage. The Board sent him to the Board of Appeals for a variance. The Board of Appeals requested from the Planning Board a denial before they could act on it. Heath asked why they could not act on the two conforming lots. The Board told him they could not because it was one subdivision and all lots were shown. They could not sign off on the plan unless the nonconforming lot was labeled unbuildable.

Robin and Ronald Pydynkowski, Forest Avenue, met with the Board to request permission to have a home occupation business, a landscaping company. Madsen asked if there would be more than two employees that were not family members. Pydynkowski said there would be only two outside employees. The Board approved the request.

William Tyler met with the Board to submit a Form A for Noah's Hill, off Addison Street. Tyler had filed the mylar with the Town Clerk and it had not been retrieved, therefore they did not have anything to act on. It was agreed that the Board would review the A&R and at the next meeting have it signed if it met all subdivision A&R requirements.

An application for a special permit was submitted by John and Priscilla Coughlin/PMC Realty Trust, 239 Western Avenue, for a special permit to construct paved parking area and 35' x 100' building. A public hearing is scheduled for December 2, 1992 at 8:00 p.m.

Pennoyer moved to hold a public hearing on December 2, 1992 at 8:00 p.m., on the application by John and Priscilla Coughlin/PMC Realty Trust, 239 Western Avenue, for a special permit under Section 6-6.9 of the Zoning By-Laws to construct paved parking area and a 35' x 100' building. The motion was seconded by Ginn, with the Board voting unanimously in favor.

Karen Hatch from Hunneman Real Estate representing property on Milk Street asked the Board if the property could be used for boat storage. The Board said as long as it was not an eye sore and did not in anyway obstruct traffic it would be no problem.

Tom Ellsworth met with the Board to discuss his property on Belcher Street. He would like to divide his land into two lots. One lot does not have the required frontage, only 90 feet, although he does have enough frontage to divide if he moved his stone walls boundaries which he prefers not to move. He was told to go to the Board of Appeals.

Also Tom Ellsworth brought up the zoning by laws. He was told to discuss with the Chamber of Commerce and also with a newly formed group called Community Development. He will get back to the Board on this matter.

Attorney James Kroesser representing Ronald Ober, developer for the Pine Ridge Subdivision met with the Board to discuss the waiving of the sprinkler systems. Also present were Damon Boutchie, DPW, Richard Carter, Fire Chief; and William Perkins, DPW Commissioner. Perkins stated that Ober has met all his obligations as far as supplying two hydrants and an access road to the pond. A third fire hydrant will also be donated at the foot of Pine Ridge Road on Pond Street. It will be supplied by summer water and ready to be used in the Winter, if necessary. Carter stated that he felt with the addition of the third fire hydrant the fire department could safely fight a fire at the Pine Ridge Subdivision. His recommendation would be to waive the deeded sprinkler system for the home owners. Ginn asked Carter if he had reviewed the sprinkler system submitted by Swift. He said, he had not seen it. Ginn felt it was necessary for Carter to review the sprinkler system plan before voting to waive the sprinkler system. Carter agreed to do so. It was requested that Carter make a written recommendation to the Board regarding this matter after reviewing the sprinkler system plan submitted by Swift. The Board will make a decision upon reviewing Carter's recommendations.

Bragdon removed himself from the Board due to a conflict of interest.

Paul Connolly of C.T. Male, met with the Board to discuss Lowland Farms. And he submitted a letter stating three options for the traffic study requested by the Board at the October 21st meeting. Connolly said the complete traffic study would cost the applicant \$6,100.00. It was noted the the applicant did not want to pay the amount stated for a traffic study. Knowles said we could deny the plan on the refusal of the traffic study. The question was asked, do we want to rescind the motion to require the traffic study? Then Connolly was asked if he thought the traffic study would create any more valuable data. He felt a reduced version would be beneficial. He reviewed the options stated in his October 21st letter to the Board. It was decided that 2F was the key to the traffic study, which reads "Analyze (subjectively) the effects of increased traffic on the existing accident rate and road conditions." It would reduce the applicant's cost by \$1,200.00.

Knowles moved to downgrade the traffic study and use Option II of C.T. Male's proposal to the Board dated October 21st, 1992. The motion was seconded by Ginn, with the Board voting unanimously.

The meeting was adjourned at 11:00 p.m.

Essex Planning Board

October 21, 1992

A G E N D A

Appointments:

- 7:45 p.m. ... David Harrell
- 8:00 p.m. ... Attorney James Kroesser - release of
sprinkler system - Pine Ridge
Subdivision
- 8:15 p.m. ... Form A submittal - John Lambros, Choate
Street
- 8:30 p.m. ... Review of Peter Van Wyck plan

Business:

Review correspondence

Review and act on Patty Pierrot resume for
Administrative Clerk for the Planning Board

Reminder: Budget meeting with Finance Committee -
November 2 at 8:00 p.m.

Essex Planning Board

October 7, 1992

A G E N D A

Appointments:

- 7:45 p.m. ... Building Inspector Richard Carter -
Building Permit Applications
- 8:00 p.m. ... Robert Dawe - discussion on denial
of building permit application
- 8:15 p.m. ... Thomas Dietrich - subdivision of
property on Western Avenue
- 8:30 p.m. ... Attorney Michael Shea - Form A,
Peter Henderson, Andrews Street
- 8:40 p.m. ... Stephen Grimes - Landscape business,
Lot 1, Pine Ridge subdivision
- 8:45 p.m. ... Whitewater Development Corp. - review
plan, Scot's Way
- 9:00 p.m. ... Turtleback Road loop - certification of
plan
- 9:15 p.m. ... Review written information from public
and amended definitive plan of Low
Land Farms

Business:

Review correspondence

Essex Planning Board

October 7, 1992

Present: Rolf Madsen, Chairman; George Bragdon; Frances Dunn; Joseph Ginn (9:00 p.m.); Mark Hall; John Knowles; Sheldon Pennoyer.

Meeting called to order at 7:45 p.m.

Robert Dawe, Coral Hill, met with the Board to discuss the denial of his building permit application at the last meeting. Dawe told the Board that he had extended a deck on his house four years ago but did not get a building permit for the work. Dawe said he realized that ignorance of the law is not an excuse, but a neighbor had told him he did not need a building permit for the work he was doing. He is now trying to refinance and the bank needs a certificate of compliance from the town for that work. The Board told Dawe they could not approve the building permit application as the deck did not conform to the setback requirements. They referred Dawe to the Board of Appeals and said they would make a recommendation that it grant the variance.

Pennoyer moved that the Planning Board make a recommendation to the Board of Appeals to approve a variance for Robert Dawe, Coral Hill. The motion was seconded by Knowles, with Bragdon, Dunn, Madsen, Knowles and Pennoyer voting in favor; Hall voted present.

Thomas Dietrich, Western Avenue, met with the Board to discuss subdividing his property into two lots. Dietrich wants to sell his house separately from his auto-body repair business. He presented a plan showing the division of the property.

Hall moved to deny the subdivision plan presented by Thomas Dietrich for property on Western Avenue finding that the lots had insufficient frontage and land area, and that insufficient information was given on the setbacks. The motion was seconded by Dunn, with Bragdon, Dunn, Hall, Knowles, Madsen and Pennoyer voting in favor.

Attorney Michael Shea, representing Peter Henderson, met with the Board to discuss an Approval Not Required subdivision plan for Henderson's property on Andrews Street. Pennoyer abstained from any discussion because of a conflict of interest. The property consists of 21.5 acres and will be

divided into three lots. There was a discussion on the lot depth. Elizabeth Frye asked what the status was of the frontage on Apple and Andrews Street. Shea said the access was through Andrews Street. The Board then reviewed the ANR submittal regulations and found the plan met all the requirements.

Hall moved to approve the Approval Not Required subdivision plan of Peter Henderson, dated February 17, 1988, as it meets all requirements under the subdivision control law. The motion was seconded by Dunn, with Bragdon, Dunn, Hall, Knowles and Madsen voting in favor; Pennoyer abstained.

Whitewater Development, Scot's Way - Developer David Verdin and engineer Clay Morin met with the Board to discuss the construction of a building on Scot's Way for the processing of fish. Because the applicant had changed the lot lines on the subdivision the Board wondered if the newly created lot would fall under the Watershed Protection by-law. A memorandum was given to the Board from the applicant's attorney stating that the subdivision came under an eight-year freeze. Hall said, "1) Town Counsel should review this proposal of an eight-year freeze, 2) We have never received an as-built plan and I feel the road has changed from the original plan, 3) The loading area should be on the side of the building according to the by-laws and this plan shows it located in the front. Also with the property being in Hamilton we need to have a legal finding on that. I think for this type of operation as it is producing processed water, with the amount of water generated and its sensitivity to the water resource area, the Board is playing Russian Roulette with the water supply of the citizens of Essex. For those reasons I feel this plan must be scrutinized properly." Madsen said he recommended getting a written response from Town Counsel regarding the memorandum. Bragdon said he was concerned there might be slippery roads from the trucks dripping water. Madsen said that once the Board received a written response from Town Counsel then they would have something to act on. Hall then asked Ronald Strong, owner of the property, to submit an as-built plan for the roadway. Nancy Randall, Blueberry Lane, asked what greywater was and what was its makeup. Verdin told her it was water that had suspended solids in it, but not enough to choke a septic system. There was no sewage waste, no effluent in it. Randall then asked Verdin what his greywater would have in it. He replied water and fish scales. Randall then asked about the testing of greywater. Verdin said they are mandated by law to test it once a month. Dunn was concerned that if this plan should go through, what is to stop any type of fish business from going in there if

this particular business did not want to be there. Dunn then asked Strong about the "light industry" he said would be there. She told him he was going back on his word. She also said she hoped the Board would be concerned about the people living in this area and the depreciation of their homes. Verdin said he felt he was proposing something that had less density than what would have been on three individual lots. When asked about the traffic, Verdin said there would be one tractor-trailer truck per day, two box trucks per day. The building would consist of 6,000 square feet of freezer space, a production area, a storage area and an office mezzanine. Verdin added that the traffic figures are for the current production rate - if it increases then there would be more traffic.

Hall moved to send Ronald Strong a letter requesting that an as-built of Scot's Way be sent to the Planning Board. The motion was seconded by Pennoyer, with the Board voting unanimously in favor.

Low Land Farms amended subdivision plan review. Bragdon removed himself from the Board for this discussion because of a conflict of interest. The Board had left open a two week period in order to receive written comments from the public. Letters were received from Kimberly Collins Germain, 15 Apple Street, Donald E. Browning, Apple Street, Department of Environmental Protection, Elizabeth Frye, 31 Apple Street, Megan and Robert Hauser, 102 Apple Street, Police Department, Dana A. Story, Winthrop Street, Addison and Mary Schade, 125 Apple Street, Robert Bruce,, Apple Street, Jennifer Stephens, Apple Street, Ronald C. Emery, P.E., Frank Witherall, 19 Eastern Avenue, and C.T. Male Associates. Pennoyer said, "I have collected most of my information prior to the meeting and have tried to sum up. I have come down to two major issues. I have spent a lot of time looking at aeriels, U.S.G.S. and traffic studies to try to determine the future density of Apple Street. I think my 50% increase is being conservative, 50% that can be ANR'd, out of our control. I have read all the traffic reports; the Hastings Murphy report addresses the road as a whole, as a road for people who walk as well. The other issue is the development of the applicant. We have got to look at what is there now and what could be there in the future." He questioned the trip numbers presented in the Nelson report, because developments have a potential average of nine trips per day. Dunn agreed with Pennoyer. There was a discussion on the consent decree issued by the Attorney General. Paul Connelly said in the decision it should be stipulated that

Van Wyck has to obtain approvals from all regulatory bodies. Ginn said the Conservation Commission does not have to allow the roadway to go in as is shown on the plan. If the road can go in in an upland area they can request that. Hall felt we could not have a situation where 'last one in shuts the door.' Knowles, after reviewing C.T. Males letter, questioned how a ready-made motion could be written into the report. Madsen said, "In reviewing what was happening at the public hearing, I asked Paul to make his recommendations of what we should have in our decision." Knowles - "I feel it is up to C.T. Male to do the engineering work and we make the decision." Connelly - "There are physical deficiencies existing with Apple Street. I don't want the Board to use the deficiencies as a reason for denial. Apple Street has a lot of ANR potential. I would suggest that you do not deny this plan based on traffic and physical deficiencies but would approach the Departments in town to improve the road." Pennoyer - "As a Planning Board you are saying we don't act as planners." Madsen said, "I feel the Board could get more out of seeing what happens with this land by a conditional approval than a denial. Eventually there is going to be some development on this property, whether Mr. Van Wyck develops it or someone else does." Hall - "I don't want to sit here and have a judge decide what goes in there. I would rather that we made that decision ourselves." Knowles felt the Board needed their own impartial traffic study. Ginn felt the information from the Police Department was very relevant. He said, "It is not a number decided by a traffic engineer - these are known facts. I don't know what accidents have not been reported. I feel more comfortable with the Police figures than the traffic report." The Board was then asked if the road length was an issue. Knowles - "Yes." Hall - "No." Ginn - "No, if we could get some agreement." Dunn - "Yes." Pennoyer - "It depends whether we want to see this development sit out on the edge or do we want to create a buffer." Madsen - "The length of the road is important for the number of dwelling units proposed." Knowles felt it was important for the reason Pennoyer proposed. Dunn asked, "Are we sitting here creating a subdivision for Mr. Van Wyck? I feel you are stating what you want to do with it." Madsen - "I feel we must give a clear opinion to Mr. Van Wyck as to what is acceptable for this plan. I was glad that someone else went out and got another traffic report. I feel it would be best as planners of the town to tell Mr. Van Wyck what we feel is best for this land and let's get this done." When polled, no Board member had a problem with the waivers of scale. The Board then reviewed C.T. Male's letter of October 7.

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The Board discussed whether they wanted another traffic study done, or whether to have C.T. Male review all traffic reports.

Ginn moved to have C.T. Male conduct a traffic study of Apple Street and the subdivision, with the results to be submitted to the Planning Board as soon as possible. The motion was seconded by Hall, with the Board voting unanimously in favor.

Hall moved to adjourn the meeting, seconded by Ginn, with the Board voting unanimously in favor.

Meeting adjourned at 11:00 p.m.

Submitted by:



Gillian B. Palumbo

Essex Planning Board

September 23, 1992

A G E N D A

Appointments:

- 7:45 p.m. ... Building Inspector, Richard Carter -
Building permit applications
- 8:00 p.m. ... Continuation of a public hearing -
Low Land Farms subdivision,
applicant Peter Van Wyck
- 9:00 p.m. ... Turtleback Road Extension
- 9:15 p.m. ... Attorney James Kroesser - sprinkler
system - Pine Ridge subdivision
- 9:30 p.m. ... John Coughlin - hot topping parking
lot, off Western Avenue
- 9:45 p.m. ... Michael Matheson - discussion of fish
business, Eastern Avenue

Business:

Confirmation of street name of Pine Ridge subdivision
Pine Street or Pine Ridge Street?

Essex Planning Board

September 23, 1992

Present : Rolf Madsen, Chairman; George Bragdon; Frances
Dunn; Joseph Ginn; Mark Hall; John Knowles;
Sheldon Pennoyer.

Meeting called to order at 7:45 p.m.

Building Inspector Richard Carter submitted a building permit application for Brian J. and Nancy J. Feener, 35 Eastern Avenue, to add a 12' x 30' bay to the existing garage and construct a living area above the garage.

Dunn moved to instruct the Building Inspector to issue a building permit to Brian Feener, 35 Eastern Avenue, for a 12' x 30' addition to the existing garage with living area above the garage. The motion was seconded by Ginn, with the Board voting unanimously in favor.

A building permit application was submitted for Robert Dawe, 6 Coral Hill, for the addition of a deck to the existing house. The deck was found to be too close to the lot line and therefore did not conform to the setbacks.

Ginn moved to deny the building permit application for Robert Dawe, 6 Coral Hill, as it does not meet the setbacks as stated in the by-laws and should be sent to the Board of Appeals. The motion was seconded by Knowles, with the Board voting unanimously in favor.

Dunn moved to rescind the action taken by the Board on the building permit application of Brian Feener. The motion was seconded by Pennoyer, with the Board voting unanimously in favor.

Hall moved to approve the building permit application of Brian J. Feener, 35 Eastern Avenue, for the construction of a 12' x 30' bay to the existing garage with living area above, with the condition that the main house as specified will not be used as a dwelling unit. The motion was seconded by Ginn, with the Board voting unanimously in favor.

Attorney James Kroesser submitted a letter to the Board to request a waiver of the requirement in Rider A, Paragraph 3 of the covenant for Pine Ridge subdivision, which required the installation of a sprinkler system in the dwelling units

built on each lot of the subdivision. The request was signed by owners of the lots within the subdivision. Kroesser said each sprinkler system would cost approximately \$6,000, and with the available water pressure and fire pond, felt it was an unnecessary expense to the homeowners. Madsen said the Board would review the Minutes and make their decision at the next Planning Board meeting on October 7.

A continuation of a Public hearing was held at 8:15 p.m. under Massachusetts General Laws, Chapter 41, Section 81, and the Rules and Regulations relative to subdivision control of Essex, Massachusetts, Section 6, to consider an amended definitive subdivision plan of land known as Low Land Farms, applicant Peter Van Wyck.

Note: Board Member George Bragdon removed himself from the Board because of a conflict. Madsen said the Board had received two pieces of correspondence, one being a letter from Attorney Charles Clark, Peter Van Wyck's counsel, granting an extension until October 31, 1992, and the other, also a letter from Attorney Clark, responding to the issues raised at the public hearing on September 2. Clark told the Board that the letter dated September 23, 1992, was in response to the issues raised in the August 13, 1992, letter from Paul Connelly, of C.T. Male, to the Planning Board, in which Connelly identified issues that remained on the table for the Board to deal with. A copy of Clark's letter is attached to these Minutes.

Betsy Fawcett, Apple Street, told the Board that "at the trial, which began in 1981, the plan was for fourteen houses and was transformed to be 51 houses in court. It was stated in court that there were three through ways - from Southern Avenue to Western Avenue, Conomo Drive (not so), Apple Street and the causeway. The judge was given incorrect information and acted upon incorrect information. The Hastings-Murphy report disappeared from the courthouse immediately after the trial and it is my understanding that it was not returned until the day after the judge made his determination."

Paul Connelly told the Board that at the last meeting they had requested he take a look at the 1981 Hastings-Murphy report and the 1987 updated, revised traffic report. He then read his report, dated September 22, 1992, into the meeting.

Connelly - "The Police Department completed their search this morning. Presently, the Essex Police Department has records dating back five years to early 1988. Over that period of time from 1988 to date, there have been twelve accidents on

Apple Street. Associated with those accidents there have been no injuries or fatalities; they have basically been fender-bender type accidents. In the breakdown of the accidents occurring in this period of time there have been two due to snow conditions on the road, two due to ice conditions on the road, one due to an excessive amount of sand which caused a slippery condition to be present, one due to excessive speed, one due to a driving while intoxicated situation, one due to a person unfamiliar with the road, one with no background data, and three due to the narrowness of the road. The traffic department tells us that an acceptable rate of accidents for this type of road would be roughly, I believe it's one or two per million miles travelled, which equates to basically two to three accidents per year. This would be due to two vehicles opposing one another and as we can see by the records maintained by the Police Department in Town the sum total of accidents that have occurred due to this nature, oncoming vehicles meeting each other in the road over the past five years, has been three, so we cannot render an opinion that there are unsafe conditions present on the road."

It was noted that the "Scenic Ways Act" only permits trees to be cut up to 4" in diameter. Connolly said he did not mean to infer in a statement in his report that indiscriminate cutting of trees would be allowed along Apple Street.

Donald Browning voiced an opinion as to the danger of exiting the subdivision and feels there will be accidents.

Eloise Hodges said that she would anticipate a greater degree of danger with the substantially increased traffic with a result of the development. M. Williams said she noticed there was a lot of transient traffic, people who do not live in the area, coming through using it as a shortcut. She does not see where there is a difference between three houses or fifteen houses with the traffic that goes through Apple Street generally, and wondered if the traffic study took into account local people commuting or people cutting through.

Connelly said no differentiation was made and felt it would be unfair to make one.

Gilbert Nelson - "In 1981, a study which is the predicate for the current studies, involved identification of through trips. The through trips were a significant proportion in 1981 of the trips that were there. To my knowledge, the Hastings-Murphy report was done in the winter. Maybe a lot of people had gone to Florida, maybe the road was impassable, but the numbers there are not relevant to any numbers that I have used, so that percentages do not relate to those numbers because they were not taken at an appropriate time or place upon which to make such a study. Secondly, there was no

identification of through trips for that study, and there could not have been, because there was only one study location, namely near the intersection of Apple Street and Turtleback Road. So all the trips generated either side of there and going away from the tally station were not included in the count. Very simply, this was the basis for the court case, the basis for the projections made to the present time and the extrapolation of the new counts that were made in late August, all considered trips. There were three counting stations, one at each end of the road, at Western and Southern Avenues, and in the vicinity of Apple Street, so it was a very comprehensive study."

Betsy Fawcett felt clarification was needed of the statement made by Van Wyck in his Environmental Impact Report that access to the subdivision was via a right-of-way. She also asked two questions - Has the drainage between the intersection of this roadway and Apple Street been remedied as was required in 1980 and the deficiency of which led to the stipulation which still holds? Is this plan in compliance with the 3% intersection grade for a distance of 50 feet in either direction?

Frederick Fawcett indicated that he felt the Planning Board did not have quite as much control over its engineer as it thinks it does. He indicated that some correspondence had been sent directly to Van Wyck's attorney. Fawcett asked Connelly if there had ever been any direct contact between a representative of C.T. Male and an engineer hired by Peter Van Wyck. Connelly said there had. Fawcett said he felt that jeopardized the control the Planning Board has over the information which is being generated. Madsen stated that "the Board's action with Mr. Connelly has been as we have asked him and he has followed our directions and has done what we directed him to do. We think that it is important in trying to make this process work effectively that there is some conversation between the engineers because as a lay Board, with some of the technical questions, we do not have the expertise to handle them the right way."

A discussion followed on the court case.

Frederick Fawcett - "This road which is going to be approximately 1500 feet long also contains at the end of it two 20 feet wide rights of way which go on further, which will extend the road for another 100 feet or so, I do not believe that this is the intent of the law. Also the pork chop lots, the lots which are attached for frontage by ribbons, are an attempt to subvert the Planning Board regulations. I disagree entirely with C.T. Male on that. The purpose of these regulations is so that from the access there shall be sufficient width, depth and accessibility by

emergency vehicles to the property and certainly fire trucks can't, cars probably won't, like to go around that great long road to get to the lot. So what's going to happen, in fact, those two 20 foot rights-of-way are going to be made into access for those two back lots and that will increase the length of the road from 1500 plus to 1600 plus. I don't see why the Planning Board should waive its length regulations in the first place, and secondly, to waive its length regulations and then allow all this ribbon access to the lots along with it. I would also like to take issue that C.T. Male saw fit to say they had not seen regulations of this type before."

Deborah Kuffel stated that she was in support of Peter Van Wyck and what he was trying to do. Reno Nastase, Turtleback Road, told the Board he moved to Turtleback Road thirteen years ago and although he and Van Wyck had differed in many ways, he thinks Van Wyck has tried to do the right thing environmentally at Turtleback Road and feels he should be given a chance to build, as long as all the legalities are followed.

Betsy Fawcett asked if there had been a delineation of the wetlands zoning district on this plan and had there been a delineation of the FEMA map HUD zone.

Paul Connelly - "The wetlands boundary is shown on the plan. The flood plain zone, the extent of the flood plain pursuant to the FEMA map elevations is shown on the plan."

Betsy Fawcett - "And do you show sanitary systems and underground utilities?"

Paul Connelly - "Sanitary systems are not shown on the plan. Underground utilities are shown."

A discussion followed on whether there was a designated wetland at the entrance to the development. Fawcett maintained the D.E.P. has ruled it was a wetland; Jerome Carr indicated in his report that this low area had no jurisdiction under the Wetlands Protection Act. Attorney Charles Clark requested that he be provided with a copy of the determination by the D.E.P.

Hall moved to close the public hearing with the stipulation that we allow time for written comment to be received up until 10 p.m. on October 7, 1992. The motion was seconded by Pennoyer, with Madsen, Hall, Ginn, Knowles, Dunn and Pennoyer voting in favor.

Michael Matheson met with the Board to discuss his rental of the former Greely property on Eastern Avenue. Mark and Joanne Jordan purchased the property and will live in the residential portion; Matheson is renting the business area.

Matheson told the Board it will be a seafood business, which will include retail, wholesale, shucking clams, and perhaps catering a few clambakes. When asked if he had all the necessary permits, Matheson said the state and and Board of health would be re-inspecting the premises. He said no restaurant will ever be there, there will be no cooking and no subletting of the business. The parking lot size will not be increased.

Ginn moved to approve the use of the former Greely Restaurant, 143R Eastern Avenue, as a seafood business, as discussed by Michael Matheson, the use being an existing use. The motion was seconded by Hall, with the Board voting unanimously in favor.

John Coughlin met with the Board to discuss the hot-topping of a parking lot for Quinn Bros., Western Avenue. which, under the Watershed Protection by-law, requires a Special permit. Madsen said he felt that even though the parking area is paved the Board should still go through the Special permit process. Coughlin said that when they went to the Building Inspector he missed this. Coughlin noted that ignorance of the law is no excuse. Coughlin was given a copy of the Special Permit application form.

Plans were submitted to the Board by Whitewater Development for review. No building permit application or correspondence was submitted with the plans.

The Board reviewed the Form A submittal for Peter Henderson. It was felt it was an improper filing because sufficient plans were not submitted according to the Planning Board rules and regulations, and it was therefore not accepted.

Ginn moved that no action could take place on the Form A submittal for Peter Henderson because of an incomplete filing. The motion was seconded by Bragdon with the Board voting unanimously in favor.

Hall moved to adjourn the meeting, seconded by Dunn, with the Board voting unanimously in favor. Meeting adjourned at 10:15 p.m.

Submitted by:


Gillian B. Palumbo

CHARLES H. CLARK
COUNSELLOR AT LAW
TAVERN PROFESSIONAL BUILDING
30 WESTERN AVENUE
GLOUCESTER, MASSACHUSETTS 01930
(508) 281-5800

September 23, 1992

Rolf Madsen, Chairman
Essex Planning Board
Town Hall
Martin Street
Essex, Massachusetts 01929

RE: Amended Definitive Plan of Low Land Farms

Dear Chairman Madsen:

Following the close of the public hearing, the Planning Board should be nearing a vote on the proposed Amended Definitive Plan for Low Land Farms. Prior to scheduling a vote, I propose that the Board hold a business session to review and discuss how to dispose of the remaining issues concerning the Plan.

The issues that remain to be resolved either by action by the Planning Board or by action by Mr. Van Wyck are identified in the August 13, 1992 letter to the Planning Board by Paul J. Connolly, New England Regional Manager for C.T. Male Associates, a copy which is attached hereto.

In response to the issues raised in that letter, Mr. Van Wyck comments as follows:

Comment 1.

Existing traffic movement counts should be taken at the Apple Street and Western Avenue intersection. The applicants traffic report should be updated/ revised to reflect this new data. The new data should be compared to the projected data based upon 1983 counts (ABA).

Rolf Madsen
September 23, 1992
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Response 1.

As you are aware, Mr. Van Wyck hired his traffic consultant, Gilbert M. Nelson, P.E. to take existing traffic movement counts at the Apple Street and Western Avenue intersections. These counts were taken on August 25, 1992. The results of Mr. Nelson's additional research were presented to the Planning Board by Mr. Nelson on September 2, 1992 and are contained in his "Revised Amended Traffic Impact Study" dated August 28, 1992. This report was included in the record of the public hearing on the Plan.

Mr. Nelson's August, 1992 data supported the conclusions reached in his earlier studies. Despite a modest increase in traffic, the area remains Level of Service (LOS) "A" with ample reserve capacity according to professional standards which must be followed by the Board. This conclusion can be confirmed by C.T. Male Associates who are qualified as traffic engineers.

Furthermore, I think it important to point out to the Board that Mr. Nelson's earlier study, his qualifications and his methodology were supported in the decision of Superior Court Judge Elbert Tuttle in his written opinion in the case entitled Peter Van Wyck v. David Campbell et al, Civil Action No. 81-1351, a copy of which is attached hereto. This case was an appeal of a decision of the Planning Board disapproving a subdivision plan submitted by Mr. Van Wyck which would have extended from Turtleback Road to Essex Park Drive to Western Avenue ("Turtleback Road Extension").

In this case, the Court found:

1. That the Planning Board in voting to disapprove the plan exceeded its authority by basing that decision on increased traffic hazards on Apple Street;
2. That based on the expert testimony presented (Mr. Nelson's), that the increased traffic generated by the proposed subdivision would not significantly increase the traffic presently using Apple Street nor would the traffic cause any significant hazard to life or property.

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September 23, 1992
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Judge Tuttle's decision was affirmed by the Appeals Court in a rescript opinion entered by the Court on June 20, 1988. It is significant that the Appeals Court saw so little merit in the Appeal that it issued its affirmation without opinion.

Despite well-intentioned and heartfelt opinion, the facts do not support the conclusion that Low Land Farms would create a traffic issue which would be a reason to deny Mr. Van Wyck's Plan. A contrary conclusion would fly in the face of the facts and opinions of an expert in the field and the judgment reached at a trial on the very same issue in which Mr. Nelson's report was analyzed side-by-side with the February, 1981 "Capacity Analysis of Apple Street, Essex" prepared by Hastings-Murphy Associates.

Comment 2.

The issue of lot sidelines raised in our correspondence of May 20, 1992, needs to be addressed by waiver (ABA) or by revision of lot layouts (ABA).

Response 2.

The proposed lot lines in the opinion of C.T. Male would require a waiver of the "Rules and Regulations Relative to Subdivision Control" Section 7.06(6). In C.T. Male's May 20, 1992 letter to the Board, it stated in regard to Section 7.06(6):

"We have never seen this type of requirement before. Strict adherence to same will result in lots that are either rectangular or pie shaped with no room for variation. The enforceability of this regulation is suspect to us."

Leaving aside the legal conclusion (a conclusion with which I agree) the question remains whether the Planning Board is going to allow for creativity and planning in lot design. The regulation as written seems to put a straightjacket on prudent or desired outcomes. From a planning standpoint, the proposed lot lines are superior to ones "substantially at right angles or radial to street lines." Lot lines can

Rolf Madsen
September 23, 1992
Page Four

be altered to strictly comply with Rule 7.06(6). However, it is urged that the Planning Board see that the plan proposed is better. Mr. Van Wyck seeks a waiver from the strict adherence to Rule 7.06(6).

Comment 3.

The issue of lot widths raised in our correspondence of May 20, 1992, needs to be addressed (ABA and/or ABB).

Response 3.

The lot width issue raised for the first time in C.T. Male's May 20, 1992 letter to the Board can be dispensed with either by Board action or by a redrawing of the lines. Mr. Van Wyck urges that the matter be resolved through Board action.

The issue is one of interpretation. C.T. Male commented to the Board regarding Section 6-6.2(a) of the Zoning By-Law:

"Again, this is the first time we have ever seen interpretation of Lot Width as set forth as such. Typically, Lot Width (in our experience) is always defined as the distance between lot sidelines as measured along the front yard setback line".

Other communities interpret the same Lot Width definition in such a way that Mr. Van Wyck's Plan would be in compliance with the same Zoning By-Law language. You are urged to interpret the Zoning By-Law in a like manner. Again, prudent and creative planning would be enhanced within Essex with such an approach. Lot lines can be changed if the Board decides otherwise. The Board should make a determination on this issue prior to calling for a vote.

Rolf Madsen
September 23, 1992
Page Five

Comment 4.

The issues raised in our correspondence of March 16, 1992, need to be addressed:

- a. Locus Plan scale waiver (ABB)
- b. Road Cross Section scale waiver (ABB)
- c. Road Profile scales waiver (ABB)
- d. Road length waiver (ABB)
- e. Stormwater Drainage Restrictor Plate Detail revisions (ABA)

Response 4.

- a., b., c. Mr. Van Wyck has requested these waivers all along. These all have to do with plan scale waivers. The surveyor who drew the plans believed that having the plans appear on one sheet rather than the two that would be required to be in strict compliance with this requirement would make presentation of the plan clearer.

C.T. Male in its March 16, 1992 letter to the Board commented that:

"The waiver requests from 6.01(1.)B., 6.01(1.)D. and 6.03 are basically procedural items and will not have any effect on the outcome of the development."

- d. I have presented the reasons for a road length waiver on many occasions. The waiver request from 7.02(4.)C.(2.) is to allow a dead end road length of 1523 feet where a maximum of 1200 feet is allowed. As presented earlier and included in the record of the public hearing, approval of this waiver request would allow for more open space, a safer turnaround, shorter driveways, better placement of utilities, would place the houses

CHARLES H. CLARK
COUNSELLOR AT LAW

Rolf Madsen
September 23, 1992
Page Six

further away from Apple Street, and would allow for a fire hydrant to be placed closer to the proposed houses as is urged by the Fire Chief.

C.T. Male in its May 20, 1992 letter to the Board commented:

"It is our opinion that allowing the requested 1523 foot road to be approved where the maximum allowable length of dead end road per the Rules and Regulations is 1200 feet will cause no harm, breach of safety or other situation contrary to the best interest of the Town..."

Mr. Van Wyck has proposed limiting the number of lots to 15 - the same number that would be allowable under the 1200 foot road. I urge approval of this waiver with this limitation.

- e. Mr. Van Wyck has agreed to revise the restrictor plate detail drawing on Sheet 6 in response to C.T. Male's comments. Once it is clear how the Board will deal with the waiver requests and By-Law interpretations, all of the drawings will be revised as necessary in accordance thereto and the restrictor plate detail drawing will also be revised. The time and cost incurred of revising drawings is substantial, and Mr. Van Wyck would like to have all necessary revisions done at the same time. This is a reasonable request which will keep plans to a minimum. The Planning Board could, on the other hand, vote to approve the Plan with the condition that Mr. Van Wyck provide revised drawings of the restrictor plate detail which meet the approval of C.T. Male.

CHARLES H. CLARK
COUNSELLOR AT LAW

Rolf Madsen
September 23, 1992
Page Seven

I would be glad to comment further about any of these issues if requested to do so by the Board.

Very truly yours,



Charles H. Clark

CHC/11
Enclosures

cc: Members of the Planning Board
Peter Van Wyck
Paul Connolly
Gilbert Nelson
Robert Klopotoski

Essex Planning Board

September 2, 1992

A G E N D A

Appointments:

- 7:45 p.m. ... Submittal of building permit applications - Building Inspector Richard Carter
- 8:00 p.m. ... Continuation of public hearing - Low Land Farms amended definitive subdivision plan
- 8:40 p.m. ... Discussion of Turtleback Road
- 9:00 p.m. ... Janet Gorton, 98 Choate Street - subdivision of property - CANCELLED
- 9:15 p.m. ... Karen Hatch, representing Crane Farm, Milk Street - boat storage
- 9:30 p.m. ... Linda Monagle, Southern Avenue - change of use of barn to studio
- 9:40 p.m. ... David Hidden - request to remove covenant from Tyler subdivision road, off Addison Street
- 9:45 p.m. ... Review of Form A - lot line change, Scot's Way subdivision

Business:

Long Range Planning Committee

Decision on Form A submittal fees

Sign Bills Payable Voucher

Essex Planning Board

September 2, 1992 - Minutes

Present: Rolf Madsen, Chairman; Frances Dunn; Joseph Ginn;
John Knowles; Sheldon Pennoyer.

Meeting called to order at 7:45 p.m.

Building Inspector Richard Carter submitted a building permit application for Scott Savory for construction of a single family dwelling on Lot 6, Pine Ridge Road. Carter told the Board that at the last meeting Ronald Ober, developer of the Pine Ridge subdivision, submitted a building permit application for a spec house on this lot. Those plans have now been withdrawn. Building size - length 40 feet, width 26 feet, height 28.5 feet. Lot size 1.268 acres.

Pennoyer moved to approve the siting of the single family dwelling for Scott Savory, Lot Number 6, Pine Ridge Road, as shown on the plan dated February 28, 1989. The motion was seconded by Knowles, with the Board voting unanimously in favor.

A building permit application was submitted for John and Gail Shields for construction of a single family dwelling on Lot 1, Pine Ridge Road. Building size - length 62 feet, width 28 feet, height 28 feet. Lot size 1.59 acres.

Pennoyer moved to approve the building permit application for a single family dwelling for John and Gail Shields, Lot 1, Pine Ridge Road, as shown on the plan dated April 9, 1991. The motion was seconded by Knowles, with the Board voting unanimously in favor.

A building permit application was submitted for James N. Lester for construction of a two-story garage and workshop at 83 Wood Drive. Building length 40 feet, width 24 feet, height 25 feet; lot size 26,925 square feet.

Ginn moved to approve the building permit application of James Lester, 83 Wood Drive, for a 2-story garage/workshop noting that there will be no installation of plumbing facilities as shown on the site plan dated November 14, 1988. The motion was seconded by Knowles, with the Board voting unanimously in favor.

A building permit application was submitted for Jeffrey D.

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September 2, 1992

Jones for construction of a single story addition to the existing residence at 23 Choate Street. A request was made to change the use of the dwelling from a single family to a two-family. Building size - length 32 feet, width 44 feet, height 17 feet. Lot size 3.4 acres.

Pennoyer moved to permit the change of use from a single family to a two-family for Jeffrey Jones, 23 Choate Street, and to approve the application for a single story addition as shown on the drawing dated July 6, 1992. The motion was seconded by Knowles, with the Board voting unanimously in favor.

A continuation of a public hearing was held at 8:15 p.m. under Massachusetts General Laws, Chapter 41, Section 81, and the Rules and Regulations relative to subdivision control of Essex, Massachusetts, Section 6, to consider an amended definitive subdivision plan of land known as Low Land Farm, Applicant Peter Van Wyck.

Madsen stated that the Board had received two correspondence, one from C.T. Male and one from Peter Van Wyck's attorney, Charles Clark. Madsen read C.T. Male's letter dated August 13, 1992, into the meeting. Madsen then asked the Board if they had any comments before Clark read his letter into the meeting. Betsy Fawcett questioned the notification of the abutters for the continuation of the public hearing. Madsen told her he felt he felt adequate notice of the hearing had been given, but if she felt otherwise, then a written comment should be given to the Board.

Clark then read his letter dated September 2, 1992, into the meeting, which he said was in response to the comments and recommendations raised by the Department of Public Works, Conservation Commission, Board of health, Fire chief and the Chief of Police. A copy of both letters are attached to these Minutes. Clark said that in response to the August 13 letter from Paul Connolly of C.T. Male to the Planning Board, Gilbert Nelson had revised his traffic study to address some of the concerns. Nelson then submitted to the Board copies of the revised traffic report. Nelson said he concurred with Paul Connolly's recommendation that there be additional counts made, and on August 25, 1992, he did conduct additional counts at the intersection of Western Avenue and Apple Street. "Basically," he said, "the report as submitted

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on August 5 is updated to reflect those counts. The simplistic bottom line of the new counts, the new projections based on the new counts, is that the level of service, including the projected Apple Street traffic without the development, is somewhat greater than the volume which had been anticipated before. However, the evaluation including the traffic generation by the development is still very comfortably in the level of service A as indicated. Basically, I altered Figure 2 so as to reflect the increase in the volumes that were recorded on August 25. Quite simply, I multiplied the values that had been recorded by extrapolation on August 5 on Apple Street by a factor of 1.17 and on Western and Southern Avenues by a factor of 1.22. Essentially, this is a nominal increase over what was indicated by the 2% increase that I had indicated before." Eloise Hodges, 93 Apple Street, said she had a petition that she wanted to submit to the Board signed by twenty-two citizens of Apple Street. "The petition," she said, "requested that the Planning Board defer any decision on the Low Land Farms development until the September 21 meeting takes place. That meeting has been called by Town Counsel, bringing together all the Boards in Town to review and update them on the legal situation as it now exists between Mr. Van Wyck and the Town. It's quite clear that a number of people are not sure what the facts are at present. We hope that you can wait out the three weeks and allow that meeting." She also stated that they have a great concern about public safety and the degree of traffic on Apple Street. "We completely disagree with Mr. Nelson's projection of the carrying capacity of Apple Street and also with his premise of what the traffic is at present. Mr. Nelson had stated that the peak traffic on Apple Street with the addition of the Low Land Farm development would be approximately one car per minute. We had made our own traffic study in the past three weeks and found at present it is one car per minute. If the Low Land Farms development is added that would increase the traffic by 25%." Attached to the petition was the study done in 1981 which they felt was a very good study. She implored the Planning Board to respect the fact that Apple Street is a scenic way and has been designated as such. Kimberly Germain, 15 Apple Street, said she is still unclear as to whether Gilbert Nelson had included Turtleback Road extension in his study. Nelson - "Yes. This report that I am now presenting which has a slight revision to what was presented on August 5 does

specifically and directly include the Turtleback Road extension trip generation as well as Low Land Farms trip generation. Elizabeth Frye, Apple Street, indicated that there was a lot of frontage along Apple Street which was potential house lots. She also questioned how lot depth was obtained. Frederick Fawcett, Apple Street, said, "The right-of-way into these lots which is 100 feet long and a total of 44 feet wide, 22 for each, obviously that's going to be a driveway, so if that's going to be a driveway how are your emergency vehicles going to turn around unless he's going to put a hammerhead or a great big turn around in there and then the road is 100 feet longer even than the road which is already too long. The reason for frontage requirements, obviously, is for public safety and there is no way that these frontage requirements allow for public safety vehicles to properly park and perform their duties for those back lots. The whole point of turning down an applicant's proposal and giving him a chance to cure that proposal and getting it subsequently approved is for him to be able to make an attempt to cure the deficiencies in that plan. Have the deficiencies in the plan been cured? I cannot see why we go dancing around and around with this plan over and over again, having it resubmitted, erased and patched together again and come up with another plan that still does not meet the regulations of the Planning Board. I would also like to point out to C.T. Male that it is not C.T. Male's responsibility in this particular instance to comment upon whether or not our bylaws and/or regulations are good, right or indifferent. That is not a subject for this particular meeting subject to this particular plan. I feel it clouds the issue quite considerably to make that sort of subjective judgement at this time." Betsy Fawcett asked if the Planning Board would answer the following questions:

- 1) Is Mr. Van Wyck in total compliance with the Department of Environmental Protection and the Office of the Attorney General, and 2) Has the D.P.W. approved or disapproved this plan? The Board did not know if the plan was in compliance with the D.E.P. at this time. Eloise Hodges reiterated that she would appreciate if the Board would hold off making a decision until after the September 21 meeting. Madsen said he could assure her that there would be no decision made before that date. Clark said the meeting mentioned in the petition was a new issue raised tonight. It mentioned generally the legal relations between Mr. Van Wyck and the Town. He questioned what jurisdiction the Board of Selectmen

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had with the subdivision plan. Madsen said, "Knowing what has been going on with Mr. Van Wyck and his property, subdivision proposals on both this property and also Turtleback Road, I think it would be in the best interest of the Board, not to say whether it would be a reason for denial or approval on this plan, but I think its something that the information in there should be looked at; the process is already in place, there is going to be a meeting on the 21st." Clark suggested if the Board was going to have that meeting then it should be part of the public hearing. Madsen said the meeting was not necessarily relative to this issue here, but it is relative to a number of legal issues that have been ongoing with Peter Van Wyck over the last fifteen years. Clark - "Then for the record I would say they are relevant to this subdivision." Dunn then said the Board should look at this with commonsense. She questioned why the Board was going through this if Klopotoski (surveyor) said this could be done without the requested waivers. She felt there had not been too much corrected on the plan although the Board was supposed to have one with everything corrected. She said she did not see too much corrected on the plan with regard to the reasons for denial. Her other issue was the drainage. She felt the ditches would cause a lot of problems. She was also concerned about the traffic. Clark said there were about sixty-five revisions made to the plan in response to the denial. They could have ended up with a 1200 foot road, same number of lots, no waivers, compliance with every rule and regulation, without a reason to deny it. Clark said, on Dunn's concern about traffic, that people can make wrong counts because they are not traffic engineers. Mr. Nelson is a traffic engineer; his report and his reputation counts. With regard to the drainage issue, Clark said that is a technical issue and is beyond his expertise. On the safety issue, he said he found it very interesting that neither the Chief of Police or the Fire Chief made any comment whatsoever with regard to the traffic safety issue. Dunn invited people to ride with her on the school bus in order to have her view of traffic safety. She felt that with open ditches as drainage you would have weeds and disease breeding. She reiterated that common sense be used when making a decision on this plan. Kimberley Germain questioned that the traffic study was done for Van Wyck and paid for by Van Wyck. Nelson said, "This has been an employment of mine for eleven years. I first arrived in Essex something more than eleven years ago. I

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was presented with the Hastings-Murphy report. This report was the cause which shut down any development on Apple Street. We couldn't cut a tree, we couldn't cut a bush. The context of that report, my concept of it, was to preclude any addition. I undertook to do a conscientious study. It went to court. I believe my report was upheld as being a conscientious professional report that indicated that Apple Street had certain capabilities. I did not exaggerate these capabilities. Yes, Apple Street has more traffic on it to some degree than what it did in 1981 when I first made the counts. The width of Apple Street has not change significantly. Other characteristics have not changed significantly." Megan Houser then voiced her concern about the traffic. Sheldon Pennoyer - "I want to speak as a Planning Board member. I wasn't here on this Board at the beginning of this process. I think what bothers me in listening to both sides - we are living in an expanding world, it's a reality. What I see is that when a developer comes before a Board at a preliminary stage, this is the stage when us, as a community, can sit and begin to shape these things. I would, more than probably anyone here, like to see a large portion of this land have a restriction on it. I have certain feelings about, not what it does to Apple Street, but what it does to the Town Hall and what it does when people are playing ball from the Town Hall as houses start to crop up on this rather wonderful piece of natural landscape. I think we have gone beyond that, and I think what has happened here is that everyone has come after the applicant for these technical deficiencies of not meeting the engineering requirements. Any person can eventually meet those but the longer it takes him to meet those, the greater his liabilities are in terms of the money he puts forward to approve the thing. So if this applicant goes bust, somebody else is going to pick it up and keep going. So in the future, whether it's another piece on Apple Street or somewhere, we've got to start looking and shaping these things and saying, yes, there might be some buildings here but can we get some of it to have a restriction so that we can begin to get a balance and begin to get some predicability within Essex."

Pennoyer moved to continue the public hearing until September 23, 1992, at 8:00 p.m. The motion was seconded by Knowles, with the Board voting unanimously in favor.

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Turtleback Road Extension - A letter was submitted to the Board by Attorney Charles Clark, attorney for Peter Van Wyck. The letter read as follows: "Mr. Peter Van Wyck has asked that I look into the matter of recording of an approved subdivision plan beyond the normal six month period for recording such plans and be prepared to make my findings available to the Board."

"The recording of subdivisions is controlled by Massachusetts General Laws Chapter 41, Section 81X."

"In pertinent part, the statute requires the execution of a certificate by the current planning board that the plan that was previously approved has not since been modified, amended, rescinded or changed if, as here, that is the case. No such modification, amendment, rescission or change has been made by the Board. The statute is quite explicit that the Board shall make the certification upon application."

"Action by the Planning Board appears to be a ministerial act and not one of discretion under the statute. The Land Court concurs with this view."

Clark said he did not have Town Clerk Sally Soucy's sign-off on the plan. Madsen said he was uncomfortable signing the plan, knowing an appeal had been filed, without a document as to the outcome of the appeal filed. It was suggested that the applicant submit an affidavit stating that he knows of no other appeal to the higher court.

Linda Monagle, 67 Southern Avenue, met with the Board for a change of use from a residential use to a home occupation. Monagle explained to the Board that she does smocking and would like to have the home occupation in the barn on her property, in which she would sell smocking patterns and smocking floss. She added that there would be no more than two employees, no change in the exterior appearance, no utilities, and generally, only one customer at a time.

Pennoyer moved to approve the home occupation for 67 Southern Avenue, for the use of a smocking studio, with the stipulation that the home occupation by-law be met, seconded by Ginn, with the Board voting unanimously in favor.

David Hidden met with the Board to request the release of the

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covenant from the Tyler subdivison road, Noah's Hill Road, off Addison Street. A letter was received from the Department of Public Works.

Knowles moved to grant the request to remove the covenant from Noah's Hill Road, seconded Dunn, with Madsen, Dunn, Knowles, and Pennoyer voting in favor; Ginn voted present.

Engineer Clay Morin met with the Board to submit a plan for a lot line change under a Form A, subdivision approval not required, for the Scot's Way subdivision.

Pennoyer moved to approve the Form A plan, subdivison approval not required, for a lot line change for Misty Acres Realty Trust, Ronald Strong, Trustee, as shown on the plan dated July 27, 1992, seconded Ginn, with the Board voting unanimously in favor. The Board signed the plan.

Long Range Planning Committee - Meetings will be held on September 8 and 22.

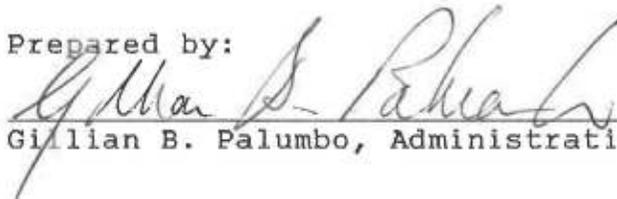
Pennoyer moved to hold a special meeting of the Planning Board, to commence at 7:45 p.m., on September 23, 1992, seconded by Ginn, with the Board voting unanimously in favor.

The Board proceeded to vote on the revision of the subdivision rules and regulations considered at a public hearing held at the Planning Board meeting of August 5, 1992.

Dunn moved to amend the Essex Subdivision Rules and Regulations by adding the following: Under Section 4.01 - a non-refundable fee of \$100.00 is required for each submission with an additional \$100.00 fee for each lot created. Under Section 5.01, Paragraph 2 - A non-refundable fee of \$100.00 is required for each submission, seconded by Pennoyer, with the Board voting unanimously in favor.

Pennoyer moved to adjourn the meeting, seconded by Knowles, with the Board voting unanimously in favor. Meeting adjourned at 10:40 p.m.

Prepared by:



Gillian B. Palumbo, Administrative Clerk

CHARLES H. CLARK
COUNSELLOR AT LAW
TAVERN PROFESSIONAL BUILDING
30 WESTERN AVENUE
GLOUCESTER, MASSACHUSETTS 01930

 (508) 281-5900

September 2, 1992

Rolf Madsen, Chairman
Essex Planning Board
Town Hall
Martin Street
Essex, MA 01929

Re: Amended Definitive Plan of Low Land Farms

Dear Chairman Madsen:

On behalf of Peter Van Wyck, I would like to respond to the comments and recommendations raised by the Department of Public Works, the Conservation Commission, the Board of Health, the Fire Chief and the Chief of Police which were submitted to the Planning Board and inserted into the record of the Public Hearing on the above-mentioned subdivision plan on August 5, 1992. I request that this letter be also inserted into the record of the Public Hearing which continues tonight.

1. Department of Public Works

Comment: The Department comments that contours, slopes, and grading are not defined.

Response: Mr. Van Wyck has submitted plans which define contours, slopes and grading in conformity with the Rules and Regulations Relative to Subdivision Control adopted by the Planning Board of the Town of Essex. The plans have been reviewed on numerous occasions by the Technical Advisor to the Planning Board, C.T. Male Associates and have been found to be in conformity with the Rules and good engineering practice. Specifically, Rule 6.04 (2) determines the requirements which have been complied with.

Comment: The Department comments that it requires 18" of gravel on roads and 12" has been provided.

Rolf Madsen, Chairman
September 2, 1992
Page Three

Response: Mr. Van Wyck, prior to constructing the road, must first file a Request for Determination to see if the Conservation Commission has jurisdiction under the Act. If the determination is yes, then a NOI would be required. The important thing to remember is that nothing gets built until the Commission's interests are reviewed and evaluated. The Commission's involvement follows the Planning Board's approval of the plan. The commission also requests that a botanist show the edge of the buffer zone. This has already been done: the wetlands area has been flagged on the ground and the wetlands and buffer zone appear on the plans.

3. The Board of Health

Comment: The Board recommends approval with the comments that 1) each lot be posted; 2) each lot be submitted separately for sewage system approval; 3) that it assumes the water supply is private; and 4) that no dwelling shall be allowed to connect to a street drain.

Response: Mr. Van Wyck will post each lot created by this Plan prior to conveyance or prior to seeking septic approval. Each lot will be submitted separately for sewage disposal system approval at the appropriate time. The water supply will be public, not private. Drains from dwellings will not be connected to Town street drains.

4. Fire Chief

Comment: The Chief's only comment is that hydrants must be a maximum of 500 feet from dwellings.

Response: This code requirement will be adhered to. Approval of the length of road waiver will bring hydrants closer to dwellings than code requires which is the thrust of the Chief's public safety comment.

5. Chief of Police

Comment: The Chief's only concern is that trees be trimmed to the ground at the entrance of the subdivision for public safety reasons.

CHARLES H. CLARK

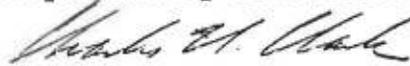
COUNSELLOR AT LAW

Rolf Madsen, Chairman
September 2, 1992
Page Four

Response: Mr. Van Wyck will trim trees at the entrance on his land required for public safety reasons and authorized by the Town.

I would be glad to comment further about any of these issues if requested to do so by the Board.

Respectfully submitted,


Charles H. Clark

cc: Department of Public Works
Conservation Commission
Board of Health
Fire Chief
Police Chief

CHARLES H. CLARK
COUNSELLOR AT LAW

Rolf Madsen, Chairman
September 2, 1992
Page Two

Response: Mr. Van Wyck has provided for a gravel roadbase of 12" which is the requirement under Rule 7.02(4)(a)(9). This requirement was reviewed by C.T. Male which has informed the Board of the Applicant's compliance with this requirement.

Comment: The Department comments that it will not accept an open drainage system.

Response: Mr. Van Wyck has designed a drainage system which is in conformity with the Rules and Regulations of the Town of Essex. This system's technical aspects have been thoroughly reviewed by C.T. Male and have been shown to be in compliance with all applicable rules and good engineering practice. Specifically, Mr. Van Wyck has chosen street drainage using roadside swales as contemplated by Rule 7.02(5), second paragraph, and Appendix C thereto. Rule 7.03(1) (Drainage-General Approach) specifically encourages storm water recharge rather than piping. Further, this section states that open drainage systems are preferred.

Comment: The Department comments that it is unclear where the drainage will drain to.

Response: No drainage paths will be altered by the proposed drainage system and roadway as was required by C.T. Male in their technical review. Water will drain downhill in the direction of the marsh bordering the Essex River.

Comment: The Department comments that the plans as a whole are not acceptable.

Response: The plans that were submitted are in conformity with the Rules and Regulations and have been reviewed for conformity by C.T. Male. The few exceptions are where the applicant is seeking a waiver from the Rules and Regulations and where the applicant is seeking a policy determination from the Board on how it intends to apply lot width and depth definitions to the plan.

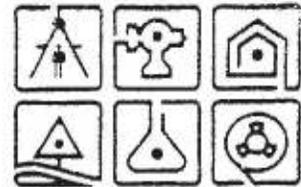
2. The Conservation Commission

Comment: The Commission comments that it would like to receive a preliminary Notice of Intent.

C.T. MALE ASSOCIATES, P.C.

Two Central Street
Third Floor
Ipswich, MA 01938
(508) 356-2756
FAX (508) 356-4880

Engineering
Land Surveying
Architecture
Landscape Architecture
Environmental Services
Computer Services



August 13, 1992

Town of Essex
Planning Board
Town Hall
Essex, MA 01929

Attn: Rolf Madson, Chairman

Re: *Definitive Subdivision Plan
Technical Review
Low Land Farms Subdivision, Revision 3
C.T. Male Reference 89-07658-1*

Dear Board:

Following the recent (8/5/92) public hearing on the subject proposal, I felt it prudent to reiterate several issues that you should pay particular attention to. Some issues require action by the Board (ABB) and some issues require action by the applicant (ABA). The issues are noted as such:

1. Existing traffic movement counts should be taken at the Apple Street and Western Avenue intersection. The applicants traffic report should be updated/ revised to reflect this new data. The new data should be compared to the projected data based upon 1983 counts (ABA).
2. The issue of lot sidelines raised in our correspondence of May 20, 1992, needs to be addressed by waiver (ABB) or by revision of lot layouts (ABA).
3. The issue of lot widths raised in our correspondence of May 20, 1992, needs to be addressed (ABA and/or ABB).

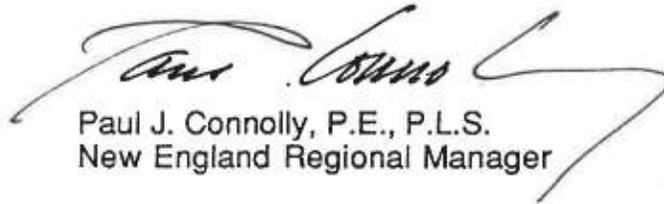
C.T. MALE ASSOCIATES, P.C.

4. The issues raised in our correspondence of March 16, 1992, need to be addressed:
- a. Locus Plan scale waiver (ABB)
 - b. Road Cross Section scale waiver (ABB)
 - c. Road Profile scales waiver (ABB)
 - d. Road length waiver (ABB)
 - e. Stormwater Drainage Restrictor Plate Detail revisions (ABA)

Please call if there are any questions.

Very truly yours,

C.T. MALE ASSOCIATES, P.C.



Paul J. Connolly, P.E., P.L.S.
New England Regional Manager

PJC/gb

Essex Planning Board

August 5, 1992

A G E N D A

Appointments:

- 7:45 p.m. ... Building Inspector Richard Carter -
building permits
- 8:10 p.m. ... Westley Burnham - submittal of Form A,
moving lot line - County Road
- 8:15 p.m. ... Public Hearing - Amended definitive
subdivision plan, Low Land Farms
- 9:15 p.m. ... Public hearing - filing fee changes
for Form A submittals and preliminary
subdivision plan submittals
- 9:30 p.m. ... John Lambros, Choate Street - Form A
submittal
- 9:45 p.m. ... Ronald Ober, Pine Ridge subdivision

Business:

Review correspondence

Next Planning Board meeting - September 2.

Essex Planning Board

August 5, 1992

Present : Rolf Madsen, Chairman; George Bragdon; Frances
Dunn; Joseph Ginn; Mark Hall; Sheldon Pennoyer.

Meeting called to order at 7:55 p.m.

Building Inspector Richard Carter submitted a building permit application for Donald E. Metcalf, 118 Martin Street, for the construction of a single family dwelling. The Board of Appeals granted a variance for the property in 1991. All other approvals from the Conservation Commission and Board of Health were granted. Hall then read the conditions that were required by the Board of Appeals, i.e. a roadway for three lots, a fire truck turnaraound, and limited to three houses.

Ginn moved to approve the house siting for a single family dwelling at 118 Martin Street, applicant Donald Metcalf, seconded by Pennoyer, with Madsen, Pennoyer, Hall, Dunn and Ginn voting in favor; Bragdon abstained.

A building permit application was submitted for James and Madeline Albani, Lot Number 5, Pine Ridge subdivision, for the construction of a single family home, 46' by 38' x 35'. The Board of Health has approved the building permit and it will go before the Conservation Commission on September 22.

Hall moved to approved the building permit application for James and Madeline Albani, for the construction of a single family dwelling on Lot Number 5, Pine Ridge subdivision, subject to approval from the Conservation Commission. The motion was seconded by Pennoyer, with the Board voting unanimously in favor.

A building permit application was submitted for Ronald Ober, Lot Number 6, Pine Ridge subdivision, for the construction of a single family modular dwelling, 48' by 28' by 26'.

Hall moved to approve the building permit application for Ronald Ober for the construction of a single family modular dwelling on Lot Number 6, Pine Ridge subdivision, subject to approval from the Conservation Commission. The motion was seconded by Pennoyer, with the Board voting unanimously in favor.

A building permit application was submitted for James Lester,

83 Wood Drive, for the construction of a two-story garage, 24' by 40'. The lot size is 26,965 square feet. The siting of the accessory building met all set backs, but the Board wanted to see a full set of plans for the siting. The permit also needed approval from the Board of Health and Conservation Commission.

Thomas Griffin, County Road, met with the Board for a change of use from a two-family to a three-family dwelling. The Board was told that the Board of Health inspected the property today and tentatively approved the conversion. Under the by-laws a change to multi-family needs a special permit, with a lot size requirement of 60,000 square feet. The existing lot does not conform; therefore a variance is required from the Board of Appeals prior to the Griffin's application for a special permit.

Pennoyer moved to deny the change of use because the lot size does not conform to the requirements of the by-laws for multi-family use. The motion was seconded by Hall, with the Board voting unanimously in favor.

Robert Hanlon, Walker Creek Furniture, Eastern Avenue, met with the Board to discuss the change of use for the property from a commercial use to a residential use with a home occupation. Hanlon told the Board he wishes to convert part of the building to an apartment as a residence for himself.

Hall moved to approve the change of use from commercial to residential and home occupation under Essex by-law 6-6.2 for Robert Hanlon, Walker Creek Furniture, Eastern Avenue. The motion was seconded by Pennoyer, with the Board voting unanimously in favor.

Madsen asked Building Inspector Richard Carter about Byrne Brothers and Quinn Brothers hot-topping portions of their property. Both properties fall under the Water Resource Protection District, by-law 6-13, and a special permit is required for this activity. Carter said he would speak with both parties regarding this.

A Public Hearing was held at 8:30 p.m. under Massachusetts General Laws, Chapter 41, Section 81, and the Rules and Regulations relative to Subdivision Control of Essex, Section 6, to consider an amended definitive subdivision plan of land known as Low Land Farms, off Apple Street, applicant Peter Van Wyck.

Madsen - "Before we take public comments, we have received comments back from the Department of Public Works, as follows, "At our meeting of July 1, 1992, we the Department of Public Works Board of Commissioners reviewed the definitive subdivision plan of Low Land Farms dated 9-1-90, revision 3-9-92. Our comments are as follows: 1. Contours, slopes, and grading not defined. 2. We require 18" of gravel on roads, 12" is shown. 3. The D.P.W. will not accept the combination of pipe drainage and open ditch drainage in a new subdivision. Open ditch drainage requires too much maintenance and we have enough of those on existing roads. Therefore, we are not accepting this proposed drainage on a road that is potentially a Town road. 4. It is unclear where the drainage will drain to. 5. Plans as a whole are unacceptable. If you would like to see examples of drawings we would like for road layout, water, and drainage, please review plans for Pine Ridge and/or Charlottee Partnership." From the Police Department, "My concern would be with the shrubs that are shown at the entrance of the roadway. For the safety of all people using the roadway I would ask that they be kept trimmed low to the ground so as not to create a hazard." From the Conservation Commission, "We would like to receive a preliminary Notice of Intent detailing the scope of the project and information as to how the wetlands were delineated. Also the edge of the buffer zone should be shown by a certified botanist, together with any isolated vegetative wetland areas within the project area. We require the above information in order to make comments on the plan." From the Board of Health, "1. Each lot to be posted so that they are readily identified. 2. Each lot to be submitted separately for sewage disposal system approval. 3. Water supply - assume it is private water supply. 4. Drains - no connection to any street drain shall be allowed from any dwelling." From the Fire Chief, "Hydrant 500 feet maximum."

Madsen then asked for comments from the Board members. At this time they had no comments. Madsen then asked for comments from the applicant or his representative. Attorney Charles Clark said he was representing Peter Van Wyck. Clark - "I would like to introduce a few other people who have come here tonight to help support Peter Van Wyck's plan. With me are Gilbert Nelson, who is a professional engineer, and who will be available to comment on traffic and safety issues, Robert Klopotoski on technical issues, and Jerome Carr on wetlands issues. As you know, this is an amended definitive plan for the subdivision of Low Land Farms, a subdivision off Apple Street in Essex. The lots as shown on

Sheet 1 of the plan shows that the area to be subdivided lies in between Apple Street, Western Avenue, Southern Avenue, and Martin Street. The area to be subdivided comprises 78 acres of land with actual building to occur on a relatively much smaller number of acres. Sheet 2 of the submitted plan shows the definitive plan. The plans main features include: the building of a 20 foot wide road, 1523 feet in length, to access the subdivision with a hammerhead turnaround at the end.

In compliance with the subdivision control rules and regulations, Mr. Van Wyck has undertaken the following: Prepared stormwater drainage calculations calculated by professional engineer Vartan Mooradian, which conclude that with the design elements incorporated into the subdivision plan, post-development runoff shall be equal to or less than pre-development flows that exit the site. The stormwater drainage calculations and the stormwater drainage design have been favorably reviewed by C.T. Male Associates during their technical reviews on behalf of the Town. Created an erosion control plan to protect soil areas that get exposed during and after the building process. The plan encompasses both temporary and permanent erosion schemes involving the use of straw, mulch and permanent seeding. The erosion control plan has been reviewed for technical compliance by C.T. Male and has its approval. Mr. Van Wyck is assured, through the certification of engineer Mooradian, that the municipal water supply is adequate to supply water flows and pressures for fire fighting and domestic water supply purposes. Sheet 3 (lower left side) gives the actual flows, pressures, and testing dates by the Town of Essex Department of Public Works.

Mr. Van Wyck has made over sixty technical revisions to the earlier plan. These revisions were reviewed for compliance with the subdivision rules and regulations and have been ok'd by C.T. Male Associates. Mr. Van Wyck has created a superior roadway design that incorporates all of the requirements of the rules and regulations and which meets or exceeds the standard of good engineering practice followed and encouraged by C.T. Male Associates and the engineering profession. Based upon discussions with C.T. Male, C.T. Male and Mr. Van Wyck are in technical agreement on the plan submitted to the Board except for a few waivers from the subdivision control rules and regulations, to be discussed in a moment, and except for one or two minor design elements which will be submitted to C.T. Male for technical approval prior to the Planning Board's vote on the plan. C.T. Male

has further commented in writing that the proposed road alignment is pleasant and seems to fit well with the lay of the land. Further, the proposed road respects the existing natural and manmade features such as the stone wall, trees and topography present at the site.

While the proposed amended definitive plan contemplates six lots, Mr. Van Wyck has stated his intention to create fifteen lots overall. He has also stated his intention to limit this subdivision to no more than fifteen lots. Some of you have expressed interest in just what the proposed subdivision would look like with fifteen lots. We have prepared a supplemental drawing to depict the probable lot configuration when all is said and done. There are a few caveats that have to be remembered, however. Mr. Van Wyck seeks to create buildable lots which will support adequate septic systems. Several percolation tests have been performed which give a general idea of percable land. There may be other issues which arise as well. But as of this date, the probable building lot configuration being considered is as shown on a supplemental sheet being provided to the Board this day. As you can see, one of the lots, Number 1, has frontage on Apple Street, but access to Lot 1, if that lot were to be built, would be through an easement over Lot 2.

As I indicated earlier, Mr. Van Wyck has indicated that he is willing to sign a covenant limiting the number of lots to fifteen should the Board approve the plan with the waivers asked for. I have filed a draft covenant with the Planning Board which would be reviewed by Town Counsel to assure that the covenant would run with the land. As I indicated earlier, the plan as submitted seeks a few waivers from the subdivision rules and regulations of the Town of Essex. 6.01(1)B, 6.01(1)D, and 6.03 are procedural items and have to deal with the scale of the drawings presented. It was felt the plan was clearer in the scales selected. C.T. Male has indicated that these waivers will not have any effect on the outcome of the development. 7.02(4)(C)2 - This is the waiver request to allow a dead end road length of 1,523 feet whee a maximum of 1,200 feet is allowed. Most people do not ask for waivers that will cost them more money. This one will require Peter Van Wyck to construct over 25% more road. Why ask for the waiver? The waiver allowing a long road is in the best interest of the Town and the abutters. The following issues come into play: Open Space - Mr. Van Wyck wishes to retain some open space on the left side of the road. This desirable feature would have to be sacrificed with a shorter road, which will push all the lots down.

The turnaround - with a 1,200 foot road, the turnaround would be on a 4% incline. Also, it would require altering existing landscape because of the hill on one side and the valley on the other. The turnaround with a longer road provides a safe, flat area for ambulance, police, fire, and any other vehicles to turnaround. The shorter road would require longer driveways for access to houses. Fire and ambulance access would be worse with a shorter road. The Town has no say over driveways after houses are sold. A shorter road would put the inhabitants at some risk. A shorter road would put utilities further away from houses. This is not desired from a planning viewpoint as utilities should be as close to the houses they serve as possible. With a longer road, and I think this is very important for the abutters, houses could be placed further away from Apple Street - about the length of a football field. The plan proposes a fire hydrant at the end of the road to serve the back lots. With a shorter road, the hydrant would be 300 feet further away - not desired or prudent. Since the covenant limits the number of lots, agreeing to the waiver will not increase density. C.T. Male has reviewed this request for a waiver in its technical review and has stated in its May 20, 1992, letter to the Board that approval of the waiver 'will cause no harm, breach of safety or other situation contrary to the best interests of the Town.'

In talking with various members of the Board and the public, there seems to be serious concern that approval of this plan will put more traffic on Apple Street that it can handle. Further, questions have been issued as to the safety of entering Apple Street from the subdivision. In anticipation of questions and issues raised in this regard, the applicant has commissioned an amended traffic impact study which amends and incorporates the traffic impact study drafted in 1987 for the Turtleback Road Extension plan. Here to present his findings is Gilbert M. Nelson who is a professional engineer who was educated at Dartmouth College and the Thayer School of Engineering, also at Dartmouth. Mr. Nelson's expertise as a traffic engineer and traffic consultant is extensive and I am including a copy of his resume in the record."

Gilbert Nelson - "I would like to say that I performed, initially, studies back to 1983, and subsequently 1987 and 1991. I prepared a letter report which indicated the issue of sight distance and safety at the juncture of the proposed driveway to Low Land Farms at Apple Street. With that said, I will briefly outline the aspects of study that I entertained in producing the amended report which is made

available to the Board. I used exactly the same methodology and criteria that had been pursued at the initial report. All of these studies were predicated on traffic counts which were done very meticulously some years ago. Those traffic studies have been updated by standard statistical procedures, such that now I have an estimated 1992 ambient flow of traffic on Apple Street as well as on Western Avenue and also on Southern Avenue. Those are the two connecting streets as you know at the ends of Apple Street. In addition, on the earlier study, the traffic counts by use of license plate identification enabled us to identify true trips versus trips which had origins on the various segments of Apple Street. This is important because the earlier issues and, perhaps, the issues today, are the same; that is, the nature of traffic on Apple Street and the ability of Apple Street with its configuration to handle the traffic. The principle elements of the amended study were to, first, identify the new development, next to identify the present traffic conditions which were extrapolated by approved statistical methodologies, and thirdly, to identify the trip generation characteristics of the proposed development, which was then added on to the traffic of Turtleback Road Extension. Basically, as I indicated, the methodology was the same. The only other factor that I had mentioned previously was that the assignment of distribution of those trips going in and out of, let's say a driveway, it's important to say whether it turns right or left, whether it goes towards Western Avenue or towards Southern Avenue, and this is done in the same manner as it was done previously, which was essentially the identification of the trips that had been done in the original counts and which is roughly proportional to the directional distribution of flows on Apple Street. So, given those, I prepared a series of exhibits, figures which present those numbers. Finally, I did an evaluation of what I call the worst case scenario, which was at the intersection of Apple Street and Western Avenue, which fit that requirement based on the fact that it had significantly greater traffic volumes than on Southern Avenue, the turning movements were larger and I used the evening peak hour, so that any of the other intersections that were involved would have been significantly less problematical, if such proves to be a problem at all. Coming down to the final conclusions that I reached, essentially, it is my opinion that there will be no significant or discernible adverse traffic or traffic safety impacts from the full implementation and operation of both the Turtleback Road and Low Land Farms subdivision. In the analysis that I just finished describing, essentially, it resulted that the quality of traffic flow, level of surface

is what we call it, (LOS is another term for it), was, is, and will be, with these developments as well as larger subsequent future developments at Western Avenue, would be level of surface A; under the existing conditions with the implementation of these developments, Turtleback Road extension as well as Low land Farms subdivision, the reserve capacity on the critical approach of Apple Street northbound towards Western Avenue, the vehicles which would have to turn left and right would have a reserve capacity above the usual capacity of 645 vehicles per hour. These are the bases that I did before - I not saying that that is at all realistic, but that is what would give you a capacity. However, at this time we have, just as an example, after the complete development, that there would be approximately 59 vehicles using Apple Street, including those generated by the development. That bespeaks the current and proposed level of surface A. 59 vehicles is approximately 60 vehicles which is one vehicle per minute in either direction. It's not 60 vehicles going northbound and 60 vehicles going southbound. So those are the basic elements. I might say also, as far as the entrance at Apple Street of the proposed Low Land Farms driveway, that the sight distances are appropriate and well within the regularly used and applied standards. There should be no problem regarding safety, traffic flow, at that locaton. That's a summary of my report."

Paul Connelly, C.T. Male Associates, Technical Review Agent for the Planning Board of the Town of Essex - "You just recently mentioned the 59/60 number of trips, existing plus proposed development - Is that proposed development with the six house lots or with the fifteen lots?"

Nelson - "That is fifteen lots."

Connelly - "Is that 59 trips or trip ends during the peak hour?"

Nelson - "That is during the p.m. peak hour. Any other hour would be statistically lower."

Connelly - "Is the p.m. peak hour the worst case for Apple Street and the proposed development or does it flip-flop, or what?"

Nelson - "That is the worst case of the cases I looked at."

Connelly - "What is the total average trips?"

Nelson - "That I did not calculate."

Connelly - "What is your daily trip ends from the proposed fifteen lot subdivision daily and what is it during the peak p.m. hour."

Nelson - "I just did the p.m. and a.m. peak hours throughout the project, in other words, all the way from Southern through Western Avenues. The peak hour numbers are: total number during the a.m. peak hour, and this is two-way

traffic on Apple Street, at the driveway, is 19 for Turtleback Road Extension and 17 for Low Land Farms. For the p.m. peak hours it is 27 for the Turtleback Road Extension and 24 for Low Land Farms subdivision."

Madsen - "The criteria was also fifteen single family dwellings, is that correct?"

Nelson - "That is correct."

Madsen - "And that criteria is spelled out clearly in the report you are going to leave with the Board?"

Nelson - "That is what these numbers are assumed to be, that is correct."

Clark - "One other issue which I have heard raised is whether the Wetlands Protection Act applies to any wet area on the land. A particular concern is the status of so-called Area A which is the first wet area on the left. Here to report on this issue is Dr. Jerome Carr. Mr. Carr has earned his Ph.D. and is a professional hydrologist."

Carr - "I've been involved in this piece of land since about 1984 and it was our firm that flagged pieces of wetland on the side, although we didn't flag it all. Sections of it were flagged by Sanford Ecological Services and Wetlands Preservations, Inc. What I have been asked to do tonight is to address the small wetland area just to the left of the road as you come in. We have a situation where with the court settlement with the State, the State has determined that if that wetland were to be anything it would fall under the resource area category called Isolated Land Subject to Flooding. The court order has mandated that Mr. Van Wyck close a ditch that was dug there by somebody other than Mr. Van Wyck and to keep that ditch from draining to maximize the volume of water that would be held on the farm land. To qualify as isolated land subject to flooding the area has to hold a quarter acre foot of water and we have to add a survey conducted of that particular area. There were fifty something spot elevations taken of a very small area, very fine contour lines drawn, and it turns out that this area holds only about one third of the required volume of water to be a resource area. So this little area to the left of the entrance road is going to be too small to qualify as a resource area under the Wetlands Protection Act. So there will be no wetland issue associated with area A at all. I will mention while I'm here that there is another area of groundwater break out two hundred feet further down the property, in fact, it is in this little valley right in here. I was on that site today to see whether or not the wetland area that has evolved there since the area was last mowed and the two years it was left alone, and there has been an area of wetland evolve in that area and that area does not fall

within the 100 feet of the road layout. It will certainly affect some of the house lots at a later date, but when the plans are submitted to the Conservation Commission the surveyor will have the responsibility of locating the flags that will be put there and putting them on the plan. I went down there today and located the edge of the wetland and paced it off to the road and it's beyond the 100 foot buffer zone, so the road itself will not have any jurisdiction under the Wetlands Protection Act."

Clark then indicated that was the end of his presentation subject to the rights to respond in writing to the reports of the various Boards. Carr also indicated that there would be a report coming on the results of the survey so that there will be a set of calculations given to the Board."

Connelly - "With regard to the isolated land subject to flooding, which I believe falls under the jurisdiction, if applicable, under 310CMR 10.57, it is my understanding that, you, the applicant, will be filing a Request for a Determination of Applicability with the Conservation Commission to basically get a sign off, if you will, or a jurisdictional body, regulating body, input on this area."

Carr - "That's correct."

Elizabeth Frye, Apple Street - "I'm not sure I understood what you said as to how this study was made. Was it correct that the last time you did your car counting was for the case that went to court in 1983, that traffic study. The rest you said was extrapolated from those figures."

Nelson - "Yes."

Frye - "So nothing has been done, basically, for ten years. Evidently, this evening we are talking about something new. We are talking about fifteen houses and you say that at peak hour seventeen of those would be attributed to Low Land Farms. Well, only seventeen cars coming from fifteen houses."

Nelson - "During that peak hour, that's correct. These numbers that I used which we call generation factors were developed from housing units of similar characteristics on Apple Street, in the earlier study. That's what the license plate survey did, in terms of segregating true trips from those of trips generated to or from dwelling units on Apple Street. This was done morning and afternoon, probably three and a half to four hours during each period."

Frye - "The use of Apple Street, beyond the residential use, has also increased plenty in ten years."

Nelson - "Generally speaking, I have used what is typically accepted by the Mass. Department of Public Works as an expansion factor, which is 2% per year, and that basically results in an expansion factor of upwards of 20% which is

indicated in my report. This is, again, an accepted methodology for the expansion of existing traffic."

Frye - "Is the Board discussing the fifteen house plan tonight or the plan we expected to discuss."

Madsen - "We have a subdivision plan on the table for six lots but when we review a subdivision plan we review it with the potentiality of the development that might be served. At this time the developer has come before the Board and is saying he's looking at fifteen house lots. When we have been reviewing the plan, we have always reviewed it in terms that for every 150 feet he could chop off a lot. We have always assumed it will be 15 or 18 lots, somewhere in that number, even though it's a six lot subdivision."

Frye - "That's right, but may I also say that there's a big difference in my line. If you are suddenly addressing the reality, which always existed, of fifteen lots, remember C.T. Male said thirteen was fine, there are many new factors that come to mind, which you could have slipped by with six, which you can no longer slip by and to lay that on us tonight, is going too far, I think. It's a very sudden change. It's got to go back to Conservation, it has a lot of new things that come into play when you have a fifteen house subdivision. Have those lots been perced? Fifteen lots? I doubt it. You can't come in with ANR's in the future. Fifteen houses should be part of your subdivision plan if that's what your asking for. If you are asking for something which later on will be fifteen houses, you are talking about ANR; ANR is a waiver from subdivision control and you know it."

Robert Houser, Apple Street - "I've only been on Apple Street five years. I'm not a traffic engineer. I do have small children. I've watched this traffic, and with all respect with the way you update studies statistically, I'd encourage the Board to consider a real traffic study. A couple of things we've noticed. Traffic in the last five years has increased dramatically. A lot of it is going to the Home Center to buy materials. A lot of it is just people who realize we are the short cut now. We have an awful lot of cars on the weekend, and so I don't think the peak hour is going to work. I just can't believe the traffic you are talking about coming out of that intersection on a very narrow bumpy curved way is really not going to make a difference in terms of the safety of those of us who drive this street everyday. I want to ask the Board to consider whether or not a true traffic study was something we should consider again."

Westley Burnham - "I believe you said sixty cars an hour coming out of that intersection. I thought the sixty car an

hour was at the intersection of Western Avenue and Apple Street. Is that correct?"

Nelson - "That's correct. I might say that coming out of Low Land Farms drive it is predicted that thirteen would come out in the morning and that eleven would come out in the afternoon, that a total of eight would go in in the morning and seventeen would come in in the evening. Those are the figures that are in the report."

Jean Wittemore, Apple Street - "The reports you read at the beginning of the meeting, were those reports based on a six house plan or a fifteen house plan."

Madsen - "The plan submitted to them was six house lots."

Arthur Hodges, Apple Street - "As I understand, we are getting recommendations from a consultant on the basis of fifteen house lots, but everyone seems to know there is a potential for a lot more. What is the total potential of the area."

Madsen - "The applicant has said that he is willing to limit by covenant to fifteen house lots in the subdivision."

Hodges - "Is there any potential for further subdivision because of the longer road?"

Connelly - "We, as the consultants, looked at the allowed road length at 1200 feet and what the maximum build out would be on that road. I believe our calculations came out to be 13.8. That was with no regard to any additional lots that could be put on Apple Street which they have done for a total of fourteen. They are showing fifteen this evening. What they have verbally represented to the Board before this evening has been if the Board were to allow them to have a 1523 foot long road by waiver, instead of the maximum 1200 foot road, they would put in no more than the maximum number of lots that would be allowable."

Hodges - "So the maximum then is fifteen on this entire subdivision."

Connolly - "It's somewhere between 13 and 15, there's been some discussion on the calculations."

Frye - "I understand that we are supposedly doing this six lot subdivision, but what I want to avoid is when thirteen or fifteen houses go in, they come in as a subdivision plan, not as an ANR. In which case, all you can say is they have frontage and lot area. That's why they should be part of a subdivision plan, not a six-lot plan."

George Bragdon, Apple Street - "I tried to propose a subdivision plan a while back. The members of the Planning Board told me outright they wanted the houses to appear on each one of the three lots, where I had positioned every lot and houses in relation to anything that has a wetland as part of the submission. I think we ought to be fair and impose

those same rules to everybody. I proposed a three-lot subdivision, they are proposing up to a fifteen-lot subdivision. A fifteen-lot subdivision can get by a lot easier than a three-lot subdivision."

Madsen - "George, you are not acting as a Board member?"

Bragdon - "No, I'm not."

Madsen - "Why not?"

Bragdon - "Basically, the Van Wycks' hired my wife to act as a babysitter. Where that conflict is still in effect for a years time, I am acting as a member of the public."

Donald Browning, Apple Street - "Does the traffic study take into consideration the 50 additional lots off Turtleback Road?" Browning was told no.

Kim Jermain, Apple Street, said she had concerns of additional traffic. She noted that it was very high between 6 and 8 in the morning and again between 4 to 7 in the evening. She said several businesses have been adding to the traffic, such as a greenhouse and a daycare. W. Burnham said he could understand the concerns of traffic, but thought a new study would not help. He noted that the roadway may handle the additional traffic. A. Hodges told him Apple Street has too much traffic even now. Attorney Clark said it was difficult to replay about the traffic because no one else was qualified. Nelson's report was upheld in court.

Hall moved to continue the public hearing for Peter Van Wyck to September 2, 1992, at 8:00 p.m., seconded by Pennoyer, with Dunn, Ginn, Hall, and Pennoyer voting in favor; Bragdon abstained.

A public hearing was held to consider a revision of the subdivision rules and regulations of the Town of Essex as follows: Under 4.01 a non-refundable fee of \$100 be required for each submission with an additional \$100 fee for each lot created; under 5.01 a non-refundable fee of \$100 be required for each submission.

The 4.01 changes were debated with \$100 being proposed for a Form A submittal. Currently, no fees are being charged. A non-refundable fee for lot line changes will be \$100. Attorney James Kroesser pointed out that fees should be charged. Pennoyer noted that four towns charge for ANR and lot line changes. Bragdon said that townspeople cannot always afford a fee for an ANR (subdivision approval not required). The Board will vote on the by-law change at a later meeting.

A motion was made, seconded and unanimously voted on to

approve the Approval Not Required Subdivision plan of Stanley E. Collinson.

Pine Ridge Subdivision - has been 95% completed and only \$9,440 is required to complete the project, \$6,300 for binder coat, \$600 for grading, \$1,540 for plans, \$400 for spillways, and \$600 for a utility trench, for a total of \$9,440.

Hall moved that all but \$21,440 be released from the Pine Ridge account, seconded by Ginn, with the Board voting unanimously in favor.

Hall moved that the Board release Lot 7, containing 2.8 acres, seconded by Ginn, with the Board voting unanimously in favor.

Ginn moved to adjourn the meeting, seconded by Dunn, with the Board voting unanimously in favor.

Meeting adjourned at 10:30 p.m.

Prepared by:



Gillian B. Palumbo
Administrative Clerk

Essex Planning Board

July 1, 1992

A G E N D A

Appointments:

- 8:00 p.m. ... Review of amended definitive
subdivision plan for Low Land Farms
- 8:50 p.m. ... Form A - Stan Collinson, Choate Street
- 9:00 p.m. ... John Heath - informal discussion -
subdivision of property, Wood Drive
- 9:15 p.m. ... Form A - John Lambros, Choate Street

Business:

- Form A plan - Margaret Lake, Apple Street
- John Coughlin - Hot topping behind Misty Acres -
violation of Watershed by-law?
- Zoning Committee
- Advance autobody shop

Esex Planning Board

July 1, 1992

Present: Rolf Madsen, Chairman; Frances Dunn; Joseph Ginn;
Sheldon Pennoyer.

Meeting called to order at 8:10 p.m.

Board member Sheldon Pennoyer said he reviewed Peter Van Wyck's amended subdivision plan for Low Land Farms, and although he was completely new at this he did have some problems. He said, "I could not see any problems with the drainage, but I do feel there are a lot of pork chop lots for the amount of acreage. I found it disturbing that Mr. Van Wyck talked about farming it, and I feel he should farm it, not just throw the word around. I feel if a restriction is put on the other areas, then I could see the configuration of the lots. Granting there are four lots there, but I am disturbed about the remainder, the large area not divided. I feel its a lot of contorted lots, but if we talk about a restriction then the lots are fine. I do question the length of the road and feel the Board is being asked to approve a lot more than is being shown on the plan."

Madsen said the Board's review should be conducted on the potentiality of the entire lot. Paul Connolly, Technical Review Agent for the Planning Board, said he remembers Van Wyck talking about farming, but also feels there will be Form A's/ANR's presented. Pennoyer said he would like to talk about preserving some of the open space. Madsen felt it might be a tack the Board could take with Van Wyck, saying that if we grant the waivers requested then the Board would like to see some open land preserved. Paul Connolly was asked about the technical review. He said, "The plan is essentially complete. There are several waiver requests which have to be dealt with, re: longer road, waiver for scales in three instances, lot width issue has to be dealt with, and the 10 inch diameter drainage pipe. The plan as requested in our letter dated March 16, 1992, has not been received by us as yet. The plan would come under Conservation Commission review and I would ask that they do their own review." Attorney Charles Clark, representing Peter Van Wyck, was asked if there had been a formal filing made with the Conservation Commission. Clark said there had been a formal filing to the Conservation Commission on the original plan. Ginn was concerned that the Conservation Commission would completely refuse a particular part of the road, which would then require a significant modification to the plan. Ginn wanted it noted that there had been no filing of a Notice of Intent with the Conservation Commission. Ginn then asked if computations had been done on the pork chop lots at the end of the subdivision to

see if they conform to the by-laws. Connolly said that they did not conform to the width requirement but did conform to the depth requirement. Madsen - "Do they meet our by-laws?" Connolly - "No, they don't. We either have to change the by-laws, require a variance, or redesign the lot size." Madsen - "We can make an approval of the plan subject to modification of the lot lines." Ginn said maybe the developer should consider modifying them now. Madsen asked, "Would the Board prefer this to go to the public hearing this way or hold off on the public hearing until it can be made technically correct." Pennoyer - "I want some negotiating position. I want to see some open space on this." Ginn - "If Peter Van Wyck would change it, I would like to see it changed, but I don't think he will." Dunn - "I feel we should work on this and go with this plan." Madsen said he felt it could be easily modified. Connolly - "The Board is on a 135 day time frame period, which started when they made the filing with the Town Clerk." He added that he felt it was ready to go to a public hearing. Betsy Fawcett disagreed with the time frame and said it was 90 days, not 135."

Margaret Lake property, Form A, Turtleback Road - Pennoyer said he looked at the road. Although he saw flooding on Apple Street he felt it was due to clogged catchbasins and had nothing to do with Turtleback Road. Betsy Fawcett said the case went to court and Van Wyck stipulated that the road would be dug up and redone. It never was done, she said, and there is a stream that runs in front of the Bragdon property into the Essex River. Dunn said that if the road was inadequate she would not want to see any more houses up there.

Ginn moved to approve the Form A subdivision of land for two lots as shown on plan of land in Essex dated May 26, 1992, for the estate of Maragaret Lake, finding that Lots 21 and 20 have frontage on the private way of Turtleback Road, and that approval under the subdivision control law is not required. The motion was seconded by Pennoyer, with Dunn, Ginn, and Pennoyer voting in favor; Madsen voted present. Fawcett noted that there are a lot of things filed at the Registry of Deeds which should be checked.

Stanley Collinson submitted a Form A to the Board for property on Choate Street. Upon review of the plan the Board found two deficiencies - The size of Lot 1 was given in square feet instead of acres, and incorrect abutters names were given. Because of these deficiencies the Board could not act on the plan; Collinson withdrew the plan and Form A application. He asked the Board if, upon their review of the plan, they had any problems with the layout. The Board said they could see no problem with the plan once the corrections were made.

Collinson will meet with the Board at their next meeting on August 5, 1992, to resubmit the plan.

John Heath met with the Board for an informal discussion on the subdivision of property he owns on Wood Drive. Heath wants to create three lots from the 5/6 acre parcel, with an existing dwelling located on the center lot. Upon review of the plan Heath presented to the Board, they found two lots conformed to the by-laws, but the third lot lacked sufficient frontage. The Board recommended Heath go to the Board of Appeals.

John Lambros submitted a Form A, Subdivision Approval Not Required, for two lots on property he owns on Choate Street. The Board reviewed the plan and application.

Ginn moved to approve the Form A, plan of land of John Lambros dated July 1, 1992, for two lots, Lot 1 consisting of 2 acres with 150 feet of frontage and Lot 2 consisting of 16.4 acres with 450 feet of frontage on Choate Street, finding that approval under the subdivision control law is not required. The motion was seconded by Dunn, with the Board voting unanimously in favor.

Zoning Committee - Madsen said they are forming a committee and will ask Michael Cataldo, Roger Hardy, and David Lane to be on the committee. He has also called Patricia Roy who is a member of the Chamber of Commerce. Martha Thompson and Eloise Hodges have called to say they also are interested .

Administrative Clerk Gillian Palumbo submitted her resignation, effective October 1, 1992.

Dunn moved to accept the resignation of Administrative Clerk Gillian Palumbo. The motion was seconded by Ginn, with the Board voting unanimously in favor.

Ginn moved to adjourn the meeting, seconded by Dunn, with the Board voting unanimously in favor.

Meeting adjourned at 10:10 p.m.

Submitted by:


Gillian B. Palumbo

Essex Planning Board

June 17, 1992

A G E N D A

Appointments:

- 7:45 p.m. ... Building Inspector Richard Carter
- 8:00 p.m. ... Geoffrey Richon - submittal of Form A
for Margaret Lake, Apple Street
- 8:15 p.m. ... Stan Collinson, Choate Street -
submittal of Form A
- 8:30 p.m. ... Attorney Charles Clark - Peter Van
Wyck's subdivision plan for Low Land
Farms

Business:

- Summer schedule
- Zoning committee
- Liberty Research
- Review correspondence

Essex Planning Board

June 17, 1992

Present : Rolf Madsen, Chairman; Frances Dunn; Joseph Ginn;
Mark Hall; Sheldon Pennoyer.

Meeting called to order at 7:50 p.m.

Building Inspector Richard Carter reported that he had no building permit applications to submit to the Board.

Geoffrey Richon met with the Board to submit a Form A application for the Board for Margaret Lake, Apple Street, for two lots with frontage on Turtleback Road. A question was raised as to the width and grade of the road and its adequacy. The standards of adequacy in the subdivision regulations were reviewed. Attorney Charles Clark, representing Peter Van Wyck, said Turtleback Road is private and there is not a granted right to the road. Madsen then asked the Board if there were any other issues with the plan other than the adequacy of access. The Board said they had no other problems with the plan. Richon then submitted a deed showing the right of easement. He said the Lake's attorney was comfortable with the wording of the deed so they proceeded with the Form A. Clark said he would like a copy of the later deed and if necessary would speak to Lake's attorney. Jennifer Stephens, Apple Street, said she was promised access on Turtleback Road but never got it. Hall said, "I do not feel it is an adequate way. At Essex Reach subdivision I came under those standards and had to take borings to be sure the road was adequate. I feel the Board will open a can of worms if they allow this."

Hall moved to disapprove the Form A of Margaret Lake, Apple Street, approval under the subdivision control law not required, until such time the applicant can show us it meets the standards of adequacy under the subdivision rules and regulations. The motion was seconded by Dunn.

It was noted that there was another approved subdivision called Turtleback Road Extension which was to be added to Turtleback Road, increasing the potential number of houses. The voting on the motion was as follows: in favor - Dunn, Hall, and Madsen; opposed - Ginn and Pennoyer.

Madsen said he felt the questions raised on standards of adequacy and Turtleback Road were valid. Richon said he

felt it was an odd thing to have him do, to prove the road was adequate, when there already were four houses on the road. The Board then reviewed the subdivision plan for the Turtleback Road extension.

Ginn moved to reconsider the motion pertaining to the Form A of Margaret Lake, Apple Street, noting the title of January 15, 1988, and revision of plan dated November 30, 1987, indicating that the access to the subdivision was adequate. The motion was seconded by Pennoyer, with Dunn, Ginn, Madsen, and Pennoyer voting in favor; Hall opposed.

Hall said he wanted to make it part of the Minutes that Peter Van Wyck does not have to widen the road. He also has questions about the adequacy of the road. Richon stated, "Mr. Hall and I have been in litigation and I have heard that he has said if anything was brought into the meeting he would vote against it." Madsen suggested that all Board members make a site visit to the location of the lots and see if they feel the road is adequate. Hall then questioned a right-of-way through the property. Richon said, "We have no intention of subdividing the property further. We will be happy to label it 'equestrian travel only.'"

The Board discussed reverting to a summer schedule for the months of July, August, and September.

Ginn moved to go on a summer schedule, meeting only on July 1, August 5, and September 2, 1992, at 7:45 p.m. The motion was seconded by Pennoyer, with the Board voting unanimously in favor.

Attorney Charles Clark, representing Peter Van Wyck, met with the Board to discuss scheduling a public hearing for Van Wyck's amended subdivision plan for Low Land Farms. Clark said surveyor Robert Klopotoski had not filed the plan with the Town Clerk as originally thought, but it has now been filed.

Ginn moved to hold a public hearing on August 5, 1992, at 8:15 p.m. for the amended definitive subdivision plan for Low Land Farms, applicant Peter Van Wyck, requesting that Paul Connelly, the Board's Technical Review Agent, be present at the hearing. The motion was seconded by Hall, with the Board voting unanimously in favor. Madsen asked that two members of the Board review the definitive plan by the July 1 meeting.

Joanne Jordan met with the Board to discuss a proposed purchase of property at 143 Eastern Avenue, the former Greely property. She said she and her husband wanted to buy it if they could rent out the business property as a retail fish store, and live in the residential part. She also wanted to run a day-care center from the property. Ginn felt it would create too much density for the property with the two businesses. Madsen said, "It is a non-conforming lot and has a grandfathered fish business, but I would not approve it with a day-care center."

Frank Gentleman met with the Board to submit a building permit application for an addition to his house at 9E Gregory Island Road. The lot is non-conforming.

Ginn moved to approve the building permit application of Frank and Beth Gentleman, 9E Gregory Island Road, for an 8' x 12' sun room and deck, finding under Essex by-law 6-4.2 that the proposed alteration is not substantially more detrimental to the neighborhood than the existing non conforming use. The motion was seconded by Hall, with Ginn, Hall, Madsen, and Pennoyer voting in favor; Dunn abstained because she was not sure where the property was located.

Dunn informed the Board that she had checked on the Pine Ridge subdivision road and found that the paving had still not been completed.

Board member Sheldon Pennoyer submitted a list of subdivision filing fees which he had obtained from other towns. The Board felt they should charge a filing fee for the submittal of Form A's, subdivision plans believed not require approval under the subdivision control law.

Pennoyer moved to hold a public hearing on August 5, 1992, at 9:15 p.m. to revise the subdivision rules and regulations to include under 4.01 - Submission and Notice of Plan believed not to Require Approval - that a non-refundable fee of \$100 be required for each submission, with an additional \$100 fee for each lot created, and under 5.01, paragraph 2 - Submission of Preliminary Plan - that a non-refundable fee of \$100 be required for each submission. The motion was seconded by Ginn, with the Board voting unanimously in favor.

It was brought to the Board's attention that there has been growing concern amongst the neighbors of Liberty Research Company, Essex Park Road, of the noise being generated by tractor trailer trucks parking from 4 a.m. leaving their

engines running until the building opens for the morning shift.

Ginn moved to send a letter to Liberty Research Company, the letter to be delivered by the Building Inspector, stating that upon complaints from neighbors all deliveries should be made during normal working hours and that if vehicles are left on site their engines must be shut off to eliminate annoyance from noise and pollution. The motion was seconded by Pennoyer, with the Board voting unanimously in favor.

The Board discussed the additional tables which they approved for Tom Shea's Restaurant. The Board felt a copy of the Minutes should be sent to Manager Tom Goetner asking whether or not he is complying with the Minutes.

Dunn moved to adjourn, seconded by Hall, with the Board voting unanimously in favor.

Meeting adjourned at 10:00 p.m.

Submitted by:


Gillian B. Palumbo

Attest:

Essex Planning Board

June 3, 1992

A G E N D A

Appointments:

- 7:55 p.m. ... Eleanor Vyn - informal discussion on property on Conomo Drive
- 8:00 p.m. ... Jeffrey Richon - submittal of Form A, Apple Street Farms
- 8:15 p.m. ... Attorney Charles Clark - Peter Van Wyck subdivision, Low Land Farms
- 8:45 p.m. ... Ronald Gauthier - apartment over garage, Wood Drive
- 9:15 p.m. ... Engineer Clay Morin - Stan Collinson Form A, Choate Street
- 9:30 p.m. ... Ronald Strong - Flea market on Scot's Way

Business:

Farm stand at South Essex Antiques, corner of Harlow Street and Eastern Avenue

Election of chairman and clerk

Essex Planning Board

June 3, 1992

Present: Frances Dunn; George Bragdon; Joseph Ginn;
John Knowles; Rolf Madsen; Sheldon Pennoyer

Meeting called to order at 7:45 p.m.

Eleanor Vyn met with the Board for an informal discussion on property located on Conomo Drive. Vyn said she would like to construct a single family dwelling on the lot. Upon review of the plan it was found the lot in question was beyond the paved portion of Conomo Drive. Vyn was told that approval could not be given for the construction of a dwelling until the portion of Conomo Drive that provides frontage for her property was brought up to the standards of adequacy for a subdivision road.

Geoffrey Richon met with the Board to submit a Form A for the division of two lots off the rear of property owned by the estate of Margaret Lake on Apple Street. The two lots would have frontage and access on Turtleback Road, with the remaining nine-acre parcel having frontage on Apple Street. Richon told the Board the property line ends on the edge of Turtleback Road. Because Turtleback Road is a private subdivision road, the Board questioned the ownership of the road and the possibility of no easement rights to Turtleback Road. Richon was asked to return to the next meeting with proof that Turtleback Road can be used as frontage for the lots.

Attorney Charles Clark, representing Peter Van Wyck, met with the Board to set a date for the public hearing of the amended definitive subdivision plan for Low Land Farms. Madsen said he felt the Board should set a public hearing date and follow Town Counsel's advice. He felt the Board and Clark should all co-operate rather than go back and forth, and asked if Clark knew of any issue that should be raised at this time. Madsen added that it would make sense to run the process through its course, as he wants to see this resolved and finished.

Madsen moved to schedule a public hearing on July 1, 1993, at 8:00 p.m. for the amended subdivision plan of Low Land Farms pending clarification of the Town Clerk's receipt prior to the Planning Board meeting of June 3, 1993. If the Town Clerk is not in receipt of the amended plan, a new submittal

will have to be made to the Planning Board. The motion was seconded by Pennoyer, with the Board voting unanimously in favor.

A discussion followed with Paul Connelly of C.T. Male, the Board's technical review agent, on lot width. After being questioned by members of the public on lot depth, Connelly said he feels all the lots do conform to the minimum requirements of lot depth. He had been questioned as to whether there were four non-conforming lots on the subdivision plan.

Ronald and Donna Gauthier met with the Board to discuss the conversion of a second floor of a two-car garage into a one bedroom apartment on their property on Coral Hill. Madsen told the Gauthiers that this conversion could not be done, according to the Town's Watershed Protection by-law, because of insufficient room for a second unit.

A letter was received from Town Counsel regarding the motion on the floor of the Annual Town meeting for the zoning proposal. Town Counsel said that because no action was taken on the zoning proposal at the Town meeting, the Planning Board only had the right to form a study committee.

Madsen moved to create a committee of nine people, of which two are at least Planning Board members, to review the proposed zoning by-law regarding districts. The motion was seconded by Knowles, with the Board voting unanimously in favor.

It was brought to the attention of the Board that the White Elephant has built a porch on the building next to Cape Ann Golf Course and is displaying their goods on it.

Ronald Strong met with the Board to discuss the operation of a flea market on Lot 1 of the Scot's Way subdivision. Strong told the Board that the lot will remain grassed, and parking will be on the side of the road of Scot's Way. Strong assured the Board that the flea market would only be on week-ends, would be seasonal, and there would be no building on the lot. Because of the Board's concern for the traffic and parking on Western Avenue, Madsen felt "No Parking" signs should be placed on Western Avenue and that Strong's proposal should also be taken to the Chief of Police for his review. Madsen also requested copies of letters from all abutters to the property stating they had no objections to the flea market.

The Board then questioned Strong regarding the proposal for a fish processing plant on Scot's Way. Strong said he wanted an opinion from the Board as to whether the fish processing plant was considered business or manufacturing.

Election of Officers - Pennoyer moved that Rolf Madsen be elected Chairman of the Planning Board, Joseph Ginn, Co-Chairman, and John Knowles, Clerk. The motion was seconded by Knowles with the Board voting unanimously in favor.

Note: Prior to the arrival of the Administrative Clerk the Board took the following action - Approved the building permit application of Dexter Tindley for an 18' x 20' addition to his dwelling at 138 Eastern Avenue, and approved the siting of a new dwelling at Low Hill for George and Sandra Marsh.

Knowles moved to adjourn, seconded by Pennoyer, with the Board voting unanimously in favor.

Meeting adjourned at 10:15 p.m.

Prepared by:



Gillian B. Palumbo

Attest:

Essex Planning Board

May 20, 1992

Present: Frances Dunn; Mark Hall; Rolf Madsen; Sheldon Pennoyer.

Meeting called to order at 8:05 p.m.

Madsen moved to welcome Sheldon Pennoyer, the new member of the Planning Board, seconded by Hall, with the Board voting unanimously in favor.

Building Inspector Richard Carter submitted a building permit application for Tim Harrell, 34 Eastern Avenue.

Madsen moved to approve the building permit application of Tim Harrell, finding under Essex by-law that the proposed alteration is not substantially more detrimental than the existing nonconforming use to the neighborhood.

Carter told the Board that he had spoken to David Gaudet of 22 School Street regarding the display of lawnmowers on his property. Gaudet had been granted a home occupation at the property but was told outside displays of his product were not permitted.

David Reardon and Ronald Strong met with the Board to discuss a proposal to construct a building on Lot 5, Scot's Way, to be used as a fish processing business. Reardon explained that frozen blocks of fish would be brought to the building where they would be dipped in batter, packaged and shipped out. There would be 12 to 14 employees on a shift, which the Board said would automatically put it in Industrial Land Use, Class A. The building would be 22,000 square feet in size, one story, with a mezzanine office. The size of the building created a setback violation and Madsen said that even if this proposal was taken to the Board of Appeals, he could not see how they could rule favorably on this. When asked about truck usage, Reardon said three trucks would come and go each day. Hall said he would like to hear from the people who operate the business. Ginn questioned Reardon about the length of the lease. He was told it was for ten years with two five year extensions. Ginn said he was concerned that if this went out of business what would go in the building next. He wondered if some restrictions could be put on what could be done with the building. Reardon was given a copy of the Watershed Protection by-law for review as

the lot in question falls within its scope. Reardon said they would return to the Planning Board if they decide to go ahead with the proposal.

Ronald and Donna Gauthier, Coral Hill, met with the Board to discuss a proposal for an apartment over their garage. Gauthier said the garage was built on a separate lot than their house and at the time they decided to use the second floor for storage. He would now like to have a one to two bedroom apartment above the garage. Gauthier said the original building permit was issued by former Building Inspector Edwin Story. The Board said they would like to have the date of the building permit issuance in order for them to review the Minutes. Gauthier was asked to return to the next meeting.

Engineer Clay Morin and Stan Collinson met with the Board for an informal review of a Form A subdivision plan for Collinson's property on Choate Street. The Board reviewed the by-law on lot depth. The Board said they would be receiving some information from C.T. Male on this subject and felt they should all review it first before making a decision on the plan.

Attorney James Kroesser, Ronald Ober and Joseph Silva met with the Board to discuss Silva's interest in purchasing Lot 4 of the Pine Ridge subdivision. Kroesser said this meeting with the Board was to try and get the rest of the lots released. He felt with the passbook the Board was holding the Board could not hold back the release of the rest of the lots. Ober told the Board that the hot top would be going on the road at the end of the week. After some discussion Hall moved that the Board release lots 1, 2, 4, 5, 6 and 8 and hold lot 7 until such time the applicant can prove that there is sufficient monies in the passbook to complete the subdivision and upon the satisfaction of the Board Lot 7 will be released. The motion was seconded by Madsen, with the Board voting unanimously in favor.

Ron Ober then asked the Board for a letter to be sent to Trimount (hot top company) stating they will release the monies in the name of Ronald Ober and Trimount.

Madsen moved to send a letter stating that the Board is holding this money and upon completion will authorize release of the monies in the name of Ronald Ober and Trimount. The motion was seconded by Hall, with the Board voting unanimously in favor.

The Board reviewed Town Counsel's letter regarding the procedure for Peter Van Wyck's submittal of an amended definitive subdivision plan for Low Land Farms. A copy of this letter will be sent to Van Wyck's attorney for his review.

The letter for the Open Space Committee was approved and signed by Chairman Dunn for the Board.

Madsen moved to adjourn the meeting, seconded by Hall, with the Board voting unanimously in favor. Meeting adjourned at 10:00 p.m.

Submitted by:



Gillian B. Palumbo

Attest:

Essex Planning Board

May 6, 1992

A G E N D A

Appointments:

- 8:00 p.m. ... Review of amended subdivision plan
for Low Land Farms, applicant Peter
Van Wyck
- 8:45 p.m. ... Ronald Ober - Bond for Pine Ridge
subdivision road, off Pond Street
- ... Richard and Patricia Pierrot -
submittal of a building permit for
Pine Ridge subdivision lot
- 9:15 p.m. ... Lansing Banks - discussion of property
at 143 Eastern Avenue

Business:

Review correspondence

Read Minutes of March 18, 1992

Essex Planning Board

April 15, 1992

A G E N D A

Appointments:

- 7:45 p.m. ... Attorney Charles Clark - submittal of amended definitive plan for Low Land Farms subdivision, Apple Street
- 7:55 p.m. ... James Monahan - Board to sign amended definitive subdivision plan for Noah's Hill, off Addison Street
- 8:00 p.m. ... Continuation of public hearing - zoning by-law
- 9:00 p.m. ... Lansing Banks - former Greely property, Eastern Avenue
- 9:15 p.m. ... Ronald Ober - Pine Ridge subdivision

Business:

Sign bills payable voucher

Essex Planning Board

April 1, 1992

A G E N D A

- 7:45 p.m. ... Diane Polley, Pond Street - Board's signatures on subdivision plan, variance approved by the Board of Appeals
- 8:00 p.m. ... Public hearing - Noah's Hill amended definitive subdivision plan
- 8:20 p.m. ... Ronald Ober - submit letter regarding covenant on Pine Ridge subdivision road
- 8:30 p.m. ... Public hearing - zoning by-law

Business:

Sign payroll voucher

Essex Planning Board

March 18, 1992

A G E N D A

Appointments:

- 7:55 p.m. ... Lansing Banks, Eastern Avenue
- 8:00 p.m. ... Attorney Charles Clark, representing
Peter Van Wyck - Low Land Farms
subdivision
- 8:45 p.m. ... Attorney Mark Glovsky - Form A,
applicant Paul Pennoyer
- 9:00 p.m. ... Richard Tomaiolo - Form A, property
on Spring Street
- 9:15 p.m. ... Tom Goertner, representing Tom Shea's
Restaurant - submitting plans

Business:

Comments for Open Space committee

Zoning by-law

Sign Bills Payable voucher

Read Minutes of March 4, 1992

Essex Planning Board

March 18, 1992

Present: Frances Dunn, Chairman; George Bragdon; Joseph Ginn;
John Knowles; Dana Story; Mark Hall (8:30 p.m.)

Meeting called to order at 7:45 p.m.

Building Inspector Richard Carter submitted a building permit application to the Board for Walter and Adelaide Jewett for construction of a single family dwelling, 28' x 36', in front of the barn at 57 Martin Street. Lot size 41,528 square feet.

Story moved to approve the building permit application of Walter Jewett for a single family dwelling at 57 Martin Street, the approval given pending approval of the application by the Board of Health. The motion was seconded by Knowles, with Dunn, Ginn, Knowles, and Story voting in favor; Bragdon abstained.

A building permit application was submitted to the Board for their review for a garage/barn for Stephen Walker, Island Road. No finding by the Board was necessary.

Lansing Banks met with the Board to touch base with them regarding the plans he has for the former Greely property on Eastern Avenue. Banks said he plans to remove some of the building which housed the Greely shellfish business and replace it with a larger building from which he will run his business. Ginn said he felt it was increasing the use of the business. He said he couldn't see any difference between this business and the requested home occupation near Water Street. Banks said he was going to live in the front and have his business in the back. Dunn said she wanted to know whether the Board was dealing with a home occupation or a commercial business. Banks said he is the middle man not the manufacturer of the doors and windows, therefore most of his business takes place on the telephone. He also makes his own deliveries to his customers using his pickup truck. Ginn said he felt that the Board has to be careful as to how we have this presented. It was suggested that Banks return to the Planning Board after permission has been granted by the Conservation Commission. At that time he will submit a building permit application for the Board to act on.

Attorney Charles Clark, representing Peter Van Wyck met with the Board for further discussion on the submittal of an amended plan for the subdivision known as Low Land Farms.

Bragdon refrained from any discussion and will abstain from the voting because of a conflict. Clark said he wanted to update the Board on what Peter Van Wyck has been doing since December 18, the last time he was in discussion with the Board.

Clark - "We've met with Paul Connolly at C.T. Male, your technical adviser, to discuss in detail his report dated December 4. We have had since then several more in-depth discussions concerning the following issues, the roadway design specifications, the drainage design, the drainage calculations, storm water retention basin, erosion control plan and other specific requirements of the Town of Essex subdivision rules and regulations. All of those are reflected in C.T. Male's December 4 report. I can say tonight, based solely upon their report in December, Peter Van Wyck has made the suggested revisions in all of these areas and I can now state that we and C.T. Male are in technical agreement on the plans. The plans submitted tonight conform to the rules and regulations, the zoning by-laws and good engineering practice. I think you will see that in a relatively short amount of time a great deal has been accomplished in terms of developing a good technical plan. Waivers - Peter has, pursuant to my advice and our discussions here, abandoned his desire the waiver for a 16 foot wide road and is presenting a 20 foot wide road. One other waiver that was on the plan before you which we will not be asking for is the depth of the pipe. So we are down to four waivers, three of which I don't think from our discussions are really substantive. Two of them have to do with the scale of the drawings. Also Peter is not proposing the street trees, instead he's relying on what is naturally out there. To me the real issue comes down to the length of the dead-end road. I want to briefly state the case for the dead-end road, so that you can begin thinking about it and the neighbors can be talking about it, because I know it's an issue that will be talked about for a long time. Most people do not ask for waivers which are going to cost them money. In this case, Peter is proposing to build a road that is 25 percent longer and is going to cost him about \$100 to \$125 per foot to build. What Peter wants to do is leave as much open space as he can on the left hand side of the road as you are going in. Allowing a 1500 foot road would allow him to do this. If you scale back to a 1200 foot road he has to use part of that space that he would like to keep open for farmland or whatever, and use some of that land to provide frontage for the rear lots. So you would be cutting out some of the open space by requiring a shorter road. From a safety standpoint the hammerhead or turnaround that has been proposed at the end of the road, if it were a 1200 foot road the hammerhead would be

on a 4% incline and you can see some of the problems we can have - that's a dangerous turnaround. It is not good for emergency vehicles or anything. A 1500 foot road is better. Putting a turnaround in at 1200 feet you've got a hill on one side and a valley on the other; we are going to end up having to bulldoze something, and change the natural contour of the area."

Ginn - "That can be accomplished, but you are just trying to work with the natural ground."

Clark - "That's right, as much as possible. Further, the shorter road would require longer driveways for access to the houses in the rear. Fire and ambulance access would be worse for the shorter road. The Town does not have any say over the driveways, so you are losing some control over bringing the emergency services to the houses that will be built in the rear. From a safety standpoint, I would argue that a 1500 foot road is a safer road. A shorter road would put utilities further away from the houses and that's not good planning. Utilities should be as close to the houses that they serve. Long access driveways do not create a good plan. From a sight perspective, and I think this would appeal to the abutters, that with a longer road the houses could be placed further away from Apple Street in the rear of the lot. Another safety issue of the 1500 foot road proposes a fire hydrant at the end of the road; the 1200 foot road would place the fire hydrant 300 feet further away from the houses. That would create a condition that was not as safe as having one closer to the houses. In exchange for the waiver for the length of the dead-end street, Peter is prepared to offer a covenant which we talked about early last spring which would run with the land, with the number of lots running on the road be limited to fifteen lots. It means that if you agree to the waiver no more lots would be created than are allowed with the 1200 foot road. Peter is not gaining the ability to build more lots with the longer road. I would work with Town Counsel; perhaps you would want his approval on the language of the covenant, so you are satisfied. The length of the dead-end road limitation with rule or regulation is by its very nature arbitrary. Different towns include a limitation in their subdivision rules and regulations, but all the lengths vary and I haven't seen any justification for one length over another, but towns pick a particular length. Because this limitation is by its nature arbitrary, the waiver is widely granted throughout the Commonwealth where circumstances such as I have described above exist. There is no technical reason. I think Paul Connelly would agree with me. There is no technical reason why, with a covenant, this roadway should not be permitted with these covenants. I recommend that we proceed to a hearing limited to the issues raised in the denial as soon as

possible. I believe for the notice to the abutters and publication we would have to skip a meeting. That would give the abutters, C.T. Male and any one else an opportunity to come in and view the plans they have obviously got to view ahead of time.

Knowles - "That's a great presentation, I appreciate it. I'm still trying to find out what happened to the last submission that Peter made, because we have something on the table that we are supposed to decide on, which included new lots. He came in the next day or the next meeting after we had denied the earlier one. Does anyone recall that?"

Clark - "That was before I came on board to this issue. The way I understood how the Board had left it, it was not going to consider any new plans until Peter had gone through and had a technical review of the May plan. He didn't get the results of that until December."

Knowles - "No, I don't think that's right. He came in and made an application to us with a new plan."

Clark - "That he took off the table."

Knowles - "We don't know that yet."

Clark - "That's not on the table."

Knowles - "Can you just decide that arbitrarily then? How do we know that won't happen again?"

Clark - "That's withdrawn. The only thing that would be on the table would be the plans submitted tonight."

Story - "Mr. Clark, are you tonight submitting a new definitive?"

Clark - "It's a revision of the earlier plan."

Story - "A new definitive plan incorporating the things that you discussed, isn't that right?"

Clark - "Solely reacting to C.T. Male's report. C.T. Male had some problems with these plans. We've done A, B and C to try to meet the standards of C.T. Male."

Elizabeth Frye - "What is the nature of the plan you are submitting tonight? Do you call it an amended plan? That's the only kind you can submit, an amended plan."

Clark - "This plan is a direct response to the report by C.T. Male. The subdivision control law encourages the applicant to work with the Board and the Board has encouraged the applicant to work with the technical adviser to come up with a plan that is passed. This is a revision of the earlier definitive."

Frye - "Case law will show there is no such thing as denying with conditions, otherwise it would be the same as approving with conditions. All he can do to it now is, when you deny the plan with conditions, at that point Peter could either go to Superior Court for his appeal or he could submit to you an amended plan addressing the changes and that amended plan is a new filing. It comes in and goes through the whole process. You can waive parts of the process, like the fees

and so forth, and there is a public hearing, there is consideration of all those regulations, nothing left out, parking traffic, environment, everything, and it's here in 81U and 81W. This is from the Mass. Appeals Court."

Clark - "What year?"

Frye - "1978. Patelle vs. Planning Board of Woburn.

'.....We are thus moved by the particular circumstances of this case to decide whether a plan which has been disapproved for stated reasons should be accorded the same sort of automatic treatment. A planning board has no discretion to disapprove a subdivision plan which has been approved by the board of health and is in conformance with the reasonable rules and regulations of the planning board, and, thus, the argument could be made (as the board apparently does) that it should follow as a necessary corollary that approval must be forthcoming once the legitimate grounds of disapproval are removed. As appealing as the forgoing argument appears, we cannot agree with it. If we were to agree we would be saying that disapproval for stated reasons is the same as approval upon conditions.' This definitely puts the corrections to an amended plan and you go the whole route and we address anything we want to."

Clark - "I don't want to get into, and I don't think the Board wants to get into, a legal debate over caselaw. Let me first say that Patelle is a landmark case. There have been cases since then that further refine what a Board has to do in a situation like this. Briefly, if you are worried about it as a Board this is where you consult Town Counsel. The amended plan is subject to a hearing. That's what I had proposed one month from tonight. Further caselaw does say, however, that the hearing is not to open everything all up again. It is limited to the issues that are on the amended plan."

Frye - "Is that your position even if you have left something out that we should address?"

Clark - "If it's included in the denial."

Frye - "The denial of some of these issues that we are interested in are in the Minutes and they didn't make it into the letter of denial."

Dunn - "I think we need Town Counsel's advice. How does the rest of the Board feel?"

Story - "I have a question. Is your contention, therefore, that this is, in essence, a resubmission of a definitive plan and must go through all of the processes?"

Frye - "No, it's an amended plan which is a new plan."

Story - "So, therefore, you contend it should be subject to all of the procedures that accompany a definitive plan; every issue can be expressed."

Frye - "You can address any issue in your regulations or your by-law because you are not going to sit back with your hands

tied and watch somebody go through it wrong, simply because somebody let down. It just defeats the whole purpose."
Story - "If something is left out of a letter of denial, that seems to be a pretty good point. That would seem to me critical."

Frye - "You denied the plan. You disapproved the plan; conditions or not you disapproved the plan. You did not approve it with conditions."

Story - "No, we disapproved it."

Frye - "You disapproved it, therefore, he has to either appeal it to Superior Court or come in with an amended plan."

Hall - "That's what he has done. He brought in an amended plan and is requesting a new hearing."

Frye - "And we are allowed to address any or all subdivision regulations we want. That's what he doesn't want to do."

Clark - "All I'm saying is that....."

Knowles - "You are saying we are limited to those issues."

Clark - "Right."

Knowles (to Frye) - "And you are saying we are not limited to those issues. So clearly we have to find out what the answer is and there is an answer. But I should add one other thing, which is that one of the reasons for denial was a procedural interruption. Now I don't know how you correct that on the new plan."

Hall - "Procedural, in that we didn't get a response from Peter."

Knowles - "We were precluded from a response so the whole thing gets thrown out as far as I am concerned. After we voted to deny it, which meant that we couldn't go through anything that he may or may not have had, so it's procedural. So my point is I'd throw the whole thing out anyway, just for that."

Hall - "We had certain requirements that we had spelled out to the developer and asked him that he give us input to make our job easier. We were not privy to having that information, and if that brings up additional information other than what was laid out in the denial we are going to take it up."

Clark - "I think he's done a very good job of putting this plan together so we can address the issues. Quite frankly, I can't think of many issues that will come up."

Knowles - "That's why we have public hearings though."

Clark - "I agree."

Dunn - "In the meantime, does the Board feel I should get Town Counsel's answer on this as to what can be discussed?"

Story - "We don't know when his time clock is supposed to begin. In other words, we don't know exactly the status of what it is we would be receiving. Is it an amended definitive plan, is it a brand new plan, or what is it. For that, I think, we need Town Counsel to advise us on. As

far as scheduling a hearing is concerned, that indicates in our minds we are starting a time clock on a new plan."

Clark - "The time clock on the amended plan starts tonight."

Story - "I don't think we are prepared to start the time clock relative to a new plan at this moment. I don't think we can until we have the opinion of Town Counsel."

Knowles - "We don't know if there isn't a plan already submitted. Last time I checked there was a plan in front of us."

Story - "This is what we have to have clarified."

Knowles - "I think it is reasonable for us, within the next two weeks, to get it clarified by Town Counsel and proceed from there."

Clark - "It was my understanding that you would not even entertain a new plan. The submission was incomplete because you hadn't gone through the C.T. Male process, so therefore the plan was never accepted by the Board."

Knowles - "He, in fact, was given the option to wait until we had received word from C.T. Male and he rejected that saying, "No, you vote tonight." So we voted to deny and we denied him, and he knew we were going to do this. We denied it in part because we had not received that review. Even the thinking in that review, even the preamble to it, is something we would have liked to have seen. Just on the virtue of that he was denied flat out, aside from the other issues we denied him on. At the next meeting, as far as I know, he came in again saying, "No waivers, I'm submitting this plan." We said we have an issue here because this plan was substantially different, so this may have to be considered a new plan. That's the last time I knew anything was following any kind of order at all, if you can call that any reasonable order. That I think was just before you made your first appearance before the Board."

Clark - "I don't think the plans are before the Board."

Knowles - "The last meeting you were at, which was sometime ago, you were saying ignore that, at which time we said we didn't know if we could ignore this, because Peter did come in and submit it."

Clark - "He instructed me to come in with this plan."

Knowles - "So he must have something in writing that says its withdrawn, because the last thing we have on paper is that plan."

Story - "He has never written us a letter to the effect it's withdrawn."

Clark - "Again we are getting bogged down by procedures. Let me check with Gillian, check with Town Counsel, and if a letter is required, a letter is required. The intent is to disregard, pull off the table, that submission made by

Peter."

Story - "Why are we spending all this time arguing about procedure? Why wouldn't it be a lot easier and simpler to go ahead and resubmit it?"

Clark - "It would take a lot more time and cost a lot more money to do that. It is also not required, because the law provides you can amend a definitive plan that has been turned down. I will make it easy for you. I will not submit the plans. You can check and if there is something on the table that shouldn't be there we'll pull it off formally so we are clean. Then we'll come in and submit, and then the clock won't start running until that time."

Hall requested that Clark give the Board a letter indicating to them how he anticipates submitting this, so that they would be in a better position to receive the plan and in the meantime the Board discuss with Town Counsel their options of accepting it.

Dunn - "So we are going to hold until we get a letter from Attorney Clark."

Attorney Mark Glovsky, representing Paul C. and Cecily H. Pennoyer, met with the Board to submit a Form A for property located at 68 Grove Street. The property contains approximately 57 acres. Glovsky said the property has belonged to the Pennoyer family since 1970 and they have no intention of developing the property. In fact, they have plans to preserve the property. Before the submission, Sheldon Pennoyer discussed this plan with most of the neighbors. He wanted to be sure they understood it and were supportive of it.

The plan shows a division of land into two lots, each of which contain in excess of the minimum frontage required, under the provision of the zoning by-law. The frontage runs along Grove Street, a public way, which has sufficient width, suitable grades and adequate construction to satisfy the subdivision control law. The Board reviewed the application and plan.

Hall moved to approve plan dated February 20, 1992, plan of land in Essex of Paul G., Jr. and Cecily H. Pennoyer, Planning Board approval under the subdivision control law not required, subject to the remaining parcel being named. The motion was seconded by Story, with Dunn, Story, Hall, and Bragdon voting in favor; Ginn and Knowles abstained. The Board signed the plan.

Richard and Sandra Tomaiolo submitted a Form A to the Board

for property located on Spring Street. James Prentiss, an abutter, said he was concerned because there is a brook running through the property. He feels it is a watershed area and is concerned as to what protection there is for people buying the property, and the neighbors.

Hall moved to approve the plan of Richard and Sandra Tomaiolo dated March 17, 1992, by Donohoe and Parkhurst, Planning Board approval under the subdivision control law not required. The motion was seconded by Bragdon, with the Board voting unanimously in favor.

Tom Goertner, representing Tom Shea's Restaurant, met with the Board to submit plans for the additional seating for the restaurant. Goertner said sixteen, or possibly eighteen people can be seated. Ginn asked how the restaurant plans to deal with the parking. Goertner said he had no problem with valet parking. Ginn questioned whether the apartment that is there presently will be removed. Goertner said it would be.

The Board then discussed the proposal by Lansing Banks for the former Greely property on Eastern Avenue. Ginn said he had some concerns with classifying it as a home occupation, because it is commercial property.

The Minutes of March 3, 1992, were read. Hall moved to approve the Minutes of March 3, 1992, as read, seconded by Story, with the Board voting unanimously in favor.

Hall moved to adjourn the meeting, seconded by Story, with the Board voting unanimously in favor.

Meeting adjourned at 10:10 p.m.

Submitted by:


Gillian B. Palumbo

Attest:

Essex Planning Board

March 4, 1992

A G E N D A

- . 8:00 p.m. ... Public hearing - Open Space
- 8:30 p.m. ... James Witham - Evalina Goulart
- 9:00 p.m. ... James Monahan - submittal of
amendment to subdivision plan
of Noah's Hill

Business:

Discussion of zoning by-law
Spring Street property - Richard Tomaiolo

Essex Planning Board

March 4, 1992

Present : Frances Dunn, Chairman; George Bragdon; Joseph Ginn; Mark Hall; John Knowles; Rolf Madsen (8:20); Dana Story (8:30).

Meeting called to order at 7:50 p.m.

Building Inspector Richard Carter was questioned by Hall regarding the display of window washing liquid outside of Richdale Stores. Carter said the store was not violating any by-law.

A public hearing was held at 8:10 p.m. for the purpose of public comment on a plan for preserving and promoting open space in the Town of Essex.

Maria Burnham and Michael Cataldo represented the open space committee. Burnham said, "We haven't targeted anything for future acquisition, that is why we want to continue with the open space committee. When we last came to the Board we explained briefly as to why it was being done. To qualify for state funds towns are asked to identify and have a plan of action for open space. The old plan has lapsed and we have now written a document. The final step is to come before the Toown boards and receive comments back from these boards." Ginn - "Does this, by the adoption of the land, have restrictions on the land?" Burnham - "No. Nothing is required - it is just suggested." A map was provided showing three areas of open space - public open space, town owned, and private conservation. Ginn asked, "How does the new watershed by-law come into play on this?" Burnham - "The watershed area includes all the maple swamp area. It is a good idea to have it shown on the plan." Ginn - "Do you have proposals for expansion?" Burnham - "In the report there are some suggested actions. We would like to receive from the Planning Board some kind of letter indicating the questions asked and the input received." Cataldo said, "There is a proposal to have a ball field behind the filtration plan, which we feel is a good use of the area. We feel the Board should take this as a guideline and do some planning for the town." Burnham - "We have a lot of people who are interested in working for open space." Ginn - "Is there a plan as to which areas are the best acquisitions?" Burnham - "We don't have a greensway. In order to protect wildlife you need corridors of green." Cataldo - "The thing

we haven't tracked are parcels of land that come under tax taking." Ginn - "Do private conservation areas have the same restrictions?" Burnham - "No, you can put whatever restrictions you like on it."

As there was no further discussion, Hall moved to close the public hearing for preserving and promoting open space, seconded by Bragdon, with the Board voting unanimously in favor.

James Witham, representing the Essex Historical Society, met with the Board to present a draft application for a Chapter 91 license. Witham said, "A year last November, when we brought up the boat we had to apply for an emergency permit. We are now applying for a Chapter 91 license which is required for the work we must do. We are trying to bring this project up to specifications and this is part of the process. The license is for a temporary railing for the Evalina Goulart." The Board reviewed the submitted documents.

Hall moved to approve the plan and application for a Chapter 91 license for the Essex Historical Society as presented, with the plan and permit to show clarification of easement rights through the property. The motion was seconded by Story, with the Board voting unanimously in favor.

The Board discussed the zoning by-law. Madsen felt the by-law should be sent to the Planning Board consultant, Phil Herr, for his review and comments.

Madsen moved to hold a public hearing for public comments on the zoning by-law on April 1, 1992, at 8:30 p.m. The motion was seconded by Hall, with the Board voting unanimously in favor.

James Monahan met with the Board to submit an amended definitive subdivision plan for Noah's Hill subdivision, off Addison Street. Monahan said the Board had voted to deny the definitive subdivision plan on October 16, 1991, on the basis that the Board was not happy with the road frontage on Lot 2 as shown on the plan. Monahan said they will not be asking for any waivers. The road will be a 16' wide gravel road. A public hearing to consider the amended subdivision plan was scheduled for April 1, 1992, at 8:00 p.m.

The Board discussed the Soginese Creek subdivision plan. Knowles maintained that an easement does not supply frontage;

it just supplies the right to access. The proposed subdivision road is reached through an easement off Spring Street.

Madsen moved to adjourn, seconded by Hall, with the Board voting unanimously in favor. Meeting adjourned at 9:40 p.m.

Prepared by:


Gillian B. Palumbo

Attest:

Essex Planning Board

February 19, 1992

A G E N D A

- 8:00 p.m. ... Susan Cain, Pond Street -
two houses on single lot
- 8:15 p.m. ... Informal discussion on
Soginese Creek subdivision
- 8:30 p.m. ... Attorney Charles Clark for
Peter Van Wyck - CANCELLED
- 8:30 p.m. ... Deo Braga - Dunkin Donuts -
Woodmans
- 9:00 p.m. ... Attorney Thomas Donovan -
Form A

Business:

Pigeon Cove home occupation
Robert Geddes home occupation
Autobody shop, Western Avenue - license
for selling cars

Essex Planning Board

February 19, 1992

Present: Rolf Madsen, George Bragdon, Frances Dunn, Joseph Ginn, John Knowles, Dana Story.

Meeting called to order at 7:58 p.m.

Building Inspector Richard Carter submitted a building permit application for Kenneth Jones, 28 Apple Street, for the construction of a 14'x22' addition to the existing dwelling, and to convert the existing use from a single-family dwelling to a two-family dwelling. The lot isze is 11,438 square feet. Bragdon abstained from any discussion or voting on this as he is an abutter. Elizabeth Frye said for the record she had a concern with this. The parking on the side away from Frye's was not sited on the plan.

Ginn moved that Kenneth Jones, 28 Apple Street, be allowed the change of use from a single-family to a two-family dwelling, and that the parking for all residents of the dwelling be off-street parking, and that approval of the Conservation Commission be granted before any work commences, finding that the proposed addition under Town of Essex By-law 6-4.2 is not substantially more detrimental to the neighborhood than the existing non-conforming use, seconded by Madsen, with the Board voting in favor, except for Bragdon, who abstained.

Susan Kane met with the Board to discuss the construction of two houses on one lot. Kane said a botanist came to look at the proposed site for the subdivision road and felt it would not be a good idea to replicate the amount of wetland vegetation necessary for the turnaround. Kane then decided to build two houses on the same lot. She wondered if, because of the change of plan, she would fall under the new Watershed By-law. Kane was told, upon review of the By-law, that 80,000 square feet was necessary. Madsen told her that the By-law is cut-and-dried and that 80,000 square feet is required.

Soginse Creek Subdivision - Engineer Clay Morin, representing William Ridge, owner of the property, said he had a concern about the calculation of the fee. He noted that 50 feet is an easement. James Prentiss, Spring Street, said 3 feet of Richard Tomiaolo's property is in the easement. Morin was told that the Planning Board makes a determination as to whether there is adequate access. The easement has to meet the Board's standard of adequacy. The Board then has to be assured when determining

Page Two
February 19, 1992 - Minutes

access, how many lots can be created on that access. Knowles told Morin that they know who the land owners are on the easement. Frontage cannot be conveyed, but only passage can be conveyed. Prentiss questioned whether the road, because of the density, will have to be brought up to the standards of the Town. Prentiss was told as long as the road can be documented and meets the Board's standards of adequacy.

Deo Braga, Dunkin Donuts - Deo Braga met with the Board regarding the conversion of an ice cream store presently on the property of Woodman's Restaurant, Main Street, to a Dunkin Donuts. He said he came in to check on the sign for the business. Ginn said he did not particularly favor Dunkin Donuts coming into Essex. He said Woodmans has a lot of room and would feel better if some parking lanes were painted. He added that the impact of this is unknown. Story said he objected to this on traffic grounds. He felt it would make a bad situation worse. The question of signs and parking were discussed. Knowles said he would be interested to know what kind of traffic study Dunkin Donuts would do because of the configuration of the parking. Braga said the Selectmen wanted him to work with the Planning Board. Braga said he would have a small sign in brown.

Attorney Thomas Donovan met with the Board to submit a Form A. Madsen said he would abstain from any discussion on this. Donovan said he has owned the lots since 1960, but the lots have existed as lots prior to 1945. He is not changing any lot lines but just wants to have this recorded in Land Court, in order to certify the boundaries.

Dunn moved to approve the Form A as submitted by Thomas Donovan, under Approval of the Subdivision Control Law Not Required, and that the plan be signed, seconded Knowles, with Dunn, Ginn, Knowles, and Story voting in favor; Madsen and Bragdon abstained.

James Witham of the Essex Historical Society, said they are trying to bring in the Evalina Goulart and would like to leave a draft Chapter 91 License application with the Board to review.

Madsen moved to adjourn, seconded by Knowles, with the Board voting unanimously in favor. Meeting adjourned at 10:15 p.m.

Prepared by: Gillian B. Palumbo
Gillian B. Palumbo, Admin. Clerk

Essex Planning Board

February 5, 1992

A G E N D A

- 8:00 p.m. ... Rex Ferguson - discuss Town taking
over Patriots Lane
- 8:30 p.m. ... Tom Ellsworth - zoning by-laws
- 8:45 p.m. ... Tom Shea's - parking for additional
seating
- 9:00 p.m. ... Lansing Banks - Greely property,
Eastern Avenue - change of business

Business:

Board of Appeals hearing Thursday - Deer Hill
Farms property - requested variance

Essex Planning Board

January 22, 1992

A G E N D A

- 7:50 p.m. ... Roger Hardy, submittal of Form A
- 8:00 p.m. ... Peter Van Wyck (CANCELLED)
- 8:30 p.m. ... Tom Ellsworth - zoning by-law
- 9:00 p.m. ... Robert Coviello, change of use -
property/corner of Eastern and
Southern Avenue

Essex Planning Board

January 8, 1992

A G E N D A

- 7:50 p.m. ... Attorney John Sheeran - Robert
Getty, Story Street
- 8:00 p.m. ... Open Space Committee
- 8:30 p.m. ... David Gaudet - property at 22
School Street
- 8:45 p.m. ... Robert Coviello - property at corner
of Eastern and Southern Avenues
- 9:00 p.m. ... Roger Hardy - submittal of Form A,
property on Island Road

Discussion:

Property additions with breezeway

Essex Planning Board

January 8, 1992

Present : Frances Dunn, Chairman; George Bragdon; Joseph Ginn; Mark Hall; John Knowles; Dana Story; Rolf Madsen (8:15 p.m.)

Meeting called to order at 7:50 p.m.

Building Inspector Richard Carter submitted a building permit application for John Knowles, 206 Southern Avenue, for an addition to the existing dwelling. Knowles removed himself from the Board for this discussion and vote. The application and plans were reviewed.

Ginn moved to approve the building permit application for John Knowles, 206 Southern Avenue, for an addition to the existing building finding under Essex by-law 6-4.2 that the proposed alteration is not substantially more detrimental than the existing nonconforming use to the neighborhood and also noting that both the Conservation Commission and the Board of Health approve the project. The motion was seconded by Bragdon, with Dunn, Bragdon, Ginn, Hall and Story voting in favor.

Attorney John Sheeran, representing Robert Getty, Story Street, met with the Board to discuss converting his lot into two condominium lots. There are two existing buildings on the lot, a residential dwelling and a garage with an apartment above. Getty runs a home occupation out of the garage. Sheeran said if the lots become condominiums the business will not be there. He also said there is a letter of record from Scott DeWitt, owner of Brookside Apartments providing access to the rear of the property. This was not submitted to the Board at this time. The land is registered land. Dunn said when she spoke to Town Counsel about this type of situation he suggested the Board should consider it under by-law 6-6.9(k), Multifamily dwelling and/or apartment land use. It was felt the Board should have Town Counsel's opinion on this particular issue.

Story moved that this be tabled pending review by Town Counsel, seconded Hall, with Dunn, Bragdon, Ginn, Hall, Knowles and Story voting in favor.

Michael Cataldo, representing the Open Space Committee, met with the Board to discuss the proposed Open Space Plan for

the Town. He submitted to the Board a draft copy of the plan for preserving and promoting open space. Cataldo said, "The Committee has been working for three years trying to come up with goals and objectives for a plan with possible acceptance by the Town. We are meeting with the Board of Selectmen and the Conservation Commission and want to set up one public hearing to receive further input from the public." He presented a color-coded map of the Town charting different types of land, i.e. public open space land held by the Trustees of Reservations and Essex County Greenbelt, land owned by the Town and land that has a conservation restriction on it. The map also identified the soil conditions. Hall asked, "Has the Open Space Committee taken into account the new zoning by-law for the aquifer district." Cataldo - "Yes, it has, and we would like to see the new wetlands protection district imposed on the plan to further indicate buildable and non-buildable areas." Hall - "Is there money available to do this?" Cataldo - "We get conflicting messages." Hall - "Is there a statute in the state that recognizes this?" Cataldo - "Within the Department of Environmental Protection there is something to make funds available for environmental purposes." The Board agreed a public hearing for public comment on the open space plan should be held on February 19, 1992, at 8:00 p.m.

David Gaudet met with the Board to request approval for a home occupation at 22 School Street, property Gaudet plans to purchase. Gaudet said the home occupation would involve the fixing and selling of lawnmowers and would be contained entirely within the confines of the garage, 23 x 23 square feet in size. The lot size is 5525 square feet. Gaudet said he has been in Essex for four years and has been renting three years from Richard Teel on Western Avenue and is now renting from Quinn Brothers. Madsen - "You display your products outside over there. You do realize that with a home occupation you cannot do that." When asked the extent of his business, Gaudet said the biggest machine is 89" long, 43" wide and 43" tall. He orders parts and they are delivered once a week or three times a week, depending on what his needs are, and a truck may deliver lawnmowers occasionally. Dunn said she felt that under the home occupation by-law they could not allow retail business. Hall - "How many vehicles do you have?" Gaudet - "I only have one personal truck. I do not plan on hiring anybody, and I do not plan on getting any larger." William Pascucci, an abutter, "I have a business there and generate traffic. I work with my neighbors. There has not been a problem with them. There are no neighbors here against it."

Sheldon Pennoyer, Grove Street - "I think the idea of a home occupation is great. I think it is small. We just have to watch that the scale doesn't get out of hand, but I think this is a good move." It was felt a poll of the Board was needed to indicate whether approval would be given.

Ginn moved to poll the Board, seconded by Story, with the Board voting unanimously in favor.

Hall - "It's hard for me to evaluate something like this. I don't have a plot plan. I don't know what is on that lot. I am opposed until further information is forthcoming."

Knowles - "I know that location. If the scale is kept as presented I can't see any problem. I'm in favor."

Bragdon - "You know the Town by-law. You know what you have to do. I'm in favor."

Story - "In favor."

Ginn - "In favor, but with two concerns, i) noise and ii) hours. I feel you should be sensitive to the neighbors on both issues."

Madsen - "Opposed. I don't think it is a home occupation. In the past he has displayed his products."

Dunn - "In favor, in high hopes that it goes down in size instead of up."

It was noted that Gaudet said his hours were usually 8 to 5. Hall felt Gaudet should come back to the Board with some specifics of the home occupation in writing.

Robert Coviello, together with Roland and Joyce Fontaine, met with the Board to discuss the change of use from residential to commercial of property at 2 Southern Avenue, owner Russell Rose. Coviello said the Fontaines will be running the antique shop he plans for the property if permission is given. Coviello said there would be three small areas of parking, as the Board, at their last meeting, had stated they did not want to see one large parking lot. The building measures 20' x 30' in size, and the lot area is 10,170 square feet. The small parking areas would be constructed to either side and to the front of the house. The driveway enters in from Southern Avenue and circles around the house.

Madsen - "Is there going to be any residences on the property?"

Coviello - "No."

Madsen - "Any kitchen?"

Coviello - "No."

Robert McPhail, 7 Eastern Avenue (an abutter, Lot 87) - "Our primary concern is parking and conversion from a pastoral historic site on the corner, which is an attractive corner, to having a parking lot out there. For me, that is abhorrent. It is a lovely corner; it's a busy corner. I'm

vehemently opposed to it. I'm particularly opposed to parking on Eastern Avenue. It's a small property. I'm flabbergasted at the notion of having cars on that street. I think it is a mistake."

Coviello - "On talking with Mr. McPhail, I realized his feelings on the parking and reduced it."

Beverly Coos - "The run-off from the lot starts at the front steps of the property and I feel it will interfere with this run-off if parking is put in."

Sylvia Martin, 11 Eastern Avenue (Lot 86) - "We object to this property being converted for many reasons. 1) Safety aesthetics - traffic on to and off of Southern Avenue is congested. There is often a waiting line. We feel the increase of traffic onto Southern Avenue is dangerous. 2) Curiosity factor - having a parking lot on the hill. 3) Water run-off - if a driveway and parking areas are put in then we lose the green area for absorption. The catch basin on Southern Avenue is not adequate. 4) Snow removal - When the parking areas and driveway are ploughed it will be pushed on to Southern Avenue. 5) The front parking area - will come very close to the banking. We could have a car going over the front banking. 6) The question of hot top - if it is not hot-topped then it will be gravel or pea stone and we will have rocks or stones on Eastern Avenue. 7) Aesthetics - we will be losing a lot of green areas and in turn will look like a used parking area. 8) Signs - they could be obstructive. This is a historical area of town and I don't think it should change. Who will monitor the number of cars. Under Essex by-law 6-5.9 parking should not be located within 30 feet of the street line. Widening of Route 133 - at this point they are looking and discussing it, but it has not been completely abandoned. 6 feet or more belongs to the Essex County line so Mr. Coviello will lose that amount from the front yard."

Sheldon Pennoyer - "I'm here, not because I'm particularly against it, but at to what it will look like and it isn't great."

Roland Fontaine - "Ploughing will be done with the natural flow. We will be planting plenty of shrubs to make it look an attractive property and the sign on the house will be in keeping with the period of the dwelling."

Bragdon - "The plan submitted this evening does not show how the front parking lot relates to the banking. I would like to see this shown."

Madsen - "I am hearing the same concerns from the people here tonight that we had the first time you came in. We said we did not want to look at cars when we go down Route 133. Part of the concern is aesthetics. I do not want to go down that

road and see cars. I think we have a building that is falling down and it would be nice to work it out without hurting the neighbors."

Dunn - "I have one concern and that is the catch basin on Southern Avenue."

The Board then tabled further discussion until Coviello returned with more information in answer to the concerns of the Board and public.

Roger Hardy met with the Board to submit a Form A for property on Island Road. He omitted to file the Form A application so was rescheduled to appear before the Board at their next meeting on January 22, at 7:50 p.m. Hardy's plan and mylar were returned to him.

Hardy also asked the Board if he could use two or three rooms of his house as a bed and breakfast. Because Hardy had more than adequate land area for parking the Board could see no problem with this, providing permission was granted from the Board of Health.

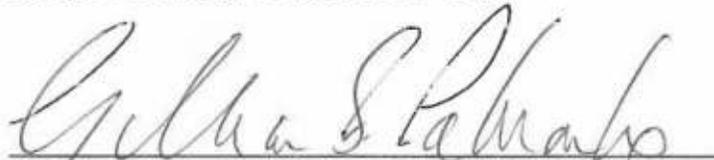
David Gaudet returned to the Board and submitted a letter to them requesting a home occupation at 22 School Street to be held in the garage.

Ginn moved that the Planning Board approve the use of a home occupation of small lawnmower repair and sales at 22 School Street as requested by David Gaudet, under Essex By-laws 6-3.14 and 6-6.2(d). The motion was seconded by Story, with Dunn, Bragdon, Ginn, Knowles and Story voting in favor; Hall and Madsen opposed. The motion carried.

Madsen moved to adjourn the meeting, seconded by Story, with the Board voting unanimously in favor.

Meeting adjourned at 10:35 p.m.

Respectfully submitted by:


Gillian B. Palumbo

Attest:

**Planning Board
December 15, 1993**

PRESENT: Sheldon Pennoyer; Chairman, Howard Altholtz, George Bragdon, Pat Dunn, Kimberly Jermain

Dick Carter, Building Inspector, submitted a preliminary plan for riding stables and indoor arena, "**Miles River Stables Arena Complex,**" owned by **Peggy Lynch and Michael Keogh.** The plan is currently under review by the Board of Health and filed with the Conservation Commission. The property located on Choate Street, is 9.63 acres and total area for all buildings will be 55, 000 sq. ft.

BRUCE FORTIER, Southern Ave., suggested that because this was a recreational facility it needs a special permit.

ALTHOLTZ: Reviewed the zoning by laws and determined that 6-6.9 Special Permits applied to this plan. All members were in agreement that the owners would need to apply for a Special Permit under 6-6.9 pertaining to establishing a recreational facility.

Kimberly Jermain came before the Board as an abutter of 11 Apple Street (abstaining from any vote) and presented a copy of the meeting minutes of the Board of Selectmen of May 4, 1970. At that time the Selectmen served as the Board of Health and on May 4th, 1970 they issued a permit to "Warren Smith, 11 Apple Street for a 6 bedroom residence." Jermain asked that pursuant to her letter dated August 20, 1993 she and her husband David would again request that the building be used for the purposes that it was given, a permit for which was for a four unit apartment, six bedrooms in total.

Altholtz moved to ask the Building Inspector, Dick Carter to have Warren Smith bring his property into compliance with the zoning-by-laws or seek appropriate penalties. (Zoning bylaws can be referenced by August 2, 1993 letter and previous.) The motion was seconded by Bragdon, with the Board voting unanimously in favor.

Altholtz moved to amend the previous motion to allow Warren Smith the opportunity to prove that he is in compliance with zoning bylaws. The motion was seconded by Bragdon, with the Board voting unanimously in favor.

Altholtz requested to know the status of the Shayna Realty Trust, 17 Lufkin Point Road property which had been denied a building permit in October due to lack of frontage. Carter said that he had issued a building permit to the applicant because he had received a letter from the applicant verifying a variance for the property for frontage. Pennoyer took the blame for giving Carter the go-ahead to issue the permit over the phone, without following procedure requested by the Board to have the applicant appear before the Board with documentation for the variance for frontage. Carter produced a copy of the letter submitted by the applicant. It was decided for reasons of time that the materials would be reviewed at another time.

Dunn abstained from the following application.

Raymond Greene, 15R Story Street, met with the Board to discuss

his building permit application submitted at the Board's December 1, 1993 meeting, at which time the Board asked Greene to return to the next meeting so they Board could review the plans. Pennoyer read the "Finding of Facts" from the decision made by the Board of Appeals.

Altholtz read the 6-4.2 "Non-Conforming by-law"

Dunn, as an abutter, stated her objections to the plan because of the access tot he buildings and the proximity to the school and noted that she respected Mr. Green's responsible performance as a land owner and as an individual. Pennoyer objected to the size of the lot in relations to the other lots on the street with single family homes. Greene stated that his home abuts 39 apartments - Brookside Apartments.

BRUCE FORTIER, Southern Avenue, felt that the existing units are currently illegal under the zoning-by-laws and added that an additional unit would require a special permit.

Dunn clarified her opinion on access which she felt was a safety issue to allow for fire and safety vehicles to reach the units. She objected to the existing dwellings owned by Robert Getty, the access limited by his business and usage. Pennoyer inquired of Fortier if he was referring to the 6-6.9 when he stated that the existing dwelling was illegal ("No dwelling should be allowed to accommodate more than one family for each 10,00 sq. ft. of the area of the lot.") The total lot area is 28,868 sq. ft. with two existing dwellings. Altholtz read 6-4.2 "Non-Conforming." and said that he felt given the new information regarding the Brookside Apartments and the number of two family homes on Story Street that he was in favor of the plan because it was not substantially more detrimental. Jermain expressed the opinion that Brookside Apartments did abut the property but in her view were an example of poor developmental planning and that the size of the majority of lots surrounding the site with single family dwellings on them were more accurately expressed the character of the neighborhood. She believed that an addition of another dwelling unit given the lot size of 28,868 sq. ft. would not meet 6-6.9, No. 1.

Jermain moved to deny approval for Raymond Greene, 15 R Story Street, based on a lack of lot area for the three units under 6-6.9, No. 1. "No dwelling shall be altered to accommodate more than one family for each ten thousand square feet if area of the lot." The motion was seconded by Bragdon, with Bragdon and Jermain in favor. Altholtz and Pennoyer opposed. Dunn abstained.

The motion did not carry.

Altholtz moved to approve the application for Raymond Greene for an additional unit because it is no more detrimental to the neighborhood "under 6-4.2." Pennoyer seconded the motion, Altholtz and Pennoyer in favor. Bragdon and Jermain opposed. Dunn abstained.

The motion did not carry.

John Heath, Wood Drive, asked the Planning Board to deny his plan for Wood Drive because of a lack of frontage for parcel #3.

Dunn moved to deny the plan due to lack of frontage on lot #3. Jermain seconded the motion, with the Board voting unanimously

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in favor.

Mike Cataldo, Board of Appeals, addressed the Planning Board to asked that a representative be sent along with minutes to Appeals Board hearings so that the Appeals Board might be better informed. The Planning Board members discussed the issue and agreed to seek council opinion regarding the request made by the Appeals Board. A letter would go to Tierney asking, "Can the Planning Board verbally represent their views with a representative at hearings of the Appeals Boards or is the Appeals Board to rely solely on minutes?"

Peter Van Wyck met with the Board to discuss Lowland Farms subdivision off of Apple Street. Jermain asked that the Planning Board require the applicant Peter Van Wyck to present a complete plan including topographic surveys when engaging the Board in discussions. She also suggested that the Board protect the interest of the Town by invoking Chapter 593 of the General Laws to establish a fund, paid for by the applicant, to hire legal council. Jermain felt it was the Board's experience with this particular developer, who continues to disregard procedures, disrespects the subdivision control regulations and threatens legal action on any occasion that does not yield his desired results that requires this step. Jermain personally felt that she wanted him to follow procedure. Dunn felt that Mr. Van Wyck was just trying to get an opinion on which plan we preferred so that he can avoid spending money to draw up a finished plan that does not resemble a plan that we would approve.

BRUCE FORTIER, asked if there was a definitive plan before the Board? He suggested that Mr. Van Wyck make an application to reconsider the plan that had been denied. That is procedure. Altholtz felt that there was no reason that the Board could not give Mr. Van Wyck a sense of which plan they would prefer, but that this opinion would not be binding. Van Wyck, said that if he went to the expense to draw up a plan to include a longer road, requiring a waiver, because of the Board stated preference and the plan was denied, he might seek legal action against the Board. It was agreed by the Board that their discussion of the unfinished plan with Mr. Van Wyck could not be used to hold the Board to allow for waivers and that the Board felt that they must follow procedure and ask the developer to resubmit the plan, addressing the reasons for denial.

Pennoyer presented Patty Pierro's, secretary of the Board, letter of resignation. Jermain asked that before the position is advertised that the job be restructured to allow for a paid day in the office so that the new secretary would not have to have her home life disrupted by constant calls. Dunn stated that it was Patty's accommodating nature that made it difficult for her to control the number of hours spent on the job. She suggested we limit meeting hours, too. It was agreed by all that this was a loss to the Planning Board, and all hoped to restructure the position to be able to keep the next secretary.

The minutes to the December 1, 1993 meeting were read. Bragdon moved to approve the the meeting meetings of December 1, 1993. Dunn seconded the motion, with the Board voting unanimously in favor.

Shayna Realty Trust, 17 Lufkin Point Road was discussed again

and the letters were reviewed regarding the variance granted for frontage in 1989, by the Appeals Board.

BRUCE FORTIER, suggested that variances expired after a certain length of time.

This comment was researched and it was determined that the variance granted for Lufkin Point Property owned by Shayna Realty Trust had indeed expired. It was agreed that Pennoyer would contact Dick Carter to instruct him to inform the owner that the permit was wrongfully issued and the variance expired requiring Appeals Board review.

Altholtz presented a form which he drafted, a monthly log to assist the Building Inspector.

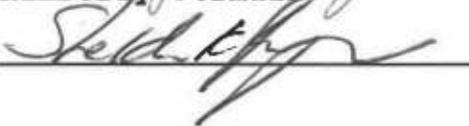
The meeting was adjourned.

Prepared by:



Kimberly Jermain

Attested to:



**Planning Board
December 1, 1993**

PRESENT: Sheldon Pennoyer; Chairman, Howard Altholtz, George Bragdon, Pat Dunn, Joe Ginn, Kimberly Jermain, Joe Knowles

The Building Inspector Richard Carter submitted a building permit application for Mark and Judy Carbrey, 7 Lufkin Street, to add a second floor on existing ranch.

Dunn moved to approve the building permit application for Mark and Judy Carbrey, 7 Lufkin Street, for a second floor addition under the Essex Zoning Bylaw 6-4.2 that the proposed alteration or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. Altholtz seconded the motion, with the Board voting unanimously in favor.

Knowles presented the Board with a draft for proposed zoning bylaw charges. The Board decided to review the proposed changes and discuss this further at the next meeting. It was also decided that Atty. John Guerin, MAPC representative will get a copy and also ask for his input at the next meeting.

John Dick, Hancock Survey Company met with the Board to discuss plans for adding eight floats and dock space by the Filias', 138 Main Street. Dick previously had asked the Board what considerations they would make at the Board's October 20, 1993 meeting. At that time the Board felt their jurisdiction was with the building permit process. The Board to not have any input at this time other than to advise Dick go through the proper permitting process with the Conservation Commission and the Department of Environmental Engineering. Dick was given a copy of the October 20, 1993 meeting minutes.

Bruce Fortier, Southern Avenue, questioned the Board on why it did not require NYNEX to go through the proper procedure to obtain a special permit for a building NNYNEX constructed at the Fire Tower off Southern Avenue without local permits to do so. Pennoyer stated the complain was brought to the Board of Selectmen and Town Counsel ruled that it was not subject to the Town's special permit process because it was a public function.

Jermain as requested by the Board at the November 17, 1993 meeting produced a copy of the assessor's card for Warren Smith, 11 Apple Street. The assessor card was for four units with a family room in the basement. The assessor's card dated 1970 also stated the constructed was 75% complete. In 1980 the septic was updated to accommodate six units. ~~Two~~ apartments were built in the basement and as since 1980 as a six unit apartment building. The Board decided to seek an opinion from Town Counsel as to whether or not the building does indeed have two illegal apartments. Also, ~~it was~~ suggested to write former Building Inspector, ~~William~~ Brooks a letter requesting any documents or information he may have regarding this issue.

Raymond Greene, 15R Story Street, met with the Board to submit a building permit application to construct a one-story apartment onto the back of his home for his parents. The Planning Board previously denied his application June 16, 1993 and Green appealed the Planning Board's decision through the Board of Appeals. The Board of Appeals send Greene back to the Planning Board, stating the Planning Board could act under the Town's zoning bylaw for nonconforming uses. The addition does meet all proper setback. The Board of Health has approved the proposed addition. It was the Board's decision to review the plans before making any further motions. Green was asked to return to the Board December 15, 1993 meeting.

Susan Cain, Pond Street, met with the Board to discuss informally building a second home on her lot. She is going to purchase enough property from her neighbor to make her lot conforming and also her neighbor's lot would still be conforming. Pennoyer expressed concern because the land was in the water shed district and also consisted of wetlands. Cain felt she could comply will all zoning bylaw considering the wetlands and the water shed district. She does have a perk on the lot for a separate septic system. The Board did not find anything wrong with building a second home on the lot as long as all zoning bylaws were met.

Peter Van Wyck, Turtleback Road, met with the Board to discuss Low Land Farms and Turtleback Road Loop subdivisions. Van Wyck asked the Board if the Board had any questions regarding Attorney Charles Clark letter dated November 18, 1993. Pennoyer stated he sent everything to Town Counsel. Altholtz questioned Van Wyck about the recent mortgage referenced in the above mentioned letter. Van Wyck stated the mortgage was taken out in his son's name and did not know the exact date the mortgage was taken out, but approximately during the past month.

Van Wyck presented the Board with two different plans for Low Land Farms. Van Wyck wants to avoid redrawing the plan several times, therefore suggested a meeting so the Board and he could work through the plan and discuss the waivers. Jermain felt very strongly that a plan should be drawn up to show exactly what Van Wyck wanted as a subdivision. Van Wyck felt the Board should make a decision on the length of the road. Pennoyer stated that Van Wyck had a plan showing a longer road before the Board. Pennoyer felt this was a better plan because it was a better use for the land. This had to do with the grading. Pennoyer suggested the Board should look at the previous plan. After reviewing both sets of plans the Board agreed to review both plans, schedule a site visit, and asked Van Wyck to return to the next meeting.

Altholtz moved to amend the original motion of November 2, 1993, regarding Turtleback Road Extension to include under item #2 "as stated in the Essex Subdivision Control Laws Section 7.02 streets and ways, paragraph 4C." Pennoyer seconded the motion, with the Board voting unanimously in favor.

Pennoyer removed himself from the Board due to a conflict of interest.

Geoffrey Richon, Bill Greenbaum, Paul Donohue, Dick Prouty and Tom Webster. met with the Board to present a preliminary plan for Project Adventure's possible acquisition of Turf Meadow on County Road. Project Adventure would like to sell off two lots at the back of the property, and possible a third lot at the front of the property which would be an ANR. The road to service these two lots would be approximately 3,000 feet long with two 150' turnouts, therefore Project Adventure would have to request a waiver for the length of the road. The existing road would be widened to service these two lots instead of created a new road to enable Project Adventure to kept the cost down. Dunn questioned if it would be possible to have an emergency exit, not exactly a road, but a passable way. Prouty stated there was no way this would be possible. Jermain suggested an exit way onto Western Avenue. Prouty stated this would not be a safe intersection at this particular point in the road, and also due to typography of the property almost impossible. Bragdon brought up the issue of the tax rate because Project Adventure in a non profit organization. Project Adventure stated that presently the Essex School system is using Project Adventure and this service is being paid of the town's tax dollars. Project Adventure is offering to credit the town with the difference. The town presently receives twelve thousand dollars a year. And Project Adventure would make sure the same amount was collected. They would credit the town the difference after the town collected the taxes from the lots sold off to make sure the twelve thousand dollars was still collected, although the difference would be a service to the town. Project Adventure has a deadline for the end of January. They asked the Board for a sense of the Board regarding this plan and the necessary waivers that would have to be granted. Bragdon brought up the issue of water and that nothing was marked on the plan showing water being brought in, therefore this would also be requested as a waiver. The following statements were made members regarding the water and length of road waivers:

ALTHOLTZ: I have no problem with the length of the road given the number of houses it will service. As far as the hydrants, subject to Dick Carter's input I don't have a problem with it.

KNOWLES: I don't have a problem with the length of the road given the number of lots proposed. I can't say about turnouts and gravel. As far as hydrants I'd have a tough time with deciding on that.

BRAGDON: I have a problem with the length of the road. I have a problem talking about this before it goes to the Conservation Commission because I don't know what Conservation is going to find out. I'd be reluctant to recommend anything. I'd have to turn this plan down basically on the length of the road.

DUNN: I think this is an exceptional piece of land in Essex that so much could happen to. And that plan laying on the table is an asset to the town. And even considering other

Planning Board
November 2, 1993

PRESENT: Sheldon Pennoyer; Chairman, Howard Altholtz, George Bragdon, Pat Dunn, Joe Ginn, Kimberly Jermain, Joe Knowles

Joe Ginn abstained from the following application.

The Building Inspector, Richard Carter, submitted a building permit application for L. William Holton, 2 Maple Street, for an addition, kitchen, 15'x12'.

Dunn moved to approve the building permit application for L. William Holton, 2 Maple Street for an addition, kitchen, 15'x12', under Essex Zoning by-law 6-4.2 that the proposed extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. Altholtz seconded the motion, with the Board voting unanimously in favor.

A building permit application was submitted for Jeff Fraser, 27 Eastern Avenue, to add a storage area, 5'x28'.

Ginn moved to approve the building permit application for Jeff Fraser, 27 Eastern Avenue, to add a storage area, 5'x28'. Dunn seconded the motion, with the Board voting unanimously in favor.

Attorney John Guerin, MAPC representative met with the Board to review materials regarding the site plan review and cluster zoning. Guerin left the information for the Board's review. Also, discussed was the proposed revisions to Title 5.

The Board addressed and voted regarding petitions filed against Peter Van Wyck's Turtle Back Road subdivision plan previously approved in 1988. Peter Van Wyck was present.

VAN WYCK: You've had a lot of time to review this plan. I think it is time to put this to a vote and get on with better things. Enough is a enough and let's get on.

Jermain moved that we, the Planning Board of Essex, rescind approval of a subdivision plan, Lot #16, Title 48746, August 1987, revised November 30, 1987, by the applicant Peter Van Wyck. This plan does not meet the subdivision regulation, 7.02 "Streets" and Ways" regarding the length of a dead-end street. Turtleback Road Extension exceeds 1,200 feet in length, violating, 7.02. i; "Every dead-end street (whether a cul-de-sac, teardrop or other variation shall not exceed 1,200 feet in length."

There was no second to Jermain's vote. Therefore, the motion did not go forward.

Altholtz moved that in light of consideration for public safety, the Essex by-laws, the rules and regulations of the Essex Planning Board, Chapter 41 the subdivision control law, the public interest and the rights of all parties affected, that we vote to modify the approval of the plan of Peter Van Wyck of the so-called "Turtleback Road Extension" as follows:

1. Terms and conditions related to the Turtleback Road Extension which are part of the settlement agreement between the Town of Essex and Peter Van Wyck filed in Essex Superior Court on 10/26/93 shall be incorporated into this motion.

2. The terms and conditions set out in connection with the previous approval of this plan and which survive the settlement agreement referred to in Item 1 shall apply in addition to those which are part of this motion;

3. The approval shall now be considered to be based on a waiver of the dead-end street provision of the rules and regulations of the Town of Essex Planning Board because the extension is beyond the 1,200 feet limit on dead-end streets;

4. The total number of lots on and around the extension constituting this subdivision shall not exceed 5 lots.

5. No lot shall contain more than one single family dwelling including an in-law apartment;

6. No lot shall be allowed to be further subdivided under any conditions;

7. No further extensions, loops or roads of any type shall be permitted off of or beyond Turtleback Road Extension or beyond the 1200' point of Turtleback Road unless connected to another through way and otherwise in full compliance with the subdivision control laws, the Essex by-laws and the Essex Planning Board rules and regulations;

8. The above conditions and restrictions shall be recorded on the plan and recorded with any deeds conveyed out for said lots and shall run with the land;

9. In all other respects other than waivers specifically provided for herein, in the previous approval of this plan and in the settlement agreement between the Town of Essex and Peter Van Wyck this subdivision shall completely conform to the rules and regulations of the Essex Planning Board, the Essex by-laws and any other applicable subdivision control laws.

10. This approval shall become effective if within 30 days from November 2, 1993, the Planning Board received from Mr. Van Wyck, a writing suitable to the Planning Board in form and substance which shall indicate his acceptance of the terms and conditions stated herein, which shall be suitable for recording and which shall be so recorded with the plan and with any deeds conveyed out for said lots and shall constitute a covenant running with the land. If no such writing is received by the Board within that time, this approval shall lapse and any previous approval shall be deemed to be rescinded.

Knowles read into the minutes a letter addressed to the Planning Board from David Harrell; Police Chief, and Dick Carter; Fire Chief, dated October 25, 1993.

Jermain read into the minutes a letter addressed to the Planning Board from Town Counsel, John Tierney, dated October 21, 1993.

Bragdon seconded the motion with the Board voting as follows; Altholtz; in favor, Bragdon; in favor, Pennoyer; in favor, Ginn; in favor, Jermain; against, Dunn; against, Knowles; present.

Peter Van Wyck stated that he will not accept this compromise.

Pennoyer asked members of the Planning Board if they had compiled a list of people to serve on a **site review plan committee**. Members of the Planning Board were still working on their list and would review this at the next meeting.

Pennoyer read into the minutes a letter from **Attorney Charles Clark** stating that he would no longer be representing **Mr. Peter Van Wyck, Turtleback Road, Essex**, effectively immediately.

Altholtz discussed an **Essex Community Development Meeting** he attended regarding **Project Adventure**. The will be subdividing four house lots and reviewed plans for changing the existing house into offices. They talked about traffic it might create and business it might generate. Project Adventure basically pointed out what they thought would benefit the town.

The October 6, 1993 meeting minutes were read. Jermain moved to approve the October 6, 1993 meeting minutes. Altholtz seconded the motion, with the Board voting unanimously in favor.

Pennoyer moved to adjourn the meeting. Bragdon seconded the motion, with the Board voting unanimously in favor.

The meeting was adjourned at 9:30 p.m.

Prepared by: _____

Attested by: _____

Planning Board
October 20, 1993

PRESENT: Sheldon Pennoyer; Chairman, Howard Altholtz, George Bragdon, Joe Ginn, Kimberly Jermain

Altholtz abstained from the following application.

The Building Inspector, Richard Carter, submitted a building permit application for Joan S. Street, Wood Drive, to construct a single family dwelling.

Dunn moved to approve the building permit application for Joan S. Street, Wood Drive, to construct a single family dwelling, 32'x67'. Bragdon seconded the motion, with the Board voting unanimously in favor.

The Building Inspector, along with Sylvester Freitas of National Marine, Gloucester, Mass., brought to the Board's attention Fritas' interest in purchasing Lot 6 at Scot's Way to construct a building to be used as a Marine Salvage business and possible retail store. Fritas wanted to make sure the size of the building he intends to build would not be a problem due to the area being in the water shed district. Pennoyer advised Fritas they could not make an approval without a submission of an application and plans.

The Building Inspector, along with Stan Collinson owner of Gaybrook Garage, Western Avenue, met with the Board for an informal discussion regarding renovations to the garage. He did not ask for any permits. He has had the tanks tested. These tests are fine, but will also be opening them up and if visually they need repairs then those repairs will be done. He will be replacing the single island with two islands. Citgo wants to cover the island with a canopy. Collison stated the canopy is necessary for safety purposes. Pennoyer stated that due to lack of zoning there is a lot of residential properties across from this garage, therefore he suggested Collison ask Citgo to modify their standard prefab-style canopy so it would be less offensive. Collison expressed that if the Town objects to the style then Citgo would probably be willing to modify the design. The Board agreed with asking Citgo to modify their design and it was agreed to put in writing their concerns regarding the design of the canopy.

Altholtz excused himself from any NYNEX business.

The Building Inspector, Carter, in reporting back to the Board he made a site visit to the state fire tower where NYNEX had constructed a building. He told the Board he met with a representative of the firm and was NYNEX had obtained state permits. Carter was still waiting to hear from the director of State Department of Environmental Management. The Board felt NYNEX, even though permits were granted by the State, was still responsible in obtaining all town permits. Carter and the Board agreed to wait until Carter reached the director of DEM before making any further decisions.

John Dick, Hancock Survey Co., met with the Board to discuss adding floats and dock space by Charles Filias. They have already prepared Chapter 91 plans and have filed them with DEP and the Conservation Commission. Dick asked the Board what considerations they wished to take. The Conservation Commission refused to accept the filing until the Planning Board was advised. The Planning Board was not asked to make any recommendations at this time. The Planning Board felt their jurisdiction was in the building permit application process, and the Planning Board would also have to sign off on the Chapter 91 licensing form. Dick agreed to drop off a set of plans so the Board could outline their concerns.

Jermain suggested that when the Planning Board makes a denial the exact zoning bylaw should be quoted in the minutes. Jermain offered her assistance in looking up the bylaws. Jermain, also suggested that if an applicant does not supply the Planning Board with a plan, the Board should refuse to have a discussion. The Board agreed on both issues.

Peter Van Wyck canceled his appointment with the Board this evening. The Board held an informal discussion regarding Turtleback Road subdivision. The Board would like to make a motion addressing the petitions to amend, modify or rescind the plan.

The Board discussed setting up a committee to review the site plan review bylaw. The Board decided to make a recommendation to the Board of Selectmen along with speaking with previous committee members.

The minutes of the October 6, 1993 meeting. Jermain moved to approve the minutes of the October 6, 1993 meeting. Ginn seconded the motion, with the Board voting unanimously in favor.

The meeting was adjourned at 10:30 p.m.

**Planning Board
October 6, 1993**

PRESENT: Sheldon Pennoyer; Chairman, Howard Altholtz, George Bragdon, Pat Dunn, Joseph Ginn, Kimberly Jermain, John Knowles

The Building Inspector, Richard Carter, submitted a building permit application for Stephen and Patti Edington, Belcher Street, to construct a three bedroom single family dwelling.

Knowles moved to approve the building permit application for Stephen and Patti Edington, Belcher Street, to construct a three bedroom single family dwelling, 30' x 64', as shown on plan dated October 18, 1993. Dunn seconded the motion, with the Board voting unanimously in favor.

Ginn abstained from the following application.

A building permit application was also submitted for Shayna Realty Trust, 17 Lufkin Point Road, to construct a single family dwelling, 30' x 22'. The Board reviewed the site plan and found there was insufficient frontage under present day zoning bylaws. The contractor felt the lot was in existence before zoning, therefore it would fall under the grandfather stature. The Board asked for proof and it was decided the deed would be brought in at the next meeting. Richard Bronstein, an abutter, although in favor of the project, wished to express his concerns for any blasting that would take place. He was concerned with damage to any wells in the area.

Pennoyer addressed a formal written complaint by Bruce Fortier, Southern Avenue, dated August 23, 1993, and received at the Planning Board's August 25, 1993 meeting. Fortier's complaint the Board was in violation of Essex Zoning Law Chapter 6, Section 7-A records. Pennoyer had a large map of the town made. It will be hung on the Board's meeting room. A pin with flag will be used to made the location of granted building permit and then the flag will be pulled when the work is completed. Carter agreed with this new system of keeping track of permits.

Pennoyer brought the Building Inspector's attention a letter received from Maria Burnham, Ph. D., 30 Southern Avenue, addressed to Mr. Peter Weber; Commissioner, Dept. of Environmental Mgmt., cc. Chairman of Essex Planning Board, NYNEX Mobil Communications, Andrea Cooper; Land Use Policy, Ms. Mary Connolly; Office of Atty. General, Ms. Sally O'Maley; Reporter Gloucester Times, Gov. William Weld; Governor, dated September 21, 1993, regarding a building NYNEX had constructed at Morse Hill Fire Tower without proper permits. Burnham enclosed photographs of this building. Fred Fawcett was present at the meeting and also handed the Board a letter regarding this matter. Carter stated he was asked about this several months ago, at which time he went through everything and did not find a permit. Pennoyer felt the Board of Selectmen should notify of the possible violation because fines may be in order, and also the Board should investigate further to determine if, in fact, this is going on. Carter was given a copy of the letters received. Pennoyer asked Carter to make a visit to the site. Carter agreed to do so and will get back to the Board. The Board will notify the Board of Selectmen and copies of the written complaints will be forwarded to their attention.

Carter as agreed at the Board's September 1, 1993 meeting, responded to a formal complaint regarding Warren Smith, 11 Apple Street. It was determined that the same plans were used to build this apartment complex as the apartment complex on Story Street. The two apartments in the basement were roughed in. He stated he went back as far as 1970. Jermain asked Carter if he measured the sign. He measured the sign and felt he was in compliance because this was a commercial lot. Altholtz questioned if the town had a distinction between commercial and residential. Carter said no. Carter felt this was a commercial business, therefore the sign fell under 32 sq. ft. Pennoyer questioned how this property could be classified as commercial. Carter stated because it is not owner-occupied and the bank considers this commercial property. Jermain felt as though it was owner-occupied. She also stated he was in the trailer for over three months. The Board and Carter wanted a better definition of the property, whether it was commercial or residential. Knowles felt the burden of proof, whether it was commercial or residential, should be on Warren Smith. The issue of the original building permit was discussed. Jermain insists that only four units were allowed. No permit or minutes from any public hearings can be found. Carter stated that this has been in existence for more than ten years, therefore it does not matter that he presently has six units. Altholtz questioned Carter about the ten year grandfather stature, and if, the units were illegally built in the first place does the ten year grandfather stature still stand. Carter was unsure on this, and also questioned how to prove this. The issue of the trailer was also discussed. Carter stated the trailer is registered. Jermain said it did not matter whether the trailer was registered, the bylaw states a trailer cannot be there for more than three months. Carter stated he has to get a permit from the Board of Selectmen to live in it for three months and stated that Smith was only living there for three months. Jermain disagreed with Carter saying Smith was there for more than three months. Carter advised the Board that if the trailer was registered it didn't fall under the Planning Board's jurisdiction or the Building Inspector. This is a 19' travel trailer. Altholtz suggested the Board ask Town Counsel where the burden of proof lies and then apply it. Ginn suggested writing Smith a letter stating that no one can live in a trailer without a permit from the Board of Selectmen. Carter had already advised Smith of this process. It was agreed that the Board would write a letter to Warren Smith asking him how many apartments the original permit granted, and also ask him to get a permit for the trailer.

Pennoyer brought to the Building Inspector's attention a complaint regarding numerous cars being stored at a residential address on Western Avenue. Carter will follow up.

Pennoyer also brought the Building Inspector's attention a complaint regarding David Dunn's Woodcutting business being too close to the street. Carter had already spoken to Dunn regarding this matter, and he will move it back the required twenty-five feet.

Altholtz asked Carter his opinion, as Fire Chief, regarding Peter Van Wyck's Turtleback Road Extension subdivision road going beyond the 1200' by the fire safety standards. Carter said the whole plan should be submitted for approval. He could not comment before seeing the plan.

A public hearing was held at 8:50 p.m. on the application by Dario C., Gloria J., and Michael Galli, Lake Shore Drive, for a Special Permit under 6-13.3 of the zoning bylaws to divide property into two legal lots at Lake Shore Drive. Atty. John Anderson, Dario, Gloria and Michael Galli were present. No abutters were present.

ATTY. JOHN ANDERSON: A couple of months ago we were here and you said we had to take this to the Appeals Board. We did so, and were granted permission to divide this lot into two lots. The Galli's have owned and lived on this lot since 1960. One structure was already in existence, and in 1971 the other structure was constructed.

PENNOYER: Essentially this has already gone to the ZBA and approved. And this had to do primarily with the lot area.

ATTY. ANDERSON: Yes, that's correct. We did get a side lot variance here.

PENNOYER: So we're basically concerned with the watershed district overlay.

GINN: Is there anything in near future that will be changed on these lots? Any additional buildings or impervious area that the Board should be aware of?

ATTY. ANDERSON: I spoke with the Galli's on this plan and there is nothing planned that would change the footprint of the buildings or the impervious area. And I think it is clear if such were to happen that would be under your permitting jurisdiction. But that's not the plan. The Galli's understand that if they were to do anything to these lots it would be subject to that water resource bylaw.

PENNOYER: Is there any comment from the public? (No comment.)

Knowles moved to close the public hearing. Dunn seconded the motion, with the Board voting unanimously in favor.

Bragdon moved to approve the subdivision of Dario and Gloria Galli, Lake Shore Drive, as a Form A approval not required and with no apparent changes or alteration as subject to the water shed district, and with the plan shown dated March 4, 1993, that no changes or alterations to the site would be proposed or made at this time. This approval is being granted in accordance with directions given by the ZBA. Altholtz seconded the motion, with the Board voting unanimously in favor.

John Burgess, Rocky Hill Road, met with the Board to discuss grading of Rocky Hill Road in front of his property. The Board advised Burgess that Rocky Hill Road is a private road and it would be perfectly fine for him to proceed with grading.

Clark Dexter, representing Sam Crocker met with the Board to discuss purchase of Lot 3 located at Scot's Way. Sam Crocker would like to construct a boat storage building. He was told that in three years there would be restrictions placed on that property. He wants to know if he buys the property now does he have to put the building up before the three years limit. Also, the second question is when it comes time to sell in the future who will he be able to sell the property to. Does it have to stay as a boat storage or can it be sold as another industrial or

commercial use? Pennoyer felt both questions could be addressed by the water shed district bylaw. Scot's Way does have a grandfather stature that does run out in three years. If you were to build the building in five years he would subject to a different set of restrictions on that piece of property than if he build it before the three year limit expires. And those restrictions are outlined in the water shed district bylaws. And if you were to sell the property in ten or thirty years you could continue the nonconforming use, but if you were to substantially change the use which increased the nonconformity you would be subject to additional restrictions. Crocker has a repair shop in Manchester. This purchase would strictly be used for storage because he has run out of space in Manchester.

Clark Dexter, representing Dana Wolf and Al Enos met with the Board to discuss purchasing Lot 9 at Scot's Way. Wolf and Enos would like to start a new business Apex Manufacturing at this location. This lot already has a building on it. Apex Manufacturing will be a machine shop. They have signed a lease with Jim's Rubbish to lease the lot with the option to buy. It is self-contained and no noise. They will need to run two shifts. The only traffic would be the staff going in and out. There would be twelve people on each shift. Deliveries would only be during daytime hours. Dexter was concerned with running two shifts because of the Essex bylaws. Dunn was concerned with the waste that would come from such a business. Wolf explained to Dunn that the only waste would be in the form of metal chips that would be gathered up and placed in a container. This is stored in the building. Then the chips are sold to a scrap metal vendor. These cuttings would be the only waste. This would be handled as hazardous waste and a firm such as Clean Harbors would pick this up. Dunn questioned if there would be any runoff. Wolf stated everything was self-contained. Knowles questioned the solvents used. Wolf stated they were water-based solvents. There are no floor drains in the building. Dunn suggested restricting deliveries to limit traffic in the surrounding neighborhood. Wolf and Enos found no problem with this restriction. Ginn expressed concern for possibly violating zoning bylaws stating this would be an industrial business, manufacturing business, with more than 12 employees and as an industrial piece of property and business a 90,000 sq. ft. lot and 300' of frontage is required. This lot has 57,000 sq. ft. and lacks necessary frontage. The Board agreed this was a good use for the property except this business does not comply with the zoning bylaws regarding number of employees, frontage requirement, and lot size. A poll of the Board was taken:

ALTHOLTZ: If we had the power I would grant the variance. I think it's a good project from what I've heard unless there is anything that is going to happen that I haven't heard. But from what's on the table it looks like a good project. You might have some local hiring. You'll have to start spending money in the town. It's no more intrusive than any other activities that are going on in the area. You can limit the hours of big trucks. And in containing everything there is no discharge. It's probably one of the better uses for that site. You will be subject to a lot of regulatory requirements of your own. So we have other people looking over your shoulder than somebody that is less regulated. I don't see any down side. Some use has to be made of this property. You're just failing on a technicality here. My sense is we should deny you and send you to the Board of Appeals with a recommendation to grant a variance.

KNOWLES: I think we should deny it and send it to the Board of Appeals with a recommendation.

BRAGDON: I would be in favor of this project.

JERMAIN: I'm in favor of this project.

GINN: I think a business of this kind could work in that area. Everything would be inside the building. Completely self-contained. I would vote in favor of this project.

DUNN: I'm in favor of this.

PENNOYER: I'm in favor of this project.

The Board agreed to make a recommendation in favor of this business to the Board of Appeals.

Altholtz moved to deny the use based on the fact that it does not meet industrial Class A requirements, in terms of square footage and frontage. I further move that we transmit to the Board of Appeals a sense of this project that it is a very positive project for the community and it's our hope notwithstanding complying to the bylaws he can receive a variance. Also, a representative of the Board would be available to the Board of Appeals if requested beyond the information in the letter. Dunn seconded the motion, with the Board voting unanimously in favor.

Attorney John Guerin met with the Board to discuss his appointment as Massachusetts Area Planning Council Representative. Guerin was reappointed in May of 1993. The issue arose after Guerin wrote a letter to the Board of Selectmen stating that he may be changing his residence to another town. The Planning Board sent the Board of Selectmen a letter concerning this matter and the Board of Selectmen voted 2 to 1 to open up the position. Later it was found out that once the appointment is made it cannot be rescinded. The appointment is for three years and it does not matter whether the appointee is a resident or non-resident. Guerin would like to continue as Representative and work closely with the Board. He is willing to meet with the Board on a regular basis or when the Board feels necessary. His office is in Essex and can be reached there anytime. The Planning Board's apologized to Guerin for the confusion. Guerin will meet with the Planning Board at their first meeting in November.

Knowles moved to approve the minutes of the August 25, 1993 meeting. Altholtz seconded the motion, with the Board voting unanimously in favor.

Jermain moved to approve the minutes of the September 1, 1993 meeting. Dunn seconded the motion, with the Board voting unanimously in favor.

The Board discussed the Turtleback Road Extension subdivision informally.

The Board adjourned at 11:30 p.m.

Planning Board
September 1, 1993

PRESENT : Sheldon Pennoyer; Chairman, Howard Altholtz, George Bragdon, Joe Ginn, Kimberly Jermain, Pat Dunn

The **Building Inspector, Richard Carter** met with the Board to discuss a formal complaint regarding 11 Apple Street. Carter said he advised Warren Smith to go to the Board of Selectmen for a permit to live in the trailer. Pennoyer suggested that the Board write a letter to the Board of Selectmen underlining the bylaw. Carter would look into the permit. Jermain questioned Carter about the signage. Carter expressed that he thought it was pretty close, but would look into it. Smith did get a permit for the sign.

Altholtz questioned Carter about a trailer on Wood Street. Carter explained that this person was remodeling a house across the street from the trailer and the trailer was being used for storage. Altholtz expressed concern for a power line that was hooked up to the trailer. Carter assured him there was a permit granted for the electricity.

A building permit application was submitted for **John Coughlin, Western Avenue** for construction of building, 35'x100'.

Bragdon moved to approve the building permit application for **John Coughlin, PMC Realty Trust, Western Avenue**, for the construction of a 35'x100' parking garage as previously approved in the minutes of January 6, 1993, for a special permit approved at that time as it conforms to the stipulations, no floor drains and to be restricted to the storage of trucks and trailers only. Dunn seconded the motion, with the Board voting unanimously in favor.

Altholtz brought to the Board's attention that every town in the Commonwealth has a representative through their Mass. Area Planning Council at no cost. Essex's representative is John Guerrin. I would suggest the Board write a letter to the Board of Selectmen to see if they could open up the application process for that position and limit it to someone that lives in the Town. The Board agreed on following through with this position.

A public hearing was held at 8:00 p.m., under Massachusetts General Laws, Chapter 41, Section 81, and rules and regulations relative to subdivision control of Essex, Section 6, to consider definitive plan of land in Essex, Mass., being a subdivision of Lot #16 shown on Land Court Plan #32098F filed with Certificate of Title #48746, Applicant Peter Van Wyck.

PENNOYER: Is there any comment from the Board since our meeting of last week? (No comment from Board.)

CLARK: Currently there is no plan for Turtleback Road before the Board. I believe this proceeding was in response to the petitions and that is why we are having the hearing. It is not the consider the plan submitted by Peter Van Wyck. That plan has already been approved.

PENNOYER: He's right. We are here because of a petition. This is a continuation of our previous public hearing.

ALTHOLTZ: Are you going to make any objections based on the public notice?

CLARK: I am going to reserve all rights to complain. The way I read the notice of the public hearing it gave the impression that it was considering the plan. I just want to make the point that you are not considering the plan. I believe you are dealing with the petition that was submitted to this Board asking to amend, modify or rescind the plan.

PENNOYER: Everything is correct on the notice except it is suppose to read to modify, amend or rescind approval of a previous Planning Board's of subdivision plan, etc. It says incorrectly to consider a subdivision plan of land in Essex, Mass. What I want to make sure that if we go through with this process and come to a conclusion here or close the public hearing it doesn't get thrown back in our face again.

KNOWLES: (Reads into minutes a letter to the Planning Board from Scottie Robinson, Turtleback Road, dated August 24, 1993, addressed to the Planning Board.)

ALTHOLTZ: I just want to ask one question. Are you requesting continuance of the public hearing based on the public notice?
You have the opportunity to do so?

CLARK: I just made a point. I'm not requesting that, no.

ALTHOLTZ: Just let the record show, he had the opportunity to do so.

CLARK: I didn't know there was an issue until you read the introduction.

ALTHOLTZ: Do you want some time to consider the issue?

CLARK: I'm not going to waive any rights.

ALTHOLTZ: Do you want some time to consider that issue now?

CLARK: Now, no.

PENNOYER: (Reads into minutes a letter to C.T. Male from the Planning Board dated August 26, 1993 and a response letter to the Planning Board from Paul Connolly, C.T. Male dated August 30, 1993.)

: I'm just here trying to find out what's going on with this thing. It's been going on for so long. Nothing seems to happen. And I would like to hear from the Planning Board what your objections are for not granting this permit.

PENNOYER: I don't think we have a consensus. The point of this process is to hear from the public. We haven't come to a consensus yet. We're hoping to soon.

: I should think you should be able to very soon, because it's been going on for years. In fact, I'm in favor of granting the variance to Peter for Turtleback Road. And as far as your traffic is concerned on Apple Street, if Turtleback Road is finished through the whole way, I really believe there will be less traffic on Apple Street than there is now. Because a lot of that traffic will go out Turtleback Road to Beverly or wherever they're going. And as far as people cutting through, they're not going to cut through Turtleback Road. Because it's much easier to go down the brook and come up the street than it is to go all through that road and up and down those hills to get across. They're not going to do it.

PENNOYER: Well, this is not a through road. It's only an extension.

: Well, someday it's going to be finished. I hope. It should be finished really. I can't see holding the hearing up any longer on this project. It seems a lot of personal stuff is caught up in this that you folks shouldn't consider at all. You should look at just the facts.

MRS. HODGES, Apple Street: We haven't heard from you since you received our package. Are there any questions particularly about the material that you received or any clarifications.

PENNOYER: We were able to get it within a reasonable amount of time to look at it before our special meeting of last week. Does anyone have any questions?

ARTHUR HODGES: One point that I think should be pointed out here is Essex has been known for a number of years for having a looser set of regulations for development than many other communities. And that reflects the wishes of the town and the Townies had a number of people who would like to put in zoning to tighten up, or whatever, and whether for good or for ill the voters of the town decided to go with what we've got. And I've been at meetings in which developers have said (and this is developers as a class) for those of you who object to a particular plan we understand why you don't like it but the developer, the client, whoever it is, is entitled to protection of the regulations as they exist. In other words, if Essex has some regulations that are looser than some other communities that's what the voters wanted and the developer is entitled to what those regulations say. And I think that's fair. On the other hand, I think it's also fair that the citizens of the town are entitled to enforcement of the regulations as they exist. In other words, they can't cut both ways. You can't have a developer come in and claim protection under the regulations that are loose and then ask for waivers for those regulations if they are still too stringent for the developer's plans. And I think I'm specifically referring to this 1200' limitation on cul-de-sacs. And I spelled that out on my memo. I just want reiterate this to be fair to everyone, developers and citizens, and if this Board is going to operate under a set of regulations that's spelled out and accepted by the town, and these have been enforced since 1981, I think you should go with them. Unless there is a variance entitled to public safety or some clear overriding use, which I don't think applies in this case, then I think you should enforce what you have. And that's the 1200' cul-de-sac limitation.

ATTORNEY CHARLES CLARK: Wesley Burnham was the chairman of the Planning Board at this time of the original approval. He was going to speak on behalf of his involvement at the time, but he may or may not come back depending on the length of the emergency. But if does not I would like to continue this hearing in order to hear him. I have a few comments relative to reactions of the petitions and also to some of the various materials supplied by some of the residents of the town. Generally I urge you not to amend, rescind or modify this plan. It would plunge the town and Peter back into a new round of disagreement. We are working hard at the Selectmen's level to settle many of these numerous very complicated issues. And action such as this I think would torpedo any negotiations that are currently going on. And a lot of work has gone into this. The Selectmen, the Planning Board and Conservation Board members, and us spend Sunday morning going out walking this site that is the subject of this plan. I think it would be wrong at this stage of the negotiations to torpedo those negotiations with a vote to rescind or modify. Because this plan is one of many complicated issues for the Board. This is a knot that has tied itself up for the last twenty years and unless we all work to untie it it's not going to be in the interest of the town, Peter or the citizens that are footing the bill for these repeated hearing that have been going on for twenty years. This is not the way this process is designed to work. Second, in my reading of the material that was submitted last week, I reread the minutes of the previous meetings that read up to the approval of Turtleback Road plan back in 1988. And in my reading of that it was not clear at all,

probably to the contrary that, the Board intended to grant a waiver for the length of the road issue. The Board new full well how to grant a waiver properly. And this was indicated on the plan with the grade issue. So this isn't a matter of the Board goofing. The Board asked for on several occasions a case law to support the interpretation of the deadend street bylaw as it was interpreted by courts throughout the Commonwealth. And eventually those were provided by Peter Van Wyck's earlier Counsel. The Board, in my reading of the record, took into consideration the case law the concession that Peter have made with regard to lot number and other issues, and then made a determination based on all the facts and all the hearings and all the materials that were submitted to them, that the Board felt as though it was in the best interest of the town at that time. Thirdly, the traffic issue which has been talked about for so long, not only for Turtleback Road but also Lowland Farms subdivision, has turned out not be a real issue according to the Board's own consultant. The Board's own consultant come up with the same findings as Peter Van Wyck's consultant came up with over ten years, and also earlier this year before the Board. Among the comments by this Board's consultant, the consultant for the town, if possible the development along Apple Street should be clustered to reduce the number of new access points along the road. This means that the access road to Lowland Farms and Turtleback Road are better than allowing the road cuts for approval not required plans from both a planning standpoint and a safety standpoint. Working with the plans before you and discouraging road cuts for lots over which the Board would have no control is a good plan and should be the favorite approach for those truly interested in safety rather than using the issue for their own personal reason. The scenic way laws allow for trimming along the way for safety reasons. It's done all the time and can be done under the direction of the Planning Board. The Board would not lose control with the issue of trimming trees and shrubs. The issue with the number of lots that supposedly could be built and fit under the traffic sealing that was mentioned in the C.T. Male report, there is no precedent that I know of for preserving possible lots for possible ANRs. It's too speculative and this Board should not consider this. I urge you not to act hastily. There are a lot of issues here. The ongoing settlement negotiation between the town and Peter Van Wyck. It is not right for one Board to take away property rights approved by the town merely because of change in the makeup of the Board. That's bad government. These issues were concerned long ago when the plan was approved. The town should not now renege on its action. There has to be some formality to this process, so people can rely upon the town to conduct its business fairly and with equal for all. I urge you to object the petitions to modify this plan.

PENNOYER: As a member of the Board I just want to make a comment, and also as a member of the Committee who has been working with the Selectmen in dealing with some of the outstanding issues. I want to say is I think the focus of those efforts, and I agree with you Mr. Clark, is try to get some past issues out of the way. Basically, lawsuits that are outstanding and we're not getting anywhere, primarily focus around the issue of wetlands. In other words, some actions that were taken on the properties that deal with wetlands. Whether it be the town or the applicant. And it's not so much around the issues that we're looking at right here at this table.

CLARK: There are many issues that have been raised in all the litigations. They are relevant to the length of the road, the grade of the road, and the fitness of the road of Turtleback Road as built. Regarding issue of the dump. And we all walked that site.

PENNOYER: I'm not denying that.

CLARK: So the wetland issues are part of it. Also, part of the process we've had members of the Dept. of Environmental Protection out for two site visits as part of an effort get DEP to release this land from the consent of decree. They have done so. Again, if you take this action to rescind all of that effort would be in vain.

PENNOYER: Okay. It's just my opinion that they do not primarily focus around the extension for the Lowlands relative to the subdivision control law. But we'll let that be.

ELIZABETH FYRE, Apple Street: This isn't what I had planned to say, but I can answer every single one of those things that he said because I was there at all of those meetings when that plan was discussed. I do know what happened. As far as the three Board, the Planning Board, Conservation Board, and the Selectmen, will do about the stipulations that is entirely separate from your consideration of this plan. The only thing they have in common is they are dealing with Peter Van Wyck. To tie this all up and confuse it with all the litigation, all the lawsuits, I think, is a mistake. I will just read to you what I wrote. I'm submitting it now. "The powers of the Planning Board under the subdivision control law shall be exercised with due regard for securing safety in case of fire, flood, panic and other emergencies. Section 1,1:01. Strict compliance may be waived when in the judgement of the Board such action is in the public interest and not inconsistent with the subdivision contract law. Section 1,1:03." The proposed loop road is an extension of the Turtleback Road cul-de-sac as it intersects only with Turtleback Road sharing its single access and exit point at Apple Street and more than doubling the 1200' length allowed by the town's subdivision regulations." The question is not one of how many houses should be allowed on this extension in view of public safety on Apple Street. It is whether or not the Board could in good conscience grant such a big waiver. Clearly it is not in the public interest as specified in the regulations. What reason for sufficiently compelling to offset the impact of such a precedent on future development or the threat to public safety in event of an emergency, which might also result in legal action against the town. Given the opportunity by the applicant's failure to register the plan within the required six month period, I hope you will rescind past approval of this plan. That is saying something over again. But that to me is what it is. Whether you should allow an extension on that road at all.

WESLEY BURNHAM, County Road: I was a member of the Planning Board when this plan was brought before us. I think I was Chairman at the time, also. In regards of the loop the loop was presented to us with case law based on land court. An exact, almost identical situation was pointed out in two separate instances. Based on that and conversations with John Tierney, that's where we based our approval on the loop extension, not being an extension of the deadend road issue. If I remember that was based on the fact that loop actually has two entrances, one entrance, one egress, even though it does dump onto the same access road. So the actually deadend road section is the Turtleback Road section. That's how it was presented to us. I verified that through Tierney at the time. He backed it up. We obviously didn't take it to court to test it again because it had been there several times. As far as any other issues go I think it would be a grave mistake for you to reverse the findings of a previous Board in the absence of any substantial change in either the laws or the conditions for the plan itself. If you find something substantial, such as change in the plan or substantial change in the region or some change in the subdivision control laws, then maybe there is some justification to revisit it. My personal belief is you ought to grant the re-approval and let this get out of the way.

ELIZABETH FRYE: Have you all read this? Did any of you see any mention of John Tierney except that they were going to ask for his opinion. Do the minutes anywhere show what his opinion was? And aside from references the case law was it ever spelled out in detail and why is the case law at Wesley's house and not part of the record. Several times it was referenced in the minutes that they were going to ask John Tierney about this. I don't recall that he ever got back with anything.

ALTHOLTZ: If those cases are so pivotal and if that's what you're relying on then you really should have submitted them to the Board.

CLARK: We're not relying on them.

ALTHOLTZ: You just said that in your opening statement. That the decision was based on case law. In the minutes they talk about having submitted three cases, and as Mrs. Fyre mentioned I don't see any response from Town Counsel. In fact, Evans, Peter's attorney said, "At least, two out of the three cases that were submitted were appealed." So I don't see that as conclusive at all. In the absence of it you can't rely on it.

CLARK: I might add we just had the previous Chairman tell you how they made their decision. Whether they got their opinion from Town Counsel in writing or not.

ALTHOLTZ: Two out of three cases were appealed.

WESLEY BURNHAM: Two out of three cases were based on the appeals court finding. In other words, they had been appealed by the Superior Court, I guess it is, to the higher, and they supplied that also. There were three or four different cases that he submitted as documentation. Two of them were almost carbon copies of exactly what Mr. Van Wyck presented. They had gone through the Superior Court and then the Court of Appeals, or whatever you call it. They supplied both of them. That was the point I was saying. They had already been appealed.

ALTHOLTZ: I think if they exist they are important.

ARTHUR HODGES: My question is if the Planning Board wanted to enforce the 1200' regulation does the case law for the developer claim that would be unable to be enforced. Is the 1200' maximum enforceable by this Board, if it so chooses. I submitted the regulations from Manchester just to show you what another town was doing. They have a 1200' extension that they enforce. And a developer does get beyond the 1200' limitation. In addition to that they have also anticipated which is clearly a ploy by developers to simply say when they try to attach another deadend road onto a cul-de-sac. They have specifically identified that problem by saying you can't do that in town. Any road coming off a cul-de-sac is considered to be an extension of the cul-de-sac.

CLARK: Is that the Essex Planning Board?

HODGES: No, but they have already anticipated this because it is clearly a tactic used by developers. You're not suppose to have a lot of high flying laws and regulations. Common sense is suppose to rule. Now, believe me, I can't believe that common sense would tell you that you can drive up Turtleback Road and claim that there is more than one access or egress on it. It's a cul-de-sac. You go up and you go back. You go up from Apple Street and you go back to Apple Street. Where is the other entrance?

WESLEY BURNHAM: When he first came in with the plan we were looking at it as a deadend extension. The same as you are. Then as discussions continued he brought in the evidence of the case law that had already been through several appeal processes. I'm not familiar with the procedure. What came out of that was we decided at that time we were not dealing with a deadend road extension based on what the general court and the appeals court had already determined. Because of the fact that it was a deadend road into this point but the cul-de-sac or the extra had actually two entrances and exits. In other words, there were two ways to get from here to here, so it was decided by the court that it was not a deadend road. I'm not saying that I completely agree with it. I'm just giving the basis for what we used to determine our decision, based on the information that we had, and the information that was available and the information that had already been tested in court and lost. It was almost a carbon copy of what he had done. It had been tested in two cases and already lost in two difference places in Massachusetts. It was a 500' or 800' deadend street with a loop on the end and the town had taken it to court, based on your exact opinion, that it was an extension of a deadend road, and they lost. Based

on that we could not consider it extending a deadend road. So that became a dead issue. I'm not disagreeing realistically but at the time we were looking at do we want to go through another court battle. It had already been lost at least twice.

PETER : I'm an abutter of Peter Van Wyck. It's pretty much the same faces up here. I just want to come forward and say as an abutter I'm as exposed to this development as much as anyone else. opposed to it.

PETER SOUZA, Turtleback Road: I'm building a new house as you enter Turtleback Road. I'm concerned about the traffic. I have two young children. I don't have a problem with people building homes as long as they do it right. I just have a concern that things will be done right and proper for everybody.

PENNOYER: I would like to close the public hearing if no one else any other comments.

JERMAIN: Will we have a chance to discuss this publicly?

PENNOYER: Yes, we can come back to this at the end of the night, or maybe we should continue the public hearing. I'd like to hear from the other Board members.

ALTHOLTZ: I would like to get those cases. Do you have them?

WESLEY BURNHAM: I have my own personal records. I believe they should have been in the record.

Knowles moved to close the public hearing. Ginn seconded the motion, with the Board voting unanimously in favor.

Helen Nieberle, Spring Street met with the Board to discuss a Form A, lot line changes on her property.

Ginn moved to approve the request of Ernest and Helen Nieberle, on a plan dated February 17th, 1993, to combine Parcel A with Lot 1. Parcel A being 6155 sq. ft. combined with Lot 1 being 7676 sq. ft. breaking off and creating Lot 2 of 10,287 sq. ft., forming one lot of Parcel A and Lot 1. Altholtz seconded the motion, with the Board voting unanimously in favor.

John Cushing from the Historical Society met with the Planning Board and the Conservation Commission to discuss informally the purchase Story's Shipyard.

Paul Mugford, Jim Witham, and Harvey Schwartz were present representing the Historical Society. The Historical Society did not present any proposals and no vote was requested. They met with the town's Boards as a courtesy. They stated that nothing much is planned for the next five years, other than storage of boats. Witham presented a model. The Historical Society planned on moving the Evelina Goulart by next Spring, so they could worked on her and also put a roof over her. On a five to ten year scale the Historical Society would like to put small buildings on the shipyard property that are appropriate for the shipyard's museum. These buildings would not be close together, but bring enough buildings for the display space they would need. Eventually they would build a larger museum building that would house all of the models and archives. They stated they would leave the central area open with grass. The Board agreed this project would benefit the Town, although concern was expressed for it's combined

mixed use of commercial, historical, boat storing and apartment. The Board also expressed concern for a parking area.

Jeffrey Richon and Dick Prouty met with the Board to familiarize the Board with plans of Project Adventure and the acquisition of Means Property on County Road. Prouty presented the Board with an informal plan. Project Adventure would like to divide the land into five lots. Four lots would be residential. No lot would be under 4 acres. They would eventually build a 6,000 sq. ft. approximately office building, and also a small shipping and receiving building. The final piece of property is 277 acres, of which 168 acres are in conservation trust. However, the conservation trust allows educational use of this property. This land would be perfect for Project Adventure's use. Project Adventure would have to build a road. The length of this road is a concern of the Planning Board. Project Adventure would have to request a waiver for the length of the road. Ginn expressed concern for public safety and access for emergency vehicles, and also Special Permits due to the fact that this property is in the Water Shed Protection District. Pennoyer suggested that dealing with the issue of the access and the roadway that Project Adventure should develop a strategy that would deal with the traffic as best as you can and then moved toward getting the waiver for the length of the road based on the benefits to the town, and satisfies that it is in the public interest. Project Adventure will take the next step in creating a preliminary plan for submittal.

Pennoyer moved to hold a public hearing on the application of Dario, Gloria and Michael Galli, Lake Shore Drive, for a special permit under Section 6-13.3 of the zoning bylaws to divide property at Lake Shore Drive into two legal lots. Ginn seconded the motion, with the Board voting unanimously in favor.

Jermain moved to adjourn. Bragdon seconded the motion, with the Board voting unanimously in favor.

The meeting was adjourned at 11:15 p.m.

August 25, 1993
Planning Board

PRESENT: Sheldon Pennoyer; Chairman, Howard Altholtz, George Bragdon, Pat Dunn, Kimberly Jermain, Joe Knowles

Building Inspector, Richard Carter submitted a building permit application for Henry Dix, 192 Western Ave, to construct a 12'x24' carport.

Dunn moved to approve the building permit application for Henry Dix, 192 Western Avenue, to construct a 12'x24' carport as being reviewed by the Board because it is located in the water resource protection area. Knowles seconded the motion, with the Board voting unanimously in favor.

The Building Inspector Richard Carter met with the Board to discuss complaints regarding possible violations of the Essex zoning by-laws. Present was Selectman Bob Dawe and Bruce Fortier.

Carter would like the name, address and telephone number of the person making the complaint so he may get back to them, along with the name, address and telephone number of the person who is violation. Altholtz felt it was important to ensure anonymity. Carter assured the Board the person identity would be protected. He just wanted to be able to get back to them with his findings. Carter read a formal complaint to the Board from Bruce Fortier, Southern Avenue. The Board will respond to this complaint at their September 1, 1993 meeting.

Pennoyer felt that when a complaint was received the Board should write a letter to the person being complained about saying the Board will discuss this issue at our next meeting. So if they would like to come in and discuss it with the Board they could. Pennoyer felt this would allow the Building Inspector, the Planning Board and the individual the opportunity to discuss the problem and then the Building Inspector could go out if necessary. The Building Inspector and the Board agreed to try this procedure to see how it works. Pennoyer also suggested if a complaint is made to a member of the Board the complaint should be referred in the formality that Carter described, which is to have the Planning Board's secretary call it into the Building Inspector.

Carter submitted a building plan for John Coughlin, Western Avenue. The Board had requested to review this plan when they granted Coughlin a special permit. The Board will review the plan.

The Board reviewed and discussed the traffic analysis which was conducted by C.T. Male and dated July 2, 1993. The Board raised the following questions and decided request clarification from C.T. Male in letter form. The questions are as follows:

1. Does the study count the Turtleback Road Extension as approved? Does 37 future houses include or exclude Turtleback Road Extension?
2. When was the study done?
3. What are the levels of service? What do they mean? How did you determine Apple Street to be level "B"? What other road in town is a level "B"?
4. How much worst can the traffic get and still be at level "B"?

The Board also acknowledged receiving a package from Arthur Hodges, Apple Street, and a letter from Mrs. Houser, which was read into the minutes.

Jermian moved to approve the July 7, 1993 meeting. Altholtz seconded the motion, with the Board voting unanimously in favor.

Knowles moved to the approve the August 4, 1993 meeting. Dunn seconded the motion, with the Board voting unanimously in favor.

Dunn moved to resume the regular schedule of meeting on the first and third Wednesday of each month starting October 6, 1993. Bragdon seconded the motion, with the Board voting unanimously in favor.

Altholtz moved to adjourn. Bragdon seconded the motion, with the Board voting unanimously in favor.

The meeting was adjourned at 10:30 p.m.

ESSEX PLANNING BOARD

AGENDA

August 4, 1993

8:00 p.m. DPW, Scott's Way and Pine Ridge Road

8:30 p.m. David Coffin, 189 John Wise Ave., Form A subdivision
ATTORNEY MARK GLOVSKY

Planning Board
August 4, 1993

PRESENT: Joe Knowles; Acting Chairman, Pat Dunn, Howard Altholtz, Kimberly Jermain

Building Inspector Richard Carter submitted a building permit application for Charles and Amy Sim, 7 Main Street, to clean out existing foundation, cap with 12" of concrete and build a conventionally framed garage with 10' walls and 12 pitch roof, 33'x 43', to be used for home occupation bicycle repair.

Jermain moved to approve the building permit application for Charles & Amy Sim, 7 Main Street, new construction of a garage on existing foundation, 33'x40', and to authorize the use of construction for to be used for a future home occupation bicycle repair shop subject to the home occupation bylaws. Altholtz seconded the motion, with the Board voting unanimously in favor.

A building permit application was submitted for Douglas H. and Ruth M. Hughes, 18 Prospect Street, for an addition, 12'x20', bedroom and bath enlargement dormer.

Altholtz moved to approve the building permit application for Douglas H. and Ruth M. Hughes, 18 Prospect Street, for the expansion of a bedroom and bathroom dormer, 12'x20', under the Essex bylaw 6-4.2 that the proposed extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. Dunn seconded the motion, with the Board voting unanimously in favor.

A building permit application was submitted for Richard and Sandra Burns, Red Gate Road, for an addition to rip off mudroom and add on to kitchen, 10'x 12'.

Knowles said the way he has always seen it in the last few years is whether or not the existing footprint has changed. Carter expressed that under 6-4.2 the footprint can be changed if it does not make it any more nonconforming than it was before. Therefore, Carter expressed that Burns was not making it any more nonconforming for the simple reason he is not encroaching anymore on his line. Knowles feels as though you cannot increase the footprint under 6-4.2, and if you do add to footprint then you are making it by definition substantially more nonconforming in a lot that size.

Dunn moved approve the building permit application for Richard and Sandra Burns, Red Gate Road, for the addition off mudroom and add on to kitchen, 10'x12', the difference in square footage will be 120', under Essex bylaw 6-4.2 that the proposed extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. Altholtz seconded the motion, with the Board voting unanimously in favor.

Jermain expressed concerns to the Building Inspector regarding trailers owned Warren Smith, 11 Apple Street, and located at this property. People have asked Jermain how many apartments exist at this complex. Smith was only to have four apartments and now he has six. Jermain expressed concerns for the two basement apartments. Carter said this has existed for over ten years. Jermain explained that now he has brought another trailer, therefore that's basically another unit. Carter explained that a permit can be issued to allow the trailer to be at the location for one year. They can get a building permit for the trailer for one year. If the trailer is going to be lived in it should only be for temporary purposes, such as fire and renovations. Carter said he would check to see if a permit was issued.

William Perkins, Damon Boutchie, and Bruce Julian from the DPW meet with the Board to discuss purchasing a lot and building on Scott's Way, and also a motion made by the Board regarding Pine Ridge subdivision.

PERKINS: We need a new location for the Department of Public Works. We are here to find out whether or not one can be established there. And if we can there will be a long procedure to get everything approved, because obviously it's in the water protection resource area, and there will be certain requirements, and special permitting. So, I guess the initial question is the Planning Board's reaction to a DPW garage down on Scott's Way.

KNOWLES: That development is grandfathered. The water shed doesn't apply. I don't think it would be the Planning Board any favors if the DPW came in and didn't take some of the water shed protection elements in mind.

DUNN: As far as storing the salt, and stuff. We all felt that would be detrimental to our water shed area. Could you do something to contain that?

PERKINS: It has to be done. You can't just pile it up. It would certainly be to our advantage to have a building. Obviously cost is a big factor.

ALTHOLTZ: Would you be putting an underground fuel tank in there.

PERKINS: We buy all our fuel at the local stations. For what the town uses in fuel it doesn't make sense to do that.

JERMAIN: Would you be storing anything that would effect the water protection area?

KNOWLES: Solvents or cleaning solutions?

ALTHOLTZ: Would you be repairing any of the vehicles up there?

PERKINS: Nothing major. Things would be stored up there, but in a very safe container. We're not storing anything of any significance. I don't think we store anything other than gas, paint or motor oil. Part of this move is to eliminate the storage of our excess material down behind the tennis courts because of the volume of kids during the Summer, etc.

ALTHOLTZ: What type of excess material?

PERKINS: Fill, leaves, and stuff like that.

ALTHOLTZ: Asphalt?

PERKINS: It's a possibility.

ALTHOLTZ: Have you gone to the Conservation Commission?

PERKINS: No, our first step was to come here because of the water shed protection area.

KNOWLES: The restrictions that you find in the water shed protection act you're already doing. You have it in containers and there is nothing stored below ground or outside. It's pretty straight forward.

PERKINS: If your Board could write a letter then we can then proceed with our next step.

KNOWLES: Okay. I think the sense of this Board is that it's fine.

William Perkins also brought to the Board's attention a motion that was made previously regarding a donation to the DPW from a resident of Pine Ridge. Perkins said the DPW cannot do anything with this because State law states they cannot accumulate any excess funds and if they accumulate funds for more than three years they would have to turn it back. The DPW under this law would not be able to accept this check, therefore would be returning the check to the donor. Knowles felt as though it would be better if the funds went directly to the Planning Board. The DPW felt more comfortable with this agreement. The Planning Board will discuss setting up this fund with Town Counsel.

Attorney Mark Glovsky representing Eric Jostrom met with the Board to submit a Form A for his property located at 189 John Wise Ave. The plan does not meet the Essex zoning bylaws, therefore Attorney Glovsky withdrew the Form A application along with the plan to be resubmitted at a later date.

Dan Ottenheimer, John Wise Avenue, and also works for the Mass. Bay Programs met with the Board to discuss underground storage tanks in the water shed protection area. It

was his suggestion that the Fire Chief have these tanks tested regularly. He explained the Fire Department should require that a test be performed and then review the test to make sure the tanks passed the test. The Planning Board suggested Ottenheimer go to the Board of Selectmen.

Altholtz spoke with Bob Coviello, 44 Main Street, regarding the display of antiques on his deck at Main Street Antiques. Coviello presented Altholtz with minutes from the Planning Board's September 5, 1990 meeting regarding this issue. Altholtz read the aloud. The Board still have concerns with furniture down the sidewalk. Altholtz suggested writing him a letter regarding this issue.

Altholtz brought to the Board's attention a makeshift auto repair business at 121 Western Avenue. This will be brought to the Building Inspector's attention at this next meeting.

The Board discussed enforcing the Essex zoning bylaws. The Board discussed imposing fines and creating a bylaw to properly impose fines. The Board would like to further discuss this at their next meeting.

Jermain moved to adjourn the meeting. Altholtz seconded the meeting with the Board voting unanimously in favor.

The Board was adjourned at 10:00 p.m.

Planning Board
July 7, 1993

PRESENT: Sheldon Pennoyer; Chairman, Howard Altholtz, George Bragdon, Pat Dunn, Joe Ginn, Kimberly Jermain

Dunn abstained from the following application.

Building Inspector Richard Carter, resubmitted a building permit application for Raymond Greene, 15 R Story Street, for addition of apartment with two bedrooms and 1 1/2 baths for elderly parents. A copy of the condo deed was presented to the Board.

Altholtz moved to let the previous motion on June 16, 1993 stand. Bragdon seconded the motion, with the Board voting unanimously in favor.

Bragdon abstained from the following application.

A building permit application was submitted for Donald Metcalf, 118 Martin Street, to build a single family home, 52'x26'x20'.

Ginn moved to approve the building permit application to Donald Metcalf, 118R Martin Street, for a third principle dwelling on a Lot of 3.05 acres, for a single family ranch, 52'x26'x20', subject to Conservation approval. This is to our approval of last year allowing three principle dwellings on one lot. Altholtz seconded the motion, with the Board voting unanimously in favor.

A building permit application was submitted for James H. Genest, 10 Spring Street, for the construction of 30'x40' garage. The original building permit was issued in 1984.

Ginn moved that the Building Inspector reissue a building permit for James Genest, 10 Spring Street, for a 30'x40' garage as approved in the May 2, 1984 meeting, and not to be used as a dwelling unit and let it be noted that a portion of the garage may be used for a workshop by the owner. Altholtz seconded the motion, with the Board voting unanimously in favor.

Attorney John Anderson, on behalf of Dario & Gloria Galli, Lakeshore Road met with the Board to discuss an ANR plan.

Attorney Anderson wanted review the plan and make sure the denial on the record was accurate. The Board felt their original denial on July 16, 1993 was accurate. They were also advised that since their homes were located in the Town's watershed district they will need to apply for a special permit from the Planning Board if the lot division is approved by the Board of Appeals. The Galli's were given a copy of the minutes.

Jermain moved to approve the minutes of the July 16, 1993 meeting. Altholtz seconded the motion, with the Board voting unanimously in favor.

A public hearing was held for Russell and Betty Hodgkins, 44 Story Street, in accordance with the Massachusetts General Laws, Chapter 40, Section 15C and Section 3 of Chapter 87, for removal of a stone wall on a scenic way.

PENNOYER: I would like to open the public hearing for Russell and Betty Hodgkins, 44 Story Street, in accordance with the Mass. General Laws, Chapter 40, Section 15C and Section 3 of Chapter 87, for removal of a stone wall on a scenic way.

JERMAIN: (A letter from Joan Bucklin, 36 Story Street, dated June 21, 1993 was read into the minutes.)

ALTHOLTZ: What's in the trailers?

PENNOYER: Let's address the stone wall first. You were going to bring us some photographs?

JERMAIN: I asked if there were any photographs to see what the condition of the wall was originally because they had claimed that it had been opened for one period and then it was

closed again. And they were actually bringing it back to an original state by opening it up. And I was just wondered if there was any photographic record of this change of the appearance.

DUNN: Years ago, I don't remember how many, but years ago that wall was opened for one of our tractors to go into. This was way back. And my husband did get in through there and out back. I don't remember if they did a garden out there or not. I remember him going in there and that wall was open at one time.

WALTER ANDREWS: I live down the hill from him. The only thing I would like to be assured of is there is a drain right there and the opening would not be filled in or closed because if it was closed I would get all the water from Story Street down into my yard. Other than that I have no objections whatsoever about the wall being removed.

DUNN: How is it right now, Walter? Are you getting any water now?

ANDREWS: No, because there is a drain right there in front of it. But, I wouldn't want this to be hot-topped.

PENNOYER: Does this require anything from DPW because it's a curb cut?

DUNN: DPW said they would give the permit after we allowed it.

B. HODGKINS: He said he didn't have any problem with it. He just wanted to follow procedure.

JERMAIN: So they won't be closing up one driveway?

DUNN: No, it's a duplex. A two-family.

GINN: Are utilities going up the lower of the driveway?

R. HODGKINS: No.

GINN: So the only use of that is just access. That's all. When this problem initially started there was construction going on? Is that correct? And is that why you came into the Board?

R. HODGKINS: Yes.

GINN: So during construction you were going to remove the stone wall so you could get in and out and then you were going to put it back?

R. HODGKINS: Yes.

GINN: All the construction is done now and it's just easier to use this for access in and out of the property. Is the building trailer still there?

R. HODGKINS: There is a trailer parked in that driveway.

PENNOYER: What kind of a trailer?

R. HODGKINS: A box trailer.

GINN: Is that going to stay there?

R. HODGKINS: No.

PENNOYER: How long has that been there?

R. HODGKINS: Eight months.

PENNOYER: Is it registered?

R. HODGKINS: Yes.

GINN: The woman who wrote the letter brought up this issue.

ALTHOLTZ: I think the trailers need a license from the Board of Selectmen if they're there for more than three months.

GINN: You can have a box trailer and it has to have a permit every year. Dick Carter issues a permit. It doesn't have to be registered. But the lady who wrote the letter brings that issue up, that the trailers were there when the trees were cut.

PENNOYER: Which was when?

R. HODGKINS: Eight, nine, ten years ago.

PENNOYER: The trailer were there then?

R. HODGKINS: Yes.

JERMAIN: Have you ever had a permit for the trailer?

R. HODGKINS: No. They are not going to be staying there.

GINN: I think the Board should discuss it because it was brought up in the letter.

PENNOYER: (Reads aloud minutes from June 6, 1990.)

DUNN: Sheldon, I think that was just explained to us. And by the way I have talked to Betty and Russell on it. That was a second thought. At the time, fine, we're going to close the wall up. No reason not to. But then living in the house and all, they found that they would like to have that access to down back. I've driven by then daily, back and forth to the stand, from what I see they are using the upper driveway. I think this driveway is a driveway of convenience. It isn't going to be traveled out of all the time. It would be more convenient to have it open to get to the back part of their house.

GINN: I think that we're kind of overlooking that there was access to that area to start with. They didn't remove the entire portion of the stone wall. They removed a portion of it to make it a little bit wider. I don't have a problem with that access and use of that area. I do have a little bit of concern with the trailer. If that were to stay there it should be properly permitted or it should be removed. Apparently someone brings up the fact that there is a trailer and it is visible.

R. HODGKINS: Yes, it is right beside the house. You can't miss it. It's not going to stay there.

PENNOYER: Is there anyone from the blic who would like to speak? (No comment.) I would like to close the public hearing.

Ginn moved to grant a special permit for Russell and Betty Hodgkins, 44 Story Street, for removal of stone wall on a scenic way, that the second access to their property is not the removal of the entire stone wall but a portion of the stone wall of an already existing opening in the stone wall so that they may use this as access to the lower portion of their lot and house. And again I would like to have it noted that it is an existing opening in the stone wall that was enlarged for that use. And the area be continually maintained for drainage purposes to lower properties and the existing street conditions. Dunn seconded the motion, with the Board voting unanimously in favor.

PENNOYER: I would suggest that if you were going to have the trailers there for longer than a couple of days you should go to Dick Carter for the permits. Thank you.

The Board discussed the conflict of interest regarding Jermain's participation on proposed subdivisions on Apple Street by Peter Van Wyck. Jermain read out loud a letter from Town Counsel regarding this matter.

JERMAIN: I think we covered this initially when we asked Tierney to look at my circumstances, to look at correspondence I made to this Board prior to being elected to the Board. We asked him to look at that. We asked him to look at the proximity of where I

lived, the property I owned on Apple Street, and to tell me whether or not I should proceed with speaking my mind on the particular cases that are involved. And I was assured by him and the Ethics Commission that my opinion is my opinion, and unless there can be proven to be, and the Plaintiff has to prove this, substantially that I have something to be gained by my opinions and voting based on my opinions, that I should just go ahead and just follow normal procedure there is to make my positions clear. And I think we did that with Tierney's letter. I just want to say if you go back to the letters that I submitted to this Board prior to becoming a member of the Board, those letters and the petition that I signed prior to becoming a Planning Board member state exactly what my interests and opinions are about the two developments involving Peter Van Wyck. I think there are four of them, and the two petitions that I signed I have been asking the Board to consider public safety. And that is the issue that I've dealt with and that is the issue that I've stayed with. And I think that is a matter of public record because I submitted the letters to the Planning Board. And they can be read by everyone. So it's quite clear what my opinion was prior to becoming a Planning Board member.

The Board feels as though this issue has been addressed twice with Town Counsel and the Ethics Commission. Jermain's interests and opinions are not substantially different from the general public, therefore the Board feels comfortable with her position relating to participation in Low Land Farms and Turtleback Road subdivisions by applicant Peter Van Wyck.

A Public Hearing was held under Massachusetts General Laws, Chapter 41, Section 81, and the Rules and Regulations relative to Subdivision Control of Essex, Section 6, to consider a definitive subdivision plan of land known as Low Land Farms, off Apple Street, applicant Peter Van Wyck.

PENNOYER: I would like to open the Public Hearing for Peter Van Wyck for the applicant Peter Van Wyck under Mass. General Laws, Chapter 41, Section 81, and the Rules and Regulations relative to Subdivision Control of Essex, Section 6, to consider definitive subdivision plan of land known as Low Land Farms.

DUNN: Where do we stand right now? Who is it that wants this motion rescinded?

PENNOYER: There was a request made by the abutters through a petition.

DUNN: Because as I was reading here, Mr. Clark went along with that, or not?

CLARK: Where I think we are procedurally is the Board signed the plan. We decided we would not object to a public hearing in order to allow people who had moved to the property since the approval could state their views to the Board. The moving party here is the petitioners who are trying to convince this Board to amend or rescind the prior approval of the plan.

PENNOYER: I think we have a public hearing not just for the people who moved there, it's the public. It's open to the public again.

ELIZABETH FRYE: I am a party to one of the petitions before you. We had hoped for a public hearing before your Board decided to sign the plan again, which had been signed by a Board five years previously. But you decided to do otherwise. And we still want our chance to ask you to rescind what has now been done by your Board, instead of what was done by a prior Board. Now, on several occasions your Board said you would not make any decisions until you had looked into the files and at the minutes to get the background of the case. And as far as I know that was never done. And I think it's very important. And I have done that. I have the minutes leading up to the original denial and Peter's coming back, and then the approval of that plan. And I think it's important that you hear the reasons why that plan was denied in the first place. If it's all right with you I would like to read from these minutes. So let me do that and then I have something else I want to say about Turtleback Road. (Reads minutes from the October 21, 1987, October 27, 1987, November 4, 1987, December 2, 1987, and January 13, 1988)

PENNOYER: We will look into these minutes.

FRYE: Now, I object to their approval. I think it's very wrong. I don't care if you can go out your driveway and go right or left you're still coming back to a road that has one

entrance and exit. And if you approve this, then you're going to approve another loop on it, and another loop on it. That's why it doesn't make any sense. And the other thing I feel is in the first place, and this goes back to 1978 a complaint and stipulation on the condition of Turtleback Road. Turtleback Road was not built according to the cross section which was on the plan. The cross section on the plan conformed to the regulations. Turtleback Road did not. Whitland and Howe came down from Wellesley and checked it out, and said they conducted certain engineering tests and studies on Turtleback Road. Said tests have disclosed that Turtleback Road has materially failed to comply with the specifications set forth by the defendant on the subdivision application final plan and fails to comply with the specifications set forth for road construction. This is on the complaint. The Town of Essex has obtained engineering advise that said road must be reconstructed to provide a safe and lasting way of access for vehicular traffic including fire and emergency vehicles, and on. The response of the defendant who says I have a purchase and sale agreement on a house. And they say no more of that until it's fixed. Then out comes the stipulation that says Turtleback Road in Essex to be repaired and to comply fully in all respects with the requirements of the subdivision, and the State laws for the road. The stipulation called for removal of the present asphalt pavement. This was not done. Spot work was done. Now, the Town did not pick up on this properly. This road was not done like this. So the Town dropped the ball. Therefore, the Town will not take over that road because it is not properly built.

ALTHOLTZ: What would you like to see happen?

FRYE: I would like you to get rid of that other plan.

ALTHOLTZ: The whole loop?

FRYE: The whole loop because I think until other things are straightened out he doesn't have any right to do it. But if he has to do it I am sick and tired of these plans that have been going on for so many years where he comes in with a road. And says we didn't have our perks. There is three hunks of land. And then he can come in with his plan and circumvent the subdivision regulations. Just like Low Land Farms. Just like all of them.

ALTHOLTZ: You're also worried about some of the larger lots being subdivided?

FRYE: Who keeps track of these numbers? There is no control. Who gets the twelve lots? First come. First serve. How, how is it done?

ARTHUR HODGES: I have in front of me a petition by Sam Hoar who does not live on Apple Street. He lives on Rocky Hill Road. And he is not here tonight. But I would urge the Board to consider his petition and memorandum seriously. My concern here revolves around the process that the Board has gone through over the years, which I think Mrs. Frye has articulated very well. But, along with that it seems to me there is a number of things that get lost from one meeting to the next. At one meeting it was noted that there was going to be a traffic study done and the board should not take any action on this plan including Low Land Farms until the impact of public safety be done. I think it was a survey that was, at least, in process of being done. I'm simply asking for information. Has the Board now got that information in front of them? And do they feel comfortable making decisions on this plan, or any other plan, based on the input of an impartial expert not Mr. Van Wyck's engineer? What has happened with that? That's a simple question. I do know that appeared in write up of one the meetings over the last year that that was an essential part of the deliberations of the Board. Could I ask that question?

PENNOYER: I think it was an essential part of the decision process for Low Land Farms. That traffic study is under way and is due shortly. And that is why we have not addressed Low Land Farms at this point.

HODGES: Would that traffic study have any bearing since it is right across the street from that? I would just submit that it would seem to me just common sense that if Low Land Farms and Turtleback Road are right across from each other, and we're talking, I believe, about at least as many houses as on the Turtleback Road side, that would be the rational thing to do. To have that all in front of you so you can see as a Planning Board and to be able to have some feeling of impact on both of these projects on Apple Street. Which we all know and has been documented is winding, narrow and dangerous, etc. These should not be viewed as simply ways of obstructing and frustrating Mr. Van Wyck's obviously legal ability to built rational development on Apple Street. I don't think anyone, and certainly I

as a resident of the street, would deny and say that he can't do anything. I think truly if the word planning has any sort of meaning or definition, two developments on either side of a very narrow street with a major number of houses going on, I think it would be a great mistake for the Board to simply say we are not doing that on this property. We're doing it on the one on the other side. It doesn't make any sense to me. So that's one point. I think I have observed this over the years and this goes back to the early development of Turtleback Road. I've seen Mr. Van Wyck's plans and his approach is just to say here's a plan and this is how I'm going to develop it and there is going to be eight or nine houses on Turtleback Road. The last lot is always the biggie. He is never able to tell you what's going to be able to happen to this lot. He sells off lots one through six and then the last lot is the one that he obviously now putting on another loop. I think to me it's inconceivable, even though it might have been permitted in some obscure place in Mariborough. It's inconceivable to me that a Planning Board would allow a developer to continue to put loop upon loop upon loop, and pretend that that's a different road. The whole intent of the zoning bylaws that the Town has put in is to try to put some sort of restriction on a developer's ability to put a single road in off a road like Apple Street. And that's why you had your restrictions on length and a cul-de-sac. And then to slap another one on top of that seems to me to completely get around and frustrate the intention of the Town. So those things really do concern me. So based on traffic and existing zoning laws you would certainly take a very hard look at this. Not to prevent Mr. Van Wyck from doing what he should be able and entitled to do. But I think there has been a method or pattern that has gone on over the years is simply not allowing the Planning Board to see the total plans so they can make a rational judgement on the impact of the Town. And I think this is truly going to have an impact on the safety of that street when you combine it with all these others.

MARY SCHADE: Why should a road be called a scenic way if there doesn't seem to be more definite limitations put on it?

DUNN: I know that these people have all their concerns, but are we getting a little bit away from the fact that we were given direction that if the plan had not been changed then we had to sign it. If there were no changes, it wasn't up to this Board to do a traffic study at this time. I'm just wondering if we're getting away from that. I don't think we had a choice not to sign it because of no changes on the plan.

PENNOYER: It does state that we have the right to modify it if we felt there was substantial change.

DUNN: By the way I can understand the concerns. I'm not saying I don't go along with a lot of the concerns. Just that I'm wondering if we can do anything about those concerns at this time where we were not the Board to approve this.

PENNOYER: The process is allowing us to listen to the public and take that into consideration on what we have done this far.

ALTHOLTZ: I did read Sam's memo. And I think one thing he's saying is that the changes in the neighborhood and the makeup of the abutters constitutes a change because the plan is now sitting in a different context.

JERMAIN: Can I speak based on the fact that I signed the petition and I also sent a letter on March 14 to the Board. I would just like to speak on that. My main reason for signing the petition that was submitted to you to ask to have the public hearing was that I really feel that not following the subdivision rules and regulations and allowing a loop added on to a 1200 foot road is basically giving a waiver. And I don't think that the Planning Board that made the decision to sign the certificate really looked at the context in which that waiver was offered. And I think they had the opportunity to based on the fact that the developer didn't submit the plan within the six month period of time and didn't do that for reasons I don't know. But he allowed it to lapse and made the opportunity for the Board to look at the development in the context of contemporary circumstances. And in my letter of March 14, I felt that after the meeting of March 3, where it was outlined by Tierney how the Board was to act in dealing with the certificate that they were misled and instructed by the developer's counsel. On March 4 I gave John Tierney a call because I wanted to find out what he was actually asking the Planning Board to do in that situation. And from discussion with him I composed this letter of March 14 because I was really concerned that the Planning Board did not have clear understanding of what they would be doing by signing that certificate. From my discussion with John Tierney I came away with the understanding

that the Planning Board did have the opportunity to either amend or rescind the plan. And I felt that with all that was going on on Apple Street with the discussion of Turtleback Road and Low Land Farms given the nature of the discussion e.i. the traffic circumstance that the Planning Board should look at this in context in contemporary times. So I would just like to suggest that my particular involvement with the signing of one of the petitions that has asked for this review is so that you can relook at John Tierney's advice to you, see for yourselves what your options are, and consider the circumstances on Apple Street that have been discussed in the last year with regards to Low Land Farms. And look at the situation of adding a loop onto a subdivision road, which essentially to my way of thinking is adding and going beyond what the subdivision rules and regulations allow for.

FRYE: I think you will probably realize this when you read the minutes. They did not request this as a waiver. There was no waiver that was granted by the Board. In accepting that plan you accepted the concept of adding a loop to a dead end road. Not as a waiver. There you might be in trouble. I mean if somebody gets hurt up there in an emergency, after they get feeling better they might sue the Town.

CLARK: It seems to me you have a cluster of issues which identify with the physical plan as it was addressed by a previous Board. Things that have not changed at all. The road and the loop, and things like that, are in the same shape as they were five years ago. Then you have two other things that may or may not have changed, one is people have moved to the neighborhood. I'm kind of curious though, I think one of the purposes of this hearing was to invite people to speak who have moved to the area since the approval. I haven't heard anyone here identify themselves as such. So I wonder whether or not that is a real concern, or whether were just rehashing the same issues for the same people that has been going on for years and years and years. The other issue that I think is fair, or that this Board might look at in a different way, is the issue of traffic and safety which is being addressed by the traffic study. I don't think this Board can take any action with regard to that issue if you were to amend, rescind or modify the plan, until we've had a chance to look at that report and talk about it. So I would be in favor of continuing this hearing on that issue alone.

PENNOYER: Any other comments? I would like to continue it.

GINN: I think that if any of the abutters, neighbors, people who have a concern about this be welcome to the Board to write a letter and state their concerns to the Board so we can have that on file. Because I think there is going to be a work study for this Board to review everything. And not necessarily abutters, but anyone in Town. There might be people who can't be at this meeting or other meetings. I would like to make a motion that we continue this public meeting to our first meeting in September and then at that point that we close the public hearing on this. What I'm trying to eliminate is this going on and on and on. And come next August we're going to be sitting here with this same dilemma in front of the Board. I think if we put a time limit on something and everyone can get their eleventh hour into the Board and then the public hearing is closed. We will then have our time to go through everything.

PENNOYER: By that time we can make a request that the traffic study be completed.

ALTHOLTZ: Does anyone have a number of lots that would be an acceptable limit?

FRYE: It wasn't for me to decide that. It was a decision for the Board.

ALTHOLTZ: So it's not a numbers game. You just don't like the concept of the loop.

FRYE: I know it's wrong. He built his own situation. He has one road. He had enough for an exit. And he sold house lots instead. Now, he has a dead end road. Sorry you cannot have 1800 feet on top of a 1200 foot road.

Ginn moved to continue this public hearing until our first meeting in September and at that point that all information be on the table so we will be able to close the public hearing at the end of that hearing. I would like to further add that it is extremely hopeful that the traffic study be completed and presented to the Board at that time for its review and then later discussion. Jermain seconded the motion, with the Board voting unanimously in favor.

A public hearing was held for Marianne McCartney, 9 Harlow Street, for a Special Permit under Section 6-6.9 of the zoning bylaws to convert existing three-family dwelling into legal units.

PENNOYER: I would like to open the public hearing for Marianne McCartney, 9 Harlow Street, for a Special Permit under Section 6-6.9 of the zoning bylaws to convert existing three-family dwelling into legal units.

GLOVSKY: We've done a lot of homework since the last meeting and the exercise was most worth while because Marianne McCartney notwithstanding advise of Counsel that she had the right to do what she was doing and favorable reports from other town agencies, has determined that at this moment she would like to respectfully request to withdraw her special permit without prejudice. And, if I may, having said that I will explain a little bit of history and answer some of the questions you have asked. There was a lot of mystery. A lot of questions about dates and permits and site plans. We've done that homework. And Marianne has also done a tremendous exploration in her back yard. There is some question now on who has jurisdiction with respect to the septic system. The system itself is located in Gloucester. The house is located in Essex. The Gloucester Board of Health is convinced that it has sole jurisdiction with respect to the septic system. In any case her plan is to complete work on the system. She is in the process of redesigning it and adding to it to satisfy both the Essex and Gloucester Boards of Health. And that is in process and won't get final approval for a few weeks. We have determined as these packages indicate that the original building permit for the house was issued in August of 1982. And it was followed by an occupancy permit sign off in April of 1983. In July of 1985 a building permit was issued for the garage, not an apartment just a garage. That permit was not signed off. It was noted in Mr. Carter's notebook and there is no paper record other than the notebook. We anticipate occupancy permits will be issued momentarily for two units. According to Mr. Carter two minor changes will be needed. A window will be enlarged and a fire wall will be created between the garage apartment and the main house. What Marianne is leaning to do at the moment is using the property as a two-family. That is why we are withdrawing the application. She thinks its best use is as a two-family. Not because of the septic system or parking won't be able to serve the needs of three units. But through this process she has lost two tenants. The intention is to do the work that is necessary in order to get all the final sign offs and occupancy permits for the two units and approval for the septic system from both Board's of Health. She has continued with water testing with the Delays. Their water was tested and is okay. There is no evidence of problems in the neighborhood. And that's where we're headed. The exercise was most worthwhile. It alerted us to a lot of issues that wouldn't have otherwise been addressed. And thank you for the guidance you gave us. We are presenting the request for leave to withdraw the application without prejudice and we do not anticipate we will be refileing.

Altholtz moved to accept the withdrawal of the application for a special permit without prejudice. Bragdon seconded the motion, with the Board voting unanimously in favor.

John Bryne of Byrne Brothers Landscaping on Western Avenue met with the Board to inform the Board that he has retained Clay Morin and a recharge plan for drainage will be presented on August 4.

Chuck Sim, 7 Main Street, met with the Board to discuss building a two-bay garage on an existing foundation on his property. He would like to operate a bicycle repair shop out of one section of the garage. The Board did not have any problem with Sim building the garage, but advised him he would have to abide with the home occupation bylaw and was also asked to show the Board a parking plan.

The Board agreed to become a member of the Massachusetts Federation of Planning and Appeals Boards, Inc.

Pennoyer brought to the Board's attention a site plan review. He feels as though the Board should be looking at putting together a committee of some Planning Board member's, but also outside people in the Town to work and try to bring this before the Town Meeting for approval. This would be an important tool for the Planning Board.

Jermain discussed a meeting she attended organized by the Mass. Audobon Society.

Ginn brought to the Board's attention an antique store, ^{Coviello's} ~~Cavello~~. They asked to put a deck on and that was to be used just for access. Now, the furniture is all the way down the street and down the sidewalk. Altholtz agreed to speak with him.

Ginn brought to the Board's attention Max Callahan's deck, which was suppose to be used for spillage. The deck is now has a full bar on this deck. The Board was concerned with proper permits. The Board will ask Dick Carter about proper permits.

Dunn moved to adjourn the meeting. Bragdon seconded the motion with the Board voting unanimously in favor.

The meeting was adjourned at 10:45 p.m.

**Planning Board
June 16, 1993**

PRESENT: Sheldon Pennoyer; Chairman, Howard Altholtz, George Bragdon, Pat Dunn, Joseph Ginn, Kimberly Jermain, Joseph Knowles

Building Inspector Richard Carter, building permit application for Susan A. Morin, 7 Lowe Hill, to construct a single family residence with garage and a deck. Easement is recorded in BK 11560 PG 362.

Bragdon moved to approve the building permit application for Susan Morin, 7 Lowe Hill, to construct a single family home with garage and a deck, 96'x42'x31'. Dunn seconded the motion, with the Board voting unanimously in favor.

Dunn abstained from the following application.

A building permit application was submitted for Raymond Greene, 15 Rear Story Street, for addition of apartment with two bedrooms and 1 1/2 baths for elderly parents.

Knowles moved to deny the application for Raymond Greene, 15 Rear Story Street, for addition of apartment with two bedrooms due to the regulations of condo and lot size restrictions. Altholtz seconded the motion, with the Board voting unanimously in favor.

A building permit application was submitted for Nelson E. Selig, Jr., 135 Eastern Avenue, for footings, foundation and wood construction breezeway, mudroom and garage.

Ginn moved to approve the building permit application for Nelson E. Selig, Jr., 135 Eastern Avenue, to construct a 20' x 46' garage, under the Essex bylaw 6-4.2 that the proposed extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. A letter from the abutters is requested.

An A&R plan was submitted for Dario C. & Gloria Galli, 43 Lake Drive, to divide two lots into separate ownership.

Knowles moved to deny the plan of Dario C. & Gloria Galli, 43 Lake Drive, because it would violate the water shed protection bylaw by creating two lots of less than 40,000 s.f. Ginn seconded the motion, with the Board voting unanimously in favor.

Dunn excused herself from the meeting.

A public hearing was held for Marianne McCartney, 9 Harlow Street, for a Special Permit to convert existing three-bedroom dwelling into legal units.

PENNOYER: I open the public hearing for Marianne McCartney, 9 Harlow Street, for a special permit to convert existing three-bedroom dwelling into legal units. Any comments from the Board?

ALTHOLTZ: Is the garage separate?

GLOVSKY: Attached.

PENNOYER: Do you have all the plans? We should lay them out on the table? I also want to read into the minutes a letter we received from the Board of Health and Mrs. Warren. (A letter from Mrs. Samuel D. Warren, Harlow Street, addressed to the Essex Planning Board, dated May 26, 1993, was read into the minutes, and a letter from the Essex Board of Health, Health Agent, Cynthia L. Barletta, addressed to Marianne McCartney, dated June 7, 1993 were read into the minutes.)

KNOWLES: I also have a letter. (A letter from Robert and Daphne Borden, 54 Lufkin Street, addressed to Joe Knowles, Planning Board, dated May 31, 1993 was read into the minutes.)

PENNOYER: The whole system is in Gloucester.

GINN: Which is perfectly legal as long as it meets their requirements. Have you had time to respond to the Board of Health's letter.

ALTHOLTZ: Were electrical permits pulled for the work done in the basement and the garage?

MCCARTNEY: I'm sure they were.

SALLY O'MALLEY: Excuse me. The only electrical permit that was pulled was for your service.

GLOVSKY: As you know I wasn't involved with this application at the outset. I got involved at the meeting before last. And prior to filing the application, Marianne McCartney obtained a letter from the Board of Health that was directed to you that they thought the system was adequate for a five bedrooms. We acknowledged that since your last meeting we have hired an excavator to dig on site to determine the location and condition of the existing system. And the letter that you have dated June 7, 1993, is in part on account of the new information that we were able to provide. At this point Marianne McCartney is ready, willing and able to meet all of the conditions that the Board of Health has suggested. And it seems as though that work can be done. We already have a quote, and it looks as though it will cost between six and seven thousand dollars. And at this point that is work that will take place no matter what. We think it is necessary. I would listen to the correspondence from the Borden's and the Warren family it sounds to me as though, and I certainly can't speak for them, the foremost concern is waste water, sewerage, and potential for contamination of wells, and wetlands. Certainly we need to comply with all the Board of Health requirements. We have already tested our well and the Delacy well. And we've determined that the water quality in both wells is more than adequate. Additional tests results are being obtained and we expect that they will show that there is no contamination. My understanding is that there is substantial distance between the location of this system and the actual wetlands. The system is not in a buffer zone, as I understand it. And a filing would not even be required to be made before the conservation permission. And I believe we are not in your ground water recharge zone. I might reiterate a point or two that I made at the first meeting. This lot does contain 45,000 s.f., and today the owner of this property would have the right, if a permit were requested, to build a two-family structure on that property so long as one of the dwelling units contained no more than two bedrooms. At the moment the total three units contain five bedrooms, and that is what we intend to keep on the site. So we could have five or more bedrooms in a two-family which could be constructed today as a right. Certainly we would have to meet Title 5, and Essex Board of Health requirements, but we believe we can do that, and we intend to do that. With respect to conversion of a single-family to a three-family your bylaws require that there be at least 10,000 s.f. per dwelling unit. We have more than 15,000 s.f. per dwelling unit. There can't be substantial change in the structure. We proposing no change in the structure. There has to be adequate parking. There is more than adequate parking. And lastly we have to be able to show that the proposed use not be more substantially more detrimental to the neighborhood than a single family use, or the use that could be permitted on this site, which would be a two-family use. And I would suggest to you that so long as the Board of Health reviews our plans for a septic system upgrades there would be no evidence that would be sufficient to deny this application on the basis of substantial detriment to the neighborhood. We intend to do whatever is necessary to satisfy the requirements, and I think we will satisfy the requirements of 6-6.9 J. I think at this point you have the authority to issue a special permit conditioned upon the Board of Health approval of septic system upgrade plans and satisfaction of the conditions listed in the Board of Health letter. And other than that I do know that people don't like change. I don't think this is a significant change. We do appreciate the concerns of the abutters and we are determined to do whatever we can to assure the neighbors that we are not going have any adverse impact in the neighborhood.

BRAGDON: The abutter, Delacy, have you reviewed the proposed plan that would be approved? Do you see any problems with it effecting your water supply?

MARYELLEN DELACY: I don't see it effecting our water supply because there has been three families living there for some time. And we haven't noticed any adverse changes in our water supply. Marianne had our well water tested recently, and prior to that I had it tested just two years ago. And at that time there was a multiply dwelling next door and there has been no changes. All I know is that every time we've had our water tested it's been pretty much the same from when it was a single family dwelling until now.

ALTHOLTZ: Is there adequate parking?

GLOVSKY: The lot is approximately a little bit more than an acre. There is parking behind the house.

PENNOYER: This site plan is hard to read. As I'm reading this drawing it does not meet the setbacks for multi-family use. If you go for a two family, then it meets the setbacks. Am I correct? For a multi-family the side yard is 100'? And you don't have a side yard where it is a 100'.

ALTHOLTZ: Are we looking at Section K or J?

GLOVSKY: We're going under Section J. We're not building a new house?

PENNOYER: I know you're not.

ALTHOLTZ: But under "J" I have a problem with subsection 3. The substantial enlargement. From my understanding, the house was built in 1980 and the garage in 1982, and subsequently quickly became inhabitant.

MCCARTNEY: The garage was built in 1985.

ALTHOLTZ: The garage was built separately. So the property was, in fact, enlarged to make way for a third apartment.

GLOVSKY: No, because the garage existed and the footprint of the house and the shell of the house was kept the same. The use of the interior house changed.

ALTHOLTZ: But the garage wasn't there in the original construction. I understand it wasn't. It was built afterwards.

MCCARTNEY: Yes.

ALTHOLTZ: I think it constitutes substantial enlargement under subsection 3.

KNOWLES: How many people have lived there at the same time?

MCCARTNEY: I think that's a good question. There is a studio apartment, which I'm trying to legalize. It is adequate for one person. The most we've had there is six people.

KNOWLES: But there are three kitchens?

MCCARTNEY: There are three different units. Three different kitchens; right.

PENNOYER: Any other comments from the public?

MCCARTNEY: I care about the property and I care about how it is run. I care about how it is treated. I take care of it. I would not leave it un-owner occupied.

SAM WARREN: I'm not necessarily concerned about you, but when you die, when you sell the house, when you leave, that's probably going to change. And that's probably up to the Planning Board. When my mother dies there is going to be pressure to develop that land. How is the Planning Board going to control it. Can Harlow Street afford to take on that kind of development. I'm not concerned about you. It does look nice there.

MARYELLEN DELACY: Can I make a comment based on what Mr. Warren just said. Is there any way the Planning Board can put some restrictions on a permit that is given to Marianne based on owner occupancy. Then if the owner should leave the premises it would revert back to a single family.

KNOWLES: I don't think we can do that because the permits are not issued to people so much as the property.

GLOVSKY: Marianne McCartney would be willing to accept the condition that the property be owner occupied, and that would be one of the conditions if the special permit were granted.

JERMAIN: We cannot police that kind of thing.

KNOWLES: I'm not sure that requirement would stand up either.

GLOVSKY: Well, I think it might stand up.

PENNOYER: Let me ask you a technical question. Obviously, you have to have a certificate of occupancy, which means going and getting a sign off from the electrical inspector, building inspector, you know, getting everything lined up so you can finance this as a three-family. How are you going to do that? Maybe it's none of my business, but it is a point that has been brought up.

MCCARTNEY: I would have an inspector come.

PENNOYER: But if the walls are closed, how is any inspector going to sign off on something they can't see what has happened behind the walls.

GLOVSKY: There is a lot of construction unfortunately that has never been signed off either pre-code, post-code, or whatever. There are certain statute of limitations to deal with that. I'm sure you know there is a statute that if you built a house in the 40's and you didn't get a permit, and ten years goes by and there is a zoning problem, you're safe.

PENNOYER: Yeah, but if it goes to a three family from a single.

GLOVSKY: Use versus construction. They are two different issues. Unfortunately Marianne McCartney didn't know anything until she tried to refinance. As you heard from her and her son at the last meeting her husband built this house without a whole lot of involvement from her. And rules and behavior might have been a little different in 1980 and 1981. It doesn't make it right. But she is now in a situation where she has significant involvement. And I think that under the circumstances since it is an existing dwelling, and with all due respect to the suggestion that the garage wasn't part of the original structure, it is part of the structure that exists today. And so what we're doing is converting that existing structure into three dwelling units. Then I think the only question is whether there is anything that can be determined substantially detrimental to the neighborhood that we can't overcome somehow. And I haven't heard anything yet that would indicate that there is going to be a substantial detriment to the neighborhood. There are some unanswered questions with respect to the septic and water quality. We've answered a lot of them. We're willing to answer more. And we're willing to comply with new requirements of the Board of Health indicating that they need significantly more information and improvements, only three months after a March 1st letter. March 1, as you know, we were told the system was adequate to serve the needs of a five bedroom dwelling.

KNOWLES: I can't get over the sense that it's very difficult and Howie's question points to it, too, after the fact. The question of enlarging things and when it was enlarged. Well, you don't have to enlarge anything now, but when was it enlarged.

GLOVSKY: What was the date of the bylaw that deals with conversion of existing buildings to three family dwellings?

ALTHOLTZ: I think it was 1972.

GLOVSKY: Conversion under a special permit. I thought that was later in the later 80's.

GINN: I would like to see the upgraded reports from the Board of Health. It may be that the cart is before the horse a little bit.

GLOVSKY: We'll do it either way.

GINN: That's one of the things the Board asked for.

GLOVSKY: You asked for a dye test actually.

GINN: And the Board of Health's sign off on that. We cannot act as the Board of Health. That's not our department. It was my thought that the dye test would suffice.

GLOVSKY: The Board of Health said the dye test wasn't going to solve the problem and that's fine. We're willing to abide by your recommendation. Complete the work that the

Board of Health is requiring. Because we're going to do it one way or the other. And then come back to this Board.

GINN: I think that would work in favor of this particular lot of land. If, in fact, that were all brought up to code with the Board of Health's approval it would alleviate some pretty substantial concerns from basically every abutter in the area. And I think that puts the Board in a little different perspective as far as quality of land in that area. I think that's pretty important in that area. Most every abutter has brought that issue up as a possible problem. We don't know if there is a problem. There are some other issues and I think the Board had asked for a documentation of parking spaces on how that was going to be laid out, and so forth. And the issue that was brought up tonight about inspections on conditions, whether it be wiring, plumbing, etc., that some sort of sign off be given on those from other departments. Whether they can inspect the whole thing or not. I don't know.

GLOVSKY: We will respectfully then request continuance of this hearing, unless you want to close it, to July 7, which is your next meeting.

PENNOYER: I think we should look very strongly on what Howie has pointed out.

GINN: I think it should be up to the applicant themselves to show us the sequence of how the permits were obtained for building. Whether that was built as one footprint as it is now in 1981, or whether there was an addition and a permit granted for expansion of garage, or whatever, in 1985. I think that's up to you folks. Just show us the sequence of events. And then maybe by doing that other inspections will fall in line.

KNOWLES: Aside from all that, septic, electrical, I do have a problem with Paragraph 2. Substantially more detrimental.

PENNOYER: Right. I think as Board we should be concerned with that.

GLOVSKY: On what basis do you find the addition of a studio apartment, in this situation, where you have two small dwellings units to begin with as opposed to two larger units, to be substantially more detrimental to the neighborhood.

KNOWLES: That is already there or would be there if it was a single family. What I heard a month ago, with all do respect, was because no one knew this was here it somehow couldn't be deemed detrimental. Because no one knew it was really there somehow it really didn't matter because if you didn't know it was there it wasn't detrimental. I don't buy that. I can cite the minutes. I know that came up from two different people who were here earlier. The idea of ten people living in a single dwelling -- single structure in that area makes me feel kind of funny. I know the area pretty well and no one can tell me that having three dwellings, three living spaces, for three different families would have less impact than one or two.

GLOVSKY: Understand for a moment, and I'm sure you do, we could on 30,000 s.f. put in two dwelling units with a total of ten bedrooms. We could do that without coming to this Board. What we're proposing to do to legitimately, although not originally permitted, which could be permitted today a two family, is add one bedroom studio apartment.

ALTHOLTZ: Well, you might not be able to put in ten bedrooms, first of all, because your septic system might not accommodate it. So that's a real stretch.

KNOWLES: I just didn't want to leave it that if you clear up the mechanical problems that clears up the problem.

PENNOYER: I think someone should make a motion to either continue the public hearing or to deny it right now.

GINN: With what I have in front of me right now I would vote to deny it. Now, if that's what the applicant wants us to do is to close the public hearing. I think there are other issues here. And I'm not saying that we, or myself, would not vote to deny it after all the other additional information is in.

JERMAIN: It seems to me that there is quite a bit of expense that might have to go on to just have it reconsidered and I don't want to put someone in that situation.

GLOVSKY: We're going to spend that money anyway.

JERMAIN: I think that's something you might want to consider.

GINN: I think at the next meeting we should put this to bed. It's unfair to all the abutters and people that are surrounding this.

ALTHOLTZ: So what specifically are we asking her to come back with at the next meeting. All the information that the Board of Health is requesting? Electrical inspections?

PENNOYER: No, I think realistically it can be the Board of Health issues. I think we did request at the last meeting a site plan. And we don't really have a site plan outlining parking and what not. And that's a concern with this.

GLOVSKY: I thought you only asked for the floor plan.

PENNOYER: No, Joe specifically brought up a site plan outlining parking because that's been a concern all the way through, and that's not here tonight.

BRAGDON: Another concern I would have is an alternate water supply in case in the future the wells do get polluted. Because the way it stands now, if I'm reading this map right ----

GINN: Can you identify on the lot that there is room for another well if one goes sour.

BRAGDON: If an abutter's well goes bad, there going to turnaround and blame us for approving this. I can't approve this unless they have a contingent plan to protect their neighbors.

Ginn moved to continue the public hearing until July 7, 1993 at 9:00 p.m., and that all information that has been requested be presented to the Board and the Board will make a decision on this matter. Knowles seconded the motion, with the Board voting unanimously in favor.

Attorney Mark Glovsky, on behalf of Michael and John Byrne, explained to the Board that the Byrne's were still working on a recharge plan and did not have the plan finished for this scheduled meeting. Glovsky assured the Board they would have a plan by the next meeting.

Attorney James Kroesser, on behalf of John Lambros, met with the Board to discuss a Form A plan for land on Choate Street.

KROESSER: You requested that I come back with a note on the plan referencing the common driveway easement that will be prepared and recorded over this piece to access all four of these lots. There is the note and the revision date of 6/15/93. If you're interested, I have a draft of the easement itself that you're welcome to hold onto. My promise to you, I guess, is the plan and the easement will go directly together or not at all, because the plan now has the note on it that requires the recording of the easement with it. The easement refers to the plan by description.

ALTHOLTZ: Was this the plan with the pond? Did we ask Tierney about this?

PENNOYER: No, he was not asked. I did a little research on this and I couldn't find anything that said that if you had a wetland in your frontage that it couldn't become frontage.

GINN: I don't think this town has any restriction against that. Where do we stand on the 61B?

KROESSER: From the assessors we have a total of what the rollback taxes are. The 61B lean is still of record in the Registry against the property, so none of the property can be conveyed without paying this. And they will get paid on the sale of the first lot.

GINN: Does that mean it is initially offered to the town? And has that been done?

KROESSER: Yes, it was attempted incorrectly last year and will be done over before we go to sell any of those lots.

ALTHOLTZ: The reason you have frontage is to have access to the lot. When you have impediment to the frontage is it just illusory access. Is it access in name only.

PENNOYER: In this town you don't have to enter your lot on your frontage, so I look at it being more a density tool. In other words, the 150' of frontage is a tool to control density versus a tool to control density and an access to a lot.

KROESSER: We're actually limiting the density here by breaking them out on a Form A basis because you need 150' of frontage on the street.

PENNOYER: I have nothing against the plan. I think the common driveway is good.

KROESSER: I think if you read the cases on this, they distinguish wetlands specifically because wetlands are out of your jurisdiction.

PENNOYER: Well, no, they are not.

KROESSER: The cases that I gave you tell you that conservation commission approvals, if you want to travel over the physical access are not something you need to worry about. The only thing I think you need to be mindful of here, is that you can get onto the property from each of those lots. And here we're doing it by a common driveway because it's smart thing to do. If we had to go to Conservation we could require them to give us an order of conditions to put a driveway across there.

GINN: The State DEP or the conservation commission cannot restrict access to your lot. So if there was not a common driveway on this plan the State would have to grant permission to get to that lot. Now it may be very expensive, but they could access that lot through this pond or swamp area. The concern I have on this is a further subdivision of land because basically you do have a lay out of a roadway.

KROESSER: To do that would require coming back with a Form B subdivision plan and building a road.

GINN: Well, you have a roadway partially started.

KROESSER: We have a driveway and I don't think anyone intends to create more than a linpack driveway.

GINN: No, not at this point. But you have what appears to be a 44' way or driveway, common way, at some point, ten years from now could be turned into a subdivision road.

KROESSER: I can answer that. The common driveway agreement prohibits the use of the common driveway for more than those four lots.

GINN: We should have a copy of that, and that would be in the deed as well.

PENNOYER: This lot could still be subdivided.

KROESSER: That lot still has 308' of frontage. He could carve that in half if he wanted to, but he wouldn't be using the common driveway necessarily to get to it. He could come right in off Choate Street because it's high and dry over there.

Ginn moved to approve the Form A of John Lambros, Choate Street, to create four separate lots to be accessed through a common driveway as shown on plan dated October 1, 1982, revised June 15, 1993, and that common driveway easement agreement will be on file with the Board and that all requirements to Chapter 61B as pertinent to the town and State be met. And as shown on the plan the common drive, and as indicated by Attorney Kroesser in the document, that the common drive will serve only the four lots as shown. Knowles seconded the motion, with the Board voting unanimously in favor.

Clay Morin along with Craig Doyle met with the Board to discuss a preliminary plan for division of land.

MORIN: What we're thinking of doing on a preliminary basis is dedicating a 44' wide right of way bringing in a turnaround similar to what we did on Pond Street for Gannett. We did a turnaround for him, but it was longer than this access. This would create a lot in front and also create the frontage for Craig's house in back. And then the other option instead of going in that direction is just to flip-flop it over here just to make sure we do have the 150' of frontage and bringing this off at an angle. There isn't town water out there. Town water is down by the golf course.

BRAGDON: Where are the wells?

MORIN: There is already an existing well for this and for this.

PENNOYER: So you're trying to get two lots out of the property.

MORIN: Right. We're going to create two lots out of one. But we have to create the frontage for the back house that exists now. The only potential variance we may request is the center line of the driveway because there are a row of Maple trees along here and a stone wall that we don't want to disrupt. Supposedly we have 195' on the road, so if that's the case we dedicate 44', and then we have 151'. It's a lot on an existing way. We can go to 30,000 s.f. because we're not in the water shed district. Actually we're proposing almost 40,000 s.f. right now. The second lot will be about 100,000 s.f., 2.31 acres. So we just wanted to run this by you to make sure the Board understood we didn't have town water out there because that's always an issue that comes up. It seems to be pretty straight forward. We're going to double check the boundaries. And other than asking for no town water, we're going with a well, and ask for an off center for the road in the front so we don't have to take down those big trees. Those trees are probably 150 years old. The back lot is a single family with an in-law and the front lot will be a single family.

PENNOYER: What's the Board feel about this?

GINN: You're creating that as a 30,000 s.f. lot?

MORIN: Actually it's 37,915 s.f. As we rework it maybe we'll make it 40,000 s.f. We've got plenty of room.

GINN: That's a better idea. Now, are you actually going to put a subdivision road in?

MORIN: We're proposing to a 16' gravel way. We're going to have to update what we have there. We're going to have to widen this.

GINN: You're going to have to show us some conditions of existence.

MORIN: They'll be a turnaround. We'll pave the turnaround. When we file the definitive we'll stake this out and we'll make a site visit under the definitive review and you can see how that drive goes up relative to the proposed easement. If there is any changes or concerns that the Board feels they want done we'll address those at that time.

Attorney Charles Clark, on behalf of Peter Van Wyck, met with the Board to discuss the petitions for Turtleback Circle subdivision.

PENNOYER: In general business at our last meeting, we discussed the petition for the Turtleback Road Extension. Attorney Clark brought up the point that the Board made a motion a number of meetings ago, that anything that be acted on be on the agenda. So the applicant or the abutters can respond. So I think it's a fair request that we raise the issue of the petition again. I think we have to rescind the motion of last week only to make another motion this week.

ALTHOLTZ: I don't think we have to rescind it unless someone has a problem with the vote.

PENNOYER: I think what I'm doing is giving either the abutters or the applicant time to respond in the discussion before the motion is made. Because this is something I think the

Planning Board embraced which is the idea of having every issue on the agenda before we make a motion.

JERMAIN: Were the people who signed the petition made aware that tonight this was going to be on the agenda.

PIERRO: I spoke with Art Hodges.

CLARK: It was also in the paper.

PENNOYER: See last time it wasn't in the paper. It was just brought up as a housekeeping issue because we knew we had to deal with the petition. If someone feels I'm wrong by rescinding the motion. That's fine. I just think we have to bring up the issue and if the applicant wants to respond. Fine.

GINN: I would like to make a motion at this point not to rescind the motion unless a motion were to be different than what was proposed.

ALTHOLTZ: That's what I was thinking. Unless there is a specific objection to the action why rescind. I haven't heard any formal objections or actions.

CLARK: I do have a couple points to make and they do go to the point of how the action was taken and who took it. I did raise the point with Sheldon because I think it's a good procedure, not only with Peter, but with any applicant to put things on the agenda twenty-four hours ahead of time. Whether it's an applicant, opposition, or a motion from a member of the Board. But I do think you need to have another motion. Peter is not objecting to the fact that you want to have a public hearing on this. I think that was an understanding we had when you signed the plan. Obviously we'll oppose any modification or change, but we'll save those arguments until then. But I spent a lot of time during the last week, or so, on the issue that has come up in discussions with this Board and it also has come up with Town Counsel. And it has to do with participation of new Board member Kimberly Jermain in your decisions regarding Turtleback Loop and Low Land Farms. I spend a considerable amount of time researching this issue and researching the opinion's of the ethnic commission. It's difficult. I know the Board is grappling with it as any Town Board ----

GINN: No, we're not grappling with it.

CLARK: My conclusion is that there is conflict of interest under Section 19 and 23 of General Laws Chapter 268A, notwithstanding the correspondence with Town Counsel you have with this issue. I respectfully disagree with John Tierney's opinion. The letter which is part of public record from Sheldon Pennoyer to John Tierney asked for his opinion regarding conflict of interest under Section 19. It did not ask in a general sense whether there was a conflict of interest under any other section of the statute. And I believe there is conflict of interest under Section 23 (b) (3). I have a letter which I will present to Mrs. Jermain and to the Board, rather than getting into the argument. I think it's something that people need to, especially you, really need to look at and decide. And I recommend seeking private legal counsel in helping you make that decision. The second part of John's qualification for his response was that he assumed, the promise in your letter Sheldon, that Mrs. Jermain had no business interest, which he took to mean financial interest. In my reading of the opinion's of the ethnic commission is that the effect of a subdivision on a person's real estate value whether it goes up or down is a financial interest with regard to the statute.

KNOWLES: A vague financial interest or a direct?

CLARK: There is a whole series of cases. They start from the premise that the direct financial interest is if you live right next door, direct abutter.

KNOWLES: Or if your parents do.

CLARK: Then you branch out to parties of interest as defined in Chapter 40A Section 11. Then you go to the case log, which is how the commission keeps records. What the direction the commission is going is enlarging the pool of people to protect a conflict of interest.

KNOWLES: Mr. Clark, in the interest of time, and on behalf of Mrs. Jermain who needs no one to speak on her behalf, we would be best to take your advise as just that.

CLARK: That's all it's offered as.

KNOWLES: And I would also recommend to the rest of the Board that we proceed with the understanding that there is no conflict of interest. And, if Kim, for her own protection wants to seek private legal counsel she can do that. But, in the mean time I think we risk nothing, and in fact, we wasted a lot of time. I was under the impression we were going to talk about the petition.

PENNOYER: I think this is relevant to the petition.

KNOWLES: This is irrelevant to everything.

CLARK: The motion was made by Mrs. Jermain. If she participates improperly any action the Board takes can be rescinded.

JERMAIN: I got an opinion from John Tierney that there is absolutely no way, given the fact, that I'm not an abutter to an abutter or an abutter to the property that it could have any impact on my property than it could have impact on Pat Dunn's farm stand.

KNOWLES: Any way it's Kim's problem, not the Board's and not the applicant's.

PENNOYER: We don't know how this is going to stand. We do know the motion carried by a substantial amount. My advise is to remake the motion without you involved so that we don't have to back track.

JERMAIN: I'm not being intimidated by his suggestions. And I don't want to back down on what I brought up as a motion. I am perfectly willing to stand up and make that motion. I am not intimidated by his advise.

PENNOYER: I think we should send this letter to Town Counsel. And we'll go from there.

The Board discussed the grandfather statute. Howard Altholtz researched this statute.

Knowles moved to adjourn the meeting. Bragdon seconded the motion, with the Board voting unanimously in favor.

The meeting was adjourned at 10:40 p.m.

ESSEX PLANNING BOARD

AGENDA

June 2, 1993

Appointments:

- 8:00 p.m. Marianne McCartney, Public Hearing
- 8:30 p.m. DPW, Scot's Way (CANCELLED)
- 9:00 p.m. Byrne Brothers (CANCELLED)
- 9:15 p.m. Attorney James Kroesser, representing
Garcia Kimball, Maple Street and
John Lambros, Choate Street

Business:

Summer Schedule

Planning Board
June 2, 1993

PRESENT: Sheldon Pennoyer; Chairman, Howard Altholtz, Pat Dunn, Joe Ginn, Kimberly Jermain, Joe Knowles

Howard Altholtz removed himself from the Board regarding the following building permit application of Gary and Susan Eno.

Building Inspector Richard Carter resubmitted a building application for Gary and Susan Eno, 70 Wood Drive, to construct an accessory building on a 5,000 s.f. lot, which is owned under separate deed from their home lot. Eno stated he will use this as storage only. He will be putting electricity in, but no plumbing or water will be hooked up. The Board stated they had Town Counsel review after the last meeting. Pennoyer explained that Town Counsel stated under an accessory building this could not be done. But, if it was not considered an accessory building, but merely a building or garage on a lot, then that lot has to meet various area and frontage requirements. Carter explained that the building was a garage and storage, not an accessory building. Carter also felt that the lot fell under the classification of a grandfathered lot because it was in existence before 1972.

Ginn moved to approve, pending approval by Town Counsel by the Chairman of the Planning Board, the building permit application of Gary and Susan Eno, 70 Wood Drive, be granted a building permit for a building to be used as a barn, garage, or storage, 24' x 30'. It will meet the minimum of 10' setbacks as required by an accessory building, even though Town Counsel has already ruled this it is not an accessory building. The building will only be used in the capacity as a garage or barn, and not for any type of a dwelling, and without water or sewer services. Knowles amended the motion to include no kitchen be installed, and the use subject to requirements of the water resource protection bylaw. Knowles seconded the motion, with the Board voting unanimously in favor.

Building Inspector Carter asked the Board's opinion on the water resource protection bylaw in relation to Scot's Way subdivision, Western Avenue. This falls under the water shed district, but because it is grandfathered the 25% is ^{allowed} required, not 15%. The Board agreed.

Pennoyer brought to the building inspector's attention that he had received numerous phone calls regarding Ronald and Robin Pyndynkowski, Forest Avenue, a home occupation, saying they were doing chipping during the day. They take them off-site, but they were chipping them on-site. And they are storing a lot of materials outside. They have the structure up, so now they should be storing the materials in the structure. Pennoyer asked Carter to look into this.

Dunn expressed to the building inspector concern for a David Gaudet, 22 School Street, a home occupation, he has between six and eight tractors outside. Carter stated that he has been over there about six times and Gaudet says he is going to relocate. Dunn stated that even if it is going to relocate, while he is there he should be following the bylaws.

A building permit application for 227 Western Ave Realty Trust, 227 Western Ave, to construct mini storage (metal building). Pennoyer explained that the land is grandfathered under the water resource protection bylaw, the ¹⁵25% applies not the ²⁵15%.

Knowles moved to approve a building permit application for John James, 227 Western Avenue Realty Trust, 227 Western Ave., to construct of new mini storage (metal buildings), located on Lot 12 of Scot's Way on plan dated 6/2/93, subject to the DPW curb cut, and with the understanding that the water shed resources protection act the 15% is not applicable, 25% does apply. Altholtz seconded the motion, with the Board voting unanimously in favor.

A public hearing for was held for Marianne McCartney, 9 Harlow Street, for a special permit under Section 6.6-9 to convert existing three family dwelling into legal units.

Pennoyer opened the continued public hearing for Marianne McCartney, 9 Harlow Street, for a special permit to convert an existing three family dwelling into legal units.

The Board was advised that the Essex Board of Health was unable to conduct the dye test of the septic system requested at the last meeting. Ginn brought to the Board's attention that the existing septic system is located in Gloucester. The Board is concerned with what actually exists for a septic system. Jermain questioned the square foot lot requirement. Pennoyer advised the Board they should be concerned with existing building code requirements, such as exits, railings, and stairs.

Knowles moved to continue the public hearing for Marianne McCartney, 9 Harlow Street to June 16, 1993 at 8:00 p.m. Altholtz seconded the motion, with the Board voting unanimously in favor.

Attorney James Kroesser, representing Garcia Kimball, Maple Street, met with the Board to determine if Kimball's lot was protected under the grandfather statute.

KROESSER: The issue that was raised at the last meeting, that John has addressed, is whether or not it's necessary in order to gain the grandfather protection of the zoning statute that the lot be owned by the same person for the entire period of time starting with before zoning was adopted until the time when I show up to ask for the determination that it constitutes a grandfathered lot. And that John has addressed by saying, "No, that isn't necessary." The only thing that is necessary is that it remain a separate lot since prior to the adoption of zoning. Which is the case here. It has changed hands, as most property does. And John answered the question, the same way I answered that for Rolf a month ago. And I think that was the only issue there was.

GINN: One of the biggest obligations was that even though it has changed hands that the lot lines have not changed. And they have remained the same.

KROESSER: And there are deeds you have that go back to 1924, or so, that describes the property that appears on the plans today.

GINN: I think that the Board has to say from feedback from Town Counsel that it is a buildable lot. You're not here with a building permit. You're just trying to determine that this is a buildable lot.

KROESSER: We're just looking for the determination that it constitutes a buildable lot due to its grandfather statute.

ALTHOLTZ: In terms of area?

KROESSER: Right.

KNOWLES: And whatever is built has as to be as conforming as possible.

KROESSER: We know it perks. Placement may be an issue. There will never be more than one house. It isn't possible. There is a valid perk in existence now.

CAIRNS: Parcel 1 is on Maple Street. Is that where the perk was done?

KROESSER: Yes. To make it as clear as possible, because it's gone through some changes. The lot that the determination is being made on is the totality of the three pieces. The perk was done on the front lot. On the lot that fronts on Maple Street. The house very likely will go there as opposed to any where else. But the determination is for the entire piece of property.

ALTHOLTZ: So you are making a commitment to build no more than one house on those three?

KROESSER: Yes, think of it as one lot. The only reason you can think of it as one lot is because that's the way it comes through. It's always been described separately as three parcels of land. There will never be more than one house.

ALTHOLTZ: Can they be formerly joined those three parcels into one?

KROESSER: They are effectively now. Notwithstanding the descriptions of Parcel 1, 2 and 3. If your tape recorder is going there will never be more than one house built on the combined total of that three lot piece of property, if one house.

JEFF BUTLER, 6 WINTHROP STREET, My concern is that I have more water in my field than I did two months ago when we all met. And this is a stone's throw away from one of the parcels. Not the parcel that perks. I'll grant that. But the other two we really have to be concerned with because that field could be a rice patty. And it's worse now than it was earlier in the Spring. I hope somebody really keeps an eye on where this building is situated, if that ever comes to pass.

GINN: I think the Board is trying to determine this evening from feedback from Town Counsel, is that this is classified as a buildable lot. They will then have to come back before this Board with a building permit application. If they can meet all setbacks and septic systems, so on, and so forth.

JEFF BUTLER, The only thing that I ask is that we would like a little bit more for warning because other than tonight's paper we almost were surprised again. We've come two other times and Counsel hasn't appeared. Mrs. Kimball's attorney has been here at least twice since I've been here, and unfortunately Town Counsel wasn't present.

GINN: Good point. Jim, if you're going to be involved in any this later on, you know, building permit wise, as a courtesy notify the abutters. We can't obligate you, but we'd appreciate it.

JAY HAVIGHURST, 6 WINTHROP STREET, Our view looks right out at that lot. Lot 1. I don't know where the setbacks would be, but the house would either go straight up or not be a very big house. My concern is how high the house is. Because the view of our kitchen and our upstairs looks straight onto that lot. It would impact our yard a lot. And also we have water in our basement. And we are right next to that, so any kind of drainage would go right into our basement.

GINN: Is the water table very high up there?

RICHARD CAIRNS: Since Richardson built up there it shifted things around. So we are concerned about where water is going to go. Out of our driveway there is clear water that has been tested. And it's clear water now that didn't run down before Richardson built that barn. And we're afraid that any other building in that area would increase that problem.

GINN: How long ago were the perk tests done?

KROESSER: I don't know. They have been renewed once. Something tells me they have been out there twice.

CAIRNS: I think also that on one of those two parcels there is a well.

BUTLER: What was always out of the back of Jay's house. It used to have a pump on top of it that George Mears used to water his garden for years.

MALCOLM FRASER, 12 WINTHROP STREET, I would like to know how far away this house is going to be from my property.

PENNOYER: At this time they don't have any formal drawings before the Board. They have to make it as conforming as they possibly can. And they have to come to us with a set of drawings of this building.

FRASER: Will this be a single family house?

PENNOYER: Yes, it can't be any more than that because of the area.

Ginn moved that Parcel 1, 2, and 3, and given Town Counsel's authority, to say that Parcel 1 on plan of Garcia Kimball of Book 276 Plan 4 dated June 22, 1992, be classified as a buildable lot for a single family home. That it doesn't have to have the standards of 150' frontage, that it can meet the original standards of 50' of frontage and a minimum lot size of 5,000 s.f., and that the applicant will be back before this Board for a building permit and review by the Board.

PENNOYER: Any discussion. (No comment.) A second? (No comment.)

GINN: No one wants to second the motion? It dies.

PENNOYER: Do you need a motion?

KROESSER: Yes, I need to be able to give my client the advise that she can go ahead and get some plans drawn up for the building.

DUNN: I just think that allowing this to be a building lot is going to cause us a lot of problems. And it's just going to keep bouncing back at us, and I just think it's very detrimental because of where it is and the way it is laid out with the water and all. And I just couldn't vote for it.

KNOWLES: You're asking us for a legal decision?

KROESSER: I'm asking you for a decision that you are the only Board in town that has the capability to render. The woman is entitled to an answer as to whether or not it constitutes a buildable lot. We've been here at least a half a dozen times on this same thing. Whether there is water. There may be a problem with conservation. Whether you can put a building on the lot is a problem for another day. She is entitled to be told whether it is or it isn't, technically under the statute. And most Towns don't do it the way you do, you submit a request to the building inspector for this determination and he has fourteen days to act on it. I'm asking for a simple decision. The property has been held in separate ownership since way before you had zoning. It has more than fifty feet of frontage. It has more than 5,000 s.f. of area. It is not necessary that it be owned by the same person for whole time. You have that in writing from your Town Counsel.

ALTHOLTZ: Those things are all clear. What's not clear to me is if they do, in fact, or have, in fact, merged, why are we still calling them three separate parcels.

KROESSER: Because the description in the deeds, all the way to well before the passage of zoning in Essex, described them as separate parcels.

GINN: Just so other Board members and people in the audience know, I don't feel any better about this than any other Board member. But I don't think we have any ground to stand on to deny it. The motion that I made is for Parcel 1. That's where the building and the septic system has to go. I'm not saying anything about merging three lots. And I don't think the three lots could be merged because it's been brought up in discussion in the past that the middle lot has a title deficiency, that's my understanding. I don't know where that stands. But we have been told that there are three separate deeds to these individual lots. They are owned by the same person and it states that on the plan.

PENNOYER: I think if Joe's motion can't pass, we ought to make a motion to give him some direction.

GINN: If no one wants to second my motion, then someone make a motion to deny it and state a reason for it. I can't make a motion to deny this just because I don't like it.

KROESSER: For the record, I don't like it either. This lot ended up in existence because everything around it got carved up. No one did this purposely. This is a left over lot. This is not an ideal solution. This is an odd lot that's been there for fifty, sixty years.

GINN: I'm not sure a building is going to be able to go in there. And you're not in front of this Board asking for a building permit. All you're asking for is that Parcel 1 can be built on. And the interpretation that I've gotten back from Town Counsel states that yes, it is.

DUNN: My whole concern with this is not on a legal point. My concern is there is a lot of people who moved down here and then you have a postage stamp size lot and somebody is slapping a house in there. I just don't think it's fitting where it is. I think it's far more detrimental in that neighborhood. I don't, myself, want to keep approving, and I know you're looking at this from a legal point of view, but I won't continue to vote for something because it's legal if I don't feel it's fitting.

GINN: If you don't like my motion, then make a motion to deny it.

KROESSER: Just a quick response. I think you have to understand that this is a small lot neighborhood.

DUNN: I know it's a small lot neighborhood, but it doesn't help to keep crowding it more than it already is. I think to crowd it more is wrong.

KROESSER: I don't disagree with, but I think legally I'm here to advocate for what is the correct position. I think you found the right answer from your Town Counsel. I'm not asking you to say that this is the greatest thing you've ever done in your whole life. I'm just asking you to do your duty. You either tell us it qualifies or it doesn't. Because the only way out of here is an answer one way or the other. If you deny it, the next step is the Board of Appeals, or to go into litigation on it because there is no other solution. You can't just say, you know, we'd rather not talk about this anymore.

KNOWLES: I would move to deny it just to give him an answer.

KROESSER: Tell me why? You have to give me a reason.

KNOWLES: Because I don't know that the question that was put to Town Counsel has been answered. This is something that we don't find in our bylaws. As a matter of right we would deny it right now because the lot isn't big enough. And the frontage isn't big enough. You're saying that it's been around since 1920. And the question put to Town Counsel was not is that okay, but does it matter if the same owner owned it or if it changed hands.

PENNOYER: Can I just make a correction? We sent Town Counsel the plot plan of the land, the unapproved meeting notes of the discussion that went on, and specifically the question about ownership. And that's why when you read the letter from Town Counsel it does state a number of different issues. That's why it's not just a cut and dry. That's why I agree with Joe's motion.

ALTHOLTZ: In the end we might not really like it, but that doesn't really matter. It's a matter of applying the State statute and the Town's bylaws. But maybe we can frame the motion a little bit more narrower. Maybe we can just say that it's the opinion of the Board that these parcels come within the grandfather statute. Are you asking for more than the one lot.

KROESSER: We were asking for all three. But more for the sake of making it clear to everybody that it is one lot. And we're not looking to separate anything off.

PENNOYER: I think it's safer to do it that way.

KROESSER: I think it is, too. It doesn't matter because the reality is it's one house, period.

PENNOYER: If the front lot became a buildable lot and you keep this separate. What prevents this from being joined with this, or this being joined with this in order to expand one of the others in here because some of that is the buildable lot. To me we're protecting ourselves against density, which is the concern here, which is to combine the three saying the whole thing is one buildable lot.

DUNN: That has to be. The other two are going to be land locked.

PENNOYER: But, what I'm saying is if there are left separate they can be joined to one of the other surrounding lots by somebody else that might own it in the future.

KROESSER: No, the lots are too small.

DUNN: If you take that frontage and use it for that one lot, you are creating two land locked pieces of land with the other two, and you can't do that.

PENNOYER: If it's owned by the same owner you can.

DUNN: But no matter who owns them there is still two lots of land there that are land locked.

GINN: We are not land locking anything. What we are saying is that Parcel 1 with 67' of frontage and 5,600 s.f. can be issued a building permit, or is classified as a buildable lot under the grandfather statute that it meet lot size and frontage.

DUNN: Now, where is the access to Lot 2 and 3?

GINN: I have no idea.

DUNN: Therefore it's land locked.

GINN: I'm not saying anything about Lot 2 and 3. I'm saying Lot 1.

KROESSER: You don't have the power to transfer the title to these pieces of property. The simple fact is I could go back to my office and dictate a description of the entire perimeter of the three lots together and make it look like one lot, but it isn't relevant. For zoning purposes it's only one piece of property. You're not land locking anything.

DUNN: Then where is your access?

KROESSER: Your access is off of Maple Street. There is 67' of frontage there.

DUNN: For one lot.

KROESSER: Right.

DUNN: And the other two lots now have no access.

KROESSER: The other two lots are part and parcel of the same piece of land.

DUNN: We're going to wind up with what we have up on Pond Street. The only way you can get to a piece of land up there is by helicopter.

Altholtz moved that it is the opinion of the Board that Parcel 1, 2, and 3 are subject to the grandfather statute. Jermain seconded the motion, with Altholtz in favor, Knowles in favor, Ginn in favor, Jermain in favor, Pennoyer in favor, and Dunn opposed.

Attorney James Kroesser, representing John Lambros, Choate Street, to submit a Form A application.

KROESSER: You signed a Form A, a year or so ago, dividing that lot off because it was going to be sold. It fell through. So there's a plan already signed separating Lot 2 off. All he is doing now is creating these two back lots.

PENNOYER: Isn't there a issue with Chapter 61A here?

KROESSER: There is an issue with Chapter 61B here. It's the recreational land statute opposed to the agricultural land statute. And he owes between five and seven thousand dollars in taxes on the property, which gets paid at the time the property gets sold.

PENNOYER: What about the rights of first refusal to the Town?

KROESSER: That has to be released by the Town before he can sell the property. That lean is recorded in Salem. So before he can convey good title of the property he has to go through that procedure and he'll end up just paying those taxes. There are two ways the statute works, if he has a buyer for the property at a set price. He has to offer it to the town for that price. If he doesn't then he has to offer it to the town at fair market value. If the town is interested you go through an appraisal process to set that valuation. Lot 4 is his house lot and that he is keeping. These three at some point, assuming he can find a buyer for them, are going to get sold. All three will be offered to the town prior to being sold.

PENNOYER: The remaining property that he keeps he will no longer be able to have under 61B.

KROESSER: He is taking it out lock, stock and barrel.

GINN: So what are you looking for?

KROESSER: We're looking for a Form A signature on this plan. This is a common driveway. They all get their frontage off of Choate Street, or it wouldn't be a Form A. It would be a Form B and we'd be going through subdivision hearings.

DUNN: Are they all going to access over their frontage?

KROESSER: No, they are going to access over this common drive.

SALLY O'MALEY: There is a pond there.

PENNOYER: If that's the case then we can't approve this. You don't have to go through your frontage, but you have to be able if you needed to go by this. You don't have to do it. As a Board we should be looking at this land. If there is a pond here then it can't fly.

KROESSER: I understand what you're saying. There is a 1989 case on it that says that the presence of interior wetlands isn't grounds for denying a Form A as long as there is linear frontage on the street and there is physical access to the property guaranteed in some way. And in this case it's over that common driveway. And if they have to they can go to Concom as a matter of rights for a limited project to put a driveway across there.

GINN: Why do you want to Form A that Lot 2 again? Has the lot changed in size?

KROESSER: No.

PENNOYER: Does the rest of the Board want to hold off and look into this issue of wetlands, and make a motion on this at the next meeting.

DUNN: If you could explain one thing to me. I'm not saying you have to access through your frontage. Are you saying you have to be able to.

PENNOYER: That's the question. I think as a Board we want to look into that. We're dealing with another case on Apple Street that is similar to this. I think the question is do you have to have the ability to access your lot from your frontage.

GINN: We're not being shown any document that is stating that Lot 1, 2, and 4 have a legal rights or access over Lot 3. So how can we sign a Form A this without that assurance that the other lots do have a legal right over Lot 3's land.

KROESSER: That's true. If you had a common driveway bylaw you'd be in a position to determine what the terms of the common driveway provisions would state, and without that, and I don't have any problems with it, I don't know if you can requirement it, but you can certainly approve the plan and I'll have the engineer reflect that a common driveway easement will be recorded with the plan.

GINN: Personally I'd like to see that on the plan. Can we have the engineer put that on a mylar that's dated on a plan that we sign. And that would give us time to ask our Town Counsel about this frontage issue.

KROESSER: That's fine. I don't have any trouble with that. I have a Form A application. All I want you to do is date it tonight and receive it so I can get this moving.

GINN: This is not the plan we'll be working on.

Dunn moved to accept a Form A application of John Lambros, Choate Street. Ginn seconded the motion, with the Board voting unanimously in favor.

Ginn moved to approve the minutes of the May 5, 1993 meeting. Dunn seconded the motion, with the Board unanimously in favor.

Jermain moved to approve the minutes of May 19, 1993 meeting. Knowles seconded the motion, with the Board voting unanimously in favor.

Altholtz moved to approve the minutes of the May 24, 1993 meeting. Ginn seconded the motion, with the Board voting unanimously in favor.

Ginn moved that for the month of July, on until so noticed, the Board will be on a Summer schedule of meeting on the first Wednesday of each month. Altholtz seconded the motion, with the Board voting unanimously in favor.

The Board discussed the appeal by Dave Hidden for the property of Donald and Melanie Burnham, R. Western Ave. The Board rescinded the motion, but they did not have the right to do this according to John Tierney, Town Counsel. The Board cannot rescind an A&R plan, only under the subdivision control regulations can a plan be rescinded. Pennoyer asked the Board if they wanted to follow through with their rescission or if they wanted to follow Town Counsel's advise and let it be. The Board felt that they were not in error given the information they received from the applicant and applicant's attorney. The Board acted in good faith and acted only on information that was given. Pennoyer told the Board to send the notice of appeal to the Selectmen and they would submit it to Town Counsel. Also, the Board will submit all minutes and correspondence relating to this matter.

Pennoyer brought to the Board's attention a letter dated May 28, 1993, from Town Counsel regarding Jermain's position regarding voting on Turtleback Road Circle subdivision. Town Counsel has expressed the opinion that from the facts stated in a letter from the newly elected Board member dated May 27, 1993, there appears to be no conflict of interest arising under M.G.L., c. 268A, Section 19. Town Counsel's letter is on file with the Town Clerk and is a public record all pursuant to Section 22 of the statute.

Pennoyer brought to the Board's attention that they have to address the petition and the memorandum that came before the Board by Attorney Sam Hoar and the neighbors. The Board can either elect to continue the public hearing and reverse our decision on the signatures, or we can just say we are satisfied with our decision.

Jermain moved that the Board address the petitions by having a public hearing. Knowles seconded the motion, Dunn in favor, Jermain in favor, Altholtz in favor, Knowles in favor, Ginn against, and Pennoyer against.

The Board will hold a public hearing on July 7, 1993 at 8:30 p.m.

Pennoyer and Dunn were appointed to represent the Board regarding the outstanding lawsuits by the Town. A site walk took place with Peter Van Wyck, Rebecca Linhart, Bob Dawe, and conservation commission to review all of the issues in the consent of decree. Pennoyer wrote in a letter to the Selectmen his opinion regarding each of the issues. Each member received a copy of this letter. Pennoyer felt the area had stabilized itself.

Pennoyer addressed the issue of securing a map of the overlay district and Town map to be mounted on the wall. The cost will be approximately \$240.00. The Board agreed this would be a beneficial and useful tool.

Altholtz suggested requiring any applicant that came before the Board to submit a summary or proposal of their intentions the prior Thursday, and if they were citing any laws or exemptions or statutes, they give the Board a copy. Altholtz would like to receive a copy of that before the weekend of the scheduled meeting for review. The Board asked Altholtz to make up an outline of questions to ask applicants in order for the applicant to provide the Board with a proposal or summary before meetings.

Pennoyer explained to the Board that Tierney has offered to have working meetings with the Board. The Board felt the Town should be represent at meetings, especially when applicant's are being represented by their attorney's at meetings. The Board will find the state legislation that allows an applicant to reimburse Town Counsel to sit in at the Planning Board's meetings when necessary.

Knowles moved to adjourn. Ginn seconded the motion, with the Board voting unanimously in favor.

The meeting was adjourned at 10:30 p.m.

Planning Board
June 2, 1993

PRESENT: Sheldon Pennoyer; Chairman, Howard Altholtz, Pat Dunn, Joe Ginn, Kimberly Jermain, Joe Knowles

Howard Altholtz removed himself from the Board regarding the following building permit application of Gary and Susan Eno.

Building Inspector Richard Carter resubmitted a building application for Gary and Susan Eno, 70 Wood Drive, to construct an accessory building on a 5,000 s.f. lot, which is owned under separate deed from their home lot. Eno stated he will use this as storage only. He will be putting electricity in, but no plumbing or water will be hooked up. The Board stated they had Town Counsel review after the last meeting. Pennoyer explained that Town Counsel stated under an accessory building this could not be done. But, if it was not considered an accessory building, but merely a building or garage on a lot, then that lot has to meet various area and frontage requirements. Carter explained that the building was a garage and storage, not an accessory building. Carter also felt that the lot fell under the classification of a grandfathered lot because it was in existence before 1972.

Ginn moved to approve, pending ^{Review} approval by Town Counsel by the Chairman of the Planning Board, the building permit application of Gary and Susan Eno, 70 Wood Drive, be granted a building permit for a building to be used as a barn, garage, or storage, 24' x 30'. It will meet the minimum of 10' setbacks as required by an accessory building, even though Town Counsel has already ruled this is not an accessory building. The building will only be used in the capacity as a garage or barn, and not for any type of a dwelling, and without water or sewer services. Knowles amended the motion to include no kitchen be installed, and the use subject to requirements of the water resource protection bylaw. Knowles seconded the motion, with the Board voting unanimously in favor.

Building Inspector Carter asked the Board's opinion on the water resource protection bylaw in relation to Scot's Way subdivision, Western Avenue. This falls under the water shed district, but because it is grandfathered, the 25% is required, not 15%. The Board agreed. *15% allowed. 25%.*

Pennoyer brought to the building inspector's attention that he had received numerous phone calls regarding Ronald and Robin Pynynkowski, Forest Avenue, a home occupation, saying they were doing chipping during the day. They take them off-site, but they were chipping them on-site. And they are storing a lot of materials outside. They have the structure up, so now they should be storing the materials in the structure. Pennoyer asked Carter to look into this.

Dunn expressed to the building inspector concern for a David Gaudet, 22 School Street, a home occupation, he has between six and eight tractors outside. Carter stated that he has been over there about six times and Gaudet says he is going to relocate. Dunn stated that even if it is going to relocate, while he is there he should be following the bylaws. *which would be*

A building permit application for 227 Western Ave Realty Trust, 227 Western Ave, to construct mini storage (metal building). Pennoyer explained that the land is grandfathered under the water resource protection bylaw, the 25% applies not the 15%. Pennoyer made suggestions to the applicant to minimize the effects of the 25%. Knowles moved to approve a building permit application for John James, 227 Western Avenue Realty Trust, 227 Western Ave., to construct of new mini storage (metal buildings), located on Lot 12 of Scot's Way on plan dated 6/2/93, subject to the DPW curb cut, and with the understanding that the water shed resources protection act the 15% is not applicable, 25% does apply. Altholtz seconded the motion, with the Board voting unanimously in favor.

A public hearing for was held for Marianne McCartney, 9 Harlow Street, for a special permit under Section 6.6-9 to convert existing three family dwelling into legal units.

Pennoyer opened the continued public hearing for Marianne McCartney, 9 Harlow Street, for a special permit to convert an existing three family dwelling into legal units.

The Board was advised that the Essex Board of Health was unable to conduct the dye test of the septic system requested at the last meeting. Ginn brought to the Board's attention that the existing septic system is located in Gloucester. The Board is concerned with what actually exists for a septic system. Jermain questioned the square foot lot requirement. Pennoyer advised the Board they should be concerned with existing building code requirements, such as exits, railings, and stairs.

Knowles moved to continue the public hearing for Marianne McCartney, 9 Harlow Street to June 16, 1993 at 8:00 p.m. Altholtz seconded the motion, with the Board voting unanimously in favor.

Attorney James Kroesser, representing Garcia Kimball, Maple Street, met with the Board to determine if Kimball's lot was protected under the grandfather statute.

KROESSER: The issue that was raised at the last meeting, that John has addressed, is whether or not it's necessary in order to gain the grandfather protection of the zoning statute that the lot be owned by the same person for the entire period of time starting with before zoning was adopted until the time when I show up to ask for the determination that it constitutes a grandfathered lot. And that John has addressed by saying, "No, that isn't necessary. The only thing that is necessary is that it remain a separate lot since prior to the adoption of zoning." Which is the case here. It has changed hands, as most property does. And John answered the question, the same way I answered that for Rolf a month ago. And I think that was the only case there was.

GINN: One of the biggest obligations was that even though it has changed hands that the lot lines have not changed and they have remained the same.

KROESSER: And there needs you have that go back to 1924, or so, that describes the property that appears on the plans today.

GINN: I think that the Board has to say from feedback from Town Counsel that it is a buildable lot. You're not dealing with a building permit. You're just trying to determine that this is a buildable lot.

KROESSER: We're just asking for the determination that it constitutes a buildable lot due to its grandfather status.

ALTHOLTZ: In terms of area?

KROESSER: Right.

KNOWLES: And whatever is built has as to be as conforming as possible.

KROESSER: We know there's no more than one house. It isn't possible. There is a valid perk in existence now.

CAIRNS: Parcel 1 is on Maple Street. Is that where the perk was done?

KROESSER: Yes. To make it as clear as possible, because it's gone through some changes. The lot that the determination is being made on is the totality of the three pieces. The perk was done on that lot. On the lot that fronts on Maple Street. The house very likely will go there as opposed to any where else. But the determination is for the entire piece of property.

ALTHOLTZ: So you are making a commitment to build no more than one house on those three?

KROESSER: Yes, think of it as one lot. The only reason you can think of it as one lot is because that's the way it goes through. It's always been described separately as three parcels of land. There will never be more than one house.

ALTHOLTZ: Can they ever formerly joined those three parcels into one?

KROESSER: They are never going to be joined together. They are separately owned and are being sold separately now. Notwithstanding the descriptions of Parcel 1, 2 and 3, if your tape record is going there will never be more than one house built on the combined total of that three pieces of property, if one house.

JEFF BUTLER, 6 WINTHROP STREET, My concern is that I have more water in my field than I did two months ago when we all met. And this is a stone's throw away from one of the parcels. Not the parcel that perks. I'll grant that. But the other two we really have to be concerned with because that field could be a rice patty. And it's worse now than it was earlier in the Spring. I hope somebody really keeps an eye on where this building is situated, if that ever comes to pass.

GINN: I think the Board is trying to determine this evening from feedback from Town Counsel, is that this is classified as a buildable lot. They will then have to come back before this Board with a building permit application. If they can meet all setbacks and septic systems, so on, and so forth.

JEFF BUTLER, The only thing that I ask is that we would like a little bit more for warning because other than tonight's paper we almost were surprised again. We've come two other times and Counsel hasn't appeared. Mrs. Kimball's attorney has been here at least twice since I've been here, and unfortunately Town Counsel wasn't present.

GINN: Good point. Jim, if you're going to be involved in any this later on, you know, building permit wise, as a courtesy notify the abutters. We can't obligate you, but we'd appreciate it.

JAY HAVIGHURST, 6 WINTHROP STREET, Our view looks right out at that lot. Lot 1. I don't know where the setbacks would be, but the house would either go straight up or not be a very big house. My concern is how high the house is. Because the view of our kitchen and our upstairs looks straight onto that lot. It would impact our yard a lot. And also we have water in our basement. And we are right next to that, so any kind of drainage would go right into our basement.

GINN: Is the water table very high up there?

RICHARD CAIRNS: Since Richardson built up there it shifted things around. So we are concerned about where water is going to go. Out of our driveway there is clear water that has been tested. And it's clear water now that didn't run down before Richardson built that barn. And we're afraid that any other building in that area would increase that problem.

GINN: How long ago were the perk tests done?

KROESSER: I don't know. They have been renewed once. Something tells me they have been out there twice.

CAIRNS: I think also that on one of those two parcels there is a well.

BUTLER: What was always out of the back of Jay's house. It used to have a pump on top of it that George Mears used to water his garden for years.

MALCOLM FRASER, 12 WINTHROP STREET, I would like to know how far away this house is going to be from my property.

PENNOYER: At this time they don't have any formal drawings before the Board. They have to make it as conforming as they possibly can. And they have to come to us with a set of drawings of this building.

FRASER: Will this be a single family house?

PENNOYER: Yes, it can't be any more than that because of the area.

Ginn moved that Parcel 1, 2, and 3, and given Town Counsel's authority, to say that Parcel 1 on plan of Garcia Kimball of Book 276 Plan 4 dated June 22, 1992, be classified as a buildable lot for a single family home. That it doesn't have to have the standards of 150' frontage, that it can meet the original standards of 50' of frontage and a minimum lot size of 5,000 s.f., and that the applicant will be back before this Board for a building permit and review by the Board.

PENNOYER: Any discussion. (No comment.) A second? (No comment.)

GINN: No one wants to second the motion? It dies.

PENNOYER: Do you need a motion?

KROESSER: Yes, I need to be able to give my client the advise that she can go ahead and get some plans drawn up for the building.

DUNN: I just think that allowing this to be a building lot is going to cause us a lot of problems. And it's just going to keep bouncing back at us, and I just think it's very detrimental because of where it is and the way it is laid out with the water and all. And I just couldn't vote for it.

KNOWLES: You're asking us for a legal decision?

KROESSER: I'm asking you for a decision that you are the only Board in town that has the capability to render. The woman is entitled to an answer as to whether or not it constitutes a buildable lot. We've been here at least a half a dozen times on this same thing. Whether there is water. There may be a problem with conservation. Whether you can put a building on the lot is a problem for another day. She is entitled to be told whether it is or it isn't, technically under the statute. And most Towns don't do it the way you do, you submit a request to the building inspector for this determination and he has fourteen days to act on it. I'm asking for a simple decision. The property has been held in separate ownership since way before you had zoning. It has more than fifty feet of frontage. It has more than 5,000 s.f. of area. It is not necessary that it be owned by the same person for whole time. You have that in writing from your Town Counsel.

ALTHOLTZ: Those things are all clear. What's not clear to me is if they do, in fact, or have, in fact, merged, why are we still calling them three separate parcels.

KROESSER: Because the description in the deeds, all the way to well before the passage of zoning in Essex, described them as separate parcels.

GINN: Just so other Board members and people in the audience know, I don't feel any better about this than any other Board member. But I don't think we have any ground to stand on to deny it. The motion that I made is for Parcel 1. That's where the building and the septic system has to go. I'm not saying anything about merging three lots. And I don't think the three lots could be merged because it's been brought up in discussion in the past that the middle lot has a title deficiency, that's my understanding. I don't know where that stands. But we have been told that there are three separate deeds to these individual lots. They are owned by the same person and it states that on the plan.

PENNOYER: I think if Joe's motion can't pass, we ought to make a motion to give him some direction.

GINN: If no one wants to second my motion, then someone make a motion to deny it and state a reason for it. I can't make a motion to deny this just because I don't like it.

KROESSER: For the record, I don't like it either. This lot ended up in existence because everything around it got carved up. No one did this purposely. This is a left over lot. This is not an ideal solution. This is an odd lot that's been there for fifty, sixty years.

GINN: I'm not sure a building is going to be able to go in there. And you're not in front of this Board asking for a building permit. All you're asking for is that Parcel 1 can be built on. And the interpretation that I've gotten back from Town Counsel states that yes, it is.

DUNN: My whole concern with this is not on a legal point. My concern is there is a lot of people who moved down here and then you have a postage stamp size lot and somebody is slapping a house in there. I just don't think it's fitting where it is. I think it's far more detrimental in that neighborhood. I don't, myself, want to keep approving, and I know you're looking at this from a legal point of view, but I won't continue to vote for something because it's legal if I don't feel it's fitting.

GINN: If you don't like my motion, then make a motion to deny it.

KROESSER: Just a quick response. I think you have to understand that this is a small lot neighborhood.

DUNN: I know it's a small lot neighborhood, but it doesn't help to keep crowding it more than it already is. I think to crowd it more is wrong.

KROESSER: I don't disagree with, but I think legally I'm here to advocate for what is the correct position. I think you found the right answer from your Town Counsel. I'm not asking you to say that this is the greatest thing you've ever done in your whole life. I'm just asking you to do your duty. You either tell us it qualifies or it doesn't. Because the only way out of here is an answer one way or the other. If you deny it, the next step is the Board of Appeals, or to go into litigation on it because there is no other solution. You can't just say, you know, we'd rather not talk about this anymore.

KNOWLES: I would move to deny it just to give him an answer.

KROESSER: Tell me why? You have to give me a reason.

KNOWLES: Because I don't know that the question that was put to Town Counsel has been answered. This is something that we don't find in our bylaws. As a matter of right we would deny it right now because the lot isn't big enough. And the frontage isn't big enough. You're saying that it's been around since 1920. And the question put to Town Counsel was not is that okay, but does it matter if the same owner owned it or if it changed hands.

PENNOYER: Can I just make a correction? We sent Town Counsel the plot plan of the land, the unapproved meeting notes of the discussion that went on, and specifically the question about ownership. And that's why when you read the letter from Town Counsel it does state a number of different issues. That's why it's not just a cut and dry. That's why I agree with Joe's motion.

ALTHOLTZ: In the end we might not really like it, but that doesn't really matter. It's a matter of applying the State statute and the Town's bylaws. But maybe we can frame the motion a little bit more narrower. Maybe we can just say that it's the opinion of the Board that these parcels come within the grandfather statute. Are you asking for more than the one lot.

KROESSER: We were asking for all three. But more for the sake of making it clear to everybody that it is one lot. And we're not looking to separate anything off.

PENNOYER: I think it's safer to do it that way.

KROESSER: I think it is, too. It doesn't matter because the reality is it's one house, period.

PENNOYER: If the front lot became a buildable lot and you keep this separate. What prevents this from being joined with this, or this being joined with this in order to expand one of the others in here because some of that is the buildable lot. To me we're protecting ourselves against density, which is the concern here, which is to combine the three saying the whole thing is one buildable lot.

DUNN: That has to be. The other two are going to be land locked.

PENNOYER: But, what I'm saying is if there are left separate they can be joined to one of the other surrounding lots by somebody else that might own it in the future.

KROESSER: No, the lots are too small.

DUNN: If you take that frontage and use it for that one lot, you are creating two land locked pieces of land with the other two, and you can't do that.

PENNOYER: If it's owned by the same owner you can.

DUNN: But no matter who owns them there is still two lots of land there that are land locked.

GINN: We are not land locking anything. What we are saying is that Parcel 1 with 67' of frontage and 5,600 s.f. can be issued a building permit, or is classified as a buildable lot under the grandfather statute that it meet lot size and frontage.

DUNN: Now, where is the access to Lot 2 and 3?

GINN: I have no idea.

DUNN: Therefore it's land locked.

GINN: I'm not saying anything about Lot 2 and 3. I'm saying Lot 1.

KROESSER: You don't have the power to transfer the title to these pieces of property. The simple fact is I could go back to my office and dictate a description of the entire perimeter of the three lots together and make it look like one lot, but it isn't relevant. For zoning purposes it's only one piece of property. You're not land locking anything.

DUNN: Then where is your access?

KROESSER: Your access is off of Maple Street. There is 67' of frontage there.

DUNN: For one lot.

KROESSER: Right.

DUNN: And the other two lots now have no access.

KROESSER: The other two lots are part and parcel of the same piece of land.

DUNN: We're going to wind up with what we have up on Pond Street. The only way you can get to a piece of land up there is by helicopter.

Altholtz moved that it is the opinion of the Board that Parcel 1, 2, and 3 are subject to the grandfather statute. Jermain seconded the motion, with Altholtz in favor, Knowles in favor, Ginn in favor, Jermain in favor, Pennoyer in favor, and Dunn opposed.

Attorney James Kroesser, representing John Lambros, Choate Street, to submit a Form A application.

KROESSER: You signed a Form A, a year or so ago, dividing that lot off because it was going to be sold. It fell through. So there's a plan already signed separating Lot 2 off. All he is doing now is creating these two back lots.

PENNOYER: Isn't there a issue with Chapter 61A here?

KROESSER: There is an issue with Chapter 61B here. It's the recreational land statute opposed to the agricultural land statute. And he owes between five and seven thousand dollars in taxes on the property, which gets paid at the time the property gets sold.

PENNOYER: What about the rights of first refusal to the Town?

KROESSER: That has to be released by the Town before he can sell the property. That lean is recorded in Salem. So before he can convey good title of the property he has to go through that procedure and he'll end up just paying those taxes. There are two ways the statute works, if he has a buyer for the property at a set price. He has to offer it to the town for that price. If he doesn't then he has to offer it to the town at fair market value. If the town is interested you go through an appraisal process to set that valuation. Lot 4 is his house lot and that he is keeping. These three at some point, assuming he can find a buyer for them, are going to get sold. All three will be offered to the town prior to being sold.

PENNOYER: The remaining property that he keeps he will no longer be able to have under 61B.

KROESSER: He is taking it out lock, stock and barrel.

GINN: So what are you looking for?

KROESSER: We're looking for a Form A signature on this plan. This is a common driveway. They all get their frontage off of Choate Street, or it wouldn't be a Form A. It would be a Form B and we'd be going through subdivision hearings.

DUNN: Are they all going to access over their frontage?

KROESSER: No, they are going to access over this common drive.

SALLY O'MALEY: There is a pond there.

PENNOYER: If that's the case then we can't approve this. You don't have to go through your frontage, but you have to be able if you needed to go by this. You don't have to do it. As a Board we should be looking at this land. If there is a pond here then it can't fly.

KROESSER: I understand what you're saying. There is a 1989 case on it that says that the presence of interior wetlands isn't grounds for denying a Form A as long as there is linear frontage on the street and there is physical access to the property guaranteed in some way. And in this case it's over that common driveway. And if they have to they can go to Concom as a matter of rights for a limited project to put a driveway across there.

GINN: Why do you want to Form A that Lot 2 again? Has the lot changed in size?

KROESSER: No.

PENNOYER: Does the rest of the Board want to hold off and look into this issue of wetlands, and make a motion on this at the next meeting.

DUNN: If you could explain one thing to me. I'm not saying you have to access through your frontage. Are you saying you have to be able to.

PENNOYER: That's the question. I think as a Board we want to look into that. We're dealing with another case on Apple Street that is similar to this. I think the question is do you have to have the ability to access your lot from your frontage.

GINN: We're not being shown any document that is stating that Lot 1, 2, and 4 have a legal rights or access over Lot 3. So how can we sign a Form A this without that assurance that the other lots do have a legal right over Lot 3's land.

KROESSER: That's true. If you had a common driveway bylaw you'd be in a position to determine what the terms of the common driveway provisions would state, and without that, and I don't have any problems with it, I don't know if you can requirement it, but you can certainly approve the plan and I'll have the engineer reflect that a common driveway easement will be recorded with the plan.

GINN: Personally I'd like to see that on the plan. Can we have the engineer put that on a mylar that's dated on a plan that we sign. And that would give us time to ask our Town Counsel about this frontage issue.

KROESSER: That's fine. I don't have any trouble with that. I have a Form A application. All I want you to do is date it tonight and receive it so I can get this moving.

GINN: This is not the plan we'll be working on.

Dunn moved to accept a Form A application of John Lambros, Choate Street. Ginn seconded the motion, with the Board voting unanimously in favor.

Ginn moved to approve the minutes of the May 5, 1993 meeting. Dunn seconded the motion, with the Board unanimously in favor.

Jermain moved to approve the minutes of May 19, 1993 meeting. Knowles seconded the motion, with the Board voting unanimously in favor.

Altholtz moved to approve the minutes of the May 24, 1993 meeting. Ginn seconded the motion, with the Board voting unanimously in favor.

Ginn moved that for the month of July, on until so noticed, the Board will be on a Summer schedule of meeting on the first Wednesday of each month. Altholtz seconded the motion, with the Board voting unanimously in favor.

The Board discussed the appeal by Dave Hidden for the property of Donald and Melanie Burnham, R. Western Ave. The Board rescinded the motion, but they did not have the right to do this according to John Tierney, Town Counsel. The Board cannot rescind an A&R plan, only under the subdivision control regulations can a plan be rescinded. Pennoyer asked the Board if they wanted to follow through with their rescission or if they wanted to follow Town Counsel's advise and let it be. The Board felt that they were not in error given the information they received from the applicant and applicant's attorney. The Board acted in good faith and acted only on information that was given. Pennoyer told the Board to send the notice of appeal to the Selectmen and they would submit it to Town Counsel. Also, the Board will submit all minutes and correspondence relating to this matter.

Pennoyer brought to the Board's attention a letter dated May 28, 1993, from Town Counsel regarding Jermain's position regarding voting on Turtleback Road Circle subdivision. Town Counsel has expressed the opinion that from the facts stated in a letter from the newly elected Board member dated MAY 27, 1993, there appears to be no conflict of interest arising under M.G.L., c. 268A, Section 19. Town Counsel's letter is on file with the Town Clerk and is a public record all pursuant to Section 22 of the statute.

Pennoyer brought to the Board's attention that they have to address the petition and the memorandum that came before the Board by Attorney Sam Hoar and the neighbors. The Board can either elect to continue the public hearing and reverse our decision on the signatures, or we can just say we are satisfied with our decision.

Jermain moved that the Board address the petitions by having a public hearing. Knowles seconded the motion, Dunn in favor, Jermain in favor, Altholtz in favor, Knowles in favor, Ginn against, and Pennoyer against.

The Board will hold a public hearing on July 7, 1993 at 8:30 p.m.

Pennoyer and Dunn were appointed to represent the Board regarding the outstanding lawsuits by the Town. A site walk took place with Peter Van Wyck, Rebecca Linhart, Bob Dawe, and conservation commission to review all of the issues in the consent of decree. Pennoyer wrote in a letter to the Selectmen his opinion regarding each of the issues. Each member received a copy of this letter. ~~Pennoyer felt the area had stabilized itself~~, *the Board felt*
the the case 10671 was of concern
Pennoyer addressed the issue of securing a map of the overlay district and Town map to be mounted on the wall. The cost will be approximately \$240.00. The Board agreed this would be a beneficial and useful tool.

Altholtz suggested requiring any applicant that came before the Board to submit a summary or proposal of their intentions the prior Thursday, and if they were citing any laws or exemptions or statutes, they give the Board a copy. Altholtz would like to receive a copy of that before the weekend of the scheduled meeting for review. The Board asked Altholtz to make up an outline of questions to ask applicants in order for the applicant to provide the Board with a proposal or summary before meetings.

Pennoyer explained to the Board that Tierney has offered to have working meetings with the Board. The Board felt the Town should be represent at meetings, especially when applicant's are being represented by their attorney's at meetings. The Board will find the state legislation that allows an applicant to reimburse Town Counsel to sit in at the Planning Board's meetings when necessary.

Knowles moved to adjourn. Ginn seconded the motion, with the Board voting unanimously in favor.

The meeting was adjourned at 10:30 p.m.

Essex Planning Board

Agenda

May 24, 1993

8:00 p.m. Informational meeting for new members

**Planning Board
May 24, 1993**

PRESENT: Pat Dunn, Kimberly Jermain, Howard Altholtz, Sheldon Pennoyer, Joe Ginn

Dunn moved to elect Sheldon Pennoyer as the chairman for the coming year. Altholtz seconded the motion, with the Board voting in unanimously in favor.

Pennoyer moved that the minutes of the meeting be made available to the members before the scheduled meeting. They will be left in the Planning Board's box at Town Hall. Jermain seconded the motion. Dunn in favor, Altholtz in favor, and Joe Ginn opposed.

The Board met for an informational meeting. They discussed in general the following matters.

Turtleback Circle subdivision

A petition submitted by abutters on Apple Street and a Memorandum submitted by Attorney Sam Hoar regarding Turtleback Circle subdivision. The Board reviewed Town Counsel John Tierney's letter, and the rules and regulations relating to the matter. The possibility of holding a public hearing was discussed, and also what would be accomplished by doing so. Altholtz suggested that the Board look at some cases where other Board's in the Commonwealth have rescinded their approval and see what they based their criteria on.

Garcia Kimball, Maple Street, request for a building permit

The Board agreed that it did not matter how many times the lot changed ownership as long as the lot size and shape had not changed. Attorney James Kroesser will meet with the Board on June 2, at which time the Board will make a ruling.

Donald and Melanie Burnham, Rear Western Ave., Form A Dave Hidden was present.

The Board explained to Mr. Hidden in a letter was dated May 21, 1993, the Board was seeking Town Counsel for opinion on their motion to rescind their previous approval of the A&R, and until his correspondence was received no action will be taken.

Gary and Susan Enos, 70 Wood Drive, building permit application.

Pennoyer asked for Town Counsel's opinion on this matter in a letter dated May 21, 1993. The Board's concern was with definition of accessory building and the future use of the constructed garage.

227 Western Realty Trust, 227 Western Avenue, building permit application to construct a storage building on Scot's Way.

The Board discussed the seven year exemption period for the water shed district.

Marianne McCartney, 9 Harlow Street, special permit for converting existing three-family dwelling into legal units.

Jermain expressed her concerns about enforcement of fines. Pennoyer explained that the Building Inspector enforces the bylaws. The Planning Board can only request. Ginn expressed concerns with parking. The Board agreed that she has the square footage to allow for a three-family. Concerns were expressed about permits for the garage itself and electrical inspections. The Board felt comfortable with their decision for a dye test because of the sensitivity of the area.

Pennoyer moved to elect Joe Knowles as Co-Chairman for the coming year. Jermain seconded the motion, with Altholtz in favor and Ginn in favor.

Jermain moved to elect Joe Ginn as Clerk for the coming year. Altholtz seconded the motion, with Pennoyer in favor and Ginn in favor.

The meeting was adjourned at 10:00 p.m.

Essex Planning Board
May 19, 1993

PRESENT: Joe Ginn; Acting Chairman, Howard Altholtz, Pat Dunn, Kimberly Jermain, Joe Knowles

Building Inspector Richard Carter, submitted a building permit application for John and Diane Kotch, Belcher Street, to construct a single family home, 58'8"x45'x34'.

Pennoyer moved to approve the building permit application for **John and Diane Kotch, Belcher Street**, land formerly owned by Means, Lot 1, for a single family dwelling conditional upon potable water on site. **Dunn** seconded the motion, with the Board voting unanimously in favor.

A building permit application was submitted for Peter and Joanne Souza, Turtleback Road, estate of Margaret Lake, to construct a single family dwelling.

Pennoyer moved to approve the building permit application for **Peter and Joanne Souza, Turtleback Road**, for a three bedroom single family dwelling, 40'x28'x27', not including garage shown on the site plan but it is in reference to the drawings submitted with the application. **Altholtz** seconded the motion, with the Board voting in favor.

A building permit application was submitted for Joe and Felomena DaSilva, 7 Pine Ridge Road, Lot 4, to construct a single family dwelling.

Pennoyer moved to approved the building permit application for **Joe and Felomena DaSilva, 7 Pine Ridge Road**, for a four bedroom single family dwelling, 44'x33'x35', on Lot 4. **Jermain** seconded the motion, with the Board voting unanimously in favor.

Howard Altholtz removed himself from the Board regarding the following application.

A building permit application was submitted for Gary and Susan Enos, 70 Wood Drive, to construct a garage and storage. The lot size is 5,000 s.f. It is an accessory building. There is no plumbing in it. He has letters from the abutters. It's a seperate deed from his house. There are test pits on the lot. It is a house lot, but can't conform. There will be no plumbing or water, just electricity.

GINN: What is it an accessory to?

CARTER: It's a garage. It's not a dwelling.

PENNOYER: What about the overlay district. In other words, there is a building of 720 s.f. and the lot is 5,000 s.f.

ENOS: It's less than 15%.

GINN: The only concern I have is it's being called an accessory building, but there is nothing else on the lot. We can ask for Town Counsel's interpretation on this, or we can move forward.

The Board will have Town Counsel clarify whether it is legally an accessory building on a lot with nothing else.

A building permit application was submitted for 227 Western Realty Trust, 227 Western Avenue, Lot 10 and 11, to construct a storage building on Scot's Way.

GINN: You're basically saying that this is not applicable to the water shed district.

JONATHAN JAMES: Not until that seven years are past. Originally we developed plans, did all the engineering, did the septic. We spend a lot of money to put that strip mall on there. When all this came up, that and the economy, we're now trying to do real low key. This is my office. I'm here. I have to look at it for the rest of my life. It's low impact. There's no harm to the environment. We're planting trees. We've been planting trees to

put out here. We get along with the neighbors. We've been quiet down there for eight years and we'd like it to continue that. (u)

ALTHOLTZ: Is that exemption recorded?

JONATHAN JAMES: Yes, it was recorded. And again we went through the process of hiring two different lawyers to get that proposal in.

ALTHOLTZ: Do you have anything that would show the exemption?

GINN: I think to satisfy everybody's mind on this, I would like to hold this until the next meeting so Town Counsel can give us his feedback on that, as well as the water shed district if that takes into account.

A public hearing was held for Marianne McCartney, 9 Harlow Street, under Section 6-6.9 to convert existing dwelling into a three family dwelling. Attorney Mark Glovsky represented Mrs. McCartney.

GLOVSKY: I look at this as being a relatively simple matter, and it's nice to think that homeowners can handle this kind of thing on their own. But, unfortunately the world is getting more complicated. In any case, as you know because Marianne McCartney has been before your Board on a couple of occasions to discuss this matter. Her problem involves a house that was built in 1982 by her ex-husband, with a building permit being issued back in 1982. Although not all the records that we would like are available to us, but in any case, we are treating this as an existing single family house because there was never a special permit issued for it to be a three family house. So her application, which she put together pretty good by herself, states she is before this Board asking for permission, and in accordance with Section 6-6.9, to convert an existing dwelling to a three family dwelling. And your special permit provisions, set forth a criteria for converting an existing dwelling into a three family unit. The first being no dwelling will be altered to accommodate more than one family for each 10,000 s.f. of area of lot. This lot has 45,000 s.f., so indeed we have the required lot area. The second condition is that the Planning Board finds that the conversion would not be substantially more detrimental to the neighborhood than the existing use. The existing use, unfortunately, happens to be a three family use, that is not a legal three family use, but it's been used as a three family dwelling for a number of years.

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wrong
ps-619A

ALTHOLTZ: When was it converted?

GLOVSKY: It's hard to piece that together. The house was constructed in 1982. The second unit consisted of the basement of the existing house. And it's unclear from the records when that became an apartment. And at some point, approximately 1986, it appears as though the garage that was built in 1985, was converted to an apartment use. This issue came up not because of a complaint or because of problems in the neighborhood, but because as many of you know it's a great time to refinance, and Mrs. McCartney was attempting to do that and to satisfy her lender she had to establish that this was a legitimate three family dwelling. Consequently her refinancing is held up because she was unable to establish that and ultimately learned that it was necessary to come before this Board for a special permit. The third condition is that except for creation of additional exits, required by law, the structure isn't substantially changed or enlarged. We're not contemplating any change interior or exterior in this particular case. And lastly parking and we have more than adequate parking to meet the requirement on this 45,000 s.f. lot. There is one additional requirement, sort of tucked away in the back of Section 6-6.9, which doesn't have a number. It's on Pg. 614. It says all proposed multi-family conversion to three family and the multi family and/or apartment land use be required to supply the Board of Health with a septic system plan to be approved before permits are given. I believe, a letter from the Board of Health has been submitted with to this Board stating that the existing system satisfies the requirements the Board of Health for a three unit dwelling. Under the circumstances, it seems to me as though Mrs. McCartney satisfies the criteria for the conversion for the three family. There was some confusion at one point, I think, with respect to Section K, or the section that provides with the construction of new three family buildings. This is not a new construction. This is existing building that is being converted and on that basis, I think, that she is entitled to the relief that she is requesting. And unless someone can establish before this Board that what she is proposing is going to be significantly detrimental to the neighborhood. The other thing that I might add is that as I

understand your zoning bylaw you can by rights build a two family house on a lot of land that has frontage on a street existing in 1972 providing that the lot as a minimum of 30,000 s.f. So, I think, if I'm not mistaken, and some times I find little issues hidden away in the Essex's bylaws, but as right this could be a two family. And so what we're really asking for is one additional unit, which is, in fact, the garage, which is a one bedroom unit. So we're not adding a lot traffic, or a lot of activity by asking for three units. Thank you. And Mrs. McCartney is here if you have any specific questions for her.

GINN: I have a copy of the minutes from the Board of Health when that was approved.

DUNN: Here's a copy of the electrical permit. It doesn't say too much.

PENNOYER: And the original permit taken out for this property was a two family; correct?

MCCARTNEY: I think it was for a single family. I'm going to have to say at the time of the building of this house I like many other women handed the job over to my ex-husband. There is a lot of answers that I cannot give just because of the part I played in the building. He was the contractor and he did all the foot work.

ALTHOLTZ: Can you explain one issue? You say by right she can have a two family, and you'd only being asking for one additional unit. But by right she could have a two family only if she had the proper permits to build a two family. By right, by permit, didn't she only have the right to build a one family.

GLOVSKY: You're right. What I meant was if there was nothing on the lot today?

ALTHOLTZ: But there is. So you're asking for two additional units from the original permit.

GLOVSKY: Yes.

DUNN: I believe we have a letter here from Lucy Poole that should be read into the minutes.

GINN: (Letter from Francis and Lucy Poole regarding the application of Marianne McCartney read into the minutes.)

JESSICA WARREN: I represent the Warren Family Land Trust. I am directly abutting. I can speak for the Poole's, Turner's regarding this situation. Because we did a study of that when someone wanted to put a garage where the antique store is right now. The Poole's and the Turner's all have thirty foot dug wells. Just beyond them is a wetlands that goes into a muskrat pond, and drains into Luffins Creek. And all that soil I regret to say is really clay and rock. I represent the Warren Family Land Trust, and I really think it's a shame to have three illegal apartments without coming to any hearings which would have saved Ms. McCartney this pain and anguish, which I know is tough, but really there should have been a study of the neighborhood before it happened. I feel it's a very sad thing when neighbors have to come out and do something about a neighbor. We really put faith in the Planning Board to uphold the statute, and to know the conditions of land, and so forth.

HENRY WARREN: I live in Brookline, but I am also an owner of the land abutting. We rely upon the Town Planning Board to oversee the development of the Town in a sensible way. I think there is a question of what to do when existing structures are built. AND it's obviously a hardship on the owner. But the rights of the Town were not given due accord with the original construction.

GINN: Just so you folks know, the Planning Board was unaware of this existing dwelling. This is an after the fact application.

JESSICA WARREN: We are aware of that. This was Mrs. McCartney's ex-husband. I'm sorry he isn't here.

MARY ELLEN DELACY: I am also an abutter. I have some objections with what Mrs. Poole said in her letter. I was very aware that there was construction going on. We're directly an abutter next door. And the Poole's were aware that construction was going on. I suppose, myself included, that permits were granted and everything was above board. The

Planning Board knew. And they were paying taxes from that point on on structures that had multiple families living there. And I feel if I had a problem or a concern with the construction that was going on next door, or how it was going to be used, it was my responsibility, not just the Planning Board, to see exactly what was going on. Is this okay to do? Is it legal? And what's the zoning? My husband and I did not come forth at that time so I would feel why would I come forward now eight years later and say I should have done this eight years ago. I'm speaking for myself and saying I did know and I didn't have a problem with it then so why should I have a problem with it now.

JESSICA WARREN: You can't go ask your neighbors, is what you're doing legal. You wouldn't have any neighbors left.

GINN: Did you know during that construction that it was a three family home?

MARY ELLEN DELACY: Well, I know three families have been living there.

GINN: During that construction were you under the impression that it was a three family?

MARY ELLEN DELACY: I thought they had legal permits to make it a three family dwelling. I didn't know it was going to be a two family or three family, just that it was going to be a multiple dwelling, and I assumed that permits were issued. And Marianne probably did, too. Her husband constructed it. We've lived there for eight years and never had a problem.

GINN: So you're speaking in favor of this project. You don't have a problem being a direct abutter with this?

MARY ELLEN DELACY: No.

ALTHOLTZ: The point we're trying to make is, is this going to be substantially more detrimental to the neighborhood than it would be without it. So for eight years, or so, I mean, is it substantially more detrimental now because you have knowledge of it, or because there is an actual effect.

JESSICA WARREN: No, I'm frightened of what could happen.

ALTHOLTZ: But when you didn't know about it was there any effect on your life or property?

JESSICA WARREN: My life -- The effect on the creek. I'm really thinking more on the wetlands. There is a stream that goes through our property to Lufkins Creek. We had it tested and it's highly polluted from 133. We had it tested over a period of fifteen years. It's very polluted by the road. But, I know it's so easy to have something like that happen. It seems to me to allow more building in a tricking area where soil doesn't really absorb probably seems to me to be absurd. I'm not impacted because I don't go drink out of Lufkins Creek and I'm not a clammer. I'm not threatened. But I'm very concerned about conservation.

GINN: Your concerns are with the quality of the area and the septic usage.

JESSICA WARREN: We have given up all rights to 127 acres. It will never be built on for just this reason. Because the land isn't really perkable. We are in a high scenic value area. We have the fishing and clamming to think about. You have to be careful what we do. That's my concern.

GINN: If I could interject something quickly, I think it may address the concerns that we have and are going round and round about. Maybe we should have the Board of Health go up there and do a dye test the area. Because that will show if there is any problem. I think it's a valid concern. It's a concern from the Poole's and yourself, and there are wells in the area. I think that's a really simple easy solution to see if there is a problem or there isn't. It will show up right away.

HUGH WARREN: I live in Cambridge, but I am a taxpayer on this property that does abut Mrs. McCartney's property. The whole nature of that neighborhood has been a single family neighborhood. It has not been a multi-family neighborhood. I live in a multi family

neighborhood in Cambridge. From my standpoint it does impact the value of the property when you do go to multi-family kind of situations. So I do think it has an impact on value of the investment that people have in the area. I would like to register that as a concern.

GLOVSKY: First of all one of the thing that makes Essex unique is the fact that it recognizes that multi-family and single family uses can coexist, and consequently the community has a nice balance. But that is somewhat besides the point. But the zoning bylaw does permit this by special permit if we meet certain criteria. And we're suggesting that we do. There are two other direct abutters that have signed a petition saying that they support her request to legitimize her three family dwelling.

ALTHOLTZ: How separate are the units? Has the electrical work been inspected?

MCCARTNEY: Yeah, that has been done.

DUNN: Excuse me. There is an electrical report right there that shows that not too much has been done.

GLOVSKY: I think it's a good question that the dye testing be done because that seems to be a legitimate concern. And one other suggestion that I might make if the septic is an issue is that as a condition of granting the special permit you require the septic system to be inspected and perhaps pumped on a certain schedule with evidence of that being submitted to the Board of Health. And that kind of condition we could abide with too just to make sure there is no problem with the septic.

KNOWLES: Do you know what the septic is?

GLOVSKY: It's relatively a new system. It was installed in 1982. The plans should be on file in Town Hall.

GINN: So it's ten plus years old.

KNOWLES: Is it a three family septic or a single family septic?

GLOVSKY: The Board of Health has determined the system adequate for a 5 bedroom dwelling. Determination of a 3 family status will be up to the Building Inspector and Planning Board.

DUNN: That means there are three separate kitchens.

GLOVSKY: I think the Board of Health should really have the responsibility of determining whether it's adequate. And we can submit any information that might be needed by the Board of Health to make that determination.

JESSICA WARREN: Mr. Glovsky, can I ask you whether Mrs. McCartney intended to have a three family home when she built that house new?

GLOVSKY: I can't answer that.

MCCARTNEY: No that was kind of a fall out because of a lot of marital problems. I just want to say that I care very much about the area. I care very much about my place. My improvements since I've been living there alone have been noticeable. I do not have three families living there. I have myself. Downstairs there is a couple. Next door I did not rent out because I knew I had this problem. And that is a significant loss for me. But I do not want to have cars, and people, and children at this time in my life. I want a peaceful, quiet place. And I consider my standards way above the norm of a lot of people that live in Essex, and I'm committed to keeping that property A-#-1. And I want to say I love that place as much as you love your property, Mrs. Warren.

JESSICA WARREN: I'm sure you do.

MCCARTNEY: And I'm protecting it as you're protecting your land.

JESSICA WARREN: Something might happen to the both of us. I might croak. And you might move away. And if you do move out, then we will have a different situation on our hands. While you're living there it's one thing.

GLOVSKY: There is another possibility, and that is that it can be conditioned on owner occupancy, if you think that makes a difference. There are all sorts of conditions that can be added to a special permit to safeguard against the kinds of issues that you are raising. And I think some of them would be appropriate. I'm not sure all of them would be.

JESSICA WARREN: We're just trying to be responsible. Looking ahead. You know none of us know.

GLOVSKY: And I don't blame you for that. But I think the first hurdle before we can even think about conditions is probably to do that dye testing to determine what the status of the existing system is. We'd be perfectly happy with a continuance of this public hearing if you don't want to close it, so there is an opportunity to supply the Board with additional information.

GINN: Would anybody else from the audience like to say something? (No comment.)

DUNN: I can sympathize with someone that doesn't realize that the proper permits have been issued, but I'll be damned if I can sit her and say my husband could build two families onto my home and I didn't know anything about it. I think it was intended to be used as three families. Otherwise there wouldn't have been two extra units built onto it. Besides that, I think, what Mrs. Warren said makes a lot of sense. If that had come before us at that time it would have gone under this special permit, and at this time we are saddled with a decision that we should not be saddled with. I got two calls asking why the Planning Board was not on the ball and knew about this. Well, the Planning Board can't go door to door and ask how many apartments there are. This is a slap in the face to the Planning Board and that's how I feel about this. Also, a special permit we could have put limits on this. We could have set this up better, but we didn't get that chance to do it. And as far as what could happen there, Marianne has lived there quietly since the three apartments have been there. A lot of people didn't even notice that this was there. So I'm not going against the way you would be living there. I'm saying what Mrs. Warren said. You could sell the house and what could come in there is what we're concerned with. Anything could happen in there. It's hard to make decisions when it's already there.

BRUCE FORTIER: I'm speaking in just general terms of the matter. The concern is first that Mrs. Dunn wants to put it on personal basis that you should regard any failure of the citizen to get the proper permits isn't done to you personally. I think that's a mistake in general, and particular with stuff like this. And we had a similar problem with electric stuff. We know perfectly well that loads of people do their own electric work without permits because the volume sold up at the Home Center certainly doesn't equal the permits. And I know from talking with our electric inspector he is perfectly happy to have somebody come to him for a permit if they realize for safety's sake they need it. A lot of times people do a simple thing and then say, "Oh, dear, now a really should be getting a permit. But I don't dare get a permit because then I'm going to be attacked because the Inspector is going to notice the previous." In the case of the electrical it's a very dangerous because it kind of forces people —

GINN: Bruce, is this relevant to this case? The electrical has already been inspected.

FORTIER: Yes. What I'm trying to say is this person is attempting to seek a new permit so then she will be required to get a new occupancy permit. And then she will have to have her occupancy permit signed off by electrical inspector, health inspector, etc. So if there are any deficiencies, there will be a proper way of taking care of it. If the Board takes a belligerent attitude, you know, personal attitude, as a front, then we know perfectly well that there are lots of things in Town that don't meet the requirements. And it would be far more in the interest of the Town if those people were encouraged to say, "Look okay, mistakes are going to be made, but it's much better to get things back on the track."

GINN: We know what they're trying to do. They are coming forward now to make amends on what has happened and to move forward. If this came to the Board beforehand, before the construction started the Board would have to deny it.

HENRY WARREN: What forced the conformance was going to the bank to get the refinancing. If she didn't try to get refinancing she would have never come back to this Board in the first place. So it shows her contempt for the Board, the bank is enforcing it.

GLOVSKY: I don't think it shows contempt for the Board. If I may with all do respect. When people refinance they find all sorts of discrepancies. There is no contempt for the Board. It's not a slap in the face. And this is an opportunity for the Board to impose conditions that it could have imposed in 1982. And I think, with all do respect to the Board, we have to go back to the section in the bylaw that specifically provides for the granting of special permits to convert existing dwellings to three families if conditions are met. It seems to me that the only real potential objection as far as detriment to the neighborhood is the possibility of a septic problem. And that could be based on demonstral evidence and that is what we're going to determine. But a number of people tonight said they didn't even know it was a three family, or it has no real effect on the neighborhood, or it hasn't been a problem, and I think we can keep it that way. Especially if you impose conditions that have never been imposed on this property before.

HUGH WARREN: There is another issue you've neglected and that was the market value issue. You conveniently positioned it in such a way to say that the law allowed to have multi developments next to single family dwellings. But from a market prospective it does have an impact on the abutting land.

GLOVSKY: I don't think that's the type of objection that historically provides a basis for which somebody can claim that this is a detrimental effect to the neighborhood. If you take a vacant lot and put a house on it, it has a detrimental effect conceivably on abutting property. And in this case it's not something that's prohibited by the zoning bylaws. It's something that may be permitted by the zoning bylaws.

JESSICA WARREN: We did spend a lot of time in some Town meeting, God knows how many years ago, fifty years ago maybe, but anyway, voting in Essex that we would only have two family houses. And I don't know the status of that bylaw is now. But I do know that this was the kind of thing that we were trying to avoid.

GLOVSKY: In 1983, the Town voted to amend the bylaw to add this provision that allows for three families. For some reason the Town did that, maybe they shouldn't have done it, but they did.

ALTHOLTZ: It was built in 1982 as a single family, soon used as a two family, then in 1985 a garage was constructed and it became used as a three family. So wouldn't that construction of that garage violate Section J-3, which is a substantial change or enlargement to the structure.

GLOVSKY: No, because we are looking at it as of today.

ALTHOLTZ: We can't be. We're looking at it as if it's day one. Otherwise, we can't hear it because we can only hear an application for a conversion. So we're making believe it's day one.

GLOVSKY: I think Town Counsel addressed that issue. But, if not he could address it again. I talked to John Tierney because that was a concern of mine, too.

ALTHOLTZ: Wasn't the construction of the garage an enlargement or a substantial change?

GLOVSKY: When the garage was added to the house in 1985, it was an enlargement of the house.

JACOB MCCARTNEY: I'm Marianne's son. If you are a neighbor, or on the property, everything seems to be healthy and we've beautified the land and the area. And I think at that level, we stand for the best of things in the terms of the property and the neighborhood. I was involved with my father in the building of this house. He didn't investigate what he had to do legally, which was wrong. He should have. I was a teenager at the time and I remember learning all about the construction at the time. But I didn't know anything about legalizing apartments, and he certainly did not look into that. Now, I didn't think to myself at the time, I did not feel contempt for legality. I simply wasn't aware of it. And I feel I am

in similar shoes as my mother in that I can't say I look back at myself and say, "Dumb little kid, why didn't you look into the laws." And I can't say to my mother, "You dumb mother, why didn't you look into the laws." Because it really was in my father's hands. He did the contracting. And I accept that he didn't look into the due processes of converting this into a three family. But I can't condemn my mother for that, in fact, I think she is doing the right thing by rectifying at this time.

JESSICA WARREN: You-know, ignorance of the law is no excuse.

JACOB MCCARTNEY: Ignorance, yes, but not contempt. Certainly not contempt.

ROLF MADSEN: I would make two suggestions for special permit granting authority. One, I don't happen to see a plan of what you're making a decision on on the table anywhere as a layout of what's happened on the property. I would make a suggestion that before you make a decision that you should see that. And the second thing that I would suggest is that you look at the issuing rules under the special permit process because it's pretty specific on how you make your decision regarding this. You have to regard the bylaws, but you also have to regard the special permit issuing rules. And that's how you're going to formulate your decision.

GINN: Would anyone like to add to this? (No comment.) I would like to continue this public hearing for our next meeting to give the Board some time and give the Board of Health time to investigate to see if that system is adequate.

GLOVSKY: Are you going to contact the Board of Health, or should we?

GINN: I think it should be up to you folks. One issue that has not been brought up is parking. I don't know if the driveway is utilized for all the cars or if everyone parks on the road.

MCCARTNEY: There is no need for them to park on the road. There is five parking spaces up in the driveway.

GLOVSKY: We will bring a parking plan with us, also. Thank you.

The Planning Board will continue the public hearing for Marianne McCartney on June 2, 1993, at 8:00 p.m.

Attorney Mark Glovsky, representing John and Michael Byrne, met with the Board to discuss their home occupation business, Byrne Brothers Landscaping, Western Avenue. John Byrne was present.

GLOVSKY: All of this, unfortunately is somewhat after the fact for me. John Byrne is here with me. And my understanding is that he is here before the Board because there is question about his lot coverage in the water shed district. And quite frankly I'm somewhat confused by your water shed bylaw. If you look at Pg. 623 of your ordinance, I assume that this is section that concerns you with respect to the Byrne property. It provides that residential development which renders impervious more than 15% of building lot (including the portion of any new street abutting the lot) or which has a lot area of less than 40,000 s.f. (excluding wetlands) for each dwelling unit. And it's my understanding that it's not residential development that has caused this lot to be covered by more than 15%. That it is in fact commercial development or a business development. That's one question, I have for you. And I don't mean to be coming to you with questions. I should be providing you with the answers. The other thing is that John was under the impression that he would not be able to convert to exclusively business use. And my reading of the bylaws is that it could become a purely business property. He has sufficient lot area frontage and he meets setback requirements. And, in fact, if that's the case it doesn't seem to me that the water shed bylaw, for some reason, applies to commercial uses. And that doesn't make sense to me because it seems to me that commercial uses are more damaging to the environment than residential uses.

KNOWLES: It covers certain business activities. I think, if I remember right, there was some question as to what is there now. In other words, are we talking about a home.

JOHN BYRNE: I live there.

KNOWLES: And this business is there under the home occupation?

PENNOYER: Right.

KNOWLES: So it's a home occupation.

GLOVSKY: There is a home there. We can eliminate the home if that's required. Well, it seems to me as though we can. Quite frankly, it might make sense at some point for us to considerate an alternative uses of the site. And I think in the future before any change of use or any new plans for this site, you'll be the first to know. Here we are. There is a single family dwelling and office, and a large garage building on the site. And as you can see by this sketch plan we have identified the amount of site that is covered by impervious material and we've identified the open space. The lot area is 38,000 s.f. My recollection is that you need 30,000 s.f. for a business use and you need a 150 feet of frontage, and obviously parking and the setback requirements. But it seems to me that John Byrne can convert this to purely business use and then we would not be subject to the lot coverage requirements of the water shed district.

GINN: He would or would not?

GLOVSKY: He would not.

ALTHOLTZ: It would under B7, by special permit only. Any use would be subject to that, I would think.

KNOWLES: It covers business activities.

PENNOYER: The thing I think we have to do is look at it as a residential property. We keep going back and forth on whether it's a residential property or commercial property. It is a residential property.

KNOWLES: The reason for this activity was granted under the home occupation. I remember when this first came up being overwhelmed by the argument that this is a business and it's not covered under the business use. It isn't a business use. It's a home occupation use. Don't let appearances fool you, Mark. Never mind what you might see there, it's a home occupation.

GLOVSKY: Okay. I think we're talking about two different things. I think we're talking about the classification that entitles him to be there. Is one thing.

PENNOYER: Let's deal with the fact that it's a residential property and then base where we're coming from, from that. Which is in the bylaw which talks about covered area within the parking for a residential development.

GLOVSKY: But, what I would say is that it's residential development with a home occupation business. You have a fairly broad home occupation in Essex. And it's the business aspect of the property that has been developed to cover more than 15% and not the residential use that it's classified as.

PENNOYER: No, it's called a residential property.

KNOWLES: It's a home occupation and it's very specific. It may be broad and there may be problems caused by this particular use of home occupation. Don't let appearances fool you, Mark. This is a residential lot that we're talking about. Not a business or commercial lot. It's a residential lot by definition. Otherwise, there would be no business activity here. This was granted under home occupation in 1988.

PENNOYER: So if we go to home occupation that's another set of issues.

DUNN: The only thing I'm getting at is, I don't think pulling John in here and taking this piece of property now and try to figure out what it should be. Because it's already here in the minutes of February 17, 1988, when Jim Platt come in with the boys to the Board, I think we should personally be able to talk to John or to the family and come to something that can be compatible to both of us. It said right here, "The Byrne's proposed to put a building on the property for their landscaping business and to live in the residence." And I

remember back at that time there was a question of mixed use there. It would either have to be a home occupation or a commercial. The lot size is 38,000 s.f. Cataldo said, What would you do with the existing commercial part of the property. And John said, Probably just turn it back into a garage. I don't know if you want to hear all of this, but there is quite a bit of discussion here on how we could work this into the home occupation. And I am one that has said we are bulging the seams of the home occupation. But it was also said in here and agreed that it was a family run business and about the employees, and all. It was agreed that these people were coming to work, get in a truck, and leave. And I think that's why we all sort of pushed to do this at the time. I think right now are concern isn't so much to change that. I don't see how we can really change it. We approved it back then. But maybe we can get it to work better for the Board, for the Town, and for Byrne Brothers.

PENNOYER: Yeah, but I think the question here is whether he is applying for a paved area within the water shed district for a residential property or our we dealing with a home occupation.

DUNN: Well, that's what I'm saying here. He was approved for the home occupation.

GINN: That's all stems from, they were asked to come in for an application for the paving because it's in the water shed district. It went along way around. Didn't file. Didn't file. We had numerous letters back and forth. He finally came in and had a discussion with the Board. Bruce Fortier was involved in that discussion and said that because it was a residential piece of property that's working as a home occupation that they do not come under the filing for a special permit for the paving in the water shed district. I think that most everyone is aware that there is a home occupation and it's kind of outgrown that situation. I think it would have been a pretty simple situation to submit a plan, file for that special permit for the paving, show exactly what is there, document it, and everything would have gone along. But, you drive by and look at that as a home occupation business and I think it's pretty evident that it's grown beyond those limits. When you pull out the minutes of the February 17th meeting, there are a number of trucks, but it's limited to the type of business. They are not in a business that would require large vehicles. And you go by and you see dump trucks parked there. It's very evident. I think with the facts in front of us it's grown from a home occupation. Now, you're trying to play on both sides of the fence. You don't want to file for a permit for the paving in that water shed district, but you still want to say that you're under a home occupation. I think there is a little problem.

GLOVSKY: I think we may be able to classify this. John, when I first met with him last week was under the impression that he would not be able to eliminate the dwelling from the site. My reading of the zoning bylaw is that he could dwelling unit and this could become a business use. And one possibility might be, if in fact you're right, and John has outgrown the property —

GINN: If I am right or that is correct?

GLOVSKY: If that's correct. And I don't know whether that's true or not. I haven't studied the property and I've only been there once. Perhaps it is time for him to consider alternate location. And if he's going to do that, perhaps it make senses to consider what's a more appropriate use for the property. My feeling is, without being there, that it might be purely a residential use. It might not be the kind of place that it makes sense to use as a home occupation or a purely business use may be proposed. Then as you pointed out a moment ago, it seems as though a special permit may be required, if in fact, he's got more than 15% impervious. I don't know. That provision doesn't quite jive.

KNOWLES: Business all have to get a special permit. One way or another it still applies. I'm still trying to digest something that I just heard. Can somebody outgrow a home occupation?

GINN: Of course you can?

KNOWLES: And then change it to a business use?

DUNN: If the property can meet the requirements.

GINN: There will be no living on the property. They can turn that building into two or three offices and live somewhere else.

leave the opening there. It is a two family house. I would like to be able to use the back door and it would make access much easier by leaving the opening there.
GINN: I don't think that's going to be allowed.

RUSSELL HODGKINS: It used to be an opening years ago. There was a garden there. And my father built that wall there. When I took it down I was wrong. I didn't realize it was a scenic way. Ignorance of the law is no excuse. I realize that. But then I came to the Board and was told to put it back. But there was an opening there because Pat Dunn's husband had plowed it out for me where it was used as a garden. And what I did, naturally, was make it wider to get in there with a dozer. So, what I'm asking is if there is any way, it was eight feet, and I'm ten or twelve feet, could I leave the additional four feet open. That's what I'm basically asking for.

GINN: What you're saying is where there was always an eight feet opening, you want to keep that open. And instead of an eight foot opening you would like to have a twelve foot opening. So you want to have two driveways.

R. HODGKINS: Yes.

GINN: I think DWP frowns on that. I'm not positive. Have you approached them?

B. HODGKINS: I spoke to Bruce about it myself. And he said he didn't have a problem with it at all. The only problem he had with it is that we had to get a permit from you because it is a scenic way and because we removed the stone wall.

PENNOYER: We have to have a public hearing on this.

B. HODGKINS: We don't have a problem with a public hearing. I have talked to several of our neighbors and no one has a problem with what we're doing.

JERMAIN: Can you bring in photographs of the way the existing wall was originally when it was an eight foot opening?

GINN: One thing I want along with the public hearing is a letter from the DPW saying they go along with that.

Sylvester Freitas met with the Board to discuss purchasing property on Scot's Way.

Freitas explained to the Board he was interested in purchasing Lot 6 of Scot's Way, and would like to set up a contractor's yard there. The septic system was designed and already approved. He is going to stay with the same septic system. He would be building in phases, starting with a 50' x 46' building with a 2' x 5' exterior platform. He would be storing heavy equipment, cranes, and his future goal is to be a marine distributor. Altholta asked what kind of materials were going to be stored there? Freitas told him lumber and oak pilings, which would all be new. Freitas raising shipwrecks, but these wrecks would not be brought to this location. He would only store the cables and equipment used to accomplish this.

The Board would approve a contractor's yard on Lot 6 of Scot's Way only if all zoning requirements and bylaws were adhered to.

Dave Hidden and Sylvia Hidden, Western Ave., met with the Board to discuss the approval of an A&R plan for Donald and Melanie Burnham, Rear Western Avenue. Mr. Hidden stated that at the last meeting this issue was tabled to the next meeting and he did not express his concerns because of that reason.

GINN: What are your concerns, Dave?

HIDDEN: I don't know if you have the plan there. The original configurations of the lot there was one hundred feet of frontage. Maybe it wasn't legal, but it was then.

PENNOYER: So your concern is Lot C, which becomes Lot D.

And the whole property as a commercial property.

KNOWLES: And a home occupation no longer applies?

GINN: Correct.

DUNN: Can I ask you a question? How many trucks do you have now?

BYRNE: Ten.

DUNN: Then it says here. I'm just going back to what they allowed at that time. And they did say six trucks. In the Summer there would be ten to twelve employees.

GLOVSKY: He's grown.

GINN: Part of this problem would have gone away if you had filed for that special permit this Winter.

BYRNE: You have an idea that I tried to go around all of this. I went down and I talked to Bruce.

GINN: You withdrew your special permit.

GLOVSKY: I don't want the meeting to become counterproductive. Tonight I think it is becoming apparent to me that we need to come back to this Board with a proposed plan for the recycling of this property. And what we need is a definitive plan, and in fact, and I think if you're right, it appears that regardless of whether we exceeded the 15% before the work was done, a special permit would have been needed to extend the nonconforming use by going even with the paving area. That seems to require some sort of water recharge plan. And therefore, I think, we ought to get back to the drawing table. Put that together. And determine whether we are going to go forward with this use. In this case, John needs to be advised as to what extend there are limitations on his work here. Hopefully, if he has a better understanding of the rules and constraints we're not going to waste any more of your time. There is nothing formally before you at this time. What I would respectfully request is that you put us back on the agenda for June 2, and at that point we come to you with a plan. Now that I have a somewhat better grasp of the issues. We can begin to focus on what makes more sense for the property in relationship to the neighbors and everything. And I agree with Joe, it may be examined the use of the property.

GINN: Does that satisfy the Board at this time? Does any of the Board members have anything to add to this?

KNOWLES: When was this paved? Because I remember we wrote a number of letters, not only to you, but to Dick Carter. When was this paved?

BYRNE: About a year ago. I spoke to Bruce Julian, DWP, about the permit, at which time he came down and walked around. At the time he was the one I was informed that I had to deal with on doing anything with the hottop. He said you need to fill this permit out. I filled the permit out. I paid the fee. He walked around and everything was fine. So, I felt that I wasn't trying to go around any laws.

The Board will meet with Attorney Mark Glovsky, representing John and Michael Byrne on June 2, with a definitive plan.

Russell and Betty Hodgkins, 44 Story Street, met with the Board to discuss removal of a stone wall on a scenic way.

GINN: (Reads aloud the minutes from June 6, 1990 meeting.) It has been brought up to the Board that nothing has been reconstructed or replaced as promised.

BETTY HODGKINS: Our plans have changed a little bit from that time. At the time Russell wanted to get the bulldozer in there and remove the trees. We are still doing a little landscaping that we haven't quite finished. But we would like to get permission to

HIDDEN: Are you calling that lot rear. That's a side line and that's a side line. Where is the rear line? It doesn't connect.

GINN: What they said, and this is how the Board made that interpretation that the building was going in that area and they needed that width.

HIDDEN: The shape of the lot doesn't meet the requirements. If you look at the plan, it basically says it should be a square, or a pie shape, or even a pork chop lot it can be. But the rear must show and the two sidelines.

KNOWLES: Is this a way?

HIDDEN: Definitely, it is a way. It was actually the ice house road.

KNOWLES: But this is a way.

HIDDEN: Yes.

GINN: And he says he owns that.

HIDDEN: Yes, he may own it by deed.

GINN: Well, that is what has been implied to the Board. All we had to go by was a plan stamped by the engineer. The way it was explained to this Board is that's why the lot line change, so a house could be accepted for that area or back where ever it was in that area. They had 150' frontage. The house would go in here with the proper setbacks, side and rear.

HIDDEN: The density is too much. Where is he going to put his septic system? In the road?

SYLVIA HIDDEN: I would like to question the Board on how they left 40 feet of frontage for this new Lot B2. They take a conforming pre-1972, and now took frontage away, which it didn't have sufficient frontage to give up. But now only has 40 feet of frontage when it originally had 100 feet of frontage on a corner lot. Which was acceptable in 1958 the 100 feet.

GINN: The way it was explained to the Board they were not taking frontage away from that lot.

DUNN: There is so many questions on this. Can the Board rescind the motion and take this again?

GINN: I'm not so sure the Board can. But I think Dave can appeal the decision of the Board. Maybe I'm looking at this wrong or differently, but there was never any frontage taken from that because he owned that.

SYLVIA HIDDEN: We contend that there was frontage taken away.

Knowles moved to rescind the signed A&R for Donald and Melanie Burnham, Western Avenue, given new information that would effect the decision already made on May 5, 1993, contingent upon review by Town Counsel. Dunn seconded the motion, with the Board voting unanimously in favor.

The Board will hold a public meeting for Monday, May 24, 1993 at 8:00 p.m. at Town Hall.

The meeting was adjourned at 11:15 p.m.

HIDDEN: How can we take frontage away from that lot and create another lot. And how can you take Lot A, which is a nonconforming lot and change the configuration of it and also take frontage off of that.

KNOWLES: That was my question. If I remember right, how can you carve frontage off of this and strip it out like that.

HIDDEN: You can strip frontage off of that one to make it. Whereas that roadway is a variable road. It was frontage because I couldn't have built my house there or my daughter's house there, if it wasn't considered frontage.

PENNOYER: I guess the thing that we looked at was what frontage was remaining when you look at each one of these lots.

HIDDEN: There is only 40 feet on Lot B2.

GINN: The way it was explained to me and I interpreted it was that this was not a frontage issue for this lot. The way it was explained to us was this was a nonconforming lot. What they took, this section and this section, the square footage of that lot didn't change.

HIDDEN: Exactly, but when you change the configuration of that lot and take frontage away from it.

GINN: They didn't take frontage away from it because that was not classified as frontage the way that it was explained to the Board. This was its frontage as a nonconforming lot. They were not saying that this was frontage because he said that he owns that.

HIDDEN: But, he doesn't own that other lot.

GINN: Which other lot is that?

HIDDEN: The one he changed.

GINN: He doesn't own that, no. That was never implied that he owned that lot.

HIDDEN: I don't see how under an A&R with no public hearing, you can change the configuration of a 16,000 s.f. lot. You can take away frontage on another lot. You can change the configuration of that or you can take Lot C and change the frontage on that.

KNOWLES: On C.

HIDDEN: Right, under approval not required.

KNOWLES: Is this lot's frontage the way it is on this map?

HIDDEN: It has frontage there, and it also has frontage on the front street.

GINN: This is not saying that this is frontage here. This is saying now, or formally someone, Mears, that was owned. And Burnham says that he owns that now.

HIDDEN: There is a question mark on whether or not he does own it.

ALTHOLTZ: Does he have a title to it?

GINN: Yeah, he says he owns this entire parcel. That's the way it was explained.

ALTHOLTZ: Is it recorded?

HIDDEN: Well, you find the other deed to the other part of it, and you'll be doing good. The other issue I have is the density issue. Which is putting that many house in there. And then also, I don't feel as though that plan meets the side and rear yard requirements. Because technically you don't come up with any sides and you don't come up with a rear. You only have nine feet connecting the whole thing.

GINN: How do you see that?

Essex Planning Board

Agenda

May 24, 1993

8:00 p.m. Informational meeting for new members

**Planning Board
May 24, 1993**

PRESENT: Pat Dunn, Kimberly Jermain, Howard Altholtz, Sheldon Pennoyer, Joe Ginn

Dunn moved to elect Sheldon Pennoyer as the chairman for the coming year. Altholtz seconded the motion, with the Board voting in unanimously in favor.

Pennoyer moved that the minutes of the meeting be made available to the members before the scheduled meeting. They will be left in the Planning Board's box at Town Hall. Jermain seconded the motion. Dunn in favor, Altholtz in favor, and Joe Ginn opposed.

The Board met for an informational meeting. They discussed in general the following matters.

Turtleback Circle subdivision

A petition submitted by abutters on Apple Street and a Memorandum submitted by Attorney Sam Hoar regarding Turtleback Circle subdivision. The Board reviewed Town Counsel John Tierney's letter, and the rules and regulations relating to the matter. The possibility of holding a public hearing was discussed, and also what would be accomplished by doing so. Altholtz suggested that the Board look at some cases where other Board's in the Commonwealth have rescinded their approval and see what they based their criteria on.

Garcia Kimball, Maple Street, request for a building permit

The Board agreed that it did not matter how many times the lot changed ownership as long as the lot size and shape had not changed. Attorney James Kroesser will meet with the Board on June 2, at which time the Board will make a ruling.

Donald and Melanie Burnham, Rear Western Ave., Form A Dave Hidden was present.

The Board explained to Mr. Hidden in a letter dated May 21, 1993, the Board was seeking Town Counsel for opinion on their motion to rescind their previous approval of the A&R, and until his correspondence was received no action will be taken.

Gary and Susan Enos, 70 Wood Drive, building permit application.

Pennoyer asked for Town Counsel's opinion on this matter in a letter dated May 21, 1993. The Board's concern was with definition of accessory building and the future use of the constructed garage.

227 Western Realty Trust, 227 Western Avenue, building permit application to construct a storage building on Scot's Way.

The Board discussed the seven year exemption period for the water shed district.

Marianne McCartney, 9 Harlow Street, special permit for converting existing three-family dwelling into legal units.

Jermain expressed her concerns about enforcement of fines. Pennoyer explained that the Building Inspector enforces the bylaws. The Planning Board can only request. Ginn expressed concerns with parking. The Board agreed that she has the square footage to allow for a three-family. Concerns were expressed about permits for the garage itself and electrical inspections. The Board felt comfortable with their decision for a dye test because of the sensitivity of the area.

Pennoyer moved to elect Joe Knowles as Co-Chairman for the coming year. Jermain seconded the motion, with Altholtz in favor and Ginn in favor.

Jermain moved to elect Joe Ginn as Clerk for the coming year. Altholtz seconded the motion, with Pennoyer in favor and Ginn in favor.

The meeting was adjourned at 10:00 p.m.

Essex Planning Board Agenda

May 19, 1993

- 8:00 p.m. Marianne McCartney, 9 Harlow Street, PUBLIC HEARING
for Special Permit
- 8:45 p.m. Attorney Mark Glovsky, representing John and
Michael Byrne, home occupation business
- 9:30 p.m. Russell and Betty Hodgkins, 44 Story Street,
removal of stone wall on scenic way
- 9:45 p.m. Sylvester Freitas, approval for purchasing lot
located on Scot's Way to construct building

Business:

Elect new Chairperson
Discuss Correspondence from Town Counsel

Essex Planning Board
May 19, 1993

PRESENT: Joe Ginn; Acting Chairman, Howard Altholtz, Pat Dunn, Kimberly Jermain, Joe Knowles

Building Inspector Richard Carter, submitted a building permit application for John and Diane Kotch, Belcher Street, to construct a single family home, 58'8"x45x34.

Pennoyer moved to approve the building permit application for John and Diane Kotch, Belcher Street, land formerly owned by Means, Lot 1, for a single family dwelling conditional upon potable water on site. Dunn seconded the motion, with the Board voting unanimously in favor.

A building permit application was submitted for Peter and Joanne Souza, Turtleback Road, estate of Margaret Lake, to construct a single family dwelling.

Pennoyer moved to approve the building permit application for Peter and Joanne Souza, Turtleback Road, for a three bedroom single family dwelling, 40'x28'x27', not including garage shown on the site plan but it is in reference to the drawings submitted with the application. Altholtz seconded the motion, with the Board voting in favor.

A building permit application was submitted for Joe and Felomena DaSilva, 7 Pine Ridge Road, Lot 4, to construct a single family dwelling.

Pennoyer moved to approved the building permit application for Joe and Felomena DaSilva, 7 Pine Ridge Road, for a four bedroom single family dwelling, 44'x33'x35', on Lot 4. Jermain seconded the motion, with the Board voting unanimously in favor.

Howard Altholtz removed himself from the Board regarding the following application.

A building permit application was submitted for Gary and Susan Enos, 70 Wood Drive, to construct a garage and storage. The lot size is 5,000 s.f. It is an accessory building. There is no plumbing in it. He has letters from the abutters. It's a seperate deed from his house. There are test pits on the lot. It is a house lot, but can't conform. There will be no plumbing or water, just electricity.

GINN: What is it an accessory to?

CARTER: It's a garage. It's not a dwelling.

PENNOYER: What about the overlay district. In other words, there is a building of 720 s.f. and the lot is 5,000 s.f.

ENOS: It's less than 15%.

GINN: The only concern I have is it's being called an accessory building, but there is nothing else on the lot. We can ask for Town Counsel's interpretation on this, or we can move forward.

The Board will have Town Counsel clarify whether it is legally an accessory building on a lot with nothing else.

A building permit application was submitted for 227 Western Realty Trust, 227 Western Avenue, Lot 10 and 11, to construct a storage building on Scot's Way.

GINN: You're basically saying that this is not applicable to the water shed district.

JONATHAN JAMES: Not until that seven years are past. Originally we developed plans, did all the engineering, did the septic. We spend a lot of money to put that strip mall on there. When all this came up, that and the economy, we're now trying to do real low key. This is my office. I'm here. I have to look at it for the rest of my life. It's low impact. There's no harm to the environment. We're planting trees. We've been planting trees to

put out here. We get along with the neighbors. We've been quiet down there for eight years and we'd like it to continue that. (wag)

ALTHOLTZ: Is that exemption recorded?

JONATHAN JAMES: Yes, it was recorded. And again we went through the process of hiring two different lawyers to get that proposal in.

ALTHOLTZ: Do you have anything that would show the exemption?

GINN: I think to satisfy everybody's mind on this, I would like to hold this until the next meeting so Town Counsel can give us his feedback on that, as well as the water shed district if that takes into account.

A public hearing was held for Marianne McCartney, 9 Harlow Street, under Section 6-6.9 to convert existing dwelling into a three family dwelling. Attorney Mark Glovsky represented Mrs. McCartney.

GLOVSKY: I look at this as being a relatively simple matter, and it's nice to think that homeowners can handle this kind of thing on their own. But, unfortunately the world is getting more complicated. In any case, as you know because Marianne McCartney has been before your Board on a couple of occasions to discuss this matter. Her problem involves a house that was built in 1982 by her ex-husband, with a building permit being issued back in 1982. Although not all the records that we would like are available to us, but in any case, we are treating this as an existing single family house because there was never a special permit issued for it to be a three family house. So her application, which she put together pretty good by herself, states she is before this Board asking for permission, and in accordance with Section 6-6.9, to convert an existing dwelling to a three family dwelling. And your special permit provisions, set forth a criteria for converting an existing dwelling into a three family unit. The first being no dwelling will be altered to accommodate more than one family for each 10,000 s.f. of area of lot. This lot has 45,000 s.f., so indeed we have the required lot area. The second condition is that the Planning Board finds that the conversion would not be substantially more detrimental to the neighborhood than the existing use. The existing use, unfortunately, happens to be a three family use, that is not a legal three family use, but it's been used as a three family dwelling for a number of years.

60,000
wrong
Pg. 614A

ALTHOLTZ: When was it converted?

GLOVSKY: It's hard to piece that together. The house was constructed in 1982. The second unit consisted of the basement of the existing house. And it's unclear from the records when that became an apartment. And at some point, approximately 1986, it appears as though the garage that was built in 1985, was converted to an apartment use. This issue came up not because of a complaint or because of problems in the neighborhood, but because as many of you know it's a great time to refinance, and Mrs. McCartney was attempting to do that and to satisfy her lender she had to establish that this was a legitimate three family dwelling. Consequently her refinancing is held up because she was unable to establish that and ultimately learned that it was necessary to come before this Board for a special permit. The third condition is that except for creation of additional exits, required by law, the structure isn't substantially changed or enlarged. We're not contemplating any change interior or exterior in this particular case. And lastly parking and we have more than adequate parking to meet the requirement on this 45,000 s.f. lot. There is one additional requirement, sort of tucked away in the back of Section 6-6.9, which doesn't have a number. It's on Pg. 614. It says all proposed multi-family conversion to three family and the multi family and/or apartment land use be required to supply the Board of Health with a septic system plan to be approved before permits are given. I believe, a letter from the Board of Health has been submitted with to this Board stating that the existing system satisfies the requirements the Board of Health for a three unit dwelling. Under the circumstances, it seems to me as though Mrs. McCartney satisfies the criteria for the conversion for the three family. There was some confusion at one point, I think, with respect to Section K, or the section that provides with the construction of new three family buildings. This is not a new construction. This is existing building that is being converted and on that basis, I think, that she is entitled to the relief that she is requesting. And unless someone can establish before this Board that what she is proposing is going to be significantly detrimental to the neighborhood. The other thing that I might add is that as I

understand your zoning bylaw you can by rights build a two family house on a lot of land that has frontage on a street existing in 1972 providing that the lot as a minimum of 30,000 s.f. So, I think, if I'm not mistaken, and some times I find little issues hidden away in the Essex's bylaws, but as right this could be a two family. And so what we're really asking for is one additional unit, which is, in fact, the garage, which is a one bedroom unit. So we're not adding a lot traffic, or a lot of activity by asking for three units. Thank you. And Mrs. McCartney is here if you have any specific questions for her.

GINN: I have a copy of the minutes from the Board of Health when that was approved.

DUNN: Here's a copy of the electrical permit. It doesn't say too much.

PENNOYER: And the original permit taken out for this property was a two family; correct?

MCCARTNEY: I think it was for a single family. I'm going to have to say at the time of the building of this house I like many other women handed the job over to my ex-husband. There is a lot of answers that I cannot give just because of the part I played in the building. He was the contractor and he did all the foot work.

ALTHOLTZ: Can you explain one issue? You say by right she can have a two family, and you'd only being asking for one additional unit. But by right she could have a two family only if she had the proper permits to build a two family. By right, by permit, didn't she only have the right to build a one family.

GLOVSKY: You're right. What I meant was if there was nothing on the lot today?

ALTHOLTZ: But there is. So you're asking for two additional units from the original permit.

GLOVSKY: Yes.

DUNN: I believe we have a letter here from Lucy Poole that should be read into the minutes.

GINN: (Letter from Francis and Lucy Poole regarding the application of Marianne McCartney read into the minutes.)

JESSICA WARREN: I represent the Warren Family Land Trust. I am directly abutting. I can speak for the Poole's, Turner's regarding this situation. Because we did a study of that when someone wanted to put a garage where the antique store is right now. The Poole's and the Turner's all have thirty foot dug wells. Just beyond them is a wetlands that goes into a muskrat pond, and drains into Lufkins Creek. And all that soil I regret to say is really clay and rock. I represent the Warren Family Land Trust, and I really think it's a shame to have three illegal apartments without coming to any hearings which would have saved Ms. McCartney this pain and anguish, which I know is tough, but really there should have been a study of the neighborhood before it happened. I feel it's a very sad thing when neighbors have to come out and do something about a neighbor. We really put faith in the Planning Board to uphold the statute, and to know the conditions of land, and so forth.

HENRY WARREN: I live in Brookline, but I am also an owner of the land abutting. We rely upon the Town Planning Board to oversee the development of the Town in a sensible way. I think there is a question of what to do when existing structures are built. AND it's obviously a hardship on the owner. But the rights of the Town were not given due accord with the original construction.

GINN: Just so you folks know, the Planning Board was unaware of this existing dwelling. This is an after the fact application.

JESSICA WARREN: We are aware of that. This was Mrs. McCartney's ex-husband. I'm sorry he isn't here.

MARY ELLEN DELACY: I am also an abutter. I have some objections with what Mrs. Poole said in her letter. I was very aware that there was construction going on. We're directly an abutter next door. And the Poole's were aware that construction was going on. I suppose, myself included, that permits were granted and everything was above board. The

Planning Board knew. And they were paying taxes from that point on on structures that had multiple families living there. And I feel if I had a problem or a concern with the construction that was going on next door, or how it was going to be used, it was my responsibility, not just the Planning Board, to see exactly what was going on. Is this okay to do? Is it legal? And what's the zoning? My husband and I did not come forth at that time so I would feel why would I come forward now eight years later and say I should have done this eight years ago. I'm speaking for myself and saying I did know and I didn't have a problem with it then so why should I have a problem with it now.

JESSICA WARREN: You can't go ask your neighbors, is what you're doing legal. You wouldn't have any neighbors left.

GINN: Did you know during that construction that it was a three family home?

MARY ELLEN DELACY: Well, I know three families have been living there.

GINN: During that construction were you under the impression that it was a three family?

MARY ELLEN DELACY: I thought they had legal permits to make it a three family dwelling. I didn't know it was going to be a two family or three family, just that it was going to be a multiple dwelling, and I assumed that permits were issued. And Marianne probably did, too. Her husband constructed it. We've lived there for eight years and never had a problem.

GINN: So you're speaking in favor of this project. You don't have a problem being a direct abutter with this?

MARY ELLEN DELACY: No.

ALTHOLTZ: The point we're trying to make is, is this going to be substantially more detrimental to the neighborhood than it would be without it. So for eight years, or so, I mean, is it substantially more detrimental now because you have knowledge of it, or because there is an actual effect.

JESSICA WARREN: No, I'm frightened of what could happen.

ALTHOLTZ: But when you didn't know about it was there any effect on your life or property?

JESSICA WARREN: My life -- The effect on the creek. I'm really thinking more on the wetlands. There is a stream that goes through our property to Lufkins Creek. We had it tested and it's highly polluted from 133. We had it tested over a period of fifteen years. It's very polluted by the road. But, I know it's so easy to have something like that happen. It seems to me to allow more building in a tricking area where soil doesn't really absorb probably seems to me to be absurd. I'm not impacted because I don't go drink out of Lufkins Creek and I'm not a clammer. I'm not threatened. But I'm very concerned about conservation.

GINN: Your concerns are with the quality of the area and the septic usage.

JESSICA WARREN: We have given up all rights to 127 acres. It will never be built on for just this reason. Because the land isn't really perkable. We are in a high scenic value area. We have the fishing and clamming to think about. You have to be careful what we do. That's my concern.

GINN: If I could interject something quickly, I think it may address the concerns that we have and are going round and round about. Maybe we should have the Board of Health go up there and do a dye test the area. Because that will show if there is any problem. I think it's a valid concern. It's a concern from the Poole's and yourself, and there are wells in the area. I think that's a really simple easy solution to see if there is a problem or there isn't. It will show up right away.

HUGH WARREN: I live in Cambridge, but I am a taxpayer on this property that does abut Mrs. McCartney's property. The whole nature of that neighborhood has been a single family neighborhood. It has not been a multi-family neighborhood. I live in a multi family

neighborhood in Cambridge. From my standpoint it does impact the value of the property when you do go to multi-family kind of situations. So I do think it has an impact on value of the investment that people have in the area. I would like to register that as a concern.

GLOVSKY: First of all one of the things that makes Essex unique is the fact that it recognizes that multi-family and single family uses can coexist, and consequently the community has a nice balance. But that is somewhat besides the point. But the zoning bylaw does permit this by special permit if we meet certain criteria. And we're suggesting that we do. There are two other direct abutters that have signed a petition saying that they support her request to legitimize her three family dwelling.

ALTHOLTZ: How separate are the units? Has the electrical work been inspected?

MCCARTNEY: Yeah, that has been done.

DUNN: Excuse me. There is an electrical report right there that shows that not too much has been done.

GLOVSKY: I think it's a good question that the dye testing be done because that seems to be a legitimate concern. And one other suggestion that I might make if the septic is an issue is that as a condition of granting the special permit you require the septic system to be inspected and perhaps pumped on a certain schedule with evidence of that being submitted to the Board of Health. And that kind of condition we could abide with too just to make sure there is no problem with the septic.

KNOWLES: Do you know what the septic is?

GLOVSKY: It's relatively a new system. It was installed in 1982. The plans should be on file in Town Hall.

GINN: So it's ten plus years old.

KNOWLES: Is it a three family septic or a single family septic?

GLOVSKY: The Board of Health has determined the system adequate for a 5 bedroom dwelling. Determination of a 3 family status will be up to the Building Inspector and Planning Board.

DUNN: That means there are three separate kitchens.

GLOVSKY: I think the Board of Health should really have the responsibility of determining whether it's adequate. And we can submit any information that might be needed by the Board of Health to make that determination.

JESSICA WARREN: Mr. Glovsky, can I ask you whether Mrs. McCartney intended to have a three family home when she built that house new?

GLOVSKY: I can't answer that.

MCCARTNEY: No that was kind of a fall out because of a lot of marital problems. I just want to say that I care very much about the area. I care very much about my place. My improvements since I've been living there alone have been noticeable. I do not have three families living there. I have myself. Downstairs there is a couple. Next door I did not rent out because I knew I had this problem. And that is a significant loss for me. But I do not want to have cars, and people, and children at this time in my life. I want a peaceful, quiet place. And I consider my standards way above the norm of a lot of people that live in Essex, and I'm committed to keeping that property A-#-1. And I want to say I love that place as much as you love your property, Mrs. Warren.

JESSICA WARREN: I'm sure you do.

MCCARTNEY: And I'm protecting it as you're protecting your land.

JESSICA WARREN: Something might happen to the both of us. I might croak. And you might move away. And if you do move out, then we will have a different situation on our hands. While you're living there it's one thing.

GLOVSKY: There is another possibility, and that is that it can be conditioned on owner occupancy, if you think that makes a difference. There are all sorts of conditions that can be added to a special permit to safeguard against the kinds of issues that you are raising. And I think some of them would be appropriate. I'm not sure all of them would be.

JESSICA WARREN: We're just trying to be responsible. Looking ahead. You know none of us know.

GLOVSKY: And I don't blame you for that. But I think the first hurdle before we can even think about conditions is probably to do that dye testing to determine what the status of the existing system is. We'd be perfectly happy with a continuance of this public hearing if you don't want to close it, so there is an opportunity to supply the Board with additional information.

GINN: Would anybody else from the audience like to say something? (No comment.)

DUNN: I can sympathize with someone that doesn't realize that the proper permits have been issued, but I'll be damned if I can sit her and say my husband could build two families onto my home and I didn't know anything about it. I think it was intended to be used as three families. Otherwise there wouldn't have been two extra units built onto it. Besides that, I think, what Mrs. Warren said makes a lot of sense. If that had come before us at that time it would have gone under this special permit, and at this time we are saddled with a decision that we should not be saddled with. I got two calls asking why the Planning Board was not on the ball and knew about this. Well, the Planning Board can't go door to door and ask how many apartments there are. This is a slap in the face to the Planning Board and that's how I feel about this. Also, a special permit we could have put limits on this. We could have set this up better, but we didn't get that chance to do it. And as far as what could happen there, Marianne has lived there quietly since the three apartments have been there. A lot of people didn't even notice that this was there. So I'm not going against the way you would be living there. I'm saying what Mrs. Warren said. You could sell the house and what could come in there is what we're concerned with. Anything could happen in there. It's hard to make decisions when it's already there.

BRUCE FORTIER: I'm speaking in just general terms of the matter. The concern is first that Mrs. Dunn wants to put it on personal basis that you should regard any failure of the citizen to get the proper permits isn't done to you personally. I think that's a mistake in general, and particular with stuff like this. And we had a similar problem with electric stuff. We know perfectly well that loads of people do their own electric work without permits because the volume sold up at the Home Center certainly doesn't equal the permits. And I know from talking with our electric inspector he is perfectly happy to have somebody come to him for a permit if they realize for safety's sake they need it. A lot of times people do a simple thing and then say, "Oh, dear, now a really should be getting a permit. But I don't dare get a permit because then I'm going to be attacked because the Inspector is going to notice the previous." In the case of the electrical it's a very dangerous because it kind of forces people ----

GINN: Bruce, is this relevant to this case? The electrical has already been inspected.

FORTIER: Yes. What I'm trying to say is this person is attempting to seek a new permit so then she will be required to get a new occupancy permit. And then she will have to have her occupancy permit signed off by electrical inspector, health inspector, etc. So if there are any deficiencies, there will be a proper way of taking care of it. If the Board takes a belligerent attitude, you know, personal attitude, as a front, then we know perfectly well that there are lots of things in Town that don't meet the requirements. And it would be far more in the interest of the Town if those people were encouraged to say, "Look okay, mistakes are going to be made, but it's much better to get things back on the track."

GINN: We know what they're trying to do. They are coming forward now to make amends on what has happened and to move forward. If this came to the Board beforehand, before the construction started the Board would have to deny it.

HENRY WARREN: What forced the conformance was going to the bank to get the refinancing. If she didn't try to get refinancing she would have never come back to this Board in the first place. So it shows her contempt for the Board, the bank is enforcing it.

GLOVSKY: I don't think it shows contempt for the Board. If I may with all do respect. When people refinance they find all sorts of discrepancies. There is no contempt for the Board. It's not a slap in the face. And this is an opportunity for the Board to impose conditions that it could have imposed in 1982. And I think, with all do respect to the Board, we have to go back to the section in the bylaw that specifically provides for the granting of special permits to convert existing dwellings to three families if conditions are met. It seems to me that the only real potential objection as far as detriment to the neighborhood is the possibility of a septic problem. And that could be based on demonstral evidence and that is what we're going to determine. But a number of people tonight said they didn't even know it was a three family, or it has no real effect on the neighborhood, or it hasn't been a problem, and I think we can keep it that way. Especially if you impose conditions that have never been imposed on this property before.

HUGH WARREN: There is another issue you've neglected and that was the market value issue. You conveniently positioned it in such a way to say that the law allowed to have multi developments next to single family dwellings. But from a market prospective it does have an impact on the abutting land.

GLOVSKY: I don't think that's the type of objection that historically provides a basis for which somebody can claim that this is a detrimental effect to the neighborhood. If you take a vacant lot and put a house on it, it has a detrimental effect conceivably on abutting property. And in this case it's not something that's prohibited by the zoning bylaws. It's something that may be permitted by the zoning bylaws.

JESSICA WARREN: We did spend a lot of time in some Town meeting, God knows how many years ago, fifty years ago maybe, but anyway, voting in Essex that we would only have two family houses. And I don't know the status of that bylaw is now. But I do know that this was the kind of thing that we were trying to avoid.

GLOVSKY: In 1983, the Town voted to amend the bylaw to add this provision that allows for three families. For some reason the Town did that, maybe they shouldn't have done it, but they did.

ALTHOLTZ: It was built in 1982 as a single family, soon used as a two family, then in 1985 a garage was constructed and it became used as a three family. So wouldn't that construction of that garage violate Section J-3, which is a substantial change or enlargement to the structure.

GLOVSKY: No, because we are looking at it as of today.

ALTHOLTZ: We can't be. We're looking at it as if it's day one. Otherwise, we can't hear it because we can only hear an application for a conversion. So we're making believe it's day one.

GLOVSKY: I think Town Counsel addressed that issue. But, if not he could address it again. I talked to John Tierney because that was a concern of mine, too.

ALTHOLTZ: Wasn't the construction of the garage an enlargement or a substantial change?

GLOVSKY: When the garage was added to the house in 1985, it was an enlargement of the house.

JACOB MCCARTNEY: I'm Marianne's son. If you are a neighbor, or on the property, everything seems to be healthy and we've beautified the land and the area. And I think at that level, we stand for the best of things in the terms of the property and the neighborhood. I was involved with my father in the building of this house. He didn't investigate what he had to do legally, which was wrong. He should have. I was a teenager at the time and I remember learning all about the construction at the time. But I didn't know anything about legalizing apartments, and he certainly did not look into that. Now, I didn't think to myself at the time, I did not feel contempt for legality. I simply wasn't aware of it. And I feel I am

in similar shoes as my mother in that I can't say I look back at myself and say, "Dumb little kid, why didn't you look into the laws." And I can't say to my mother, "You dumb mother, why didn't you look into the laws." Because it really was in my father's hands. He did the contracting. And I accept that he didn't look into the due processes of converting this into a three family. But I can't condemn my mother for that, in fact, I think she is doing the right thing by rectifying at this time.

JESSICA WARREN: You know, ignorance of the law is no excuse.

JACOB MCCARTNEY: Ignorance, yes, but not contempt. Certainly not contempt.

ROLF MADSEN: I would make two suggestions for special permit granting authority. One, I don't happen to see a plan of what you're making a decision on on the table anywhere as a layout of what's happened on the property. I would make a suggestion that before you make a decision that you should see that. And the second thing that I would suggest is that you look at the issuing rules under the special permit process because it's pretty specific on how you make your decision regarding this. You have to regard the bylaws, but you also have to regard the special permit issuing rules. And that's how you're going to formulate your decision.

GINN: Would anyone like to add to this? (No comment.) I would like to continue this public hearing for our next meeting to give the Board some time and give the Board of Health time to investigate to see if that system is adequate.

GLOVSKY: Are you going to contact the Board of Health, or should we?

GINN: I think it should be up to you folks. One issue that has not been brought up is parking. I don't know if the driveway is utilized for all the cars or if everyone parks on the road.

MCCARTNEY: There is no need for them to park on the road. There is five parking spaces up in the driveway.

GLOVSKY: We will bring a parking plan with us, also. Thank you.

The Planning Board will continue the public hearing for Marianne McCartney on June 2, 1993, at 8:00 p.m.

Attorney Mark Glovsky, representing John and Michael Byrne, met with the Board to discuss their home occupation business, Byrne Brothers Landscaping, Western Avenue. John Byrne was present.

GLOVSKY: All of this, unfortunately is somewhat after the fact for me. John Byrne is here with me. And my understanding is that he is here before the Board because there is question about his lot coverage in the water shed district. And quite frankly I'm somewhat confused by your water shed bylaw. If you look at Pg. 623 of your ordinance, I assume that this is section that concerns you with respect to the Byrne property. It provides that residential development which renders impervious more than 15% of building lot (including the portion of any new street abutting the lot) or which has a lot area of less than 40,000 s.f. (excluding wetlands) for each dwelling unit. And it's my understanding that it's not residential development that has caused this lot to be covered by more than 15%. That it is in fact commercial development or a business development. That's one question, I have for you. And I don't mean to be coming to you with questions. I should be providing you with the answers. The other thing is that John was under the impression that he would not be able to convert to exclusively business use. And my reading of the bylaws is that it could become a purely business property. He has sufficient lot area frontage and he meets setback requirements. And, in fact, if that's the case it doesn't seem to me that the water shed bylaw, for some reason, applies to commercial uses. And that doesn't make sense to me because it seems to me that commercial uses are more damaging to the environment than residential uses.

KNOWLES: It covers certain business activities. I think, if I remember right, there was some question as to what is there now. In other words, are we talking about a home.

JOHN BYRNE: I live there.

KNOWLES: And this business is there under the home occupation?

PENNOYER: Right.

KNOWLES: So it's a home occupation.

GLOVSKY: There is a home there. We can eliminate the home if that's required. Well, it seems to me as though we can. Quite frankly, it might make sense at some point for us to considerate an alternative uses of the site. And I think in the future before any change of use or any new plans for this site, you'll be the first to know. Here we are. There is a single family dwelling and office, and a large garage building on the site. And as you can see by this sketch plan we have identified the amount of site that is covered by impervious material and we've identified the open space. The lot area is 38,000 s.f. My recollection is that you need 30,000 s.f. for a business use and you need a 150 feet of frontage, and obviously parking and the setback requirements. But it seems to me that John Byrne can convert this to purely business use and then we would not be subject to the lot coverage requirements of the water shed district.

GINN: He would or would not?

GLOVSKY: He would not.

ALTHOLTZ: It would under B7, by special permit only. Any use would be subject to that, I would think.

KNOWLES: It covers business activities.

PENNOYER: The thing I think we have to do is look at it as a residential property. We keep going back and forth on whether it's a residential property or commercial property. It is a residential property.

KNOWLES: The reason for this activity was granted under the home occupation. I remember when this first came up being overwhelmed by the argument that this is a business and it's not covered under the business use. It isn't a business use. It's a home occupation use. Don't let appearances fool you, Mark. Never mind what you might see there, it's a home occupation.

GLOVSKY: Okay. I think we're talking about two different things. I think we're talking about the classification that entitles him to be there. Is one thing.

PENNOYER: Let's deal with the fact that it's a residential property and then base where we're coming from, from that. Which is in the bylaw which talks about covered area within the parking for a residential development.

GLOVSKY: But, what I would say is that it's residential development with a home occupation business. You have a fairly broad home occupation in Essex. And it's the business aspect of the property that has been developed to cover more than 15% and not the residential use that it's classified as.

PENNOYER: No, it's a called a residential property.

KNOWLES: It's a home occupation and it's very specific. It may be broad and there may be problems caused by this particular use of home occupation. Don't let appearances fool you, Mark. This is a residential lot that we're talking about. Not a business or commercial lot. It's a residential lot by definition. Otherwise, there would be no business activity here. This was granted under home occupation in 1988.

PENNOYER: So if we go to home occupation that's another set of issues.

DUNN: The only thing I'm getting at is, I don't think pulling John in here and taking this piece of property now and try to figure out what it should be. Because it's already here in the minutes of February 17, 1988, when Jim Platt come in with the boys to the Board, I think we should personally be able to talk to John or to the family and come to something that can be compatible to both of us. It said right here, "The Byrne's proposed to put a building on the property for their landscaping business and to live in the residence." And I

remember back at that time there was a question of mixed use there. It would either have to be a home occupation or a commercial. "The lot size is 38,000 s.f. Cataldo said, What would you do with the existing commercial part of the property. And John said, Probably just turn it back into a garage." I don't know if you want to hear all of this, but there is quite a bit of discussion here on how we could work this into the home occupation. And I am one that has said we are bulging the seams of the home occupation. But it was also said in here and agreed that it was a family run business and about the employees, and all. It was agreed that these people were coming to work, get in a truck, and leave. And I think that's why we all sort of pushed to do this at the time. I think right now are concern isn't so much to change that. I don't see how we can really change it. We approved it back then. But maybe we can get it to work better for the Board, for the Town, and for Byrne Brothers.

PENNOYER: Yeah, but I think the question here is whether he is applying for a paved area within the water shed district for a residential property or our we dealing with a home occupation.

DUNN: Well, that's what I'm saying here. He was approved for the home occupation.

GINN: That's all stems from, they were asked to come in for an application for the paving because it's in the water shed district. It went along way around. Didn't file. Didn't file. We had numerous letters back and forth. He finally came in and had a discussion with the Board. Bruce Fortier was involved in that discussion and said that because it was a residential piece of property that's working as a home occupation that they do not come under the filing for a special permit for the paving in the water shed district. I think that most everyone is aware that there is a home occupation and it's kind of outgrown that situation. I think it would have been a pretty simple situation to submit a plan, file for that special permit for the paving, show exactly what is there, document it, and everything would have gone along. But, you drive by and look at that as a home occupation business and I think it's pretty evident that it's grown beyond those limits. When you pull out the minutes of the February 17th meeting, there are a number of trucks, but it's limited to the type of business. They are not in a business that would require large vehicles. And you go by and you see dump trucks parked there. It's very evident. I think with the facts in front of us it's grown from a home occupation. Now, you're trying to play on both sides of the fence. You don't want to file for a permit for the paving in that water shed district, but you still want to say that you're under a home occupation. I think there is a little problem.

GLOVSKY: I think we may be able to classify this. John, when I first met with him last week was under the impression that he would not be able to eliminate the dwelling from the site. My reading of the zoning bylaw is that he could dwelling unit and this could become a business use. And one possibility might be, if in fact you're right, and John has outgrown the property ----

GINN: If I am right or that is correct?

GLOVSKY: If that's correct. And I don't know whether that's true or not. I haven't studied the property and I've only been there once. Perhaps it is time for him to consider alternate location. And if he's going to do that, perhaps it make senses to consider what's a more appropriate use for the property. My feeling is, without being there, that it might be purely a residential use. It might not be the kind of place that it makes sense to use as a home occupation or a purely business use may be proposed. Then as you pointed out a moment ago, it seems as though a special permit may be required, if in fact, he's got more than 15% impervious. I don't know. That provision doesn't quite jive.

KNOWLES: Business all have to get a special permit. One way or another it still applies. I'm still trying to digest something that I just heard. Can somebody outgrow a home occupation?

GINN: Of course you can?

KNOWLES: And then change it to a business use?

DUNN: If the property can meet the requirements.

GINN: There will be no living on the property. They can turn that building into two or three offices and live somewhere else.

And the whole property as a commercial property.

KNOWLES: And a home occupation no longer applies?

GINN: Correct.

DUNN: Can I ask you a question? How many trucks do you have now?

BYRNE: Ten.

DUNN: Then it says here. I'm just going back to what they allowed at that time. And they did say six trucks. In the Summer there would be ten to twelve employees.

GLOVSKY: He's grown.

GINN: Part of this problem would have gone away if you had filed for that special permit this Winter.

BYRNE: You have an idea that I tried to go around all of this. I went down and I talked to Bruce.

GINN: You withdrew your special permit.

GLOVSKY: I don't want the meeting to become counterproductive. Tonight I think it is becoming apparent to me that we need to come back to this Board with a proposed plan for the recycling of this property. And what we need is a definitive plan, and in fact, and I think if you're right, it appears that regardless of whether we exceeded the 15% before the work was done, a special permit would have been needed to extend the nonconforming use by going even with the paving area. That seems to require some sort of water recharge plan. And therefore, I think, we ought to get back to the drawing table. Put that together. And determine whether we are going to go forward with this use. In this case, John needs to be advised as to what extend there are limitations on his work here. Hopefully, if he has a better understanding of the rules and constraints we're not going to waste any more of your time. There is nothing formally before you at this time. What I would respectfully request is that you put us back on the agenda for June 2, and at that point we come to you with a plan. Now that I have a somewhat better grasp of the issues. We can begin to focus on what makes more sense for the property in relationship to the neighbors and everything. And I agree with Joe, it may be examined the use of the property.

GINN: Does that satisfy the Board at this time? Does any of the Board members have anything to add to this?

KNOWLES: When was this paved? Because I remember we wrote a number of letters, not only to you, but to Dick Carter. When was this paved?

BYRNE: About a year ago. I spoke to Bruce Julian, DWP, about the permit, at which time he came down and walked around. At the time he was the one I was informed that I had to deal with on doing anything with the hottop. He said you need to fill this permit out. I filled the permit out. I paid the fee. He walked around and everything was fine. So, I felt that I wasn't trying to go around any laws.

The Board will meet with Attorney Mark Glovsky, representing John and Michael Byrne on June 2, with a definitive plan.

Russell and Betty Hodgkins, 44 Story Street, met with the Board to discuss removal of a stone wall on a scenic way.

GINN: (Reads aloud the minutes from June 6, 1990 meeting.) It has been brought up to the Board that nothing has been reconstructed or replaced as promised.

BETTY HODGKINS: Our plans have changed a little bit from that time. At the time Russell wanted to get the bulldozer in there and remove the trees. We are still doing a little landscaping that we haven't quite finished. But we would like to get permission to

leave the opening there. It is a two family house. I would like to be able to use the back door and it would make access much easier by leaving the opening there.
GINN: I don't think that's going to be allowed.

RUSSELL HODGKINS: It used to be an opening years ago. There was a garden there. And my father built that wall there. When I took it down I was wrong. I didn't realize it was a scenic way. Ignorance of the law is no excuse. I realize that. But then I came to the Board and was told to put it back. But there was an opening there because Pat Dunn's husband had plowed it out for me where it was used as a garden. And what I did, naturally, was make it wider to get in there with a dozer. So, what I'm asking is if there is any way, it was eight feet, and I'm ten or twelve feet, could I leave the additional four feet open. That's what I'm basically asking for.

GINN: What you're saying is where there was always an eight feet opening, you want to keep that open. And instead of an eight foot opening you would like to have a twelve foot opening. So you want to have two driveways.

R. HODGKINS: Yes.

GINN: I think DWP frowns on that. I'm not positive. Have you approached them?

B. HODGKINS: I spoke to Bruce about it myself. And he said he didn't have a problem with it at all. The only problem he had with it is that we had to get a permit from you because it is a scenic way and because we removed the stone wall.

PENNOYER: We have to have a public hearing on this.

B. HODGKINS: We don't have a problem with a public hearing. I have talked to several of our neighbors and no one has a problem with what we're doing.

JERMAIN: Can you bring in photographs of the way the existing wall was originally when it was an eight foot opening?

GINN: One thing I want along with the public hearing is a letter from the DPW saying they go along with that.

Sylvester Freitas met with the Board to discuss purchasing property on Scot's Way.

Freitas explained to the Board he was interested in purchasing Lot 6 of Scot's Way, and would like to set up a contractor's yard there. The septic system was designed and already approved. He is going to stay with the same septic system. He would be building in phases, starting with a 50' x 46' building with a 2' x 5' exterior platform. He would be storing heavy equipment, cranes, and his future goal is to be a marine distributor. Altholta asked what kind of materials were going to be stored there? Freitas told him lumber and oak pilings, which would all be new. Freitas raising shipwrecks, but these wrecks would not be brought to this location. He would only store the cables and equipment used to accomplish this.

The Board would approve a contractor's yard on Lot 6 of Scot's Way only if all zoning requirements and bylaws were adhered to.

Dave Hidden and Sylvia Hidden, Western Ave., met with the Board to discuss the approval of an A&R plan for Donald and Melanie Burnham, Rear Western Avenue. Mr. Hidden stated that at the last meeting this issue was tabled to the next meeting and he did not express his concerns because of that reason.

GINN: What are your concerns, Dave?

HIDDEN: I don't know if you have the plan there. The original configurations of the lot there was one hundred feet of frontage. Maybe it wasn't legal, but it was then.

PENNOYER: So your concern is Lot C, which becomes Lot D.

HIDDEN: How can we take frontage away from that lot and create another lot. And how can you take Lot A, which is a nonconforming lot and change the configuration of it and also take frontage off of that.

KNOWLES: That was my question. If I remember right, how can you carve frontage off of this and strip it out like that.

HIDDEN: You can strip frontage off of that one to make it. Whereas that roadway is a variable road. It was frontage because I couldn't have built my house there or my daughter's house there, if it wasn't considered frontage.

PENNOYER: I guess the thing that we looked at was what frontage was remaining when you look at each one of these lots.

HIDDEN: There is only 40 feet on Lot B2.

GINN: The way it was explained to me and I interpreted it was that this was not a frontage issue for this lot. The way it was explained to us was this was a nonconforming lot. What they took, this section and this section, the square footage of that lot didn't change.

HIDDEN: Exactly, but when you change the configuration of that lot and take frontage away from it.

GINN: They didn't take frontage away from it because that was not classified as frontage the way that it was explained to the Board. This was its frontage as a nonconforming lot. They were not saying that this was frontage because he said that he owns that.

HIDDEN: But, he doesn't own that other lot.

GINN: Which other lot is that?

HIDDEN: The one he changed.

GINN: He doesn't own that, no. That was never implied that he owned that lot.

HIDDEN: I don't see how under an A&R with no public hearing, you can change the configuration of a 16,000 s.f. lot. You can take away frontage on another lot. You can change the configuration of that or you can take Lot C and change the frontage on that.

KNOWLES: On C.

HIDDEN: Right, under approval not required.

KNOWLES: Is this lot's frontage the way it is on this map?

HIDDEN: It has frontage there, and it also has frontage on the front street.

GINN: This is not saying that this is frontage here. This is saying now, or formally someone, Mears, that was owned. And Burnham says that he owns that now.

HIDDEN: There is a question mark on whether or not he does own it.

ALTHOLTZ: Does he have a title to it?

GINN: Yeah, he says he owns this entire parcel. That's the way it was explained.

ALTHOLTZ: Is it recorded?

HIDDEN: Well, you find the other deed to the other part of it, and you'll be doing good. The other issue I have is the density issue. Which is putting that many house in there. And then also, I don't feel as though that plan meets the side and rear yard requirements. Because technically you don't come up with any sides and you don't come up with a rear. You only have nine feet connecting the whole thing.

GINN: How do you see that?

HIDDEN: Are you calling that lot rear. That's a side line and that's a side line. Where is the rear line? It doesn't connect.

GINN: What they said, and this is how the Board made that interpretation that the building was going in that area and they needed that width.

HIDDEN: The shape of the lot doesn't meet the requirements. If you look at the plan, it basically says it should be a square, or a pie shape, or even a pork chop lot it can be. But the rear must show and the two sidelines.

KNOWLES: Is this a way?

HIDDEN: Definitely, it is a way. It was actually the ice house road.

KNOWLES: But this is a way.

HIDDEN: Yes.

GINN: And he says he owns that.

HIDDEN: Yes, he may own it by deed.

GINN: Well, that is what has been implied to the Board. All we had to go by was a plan stamped by the engineer. The way it was explained to this Board is that's why the lot line change, so a house could be accepted for that area or back where ever it was in that area. They had 150' frontage. The house would go in here with the proper setbacks, side and rear.

HIDDEN: The density is too much. Where is he going to put his septic system? In the road?

SLYVIA HIDDEN: I would like to question the Board on how they left 40 feet of frontage for this new Lot B2. They take a conforming pre-1972, and now took frontage away, which it didn't have sufficient frontage to give up. But now only has 40 feet of frontage when it originally had 100 feet of frontage on a corner lot. Which was acceptable in 1958 the 100 feet.

GINN: The way it was explained to the Board they were not taking frontage away from that lot.

DUNN: There is so many questions on this. Can the Board rescind the motion and take this again?

GINN: I'm not so sure the Board can. But I think Dave can appeal the decision of the Board. Maybe I'm looking at this wrong or differently, but there was never any frontage taken from that because he owned that.

SYLVIA HIDDEN: We contend that there was frontage taken away.

Knowles moved to rescind the signed A&R for Donald and Melanie Burnham, Western Avenue, given new information that would effect the decision already made on May 5, 1993, contingent upon review by Town Counsel. Dunn seconded the motion, with the Board voting unanimously in favor.

The Board will hold a public meeting for Monday, May 24, 1993 at 8:00 p.m. at Town Hall.

The meeting was adjourned at 11:15 p.m.

Essex Planning Board Agenda

May 5, 1993

- 8:00 p.m. Peter Van Wyck, Turtleback Circle subdivision
- 8:30 p.m. Attorney James Kroesser, representing
Garcia Kimball, Maple Street, building permit
- 8:45 p.m. Jack Schwartz, Essex Reach subdivision road
- 9:00 p.m. Donald and Melanie Burnham, R. Western Ave.,
Form A

Planning Board
May 5, 1993

PRESENT: Rolf Madsen; Chairman, George Bragdon, Pat Dunn, Joe Ginn, Sheldon Pennoyer

Building Inspector Richard Carter, met with the Board to discuss John and Michael Byrne's home occupation business, Byrne Brothers Landscaping, Inc. Carter told the Board that their attorney would be getting in touch with the Board to discuss this matter at the next meeting. The Board scheduled an appointment for May 19, 1993 at 8:45 p.m.

Attorney Charles Clark met with the Board so the Board could sign a Certificate to certify that the plan entitled "Definitive Subdivision Plan of Land in Essex, Mass., being a subdivision of Lot #16 shown on Land Court Plan #32098 F filled with Cert. of Title #48746" dated August 1, 1987 and approved by the Planning Board of the Town of Essex on July 20, 1988, has not been modified, amended, or rescinded, nor the plan changed. Peter Van Wyck was present. Attorney Sam Hoar was present, representing abutters on Apple Street.

MADSEN: Town Counsel said that if the Planning Board can document or show that the plan has not been amended, or rescinded or modified, we should sign the plan.

HOAR: Mr. Chairman, you can't possibly say that plan hasn't been changed when you've got new abutters. The plan itself has changed. There are new abutters. The purpose of the subdivision control law is to give notice to abutters that someone is coming in with land, next to you, and they're going to develop it, and you have a right to come in and talk about, to see the plan and comment on it. And the Planning Board has the right to talk to the developer and try to accommodate whatever comments have been heard at the public hearing. In this case, in July of 1988, the estate of Helen Warren is one of the abutters and Frederick Richardson was one of the abutters. Helen Warren is now owned by Essex County Greenbelt and Fred Richardson sold all of his land to a whole bunch of people out on Rocky Hill Road. Those people have not been given an opportunity to be heard. Their lawyers went into the Registry of Deeds when they bought their property after 1988, to see what was going on in their neighborhood, and they found absolutely nothing recorded in the Registry of Deeds. So they went ahead and bought their plan. And now five years later after they have purchased their property they come in and you're telling them they don't have a right to be heard. You're not going to stop this guy from developing the property. The property is going to be developed. The thing is that he's got to develop it consistent with the wishes of the abutters and consistent with zoning bylaws. And you cannot deny a person an opportunity to be heard. And that's what you're doing. And that's why the plan has been changed. You put the plan on the table now and put the names of those abutters on it, and it's false.

CLARK: I haven't heard any support regarding the fact for the proposition that a name change of an abutter is a change in the plan for purposes of the subdivision control law. I think that's a ridiculous argument. The other argument that hasn't been met is that this Board has gone out of its way to have special meetings, special business meetings, and I haven't seen any of these people who are being talked about coming to the Board wanting to speak. And the last two meetings we've expected to have some sort of response from those in opposition, so that we could help the Board to see if we could work these things out. And we haven't received anything except a memorandum and a petition ten minutes before the meeting. Now, how is that going to help the process. The other side didn't get an opportunity to respond, and there are some issues in here that might require some legal research. However, most of the things in here we've talked about in the past meetings. Had you been here you would heard that yes, the Planning Board had the opportunity to include that three years building of the roads provision in its decision, but the previous Board did not elect to put that in condition. So it does not automatically lapse. Now, we can sit here and argue over it. All of us are at a disadvantage because somehow we can't bring Town Counsel and get him in here. But, again I see this as another delaying tactic. The Board has the opportunity to sign the plan because it has not changed.

DUNN: Can I ask Sam? Do you think what people want is the public hearing to look and see what exactly is there? They are not actually looking for this whole plan to be completely redone.

HOAR: They are entitled to a public hearing on a definitive plan. As I understand it, the plan proposes to put a Cul-de-sac at a length which is not allowed under the Planning Board regulations.

MADSEN: No matter who it is, whether it is on Apple Street, Belcher Street, or on any other street, it's a subdivision and anyone has the right to file this petition. It can be filed, whether the plan has been signed or not signed, and it requires action by the Planning Board. Whether to accept this petition and act upon it or not. I think the real important consideration when we're making our decision tonight. If we make a decision, and even though Mr. Hoar might have some great arguments on how he's presenting his case, no matter what we do, it doesn't preclude the Board's responsibility of taking some action on this petition in the near future. In the relative near future, the next meeting, or the meeting after.

GINN: What you're saying is we can move forward on a decision to sign or not sign that plan this evening, and then at a later time act on the petition.

MADSEN: We have to act on this some time.

PENNOYER: But we can act on it after we decide to sign or not sign.

MADSEN: We want to make that decision. I just want to make that real clear to the Board that we can do that. If you have a subdivision that has been approved by the Planning Board, and a certain party wants to petition the Board to review the decision, they can do so. Even with signatures on the plan. My suggestion is to send them both to John Tierney.

HOAR: The simple matter is Peter is going to develop his land. All we're saying is give the people who are now going to be effected by the development an opportunity to be heard. This may delay your process a little bit, but it's not going to stop the developer. And that's not the intend of these people. The intend of these people is to give feedback into a development that's going to be put in their back yard. Some may be in favor of it, and some may not. But they have not been given the opportunity to be heard. Instead of all this confrontation back and forth, it seems to me that having waited this long the easiest thing for him to do is go ahead and say, okay, I will go ahead and refile for definitive plan. Go ahead and give notice and don't change the plan a bit. Have the public hearing. Find out what comments there are. And then go ahead.

CLARK: There would be less confrontation if we had an opportunity to talk before the meeting. If we had the opportunity to sit down over the last couple of weeks, and I thought we were going to, we might have been able to iron some of this out. I think what Rolf is suggesting, is that there is two decisions to be made here. One is to sign the plan and let it be recorded. And then what he is saying is the Board is not precluded from coming back. When you have your election and get this all out of the way, and then take action on the petition. If someone on the Board wants to have a public hearing to discuss whether or not we should modify, amend, or rescind the plan. Have you public hearing and give people an opportunity to be heard. And then you can have vote. But I don't think you lose anything by allowing him to file. That sets the clock rolling on the tax issue and all that. And it does allow the people who were not abutters at the time in 1988, to have an opportunity to be heard.

HOAR: The only issue I have is there is no public hearing required with respect to the petition. There is a public hearing required with notice to all abutters with respect to the definitive approval. So there is that difference.

PENNOYER: I feel the one issue out of these two petitions that has some weight is the one of the abutters. And I don't know whether there are cases proving that that is in fact a change of plan or not a change of plan. Because the bylaw does not spell out that specific point. At the same time I feel we had six meetings on this. And I think we have to move forward. I think we should take these petitions and let Town Counsel review them.

CLARK: Mr. Chairman, may I suggest that we take a short break, so I can confer with Mr. Van Wyck and Mr. Hoar to see if we can work out some of these issues.

MADSEN: There are two petitions on the table. If you want to talk to everybody that's fine. We'll take the eight-thirty appointment. Does the Board want to postpone this until next week or take a motion?

ART HODGES: Can I make one suggestion? It seems to me for better or worse, and I think it's for better, it sounds like the parties are kind of getting together here. And if I were in your shoes it seems to me that it would do no harm to allow them a little bit of time to see if they can work out some of the issues.

HOAR: I would propose, I don't know about the other petitioners, but as far as I and the people I represent are concerned, if the Planning Board would commit to holding a public hearing on this plan, and on the petition to modify to rescind it, and will give notice to all abutters of that public hearing, so everybody has the opportunity to be heard on the petition to modify or rescind the plan, I would think that the procedure has gone forward and everybody has been heard.

MADSEN: Mr. Hoar, perhaps maybe you and Mr. Clark and the rest of the people regarding this matter can meet outside. Then if you want to come back in fifteen or twenty minutes with something. If you don't want to do that that's okay as well.

Attorney James Kroesser, representing Garcia Kimball met with the Board to request a building permit for property on Maple Street.

May 5-93

KROESSER: I have a letter for you. I will leave one with you for John Tierney. Frankly, what you want to read is not so much my letter, as you do the attachment to it. It is a publication put together when the small lot case in Ipswich came out back a few years ago. And it's a terrific summary of this situation we have.

MADSEN: In Parcel 1 you have clear title?

KROESSER: Yes, and Parcel 3.

MADSEN: For sake of argument, you want to build on Parcel 1?

KROESSER: Yes.

MADSEN: You can put a dwelling unit on Parcel 1 meeting setback requirements?

KROESSER: Present day setback requirements?

MADSEN: No matter what happens, building on a nonconforming lot you're still going to have to meet the setbacks. I'm not talking about the frontage requirement or the lot area requirement. If you want to discuss with us the issue of whether or not the lot is buildable you're going to have to come before the Planning Board with a site plan of what you want done, showing that it meets those requirements. The second issue is, you're going to have to show to us that there was clear title, that there is fifty feet of frontage and five thousand square feet. And I think we're in agreement with that. If you can do that there is no issue here.

JAY HAVIGHURST: In 1991, Garcia Kimball bought the land. In 1992, she sold it to Denise Deluise and she changed the deed to the land. The description changed. It's a new lot. As of 1992. Then she tried to separate the lot. I have followed this. There has been a lot of different things that Garcia Kimball has done that are not right. In 1992, when she sold that to Denise Deluise she sold the entire parcel as one parcel, and therefore, she changed. And then she sold it to Garcia back in 1992, and to her daughter, I think Ann Davis. But, that title is recorded in Salem, and therefore this would have to go through current zoning.

KROESSER: The parcel we are talking about is one parcel of land that has three descriptions to it. It's shown on a plan that way. Garcia bought it in 1991. The person happens to be my secretary. The other person is Garcia Kimball's daughter. The transfers that were made, were of the exact same piece that Garcia bought in 1991. We came in initially looking for a building permit for the one little piece on the street. Because John

had a question about the ownership between that parcel and the middle parcel, and because Garcia had title to at least a portion of the middle parcel and to the one on the street. He had a question about the nonconforming status of the one lot on the street. So I said okay fine. We'll look for a building permit for the whole three lots together which is really the one piece that she bought in 1991. Nothing has happened. Yes, there were straw deeds done to her daughter and to my secretary in order to record a plan of the property. But there has been no lot line been changed.

MADSEN: I have no argument with the lot line being changed.

KROESSER: I understand that. What she transferred subsequent to 1991, is exactly what she bought. We're looking for a building permit for the entire three parcel piece that really only amounts to one buildable lot. And what's in that information you have makes that clear.

HAVIGHURST: That's not entirely true.

KROESSER: Excuse me. That's entirely true.

MADSEN: I'm not going to get into that. I think the Board would grant a building permit if you can show clear title with no change of ownership. I think it's pretty clear that if the parcel is owned by the same party through the entire process and they want to build twenty years after the zoning bylaws change, they have every right to do so. However, if the parcel changes hands they don't.

KROESSER: Let me be clear with you so you can understand. All you need to look at, honest and truly. I don't expect you to take it from the horses mouth. If you look at this article, you'll understand what they're saying. So long as the lot hasn't changed in size or shape since before you're zoning came into existence it doesn't matter how many people have owned it. What the grandfather statute is intended to protect is a lot that hasn't been separated off from other property since the date of your zoning bylaw. A hundred different people can own it as long as the lot itself has been maintained in its existing shape since prior to your zoning or since prior to a change in it that makes in nonconforming it's okay. The protection runs through the lot. It's not a function of who owns it. And the reason is simple, if you own a ten acre piece of property and you're looking to protect a half acre of it, the zoning law is intended to prevent you from being able to get a building permit for a piece of property when you own adjoining property to it that you can combine with it, and result in having a conforming lot. That's all it come down to. Change in ownership is not relevant.

MADSEN: We'll get the letter to him and take it from there.

Jack Schwartz met with the Board to discuss Essex Reach Road, a private way.

MADSEN: Where are the barriers now? Are they above the turnaround? On the original plan the road is approximately one hundred and fifty feet long. That's the first section. The way the plan was presented before the Planning Board, what was used was a subdivision road of about a hundred and fifty feet was created for the frontage required for the condominium project on top of the hill. From the turnaround to the top of the hill was considered a common driveway. If you have a problem on the common driveway that is a matter between you and the other people using the common driveway.

GINN: I'm not so sure that second section is common driveway because I think that road was widened at the second turnaround to add frontage for those additional lots.

MADSEN: Even if that was so, with the road not being given as-built, not given the vote of the Town to accept it as way. It's a private road. It's not a Planning Board or DPW issue.

DUNN: This road is completely maintained by the people in ownership. Nobody does anything up there. There is no plowing from the Town. They do there own maintenance completely. And that wooden fence is just twenty feet from that fire hydrant from that turnaround. It's twenty feet beyond that. And that road apparently is completely private. Even the utilities. They pay for their own street lights.

. My suggestion is if you have a problem you work it out with the abutters or counsel.

SCHWARTZ: Does the town approve a subdivision plan showing the road with two lots?

MADSEN: What are you trying to do?

SCHWARTZ: I had two questions in my letter. I just want answers to my questions. What are the standards for maintaining public ways similar in nature?

MADSEN: Standards are that the road has to be accepted by the town.

SCHWARTZ: I wanted clarification from the Town on standard use of public ways of a similar nature? That was my reason for coming here. And to what extent is the Planning Board or Town Government responsible to insure whatever those standards are under any applicable law are maintained?

MADSEN: One of the things that we do when we approve a subdivision we approve standards of adequacy for access. If the road is being used for frontage it has to meet those standards of adequacy according to our subdivision rules. And that's why in looking at when the additional resubdivision was done to the property there was recommendation made the DPW for additional width of the road, then the stating that the grade was okay because it's fairly steep.

SCHWARTZ: Because of those barricades that's why I wanted to know what those standards are. If I read you correctly, safe and passable are the guidelines.

Melanie and Donald Burnham, R Western Ave., met with the Board to discuss a Form A. Clay Morin was present. The minutes from the April 7, 1993 meeting were read aloud.

GINN: One of the question in the minutes is is the existing roadway adequate?

MORIN: We did some testing. We provided a letter relative to the road and relative to the perk test. We conducted a site visit to determine the width of the gravel way. Measurements were taken at several locations along the roadway. The average width is about seventeen feet plus as far as gravel was, and there is some shoulder area adjacent to the roadway. We did a boring in front of where the lot frontage would be. It came up to six inches of medium coarse sand with some crush stone, and then from six to twelve inches plus there was coarse sand and gravel, clean and sharp. From the visual inspection we suggested at that time with a minimum of four inches of processed gravel be used on existing roadway that would be used for frontage and the gravel would only be applied for the one hundred fifty feet of frontage. Right now according to the subdivision regulations there is sufficient sand and gravel there for a roadway.

BRAGDON: Who owns the road?

MORIN: Right now Mr. Burnham owns the road area and down the section of the gas line. And on the plan we were asked to dedicate forty-four foot width of right a way for the road and we did that on this plan. Plus we created the twenty-five depth and a hundred fifty foot of frontage relative to that, and we basically swapped land with the abutter. We took 2,443 feet of land and we gave back 2,447 feet of land. We added 24.84 feet of frontage to this lot.

DUNN: I'm really uncomfortable with this. I don't see any kind of proof here. There is a lot of land owned by Dave Hidden down there. How does he feel about this? Is this a public way, a private way, is it a right of way? What are we calling it?

MORIN: I think based on our meeting the conclusion was that this was a way that existed prior to the subdivision regulations. Mr. Burnham owns that piece of land where the road is. He actually has ownership of it. He owns it all the way down and even the gas line.

DUNN: But in order to get into Hidden's or anybody else that's in there, it has to be a right of way?

Essex Planning Board Agenda

April 29, 1993

8:00 p.m. Peter Van Wyck, Turtleback Circle subdivision

April 29, 1993
Planning Board

PRESENT: Joe Ginn; Acting Chairman, George Bragdon, Pat Dunn, Joe Knowles, Sheldon Pennoyer

The Planning Board discussed the resigning of the Turtleback Road definitive subdivision plan which was approved by a previous Board on July 20, 1988. The Plan was not recorded by the applicant.

GINN: We have called this meeting so that when we come next Wednesday we can make a decision on this. And I think that it's a little bit unfair for us, as Planning Board members, to continue and drag this out, and out, and out. It's not only unfair to the applicant or the developer, but it's unfair to the Board. I think we are spending a lot of time on this. Every meeting we seem to have a discussion and I don't think we're moving ahead. If anything, we're moving backwards on it. So it was my suggestion and the Board went along with it, that we have this meeting tonight and get everything out in the open, on the table, so that everyone is comfortable and familiar with it. This will basically all pertain to the members themselves. If someone wants to ask a question, outside the table, they may. But I'd rather try and keep all the conversation related to the table itself. I really want to be able to come to a decision, and I think the Board should come to a decision, at the next meeting.

(The minutes to the April 21, 1993 minutes relating to this issue were read aloud. These minutes were unapproved. They will be voted on for approval at the regular meeting on May 5, 1993. The minutes were read only for review of this issue.)

GINN: I think we have, in our minds, what have been acted on or discussed at the last three or four meetings.

DUNN: Where does this plan come from? I mean, we're suppose to be proving that this plan has not been changed. Could that plan, in anyway, be changed? What do we have to compare this to and to prove that it hasn't been changed?

PENNOYER: This is the original. It was held by them. Could they change it? Well, in a minor way they could make changes to it by erasing on this linen. But, that's why I said, that I looked at what was in the file. We have a file with the final approved plan on it. And I took this plan and laid it over the other. I did not see any changes.

GINN: I'd like to ask Peter a question, if I may, ---

CLARK: Peter is represented by Counsel.

GINN: Would you rather me ask you?

CLARK: Yes.

GINN: The question that I would like to have answered, and I don't care who answers it, is the validity of the perk tests on that parcel?

VAN WYCK: To answer your question Joe, I have worked right along with the Board of Health, and Clay Morin is the engineer I had. The Board of Health has been very good about allowing the perks tests to continue because we've designed the whole septic system. There is a question on one of the lots. That's because we have to go before the State for a ruling on that.

GINN: The reason for my question, and maybe your attorney can answer better, but if for some reason these perk tests were no longer valid. If there time span had lapsed. There are changes presently being in the Title IV. I don't know if that would effect this property and these perk tests, or not. Is there a possibility that you could have reduction in the number of perks on this property, meaning buildable lots? I don't think you'll be able to gain more buildable lots.

CLARK: If the perks have expired, I think the logical thing the applicant can do is if the perk passed the first time on that spot, that's where they would have the second perk test again.

time schedule that is being pushed by the applicants lawyer that doesn't consider the things that have come within the process that was made available to the public. It seems to me to be pushing something that doesn't really -- you're going to put a signature on something that is going to say that you really have to consider everything. That even though the signature may offer the opportunity to look at it again with the public hearing. You are saying you looked at the circumstances contemporarily and you think this should apply in conjunction to what you've seen that exists today. And I think that really hampers any of the discussion that can go on later and I don't really feel that in the discussions that I've heard that you really feel that way. It was brought up a number of times that you felt that there was an issue of the existing traffic condition on Apple Street. And no one has received any new information on that condition to make a statement about this. You requested information for another development Low Land Farms. You requested the developer give you data on the conditions as they exist today and you haven't received those yet. So if you couldn't make a decision on that particular development with access right on the same road how can you look at this and say you've looked at contemporary circumstances and you have made a judgement saying that nothing has changed and that you feel that you can sign it.

BRAGDON: I do not want to merge two subdivision together. Let's take one issue and address that issue and try to do it properly. I agree with Joe. However, we have to address the concerns of all the new abutters. We also have to protect the legal interest of the Town.

CLARK: I want to address Mrs. Jermain's comment. A vote by the Board under Section 81X is to sign, is no more than a finding by the Board that the Board has not modified, rescinded or amended the plan, period. It doesn't mean that they've taken into consideration all these other things. All it's doing is saying that has not modified, rescinded, or amended the plan. Then on petition or by motion by one of the Board members it can consider all of these issues in a public hearing and give people the opportunity to be heard. Nothing is lost by signing this certificate and having it recorded.

MADSEN: If we're signing the certificate we're signing that there has been no amendment, modification or rescission by the Planning Board on the plan. I think that's what the certificate says. I would like to see a motion that we do that. I would also like to take the two petitions and sent them to Town Counsel. I think the Board should also take the time to read the petitions. Because each Board member then, if they feel that there are significant reasons to hold another public hearing they can do so.

Pennoyer moved to resign the definitive subdivision plan of Land in Essex, Mass., being a subdivision of Lot #16 shown on Land Court Plan #32098 F filled with Certificate of Title #48746" dated August 1, 1987, and approved by the Planning Board of the Town of Essex on July 20, 1988, has not been amended, modified, or rescinded by the Planning Board. And also to send the two petitions to Town Counsel for review. Ginn seconded the motion, with Bragdon in favor, Madsen in favor, and Dunn opposed.

The minutes to the April 21 and April 29, 1993 meetings were read. Dunn moved to approve the minutes from the April 21 and April 29, 1993 meeting. Pennoyer seconded the motion, with the Board voting unanimously in favor.

The Board continued their discussion regarding the Form A plan submitted for Donald and Melanie Burnham, Western Avenue. The Board felt as though the frontage requirements and standards of adequacy were being met.

Ginn moved to approve the Form A plan for Donald and Melanie Burnham, Rear Western Avenue, for the subdivison of land on plan dated April 26, 1993, for the creation of two lots, designated as LotB and LotD. Pennoyer seconded the motion, Dunn in favor, Ginn in favor, Pennoyer in favor, Bragdon opposed.

The Board discussed the barn being constructed by Ronald and Robin Pydynkowski, 8 Forest Avenue. The Board felt the use of the property was subservient to the use of residence. A letter will be send to the Building Inspector.

GINN: There has been nothing submitted to this Board by Attorney Hoar pertaining to the petition that he said he was going to file during the past week. Are there any issues that Board members want to discuss about this plan.

PENNOYER: I've reviewed it both in terms of content of the drawing that's being asked to sign now, compared to the drawing that was signed and filed in 1988, and there are no changes to the plan other than the smaller signature box. I have also looked into, as I mentioned before, the number of building permits that have been taken out, and I mean full house permits not additions or renovations. There was a total of three. Because my concern was to see if there was major changes on Apple Street, and I determined that there had not been. The only changes that I could see were changes in the through traffic on Apple Street. And I can't prove this, and I think the traffic study might tell us more on it. And that would be the only possible outstanding issue at this point. As Rolf mentioned last week I am sympathetic to the issue of backing up a past Board. The main reason is that I hope it would be done with work that we stand on with various projects. If we spend time working hard with a developer to possibly reduce density, or something, I would hope that it would be backed up should it come before the Board a second time.

KNOWLES: Those are two good questions. One is procedural and one is on the substance of the plan and how to determine whether there has been some substantial change or not. In your view following the precedent of earlier Boards it's a pretty compelling argument if your an appointed board. If your an elected board then the implication is there is a reason why you're elected. For judgement sake and because things change. Decisions will change. There have been bad precedent set, at least in my view, by prior Boards making prior decisions. But that doesn't mean I'm going to follow them. And part of the problem I have is on the waiver for the road. I think this has been used as the imminent reason for waivers on length of road. We fight that argument every time and this is the reason given for precedent that we must follow. I have a problem with that. There is a lot, in other words, that this plan means beyond this subdivision in this part of town because there was some unusual circumstances to it. That's one issue. Has there been substantial change? Would we approve it today? Is that the same question. I don't know. I'd like to hear from everyone else. It may be the same question. It may not be. If we were looking at this today would we approve it. Is that a fair way to determine substantial change or is it only limited to what Sheldon was saying, which is there are only three house lots. Traffic has not significantly increased. So there doesn't appear to be substantial change. I guess the three issues for me are, has there been substantial change? Would we approve it if it was placed in front of us today? Must we follow or endorse an earlier Board decision? If we were appointed we would really have a high burden to carry if we were to reverse what someone else had done even ten years earlier, let alone five. But we're elected. So we don't necessarily have the burden. The third issue, is that plan if I'm not mistaken is used as the primary argument for waiving the length of a dead end road. And that may be important for us, given an opportunity, to undo. Those are the things I've been thinking about. And I think finally the argument that this is just a late filing and all things being equal, if it was submitted on time it wouldn't be sitting here. That's true. But it wasn't. So all these issues can come up again.

DUNN: I go along with what Joe just said. I just feel there are so many people up there, you know, so many changes. I can see a lot of changes up there.

GINN: Now or in the future? Do you feel that there have been changes between the time that the plan was signed and now, or do you foresee changes.

DUNN: No, I see there have been changes up there. I think it's so unfair just to throw a subdivision at somebody that's moved up there now. I'm looking at it on one hand, the plan has been approved and what we're being asked right now is to determine whether there has been any changes. But now from what I'm hearing from our Town Counsel and all if we don't, in other words, like this plan, approve this plan, we do have the right to rescind it. So I'm just a little bit mixed up here on whether we're expected to sign it.

GINN: You're not necessarily expected to sign it. That's what all of this discussion is. What Tierney is saying you don't have a motion. This Board does not have a motion in front of it to

put out here. We get along with the neighbors. We've been quiet down there for eight years and we'd like it to continue that.

ALTHOLTZ: Is that exemption recorded?

JONATHAN JAMES: Yes, it was recorded. And again we went through the process of hiring two different lawyers to get that proposal in.

ALTHOLTZ: Do you have anything that would show the exemption?

GINN: I think to satisfy everybody's mind on this, I would like to hold this until the next meeting so Town Counsel can give us his feedback on that, as well as the water shed district if that takes into account.

A public hearing was held for Marianne McCartney, 9 Harlow Street, under Section 6-6.9 to convert existing dwelling into a three family dwelling. Attorney Mark Glovsky represented Mrs. McCartney.

GLOVSKY: I look at this as being a relatively simple matter, and it's nice to think that homeowners can handle this kind of thing on their own. But, unfortunately the world is getting more complicated. In any case, as you know because Marianne McCartney has been before your Board on a couple of occasions to discuss this matter. Her problem involves a house that was built in 1982 by her ex-husband, with a building permit being issued back in 1982. Although not all the records that we would like are available to us, but in any case, we are treating this as an existing single family house because there was never a special permit issued for it to be a three family house. So her application, which she put together pretty good by herself, states she is before this Board asking for permission, and in accordance with Section 6-6.9, to convert an existing dwelling to a three family dwelling. And your special permit provisions, set forth a criteria for converting an existing dwelling into a three family unit. The first being no dwelling will be altered to accommodate more than one family for each 10,000 s.f. of area of lot. This lot has 45,000 s.f., so indeed we have the required lot area. The second condition is that the Planning Board finds that the conversion would not be substantially more detrimental to the neighborhood than the existing use. The existing use, unfortunately, happens to be a three family use, that is not a legal three family use, but it's been used as a three family dwelling for a number of years.

ALTHOLTZ: When was it converted?

GLOVSKY: It's hard to piece that together. The house was constructed in 1982. The second unit consisted of the basement of the existing house. And it's unclear from the records when that became an apartment. And at some point, approximately 1986, it appears as though the garage that was built in 1985, was converted to an apartment use. This issue came up not because of a complaint or because of problems in the neighborhood, but because as many of you know it's a great time to refinance, and Mrs. McCartney was attempting to do that and to satisfy her lender she had to establish that this was a legitimate three family dwelling. Consequently her refinancing is held up because she was unable to establish that and ultimately learned that it was necessary to come before this Board for a special permit. The third condition is that except for creation of additional exits, required by law, the structure isn't substantially changed or enlarged. We're not contemplating any change interior or exterior in this particular case. And lastly parking and we have more than adequate parking to meet the requirement on this 45,000 s.f. lot. There is one additional requirement, sort of tucked away in the back of Section 6-6.9, which doesn't have a number. It's on Pg. 614. It says all proposed multi-family conversion to three family and the multi family and/or apartment land use be required to supply the Board of Health with a septic system plan to be approved before permits are given. I believe, a letter from the Board of Health has been submitted with to this Board stating that the existing system satisfies the requirements the Board of Health for a three unit dwelling. Under the circumstances, it seems to me as though Mrs. McCartney satisfies the criteria for the conversion for the three family. There was some confusion at one point, I think, with respect to Section K, or the section that provides with the construction of new three family buildings. This is not a new construction. This is existing building that is being converted and on that basis, I think, that she is entitled to the relief that she is requesting. And unless someone can establish before this Board that what she is proposing is going to be significantly detrimental to the neighborhood. The other thing that I might add is that as I

PENNOYER: I believe the perk tests are no longer valid because of the two years. But that is another set of issues. The applicant has this particular plan in front of us, for the subdivision of the land. In other words, he has doesn't have all of his perk tests at this point. And it's the same as Low Land Farms, he doesn't have all of the perk tests for those lots. So he still has to go through the approval process with the Board of Health, either way.

VAN WYCK: Every year I re-perk a part of the land. This year I plan a full day of perking. I have one area of Low Land Farms I'm going to re-perk. And I also have three or four perks I'll do on Turtleback Road Extension.

GINN: Theoretically soil conditions don't change. The possibility of the State's rules governing may become more difficult to comply with.

PENNOYER: The Board of Health must report to the Planning Board it's approval or disapproval within 45 days of submittal. And I realize that this is not exactly what's going on here. But, all things considered, looking on what happened in the beginning in 1988 with this, is that the applicant had a series of perks done on the land and the Board of Health had to get back to the Planning Board within 45 days. What that's telling me is that there is some necessity in the process to have the perk tests qualify or valid before the plan is approved. And what does that mean now that we know these perk tests are no longer valid. What does that mean for us coming in and resigning?

CLARK: They've allowed the system design. We've actually designed a whole system.

PENNOYER: Yeah, but you don't need to design the whole system in order to get the approvals. What I'm reading from this is that there is some tie in with the perk testing with the approval of a definitive subdivision plan.

CLARK: I think the subdivision approval process is not what you are trying to do here. It's Section 81X, which is merely the resigning of the of the plan. I think also the Planning Board function has to do largely with lot lines and roads. I think the Board of Health is concerned with the design of the system. The Planning Board process is not necessarily to determine buildability of lots, but the combination of the Planning Board function and availability of sites that will perk. And that's a chance any applicant takes. What I'll do is get together with Peter and find out what's perked and bring that information to the next meeting.

PENNOYER: I brought up this issue of perk tests and if I could find in the bylaws or under Section 81X something that said that the perk tests had to be current, or any other issues current. Then I would say forget it, I'm glad my motion didn't go through. But I don't see anything that says that. Let's see what we have in our books that can direct us one way or the other, so we can be consistent here.

CLARK: My view, Sheldon, on the Section 81X issue, is that the legislature knew what he was doing, and if he wanted to add an additional requirement that you had to go get new perk tests, it would have been put into Section 81X.

PENNOYER: See, I don't know that it would be under Section 81X. I think Section 81X is just spelling out procedurally matters. It's not telling what the requirements are.

CLARK: Well, go get new perk test is a procedure. I suggest you get the view of Town Counsel on that.

KNOWLES: Part of my concern is on the issue of precedent, and one of the things I said last time was, and I think this is right, but I don't know. And it's a question I have for everyone else on the Board. And that is, unless I'm mistaken, that this particular plan is offered as the primary reason for waivers in length of road. Is that right?

GINN: It could very possibly be. I'm not sure. Peter, do you have something to add to that?

VAN WYCK: This was never a request for a longer road. When they approved this the length of the road was not an issue. You have 1200 ft. to where the road splits for the circle. We never asked for a longer road because, in essence, the way the Board cared to interpret it, is that you had two roads. You had two accesses.

modify, amend or rescind the approval of the plan. And what's going to happen is, we've thrown this around at a couple meetings and had discussions on this, and this is going to have to be a motion made that the Board is going to follow. Now, we don't have to do that, as he states later on in his discussion with the Board. We can just roll along. We can contemplate it some more. We can discuss some more. We can kick it back and forth, and we can talk it around some more- *more*

DUNN: I agree we should make a decision now. In all fairness I think that the people that are around up here right now should be able to come into a public hearing and to see what's being put up there in their neighborhood. It isn't fair really right now to throw this at them. And yes, I do think things have changed up there. The traffic has changed.

BRAGDON: When I came in tonight I was going to accept the plan the way it was. I was going to make a motion that we recommend acceptance of the plan with the provision that the previous letter of condition be adopted as part of the motion. However, having read the minutes and knowing that there is a potential filing made by another attorney. I want to avoid any litigation to the town. I would recommend at this point in time that we consider abstaining for one more meeting so they can file and hopefully work it out between themselves and be able to resolve the issue before we have to make a decision.

GINN: I gave that some thought and I had some concern about that, if Mr. Hoar had a definite reason and a solution to this then he would have filed that petition and he didn't. That leads me to believe that there is something not a hundred percent tangible that he was standing on. But I think he certainly knows the law and he knows how to handle it, and he would have had something to this Board if he thought that was necessary.

BRAGDON: I say give him one more meeting to come up with something.

PENNOYER: We obviously have a series of different view points here at the table, and I don't know maybe you want to let some of the people in the crowd speak. I'd like to make a motion after hearing from those people.

CLARK: I just want to add to what Mr. Bragdon said. The decision at the last meeting, Mr. Tierney had suggested to Mr. Hoar that in the best interest of everyone that Mr. Hoar speak to the abutters and call a meeting to see if they could work through some of these issues. And I fully expected to get a telephone call during the last two weeks from Mr. Hoar. I'm as mystified as you are as to why there is no petition here and a reason why there was no phone call. I think we've been very patient under the law as to the time it takes to for the Planning Board to act.

GINN: I don't think the Planning Board is obligated by any time limit to act on this. I may be mistaken, but that's what I interpret from our Town Counsel. We don't have a week, two weeks or sixty days, do we?

CLARK: I think the point that John Tierney was making, and the point that I'm making right now, is that I'm not sure we'll know a whole lot more in two weeks. You're really just putting off a decision. I mean, the Board can decide not to do anything, but eventually one of the parties, and that's going to be the moving party which is Peter, is going to file something. Either a petition, same as Mr. Hoar. And that's probably what we'll do tomorrow if that's how you decide. The Board cannot sit on a proposal. You've had five weeks. That to me is enough time to consider the proposal.

DUNN: On that time limit, it has taken them almost five years and this has not been recorded, are they going to hold this for another five and are we going to have all these changes? A lot more changes.

CLARK: The filing by the statute has to be done within thirty days.

Pennoyer moved to sign the subdivision plan submitted by Peter Van Wyck that was approved by the Board on July 20, 1988, and has been asked to be resigned because the definitive subdivision plan has not been amended, altered, or rescinded nor the plan changed. Dunn seconded the motion.

PENNOYER: Under my motion I have not put down a time restriction for the construction of this project. Can I hear somebody else who might feel that we should and if we should add that in.

GINN: I think there should be a time span on this because after a period of five years this would have become null and void, I believe, if nothing had been done with it.

Pennoyer moved to amend the motion to include a time restriction for the completion of work on Turtleback Road extension, the completion shall be done within a two year span from the date when all Boards and Agencies reviews and approvals are acquired by the applicant. Dunn seconded the motion. Pennoyer in favor, Dunn against, Knowles against, Bragdon against.

GINN: One in favor. Three against. The motion doesn't carry. I will now look for a second motion on where to take this. What do you want to do. I think it is a little bit unfair for us to continue batting it back and forth, and moving basically in a negative way.

KNOWLES: I know Rolf feels strongly about this. I know he feels strongly about a couple of the issues that I've brought up and he's on the other side. And I think in fairness given his experience on the Board, and in fairness to the applicant that we should make a final decision with him at the next meeting. In other words, I don't think it's fair to say we'll do this again next week because we've already done that a couple of times.

GINN: If that's what we're going to do I would like to have a posted meeting on April 29th so that all Board members can sit and discuss this. This is Board members. It is open to the public, but we'll be discussing this amongst ourselves. Pros, cons, and put together some sort of a motion that we feel will be acted on at our next meeting.

PENNOYER: The other option is to make a motion to deny it and start the ball rolling.

CLARK: I think in light of the vote you've taken, the prudent course would to take no further action tonight. You don't have Town Counsel here. I think we all need to do some work, and that includes the Board. At the last meeting a couple of you said you were going to look at the minutes and pull out the information that's necessary. If you have a problem with the plan that may cause you to rescind it, let's put some issues on the table not talk in generalities. What's good about the plan. What's bad about the plan. Secondly, I'm trying to achieve and other people in the town, among the Planning Board, Conservation Commission, and the Town Counsel and the Selectmen, is Turtleback Road is coming into the Lowland Farms plan. There is a body of ongoing litigation between the applicant and the Town. And possibly there is DEP action. We're trying to work through all of these issues. No one Board is going to making all of these decisions, but the Town has to develop a position regarding Peter Van Wyck and projects so that it can move forward. The Board is being asked to narrow those issues and get them on paper with regard to ongoing litigation and the DEP. The DEP is coming out in early May to review Peter Van Wyck's compliance and the consent of decree. Now, I think we all have a window to go through to move a lot of forward. Otherwise it's going to sit here.

GINN: I would like someone make a motion to have a special public meeting on the 29th of April, and we do not need Town Counsel present at that meeting, but that we have him at our May 5, 1993 meeting.

Knowles moved to have a special open public meeting, posted to the public, on April 29th, 1993 at 8:00 p.m. Dunn seconded the motion, with the Board voting unanimously in favor.

Tom Ellsworth, Belcher Street, met with the Board to discuss land on Belcher Street.

ELLSWORTH: I met with you a few months ago. I have a parcel of land on Belcher Street that I purchased separately. I would like to be able to sell it for the construction of a single family house lot. The problem is it only has 93 feet of frontage on Belcher Street. There was some question whether you could approve it or it had to go to the Board of Appeals.

GINN: Where there is a deficiency in the plan for a Form A we have to physical deny it before it can go to the Board of Appeals.

PENNOYER: Just to refresh my memory, the reason you want to get this lot approved with the '93 of frontage is because of the issue of the stone wall, wanting to retain that as a property line rather than putting an arbitrary line.

ELLSWORTH: That's right. I have additional frontage over here. I first bought this parcel. And then a period later I bought this. And I'd like to keep the bounds within the stone wall.

GINN: You could change lot lines to create 150 feet of frontage?

ELLSWORTH: I could. But, I don't want to do it.

GINN: I think that it would be a logical trade off if the Board of Appeals would grant that ten acre sight for one house lot.

PENNOYER: What's the size of your lot over here and it's frontage?

ELLSWORTH: This is about 15 acres and I think it's about 450 feet of frontage. I could be off by 50 feet. There is plenty to do it, but I really want to keep the lot lines within the stone wall and not get into an issue where to get to my house I have to drive across somebody else's piece of property.

PENNOYER: I'm asking this just as question. Is it in the interest of the Board given the fact, that maybe somebody else owns some property down the road other than you, if you take it as one parcel of land there is a specific potential, if you reduce the frontage, if you did do the scheme of stealing some more frontage from here you've reduced the potential for A&R development of the limiting property. Without changing property lines, retaining the stone wall as a property line is there any way that the Board of Appeals or that the Planning Board can make a recommendation of the Board of Appeals that there be a limited A&R subdivision potential for this piece of property in the future.

GINN: I agree whole heartedly with you. The reasoning behind that would be the potential for permeability of soils, and they're not real super up there.

PENNOYER: Yeah, but way down the road if we were to have a municipal sewer system in the future that would be something that we would rely on to control density and that would be gone.

ELLSWORTH: I can agree with this. And I feel fairly comfortable I could get a couple of houses on this piece of land. I think that without confusing this lot, certainly I would be willing to state that if you give me permission to build there that it would be for one house lot. The alternative would be to take some more land and get two house lots.

PENNOYER: I think what we have to do tonight in order to give you direction is move to deny this plan based on the frontage issue. Then you can take the next step which is to go to the Board of Appeals.

ELLSWORTH: Also, do you have the ability to make a recommendation to the Board of Appeals, or is your role strictly to deny?

PENNOYER: To deny.

ELLSWORTH: It would do my case better with the Board of Appeals if the Planning Board denied it, but made a recommendation that the Board of Appeals approve it if the owner is willing to limit that to one house lot.

Pennoyer moved to deny the application for a building lot for Thomas Ellsworth on Belcher Street, based on the insufficient frontage of 93 +/- feet to be a single family house lot. And it's Lot 2B of 10.6 acres, plan dated March 25, 1993 by Hancock Survey Associates. Knowles seconded the motion, with the Board voting unanimously.

GINN: Let the minutes show that discussion of limiting the Lot 2B if the Board of Appeals were to choose to allow it to become a buildable lot without the proper 150 foot frontage, that the lot be used for one lot that the Board would be in favor of seeing that use.

PENNOYER: I'd like to add something to that. I'm sympathetic to Tom's sensitivity to retain stone walls as a character for being property line rather than arbitrary property lines. We've had subdivisions that have property lines that go all over the map. And trying to retain an existing stone wall so that it stays and doesn't get knocked down because somebody else has a piece of land and they bulldozer it. I think there is some merit to that.

Dunn, Pennoyer, Knowles, Bragdon, and Ginn agreed with above recommendation.

Attorney James Kroesser, representing Garcia Kimball met with the Board to discuss property she owns on Maple Street requesting a building permit.

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KROESSER: She owns all three of these parcels. It's really one parcel shown on your accessors map that way. There are three separate parcels in all of the deed descriptions all the way through. We came in looking for a building permit for this lot because I'm trying to clear up a title problem for her with the middle one. And she had been thinking that she was going to sell this end piece off to some of these abutters. Put a house on this one. Clear the title problem up. And then add Parcel 2 to Parcel 1 at some point. It's by the boards. I don't think there is any interest with any of those abutters in buying this. She simply wants to get a building permit determination for the whole piece as opposed to this piece alone.

PENNOYER: I think you just contradicted yourself. Because you said you were looking for a building permit for Parcel 1.

KROESSER: The last time we were in it was a permit for Parcel 1. John Tierney got a whole set of the materials I forwarded to you. I've talked to him on the phone. He wrote you back and you've got a letter on this somewhere saying essentially that you had to make a determination as to whether or not her interest in Parcel 2 created a merger of these two lots so as to deprive her of the right to split this one off separately. And I said the heck with it. I don't want you to have you fuss with that issue. She owns all three of them together. We want to effectively wipe these lot lines out and get a permit for all three of them as one combined lot.

BRAGDON: Does she own a clear title?

DUNN: With the middle one, how can we give her a permit if that isn't clear?

PENNOYER: If it comes before our Board with a stamp from a surveyor showing lot lines and showing her as being the owner of that property then we can't question whether, in fact, she owns it. But a surveyor as to verify that, in fact, she owns it. This is not a plan showing that obviously. So what you're saying is you're looking for a building permit that would include the whole thing.

KROESSER: Yes, for the combined total of all three of those lots.

PENNOYER: And if you combine the total of all three lots what's the area?

KROESSER: It's still short, but it's a grandfathered lot for the reason that it's never been held in common ownership with any of these parcels around it. The piece was sold after zoning took effect. This piece was sold in 1964 after your zoning came into effect and it created the effective legality of this remaining piece of hers. This piece, if I can call this one piece, has been owned separately apart from all of these other parcels since way before Essex had zoning.

PENNOYER: This does not have sufficient area?

KROESSER: Your base line requirement under the statute, and John Tierney agrees with me on that score, his letter to you says that, you need at least 50 feet of frontage and at least 5000 square feet of area. Parcel 1 had that. It has 5900 square feet and 58 feet of frontage. So that Parcel alone had enough. And that's by the boards.

GINN: I disagree with that. It does not have enough at the moment.

KROESSER: It doesn't have enough under your present zoning, but the lot existed as a separate lot before your zoning existed, therefore, it's a grandfathered lot.

KNOWLES: Was anything built on there?

KROESSER: There didn't have to be.

KNOWLES: Even after zoning came in?

KROESSER: No, nothing.

PENNOYER: If you have in a town a zoning district, and the town chooses to change that zoning district from an industrial to an R1, to down zone it.

KROESSER: You're talking use now, not dimension. But that's okay.

PENNOYER: Then does that mean, that if I had a lot in what was an industrial and it's gone to an R1 residential, would I still be allowed to put my industrial plant on that piece of property?

KROESSER: No, because it wasn't there. You can't build an industrial building on a residential zoned piece of property. It's the corner store question. If there is a corner store here and it's been there since 1880 and when your zoning took effect, it was zoned residential from the onset, the store gets to stay. The same exact theory applies if it's a vacant piece of land. What she's looking to do conforms to your use requirements. It's a residential district. That's what she wants to build there. So we're not talking about a use issue. We're talking about a frontage issue. She has the 50 feet that the statute requires. She has 5000 square feet. So the only other question you need to know, and I'm telling you in my letter is, has the lot always been owned separate and apart from the adjoining properties since before zoning in Essex. And the answer is yes.

KNOWLES: We would have to deny this on the frontage only knowing what we know in the book.

BRAGDON: Has this been perked?

KROESSER: Yes, there is a perk on this lot. The reason she wanted to build on this lot is because the perk is on it. And it would have got her off and running, and she could have dealt with what to do with the other two at a later time.

KNOWLES: What's the date cut off for the 50 feet of frontage?

KROESSER: Whatever the adoption of zoning was in Essex, which I think is '59. It's a title issue more than anything else. She owns perfectly clear title to Parcel 1, and Parcel 3. We've got a question on Parcel 2, that frankly, isn't solved yet. But she's got a deed of record for all

three of those lots. There is no reason in my opinion why the lot can't be given a building permit so long as you're comfortable that it qualifies. All you have to ask Tierney is, is it a grandfather lot. Is Kresser telling us the truth? And if he says yes, we're done, and I get out of your hair.

GINN: I'd like to get some time aside at our next scheduled meeting, which is the 5th of May. We'll send this to John Tierney.

Jack Schwartz, Essex Reach met with the Board to discuss Essex Reach Road, a private way.

SCHWARTZ: It has to do with two questions I have and I put them to the DPW, regarding the Essex Reach subdivision road, and Bruce basically referred me to this Board. As you know, I live on the Essex Reach subdivision road and I have an interest in maintaining the road to the standards used by the town for public ways. We don't always agree on how to do that. There are barricades that obstruct the common way along the frontage. I've asked them to take it down. So my first question is, do the standards used by the Town to maintain public ways include the use of obstruction or other such barricades. And the second question is, trying I'm trying to get a sense of the scope of responsibilities of local government and the Planning Board to insure that the standards are being met in private subdivision road. The objective for the barricades is to prevent people from driving up to the condominium.

PENNOYER: We had a gate at the end of Grove Street, and there were some people in town who believed that Grove Street went all the way through to Gloucester. That one died awful fast, when we told them to all right build a road all the way through and we've got frontage. But, there was a whole issue of us obstructing a way. Well, that's seem to me what is going on here. They are obstructing a public way. The subdivision control law says it has to be so many feet wide, whatever, the standards for the road are.

KNOWLES: Your situation is, whether that was a way or not. It's clearly a private road, which is suppose to be maintained by the town's standards. The answer to the first question is, I think, no. You can't obstruct anything. Even speed bumps. I don't think you can just throw speed bumps up there.

SCHWARTZ: For the record, let it be said that the road is suppose to be maintained and utilized and passable for all public purposes of which a public way is used in Essex. As a private way with individual interest it has to be maintained for public purposes because the DPW has an easement of facilities up there. It has to be kept safe and sound for government, fire, etc.

PENNOYER: Okay. Maybe the original subdivision approval of the road included these fences that were set across it, and if not, why are they there.

GINN: It's a private road. Privately maintained. Privately owned. The Town doesn't own it. I don't know what jurisdiction this Board may have.

KNOWLES: I think if there is an obstruction there it is this Board's interest because of public safety.

GINN: They own it, but it has to be built to the town's specs, standards. I don't know if this Board has any jurisdiction over that. I think probably Town Counsel can tell us. But, I would think that some Board would have the authority to say you can't just automatically barricade that road. I'd like to refer this to Town Counsel. Can you give the Board a letter with a brief synopsis of what's happening, so we can relay to him as per discussion and minutes of the meeting?

The Board discussed requesting John Tierney, Town Counsel's presence at future meetings.

GINN: I personally asked Bob Dawe, Selectman, to have Town Counsel present when the Board needs him on Wednesday evening. Most importantly with just about every meeting with Peter Van Wyck because what's happening is we're getting caught in the corner. We listen to the audience. We listen to Counsel for others. It literally confuses me, and I think other Board members as well. And we're also losing a fair amount of context in the repeating of questions. Basically, what this comes down to is that, Bob Dawe suggested that this Board write a letter asking the Selectmen to have Town Counsel present at our meetings, and to enhance everything.

PENNOYER: I think we are looking at writing two letters to the Board. One letter is to specifically to make a request to be at our next meeting for three applicants who we want to have him here for. I think the second letter is to request an increase in participation by Town Counsel with the Planning Board. In other words, make him more readily available to the Board.

GINN: Could we please draft a letter to Town Counsel be on a will call through the Board of Selectmen to participate in our meetings especially when the Peter Van Wyck dealing are at hand. There are consistently a number of issues that the Board needs Counsel's opinion on that we are unable to make a decision without information from him.

PENNOYER: We would also like to request the presence of Town Counsel at our meeting of May 5th to assist in opinions for Peter Van Wyck, Garcia Kimball, and Essex Reach subdivision.

The Board discussed Betty Hodgkins, Story Street, which is a scenic way, a permit for a driveway.

DUNN: They removed that wall. He has a trailer up there. He has a driveway. The DPW denied him a permit for his driveway. The reason was because they told him he had to come to his on the scenic way. Do they need a special permit to remove that wall on a scenic way?

GINN: I think he has to apply to this Board for that. We did not grant him any type of approval whatsoever. We called him into the Board and that was a temporary access for construction for, whatever, and he was planning on putting it back. Maybe we should research. Get those minutes and make a copy of them and send them to him, and state that he should put the wall back.

It was never asked to become a permanent driveway. It was for a temporary reason. We'll send them a letter.

The Board discussed the previous Executive Meeting on April 29th, 1993. Two members of the Board will work with the Conservation Commission to try and resolve and negotiate a resolution to what we're dealing with in regards to Peter Van Wyck. Dunn and Pennoyer volunteered to work on this project. Ginn volunteered to help out as needed.

Knowles moved to adjourn the meeting. Pennoyer seconded the motion, with the Board voting unanimously in favor.

The meeting was adjourned at 11:00 p.m.

Essex Planning Board Agenda

April 21, 1993

- 8:00 p.m. Peter Van Wyck, Turtleback Loop Plan
- 8:30 p.m. Attorney John Guerin, for Donald Burnham,
R. Western Ave. CANCELLED
- 8:45 p.m. Tom Ellsworth, Belcher Street, land division
- 9:00 p.m. Attorney James Kroesser, for Garcie Kimball,
Maple Street

Planning Board
April 21, 1993

PRESENT: Joe Ginn; Acting Chairman, George Bragdon, Pat Dunn, Joe Knowles, Sheidon Pennoyer

Building Inspector, Richard Carter submitted a building permit application for Richard Dorman, Dorman Realty Trust, 20 Forest Avenue, to change existing one family house to a two family house, one and two bedroom apartments, add on 8'x9' addition to existing room on back of house.

Pennoyer moved to approve the building permit application for Richard Dorman, Dorman Realty Trust, 20 Forest Avenue, to change a one family house to a two family house, with two bedrooms on the first floor and one bedroom on the second floor, with a 8'x9' addition to existing room on back of house, under Essex bylaw 6-4.2 that the proposed extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. Dunn seconded the motion, with the Board voting unanimously in favor.

A building permit application was also submitted for Westley C. & Dawn Burnham, 22 County Road, to construct a 1 1/2 story, 24'x 36' garage with "in-law apartment" on second floor.

Pennoyer moved to approve the building permit application for Westley C. & Dawn Burnham, 22 County Road, to construct a 1 1/2 story, 24' x 36' garage with an "in-law apartment" on the second floor, under the Essex bylaw 6-4.2 that the proposed extension or alteration shall not be more detrimental than the existing nonconforming use to the neighborhood. Dunn seconded the motion, with the Board voting unanimously in favor.

The Board discussed the building permit application for Ronald and Robin Pydynkowski, Forest Avenue, for a barn. The Board had previously approved a home occupation, a landscaping company, at the property on Forest Avenue at the November 4, 1992 meeting. The following concerns were expressed:

PENNOYER: I'm very much for home occupation, but one of the things that I'm concerned about is the issue of changing the quality and the image of the property. In other words, the intent of it is keep it as residential property. They are building a barn that's way to big. They brought in a set of drawings when they came for approvals and it was a very small barn. And now it's a commercial enterprise if I've ever seen it. It's 30 feet high, 40 feet wide, and it fits a boon truck in it.

DUNN: Did his permit cover that size?

PENNOYER: Yes, it did. But it's a home occupation. It's gone now from what I view as a residential property to a residential commercial property. Now, that garage that can take all other kinds of uses. It's not a barn.

DUNN: If it's a home occupation you're suppose to have that setting just as it is. You're not suppose to have any substantial changes. And a barn that size is change.

PENNOYER: Okay. If he did not come for a home occupation. He just bought the property and he wanted to put a barn in of residential scale, nobody would say a word. Right. So my feeling was he could put a barn in as long as it retains the basic image of the property that existed, which was a residential property. Now, it's changed. The bylaw says that the property must retain it's same identity. It cannot be drastically altered. That's what I'm telling you right now.

NEIL DAGLE: I agree with the gentlemen on the Board, what looks to be framed out right now looks as though it's going to be some monstrosity. And if he brought in some plan that was lesser in size and more in tune of what the existing building in the neighborhood, and has gone

on to build what looks to me to be a monstrosity. I think it should be looked at. It's just something I've noticed in the last couple of days.

GINN: The plans that were submitted according to the Building Inspector are being built. Now, what I think happened is that the Board did not look closely enough at the building itself and the plans versus the home occupation issue.

PENNOYER: The drawings that were held up in front of us is not the building that is being built. And I'll tell you that right now. And she stated, "The barn that is going to be put up will be in keeping with the nature of the house, which is an old colonial type house." That's clearly not happening.

Pennoyer moved to send a letter to Ronald and Robin Pydynkowski, 8 Forest Avenue, expressing our concern with the barn that is being built on the property, and it is nonconforming to their intentions that they expressed to the Board originally. Knowles seconded the motion, with the Board voting unanimously in favor.

At the April 7, 1993, motion was moved and carried out to have the Building Inspector enforce the Essex bylaws on the property of Michael and John Byrne, Western Ave relating to their home occupation business. A letter was given to Richard Carter and the following was discussed with the Board.

GINN: There were a number of issues that the Board had asked that he do. One was to screen the property. For a passerby to drive by that property they could not look at that property and not see a fleet of trucks. Everything was suppose to go inside the building that they were to be building at that time. Nothing would be seen. I think some research should be done on this.

CARTER: I've been up there a dozen times. I've been up to tell them they couldn't park the vehicles out front and his equipment. It was moved down to the side.

GINN: Let's research the minutes when they came in for their permit. Are they storing chemicals there because it's in the Water Shed district?

CARTER: I'll have to look that up and get back to you at the next meeting.

The minutes to the April 7, 1993 meeting were read. Pennoyer moved to approve the minutes of the April 7, 1993 meeting. Knowles seconded the motion with the Board voting unanimously in favor. Bragdon abstained.

Attorney Charles Clark met with the Board to have the Board sign a Certificate to certify that the plan entitled "Definitive Subdivision Plan of Land in Essex, Mass., being a subdivision of Lot #16 shown on Land Court Plan #32098 F filled with Cert. of Title #48746" dated August 1, 1987 and approved by the Planning Board of the Town of Essex on July 20, 1988, has not been modified, amended, or rescinded, nor the plan changed. At the April 7, 1993 meeting the Board decided to further investigate minutes and correspondence at the time of the approval. Peter Van Wyck was present.

CLARK: I don't have a whole lot to add from my previous discussion with the Board. My position has not changed. I believe the Board should go ahead and sign the plan. It's well within the time period. The plan has not been rescinded, amended, modified. I think you should get on with it.

PENNOYER: Has the petition been submitted by Attorney Sam Hoar?

GINN: I have nothing in front of me. There has been no motion submitted by Attorney Hoar.

CLARK: Nothing was sent to me.

CLARK: The point being that you had two ways out.

VAN WYCK: There are two ways out. I never approached beyond the 1200 ft. before you had two accesses.

KNOWLES: So this wasn't defined as a dead end road.

VAN WYCK: It was not defined as being beyond the 1200 feet maximum length of road because we just had an added circle. If a house is here, which is beyond 1500 feet, they can go this way or they can go that way.

KNOWLES: Was this considered two roads?

GINN: No.

PENNOYER: Two entrances.

KNOWLES: I think in a lot of cases we've seen that this particular plan, for right or wrong, has been offered up as a precedent for a way to extend the length of a dead end road.

CLARK: A waiver is sort of a generic thing. You shouldn't be swayed by it. You can argue it. But in every case it's different.

GINN: The biggest concern that the Board as a whole should have is if you are going to deny this plan then the Board should have some tangible reasons, so they will stand up in Court. We can discuss that this evening, if we're unsure of something or hesitate because of whatever, we still have an additional week to consider this and talk to our Town Counsel about it.

PENNOYER: If that's the route we're going to take, which is to wait until the meeting to answer some of the questions that we raised here at this meeting. One being the issue of perk tests? The perk tests are no longer valid. I don't think anyone would deny that because they are in the excess of two years old. Does this plan require to have those perk tests current or not?

GINN: I think we should be asking the Board of Health to state what is actually current up there, if anything.

BRAGDON: This could be dealt with in a letter of condition if we approved it. Approved contingent upon the fact that they obtain a valid perk test.

DUNN: I have written out a motion which I will not read as a motion, of course. I have decided that we should sign it. I am not making up your minds. But, based on previous approval by the Planning Board the basis for this motion is that there has been no changes made on the plan. That's what we've decided. No substantial changes have occurred in the general area. I've batted that around and around. I've said yes, yes, yes, there has been changes. I really had to think about this. I've been even thinking about my own neighborhood. Story Street. There has been changes. I mean, right across the street we've had three or four families move in, move out. Are we basing that on that type of thing. And I think it's unfair because there are new families up around there. They didn't know about this. But, would that make a difference. Would that make a change in that Board's decision because a family moved out and a family moved in? The traffic, I feel there is a slight change. I feel there is a slight change in traffic all over the Essex. I don't think I could vote not to sign the plan because a previous Board has approved it.

The Board agreed to write a letter to John Tierney, Town Counsel, requesting additional information relating to the suggested motion by Dunn. The Board is also requesting opinion from Town Counsel regarding two questions, should a time restriction be put in as part of the motion and if the perk tests should be current before the Board resigns the plan.

The meeting was adjourned at 10:00 p.m.

Essex Planning Board Agenda

April 7, 1993

- 8:00 p.m. Peter Van Wyck, Turtleback Road Loop
- 8:30 p.m. Donald Burnham, R Western Ave., Form A
Attorney John Guerin
- 8:45 p.m. John Havighurst, Winthrop Street,
home occupation
- 9:00 p.m. Marianne McCartney, 9 Harlow Street,
submit application for Special Permit

Planning Board
April 7, 1993

PRESENT: Roif Madsen: Chairman, Pat Dunn, Joe Ginn, Joe Knowles, Sheldon Pennoyer

Building Inspector Richard Carter submitted a building permit application for Elizabeth Story, LaBaron Road, to increase size of wooden open deck from 6'x10' to 12'x16'.

Pennoyer moved to approve the building permit application for Elizabeth Story, LaBaron Road, to increase size of wooden open deck from 6'x10' to 12'x16', under Essex bylaw 6-4.2 that the proposed extension and alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. Ginn seconded the motion, with the Board voting unanimously in favor.

A building permit application was also submitted for David and Patti Burnham, 110 Martin Street, to construct a two-car garage with one bedroom.

Pennoyer moved to approve the building permit application for David and Patti Burnham, 110 Martin Street, to construct a two-car garage with a one bedroom under Essex bylaw 6-4.2 that the proposed extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. Knowles seconded the motion, with the Board voting unanimously in favor. Ginn voted present.

The minutes to the March 17, 1993 meeting were read. Knowles moved to approve the minutes of the March 17, 1993 meeting. Pennoyer seconded the motion, with the Board voting unanimously in favor.

Attorney Charles Clark met with the Board so the Board could sign a Certificate to certify that the plan entitled "Definitive Subdivision Plan of Land in Essex, Mass., being a subdivision of Lot #16 shown on Land Court Plan #32098 F filled with Cert. of Title #48746" dated August 1, 1987 and approved by the Planning Board of the Town of Essex on July 20, 1988, has not been modified, amended or rescinded, nor the plan changed. At the March 17, 1993, meeting Knowles moved to ask Town Counsel to investigate and review thoroughly the legal points of view by both Counsel for Mr. Van Wyck and Counsel for abutters for property in question, and report back to use, in person, at this meeting. The Board voted unanimously in favor. A copy of unapproved minutes from the March 17, 1993 meeting were sent to Town Counsel for review. Attorney John Tierney was present. Attorney Sam Hoar was present, representing abutters on Apple Street. Peter Van Wyck was also present.

TIERNEY: The question that was presented to me, said nothing about whether or not the Board could, or had the power to, or the authority to rescind, modify, or amend the plan. I thought that was pretty much understood in your own understanding of your bylaws, or even in the wording of your statute. And the question to me was, having the plan been presented after this time must the Board sign it. I just reiterated what it said in the statutes, which is essentially after review of your records or the Clerks review of your records, if it hasn't been rescinded, or amended, modified, or whatever, then the Board should sign it and let it go on record. The second question, however, is can you do those things. Yes, if you have a good faith basis for doing those things then you certainly can within your own rules or under the statute take appropriate action, if you feel it's appropriate. But as always you have to act in good faith and you have to have the basis for it, and

my opinion would be that you have to provide everyone, the abutters, interested parties, as well as the applicant another notice, hearing, and a written decision from which anyone who disagrees can appeal.

KNOWLES: Does the time delay, between 1988 and now, reasonable grounds to think there might have been changes in the area alone just on the time delay?

TIERNEY: I think you have determine on the facts whether or not there is reasonable facts for that. I don't think you can assume that just since time has past that has happened. But you can inquire into the facts to see whether or not that situation has arisen. It doesn't just happen automatically with time. You have to base it on facts.

PENNOYER: You should be asking yourself a series of questions. Has the traffic increased on Apple Street? How much development on Apple Street since 1988? I found out that three building permit applications were taken out.

KNOWLES: How in depth should an investigation be at this point?

TIERNEY: In depth enough for you folks to satisfy yourselves that you are acting on sufficient information to be fair to everybody. You have the obligation to base it in good faith on reasonable information. And you have to make enough inquiries to satisfy yourself that you're doing that.

PENNOYER: Let me ask the Board what are some on the issues that would concern you with respect to this subdivision on the table? We've talked about traffic.

MADSEN: What kind of changes would you be looking for? I mean, has there been significant development on Apple Street that would say to the Board that the factors taken at the time of this approval would merit a new review?

DUNN: I think just the general changes in the traffic.

KNOWLES: Are there any changes in engineering standards?

MADSEN: I know that the subdivision regulations themselves have not changed since this plan has been approved, except for the Water Shed district, which is a zoning bylaw change. When I sat on the Planning Board when this thing was approved, and I feel very strongly that unless it can be demonstrated to me that there has been significant changes since this approval was done five years ago, I think we should give him a signature. Because I think it would be wrong on the Planning Board's part to over turn a decision of another Board without substantial grounds to do that. The Planning Board, which is made up of seven members, reviewed all factors at the time of the plan, reviewed in terms of all the regulations and made a finding. Unless it can be demonstrated that there has been significant changes or modifications since then, I think it would be inconsistent for us to turnaround and now not sign the plan.

HOAR: My only thought is the following, the law states after a certain while things die. And this plan in terms of fairness, is it fair to people who are new abutters to this property, who were not there before, are finding this property to be developed. And I suggest there are other abutters who haven't been identified, not just on Apple Street. There are also people who live in the back land. Isn't it fair that they be given notice and the opportunity to be heard with respect to this subdivision. Because that is substantial change. The whole neighborhood has changed substantially in five years. And the law provides that you have the power to modify or to cancel

your approval based upon not only within internal changes within the plan, but also within external changes outside. In terms of fairness, it seems to be, it behooves Mr. Van Wyck and the Planning Board to revisit this situation. The Planning Board should sit down with Mr. Van Wyck and his Counsel to take into consideration the concerns of all the new people who may be interested in it. Whether or not something can be done with this development which will benefit the Town and Mr. Van Wyck to let it go forward in a manner which will be peaceful rather than confrontational, which it has been in the past. I don't think it's a question of preventing Mr. Van Wyck from developing, but the law does say that after a period of time you have the power to rescind your approval. The law does say, although you didn't do it, apparently, that you have the power within your own regulations to stipulate if you don't put those roads in within three years our approval is automatically lapsed. And that should have been done here. That's why those regulations are there. This thing shouldn't be allowed to hang out and dry for years and years and years. It's got to stop drying. I suggest that it has stopped drying and revisited in the interest of everybody. Otherwise there are lawsuits possible for both sides of the coin here, and that's unnecessary. This whole situation is far too confrontational.

CLARK: I think you ought to treat Mr. Van Wyck the same as any other taxpayers or resident of Town. I think that throughout this process he has been singled out for treatment that you are not treating other applicants. He has complied with the law. The law says he can do this. The time has not expired for him to bring this plan forward. Now, I haven't heard any facts that would indicate support that there has been significant change in the neighborhood. I know people feel very strongly about this issue. You raised the issue of fairness first. This man has done exactly what he was supposed to do with his property. We have been more than willing to sit down and talk with neighbors. I have said that on numerous occasions. And all we have gotten in response has been, "No, no, no. We're going to push you to the wall. We're going to push this Board. Delay. Make it cost more for the applicant." We've been ready to sit down with people. My review on the law is he is entitled to a signature under Section 81X because the Board has not changed it. And also in my reading of the minutes and the correspondence from then this plan that ended up with twelve lots was somewhat of a compromise on both sides having to do with a previous subdivision plan that might have gone all the way through. I just urge fairness for all concerned.

BRUCE FORTIER: I just wanted to say I'm not for or against. I'm extremely skeptical of Mr. Van Wyck. But I also oppose to the Planning Board's imposing imaginary rules on people. As Mr. Hoar has pointed out your Board has had the option of enacting regulations that would put a time limit on things. Your Board whether through negligence or choice, or whatever, has chosen not to put this rule in place. I think a limit is an excellent idea and you certainly should enact it as soon as possible. But in its absence you should enforce what you do have and not imaginary ones.

DICK TOMIOLO: I just wanted to say that this thing with land division with Peter has been going on for twenty years easily. I can recall the Board working diligently on this plan. And there was compromise on all angles. And it was a fine job of that Planning Board when they approved it and to continue this would be ludicrous. And I think a waste of the Board's valuable time. You're all volunteer people. And that Board tore this plan apart, going back and forth, and finally it came out. And why it should be reviewed again, I don't know.

NEIL DAGLE: Just in addition to what Dick said, is that not only has this Board wasted much of its time and the Board of Selectmen have wasted time over the twenty years, but the Town itself has wasted thousand of dollars on litigation on this thing. I think it's time to put it to bed one way or the other. I think we have an approval here, four or five years ago, let's get on with it.

WESTLEY BURNHAM: I believe I was Chairman of the Board at the time this was approved. We acted in the best faith and the best knowledge that we had at the time. To reverse our decision should require something substantial. The point I want to make is as far as the rest of the Town's people, if they can't rely on a decision to stand by one Board over a reasonable period of time, and it's going to get seconded guessed by just changing the faces on the Board, then we're going to lose a lot of credibility.

ELIZABETH FRYE: I think the Board might be happier with its decision if they took the time to read minutes on this plan. How it was presented. How it was original turned down. How it was the first time a plan was bounced back on the strength of the letter of denial. I think it would behoove you all to get the background on that plan. As far as compromising with a loop plan instead of a through road. A through road was approved by the court based on the traffic issue, but conservation no way, and that includes the State, would approve a through road. Which came down through Deer Pond to Route 22. There is no way he could build that road. So the compromise was getting a waiver. Read the minutes before you make up your mind. That's only fair. Don't listen to me. Don't listen to them.

MADSEN: What's the Board want to do?

PENNOYER: I think we should ask ourselves what questions we want to answer. Find out some of the background and understand the whole process to move this forward.

KNOWLES: For me and Sheldon, who weren't on the Board at the time, it would be interesting to see the background of this.

TIERNEY: Is the question really whether or not you're going to start the process for a hearing tonight or you're going to sign the plan?

KNOWLES: My answer is I couldn't possibly sign it. I don't know if I know enough. I'm looking at the plan fresh.

GINN: I don't feel there is anything that has substantially changed since 1988. I think we can look at the new subdivision that is being proposed. This plan was brought before the Planning Board and the Board approved it. Whether you were on the Board, whether I was on the Board, whoever was on the Board. But the Planning Board at that time spend time going over it and they made a decision to approve it. I think that it is a little bit awkward for us to try and read more into the plan than what was presented at that time. I think you have to have some faith and some trust in the other Board members that were on the Board. The Board members worked hard. If there was something that is substantially different then we would definitely want to look at it further.

TIERNEY: I can give you some direction only this way. What you have is no motion in front of you right now to modify, amend or rescind the approval of the plan. That would be one way for you to proceed. Is for someone to make that motion to do that, and that would start your process of a notice and a hearing. The other possibility you have right now is to sign the plan. Either one of those motions are appropriate. Of course there is nothing to stop you from just doing nothing, but I don't think that would get you to the point where you want to be.

HOAR: Mr. Chairman, on behalf of the abutters I make a motion that the Planning Board rescind it's approval of the plan in accordance to the provisions in the regulations of the Planning Board of the Town of Essex.

TIERNEY: You are making a petition under the statute?

HOAR: I am making a petition under the statute.

MADSEN: Would you like to file that with us, Sam?

HOAR: We will.

GINN: Is there a third option that the Planning Board review in depth minutes of the meetings, the plans themselves, review all that was submitted, and make a motion to possibly add an amendment to the plan.

TIERNEY: You can do nothing. That's an option that would get you to where you're going. If you don't make any motions or take any action and then the next time you come back you have done that in the interim and then proceed. There is nothing to stop you from doing that.

DUNN: I would like to see this go one more meeting. And give Joe and Sheldon a chance to review everything. And also I have things that I would like to look up on this myself.

MADSEN: Okay. That's what we're going to do.

Marianne McCartney, 9 Harlow Street, submitted an application for a Special Permit to convert existing three-family dwelling into legal units.

Knowles moved to accept the application for a Special Permit and to hold a public hearing for May 19, 1993 at 8:00 p.m. under the Essex bylaw 6-6.9. Dunn seconded the motion, with the Board voting unanimously in favor.

Attorney John Guerin, representing Donald Burnham, met with the Board to request information regarding land at R Western Ave. Clay Morin was present.

GUERIN: There are three lots. The green, blue and the red. The blue one does not belong to Mr. Burnham. The red lot is his house lot presently. This lot is actually two separate parcels of land. We already gave you some figures about this roadway because you asked what the condition of the roadway was and discussed frontage on that roadway. The intent here is to take a piece of property and divide it off of this piece. We've got 54,000 square feet, making this 44,000 square foot lot. By cutting this off and adding to this piece which is a presently a nonconforming lot, we will be able to do what we're trying to do. The question we had before was whether the bed of this road is sufficient for frontage and where it started and where it stopped. And Clay had some figures that he had given on this. The intent here is the neighbor who owns this right now is willing to do whatever we have to do in order to create a width large enough in order to put something in here.

MADSEN: But how big is this lot?

GUERIN: We're not going to make it any smaller or any larger. We're going to give whatever we take. We're just going to be changing the lines on it. There are plenty of room for sidelines and setbacks. The frontage would be along this roadway, which is 44' wide. And it would be 25' back from the corner to the sideline. So we've got our 25' of 150' of frontage.

MADSEN: (Reviews Essex bylaws and definitions pertaining to plan presented.) The way I'm hearing this is here is your frontage for this lot, if this is a recorded way, and recorded as such, it would be frontage on this recorded way.

GUERIN: This Board has used that road as frontage in the past.

MADSEN: If that's the case, and it might entirely be true. Because I remember something going on in the back here. I know the question has come before.

BRUCE FORTIER: It's my understanding that this is a preexisting way. It existed prior to the adoption of subdivisions rules. If it was a road that was used for access to the icehouses, it was certainly a road that existed prior to the subdivision control regulations. I think the lots in that area were found to have frontage on an existing way. That road may indeed be a right of way to somebody else's place, but it is still an existing way to have frontage on.

GUERIN: The last time we came in here we talked to the Board and they suggested that okay, let's see if it's an adequate road to build a house on and if there is enough access. And we put some gravel down. I don't remember who went out there. This is probably two years ago. It was in April of '91.

MADSEN: You have to meet the standards of adequacy for the roadway. We need engineering certification that it meets the standards of adequacy. It has to meet the yard requirements. And if it does it's okay.

GUERIN: We'll be back with a plan and details.

Jay Havighurst, 10 Winthrop Street, met with the Board to discuss a home occupation business.

HAVIGHURST: We just want to do our artwork. We are both graphic designers. We're not going to put up a sign up and we're familiar with the bylaws.

PENNOYER: Will you have clients that come in?

HAVIGHURST: We usually go out.

DUNN: You're just going to be doing your artwork there and taking it out.

HAVIGHURST: We are also fine artists, too. We'll be using the space as a art studio. We've talked to two of the abutting neighbors and they don't have any problem with it.

DANA STORY: I'm a neighbor, too. I'm just curious as to exactly what it is you do?

HAVIGHURST: We work with computers and do graphic design. And also we work in the fine arts. We do paintings, drawings, and some sculpture work.

GINN: Will you have a shop and display area?

HAVIGHURST: No, we will have a computer setup and we'll be able to show things on that. But most of the art work will be in storage. I do shows.

GINN: So you won't have anyone come to the property to see anything?

HAVIGHURST: Occasionally, yes. But we won't be generating more traffic than normally.

Knowles moved to approve the home occupation business based upon the description that was offered. Dunn seconded the motion, with the Board voting unanimously in favor.

Ginn moved to have the building inspector enforce the Essex bylaws on the property of Michael and John Byrne, Western Avenue, and also sent to conservation commission. Pennoyer seconded the motion, with the Board voting unanimously in favor.

The Board discussed the work being performed at Centennial Grove Field. Concerns were expressed about certain materials that may be used due to the fact that this property is in the Water Shed District. It was decided that a letter would be sent to Clay Morin, Morin Engineering so the Board could receive a plan and additional information concerning the work being performed.

The meeting was adjourned at 10:00 p.m.

Essex Planning Board Agenda

March 17, 1993

- 8:00 p.m. Signing off of certificate
 Turtleback Loop subdivision, review
 plan
- 8:30 p.m. Virginia Butnam, King's Court, Form A

Special Permit Application Marianne McCartney

**Essex Planning Board
March 17, 1993**

PRESENT: Rolf Madsen; Chairman, Pat Dunn, George Bragdon, Sheldon Pennoyer, Joe Knowles

Building Inspector, Richard Carter, submitted a building permit for Dr. George Evans, 10 Lufkin Point Road, to enclose existing deck to sunroom. At the March 3, 1993, the Board asked Carter to bring pictures in to confirm that there was a deck there previous to the construction. Carter stated that the assessor's office has this back to 1988, so it had to be there prior to 1988, and probably 1986 or 1987. The Board felt that the deck had been there for six or seven years, the actual footprint is not being changed, and the property is still going to be used for residential use, they made a finding that it's no more nonconforming.

Knowles moved to approve the building permit to enclose existing deck to sunroom for Dr. George Evans, 10 Lufkins Point Road, under 6-4.2, that the proposed extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. Bragdon seconded the motion, with the Board voting unanimously in favor.

The minutes of the March 3, 1993 meeting were read. Pennoyer moved to approve the minutes of the March 3, 1993 meeting. The motion was seconded by Knowles, with the Board voting unanimously in favor.

Attorney Charles Clark met with the Board so the Board could sign a Certificate to certify that the plan entitled "Definitive Subdivision Plan of Land in Essex, Mass., being a subdivision of Lot #16 shown on Land Court Plan #32098 F filled with Cert. of Title #48746" dated August 1, 1987 and approved by the Planning Board of the Town of Essex on July 20, 1988, has not been modified, amended or rescinded, nor the plan changed. The Board requested and received information from Town Counsel regarding this certificate. Peter Van Wyck was present. Attorney Sam Hoar was present to represent undisclosed abutters from Apple Street.

KNOWLES: (Read aloud a letter from Kimberly Jermain to the Planning Board dated March 14, 1993, Mr. Tierney's letter dated March 2, 1993, request for opinion, and also, read motion regarding certificate dated March 3, 1993.) (Attached.)

CLARK: I was asked to produce the linen for this meeting and also a certificate of no change, and a template of that put on the plan, so the present Board can sign that. I request that the Board sign the plan. There are four copies here.

ATTY. SAM HOAR: I'm Sam Hoar. I have reviewed the materials on this matter. I've reviewed Mr. Tierney's letter. And I have also reviewed the rules and regulations of the Planning Board. I believe that the provisions of Chapter 41 is also subject to the rules and regulations of the Planning Board. I believe the Planning Board has the power within those rules and regulations, and well known to the developer, to rescind the plan on the grounds the applicant has not not filed the subdivision approval. A review of the court records in the cases involving Mr. Van Wyck and the Town of Essex, where either the Town of Essex has sued him or he has sued the Town, indicate to me that there are a number of unresolved matters. And for this Planning Board at this moment to endorse this plan with the number of changes going on with this property, to me would be irresponsible. It would be in violation of the regulations of the Board. And it appears to me, and

to all parties concerned that there ought to be a thorough investigation of this proposed subdivision from the onset with the proposed plan, which is here, or it should be resubmitted as a preliminary plan. The Board should conduct a traffic study concerning the safety on Apple Street. The Board should contact the DEP to make certain that a 41 or 31 page judgement, between the Town and Mr. Van Wyck, and the Commonwealth and Mr. Van Wyck, which are outstanding, are all set. I just think it would be very irresponsible at this time for all parties to proceed without trying to make certain that everything is wrapped up and understood exactly. And I don't think the record, as far as I can see, indicates that that has been done.

CLARK: If I may be heard. I see the effort by the same group of people who have been involved in this effort of blocking Mr. Van Wyck over the last couple of years, I see this effort as another delaying tactic to prevent Mr. Van Wyck from using his land according to the law of the Commonwealth and the Town of Essex. Now, he has complied with everything that he was supposed to do according to the stature. There is some outstanding litigation. There is an outstanding consent of decree. And he is complying with that. But the Planning Board doesn't have anything to do with that. In the case of the Commonwealth versus Peter Van Wyck, it's the Attorney General and DEP that to monitor that consent to decree. So any questions, that anybody has with regards to his performance on the consent of decree should be directed to the Attorney General's office and the DEP, and not the Planning Board. They are not the proper quorum for that. The ongoing litigation should be directed to the Selectmen, or have the Town Counsel bring it up with me. I'd be glad to discuss outstanding matters. But none of that should hold up what is purely administrative act according to the stature and according to Town Counsel under Chapter 41-81-X. Regulations of the Board have to comply with the stature. And the regulations of the Board cannot go beyond the authority of this stature. And I would also suggest that under what has been submitted to the Board, and under the record of the Planning Board, that no such modification or rescission has been made. And that the Board is obligated under law to sign this certificate.

HOAR: I disagree with that.

CLARK: I disagree with you. I think the Planning Board should go ahead and sign the plan. I think that's what they've been advised to do by Town Counsel. I think that's what the law says. I can't prevent you from going into Court, but I think the law is against you. I think it's a delaying tactic and it would be viewed as that by the court. And frankly, on the traffic issue the Court has ruled against the people raising the traffic issue. And just a couple of months ago the Land Court issued a very strong opinion on abutters and people who call themselves abutters, who really are not true abutters, raising traffic issues, when they are unrelated to the traffic counts within the subdivision. And Judge Sullivan who was the Chief Justice, who is not anymore, ruled that you cannot bring those things in. So if there is a suit that's a delay, I will raise that with the Court. Because I really think that's what has been going on. And I think it's time for the Board and the Town to give Mr. Van Wyck a break.

KNOWLES: Mr. Hoar, is it your understanding that 81X, is not a mandatory requirement based simply on time length?

HOAR: You have a plan that was approved, never filed, and your own regulations say this would be grounds for rescission. I suggest to you that this be a new submission, and the abutters should have the opportunity to be heard. You should investigate to see if there has any modifications. And if there was modifications, I might suggest, there has been stipulations between the Town and Mr. Van Wyck. If those are not modifications to the plan, I'd like to know what they are. They certainly would be perceived as that.

KNOWLES: So this rests more on the certificate that we were presented that showed that there weren't any modifications, changes or rescissions.

HOAR: My own personal feeling is that if I was sitting on the Planning Board, I would do an investigation myself before signing such a certificate to make certain that the certification is, in fact, true.

CLARK: My view on the certificate is that it is an action by the Planning Board, that has to modify, rescind or alter the plan. There having been no action by this Board, I believe, they are obligated to sign this.

KNOWLES: I can tell you that having made the motion, that only the consideration that it was an absolute is what caused us to take that action. Had we understood that we had lead way, and that we could investigate further beyond what we were being presented at the time, the same motion would not have carried, nor would it have been made in the first place. It's difficult for this Board getting absolute statements, if you will, on one hand, it seemed to be and endorsed by Town Counsel, that agrees that it is mandatory, at which point we don't have a whole lot of lead way. In fact, you have substantial pressure to take the action that we took.

HOAR: I agree with you. I suggest you send this back to Mr. Tierney for further study and further opinion.

KNOWLES: I think that's a good idea to do right now.

CLARK: I'm not going to disagree with you that the Board could have, if it wanted to, modify the plan. But the Board has not done that. So when it is presented with a plan to be signed ----

KNOWLES: That is different than what we were explained two weeks ago, where it was mandatory.

CLARK: If you had not amended it; rescinded it, or altered it you have to sign.

KNOWLES: Then the follow-up question is, what if we alter it now before we sign it. Are we allowed to alter it now?

CLARK: I think you're right, yes.

KNOWLES: Well, that's not what we heard two weeks ago. We heard that this was absolutely mandatory. I will read the minutes from the March 3, 1993 meeting. (Knowles reads complete minutes regarding Certificate aloud.) ~~attached.~~

CLARK: You have to look in the future and the past. If there have been no changes, rescissions, modifications, my view, under the law you have to sign the plan.

KNOWLES: So the more appropriate way to place this before this Board is to say if you have no changes, you must sign this. That is different from saying, here it is, we didn't file it, but you have to sign it. It's mandatory and here's 81X that says you have to do it. What it neglects to say is you can make changes. You can amend it. You can rescind it. You can modify it. But if you don't do those things then you have to sign it as is. Is that not a fuller reading of that statute.

CLARK: It's a matter of opinion. What I said is correct under the law.

KNOWLES: Reads aloud the minutes from the February 17, 1993 meeting regarding the certificate for subdivision.) (Attached.)

MADSEN: Does anyone have any comment?

DUNN: Apple Street has their lawyer and Peter has his lawyer. Why are we sitting here without our lawyer? I'm not knocking either lawyers being here. I think we should have Town Counsel here. I think this is a very serious thing. I know I'm not ready to put my name on that until we hear from Town Counsel. I think in a case like this we do need him.

KNOWLES: My sense is, and it was our fault, as a Board that we were misled. I believe. I don't know that yet though. We don't have counsel here. A lot of things can make sense and they can all contradict each other. It's entirely possible for someone to be accurate in their information and untrue. And in this instance what we were looking for was not what we were getting. In other words, to be told that this is mandatory is entirely accurate. It is also true that we can make changes to it, and not have to sign it as is. That's what we were looking for. I believe you knew that.

CLARK: You shouldn't be looking for that from me.

KNOWLES: Oh, I understand that. That's why I started that comment with "It's been entirely our fault." We have to have Counsel here.

CLARK: Again, I would just point out whether this Board, if you look on the record, whether it's been modified or changed. That's all the Registry is looking for. To make sure that the plan as approved is still the same plan.

MADSEN: Procedurally, depending on what action the Board wants to take, if you want to seek further information from Town Counsel, we're going to have to take a motion to rescind our vote of last week, or we can go ahead and sign the plan according to the motion. Those are our options.

CLARK: No one to date on the Board has mentioned that they wanted to modify the Turtleback Loop plan. It was not raised in February when we first discussed this plan. It was not raised in the transmittal to Town Counsel to seek an opinion, and frankly, I'm very surprised you raised it tonight.

Pennoyer moved to rescind the March 3, 1993, which stated that the Planning Board would sign a certificate upon visual inspection of the plan to certify that the plan entitled "Definitive Subdivision Plan of Land in Essex, Mass., being a subdivision of Lot #16 shown on Land Court Plan #3209 F filled with Cert. of Title #48746" dated August 1, 1987 and approved by the Planning Board of the Town of Essex on July 20, 1988, has not been modified, amended or rescinded, nor the plan changed, and on advice by Town Counsel in a letter dated March 2, 1993. Knowles seconded the motion, with Dunn voting in favor. Madsen was opposed.

Knowles moved that we ask Town Counsel to investigate and review thoroughly the legal points of view made by both Counsel for Mr. Van Wyck and Counsel for abutters for the property in question, and report back to us, in person, at our next meeting scheduled for April 7, 1993. Dunn seconded the motion, with the Board voting unanimously in favor.

Archie Roy and Virginia Butman, 60 Eastern Avenue, met with the Board to submit a Form A for Kings Court.

Bragdon moved to approve this plan for property owned by Archie Roy Butman dated January 16, 1993, on Kings Court. Dunn seconded the motion, with Knowles, Bragdon, Madsen voting in favor. Pennoyer sustained from voting.

Marianne McCartney, 9 Harlow Street, met with the Board to submit an application for a Special Permit. During refinancing McCartney was told that the three family was illegal. Madsen asked her if she had the previous building permits for work that had been done. She stated she did not know. She explained the work had been done by her husband possibly without the proper permits. The Board looked through minutes (1986 through present), but no prior permits or approvals were found. Her lot only exists of 42,141 square feet, and 60,000 square feet is necessary to grant a special permit for three-family dwelling. The Planning Board denied the application for a public hearing, and advised McCartney to go to the Board of Appeals.

Knowles moved to deny the Special Permit for Marianne McCartney, 9 Harlow Street, for a three family dwelling due to lack of necessary square footage. Bragdon seconded the motion, with the Board voting unanimously in favor.

Dunn moved to adjourn the meeting. The motion was seconded by Knowles, with the Board voting unanimously in favor.

The meeting was adjourned at 9:40 p.m.

Essex Planning Board Agenda

March 3, 1993

- 7:45 p.m. Ted & Vicki Marshall, regarding property
21 Pickering Street
- 8:00 p.m. Byrne Brothers Landscaping Co., Continued
public hearing
- 8:30 p.m. Attorney Charles Clark, Turtleback Road
subdivision, representing Peter Van Wyck

Essex Planning Board
March 3, 1993

PRESENT: Joe Ginn; Acting Chairman, Sheldon Pennoyer, Pat Dunn, Joe Knowles

Ted & Vickie Marshall met with the Board to discuss the cottage on the property at 21 Pickering Street. They wanted to make sure this would be considered a rental unit. The Board found no problem with this unit. The only concern was parking.

Building Inspector, Richard Carter, submitted a building permit for Dr. George Evans, 10 Lufkin Point Road, to enclose existing deck to sunroom. At the November 4, 1992 meeting a building permit was issued to install a new foundation under existing house. He sent letters to all the abutters, again, even though he had already been through this for the initial permit. The only opposed abutter was Mr. Charles Swanson, 12 Lufkin Point Road. Swanson was concerned about the proposed expansion of the footprint on this tiny lot and this so-called existing deck which does not exist at the present was built in 1991 or possibly 1990, and he feels that this can in no way be considered part of the legitimate footprint of the building. Mr. Swanson requested the building permit be denied. Carter advised the Board that the reason the deck does not exist is because it was torn off to raise the building for the new foundation. Carter also, found out that in 1988, the Assessors have the deck on their map, and on their footprint, therefore it had to be there, at least, in 1986.

A building permit was submitted for Marianne McCartney, 9 Harlow Street, to install a second egress in ground level apartment and to install a railing to the third apartment. During refinancing the bank advised McCartney that she had an illegal apartment, because the dwelling is a two-family. McCartney stated there will be absolutely no difference in the use of the house, the only thing necessary is to install another door on the ground floor, install railings, and check out fire alarms. The Board advised her that they cannot allow a three family unit, without applying for a Special Permit.

A Public Hearing was continued for Michael and John Byrne, 234 Western Avenue, for a Special Permit under Section 6-6.9 of the Zoning By-Laws to construct paved parking area. John Byrne was present.

GINN: I open the public hearing to hear the application of John and Michael Byrne, 234 Western Avenue, Essex, for a Special Permit to construct a paved parking lot.

BRUCE FORTIER: The first point is that there is nothing in our bylaws that requires a building permit, or a permit of any sort, to pave anywhere in town. As far as a special permit for rendering impermeable a lot of more than 15 percent our bylaws forbid residential lots being rendered more than 15 percent impermeable. And allowing special permits for some uses subject to Part A, so that in Part A there are provisions for a Special Permit to render impermeable for more than 15 percent of the lot. But it is subject to that forbiddance of Part A, which says that you can't give a permit for residential use of over 15 percent. For Quinn Brothers you could because that was industrial use. A residential use is the only one in the prohibitions that specify that use is to have maximum of 15 percent. So that essentially the hearing is being held for the purpose of issuing a permit which can't be issued under the bylaws. I think people may have been misunderstood because there is a home occupation on the property. But that home occupation is being conducted as a residential use by the definition, and so that 15 percent maximum applies to the property. So to date the Planning Board really has no facts in the matter. It's something of a misunderstanding

that a permit was required for paving. This should be discontinued. The gentleman has never been charged by our enforcement officer with violation of our Town bylaws.

GINN: I think Mr. Carter was send up there a couple of different times.

FORTIER: Having someone respond to a request to investigate is not the same as the enforcing officer determining that there is a violation.

WESLEY BURNHAM: Can I ask a question. You don't have any facts as to whether or not he's over the 15 percent.

GINN: I can't tell you that. We don't have a plan.

BURNHAM: So the fact of the matter is you have not confirmed whether or not he's over the 15 percent or the 2500 square foot mark. In the event that he is, is it your intention to hear for a special permit. What I'm getting at is it's a prohibited use. You don't have the power to grant a variance. That has to go through the Appeals Board. You can grant a special permit for a specific set of uses, not to violate a previous section of a bylaw.

KNOWLES: Except that what this seems to say, is that following uses are permitted by special permits, one of which is rendering impervious more than 15 percent of lot area 2500 square feet.

FORTIER: You're absolutely right.

KNOWLES: So that would be a special permit.

BURNHAM: If it wasn't for the fact that you forbid in the previous Part A section.

FORTIER: If somebody has an industrial use here, and they want to establish a junk yard covering 25 percent of their property, you can't give them a special permit for that because junk yards are forbidden in Part A.

PENNOYER: What you're saying is it's residential property. So you can't pave over 15 percent or 2500 square feet. If it's an industrial property (i.e. across the road) we can grant a special permit. So essentially what we're looking at here tonight is if he's over 2500 square feet or 15 percent.

FORTIER: You don't have to find out anything because you're not the enforcing officer. It is not your function.

GINN: That's why Dick Carter told them they had to come in and submit for a special permit. And that's why they have done that.

FORTIER: Dick Carter told me personally that he has not measured it, and the man was coming in because the Planning Board told him to. And you don't have any facts. Factual measurements.

BURNHAM: The question is now, where do you go from here now that we've pointed out how the law should be interpreted.

KNOWLES: I don't accept that for one. This same bylaw has been accepted by over four dozen towns and approved by the Attorney General. I've seen it interpreted the way I would interpret it. Although for purposes of time and efficiency, I'd just as soon lay that aside.

GINN: My suggestion would be to have Town Counsel give me an answer on if we have the right to look at a special permit on this. And seeing that we don't have that in front of us now, with Town Counsel, I'd like to have Mr. Byrne state what he has to do, and if he has any plans give them to the Board. You have nothing. Do you have anything to add to this?

BYRNE: I found out that we were in violation through word around town. Nobody send me a letter. Nobody said anything until Dick Carter, far after the fact that I heard this, came down and said, "You need to go talk to the Board." And I said, "Okay. Fine."

GINN: Did you ever come in and talk to the Board?

BYRNE: I missed the meeting last week. I had it written down on my calendar for the wrong night.

PENNOYER: Okay. Then when was it that you were notified by Dick Carter about this issue?

BYRNE: I don't know the exact date, but it was well afterward.

GINN: The intent of the bylaw was to add water back to the resource area. If there is a flaw in the way it was written, so be it.

DUNN: Do we need to continue the public hearing? Do you want to send it to Town Counsel?

GINN: Yes, I do. I still think it needs a special permit. I would also like to have some sort of information from you on what you have done. Square footage, you know, that type of thing.

BYRNE: Nobody told me I had to have a special permit until I heard it on the street. Now, don't you think that if I was in violation that he ought to send a letter notifying me. I'm not trying to be a nonconformist. When I was going to pave I went down and I spoke to Bruce. I asked him what I needed. He told me this is what you need. He told me to fill out this application and it cost me ten dollars. I did so.

KNOWLES: And that's the curb-cut.

BYRNE: Yes.

KNOWLES: It's not up to the Planning Board to explain or let you know in advance of work you do. It's just a smart thing to check.

BYRNE: I did.

GINN: Okay. So let's wait until we hear from Town Counsel. Maybe you don't have to apply. I don't know.

BYRNE: I have no problem giving any information that's needed. But that's irrelevant to what's going on right here. The article that was published tarnishing the reputation and the name of my company. And the company has nothing to do with it. The property is owned by Michael and John Byrne, not Byrne Brothers Landscaping.

Pennoyer moved to continue the public hearing for Michael and John Byrne, 234 Western Ave., to March 17, 1993, at 8:00 p.m. Knowles seconded the motion, with the Board voting unanimously in favor.

DUNN: John, I think if you look back and I've got the minutes here when Jim Platt had that place. And I really climbed fences for you because this is far over a home occupation. I jumped fences to try to get the Board to understand that you had a nice little landscaping business and how nice it would be in town. Now, did you ever once come in here and say gee I thank you people.

BYRNE: I reseeded the playground for free.

DUNN: Just let me finish. But, one little thing goes against you and you never called the Board to say what did I do. All I'm saying is everybody is jumping down our throats, but there is never any credit.

BYRNE: I do whatever I can to help this town. I want to withdraw my permit. Then I'll submit it again.

GINN: So you're going to ignore what the bylaw is. Is that what you're saying?

BYRNE: I'm withdrawing my application for the permit, yes. I didn't come down here to put up with all this aggravation.

GINN: Okay. We'll keep this in our file and date it as of tonight that you are withdrawing your application for a special permit. And you have a check that's on file with the town for this, and that will be refunded to you.

Wesley Burnham, County Road, met with the Board to submit a Form A. He met with the Board at the February 17, 1993 meeting, but the abutter's names were not present on the plan. The plan submitted at the March 3 meeting was complete with abutter's name.

Pennoyer moved to approve the Form A submitted by Terminal Garage, dated February 15, 1993, to create Lot 14, 4600 square feet, which is not a buildable lot. Knowles seconded the motion, with the Board voting unanimously in favor.

Attorney Charles Clark met with the Board so the Board could sign a Certificate to certify that the plan entitled "Definitive Subdivision Plan of Land in Essex, Mass., being a subdivision of Lot #16 shown on Land Court Plan #32098 F filled with Cert. of Title #48746" dated August 1, 1987 and approved by the Planning Board of the Town of Essex on July 20, 1988, has not been modified, amended or rescinded, nor the plan changed. The Board requested and received information from Town Counsel regarding this certificate. Peter Van Wyck was present.

CLARK: At the last meeting I submitted to the Board a certificate for the Board to sign, regarding the Turtleback Road Loop Plan. This was the plan that was approved by the Board in 1988, and was never recorded by the applicant. By motion from the Board you requested information from Town Counsel and he agrees that it's a mandatory provision. So I would ask the Board to sign the certificate that we submitted at the last meeting.

DUNN: I can't understand Town Counsel saying what he said because my feelings on this is when they said this should be filed within six months, why do we have that time limit for six months, if anyone can come in four years later and throw it on the table and say sign this. Why do we have that it should be filed in the six months. Another reason is there has been so many changes around town and Turtleback Road, I would think that this would have to go through again. I don't agree with his answer. I voted denial at the time.

CLARK: It seems to me that the legislature provided a six month window, and said if it's not recorded in the six months this is what you have to do. And it's a mandatory rather than a discretion.

DUNN: I think it's so unfair that things have changed. Apple Street has changed, and it's so unfair to people in that area to come up with something that they did not know about because this was not recorded. There has been a lot of changes in four years.

GINN: There is a time limit on that.

CLARK: We're still well within that time limit.

GINN: We need the plan in order to sign this. Unfortunately, we do not have the plan. So, why don't we take a motion on this and and take a vote, and if it does, in fact, conform to do this then we'll do a signing at our next meeting.

Knowles moved to sign a certificate upon visual inspection of the plan to certify that the plan entitled "Definitive Subdivision Plan of Land in Essex, Mass., being a subdivision of Lot #16 shown on Land Court Plan #32098 F filled with Cert. of Title #48746" dated August 1, 1987 and approved by the Planning Board of the Town of Essex on July 20, 1988, has not been modified, amended or rescinded, nor the plan changed, and on advice by Town Counsel in a letter dated March 2, 1993. Pennoyer seconded the motion, with the Board voting unanimously in favor.

Dunn moved to close our agenda on Monday at 12:00 p.m. previous to the Wednesday meeting. Knowles seconded motion, with the Board voting unanimously.

The minutes from the February 17, 1993 meeting were read. Pennoyer moved to approve the minutes of the February 17, 1993 meeting. The motion was seconded by Knowles with the Board voting unanimously in favor.

Knowles moved to adjourn the meeting. The motion was seconded by Dunn, with the Board voting unanimously in favor.

The meeting was adjourned at 10:00 p.m.

**Essex Planning Board
February 17, 1993**

PRESENT: Rolf Madsen; Chairman, Mark Hall, Joe Ginn, Sheldon Pennoyer, Pat Dunn, John Knowles

The minutes from the February 3, 1993, meeting were read. Pennoyer moved to approve the minutes of the February 3, 1993 meeting. The motion was seconded by Dunn, with the Board voting unanimously in favor.

Wesley Burnham, County Road, met with the Board to discuss changing of lot lines on his property, in order to create a lot, which is 4600 feet, designated non-buildable, and will be transferred to his property. The abutter's names were not present on the plan. The Planning Board advised him that it is necessary to put the names of the abutters on the plan before the Board can act on it.

A Public Hearing was held for Bryne Brothers Landscaping, Inc., 234 Western Avenue, for a Special Permit under Section 6-6.9 of the Zoning By-Laws to construct paved parking area.

MADSEN: I open the public hearing to hear the application of John and Michael Byrne of Byrne Brothers Landscaping, Inc., 234 Western Avenue, Essex, for a Special Permit under 6-6.9 of the Zoning By-Laws to construct a paved parking lot. Is there anyone here representing Byrne Brothers? No. So we have no plan for Byrne Brothers? No.

BRUCE FORTIER: Are you working on an application for Bryne Brothers or why was the public hearing initiated? I got the impression from the report, that the Planning Board thinks that it's the enforcing officer. And another impression I get from the reports was that the Planning Board is under the impression that it can impose fines on people or order the Building Inspector to impose fines on people. None of which is remotely true. I've come to the hearing nothing to do with Bryne Brothers, but just to hear an explanation of why I read in the paper that the Planning Board has voted to impose a fine on somebody.

MADSEN: We didn't vote to impose a fine on somebody. And relative in the time of the public hearing, I will be more than happy to address your question, relative to the public hearing. So if you would like to discuss it at the end of the public hearing or if we continue it, please do. First of all, imposing of fines by the By-Laws are imposed either by the Board of Selectmen or the enforcing officer, not the Planning Board.

FORTIER: This is what I'm trying to convey to you. A judge is the only one who can impose a fines upon finding somebody guilty. When the By-Law has a penalty clause in it it merely enables the judge to impose that penalty. Otherwise, if you don't have a penalty clause he can simply say don't do it. And then if the person goes ahead and does it, then it can turn around and find him in contempt of court. But, it's just amazing to me that with seven people, plus the Building Inspector, plus three Selectmen, no one understands that they have no authority whatsoever under the By-Laws to impose a fine on anybody. And if somebody is violating the water shed protection, the Building Inspector is the enforcing officer of the By-Laws. The procedure is that some party, or an individual files a complaint with the enforcing officer. The enforcing officer then either replies to you within fourteen days or acts on it, or you appeal his inaction to the Appeals Board, or to a judge. So what I'm trying to illicit from you is there appears to be a public hearing but on whose initiative. Has the applicant filed something and requested this hearing?

2-17-93

MADSEN: The applicant has filed an application. When I opened the public hearing I said, I'm opening a public hearing under 6-6.9, on the application by Bryne Brothers.

FORTIER: Okay. So he's applied.

MADSEN: Okay. Thank you. Any comment on the Byrne Brother's application? All we have is an application. We have no plan. We have nothing.

HALL: I move that we close the public hearing.

BRAGDON: Should we close or continue the public hearing until a later time?

HALL: Well, maybe we ought to give them the luxury of one more notice that they are to appear before the Board. Maybe there was some emergency or something. Is there a plan with the application?

PENNOYER: No, just an application.

GINN: I'd like to have a little bit of input. I think it might be important that we do continue this. The reason being is if we were to close this public hearing, then we would basically have to deny this permit. Is that correct? Now, if we deny his permit does this Board then have some sort of enforcement order to go up and take all the hottop up. That's what he is in violation of. And are we prepared to do that, if that's what we choose do to in denying. Would that be the proper way. If we were to close the public hearing, we would then have to take a vote on basically denying the permit.

MADSEN: It would be very similar as somebody building something in town without proper setbacks or without proper permits, what action would the town take.

DUNN: I agree with Joe. I can see what you're saying.

GINN: If no one from that business property, or whatever, has enough of an interest to come and represent themselves, then I think they ought to get a kick in the knee. But I don't know as that's the proper thing to do in this situation. And I still think there should be a site visit on the property.

PENNOYER: I agree.

Bragdon moved to continue the public hearing until the March 3, 1993 meeting at 8:00 p.m. Hall seconded the motion, with the Board voting unanimously in favor.

MADSEN: The public hearing will be continued until March 3, 1993, at 8:00 p.m.

Attorney Charles Clark and Peter Van Wyck met with the Board to discuss Turtleback Road subdivision and Low Land Farms subdivision.

George Bragdon removed himself from the Board due to a conflict of interest.

CLARK: I have two things for you tonight. As you know the previous Board approved this subdivision and Peter did not record it with the Registry of Deeds in the six month time period. He wishes to do so now.. In order to do that under the statute Chapter 41-E1-S, the Planning Board needs to sign a certificate saying that the previous approval had not been modified, amended, or rescinded, nor the plan changed. I believe that is the case. Now, the original

obviously is recorded in Salem. In order to properly do this, the Board can do it two ways. They can either sign the copy, or the preferred way according to the Registry is to sign a certificate, which I have given the Board. And also, the statute and the Registry requires the surveyor who did the actual plans to go out and certify that the conditions are the same now as they were then, and if there has been a change bring that change to the Board's attention.

MADSEN: My suggestion is that we send this over to John just to get some guidance as to how we should exactly handle this issue because it is a subdivision plan that was created five years ago, and given the sensitivity of the area, just to make sure the Board acts properly and within the law.

CLARK: I'd like to be put on the agenda for the next meeting. The second item I'm here to discuss is the waivers, which is on the LowLand Farms subdivision. What I'd request the Board do just so that we're very clear as to where you stand, and I think Peter's entitled to that on the waivers, if we could take a small vote on each of them so that we can properly draft the plans to come back again. We're talking about the scale waivers on the plan, meaning the scale of the drawing. There hasn't been objection to that. The second one is length of the road issue. The density issue that we have before you is going to be dealt with after the results of the traffic study. But the length of the road issue is different. And the last one is lot sideline waivers. One of the issues that C.T. Male raised that it did not abide the subdivision rules and regulations. And the last one we're not asking for a waiver, you can't, and that's the lot width issue, which is a zoning bylaw, and we're going to correct that on the plan.

MADSEN: He's asking for opinion of the Board.

PENNOYER: Why don't we just do it this way. Ask the question on scale, and all those in favor say yes, and all those who are not, say no. And that will give them an indication on where we stand. Okay. **So all those in favor of allowing waiver of scale?**

**Dunn, Ginn, Pennoyer, Knowles, Hall were all in favor.
Madsen abstained.**

PENNOYER: **Allowing the waiver length of the road?**

**Hall, Pennoyer were in favor.
Knowles, Ginn, Dunn were opposed.
Madsen abstained.**

CLARK: Four to two.

MADSEN: No, I have no opinion until I see the report come back from C.T. Male.

PENNOYER: **Lot side lines. All those in favor of it?**

**Hall, Pennoyer were in favor.
Dunn, Ginn, Knowles were opposed.
Madsen abstained.**

Hall moved to adjourn the meeting. The motion was seconded by Knowles, with the Board voting unanimously in favor. The meeting was adjourned at 8:55 p.m.

Essex Planning Board Agenda

February 3, 1993

- 8:00 p.m. Attorney James Kroesser, for Garcia Kimball,
Maple Street, Map 36, Parcel 34
- 8:30 p.m. Attorney Charles Clark, for Peter Van Wyck,
Low Land Farms subdivision

Essex Planning Board
February 3, 1993

PRESENT: Rolf Madsen; Chairman, Pat Dunn, Joe Ginn, Sheldon Pennoyer, George Bragdon

The minutes of February 3, 1993, were read. Ginn moved to approve the Minutes of February 3, 1993, seconded by Dunn, with the Board voting unanimously in favor.

Attorney James Kroesser representing Garcia O. Kimball met with the Board to request a building permit for Garcia O. Kimball, Maple Street, Map 36, Parcel 34.

The following discussion took place:

KROESSER: I'm representing Garcia Kimball. Rolf has a letter of explanation from me. Garcia Kimball bought all three of these lots, as you see them on the plan in 1991. The lots have been separately owned way before Essex had zoning, and they come through most recently Harriet Mears estate. The reason I'm here is to get a determination from you as to buildable status of Parcel 1. It fronts on Maple Street and is 5965 square feet and has 58 feet of frontage. The reason we're asking for the building permit is simple. Parcel 2 on that plan, the middle piece, has a title defect. Put it another way, Garcia Kimball doesn't own a hundred percent of the interest in Parcel 2. What she does own is all of Parcel 1 and all of Parcel 3, and probably most of Parcel 2. She has a title problem on it. It may require us to go to Land Court at some point. The important aspect of the whole situation is without having complete ownership of Parcel 2, she's got two separate lots on either side. Parcel 1, as far as I can tell from looking at your zoning constitutes a valid preexisting lot because you define lot in your zoning bylaws, and there's a copy in that package of the 1959 Town Meeting vote that was taken that describes a lot of record, or a lot for building purposes, as a lot that's identified separately on a deed or a plan filed with the Registry of Deeds. All three of these lots have been separately described since way before Essex had zoning. Parcel 1, as you can see has, in addition, to meeting your definition of lot, meets the statutory requirements of having fifty feet of frontage and five thousand square feet of area. The only reason I'm here is to get a determination from you with respect to Parcel 1 only. Someday Parcel 2, maybe combined with Parcel 1, it might be combined with Helen Stewart's parcel, for all I know. The simple fact is at the moment I don't feel that we need either Parcel 2 or Parcel 3, in order to qualify Parcel 1 as a building lot. What happens to the other two parcels, at least, for the time being is immaterial. Neither Parcel 2 or Parcel 3 is ever going to be a buildable lot by itself. It will either have to be combined with Parcel 1 or combined with other abutting parcels to increase the area of those lots. For the sake of being able to get on with her live and do what she intended to do with this property, we need to know whether we can get building permit for Parcel 1.

MADSEN: How long has she thought that she owned Parcel 1 and Parcel 2?

KROESSER: She bought the lots in 1991.

MADSEN: Did she buy Parcel 1 and Parcel 2 from the same party?

KROESSER: She bought all three parcels at the same time. They were all conveyed by the same party.

MADSEN: Now, according to the statute those lots would merge because Parcel 2 and Parcel 3 were nonconforming lots.

KROESSER: The lots would merge only if there was a common owner of all three of them.

MADSEN: Right, but what I'm saying to you, obviously the Mears' thought that they were all in common ownership: is that correct?

KROESSER: I think the Mears knew they had a title defect. Garcia bought Parcel 2 knowing there was a title problem with it, and knowing that she had to fix it at some point.

MADSEN: My presumption would be that this is one lot. I think you have to prove that it is not for us to grant you a permit on Parcel 1. I'm going to forward this letter of explanation to Town Counsel, and we'll take it from there.

George Bragdon removed himself from the Board regarding the following matter.

Attorney Charles Clark, representing Peter Van Wyck met with the Board to further discuss the traffic study for the Low Land Farms subdivision.

The following discussion took place:

MADSEN: At our last meeting, we came to a determination of what we wanted a traffic study to accomplish. I talked to Paul Connelly and explained to him what we wanted to determine, and this letter is his response. Does anyone have any opinion or comment on this?

PENNOYER: I think it addresses the issues that we outlined here in the notes and discussed last week.

GINN: The first item, how much traffic (vehicle trips per day, vehicle trips per peak hour) can Apple Street safely support at Level of Service? Now, is that what is presently happening?

MADSEN: No, how much can it support safely, present, future, or whatever. It's a what if question.

GINN: And will it also tell us what is happening now, presently?

PENNOYER: I think No. 2 outlines that because it has to address the question that you just asked, which is, what is it presently.

MADSEN: What the question is, at its present condition how much traffic vehicle trips per day can Apple Street safely support at Level of Service A. There is an assumption being made that perhaps, and I'm sure there will be a difference of opinion, that whether or not it has reached the maximum point now or it is going to reach its maximum point in the future. If it is going to reach its maximum point in the future how many additional houses can it seek before it happens.

GINN: So basically there going to have to do a present day count then.

MADSEN: Not a present day count. It is saying it will use values of existing vehicle trip counts or projections as heretofore set forth by Gilbert Nelson.

2-3-93

GINN: I would personally rather have a true count of what is presently happening right now today. That is one of the reasons that I had made this initial motion for a traffic study, on today's standards.

MADSEN: So do we want to accept this?

PENNOYER: I'll make a motion.

JERMAIN: I don't see that you are coming up with a study that is going to come up with a better count. I think we have to have a new count done, not from a study from some years ago. I also feel that we need to address the issue of the subdivision access on to Apple Street, whether it is safe. That wasn't addressed in the study.

MADSEN: Are we talking about visibility standards set forth by subdivisions regulations, or what?

JERMAIN: The width and grade of Apple Street at that point. At the juncture of this subdivision. And that was not addressed by Nelson's report at all.

MADSEN: It's an issue of site distances regarding access set forth by regulations within the subdivisions "regs". And the applicant has to prove that he meets those "regs" in order for the plan to be approved.

PENNOYER: I don't want to do the traffic study, and then have everybody say it's no good because Gilbert Nelson's information was used.

MADSEN: One of the things that was clearly stated by our engineer and consultant is that the traffic counts and data gathered by Nelson was that the procedure used was statistically correct. And it is normal standard practices to get the counts that he has come up with. Any other comments?

JERMAIN: I'm just concerned about the fact that in order to satisfy the objections that have been brought up about the traffic study, and this doesn't address that if we use Gilbert Nelson's material because it addresses the Western Ave./Apple Street intersection.

MADSEN: I'm going to find out what exactly Level of Service A means because it isn't clearly spelled out. Once that is done I think that in fairness at Board's last meeting we hashed out for a long time about what we wanted to determine within the traffic study. I think this is what the Board basically wants to find out from a traffic study. So do we want to do accept this traffic study?

GINN: I'd like to have a present day traffic count. I think that's important.

Pennoyer moved to approve the proposal for professional services from C.T. Male Associates, P.C., dated February 1, 1993, for a traffic study based upon clarification of Level of Services A. The motion was seconded by Dunn, with the Board voting unanimously in favor.

Dunn moved to adjourn the meeting at 9:10 p.m. The motion was seconded by Ginn, with the Board voting unanimously.

Essex Planning Board Agenda

January 20, 1993

- 7:45 p.m. Helen Beck, Choate Street, Form A
- 8:00 p.m. Attorney Charles Clark, Lowland Farms, Peter Van Wyck
- 8:30 p.m. Ernie Nieberle, Lot line chnage
- 8:45 p.m. Jack Gayle, Building Permit

Other business:

Essex Planning Board
January 20, 1993

PRESENT: Rolf Madsen; Chairman, Sheldon Pennoyer, John Knowles, Pat Dunn, Joe Ginn

Building Inspector, Richard Carter submitted a building permit for Richard O'Leary, 1 Prospect Street, to create a one bedroom apartment in existing barn on the second floor. The barn is attached to the house.

A building permit was submitted for Ronald and Robin Pydynkowski, Forest Avenue, for a foundation and barn. Barn size - length 36', width 32' and height 30'. The Board gave permission to erect the barn.

A building permit was submitted for Barry and Suzanne O'Brien, 24 Grove Street, for a 14' x 18' two story addition between existing house and garage to extend livingroom, move bedroom, and a full bath.

Pennoyer moved to approve the application for Barry and Suzanne O'Brien, 24 Grove Street, for the 14'x 18' two story addition between the existing house and the garage to extend the living room under 6-4.2 bylaw. The motion was seconded by Knowles, with the Board voting unanimously.

Joe Ginn abstained from the following application.

A building permit was submitted for Louis A. McMillen, 80R Eastern Ave., to connect two story buildings/wings to existing dwelling as per plans by Louis McMillen. Jack Gayle was present. A representative from Greenbelt, Jim McDougall was also present requesting an explanation. It is a nonconforming lot.

Pennoyer moved to approve the building permit application of Louis A. McMillen, 80R Eastern Avenue, for the addition of house to connect two story buildings/wings to existing dwelling as per plans by Louis McMillen under Essex bylaw 6-4.2 that the proposed extension or alteration was not substantially more detrimental than the existing nonconforming use to the neighborhood. The motion was seconded by Knowles, with the Board voting unanimously

Helen Beck, returned to the Board with the name of abutter Dr. Harris on her Form A plan. The Board signed the Form A, which was already approved at the previous meeting but could not be signed without the abutter's name on plan.

Helen Nieberle, Spring Street, met with the Board to discuss a lot line change to allow corner lot to go with Ernie's garage. She was told she would need to fill out an application for a a Form A.

Attorney Charles Clark met with the Board to discuss Low Land Farms subdivision.

The following discussion took place:

PENNOYER: We took on the task of calling some traffic engineers, namely two from the State. One from the Department of Highway and the other from the Mass. Department of Public Works. And we tried to summarize what we learned from these individuals. And the third is somebody outside the State.

KNOWLES: The point of doing this was not to get their opinions on whether to do a traffic study. The question posed to them was what can it tell us.

KNOWLES: The State of Massachusetts does traffic analysis and speed studies. They are the people who know the most about traffic studies, what they can tell you and what they can't. The gist of what we came up with was we can do the full blown study and come up with a ton of terrific fresh data on how cars can go on Apple Street. We can find out exactly what happens and we can even apply accepted statistical information of what ten or twelve or eight or six or eighteen houses off that subdivision road would do to the traffic. But we can probably determine that right now without counting street traffic. In fact, what was most illuminating to me was talking to Rod Emery who said you got to count street traffic. You've got to count the traffic that comes through there. But if what we're trying to determine is the relative impact of this subdivision and the traffic that would result from it, that would even diminish the relative impact of that subdivision. In other words, if you count the houses on Apple Street you can apply ten day trips. A day trip is someone going or coming back. On average the families that are on Apple Street would see ten trips. One trip for some people might seem like a lot, but others it might seem like it has to be twice that many. In fact, it will come out on the average of ten, give or take one, ninety-six percent of the time. The point of all this is that you can count those trips, even without the through traffic, you can find that depending on the number of houses the relative impact of traffic from new homes off a new subdivision road would be relatively insignificant. If you add the through traffic, as Emery was recommending, it becomes even less significant not more. So what I'm talking about is starting from scratch, and what would the road look like if we were doing this, the impact on Apple Street as it is now. Will a traffic study tell us that. The applicant can spend seven thousand dollars doing that or you could probably spend a tenth of that determining whether or not the impact would be enough to justify denying the plan based on public safety. That's what we learned in these conversations.

PENNOYER: The last guy that I spoke with, I explained Apple Street and I explained the whole thing leading right up to the traffic study that we are looking for, and he felt there was a proposal for a shopping mall on the road. He laughed. He said don't waste precious resources on a full blown study. So can we outline it right now, and put this thing back on course again. Give it to C.T. Male and say, okay, here's the outline. Let's go.

MADSEN: Right now, the Board doesn't feel they are in a position based upon material received that they can make a determination as to public safety with the traffic study that is already a part of the public hearing?

GINN: Correct.

DUNN: No comment.

KNOWLES: No.

PENNOYER: Yes.

MADSEN: Town Counsel's opinion is that no matter what we do and we've been trying to work together as a Board, with the developer, is to turn down the plan the way it is now. And to be very, very specific in our denial, if we feel there are specific reasons in making that denial. With the idea that we give the developer the actual specific reasons for the denial. He's able to make remedy of his plan and present us a new plan, if he chooses to do that. He feels, and I don't have any

documentation on this, but depending on the way the Board feels and he does not know how the Board feels, it would probably be a better way to go rather than making an approval with modifications. Right now we have a situation where the applicant has not provided us with a traffic study, and we denied him on that process.

GINN: Which is basically what you just said he has suggested to do.

MADSEN: Yes. We have denial on the table for Low Land Farms subdivision.

GINN: The way that I look at this is the developer as well as the Board is trying to get a goal of what we want as a traffic study. That was our basis for denial of the plan. This Board's biggest problem right now is how we are going to deal with the traffic study.

PENNOYER: One of us should make a motion right now for a traffic study that addresses A, B, and C, -- E, F, G, if you want.

MADSEN: I think what we should be doing is we have a denial of the plan with the applicant because of a specific reason. Through conversations with the applicant there has come to light that there are a number of engineering deficiencies in the plan that have to be remedied. There are some other issues that have to be remedied before the Board would consider an approval of the plan. In a sense, by what was proposed for a traffic study here, is realistically only one piece of the puzzle. Because we have the denial. He can remedy the issue by doing the traffic study and present us the same plan again. But I would caution the applicant that if he's going to do that, then maybe he's best course of action is at the same time remedy the other problems with the plan. In a sense, what we wanted out of the traffic study is somebody else to do it to show that there is going to be a minimal impact with a division on public safety on Apple Street. Isn't that what we're really looking for? My suggestion is that we let the denial stand. Let me Mr. Clark or Mr. Van Wyck come back with information that is required here, and this plan fixed. Technically, Mr. Van Wyck has to come back before the Board with the traffic study. Then he has remedied his reasons for the denial. As part of what Mr. Clark is trying to do, is not having clear direction of what we want out of the traffic study, is come back and propose this to us. That they are willing to do this.

KNOWLES: We want real information. Not just a collection of data.

MADSEN: In a sense, he is forcing us to tell him exactly what we want, which is fine. I think that's the right process. And I think it's important that we both agree upon what we're trying to figure out. I think that's reasonable for the applicant to come back and say what do you want to see.

FRYE: I don't think the applicant should layout the perimeters of the traffic study.

CLARK: He hasn't. All the applicant did was take the headings of the C.T. Male report, and used the same headings and the same scope.

MADSEN: And just because he puts this on the table, it doesn't mean it's accepted.

JERMAIN: The people that you called on the phone that were not paid are just shooting from the hip. They don't know the road.

KNOWLES: Totally correct. But the point wasn't to get their recommendations on this traffic study or this road or this development. It was only to find out what a traffic study could tell us.

This will give us one big pile of data. It will tell us what the through put is. Whether it comes from this end or that end. And then we're going to somehow draw a conclusion from it. This will not be useful. We need to design a study that will be useful. The only way I know to do that is make an initial assessment of the road from the proposal that we have, and then determine what the study should look like from that. We need someone to do a quick study to tell us how to design this study.

JERMAIN: Apple Street is already considered dangerous.

KNOWLES: It may have no impact at all.

JERMAIN: It may have no impact, but it's still dangerous road. Apple Street is an alternative emergency route when the causeway is flooded out, and it's a very narrow road.

KNOWLES: Okay. So the question you would like to see answered is how more houses can Apple Street take.

JERMAIN: Yes, what is your plan for development on this road?

KNOWLES: That we can do without a full blown study. The origin and the requirement for this traffic study came from the public hearing. It's a serious concern and a responsible one, but then you go to the next step which is, now what. Now, how do we find out what this subdivision will do to an already dangerous situation. So the question is perfectly reasonable. Which is, how many houses can it take before it becomes significantly more dangerous. Now, the phrase significantly more dangerous is loaded. That's why we've been elected. It's our judgement that then applies. But, we don't need this study to find how many house can be added to Apple Street before it becomes significantly more dangerous.

MADSEN: We want to know about number of houses? Any other suggestions?

PENNOYER: How about outlying some of the critical areas on Apple Street?

GINN: Initially I made the motion for the traffic study because we need to have one by today's standards. The deeper we go into this the more confused I am becoming, and the reasons being, and I stated it initially, is because there is a bad and difficult situation up there. We all know that. No one is going to dispute that. It's a tough road. The answer that this Board has to try and provide, if we allow a subdivision up there, is it making Apple Street unsafe. We all know that it is unsafe now. I guess the answer that I would like to see is the expansion of houses up there, or development up there, is that going to make that road substantially worse than what it is. I don't know if I can answer that, and I'm not even sure a study can answer that. You can talk to one person and they would say it's bad now and that's going to make it terrible. And then you can talk to another person and they might say it's kind of tough now, but you can allow twenty-five house lots and it's not going to make it any tougher.

PENNOYER: How about analyzing existing roadway travel conditions, which will be put down into a documented form by a traffic engineer.

KNOWLES: The question is, how many more houses can Apple Street accommodate without significantly impacting public safety.

MADSEN: And who makes that determination? An engineer?

KNOWLES: We do, but we're asking him for the information to answer that question.

PENNOYER: And outline possible mitigating measures. The reason for that is that we can assess whether they are at all possible or whether they are impossible, given the present state of Apple Street.

MADSEN: Okay. So what I'm going to do then, is that I will contact C.T. Male to do a scope of services. I will forward that to Mr. Clark. Mr. Clark there is some other issues that the applicant will have to remedy which we already know about it. It has been clear in the correspondence. They are in the minutes. They are in the C.T. Male letters.

CLARK: Just so I can get a sense of Board, so we're all squared away on the waivers regarding scales of the drawing. It's my understanding that that's not an issue for the Board. Is that true. You're not expecting me to come back and have those drawings revised to scale. The length of road issue is tied to density and the traffic study. Okay. So you're not asking me to revise the length of the road.

DUNN: It doesn't matter how many plans you keep drawing up and bringing, if something is on the plan and it's not what we want ----

CLARK: That's what we need to know.

MADSEN: My suggestion, Mr. Clark, to the applicant that we have a better understanding of what the scope of the development will be in terms of, perhaps, he might consider drawing all the proposed house lots. Because within what was drawn, there was a potentiality for lot of further development on the subdivision road.

CLARK: We already submitted a draft covenant with restrict house lots at fifteen. And as you know, the exact location of where the lots go is depending upon the final perk tests. So I don't know if you're going to gain a whole lot there because if the perk tests are different then we'll probably want to change the lot line. You know, he can promise you six lot subdivision. That's what is before you. Your job is to see how lots can possible fit in there. We're saying it will be no more than fifteen.

MADSEN: You can give us a little better idea of what the finalized subdivision is going to look like. That's what I ask. Anyone else? Let's give, Mr. Clark, some directions, please. The issues with the engineering deficiencies need to be corrected.

DUNN: Shouldn't the drainage be straightened out on this plan before he comes back in. This is my concern about the open drainage because I think it's such a sensitive area.

MADSEN: How does the Board feel about that? Does it have to remedied?

CLARK: C.T. Male looked at the rule of way and it favors open drainage.

BROWNING: When he put this road in he put about five feet of fill or more in this area here. The water used to come down and run natural, right out through here, behind my barn. He created a dam when he lifted this road up higher than my property. The water comes down right into my driveway. But also now it's coming in where theses trees are along here and washes into

my lawn. There should be I think a catch basin there. He's want to have an open drain here and pipe under this driveway and back out to an open. It's crazy. This should be all underground.
PENNOYER: He should lower that point, which is the intersection of Apple Street.

DUNN: I think it should remedied now. I don't think we should continue on with a subdivision if it's not corrected.

GINN: No one has picked up the entrance of this proposed subdivision, D.P.W., C.T. Male, design engineers for water shed off of Apple Street. That is not being addressed.

MADSEN: Mr. Browning has an issue concerning that. I'm glad you brought that up and it has to be fixed. There are drainage concerns that have to be addressed.

GINN: And shown on plan.

MADSEN: Anything else? (No response.) I don't want to say to Mr. Clark, that if everything is fixed you're guaranteed an approval.

CLARK: Just to sum up, you have a list of questions. Do you want C.T. Male to come back at the next meeting with a scope.

MADSEN: I am going to talk to Mr. Connelly and have him come up with what the Board wants to have done, and I'll have him send us a letter and I'll have him talk to you. I will ask Mr. Connelly to come to the next meeting if it's done by then.

Ginn moved to approve the minutes of the January 3, 1993 meeting. The motion was seconded by Pennoyer, with the Board voting unanimously.

MADSEN: We have a special permit for Byrne Brothers. Everything is there.

Knowles moved to schedule a public hearing for Byrne Brothers Landscaping, Inc., for a special permit under 6.13 in the water resource district for paved parking area on February 17, 1993 at 8:00 p.m. The motion was seconded by Pennoyer, with the Board voting unanimously.

The meeting was adjourned at 10:30 p.m.

Essex Planning Board Agenda

January 6, 1993

- 8:00 p.m. Public Hearing continued, John Coughlin, PMC Realty Trust
- 8:30 p.m. Board members will discuss Lowland Farms
- 9:00 p.m. Attorney Charles Clark, representing Peter Van Wcyk,
Low Land Farms
- 9:15 p.m. Ronald and Robin Pydnykowski, Forest Street, home occupation
business
- 9:30 p.m. Helen Becks, Choate Street, Form A
- 9:45 p.m. Conomo Point Long Range Planning

Other business:

Invoices

**Essex Planning Board
January 6, 1993**

PRESENT: Rolf Madsen; Chairman, Joe Knowles, Pat Dunn, Sheldon Pennoyer, George Bragdon, Joe Ginn

Building Inspector, Richard Carter, met with the Board to discuss some concerns regarding 19 Winthrop Street. Carter assured the Board it will only be two apartments, and the existing height will remain the same. The people that were burnt out are purchasing it. They are going to live on the second and third floor. Bedrooms will be on the third floor.

John Coughlin, PMC Realty Trust, 239 Western Ave, met with the Board in reference to a Special Permit for a paved parking lot and a 35'x100' building. This is a continued public hearing. Also, present was Larry Graham, C.T. Male, who presented the Stormwater Drainage Analysis and Design for P.M.C. Realty Trust.

The following discussion took place:

MADSEN: I call the Public Hearing to order for John Coughlin, for a Special Permit for paved parking area and a 35'x 100' building in the water resource district. Does anyone have any comments? Mr. Coughlin, did you bring some drainage calculations with you tonight?

COUGHLIN: Yes, I did. Larry Graham is here from C.T. Male. I asked him to come tonight to answer any questions.

GRAHAM: (Explains Revised Parking Area Improvement Plan) The pipe that exists now would have to be eliminated. Maintain the existing catch basin, modify it somewhat. Run a pipe out. Construct a banana shape detention basin with an overflow back into behind the proposed building and back into the existing rock swale, so we don't go back into the buffer zone. When you analyze drainage here on a ten year storm as well as a hundred year storm, and the proposed detention basin as we have it here will mitigate the runoff for a hundred year storm. So it actually comes out less than the previous condition of the gravel surface. The basin operates by gravity. We have a restrictor plate over the out flow. The out flow pipe itself is twelve inch, shown down at the bottom left hand corner of the plan. There is an outlet that shows the restrictor plate in the front. It's a five inch diameter plate that allows a very low flow to exit during its use. And if that flow is exceeded it will come up and top over the twelve inch overflow. So there is no need to have an emergency overflow.

PENNOYER: So you are using this banana-shaped area as a recharge area?

GRAHAM: Detention and recharge.

GINN: The nature of the soils up there. Are they relatively pervious or impervious, or will the ground itself be absorbing any of the water in a storm area, or is it on the basis of build up in the detention basin area?

GRAHAM: I can't honestly answer that. I've done soil tests on this property up here at the top of Scott's Way.

GINN: Because they are relatively decent in the area right behind Misty Acres, I thought that was fairly decent soils.

GRAHAM: On the surface it's granular soil, but I haven't done any tests.

PENNOYER: Would you say, that given this design, which is very different from what exists, and I believe what exists is an oil and gas trap here, and a line running through here to this stream, that obviously what you've done here is created a retention and detention basin area which is increasing the recharge. The ability to recharge. And that's due to the increase of building footprint?

GRAHAM: It's a combination, the building footprint, this small amount of paving here, plus we're now accommodating as well for the difference between when this was gravel and since it's been paved.

BRAGDON: There is a lot of blueberry bushes down there. Was there ever wetlands there?

GRAHAM: I would say it's definitely wetlands over in this area. We didn't flag it. I had a botanist on the site. And I was on the property when the survey was being done, we used the fence which I think is conservative. I think the wetlands line meanders. But primarily I would say it's ninety-nine percent well on the other side of the fence. And we kept everything back a hundred feet from the fence.

PENNOYER: So is the runoff from this site here always been to move in the direction of that wetlands?

GRAHAM: Yes, as long as I've known the property it slopes this way. From the edge of the existing access drive here to the fence line is about ten feet difference in that direction.

PENNOYER: So there is a ten foot drop in elevation.

GRAHAM: Yes.

MADSEN: Any more questions from the Board?

GINN: Is this over designed at all, other than just what specifies? For example, if five years from now they want to put an addition on the building ----

GRAHAM: If you use gravel drive as a base we're slightly over designed.

GINN: This will be grass?

GRAHAM: Yes.

PENNOYER: One of the other things, and I'm not having time to run through this to find it, but one of the other things we requested was the ratio paved and building, to the unpaved area of this type. Does that exist in this report? Mark Hall asked for this for a reason because of the water shed district?

MADSEN: This is already paved now; is that correct?

GRAHAM: That's correct.

MADSEN: This is not. Right now the existing -- prior to the start of this, the bituminous concrete ended here?

GRAHAM: That's correct.

MADSEN: And then John you went and paved this area here; is that correct?

COUGHLIN: That's correct.

GRAHAM: Initially it was gravel.

MADSEN: All of this area here is being recharged by this?

GRAHAM: That's correct.

PENNOYER: Oh, so this area here is separately dealt with?

GRAHAM: We did not deal with that.

MADSEN: That was a preexisting condition.

PENNOYER: Okay. But if you're going to be designing for runoff -- In other words, does all of this runoff to here? And if so, doesn't your calculation have to include what comes off of here?

GRAHAM: No, we are taking into account just what we feel runs off of there. The rest of it either going into the ground or, as you can see up in this area, it's going across. This may in fact find its way in there.

PENNOYER: So in other words the parking lot you're telling me is pitching in such a way that the water doesn't go from this area down into here and out, or in this area and out?

GRAHAM: It's very flat up there. I don't know if we have enough shots up in here to tell you whether it's going back this way, this way or that way.

MADSEN: Any other questions? Any other questions regarding the restrictions and use of the building?

PENNOYER: The applicant has stated that it's going to be used for parking trucks in. And of course one of the concerns brought up at the last meeting is that it doesn't become a storage warehouse for chemicals, or what not.

COUGHLIN: I typed this out.

MADSEN: "Use of the above referenced building will be for storage of trucks and trailers which are now stored at this location. The intent is inside storage of trucks and trailers."

GINN: Is it on the plan that there will not be any inside drains from the building?

GRAHAM: We haven't shown any.

GINN: I think that's a concern where you are parking vehicle, of whatever sort, that there won't be any floor drains.

GRAHAM: I would agree with that.

GINN: Will this plan have to go before the conservation commission?

GRAHAM: I don't think so. I think John as a courtesy will.

PENNOYER: The Conservation Commission was concerned the last time because of the runoff in directly, directly to this trap or stone ditch. The water was running directly into a wetlands so this could possibly be a concern again.

GRAHAM: I think their action on it would in action because we have kept everything out of the resource area, and have actually improved on the peak runoff.

MADSEN: Anyone have any public comments? (No response.) I'll take a motion to close the public hearing.

Dunn moved to close the public hearing. The motion was seconded it by Pennoyer, with the Board voting unanimously.

MADSEN: The public hearing is closed.

DUNN: Other Boards are laying out fines for violations. And according to what I have read it says, like a twenty dollar a day fine. I'm just thinking that maybe a little more thought would be put into our bylaws if we are to impose fines.

MADSEN: I agree with you, but this particular situation -- I have no problem in handling Byrne Brothers that way because we've asked Byrne Brothers to come in two or three times, and they have yet to do that. When Mr. Coughlin was informed that he was in violation, because it was a brand new bylaw that was put into effect ----

DUNN: He still violated a bylaw.

MADSEN: Well, yes he did. But he also went to the agent, which is Mr. Carter, when he was doing this work and it was okay.

Pennoyer moved to approve the special permit for John Coughlin of PMC Realty Trust, 239 Western Avenue, Essex, MA., for the pavement of his parking and the addition of an accessory building measuring 35'x100', subject to the following stipulations, no floor drains will be permitted in the building. The building will be restricted to the use of storage of trucks and trailers only, and water and sewer connections will not be allowed to the building. Roof drains will be recharged into the detention/retention basin. The plan be sent to the Conservation Commission. The approval is based on the design shown on the drawing by C.T. Male dated May 12, 1992, and the drainage calculations as submitted to the Planning Board dated January 4, 1993, and being that all construction conformed to this plan. And the architect's building plans will be reviewed by the Planning Board before a building permit is granted. Upon completion of work the applicant supply the Planning Board with an as built. If there are any changes to the submitted plan then the applicant will apply for another special permit. The motion was seconded by Ginn, with the Board voting unanimously.

The Board discussed Lowland Farms. George Bragdon removed himself from the Board. Present was Attorney Charles Clark for Peter Van Wyck.

The following discussion took place:

MADSEN: Let's take up Lowland Farms. You have a letter from Kimberly Jermain and, also Charles Clark.

DUNN: I missed that last meeting, and I'm still asking do we have a plan to put on the table to look at. I don't know what I'm voting on. I don't know what I'm talking about really because I have nothing that I can look at. And I really think we should have a plan in front of us. I don't know of any subdivision that we've worked on that we haven't had a plan laid out in front of us. And even a denial when it's resubmitted, or whatever, we still have that plan laying on the table and we can look at all these little things that they've done. And we have nothing.

MADSEN: We have a denial to the applicant based upon the applicant's failure to do a traffic study and we did not have the necessary information to render any type of decision.

DUNN: You're talking traffic study. I'm talking about the whole plan. The length of the road and other things that we've asked for. I'm asking for all of it.

MADSEN: Right. You would like to see a complete new plan for what has to be done.

PENNOYER: I think what you're asking, Pat, is that because it's been denied at this point, it should be resubmitted.

DUNN: No, not at all. I'm saying that any subdivision, what so ever, should be on a plan in front of us so that we have something to look at. I could come in here and say to you now, I want to move this out in my back yard, and I want to do that over there. But do you really know what I'm doing if it's not on a plan in front of you. And how long has it been.

MADSEN: Patty, do you want to go grab the plan that we have.

DUNN: But, even the regular plan itself has not been updated, Rolf.

PENNOYER: Updated to what though?

DUNN: Updated to what they want us to look at? What they want us to approve?

GINN: They feel they have done that. Now, whether they have been corrected to your standards, our standards, my standards, I'm not sure.

MADSEN: We denied him because he didn't do a traffic study. He's come back and says he will do the traffic study. All right. He's remedying the conditions for that denial. He's come back and said this is what I'm willing to do for a traffic study. What I asked the Planning Board to do was to review what he is willing to do for a traffic study and whether we want to do it or not. That's what I've asked. There are many deficiencies in the plan that was on the table prior to that denial. But what I would like to talk about in the next fifteen minutes only, is whether or not we want to do this traffic study that has been proposed.

PENNOYER: My feeling on this issue is what we have to do is, and it's hard for us because we are not engineers -- we're not traffic engineers. It's all very well to say you have to do a traffic study. The question is, what is the scope of the traffic study. Now, the problem is that the applicant has come forward and said here's what we think should be involved in the traffic study. As much as I have a lot of faith in C.T. Male, I think Paul has been great, but I think we would be crazy to accept that particular study. To be done, number one by C.T. Male, and number two, to be done by the applicant. I think we are doing a disservice to the applicant. I think he's going down the wrong road by allowing and putting his money in that area because I think we will have an outcry from the neighbors. And I think the best thing we should do, is come up with an agreement on what the scope of services should be and select three firms to give us a number on it, and for us to take the initiative. And hold C.T. Male out at this point because of the accusations about C.T. Male and the applicant are working together. I don't think the applicant should pay the money for it because it's just going to get killed.

MADSEN: Do you think we should terminate C.T. Male's services to the Planning Board?

PENNOYER: No, I don't. I think we should take this traffic study out of it and do it as a separate thing. I have questions on how to do procedurally. And maybe in order not to have to go out and to interview a number of different firms we could select a group of firms and have them put some numbers together based on the written information that we put together. In other words, I'd like to ask some of the neighbors what criteria do you want to have answered in this thing. We all know it's a traffic study, but what's the scope.

GINN: I think I agree with what you're saying Sheldon. The concern I guess that I have is how we actually have that happen. I guess my suggestion would be that I would like to have, if that's the route that we're going to go, I would like to have C.T. Male suggest a couple of outside traffic people. As well as the developer suggest a couple of traffic people. And then have the presentations presented to the Board. And why should this Board have to do more leg work in determining who should do it.

PENNOYER: I don't want to end up in a couple of months after the traffic study is done, of us all staring at each other and finding, in fact, there is a lot of pressure from the outside saying the questions have still not been answered. And that's why I think first of all we should understand the concept. What exactly are we trying to do with this traffic study. What is the big picture here.

KNOWLES: With the traffic study, the design of the questions is everything. We may be asking questions that can't be answered.

GINN: We have to be concerned with the safety issue. I don't know if we can read a whole lot more into it.

KNOWLES: No, in fact, if the traffic study answered number one, or help us determine that. If I thought the traffic study could answer question number one then it would be what we are looking for, but I don't think it can. That's all we're looking for, the impact. But that's a huge question with a lot of different parts to it. And whether the impact is good or bad, or increases safety or diminishes safety is our judgement, and the results of the study.

MADSEN: It will make a statement as to the impact. It will not make a statement with regard to public safety. That's the determination we have to make. I've got a question for the Board. One of things that was brought in the limited scope of this traffic study was not taking a count at

Western Ave. and Apple Street. What does the Board think about that? Do you think that's a potential troublesome area?

PENNOYER: You mean Western Ave. and Southern Ave.? You're talking about two intersections?

MADSEN: I'm talking specifically about the intersection of Western Ave. and Apple Street? In the last page it says, since the traffic runs with the intersections of Apple Street and Western Ave., and Apple Street and Southern Ave., are agreed to be statistically insignificant they shall not be included in this report. I'm asking the Board what you think about that?

PENNOYER: I agree. I don't think that that's the critical area of Apple Street. I think the critical areas of Apple Street are where this road is coming out onto Apple Street, where Lowland Farm Road is. And at some of the narrow areas where the curbs are and where the road narrows down considerably are areas of concern to the Board.

MADSEN: In my mind it is important and useful. I think it should be in there.

KNOWLES: So the real question is in all of this is how do we judge the study to be done. We have determined as a Board that it's important to be this study. We have an issue now with the letter that we all received with the objectivity of our engineer.

PENNOYER: I think what we're trying to do here is move forward. Let's get on with it. I don't think that this proposal right here is what we should buy and say okay, make the study just what you see. I think we should critique it and see whether it's going to answer the questions of each member of the Board. And if it doesn't we should add to it. So if it means adding the traffic counts at the intersection of Western Ave. and Apple Street. Well, let's add it in.

JERMIAN: I think it doesn't have to be invented here. I think it's been done many times before in the State. From my point, let the State Board of Transportation, and they were the people who recommended to me traffic engineers who they felt were very good and could work on this kind situation, and have many times worked in this type of situation. I don't think it is something new being looked at. And I think you've been very well advised by someone who is a traffic engineer. I question the ability of the particular one that C.T. Male send me the resume of because he is not a traffic engineer. He happens to be a highway engineer. There are many in the area.

CLARK: You raised a number of issues tonight. One is the scope of the traffic study. The Board determined the scope of the traffic study when it voted to have Peter do the traffic study. And on the basis of that scope he has made the decision whether to appeal or do the traffic study, which is the C.T. Male traffic study. So the scope has been set by the Board, and there has been two or three votes on it. Then the scope was reduced after discussion to eliminate the traffic count at Western and Southern Avenues. Second I think you have a real big issue when you're dealing with a lot of people's professional reputation. First of all, this talk of collaboration and all that, is frivolous, scandalous and slanderous. And I for one resent that. And I think C.T. Male would resent, too. I think as a professional the Board ought to either have C.T. Male do the work or fire them and get someone else. But don't leave a cloud over either that person or the firm. You've got a lot of lay people in this room dealing with a technical issue. I think we're dancing around the same issue we did three weeks ago. I think we ought to get moving.

MADSEN: Actually what I would like to do is, if the Board didn't have full faith in C.T. Male, I think we should terminate their services. And I would take a motion to do that. I just can't believe

that a professional engineer would jeopardize his reputation by doing something which is perceived to be unethical.

KNOWLES: In a public forum though it's important not only to be above board, but appear to be above board. An appearance is almost as important. Someone should explain to me why the procedures that have been followed, some of them in the last two or three months are appropriate. Because they appear inappropriate to me, and certainly what I hear from other people outside the Board is it raises questions.

MADSEN: I agree with that. The question that I have is, dowe continue with their services, or not? And if we do, in what manner do we do it?

FRYE: After you denied the plan, who authorized that in the third paragraph of Mr. Clark's letter? In other words, who said Mr. Nelson was going to be working with C.T. Male? It isn't up to Peter to select the person who is going to do the traffic study for the Planning Board and the Town.

CLARK: The Board had already selected C.T. Male to do this.

FRYE: But not Mr. Nelson.

CLARK: Mr. Nelson works for the client.

FRYE: That's right. That's why he should not be involved with C.T. Male.

CLARK: That's exactly why he should be involved.

FRYE: After you denied the plan who authorized this?

MADSEN: No one did.

FRYE: They did this one their own.

MADSEN: I'm not sure if that specifically says that. But we can find out.

CLARK: Just for the record, Gilbert Nelson never got together with C.T. Male. If I can clarify. Following the vote -- And this is in the Town's interest, too. The applicant is trying to decide whether to appeal or do what the Board wants him to do. And he sought clarification. Okay. C.T. Male this is what you propose to do for the traffic study. What do mean? How is it going to be done? What is the protocol? That's a proper function of a traffic engineer. And it's a proper subdivision procedure. And I think we all have to figure that out.

PENNOYER: Why don't we take what we have now for the traffic study and call the State Board of Transportation.

MADSEN: Do you want to do it?

PENNOYER: Sure. I'll do it.

MADSEN: Do we want him to do that?

KNOWLES: It's actually the first question though. But I think we've already answered it. Can a traffic study answer or help us with the questions about public safety by a proposed subdivision, and if it can, how should it be designed? I understand, your point about, we voted on a certain protocol and design. And we voted a few times. No one wants to waste time coming up with results that aren't going to further answer the question.

CLARK: My earlier point is that based upon that denial and the denial and that study, Peter decided not to appeal and try to work with the Board. I don't think everybody is going to agree on what the study can answer, and I don't think everybody is going to agree on the objectivity. And I think even if we go to a third person, or fourth person, there are issues going to be raised. Every time C.T. Male agreed with one thing that went with Peter the neighbors questioned C.T. Male's integrity without offering any proof. And that is lousy. And I don't think the Board ought to let that happen. Either you back C.T. Male or you get rid of him. None of this middle stuff.

PENNOYER: Maybe we should work on it. We should do a little research. Talk to each other before the next meeting. Come to the next meeting ready to go, one way or the other.

KNOWLES: I'd like to know the answer to that question. What we can expect from a study?

PENNOYER: I believe in C.T. Male. I think they are good. I don't think we should be firing them. But I don't want the study, in the interest of the applicant and for neighbors, to be questioned when its all said and done.

CLARK: I think the Board needs some technical assistance to decide, and whether or not you will be getting objective technical assistance from C.T. Male or from someone else.

MADSEN: Okay. We'll do that. And we'll talk about it at the next meeting.

Ronald and Robin Pydynkowski, Forest Street, met with the Board to discuss their home occupation business. A tree and landscaping business.

The following discussion took place:

PYDYNKOWSKI: We went around with a letter to our abutters and we're just back with the signatures. The letter also states about the barn so we could be completely up front with everybody.

DUNN: Did I read in the minutes that there is going to be a garage put up here?

PYDYNKOWSKI: Yes, that's a barn.

DUNN: Now, on a home occupation doesn't it say that there would be no substantial change on the property. And I would call a garage quite a substantial change, if they are going to build the garage for a home occupation use.

PYDYNKOWSKI: The garage is for storage.

MADSEN: I think it pretty specific in what it says. The whole intent of the home occupation bylaw is that the home occupation appears in the home and work on the property that in the scope of appearance there is no business or work being done there.

DUNN: There shall be no change in the outside appearance of the building or premise.

PYDYNKOWSKI: The barn that is going to be put up will be in keeping with the nature of the house, which is an old colonial type house.

PENNOYER: The house has no garage as it stands now. They could build a garage and then come to us for a home occupation. So what's the intent here.

MADSEN: You're equipment has to be stored inside. You're aware of this. You can't have anymore than two employees other than the family. You're aware of that. You've given us a letter from abutters stating what you're focus is. My feeling is that they know what the bylaw is for a home occupation business.

Pennoyer moved to approve the home occupation for Ronald and Robin Pydynkowski, 8 Forest Avenue, with the understanding that they will observe all of the rules and regulations on the home occupation bylaw and have consideration for the neighbors, which are stockpiling materials, excessive noise, and changes to the existing natural buffer between their house and the abutters. And get all approvals from Conservation Commission, or other Boards as needed. The motion was seconded by Dunn, with the Board voting unanimously.

Helen Beck, Choate Street, met with the Board to present a Form A for her property on Choate Street.

The following discussion took place:

BECK: I own all of this right now. The lot line was the solid line. And all I'm doing is moving the lot line down to there.

DUNN: Who owns this lot over here?

BECK: That's Dr. Harris.

MADSEN: It has to be on the plan. There is no problem here. This is a conforming lot. This is a conforming lot. Nothing merges. She wants to move line A to line B.

Ginn moved to approve the Form A for Donald and Helen Beck, Choate Street, to move the lot line of Lot 5A pending upon receipt of name of abutter across street on the plan. The motion was seconded by Pennoyer, with the Board voting unanimously.

A application for a special permit for Byrne Brothers was brought before the Board.

MADSEN: Please send this application to him saying we need a hundred dollar check.

GINN: Tell him there is additional information we need before we can discuss it.

MADSEN: Also, write a letter to Dick Carter enforcing a twenty dollar a day fine for violation of the bylaw.

Pennoyer moved to approve the minutes from the meetings of November 18, 1992 and December 16, 1992. The motion was seconded by Bragdon, with the Board voting unanimously.

ESSEX PLANNING BOARD

WEDNESDAY, DECEMBER 14, 1994

ATTENDEES: P. DUNN/CHAIRPERSON, W. BURNHAM, S. PENNOYER,
J. KNOWLES

NATALINA DAVIS:

Form "A" application for Natalina Davis of 197R Western Avenue, Essex, plan by James Klopotoski. The application was filed with the Planning Board on December 14, 1994.

The question of a "way in existence" was brought up as well as the adequacy of the condition of the "way".

Burnham: The absolute minimum standards for a road on a Form "B" submittal is 44' with 24' pavement and underground utilities. We can waive certain items. Compromises have been made in the past to allow minimum standard of adequacy to allow for a 16' gravel road. If an existing way is in affect, then the existing way is adequate.

Sarafini: The road was never widened to 44'. Your by-laws don't say the way had to meet those rules at the time the way existed. It has been a way in existence.

Dunn: What would you have to do to make this road conform to our standards?

Burnham: They'd have to submit a Form "B", requesting whatever waivers needed, since Maestranzi will be requesting frontage on the same road. They're using an existing way for frontage that doesn't exist.

Sarafini: Your regulations say a way in existence when the subdivision control laws were enacted.

Knowles: Can we say this road presently provides frontage, would we say this road is up to grade?

Dunn: We've got to get moving here time wise.

The Planning Board received an extension, in writing, from the applicant's attorney, John Sarafini. A continuation of the discussion was scheduled for the Planning Board meeting of February 15, 1995.

BY-LAW DISCUSSION:

Continued discussion of the By-laws and Site Plan Review took place.

PREPARED BY: *P. Dunn*

ATTESTED TO: *James P. Dunn*

ESSEX PLANNING BOARD

December 7, 1994

- SABATINI
- SHARON BERRY
- JEFFERY & GLENNA GARINGER
- DAVID & DAISY NELL COFFIN
- MIKE DAVIS
- BILL BLACKWOOD
- MAESTRANZI
- LOW LAND FARMS
- ROBERT COVIELLO
- BYRNE BROTHERS

ESSEX PLANNING BOARD
WEDNESDAY DECEMBER 7, 1994

ATTENDEES: P. DUNN/CHAIRPERSON, S. PENNOYER, K. JERMAIN,
J. KNOWLES

MEETING CALLED TO ORDER AT 7:15 PM.

MINUTES: MOTION: JOE KNOWLES MOVED TO ACCEPT THE MINUTES OF THE 11/16/94 MEETING AS AMENDED, SHELDON PENNOYER SECONDED, ALL WERE IN FAVOR, THE MOTION CARRIED.

KIMBERLY JERMAIN READ A LETTER FROM PLANNING BOARD MEMBER HOWARD ALTHOLTZ (ATTACHED) REGARDING THE CHANGES MADE TO THE PLANNING BOARD MINUTES OF THE 10/19/94 MEETING.

Jermain: Howie is requesting we take action regarding his letter.

Dunn: I think he should take that up when he's here. I will tell Howie that I told Eileen to give the Selectmen the minutes of the 10/19/94 meeting they requested.

Jermain: I would like to comment on this. I spoke with you on the phone about this when you said Sally O'Maley was using unapproved minutes, that you had given her.

Dunn: I never said I gave Sally unapproved minutes. I said I gave Sally information from our minutes, I never gave Sally minutes.

Jermain: But were they your quotes or information?

Dunn: They were information, she is our correspondent, it was information from our meeting. I went from our minutes and came up with what information to give her.

Jermain: I really feel that the minutes should not be made available to anyone, it doesn't matter who it is, until they are approved by this board. If people want to make comments and use their name, that's perfectly fine, then it's their opinion. Then they're not versions of minutes that haven't been approved.

Pennoyer: Sally O'Maley is not here anymore on a full time basis. So Sally will look to the Chairperson for information, a general overview of the meeting the following week that can be printed in the paper. I do, however, have a problem if the Selectmen, and I don't care who is involved here, as a Board are going to use a set of minutes to attack another board or an individual, then that's a problem.

Dunn: I don't think it's fair to say it that way, you were not there. This goes back to when I simply asked that we do not call the Town Counsel, and all hell let loose. I called the Chairman of the Selectboard, because I did not think it was right. I copy this board on all correspondence. This board was copied on the memo which simply said please do not contact the Town Counsel, come through the Selectboard. If you want to talk to him, you can talk to him. This is a business arrangement, and I think a pretty good arrangement. When I wanted to talk to Cassidy about Van Wyck's single family home, I simply called the Chairman, he said, absolutely, you come in Monday night and when he's free you can go to another room and talk to him and get the answers you need. I think we are in better shape with access to town counsel than we have ever been.

This is Howie's problem.

Douglass: I would like to comment on this, I think I can expedite this whole thing. Immediately following the 10/19/94 meeting Pat Dunn called me and told me that the section of the minutes relating to access to Town Counsel was going to be of interest to the Selectboard, and they were requesting a copy. At the meeting of 11/07/94 changes were made to the minutes, to page 2 and page 7. No changes were made to the page requested by the Selectboard (page 6). I would have felt comfortable copying anyone on that portion of the those minutes, because they were approved.

Knowles: What makes these minutes "minutes" is the front page and the signature on the last page and a vote to approve. If you don't call them "minutes" you can send them anywhere you want.

Dunn: We're sitting here, I won't call it wasting time, but Howie is having a problem between he and the Selectboard, I don't think that's our problem.

Pennoyer: I don't either.

Douglass: If the Selectboard had requested a page that had been amended, I would not have released it until it was changed. I would copy anyone on portions of approved minutes that had no amendments.

SABATINI:

Dunn: Eileen and I looked for Sabatini's file and we couldn't find it; so they're coming back.

BUILDING INSPECTOR:

Sharon Barry: storage shed on Island Road, 20' off lot line, not an accessory building, no plumbing.

MOTION: PENNOYER MOVED TO APPROVE THE APPLICATION FOR A STORAGE BUILDING 18' X 28' TO PROPOSED DWELLING FOR SHARON BARRY, ISLAND ROAD, LOT #2 AS SHOWN ON DRAWING DATED 12/7/94, JERMAIN SECONDED, ALL WERE IN FAVOR, THE MOTION CARRIED.

Jeffrey A. & Glenna E. Garinger: application to enclose corner of house to make sun room/eating area off kitchen. Dimensions are 11' X 15', undersized lot 15,270 sf, has Conservation Commission and Wetland Approval, meets 20' setback, awaiting Board of Health approval.

MOTION: PENNOYER MOVED TO APPROVE THE APPLICATION FOR A SUN ROOM, ON LAKEVIEW ROAD, UNDER 6-4.2., FINDING IT MAKES IT NO MORE NON-CONFORMING, SHOWING A 24' 10" SETBACK, THE SUNROOM IS 15' X 11', KNOWLES SECONDED, ALL WERE IN FAVOR, THE MOTION CARRIED.

David and Daisy Nell Coffin: Application for single family home and garage at 189 John Wise Avenue.

MOTION: PENNOYER MOVED TO APPROVE THE FOUNDATION PERMIT FOR DAVID & DAISY NELL COFFIN OF 189 JOHN WISE AVENUE, FINDING IT MEETS ALL THE NECESSARY SETBACKS AS SHOWN ON DRAWING DATED 10/17/94, JERMAIN SECONDED, ALL WERE IN FAVOR, THE MOTION CARRIED, SUBJECT TO BOARD OF HEALTH APPROVAL.

Forest Avenue: Dunn questioned Dick Carter about a horse trailer being parked on the side of Forest Avenue. Dunn commented while driving the school bus, the trailer makes visability poor while picking up children.

9 Harlow Street: Dunn stated she had received a letter from Maryanne McCartney. McCartney (abutter) stated the house was approved as a two family, and is currently being used as a three family. Carter stated he is going to be visiting all multi family homes. Carter continued he would advise the board at their next meeting.

CHRISTMAS SCHEDULE - PLANNING BOARD MEETINGS:

Dunn requested the meeting scheduled for Wednesday, December 22, 1994 be cancelled or changed.

MOTION: JOE KNOWLES MOVED TO CHANGE THE NEXT SCHEDULED MEETING OF THE PLANNING BOARD FROM DECEMBER 22, 1994 TO DECEMBER 14, 1994 AT 7:00 PM, PENNOYER SECONDED, ALL WERE IN FAVOR, THE MOTION CARRIED.

Mike Davis:

Scheduled for 12/14/94 meeting at 7:00 PM.

Bill Blackwood:

Regarding building a barn on Walnut Park Road, 2 story structure, 28' X 32', lot is 8,030sf, non-conforming lot, has 58.5' frontage, meets the setbacks. Applicant stated a building permit was approved for this property within the last 3 years, it was, however, denied by the Board of Health. Pennoyer instructed the applicant he should go before the Appeals Board and seek a variance on the frontage.

Maestranzi:

New ANR plan, prior plan was abandoned. Proposed plan is on 67.9 acres, for four (4) lots. The condition of the road was the concern previously. This new plan gives better access to the lots, each lot has 150' of frontage, and available access through frontage, and new plan has turnaround easement for emergency vehicles.

Knowles: Do you feel that road is up to spec. now?

Sarafini: It's paved about half way up, the rest is gravel. But we're only planning four lots.

Pennoyer: Has this town acknowledged this as an existing way? That's step #1. Step #2 is do all the proposed lots on that existing way have access through the frontage?

Sarafini: In your by-laws, it states if the way was in existance when the subdivision control laws went into effect. That would tell us that we're eligible for the Form A treatment.

Knowles: What was required to allow this road to go in?

Sarafini: The road was there. After the skating rink was built the road was expanded to its present configuration. There is fifteen feet of gravel, the road was put in the early 50's.

Dunn: I would like to give this more time. However, our 21 days is going to be up by our next meeting.

Sarafini: We will grant an extension, so the board will have adequate time to review this.

Dunn: We'll schedule you for January 4, 1995 at 8:00 pm.

LOW LAND FARMS (PUBLIC HEARING):

Pat Dunn opened the public hearing at 8:30 PM. Dunn stated Charles Clark, Attorney for Van Wyck, and Peter Van Wyck could not be at meeting tonight. Also since Burnham, Altholtz and Ginn were not present tonight, it was decided to continue the public hearing.

Knowles: I'm sure Van Wyck wouldn't mind if just Altholtz couldn't be here tonight, but since Burnham is not here, he reschedules; I have a problem with that.

Dunn: I told Charles Clark if we run short on time, I would like to meet you at Town Hall with an extension, and Charles Clark said by all means.

Jermain: There is no continuity between discussions.

Pennoyer: The question here tonight is we have the public hearing opened, we can elect to continue the public hearing, we don't need to talk about Peter all night.

Dunn: I told Sally O'Maley that since two members were not going to be present tonight, and Van Wyck and Clark couldn't make the meeting, it would probably be continued.

MOTION: SHELDON PENNOYER MOVED TO CONTINUE THE PUBLIC HEARING ON LOW LAND FARMS UNTIL JANUARY 4, 1995 AT 8:30 PM, JOE KNOWLES SECONDED, IN FAVOR WERE DUNN, KNOWLES AND PENNOYER, AGAINST WAS JERMAIN, THE MOTION CARRIED.

Jermain: He has never filed this plan with the Town Clerk. They have nothing on file in Town Hall after 1990.

Dunn: I don't understand that Kim, because I have gone in their with plans.

Dunn: I don't know why they don't have this.

Jermain: If the public wants to see the plans, they can't. I've gotten calls from people who say where are the plans.

Dunn: I will bring the plan myself to Town Hall tomorrow morning.

Pennoyer: If they haven't been submitted to the Town Clerk, that's not our responsibility to check that out. If Peter hasn't submitted his plans to the Town Clerk, that's going to be ammunition for anyone against this plan, they're going to pull the rug right out from under him.

Dunn: I agree that yes this plan should have been submitted to Town Clerk, but tonight with Maestranzi, Sarafini asked "do I put these in?" and Kim said no I'd be glad to". That way we know what's happening, with Peter we never know what's happening.

Robert Coviello:

6 Burnham Court, addition 30' X 24', property has 210' of frontage, 1.73 acre lot. Applicant was advised by board he needs to go to the building inspector, as he meets all the setbacks, and it is not a non-conforming lot.

Jermain:

Overlays of Wetlands: Kimberly Jermain brought aerial photographs by the DEP with overlays showing the wetlands in Essex, the approximate cost is under \$300. The Conservation Commission could also have a need for them. Joe Knowles stated he would check into monies for the purchasing of these maps and get back to the board.

Donald & Melanie Burnham: Property was subdivided, the assessors office advised Kimberly that the document had only three signatures, and required four.

Jermain: The thing that stuck in my mind was taking land from one parcel that had a building on it and making it non-conforming to make another conforming lot. Now they're trying to sell off all those parcels, they haven't built on the parcel that they got the approval for, and now it's for sale. I felt all along it wasn't right. I think we should run this by Brian Cassidy.

Pennoyer: I had the whole package on this issue. Before we have Cassidy look at it, I want to make sure we know what our possibilities are on this.

Jermain: We need to ask Cassidy what happens when we haven't completed something like this, and if we find there was information that we did not receive that was pertinent to the decision.

Dunn: Could we schedule a Monday night to go to the Selectmen's meeting and present this to Brian Cassidy?

Pennoyer: I'd like an opportunity to review this before I go before Town Counsel, and prepare a list of facts.

Dunn: Let's get through the Holidays and let's say the second or third Monday in January, I will make an appointment with the Selectmen for some time with Town Counsel.

Byrne Brothers:

Jermain: Just for information purposes, John Coughlin has come in with a plan for the property behind the Sherwood's, he bought that strip so he has access through Hamilton now and he connects with Red Gate Road. It's wetlands, and he's planning a development in there.

Pennoyer: The problem here is that we have a fault in our wetlands in that if Bryne was to convert that property tomorrow, we then could issue the special permit.

Knowles: That's not just a problem with the water protection, it's the fault of how easy it is to change from residential to business use just because you feel like it.

Pennoyer: The problem is that that end of town is slowly, by default, becoming the industrial side of town.

Jermain: That's our water protection area.

Pennoyer: We theoretically cannot approve this permit.

Dunn: If we all agree on this, do you want to take a vote tonight? Because we need to make a decision on this in December, and I'd like to do this tonight.

Jermain: If we deny him, is he going to turn that into industrial property?

Dunn: He's trying to sell the property to Filias.

Knowles: Under the home occupation, isn't this beyond absurd? He can't do what he wants to do because of the water resource protection district. Is there anything we can do that would keep him from turning it into a business use?

Byrne (con't):

Jermain: It has to do with the number of employees.

Dunn: He hasn't come in to discuss it.

Knowles: They never came in here anyway.

Pennoyer: To talk about whether he's coming in is not the point here, he came to us for a special permit, we went through the public hearing process, we visited his lot, the question is do we or don't we approve it? If we deny it, which is what we're moving toward, are we shooting ourselves in the foot, as planners? In other words, if he moves out of the house and calls it a commercial entity, then we won't have anything to say.

Jermain: That would be a change of use and he'd have to get a special permit. My lawyer is on the planning board in Topsfield, and he told me that when an abutter comes in and makes a complaint about a project on the property next to them, that the Town of Topsfield turns it down always. Because they're interested in making everyone happy. The point is when something comes in that an abutter is opposed to, they take that into consideration. They would have to find an overwhelming reason to want to do it.

Dunn: I own a piece of property, and I'm paying good taxes on it, and I work hard to pay for it, if I want to do something I should have the same right as the guy next door who says he doesn't want it there.

Douglass: The Byrne's have a letter from the Planning Board saying "you've got to apply for a special permit, please have engineering drawings available", he paid the \$100 for the application, I don't know what he paid Clay Morin, it probably wasn't cheap, and now we say "oops". I don't know what his recourse is, but he's out some money here.

Knowles: His complaint would be with Clay Morin. The property looks like an industrial use, but it's a home occupation.

Pennoyer: We can't take on all the responsibilities here. This is a residential use, and the by-laws, under activities prohibited in the water resource protection district, 6-13(a), prohibit paving to this extent.

Dunn: Is there anyway we could approve him with something?

Pennoyer: I'm perfectly happy to go along with that, but the main issue here is if we deny him tonight he's going to continue to operate. He's not going to build a catchment area, the water will still run off into the wetlands. Are we doing a disservice denying this?

Knowles: I don't think we have any choice.

MOTION: KNOWLES MOVED TO DENY THE SPECIAL PERMIT APPLICATION FOR JOHN AND MICHAEL BYNRE, OF 234 WESTERN AVENUE FOR A PERMIT TO PAVE A PARKING AREA AND DRIVE FINDING THAT SAID CONSTRUCTION WOULD BE IN VIOLATION OF THE WATER RESOURCE PROTECTION DISTRICT BY-LAW, UNDER SECTION 6-13.3(A), SECONDED BY PENNOYER, ALL WERE IN FAVOR, THE MOTION CARRIED.

Pat Dunn:

Scott Petrowicz, is a Clerk of the Works. Is interested in Planning Boards, has moved to Essex. Would like to come to the next meeting, he's worked a lot with by-laws, etc. I told him to come in the 14th.

Pennoyer: He's coming in to market us, to pay him, to do some work.

MOTION: JOE KNOWLES MOVED TO ADJOURN, SHELDON PENNOYER SECONDED, ALL WERE IN FAVOR, THE MOTION CARRIED.

PREPARED BY:

Joe S. Doyle

ATTESTED BY:

Francis A. Dunn

12/16/94

To: Essex Planning Board

I request that the following changes be made to the Planning Board minutes of 11/16/94: prior to Dick Carter's presentation, I asked Eileen a couple of questions about her procedure and timing in connection with making corrections in the minutes. I asked her to tell me when the corrections that the board made on November 2d, to the minutes of the October 19th meeting were incorporated into the official version that is made available to the public. Eileen replied that those corrections were made over the weekend of November 12th/13th.

The reason I was asking these questions is because an issue has arisen related to potential improper distribution of unofficial Planning Board minutes which I am formally asking the board to look into. On November 7th at a somewhat heated meeting between the Selectboard, the Community Development Committee and the water Quality task force, minutes of the planning board were used by one of the selectmen to make a point about a supposed lack of respect for the Selectboard. At that meeting Ed Neal read from what he termed "an approved version" of Planning Board Minutes of the meeting of October 19th relating to a discussion on the use of Town Counsel. If the corrections to those minutes hadn't been incorporated into the 'official' version until the 12th or 13th of November, then Mr Neal could only have had an unofficial copy at the time of the Selectmeeting of November 7th. If true this is a serious problem and the board needs to find out how this occurred or those responsible should come forward. We have all too recently had the unfortunate experience of seeing attempts made to use the minutes of our board for political purposes. I am referring to the recent allegations of so-called minutes tampering, which although proven false wasted a lot of time and dragged the board through a lot of unnecessary dirt. The minutes are not public and can be changed up until the moment they are voted on by the board. They are corrected if necessary and only then become available to the public. Premature distribution can damage the actions and intentions of the board or cause confusion and is improper. Generally the minutes are the only permanent record of our activities and their accuracy and integrity should never be in doubt, nor should there ever be more than one version in circulation. Thank you for your attention to this issue,

Heime Atchely



ESSEX PLANNING BOARD

Essex, Massachusetts 01929

WEDNESDAY, NOVEMBER 2, 1994

- FY 1995 BUDGET
- JONATHAN JANES/storage sheds
- JOHN MAESTRANZI
- GAYBROOK GARAGE/STAN COLLINSON
- BY LAW REVIEW/SITE PLAN REVIEW

ESSEX PLANNING BOARD MEETING

WEDNESDAY, NOVEMBER 2, 1994

ATTENDEES: P. DUNN/CHAIRPERSON, H. ALTHOLTZ, K. JERMAIN,
J. GINN, S. PENNOYER, W. BURNHAM

MEETING CALLED TO ORDER AT 7:13 PM.

Dunn advised the board that she researched a motion that carried by the Planning Board previously in which it says the Planning Board has the right to ask the applicant to hire an engineer (paid by the applicant) for subdivision applications.

Dick Carter was not present at the meeting as he was called to a fire.

Mail:

Low Land Farms:

A letter from Elizabeth Frye dated October 25, 1994 to the Essex Board of Health regarding Peter Van Wyck on the Low Land Farm Subdivision will be brought to the public hearing at the next meeting.

A letter from Amy Sim/Essex Board of Health dated 7/18/94 regarding Low Land Farms will also be brought to the public hearing.

Methodist Church:

A letter was read from Betsy Klopotoski, Methodist Church, to the Planning Board, complaining that their neighbor (Morrow) is jacking up his house and building a new foundation under it. The church expressed dissatisfaction that they were not notified (since they are a direct abutter) of work being done at Morrow's house. They were requesting a letter addressing the process.

Dunn: A letter should go to the Methodist Church informing them the Planning Board is not the enforcement officer of the town.

Pennoyer: We should send a letter stating we are not the responsible party. They should contact Dick Carter as building inspector to seek assistance with this situation.

Altholtz: We should send a copy of the letter to Dick Carter as well.

MINUTES:

Altholtz: On the Coolidge Trust property I would like it changed to reflect that the reason I voted as present was I did not feel the variance granted was proper.

Altholtz: On page 7 I would like it changed to reflect that Cassidy didn't tell me in order to obtain an injunction you must prove you're likely to succeed in the suit, I was saying that.

Altholtz: On page 5 there is a reference to calling "Ed" and on page 8 referring to "Eddie", I would like to ask in the future when we communicate with the Selectmen, we should communicate with the whole board, not just determine how one member feels.

Ginn: Does that mean we would have to go to a Selectmen's meeting? I don't think that's imperative. Everyone with a question does not have to come to a planning board meeting; they can contact the Chairperson.

Pennoyer: I don't want to make this a cumbersome process, many issues do require a letter to the Selectmen, but not every issue.

Ginn: Where B. J. Frye's wall on Apple Street is discussed, please add "in my opinion" prior to my statement.

MOTION: PENNOYER MOVED THAT THE MINUTES OF THE 10/19/94 PLANNING BOARD MEETING BE ACCEPTED AS AMENDED, ALTHOLTZ SECONDED, ALL WERE IN FAVOR, THE MOTION CARRIED.

BUDGET:

A memo was issued by Brian Dagle regarding the "FY 96" budget, requesting each town department submit new budgets forecasting costs, with a maximum increase of 2%.

Dunn will work on this as it is due by 11/15/94, before the next scheduled meeting.

Dunn indicated to the Board she would like to request some additional funds this year from the Finance Committee for the Planning Board secretary to organize the files stored at Town Hall. Dunn anticipates that as the town buildings are being inspected for ADA modifications, we may be requested to move or remove the files.

Pennoyer felt all the drawings should be placed in the flat draws, filed under lot and parcel, as has been suggested in the past.

Warren Smith:

Pennoyer read a letter from Town Counsel, Brian Cassidy, on the Warren Smith property on Apple Street. Cassidy indicated his opinion of 9/14/94 remains unchanged as he has reviewed the assessor's records.

Jon James/Storage Sheds:

The applicant is seeking approval for additional storage sheds on Western Avenue. Conservation Commission has approved the amended plan (James amended the initial plan per ConComm recommendations).

James indicated the lot is 5.92 acres, the current proposal would cover 20,850 sf, added to the Phase I would be a total of approximately 47,000 sf, 18% of the lot is covered.

Pennoyer: The grandfathering issue and paving impervious area in the water resource protection district are the main areas of concern.

James: I am a part of this community. I don't believe we have a negative impact on the community. I have spoken to and allowed each of my neighbors to have input. If they asked me to change lightbulbs, I changed the lightbulbs. Every request I have received, I have acted on. It may not be the prettiest facility in town, but I think people think I'm doing the best job I can. We've landscaped and worked with the lighting to make this as attractive as possible.

Pennoyer: We need to be careful with the impervious area. We need to be standing on solid ground. We need to review the file, and review Town Counsel's opinion on the grandfathering issue as it pertains to Phase II.

Altholtz: I don't recall the details on whether they're including wetlands in the 25% figure. This project is not without its opponents. A lot of people don't like it.

Fryklund: Who are they? Do you have a list?

Altholtz: No. All of us have heard concerns aesthetically what it does to that end of town.

James: All you people hear is the bad news, you don't hear the good. I've been there for ten years. Some people are happy with it, we hear good comments.

Pennoyer: Dick Carter mentioned that upon completion of Phase I you were to provide Asbuilt drawings that show the paved area. It should be given to Dick Carter so he can put in on file.

Dunn: Should we have them come back to the next meeting?

Pennoyer: Let's revisit the file and request input from Town Counsel in a letter. That legal ruling had a specific date regarding the beginning date of construction.

Altholtz: Why do you need those sodium vapor lights? Couldn't you have a motion sensor light, instead of having those lights on all night long?

James: No. The lights are for security, part of this business is people want to know their belongings are safe.

Dunn: We'll put you on the agenda on 11/16/94 at 8:00 PM.

James: Can't you review the file and verify the situation, do we have to come back?

Dunn: Yes, and we don't meet again until the 16th of November.

Ginn: It is rude of this Board not to have all the information pertinent to the items on the agenda, and requiring the applicant to come back to an additional meeting.

John Maestranzi:

ANR application and plans for Western Avenue Realty Trust. Four lots in Hamilton and four in Essex, all lots have 150' of frontage as required, and they have a minimum of 150' of lot width at building set back as required by zoning. Prior plan was approved in 1988 for approximately 50 condominiums on a Form A.

Burnham: Is that an approved sub-division road?

Sarafini (Applicant's Attorney): It was approved in 1988 for the condo complex. It was decided at that time that the road was satisfactory for the large complex.

Burnham: I believe it was approved at that time because it was believed that you were going to improve that road for the subdivision. I'd like to see that road brought up to reasonable standards and a reasonable access for a turnaround prior to getting an approval for this ANR.

Sarafini: If you're coming in under a Form A, per the regulations, you need to have a way in existence.

Pennoyer: An ANR approval says we acknowledge that that's an existing, viable way.

Sarafini: These are very large lots. We would be willing to restrict these lots to no more than four dwelling units.

Burnham: I would like to see that road brought up to reasonable standards with a cul-de-sac built out. The individual access is supposed to be through the frontage, so there will need to be four drive-ways, or at least the ability to have four drive-ways. You're going to be selling these units to people that are going to assume there's a road up there, and that it's going to be maintained. You're essentially quadrupling the traffic up there.

Ginn: This proposal could benefit the town, it is something similar to next door. Some work needs to be done, as I recall that access, it is pretty "rough". Could you physically drive a safety vehicle (fire vehicle or ambulance) to the cul-de-sac, turn around and drive out.

Sarafini: Presently, no.

Pennoyer: I agree with Westley and Joe, if the plan shows where the proposed frontage is being taken, and the road deviates that area and goes outside of that and is actually coming from another area, if a drive-way for a lot comes near the end of the cul-de-sac, you're driving on someone else's property. I would like to see assurances that they will stay large lots.

Burnham: By approving an ANR we are acknowledging that the subdivision control regulations that we have do not apply.

Sarafini: We would be willing to create a covenant saying there would never be more than four dwelling units on this property, if someone wanted an in-law apartment, they could come back to you and request an approval for that.

Burnham: What we're saying is there would never be more than eight dwelling units up there. I'm concerned about the road, or lack of. I'd like to see something that says you'll build that road up to minimum standards to consider it frontage.

Pennoyer: If we follow through with a Form A, can we stipulate the road condition?

Burnham: We don't have to approve any building permits until that road is built.

Dunn: This is very early in the process.

Burnham: This isn't early on, this is a Form A, we have 21 days.

Ginn: I'd like to have the previous minutes researched on this prior to the next meeting.

Sarafini: In order to move forward on this and agree to only four lots, the applicants needs some reasonable conditions on what you're going to do on that road. The issue is going to be how expensive is this going to be, you may say you want this whole road paved.

Burnham: I'm talking minimum standards. I'd like to see at least a sixteen foot pavement, it's a 1,200 foot road, and a turnaround.

Betsy Fawcett: I don't see how this can be an ANR, since the road has not been statutorily accepted by the town, I would think this would have to be a sub-division.

Fred Fawcett: Well, the road would have to be built first.

Dunn: Does the board want to continue that at the next meeting?

Burnham: We have to decide this at the next meeting.

Ginn: Do you folks have any idea how you'd like to expand that roadway?

Sarafini: We'd like to discuss that when we come back at the next meeting.

Dunn: I'm putting you down on 11/16/94 at 9:00 PM.

Gaybrook Garage/Stan Collinson:

Application is for a permit to build a CITGO canopy over the gas pumps.

Dunn: I am turning the meeting over to Westley Burnham, as I am an abutter to the property.

Collinson: has spoken with his abutters since the last meeting, including those who don't abutt his property but those who view it from their property. Collinson brought letters from all abutters stating they were aware of what he was proposing.

Altholtz: One of the things discussed at the last meeting, in addition to getting letters from abutters, was coming up with other possible designs. Did you look into other possible designs?

Collinson: This is CITGO's canopy, this is the design they want. This is a CITGO station.

Pennoyer: I think Stan has done a very thorough job going to the neighbors. I was very outspoken at the last meeting because of the high impact on the neighborhood. However, Stan's done his job and the Planning Board cannot do design review, we need to move forward on this.

Altholtz: I agree Stan has honorable intentions.

Collinson: Does this board have the right to enforce design restrictions?

Burnham: No, but we need to ensure that this plan is no more detrimental to the neighborhood. If you've been to all your neighbors and no one objects to this, then we can find it no more detrimental.

Altholtz: I disagree, we can do better than this CITGO sign. Have you ever heard of CITGO modifying the design of a canopy to accommodate a neighborhood?

Collinson: I don't know, I'm sure they probably have, but I don't know. This Board does not have the right to restrict aesthetics, and I don't think this board should be dictating it. I'm the one filing the application and I'm paying for it.

MOTION: PENNOYER MOVED TO APPROVE THE PLAN FOR STAN COLLINSON OF GAYBROOK GARAGE FOR A CANOPY PER PLAN DATED 11/10/77, CONSTRUCTION DRAWINGS DATED 11/8/90, REVISED 8/21/92, FOR A TWO (2) COLUMN CANOPY BY CITGO. THIS PLAN HAS BEEN REVIEWED BY ABUTTERS AND THOSE WHO VIEW THE PROPERTY FROM THEIR PROPERTY AND FIND IT NO MORE DETRIMENTAL TO THE NEIGHBORHOOD THAN EXISTING NON-CONFORMING USE, GINN SECONDED, IN FAVOR WERE BURNHAM, PENNOYER, GINN, DUNN ABSTAINED AS ABUTTER, ALTHOLTZ WAS OPPOSED, AND JERMAIN VOTED PRESENT, THE MOTION CARRIED.

By-Laws

Dunn: Can we schedule some time to meet to discuss the by-laws? We apparently are not going to get to it at the regularly scheduled meeting.

Burnham: Once we get started with it, reviewing the by-laws will move quickly.

Dunn: How about next Tuesday evening from 7:00 to 8:30 PM?

Altholtz: Why don't we just stay until 11:00 PM tonight?

Dunn: We have not had the OK from the Selectmen.

Dunn: I'll have to remember to post this meeting.

Altholtz:

1. APPLICATION CHECK LIST:

We agreed on 8/12/93 to use the new application checklist forms in conjunction with building permits, and we never started using them.

Pennoyer: They need to be available at Town Hall so people can pick them up there.

Burnham: We should get them to Dick Carter also.

2. APPEALS BOARD:

Altholtz: If we strongly disagree with an appeals board decision we can appeal it within 20 days of their decision. We need to work more closely with the Appeals Board. We are supposed to get notice within 21 days of a hearing. That gives the Planning Board an opportunity to give them a recommendation.

Burnham: That's only on a variance, not if they're appealing a decision of ours.

MOTION: PENNOYER MOVED THAT THE PLANNING BOARD SHOULD ENSURE THEY ARE BEING NOTICED ON APPEALS BOARD HEARINGS AT LEAST 21 DAYS BEFORE THE HEARING. UPON RECEIPT OF THE NOTICE FOR A REQUEST FOR A VARIANCE THE PLANNING BOARD WILL PLACE THE MATTER ON THE AGENDA FOR THE NEXT MEETING, AFTER DISCUSSION AND A VOTE OF THE BOARD WHETHER OR NOT TO PROVIDE A RECOMMENDATION TO THE BOARD OF APPEALS ON A PROPOSED COURSE OF ACTION, ALTHOLTZ SECONDED, ALL WERE IN FAVOR WITH BURNHAM AND DUNN VOTING PRESENT, THE MOTION CARRIED.

Burnham: If I were seeking a variance from the Board of Appeals, I would not take kindly to having to deal with another board. Our input is not mandatory, if we are requested by the Appeals Board, that's one thing.

Ginn: We should get the agenda of the Appeals Board, at the beginning of our meeting set aside a few minutes to discuss the agenda.

Burnham: We need to make a priority of reviewing the mail at the beginning of each meeting.

Pennoyer: When those meeting notices come into us, we should copy them and put them around the table, so we can decide whether we want to respond or not.

Altholtz: Under 6-4.2, what usually happens is people bring letters from abutters that agree with them. You don't know by omission who disagrees with the proposed plan, and some abutters may not even be aware of what's proposed. I would like to make it a practice that we notify the abutters.

Burnham: Why don't we do that for everyone, why are we persecuting those people with non-conforming lots, especially since 2/3 of the lots in town are non-conforming?

Altholtz: A partial way of measuring substantially more detrimental is abutter input, that's very important.

Burnham: I think in order to change this, you'd have to change the by-laws.

Pennoyer: It seems cumbersome. It seems that 6-4.2 now will be limited, and we don't have the time to notify abutters. That would involve going to the Board of Assessors, getting the list of abutters and abutters-to-abutters and notifying them through a letter sent registered mail, that is the procedure we would take. I don't think we can do that.

Altholtz: If the issue is whether it's a detriment to the neighborhood, then you want the abutter input. Either we should get letters from all abutters or we shouldn't accept letters from any abutters. We shouldn't get them from selected abutters.

Burnham: Are you implying that is what's happening?

Altholtz: Absolutely.

Ginn: Are you saying that applicants have actually omitted abutters?

Altholtz: Yes. I guarantee that's what's happening. If I was going to try to do something, and I had a neighbor that didn't like me, I'm not going to go to him and ask his opinion on my project. I'm going to go to people that I know are going to approve it.

Burnham: That letter that you saw tonight was not an approval, it was just a letter saying they had seen the plan. I cannot think of one instance under 6-4.2 where an abutter was omitted.

Altholtz: You can say not one abutter was ever omitted?

Burnham: To the best of my knowledge, yes.

Jermain: The instance of the church tonight gives the impression of how abutters feel, that they should be notified.

Pennoyer: But in that instance, it's not the responsibility of the Planning Board.

Jermain: I'm just saying, abutters think they are going to be notified, they don't think they have to pursue the paper. I've heard it more than once, people ask me if they're going to be notified. It may be a misconception, but that is what they think.

Altholtz: I'm just saying we should hear from all abutters, not just some.

Ginn: What you're suggesting is they give us an abutters list so we can checkoff to see that all the abutters have been notified?

Pennoyer: If the applicant goes to the assessors office, they write out their abutters, the assessors look at it to verify it's complete and sign it. The applicant then brings the list and letters here and we verify that all abutters have been notified.

Burnham: If we're going to change the rules, we're going to change it for everybody, and do it every time.

MOTION: ALTHOLTZ MOVED THAT WHEN THE BOARD HAS AN APPLICATION BEFORE IT UNDER 6-4.2, IF ABUTTER INPUT IS GOING TO BE CONSIDERED TO DETERMINE IF IT IS SUBSTANTIALLY MORE DETRIMENTAL TO THE NEIGHBORHOOD, WE ASK THE APPLICANT TO PROVIDE US WITH A LIST OF ABUTTERS, SO WE CAN COMPARE THE LIST OF ABUTTERS WITH THE LETTERS SUBMITTED WITH THE APPLICATION, PENNOYER SECONDED, IN FAVOR WERE ALTHOLTZ AND JERMAIN, OPPOSED WERE BURNHAM, PENNOYER, AND GINN (DUNN WAS PRESENT), THE MOTION DID NOT CARRY.

SITE PLAN REVIEW:

Pennoyer: I would like a motion that I can revisit Site Plan Review.

Burnham: You lost a lot of credibility last year. My suggestion is to clean up the by-laws first and get that approved. It won't go through again until we clean up what we already have, because we'll be making more complicated and intricate by-laws.

Pennoyer: I don't necessarily have a different point of view Westley, I'm just suggesting we take a look at it, maybe we end up saying forget it.

Burnham: I'm all in favor of looking at it, but I recommend we look at what we've got first.

Altholtz: I think we should bring Site Plan Review to Town Meeting of '95, but be more organized about it. That's what I heard at the last Town Meeting, "get yourself more organized, and bring it back". I think to bring it back in '96 is crazy. We should open up the process, and bring more people in.

Dunn: I'm not against reviewing it.

Burnham: If you bring it to Town Meeting, and it doesn't pass again, you'll never get it through. I don't agree that you should be able to bring it back every year. It was defeated, and it shouldn't come back for two years according to our by-laws. I understand the technicality there, but a private citizen couldn't bring it back every year, and we should have the same obligation not to waste people's time.

Dunn: We agreed previously that we would go through the by-laws first. I don't think we'll have the time to do both, since we're having a hard time fitting in the by-laws as it is.

Ginn: I think we can do both, review the by-laws and revisit Site Plan Review.

Dunn: So, we'll meet Tuesday night from 7:00 - 8:30 PM.

MEETING ADJOURNED AT 10:10 PM.

PREPARED BY:

E. J. Douglas 85

ATTESTED TO:

Francis A. Dunn

ESSEX PLANNING BOARD

WEDNESDAY, OCTOBER 19, 1994

ATTENDEES: P. DUNN/CHAIRPERSON, J. GINN, S. PENNOYER, K. JERMAIN, W. BURNHAM, H. ALTHOLTZ, J. KNOWLES

MEETING CALLED TO ORDER AT 7:12 PM.

MINUTES:

H. ALTHOLTZ MOVED TO ACCEPT THE MINUTES OF THE 10/5/94 PLANNING BOARD MEETING, W. BURNHAM SECONDED, ALL WERE IN FAVOR WITH DUNN VOTING PRESENT, THE MOTION CARRIED.

TURTLEBACK ROAD EXTENSION:

Discussion ensued regarding the discussion with Town Counsel at the planning board meeting of 10/05/95 at which it was decided that legal action would be taken to prevent Peter Van Wyck from continuing to install utilities or water lines on Turtleback Road extension.

Dunn: the Selectmen said they did not receive a letter from the Planning Board reiterating the vote taken to seek legal action.

Douglass: I faxed it to the Selectmen last Friday, and also delivered the hardcopy to Town Hall.

Altholtz: Can I suggest something? Why don't we wait for Scottie Robinson to arrive at the meeting to continue this discussion.

BUILDING INSPECTOR, DICK CARTER:

Sally & Paul Banville: Choate Street, received foundation approval from planning board on 9/7/94.

MOTION: PENNOYER MOVED TO APPROVE THE BUILDING PERMIT FOR THE PLAN OF SALLY & PAUL BANVILLE AS SHOWN ON DRAWING DATED 10/18/94, TO BE CONSTRUCTED ON FOUNDATION APPROVED ON 09/07/94, PENDING BOARD OF HEALTH APPROVAL, AND POTABLE WATER AVAILABILITY, ALTHOLTZ SECONDED, ALL WERE IN FAVOR WITH DUNN VOTING PRESENT, THE MOTION CARRIED.

Paul & Carolyn Pittman: Map #42, #175, 10 acres, application for foundation siting for single family dwelling on Southern Avenue. Approve by Conservation Commission on 9/13/94. Application was denied by Planning Board, they went to Board of Appeals where they received variance on frontage requirement with following conditions:

1. only one single family dwelling would exist on 10 acre lot
2. the right of way of Coolidge Trust cannot be altered

MOTION: W. BURNHAM MOVED TO APPROVE THE FOUNDATION PLAN FOR A SINGLE FAMILY DWELLING FOR PAUL AND CAROLYN PITTMAN ON SOUTHERN AVENUE PER PLAN DATED 7/7/94 BY NORTH SHORE SURVEY CORPORATION FINDING IT MEETS ALL APPLICABLE REQUIREMENTS OF BY-LAWS EXCEPT FRONTAGE AND A VARIANCE WAS GRANTED BY BOARD OF APPEALS, KNOWLES SECONDED, OPPOSED WERE K. JERMAIN, P. DUNN, ALTHOLTZ PRESENT, IN FAVOR WERE BURNHAM, GINN, PENNOYER AND KNOWLES, THE MOTION CARRIED.

Jermain: the Coolidge Trust was violated, and as I understand it they subdivided that land, I don't feel that's right. I'm against the variance being granted by the Board of Appeals.

Carter: the town made that lot non-conforming, they had frontage on Southern Avenue previously.

Dunn: I am surprised they got the variance, due to the Coolidge Trust, I disagree with the Board of Appeals decision. How could the board of appeals overrule what one man wanted done with that land? I thought this was sacred, he said he wanted that land for the people of Essex to enjoy. I would never want to entrust anything I had in the Town of Essex.

Burnham: The variance has been issued, we're wasting our time on this. It's completely irrelevant whether or not you agree with the decision of the Appeals Board. One other issue I'd like to address would be adequate access for public safety vehicles.

Pittman: a ten-wheeler just went up there this morning, I'm sure there's adequate access.

Peter Van Wyck/Turtleback Road: Application for a single family dwelling on 25 acre lot.

B. J. Frye: this board should go to take a look at this property.

Dunn: I'm concerned about adequate access, is there frontage?

Burnham: We should be treating Peter Van Wyck the same as any other applicant.

Jermain: We're getting an injunction to stop the installation of utilities on this property.

Altholtz: This could put this whole episode to rest. We could approve this plan with a stipulation that no further sub-division will take place.

Burnham: Regarding adequate access, we just approved a plan for Means', did that have adequate access?

Carter: I'll request a plot plan by the next meeting from the applicant.

Ginn: We need something showing frontage. Let's ask Van Wyck to bring additional information with frontage, etc.

Dunn: is there adequate access, and what is the situation for emergency vehicles?

Burnham: we just approved the siting of a house about a 1/2 mile up on Southern Avenue and the only member concerned about adequate access was me. We approved a four lot subdivision on a 12' road on the other end of town in the last month, and no one was concerned about adequate access. I would like to see Mr. Van Wyck treated the same as any other applicant. This is for a single family building permit application.

Jermain: this is not a single family house lot. It's pretty unbelievable to assume it is. He would not be laying these utilities out there for one house lot. He's going to do whatever he wants.

Altholtz: I wouldn't be the slightest bit melancholy to see this whole thing put to rest. If we put a restriction on this saying no further subdivision of this property, wouldn't we be in much better shape?

B. J. Frye: You should go see the site and take a look at what he's proposing.

Dunn: would the board like to visit the site and inspect the property?

Burnham: we should ask Peter if it's alright for us to visit the property.

Dunn: I'll call Peter and get permission, and let you know.

David Coffin:

David and Daisy Nell Coffin, 189 John Wise Avenue, Form A, plan by North Shore Survey, required frontage is present, required setbacks and sidelines are present, lot is 6.9 acres.

MOTION: ALTHOLTZ MOVED TO APPROVE THE BUILDING PERMIT FOR DAVID AND DAISY NELL COFFIN OF 189 JOHN WISE AVENUE, THE BOARD FINDS SUFFICIENT FRONTAGE, AND THAT IS DOES NOT MAKE IS NON-CONFORMING, PENNOYER SECONDED, ALL WERE IN FAVOR WITH DUNN VOTING PRESENT, THE MOTION CARRIED.

John Lampi:

Form A, Western Avenue, off County Road, meets frontage requirements, four house lots proposed, ANR. Westley Burnham is abstaining from discussion and vote as he is abutter.

Ginn: have you had discussions with DPW regarding water?

Lampi: yes, we are submitting a plan to Damon, we were talking about bringing an 8" line in, with a hydrant. I need to see what DPW would be looking for.

Altholtz: how do you create lot #19? The lots in an ANR must have sufficient frontage.

Ginn: it states on the plan that he is conveying that lot to an abutter.

Altholtz: I don't think we have the power to create a lot that has no frontage on an ANR.

MOTION: PENNOYER MOVED TO APPROVE THE ANR PLAN FROM JOHN LAMPI, WESTERN AVENUE, SHOWING THE SUBDIVISION OF 5 LOTS PER PLAN DATED 10/04/94 BY JAMES KLOPOTOSKI SEEING LOT #'S, 15, 16, 17 AND 18 COMBINED WITH LOT A MEET MINIMUM ROAD FRONTAGE, AND LOT #19 IS NOTED AS A NON BUILDABLE LOT, AND IS TO BE CONVEYED TO ABUTTER FOR CONTIGUOUS USE, GINN SECONDED, ALTHOLTZ AND JERMAIN VOTED PRESENT, VOTING IN FAVOR WERE PENNOYER, GINN, KNOWLES AND DUNN, THE MOTION CARRIED.

ALTHOLTZ: I'd like to amend the motion to add that the conveyence will take place simultaneously with the recording of the plan.

Burnham: Can I speak to that? It does concern me, and I am an abutter, and I am abstaining from the vote. I am the abutter this land will be conveyed to. How can I simultaneously transfer land that is not currently recorded in land court yet. This is unreasonable.

Dunn: it is mentioned, though, that the land will be conveyed to an abutter, isn't that sufficient?

Ginn: If it does not go to an abutter, it automatically converts back to the contiguous lot.

Altholtz: I'll withdraw my amendment to the motion, we should request advice from Town Counsel on this.

Scottie Robinson:

Scottie is here to have answers to her questions; Jermain read the letter sent by Robinson on 8/19/94.

Robinson was seeking information regarding the Turtleback Road Extension. The questions are as follows:

1. What is status of application for extension of Turtleback Road Extension.

The Board indicated that it is in litigation right now. The Planning Board rescinded the approval, and it is the opinion of the Planning Board that he does not have an approved subdivision plan.

2. Who grants permission and oversees installation of water mains?

The Board indicated that the Department of Public Works is responsible for overseeing water lines being laid.

3. Is there still an application before the board for the extension of Turtleback Road?

The Board responded "no". However, the applicant did submit an application to the Board tonight for a single family dwelling on that property.

Altholtz: We asked at the last meeting to take legal action to have the work currently taking place at the Turtleback Extension terminated, because we learned that the cease and desist order was not the appropriate action for utilities and water lines.

Jermain: but it has been two weeks since that motion was made.

Dunn: the selectmen have the letter from us. I can call Ed Neal to find out what the status is.

Robinson: Brian Cassidy was here at that meeting, when that motion was made.

Altholtz: I asked Brian Cassidy what was happening this week, because I had received a couple of calls about continued activity. He said he would either do it by the end of this week or he would seek a voluntary agreement to cease activity by the end of the week and file that with the court.

Burnham: how did you hook up with Cassidy?

Altholtz: I called him on the telephone and asked him what was going on.

Burnham: we got a letter from the Selectmen specifically prohibiting us from contacting Town Counsel directly.

Altholtz: that's too bad. We need to know what's going on. If he doesn't want to talk to me, he doesn't have to talk to me. If they want to bill me back through my tax bill for speaking to him for five minutes, that's fine. We need to know what's going on.

Jermain: he has told the state that he has an approved subdivision for twelve lots up there. He has already stated what he is doing. He's not just building a road on his land, he's planning a subdivision.

Altholtz: we believe he is in violation when he is proceeding with the subdivision.

Jermain: we need to answer Scottie's questions.

Ginn: Scottie was at the last meeting when we voted to seek legal action to stop the work up there. Scottie has told us this evening that she was at the Selectmen's meeting and that's just what is happening.

Robinson: on Monday morning I asked Pat where they were at with this. Pat said she didn't know, she had not received a letter from this board, ten days after the vote. That's why I went to the Monday night Selectmen meeting, it would not have happened if I had not been there, saying please, please, please.

Ginn: what are we supposed to do, send it certified mail to the Selectmen?

Dunn: Eileen came to my house, I signed the letter, and she delivered the letter, and faxed it earlier.

Altholtz: is there some reason why that letter did not go until Friday?

Douglass: I was never asked to send a letter. Four or five days after the meeting I called Pat and asked if she thought there was a letter going to the Selectmen. Pat advised me to call Ed and ask him if he needed a letter. I called Ed and inquired if they were waiting for a letter, because I had not been instructed to send anything. Ed said it would make sense to send a memo, just to have it on the record, but he felt sure Town Counsel was moving ahead on it.

Burnham: When the Selectmen hired a new Town Counsel they sent us a memo advising us we needed to go through the Selectmen to communicate with the Town Counsel due to the cost.

Jermain: Cassidy was the one suggesting an injunction. We asked him if our making the motion would make this happen, and he said yes. It shouldn't take a month for us to get him to stop, and now the applicant has come in with a new plan. It was not made clear that a letter from us was required.

Douglass: Cassidy said he was meeting with Tierney to get caught up on this case, I don't think he could put this into motion without any information. He did not tell us when he was scheduled to meet with Tierney, but I suspect that this process doesn't move as fast as you'd like to think.

Burnham: It's in motion now. The Selectmen have received their letter.

Altholtz: When I asked him, Cassidy told me that in order to obtain an injunction you must demonstrate that you're likely to succeed on the lawsuit. Cassidy said he was concerned about the mortgage issue, since he's placed a mortgage on the property. Cassidy will have to argue in court in order to get the injunction that it is likely that the Town will win the ultimate lawsuit. He said by the end of the week he will either get the injunction or have a voluntary agreement from the applicant to cease work up there and he will file that.

4. Does Turtleback Road meet town code for a public way, since it's now in private hands?

Burnham: Absolutely, it's been up there for twenty years now. It's an adequate road.

Frye: it's a private way.

Burnham: There's a whole procedure that must be following in our subdivision regulations when a private way is going to be turned into a public way. There's about six to nine months worth of work usually before that can be done.

Pennoyer: the DPW would love any excuse not to take a road over.

Robinson: I would like in the minutes my great discomfort that it took two months to get answers to my questions. I am extremely distressed that there was 14 days between the vote to file an injunction and the meeting of the selectmen to accomplish this. I'm astonished that it took so long to get these answered.

By-laws:

Dunn: We need to get some time to work on the By-laws. If we could meet one extra night, since we have to be out of here by 10:00 at every meeting. Maybe we could form a small committee of three to four members that could meet one extra time each month. I checked to see if we could meet at the Fire Station.

Burnham: we need to start at the beginning of the by-laws and work our way down.

Dunn: I don't have much on the agenda for our next meeting. Why don't we stop everything else at 8:30 PM and get to to work on the by-laws. At that meeting we can decide if we need to start meeting one extra time per month.

Altholtz: What about our decision to ask the Selectmen if we could stay one hour later at the school?

Dunn: I did mention it to Eddie. They really don't want to unless it is on an emergency basis. Because if they let us stay later, everyone else will want to.

Burnham: The Selectmen feel we should stay within the budget as much as possible, unless it's a one-shot deal with some public hearings or something because the over-time rate for the custodians is somewhere between 17.00 to 18.00 and hour.

Byrne Brothers:

Dunn: we need to make a decision on Byrne Brothers pretty soon.

Pennoyer: we have until the end of December to act on this.

B. J. Frye/Apple Street:

Dunn: Bruce Julian asked me about your stone wall; if it needs a permit since it's a scenic way.

Burnham: a public hearing would be required since it's a scenic way.

Frye: it never occurred to me that a public hearing would be required.

Dunn: maybe we should schedule and hold the public hearing, just to be sure.

Ginn: as long as it's approved by the DPW, and you get a letter stating they allow you to construct a stone wall, and it will not hinder safety, traffic or anything else, it's alright.

H. Altholtz:

Storage Facility:

Altholtz: I've received several calls about the storage facility, that they're clearing land and appear to be moving forward on something. We should send them a letter informing them if they're going to hot-top anymore they will need to come before the planning board.

Pond Street/Urbicides:

When we asked Dick Carter about the urbiciding, Dick reported it was the home owner; but it's in the water resource protection district.

Burnham: if it's private property, the owner can spray anything they want.

Altholtz: urbiciding in the water resource protection district is not a good idea.

Pennoyer: it is a domestic use.

Ginn: if they used "round-up" it does not go any further than the plant. You spray it on the plant and it chokes the plant's ability to suck in water. It does not go into the ground or effect anything else.

Altholtz: if you're using it for non-domestic purposes, you have to seek a permit.

LOW LAND FARMS - PUBLIC HEARING:

MOTION: BURNHAM MOVED TO SCHEDULE A PUBLIC HEARING FOR PETER VAN WYCK OF TURTLEBACK ROAD ON LOW LAND FARM SUBDIVISION FOR 11/16/94 AT 8:30 PM, KNOWLES SECONDED, ALL WERE IN FAVOR WITH DUNN PRESENT, THE MOTION CARRIED.

PREPARED BY:

Cileen Douglas

ATTESTED TO:

Francis A. Dunn



ESSEX PLANNING BOARD

Essex, Massachusetts 01929

WEDNESDAY, OCTOBER 5, 1994

- STEPHEN PAYNE/Old Amvets Hall
- TURF MEADOW REALTY TRUST
- WATER QUALITY TASK FORCE
- LOW LAND FARMS
- THOMSON MOTORS
- NEWSPAPER COVERAGE

ESSEX PLANNING BOARD

WEDNESDAY, OCTOBER 5, 1994

ATTENDEES: P. DUNN/CHAIRPERSON, H. ALTHOLTZ, K. JERMAIN,
J. GINN, W. BURNHAM

MINUTES OF 9/21/94 MEETING:

MOTION: WESTLEY BURNHAM MOVED TO ACCEPT THE MINUTES OF THE 9/21/94 PLANNING BOARD MEETING WITH THE ADDITION OF PENNOYER'S COMMENTS ON MAESTRANZI, THE ADDITION OF BURNHAM'S COMMENT ON BYRNE BROTHERS, THE ADDITION OF ALTHOLTZ'S COMMENTS ON REQUESTING ADDITIONAL MEETING TIME FROM THE SELECTMEN AND THE DEFOLIATING ON POND STREET, ALTHOLTZ SECONDED, ALL WERE IN FAVOR WITH DUNN VOTING PRESENT, THE MOTION CARRIED.

BUILDING INSPECTOR - DICK CARTER:

Stephen Payne, 11 School Street: building permit sought for the addition of an attached 2 car garage on old Amvets Hall. Under 6-4.2 is it more non-conforming?

Ginn: has any input from abutters been provided?

Carter: no, this is the first time I have seen the plan.

Altholtz: I do not feel the planning board has the authority to approve this under 6-4.2, 6-4.2 was not meant to give lots that are non-conforming more rights than those lots that were conforming.

Carter: it's already non-conforming, they are not making it more non-conforming.

Altholtz: they should seek a variance from the Board of Appeals.

Burnham: you're not creating a new use, you're extending an existing use, we have the power to do that.

MOTION: JERMAIN MOVED TO ASK TOWN COUNSEL, BRIAN CASSIDY, (COMING TO THE MEETING AT 8:00 PM) FOR AN OPINION ON HOW 6-4.2 IS TO BE USED FOR NEW CONSTRUCTION OF ADDITIONS NOT MEETING CURRENT REQUIREMENTS, ALTHOLTZ SECONDED, GINN, ALTHOLTZ AND JERMAIN WERE IN FAVOR WITH BURNHAM VOTING AGAINST, AND DUNN VOTING PRESENT, THE MOTION CARRIED.

Turf Meadow Realty Trust:

Dunn read letter received from Ralph Pino, Jr. Pino acknowledged receipt of letter from Planning Board stating their decision may have been based on an omission of information or a misrepresentation. He requested copies of any and all information relative to what new information has been received since the planning board vote that lead the Board to believe the decision was based on inaccurate information, and from where the information came.

Burnham: I feel we should send them a letter stating it is not our intent to pursue this any further, we sent the initial letter to inform them.

Ginn: we'd be choosing to ignore the plan that was brought in. I would like this clarified.

Burnham: we had a perfect right to subdivide that property.

Altholtz: now that we're aware of a mistake, we should ask them to come in to discuss it. If they don't want to come in, there's nothing we can do. We should make an attempt.

Jermain: we should suggest it may be appropriate to come in.

Dunn: I agree with Westley, we made our decision. The burden is on their shoulders. We could send them what they are requesting.

Burnham: we could send them the plan we had, and the minutes.

Dunn: the plan was given to a planning board member, I can work with Eileen to get this information to them. How should I answer him regarding who, what and where did this new information come from.

Jermain: it doesn't matter where it came from.

Burnham: does anybody know where it came from, was it anonymously sent?

Dunn: yes, it was.

Jermain: send a copy of the plan, and the minutes relative to the property.

TOWN COUNSEL - BRIAN CASSIDY:

The Board of Selectmen invited Town Counsel to attend one hour of a planning board meeting to answer questions from the Board.

1. Burnham: The question of applicability on 6-4.2, on non-conforming lots. Can the structure can be extended, if it already doesn't meet current regulations?

Cassidy: You could make a finding that it is no more non-conforming, however, they would still need a variance on it.

2. Altholtz: For public hearings that are continued, if a board member does not attend all sessions of the public hearing, can they vote?

Cassidy: Generally, you should only vote if you have attended all the sessions of a public hearing. Obviously you would have to consider the issue of a quorum.

3. Burnham: Cease & Desist Order - Turtleback Road Extension: Does the building inspector have the authority to issue a cease and desist order?

Cassidy: The building inspector has the power to issue a cease and desist order if there is a violation of the state building code and to the extent that he's wearing the dual hat of the enforcement officer to enforce the town by-laws. Building inspectors don't usually enforce subdivision regulations.

Altholtz: Frequently, when someone is violating a subdivision control law they're also violating the town by-laws.

Cassidy: As I understand it, this board has resinded their approval of the extension of the subdivision. I understand there is an issue regarding the installation of water mains in the subdivision that the subdivision approval has been resinded.

Altholtz: we did resind it. I would like to make a point of order. If we are going to be talking about our resinding the approval of the Turtleback Road Extension, we should not be talking about this since this matter is in litigation right now. This isn't the forum to have this discussion.

Cassidy: I spoke with John Tierney, and we will be meeting to review the records. I do think you should go into Executive Session if you would like to discuss this matter.

Burnham: MOTION: BURNHAM MOVED TO GO INTO EXECUTIVE SESSION TO FURTHER DISCUSS THE EXTENSION OF THE TURTLEBACK ROAD SUBDIVISION, GINN SECONDED, JERMAIN AND ALTHOLTZ VOTED AGAINST, DUNN, BURNHAM AND GINN VOTED IN FAVOR, THE MOTION CARRIED.

The board entered Executive Session.

MOTION: GINN MOVED THAT THE BOARD END THE EXECUTIVE SESSION, SECONDED BY ALTHOLTZ, ALL WERE IN FAVOR WITH DUNN VOTING PRESENT, THE MOTION CARRIED.

Altholtz stated that Town Counsel had confirmed that the actions taken by the Planning Board relative to the rescission of the Turtleback Road Extension were at all times within the scope of its authority.

Clark: we would like a copy of the cease and desist order, if it has been issued. Our position remains that the rescission is not valid.

Burnham: what is the cease and desist order for? What by-law is he violating?

Scotti Robinson: has Mr. Van Wyck been served with a cease and desist order?

Altholtz read the memo to Dick Carter advising him to issue the cease and desist order.

Dunn: Do I understand this correctly, that Dick Carter cannot enforce subdivision control laws?

Cassidy: if the violations pertain to for instance pouring foundations, the building inspector could enforce it. If the violation is the installation of utilities, then I don't believe the building inspector has authority over that. You would seek an injunction in land court.

MOTION: JERMAIN MOVED TO HAVE THE PLANNING BOARD SEEK LEGAL ACTION THAT WILL IMMEDIATELY TERMINATE THE INSTALLATION OF WATER MAINS, UNDER SECTION 3 GENERAL, 3.0, BASIC REGULATIONS, THAT IS CURRENTLY GOING ON, ALTHOLTZ SECONDED, GINN, ALTHOLTZ AND JERMAIN VOTED IN FAVOR, BURNHAM AGAINST, AND DUNN PRESENT, THE MOTION CARRIED.

Jermain: we should have a separate motion to address the building foundations going in. That would be within the authority of the building inspector.

Burnham: we don't know if foundations are going in.

Burnham: the question is, do we want to incur the legal costs to stop him from putting in the water line?

Altholtz: that's not the question. The question is do we want to have our by-laws enforced?

TURF MEADOW:

Cassidy was questioned on the ANR on the Turf Meadow Realty Trust. If the Planning board approves an ANR, then receives information after the fact that may have altered the decision, can we resind an ANR?

Cassidy: I would really have to see the plan, and the endorsement on the plan.

Altholtz: An issue that comes up often is access, does access have to be the same as frontage?

Cassidy: In my opinion, the answer is yes. I think as a matter of planning regulation, especially in ANR's, what you're saying is this does not require subdivision approval because there is access, either on a public way, a private way or subdivision way.

B. J. Frye: how many times can a subdivision plan be submitted, how much time between submissions must there be for denials?

Cassidy: Under the zoning statutes you have to wait two years from the date of denial, unless there has been a substantial change.

Ed Neal: Peter Van Wyck told me the Planning Board was going to send him a cease and desist, I called Dick Carter and requested that if he was going to seek this he should run it by Town Counsel to ensure we were not doing the wrong thing, since this is in litigation. That was the purpose of this meeting tonight. I hope the Board agrees with that.

Ginn: could town Counsel give this board in writing what was discussed here tonight?

Altholtz: it's in the minutes.

Burnham: could you give us the desertation in writing on 6-4.2 that we could hold on to?

Jermain: can I write a letter to Scottie to respond to her request for information?

Dunn: at the last meeting it was agreed that Scottie would be willing to come back at the 10/19/94 meeting to discuss that. I will make sure it's on the agenda for the next meeting.

WATER QUALITY TASKFORCE:

Altholtz: the brochures were distributed by the water quality task force to everyone in town. It was paid for with state grant money and was a good project done by volunteer labor. No one has given these people a pat on the back yet.

MOTION: ALTHOLTZ MOVED THAT A LETTER GO FROM THE PLANNING BOARD TO THE WATER QUALITY TASK FORCE, SPECIFICALLY TO STEVE GERSCH, FOR A GREAT JOB ON THEIR BROCHURE CAMPAIGN, SECONDED BY JERMAIN, ALL WERE IN FAVOR WITH DUNN AND BURNHAM VOTING PRESENT, THE MOTION CARRIED.

PETER VAN WYCK/LOW LAND FARM:

The amended plan was submitted tonight to correct the five reasons for denial on the prior plan. No fee will be required if it is an amended plan specifically addressing the reasons for denial.

Burnham: the only thing that's relative is the five reasons for denial. As long as the rest of the plan is identical except for the addressing of the reasons. We really do need to look at the initial plan.

Burnham: Mr. Clark, since this is the second submission of a resubmission of an amended plan based on a denial, is the applicant liable for the advertising fee?

Clark: yes.

MUNSON:

Dunn read the last motion to send back the application and check received for special permit, requesting what section of the by-law they were applying for a special permit under.

Dunn: we never denied anything on it.

Burnham: what we did was found that the use was not grandfathered.

Ginn: I don't believe this board made that decision.

Burnham: they are requesting a letter from us stating essentially that we did not consider the use grandfathered.

Dunn: shouldn't we have something from them in writing asking us for a letter?

Altholtz: let's send them a letter.

Ginn: why don't we just send them a copy of all the minutes?

Altholtz: can't we send them a letter stating that the planning board is of the opinion that the use is not grandfathered, and there is no provision under special permit applications for such a special permit, let's copy the Conservation Commission and the Board of Selectmen, and reference the minutes.

NEWSPAPER COVERAGE:

Dunn: two members of the Planning Board contacted the Gloucester Daily Times with information that they wanted published in the Times.

Jermain: I contacted her asking if the Times would be covering the Planning Board Meetings, I did not call with information.

Dunn: if I am the Planning Board Chairperson, don't you think that should go through me?

Jermain: I don't think that is necessarily your job.

Dunn: so why doesn't everybody call. I don't think that's right. I haven't done it any different when Sally O'Maley was there, I would contact her with information. I was surprised when the reporter called me and said she received information from Kim Jermain and asked me if I would like to comment on it.

Altholtz: I contacted her regarding the Community Development Committee, she inquired regarding the Planning Board meeting, so I told her.

Jermain: I inquired if she would be coming to the meeting and are you going to get the minutes from our Secretary and report on the last meeting, she said she'd look into it.

Altholtz: I told her not to print anything that I said unless she checked with several other board members. She called the Chairperson.

Ginn: I feel very strongly that this should go through the Chair or the Secretary. I think the reporter should be at the meetings.

Altholtz: I agree. But if someone asks me what happened at the meeting, I'm going to tell them.

Jermain: Pat came in here angry that we had told a story to the paper, and that's not what happened.

Dunn: all this board does is argue.

Altholtz: but Pat you put this on the agenda. You keep bringing up these argumentative subjects. We should be playing by the rules, and make sure the public's aware. These meetings can't be run by making phone calls to Westley in between meetings, you seem to check with him on everything.

Dunn: Westley's the co-Chair.

Altholtz: I will not have every action that Kim or I take knipticked while the rest of this board is committing violations that are as serious or worse.

Ginn: you don't have the right to say that.

Altholtz: there is too much behind the scenes stuff going on.

Ginn: I agree, there is too much under the table action going on, whether it's you and Kim going to reporters or whether it's Pat calling Westley.

Jermain: I didn't call her to give her a report.

Dunn: could I call for a motion to adjourn?

Altholtz: I don't want to adjourn yet.

Dunn: well I'm going home.

Altholtz: so you're walking out of the meeting? Are you coming back?

Dunn: It's almost 10:00 PM, we've wasted the time arguing.

Altholtz: I completely agree with everybody who has a problem with behind the scenes stuff going on. It's not all Board Members, but it's some. Westley's talking to applicants, you're talking to Westley, and I'm not talking to anybody between meetings about issues, hardly at all, and I will try to refrain from that to the largest extent possible.

Dunn: I do not contact Westley to seek advice. Westley will pull into the stand to see what's going.

Jermain: to see what, what is going on?

Dunn: what's on the agenda for the week, etc.

Altholtz: seeing what's on the agenda is different than discussing the substance of issues pending before the Board, and a lot of that is going on. People come here with a lot of information.

Ginn: when you're in town, you bump into people who ask you what's going on, and you have to answer them. I talk about decisions, I don't make decisions. When we get into things that are going to effect the whole board, it should go through the Chair.

Jermain: it should go through the Chair. However, the Chairperson should represent the information fairly. Pat said I called the reporter from the Times to report on a meeting I attended. Pat did not bring that report to this board with the intent of sharing accurate information, it was brought to this board with the intent of reasserting her position as the Chairperson and making sure we knew she didn't like what went on, even though she doesn't know what went on.

Dunn: I asked the reporter not to print anything unless she checked with me. I wish we could discuss things rather than argue all the time. I believe there are things that don't need to get to the paper until the public can get a clear story. The reporter was pretty full of the Means' situation, she did not say which planning board member she got the story from.

Altholtz: she could have sat right here and gotten the story herself.

Dunn: If they come in, they can print anything they want. She had a fairly long story on Means', and I asked her to hold on to it until things got a little clearer and settled. Had she been here herself and got that story, that would have been a little different.

Jermain: the Chairperson isn't in the position of determining what's news and what isn't. I resent someone taking that authority. If I choose to I should be able to go to a reporter, however, I did not do that. I resent you deciding what will be in the paper and what will not be.

Dunn: Can't we sit and discuss things, couldn't we discuss as a group what will and won't go in the paper? Can't we work together more? This is a seven member board.

Altholtz: the arguing often leads to good conclusions.

MEETING ADJOURNED AT 10:00 PM.

PREPARED BY: _____

ATTESTED BY: _____

ESSEX PLANNING BOARD

AGENDA

SEPTEMBER 21, 1994

- 7:30 Read and Approve minutes of Sept. 7, 1994
- 7:45 Dick Carter Building Inspector
- 8:00 Byrne Brothers Landscaping..... Continuation of Public Hearing
Special Permit for paving an area in the Water Resource
Protection District
- 8:30 Peter Vanwyck Lowland Farm Public Hearing for amended
plan for subdivision
- 9:00 John Maestronzi Subdivision of property off Western Ave.
(Davis Property)
- 9:30 Board Discussion
Mean's Property
Town Counsel
By Laws

ATTENTION:

We must be ready to leave the school building by 10PM

ESSEX PLANNING BOARD

WEDNESDAY, SEPTEMBER 21, 1994

ATTENDEES: P. DUNN/CHAIRPERSON, S. PENNOYER, J. GINN, K. JERMAIN,
W. BURNHAM, H. ALTHOLTZ, J. KNOWLES

APPROVAL OF MINUTES:

MOTION: J. KNOWLES MOVED TO ACCEPT THE MINUTES OF THE 9/07/94 PLANNING BOARD MEETING WITH CHANGES TO PAGE 5 ON JERMAIN'S COMMENTS UNDER "PLANNING ISSUES", JERMAIN SECONDED, ALL WERE IN FAVOR WITH ALTHOLTZ VOTING PRESENT AS HE WAS NOT PRESENT AT 9/7/94 MEETING, AND DUNN VOTING PRESENT, THE MOTION CARRIED.

The Board agreed to request an additional hour of meeting time for each meeting (from 7:30 PM to 11:00 PM) from the Board of Selectmen, due to the fact that since the meetings are being held at the school the building must be vacated by 10:00 PM.

DICK CARTER/BUILDING INSPECTOR:

Henry Lane, 37 Spring Street: Henry Lane of 37 Spring Street, seeking building permit for single family dwelling, lot is 2.58 acres, new structure is 28' X 40', approved by Board of Health, Conservation Commission and Department of Public Works, driveway approved. Ginn is abstaining from discussion as he may be involved in project.

MOTION: WESTLEY BURNHAM MOVED TO APPROVE THE SITING FOR A SINGLE FAMILY DWELLING WITH ATTACHED GARAGE AND PATIO FOR HENRY LANE OF 37 SPRING STREET, PER PLAN DATED 07/19/94 BY NEWMAN AND MCDOWELL FINDING IT MEETS ALL THE MINIMUM REQUIREMENTS FOR A SINGLE FAMILY DWELLING IN THE TOWN OF ESSEX, PENNOYER SECONDED, ALL WERE IN FAVOR WITH GINN ABSTAINING, AND DUNN VOTING PRESENT, THE MOTION CARRIED.

Gaybrook Garage: new "canopy" over the gas tanks designed by CITGO, the dimension of proposed canopy is 30' X 24' with recessed lighting. Altholtz stated it is a grandfathered use under 6-4.2 and would require a building permit. Total area of lot is approximately 2.5 acres. Use is currently non-conforming in water resource protection district. The issue of signage was discussed, as was the issue of abutters concerns regarding lighting, etc. Altholtz was concerned about aesthetics of the new canopy. Dunn felt the Planning Board was overstepping it's bounds to address aesthetics. Pennoyer stated the surrounding neighborhood must be considered, this is not Route 1. Dunn abstained as a direct abutter of property.

MOTION: JERMAIN MOVED THAT THE DISCUSSION BE TABLED UNTIL ABUTTER INPUT CAN BE OBTAINED, ALTHOLTZ SECONDED, ALL WERE IN FAVOR WITH THE EXCEPTION OF BURNHAM AND DUNN VOTING PRESENT, THE MOTION CARRIED.

Pond Street: Altholtz commented about Pond Street being defoliated, he continued, the DPW says the work was not done by them, and since the site is in the water resource protection district Dick Carter is investigating.

PUBLIC HEARING CONTINUATION - BYRNE BROTHERS:

The public hearing was continued on the Byrne Brothers paving in the water resource protection district in excess of the 15% allowed. The initial hearing was held on September 7, 1994, and was continued to allow the Planning Board members to view the site before making a decision. Ginn mentioned he visited the site after a substantial rain and confirmed his belief that a catch basin system must be installed.

Bruce Fortier: there was no need for a public hearing on this issue as a special permit cannot be issued to Byrne Brothers for the paving as this is a home occupation, therefore a residence; the by-laws prohibit such a permit for a residential application.

Knowles: I mentioned that at the public hearing.

Ginn: I mentioned this at the public hearing, I don't think having the pavement removed will alleviate the recharging of the water because they will replace the pavement with a hard surface. The whole purpose of the water resource protection district by-law is to recharge the water. The applicant has the proper approach, I don't care if it is considered a residence or not. They have a plan to put the water back into the groundwater. The intent is to put the water back, that's what we're all trying to accomplish.

Fortier: I disagree. Many communities have by-laws to avoid having rain water from driveways returned to the ground water.

Jermain: I questioned if this is still considered a home occupation at the public hearing. This isn't an industrial area, it's a home occupation. The use of the property needs to be addressed; we cannot ignore that situation.

Clay Morin: we were told to apply for a special permit, that's why we're here. We're proposing gas and oil separators, the quality of the run-off will be greater.

Burnham: this looks as though it's a matter of interpreting the by-laws, we need to discuss this amongst ourselves and get back to the applicant; we have 90 days from tonight to respond on this application.

MOTION: BURNHAM MOVED TO CLOSE THE PUBLIC HEARING, KNOWLES SECONDED, DUNN VOTED PRESENT, ALL OTHERS WERE IN FAVOR, PUBLIC HEARING CLOSED AT 8:38 PM.

PUBLIC HEARING - LOW LAND FARMS:

The public hearing for Peter Van Wyck's Low Land Farms subdivision opened at 8:40 PM. Dunn read the five (5) reasons for denial. The applicant was asked if the submission of the amended plan had been changed. Van Wyck stated the plan was changed to address the five reasons for denial, however, an additional lot was added in the resubmission (the plan changed from 4 lots to 5). Robert Klopotoski stated the applicant can change number of lots, sizes of lots and shapes of lots without substantially changing the plan. Charles Clark, Van Wyck's attorney, also believed the plan should be considered the same plan. Westley Burnham stated he too felt applicants can make those changes and the plan should not be considered a new plan.

Jermain: we need to determine if this is a new plan or an amendment of a prior plan. If it is a new plan a new fee would be required. We have received a letter from the Board of Health, they have denied this plan; we can't approve a plan that's been denied by the Board of Health.

Charles Clark: the addition of another lot was in error; we will remove the additional lot. The Board of Health and the Planning Board operate separately. The Planning Board can approve a plan or disapprove a plan without considering the Board of Health's position.

Dunn: I don't believe we can approve a plan that the Board of Health has denied.

Clark: that's not true.

Burnham: it would be impossible for the applicant to make the changes required by the five reasons for denial without making some changes to the plan. That doesn't make it a new plan. He can change the lot lines and number of lots as he so desires.

MOTION: BURNHAM MOVED TO CONTINUE THE PUBLIC HEARING UNTIL 10/19/94 AT 8:30 PM REGARDING THE CHANGES AND ALLOW APPLICANT TO RESUBMIT ANOTHER PLAN - PENDING WRITTEN AUTHORIZATION ALLOWING THE EXTENSION, JERMAIN SECONDED.

Jermain: We need to look at the issues around this applicant regarding the process. I want to determine right here tonight if this is a new plan or not.

Altholtz: We've spent a lot of valuable time and energy on this. The applicant could voluntarily withdraw without prejudice.

Burnham: I don't think this is a new plan. Does the applicant have to start over at ground zero?

Altholtz: No. It's as though he never showed up tonight. He can come back with the right plan.

Ginn: We haven't even given the applicant an opportunity to explain the addition of the fifth lot. Perhaps he had to increase the number of lots to address the reasons for denial.

Burnham: I will withdraw my motion to continue the public hearing.

Clark: the addition of the fifth lot is a mistake. We would like to withdraw without prejudice, and come back with another amended plan.

MOTION: WESTLEY BURNHAM MOVED TO ALLOW PETER VAN WYCK TO WITHDRAW HIS APPLICATION WITHOUT PREJUDICE, PENNOYER SECONDED, ALL WERE IN FAVOR WITH DUNN VOTING PRESENT, THE MOTION CARRIED.

Van Wyck will be submitting a new amended plan with the same number of lots on 10/05/94 and a new public hearing will be scheduled.

Scotti Robinson complaint - Turtleback Road Extension:

Jermain read the letter received from Scotti Robinson requesting information on the status of the Turtleback Road Extension. Jermain stated she was working on a response to Robinson's letter. Jermain stated at last planning board meeting it was brought up that the applicant could lay a water main under the direction of the water department at his own expense without an approval for the subdivision, that he was basically taking on the risk himself. Jermain did not feel that was true. When reviewing the subdivision control laws, Jermain stated under section 3.01 general, without approval for the subdivision, there can be no improvements on the property at all.

Burnham: The Department of Public Works has complete control over this; the DPW is overseeing this.

Altholtz: Having heard what Jermain just read and wanting our cooperation on future projects, would the applicant be willing to cease all activities on the water line?

Charles Clark: with regard to this issue, I think it has already been settled, due to the settlement of all that litigation. The board's action withdrawing the earlier approval had no legal significance. What the board did needed to be recorded in land court, a mortgage exists on the property.

Altholtz: that mortgage was placed on that property in bad faith because you placed it in the midst of hearings. You filed litigation against the board in connection with that denial, and those issues have not been resolved regarding that litigation.

Clark: I just stated what the applicant's position is.

Altholtz: A court of law makes that determination whether the applicant's position is correct or incorrect.

Clark: he did not have an opportunity to discuss the situation with Van Wyck and Van Wyck would agree to cease all work until 10/19/94, so the status could be reviewed.

Dunn: alright, that will be in our minutes, do we want that in writing from the applicant, or are we satisfied that it's in the minutes?

Knowles: I would request it in writing.

Dunn: Could we have a note from you confirming all work will cease there until this is resolved?

Jermain: we just took an action tonight because this developer keeps making mistakes, I'm not sure that this isn't a mistake. We need to know what we're doing on this so we can proceed with order on this. We made a determination on this property back last November, the applicant continues to present this as an approved plan, he continues to do work. It's been my experience that the Planning Board doesn't make people tear out work, they find a way to work with the applicant. This applicant is going to go ahead and keep doing whatever he pleases. We have subdivision controls laws that clearly state no work should be done without approval. This work should not be going on according to 3.01.

Knowles: so the procedure to stop it would be to request the building inspector to issue a cease and desist order?

Dunn: we did get a letter from Scotti, however, this was not on the agenda. I would like to see the Board agree to discuss this on the 19th because we have not discussed this with the applicant, in fairness to the applicant, let's discuss it on the 19th.

Jermain: I agree with that, however, we have a time limit on responding to Scotti's letter.

Pennoyer: the easiest thing is for me to make a motion requesting the building inspector issue a cease and desist order.

MOTION: PENNOYER MOVED TO REQUEST THE BUILDING INSPECTOR ISSUE A CEASE AND DESIST ORDER TO PETER VAN WYCK OF TURTLEBACK ROAD ON THE EXTENSION OR "LOOP" OF TURTLEBACK ROAD SUBDIVISION EXTENSION BECAUSE IT HAS NOT BEEN AN APPROVED SUBDIVISION, IT WAS DENIED 30 DAYS FROM 11/5/93, NO WORK ON ROADS OR UTILITIES CAN BE DONE AS STATED IN SECTION 3.01. KNOWLES SECONDED, ALL WERE IN FAVOR WITH BURNHAM VOTING AGAINST, AND DUNN VOTING PRESENT, THE MOTION CARRIED.

Charles Clark: I would like to be on record objecting that I was not recognized in order to speak on behalf of the applicant as this materially affects his rights on his land, the board taking action without hearing from his council is wrong. I wanted to speak before the motion was voted on because having the building inspector issue a cease and desist order, because of a pending appeal, is going to have to require a response from me prior to the 19th. If we get into a cease and desist order, you'll issue it, we'll appeal it, and we're all wrapped up.

Scotti Robinson agreed to come back before the board on 10/19/94 to continue the discussion on the Turtleback Road extension.

JOHN MAESTRANZI:

Audette: Land abutting Means property. Coming before board informally to get feedback. Proposal is for four (4) large lots on the entire parcel, in keeping with what the Means are doing with their land. Main road will be a 16' gravel driveway to have access to the four lots. Initially the plan was for porkchop lots, however, we felt this was a better plan.

Burnham: the existing way would have to be upgraded before any additional use can be considered.

Dunn: we need to move this on. Let's give them some idea of where they should go now. They came here for some direction.

Audette: They can't go with a Form B, they have their own restrictions, if the board would prefer to see the property porkchopped we could do that.

Audette: We're willing to put restrictions on these lots under a Form A, so no further subdivision could take place, and they would be single family dwellings.

Pennoyer: if you can porkchop seven lots off of the road, why couldn't you porkchop 4 lots?

Audette: we could porkchop 4 lots.

Burnham: you're going to have to convince us that that is considered a public way or that it provides adequate access per our subdivision control laws.

Burnham: we would require fire hydrants, a 24 foot road and a turnaround for fire trucks at the end of the road.

Pennoyer: I disagree with Westley, I would like to work with the applicant under a Form B to provide waivers for road width, waterlines and turnaround if the applicant is willing to limit the subdivision to four lots and place permanent restrictions for any further subdivision of the lots.

TURF MEADOW REALTY TRUST:

In 1987 it was decided that any other subdivision of the property would be subject to the subdivision control laws.

Burnham: If anybody goes for a title search on that there is no doubt there would be a problem.

Altholtz: The appeal period is important because when the appeal period is over he can rely on the decision and move forward on his development, knowing that no one has appealed during the appeal period.

Altholtz: why don't we just ask him to come in to discuss it, to put them on notice that there is a potential problem.

Jermain: why don't we send them a letter, dated tonight, saying the previous decision may be illegal and that we want him to come in to discuss it.

Dunn: I think that just get's them shook up before we've even had time to discuss it. Let's hold off and take it up at the next meeting.

Altholtz: we can't. The appeal period will have passed.

Ginn: we specifically asked the Means if there was anything on record regarding an additional division of land, and they said no. My suggestion would be to have a meeting next week, and call them back to discuss this.

Burnham: I just looked it up, there is no appeal period on a Form A submission. You sign it, they file it, it's all over.

Altholtz: I still think we should send them a letter saying there was an omission or representation.

MOTION: ALTHOLTZ MOVED TO SEND A LETTER TO RALPH PINO, JR, TRUSTEE OF TURF MEADOW REALTY TRUST SAYING WE'VE RECEIVED INFORMATION WHICH LEADS US TO BELIEVE THAT OUR DECISION MAY HAVE BEEN BASED ON AN OMISSION OF INFORMATION OR A MISREPRESENTATION, AND THEY SHOULD COME BACK IN TO CLARIFY IT, AND THEY ARE ACTING AT THEIR OWN PERIL IF THEY DON'T. JERMAIN SECONDED, ALL WERE IN FAVOR, WITH DUNN VOTING PRESENT, THE MOTION CARRIED.

THE MEETING ADJOURED AT 10:05 PM.

PREPARED BY: *[Signature]*

ATTESTED TO: *Franca A. Dunn*



ESSEX PLANNING BOARD

Essex, Massachusetts 01929

WEDNESDAY, SEPTEMBER 7, 1994

- JESSICA SMITH
- EDWARD McINERNEY
- SALLY & PAUL BANVILLE
- TURF MEADOW TRUST
- JEROME FRENCH
- PUBLIC HEARING/BYRNE BROTHERS
- JONES FAMILY TRUST
- ANNE C. DUREY TRUST
- HARDING

ESSEX PLANNING BOARD

WEDNESDAY, SEPTEMBER 7, 1994

ATTENDEES: P. DUNN/CHAIRPERSON, K. JERMAIN, S. PENNOYER,
J. GINN, W. BURNHAM, J. KNOWLES

MEETING CALLED TO ORDER AT 7:35 PM.

MINUTES OF 8/17/94 MEETING:

Westley Burnham commented on page 3 under the motion, Jermain accepted a 30 day extension from Turf Meadow Trust, Burnham would like included a statement that the Trustees submitted the approval for a 30-day extension in writing.

MOTION: WESTLEY BURNHAM MOVED TO ACCEPT THE MINUTES OF THE 8/17/94 MEETING WITH THE CORRECTION NOTED, GINN SECONDED, ALL WERE IN FAVOR, (KNOWLES ABSTAINED FROM THE VOTE AS HE WAS NOT AT THE 8/17/94 MEETING), THE MOTION CARRIED.

DICK CARTER/BUILDING INSPECTOR:

Jessica Smith, Hardy's Point Road, new screen porch, approximately 6' without roof and screen, would increase footprint. Letters from abutters were presented with no objections. Burnham withdrew himself from discussion as he is a trustee to an abutter. Approved by Conservation Commission, Board of Health and the Wetlands.

MOTION: GINN MOVED UNDER 6-4.2 TO ALLOW THE BUILDING INSPECTOR TO ISSUE A BUILDING PERMIT TO JESSICA SMITH OF 8 HARDY'S POINT ROAD, FOR THE ADDITION OF A DECK AND SCREEN PORCH, NOT TO BE USED AS LIVABLE SPACE WITH LETTERS FROM ABUTTERS FILED WITH APPLICATION. KNOWLES SECONDED, BURNHAM VOTED PRESENT, DUNN VOTED PRESENT, REST IN FAVOR, MOTION CARRIED.

Edward McInerney, 44 Lake Shore Drive, Map 91/Lot 4, 19,500sf, replace back shed type with a kitchen and bath and make necessary renovations to existing building, approved by Conservation Commission, Board of Health and the Wetlands, will not increase existing footprint.

MOTION: PENNOYER MOVED TO ALLOW THE BUILDING INSPECTOR TO ISSUE A BUILDING PERMIT FOR EDWARD MCINERNEY, 44 LAKE SHORE DRIVE, AS SHOWN ON THE DRAWING DATED 8/12/94 TO ADD AN ADDITION THAT WILL SIT IN FOOTPRINT OF OLD SHED, FINDING IT NO MORE NON-CONFORMING UNDER 6-4.2. BURNHAM SECONDED, DUNN VOTED PRESENT, REST WERE IN FAVOR, THE MOTION CARRIED.

Sally & Paul Banville, 53 Choate Street, Lot #3, Map 16, Lot #14, 16.10 acres, foundation, approved by Board of Health, Conservation Commission and DPW.

MOTION: PENNOYER MOVED TO ALLOW THE BUILDING INSPECTOR TO APPROVE THE SITING FOR SALLY & PAUL BANVILLE, 53 CHOATE STREET, LOT #3, PER FOUNDATION PLAN DATED 7/5/93, BURNHAM SECONDED, ALL IN FAVOR WITH DUNN VOTING PRESENT, THE MOTION CARRIED.

TURF MEADOW TRUST:

Plan as presented by Ralph Pino, Trustee of Turf Meadow Trust, Lot #1, the main house lot does not have same deed restrictions as Lots #2, #3 and #4, as Lot #1 has the large building, and the Trustees do not wish to restrict this building as a single family dwelling.

MOTION: GINN MOVED TO APPROVE THE PLAN OF TURF MEADOW REALTY TRUST DATED 6/30/94 SHOWING THE CREATION OF LOTS #1, #2, #3 AND #4 BY DONAHOE AND PARKHURST. LOTS #2, #3 AND #4 HAVE DEED RESTRICTIONS THAT PREVENT FURTHER SUBDIVISION OF LOTS AND STIPULATES THAT THE DWELLINGS ARE TO BE SINGLE FAMILY HOMES AS NOTED ON THE PLAN. LOT #1 UNDER NOTE 3 STATES THE FRONTAGE WILL NOT BE USED AS FURTHER DIVISION OF THAT LOT. JERMAIN SECONDED, BURNHAM ABSTAINED FROM VOTE AS HE IS ABUTTER, PENNOYER ABSTAINED AS POTENTIAL CONFLICT COULD EXIST AS HE WORKED WITH PROJECT ADVENTURE AS PRIOR POTENTIAL PURCHASER OF PROPERTY, ALL WERE IN FAVOR WITH DUNN, PENNOYER AND BURNHAM VOTING PRESENT, THE MOTION CARRIED.

JEROME FRENCH:

Form A submitted at prior meeting from Jerome French with portion of Evelyn Bartlett's property included on plan. A Form A for Evelyn Bartlett was submitted at this meeting to complete submission.

MOTION: BURNHAM MOVED TO APPROVE THE FORM A APPLICATION OF JEROME C. AND ABBIE E. FRENCH SUBMITTED IN CONJUNCTION WITH A FORM A APPLICATION OF EVELYN F. BARTLETT FOR THE CREATION OF PARCEL A, PARCEL B AND LOT 2 PER PLAN DATED 8/10/94 BY RURAL LAND SURVEYS FINDING IT MEETS ALL THE MINIMUM REQUIREMENTS FOR THE CREATION OF A LOT IN THE TOWN OF ESSEX, GINN SECONDED, ALL WERE IN FAVOR WITH DUNN VOTING PRESENT.

PUBLIC HEARING - BYRNE BROTHERS:

Dunn opened the Public Hearing at 8:50 for John & Michael Byrne of 234 Western Avenue for a special permit for paving an area in the water resource protection district rendering greater than 15% of the lot impervious.

Clay Morin was representing Byrne Brothers, he stated the lot is 38,045sf, 13.5% is occupied by the building, 33% is covered with landscaping, 53% is pavement. They submitted a discharge water plan. There was no public attendance at the hearing.

Jermain: at what point was the process at, is the applicant coming here after the fact to deal with the paving in excess of that allowed, and showing us a plan how he intends to deal with that now? Is this fine with us?

Burnham: we can under a special permit allow him to render impervious greater than 15% if a system of artificial recharge is in place.

Jermain: but this is after the fact.

Burnham: either way, we can make them take it all out, which would probably be a long drawn out court battle, or if he's got a potentially feasible plan to deal with it, we can go along with it.

Jermain: a year ago Dick Carter said he was moving. Are we to understand now that he's not moving, because if he's going to invest all this money for a recharge system so that he can keep the business the size that it is on that lot? If this is a home occupation, and he's investing this kind of money to stay here to make up for the fact that he put in all this paving that is not allowed, we have to look at this as a home occupation.

Dunn: it has been accepted as a home occupation.

Ginn: he has exceeded his limits of a home occupation.

Burnham: the special permit hearing tonight is for paving in the water resource protection district not for home occupation, and I do not believe it was intentional or malicious. He is here after the fact trying to correct it within the bounds of our by-laws. I think we should keep the conversation to the subject.

Jermain: would a home occupation that fits within the regulations require this much paving or a recharge system of this type?

Burnham: a home owner, if he chose to, could pave this much of his property.

Knowles: this has been approved as a home occupation, so we cannot look at this as industrial use as it pertains to the watershed.

Pennoyer: we need to look at the big picture here, right now the water is being discharged into a wetland and we have a possible proposal that will deal with the issue.

Jermain: the other proposal is to take up the pavement, to have them restore it back to its original state.

Ginn: I'm going to have to disagree with that, since they use this area as an access to the building they will replace the pavement with a hard type material and I don't think that will absorb water. Even if they took up the pavement, unless they replaced the whole area with grass, I personally would still want to see some catch basins to handle the water. Maybe we should ask them to take it all up, but I don't know.

Dunn: the home occupation should be brought up later. When Coughlin came before us for paving we dealt with that, we should just be looking at the hottop right now.

Burnham: to single out one corner of town as the only ones that need permits to pave is unfair. The people don't know who to go to for information. The paving already exists, if they have a viable solution to deal with it, let's move on.

The Planning Board requested a visit to the site before making any further action on this property, Morin stated he saw no reason why the site could not be viewed; Saturday, September 10, 1994 was tentatively scheduled.

MOTION: BURNHAM MOVED TO CONTINUE THE PUBLIC HEARING ON BYRNE BROTHERS PAVING UNTIL SEPTEMBER 21, 1994 TO ALLOW THE PLANNING BOARD TIME TO VIEW THE PROPERTY IN QUESTION, AND TO RECEIVE PERC DATA FROM CLAY MORIN, PENNOYER SECONDED, ALL WERE IN FAVOR WITH DUNN VOTING PRESENT, THE MOTION CARRIED.

JONES FAMILY TRUST:

Form A submitted for property located in Essex and Hamilton, Lot #1 is in Hamilton, Lot #2 in Essex; the town line is the lot line, lot has 178 feet of frontage.

MOTION: BURNHAM MADE A MOTION TO APPROVE THE FORM A APPLICATION FOR THE JONES FAMILY TRUST OF 601 ESSEX STREET, HAMILTON, FOR THE CREATION OF LOT #2 IN ESSEX AS SHOWN ON THE PLAN DATED 7/12/94 BY ATLANTIC ENG., FINDING IT MEETS ALL THE MINIMUM REQUIREMENTS FOR A BUILDABLE LOT IN THE TOWN OF ESSEX, PENNOYER SECONDED, ALL WERE IN FAVOR WITH DUNN VOTING PRESENT, THE MOTION CARRIED.

ANNE C. DUREY TRUST:

Form A application for property located both in Ipswich and Essex, on Candlewood Road; 3.4 acres are located in Essex.

MOTION: BURNHAM MOVED TO APPROVE THE FORM A APPLICATION OF JOAN COOK TRUSTEE, ANNE C. DUREY TRUST FOR PLAN OF LAND AS SHOWN DATED 8/22/94 BY HANCOCK SURVEY ASSOCIATES, SUBDIVISION IS NOT REQUIRED FOR PORTION IN ESSEX, KNOWLES SECONDED, ALL WERE IN FAVOR WITH DUNN VOTING PRESENT, MOTION CARRIED.

FEES:

A discussion of proposed changes to the regulations to include required fees ensued; need public hearing to enact change. Table discussion for now.

PLANNING ISSUES:

Dunn questioned the board what path they would like to now take to address the issues of planning in the town. Burnham would like to review the zoning by-laws and address any areas needing clarification, Pennoyer would like to revisit Site Plan Review and see if it is valid to bring to public, Jermain felt there is no point in revisiting any plans for changing zoning by-laws or making new zoning by-laws or revisiting Site Plan Review if no enforcement is going to be in place, Knowles felt the regulations need to tie into the by-laws. Each member should make a list of the areas they think should be looked at. Burnham stated at 9/21/94 meeting the definitions should be looked at and improved when warranted.

HOME OCCUPATION CONCERNS:

Dunn read a letter from the Prindle's relative to the Sims' home occupation. Some discussion ensued regarding what the process should be for addressing complaints from abutters regarding home occupations that are being intrusive to neighbors. Burnham stated the complaints should go to the Building Inspector, rather than involving the Planning Board as they have no enforcement power.

HARDING:

Dunn read letter from the Board of Health indicating the request by Kevin Harding to have his home converted to two-family has been denied due to the fact that the applicant did not comply with requirement to have lead paint inspection done.

Scotti Robinson:

Received letter from Scotti Robinson regarding Turtleback Road Extension by Peter Van Wyck, she indicated he has been paving area when she believed he had not been approved to move ahead with project. The Board needs more time to review.

MEETING ADJOURNED AT 10:50 PM.

PREPARED BY:

[Handwritten Signature]

ATTESTED TO:

Frances A. Dunn

ESSEX PLANNING BOARD

AGENDA

AUG.17,1994

- 7:30 Read and Approve Minutes
- 7:45 Dick Cater Building Inspector
- 8:00 John Heath
- 8:30 Michael Cataldo Open Space Committee
To discuss survey
- 9:00 Planning Board Bussiness

ESSEX PLANNING BOARD

WEDNESDAY, AUGUST 17, 1994

Meeting was called to order at 7:37 PM.

PRESENT: W. Burnham/Acting Chairman, P. Dunn, S. Pennoyer,
J. Ginn, K. Jermain, H. Altholtz

MINUTES:

Burnham questioned if everyone had an opportunity to review the minutes of the prior meeting (8/3/94), Altholtz stated he would like to put off accepting the minutes until he had an opportunity to review the tape from the meeting.

MOTION: JERMAIN MADE A MOTION TO TABLE THE APPROVAL OF THE MINUTES OF THE 8/3/94 MEETING UNTIL THE TAPE COULD BE REVIEWED, ALTHOLTZ SECONDED, ALL WERE IN FAVOR WITH BURNHAM VOTING PRESENT, THE MOTION CARRIED.

DICK CARTER/BUILDING INSPECTOR:

MEANS PROPERTY/TURF MEADOW TRUST:

MOTION: PENNOYER MOVED TO ACCEPT THE APPLICATION FOR GUS MEANS' ESTATE ON COUNTY ROAD, ON FORM A, FRED SHAW, JR. AND RALPH PINO TRUSTEES OF THE TURF MEADOW TRUST. THE PLAN WAS DATED 6/30/94, DUNN SECONDED, ALL WERE IN FAVOR WITH BURNHAM VOTING PRESENT, THE MOTION CARRIED.

Ralph Pino: stated he was here in his capacity of Trustee of the Turf Meadow Trust, as well as the trust under the will of Gus Means. He stated Means' intent was to preserve the area as a large open area. He continued their intent was to use the plan set out which was approved as a Form A for the Mansfield piece approved in 1970. They would be restricting the four lots with deed restrictions or restrictions on the plan if required that construction on each of the lots would be limited to one single family dwelling with related out buildings, with no further division. The question tonight is the access, is it sufficient? We think the plan is great for Essex.

Dunn: questioned if this is a subdivision road?

Pennoyer: questioned if the appropriate vehicle for this application would be a Form A or a Form B. Would the deed restrictions hold up say 50 years down the road.

Pino: the plan was approved in 1970 as an ANR.

Ginn: we can't question what was approved in 1970. My only concern is a safety issue. I think if there is going to be expanded use up there, the fire/emergency vehicle situation is a concern.

Altholtz: liked the plan, but would like to see the deed restrictions or covenants.

Carter: would like to see a water line down there.

Rick Means: that would be a huge expense to bring a water line up there.

Pennoyer: there's no question putting a water line down there would necessitate another lot.

Dunn: supported the plan as an asset to town. However, the road concerns her, is this a drive? Is this is an ANR on something that hasn't been approved as a subdivision road?

Pennoyer: if it's approved as an ANR, then it's not a subdivision road.

Altholtz: the plan is exempt from the subdivision control laws, meaning it's an ANR if each lot in the track has access to a way in existence when the subdivision control law became effective in town.

Ginn: the safety issue is something this board should be concerned with.

Altholtz: the safety concern is the building inspector's issue.

Pennoyer: if this is an ANR, how much of this is our concern?

MOTION: GINN MOVED TO ACCEPT THE PLAN OF 6/30/94 FOR THE CREATION OF LOTS 1, 2, 3 AND 4 BEING SHOWN ON THE PLAN AS PREVIOUSLY ACCEPTED BY THE TOWN IN 1970 AS AN APPROVED WAY. THE DEED RESTRICTIONS AS NOTED ON THE APPLICATION WILL BE ENFORCED FOR THE LOTS AS THEY ALL ARE TO BE SINGLE FAMILY HOMES WITH ASSOCIATED OUT-BUILDINGS, WITH NO FURTHER REDIVISION OF THESE LOTS, DUNN SECONDED.

Pennoyer: would the applicant be willing to give the Planning Board an extension so they could come back at the next meeting with all the deed restrictions on the plan before the Planning Board signed off on the plan?

Pino: "yes" we would be willing to give a 30-day extension and appear at the meeting on 9/7/94. Is there somehow we could get a sense from the board that the board will approve the plan when we return on the 7th?

Ginn retracted his motion.

A "straw vote" was taken from the board indicating what the vote would be on the 7th:

Dunn -	would approve
Ginn -	" "
Altholtz -	" "
Pennoyer -	" "
Jermain -	" "
Burnham -	present

Pennoyer: we should be clear on what the straw vote means. Does this mean when they come back on the 7th, no one will be asking for turnouts or something else? We need to give them direction to amend the drawing if they will need to.

MOTION: JERMAIN MOVED TO ACCEPT THE 30-DAY EXTENSION FROM THE TURF MEADOW TRUST (RALPH PINO SUBMITTED THE EXTENSION IN WRITING), ALTHOLTZ SECONDED, ALL WERE IN FAVOR WITH BURNHAM VOTING PRESENT, THE MOTION CARRIED.

JOHN HEATH:

Changing prior plan from 3 lots to 2 due to the frontage issue last time, ANR on Wood Drive. Will come back before the board later with changed plan.

JEROME FRENCH:

Form A - requested to be on agenda on 9/7/94 regarding 8/17 submission. ANR on property currently owned by Bartlett. No fees were submitted with plan, discussion ensued as to what appropriate fee would be. Ginn believed the fee for an ANR is \$100 for submission and \$100 for each lot. Burnham stated French is splitting off part of his property in a swap with Bartlett in exchange for a part of their property. Burnham believed Bartlett must submit a Form A for the portion that is theirs. Burnham stated there is nothing on the application form that mentions a filing fee.

MOTION: PENNOYER MOVED TO DENY THE APPLICATION OF THE FORM A BY JEROME FRENCH OF 41 FORREST AVENUE TO DIVIDE HIS PROPERTY INTO TWO LOTS AS DESCRIBED IN THE DRAWING BY RURAL LAND SURVEYS, DATED 8/10/94 DUE TO IMPROPER SUBDIVISION OF ABUTTING PROPERTY OWNED BY EVELYN BARTLETT FOR THE CREATION OF PARCEL A WHICH CREATES LOT 2. JERMAIN SECONDED, ALL WERE IN FAVOR WITH BURNHAM VOTING PRESENT, THE MOTION CARRIED.

MICHAEL CATALDO/OPEN SPACE COMMITTEE:

Cataldo explained that the Open Space Committee sent out surveys to Essex residents. They were on the agenda this evening to brief the Planning Board on the results of the survey; 1,500 surveys were sent, 232 responses were received. The committee summarized the responses for review. The key points were 66% said they'd vote for the town to acquire land for recreational use for the town, 59% said we should be regulating growth, 57% said business and industrial growth should be regulated, 82% said there should be a master plan for town growth (whether it's zoning, site plan review or something else). Cataldo stated they would be finalizing the review of the survey results and getting back to the board. Many comments were received, and they should be reviewed to really see what the views of the townspeople are. Cataldo stated instead of planning in a vacuum, this should be used as a tool before bringing something to town meeting.

APPROVAL OF MINUTES OF 8/3/94:

- Burnham: would like to see the minutes remain as vague as they currently are.
- Altholtz: would like to see some changes in minutes of meeting, had more problem with Burnham's conduct at that meeting than with Guerin's.
- Pennoyer: overall outcome of the minutes makes no accusations or determinations, let's get over these issues and get to planning issues.
- Jermain: what got lost in that whole discussion was lawyers coming before the board representing applicants when they also maintain other positions where a possible conflict of interest could exist.
- Burnham: Essex is a small town, people are involved in many areas in small towns, it's impossible to avoid 100% of possible conflicts of interest.
- Altholtz: I will waive the revision of the minutes, however, on page 8, please change it to state that Altholtz had no problem with the review of the minutes only taking place at the meetings in the future.

MOTION: KIMBERLY JERMAIN MOVED TO ACCEPT THE MINUTES OF THE 8/3/94 MEETING, THE MOTION WAS SECONDED BY JOE GINN, ALL WERE IN FAVOR WITH BURNHAM VOTING PRESENT, THE MOTION CARRIED.

SCOTTI ROBINSON:

Concerned with activity going on on Peter Van Wyck's property on Turtleback Road. She believes some area is being paved and a water line with hydrant is being installed, and would like to know if he is allowed to do this. She was advised to write a letter to the Planning Board seeking information on Turtleback Road extension.

KEVIN HARDING:

Burnham read letter to Kevin Harding from Board of Health notifying him he is in violation of the lead paint laws renting to a family with a child under the age of 6. Sims notified him a complete lead inspection must be done immediately by a certified inspector within 90 days, the conversion of his home from a single family to a two family home is pending the completion of this process. Pennoyer wanted to point out this letter is for information only, lead paint removal is not the responsibility of the Planning Board.

TRUSTEES OF THE RESERVATION:

Burnham read a letter received from the Trustees of the Reservation regarding an application for a dock located at Long Island at the Crane Wildlife Refuge, seeking a Chapter 91 license; informing the Planning Board is part of the Chapter 91 licensing process.

MOTION: GINN MOVED THAT THE CHAIRMAN OF THE PLANNING BOARD APPROVE THE FORM FOR THE LICENSING FOR THE APPLICATION FOR A CHAPTER 91 LICENSE FOR THE TRUSTEES OF THE RESERVATION, FOR THE DOCK FACILITY OF LONG ISLAND AS DESCRIBED IN THE APPLICATION RECEIVED ON AUGUST 17, 1994, PENNOYER SECONDED, ALL WERE IN FAVOR WITH BURNHAM VOTING PRESENT, THE MOTION CARRIED.

PLANNING BOARD CHAIRMAN:

Burnham read a letter received from Joe Knowles, requesting to retract his resignation from the Planning Board on August 3, 1994.

Altholtz: we should hold an election tonight to appoint another chairman.

Burnham: we did not make a motion to accept his resignation at the last meeting. He is still Chairman until we accept his resignation.

Jermain: why isn't he here tonight if he wants to be Chairman?

Burnham: he's on vacation.

Ginn: the minutes state Knowles resigned at the last meeting.

Altholtz: we should accept his resignation and appoint a new Chairman.

Dunn: we are making fools of ourselves in this town.

Altholtz: it was in the newspaper that he resigned.

Pennoyer: the outside perception is that Knowles resigned.

Jermain: he made the statement, and we should follow through with what he initiated.

Ginn: how valuable is he as a Board Member when he continues to miss public hearings, etc.

Pennoyer: we don't need to discuss Knowles specifically, we should focus on the issue of the public perception.

Burnham: we need to follow the proper procedure that should be followed. Bob Dawe informed Burnham before this meeting that according to Robert's Rules of Order, Knowles is still Chairman.

Pennoyer: we should be very specific in the motion, and refer to the minutes of the 8/3/94 meeting when he resigned.

Burnham: is it the general opinion of the Board members present that Knowles has resigned as Chairman?

All members indicated yes, it was.

MOTION: ALTHOLTZ MOVED THAT HAVING ACCEPTED THE MINUTES OF THE 8/3/94 PLANNING BOARD MEETING IN WHICH JOE KNOWLES RESIGNED AS CHAIRMAN, THE BOARD IS CONSIDERING THAT TO BE TANTAMOUNT TO THE ACCEPTANCE OF HIS RESIGNATION NOW DECLARE HIS CHAIR VACANT, GINN SECONDED, ALL WERE IN FAVOR WITH BURNHAM VOTING PRESENT, THE MOTION CARRIED.

CHAIRMAN:

Burnham opened the floor for nominations:

MOTION: PENNOYER MOVED TO NOMINATE DUNN AS CHAIRMAN, GINN SECONDED. DUNN STATED SHE WOULD ACCEPT THE POSITION. BURNHAM CLOSED THE FLOOR FOR NOMINATIONS, AND CAST A SINGULAR VOTE IN LIGHT OF THE FACT THAT THERE ARE NO COMPETING MEMBERS. ALL WERE IN FAVOR, THE MOTION CARRIED.

CLERK:

Burnham opened the floor for nominations:

MOTION: DUNN MOVED TO NOMINATE JERMAIN FOR CLERK, PENNOYER SECONDED. ALL WERE IN FAVOR, THE MOTION CARRIED.

ALTHOLTZ:

Altholtz mentioned the motions he had been intending to make at the previous meeting:

1. That Town Counsel requests and responses be made in writing.
2. That Planning Board members don't discuss issues pending before the Board outside of the Board.
3. That Planning Board members do not attend Board of Appeals Meetings/Hearings.
4. That a formal requirement be put into the By-Laws requiring that abutters are notified under 6-4.2.
5. That the Planning Board implement filing correspondence/documents by lot and parcel.
6. That there be fewer members on the Planning Board, the By-laws state there should be between five and nine, Altholtz would like to see the board reduced to five.

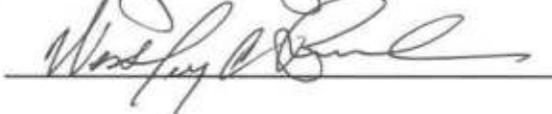
It was suggested that the board develop a pamphlet, or perhaps one or two pages in front of the by-law book, for new board members detailing duties of position, giving guidelines.

MEETING ADJOURNED AT 10:50 PM.

PREPARED BY:



ATTESTED TO:



ESSEX PLANNING BOARD

AGENDA

AUGUST 3, 1994

- 7:30 Minutes Read and Approve
- 7:40 Dick Carter Building Inspector
- 8:00 Public Input
- 8:45 Byrnes Brothers Schedule Public Hearing
Mr. Munson For Used Car Lot on Pikes Property
Schedule Public Hearing
- 9:00 Peter VanWyck Lowland Farm Discussion

ESSEX PLANNING BOARD

WEDNESDAY, AUGUST 3, 1994

Meeting called to order at 7:45 PM.

PRESENT: J. Knowles/Chairman, P. Dunn, H. Altholtz, W. Burnham,
K. Jermain, S. Pennoyer, J. Ginn

MINUTES:

MOTION: WESTLEY BURNHAM MOVED THAT THE MINUTES OF THE JULY 20, 1994 MEETING BE ACCEPTED AS WRITTEN, JOE GINN SECONDED, ALL WERE IN FAVOR, THE MOTION CARRIED.

DICK CARTER/BUILDING INSPECTOR:

Henry Lane: Carter explained at the last meeting of the Planning Board (7/20/94) a form A was signed for Henry Lane of Spring Street, it was not appropriately stamped at the top, therefore, a new form needed to be signed by the Board.

William B. Tyler: submitted an application for a permit for private recreational docks (pier) with floats, the structure consists of four pilings, located on Noah's Hill, Addison Street; approved by Conservation Commission.

MOTION: S. PENNOYER MOVED THAT THE APPLICATION FOR A PERMIT BE APPROVED FOR A PRIVATE DOCK/PIER FOR SWIMMING AND BOATING ON ADDISON STREET FOR WILLIAM B. TYLER OF NOAH'S HILL, ACCORDING TO THE PLAN DATED JANUARY 18, 1994, BURNHAM SECONDED, ALL WERE IN FAVOR, THE MOTION CARRIED.

Ginn questioned if the Harbormaster has approved this?

Tyler commented he would ask the Harbormaster for his opinion.

Dawe Paving: Carter stated he was in receipt of a letter dated July 25, 1994 from the Planning Board relative to the Dawe paving in the wetland area. Carter continued, the letter indicated that 15% of the total lot would be 761sf - and the house covers 755sf. Carter disagreed with these figures. Carter said the house did not cover 755sf with impervious surface; the By-Law states 15% or 2,500sf. He believes the 2,500 applies to the Dawe property.

Westley Burnham felt the intent of the by-law was 2,500sf or 15%, whichever is greater; the 15% was for large developments.

Dawe (con't): Carter stated half the house was covered with an open porch, that isn't impervious. Carter said either way you look at it the 2,500sf or 15%, the property is not in violation.

Knowles requested Carter write something up and submit it to the Planning Board.

Turf Meadow Realty Trust: Carter advised the applicants would be at the meeting later. He submitted the Form A for Fred Shaw and Ralph Pino. Carter retracted his application.

Kevin Harding: Kimberly Jermain inquired of Carter if the property of Kevin Harding was approved for a change of use. Carter explained he hasn't inspected it yet. Dunn commented two families are already residing in the home.

Centennial Grove: Knowles read a letter from the Chairman of the Essex Selectmen dated July 29, 1994. The issue is whether or not the ballfields require a permit as a recreational facility. Burnham commented that Andy Gallant could not make it to the meeting tonight, and requested that Westley Burnham bring up the matter. Altholtz recused himself as he as the Chairman of the Community Development Committee.

MOTION: WESTLEY BURNHAM MOVED THAT THE PLANNING BOARD SEND A LETTER TO THE SELECTMEN INDICATING THAT THE FIELD OF DREAMS PROJECT AS PRESENTED TO THE PLANNING BOARD DOES NOT REQUIRE A SPECIAL PERMIT UNDER THE RECREATIONAL USE, AS A RECREATIONAL USE HAS BEEN AND IS ONGOING IN ITS PRESENT CONFIGURATION. ANY CONSTRUCTION WILL BE APPROVED BY THE BUILDING INSPECTOR TO ENSURE THAT THE BUILDING CODES ARE MET. SECONDED BY PENNOYER, ALL WERE IN FAVOR, WITH GINN, ALTHOLTZ AND KNOWLES VOTING AS PRESENT, THE MOTION CARRIED.

Adoption of Planning Schedule: Knowles commented on the planning schedule he presented several meetings ago. He was requesting the board adopt the schedule, with the hopes that a portion of each meeting will have to do with that plan.

MOTION: WESTLEY BURNHAM MOVED THAT THE PLANNING BOARD ADOPT THE CHAIRMAN'S PLANNING AGENDA FOR THE REVIEW OF THE BYLAWS, FOR THE ENHANCEMENTS TO BE PRESENTED AT THE NEXT ANNUAL TOWN MEETING, DUNN SECONDED, ALTHOLTZ AMENDED THE MOTION, ADDING "NON-BINDING" BEFORE "PLANNING AGENDA", THE AMENDED VERSION WAS SECONDED BY JERMAIN.

ALTHOLTZ: There were several motions he had planned to make this evening. He continued, he was asked by Knowles to get on the agenda if he needed some time allotted at the meeting. Since then he learned he was taken off the agenda. Altholtz did not feel board members should have to get on agenda to bring issues to the meeting.

PENNOYER: Agreed he did not feel board members should have to get on the agenda.

KNOWLES: In order to accomplish all that is on the agenda, it is helpful to schedule those items that will take up considerable time.

JERMAIN: The schedule that is being adopted in the motion may preclude individuals enough time to speak.

BURNHAM: The schedule would not preclude spontaneous discussion, and that those things that need to be dealt with will be dealt with. The purpose of the schedule is to try to plan to be prepared to go to Town Meeting, and not try to cram things in at the last minute. This framework is to deal with the zoning by-laws, with a target set for the next annual town meeting.

KNOWLES: This is not just an idea on how to proceed, this is how to proceed. This schedule is only useful if it is followed, it should be followed as an order of business, not an option, but a requirement. That at each meeting, it's on the agenda.

ALTHOLTZ: This is a democracy, and democracies are not always efficient. The fluidness and spontaneity are more important than efficiency, it's a good guideline.

GINN: Had a problem that a board member who was on the agenda for this evening, they should be heard at that meeting. This feels too regimented. This is a good goal, but he couldn't see a schedule followed too strictly. Sometimes the public has comment, and it's important to give them time to comment.

KNOLWES: The complaint most often from the board is we go too long.

PENNOYER: Had no problem with the plan as long as it does not preclude spontaneity. Pennoyer also felt planning board members having to get on the agenda didn't agree with him, unless there is a substantial amount of time required.

KNOWLES: Believes board members should get on the agenda if they are planning on taking up considerable time.

BURNHAM: This board requested that the Chairman keep the meetings short for the summer months; he's trying to accomplish that. This Board voted to keep the schedule the same for the summer, but to keep the meetings short. Burnham commented his motion was to adopt the scheduled plan for dealing with the by-laws in time for the annual time meeting.

JERMAIN: Feels the Chairman will cut off public comment to adhere to a schedule, she commented she would prefer to use this as a goal, not a strict schedule. She continued, in the past many issues have dragged on over many meetings unresolved because the issue was cut off due to time constraints.

GINN: Questioned when the time would be allotted at each meeting. He suggested if the meeting was a public hearing on a particular subject, the public hearing should be scheduled at the beginning of the meeting, so the public would not have to sit for an hour or so and wait for the public hearing to begin.

KNOWLES: Obviously public hearings on other business would obviously take precedence.

A vote was taken on the amended motion, Burnham and Ginn were opposed, the motion carried.

A vote was taken on the initial motion made by Burnham, seconded by Dunn, Ginn and Burnham were opposed to the motion, the rest were in favor.

DAWE: Per Robert's Rules of Order, Knowles is the chairman and sets the agenda, there was no need for the last motion, and the discussion that ensued.

KNOWLES resigned as Chairman, as he felt the amount of debate involved regarding the implementation of a planning schedule indicated a lack of confidence on the part of the rest of the board in the Chairman; Knowles said he was Chairman in name only. Knowles left the meeting, and turned it over to the Vice Chairman, Westley Burnham.

GINN commented he felt it is not right for individuals who may not like the way the meeting is going to "walk out". Ginn commented it continues to occur, and he felt it was wrong.

BURNHAM opened the floor for public comment on planning issues in the town of Essex.

Nancy Dudley felt what had just gone on at the meeting was incredible. The residents of Essex are asked to support a Site Plan Review and go to Town Meeting, then we come to a meeting and find it being run totally disorganized. The Chairman tries to organize and focus it, and its voted down because you want to be more "fluid". How about if the townspeople feel like being more fluid, and maybe we won't show up for town meeting. Nobody wants their ego stepped

Ann Marie Leighton mentioned one thing in town disturbing her is the used car lot. Her concern was Essex would even consider grandfathering this. She was concerned with the board's trend in not taking input from the public. She believed this town had no plan for development and for the future.

Vince Tullock indicated he felt a schedule is necessary, because he observed many things come up and the board goes off on tangents, and you won't accomplish what you need to. He mentioned the Planning Board is the last line of defense, each business will grow, and the town will change perhaps more than intended. The members have egos and take things personally, please put your personal feelings aside, and get things done.

Mike Cataldo has compiled results of survey (200 responses) from open space committee. He wanted to share the information with the town boards. Burnham suggested Cataldo get together with Pat Dunn to get on the agenda to present the results of the survey.

Sonny/Board of Health: would be willing to come back at a later meeting to give input.

Bob Dawe: would also be willing to come back at a later meeting to give input.

BYRNE BROTHERS:

Application from John & Michael Byrne for special permit for paving in the water protection district.

MOTION: SHELDON PENNOYER MOVED THAT A PUBLIC HEARING FOR A SPECIAL PERMIT BE HELD ON WEDNESDAY, SEPTEMBER 7, 1994 AT 8:30 PM FOR JOHN & MICHAEL BYRNE OF 234 WESTERN AVENUE FOR PAVING AN AREA IN THE WATER PROTECTION DISTRICT GREATER THAN THE 15% ALLOWED, ALTHOLTZ SECONDED, ALL WERE IN FAVOR, WITH BURNHAM VOTING AS PRESENT, THE MOTION CARRIED.

MUNSON/THOMSON:

An application for a special permit was received by the Planning Board for the proposed used car dealership by Thomson Motors. Since that use is prohibited in the water protection district, a special permit could not be allowed.

MOTION: ALTHOLTZ MOVED THAT A LETTER BE SENT TO MICHAEL MUNSON RETURNING THEIR APPLICATION AND CHECK SUBMITTED FOR WARREN THOMSON FOR THE PROPERTY AT 174 WESTERN AVENUE REQUESTING CLARIFICATION AS TO WHAT SECTION OF ESSEX BY-LAW 6-13 THEY'RE APPLYING UNDER. PENNOYER SECONDED, ALL WERE IN FAVOR WITH BURNHAM VOTING AS PRESENT.

BURNHAM: We should accept the application and contact Munson to inform him that a special permit cannot be issued.

ALTHOLTZ: It is not the Planning Board's responsibility to contact applicants and inform them of the process.

JERMAIN: The board could deny his application immediately, as a public hearing would not be necessary as the use is prohibited.

PETER VAN WYCK - LOW LAND FARM:

Requesting public hearing on amended definitive plan in response to previous denial for subdivision.

MOTION: GINN MOVED TO ACCEPT AN EXTENSION FROM PETER VAN WYCK FOR A 30 DAY EXTENSION FOR THE HOLDING OF A PUBLIC HEARING ON 09/21/94, THE PLAN WAS RECEIVED BY THE PLANNING BOARD ON JUNE 15, 1994. THE EXTENSION WOULD ALLOW THE PUBLIC HEARING TO BE HELD AFTER THE 90 DAY DEADLINE, PENNOYER SECONDED, ALL WERE IN FAVOR, THE MOTION CARRIED.

MOTION: ALTHOLTZ MOVED THAT A PUBLIC HEARING BE SCHEDULED FOR PETER VAN WYCK ON THE LOW LAND FARM SUBDIVISION, THE PURPOSE BEING TO REVIEW THE AMENDED PLAN RELATIVE TO THE DENIAL OF THE PLAN DATED 12/01/93, REVISED ON 6/1/94 THE INITIAL PLAN WAS DENIED ON 5/04/94. THE PUBLIC HEARING WILL BE HELD ON WEDNESDAY, SEPTEMBER 21, 1994 AT 8:30 PM, PENNOYER SECONDED, ALL WERE IN FAVOR, WITH BURNHAM VOTING PRESENT, MOTION CARRIED.

OPEN MEETING ISSUE:

BURNHAM: Brought up the issue relative to possible inappropriate acts relative to the open meeting requirements and the recording of the board minutes. He briefly described the situation in question, and asked if the board would like to go into Executive Session since specific names would be mentioned, the board felt it was not necessary to go into Executive Session.

OPEN MEETING (con't):

ALTHOLTZ: Stated he was the planning board member in question, and saw no need to go into Executive Session.

BURNHAM: In the absense of Knowles, requested if the Planning Board Secretary, Eileen Douglass, would explain the situation as he felt he did not have sufficient information to present it himself.

DOUGLASS: Explained that in the minutes of the June 15, 1994 meeting the minutes initially indicated on page 1 that H. Altholtz said John Guerin had an opinion from the State Ethics Commission stating no conflict of interest existed in his representing clients in front of town boards as long as the issue was not relative to the entire region, as MAPC is a regional entity. Douglass continued that after Altholtz reviewed his copy of the minutes in question he called Douglass and requested she again listen to the tape and to change the minutes to read Guerin said he had an opinion from the Ethics Commission and that he would bring in the opinion. Douglass relistened to the tape and did hear Altholtz say that, but not Guerin. She changed the minutes because the statement was in a paragraph that included statements made solely by Altholtz.

At the 7/20/94 meeting of the Planning Board, Douglass continued, she felt uncomfortable when it was mentioned several times by both Altholtz and the public, that if Guerin had made that committment, he should furnish the board with it. Altholtz made the comment that it was in the minutes that Guerin made the statement that he would bring in the letter. Douglass said nothing at the 7/20/94 meeting, however felt uncomfortable with the situation, and wanted it rectified at this meeting, that for the public record Guerin never in public made the statement he would provide the Planning Board with any document.

BURNHAM: The integrity of the Planning Board could be jeopardized by the possible manipulation of the minutes and a subsequent statement at the next meeting referring back to the possible manipulation to embarrass Mr. Guerin in a public forum.

MOTION: JOE GINN MOVED TO RESTRICT COMMUNICATION WITH THE PLANNING BOARD SECRETARY TO THE CHAIRMAN OR DESIGNEE AND THE CLERK. THIS RESTRICTION MAY BE WAIVED WITH THE PERMISSION OF THE CHAIRMAN IN SPECIFIC INSTANCES ONLY. PENNOYER SECONDED, ALL WERE IN FAVOR, THE MOTION CARRIED.

BURNHAM: Stated all comments relative to the possible amendments to the minutes of the meetings should take place at a meeting in the presence of all the members

for input.

JERMAIN: The minutes were being provided to the members early, to give them an opportunity to review them prior to the meeting and get those changes to the secretary for correction. Jermain continued she believed the tapes should be maintained for a considerable length of time to review. She felt it was up to the secretary to report to the board if she felt any change was incorrect. She believed the insinuation there was a devious intent to manipulate the minutes is incorrect, if the secretary is uncomfortable she should bring in the tape and play it for all the members. Jermain felt there were instances where the minutes did not reflect her interpretation of what happened at the meeting.

BURNHAM: The secretary's job is not to take calls from the members and interpret the corrections. She takes the tape and makes her best interpretation, at the next meeting we then have the opportunity to make whatever changes need to be made.

PENNOYER: The previous secretary did not quit because of members calling her, but because applicants were contacting her. Pennoyer agreed that the minutes being submitted early for the review is a good idea, however, calls from all the members would be excessive. He agreed with Burnham's motion that the minutes should be discussed and changed only at the meeting.

DUNN: The secretary works a full time job in addition to the planning board position, that should be taken into consideration, and the calls should be reduced. Dunn continued she would like to see the Board working more together than separately.

ALTHOLTZ: Had no problem that the review of the minutes would take place only in the room in the future. He did not feel that members should be restricted from contacting the secretary.

BURNHAM: As soon as the minutes could be available, they should be available to the members. He could think of no reason why individual members would need to contact the secretary. He continued, all correspondence from the board should go through the Chairman, and the corrections to the minutes should take place at the meeting. There may be some instances, and that is where they can get permission from the chairman to contact the secretary.

ALTHOLTZ: Guerin did promise to bring in the minutes, and now he finds that the letter was incorrect so Guerin has reason to be upset. Altholtz said he had this discussion with Guerin in the hallway to discuss the situation because Altholtz knew there was a conflict of interest. Altholtz continued, in the hallway discussion of 6/15/94 Guerin said he had a letter from the Ethics Commission and he would bring it in.

DUNN: Wasn't this business resolved at the Selectmen's meeting? She continued she would like to see this concluded.

BURNHAM: John Guerin feels he has been wronged. Burnham continued he did not know all the legal issues, however, it could be seen as libelous to Guerin in Burnham's opinion. He inquired if Altholtz and Guerin could put this behind them.

ALTHOLTZ: The minutes of 6/15/94 did reflect the tape, and he felt no matter what your last name is, everyone must play by the same rules.

GUERIN said he wanted it addressed.

DOUGLASS: Was not concerned with the minutes of the 6/15/94 meeting, as the statement was in a paragraph when Altholtz was speaking, she was concerned with the statements made at the 7/20/94 when Guerin was being attacked regarding the belief that he had made a commitment at a meeting that he had not. Douglass stated she should have jumped up at the 7/20 meeting and announced that the statement made in the minutes was made by Altholtz. In the future she will because if she is uncomfortable with something being said at a meeting and knows it to be untrue she will not allow the minutes to be misrepresented.

KNOWLES:

BURNHAM: Is 90% sure that Knowles had resigned as Chairman, however, until the next meeting that would be unknown. He indicated at the next meeting if Knowles had resigned, a new Chairman would be elected.

The meeting was adjourned at 11:00 PM.

PREPARED BY: 

ATTESTED BY: 

ESSEX PLANNING BOARD

AGENDA

JULY 20, 1994

7:30 Building Inspector

7:45 Minutes Read and approve

8:00 Board Discussion

8:30 Mr. Munson Discussion on use of property st 168 western Ave.
for a used car lot.

9:00 Kim Jermain

9:15 Keven Harding request to change 1 family residence to
2 family

7/20/1994 minutes

July 28, 1994

Joseph Knowles, Chairman
Essex Planning Board
Martin Street
Essex, MA 01929

Re: Planning Board Minutes...Conflicts...Open Meeting Law...

Dear Joe, Pat, Joe, Sheldon, Kim, Westley, and Howard,

Enclosed please find my July 28, 1994 letter to the Board of Selectmen for your review. I believe it speaks for itself.

On July 20, 1994, I attended a Planning Board ("P.B.") Meeting where it was brought up by a member of the Board that I was in a conflict because I was going to represent a private client before the Board that evening. Howard Altholtz and Kimberly Jermain made, what appeared to me to be, a carefully orchestrated scene in opposition of my upcoming representation that evening, supplying no supporting information/documentation for their stance. I believed this action to be another of the continuing harangue and criticism which, in my opinion, has been ongoing since September 1993 when Mr. Altholtz drafted a P.B. letter, (unbeknownst to most of the Planning Board), to the Board of Selectmen pertaining to my tenure as the Town's MAPC Representative. I have no idea why Mr. Altholtz continues his attempt to discredit me, other than speculation that he wished to represent the Town on the MAPC and I have continued to serve in said position. Therefore, knowing the source of the unsupported criticism and the fact that I had the 1989 and 1991 letters supporting me, I stated the facts known to me and the P.B. voted 4 to 2 to allow the meeting to continue.

As you may recall, at the July 20th meeting I was thrust into a defensive position where I was forced to publicly defend my name and reputation when I was accused of a conflict and moreover accused of not bringing the 1989 and 1991 "Confidential" letters received from the Ethics Commission to the P.B. My recollection is that I never told the Board that I would bring them copies nor were they ever requested. I did say that I would make them available to anyone who wanted to come to my office and see them, including Mr. Altholtz. Moreover, Mr. Altholtz continued to insist that the P.B. minutes state that I said I would bring

these letters to the Board. This prompted a public debate which belittled me and, in essence, said I was a liar and guilty of not doing what I said I was going to do.

The facts are that I read the 1991 letter to the Chairman of the P.B., and told some other members of the Board, prior to the July 20th meeting, that I would make the 1989 and 1991 letters available to them at my office if they had any question as to my being in any potential conflicts. All parties declined. As stated in my letter to the Selectmen, until the July 20th meeting I thought any/all questions had been answered. As you know, however, I went to my office and copied the letters and supplied them to you at the end of your July 20th meeting.

The reason for this letter is that there has been some speculation, of which you may be aware, that Mr. Altholtz had tampered with the Board's minutes and was trying to use them to publicly discredit me. I am sincerely hopeful that the facts will disprove this speculation and the otherwise apparent abuse of the open meeting laws.

It is my understanding that Mr. Altholtz contacted the P.B. Secretary via telephone, outside of a public meeting, and insisted that the minutes be changed to state that I said I would bring the 1989 and 1991 "Confidential" letters to the Planning Board. It is also my understanding that the P.B. Secretary informed Mr. Altholtz that such a statement by me was never on the audiotape of the meeting. However, through his insistence and demands, she succumbed and typed said statement on the minutes, all of this without the knowledge of the P.B.

Furthermore, it is my understanding that Mr. Altholtz insisted that he obtain the audiotape from the Secretary which she gave to him without making a copy. I am unaware of the present whereabouts of the audiotape.

It is also my understanding that Mr. Altholtz, outside of the P.B. meetings, had continually requested changes to the minutes and requested to obtain the audiotapes of the minutes from the previous P.B. Secretary. I understand that she refused to hand the tapes over to him.

I am stating this information because, if true, I think this is the wrong manner in which the P.B. or any other public entity should be conducting business and is certainly a violation of the Open Meeting Laws. I am formally requesting an investigation into these purported events so that changes can be made, if necessary, to protect the very same integrity of your Board that Mr. Altholtz has stated he was trying to maintain. Furthermore, if the above-mentioned issues are found to be true, I think it incumbent on any wrongdoer(s), at the very least, to publicly apologize to me as the accusations were made in public.

Most volunteers in town government have to spend a great deal of their time earning a living to support their families. I am one of them. Most volunteers in town government would say enough is enough with the personal attacks and accusations and resign their positions justifying their decision as certainly not being worth the hassle. I am NOT one of them. I, and no one in this community should have to be subjected to such nonsense. Many good, hard-working and intelligent people that could help the Town do not get involved due to issues such as these. At the very least I hope this letter will prevent similar situations from happening to another community volunteer.

As I stated in my letter to the Selectmen, "It is time that each of the Town Boards work together to build a consensus in the community rather than the divisiveness which appears to be spreading like an illness. It is undoubtedly time for certain members of the P.B. to spend their valuable time doing their jobs planning, not digressing with matters which do not pertain to them. It not only wastes the Board's time, but is rude and discourteous to the people who have come before them in good faith." Ladies and Gentlemen, PLEASE, let's get on with the business at hand and put these other matters behind us.

If you have any questions or concerns, feel free to contact me at your convenience.

Very truly yours,

JOHN T. GUERIN

JTG/wp

cc: Essex Board of Selectmen
S. O'Maley G.D. Times Correspondent

ESSEX PLANNING BOARD MEETING

WEDNESDAY, JULY 20, 1994

THE MEETING WAS CALLED TO ORDER AT 7:30 PM.

ATTENDEES: J. KNOWLES/CHAIRMAN, K. JERMAIN, W. BURNHAM,
H. ALTHOLTZ, P. DUNN, J. GINN

Building Inspector/Dick Carter:

Knowles requested the status of the Byrne Brothers property. Carter advised that the engineering stats were not done yet. Carter stated he had advised the applicant to submit the stats along with a check so they can get on next months agenda.

Dick presented an application from Helen and Henry Lane of Spring Street. It had been approved by the Board of Health. One lot is 2.58 acres and the other is 1.15.

MOTION: WESTLEY BURNHAM MADE A MOTION TO APPROVE THE APPLICATION ON FORM A FOR THE CREATION OF LOTS #1 AND #2 FOR HELEN AND HENRY LANE OF 37 SPRING STREET, AS SHOWN ON THE PLAN DATED 07/19/94 BY NOONAN AND MCDOWELL FINDING THAT IT MEETS ALL THE REQUIRED FRONTAGE, AREA AND SETBACKS AS STATED IN THE ESSEX BY-LAWS. THE MOTION WAS SECONDED BY JOE GINN, ALL WERE IN FAVOR, THE MOTION CARRIED.

Howard Altholtz disclosed he had received a telephone call from Peter Van Wyck. Altholtz told Van Wyck he would not discuss a matter pending the board outside of the board.

Howard Altholtz informed the board he had attended a meeting of the Hamilton Planning Board last Tuesday. He found the proceedings to be civilized and well run. The entire audience received an agenda. There are 5 members on the Hamilton board, they have a professional planning person on staff.

MOTION: WESTLEY BURNHAM MADE A MOTION TO APPROVE THE MINUTES OF THE JULY 6, 1994 MEETING. PAT DUNN SECONDED, ALL WERE IN FAVOR, THE MOTION CARRIED.

DAWE PAVING:

Knowles read a document furnished by the building inspector stating Bob Dawe's property is not out of compliance with the watershed district by-law. Knowles stated he had called Dawe, Dawe's response was he was under no obligation to talk about it. Knowles informed Dawe that the Planning Board had intended to send him a letter requesting an engineering drawing of the lot with the square feet of the entire lot and the square feet of the paved areas, Dawe informed Knowles if he got such a letter he would have ignored it. Dawe reminded Knowles that the Planning Board has no enforcement power.

Knowles commented that in the future the Planning Board would be better advised to spend their time on what they are supposed to do, plan for the Town of Essex, instead of chasing people and trying to enforce things.

Altholtz commented that the board may have no power but they do have an obligation to pass things on that come our way.

Dunn stated we don't have the authority to go directly to the applicant.

Jermain stated that Dick Carter did not furnish the board with the requested information. Jermain went to the assessor's office and determined that the building alone is only a few feet short of the 15% coverage, that does not include the driveway. Jermain said it is the position of the Planning Board to request that the building inspector enforce our zoning by-laws.

Knowles agreed with Jermain that we could request the building inspector investigate, he added if Jermain had information that could assist the building inspector she should give it to him.

Ginn commented that he did not feel that any individual board member should be giving information to outside people. If any information is given, it should come from the whole board.

Jermain said the request did come from the whole board, and to date the information has not be furnished. Jermain went to the assessor's office and her calculations indicated that 15% of the lot area would be 761sf and the house coverage right now is 755sf, that includes the porches and does not include the paved areas.

Burnham made a comment that the porches are not considered impervious. His definition of impervious is something that precludes water from going into the ground causing it to be diverted to another location.

Jermain commented that these are not decks, but porches with roofs.

Knowles said if Jermain wanted information given to Dick Carter, it should be made in the form of a motion.

MOTION: KIMBERLY JERMAIN MOVED THAT DICK CARTER, USING THE INFORMATION OBTAINED FROM THE ASSESSOR'S OFFICE, BASED ON THE SQUARE FOOT AREA OF THE BUILDING, DETERMINE THE TOTAL AREA OF IMPERVIOUS SURFACE, WHICH WOULD ALSO INCLUDE THE PAVED AREA, AND ENFORCE THE WATER PROTECTION DISTRICT BY-LAW THAT STATES THAT NO MORE THAN 15% OF A BUILDABLE LOT IN THE DISTRICT MAY BE RENDERED IMPERVIOUS. TO DO SO, THAT INDIVIDUAL MUST COME BEFORE THE PLANNING BOARD TO OBTAIN A SPECIAL PERMIT. ALTHOLTZ SECONDED. IN FAVOR WERE, GINN, JERMAIN AND ALTHOLTZ, OPPOSED WERE BURNHAM AND DUNN, KNOWLES WAS PRESENT, THE MOTION CARRIED.

Ginn commented that this has gone around and around. We have information from our building inspector that says this is OK. I will refer back to what I have said in the past, an engineer should document what is on the property. If someone is disputing what our building inspector says, an engineering study should be obtained.

Knowles said he had called Bob Dawe, and his Dawe indicated he's not going to respond to the Planning Board.

Ginn stated he feels it is unfair that this discussion is brought up at every single meeting. It is unfair to spend valuable time on this issue.

Burnham stated the building inspector has made his decision. If we're not happy with it, the proper procedure is to issue an appeal to his decision. We will continue to go back and forth on this.

Jermain said that was correct, that we will continue to go around and around. If the house that exists there now is shy 6sf without the paving, it's very close.

Dunn stated that this is petty. If the applicant is over anything there, it is not up to us since our building inspector has said he's alright. As far as I'm concerned, this is harrassing this applicant. I will not vote on anything for Bob Dawe, I got my answer from the building inspector. I disagree that Dawe should have to spend his own money to have an engineering study to prove this to us, when we have been answered by our building inspector.

Ginn said he felt the board would expect an engineering study from another applicant.

Altholtz commented the state law regarding impervious includes roofs. We do have responsibility of the water protection district. The applicant should have come before us for a special permit.

Jermain commented we should send a letter to the selectmen that we have asked to have this zoning by-law enforced, and we feel that we didn't get it.

Knowles stated we got the answer from their employee.

Betsy Fawcett commented that roofs are considered impervious under state law, that Westley Burnham is incorrect.

Ed Neal commented that the Water Protection District reads residential development which causes more than 15% of the lot area to be made impervious including the area of the road in front of the building. Then if you read in the back it says special permits may be obtained for making impervious more than 15% or 2,500sf. We have two definitions, the Planning Board must make a decision on if the threshold for an existing dwelling is 15% or is it 2,500sq above which you need a special permit. I think it clearly states that a new residential development with new road and everything is what the 15% originally was for. For an existing lot you can make 15% or 2,500sf requiring a special permit. I think the 2,500sf is a completely different issue.

Altholtz commented it is either one of those, either 15% or 2,500sf then it kicks in.

Jermain added we are 6sf shy of the 15% not including any asphalt pathways, driveways, etc. There are 6sf that has not been rendered impervious, because the building constitutes the 761sf of impervious surface.

Altholtz said what we are saying to Dick Carter is here's the information we obtained, please rethink this issue with this new information.

Burnham commented that if he were Dick Carter and received this letter, he would think we were accusing him of not enforcing the by-laws.

GUERIN/MAPC:

Knowles commented he was asked at the last meeting to check with John Guerin to make sure he had a letter that he had promised to get for Altholtz clarifying his possible conflict of interest as our MAPC representative at the same time he may be representing clients to this board. Guerin had read the letter to Knowles over the phone and it seemed fine to him. At that time, Guerin informed Knowles that anyone that wanted to call him or come by to take a look at the letter was welcome to do so.

Guerin stated if anyone had a question about him they can come in to see him.

Jermain asked if Guerin brought a copy of the letter for the Board.

Guerin responded, "no".

Jermain commented she would take the opportunity to go down and see this letter.

Guerin stated he informed the board previously that anyone wishing to see the letter could go to his office and view it. Guerin stated he has volunteered for many years in this town. He considers this a direct affront to him. He continued, he is not a special municipal employee, MAPC does not have that under the statute, MAPC is a regional entity that deals with regional issues. The letter is specific and states that anything that has to do with the region, (i.e. a regional rubbish plant would be a conflict), matters that affect the town would have no conflict of interest.

Jermain stated that to be considered a special municipal employee you must be granted that.

Burnham questioned if he is an unpaid volunteer does that make him an employee.

Altholtz commented we're all employees. Except Planning Board members have been declared special municipal employees by the Select Board. Sally Soucy has the list of special municipal employees, MAPC is not one of the positions. I think there is a presumption of a conflict of interest here, and I think we should receive proof that it's been waived.

Burnham questioned, would that mean that any municipal employee cannot represent anyone before any city or town board.

Altholtz said that's right, unless they've been listed as a special municipal employee.

Guerin commented if you want to represent another client before a town board that has a different pervue as this board you can do so. You cannot go before your own board or anything that would deal with your board. Guerin continued, two years after you get off a board you're not allowed to do it. Anything that you had direct interest in at the time you were on your board you can never represent a client against the town's interest.

Knowles opened the floor for public comment on conflict of interest.

Ginn commented that Altholtz apparently didn't think Guerin should be in the position that he is, because Altholtz keeps bringing it up.

Altholtz said I don't think he should be in the position he is in and representing clients. It's really respect for the process. We all need to play by the rules, no matter how long you've been in town, no matter what your last name is.

Guerin continued that he has had a ruling from the ethics commission since 1991, when he accepted the MAPC position. He stated he obtained this ruling because he did not want to be cutting his own throat by not being able to represent Essex residents. He continued, he would not go out of his way to prove his position to this board. He had spoken to the Selectmen who appointed him, they had no problem with it. If anyone wishes to, they may contact the State Ethics Commission, Guerin said he doesn't answer to anyone on this board. He would consider any further comments on this to be libelous in nature.

Knowles commented that in matters of conflict it is not the position of the Planning Board to police them. There is recourse for presumed conflict of interest. It's fine to raise the issue at the time. But the recourse is the State Ethics Commission.

Altholtz stated he did raise this issue with Guerin in the hallway. The conflict of interest laws were written to prevent people from benefitting from their public service in private ways. He continued, conflict of interest laws were written to prevent people from using contacts that they make in public life from benefitting private interest. It is a conflict of interest for any elected or appointed official of a municipality to represent anyone before a town board on a matter the town has interest on. Altholtz said he mentioned this to Guerin two meetings ago in the hall in the hopes that John would think it through and not step over the line. And he chose to come in, he said he had an opinion on this, and that he would give it to the Board.

Guerin stated he never told the board he would furnish the board with the letter.

Altholtz commented it was in the minutes.

Dunn stated that this is degrading to this board. In Dunn's opinion, this has nothing to do with this Board, she wants no part of this. First it's Bob Dawe, not it's John Guerin, who's next? We're here to make decisions on planning, not to degrade people.

Jermain asked Guerin if she went to his office, could she see the letter?

Guerin responded, "yes".

Jermain continued, on the Melanie and Donald Burnham property, it was confusing a few meetings ago, it appeared the information furnished us was inaccurate, that we did not have to offer a building permit on that property. It was now considered a lot, legally. However, we did not have to offer a building permit on that property. Guerin had told Jermain and the rest of the board that we had no choice, advising us that we had to sign the building permit. She thought that was not right to do that without stating who he was representing, the applicant or MAPC.

Ed Neal commented this is not something that should take place in this forum. If you suspect that someone in town has a conflict of interest and has violated the conflict of interest laws, you contact the State Ethics Commission, they have investigators, they will confidentially look into it and make a determination. This is a public meeting, to write letters accusing people of conflict of interest is no different than accusing them of stealing cars or committing any other felony.

Nancy Marculewicz commented if Mr. Guerin had simply sent a copy of his letter to the Planning Board it would have ended the thing.

Fred Fawcett commented we should hear as much public comment as long as we have public comment. The selectmen have their hands in plenty of places where they shouldn't. Since Mr. Guerin's promise is in the minutes, I presume it is in the minutes, that he said he would bring in the letter to the board, then he should.

MOTION: WESTLEY BURNHAM MADE A MOTION THAT WE DISCONTINUE DISCUSSION ON THIS ISSUE AND MOVE ON TO THE AGENDA. DUNN SECONDED, IN FAVOR WERE ALTHOLTZ, GINN, JERMAIN, BURNHAM, KNOWLES AND DUNN, THE MOTION CARRIED.

SABATINI - 199 JOHN WISE AVENUE:

Application for the siting of a single family dwelling at 199 John Wise Avenue, Essex. Sabatini commented this goes back to 1981 and earlier. Ginn questioned if the Conservation Commission had signed off on this. Jermain indicated yes they had.

Ginn commented what this board has to do is if we have approvals from other town boards, they have been checked off. We make sure the property meets all the required setbacks and other requirements. Sabatini stated we will share the same common drive. Burnham commented we have to be assured he has reasonable access, he does through the common driveway. Ginn stated Lot #1 shows 244.34 feet of frontage.

MOTION: WESTLEY BURNHAM MADE A MOTION THAT WE APPROVE THE SITING FOR A SINGLE FAMILY DWELLING APPLIED FOR BY DAVID SABATINI OF 199 JOHN WISE AVENUE TO BE LOCATED ON LOT #1, PLAN SHOWN BY CT MALE, DATED 8/7/91, FINDING THAT IT MEETS ALL THE REQUIRED SETBACKS, FRONTAGE AND LOT AREA AS REQUIRED BY THE ESSEX BY-LAWS, THE MOTION WAS SECONDED BY JOE GINN, ALL WERE IN FAVOR, THE MOTION CARRIED.

MUNSON/PIKE (174 WESTERN AVENUE):

Altholtz stated the issue of conflict of interest has been raised regarding Mr. Guerin representing clients at town boards, whether it exists or not, there are ways to be exempted from it. The party representing the applicant says he has the proof of his exemption, but won't give it to us.

MOTION: HOWARD ALTHOLTZ MADE A MOTION THAT UNTIL WE RECEIVE THE VERIFICATION OF GUERIN'S EXEMPTION FROM CONFLICT OF INTEREST, WE POSTPONE MOVING FORWARD ON THIS APPLICANT. THE PROCESS AND INTEGRITY OF THE BOARD IS IN QUESTION, KIMBERLY JERMAIN SECONDED.

Burnham suggested to be complete why don't we just move to exclude Mr. Guerin from any business in front of the board, that's basically what you're saying.

Dunn stated that Mr. Guerin is our representative, and he has not been disbarred from that. Until he has been, we don't have a right to disbar him. We can ask him for this letter, but he has not been proven in the wrong. We have no right to tell him he can not come in here and represent an applicant.

Burnham stated it was beginning to look like a personality conflict between Altholtz and Guerin and the rest of us are getting sucked into this.

Altholtz stated that was an absurd statement.

Burnham continued, as far as he was concerned, disbaring Guerin from any proceedings here, based on innuendo or opinion that we have, is completely out of bounds. If there is a problem with conflict of interest, you can call the State Ethics Commission, you can file a complaint and I'm sure it will be investigated. Until that time we don't have any right to disbar Guerin from appearing. It is unfair to Mr. Munson who is appearing here in good faith and trying to do the right thing, and throw him out and set him back at least another two weeks or more.

Kimberly Jermain stated there is no innuendo, she was not trying to accuse anyone of anything. She continued, she would just like to know when Guerin is representing someone before a town board, and would like to know the distinction between that position and the position he would take as an MAPC representative. Her concern was put to rest when he indicated he had documentation to verify he was a special municipal employee, although now that is not the case, but it is another document that would relieve my concerns. Jermain didn't think it needs to get personal, she would like to see the process followed.

Jermain continued, if Mr. Munson would like to appear without Mr. Guerin representing him, she would be happy to sit here and listen to that. But she thought postponing it would give everyone an opportunity to understand what the rules are that each one of us takes, and what kind of information we're getting. Many times we are not sure whose opinion it is.

Altholtz commented, that he presumes Mr. Guerin has the documentation he says he does, let's see it so we can alleviate our fears and move on.

Guerin commented there is a presumption in this country that a man is innocent until proven guilty. You are accusing me. The only concern about a possible conflict of interest would be my butt, you people would have nothing to do with it. It would my tail, my risk, not this board's. After I meet with you tonight, I'll go over and get the letter.

Ginn commented he had no problem at all with Guerin representing this applicant before this board. We're chasing a cat's tail again with this one, taking everyone's time. This is pretty straight forward, let's move on. If Altholtz has a problem with Mr. Guerin, and it's been raised a couple of times, you ought to settle it, instead of continuing to bring it up. Like Kimberly Jermain with the property up there (Dawe).

Jermain stated she had no personal interest in any of the properties. I have the responsibility to uphold the zoning by-laws in the position I was elected to, I resent being told I am taking a personal vendetta.

Ginn continued, so you are not believing what information Dick Carter is giving you on the Dawe property.

Jermain stated she had different information than what Carter provided.

The motion was reread, the vote was as follows, in favor were Jermain and Altholtz, against were Dunn, Burnham, Ginn and Knowles. The motion did not carry. Jermain and Altholtz left the room for this discussion. Altholtz commented this is an insult to the integrity of the Board.

Guerin commented he is here representing Mrs. Pike at 174 Western Avenue. There is an interested purchaser for the property, for a small car dealership. We are here for discussion only. There are no permits required here. As a courtesy the applicants are here to explain their proposal and get the board's feedback.

Michael Munson - representing Thomson Motors. We have been in contact with the neighbors to get a sense of their concerns regarding what we have planned. We don't see any issues regarding the by-laws. It is a one-story metal building, approximately 2,000sf on 2.4 acres of land. We plan a second hand car dealership and repair shop. We plan eighteen vehicles initially, and hope to get a license for a maximum of 50 vehicles. The vehicles for sale would be in the front of the property. We would put trees in the front, and construct a stockade fence in the rear of the property. We are working with a waste disposal company to come on an as-needed basis. Relative to the washing of vehicles we plan to use a biodegradable soap. All repair work would be done inside the building.

Dunn asked Mr. Munson if he was familiar with the Town of Essex's Water Protection District? As it states under "prohibited", we're not supposed to have any automobile or vehicle services, I know you're going to say it's grandfathered, however, there really hasn't been any commercial use on that property for the past two years. Doesn't this in effect say it's been abandoned? You say you don't have to come before us, but if that use has been abandoned, you do have to come before us. People put a lot of work into the Water Protection District By-law, and it says here in black and white no repair shops and no washing, I think we're walking all over this.

Munson responded, I agree that's what the by-law says, however, that is the reason we are using some of the procedures we are planning to protect it. It is our understanding that use would be grandfathered due to the nature of the use on the property over the last decade, with heavy equipment, marine and storage.

Dunn doesn't agree it should be grandfathered. Dunn doesn't believe it has been under commercial over the last two to three years. She would consider it an abandoned use.

Munson stated some individuals have come here tonight that have been familiar with the activity that has taken place on the property.

Mr. Guerin stated as an advocate of the property owner, he is here to present a case regarding the use of the property.

Knowles commented that their appearance at the meeting tonight was supposed to be for discussion. This has been useful, however, if you're here for a sense of the board and how we would look at it, I think that's fine. Knowles commented he would be uncomfortable with any further comments on this without this proposal coming in on paper.

Burnham commented, that there is no permit required for someone to start a business on this property. They're not building any new buildings, if the grandfathered use is in contention, then we have to make a finding if the use is permitted. I think what we'll find out is the grandfathered use is still legitimate.

Guerin said we'd like to explain what the use on the property has been. The Selectmen would have some control over this due to the Class II license. We're here because the Selectmen have postponed their hearing, waiting to hear what the Planning Board's response would be regarding the use. We're here relative to the use issue. John Julian worked with Mr. Pike for many years up there, Cy Perkins is also here and Scott Woodward, Mr. Pike's grandson, is here. These people are very familiar with the property, they've been on and used the property. We feel the use is a continued use.

Julian commented Pike used to buy some machines, now and again, we used to repair them and we'd have them outside for sale. He did some welding, he sold two dumptrucks, a dozer, he did some welding on two bucket loaders and sold those, and repaired excavators and sold those. I believe that was in approximately 1990.

Guerin stated the property was used for fixing and selling machinery, right there on the property. Up until this spring, there was a forklift worked on and for sale. Scott Woodward will speak to the present use and the use in the past winter as well.

Woodward confirmed they had a forklift for sale, and used the building to store and work on boats.

Guerin continued, right up until Mr. Pike took ill he was there consistently, perhaps on a daily basis. Obviously since he was ill things carried on in a much lower scale of use, he has since passed away, that's why the property is for sale.

Perkins commented he was up there with Mr. Pike, and he did that type of work. After he got sick he didn't do as much, he still used to go down there and putter. He did all kinds of machinery down there, fabricating and repair, almost manufacturing really. That was maybe four or five years ago, it was more than two years ago.

Guerin commented there were tractors up there, the forklift was the last to go, and that was as recent as this spring. We're here to guide the board on a decision of use.

Munson commented that compared to what Mr. Pike had on the property, they feel they are narrowing the use. We feel our automotive use is a less hazardous use than the prior use. They've had marine boats in there, they've had construction equipment with hydraulic systems. Anytime you have a rainstorm you have grease and hydraulic fluids running off the vehicles. Thomson Motors would not have that.

Dunn commented she hopes with all her heart that this board will really consider this, I know Mr. Guerin and Mr. Woodward and I don't mean to fight anybody personally, but I think it's pretty lame on the two years for being abandoned. Thomson Motors could be going wild up there while people could be carrying their drinking water up there. This by-law was written to protect that area up there, that water supply is a very good reason for not having this type of thing in that area. We shouldn't overlook that by-law. We're not saying we don't want Thomson Motors here, we're saying we want to protect our water supply. Used cars will bring rust, junk and a lot of repairing there. Eighteen to fifty cars in our water shed district, I can't go along with it.

Munson said Thomson Motors is taking a completely different tact, not your typical used car dealership. They're market is high quality cars, any vehicle for sale would be totally reconditioned and in perfect shape. We're not just trying to turn around these vehicles just to make a profit. We don't offer that type of service.

Dunn commented it's not just Thomson Motors, but you people may decide that this just isn't the right spot for this. When you move you have created a use on this property. Then you may sell the property to another business that wouldn't be as careful to our watershed district.

Munson questioned, couldn't that be controlled by the license from the Selectmen?

Dunn said "no".

Burnham commented he lives in the neighborhood, and has watched that building since it was built. He was aware of some of the equipment Pike worked on. He knew Pike remained fairly active there even though he was ill. He didn't believe because someone falls ill, that should cease the use of the property. Even when the sweater shop was in the front half, the rear half was still maintained by Mr. Pike. Burnham felt the use is still a repair facility for construction equipment. He believes there are worse things that could move in than a used car lot.

Knowles opened the floor for public comment.

Betsy Fawcett said she was a very concerned citizen in this matter. If Mr. Guerin is a representative of the MAPC he well knows there are many rules prohibiting this kind of use. It would cause a reduction in the neighboring property values. The environmental problems on the property are immense. It would require a sufficient plan. The water from that property flows directly into Chebacco Lake.

Fred Fawcett said we have some laws about the number of unregistered vehicles allowed on a lot. Perhaps it's no more than one or two unregistered vehicles are allowed on a lot.

Karin Gersch commented she keeps hearing about the past uses of the building. Was there a permit required for the original use taking place in the building? Just because something went on there in the past doesn't mean it was permissible?

Karen Baker questioned Mr. Munson if there would be automotive body repair on the premises?

Munson replied, "no", any required bodywork would be contracted out to perhaps a shop in Essex or in the area.

B. J. Frye questioned if because Mr. Pike conducted some activity on the property constituted a "business". Was there a sign?

Fred Fawcett commented some board members see the regulations as something to be averted. Others take the broader view of protecting the public interest; I commend those who take the broader view.

Bob Brophy commented that property always had a very "clouded" existence. Bob was on the Conservation Commission in 1985-1987. He stated 40% of that building was built on wetlands.

Ginn questioned the two attorneys regarding the Conservation Commission requirements, are there any restrictions on the property? Has the order of conditions been approved, has the property been signed off by DEP?

Munson commented the certificate of compliance is dated in 1988.

Guerin stated relative to the comment that this will devalue other pieces of property, obviously I am here representing this applicant, the devaluing of this piece of property is also our concern.

Knowles questioned Guerin what the applicant wants from this board?

Munson commented we are seeking what the existing use is, and the continued use by Thomson Motors as a grandfathered use. Obviously if you don't find this an existing use, we would seek a special permit.

Knowles questioned the board how they would like to proceed on this property.

Dunn stated she would like to table this until we can look back at the past use of this property.

Burnham said there never has been another use, other than the sweater shop.

Dunn said we need to determine if the use has been abandoned.

Ginn commented that if Pike had a full fledged business there at one point of type, I don't know how involved it has been over the past four or five years. There has definitely been activity up there since his death.

Dunn stated there has been activity in her yard, does that mean she has a commercial use?

Burnham commented this building has never been anything but a commercial use. I personally believe the commercial use is still in effect. The Class II license they will need to obtain from the Board of Selectmen is going to have annual renewal requirements, and they can impose restrictions as they see fit.

Knowles stated he agreed with Dunn. I think we need to do as much due diligence as we can, particularly in that part of town. I think this is going to have to come before us.

Munson commented he is hearing a lot of concern regarding the level of volume of use because it's in the water shed district, also whether it would be grandfathered because of the level of volume.

MOTION: WESTLEY BURNHAM MADE A MOTION THAT THE ESSEX PLANNING BOARD MAKE A FINDING THAT THE PRESENT USE OF PROPERTY AT 174 WESTERN AVENUE IS AND HAS BEEN COMMERCIAL IN NATURE AND CAN CONTINUE UNDER 6-13.3B6.

Guerin commented that Mr. Munson had asked Scott Woodward if his grandfather (Mr. Pike) was a sole proprietor, if his business is in his own personal name. Mr. Woodward stated his grandfather filed a Schedule C with him income taxes, thereby verifying a sole proprietorship.

Dunn and Knowles were opposed to the motion, Burnham in favor, Ginn voted present as he had asked if a license was ever issued for the property and wanted more information (Altholtz and Jermain were out of the room) the motion did not carry.

Knowles stated we would give a copy of the minutes to Mr. Munson if he would like them. The next planning board meeting is scheduled for August 3, 1994, they will contact Pat Dunn if they would like to be on the agenda.

KEVIN HARDING - 121 WESTERN AVENUE:

The applicant would like to change his home from a single family to a two family. He believes it was a two family at one time. He is attempting to refinance, and the bank suggested he turn it back into a two family. Burnham stated all the Planning Board needs to verify is that the Board of Health has signed off on the septic system, and there's adequate off street parking for the second unit.

Sonny Thompson from the Board of Health was present for the meeting. He mentioned the septic system and if children under the age of 6 a lead paint inspection would be required. If lead paint was present it would have to be removed by a licenced firm. He also added that the Board of Health would like to see a plan. Sonny added there is nothing at the Assessor's Office indicating the house was ever a two family.

Jermain commented we have discussed this property over a year ago regarding unregistered vehicles being stored there. How do we look at this property when it has been in violation, and now we're looking at it for something else.

Burnham questioned if the applicant is still in violation?

Jermain indicated yes, she believed he was. The Planning Board asked Dick Carter to go there and have the excess vehicles removed; that has never happened.

Kevin stated he did dispose of one vehicle after the building inspector requested he do so. Refurbishing cars is a hobby of his.

Altholtz informed Harding that the by-law states no inoperative cars shall be allowed, unless they are in an enclosed building or screened from view.

Harding indicated he would screen the others from view. He said he did remove a car as soon as the building inspector asked him to.

Kevin stated he is under some time constraints to accomplish this, as he is trying to save his house and must do this to refinance.

Altholtz commented this is a non-conforming use as he has only has 25' of front yard, however it would be grandfathered, then we could analyze it under 6-4.2.

Ginn commented his only concern would be adequate parking.

Harding commented if he screens the cars, he can put three cars in the driveway and one in the garage.

Dunn commented our by-laws clearly state you can only have two unregistered and uninsured vehicles on your property.

Altholtz stated the rule goes as follows: no unregistered and inoperable cars in the front yard at all, no more than two unregistered vehicles in the back and side yards, and all inoperative vehicles must be screened.

Sonny from the Board of Health again requested a floorplan.

Burnham added we're not approving any construction or additions.

Altholtz questioned, did everyone agree that it should be analyzed under 6-4.2?

Yes, everyone agreed.

MOTION: JOE GINN MADE A MOTION THAT KEVIN HARDING OF 121 WESTERN AVENUE BE ALLOWED BY THIS BOARD TO HAVE HIS HOUSE AS A TWO FAMILY HOME, PROVIDED HE HAVE PROPER APPROVAL BY THE BOARD OF HEALTH, BUILDING INSPECTOR, THAT HE HAVE, PER DISCUSSION, AMPLE PARKING 4 TO 4-1/2 SPACES, THAT HE HAVE EXISTING VEHICLES CONFORM TO TOWN BY-LAWS, BECAUSE THE BOARD FINDS UNDER 6-4.2 THAT IS NOT SUBSTANTIALLY MORE DETRIMENTAL. SECONDED BY BURNHAM, DUNN VOTED AS PRESENT, IN FAVOR WERE KNOWLES, BURNHAM, GNN, JERMAIN, ALTHOLTZ. THE MOTION CARRIED.

KIMBERLY JERMAIN:

Jermain began by stating she had no personal vendetta here.

MOTION: TO SEND A LETTER TO THE BOARD OF SELECTMEN REQUESTING A COPY OF THE JOB DESCRIPTION OF THE POSITION OF BUILDING INSPECTOR AND TO BE INCLUDED IN THE REVIEW PROCESS OF THIS POSITION WHICH WOULD INCLUDE INPUT FROM THE PERSONNEL BOARD. ALTHOLTZ SECONDED.

Jermain continued, her purpose was to engage this board in a discussion on enforcement. She sent a letter to Chairman of the Board of Selectmen, Ed Neal. We discussed initially on August 4, 1993 the enforcement of zoning by-laws. We stated we were going to try to enforce the by-laws. On June 24, 1994 she attended a Board of Selectmen meeting where there were reappointments of the present Building Inspector, she asked at that meeting, and subsequently in a letter of July 5, 1994 to have a performance evaluation conducted on that position. Jermain said this is important for all employees of the town. She went to a Selectmen's meeting after this meeting and saw that the Selectmen were interested in reviewing the Assistant Harbormaster's position, so they had him come in and went over the position. At the Selectmen's meeting, they took her comments and reappointed the current Building Inspector. Jermain then read the letter to Chairman Neal. In the letter Jermain requested they reconsider the appointment of Carter, and mentioned a possible conflict of interest on Neal's voting for Mr. Carter for Building Inspector as Neal is a member of the Essex Fire Department and Carter is the Fire Chief. She also suggested the Town of Essex may look into sharing a Building Inspector with a neighboring town, thereby relieving some of the fiscal responsibility, and the Building Inspector would not be a town resident.

Altholtz then read the letter received from Chairman Neal in response to her request. Neal's response was they would not be reconsidering the reappointment of Carter. Neal continued, the Planning Board at any time could have voted to send a letter to the Selectmen with complaints or comments of the building inspector, to Neal's knowledge, this never occurred. Neal continued on the issue of conflict of interest relative to the fire department. Neal stated the conflict of interest laws are in place to prevent elected or appointed officials from receiving special treatment or financial gain in their positions. Neal commented that both he and Carter give their time to the town willingly and with the knowledge that they are losing income while in service to the town. Neal mentioned if the State Ethics Commission found a conflict of interest existed, his decision would be to resign from the fire department, which would deprive the town of a member of the fire department that is in town during the day. Neal reminded Jermain that the Building Inspector is the enforcement officer of the Board of Selectmen, not the Planning Board. He continued, the vote by the Selectmen was unanimous to reappoint Carter, so even if he had abstained from the vote, Carter would have been reappointed.

Karen Baker from the Personnel Board, stated they are in the process of developing job descriptions for all town positions. Baker continued she has contacted other surrounding towns, and she believes in most towns the Building Inspector reports to the Planning Board.

Burnham commented on the motion, Carter has been reappointed, so he questioned if it is Jermain's intent to clarify this position for next years appointment. Burnham was unclear on what Jermain wanted in her motion.

Jermain again mentioned she is requesting a copy of the job description of the Building Inspector and would like to see the Planning Board included in the review process and seek input from the Personnel Board.

Ginn questioned, is there was currently a job description on file for the position of building inspector?

Jermain reread the motion. Seconded by Altholtz. Jermain continued, this was discussed on 8/4/93 and on 8/21/93, we sent a letter on 3/2 to the Selectmen, which Mr. Neal apparently doesn't know about, regarding Warren Smith and Byrne Brothers. In favor were Jermain and Altholtz, opposed were Ginn, Burnham, Dunn, Knowles voted present, the motion didn't carry.

Ginn commented his position is he would be interested in seeing the job description when the personnel board is in the process of developing one.

Bob Brophy from the Personnel Board stated the Selectmen have requested that the Personnel Board meet with the Selectmen on 8/15/94 to review all town job descriptions. He commented it was unfortunate that an individual has jumped the gun, without coming to the Personnel Board, again a lack of communication between the town boards. We are working on this, and we're trying to set up a flowchart showing who reports to who. Brophy stated another member of the Personnel Board (Peter Souza) is here to explain what he is working on to accomplish this goal. Brophy continued, when you are on a town board, even if you wish to speak as an individual you should go back and discuss it with your board and speak as a board. Even the Chairman of the Selectmen should do the same, discuss things with his board, and respond as a board.

Burnham requested if when a draft of the job description is developed for the position of Building Inspector could the planning board receive a copy and give input?

Brophy stated "yes", the position of Harbormaster, for instance, went back to the River Committee for review.

Peter Souza commented on what he is attempting to do for the town positions. He is the Operations Manager at Varian in Gloucester and is responsible for the same procedures there.

Karen Baker questioned if it would make the job of the Selectmen easier if the Building Inspector reported to the the Planning Board?

Knowles commented, he took exception to Baker's earlier comment, and believes most towns have the Building Inspector report to the Selectmen. Knowles continued, the Building Inspector comes to the Planning Board meetings as a courtesy. He is hired by and reports to the board of Selectmen. There are valid reasons why the position reports to the Selectmen. We are attempting to identify problems in town, maybe we're monkeying around in something that doesn't need fixing. We are here to design planning for the Town of Essex.

Ed Neal publicly apologized to Jermain for the letter he sent in response to her letter. He felt Jermain's letter was a personal attack regarding the conflict of interest issue. He agreed he should have discussed his response with the other members of his board. He commented the Town is working on all job descriptions for all town positions. Neal felt to address the position of Building Inspector without addressing all other positions, would be unfair to Carter. He added just because Jermain's motion didn't carry, that shouldn't stop anyone interested from coming in and offering input in the process.

MOTION: WESTLEY BURNHAM MADE A MOTION TO ADJOURN,
SECONDED BY ALTHOLTZ ALL IN FAVOR, MOTION CARRIED.

Meeting adjourned at 10:45 PM.

PREPARED BY: *[Signature]*

ATTESTED TO: *[Signature]*

ESSEX PLANNING BOARD

AGENDA

JULY 6, 1994

7:30 Dick Carter Building Inspector

7:45 Discussion of Planning Issues

Business:

Read Minutes

ESSEX PLANNING BOARD MEETING

WEDNESDAY, JULY 6, 1994

ATTENDEES: J. Knowles/Chairman, P. Dunn, S. Pennoyer, J. Ginn,
H. Altholtz, K. Jermain, Westley Burnham

Dick Carter - Building Inspector:

Raymond Greene, Conservation Commission and Board of Health. The plans now show an addition to a single family with no kitchen. Carter felt the Planning Board left it subject to the approval of the Board of Health.

MOTION: HOWARD ALTHOLTZ MADE A MOTION TO AUTHORIZE THE BUILDING INSPECTOR TO ISSUE A BUILDING PERMIT TO RAYMOND GREENE, 15R STORY STREET, FOR AN ADDITION TO A SINGLE FAMILY RESIDENCE OF 2 MORE BEDROOMS, 1-1/2 BATHS, SUBJECT TO THE CONDITION IMPOSED BY THE BOARD OF APPEALS (BOARD OF APPEALS DECISION OF 04/20/94) SPECIFICALLY THAT IT REMAIN A SINGLE FAMILY RESIDENCE AND THAT NO BUSINESS OR COMMERCIAL ACTIVITY WILL BE UNDERTAKEN ON THE PREMISES. WESTLEY BURNHAM SECONDED THE MOTION. ALL WERE IN FAVOR, MOTION CARRIED.

Kimberly Jermain wanted recorded in the minutes of the meeting that she is requesting the letter from John Guerin promised at the last Planning Board Meeting (6/15/94) relative to Donald & Melanie Burnham, whether or not elected or appointed officials can represent individuals before town boards. Jermain also wanted in the records her continued request for disposition of the Bob Dawe paving issue.

Howard Altholtz followed up on the Bob Dawe paving issue by indicating at the last meeting there was a vote to send a letter asking for engineering studies, which Altholtz didn't agree with. He stated he thought we should get a special permit application, which we asked for three months ago. Altholtz did not feel an engineering study is necessary.

Joe Knowles stated the reason letters did not go out was he got the information regarding what dimensions were impermiable, and Knowles is going to call Bob Dawe. He will indicate to Dawe that the dimensions he was given today don't jibe with what we've seen before, he will ask Dawe to explain why they are different. He may be required to come before the board.

Westley Burnham mentioned that Bob Dawe's lot is a non-conforming lot; under 6-4.2 we can bless it.

Howard Altholtz stated 6-4.2 has nothing to do with the water protection district, when you increase a non-conforming use, the increase that's occuring still has to comply with the zoning by-laws.

Joe Knowles closed the Dawe discussion indicating he is going to call Dawe and follow up on it.

PROPOSED ESSEX PLANNING AGENDA:

Joe Knowles opened the discussion by stating the job of the Planning Board is to plan for the town of Essex. Knowles stated he thought having a plan for this would be beneficial over the next ten months or so. Knowles felt in order to derive solutions to what we as a board think are the problems, we couldn't derive solutions until we have some agreement on what the problems are and prioritize them.

Westley Burnham felt the agenda Knowles presented for the Planning Board from July, 1994 through April 1995 was reasonable.

The following is the proposed agenda:

I. Identify Planning Issues:

- seek input from town
- Planning Board member input
- compile a list of issues/problems

TIMELINE: July, August and September meetings

II. Prioritize Planning Issues:

- Planning Board decisions on issues to address

TIMELINE: October meetings

III. Derive Solutions:

- seek input from town
- Planning Board discussion
- Planning Board decision on solutions
- Planning Board decision for public hearings, if necessary

TIMELINE: November and December meetings

IV. Public Hearings:

- TIMELINE: January and February meetings

V. Revisions to Solutions:

- revise according in input from public hearings

TIMELINE: February and March meetings

VI. Public Hearings:

TIMELINE: March and April meetings

Knowles mentioned he asked the following individuals to come to this meeting informally because they all know something about planning issues and they all have been in Town for many years:

1. Dick Carter, Building Inspector
2. Ed Neal, Chairman, Board of Selectmen
3. Bill Holten, Essex Board of Appeals
4. Larry Graham, previously CT Male
5. Rolf Madsen, Board of Selectmen

The input will be to identify problems, not discuss solutions.

1. Dick Carter suggested we take a good look at the by-laws, go through them and what they mean. There are different ways to interpret them. We know we have a problem with the garage/accessory building issues, what is an accessory building, also another issue is signage, size of signs, etc. Definitions of residential lots, business lots, industrial lots. Carter informed the Board in the month of June he received 84 to 86 calls requesting information on by-laws, what they as property owners can do, what is the procedure? The job of the planning board is to plan for the future development of Essex, not restrict it.
2. Ed Neal stated the one problem that has come up in the past is 6-4.2, if you have a non-conforming lot you have to go through less paperwork and aggravation to make an addition or something than you would if you have a conforming lot. The Planning Board can decide that it is less detrimental to the neighborhood and they can approve the permit. Why should a lot that's already non-conforming, already in violation of the zoning by-laws, be granted this easier process to become more non-conforming than somebody that has a conforming lot. When a conforming lot would have to go to the Board of Appeals for certain proposals, a non-conforming lot can simply get an okay from the planning board under 6-4.2.

Altholtz commented that he feels 6-4.2 has been misapplied, and Neal's point should not be the case. He read from the by-laws, "the board has no power to allow an extension which involves a violation of an ordinance relating to set-backs, such extension can only be allowed if a variance is granted". You can expand your non-conforming building, but you cannot violate an existing law in the process.

Neal felt this issue needs to be resolved with perhaps an opinion from Town Counsel because you could become a member of the planning board or know a member of the planning board, and perhaps someone would be granted a permit for political reasons. The Board should be less political and pay attention to the will of the town. The planning board should be representing the views and goals of the majority of the people in town, not the particular goals and views of the individual members.

- Neal continued, in the past when the planning board has dedicated precious time to zoning regulations and things that are not acceptable to the town they end up cramming their schedules so they can't really deal with the by-laws that we've got and the issues that come before them because they're working on issues that are unacceptable to the town and have proven unacceptable to the town at town meeting vote.
3. Bill Holten stated he felt he was treading on thin ice because he can speak as a private citizen, however, as a member of the Board of Appeals it might be misconstrued as a view point that would be elaborated on later at a board of appeals meeting. He stated he must be vague in his opinion. He indicated he agreed with Neal on a couple of things, and disagrees on a couple. I think 6-4.2 is a great idea because it allows the planning board to exercise your prerogatives about a yes or a no based on whether or not it's more or less detrimental. And it's valuable to property owners who don't meet today's by-law requirements. He likes 6-4.2 because the wording is simple. Holten agrees that the input from the townspeople is essential. Suggested having a broad group of townspeople get together at the Elementary school and start putting ideas down. You'll find out pretty quickly what the town wants.
 4. Larry Graham, (H. L. Graham Associates, previously C. T. Male) sees great room for improvement in by-laws (i.e. lot width, lot depth, lot lines). He mentioned it has been approximately one year since they have heard from the Planning Board. Has worked with the Town of Rowley since 1988 regarding their subdivisions and site planning.
 5. Rolf Madsen, stated the ten years that he sat on the Planning Board the biggest problems we ever had were dealing with abutters, what kind of input they had in the process. The abutters did not feel the planning board took into account their input. He stated in most communities 6-4.2 is administered by the Board of Appeals, not the planning board. Involve the public in many meetings over a period of time. Madsen feels the by-laws should be gone over and the definitions must be cleaned up, a lot of townspeople are unhappy with what we have. If the by-laws say a gas station can be next door to a home, that's okay because the community says that's okay. If the community makes a decision that there's going to be a McDonald's next door to a home, the community must make that decision. Therefore, everyone must be involved in the process of changing and developing by-laws.

Knowles took comment from the audience.

Peter Van Wyck stated he felt public support is very important. Because this board is a volunteer organization, you haven't got the benefit of having professionals on the Board. You are correct in obtaining the services of someone like C. T. Male for their professional opinion. However, after you get the opinion of a professional, act based on their recommendations. The board has to step away from the political issues.

Bill Baker felt tightening up on by-law 6-5.10 would be beneficial (signage). He felt we should limit the size of signs at retail stores, and signs in windows where some stores have most of their windows covered with signs. Perhaps an ordinance can be created with a maximum percentage for size of sign.

Rick Bronstein did not feel a non-conforming lot should have an easier time than a conforming lot with changes/additions.

Westley Burnham stated the purpose of 6-4.2 was a couple of years ago at town meeting the water protection district was created. In that a minimum lot size of 40,000 sf for every lot was implemented. Every lot that exists that isn't 40,000 sf is now a non-conforming lot. If we didn't have 6-4.2, everything that happened on that lot (i.e. an addition, etc.) would require a full appeals board hearing for something the landowner had no control over.

Rick Bronstein stated a concern over issue of abutters being notified of major construction going on, feels it is inconsistent, sometimes you're notified, sometimes you are not. Doesn't the municipality have rules that there is a procedure to follow to notify abutters? Feels certainly if a non-conforming lot is being modified, and the planning board must determine if the use isn't any more detrimental to the neighborhood, shouldn't they have to get input from abutters?

Westley Burnham stated there is nothing legally binding that says the planning board has to do that. We request as part of our own procedure, applicants bring in letters from abutters.

Bill Holten did not agree with abutter notification. The planning board is an elected board of seven people, they make the decision on whether the proposal is appropriate and whether it fits into 6-4.2. Abutters input can be informative. I would not like to see an elected board run by abutters. Abutters don't make decisions on what is developed in town. Land owners have rights.

BOARD OF APPEALS:

Knowles opened the discussion with the Board of Appeals with the comment that Madsen had made regarding most communities have the board of appeals administer 6-4.2 rather than the Planning Board. What did Holten think?

Bill Holten indicated the Board of Appeals doesn't want the responsibility of administering 6-4.2, they would rather deal with it on appeal.

Pennoyer didn't feel the Board of Appeals required a denial by the Planning Board in order to act on an issue. If the landowner knows he has an obvious deficiency, can't he go directly to the Board of Appeals, rather than first coming to the Planning Board, receiving a denial, and then going to the Board of Appeals?

Westley Burnham indicated the Board of Appeals can operate under two functions. They can grant a variance for an applicant whose land obviously doesn't meet by-law regulations, or they can grant an appeal if they have received a denial from the Planning Board if they can show reason why they should be granted an appeal.

Altholtz the state laws indicate the Board of Appeals shall have the power to at the public hearing to grant upon appeal or petition a variance from the zoning by-laws. It can be upon appeal of our decision or direct petition from an applicant to you. They don't have to come to the Planning Board.

Westley Burnham an individual can go directly to you if they know they have a deficiency. We can tell them to petition to you directly.

Pennoyer indicated it doesn't mean the Planning Board doesn't want to know about an applicant seeking a variance on a specific issue.

Burnham stated we would rather inform the applicant to go directly to the Board of Appeals, rather than the Planning Board having to go through the entire process of reviewing plan, if they don't get variance. If we give an applicant a denial based on one violation of the by-laws, the Board of Appeals then appeals our decision, the applicant does not have to come back before us again for us to review all other issues. Therefore, we would have to review all properties completely, and give denial on all issues, then if they don't obtain an appeal from you, the whole process for the applicant and us was for nothing.

Pennoyer stated unless the Board of Appeals decision stated pending approval of the Planning Board.

Ginn stated a problem he sees is an applicant will go before the Appeals Board with a deficiency he knows he has and he has been told that he has to come before the Planning Board first. For instance, Paul Pittman on Southern Avenue.

Bill Holten interpreted Pittman's application to be necessary to go before the Planning Board, get a denial, then come before the Appeals Board.

Brad Story said if we give the applicant a variance on frontage for instance, that's all he's got. They we send him back to you with variance in hand, for the review of the rest of the plan.

Westley Burnham stated the applicant should go the Board of Appeals first to obtain a variance on known deficiency, they they come back to us for a full review of the plan.

Bill Holten, let's do what works. What we don't want to happen is another scenario like Raymond Greene.

Altholtz stated he found that the Essex By-Laws are different than the state law. The State laws indicate the Board of Appeals can act upon denial or petition, the Essex By-laws do not mention petition.

Holten questioned, if an applicant comes before the Planning Board with a plan, and he lacks frontage. Do you deny the plan immediately, without further review?

Knowles stated yes, that stops the process. We don't have to go down the rest of the list. We give them a denial based on frontage, it's not like a denial for a subdivision plan, where we have to list all our reasons.

Ginn does your board need a denial from this board first?

Holten no, what we need is the date of the meeting, and the minutes of your meeting so we have some backup.

Ginn if an applicant knew there was no way the Planning Board could issue them a permit, if that individual then approached your board, what would you say?

Holten what we have said up to this point, is, you have to go before the Planning Board first.

Ginn stated another suggestion he had is if we could get an agenda for your meeting.

Holten stated our own by-laws indicate an individual must first receive a denial from the Planning Board before going to the Board of Appeals.

Westley Burnham stated again, per state law an applicant can go before the Board of Appeals to seek a variance without going first to the Planning Board.

Altholtz however, our by-laws do not say that.

Knowles asked Holten if the minutes we have been supplying applicants that have received denials so they can request appeal from appeals board are sufficient?

Holten the minutes in the past have not supplied enough detail or information, no.

Altholtz asked if whether or not when we get an application like that, should the two boards be meeting to review the proposal.

Burnham stated he felt that could be seen as a possible collusion. If you're appealing a decision made by us, and we're meeting together to discuss it, the applicant could see it as a conflict.

Altholtz felt one member of the Planning Board should go to the Appeals Board meeting with the entire charge of the board. The Board should direct a representative as to what it wants them to say.

Burnham stated at a public hearing, any input from a planning board member, whether they are acting on behalf of the planning board or not, or as a private citizen, there is no problem whatsoever. My concern was a non-public scenario.

Altholtz I think it needs to be an authorized version of our decision that is presented at the board of appeals meeting.

Knowles what we're saying is, the minutes of our meeting with the denial are fine.

Pat Dunn commented she would like to volunteer to be the representative from the Planning Board at the Appeals Board meetings with a letter of what the planning board would like conveyed. Pat thought perhaps sending two planning board members would be better.

Karen Baker questioned if Bill Holten felt he got adequate information on the projects it needs to act on?

Bill Holten said that is a very difficult question to answer. Sometimes yes, sometimes no. For the most part we're lacking information.

Bob Marculewicz stated if all boards were to file their information by Lot and Parcel it would be simple to access. Otherwise it's difficult to obtain sufficient information.

Pennoyer felt the Planning Board minutes relating to a denial, could include a round-table comment with each member making a few sentences regarding their position, would probably be sufficient for the Board of Appeals.

Burnham stated he doesn't think Planning Board members should go to the Board of Appeals meetings as an official representing the Board in that capacity; they could just answer questions.

Altholtz disagreed. Either you're there as a representative from the Board or not.

Bill Holten again felt the applicant should come to the Planning Board first. They would receive their denial, then they could come before the Board of Appeals with their application and the minutes from the denial by the Planning Board.

Knowles stated we will send people to the Board of Appeals meetings if we feel that is necessary. Otherwise, we will send our minutes, with as exact a denial as we can make.

Altholtz believes planning board members should not go Appeals Board hearings at all. You are carrying more authority than the guy sitting next to you.

Dunn disagrees. You cannot stop private citizens from going to any town meetings.

Altholtz commented when we receive a notice from the board of appeals indicating a hearing is being held relative to a denial of ours, and we will discuss whether we want to send a representative or not; we will send applicable minutes.

Bill Holten stated he would like to leave off a revised record of proceedings on the Raymond Greene case, the previous version was too condensed.

Burnham stated while reading the revised record of proceedings, he was concerned because it reads "the building inspector is hereby directed to issue a building permit for the addition based on the revised floor plans submitted by Mr. Greene". He does not have to come back here. That's why I don't want to deny everybody that has to go in front of you to obtain a variance. When it's a known deficiency, and it needs a variance under the state definition, we should not deny because now you put in the confusion of the appeal to our decision or the request for relief from a by-law that they can't meet.

Holten stated you cannot make the law absolutely air-tight.

Burnham stated Chapter 48 allows for the petition directly to you under state law for relief from a by-law which for some hardship condition cannot be met. Allow them to petition you directly to take care of that one item, then let them come to us essentially with a conforming lot and then we can treat them as if they have a conforming lot and start from ground zero.

Bill Holten I think we need to stop thinking about everything in terms of being a variance. We would not grant Mr. Greene a variance. We made a ruling, it's not a variance.

Burnham you're forcing everyone to come before to get a denial before they can come to you.

Holten that's what it says in the by-laws.

Kimberly Jermain stated rather than sending someone to the Appeals Board hearing, I would prefer to have the Appeals Board come to us requesting information prior to a hearing so that we can explain our position. Then you could represent yourself based on the information you got from the entire board. Rather than sending representatives that might not intentionally misrepresent it but might unintentionally misrepresent.

Holten I like that concept. How would we implement this?

Burnham stated it would be very easy.

Altholtz stated we could give you a few minutes at the beginning of each meeting.

Burnham stated when you receive a petition for an appeal, you can send us an opportunity to send you information.

Jermain if you give the entire board the opportunity to present the information, then I think the information will be complete.

Pennoyer said, when we get the notice from you on the appeal that's going to be held in a public hearing, we at that time will send you what information we have.

Ginn when the applicant goes to their board stating we want to have a public hearing, that's when they're going to review it. If they have any wants or questions, they should request that.

MINUTES OF JUNE 15, 1994:

Pat Dunn would like page 11 changed to reflect that she was opposed on the Miles River motion. Sheldon Pennoyer stated he would like it reflected also on page 11 that he abstained from the vote on Miles River because he was not present at the public hearing.

Jermain mentioned she would like page 1 changed to reflect the following on Donald & Melanie Burnham property: Jermain noted the abutting lot was made non-conforming, and it is the decision of the Planning Board whether this lot is a buildable lot. Westley Burnham mentioned the Planning Board approved the initial plan making the abutting lot non-conforming.

Jermain requested page 10 be changed on the Low Land Farm resubmission as follows: On 6/15/94 a resubmission of the Low Land Farms subdivision was received by the Planning Board. Pennoyer reviewed the submission and stated it was complete. No fees would be required if this is a resubmission of a plan with corrections based on a denial, not a new plan.

MOTION: KIMBERLY JERMAIN MADE A MOTION THAT THE MINUTES OF THE JUNE 15, 1994 MEETING BE APPROVED WITH THE MODIFICATIONS ABOVE. WESTLEY BURNHAM SECONDED, ALL WERE IN FAVOR, MOTION CARRIED.

Town Counsel:

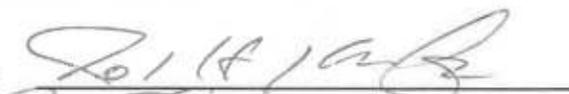
Knowles stated the response he received from John Tierney based on what members can vote based on their attendance at a public hearing. He said Tierney indicated members should be present at all members in order to vote, however, the minutes and the presence of the tape from the public hearings could be enough to make any member who missed a portion of the public hearing could be informed enough to vote.

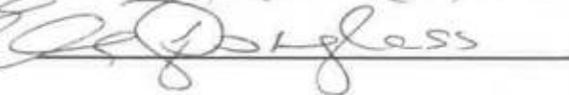
Altholtz asked Rolf Madsen if he had any information on the same. Madsen said he felt it would be up to the individual board member if he felt he had sufficient information to vote.

Ginn felt the minutes should be enough to keep members informed and they can have discussions with other members to keep abreast.

Karin Gersch had additional comments regarding any problems. The lack of information in town from board to board on specific properties is a major issue. The Planning Board, the DPW, Board of Health, Conservation Commission, all have in their individual files vital information that should be shared. She also agrees that all information should be retained relative to Lot and Parcel. People don't know what their jobs are or what other town boards jobs are. New people to town don't know where to go to begin process of building, etc. Corporations have flow charts, organizational charts and job descriptions, they are very important. People need to start thinking of towns as corporations and incorporate teamwork, people don't like change, but change has to happen. Variances should not be given so easily, the by-laws should be upheld. The Planning Board should have a vision for their decisions.

Meeting adjourned at 9:45 PM.

ATTESTED TO: 

PREPARED BY: 

ESSEX PLANNING BOARD

AGENDA

JUNE 15, 1994

- ✓ 7:30 Dick Carter Building Inspector
- ✓ 7:45 Clay Moran To submit a plan for Soganeese Creek
Spring St. and to submit a plan for Craig Doyle
of John Wise Ave.
- ✓ 8:00 Public Hearing Filius Realty Trust
To extend docks in the Essex River
Recreational Use
- ✓ 8:30 Paul Pitman Building Permit Southern Ave.
- ✓ 9:30 Community Action Statement

Business:

- ✓ Read Minutes
- ✓ Discuss Summer Schedule
- ✓ Discuss Clerk Position
- ✓ Peter Van Wycke Resubmission of Low Land Farm Subdivision

6/15/1994 minutes



ESSEX PLANNING BOARD

Essex, Massachusetts 01929

TO: JOE KNOWLES

FROM: EILEEN DOUGLASS *Eileen Douglass*

DATE: JULY 26, 1994

SUBJECT: JUNE 15, 1994 MEETING

SOME QUESTIONS HAVE BEEN RAISED REGARDING THE MINUTES OF THE 6/15/94 MEETING OF THE ESSEX PLANNING BOARD. WHAT FOLLOWS IS MY BEST RECOLLECTION OF WHAT TRANSPIRED.

- I PLACED SEVEN COPIES OF THE MINUTES IN THE PLANNING BOARD MAILBOX AT TOWN HALL ON MONDAY, 6/27/94 TO BE PICKED UP AND REVIEWED BY THE MEMBERS BEFORE THE NEXT MEETING (JULY 6, 1994).
- SOMETIME BETWEEN 6/28/94 AND 7/5/94 I RECEIVED A CALL FROM H. ALTHOLTZ STATING HE HAD A CORRECTION TO THE MINUTES. HIS CHANGES WERE RELATIVE TO THE APPLICATION OF DONALD & MELANIE BURNHAM OF 200R WESTERN AVENUE, (PAGE 1, PARAGRAPH 5, COPY ATTACHED). HE ADVISED I CHANGE ALTHOLTZ' POINT OF ORDER RELATIVE TO JOHN GUERIN'S POSSIBLE CONFLICT OF INTEREST DUE TO HIS MAPC POSITION. IN MY TRANSCRIPTION FROM THE TAPE IT READ "ALTHOLTZ STATED GUERIN HAD AN OPINION FROM THE STATE ETHICS COMMISSION, AND WOULD BRING IT IN." ALTHOLTZ ADVISED I CHANGE THIS TO READ "GUERIN ASSURED ALTHOLTZ THAT HE HAS AN OPINION AND WILL PROVIDE IT TO THE PLANNING BOARD THAT HIS MAPC POSITION WASN'T SUBJECT TO THAT RULE".
- AT THE 7/6/94 MEETING, THE MINUTES OF THE 6/15/94 MEETING WERE APPROVED. I RECOLLECT THAT I MADE SEVEN NEW COPIES OF PAGE 1 AND PASSED IT OUT AT THE MEETING. OTHER THAN THAT, I DO NOT SPECIFICALLY REMEMBER ANY MENTION BEING MADE OF THE CHANGE ON PAGE 1. THE TAPES OF THE 7/6/94 MEETING ARE AT TOWN HALL, AND COULD BE REVIEWED TO DETERMINE THIS. AT THIS TIME, ALTHOLTZ REQUESTED I MAKE A COPY OF THE 6/15 MEETING TAPE FOR HIM.
- DURING THE 7/6/94 MEETING, KIMBERLY JERMAIN WANTED RECORDED IN THE MINUTES THAT SHE IS REQUESTING JOHN GUERIN FURNISH THE PROMISED LETTER REGARDING HIS POSSIBLE CONFLICT OF INTEREST (PAGE 1, PARAGRAPH 3 COPY ATTACHED).
- AT THE 7/20/94 MEETING ALTHOLTZ BROUGHT UP THE ISSUE OF THE "PROMISED" LETTER, AND GUERIN DENIED EVER MAKING THAT STATEMENT. I HAVE NO RECOLLECTION OF GUERIN MAKING THAT STATEMENT AT THE MEETING. IT IS MY OPINION THAT THE INFORMATION RECORDED ON THE TAPE OF THE 6/15 MEETING WAS A QUOTE BY ALTHOLTZ AS I HAD INITIALLY RECORDED. AT THIS MEETING I INFORMED ALTHOLTZ I WAS UNABLE TO COPY THE TAPE AS I COULDN'T FIND ANYONE WITH A DUAL CASSETTE DECK. HE TOOK THE TAPE WITH HIM TO COPY, AS FAR AS I KNOW HE IS STILL IN POSSESSION OF IT, THEREFORE, I CANNOT VERIFY THIS INFORMATION. I FAXED A REQUEST TO ALTHOLTZ TODAY THAT HE RETURN THE TAPE TO TOWN HALL.

ESSEX PLANNING BOARD

WEDNESDAY, JUNE 15, 1994

ATTENDEES: J. Knowles; Chairman, P. Dunn, K. Jermain, J. Ginn,
S. Pennoyer, W. Burnham, H. Altholtz

Dick Carter, Building Inspector:

Donald & Melanie Burnham, 200R Western Avenue, single family dwelling. Brought letters from abutters, Davis, Kirker, Benoit and Hidden having no objections to building of new house.

It meets setbacks and sidelines, frontage is 150', lot size is 60,316 sf, it is a non-conforming lot. Attorney John Guerin was representing the Burnham's. Meets all requirements of 6-6.2.

MOTION: Westley Burnham made a motion to approve the siting for a single family dwelling at 200R Western Avenue, finding it meets all the minimum requirements of 6-6.2 as shown on the plan dated 04/29/94 by Clay Moran, Joe Ginn seconded the motion.

Jermain noted the abutting lot was made non-conforming, and it is the decision of the planning board whether this lot is a buildable lot. Westley Burnham mentioned the Planning Board approved the initial plan making the abutting lot non-conforming. Pennoyer stated you cannot rescind a prior ANR.

Altholtz made a point of order stating he had raised the issue of whether an appointed or elected official can represent someone coming before a town board, however, he said Guerin had an opinion from the State Ethics Commission. Guerin assured Altholtz that he has an opinion and will provide it to the Planning Board that his MAPC position wasn't subject to that rule.

Opposed to the motion were Pat Dunn and Kimberly Jermain, in favor were Pennoyer, Knowles, Ginn, Burnham and Altholtz. The motion carried.

Raymond Greene:

Dick Carter stated the set of plans not showing the 2nd kitchen were not available yet, however he did have the

ESSEX PLANNING BOARD MEETING

WEDNESDAY, JULY 6, 1994

ATTENDEES: J. Knowles/Chairman, P. Dunn, S. Pennoyer, J. Ginn,
H. Altholtz, K. Jermain, Westley Burnham

Dick Carter - Building Inspector:

Raymond Greene, Conservation Commission and Board of Health. The plans now show an addition to a single family with no kitchen. Carter felt the Planning Board left it subject to the approval of the Board of Health.

MOTION: HOWARD ALTHOLTZ MADE A MOTION TO AUTHORIZE THE BUILDING INSPECTOR TO ISSUE A BUILDING PERMIT TO RAYMOND GREENE, 15R STORY STREET, FOR AN ADDITION TO A SINGLE FAMILY RESIDENCE OF 2 MORE BEDROOMS, 1-1/2 BATHS, SUBJECT TO THE CONDITION IMPOSED BY THE BOARD OF APPEALS (BOARD OF APPEALS DECISION OF 04/20/94) SPECIFICALLY THAT IT REMAIN A SINGLE FAMILY RESIDENCE AND THAT NO BUSINESS OR COMMERCIAL ACTIVITY WILL BE UNDERTAKEN ON THE PREMISES. WESTLEY BURNHAM SECONDED THE MOTION. ALL WERE IN FAVOR, MOTION CARRIED.

Kimberly Jermain wanted recorded in the minutes of the meeting that she is requesting the letter from John Guerin promised at the last Planning Board Meeting (6/15/94) relative to Donald & Melanie Burnham, whether or not elected or appointed officials can represent individuals before town boards. Jermain also wanted in the records her continued request for disposition of the Bob Dawe paving issue.

Howard Altholtz followed up on the Bob Dawe paving issue by indicating at the last meeting there was a vote to send a letter asking for engineering studies, which Altholtz didn't agree with. He stated he thought we should get a special permit application, which we asked for three months ago. Altholtz did not feel an engineering study is necessary.

Joe Knowles stated the reason letters did not go out was he got the information regarding what dimensions were impermiabile, and Knowles is going to call Bob Dawe. He will indicate to Dawe that the dimensions he was given today don't jibe with what we've seen before, he will ask Dawe to explain why they are different. He may be required to come before the board.

Westley Burnham mentioned that Bob Dawe's lot is a non-conforming lot; under 6-4.2 we can bless it.

Howard Altholtz stated 6-4.2 has nothing to do with the water protection district, when you increase a non-conforming use, the increase that's occuring still has to comply with the zoning by-laws.

ESSEX PLANNING BOARD

WEDNESDAY, JUNE 15, 1994

ATTENDEES: J. Knowles; Chairman, P. Dunn, K. Jermain, J. Ginn,
S. Pennoyer, W. Burnham, H. Altholtz

Dick Carter, Building Inspector:

Donald & Melanie Burnham, 200R Western Avenue, single family dwelling. Brought letters from abutters, Davis, Kirker, Benoit and Hidden having no objections to building of new house.

It meets setbacks and sidelines, frontage is 150', lot size is 60,316 sf, it is a non-conforming lot. Attorney John Guerin was representing the Burnham's. Meets all requirements of 6-6.2.

MOTION: Westley Burnham made a motion to approve the siting for a single family dwelling at 200R Western Avenue, finding it meets all the minimum requirements of 6-6.2 as shown on the plan dated 04/29/94 by Clay Moran, Joe Ginn seconded the motion.

Jermain noted the abutting lot was made non-conforming, and it is the decision of the planning board whether this lot is a buildable lot. Westley Burnham mentioned the Planning Board approved the initial plan making the abutting lot non-conforming. Pennoyer stated you cannot rescind a prior ANR.

Altholtz made a point of order stating he had raised the issue of whether an appointed or elected official can represent someone coming before a town board, however, he said Guerin had an opinion from the State Ethics Commission. Guerin assured Altholtz that he has an opinion and will provide it to the Planning Board that his MAPC position wasn't subject to that rule.

Opposed to the motion were Pat Dunn and Kimberly Jermain, in favor were Pennoyer, Knowles, Ginn, Burnham and Altholtz. The motion carried.

Raymond Greene:

Dick Carter stated the set of plans not showing the 2nd kitchen were not available yet, however he did have the Board of Health approval.

Warren Smith:

Jermain questioned whether Warren Smith was coming before the board or not. Dick Carter stated he had spoken to Smith on Friday, and was under the impression Smith was going to make an appointment to come before the board. Carter believed the trailer was gone.

Village Parking Lot:

Pat Dunn questioned the continual use of the Village Restaurant parking lot as a spot for parking used vehicles for sale (on Rte. 133). Dick Carter stated the Village Restaurant owns the property and is free to do with it what they choose.

Dawe/Paving Driveway:

Jermain questioned Carter on the status of Dawe's paving. Carter stated nothing was happening, he felt the measurements of the square footage of paving came way under maximum allowed. Jermain questioned if the measurements included the roofs. Dunn mentioned she viewed the paving herself and felt there was not much hottop there. Dunn felt if this was pursued, it was getting to the point of harrassment, she felt other individuals have paved larger areas and no one is questioning them. Ginn suggested if this issue is going to be brought up at every meeting or at least every other meeting, that the board should ask the owner of the property to have an engineer submit a square footage of all impervious areas showing the board exactly what is impervious, whether its roofs, hottops, garage, or pavement. Dunn disagrees that the property owner should have to pay an engineer to draw up a plan for the Planning Board. She asked, are we expecting everyone with similar property to do the same? Ginn stated they asked Byrne Brothers two years ago for same study, and they never responded. Knowles suggested letter go to Dawe requesting study. Dunn requested her name not be put on the request, because she feels it is unfair and harrassing.

Soganeese Creek Subdivision:

Applicant cancelled, however, some residents arrived at meeting to make their comments known. Prentiss, Spring Street, the board should walk the proposed site for the subdivision.

FILIAS REALTY TRUST:

Joe Knowles opened the continuation of the public hearing for Filias Realty Trust, 138 Main Street, for additional docks per Essex By-Law 6-6.9 B recreational use.

Knowles mentioned the public hearing had been continued from June 1, 1994 specifically to allow for additional time for other town boards to submit information if they chose to. Received in the mail since the last meeting was a letter from River Management, Knowles read it into the minutes, it read as follows:

June 13, 1994

Dear Mr. Chairman and Members of the Board:

With regard to the application of Filias Realty Trust for additional floats in the Essex River, please be advised that the Essex River Management Committee is opposed to any further expansion until a licensed engineer drawing of the planned expansion is available, complete with boundaries of the channel and abutters. Please note that is against federal regulations for anything to be in channels and it is our opinion that the present floats are in the channel of the Essex River. Sincerely,

Clayton Brooks, Jr.
River Management Committee

Knowles mentioned that the board wanted to be certain that other relevant boards in town had received notification as required by procedure. The Planning Board Secretary, Eileen Douglass, was given the task of contacting those relevant boards and determining if proper procedures were followed. Douglass reported she had spoken to the Board of Health and they indicated had they received the notice it would not have initiated any response from them. They stated they would have no comment unless the Planning Board asks them specific questions, and they would respond to those questions within the 35 days. They indicated they were not thrilled with the jiffy john situation, they were concerned, as Altholtz had mentioned, about the pump out of these additional boats. Douglass also spoke with Ed Perkins of the Conservation Commission, he reiterated the same regarding having received the notice of the public hearing of the Planning Board. Perkins stated they also have the plan, Filias came before them in September of 1993. The Conservation Commission is still waiting for requested information from Filias on two issues: 1) extended property lines 2) location of federal channel. The Conservation Commission sees our two functions as

separate, they are not waiting on us, and we should not be waiting on them. If they had received the information they requested from Filias, they would have moved forward on the plan with or without our decision.

Harold Burnham questioned if the Board had received the letter he sent. Jermain read the letter from Harold Burnham into minutes:

Dear Board Members:

I am writing in reference to the public hearing that took place this evening discussing the floats at the Landing Apartments.

At the hearing, I noticed that the engineer had drawn the floats in question on the outside of the dredged river channel. Although I understand that in Massachusetts most waterfront property is owned to the low watermark, this does not give all waterfront property owners the right to block the safe passage of vessels over their property bounds at high water.

For many years now I have been sailing the Essex River and it has been my business to take paying passengers on these sailing trips since 1992. The vessels which I use in this business are both too large and draw too much water to maneuver safely with other traffic when confined to the dredged channel. However, at high water when the tide allows me to sail from riverbank to riverbank, despite the flukey winds, strong currents, and numerous high speed power boats, I have been able to take many people on enjoyable trips up and down the river.

My point is that at high water many vessels - including kayaks, canoes and the increased volume of power boats which frequent the river on weekends - utilize the area of the proposed floats and much of the waters outside the dredged channel along the river's length. Keeping this in mind one can see that, although these floats are drawn outside the dredged channel, at high water they would not be outside of the channel at all. I would like to add that if everyone who owned marsh land along the river's banks were allowed to extend pilings and floats out to the edge of the dredged channel the river would be unsafe at any tide.

With the long range planning of the town in mind I feel it is an important time to set a precedent against further development of the river which encroaches upon the channel. It is completely within your power to stop this detrimental development and I hope that you would vote to deny the apartments any authorization to extend their marina and have them remove any illegal or unauthorized floats and pilings they may presently have in place.

Sincerely, Harold Burnham

Westley Burnham asked the applicant how many slips they presently had existing.

Paula Filias indicated 23 slips. She continued, the number of boats may vary because if they were small boats there might be 25 boats, if they were larger there might be 23.

Altholtz mentioned he had taken seriously what the people had indicated at the Public Hearing. We have a problem with the river right now, regarding pollution and traffic. He stated he would be voting against this project. It's introducing too much motorized traffic into the river and in the channel.

Burnham did not believe the addition of ten more docking spaces are that significant. If you really want to restrict motor boating in the river we should look at restricting trailering. Burnham indicated what he is going to suggest, and what he would like to make as a motion, is to allow them the expansion they are requesting, but in a different design. They should reconfigure the plan with the Army Corp. of Engineers approval, reshaping it away from the channel.

Jermain questioned if Burnham was not taking into consideration what the River Management Committee was saying.

Burnham felt his plan did take into consideration their concerns.

Ginn questioned whether existing floats were permitted correctly?

John Dick indicated the existing floats are not required to be permitted. My client is proposing to put permanent pilings in to hold these floats in place, the pilings require a permit.

Altholtz stated we should deny this application and let them bring in a new plan.

Knowles stated, if we go by procedure, that's what we should do. We do not reconfigure their plan for them. The proposal was specific to a plan that has been publicly available, and that's the plan we have to vote on, we can't alter or modify the submitted plan.

Burnham said he was not trying to modify their plan, he was trying to allow them the extended use. Let's grant them the use or allow them to extend the use and seek Chapter 91, State and Army Corp. licensing for no more than an additional 10 slips.

Altholtz questioned what specific plan are we voting on then?

Burnham stated he did not feel they had to exactly vote on a specific plan.

Knowles stated he felt that was tricky. The public hearing is about a specific plan.

Ginn said especially if they are not licensed. The applicant could move them anywhere they want.

Jermain said then, Westley, you are turning over the responsibility of the Planning Board to the Army Corp. of Engineers?

Burnham said they have to approve it anyway.

Pennoyer commented that it is the applicants "intent" that is reviewed at the Public Hearing. I have to challenge Westley on his very confident statement that the trailers bring in more traffic than the boats. The big issue is the traffic on the river and the added traffic in town.

Burnham stated you're making the assumption that each one of those slips is going to be occupied by power boats. I'd like to give the applicant an opportunity to reconfigure the plan with a maximum number of slips available.

Knowles stated he would like to close the public hearing, feeling enough public comment has been heard over the last two meetings. This hearing started on May 18, 1994. I think we should close the hearing unless the board feels it would like to take more public comment.

Pennoyer felt there some new faces at the hearing, and they should be allowed to comment.

Jim Prentiss did they just put this in the river without permits by the Harbor Master, and is it permitted by the Harbormaster now?

John Dick stated he did not know.

Harold Burnham stated the edge of the dredged channel is not the width of the channel.

Paula Filias stated the motivation for the project was to keep the boats out of the mud. We can reconfigure the plan and we will resubmit another plan if you provide us input. We are attempting to expand the number of floats to increase funds to offset the cost of dredging the area that our slips are in.

Dana Story stated we don't need more boats in the river. They're not improving the area, they want to improve their bottom line.

Mrs. Henderson questioned how close they can come to her property line?

John Dick stated per Chapter 91 - the structure must be more than 25' from the abutters property lines. It's like zoning, however it can be waived by abutters if they so choose. It is our intent to maintain the 25' distance.

Mrs. Henderson said if you say yes to them, how can you refuse other applicants?

Paula Filias stated other have been granted permission in the area.

Mr. Henderson questioned if they have the correct permits for what they presently have?

John Dick stated we are obtaining permits for existing floats now.

MOTION: Jermain made a motion to deny the special permit for Filias Realty Trust, 138 Main Street, for a recreational use under Essex By-Law 6-6.9(B) for additional docks, Altholtz seconded.

Westley Burnham stated the applicant would be "locked out" for two years if this application is denied.

Altholtz said let's vote and deny.

Ginn questioned if what currently exists can be licensed?

John Dick indicated we can't get to that point if you don't approve this plan.

Burnham stated a special permit is for an existing use.

Jermain stated the applicant feels he's before us for additional docks, thereby validating the existing floats.

Knowles said I think we should do that separately.

Fred Fawcett stated he believed the public hearing could not be closed until the other town boards have been heard from.

Knowles said we don't understand that to be true. They operate independently from us.

MOTION: Jermain made a motion to close the public hearing, seconded by Ginn. All were in favor, motion carried.

Burnham looked into the regulations as to how many members must vote to get a 2/3 vote, due to the fact that the following members cannot vote because they missed a portion of the public hearing: Pennoyer, Dunn and Ginn.

Altholtz reminded the board, we need a 2/3 vote in order to carry.

Knowles stated if there are only four board members available to vote, and those four would be Burnham, Altholtz, Jermain and Knowles, do we have a sense for how we would vote. Could we possibly have the 2/3 for an approval? To deny it we only need a simple majority.

John Dick we would like to withdraw without prejudice, and we could come back with another plan.

MOTION: Jermain made a motion to deny the special permit for Filias Realty Trust, 138 Main Street, for additional docks per Essex By-Law 6-6.9 (B) recreational use. Altholtz seconded. Opposed were Knowles, Burnham, Ginn. Motion did not carry.

Burnham until we have confirmation on what attendance at public hearing regulations are relative to voting, it is unfair to the applicant to continue, if a motion to deny means they must wait two years to reapply.

Altholtz indicated he feels confident if you miss any portion of a public hearing, you cannot vote on it.

Burnham would like to see this tabled, in fairness to the applicant, until we know who is eligible to vote.

Ginn stated he would like to see the applicant get what is now existing licensed, then they can come back to see if it can be expanded.

John Dick stated we cannot even apply for that license until we get past the Planning Board.

Ginn stated he did not feel that was correct. You are not before this board now for what you presently have, you are here for an extension of what you have. I would like to see what is there licensed and permitted. That would help me make a decision on how I would vote on an expansion.

Jermain the applicant says he feels he is before us asking for an addition on to what exists, and for permission for what exists as well. That is how he sees it as I understand it. He is asking us to approve the addition, and by approving the addition we're validating the existing. I'm saying I don't approve of the existing, I'd like to see in the motion how we feel about the existing as well as the addition.

MOTION: Westley Burnham made a motion to allow Filias Realty Trust to withdraw their application for a special permit to make additional docks at 138 Main Street per Essex By-Law 6-6.9 (b) at their own request without prejudice, contingent on a written request which will be filed with application. Ginn seconded, all were in favor, motion carried.

Paul Pitman, Southern Avenue:

Plan for building permit - 10 acre parcel, close to the Manchester line, with no frontage on Southern Avenue. His brother owns the 20 acre parcel on the Manchester line, Paul owns the 10 acres. He's been using a driveway (right of way) on the Coolidge Trust property (a public charitable trust) for approximately 17 years and the previous owner used it for about 20 years before that. The 20 acre lot and 10 acre lot were separated in 1989. Pennoyer mentioned the property does not have the required frontage. Pat Dunn mentioned the Coolidge Trust is a touchy issue. Betsy Fawcett said the Selectmen are the Trustees of the Coolidge Trust, although she believes the Attorney General has more authority over it. Mrs. Fawcett doesn't believe the Board of Appeals has the power to issue a variance for the property of a permanent charitable trust.

Mr. Pitman was informed by the Board he could either get a denial from the Planning Board, then go to the Board of Appeals and seek an Appeal, or he could simply go to the Board of Appeals seeking a variance for an inadequacy that he knows his property has.

Fred Fawcett indicated that the two lots may not still legally be two lots because after three years, they could revert back to one lot.

Knowles requested the secretary send a copy of the portion of the minutes of this meeting relative to this applicant go to Mr. Pitman in order that he may go before the Board of Appeals and seek a variance.

Community Action Statement:

Howard Altholtz stated that there is an application process at the state level as a foundation for funding for items such as, planning, water quality, roads, codifying by-laws and Conomo Long Range Planning, etc. Various portions of the application were farmed out to the appropriate town boards for completion. The portions are to go back to the Selectmen to complete application.

Minutes of Meeting:

Kimberly Jermain made a motion to approve the minutes of the 5/18/94 meeting, Westley Burnham seconded the motion, all were in favor, the motion carried.

Sheldon Pennoyer made a motion to approve the minutes of the 6/1/94 meeting with the addition of his name under attendees, Westley Burnham seconded, all were in favor, the motion carried.

Position of Planning Board Clerk:

Knowles opened the floor for nomination for the position of Planning Board Clerk (previously held by Joe Ginn). Westley Burnham nominated Pat Dunn, the floor was closed for nominations. All were in favor, Pat Dunn was appointed as Clerk.

Summer Schedule:

The discussion of changing to a summer schedule (meeting once per month) was discussed. Westley Burnham made a motion to keep current schedule twice per month, however, to limit the schedule to keep the meetings short for July and August. Kimberly Jermain seconded, Ginn was opposed, all others were in favor, the motion carried.

Pine Ridge/Sprinklers:

Knowles requested the boards permission to look into the issue of the sprinkler systems that were required at the Pine Ridge subdivision. Ginn felt the deal had been that each homeowner should have been responsible for the donation of \$1,000 worth of materials that the water department would require. The homeowners went along with it. Knowles stated the problem is that there is no way to account for those contributions to the town. Knowles wants to look into how that can be accomplished. The board gave Knowles their support to investigate the situation.

Low Land Farms/Peter Van Wyck:

On 06/15/94 a resubmission of the Low Land Farm subdivision was received by the Planning Board. Pennoyer reviewed the submission and stated it was complete. No fees would be required if this is a resubmission of a plan with corrections based on a denial, not a new plan.

Unresolved business:

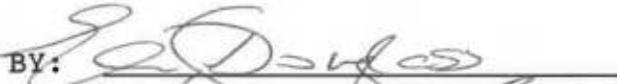
Kimberly Jermain had a concern with properties like Dawe, Smith, the storage units, etc., where complaints were brought to the Planning Board and those issues were brought to the attention of the property owner and have not been followed up on. Jermain suggested some mechanism be put in place to ensure that these kinds of items are followed up on and resolved. Knowles suggested some letters go to the appropriate property owners to try to resolve the unfinished business. Pennoyer suggested a letter should go to the Selectmen when no resolution can be found on a specific property.

Miles River Stables:

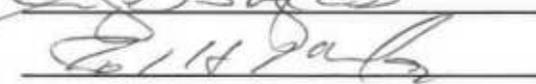
Kimberly Jermain made a motion to deny the 22' opening in the stone wall on the designated scenic road known as Choate Street as presented in the plan for Miles River Stables, Altholtz seconded. Ginn is abstaining, Pennoyer couldn't vote as he wasn't present at the public hearing. In favor were Knowles, Altholtz, Jermain, opposed were Burnham and Dunn, the motion carried.

Meeting adjourned at 10:50 PM.

PREPARED BY:



ATTESTED TO:



ESSEX PLANNING BOARD

AGENDA

JUNE 1, 1994

- 7:30 Dick Carter Building Inspector
- 7:45 Read and Approve Minutes
- 8:00 Continuation of Public Hearing To extend docks
Filius Realty Trust Recreational Use
- 8:30 Discussion and possible decision
Miles River Stables Choate St. Essex
- 9:00 Discussion on Site Plan Review

Discussion:

- 1 Donald Metcalf Property
- 2 Summer Schedule

ESSEX PLANNING BOARD

WEDNESDAY, JUNE 1, 1994

ATTENDEES: Joe Knowles; Chairman, Kimberly Jermain, Pat Dunn, Westley Burnham, Howard Altholtz, Sheldon Pennoyer

Meeting opened at 7:30 PM.

Building Inspector - Dick Carter:

Donald & Melanie Burnham, 200R Western Avenue, single family dwelling. The DPW was meeting tonight on the curbcut. Already gone through Conservation Commission. Previously appealed due to a denial by the Planning Board. Melanie Burnham indicated the appeal has been dropped, however, it has not yet been filed. Kimberly Jermain believed the denial stemmed from having a right of way as part of the required frontage.

MOTION: Pat Dunn made a motion to table the discussion pending further investigation of meeting minutes relating to prior denial. Altholtz seconded motion, Knowles, Burnham and Pennoyer against. Motion didn't carry.

Sheldon Pennoyer found minutes relating to the denial of Hidden and Curker. By the board approving the plan in 1959 for three lots, the majority of the frontage for lot C was removed, thereby making it a non-conforming lot. A portion of the right of way would have to be used for frontage.

MOTION: Pennoyer made a motion to approve the permit for Donald & Melanie Burnham contingent on the submission of resolution of appeal. Westley Burnham seconded and amended the motion, adding that the 04/29/94 plan must contain the appropriate setbacks per by-law 6-6.2. residential land use, Pennoyer seconded the amendment, in favor were Burnham, Knowles, against were Dunn, Altholtz and Jermain. The motion did not carry.

Westley Burnham commented if the lot met the required frontage and sidelines, it should be approved. Pennoyer stated that Town Counsel informed him previously that the Planning Board cannot rescind a decision on an ANR.

Joe Knowles requested the discussion be tabled until later in the evening, and asked if Dick Carter would be available later in the evening.

Planning Board Minutes:

Kimberly Jermain made a motion to approve the minutes of the April 6, 1994 meeting, Pennoyer seconded, all were in favor, motion passed.

Howard Altholtz made a motion to approve the minutes of the April 20, 1994 meeting, Pennoyer seconded, all were in favor, motion passed.

Howard Altholtz made a motion to approve the minutes of the May 4, 1994 meeting, with the following amendments: change date on all pages to reflect meeting was on May 4, 1994 not May 5, on page 5, change Pennoyer stated applicant (Van Wyck) paid fee under "protest" not "duress", Pennoyer seconded, all were in favor, motion passed.

Filias Realty Trust - Public Hearing:

Joe Knowles opened the continuation of the public hearing at 8:00 PM on the Filias Realty Trust for a special permit for recreational use, continued from May 18, 1994.

Fred Fawcett: shouldn't there be a wetland area by-law hearing also? He also stated for a special permit, the Board of Health and the Conservation Commission must be notified.

Betsy Fawcett: questioned what By-law this is under.

Westley Burnham: stated at the end of last meeting we were going to get estimated extended lot lines.

John Dick: you asked me to extend the property lines out to the limit of ownership by colonial ordinance, that would be the mean low water line, which in this instance at the present time is the edge of the channel.

Westley Burnham: the owner's of the tidal marsh land off to the right (to the east), where does their property line go?

John Dick: their property would extend out on the extension of the property line. There are extenuating circumstances, however, at some point, yes they would

intersect. The abutters are Bay Road Realty Trust, Essex River, Inc., and across the river, the Henderson's also have rights to low water.

Besty Fawcett: has the Corp. of Engineers been notified?

John Dick: the Corp. of Engineers is way down the line.

Betsy Fawcett: under the Rivers and Harbors Act of 1899, shouldn't they have filed with the Corp. of Engineers first?

John Dick: the Corp. of Engineers have the plan. We are here to discuss the issues raised at the last meeting.

Besty Fawcett: what were the responses of the Corp. of Engineers?

John Dick: we're waiting for the response from the Essex Planning Board, we have been trying to complete this public hearing which has been ongoing since September. I've extended the property lines for you, the second issue I believe was do we intersect the channel, as I have been given to understand by the Corp. of Engineers, we do not. The Corp. has not yet finalized their as-built dredge data, when that's finalized, I will get a set of copies, if indeed at that time it turns out the channel isn't here, but it's here, these floats are moveable, we'll simply pivot them and move them out.

Paula Filias: we are here to discuss the issues raised at the close of the last meeting, that is all we're here to discuss tonight. We were advised by counsel not to discuss issues not continued from the last meeting.

John Dick: The third and final item as far as I'm concerned is the additional parking, you requested for us to see if we could install additional parking. Yes, we can. The total parking spaces on the plan now would equal fifty (50).

Altholtz: how many spaces were required by the number of units?

John Dick: We have nineteen (19) units, a conservative estimate is 1 and 1/2 spaces per unit, would be thirty (30) spaces. So this basically gives us twenty spaces in excess. There is no standard under the by-law.

Kimberly Jermain: you're adding how many more slips?

John Dick: once again, 10 additional floats. That's assuming one boat per side.

Paula Filias: I believe in your mail box is a letter from

the Board of Health on the Jiffy John issue.

Charlie Burnham: I was here at the last hearing. You show three abutters, that may be how you see it, but I don't. This area used to be a very important place in town. People tended in those days not to walk up Main Street, but to walk around through here to the shipyard, run by a half a dozen people in town and there was a right of way.

John Dick: Bay Road Realty has no such right of way, and there is a set of right of ways back here on these lots that means nothing to this plan.

Charlie Burnham: I don't have that deed, I've talked to you about deeds, if you had that deed you could show us, but there's always been a lot of question.

Joe Knowles: the point is that the abutters aren't really shown on the plan.

Charlie Burnham: the land right here was used for years and years by people, I kept a boat there for twenty years, Whitey kept a boat there for years. The point I am making is, this was a very important part of town at one time, and it was used a great deal, it had a lot of public access, and I think talking to George French who used to own this property, he says there was some confusion in his mind who owns this. I don't know how clear the title is. In Essex in the 1960's they put some marinas in, they put them in with the boats backing out into the channel. Boats don't back up easily and boats don't stop, when someone backs into the riverway here it's a very dangerous situation. I think this plan is very unsafe, I think it's very unfair to anybody that's using the river. I don't think the town is obligated to do anything for these people, they should be able to have some boats there, but we don't need any more marinas in Essex as far as I'm concerned.

Paula Filias: This was brought up at the last meeting, and it has been brought up again, there is absolute clear title to our property and I will not tolerate any question about our title. If there is any question about the title to the property next door, then that is not relevant to what we're dealing with.

Joe Knowles: I think the reason that was brought up was to show that perhaps the abutters weren't displayed.

Paula Filias: If Bay Road Realty Trust was concerned about this then they would be here, because they were obviously notified about this.

Besty Fawcett: Mr. Chairman, there is an ancient right of way in that area and I suggest before any further discussion, it be researched and has any consideration been given to MGL 13105 Coastal Restrictions which are in that area? And if not, why not? It was pointed out to the engineer last summer, that there might be a 13105 problem.

Maria Burnham: I have in front of me the By-Law for special permit 6-6.9, in order to get a special permit you must be able to show that the specific site for the proposed plan is an appropriate location for such use. I disagree with that, it is not an appropriate location because of the hazards that Charles discussed. It also says that the proposed use will not adversely affect the neighborhood, the neighborhood being the whole town, because the whole town uses the river. It also says it will not be a hazard to vehicles, there will certainly be a serious hazard to other boats in the river. I don't think you have to grant this, and if you do grant this, it has to be a 2/3 majority.

Fred Fawcett: is this special permit being sought under the Wetland Zoning By-Law?

Altholtz: I think the special permit you are referring to in connection with the wetlands is the same as the regular special permit, I don't think that a separate special permit is required.

Joe Knowles: what we're doing is what was noticed. This is a recreational use.

Fred Fawcett: this is covered by the Essex wetland zone district.

Joe Knowles: I am not sure that point is jerman to this public hearing.

Fred Fawcett: if it is within a wetland zone of the town, you cannot issue a permit until you have satisfied the requirements of the Wetland Zoning District By-Law. A great many things the planning board deals with and calls zoning, are not zoning. The Conservation Commission and the Board of Health must be notified, now if they have not been notified, you can't act, and until 35 days have gone by or they have sent you information about it, you can't act. All aspects of MGL 13140 must be dealt with, all permits from local, state and federal have to be obtained.

Altholtz: can I suggest we put a time limit on the public hearing?

Knowles: let's see how we do in the next ten minutes.

Bruce Fortier: I want to bring up the fact once again that our zoning law is very specific that this property is entirely within the wetland zone. It's very specific that you can't build any permanent structures. An argument has been raised that since this is a series of poles, they're not structures, I think this is a ludicrous argument. Anyone would agree that a series of pilings would constitute a structure. If someone applies for something that is banned by the laws, it is not subject to a special permit. This was the whole purpose for the Wetland Zone, so there would be no more permanent structures within the banks of the river.

John Dick: We've addressed this issue already, you have a finding from your Town Counsel that this is a perfectly appropriate use.

Altholtz: Where is the legal opinion?

John Dick: I am not particularly interest in any of the issues raised before, we were asked to do three things for this meeting. We were asked to go to the Board of Health to address waste disposal, we've done that. We were asked to address parking, we've done it. We were asked to extend the property lines and show abutters, we've done it. We're done, that's our presentation, and we won't go over the same ground again. You're wasting my client's time and money.

Betsy Fawcett: Where is the letter from John Tierney?

John Dick: My client's attorney discussed this with Town Counsel, he expressed an opinion that Town Counsel was in agreement, if you want a written opinion from Town Counsel, it certainly is within your right to ask for it. I relied on verbal opinion, I was not asked to get a written opinion. This has been brought before the board twice now.

Altholtz: We do need a 2/3 vote on all special permits. I am not a big fan of injecting more motor craft into the river. I think this a too large a project in my view, it is in the wetlands area, we do have to seek Conservation Commission opinion first before we can make a decision. I think it needs to be scaled back a little, somewhere. Another dozen boats out there, the traffic and parking is too much.

Mrs. Henderson: Traffic is my concern, there are a lot of antique shoppers, did you ask the police how they feel about this?

Paula Filias: We can agree to back the boats in, to reduce boats backing into the river.

Charlie Burnham: I live next to a marina now, and they have cigarette boats, with exhaust and noise. I see nothing in writing that you will agree to backing boats in, etc.

Bob Brophy, Western Avenue: When I was on the Conservation Commission, and discussed the dredging of the marinas, one of the points that kept coming up was, well they're there we have to allow them to dredge. They're in business, they've been there. Why do we have to extend and expand and make more now. If they are there now, fine. We have pollution, the state is coming down on us, why create more of a problem.

Betsy Fawcett: Has the River Management people been consulted?

Joe Knowles: they were at our last meeting.

Betsy Fawcett: have they submitted any comments?

Joe Knowles: not yet.

Bruce Fortier: under the special permit by-law, do other town boards have to comment by deadline? Has comment period expired? You can't complete the public hearing until the period has expired or they have submitted their comments.

Altholtz: At the close of the public hearing, we're going to ask the Conservation Commission and the Board of Health to comment.

Fortier: you can't close the hearing without their comments.

John Dick: We're under 6-6.9 Special Permit for recreation use. We're not talking about the septic system, although we present there is a perfectly adequate septic system on the property serving the apartments. There is no waste disposal issue before the board at this time. There aren't any guidelines for a pumpout facility from the Commonwealth. We've been before the Conservation Commission since September, if anybody had anything to say, the Conservation Commission is the proper place for that.

Bruce Fortier: Mr. Dick has represented in the past to your board that this deed in fact only went to the high water mark. He was supposed to bring in a copy of the deed. And the fact that there seems to be a continual avoidance of bringing in the deed makes me strongly suspect that this applicant doesn't have a deed that covers the property. I urge your board to view the actual deed to this property prior to making a decision.

John Dick: If you want to see the deed, I'll pull it out right now. I am not trying to conceal anything, the Filiias' deed is public record, and I resent the implication that I'm hiding something. You know where to find that deed if you want it.

Kimberly Jermain: On Tuesday of last week, I went to the public hearing of the Conservation Commission, and that was continued contingent on this public hearing. There was no discussion last Tuesday, they said the Planning Board would be meeting on June 1st, and they held their meeting open until we had ours. Therefore, they are not under the impression that they are to be providing information to us.

Westley Burnham: what was the initial application date?

Pennoyer: two weeks prior to the last public hearing.

Westley Burnham: It was advertised in the newspapers, as it should have been?

Pennoyer: the application was submitted Wednesday, 05/04/94.

Westley Burnham: It was posted in the appropriate places?

Knowles: yes.

Westley Burnham: did we mail the abutters notification?

Pennoyer: yes.

Westley Burnham: did we mail notices to the boards within the Town of Essex?

Pennoyer: yes.

Westley Burnham: we have not received any comments, we can close the public hearing. We can still receive written comments. We have 90 days following tonight to make our decision. I had a conversation with Eddie Perkins, also a member of the Conservation Commission, and in his dealings with Chapter 91 and licensing of his marina, you start the process with the planning board, then if the planning board deems it is not an unreasonable project, then the Army Corp. of Engineers will get in and exactly mark where the channel is, and be sure that the pilings are located in such a way so as not to interfere with any navigatable waters. Then the Conservation Commission will get in, there is a whole process where we are the first stepping stone. It doesn't go anywhere until we say, yes, it's reasonable enough, go ahead and see if you can get through the rest of the stuff.

Kimberly Jermain: So if we're waiting for the Conservation Commission comment, we're not going to get it?

Westley Burnham: we're not going to get it, because they're waiting for us.

Altholtz: There is a 35 day period in which they must comment. We either have three more days if we transmitted correctly, or we have 35 days from today.

MOTION: Westley Burnham made a motion to continue the Public Hearing to 06/15/94 at 8:00 PM to give relevant town boards time to comment, Kimberly Jermain seconded, all were in favor, motion passed.

Miles River Stables:

Westley Burnham: we are here to discuss the removal and alternations of a stone wall, and the removal of a tree.

John Dick: we have already agreed to move the opening to go around the tree.

Joe Knowles: I spoke with Ed Perkins, the tree warden must be here to hold a meeting on the removal of a tree.

Pennoyer: Let's move on to the stone wall.

Jermain: we discussed last time that the size of the curb cut is the decision of the DPW.

Westley Burnham: approval is contingent on DPW discretion, the curb cut is not a planning board issue.

Arthur Clark, Choate Street, the applicant previously said maximum of facility would be 20 horses, now they're saying more.

Pennoyer: we talked about curving the wall, and building it up.

MOTION: Westley Burnham made a motion to approve the removal of a 22' section of a stone wall on a scenic road, Choate Street, as shown on the plan dated 10/29/93 and revised on 02/23/94 by Hancock Survey Associates, requesting also that the stone wall be curved in to maintain the character of the rest of the street. Joe Knowles seconded.

Jermain: at the public hearing it was mentioned that the bulk of the traffic would be coming from the Ipswich side because the road is better. We are not taking into consideration the public comment at public hearing, which is preserve the aesthetics of the scenic way.

Westley Burnham: this project is out of scale in the neighborhood, however, the special permit has been granted. Are we being overprotective of the stone wall to be spiteful?

Pennoyer: 20' vs. 12". Safety concerns vs. character, I think the curve of the road is a disaster. If we don't grant the 20' opening, the traffic for the facility would be very dangerous. To get into the 12' opening, the vehicle would have to cross to the other side of the road to make the turn.

Westley Burnham: Essex is getting all the tax benefits, Ipswich gets nothing. It's not unreasonable if we are to provide fire and police protection, that we ought to be able to access this facility from our own town. We shouldn't force them to have us cross over the Ipswich line to gain access to what we're obligated to protect.

Jermain: They continue to maintain that the traffic will be coming from the Ipswich side.

Knowles: There isn't much of a case for hardship. We're not taking access away, you have access through Ipswich if you want it. And that may be the more reasonable approach.

Westley Burnham: Access from the Ipswich side is not reasonably safe.

Knowles: This is the first I've heard that access from Ipswich is unsafe, I've heard it would be difficult to get through the Ipswich Planning Board.

Jermain: They are accessing their property right now from the Ipswich side.

Burnham: It's a temporary situation, it's on the side of a hill.

Jermain: It obviously is functional. When they applied for their recreational permit, they continually represented on the traffic plan that it was going to be directly from Chebacco Road. But they are going to be identifying it from Choate Street.

Altholtz: I'd like to amend the motion to change the opening to 15'.

Knowles: it would be tricky to amend Burnham's motion, because it was specific to a 22' opening.

The motion was reread, the vote was as follows: in favor were Burnham, opposed Altholtz, Knowles, Jermain. The motion did not carry.

John Dick: can we ask the Board where we go from here?

Knowles: we made a motion, it did not carry. If Pat Dunn and Joe Ginn were here tonight, the vote would be different.

Westley Burnham: We're not arguing that access should be allowed. Whether it's 12' or 20', we're knitpicking; it's not fair to the applicants.

Knowles: could we go around and have everyone give the applicant their position? Perhaps you already have a sense of the position of the board, minus two members. We will look into whether we can amend your proposal, or if we have to either deny or approve.

MOTION: Westley Burnham made a motion to approve a 20' opening in the stone wall on the scenic road known as Choate Street for Miles River Stables, the motion was not seconded and was not voted on.

Appeals Board - Greene Property:

Gloria Storey and Brad Story and Bill Holden from the Appeals Board were present to discuss the Greene property.

Bill Holden: we're going back to when Westley Burnham was Chairman of the planning board in 1987, when two lots were created, one 8,000 sf and the other 20,000 sf.

Westley Burnham: that's not true. There was not two separate lots created.

Bill Holden: As far as I know back in 1987 two lots were created, whether that's wrong or right. We have two lots anyway. In June of 1993 Raymond Greene came to the Planning Board with an application for an addition. He wanted to put an addition on this lot. He was denied. So he came before the Board of Appeals seeking an administrative review. We sent him back to the Planning Board and advised the Planning Board that we thought it should be taken up under 6-4.2 non-conforming use. He went before you with that and you denied that, then he came back to us and we approved the addition. Then he went to Dick Carter and asked for a building permit and Dick said he had to come back before you folks. And as I understand it, it was denied again. The Board of Appeals decision was overturned. That's it in a nutshell. We don't know where this is because we have not seen the minutes of your last meeting.

Pennoyer: first I'd like to clarify something, you use the word "addition", it's really another unit, a second unit on the property. The plan shown to us showed a separate unit with a separate kitchen, separate bath, etc. That's why I think we have to talk this through.

Westley Burnham: there is one hurdle we have to get over first. There are not two lots. We have one lot, in 1987 we allowed under 6-4.2 a second dwelling unit to be created. It was below the minimum requirements of 30,000 sf, so under 6-4.2 we granted him permission to put on a second dwelling unit on the same piece of property. Since that time, what they've done is condominiumize it, where they have sold the rights to 20,000 sf and Getty kept the rights to 8,000 sf. I don't care what rights they've signed over to themselves, that's completely irrelevant. As far as we're concerned, there is still one lot with two dwelling units on it. The plans that were presented show a third dwelling unit on a 28,000 sf lot. Your 6-4.2 finding doesn't address that because it isn't a more non-conforming lot. There are a completely different set of by-laws that govern three families. The point I'm trying to get at here is, under your finding of fact here, first off "variance granted", there was no variance applied for. What he applied for was an appeal of a decision made by the planning board.

Bill Holden: I agree with you.

Westley Burnham: going along, the addition of an in-law apartment, then later along you provide that the dwelling remains a single family residence. That's conflicting in itself in the same finding of fact.

Brad Story: what he asked for was an in-law apartment, what we gave him was a single family.

Westley Burnham: the in-law apartment was what he was denied. What I'm saying is you guys appealed the decision that was made here. He was denied an in-law apartment. But in here you're granting him an addition that wouldn't have been denied here if he showed up with this plan.

Bill Holden: I don't know about that Westley. It's easy to say that now.

Westley Burnham: it would be very difficult if he wanted to put an addition on his building, for us to deny it.

Altholtz: the point Westley is making is it should have come back around to us, then if it was denied he would have had grounds for an appeal. But you modified it in a way that sort of recreated the plan.

Westley Burnham: you have the jurisdiction to override any decision that we make and make any provisions. You're absolutely right. The problem was that he was not terribly clear on what he was turned down for. In fairness to you and the applicant, I don't think the applicant knew what he was trying to appeal.

Joe Knowles: I would say that is exactly what happened. We seemed to be getting a different request everytime he came before us, and it was probably out of confusion, not out of any kind of conspiracy.

Bruce Fortier: Yesterday, Dick Carter showed me a letter from Atty. Michael Shea on behalf of Greene that was going to our Town Counsel which I was concerned your planning board would be unable to change. I talked with Ed Neal, and prepared a letter to Tierney today. I feel the Appeals Board refuses to acknowledge the exclusive jurisdiction of the Planning Board over section 6-4.2 of our local by-laws, changes in non-conforming use. The members of the Appeals Board refuse to distinguish between an appeal and a variance. In the case at hand, Greene filed an appeal on 02/25/94, a public hearing for an appeal was advertised for 04/13/94, and held on that date. On 04/20/94 the Appeals Board met and decided to issue a variance, with no application for a variance ever being received, and no public hearing for a variance ever been advertised.

Pennoyer: What I'm trying to clarify here is that it was brought up that Raymond Greene doesn't know what he was denied for, it seems pretty clear to me that the denial was for the addition of an apartment with 2 bedrooms and 1-1/2 baths for elderly parents. Then it goes back to what Westley was saying, that now we're looking at a three family property. We can't make a finding under 6-4.2 to allow a third unit, in other words a three family on that property.

Altholtz: I don't feel this is a turf war. I do recognize under 6-4.2 the Planning Board does have jurisdiction only to make that finding, but it is reviewable by your board. Anything in the by-laws is reviewable by you. Ray did apply for a third family, and it is one lot, I do agree with Westley. I don't feel we have the jurisdiction to make a 6-4.2 finding on such a substantial increase in use. That's not an alteration or increase of a non-conforming use, that takes it to another plateau.

Bill Holden: We were looking at that as two lots.

Joe Knowles: Greene presents it as two lots.

Altholtz: We simply denied it on the basis of inadequate land area. My view is that probably that second unit back in 1987 was inappropriately authorized under 6-4.2 also.

Westley Burnham: the problem is that you don't say that. You read your minutes here, Knowles moved to deny the application for the addition of an apartment with 2 bedrooms due to regulations on condos. The more I followed

this the more confused I got.

Westley Burnham: at the meeting of 12/15/93, Jermain moved to deny the application for Raymond Greene based on lack of lot area for the three units under 6-6.9 #1. 6-6.5 is the by-law that addresses multiple structures on the same lot. So even this one wasn't complete, he could have very easily appealed that and won with the argument that it was not a proper denial. The next motion is Altholtz made a motion to approve the application for an additional unit because it is no more detrimental to the neighborhood under 6-4.2, motion did not carry. So I assume since this was the last thing that happened, he thought he was denied under 6-4.2, and went to the Appeals Board. If he were to show up tonight showing an addition with two bedrooms, meeting the required setbacks, I think we'd be extremely hardpressed to deny it.

Bruce Fortier: if an applicant lacks frontage, let's say, or needs to build a building closer than what is required, a variance is a variance from that requirement. It is not a genuine, or general absolution from the requirements of the law. If they get a variance, they come back to the Planning Board, variance in hand, attached to the building permit application, so that the planning board can see what was lacking and that the appeals board gave them a variance.

Bill Holden: he came to us with a plan to put on an in-law apartment, and we sat in two meetings with this. We asked him if he would settle for just putting an addition on, because we're going to deny this? He decided yes, alright.

Joe Knowles: so we did the right thing at the last meeting, based on what was presented. So we just wait for the right plan to come in for an addition.

Altholtz: I really think we need to sit down as two boards to discuss our roles. Would you like to schedule a time to do that?

Knowles: let's schedule July 6, 1994 at 8:00 PM.

Ipswich Savings Bank:

Requesting letter from Planning Board regarding 118 Martin Street, a plot plan indicated the property has been condominiumized into three lots. The letter would be a sign off on the plot plan that was issued.

Westley Burnham: send a letter back stating that as far the planning board is concerned, it is one piece of property with common ownership. Whether that common ownership be a condominium complex or an individual, it doesn't matter. Any dealings they have with themselves is beyond our purvue.

Site Plan Review:

Westley Burnham: you already have a special permit process which is almost as inclusive and restrictive or has the potential. It doesn't matter what kind of laws you have on the books.

Pennoyer: I totally disagree. I've looked over the special permit process and that's why we developed the site plan review.

Westley Burnham: my point is, with the special permit process you have the power, you just have to be detailed with everything that you say. I've seen in the minutes detailing the decisions, you are not specific enough. If you deny something on a couple of items but not all the items, the applicant comes back with corrections, and you can't address the items not mentioned.

Altholtz: you are absolutely right. We do have a lot of power in the special permit process. And we should use it more. That doesn't mean we don't need other tools.

Westley Burnham: I'm suggesting we sit down with the Site Plan Review document and incorporate those items that are reasonable and that you can sell the town into our special permit section. So instead of trying to sell the town on 7 or 8 pages of by-laws that they're horrified by, you can make a minor modification of the special permit process.

Pennoyer: I think our by-laws are all over the place, and difficult to follow, and I'm not at all in favor of having zoning districts in Essex.

Westley Burnham: I am simply saying why reinvent the wheel, when we can modify our special permit by-law regulations. We can waive any single one of those regulations at any time, you can change it on a moments notice, the way it was written in there if it becomes a by-law, the only you can alter any of it is to go back to a town meeting and change it.

Altholtz: that's not the way we wrote that. We wrote it that we can make any rules and regulations.

Westley Burnham: yes you did. I know what you're trying to say, however, if it was accepted, the entire block was a by-law. Every word that was presented at the Town Meeting regardless of what your intent was, had it been accepted, is written in stone (i.e. every single lot that came in that fell under Site Plan Review would have to have all the documents required).

Joe Knowles: look at this as a process. This isn't an argument that anyone's going to win. We should spend the time between now and the next annual town meeting on actually planning, not specifically on Site Plan, but start talking not so much about solutions, but the problems. Are there problems in our mind, or or there real problems.

Westley Burnham: we need to find out what we really perceive as a problem, then we should decide how we are going to approach it. Business (i.e. Byrne Brothers) is perceived as a major problem. On Choate Street (Miles River) I don't believe you had the authority to approve a living space on what is essentially a business use. There is nothing in our by-laws that allows us to do that.

Joe Knowles: We've done it before too.

Burnham: there is no legal, clean way to do it.

Altholtz: I don't know that there's anything that prohibits us from doing it.

Burnham: an area where I've seen problems over the last 10-15 years, is that the by-laws don't prohibit something, but they don't approve it either.

Fortier: The town made the decision years ago after considering the possibilities of zones that it had to go by uses, and regulations for uses. We had an initial period where it took us a while to straighten out the mess. By 1978 it finally got to the point where the planning board said alright the bookkeeping is done, we have the thing in order. There should be a use category for a combination residential and business. The business use section covers everything from a sweater shop to a jet engine test lab.

Burnham: when you're acting as the special permit granting authority, you have an incredible amount of power.

Pennoyer: I'm going to hand out the final copy of the Site Plan Review to all board members. If you think it should be incorporated into the special by-law I'm not against that, as long as the intent carries forward.

Burnham: it doesn't have to be all inclusive in the special permit, we can make adjustments to the regular by-law sections such that you can cover it.

Pennoyer: I think we shouldn't look just at site plan review, I'd like to look at some of the definitions in our by-laws.

Burnham: Raymond Greene was denied three different times, none of which was the right one.

Altholtz: The last denial was the right one.

Altholtz: I think there is tremendous support for Site Plan Review.

Knowles: if we do this right, and actually do what we're charged with doing, which is actually plan, propose changes, or propose none. Then we serve ourselves well in two ways, the first is we'll have thoughtful ideas in the form of by-laws, and regulations, second is we build some consensus for the process.

Burnham: back to Site Plan Review. The by-law should have the specifics of what falls into it, and what is required to undergo it. The procedures section should be completely left out of here, the enforcement section should be in. The submission requirements have absolutely no business in here whatsoever. They should be in a separate regulation type set-up. Then we can adjust them as necessary, if this was approved, then you absolutely, positively have to meet every single one of these under the by-laws.

Altholtz: unless you had a waiver.

Burnham: I don't believe the waiver section is legal. I do not believe it is legal to propose a by-law that you are administering that you can waive and write variances for yourself.

Altholtz: if the town gives you that power then you can.

Burnham: then why would we bother to have a board of appeals if the planning board has the authority to write it's own variances?

Altholtz: we don't have the authority to write our own variances.

Burnham: you would if this was passed.

Fortier: that was one of the objections that the citizens had was they don't want rules that are going to apply to that guy but not this guy.

Altholtz: I thought it made it more palatable.

Burnham: another thing is you don't write amendments right up to the night of the meeting.

Fortier: another problem was you had four pages. You go to the people and say we have a few new paragraphs, they can understand it and they'll pass it.

Burnham: a couple of years ago we looked at the home occupation by-law and realized that it wasn't able to be read by the common man and understood. Obviously that's no good. We re-wrote the thing in English so that anyone could understand it. It was better than what we had. We went to Town Meeting with a single page copy that people could sit down read and understand.

Pennoyer: yes but you had a home occupation, and you were just amending the home occupation.

Altholtz: what I think happened at town meeting is we didn't do a big selling piece on it. We should have sent something to each household.

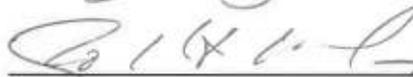
Pennoyer: if you as the applicant can pick something up and say alright this is what I'm going to be required to do, they'll do it. I had an attorney from out of town look at this, and he said the good thing about this is it's clear, it's clear for the applicant and it's clear for the planning board.

Meeting adjourned at 11:10 PM.

PREPARED BY:



ATTESTED TO:



ESSEX PLANNING BOARD

AGENDA

May 18, 1994

- 7:30 Welcome newly elected members
Howie Altholtz ***** Wesley Burnham
- 7:35 Dick Carter Building Inspector
- 7:45 Bill Blackwood Informational
Land on Harlow St. CANCELLED
- 8:00 Public Hearing Special Permit
Miles River Stables Choate St.
- 8:30 Public Hearing Recreational Use
Filius Realty Trust Extending Docks on Essex River
- 9:00 Bruce Fortier Discussion
Appeals Board Decision Raymond Green - Bob Getty Property
- 9:30 Elect New Officers
- Business:
Read Minutes of April 20, 1994 and approve
Read and approve minutes of May 4, 1994

ESSEX PLANNING BOARD

MAY 18, 1994

Present: Joe Knowles (Chairman in Pennoyer's absence), Joe Ginn
Westley Burnham, Howard Altholtz, Kimberly Jermain
Pat Dunn

Meeting opened at 7:35 PM.

BUILDING INSPECTOR - DICK CARTER:

Miles River Stables, Choate Street, special permit, signed off by Board of Health, Conservation Commission, special permit was previously issued in error because public hearing was advertised incorrectly. The decision was made by the applicant and the planning board not to hold public hearing on special permit, because no appeal had been submitted.

MOTION: Pat Dunn made a motion that the building inspector issue a building permit to Miles River Stables, Choate Street, Essex, to build a horse farm, consisting of a breeding and training facility as shown on plan dated 10/29/93, two arenas, and one stable with two bedroom caretaker's apartment overhead, subject to sprinkler. Motion was seconded by Westley Burnham, all were in favor (Joe Ginn abstained from vote), motion passed. Howard Altholtz mentioned the traffic management plan is available for abutters.

Richard and Patricia Carter, 8 Apple Street, regarding a subdivision, there are two lots with common drive. Kimberly Jermain was seated in audience for discussion and vote.

MOTION: Westley Burnham made a motion to approve subdivision plan of Richard and Patricia Carter of 8 Apple Street, finding it conforms to the minimum requirements of subdivision control requirements. Lot of land consisting of Parcel A with one dwelling existing, and Parcel B with two dwellings existing. Joe Ginn seconded, all were in favor (Kimberly Jermain abstained).

Greene/Board of Appeals:

Discussion was postponed to 9:00, as Bruce Fortier was on agenda for Greene discussion at 9:00.

Dawe/Paving

Dick Carter advised the Board that less than 700 sf of area had been paved, this is approximately 60 sf less than allowable.

Bill Blackwood, Harlow Street, cancelled 7:45 appointment.

Miles River Stables:

Joe Knowles stated the public hearing held weeks ago was improperly advertised, therefore another meeting was called and advertised, however, the time had lapsed for appeals. No public hearing was held for the special permit. The public hearing for Margaret Lynch of Miles River Stables, Choate Street, Essex, MA in accordance with MGL, Chapter 40, Section 15C for the removal of a tree and the removal and repair of a portion of a stone wall on a designated scenic road, and Section 3 of Chapter 87 for the removal of a public shade tree was opened at 8:30 PM.

Arthur Clark, Choate Street stated the tree warden (Bill Perkins) would have to be at public hearing in order to discuss shade tree.

John Dick, Hancock Survey Associates, we will move the driveway to go around the shade tree if it is the planning board's decision not to allow removal of the tree.

Tom Ellsworth, Choate Street, Choate Street was designated as a scenic way, the Town should maintain that designation and follow the rules and regulations.

Neal Dagle, Turkey Farm, the excrement is on direct line to Ipswich River. Most of the traffic for horse farm would enter on Ipswich side on Candlewood Road because it is a shorter distance and a nicer road.

Arthur Clark, Choate Street, why didn't they go to Ipswich for entrance through a stone wall. Can't we adhere to 12' driveway opening?

Mike Keogh, excrement from stable will be containerized and removed.

Pat Dunn, this is an agricultural use, no natural waste (excrement) can be considered to damage environment. The 20' opening would be a safety factor, you need wider width for opening.

John Dick, Hancock Surveyer, where is the policy mandating 12' opening?

Jane Ellsworth, Choate Street, you don't have all the information you need to hold a public hearing.

Westley Burnham, this hearing is for the possible removal of a shade tree and the breeching of a stone wall. They would need approval of the DPW for the size of the opening.

Mr. Henderson, Water Street, Brud Doyle told him many years ago, when he was paving his driveway, 12' was the maximum width.

Tom Ellsworth, Pat Dunn's safety issue is not our concern. Choate Street is a scenic way for a reason, don't deviate from the By-Laws to accommodate this facility.

John Dick, Hancock Survey Associates, the zoning by-laws didn't contemplate a commercial/recreational facility. The wider driveway is a safety concern. Most driveways on Choate Street are probably in excess of 20' as it is.

Neal Dagle, the existing driveway openings on Choate Street probably are in excess of 20' wide, their grievance should be with the DPW.

Bruce Fortier, shouldn't they reconfigure the radius of the wall so you can maintain the 12' opening, but still get off the road quicker with the configuration of the wall?

Mike Keogh, the wall is run down. The opening will be practical and we will upgrade the appearance of the wall.

Arthur Clark, the abutters property value is diminished with a huge complex across the street.

Peggy Lynch, we're planning on putting trees up to line-off, replant along the boundary lines.

Maria Burnham, who owns the wall?

John Dick, Hancock Survey Associates, inside 1/2 of rock belongs to owner, outside 1/2 is owned by the town.

Mrs. Clark, Ipswich entrance would be better.

John Dick, Hancock Survey Associates, we need the 20' opening for large vehicles.

Howard Altholtz, the compliance of other driveways on Choate Street is irrelevant. The Planning Board does not stipulate the size of curbcuts, try to conform to by-laws or let DPW reconfigure to make more safe.

Pat Dunn, they need wider driveway. They can make one swing and get off the road. It's a narrow road and you could slide off one side or the other.

Westley Burnham, the 12' opening is not a by-law, it is the DPW's concern, 12' is standard curbcut for residence, DPW can waive if they deem necessary.

Joe Ginn, have you applied to Ipswich for larger opening?

John Dick, Hancock Survey Associates, no. We don't propose to construct a permanent driveway on the Ipswich side.

Joe Ginn, has application to DPW for curbcut been made?

John Dick, Hancock Survey Associates, no.

Kimberly Jermain, should respect the designation of a scenic way.

MOTION: Westley Burnham made a motion that the Public Hearing be closed, Joe Ginn present for vote, Howard Altholtz seconded, the motion passed.

Filias Realty Trust, 138 Main Street

Joe Knowles opened the public hearing for Filias Realty Trust of 138 Main Street at 9:15, for additional docks per Essex By-Law 6-6.9 (b) recreational use.

Bruce Fortier, Southern Avenue, Wetland District By-law shall apply to land around boundary of any wetland. 6-10.3 permitted uses, does not list piers, restrictions are construction of buildings or other structures; piers are structures. Applicant is applying for something that isn't allowed.

John Dick, Hancock Survey Associates, the entire existing float system exists outside of the designated channel dredging. We have already gone to the Conservation Commission. We would like to construct the addition of 4' wide piers beyond what is existing to stabilize entire structure. Under Chapter 91 the only interest the Commonwealth has is those eight sets of pilings. The only interest the Corp. of Engineers has is the dredging. The existing structure has been in existence since 1981, thus under the laws of the Commonwealth is not subject to regulations under the building permit procedures.

Edwin Howard, parking concern.

Filias, there are 19 apartments, 6 bays may be available to non-residents, the rest are to be used by apartment residents.

John Dick, Hancock Survey Associates, the docks are primarily for the use of residents. Non-residents could rent fingers.

Neal Dagle, how many boats dock there now? What will increase of boats be? Not in favor of more traffic in river, could it be limited to use by apartment residents?

Howard Altholtz, DEP pollution concern. Six to twelve more boats, what are the pump-out requirements.

Michael Shea, Attorney for Filias, the By-law is for recreational use, the extension of piers. This is no more non-conforming, purvue of planning board is not pump out station.

Clayton Brooks, River Management, we should have been notified of this meeting. The only way we were made aware of it is in the newspaper.

Madith Henderson, 34 Water Street, more floats devalue property, I am against additional boats.

Edwin Howard, parking is the issue. Non-residents will create parking problems for that section of Main Street. We've worked out an arrangement with employees of Tom Shea's where they park in Woodmans, so no Main Street spaces are taken up all day. The non-resident users of these docks would most likely be all day parkers.

Charlie Burnham, Filias is different than the two Marina's, their pilings went in with permits, Chapter 91.

Neal Dagle, I ask my question again. How many boats are presently docked at existing piers, what increase would additional fingers create?

John Dick, Hancock Survey Associates, there are 40 parking spaces, 29 are used by apartment occupants, there are 11 to "play with".

Maria Burnham, this would be more detrimental to existing situation, parking, pollution and traffic.

Paula Filias, we are going by the regulations. The process for Chapter 91 begins here.

Edwin Howard, parking is my main concern. Marblehead requires a parking space for each dockage space.

Bruce Fortier, does not believe existing pier was there since 1981. Existing pier was in violation, in 1979 law was passed, doesn't believe structures were built with permits. Statute of limitations only applies to structures that were built with building permit.

Michael Shea, in 1978 the causeway was flooded. The dock was repaired at that time. The property owner owns to water mark, this use is not substantially more detrimental to area.

Bruce Fortier, planning board should view deed of property to determine who owns land.

Howard Altholtz, this use is more detrimental. Statue of limitations does not protect improper uses, it does apply to building permits as Bruce Fortier said, parking needs to be addressed. I am not in favor of this, I would vote against it if we were voting tonight.

Joe Ginn, how many slips exist on drawing?

John Dick, Hancock Survey Associates, 24 boats maximum.

Joe Ginn, are all 24 boats owns by apartment residents?

Paula Filias, 30% are used by residents presently.

Joe Ginn, would like to see plan for additional parking spaces, a plan detailing the channel in relation to the floats, a plan extending property lines to the extent they can be extended over the flats, and Board of Health comment on pump-out requirements.

MOTION: Westley Burnham made a motion to continue the public Hearing on Filias Realty Trust until June 1, 1993 at 8:00 PM. Ginn seconded, all in favor, the motion passed.

Bruce Fortier, re: Raymond Greene, 15R Story Street

Variance granted by Board of Appeals on April 20, 1994 on By-Law 6-4.2., non-conforming uses.

Fortier believes no application has never been filed with the Appeals Board for variance. Applicant sought planning board approval for permit for third dwelling on lot, planning board denied application. Applicant then went to Board of Appeals and on April 20 variance was granted by Board of Appeals.

Bruce Fortier suggested Planning Board get permission from the Selectmen to have a meeting with Town Council and Board of Appeals to go over details of situation and review correct process.

Altholtz, the only conditions a variance can be granted are:

- result of topography, not the fault of applicant.
- could cause substantial hardship if not granted.
- meets intent of by-laws in the best interest of town.

MOTION: Westley Burnham made a motion to deny the application based on the fact that the Board of Appeals record of proceedings dated April 20, 1994 does not address the 6-5.5 requirement for land area for multiple houses on a lot, as the plan dated 1/14/94 for the building permit shows it would be a third unit. Also, the Planning Board has not received what it considers to be a proper variance. The motion was seconded by Jermain, all were in favor, the motion passed.

The floor was opened for nominations for Planning Board officers for ensuing year.

Westley Burnham nominated Pat Dunn for Chairman, Joe Ginn seconded. Howard Altholtz nominated Joe Knowles. Burnham closed the floor for nominations. Knowles stated it is probably his last year on the board and he would like to be chairman this year. The Board voted: 4 voted in favor of Knowles, Dunn voted against. Joe Knowles was appointed Chairman.

Pat Dunn nominated Westley Burnham for Vice-Chairman, Joe Knowles seconded. The Board voted unanimously in favor; Westley Burnham was appointed Vice-Chairman.

The vote for the position of Clerk of the Planning Board was postponed until the meeting of June 1, 1994. Ginn will hold post temporarily.

MOTION: Howard Altholtz made a motion to hold a public hearing on Site Plan Review, Kimberly Jermain seconded. Discussion ensued with the general consensus being additional work needed to be done before Public Hearing should be scheduled. Motion did not pass.

Meeting adjourned at 11:00 PM.

PREPARED BY: *[Signature]*
ATTESTED TO: *[Signature]*

ESSEX PLANNING BOARD

AGENDA

MAY 4, 1994

7:50 Dick Carter Building Inspector

7:45 Mr. Bettencourt :..... The former Ship - A - Hoy Restaurant

8:00 Peter Vanwyck LowLand Farm Subdivision

ESSEX PLANNING BOARD

May 4, 1994

PRESENT: Sheldon Pennoyer; Chairman, Pat Dunn, Kimberly Jermain, Joe Ginn, George Bragdon, Howard Altholtz

BUILDING INSPECTOR - Dick Carter:

William & Rosemary Fitts - 2 Lufkin Point Lane (private drive), remove existing garage and construct new garage 26' X 22' - 18' high. At last planning board meeting the Fitts were asked to bring back lot layout and letters from abutters. Applicant owns private way. Sarah & Rick Bronstein, 8 Lufkin Point Lane, pleased with Fitts plans for new garage, Michael & Katherine McGraw, 43 Lufkin Point Lane, no objection to new garage.

Joe Ginn made a motion to approve permit for William & Rosemary Fitts 6-4.2 for construction of garage, 22' X 26', replacing existing garage, with letters from abutters read into the minutes. Application is not more substantially detrimental than existing non-conforming use. Pat Dunn seconded, all were in favor, motion passed.

BOARD MINUTES OF 3/16/94:

Kimberly Jermain made a motion to accept the minutes of March 16, 1994 meeting minutes as amended, with corrections to page 5, relative to Turtleback Road and Low Land Farm. Pat Dunn seconded the motion, George Bragdon abstained as he was not present at 3/16/94 meeting, all were in favor, motion passed.

BETTENCOURT - 99 MAIN STREET:

Fortune Palace (old Ship-A-Hoy), came to last planning board meeting to get permit to raise building to drive piles and raise building four feet. Now would like to close up some "jogs" in the footprint of the building. Pennoyer had concern over parking, since this might increase footprint enough to cut into required parking spaces. Altholtz questioned whether or not building met handicap accessible requirements, applicant informed board it did. Not pursuing permit, just informing Board what they are up to.

PETER VAN WYCK - LOW LAND FARM:

Charles Clark, Attorney for Van Wyck - discussion of fee for submission of definitive plan for Low Land Farm. Is this same plan or is it submission of different plan.

Pennoyer stated Town Counsel advised him that if the changes on the original plan are directly responding to the denial then there is not a filing fee. If the changes are not responding to denial, then it is a new plan, and fee would be required.

Jermain stated she feels the by-laws clearly state that the fee is required for any submission of definitive plan.

Pennoyer believed the denial was due to traffic concerns. He felt the plan was a different plan with different lot configurations.

Fred Fawcett, Apple Street, feels this is a new plan, and he disagrees with Town Counsel.

Charles Clark, read letter dated today to Board with sequence of events:

- Charles Clark hired as counsel to Van Wyck in the Fall of 1991.
- September 1, 1990 amended definitive plan submitted.
- May 1, 1991 revised plan was submitted to then Chairman Pat Dunn for technical review by CT Male, Town of Essex technical review agent, to determine plans compliance with the rules and regulations regarding subdivision control and the zoning by-laws of the Town of Essex. This submission had many omissions and errors that did not conform to the rules and regulations of the town.
- December 1, 1991 Technical review by CT Male, provided a baseline from which the board and the applicant would move forward on plan.
- March 2, 1992 revision of amended plan filed with board. This plan was then given to CT Male Associates for technical review.
- March 16, 1992 CT Male sent letter to Pat Dunn indicating almost all issues raised in earlier technical review had been addressed by 03/02/92 revision.

- May 20, 1992 letter from CT Male to Pat Dunn relative to issue of waiver for length of road, and definition of lot width and lot sidelines as they related to proposed plan. CT Male's letter indicated the longer road would cause no harm or breach of safety contrary to the best interests of the town, provided certain conditions were met. CT Male found the proposed lots could not conform to the rules and regulations with regard to lot sidelines and did not conform to the zoning by-laws with regard to minimum lot width. They indicated that in regard to Section 7.066 of the rules and regulations, adherence to this requirement would result in lots that are either rectangular or pie shaped with no room for variation.
- Summer of 1992 - Public Hearing. Traffic issues were raised by members of the Board and residents of Apple Street. Board voted to require CT Male to perform another traffic study at Van Wyck's expense.
- August 13, 1992 - Planning Board received a letter (to then Chairman Rolf Madsen), from CT Male identifying the need for traffic patterns which were subsequently taken and reiterated the need for the board to either issue a waiver or the applicant to re-draw the lot lines to conform to the new interpretation of lot width. CT Male reminded the Board other issues raised in their March 16, 1992 letter to the Board that included, scale waivers, road length waiver and drainage detail.
- October 7, 1992 - CT Male identified remaining issues to be addressed by the Board.
- February 17, 1993 - "straw vote" the board indicated its unanimous support for the scale waivers, majority support for the length of road waiver and a negative vote concerning the waiver for the lot sideline rule and regulations. By law the board cannot issue a waiver relative to lot width because it is a by-law issue. Mr. Clark then advised Van Wyck to have his engineer re-draw the lots to bring them into compliance with the rules and regulations as suggested by CT Male, to continue to request waivers regarding scale and length of road based on 02/17/93 straw vote.
- December 1, 1993 - submission of revised, amended definitive plan, Van Wyck cleared deficiencies found in plan by technical consultant.

Clark feels no new fee should be required due to the fact that all actions pursuant to initial submission of definitive plan were corrective actions taken to correct plan as suggested by CT Male and Planning Board.

Clark stated Planning Board is required to approve the plan after a hearing or if it does not comply with the rules and regulations it should modify or disapprove the plan. If the Board votes to disapprove it must state in detail where the plan does not conform to the rules and regulations of the Planning Board.

Jermain stated that Van Wyck brought two plans to the board initially, and said "which plan would you like", the board's response was "we're not going to pick your plan, stand by a plan that you think address the things that we told you before, we're not going to do the work for you". Van Wyck came back to board with plan with different configuration than was submitted previously, with only four lots. It was a different definitive plan.

Pennoyer requested copy of Rolf Madsen's denial of plan dated December 1, 1992 and read letter into minutes.

Dear Mr. Van Wyck:

Please be advised that at the Planning Board Meeting held on 11/18/92 a motion moved and carried. The Board moved to deny the plan for Low Land Farm dated 09/01/90 and revised 03/18/92 based on the applicants refusal to supply the traffic study. Without that information provided by the traffic study the Board was unable to make the determination for the request of waiver, issues of density in the development and public safety concerns based on but not limited to that language.

Respectfully,
Rolf Madsen
Chairman, Essex Planning Board

Betsy Fawcett, Apple Street stated an amended plan is a new plan. His prior plan was denied, this is new plan, fee is required.

Clark motion was made to require traffic study by Rolf Madsen, traffic issue was greatest concern at that time, could Apple Street carry the traffic.

Jermain stated 12/1/93 Van Wyck submitted two versions of plan (two configurations).

Clark feels Van Wyck has addressed all issues raised by board.

B. J. Frye, Apple Street states the plan that was turned down twice was for six lots. Traffic study was completed, they all came in with traffic concerns, she never heard what reaction to last traffic study was.

Pennoyer stated Planning Board wrote, reviewed and endorsed the traffic study.

Clark commented Van Wyck is prepared to pay fee. Requests John Tierney review Clark's letter and process. If Van Wyck pays fee, it is paid under protest.

Pennoyer said he would like to see point-for-point, drawing-for-drawing to see changes from denied plan to current plan.

Pennoyer polled the board. All were in favor of requiring fee.

Clark requested how much fee should be.

Pennoyer stated 1,500 foot road X 2 (each side) /150' = \$2,000. Section 6-01 (F) non refundable fee of \$100 is required for every 150' of frontage created within subdivision.

Betsy Fawcett stated fee was due with submission, otherwise developers would see which way the wind was blowing before submitting fee.

Pennoyer said the board is taking responsibility for missing omission of fee with application.

B. J. Frye, Apple Street stated for the record would like the board to know so far we've seen the four house plan, the twelve house plan, the fourteen house plan, and the six lot plan.

Clark stated in his time here, a fee was never required for an amended plan. Technical review by CT Male necessitated resubmission. The 8/1/92 letter from CT Male addressed all identifiable issues.

Pennoyer would like in record that the Town of Essex received from Peter Van Wyck check number 5057 in the amount of \$2,000 for the submission of definitive plan submitted December 1, 1993. This payment is made under protest.

Clark questioned does the plan conform to the rules and regulations? If not, where specifically does it not. That is what you're using CT Male for, to identify specifically those places where it does not.

 Kimberly Jermain made a motion to deny the definitive subdivision plan for Low Land Farm submitted by Peter Van Wyck on December 1, 1993 located off of Apple Street for the following reasons:

1. Length of Road, 7.02 Streets and Ways
 Requests longer than 1,200 feet. Applicant gives no substantial reason or documented evidence that this waiver is in the best interest of the town.
2. Drainage, 7.03
 We do not feel the open drainage system on the plan will protect abutting properties from runoff and flooding. Of particular concern is the first 250' of road which abutts a very sensitive wet area.
3. Safety Concerns, 7.02 -2J
 The Fire Department is requesting a 100' diameter turnaround, which is not on the plan and would address their concerns for public safety.
4. Traffic, 7.02 Streets and Ways
 We feel there is very poor visibility at the point at which the subdivision road intersects Apple Street.
5. Stipulation for Judgement, 11/3/93
 The applicant has not complied with the Stipulation for Judgement, #3A.
6. Utilities, 7.01(10)
 Applicant must show all utilities for the full length of the road or seek a waiver for the lack of information.
7. Lot #1 (1.05 Section 2)
 Applicant must provide information to verify that Lot #1 is buildable before the board can approve this lot.
8. Lot Lines (7.06)
 Lot lines are not perpendicular to the street lines.

The motion was seconded by Pat Dunn.

Jermain discussed the importance of Hildonen's and Browning's property relative to the drainage issue.

Browning (abutter) stated neither Pennoyer or Ginn ever discussed the matter of drainage with him.

Pennoyer took exception to this comment. Pennoyer said he and Ginn were at Browning's property, they walked the property with Browning and Hildonen showing them the problems they were having.

Browning questioned if Pennoyer felt the open ditch plan addressed the problem.

Pennoyer said no. He was questioning the reasons for denial here, he felt that particular area should have an underground system.

Clark stated Van Wyck has given evidence that a longer road is in the best interest of the town. In a September 23, 1992 letter from Charles Clark to Rolf Madsen addressed the longer road as well as other concerns. The waiver request is to allow a dead end road length of 1,500 feet, when a maximum of 1,200 is allowed. As presented earlier, approval of this waiver would allow for more open space, and a safer turnaround, because at the 1,200' point in the road there is an incline, at 1,500 it is flat. The longer road would also allow for shorter driveways, better placement of utilities, could place the houses further away from Apple Street, and would allow for a fire hydrant to be placed closer to the proposed houses as was expressed by the fire chief. CT Male's response of May 20, 1992 to the Board indicated the longer road would cause no harm, breach of safety or other situation contrary to the best interest of the town.

Drainage issue: Clark believed the Board was relying on its technical advisor in this issues. We are committed to dealing with the Hildonen/Browning drainage issue. Van Wyck has agreed to address these issues in the plans.

Safety Concern: The fire department issue is not required in the By-Laws.

Traffic Concern: Traffic study did not mention visibility. Van Wyck has offered to trim the brush at the road to the satisfaction of the police department and the planning board.

Lot #1: Buildability has never been the concern of the planning board. The applicant has done perc tests, usually perc tests expire before any plan has been approved.

Lot Lines: The plans submitted comply with the rules and regulations of the planning board.

Betsy Fawcett Sited 6.02.12 in regulations. Relating to surface water drains draining on adjacent properties not owned by the applicant. The applicant must indicate what course the discharge will take and should present to the planning board evidence from the DPW or the owner of adjacent property that such discharge is satisfactory and permitted by public or private ownership of adjacent street or property.

Pennoyer stated if the patterns of the drainage on the roads are directed onto the abutting properties than that is correct. In this particular plan the road is not draining onto any of the abutting properties. An open ditch drainage system is showing what its water course is and its taken around Browning's property.

Betsy Fawcett stated you must indicate the length of that drainage all the way to the nearest body of water, in other words, the Essex River. At some point it will cross somebody else's land, and that somebody has got to give permission.

Pennoyer stated when he looks at the plan, it goes right into a drainage easement that's existing, and that drainage easement is owned by the applicant.

Clark commented he did not feel the first 250' of road that abutts the very sensitive wet area is a planning board issue. This is a Conservation Commission issue, and the applicant has to go before the board on that.

B. J. Frye said her property has been effected by what Van Wyck has done. If this plan does not correct it, does she have to hire her own lawyer?

Fred Fawcett stated the subdivision control laws require that you get the approval of the Board of Health. Because previous planning boards or other boards did not address some issues in error, doesn't mean that each succeeding board shouldn't address them.

B. J. Frye commented on Lot #1, the Board of Health has said they cannot approve a lot if the septic system has to be on the side of a building. It says in the regulations that the planning board and the Board of Health have to determine whether a lot is not buildable.

Pennoyer commented although Lot #1 is perced, the average size of a septic system might have a tough time fitting with the required setbacks.

Jermain - Definition of a lot: "Area of land in one ownership with definitive boundaries used or available for use at the site of one of more buildings. Areas endorsed by the board upon a plan as not available for building purposes shall not be considered lots".

Ginn stated if Lot #1 has had a perc test on it, if it has frontage, theoretically it's a buildable lot.

Altholtz commented the planning board isn't required to say it is buildable, but if it isn't buildable then they must say it's not a lot. If the applicant says its buildable, then we don't address it.

Dunn stated if we accept Lot #1 as buildable, and put nothing in a denial, then we're accepting that it is a lot.

Altholtz questioned isn't saying "subject to approval of the Board of Health" enough?

Pennoyer stated that is the way it was stated on Turtleback Road, contingent on Board of Health and Conservation Commission approval.

Jermain said it doesn't make any sense for us to have gone through this whole process, and not put down every area where information was lacking. Because when applicant comes back with another definitive plan, we'll have nothing to work with.

Altholtz stated it doesn't matter substantially whether we approve this plan with modifications, or deny it for cause.

- - - - -
Kimberly Jermain made a motion to deny the definitive subdivision plan of Peter Van Wyck for Low Land Farm of December 1, 1993 located off of Apple Street for the following reasons:

1. Length of Road: 7.02 Streets and Ways
Requests road longer than 1,200 feet. Applicant gives no substantial reason or documented evidence that this waiver is in the best interest of the town.
2. Drainage: 7.03
We do not feel that the open drainage system on the plan will protect abutting properties from runoff and flooding. Of particular concern is the first 250' of road which abutts a very sensitive, wet area. The applicant has not complied with Stipulation for Judgement November 3, 1993 #3A, referring to drainage.

- 3. Safety Concern: 7.02-2J
The Fire Department is requesting a 100' diameter turnaround which is not on the plan and would address their concerns for public safety.
- 4. Traffic: 7.02 Streets and Ways
We feel that there is poor visibility at the point at which the subdivision road intersects Apple Street.
- 5. Lot Lines: 7.06
Lot Lines are not substantially perpendicular to the street line.

The motion was seconded by Dunn as amended, in favor was Altholtz, against the motion were Pennoyer, Ginn and Bragdon.

Joe Ginn made a motion to approve the definitive plan for Low Land Farm Subdivision by Mr. Peter Van Wyck dated September 1, 1990 with the following modifications.

- 1. Open Ditch Drainage System: The first 250' abutting Hildonen property shall be a closed system. This system shall be constructed due to the existing flooding conditions. A redesign shall incorporate a curbing system to help ensure proper drainage as described under Section 7.02h. Engineering drawings shall be submitted to the Planning Board, Conservation Commission, and Department of Public Works for review and approval before construction begins.
- 2. Total length of road shall not exceed 1,200 feet and shall incorporate the DPW and Fire Chief's request for a 100' diameter cul-de-sac as required under Section 6-3.23. There shall be no future increase in length of road.
- 3. Lot #4 acreage shall only incorporate upland area as designated under Section 6-3.23.
- 4. There shall be no more than 15 lots total in the subdivision.

5. Waivers:
 - a. Length of Road (see #2 above). DENIED
 - b. Scale of locus plan. APPROVED
 - c. Scale of cross section. APPROVED
 - d. Street trees (as outlined on page 3 of 6 drawings dated 9/1/90). APPROVED
6. Approval is contingent upon all other boards and agencies review and approval.
7. A final set of drawings incorporating the above outlined modifications shall be submitted to the planning board for signatures no later than three (3) months from today.

Motion was seconded by Pennoyer, in favor were Bragdon, against were Altholtz, Dunn and Jermain. The motion did not carry.

Kimberly Jermain made a motion to deny the definitive subdivision plan of Peter Van Wyck for Low Land Farm of December 1, 1993 located off of Apple Street for the following reasons:

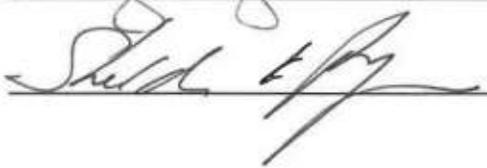
1. Length of Road: 7.02 Streets and Ways
Applicant requests road longer than 1,200 feet. Applicant gives no substantial reason or documented evidence that this waiver is in the best interest of the town.
2. Drainage: 7.03
Open ditch drainage system - the first 250' feet abutting Hildonen property shall be a closed system. This shall be constructed due to the existing flooding conditions. A redesign shall incorporate a curbing system to help ensure proper drainage as described under Section 7.02 (h). Engineering drawings shall be submitted to the Planning Board, Conservation Commission, Department of Public Works for review and approval before construction begins. The engineering drawings should provide sufficient detail to describe resolution to address flooding problems of abutting properties.

- 3. Safety Concern: 7.02-2J
The Fire Department is requesting a 100' diameter turnaround which is not on the plan and would address their concerns for public safety.
- 4. Traffic: 7.02 Streets and Ways
We feel there is poor visibility at the point at which the subdivision road intersects Apple Street.
- 5. Lot Lines: 7.06
Lot Lines should be substantially perpendicular to the street line.

Dunn seconded, in favor were Pennoyer, Bragdon, Altholtz, and Ginn; the motion passed.

George Bragdon made a motion to close the meeting at 11:05 PM, Altholtz seconded and the motion carried.

PREPARED BY: 

ATTESTED TO: 

ESSEX PLANNING BOARD

AGENDA

APRIL 20, 1994

- 7:30 Dick Carter Building Inspector
- 7:45 James Witnam Historical Society
- 8:00 Terry AnderholmWestern Ave. Deck Permit
- 8:15 George Stavros To tear down and rebuild equipment shed
- 8:30 Miles River Stables
- 8:45 Peter VanWyck LowLand Farm Subdivision
- 9:30 Site Plan Review Discussion
- 10:00 Board Discussion:
 Finances
 Fee Changes
- 10:30 Adjourn

ESSEX PLANNING BOARD

APRIL 20, 1994

Present: Sheldon Pennoyer; Chairman, Pat Dunn, Kimerly Jermain, Joe Knowles, Joe Ginn, Howard Altholtz, George Bragdon

Building Inspector, Dick Carter:

Bill & Rosemary Fitts - 2 Lufkin Point Lane. Permit for construction of garage (removing existing garage), property is contiguous lot with 2 parcels. Pennoyer requested plot plan with letters from abutters.

Robert Dawe - Carter advised the Board 192 sq. ft. of lot was paved (cannot exceed 15% of entire lot). Dawe must fill out application to indicate what percentage of lot was paved.

Historical Society:

Sign for Essex Shipbuilding Museum, unlit, in compliance.

Cape Ann Golf Course, George Stavros:

Construction of new metal building 45' X 75' (USA Metal Building by Fryklund Construction) with 15' peak. Replacing old wooden structure on smaller footprint. Joe Ginn questioned drainage. Stavros indicated Sonny at the Board of Health informed him no drainage was necessary if there was a "sludge pit" in the center of the building that could be pumped out if anything accumulated there.

Pat Dunn moved Building Inspector issue permit to C. A. Golf Course, George Stavros, 99 John Wise Avenue to construct maintenance and storage building 45' X 75' in place of old structure contingent on Board of Health approval. Joe Knowles seconded, the motion passed.

Miles River Stables:

Pennoyer read a letter he received from Town Counsel relative to public hearing notices for Miles River and Falias. Tierney suggested that to eliminate any opportunity for future controversy, the public notices should be redone and public hearings rescheduled.

Pennoyer informed the Board of a conversation he had with Bill Perkins from the Department of Public Works. The issue under the jurisdiction of the Planning Board is the altering of a stone wall on a scenic way, the DPW sets the size.

Altholtz agreed that the Planning Board would approve the breach of the wall, not the size of the breach.

Pennoyer stated there was only one shade tree in jeopardy. The Tree Warden must also be included at the Public Hearing, and they meet on the first and third Wednesday's of each month, therefore they would never be able to attend a regularly scheduled Planning Board meeting.

Pat Dunn suggested the notice should be "Legal Notice" not "Public Notice", because it will be less expensive and smaller piece in the paper, the notice must be for all three of the following:

1. recreational use
2. removal of a public shade tree
3. removal of a stone wall on a scenic way

Added to the legal notice should be an indication that the wall will be repaired.

Kimberly Jermain made a motion that a public hearing be scheduled for Wednesday, May 18, 1994 at 8:00 PM for a special permit for recreational use, the removal of a public shade tree, and the removal of a stone wall on a scenic way for Miles River Stables, Choate Street, Essex, MA. Pat Dunn seconded, the motion passed.

Filias Realty Trust:

Pennoyer relayed to the Board that he had a discussion with Rolf Madsen. Rolf indicated to Pennoyer that the proposed additional docks for 138 Main Street are on a waterway, not marsh. They, therefore, would not fall under the By-Laws for wetlands restrictions.

Kimberly Jermain stated she would like to discuss this with Town Counsel before notice for public hearing is announced.

Kimberly Jermain made a motion to schedule a public hearing on Wednesday, May 18, 1994 at 8:30 PM for additional docks at Filias Realty Trust, 138 Main Street, Essex, MA under the By-laws for a recreational use. Joe Ginn seconded, the motion passed.

Altholtz questioned the requirements for a pump-out station for the vessels, Filias indicated they would check with the Board of Health.

Low Land Farm (Peter Van Wyck):

Pennoyer read a letter from Town Counsel he received stating the Planning Board does not have the authority to waive the application fee required for each submission to the Planning Board for a project (\$100 for 150' of frontage created within the subdivision).

Pennoyer polled the Board for their positions on the Low Land Farm proposal.

Bragdon: feels Planning Board should deny plan and give all reasons to Van Wyck.

Knowles: agrees with Bragdon.

Altholtz: Feels fee is most important issue presently. Should wait for fee before voting on plan.

Ginn: Feels Planning Board made mistake - didn't go through checklist when proposal was submitted. Feels Van Wyck should be given opportunity to pay fee.

Pennoyer: agrees with Ginn, give Van Wyck until 05/04/94 to submit fee.

Dunn: read the minutes of the January 5, 1994 Planning Board Meeting, stating the submission for Low Land Farm was complete.

Kimberly Jermain made the following statement: "We as a Planning Board must not approve concepts for land development. When presented with a "definitive plan", we are required by law to determine the plans viability by reviewing detailed drawings submitted by the developer that address town concerns. This plan (Lowland Farms, December 1, 1993) is an unfinished idea for a piece of land that impacts on an important ecological attribute of our town, the Essex River and marshlands. Development for this property is inevitable, but this incomplete, unsubstantiated attempt does not satisfy our town subdivision regulations and cannot be approved."

Dunn made a motion to deny the Low Land Farm subdivision proposal for the following reasons:

1. Length of Road
2. Drainage
3. Safety concerns
4. Payment of fee
5. Traffic
6. Lot lines
7. Right of way

Kimberly Jermain seconded. Pennoyer commented right of way was not the concern of Planning Board, if licensed surveyor did not put on plan, it should not be considered.

Altholtz stated plan did not have to specify lot lines for every potential lot, just those proposed with plot. Knowles felt no mention of traffic should be made, since Planning Board handled the traffic study required.

Altholtz agreed with points #1, #2, #3, and #4, stated he felt #5 and #6 should be taken out of motion.

Knowles suggested letter go to Van Wyck stating fee requirement and give him until meeting of 05/04/94 to submit.

Pat Dunn rescinded motion to deny subdivision plan, Kimberly Jermain seconded, and the motion passed.

Joe Ginn made a motion that certified letter, return receipt, be mailed to Van Wyck stating he should submit required fee (per 6-02 (f) \$100 for every 150' of frontage created within subdivision) on or before 05/04/94 meeting to make submission complete for Low Land Farm, Knowles seconded, and the motion passed.

Site Plan Review:

Discussion on bringing Site Plan Review By-Law to Town Meeting.

Knowles made a motion to support Site Plan Review By-Law at Town Meeting, Altholtz seconded, the motion passed. Bragdon against, Dunn not present for vote.

Meeting adjourned at 10:40 PM.

PREPARED BY:



ATTESTED BY:



ESSEX PLANNING BOARD

AGENDA

APRIL 6, 1994

- 7:30 P.M. Dick Carter Building Inspector
- 8:00 P.M. Public Hearing.....Miles River Stables
Shade Tree removal on a scenic way
- 8:30 P.M. Public Hearing ...Filius Realty Trust
Recreational Use Extending Docks
- 9:00 P.M. Terry Anderhalm 87 Western Ave.
Discussion on existing deck
- 9:15 P.M. Lowland Farm Subdivision
Peter VanWick

ESSEX PLANNING BOARD

APRIL 6, 1994

PRESENT: Sheldon Pennoyer; Chairman, Pat Dunn, Kimberly Jermain, Joe Ginn, Joe Knowles, George Bragdon

Meeting was called to order at 7:40.

Building Inspector - Dick Carter:

99 Main Street (former Ship-A-Hoy Restaurant) seeking permit to raise building, drive pilings and replace on same footprint. The property is a non-conforming building on a conforming lot. This would raise the building four feet, which would put it above the flood zone; it has passed the Board of Health, and the Conservation Commission. Joe Knowles moved Dick Carter issue building permit to Fang Liaw to clean up existing floor joists and deck, drive piles according to plan, filing under 6-4.2, Joe Ginn seconded, the motion passed.

Sheldon Pennoyer, 68 Grove Street. New single family dwelling, 4 bedroom, 2 bathroom, 8 room. It has passed Board of Health and Conservation Commission. Sheldon Pennoyer and Joe Ginn abstained from process due to conflict of interest. George Bragdon moved to have building inspector issue permit, Joe Knowles seconded, the motion passed.

Apex Manufacturing, Scott's Way: Planning Board denied application in October of 1993 due to the property and building not being suitable for manufacturing facility open several shifts per day. They went to Board of Appeals and got permit.

Bob Dawe, paving driveway. Complaint received by Pennoyer that area was paved in the watershed district. Dick Carter is going to measure area that was paved to determine if area paved exceeded by-laws.

Dick Carter advised Planning Board he was instructed by Selectmen to issue new building permits only to those that meet Title 5 requirements; only those applications that increase footprint.

PUBLIC HEARING WAS OPENED AT 8:10 PM:

Miles River Stables, Margaret Lynch for the removal of a tree on a scenic way in accordance with Mass. General Laws, Chapter 40, Section 15C and Section 3 of Chapter 87 for the removal of a tree on a scenic way. Joe Ginn abstained due to possible conflict of interest. John Dick, Hancock Surveyors, stated 9 acres of the site is located in Essex,

while 7-1/2 acres are located in Ipswich. The area to be developed is entirely in the Essex side of the property; because he felt it would be exceedingly difficult to run anything through the Ipswich Planning Board. They are clearing the lot on the Ipswich side and will use it as agricultural not recreational use. They would use an existing 12' gap in stone wall on the Ipswich side as alternative access to site. They would like a twenty foot opening in continuous wall in Essex. He indicated there were eight trees, one might be impacted by driveway. They will leave the tree alone if they can, however, they seek approval for a 20' cut in stone wall for the driveway. It was mentioned that the size of the curbcut is the responsibility of the Department of Public Works. Dick indicated this was to be a joint hearing with the tree warden, however, he could not be here tonight.

Sally O'Maley stated since the Public Hearing notice in the newspaper did not mention the possible removal of the stone wall, the public hearing could not be held.

Joe Ginn felt since "scenic way" and "shade tree" was printed in the announcement, the meeting should continue.

Arthur Clark, Choate Street. This proposal is for a twelve foot opening in a stone wall, next it will be something else. He inquired if Ipswich objected to plan, since property abuts Ipswich as well.

Bruce Fortier, Southern Avenue, suggested the Planning Board would have ample time to run corrected Public Notice, and the meeting should be postponed.

Tom Ellsworth, Belcher Street, indicated he is not a proponent of this project. Feels this is a huge complex, perhaps the size of 25 to 30 homes, and if a 20' opening for a driveway is approved, that would tend to make the property more commercial than residential.

John Dick indicated the requirements have been met, he knows of no such law that would prohibit a 20' opening for a driveway.

Michael Keough, Miles River Stables, stated large vehicles delivering hay, or horses would probably occur once every four to six weeks. He feels he needs access for these deliveries and believes this application to be more agricultural than commercial.

Tom Ellsworth, Belcher Street felt that some day the property could be converted into commercial use (i.e. trucking company, machine shop, storage facility), and questioned if a deed restriction could be placed on the property to prohibit that.

Pat Dunn indicated to convert the site to commercial would be a change of use and a permit would be required at that time.

Sally O'Maley indicated the size of the curbcut would be the jurisdiction of the department of public works. She expressed her opposition to the public hearing being held since the notice was incorrectly posted.

Arthur Clark, Choate Street questioned why not a 40 to 50' opening for a driveway? Could anyone get an exception?

Michael Keough asked could he have a 20' opening for a driveway if no stone wall existed.

Sheldon Pennoyer - yes.

Michael Keough stated that vehicles would not be entering the property from Choate Street, but down Chebacco Road on the Ipswich side.

Pat Dunn moved that the public hearing be closed, Kimberly Jermain seconded, the motion passed.

Filius Realty Trust, Main Street

A Public Hearing was scheduled for additional docks at 138 Main Street.

Bruce Fortier, Southern Avenue sited 6-10.3 (B) Restrictions in a wetlands district. He felt the hearing should not have been scheduled since the application is prohibited by the regulations of the town.

John Dick suggested he would reschedule the hearing after investigating under what application the additional docks should be applied for under.

Terry Anderholm, 87 Western Avenue:

The old Essex Falls School. The issue is an existing deck attached to the structure, constructed around 1988 with inadequate setbacks and no variance. The Anderholms are seeking advice on how to resolve this.

Pat Dunn stated others have requested variance who have built a structure themselves without a permit.

Joe Ginn suggested she get letters from abutters stating their position. He stated that the deck does not make the property any more non-conforming.

Sheldon Pennoyer stated if Planning Board denies waiver, it could go to Board of Appeals as a hardship case.

Joe Ginn thought the Planning Board could approve waiver for variance.

Joe Knowles disagreed. He felt the process must be followed, permit should not be approved.

Sheldon Pennoyer suggested they get a building permit and come back to the Board.

Joe Ginn reiterated this is not new construction, and under 6-4.2 non-conforming uses, the planning board can approve.

Sheldon Pennoyer again suggested she come back to planning board with building permit and letters from abutters.

Peter Van Wyck:

Again requested waiver for longer road, however, he will shorten road if waiver is not granted.

Sheldon Pennoyer stated that the definitive plan for the sub-division indicated lot #4 was 72 acres, however, that included salt march, and that cannot be included in acreage.

Sheldon Pennoyer felt a list of questions from the Board would help to clarify some issues.

Kimberly Jermain indicated that the submission fee was received from Peter Van Wyck for the first submission but not for any submissions thereafter.

Peter Van Wyck stated he did pay fee for initial submission and felt all other submissions were continuations of initial one.

Kimberly Jermain felt fees must be paid with each submission of definitive plan. She stated approvals from Board of Health and Conservation Commission should be brought to board from applicant. It is not the responsibility of the Planning Board to seek this information out from other sources.

Sheldon Pennoyer questioned if Lot #1 would be buildable due to setbacks.

Joe Ginn questioned Peter Van Wyck if there had been an approved plan for lot #1.

Van Wyck: No. He stated the lot lines could be moved to allow approved setbacks.

Kimberly Jermain stated lot lines cannot be moved; the planning board must know where lots are intended.

Van Wyck: stated there are over 42 acres total, isn't there plenty of room for all lots?

Sheldon Pennoyer: stated since there is ample space why not draw a new plan that could have confidence in lot plans?

Pat Dunn: questioned why this definitive plan is being treated as preliminary plan?

B. J. Frye: indicated the Board of Health did not know size of Lot #1, the Conservation Commission needs more information on septic systems and Lot #1 is only perced in one spot.

Peter Van Wyck: indicated 1989 perc tests must be redone.

Kimberly Jermain brought up issue of right of way, reason for denial in the past.

Peter Van Wyck: stated the right of way was for the Town of Essex to the gravel pit. Essex chose to use Landing Road and disbanded the right of way.

Joe Ginn stated it was the responsibility of the surveyer to investigate any existing rights of way.

Joe Knowles made a motion that decision on property be held pending receipt of application fee from Van Wyck. George Bragdon seconded, the motion passed.

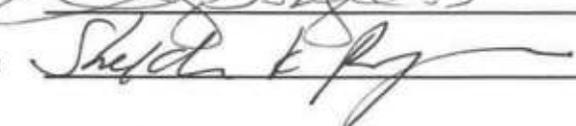
Joe Knowles made a motion to approve minutes of March 16, 1994 meeting as amended, Kimberly Jermain seconded, the motion passed.

Antique Dealers and Shop Keepers Application:

The Planning Board received a memo from the Board of Selectmen relevent to an application from Martha Tattersall for an Antique Dealers and Shop Keepers License. Sheldon Pennoyer requested a letter go to applicant requesting they contact Planning Board to schedule appointment to discuss.

The meeting was closed at 10:45.

PREPARED BY: 

ATTESTED TO: 

ESSEX PLANNING BOARD

AGENDA

MARCH 2, 1994

- 7:30 Dick Carter Building Inspector
- 7:45 Steve Gersh Essex Water Quality Task Force - *Cancelled*
- 8:00 Chuck Simm Pickering St.
Home Occupation Bicycle Repair Shop
- 8:15 Ron Ober Pine Ridge Subdivision
Release of money
- 8:30 Peter VanWyck Low Land Farm Subdivision
Discussion and possible decision
- * Set date for Public Hearing for Miles River Stables
Special Permit for scenic way
- * Read and approve minutes

ESSEX PLANNING BOARD MEETING

MARCH 16, 1994

PRESENT:

Sheldon Pennoyer; Chairman, Pat Dunn, Joe Ginn, Howard Altholtz, Kimberly Jermain, Joe Knowles

The meeting was called to order at 7:30 PM.

David Davis:

Pat Dunn moved to have the Building Inspector issue permit to David Davis, 132 Eastern Avenue, for new garage and office under 6-4.2. Joe Knowles seconded, the motion passed.

Thomas Beale:

Requesting permit to build 2-1/2 story salt box on Spring Street, passed by board of health and conservation. Howard Altholtz moved to have building inspector issue permit, Joe Knowles seconded, the motion passed.

Burn Brothers, Western Avenue:

Dick Carter advised the Board Burn Brothers has hired an engineering firm, plot plan and survey should be done this month.

Warren Smith, Apple Street:

Dick Carter advised the sign will be coming down. Dick did not believe the by-laws addressed the specific size of the sign, because it is not a home occupation and it is not a residence. The quantity of units is being addressed by the Board of Health first. The trailer is a registered vehicle, and can be occupied for a certain period in yard (90 days). They will be coming to the Planning Board in May. Kimberly Jermain informed the Building Inspector that it is stated in 6-6.9 Special Permits, 2. Signs - states signs can be no larger than 6 sq. ft. in area.

John Guerin:

John advised the board the MAPC has endorsed plan by a Cape Ann Transportation Authority (CATA) for a "Park & Ride" system between Gloucester, Essex and Rockport, \$78,000 is available from the Federal government. This would increase tourist travel and decrease traffic, and would be no cost to Essex.

EOCD/Grants Alert - grant proposal of up to \$50,000 for projects like codifying by-laws, conomo long-range planning, etc. John needs help with community action statement. Grant applications will be available on 3/22/94; John will get package.

THE PUBLIC HEARING WAS CALLED TO ORDER AT 8:00 PM.

Pennoyer passed out draft of Site Plan Review. Some changes were incorporated into this version. He indicated some language was added to change accessory building language. He got review letter from MAPC, they brought up the following issues: 1) the review requires approval and that must be made clear, 2) standards for review.

Bruce Fortier, Southern Avenue:

Questioned Pennoyer's changes to initial draft to incorporate accessory building. Brought up issue of enforcement: one year time limit, anyone opposed to a proposal could kill it indefinitely with appeal process.

John Guerin:

Suggested situation could be resolved if a sentence is added saying the year period shall toll for any and all appeal process.

Bruce Fortier, Southern Avenue:

Section 6-14.5 (c), what rules and regulations relating to administration of this by-law might be added or changed. Where would those changes be made? Amendments allowed by planning board?

John Guerin:

Indicated MAPC mentioned a 2/3 vote at Town Meeting to amend by-law.

Bruce Fortier, Southern Avenue:

Indicated this by-law would give the Planning Board the power to change the by-laws. 6-14.6 Criteria: check each application regarding adherence to all laws of state and local government. Does this board possess the expertise to accomplish this task? Is this enforceable?

Howard Altholtz:

Indicated each permit is always issued subject to all applicable laws and regulations.

Arthur Clark, Choate Street:

Suggested they add "under advice of counsel".

Rick Bronstein, Lufkin Point:

Requested general overview of Site Plan Review, goals.

Sheldon Pennoyer:

No area zoning in town. Site Plan Review would give applicant opportunity to address issues relative to land

owners around the property. Bring together all uses that might overlap, mostly commercial/industrial and large residential projects.

Rick Bronstein, Lufkin Point:

Questioned how this differs from present system.

Sheldon Pennoyer:

Estimated only approximately 20% of potential applications would fall under Site Plan Review. Same set-backs, parking, etc. laws still have to be adhered to.

Rick Bronstein, Lufkin Point:

What is the order the criteria must be satisfied.

Sheldon Pennoyer

This would be the first step. Would get applicant over the first hurdle, get direction for permit to move forward.

George Stavros, John Wise Avenue:

Questioned, is his golf course recreational or agricultural?

Sheldon Pennoyer:

Indicated it is considered recreational.

Mike Cataldo, Rocky Hill Road:

Under Procedures. Ten business day window is a tight turn-around time; perhaps 21 calendar days.

Bruce Fortier, Southern Avenue:

Questioned planning board notice in the Gloucester Daily Times for Site Plan Review of Filias Realty Trust for additional docks. He did not believe Site Plan Review could be applied until voted in. Also, he did not know if docks would fall under Site Plan Review.

Howard Altholtz:

Indicated the Site Plan Review would encompass any appropriate application where a building permit would be required.

George Stavros, John Wise Avenue:

Questioned if he wanted to remodel a hole at the golf course would he have to go through site plan review.

Sheldon Pennoyer:

Pointed out since building permit would not be required, neither would Site Plan Review.

Rick Bronstein, Lufkin Point:

Questioned since single family homes are exempt, would some spill-over occur where abutters would not be considered in those applications.

Rolf Madsen, Pine Street:

Stated that Public Health Laws address those issues.

Kimberly Jermain:

Sees this not as an additional burden for the Planning Board or the applicant, but a tool for abutters to have a chance to plan.

John Guerin:

Believes since Essex has no zoning districts, something like this would be helpful to preserve town character. He indicated this Site Plan Review was a compilation of other towns plans, and most other towns that do not have zoning districts do have such a process.

George Stavros, John Wise Avenue:

Expressed concern over whether or not this process will de-value his land, because potential bankers or buyers will feel restricted with opportunities for development.

Sheldon Pennoyer:

Did not "buy" the belief that this would de-value land, believed just the opposite.

Kimberly Jermain:

Thought this would enhance value of land because process would protect abutters from some possible uses.

Bruce Fortier, Southern Avenue:

Believed that Site Plan Review would increase time of Planning Board members to review applications. He believed the old Essex Village was entirely at the discretion of the Planning Board. He felt the Site Plan Review would drive community away from the planning board. He believed it does not add anything to the current by-laws.

George Stavros, John Wise Avenue:

Commended board on work they have done to accomplish this. Suggested he would like to work on an amended version before this is submitted at town meeting.

Pat suggested she would like to work on the Site Plan Review more before bringing to Town Meeting.

Pat Dunn moved to close the public meeting at 9:35 PM. The Board will vote on 4/6/94 whether or not to take this to town meeting.

Discussion ensued whether or not Filias Docks should have been scheduled for site plan review. Pat Dunn indicated Sally Soucy told her it was not to be used until it had been passed.

Low Land Farm:

Jermain did not feel required information has been provided by developer. In 1980 the plan included a right of way that could not be found on current plan. Previous plans were denied due to right of way. Letter from Conservation Commission stated they are unable to determine if lot #1 is buildable; no notice of intent has been received, nor did information received constitute sufficient information for definitive plan.

Turtleback Road:

Peter Van Wyck has sent a letter to MEPA stating that he has an approved plan for Turtleback extension of 12 lots. Sheldon suggested letter go from Planning Board to Nancy Baker at MEPA informing them that current plan is for five lots. This is to include minutes from November 4 meeting.

Joe Knowles moved to accept minutes of March 2, 1994 meeting, seconded by Pat Dunn, motion passed.

Howard Altholtz questioned rather or not it would be helpful to copy other Town of Essex boards on minutes of meetings, and receive copies of theirs. Pennoyer and Dunn suggested they table the discussion until a later date.

Howard Altholtz moved to close the meeting at 10:10 PM.

PREPARED BY: _____

ATTESTED TO: _____

ESSEX PLANNING BOARD MEETING
MARCH 2, 1994

PRESENT: Sheldon Pennoyer; Chairman, Pat Dunn, Howard Atholtz, Kimberly Jermain, George Bragdon, Joseph Knowles

Sheldon Pennoyer called the meeting to order at 7:40 PM.

Site Plan Review

Building Inspector, Dick Carter, had some input on the Site Plan Review. He stated that the Site Plan Review, as written, would require homeowners wishing to build a garage or barn on their property to go through the review process. It was suggested by Pennoyer that perhaps the term "accessory building" could be redefined to exempt such applications from the process.

Chuck Simm

Simm would like to open a bicycle repair shop in his home on Pickering Street. He also indicated in the future he might like to add bike accessory and sporting goods sales to the home occupation. Simm's proposal was to have cars pull off the street on his property, but not entering his driveway. His neighbors, Mr. & Mrs. Prindle, had some concerns regarding additional traffic on Pickering. The Prindle's suggested he set it up so his customers would have to enter his driveway, by putting some sort of barriers on his property right off of Pickering. The Board supported the Prindle's proposal, and indicated to Simm they would appreciate his using that alternative, though it meant additional work and cost to him.

Pine Ridge

Ron Ober again requested the release of all but \$7,000 of the monies held in escrow for Pine Ridge. He brought a letter from the Clerk of the Works indicating 99% of the work is complete. Pat Dunn indicated she had done some checking since the meeting of 2/16/94, and the DPW was happy with the status of the work. Joe Knowles questioned the approximate completion of the as-builts, Ober indicated late March. Some discussion ensued regarding ownership and subsequent maintenance of the sub-division road. Ober indicated the "lot" the road was on is his property, and the town could take over after three years.

Howard Atholtz moved that \$7,000 be held in escrow, the balance being released to Ober pending the completion of as-built drawings, repair of shoulder work, setting of monuments, repair of hydrants and the delivery of one (1) hydrant to the DPW. Joe Knowles seconded and the motion passed.

Low Land Farm

Pennoyer indicated he and Joe Ginn had reviewed plan, he passed out document he and Ginn prepared with questioned issues. The issue of fifteen (15) lots on the 1,200' road and the possible build-out of the project was questioned. Van Wyck stated if he put a cul-de-sac at the end of the 1,200' road, it would increase the number of lots. One would be built on Apple Street and fourteen on the sub-division road. Atholtz pointed out original plan had four lots. The issues of drainage, wetlands and lot lines were brought up.

Public Hearings

March 16, 1994 - Site Plan Review

April 6, 1994 - Joe Knowles made a motion to schedule a public hearing at 8:00 PM on Miles River Stables, Choate Street, scenic way, possible removal of shade tree, George Bragdon seconded and the motion passed.

April 6, 1994 - another public hearing for Site Plan Review on special permit for additional docks at Filias Realty Trust, 138 Main Street, was scheduled for 8:30 PM.

Letters to Selectmen

Pennoyer read two letters addressed to the Selectmen in relation to Burn Brothers on Western Avenue and the Smith property on Apple Street. The Burn Brothers was relative to an over-use of a home occupation and permit for paving. Smith property was due to an oversized sign on the property and their operating a 6 unit/11 bedroom residence, when permit was for 4 unit/6 bedroom (due to use of a trailer on the property).

Patriot's Landing

Pennoyer is sending letter requesting they call the board to schedule a time to come to planning board meeting to discuss concerns.

The minutes of February 2, 1994 meeting were reviewed. Kimberly Jermain made a motion to accept minutes, the motion was seconded by Atholtz and passed.

A motion to close the meeting at 10:40 PM passed.

Prepared by: Joe Douglas

Attested by: Sheila K. Py

AGENDA

- 7:30 pm. Dick Carter - Building Inspector
7:45 pm. Ron Ober - Pine Ridge Subdivision
8:00 pm Public Discussion ...Informational
8:30 pm Richard and Sandra Osborn
 To discuss use of property at 1 Main St.

Business:

- Discussion and possible decision on Cheate St. Stable (8:45-9:15)
Boards input on writing Town Report (9:15-9:30)
Discussion on Lowland Farm (9:30-10pm)
Turtle Back Loop discussion (10pm-10:15)

~~Read Minutes~~

*Read & approved minutes of Jan. 12 and
Jan. 19*

PLANNING BOARD MEETING
FEBRUARY 16, 1994

PRESENT: Sheldon Pennoyer; Chairman, Pat Dunn, Joe Ginn, Howard Atholtz, Kimberly Jermain, George Bragdon

STORAGE UNITS ON WESTERN AVENUE:

The issue is whether, relative to lots #10 and #12, did the lot get increased in area, not within a lot on Scott's Way, but with an additional piece of land to the east which is not part of the original Scott's Way. The frontage was assumed to be on Scott's Way, but has ended up being on Western Avenue. The Building Inspector, Dick Carter, stated the plan was approved showing the frontage and entrance on Western Avenue. Pennoyer indicated he was referring to the approvals for Scott's Way, and the grandfathering of the lot based on what the actual lot is. Dick Carter indicated the approved plan as submitted included lots #10 and #12 as one lot. Pennoyer stated the as-built would be necessary. Dick Carter indicated they have hired a landscape architect and would be moving forward.

PINE RIDGE:

Ron Ober speaking on behalf of Bob Campbell, who is in Florida, is requesting some monies held in escrow be released; the total in escrow is \$23,979.53. His request was for all but \$5,000 to be released, pending the completion of the following work:

- o as-built drawings
- o repair of shoulder work
- o setting of monuments
- o repair of hydrants
- o delivery of one (1) fire hydrant to DPW (not in place)

Joe Ginn mentioned he noticed a possible drainage problem last fall which, if it hasn't been addressed, should be. Ginn made a proposal that \$10,000 remain in escrow, releasing \$13,979.53, pointing out that if the work is not completed by Campbell, the town would have to hire another firm to complete the job at an unknown cost.

Ginn stated due to the fact that the monuments have not been put in, it would be impossible for anyone other than a surveyor to ascertain if the road is in the correct spot, if the houses themselves are located properly and if the septic systems are in the right sites.

Ober proposed \$6,000 remain in escrow until the job is completed. Ginn moved that the board review all documents, talk with the Conservation Commission, and discuss this with further research for the next meeting and get back to Ober with the decision of what will remain in escrow. The motion was seconded and passed.

SITE PLAN REVIEW:

Pennoyer read a letter to the Board of Selectmen from Town Council relative to his review of Site Plan Review. Town Council felt that the terms are consistent with case law to date. The leading cases indicate that a town may adopt reasonably flexible methods consistent with substantive and procedural provisions of the zoning enabling statute of allowing permit granting authorities to adjust the zoning regulations to public interest in accordance with sufficiently stated standards. He continued, that the proposal, in general, meets that criteria. Obviously, with such words as "reasonably" and "flexible" it is impossible to say whether or not future challenges will be brought and whether or not they will be successful. He noted that to the extent an attempt may have been made to track the statute on setting forth exemptions, that no religious exemptions was provided in that section of the draft. This may have been intentional or an oversight. With respect to the standards set forth in the proposal, none of the terms set forth have yet been challenged in any of the cases. However, it was his suggestion that such a concept as "reasonable demand on town services" may be challenged at some point as being too vague. Also the provisions with respect to "town character" might at some point be challenged as being too broad. Efforts should be made to ensure that standard on existing vegetation is not an attempt to overstep province of another town board, such as the Conservation Commission. Town Council also reminded the board that it must follow the proper steps for adopting zoning bylaws.

Anne Marie Latham, Western Avenue stated she appreciated the section on permits expiring after one year and was curious about what would be exempt. Pennoyer stated that the intent was to try to include in the bylaws details on special permits, not so much in residential work which is generally minor in scale and effect, but to try to address some at the commercial/industrial end, which often have major effects.

Arthur Clark questioned continuity of the existing use of land. Clark suggested some financial background might be required by applicants to indicate the longevity of the plan. Pennoyer stated that if it were a new business venture with no history of financial stability they would not be able to give any previous information, which could discourage new ventures.

Bruce Fortier, Southern Avenue, suggested the plan not go on warrant until further work is done. He suggested this plan would give Planning Board more room for personal opinion. He stated Institutional and Fraternal are not uses that are regulated in bylaws. Pennoyer indicated the bylaws were intended to be loose and to reinforce both the rights of the landowner and the rights of the abutting property owners. He stated the bylaws would be upheld differently by different boards depending on where the board swings at various times, based on what desires of voters are. Fortier stated having to hire a licensed Massachusetts engineer and go through entire process to build structure for business purposes is too intrusive.

Anne Marie Latham, Western Avenue supported Pennoyer's comments on proposed Site Plan Review required process for building and developing. She is a resident at the end of Western Avenue, and believes it is over-developed and believes more control is required.

RICHARD OSBORNE, ONE MAIN STREET:

Osborne was seeking guidance on possibility of opening a retail shop for bikes, mountain bikes and kayaks. The shop would run out of the garage; some rental sales would be done. Osborne indicated his property fronts on three streets, Pickering Street, the house fronts on Main Street and the garage on Western Avenue. He would like to go to the DPW and make a change and enter on Western Avenue and depart onto Pickering Street. Presently six parking spaces exist. Pennoyer requested some projection of quantity of customers/visitors per day. Osborne stated he had been in discussions with the Historical Society relative to doing the bulk of the kayak work out of the shipyard.

Bruce Fortier, Southern Avenue indicated under present bylaws if someone wishes to have a home occupation, after reviewing the bylaws if they meet their requirement, it would not come under the jurisdiction of the planning board. He indicated the building inspector would have to determine whether the traffic generated by the business would be more than in that area.

Osborne questioned if the business grew would he have the option of turning the entire building into a commercial property and not a residence, therefore it would no longer be a home occupation. The lot size is 1/2 an acre. Osborne was informed that the Board was in no position to address that issue. He was told to review the bylaws, assure that his current plans to run the business from the garage meet the existing requirements for a home occupation, and proceed if he so wishes.

MILES RIVER STABLES:

Peggy Lynch seeking special permit for stables on Choate Street. The issue of metal roofs was discussed, Lynch indicated all structures have wooden exterior, the larger arena will have metal roof. Penoyer had concerns relative to potential glare from the roof and suggested roof might be treated with something to reduce or eliminate glare.

The issue of parking and traffic flow was brought up. Dunn was concerned about potential on-street parking and was informed by Lynch that the plan provides for forty (40) parking spaces. It was suggested a traffic study might be performed and submitted. Lynch stated any horse show would have police officer present for traffic management.

Dunn made a motion to approve the special permit application for Miles River Stables, Choate Street, with the condition that the applicant submit a traffic management plan, stating how they are going to direct traffic and deal with traffic issues during special events, and stating that applicant is aware of the board concerns relative to off street parking and the glare from metal roofs. Bragdon seconded the motion. The permit would acknowledge the existence of an apartment on the property. Penoyer noted the permit did not change the use and went along with current bylaws. Ginn abstained due to work he has done on the property in the past and any potential work he may do in the future.

The discussion of conflict of interest ensued. It was decided if a conflict of interest exists, the individual should make it known to the chairman, will not speak on the issue unless necessary, and should leave the table, they will not be allowed to vote.

Jermain made a motion to request the Board of Selectmen put the Essex Site Plan Review, as drafted on 02/01/94, on the warrant for the Town Meeting in May. To incorporate the plan into the bylaws as Section 6-14 and change the draft format according to bylaw format.

Some discussion relative to possible amendments to Site Plan Review took place. Suggestions were to include religious institutions as having to comply with plan, and "town services" should be made more specific. Jermain made a motion, seconded by Atholtz, to amend the plan as discussed. Abstaining were Dunn and Bragdon.

Jermain made a motion to accept minutes as read of January 19, 1994 meeting, motion was seconded by Ginn and passed.

A motion to close the meeting was passed.

Prepared by: 

Attested by: 

ESSEX PLANNING BOARD
AGENDA

Feb. 2, 1994

7:30 Dick Carter Building Inspector

7:45 Ron Ober Pine Ridge Rd. CANCELLED

Pam Stone Animal Inspector

8PM Public Hearing
Margaret Lynch Stables Choate Street
Special Permit

8:45 Public Hearing
Peter Van Wyck Low Land Farm Subdivision

Planning Board
February 2, 1994

PRESENT: Sheldon Pennoyer; CHairman, Howard Altholtz, George Bragdon, Pat Dunn, Joe Ginn, Kimberly Jermain, ~~Joe Knowles~~

Altholtz moved that the Planning Board was satisfied with the building permit application that Dick Carter, had previously issued for Lisa Lambert, 17 Lufkin Point Road, and can proceed with building as it is a buildable lot. Jermain seconded the motion, with the Board voting unanimously in favor.

Bragdon moved to approve the building permit application for Judith McComonsky, 5 Southern Heights, for an addition under Essex bylaw 6-4.2 that the addition or alteration is no more detrimental to the existing neighborhood. Ginn seconded the motion, with the Board voting Bragdon, Ginn, Jermain, Dunn, Knowles in favor. Altholtz voted present.

Dunn moved to approve the building permit application for *Laurie McMillan* the alteration, an addition of a kitchenette which was originally a guest bedroom headquarters. There will be no change in the footprint. If this will ever be rented commercially they must return to the Board. Bragdon seconded the motion, with the Board voting unanimously in favor.

A public hearing was held on the application of Margaret Lynch for a special permit to construct a horse arena on Choate Street.

DICK: My name is John Dick, Hancock Associates representing the plan. Ms. Lynch is also present. We have a two page plan, and some correspondence that has already been send to you. The Board of Health has reviewed and approved this plan. Just for the record the Conservation Commission on December 7 had a meeting to determine the building on this site. I represented to them, and I represent to you that I have delineated the wetlands at the back of the property. The 100 foot buffer zone to the wetlands resource area does not reach up to the proposed development. All of our work takes place beyond the buffer zone. Therefore, the Conversation Commission declined to make any determination whatsoever. They did not make a formal determination.

ALTHOLTZ: Did they make a negative determination?

DICK: No, as a matter of fact, they made no determination. They said that since we were beyond the

buffer zone there was no need. We didn't pursue the issue. They were requested to make a determination. The 21 days appeal period has expired. It's considered a negative determination. What my clients propose is a riding rink, riding rink and stable for a group of horses not to exceed twenty. There is a septic system in this area behind the stable to serve the needs of the stable building. There is also a leeching system along Choate Street in front of the building existing of a infiltration system, and that's for disposal of gray water for washing animals. So the only waste that won't be disposed of on-site is will be horse manure. That is to be trucked off the site in sealed containers. I think it's every other day.

ALTHOLTZ: What kind of trucks will be coming in to remove that?

MIKE KEOUGH: I presently manage this business at a different location. It would be own people. Not a separate company.

JERMAIN: Will there be caretaker or anyone that lives on the property?

KEOUGH: Right now within the design of the barn we are going to put an apartment above the barn. So someone will be staying on the property for security and safety purposes.

The Chairman let the public speak. Concerns stated were traffic, what the use would be if they should ever sell the property, and if the property would be owner occupied. Pennoyer stated that if this was going to be an industrial use then the applicant probably wouldn't even have to be in front of the Planning Board because there is no zoning.

KEOUGH: Regarding the traffic flow, there is no more than six to eight vehicles on the property during any given time. And they come at different times. I don't have fourteen people for a riding lesson at 8:00 a.m. I schedule them at different times. The traffic would come in off of Candlewood onto Chebacco because Choate Street is not good for traffic flow other than residents. It's actually closer to that end.

SALLY O'MALLEY: I've lived on Choate Street longer than most people. I've seen traffic change on Choate Street. At Thanksgiving and Christmas time due to the Turkey Farm there are more people going in. I think that if that was subdivided into house lots we'd see much more traffic. I understand the concerns about a light industrial business going in there. I would have concerns, too. But I have concerns about the home occupation bylaw. From what I

understand about these people and everything else, I would have no problem with it.

KEOUGH: Most of the pasture will be on the Ipswich side.

PAMELA STONE: I'm an Animal Health Inspector in town. I've known these people for a number of years. My personal opinion on this project is this is the best use for that plot of land. I would like to see something like this go in instead of home sites. I lease a barn right around the corner from this. From my experience the traffic flow would go down Candlewood. I've been to their stables on various occasions and they take excellent care of the animals.

VIRGINIA CLARK: I live on Choate Street. I understand that Choate Street is a scenic way. This will totally change the character of the street. I don't have anything against horses or what they're trying to do. It's going to change the entire neighborhood. And the fact that the owners are not going to live there won't be interested in the neighborhood. They will be primarily interested in their business, and there is nothing wrong with that, it's just that it is going to change the character of the whole street.

GINN: I have been involved with this property with excavating. I will not be voting on this proposal. But I would like to ask a couple of questions. I'm not overly concerned about the cars, and I don't think the neighbors are too concerned with that. I think the concern is with trucks. Are you going to have grain trucks, hay deliveries, that kind of stuff?

KEOUGH: I have a hay delivery that comes approximately every five weeks. I have a grain supply coming from Giddings Farms in Essex and they come every ten days.

GINN: Future development of the land. The Ipswich pasture land is that going to be brought back into agricultural use.

KEOUGH: We would like to open up as much of the property as we can, but we would like to shield some of the property with trees. So it's not a naked stretch of land. Yes, we would like to open it up so there is an open pasture and there would be probably one or two prepared riding surfaces. A flat graded surface for an outside riding area.

GINN: Above and beyond what is shown here?

KEOUGH: Yes.

2.2.94

TOM ELLSWORTH: Will there be shows of any type where there would be quantities of horse trailers and quantities of spectators?

KEOUGH: We would like that to be allow in the future, but at the present time we do not have anything like scheduled for the property.

ALTHOLTZ: Maybe we would like to see a traffic study that would take into consideration events that you may ultimately want to hold. I'm just raising that issue.

JERMAIN: How are going to prevent people from going down Choate Street, if they choose to do so. Choate Street is not a big safe access.

PEGGY LYNCH: When you send out a flyer telling people in the community the exact location of the show or event that's where that information would be. The exact direction would be given to go up Candlewood. You really wouldn't want to go up Choate Street.

BRAGDON: Where would the hay and grain to stored?

LYNCH: There is a storage area in the barn.

TOM ELLSWORTH: I'm concerned with the looks of this establishment. I don't know what a metal roof looks like. And this is a big building. And I would urge the Planning Board to put some directions on this so this would look as attractive as possible. And secondly, I would ask that this be used only as a recreational use and a restriction on it that it cannot be converted to an industrial or commercial use.

PENNOYER: I would like to close the public hearing.

Pennoyer moved to close the public hearing. Altholtz seconded the motion, with the Board voting unanimously in favor.

A public hearing was held on the application of Peter Van Wyck for a subdivision off of Apple Street to be known as Low Land Farms.

PENNOYER: Reads aloud letter from Peter Van Wyck. Also enclosed with this letter was two drawings.

ALTHOLTZ: I didn't know we were giving Peter any problems. I only looked at it last meeting for the first time. I didn't know Peter was having problems with this. I thought we were approaching this initially and in a very reasonable manner. And here he is already approaching us

2.2.94

in an adversary manner. I just want to go on record as cautioning Selectman Bob Dawe, that the Planning Board is an independently elected body of officials that deal with these issues and I urge him to stay out of it.

PENNOYER: I don't think our previous discussions had much to do with the gravel area and the preservation of the gravel. I know it got thrown back and forth. The gravel was not a major portion, which the letter leads you to believe it was very major.

ALTHOLTZ: Very miss placed.

JERMAIN: I would like to speak about one part in the letter as well about fifteen allowable lots. There are not fifteen lots allowable lots as we've seen them laid out. Unless we want to grant a waiver and see an overwhelming benefit to the Town.

PENNOYER: I did an overlay to see how many lots, if this road was approved, could go on this road. I don't get fifteen. I get a different number. I'm looking at it as if it's 1200 feet long, because if it gets extended there would be no more lots than if it was 1200 feet, I'm getting twelve lots. I think that's an issue we have to bat back and forth. But I think we also have to focus on the issue that, look, this is what he is proposing and if, in fact, this thing couldn't sustain fifteen, then we say twelve.

DUNN: Are we going by this set of plans that is handed to us right now?

PENNOYER: Yes, we are. But we have to look into the future. Because if we approve this road has the potential for more house lots than shown right here.

JERMAIN: But doesn't it seem to you that it's really time handed the Board it's really important information by asking for four lots but asking for a waiver for a road and extending it considerably beyond the road that we require. I don't understand the purpose for giving less information and requesting more along the road. What's the purpose for giving less information for what you're going to be doing for a road that you want to extend. I would like to see how this is going to be divided and be able to consider it's impact on that land.

ALTHOLTZ: The way to look at this is to envision the worse case scenario.

BETSY FAWCETT, Apple Street: You are going to decide on four lots, or not; is that correct?

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PENNOYER: Yes.

BRUCE FORTIER, Southern Avenue: The idea that you're approving four lots, when in fact, you're approving the subdivision of a parcel of a certain size. And the road on it after which, under the laws, once a subdivision road is approved the applicant has the right to rearrange the lots and subdivide them as long as he has the necessary frontage. I think that is something a lot of people don't realize. It's a delusion to say there is 1500 feet of road here then once it's approved the applicant can come back and get one lot for every 150 feet of frontage.

FRED FAWCETT, Apple Street: Mr. Van Wyck has been asked by at least three conservation commissions, and I think two Planning Boards, to be up front with his complete plan for his land, both on Turtleback and Low Land Farms. Because all of this land drains towards the Essex River and all of it impacts upon the Essex River. And we have been told that it is within the jurisdiction of both the Conservation Commission and the Planning Board, to request his full plans. And if you consider the plan before you not to be his full plan that is a reason for taking issue. Mr. Van Wyck has never complied with that request.

BRUCE FORTIER: I just want to speak in opposition to that. An applicant's private business is their private business. Their private plans are their private plans. If they come to you with a definitive plan it's suppose to be approved or disapproved on the merits. And the fact that a person doesn't reveal their private business should have no bearing on your influence. It should be on the merits before you.

ELIZABETH FRYE, Apple Street: I have written my comments. (Reads comments aloud and gives copy to Planning Board to be filed.)

BETSY FAWCETT: I wonder why Mr. Van Wyck is insistent on the waiver of the plan scales. I think the locus is incorrect. On the February 11, 1981 a similar plan was denied for this same site. Citing he lacked a legal right of way. And in his environmental impact report which Mr. Van Wyck is required to write for the Conservation Commission for this area under the Massachusetts Environmental Policy Act, he said that access to the Low Land Farm property if via right of way of Apple Street. I think that should be shown on the plan. Will Mr. Hildonen an abutter become part of that subdivision? Should, in fact, you say five house lots instead of four, or sixteen instead of fifteen? Would it effect the traffic studies in any way? Is Mr. Van Wyck using Mr. Hildonen's driveway, in part and in whole? I think there is insufficient wetland delineation. I think there is a

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problem with the blind drive posted by the DPW. I think attention should be paid to the boundaries under our title insurance. I don't see those there. I think Mr. Browning's well should be considered. The road is going to be too close to it. I think he should make provisions for adequate drainage outside the subdivision, which is required by 6-0.12. I think there are a lot of problems with this plan.

GINN: What is the status with DEP on this project, and has this plan been submitted to the local Conservation Commission? The town and the state has already agreed that there is an isolated area of wetlands?

VAN WYCK: Yes.

GINN: And you are saying they are incorrect and you have appealed to them?

VAN WYCK: No, not at all. I'm saying that in order to address the size of the isolated area. The State Dep only gets involved if it's a certain size. Now, I have provided the Conservation Commission engineering studies that this is not the size that the DEP had to get involved in. Usually the Conservation Commission refers it to the State if it's a certain size.

GINN: All right. What about past violations or problems or DEP concerns? Has all that been put to bed?

VAN WYCK: That's all been taken care of.

FRED FAWCETT, Apple Street: I believe the Conservation Commission a couple of weeks ago made a positive determination that not only was this a wetlands but that it was of sufficient size to be covered under the State.

VAN WYCK: That's incorrect.

BRUCE FORTIER: My question is are these wetlands within the boundaries of these lots?

BRAGDON: At this point in time, we don't know. We don't know what the situation is. We're trying to resolve the situation. So we can go forward. We're trying to get additional data on this. If there is wetlands here, they may have to be tagged.

BRUCE FORTIER: Can we anticipate that this hearing will be continued?

PENNOYER: Maybe, maybe not. I don't know.

ALTHOLTZ: I would like Peter to address each waiver that

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he is requesting?

PENNOYER: Length of road form 1200 to 1523 feet.

VAN WYCK: If you allow the longer road it means that we can keep some land in pasture in this area. I think this would make a better subdivision. Since there will be some development down here it would be best to have a road that actually allows people that buys houses down there to get down there.

ALTHOLTZ: So are you saying you want the road to go further because you want to have development further into the property?

VAN WYCK: That's correct. The intent purpose would be to have some houses down here. Therefore, if you're going to build houses why don't you have a road that goes down to the houses.

PENNOYER: I can't assume, as a Planning Board member, I have to look at all that talk and throw it out because there is no mechanism which tells me that that is going to happen.

ALTHOLTZ: Would you put a deed restriction on the property? Would you put a deed restriction prohibited development over six lots?

VAN WYCK: I have no intention to subdivide ----

ALTHOLTZ: Would you put a deed restriction to support that?

VAN WYCK: I think the best way to do it is put a maximum of 15 lots.

PENNOYER: The next waiver is the locus plan.

VAN WYCK: I'm not quite sure why this was done this way. The scale as we see it now because we wanted it all on a single sheet.

PENNOYER: Scale of cross section. It's the same issue. I don't think we have to do it. Street trees. See sheet three.

VAN WYCK: As far as trees go we identified major trees, the trees along the road going in, and being a large piece of property we took what we thought were the features that we thought the Board would want.

PENNOYER: In other words, you want a waiver from the bylaws which talks about specifically providing certain

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trees at a certain distance. And you're taking the existing trees and incorporating them into the road.

VAN WYCK: Yes, that's it.

Dunn moved to close the public hearing. Ginn seconded the motion, with the Board voting unanimously in favor.

The Board discussed the draft for a zoning bylaw change regarding site plan review. Penoyer incorporated the comments discussed at the previous meeting into the draft. The Board reviewed the procedure and enforcement sections of the draft. Dunn expressed concerns for the bylaw and stated she was having a hard time accepting the bylaw.

Altholtz moved to that the Planning Board submitted the draft for the site plan review bylaw to Town Counsel for his review and the MAPC for their input through the Board of Selectmen. Dunn seconded the motion, with the Board voting unanimously in favor.

The meeting was adjourned.

PREPARED BY:

Patricia A. Pierro

ATTESTED TO:

[Signature]

Planning Board
January 19, 1994

PRESENT: Sheldon Pennoyer; Chairman, Howard Altholtz, George Bragdon, Pat Dunn, Joe Ginn, Kimberly Jermain, Joe Knowles

Raymond Green, 15 R Story Street, met with the Board to review a previous motion the Planning Board had taken at the Board December 15, 1993 meeting. Two motions were made. Both motions ended in a tie, therefore either motion did not carry. Greene wanted to construct a two bedroom apartment onto the back of his home. His present dwelling is a three-room apartment above a two-car garage, which is located on a 28,000 square lot with 53 feet of frontage on Story Street. The 28,000 sq. ft. lot was held under one ownership, but two years ago it was sold as two lots under a condominium agreement. Green's house sits on 20,000 sq. ft. and Bob Getty, other lot owner sit on 8,000 sq. ft. The Board stated the zoning bylaw clearly states that 10,000 square feet of lot size is necessary for each dwelling unit. Pennoyer stated that under the present bylaw 40,000 sq. ft. is required for a two-family unit. The Board felt they could not act on the request under the non-conforming section of the Town's bylaws because the law is intended for minor changes and not the addition of a living space. The Board advised Greene of his right to return to the Board of Appeals.

Dunn abstained from voting.

Jermain moved to deny the building permit application of Raymond Greene, 15R Story Street, to construct a two-bedroom apartment onto his existing home due to insufficient lot size and frontage. Bragdon seconded the motion, with the Altholtz in favor, Bragdon in favor, Jermain in favor, Knowles in favor, Ginn against. Pennoyer did not vote.

The Board discussed holding a work session to review the Site Plan Review bylaw. It was agreed to hold a work meeting on January 26, 1994.

Jermain moved to hold a public work meeting on Wednesday, January 26, 1994 at 7:30 p.m. Altholtz seconded the motion, with the Board voting unanimously in favor.

The meeting minutes of January 5, 1994 were read. Altholtz moved to approve the minutes. Jermain seconded the motion, with the Board voting unanimously in favor.

Dunn moved to adjourn. Bragdon seconded the motion, with the Board voting unanimously in favor.

The meeting was adjourned at 10:45 p.m.

Prepared by: Patricia A. Pierre
Attested by:

Planning Board
January 12, 1994

PRESENT: Sheldon Pennoyer; Chairman, Howard Altholtz, George Bragdon, Joe Knowles, Kimberly Jermain

The Planning Board met with Atty. John Guerin; MAPC Representative for Essex, Jean Christensen; Government Services Manager for MAPC, and Paul DeCoste; Principal Planner of Government Services for MAPC, to discuss various services it can offer. Christensen stated that if the Town had a Site Plan Review included in its zoning bylaws. All present felt this was a good planning tool. Pennoyer stated he was working on a proposal for a Site Plan Review bylaw. Pennoyer wanted to see a straight forward bylaw using simple language everyone can understand. Pennoyer expected to finish the draft so the Board could schedule a work session January 26, 1994 to discuss this bylaw further. The Board will hold a public hearing after they review and discuss the draft. It was also discussed that the MAPC would review the bylaw, but wanted the Planning Board and Town should prepare it. The Board would like MAPC to review the Site Plan Review after they finish.

Jermain moved to adjourn. Altholtz seconded the motion with the Board voting unanimously in favor.

The meeting was adjourned at 9:00 p.m.

Prepared by: Patricia A. Lierro
Attested to:

PLANNING BOARD
January 5, 1994

PRESENT: Sheldon Pennoyer; Chairman, Howard Altholtz, George Bragdon, Pat Dunn, Kimberly Jermain, Joe Knowles

Altholtz explained the MAPC Representatives that were suppose attend this evenings meeting cancelled because of the previous day's weather conditions, other meetings had to be postponed, therefore they were unable to attend this scheduled meeting.

ATTY. JOHN GUERIN: I have a question about this. As you know I am the Town's Area Planning Council Representative, and the only way I've been able to find out anything is via them. Apparently a member of the Planning Board, Howard, is calling them on his own setting up meetings to discuss these things without any knowledge of the representative or other members of the Town, including the Board of Selectmen from what I understand. And it was me chasing down MAPC today to find out that, in fact, they weren't coming. And I was inform that because they had just got off the phone with Howard. And that's when I called the secretary for the Planning Board and let her know as well that they were not coming. But there has to be organizational steps, and this again, I don't know why this is happening because Howard you definitely know I'm available to you if you want to give me a call. It will be much easier for the purposes of keeping track of things, instead of last week when I was running around trying to find out if there was a meeting or not. Members of the Board saying no we don't even have a scheduled meeting. And I'm suppose to be telling this to someone in Boston. There is a way to do this and I think it is to work as a team between the Planning Board and myself, as we discussed before.

PENNOYER: At the last scheduled meeting we discussed that it would be a good idea to call a special meeting to review the zoning bylaws that we have before us. In terms of the MAPC representatives John, we had a discussion on that and you represented to me that it would cost money to get them down here.

ATTY. JOHN GUERIN: It would cost money if we used them. I didn't want to waste their time.

PENNOYER: Howie and I discussed in between two meetings that we were going to have a special meeting and we were going to try and schedule a special meeting to get some work done. The intent behind this was not to do anything behind anyone's back, but just try to get some work down. A chance to sit down and address the zoning bylaws before us. That's all it was. We had no chance to discuss it as a Board. As far as I'm concerned a lot of this is trash. And the look what we're into now.

ATTY. JOHN GUERIN: That's exactly right. But the problem before us is the hierarchy to go through, and you wouldn't have all this had this been taken care of from the start. People sitting on your own Board, Pat, for one didn't know anything about this meeting. She said she wasn't going and that the Board hadn't put anything together.

PENNOYER: Each individual including yourself was sent a notice by mail.

DUNN: I think this ought to be cleared up and I don't care if it's cleared up in public or not, as long as it's cleared up. I found out about that meeting and was made one damn fool of because other people were getting word that there was a meeting. I didn't know anything about a meeting. I've sat on the Board for eight years. We planned no meeting at our last meeting. Several times the same thing has come up. And of course, you and Howie talk, and Howie calls here, calls there. I would really like to ask right here and right now that these things are done and settled within the Board at a meeting. Even if it's a special meeting. It's fine, but I would like to know sooner than a day before that they're coming, and that's when I found out. As a member of the Board I found out the day before they were due.

JERMAIN: Didn't you get a notice?

DUNN: Sure I did. The day before.

KNOWLES: I still haven't received a notice.

DUNN: This Board is not working right. It's not working together. I mean why are we here heating the building and running the lights when some of our business is being done over the telephone, and I don't think that's fair to the rest of these members, including myself. And I'm going to ask that these things be done at a meeting, and if you and Howie come up with something that you feel is important and we should have a meeting, I think the members should be called. It should be posted. And I don't care if you have it at six o'clock on a Sunday morning. But the meetings should be held here and not over the telephone. And I've asked that before.

PENNOYER: Okay. Pat, I think that's fine, and respect that. But I will say that at our last meeting it was discussed at the end of the meeting. And you might have already left.

DUNN: No, I wasn't gone because I had the keys.

PENNOYER: Regardless sometimes at the end of our meetings people go off and talk on their own. It was discussed that we would try to set up a special meeting.

DUNN: We would try, but it was not set up.

PENNOYER: I respect what you're saying, but don't make it sound like it's all happening underground.

DUNN: Okay. But too much has been done over the telephone and we can't get seven members together over the telephone.

ALTHOLTZ: Let me say something about this because I was involved in setting up the meeting, so I know exactly how it happened. It really kind of blows me away that people see all this underground kind of stuff going on. We were trying to have a very innocent meeting to try and help the Board prepare for a review of all the bylaws that have to do with land use. Now, Kim, got a mailing a week before. George said he got it a week before. Joe said he never got it.

KNOWLES: I still haven't.

ALTHOLTZ: I spoke with Joe Ginn on the phone last night. He has no problem with it. We discussed having the MAPC reps down.

ATTY: JOHN GUERIN: Who discussed it?

ALTHOLTZ: The Board discussed. I'm speaking so please let's not have interruptions. The Board discussed having MAPC people down. And we asked John Guerin to see if he could get them down. And he called Sheldon and said, "Yeah, but they want to charge and let's not get it going." And it was dropped. And I said, "We really need some help to see what's going on in other communities and what tools are working and what tools aren't working, and if we're going up the wrong trail. I'm going to give MAPC a call and see if they're willing to do it for free." So I called the MAPC because I know some people up there. And I said, "Look we really need some help. Would you be willing to come to Essex and share your experiences with other communities about what is going on." Because they work with Planning Board's all around the state. "Tell us what is happening with bylaws. Tell us what is happening with relationships between Building Inspector and other Boards and enforcement." And they said, "Yeah, we'll come down and do it for free." So I told Sheldon, "There two people from MAPC are willing to come down and kind of give us an overview of what they have to offer for free." So Sheldon said, "Great, let's set up the meeting." And I said, "Fine." And he said, "Can you write the letter to notify all the Board members." And I said, "Yeah, I will. But you review it first and as soon as you say it's okay I'll mail it out." We did that. I week before the meeting it was mailed out. It was posted in the Town Clerk's office four days before the meeting. There was an article in the paper about it. So there is nothing secret about it.

DUNN: It was not discussed at a Board meeting.

ALTHOLTZ: He said it was. I don't recall if it was or not.

DUNN: It was not done at a Board meeting.

ALTHOLTZ: That's the whole story.

BRAGDON: I remember the discussion we had. At the time we all started to review the proposed, I say proposed because this is just a draft. This was just to review and we all have problems with it. Different phases. But we all agreed that it was a lot of work that Joe did to bring this to light. We thanked Joe at the time, but then we realized we needed a lot of work to figure out what we ought to present to the Town at the Town Meeting. And then we decided to informally just discuss how we were going to review it. And more than one person at that time said they wanted to be a part of it. Then it escalated. Everyone on the Board said they wanted to review it and be part of the committee. Now, does that bring anything to light, Pat?

DUNN: Oh, I know perfectly well what is going on. I don't need anything brought to light. I know we had a discussion here. And it was only a discussion. Nobody said let's have a meeting.

PENNOYER: Nobody said let's have a meeting. Let's schedule it for

such and such a date. No, I'm not saying that. Can I propose something here. Can we get off the housekeeping and get on with discussing this bylaw in front of us.

BOB DAWE: I'm Bob Dawe, Chairman of the Board of Selectmen. We received a letter back a few months ago saying that the communication between our appointee was not satisfactory and what was going on. He was summoned down here. I attended that meeting. John has been forwarding all the information from the MAPC to the Board of Selectmen. I'm sure you're getting your copies. It was agreed at that time you were going to work with our appointee. Who is the liaison between the Council and the Town of Essex. And I take great offense when we are now circumventing, when people go and set up their own private agenda through the Council with private telephone calls and then come down and deny their private telephone when we know exactly what is going on. You went around our representative. If you want to have informed constituents then why can't you work with this gentleman here, who has volunteered his time and efforts and is trying to work very hard on the Town of Essex.

PENNOYER: Let me respond to that. What makes you think we're not working with him, if we invite him and ask him to come to the special meeting that we tried to set up and work with MAPC reps.

GUERIN: Do you know how I found out about that? Through MAPC, after Howie set it up.

JERMAIN: You didn't get the notice?

GUERIN: No, I found out about it through MAPC, then I got the mailing the following day.

PENNOYER: Are we going to get into this -- Come on ----

GUERIN: Let's just stick to this and get it over with. I thought we were going to bury this the last time I came in. When we discussed this over the phone, I told you as the Chairman of this Board, what the MAPC would do for us. I said they would not review this piece meal. We spent six hundred dollars a year with them. We don't spend a lot of money with them. They haven't got the money to come and do these things. On top of this we never discussed coming down and giving an overview because all I had to do is get Paul DeCost on the phone, or anyone of them to come down. Just like next week David Soul is coming to the Selectmen's meeting. He's not charging us for it. The man will come down. The problem is I didn't get a call from anyone. Howie, I talked to you about this. Pick up the phone and call me. I'll take care of it.

ALTHOLTZ: I thought sending you a notice like everyone else was sufficient.

GUERIN: I told the director today no one is to set up a meeting unless they go through or hear it from me first because I am the representative to do it. I don't want a grandstand here. Like it appears you're trying to do. Like they are going to do something free for you and not for the rest of the Town.

ALTHOLTZ: They'll do it for anyone. That's what we asked you to

do. Set up the meeting.

GUERIN: That wasn't asked of me. The Chairman asked for site plan review and would they review the Planning Board bylaws. So the bottom line on this thing is to call up and ask. The bottom line is to communicate. Nobody is doing it still. I'm left in the dark. From my understanding, from someone on this Board, you were told to call John Guerin and check it through him.

ALTHOLTZ: I don't want to get into a discussion. This is on the agenda. If you have a complaint go to the people who appointed you. But I really take offense ----

BOW DAWE: The person who appointed him is here.

ALTHOLTZ: Are you speaking for the Board of Selectmen?

BOB DAWE: Yes, I am.

ALTHOLTZ: They said you're not.

BOB DAWE: They said I'm not.

ALTHOLTZ: That's right. There was no discussion by the Board of Selectmen to send you as their representative.

BOB DAWE: They don't have to send me as their representative. I come as an involved citizen.

DUNN: Sheldon, excuse me. Are you still the Chairman, or what?

GIL GUERIN: Excuse me. Are you speaking for the Board of Selectmen now, too?

ALTHOLTZ: I'm not. He's not either.

GIL GUERIN: Yes, he is. He's our Selectman.

PENNOYER: Everyone quiet. There is no public hearing. We're going to get on with discussing the bylaws. Does anyone have anything to say? Has everyone on the Board looked at it, or don't they do anything outside of the Board?

DUNN: We certainly all do our part when we're included.

ALTHOLTZ: I got a few calls that I had proposed these bylaws. I just want to make a statement. Everyone on this Board knows these is not my proposal. And I have nothing to do with these bylaws. And specifically, I don't think the gun proposal that everyone is here for has any business being before the Planning Board. It's not a land use bylaw. If people want to propose that, they can go to Town Meeting. I'm not going to air my personal views on the subject. That's not what is important. I think having that issue on the table reverts the Planning Board from the business they should be doing.

KNOWLES: I'll go back a month ago when I put this together. The purpose of the Planning Board, it's only purpose if you read the rules and regs of the Town, is to formulate bylaws. When Dick Carter comes in to call on us he does so as a courtesy to us. We

really are only here to plan for the town. The only tools we have are the zoning bylaws. In the three years that I have been on the Board, I have a short list of all the complaints that keep coming up. They are generic complaints. Whether I agree with them or not, I hear them. And now I try to respond to them. I don't know if you all have a copy. You might want to. But these are the things that I hear. You folks might hear other ones. You might hear none at all. But this is what I hear. And my responsibility is to respond as a member of the Planning Board. Now, the next step in this phase is not to call a special meeting and invite in what might easily be misconstrued as outsiders. I would also point out that I disagreed with that. And, in fact, we had some heated discussions about that. It wasn't the proper procedure. That it would be misunderstood. And that is why I think everyone is here. These are not bylaw proposals. This is a working sheet. Call it what you want. A draft. I'm not backing away from it at all. Because I happen to believe we probably need some piece of each and every one of these. But, on the other hand the best way to proceed is to start with something on paper, then it's time for public input, and not just the people who are upset about them. Because for each one of you who are here that think I'm some kind of pariah there are three or four other people who have complained about these things. And that's what I'm trying to respond to. Now, the one piece of information that I got that was useful to me was from Dick Carter, which was the gun stuff is not a zoning bylaw. He's absolutely right. So as far as this Board goes that issue is dead. If someone wants to take that to the Selectmen, and by the way that also came from complaints, they can take it to the Selectmen. The beauty of this process is everyone is here, now it's time to start talking about it. So the next step is for this Board to schedule public hearings on these proposals. And if we need nine signatures, I'll go get them. Now, if everyone is against them, as far as I'm concerned I've done what I was elected to do, which is to make things possible. I'm proposing that we look at these, if the Board says no, we won't, that's the end of that. It won't go to Town Meeting.

GIL GUERIN: Can we vote on it tonight?

KNOWLES: No, not without a public hearing.

DUNN: I feel this is an attack on the small businessman. I'm sure we can improve our bylaws, without an attack on the small businessman.

PENNOYER: We're all sort of taking the heat for the prohibited uses, and frankly, the gun one I'd throw out in a second. I'm a hunter myself. And a lot of the prohibited uses are totally out of the character of the Town. But we haven't had a chance to discuss these.

Many concerned citizens were present for this meeting. The Chairman let many of those present speak regarding the bylaw proposal, and found most of those present in opposition of these bylaw changes. The Board discussed possibly setting up a committee to review these bylaws, but no discussion was made to do so. The majority of the public who were present felt as though another committee was unnecessary. The public felt the Planning Board should do their job by reviewing these bylaw as a Board because basically they represent a cross-section of the town. There was a

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general relief among the public that the Planning Board had no jurisdiction over the gun control bylaw, and relieved it was a dead issue as far as this Board was concerned.

Pennoyer moved to discard the so-called "draft of proposal bylaws" and start again. The Board will come up with another bylaw, but this motion is to eliminate the prohibited uses, and throw this draft in the trash.

DUNN: When Joe gave this to the Board he said this is just something to work with. He said you can rip this page up, or you add to this one. It is something to just get us started.

PENNOYER: Let's just throw out the prohibited uses.

DUNN: It's not a bylaw anyway so why should we throw it out.

BRAGDON: Sheldon, to approve everything except for that would indicate that we've already been through the definitions.

There was no second to this motion. The motion did not carry.

Dunn moved to schedule a work meeting to discuss the proposed bylaw changes on January 12, 1994 at 7:00 p.m. **Knowles** seconded the motion, with the Board voting unanimously in favor.

Knowles moved to hold a public hearing on the application for a special permit for **Margaret Lynch, Trustee**, for an equestrian exhibit buildings on property located on **Choate Street**, which will be known as "**Miles River Stable Arena Complex**", on **February 2, 1994** at 8:00 p.m. **Bragdon** seconded the motion, with the Board voting unanimously in favor.

The **Building Inspector, Dick Carter**, met with the Board to update the Board regarding **Warren Smith's property at 11 Apple Street**. **Warren Smith** is working with the Board of Health.

Carter also requested an as-built for the **Mini-Storage, Western Avenue**, to make sure they were in compliance with the water shed district bylaw.

Carter advised the Board about **Shayna Realty Trust, 17 Lufkin Street**, about a variance that was granted for frontage. He has requested an opinion from Town Counsel because there is a question whether or not the variances has expired, and if it is recorded how could it possibly expire.

Peter Van Wyck, Turtleback Road, submitted a definitive plan for **Low Land Farms**. **Sheldon** reviewed the application procedure to make sure **Van Wyck** was submitting all necessary information. The Board found everything was submitted correctly. Since there was no preliminary plan submitted the Board has one hundred and thirty-five days as stated in Section 81-U, of the Massachusetts General Laws.

Jermain moved to hold a public hearing under Massachusetts General Laws, Chapter 41, Section 81, and the Rules and Regulations

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relative to Subdivision Control of Essex, Section 6, to consider a definitive subdivision plan of land known as Low Land Farms, off Apple Street, by applicant Peter Van Wyck, on February 2, 1994 at 8:45 p.m. Dunn seconded the motion, with the Board voting unanimously in favor.

Pennoyer explained to the Board members that a letter would be sent to the Board of Selectmen regarding the summons the Board received this week relating to Turtleback Road subdivision, and then forwarded to Town Counsel.

Pennoyer brought to the Board's attention a letter from Town Counsel in response to the Board's request for information regarding Turtleback Road subdivision's denial due to the time lapse. Pennoyer read this letter aloud. Pennoyer's understanding of the letter was to request the original mylar so the denial could be recorded. The Board will check with Sally Soucy, Town Clerk and Peter Van Wyck the applicant to secure the mylar. The Board agreed that in dealing with Town Counsel, especially with situations as this, it is very difficult to communicate by mail or phone. The Board agreed his presence is important. Jermain felt it would be in the best interest of the Town for Counsel to be present when dealing with Mr. Van Wyck. Knowles said that on occasion the Board has required the applicant pay for that. Jermain stated that there is a state law that allows for this and would not come out of the Selectmen's budget. Jermain said if this was done for other developers in the past, then why can't the Board ask that this be done when dealing with Mr. Van Wyck. She feels this is important because they are starting from square one on Low Land Farms, and trying to have a clean procedure and respond correctly. Jermain strongly urged the Board to pursue this through the Board of Selectmen.

It was decided that Jermain and Dunn would attend the Selectmen's meeting on Tuesday, January 18, 1994, only after Pennoyer wrote a letter to the Selectmen advising them that Jermain and Dunn would attend, in order for Town Counsel to explain fully necessary information to record the denial on Turtleback Road subdivision and also to clarify his recommendation for information to satisfy the summons issue to all Board members.

Pennoyer brought to the Board attention the motion made at the Board's December 15, 1993 meeting on Raymond Greene, 15 R Story Street, application for an addition. It was found that a tie is not a denial therefore, the Board should make another motion to break the tie. The Board decided to rediscuss the situation and make an entirely new motion regarding Mr. Greene's application. It was felt that both Joe Knowles and Joe Ginn would benefit from the discussion since they were absent from the last meeting.

The Board discussed Shayna Realty Trust, 15 Lufkin Street, regarding the variance for frontage. The Board reviewed the zoning bylaw regarding this issue. Pennoyer suggested writing a letter to Shayna Realty Trust stating that the Board was looking at their variance for frontage because it appears it has expired. The letter should also state that the Board is waiting for a ruling from Town Counsel. The Board agreed on this procedure.

The meetings minutes were read. Dunn moved to approve the meeting minutes of December 15, 1993 as corrected. Bragdon seconded the

motion, with the Board voting unanimously in favor.

Dunn moved to adjourn. Jermain seconded the motion, with the Board voting unanimously in favor.

The meeting was adjourned at 9:45 p.m.