

TOWN OF ESSEX PLANNING BOARD

AGENDA

DECEMBER 20, 2000

7:30 p.m.

7:30 p.m. **Building Inspector Report**

8:00 p.m. **6 Scots Way**

8:45 p.m. **77 Rear Eastern Avenue**
 Approval of Form A

9:00 p.m. **Other Business**

FY 2002 Budget

Turtleback Road Extension
(Graham letter dated 12/11/00)
(VanWyck letter dated 12/14/00)

7 Main Street/Sea Meadow
(see memo dated 12/12/00)

Sewer Project
Response regarding design drawings – Story St.
Is public hearing required? Respond to
Selectmen.
Vacant Lots

Approval of Minutes

Approval of Bills Payable

Mail

Site Plan Regulations

Miscellaneous

1. How to apply upland vs. wetland regulations when
faced with an application for structure within a wetland
buffer.

**TOWN OF ESSEX PLANNING BOARD
MINUTES
WEDNESDAY, DECEMBER 20, 2000
7:30 p.m.**

The meeting was held in the Teachers' Lounge at Essex Elementary and Middle School and was opened at 7:35 p.m. by the chairperson.

Attendees: Westley Burnham, Walter Rich, Scottie Robinson, Elisabeth Shields, Bill Sanborn (Building Inspector), Genie Dorfman (Secretary).

Absent: Gil Guerin, George Stavros, Joe Walker.

BUILDING INSPECTOR REPORT

6 Scots Way: Bob Griffin of Griffin Engineering, Beverly, returned and presented redesigned site plans for his client Mr. Lawlor. The plans indicate a reduction in the amount of driveway around proposed garage, which is in the same location as in previous plans. Future septic system plans were removed. Previously proposed pavement is now indicated as being grass. Also revised the type of storm water pretreatment. Because of the reduced pavement area there is a pre-cast chamber that will more effectively do job with shorter delivery time. This is a three-chamber compartment. On the plan is calculation of percent impervious. The lot is approximately 66,000 square feet, the area of the lot in the calculation refers to the area after the wetlands have been taken out of the lot area. They are just under 15%. Mr. Lawlor is anxious to order building and close on property. This would allow him to do that. He would like to return and request site-plan review for a plan similar to the one presented at the last meeting. A question was asked regarding the proposed drainage system. Is it adequate for the next phase? The Planning Board requests a document for special permit that states the system will not degrade groundwater.

Motion: Walter Rich moves to approve the application of ~~Phil Hansbury~~ *Mr Lawlor, fir property, owned by Phil Hansbury,* for 6 Scots Way, Map 8, lot 31F, to erect a 50' x 100' storage garage with no interior plumbing. Lot size is 1.51 acres. The Board finds the applicant meets all minimum setbacks for the Town of Essex, as required by Section 6-6.5 and Sections 6-15 and 6-13.

Note: The calculation impervious area as shown on plan is less than 15%. Before the Building Inspector issues the permit the applicant will obtain Board of Health and Conservation approval.

The motion was seconded by Scottie Robinson and unanimously approved.

36 Lakeshore Drive: At the last Planning Board meeting Mr. Russel Ulrey's request to enclose his existing deck was discussed. Walter Rich and Westley Burnham have both visited the site since then. Both agreed that the existing deck does not look like it was built before 1972 and that it probably had needed a Building Permit. The deck looks like a 4' x 6' landing area with 3-4 steps going to ground. The set of steps appears to be for access, not truly a deck. Approval would set new side-line for future construction and increase the non-conformity of the lot. It does not meet requirements as it's too close to the property line. The options the owner would have would be to seek a variance with the Board of Appeals, appeal the Planning Board's finding, or come in with a master plan of future renovations.

Motion: Walter Rich moves that enclosing the 6' x 8' deck at 36 Lakeshore will increase the non-conforming use and also finds that approval would substantially be

more detrimental to the neighborhood than the existing deck. The application, therefore, is not approved.

The motion was seconded by Scottie Robinson and unanimously approved.

Note: A letter from the Planning Board to the Building Inspector and applicant will be sent as soon as possible stating the above action.

11 Lufkin Point: A Building Permit for new house at the specified address has already been approved. Mr. Jerome Crepeau and Louis Lima currently request approval of a Building Permit for a 20' x 30' garage on the property. The plan meets all set back requirements. Board of Health and Conservation have signed-off.

Motion: Betsy Shields moves to approve the Building Permit application of Jerome Crepeau and Louis Lima of 11 Lufkin Point for a 3-car garage and shed to be built on cement piers, seeing that it meets all residential requirements. Board of Health and Conservation have signed-off.

The motion was seconded by Walter Rich and unanimously approved.

1 Liberty Road: Plans were presented by Mr. Paul Pare for a new house at 1 Liberty Rd. Lot size is 44,469 square feet. Overall dimensions of structure is 90' x 40'. Board of Health and Conservation have signed off. Wetlands is not an issue. The house is 3,600 sq. feet. The property is in the Watershed Protection District. 6,670 sq. feet is 15% of impervious.

Motion: Betsy Shields moves to approve the application for a Building Permit of Paul and Kristen Pare for the construction of a single family dwelling with garage at 1 Liberty Road, Map 8, part of lot 34. The dimensions of the home are 90' x 40'. Board of Health and Conservation have signed off. Plans presented are dated 9/6/99, revised 11/4/99.

The motion was seconded by Scottie Robinson and passed unanimously.

2 John Wise Blvd: The Building Inspector presented a request to expand the dwelling at 2 John Wise Blvd. It was the consensus of the Board that this interior renovation does not require Board approval.

229 Western Avenue: The Building Inspector reported that he had been contacted by Mr. Kippenberger, who stated that he had just received the letter from the Building Inspector dated September 6, 2000. Mr. Kippenberger believes he complies with all Town Home Occupancy Bylaws, but the Building Inspector will continue to monitor the situation.

36 Spring Street: The Building Inspector brought the complaint of Mr. Gerard Hayward to the attention of the Board. He previously reported that the owner of the property at 36 Spring Street is not in violation of any Essex Home Occupancy Bylaws. Mr. Hayward disagrees and believes that the truck currently used by his neighbor exceeds weight restriction of 17,000 lbs. The Building Inspector will return to the property and look at the registration to verify the weight. Board members questioned whether Essex Home Occupancy laws are too lax. Should a permit be put in place? Research must be done regarding "mixed use" classifications. The Building Inspector agreed to forward Gloucester regulations to Westley.

"In-law"/Two Family Use Issue: The Selectmen have not responded to our letter dated December 7, 2000, which clarified the Board's position on this issue. Briefly, the term "in-law apartment" does not appear in our bylaws. The Board considers such type of apartment to be a "dwelling unit", and any house that has two dwelling units (i.e., kitchen, bath and sleeping units)

constitutes a "two-family dwelling". Any addition of this type to a single family home requires a change of use from single-family to two-family.

This led to a further discussion regarding **59 Western Avenue** and the request of Carolyn Clark for a Building Permit. The Building Inspector needs to take action on this application as soon as possible. The original variance on this property is the one factor that is holding up approval. The variance was granted based on single-family use. At this point Carolyn Clark and others joined the meeting. It was explained that she needs to request a hearing with the Board of Appeals to ask for an adjustment to the variance. The Board believes that they have a solid argument as the standards for single-family and two-family are the same. All that is required is a rewrite. The request is reasonable. It was reiterated that the Building Inspector is the agency that will issue or deny the permit. The Planning Board is responsible for approving the siting or changes of use. The Board reviews applications for Building Permits, determines if zoning requirements are met, which either supports or does not support the Building Inspector's interpretation. The Planning Board feels that, at this time, this Building Permit should be denied until the issue is clarified. From a Zoning perspective this application cannot be approved. Members of the Board should meet with Selectmen next week to determine what questions should be asked of town counsel.

77 R EASTERN AVE.

Chris Casey, attorney for Mr. Wildes, requested approval of Form A. Plans were presented for signature, a \$100 check was already prepared. A lawsuit between Mr. Wildes and Mr. Noones has recently been resolved.

Motion: Scottie Robinson moves to approve Form A application of Patricia A. Nunes, Trustee of Nunes Realty Trust, to create parcel B, a 6,078 square foot non-buildable lot, as of plans submitted by Patricia A. Nunes, drawn by Bradford Eng. Co., dated 11/24/00 and duly stamped by James W. Bougioukas. Parcel B to be transferred to the Wildes.

The motion was seconded by Betsy Shields and unanimously approved.

FY 2002 BUDGET

A brief discussion took place regarding the Planning Board's budget for the upcoming year. It was agreed that a general 2% increase in payroll and in expenses is acceptable. A letter to the accountant will be forwarded as soon as possible.

TURTLEBACK ROAD EXTENSION

Graham's letter dated 12/1/00 and VanWyck's letter dated 12/14/00 were given to the Board. Graham's letter indicates that an estimated \$86,500 is required for completion of the project. The road is basically 95-98% complete. The deadlines are still in effect. VanWyck wants the Board to permit him to warranty the remaining work on the above project. It was the consensus of the board that a letter be sent to VanWyck, copied to Graham, stating that we agree with Graham's cost estimate and that after the money is received by the town, VanWyck can then begin to sell the lots in question.

SEWER PROJECT

Story Street, Scenic Way

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Act may need to be reviewed and a joint hearing convened with the Tree Warden if any trees greater than six inches in diameter will be removed during the construction. A letter to the Selectmen will be sent stating the Board's findings.

Vacant Lots

The Planning Board has been asked to research and identify every vacant lot in Essex, and determine whether it is buildable or not, and then to vote on each one. Board members have already drafted a list of vacant lots and that hours of further work, title searches, etc., would be involved. Perhaps this is an engineering consulting job. Should a letter be sent from Brendhan Zubricki, Town Administrator, to every property owner of a vacant lot to inform them of the Board's initial findings, and to give them an opportunity to agree or contest that opinion? Westley will inform Brendhan that the Board will continue to be involved with the review process, but that property owners should contact the Board of Health or Brendhan to contest or confirm the Board's findings.

APPROVAL OF BILLS PAYABLE

Board members signed miscellaneous bills payable and one payroll request.

APPROVAL OF PLANNING BOARD MEETING DATES

Motion: Betsy Shields moves to approve the Planning Board's meeting dates for the next six months. The motion is seconded by Scottie Robinson and unanimously approved.

Due to the lateness of the hour, other agenda items were tabled.

The Board adjourned the meeting at 10:30 p.m.

The next meeting is scheduled for Wednesday, January 3, 2001.

Presented by: Genie Dorfman
Genie Dorfman, Admin. Assistant

Attested to: Scottie Robinson
Scottie Robinson, Clerk

TOWN OF ESSEX PLANNING BOARD

AGENDA

DECEMBER 6, 2000

7:30 p.m.

7:30 p.m.

Building Inspector Report

8:30 p.m.

**36 Story Avenue/Bucklin
Approval of Covenant
Signatures**

8:45 p.m.

66 Choate Street

9:00 p.m.

Jerome French – Approval of Form A

9:15 p.m.

Other Business

Approval of Minutes

Approval of Bills Payable

Sewer

Vacant Lots

Response regarding design drawings – Story St.

Mail

Site Plan Regulations

Miscellaneous

1. How to apply upland vs. wetland regulations when faced with an application for structure within a wetland buffer.

TOWN OF ESSEX PLANNING BOARD
MINUTES
WEDNESDAY, DECEMBER 6, 2000
7:30 p.m.

The meeting was held in the Teachers' Lounge at Essex Elementary and Middle School and was opened at 7:40 p.m. by the chairperson.

Attendees: Westley Burnham, Gil Guerin, Walter Rich, Scottie Robinson, Elisabeth Shields, Joe Walker, Bill Sanborn (Building Inspector), Genie Dorfman (Secretary).

Absent: George Stavros.

BUILDING INSPECTOR REPORT

36 Lakeshore Drive: Russell Ulrey of 36 Lakeshore Drive wishes to enclose his existing deck. Dimensions are 10'8" long x 6' wide. The Building Inspector believes it to be a temporary structure, however, the consensus of the Board is that it cannot be viewed as temporary. The deck is one foot from the property line. Does it need a variance? If deck was built before 1972 it is not an illegal structure. It was agreed that Board members should visit the site before approval. The Board is hopeful that action can be taken at the next meeting.

8 Centennial Grove Drive: HRM Group LLC requests approval of Building Permit for a single family home on the property. Conservation, Board of Health and Wetlands have signed-off. The property has a variance for frontage on Centennial Grove. Plans were presented. A portion of the lot is adjacent to preexisting public way. This was an ANR. Lot size is 58,880 sq. feet. Sewer connection has been reserved for the parcel. Setbacks, frontage are acceptable. Conservation has requested as minimal paving as possible.

Motion: Betsy Shields moves to approve the building permit application for HRM Group LLC for a single family dwelling located on 8 Centennial Grove Drive, Map 31, Lot 39. Seeing also that the plan meets the minimum standards of the zoning bylaws. Variance will rectify the problem with the frontage.
The motion was seconded by Joe Walker and passed unanimously.

6 Scots Way: Phil Hansbury attended the meeting along with his engineer, Bob Griffin of Griffin Engineering, Beverly. Proposed drainage plans were presented. Based on previous tests conducted in '91, Mr. Griffin suspects that septic requirements will be met when necessary. All work is proposed beyond the buffer zone. The proposed building is 50' x 100'. The plans show a paved entry-way with catch basin. Gravel behind building to be kept. Catch basin to flow to detention area with berm. Proposed use of the building is for parking vehicles only. No plans, as yet, for office, which would require septic. That may happen in the future. Floor drains plumbed into tight tank. Parking area is approximately 6000 sq. feet. Building area is approximately 5000 sq. feet. Total size of lot is 65,838 sq. feet. Plans proposed total 23% of lot. Bylaw 6-13 requires a special permit for anything that exceeds 15%. Can Mr. Hansbury reduce parking? What is the timeframe for special permit process? Anticipated that hearing would be held mid-January. Special permit would be available to be voted on by February. Property is within ½ mile of town waters. DPW will be interested. If Mr. Hansbury can reduce the plans to 15%, the procedure is straight-forward. Is it possible to start small, then come back later and apply for Special Permit? All issues discussed at Planning Board meeting on November 1, 2000 have been addressed with diligence. The Planning Board does not foresee any problems with the plans if they are redesigned

and resubmitted at the next meeting and all other zoning requirements are met. It was recommended that Mr. Hansbury appear at our next meeting on December 20, 2000 at approximately 8:00 p.m., with redesigned plans.

36 Spring Street: The Building Inspector brought to the attention of the Board the complaint of Mr. Gerard Hayward, of 40 Spring Street, regarding the above address. He has visited the site and does not see where the owners are violating home occupancy laws. The neighbors are separated by approximately 50-60 feet. The business involves renting equipment to movie sets, the truck is gone 1-2 days at a time. It was suggested that the Building Inspector correspond with the complainant to explain his findings.

229 Western Avenue: The Building Inspector suggests that he continue to monitor the home business at the above address.

"In-law"/Two Family Use Issue: The Building Inspector brought to the attention of the Board the letter dated November 20, 2000, from the Selectmen regarding "in-law" apartment controversy. Essex does have precedents of allowing "in-law" apartments in the past. It is the current opinion of the Building Inspector and the Board that a dwelling is a self-contained structure. A single-family dwelling has one kitchen. If a second kitchen is built that would change the use from a single-family to a two-family. The Building Inspector is the only person that can change the use classification. An "in-law apartment", would therefore be a two-family. Zoning definitions include single-family, two-family or multi-family dwellings. Is there a difference for Assessment purposes? Town departments should be unified regarding this issue. Does town recognize legal concept of "in-law apartment"? The Board will forward our opinion to the Selectmen in a memo within the next few days.

59 Western Avenue: The request for a Building Permit regarding this property was re-submitted. The request does not make the property any more non-conforming in use. The variance for the frontage resulted in a lawful non-conforming structure. The Building Inspector is inclined to approve the application at this time. The opinion of the Planning Board, however, is that the Building Inspector should wait. By the next meeting we should know more. The Selectmen and this Board appear to be heading away from "in-law apartment" classifications. The entire issue must be thought through before any policy decisions are made.

41 FOREST AVENUE

Mr. Gerome French requested approval of Form A. Plans were presented for the creation of a non-buildable lot #3 that is contiguous to an abutter.

Motion: A motion was made by Gil Guerin to approve the application for Form A of Gerome and Abbie French of 41 Forest Ave. The deed of the property is registered in Essex District Registry Book Number 12853, Page Number 0479. Application is for the creation of lot #3 as per the plan dated November 27, 2000.

Note: The lot will be non-buildable and combined with the abutting property. The motion was seconded by Betsy Shields and unanimously approved.

66 CHOATE STREET

Ms. Ann Coan is the potential buyer of the above referenced property. Is interested in running an equestrian business. The Board is not aware of any restrictions on the property. The Site Plan Review will be enforceable by the beginning of the year which would require buyer to go through hearing process. It was pointed out that Essex does not have district zoning. We regulate

specific use of property using our guidelines. Due to the size of the property (7 acres) mixed use is not an issue. Residential and Business requirements would need to be met. The Board does not foresee any issues except hearing process under Site Plan Review. It was suggested that the owner find out what the property was previously used for. The existence of an apartment on the property was mentioned. It was suggested that the potential buyer speak to the Building Inspector and Board of Health to document the apartment. If you cannot document apartment's construction before 1972, she should prompt the present owner to clear up issue. If an existing apartment exists alongside single-family, you have a two-family. If another dwelling unit exists then Special Permit process is required as well as Site Plan Review. The criteria that needs to be met for a three-family (or multi-family) is more rigorous. The Board does not anticipate any major issues, but there will be a Site Plan Review process that encourages the neighborhood's input.

36 STORY AVENUE

The signed covenant and \$1,000 check must be submitted before the Board signs the plans dated May 15, 2000, revised August 22, 2000. The secretary was asked to call and arrange to have them submitted.

APPROVAL OF BILLS PAYABLE

Board members signed miscellaneous bills payable and one payroll request.

Due to the lateness of the hour, other agenda items were tabled.

The Board adjourned the meeting at 10:30 p.m.

The next meeting is scheduled for Wednesday, December 20, 2000.

Presented by: Genie Dorfman
Genie Dorfman, Admin. Assistant

Attested to: Scottie Robinson
Scottie Robinson, Clerk

TOWN OF ESSEX PLANNING BOARD

AGENDA

NOVEMBER 15, 2000

7:30 p.m.

7: 30 p.m.

Executive Session

VanWyck – Lowland Farms

8:00 p.m.

Building Inspector Report

9:00 p.m.

Scott Boches

Evans Way – Requests return of Bond money.
Ice House Lane subdivision.

9:30 p.m.

Other Business

Letter from Gerard Hayward re: 36 Spring Street.

Sewer

Vacant Lots

Response regarding design drawings – Story St.

Approval of Minutes

Approval of Bills Payable

MAPC Representative

Mail

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Sevier Project

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Presented by: Genie Dorfman
Genie Dorfman, Admin. Assistant

Attested to: Scottie Robinson
Scottie Robinson, Clerk

14 December, 2000

Turtleback Road
Essex, Mass. 01929

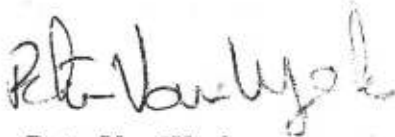
Essex Planning Board
Town Hall
Essex, Mass. 01929

Dear Board Members:

I would like to be able to sell lots from the Turtleback Road subdivision and knowing that a performance bond will be required before lots can be released, I asked Larry Graham to come up with a figure as to what the dollar amount should be relative to the bond. Mr. Graham has written to the board directly, and I am enclosing a copy of his letter.

I would like the board to write me a letter stating that upon my posting a bond, the planning board will allow lots to be released. From a practical point of view, I will not post the bond until I am in need of a lot release which I expect this spring.

Sincerely,



Peter Van Wyck

received
12/20/00



GRAHAM ASSOCIATES, INC.

formerly associated with C.T. MALE ASSOCIATES, P.C. OF IPSWICH, MA

TWO CENTRAL STREET
IPSWICH, MA 01938
(978) 356-2756
FAX (978) 356-4880

ENGINEERS, SURVEYORS, PLANNERS
PROFESSIONAL SERVICES SINCE 1984

December 11, 2000

Town of Essex
Planning Board
Town Hall
Essex, MA 01929

Attn: Wes Burnham
Chairman

Re: *Turtleback Road Extension*
H.L. Graham Project No. 89-07658-4

Dear Board:

I have prepared this letter report at the request of Peter VanWyck. Mr. VanWyck called me and said he planned to request that the Board permit him to warranty the remaining work at the above referenced project such that he could secure lot(s) release(s). He asked that I provide he and the Board a cost estimate of the remaining work and he provided me with a copy of his contract with The Fraser Company, his general contractor.

Accordingly, I have reviewed said contract, my most recent correspondence to the Board (November 30, 2000) and the status of the site and remaining work and offer the Board the following cost estimate for any surety it might consider:

<u>Item No.</u>	<u>Description</u>	<u>Estimated Cost</u>
1	Complete, Clean, Reshape Rip-Rap Swales	\$ 2,500
2	Loam & Seed Shoulders	10,000
3	Loam & Hydroseed Side Slopes	9,000
4	Bit. Conc. Berm, 0+50 to 3+50 L	1,500

received
12/13/00

5	Guardrail	12,500
6	Water Quality Inlet, Clean, F&I Three (3) Risers, Frames and Covers	4,000
7	Complete Access Drive to Pond 6	4,000
8	Complete, Loam and Seed and Clean Ponds 4 & 5	8,000
9	1" Bit. Conc. Finish Course	12,500
10	Engineering (As-Built Plans, Road Bounds, Other)	<u>8,000</u>
	Sub-Total:	\$72,000
11	Contingencies, Inflation, Other (20%±)	<u>14,500</u>
	TOTAL:	\$86,500

If you have any questions in regard to this letter report or estimate, please contact me.

Very truly yours,

H.L. GRAHAM ASSOCIATES, INC.



H.L. Graham, P.E.
President
Technical Review Agent
Essex Planning Board

HLG/gb

cc: Kopleman and Paige, P.C., Attn: George X. Pucci
Peter VanWyck
Thomas E. Neve Associates, Inc.
Mark B. Johnson
The Fraser Company



ESSEX BOARD OF SELECTMEN

TOWN HALL • MARTIN STREET • ESSEX, MASSACHUSETTS 01929-1219

Telephone (978) 768-6531

MEMORANDUM

TO: William Sanborn, Building Inspector

FROM: ^{BZ} Brendhan Zubricki, Town Administrator

DATE: December 12, 2000

SUBJECT: Complaint Regarding Non-conforming Business Use of Land

A resident (Mr. Edwin Howard) has approached me to complain that the business known as "Sea Meadow" at 7 Main Street constitutes a non-conforming business use of that parcel. The complainant claims that Sea Meadow was formerly operated as a home occupation and that the new owners of the property now operate the shop as a true business - not a home occupation. Further, the parcel supporting this alleged new use, in the opinion of the complainant, does not conform to the minimum standards for business use of land in the Town By-laws. Please be so kind as to investigate this matter and inform me of your official opinion. I will be happy to pass on your assessment to the complainant and he perhaps could follow up my contact by visiting you during your normal office hours. Thank you for your attention to this matter.

cc: Planning Board
Zoning Board of Appeals
Mr. Edwin Howard
current owner of 7 Main Street
file



ESSEX BOARD OF SELECTMEN

TOWN HALL • MARTIN STREET • ESSEX, MASSACHUSETTS 01929-1219

Telephone (978) 768-6531

November 2, 2000

MEMORANDUM

From: Board of Selectmen
To: Planning Board
Subject: Sewer Project on Story Street, Scenic Way

Attached are the applicable design drawings for the sewer lines on Story Street.

The Board of Selectmen request from the Planning Board a determination as to the need for a public hearing and permit under the provisions of Chapter 40 Section 15C of the Massachusetts General Laws.

As can be seen from the plans, the collections pipes will be installed in the public ways. There is no plans to remove trees or stone walls during the installation.

The installation of the lateral lines to each of the buildings to be served by the sewer, may require the disturbance of a stone wall. The contract documents call for the contractor to replace and disturbance to a stone wall. In the event that a tree is damaged during the construction, the contractor will replace the damaged tree.

It does not appear that a public hearing and permit is required.

If you have any questions please call David Folsom at 768-6921. Your response is requested by December 1, 2000 so that we may make necessary contract amendments for submittal to the DEP by the end of the year.

Please return the attached plans with your reponse.

received
11/2/00

town wherein such land lies, nor unless such conveyance is made within three months after the expiration of such six months.

Added by St.1957, c. 552. Amended by St.1969, c. 555, § 1; St.1975, c. 706, § 89; St.1990, c. 177, § 98.

Historical and Statutory Notes

St.1957, c. 552, an emergency act, was approved July 19, 1957.

St.1969, c. 555, § 1, approved July 24, 1969, added the second paragraph.

Section 2 of St.1969, c. 555, provided:

"The provisions of section fifteen of chapter forty of the General Laws shall not be deemed to apply or to have applied to sales, exchanges, leases, permits, licenses or agreements made or granted in accordance with section fifteen B of

said chapter forty as in effect immediately prior to the effective date of this act."

St.1975, c. 706, § 89, an emergency act, approved Nov. 25, 1975, and by § 312 made effective as of July 1, 1975, substituted "environmental quality engineering" for "public health" in the first paragraph.

St.1990, c. 177, § 98, an emergency act, approved Aug. 7, 1990, in the first paragraph, substituted "protection" for "quality engineering".

American Law Reports

Power of municipal corporation to exchange its real property. 60 ALR2d 220.

Power of eminent domain as between state and subdivision or agency thereof, or as between different subdivisions or agencies themselves. 35 ALR3d 1293.

Power of municipal corporation to lease or sublet property owned or leased by it. 47 ALR3d 19.

Liability of governmental entity for issuance of permit for construction which caused or accelerated flooding. 62 ALR3d 514.

Library References

Comments.

Public water supply, see M.P.S. vol. 18A, Randall and Franklin, § 999.

Texts and Treatises

56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 549 et seq.

SCENIC ROADS

Caption editorially supplied

§ 15C. Scenic road designations; improvements; fines

Upon recommendation or request of the planning board, conservation commission or historical commission of any city or town, such city or town may designate any road in said city or town, other than a numbered route or state highway as a scenic road; provided, however, that a numbered route may be designated by a city or town as a scenic road if its entire length is contained within the boundaries of said city or town, and no part of said route is owned or maintained by the commonwealth.

After a road has been designated as a scenic road any repair, maintenance, reconstruction, or paving work done with respect thereto shall not involve or include the cutting or removal of trees, or the tearing down or destruction of stone walls, or portions thereof, except with the prior written consent of the planning board, or if there is no planning board, the selectmen of a town, or the city council of a city, after a public hearing duly advertised twice in a

newspaper of general circulation in the area, as to time, date, place and purpose, the last publication to occur at least seven days prior to such hearing; provided, however, that when a public hearing must be held under the provisions of this section and under section three of chapter eighty-seven prior to the cutting or removal of a tree, such hearings shall be consolidated into a single public hearing before the tree warden and the planning board, or if there is no planning board, the selectmen of a town, or the city council of a city, and notice of such consolidated public hearing shall be given by the tree warden or his deputy as provided in said section three of chapter eighty-seven. Any city or town making said scenic road designation may make an ordinance or by-law establishing that a violation of this paragraph shall be punished by a fine not to exceed three hundred dollars.

Designation of a road as a scenic road shall not affect the eligibility of a city or town to receive construction or reconstruction aid for such road pursuant to the provisions of chapter ninety.

Added by St.1973, c. 67. Amended by St.1979, c. 552, § 1; St.1985, c. 384; St.1989, c. 360.

Historical and Statutory Notes

St.1973, c. 67, was approved March 6, 1973.

St.1979, c. 552, § 1, approved Aug. 20, 1979, added the proviso at the end of the second paragraph.

St.1985, c. 384, approved Oct. 15, 1985, in the first paragraph deleted commas preceding

"or historical", and following "highway", and added the proviso.

St.1989, c. 360, approved Sept. 18, 1989, in the second paragraph, added the second sentence.

Law Review and Journal Commentaries

Burger court and new federalism: Reflections on roles of local government. M. David Gelfand (1980) 21 B.C.L.Rev. 763.

Library References

Highways ⇨ 18.
C.J.S. Highways §§ 1, 2.

Comments.

Land use regulation, scenic roads, see M.P.S. vol. 28, Eno and Hovey, § 25.37.
Scenic roads and shade trees, see M.P.S. vol. 18A, Randall and Franklin, § 962.

Subdivision controls, miscellaneous powers and duties of planning board, see M.P.S. vol. 18A, Randall and Franklin, § 715.

Texts and Treatises

Mendler, Massachusetts Conveyancers' Handbook with Forms, §§ 13:1-13:9, Environmental Controls.

STREET SPRINKLING

§ 16. Authorization

A town may sprinkle or spread upon its public ways, or parts thereof, any liquid or material suitable for laying or preventing dust and preserving the surface of such ways or for sanitary purposes, may appropriate money therefor, and determine that with respect to the whole or any part of such ways the whole or any part of such expense shall be assessed upon the estates abutting thereon.

LEONARD KOPELMAN
DONALD G. FAIGE
ELIZABETH A. LANE
JOYCE FRANK
JOHN W. GIORGIO
BARBARA J. SAINT ANDRE
JOEL B. BARD
EVERETT J. MARDER
JOSEPH L. TEHAN, JR.
ANNE-MARIE M. HYLAND
THERESA M. DOWDY
DEBORAH A. ELIASON
RICHARD BOWEN
DAVID J. DONESKI
JUDITH C. CUTLER

EDWARD M. REILLY
DIRECTOR WESTERN OFFICE

DAVID C. JENKINS
WILLIAM HEW'G III
JEANNE S. MCKNIGHT

KOPELMAN AND PAIGE, P. C.

ATTORNEYS AT LAW

31 ST. JAMES AVENUE

BOSTON, MASSACHUSETTS 02116-4102

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FAX (617) 654-1735

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NORTHAMPTON OFFICE
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KATHLEEN M. O'DONNELL
SANDRA M. CHARTON
ILANA M. QUIRK
PATRICIA A. CANTOR
THOMAS P. LANE, JR.
BRIAN W. RILEY
MARK R. REICH
MARY L. GIORGIO
KATHLEEN E. CONNOLLY
CHRISTOPHER J. GROLL
DARREN R. KLEIN
THOMAS W. MCENANEY
JONATHAN M. SILVERSTEIN
KATHARINE I. GOREE
GEORGE X. PUCCI
LAUREN F. GOLDBERG
JASON R. TALERMAN
GREGG J. CORBO
AMANDA ZURETTI
DANIEL C. HILL
VICKI S. MARSH
BRIAN E. GLENNON, II
JONATHAN D. EICHMAN

December 6, 2000

BY FACSIMILE (978) 282-4700

Charles H. Clark, Esq.
122 Main Street
Gloucester, MA 01930

Re: Peter Van Wyck v. Francis Dunn et al.
(Essex Planning Board/Low Land Farm)
Land Court Misc. No. 215261

Dear Mr. Clark:

As set forth in my November 20, 2000 and November 27, 2000 correspondence, the Essex Planning Board has authorized me to execute the revised Agreement for Judgment previously forwarded to you and file it with the Land Court to terminate the above-referenced litigation.

As you know, the Agreement has been revised to indicate that the construction of the subdivision roadway and utilities for the Low Land Farm Subdivision shall be completed within two years from the date of the filing of the Agreement for Judgment with the Land Court. In addition, as we discussed, I have added a new paragraph, numbered paragraph 5, that indicates that all parties agree that there shall be no award of damages, costs or attorneys' fees and that all parties waive any and all rights of appeal.

I understand that you are waiting to hear from Mr. Van Wyck regarding his response to the Agreement. Please let me know if there is a problem. If I am authorized to execute the Agreement for you, then please sign the Agreement and facsimile the

received
12/12/00

KOPELMAN AND PAIGE, P.C.

Charles H. Clark, Esq.
December 6, 2000
Page 2

signature page to me. I then will execute the Agreement, file it with the Land Court and forward copies to you of the fully executed Agreement and the cover letter to the Court.

Thank you for your cooperation in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Ilana M. Quirk', with a long horizontal line extending to the right.

Ilana M. Quirk

IMQ/lem

cc: Board of Selectmen
Planning Board
114988/essex/0024



ESSEX PLANNING BOARD

Town Hall 30 Martin Street Essex, Massachusetts 01929 - 1219

MEMORANDUM

Date: December 7, 2000

To: Board of Selectmen

From: Elizabeth Shields, Planning Board

Pursuant to your memo, dated November 20, 2000, we would like to clarify our position on the term "in-law" apartment. There is no such term currently used in our by-laws. Historically and to date the Planning Board considers such type of apartment to be a "Dwelling Unit", and any house that has two dwelling units (i.e., kitchen, bath and sleeping units) constitutes a "two family dwelling" under the Essex by-laws. Simply said, an "in-law apartment" is a separate "Dwelling Unit" and any addition of this to a single family house requires a change of use from the single family house to a two-family house.

Please let us know if there is disagreement about this term. We would be happy to further discuss this issue with you if necessary. Until further changes, we will continue to apply the by-laws as interpreted.

cc: Building Inspector



ESSEX BOARD OF SELECTMEN

TOWN HALL • MARTIN STREET • ESSEX, MASSACHUSETTS 01929-1219

Telephone (978) 768-6531

MEMORANDUM

TO: Planning Board

FROM: Board of Selectmen *DAF*

DATE: November 20, 2000

SUBJECT: Construction of In-law Apartments as Related to Change in Use

It has come to our attention that some controversy exists regarding whether the construction of an "in-law apartment" (i.e. a self-sufficient living space intended as dwelling quarters for a subset of the members of a single family which is connected to the principal dwelling quarters of the remainder of members of that family) causes the use of the structure to change from a single-family use to a two-family use. As you may know, this Board has recently developed a set of sewer policies – one of which has deemed the construction of an in-law apartment not to constitute a change in use (referencing by-law sections 6-3.11, 6-3.13, and 6-3.14). Please consider this matter as soon as possible and develop a written opinion for discussion.

Please contact Town Administrator Brendhan Zubricki at 768-6531 if you should have any questions or comments concerning this matter. Thank you.

cc: Building Inspector
Zoning Board of Appeals
file



ESSEX BOARD OF SELECTMEN

TOWN HALL • MARTIN STREET • ESSEX, MASSACHUSETTS 01929-1219

Telephone (978) 768-6531

SEWER USE

IMPLEMENTATION POLICIES

The Sewer Service Area by-law defines the sewer service area for the Town of Essex Sewer Collection System and establishes criteria for lots to connect to the system. In order to interpret and establish uniform guidelines, the Board of Selectmen will from time to time issue policies concerning connections to the Central Sewer Collection System.

Policy # 1

The Sewer Service Area by-law establishes in Section 7-7.2 that existing vacant lots in the sewer service area will be entitled to one sewer connection with a design flow of one (1) sewer unit. Even if a vacant lot has an installed on-site septic system with a capacity greater than one (1) sewer unit, any structure built on the lot will be restricted to a use that is within the one (1) sewer unit design capacity. A larger capacity use structure proposed for the lot will not be allowed to connect to the sewer system and must be provided with an approved Title V, on-site system.

Policy # 2

A lot, with an approved on-site system with a design capacity greater than needed by the existing structure, may make modifications to the structure which increase the design capacity requirements of the structure but remain within the design capacity of the septic system. There will be no increase of needed sewer capacity within the parameters of the Sewer Service Area by-law.

Policy # 3

A lot with a structure or multiple structures, may remove a structure and rebuild a structure in another location on the lot, provided that the sewage disposal capacity requirement of the new structure is the same or less than that of the existing structure. There will be no increase of needed sewer capacity within the parameters of the Sewer Service Area by-law.

Policy # 4

The addition of an in-law apartment to an existing dwelling, which through modification of existing bedrooms, results in no increase in sewage disposal capacity requirement is allowed within the parameters of the Sewer Service Area by-law and the definition in the Land Use

by-laws of a single family dwelling. Change in use of the dwelling to a two family dwelling is prohibited under the moratorium in the Sewed Service Area by-law. Upon expiration of the moratorium an application for change in use may be submitted to the Board of Public Works.

Planning Board

41:109. Resignation; notice; residence requirements.

Section 109. No resignation of a town or district officer shall be deemed effective unless and until such resignation is filed with the town or district clerk or such later time certain as may be specified in such resignation. Upon receipt of a resignation the clerk shall notify the remaining members, if the resignation is received from a board of two or more members, and he shall further notify the executive officers of the town or district and such notification shall include the effective date of the resignation. Unless otherwise provided by general or special law, ordinance or by-law, a person need not, in order to accept appointment to a public office in a town or district, be a resident of such town or district; provided, however, that if an appointed town or district officer is required to become a resident within a period of time specified at the time of his appointment by the board or officer making the appointment but fails to do so within the time specified, or if an elected or appointed town or district officer removes from the town or district in which he holds his office, he shall be deemed to have vacated his office.

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41:11. Appointment to fill vacancy in town office.

Section 11. As used in this section, the term "vacancy" includes a failure to elect. If a vacancy occurs in any town office, other than the office of selectman, town clerk, treasurer, collector of taxes or auditor, the selectmen shall in writing appoint a person to fill such vacancy. If there is a vacancy in a board consisting of two or more members, except a board whose members have been elected by proportional representation under chapter fifty-four A, the remaining members shall give written notice thereof, within one month of said vacancy, to the selectmen, who, with the remaining member or members of such board, shall, after one week's notice, fill such vacancy by roll call vote. The selectmen shall fill such vacancy if such board fails to give said notice within the time herein specified. A majority of the votes of the officers entitled to vote shall be necessary to such election. The person so appointed or elected shall be a registered voter of the town and shall perform the duties of the office until the next annual meeting or until another is qualified.

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12/20/09

TOWN OF ESSEX PLANNING BOARD

AGENDA

DECEMBER 6, 2000

7:30 p.m.

- 7:30 p.m. **Building Inspector Report**
- 8:30 p.m. **36 Story Avenue/Bucklin**
 Approval of Covenant
 Signatures
- 8:45 p.m. **66 Choate Street**
- 9:00 p.m. **Jerome French – Approval of Form A**
- 9:15 p.m. **Other Business**
- Approval of Minutes
- Approval of Bills Payable
- Sewer
 Vacant Lots
 Response regarding design drawings – Story St.
- Mail
- Site Plan Regulations
- Miscellaneous
1. How to apply upland vs. wetland regulations when faced
 with an application for structure within a wetland buffer.

**TOWN OF ESSEX PLANNING BOARD
MINUTES
WEDNESDAY, DECEMBER 6, 2000
7:30 p.m.**

The meeting was held in the Teachers' Lounge at Essex Elementary and Middle School and was opened at 7:40 p.m. by the chairperson.

Attendees: Westley Burnham, Gil Guerin, Walter Rich, Scottie Robinson, Elisabeth Shields, Joe Walker, Bill Sanborn (Building Inspector), Genie Dorfman (Secretary).
Absent: George Stavros.

BUILDING INSPECTOR REPORT

36 Lakeshore Drive: Russell Ulrey of 36 Lakeshore Drive wishes to enclose his existing deck. Dimensions are 10'8" long x 6' wide. The Building Inspector believes it to be a temporary structure, however, the consensus of the Board is that it cannot be viewed as temporary. The deck is one foot from the property line. Does it need a variance? If deck was built before 1972 it is not an illegal structure. It was agreed that Board members should visit the site before approval. The Board is hopeful that action can be taken at the next meeting.

8 Centennial Grove Drive: HRM Group LLC requests approval of Building Permit for a single family home on the property. Conservation, Board of Health and Wetlands have signed-off. The property has a variance for frontage on Centennial Grove. Plans were presented. A portion of the lot is adjacent to preexisting public way. This was an ANR. Lot size is 58,880 sq. feet. Sewer connection has been reserved for the parcel. Setbacks, frontage are acceptable. Conservation has requested as minimal paving as possible.

Motion: Betsy Shields moves to approve the building permit application for HRM Group LLC for a single family dwelling located on 8 Centennial Grove Drive, Map 31, Lot 39. Seeing also that the plan meets the minimum standards of the zoning bylaws. Variance will rectify the problem with the frontage.

The motion was seconded by Joe Walker and passed unanimously.

6 Scots Way: Phil Hansbury attended the meeting along with his engineer, Bob Griffin of Griffin Engineering, Beverly. Proposed drainage plans were presented. Based on previous tests conducted in '91, Mr. Griffin suspects that septic requirements will be met when necessary. All work is proposed beyond the buffer zone. The proposed building is 50' x 100'. The plans show a paved entry-way with catch basin. Gravel behind building to be kept. Catch basin to flow to detention area with berm. Proposed use of the building is for parking vehicles only. No plans, as yet, for office, which would require septic. That may happen in the future. Floor drains plumbed into tight tank. Parking area is approximately 6000 sq. feet. Building area is approximately 5000 sq. feet. Total size of lot is 65,838 sq. feet. Plans proposed total 23% of lot. Bylaw 6-13 requires a special permit for anything that exceeds 15%. Can Mr. Hansbury reduce parking? What is the timeframe for special permit process? Anticipated that hearing would be held mid-January. Special permit would be available to be voted on by February. Property is within ½ mile of town waters. DPW will be interested. If Mr. Hansbury can reduce the plans to 15%, the procedure is straight-forward. Is it possible to start small, then come back later and apply for Special Permit? All issues discussed at Planning Board meeting on November 1, 2000 have been addressed with diligence. The Planning Board does not foresee any problems with the plans if they are redesigned

and resubmitted at the next meeting and all other zoning requirements are met. It was recommended that Mr. Hansbury appear at our next meeting on December 20, 2000 at approximately 8:00 p.m., with redesigned plans.

36 Spring Street: The Building Inspector brought to the attention of the Board the complaint of Mr. Gerard Hayward, of 40 Spring Street, regarding the above address. He has visited the site and does not see where the owners are violating home occupancy laws. The neighbors are separated by approximately 50-60 feet. The business involves renting equipment to movie sets, the truck is gone 1-2 days at a time. It was suggested that the Building Inspector correspond with the complainant to explain his findings.

229 Western Avenue: The Building Inspector suggests that he continue to monitor the home business at the above address.

"In-law"/Two Family Use Issue: The Building Inspector brought to the attention of the Board the letter dated November 20, 2000, from the Selectmen regarding "in-law" apartment controversy. Essex does have precedents of allowing "in-law" apartments in the past. It is the current opinion of the Building Inspector and the Board that a dwelling is a self-contained structure. A single-family dwelling has one kitchen. If a second kitchen is built that would change the use from a single-family to a two-family. The Building Inspector is the only person that can change the use classification. An "in-law apartment", would therefore be a two-family. Zoning definitions include single-family, two-family or multi-family dwellings. Is there a difference for Assessment purposes? Town departments should be unified regarding this issue. Does town recognize legal concept of "in-law apartment"? The Board will forward our opinion to the Selectmen in a memo within the next few days.

59 Western Avenue: The request for a Building Permit regarding this property was re-submitted. The request does not make the property any more non-conforming in use. The variance for the frontage resulted in a lawful non-conforming structure. The Building Inspector is inclined to approve the application at this time. The opinion of the Planning Board, however, is that the Building Inspector should wait. By the next meeting we should know more. The Selectmen and this Board appear to be heading away from "in-law apartment" classifications. The entire issue must be thought through before any policy decisions are made.

41 FOREST AVENUE

Mr. Gerome French requested approval of Form A. Plans were presented for the creation of a non-buildable lot #3 that is contiguous to an abutter.

Motion: A motion was made by Gil Guerin to approve the application for Form A of Gerome and Abbie French of 41 Forest Ave. The deed of the property is registered in Essex District Registry Book Number 12853, Page Number 0479. Application is for the creation of lot #3 as per the plan dated November 27, 2000.

Note: The lot will be non-buildable and combined with the abutting property. The motion was seconded by Betsy Shields and unanimously approved.

66 CHOATE STREET

Ms. Ann Coan is the potential buyer of the above referenced property. Is interested in running an equestrian business. The Board is not aware of any restrictions on the property. The Site Plan Review will be enforceable by the beginning of the year which would require buyer to go through hearing process. It was pointed out that Essex does not have district zoning. We regulate

specific use of property using our guidelines. Due to the size of the property (7 acres) mixed use is not an issue. Residential and Business requirements would need to be met. The Board does not foresee any issues except hearing process under Site Plan Review. It was suggested that the owner find out what the property was previously used for. The existence of an apartment on the property was mentioned. It was suggested that the potential buyer speak to the Building Inspector and Board of Health to document the apartment. If you cannot document apartment's construction before 1972, she should prompt the present owner to clear up issue. If an existing apartment exists alongside single-family, you have a two-family. If another dwelling unit exists then Special Permit process is required as well as Site Plan Review. The criteria that needs to be met for a three-family (or multi-family) is more rigorous. The Board does not anticipate any major issues, but there will be a Site Plan Review process that encourages the neighborhood's input.

36 STORY AVENUE

The signed covenant and \$1,000 check must be submitted before the Board signs the plans dated May 15, 2000, revised August 22, 2000. The secretary was asked to call and arrange to have them submitted.

APPROVAL OF BILLS PAYABLE

Board members signed miscellaneous bills payable and one payroll request.

Due to the lateness of the hour, other agenda items were tabled.

The Board adjourned the meeting at 10:30 p.m.

The next meeting is scheduled for Wednesday, December 20, 2000.

Presented by: Genie Dorfman
Genie Dorfman, Admin. Assistant

Attested to: Scottie Robinson
Scottie Robinson, Clerk

TOWN OF ESSEX PLANNING BOARD

AGENDA

NOVEMBER 15, 2000

7:30 p.m.

7:30 p.m.

Executive Session
VanWyck – Lowland Farms

8:00 p.m.

Building Inspector Report

9:00 p.m.

Scott Boches
Evans Way – Requests return of Bond money.
Ice House Lane subdivision.

9:30 p.m.

Other Business
Letter from Gerard Hayward re: 36 Spring Street.

Sewer
Vacant Lots
Response regarding design drawings – Story St.

Approval of Minutes

Approval of Bills Payable

MAPC Representative

Mail

Site Plan Regulations

Miscellaneous

1. How to apply upland vs. wetland regulations when faced with an application for structure within a wetland buffer.

**TOWN OF ESSEX PLANNING BOARD
EXECUTIVE SESSION MINUTES
WEDNESDAY, NOVEMBER 15, 2000
7:30 P.M.**

By unanimous roll call vote the Board moved into Executive Session, to discuss strategy regarding pending litigation concerning Peter VanWyck, noting that they would be returning to Open Session.

The meeting was held at Essex Elementary and Middle School and was opened at 7:45 p.m. by the Co-chairperson.

Attendees: Gil Guerin, Walter Rich, Scottie Robinson, Elisabeth Shields, George Stavros Bill Sanborn (Building Inspector), Genie Dorfman (Secretary).

Absent: Westley Burnham, Joe Walker.

A phone call was made to Ilana Quirk of Kopelman and Paige, P.C., and those Planning Board members identified themselves.

Ilana Quirk discussed, at length, the history of Lowland Farms. The only current member of the Board who was on the Board in January, 1995 is Westley Burnham who was not in attendance. The litigation commenced before the current members became members of the Board. The decision of December, 1995 approved the plan dated September 1, 1990 as revised through September 30, 1994 drawn by Survey Assoc. Walter stated that the plan we have was revised 6/1/94.

ILANA QUIRK: the final plan that was referenced in the decision, the approval indicates that the final revision date is September 30, 1994.

SCOTTIE ROBINSON: We do have this plan.

ILANA QUIRK: That plan was approved back in January, 1995 by the Board, with a set of conditions. There were five conditions, two conditions that were appealed. Anytime a board gives approval of a project but it does it with conditions, it allows the applicant to appeal the decision as if it were a denial. So, VanWyck appealed the decision because he was dissatisfied with conditions 1 and 4. Condition 1 required that construction had to begin within 6 months of endorsement by the Planning Board. That condition stated that the expectation of the Board was that construction was to be completed within two years. Condition 4 stated that VanWyck would be required to allow access for the purposes of passing and re-passing to the immediate abutting property owners. So, he appealed both of those conditions.

As you may be aware Kopelman and Paige did not become counsel until early this year, or December of 1999. Prior counsel had worked with VanWyck's counsel and an agreement for judgment was negotiated. Mr. VanWyck wanted to move ahead with the subdivision project and was willing to essentially drop his appeal. Prior counsel put together the agreement for judgment which essentially said that the decision previously approved by the Planning Board would be affirmed and all conditions affirmed, and he added one provision which I'm not sure how he got VanWyck to agree, but it is a favorable thing. The additional condition states that VanWyck must complete the

construction of the roadway within two years. I've actually discussed that particular point with Charles Clark, VanWyck's counsel, and we've agreed that that two year period will run through the date of the filing of the agreement for judgment. Which, quite frankly, even if we were to go forward and have the trial regarding the appeal and when, we would not be able to impose that requirement. So, that's actually a very favorable thing. As I say this agreement for judgment was negotiated and authorized by both VanWyck and the Planning Board before we became counsel for the Board. Prior counsel left, VanWyck actually obtained new counsel as well but maintained Clark to help wrap up this piece of litigation.

Back in Feb. I did meet with the Board, went over the issue without an in-depth understanding of Lowland Farms situation and indicated that to the Board in an Executive Session. At that point Sheldon Pennoyer was still on Board and Mr. Burnham was at Executive Session Meeting. The Board voted that yes the Board wanted to go forward with the agreement for judgment. There were some procedural problems with prior counsel had to withdraw, had to file an appearance and one thing led to another and it did not get wrapped up. Recently, the parties have all asked that this issue be resolved. It was my understanding that I was still authorized to do the agreement for judgment, but then I heard from the selectmen last week that there was confusion on their part. That now has been cleared up. I have spoken with the selectmen's office, the chair and Jodie Davis. The selectmen are fine with the agreement for judgment and they agree that it can go forward. I think the confusion was that VanWyck may have come to the Board and said why don't we stipulate to dismiss the litigation and perhaps the feeling was that was a better way to do this. I believe the agreement for judgment, as presently negotiated, puts the Board in a more favorable position than just to stipulate a dismissal. Betsy had asked about condition #2, of the decision, which was not actually a condition that was appealed by VanWyck and Betsy sent some additional information today. It turns out, without surprise to anyone, that there has been a great deal of litigation between VanWyck and the town over the years. It turns out that by 1994 there were already three pieces of litigation between VanWyck and the town. One of those pieces of litigation did involve the Planning Board and there was an agreement for judgment and a stipulation to settle that piece of litigation. One of the main issues, and what you see in condition #2 of the January, 95 plan for Lowland Farms, which reads "the terms and conditions related to the Lowland Farms property which is part of the settlement agreement between the town of Essex and VanWyck filed in Essex Superior Court on October 26, 1993, shall be incorporated in this motion". What had happened, there are two property owners in the area (Browning and Hildenan) with some serious drainage concerns. I do not have copy of that settlement agreement but have asked attorney Clark to locate. We could not find copy in Town Hall. We should have copy in file and be aware exactly of what the terms are. I will pursue that. The reason for that is that it has been an outstanding matter for 20 years. The understanding of everyone was that that original stipulation of dismissal and settlement agreement back in 1993 would take care of the problem. That didn't happen. The Planning Board tried to make sure when it did Lowland Farms that the problem would be addressed. I understand from atty. Clark, but cannot confirm this as I have not seen plan Board has in front of you and I am not an engineer, but according to atty. Clark and it's VanWyck's position that the plan addresses the drainage concern or will address the drainage concerns. I do not know if that is the case or not. We need to track down.

copy of settlement agreement. I have civil action numbers for three prior pending matters. It would be a simple matter to send someone to Essex Superior Court. We need to know and keep track of exactly what the agreement is and to make sure that it's carried out within one year of the agreement for judgment provided the Board asks me to do it. Under chapter 41, section 81Y, if a condition of the subdivision approval is not carried out you have one year to bring enforcement litigation. Since he has two years to put in road the Board should monitor the situation for two-year period, then we would have one year after that if he didn't solve the problem the Board could do enforcement litigation. I will get copy of settlement agreement.

That brings us back to the agreement for judgment that has been on the table for quite awhile. The definitive subdivision plan dated September 1, 1990 revised September 30, 1994, the Lowlands Farms, it was approved with conditions shall be affirmed except as modified with this agreement. The only modification is that the subdivision road, including installation of all utilities, shall be completed within two years of the date of the filing of this agreement for judgment. The conditions contained in the original January, 95, decision will remain in full force and effect. There is a further stipulation that the conditions of the agreement can be enforced in Land Court. My recommendation is that agreement for judgment is favorable for the Planning Board and recommends the Board authorize me to go forward.

Questions:

SCOTTIE ROBINSON: Neighbors problems with drainage? We don't know what 10/26/93 document calls for, it's five years later, they still have flooding on their property all this time. Is there anything that can be written into agreement to speed up solution to their problem?

ILANA QUIRK: We do need copy of settlement agreement, to see if there is something that can be immediately enforced if he is not in compliance with original agreement.

SCOTTIE ROBINSON: My understanding that the agreement states that by the time he completes the road their drainage problems will have been addressed.

ILANA QUIRK: The neighbors are satisfied that that will be the case?

SCOTTIE ROBINSON: No, the neighbors are not satisfied. He's put it off until the year 2000....

ILANA QUIRK: No, my question is whether the neighbors agree that if VanWyck constructs the road as shown on the plan, will that address the problem?

SCOTTIE ROBINSON: No, I don't believe they are.

BETSY SHIELDS: Brings us to another question... Over the last 6 years, how can the Board be sure that the drainage, wetlands and all those things have not changed either from him doing work on the land or natural changes. Do we have to worry about that?

ILANA QUIRK: No actually, he has an approval with conditions and he's willing to go back to that approval with conditions which does not take final affect until the court case is resolved. So there's nothing to enforce under the subdivision decision that you've got until such time as it is final and it won't be final until litigation is terminated.

GIL GUERIN: My response is that if neighbors have had damage occur as a result to drainage they should have filed their own suits towards their neighbor which would have brought this to light a lot sooner. Right now we don't want to change judgment.

ILANA QUIRK: You are right in that neighbors if they had private nuisance situation or damage to their property that they could have proved that resulted from something Mr. VanWyck did, they would have had a private right of action and may still if damage is continuing. What is typical, however, that when these things happen the neighbors certainly prefer the town expend its resources, time and so forth to resolve the situation. It's possible that construction of this plan will resolve the issues. I'm not clear on is that if this drainage situation of Mr. Browning's letter dated March 28, 1995, he indicates that a drainage problem that existed for more than 15 years. Not sure what it is that VanWyck did or didn't do within that period that would have caused that problem. They would have to prove in the event they wish to seek private damages against Mr. VanWyck.

Anyway, point is condition #2 which talks about that October, 93 settlement agreement was not appealed by Mr. VanWyck. He is willing to go along with that. It's a question of timing. The original decision that was put together by the Planning Board back in 1995 really had no enforceable time limit in it. If you look at condition #1 of the decision, it says that construction shall commence within six months of the date of endorsement.

Then it went on to say and it expected it to be completed within two years. This is a pitfall for Planning Boards to have, and members of the Board are aware of this. Unless you have a requirement that the applicant must come in after they get approval and get their endorsement within a particular period of time, they have no requirement under the law that they come to you by any particular date for an endorsement of the approved plans. So what happens frequently is that a Planning Board will approve a plan and then it's not appealed, so it's a final approval, but the applicant never brings it back for endorsement. Now that's a way for the applicant to get an enhanced subdivision free from zoning changes and all other requirements set forth in the plan. Because the requirements do not begin to run until the endorsement is not received. My strong recommendation would be that you have a requirement in subdivision regulations, that you can then enforce by putting in a condition in each subdivision approval saying that the applicant shall seek the endorsement of the board within six months of approval. If you do not have that provision already in subdivision regulations, I recommend you consider doing that.

There is an opportunity to put together regulations to govern what specifications you want on plans, what kind of road specifications you want to see with respect to construction. There are a whole host of requirements that you can impose. If you like I can look at subdivision regulations to see if that requirement is already in there and get back to Betsy and let her know.

GIL GUERIN: Should we at this point, any tool/mechanism to change any existing terms of this agreement to judgment.

ILANA QUIRK: More accurate question would be whether we can alter original approval, because the agreement for judgment, we can do or not do. If we don't do it, what will happen is that VanWyck and counsel will go to Land Court and say they want trial date and are willing to have agreement to judgment entered against them. At which point the Land Court becomes angry with us all wanting to know why the case has to be tried to have judgment entered against plaintiff, because the plaintiff is not able to voluntarily dismiss the case without the Board's consent. To get back to the more accurate question of whether we can alter the original decision... the only way to alter decision is under Chapter 41-Section 81W, which says the Board can modify, alter or

amend a subdivision approval provided it has very good cause to do so. It cannot be done if the land has been mortgaged in good faith, it is not possible to do that. Once the bank has relied upon the fact that approval has been given and, as a result, has financed all or part of the purchase of the land, or improvements that are going to be made to the land, it is not possible to do a modification. Essentially, I don't think there is an ability on the part of the Planning Board to go back and alter its terms and conditions at this late date.

GIL GUERIN: The only alteration would be to the drainage issue.

SCOTTIE ROBINSON: In the recent memo of Wesley Burnham's (e-mail) he mentioned the movement of a road 25 feet away from wetlands supposedly.

ILANA QUIRK: Has spoken to Wes but has not received memo.

SCOTTIE ROBINSON: We will fax copy but in memo it says Peter has expressed a desire to make some modifications to road layout. This involves moving a section of the proposed road approximately 25 feet further from the wetlands. I feel this change is minor in nature and allowable as a minor modification without invoking open public hearing process". However, the town's experience with Peter has been that when he starts moving things around they don't wind up where he says they are going to be. Even when he submits plans that look straightforward the roads don't go in where he says they are going to go. I would really urge that we do not allow minor modifications. If we are going to accept it, it's as is. If it's not a reasonable plan then we need to find means to have him change it under formal review process and not allow so-called minor modifications to go through. What's our status? If he comes in and says "Okay we've got agreement for judgment, I just want to move this road" cant we say that will involve a re-submittal or do we have to say Okay, sure.

ILANA QUIRK: It depends on exactly what the modification is. No modification can be made if there has been a mortgage in good faith unless the mortgage holder signs off on it. He can come in if there is a mortgagee with a mortgagee sign off. He can come in and ask the Planning Board to amend or alter the prior approval to require a change in the plans. All the requirements of the subdivision control law apply in terms of notice and so on. In the event that he's... it depends on how substantive it is. If he is affecting people's rights, although he hasn't sold any of these lots. It depends upon how substantive the change is. Did I hear you say that he was going to change the road.

BETSY SHIELDS: Yes, 25 feet supposedly away from wetlands.

ILANA QUIRK: Well, it's not unusual as you know, it's a chicken and egg kind of thing for the developer. Do I go to the Planning Board first or do I go to the Con Com first? And the answer doesn't really matter, because no matter who the developer goes to first, the one that he goes to second will often result in the developer having to go back to the first board. Because of different requirements and it's certainly not at all unusual for the developer to get subdivision approval then go to the Con Com and find out that the road has to be moved because of wetland considerations.

GIL GUERIN: We have to actually deal with this straightforward as if he's a new applicant and without prejudice. That means we have to probably consider that it's a reasonable request to move this road. We can anticipate, however, that Peter will come in and it will be moved someplace different. We almost have to overlay each one of his plans, they come in confusing and changed in ways we might not notice. That's why we are frustrated.

ILANA QUIRK: I understand.. dealt a little with Turtleback extension subdivision situation, so I'm aware of some of the history of all of this. You have just perfectly stated the law, which is that when you have an applicant before you that has a "checkered" past and an unsavory history with the Board, you cannot take that into consideration when an application comes before you. You cannot have any bias or prejudice against that person. However, that doesn't mean you can't look at the plan as carefully as you possibly can to scrutinize it to put as many conditions on it to keep it on the straight and narrow. What is the Board's situation in terms of having proposed plans reviewed? Do you routinely send plans out to engineering consultant?

GIL GUERIN: Subdivisions, once it gets underway, we have a consultant involved.

ILANA QUIRK: My strong recommendation would be that, assuming we do this agreement for judgment, and it gets filed and Mr. VanWyck wants to come in to request a modification due to Conservation Commission issues, that you tell him okay. It's a modification, a full-blown modification, with notice of public hearing and so on, and you need a proper plan and the plan needs to be sent to the town's engineering consultant. I assume you have a review fee situation in your regs. that you would pay him to review the plans.

GIL GUERIN: History of this might turn into Peter would file suit against us again for making that request. Effectively, the answer to your question is yes, we have that person in place and theoretically if the road doesn't get put in the right place after final plans, this engineer would notice.

ILANA QUIRK: Because the engineer should compare the plan that you have already approved to the one now offered for consideration. The answer to the questions are... yes you must accept the application for the modification. But yes, you can really scrutinize it and get your consultants in to make sure that there are no changes that aren't being highlighted for you from the original plan.

BETSY SHIELDS: How big of a change does it need to be in order to require him to re-submit the entire subdivision plan?

ILANA QUIRK: If he is moving the roadway...in those situations where a roadway has been approved and the only change proposed is to reconfigure some lot lines and the surety for the roadway in place, you can do that by ANR approval. That's not a big deal. But moving the road, that's a material change and in my view would require a full-blown subdivision approval with notice of public hearing and full plans and so on.

WALTER RICH: If you sign agreement for judgment, what you're doing is agreeing upon the conditions that Mr. Clark has submitted to you from Mr. VanWyck stating that he is dropping the lawsuit that he had against us. Is that correct?

ILANA QUIRK: Correct.

WALTER RICH: Is there any agreement in there for payment of fees?

ILANA QUIRK: No.

WALTER RICH: In other words, if we had gone to court and we had won this, would your fees or someone else's fees be reimbursable?

ILANA QUIRK: The only time attorneys fees are pulled is when you have a judgment in your favor, which means you have to go forward, try the case and get a decision in your favor, and there has to be after that a finding made under a particular statute Chapter 31 Section 6S that the claims advanced in the lawsuit were not advanced in good faith, on a good faith factual basis, or not in a good faith basis in terms of what the law says. Given

the basis for these appeals, particularly on Condition #4...take condition #1, you were certainly within your right to see that construction had to be commenced within 6 months of endorsement. I would have absolutely no problem with that and I would say that the appeal, while 6 months is short, and also if you don't have that in your regs. the question would be whether that's appropriate and I'd have to check. But on #4, that he shall allow access to other property owners over his street...you have a good faith claim there. So I don't see any court awarding attorneys fees to us on that.

WALTER RICH: Okay, thank you.

BETSY SHIELDS: Given that he sued us, and has not pursued the litigation that rigorously it seems, but it's lasted six years. In the meantime the septic inspections that went on have now expired, the traffic study he did because he was over ten lots is probably irrelevant. Potentially the drainage, wetlands or other issues might have become outdated...we have no recourse or no way to bolster those at this point?

ILANA QUIRK: You have no recourse with respect to your subdivision regulations because they are frozen in time. He has frozen that, as a result of the litigation. Also frozen the zoning as well, if there are zoning changes then those will not effect him. The wetlands and septic issues, that's different. The only way that he could have frozen those in time was that if he went forward and got his permits... and I don't think...

BETSY SHIELDS: No he does not.

ILANA QUIRK: So it's more likely than not, it's possible that he's not captured by the new Title V, but I would be willing to bet that he is captured by the new Title V.

GEORGE STAVROS: I'm on the Conservation Commission also. On lot #3 he is well within 200 feet of the creek, which is the new wetlands 200 foot Rivers Act. So, if he needed to come in just to do a minor lot line adjustment, would that be a minor modification to get relief from that 200 feet?

ILANA QUIRK: I would have to go back and look at the Rivers Act, I don't do that much conservation work, but again with the Rivers Act, you had several different ways of freezing themselves under the law that was in effect before the Rivers Act took over. We don't know whether VanWyck for this project took the steps he needed to, to exempt himself from the Rivers Act. If he didn't, then he's subject to it. Does he have full conservation approval for this project?

GEORGE STAVROS: Yes he does, as far as I know. He did at the time of the filing.

ILANA QUIRK: Okay.

GEORGE STAVROS: What my question is Ilana, is where we have, like you have said, have we stopped the clock on zoning issues, will he have to resubmit through Conservation Commission?

ILANA QUIRK: In the event that the Conservation Commission gave its approval and its approval essentially was condition upon where you have to move the roadway and you have to do this and that, and he then goes and changes the plan to conform to the Conservation Commission requirements, I don't see him needing to go back to Conservation... in those circumstances. It sounds like what he did was he went to Conservation and said here's my subdivision plan, and conservation said you have to move the roadway. Did he provide you with a new plan showing the revised ...with the roadway moved? Did he give you such a plan?

BETSY/WALTER/GIL: No. I'm not sure if his....

ILANA QUIRK: I mean for the Conservation Commission.

GIL GUERIN: No we have not seen it at Con Com. Wesley sites in the memo that he sent you that its just 25 feet further from the wetland. No I don't believe that is a Con Com requirement. I think its Peter's personal desire, for whatever reason that may be.

ILANA QUIRK: But you raise a good point. If its something that VanWyck wants to do, just for no particular reason and its not driven by wetlands considerations, that he now wants to reconfigure his subdivision essentially, it may be that he's going to open himself up to the Rivers Act. But, I would need to see the plan that he had approved by the Conservation Commission on the first "go-round".

GIL GUERIN: okay.

ILANA QUIRK: okay? And that's a very worthwhile question to pursue.

BETSY SHIELDS: So look at the Conservation Commission for any approval?

ILANA QUIRK: Not for the Planning Board to pursue, but for the Conservation Commission to pursue, to see whether any changes that are contemplated and ultimately approved by the Planning Board of the subdivision plan, whether that will require further review then by the Conservation Commission to have invoke jurisdiction of the Rivers Act.

BETSY SHIELDS: Okay. Alright, so that endorsement in the agreement for judgment would be tied to some timeline within six months, we would have to have this endorsed? And he would have to show a performance guarantee, and all that?

ILANA QUIRK: I don't know if that's in your regulations already. I will go back and look. If it is, we can argue that those are incorporated by reference and argue that that's what he should do. What we are bound by is what the decision already says. We're getting something extra with the proposed agreement for judgment, which is that they must construct a road within two years of the file date of the agreement for judgment, which is better than what the original decision said. I know the original decision said construction shall commence within six months of the date of endorsement, but there's no requirement in the decision that he get an endorsement.

SCOTTIE ROBINSON: That's why we were asking whether an endorsement timeline can be written into the judgment, if there is nothing in our regulations.

ILANA QUIRK: Well, let me go back tomorrow and look at your regulations and I'll raise that issue with attorney Clark. I know, from what he is telling me, that Mr. VanWyck apparently is anxious to get things going, so hopefully, he's looking to do the quick endorsement and get it going.

BETSY SHIELDS: Okay, so now we go and vote on this?

ILANA QUIRK: What I need is a vote from the Board to indicate whether you wish to authorize me to enter into this agreement for judgment or not, whether you will authorize me to sign it.

GIL GUERIN: Are we prepared for that? Is there some homework you're going to do prior to that, based on this conversation?

ILANA QUIRK: Well, I certainly can ask about the issue about the endorsement. Again, if that's not already in your regulations, that's not something you legally can require. Even if we tried the case, if it's not in your regulations, there's no way to impose that requirement.

GIL GUERIN: So, it's a mute point. We might as well have the vote to authorize you to go forward.

ILANA QUIRK: That's my recommendation. I will try though to add that condition in. But, what I'm trying to say is that the Board's decision is what it is and it is an approval. The applicant is willing to drop his appeal of the two conditions that he found onerous and is willing to agree to a new condition which is that he finish the road within two years. Trying to add further conditions that may not even be in your regulations, I think is problematic at this point. I'll certainly try it, but my recommendation is that you authorize me to sign this on the Board's behalf.

BETSY SHIELDS: Okay.

ILANA QUIRK: Do you want to go ahead and discuss that and perhaps Betsy you could call me in the morning and let me know?

BETSY SHIELDS: Yes, why don't we do that.

ILANA QUIRK: Okay, very good.

BETSY SHIELDS: Thank you. Good bye.

By unanimous Roll Call Vote, the Board moved to close Executive Session and return to Open Session at 8:25 p.m.

Presented by: Genie Dorfman Attested to: Scottie Robinson
Genie Dorfman, Admin. Assistant Scottie Robinson, Clerk

**TOWN OF ESSEX PLANNING BOARD
OPEN SESSION MINUTES
WEDNESDAY, NOVEMBER 15, 2000
7:30 p.m.**

The meeting was held in the Teachers' Lounge at Essex Elementary and Middle School and was opened at 7:40 p.m. by the Co-chairperson.

Attendees: Gil Guerin, Walter Rich, Scottie Robinson, Elisabeth Shields, George Stavros Bill Sanborn (Building Inspector), Genie Dorfman (Secretary).

Absent: Westley Burnham, Joe Walker.

Co-chairperson Shields said she would entertain a motion to have a roll call vote to move into Executive Session to discuss strategy regarding pending litigation concerning Peter VanWyck. The motion was moved, seconded and, per a unanimous roll call vote, the Board moved into Executive Session at 7:45 p.m.

After returning to Open Session at 8:25 p.m. by unanimous Roll Call Vote, the following motion was made.

Executive Session - VanWyck – Lowland Farms

Motion: The motion was made by Gil Guerin to authorize town counsel to execute the Agreement for Judgment previously negotiated with Mr. VanWyck regarding the litigation concerning the Low Land Farm Subdivision.

The motion was seconded by Scottie Robinson and unanimously approved.

Building Inspector Report:

105 Choate Street. The Building Permit application of Ronald J. and Julie H. DePaolis was discussed, and a diagram presented. The applicants require Board of Health and Conservation sign-off. The septic has been approved. A well does exist on the property, the information is in application. The structure meets setbacks. Meets dimension requirements as stated in Section 6-6 Land Use Regulations of the Essex Bylaws. It was found that the structure will require precise placement on the lot.

Motion: Walter Rich moved to approve the application for Building Permit of Ronald J. and Julie H. DePaolis with the condition that appropriate signatures from Board of Health and Conservation be obtained. The property is located at 105 Choate Street, lot 4, Map 16, lot 7. Lot size is 1.43 acres. The permit is for a single-family home with attached garage. The motion was seconded by Gil Guerin and unanimously passed.

59 Western Avenue: The Building Permit application of R. Clark was discussed. The permit was for a 36 x 32 foot addition to the existing home to be used as an in-law apartment. The application had been stamped by the Board of Health. Meets setbacks. Does the structure remain single family with an in-law apartment? It isn't clear. The Planning Board cannot determine if structure would remain single family, or be classified

as two-family. There is no criteria. "In-law" classification is not mentioned in bylaws. Apparently, Town Administrator described the structure as "in-law" to applicants and stressed that the addition could never be rented and must be passed from family member to family member. Can this requirement be written into deed? A drawing was presented. The existing structure does not meet the frontage requirement. How does that effect request for addition? The abutter, Jim Knowlton was in attendance. The lot was originally created through a variance process. What is the frontage requirement if classified as a two-family. A copy of a Board of Appeals decision dated February 11, 1975 was presented. It states, in brief to "grant a variance, with conditions,.... The above condition being that not more than one single family dwelling be erected on either Lot B5 or B6." The Board agreed that, based on that decision, the home cannot become a two-family. The lot is a legal, non-conforming lot. Therefore, the frontage is not a problem. Does the addition of the kitchen turn the home into a two-family? What defines a "dwelling unit"? It was suggested that Betsy Shields ask Ilana Quirk, counsel for the Board. Additional research should be done on how other property converted to "in-law" use. Is the decision up to the Board or the Building Inspector? The question was put to the applicants as to whether they wanted the issue tabled, withdrawn or continued. The time requirement begins when the application is made. The owners decided to withdraw the application without prejudice, do some research and return to the Board at a later date.

Scott Boches

Evans Way (Story Hill subdivision)

Mr. Boches appeared and requested return of the bond money regarding the Story Hill subdivision. The Board briefly discussed the Stop sign that is now at the end of Evans Way. It was agreed that, because of safety reasons, it should remain.

Motion: A motion was made by Gil Guerin to accept the "as built" plans for the Story Hill subdivision dated 2/9/00, revised 8/30/00, finding that it meets all conditions of the subdivision definitive plan and stipulations. Additionally, the town will release the bond money to Mr. Boches, minus \$500, which the town will keep until the items listed below are completed.

- a) **Stop sign installation on Evans Way at Martin Street.**
- b) **Replacement of approximately 3 foot length of bit berm (curb) in the top left portion of the cul-de-sac.**
- c) **All catch basins (5) and drain manholes (3) and the detention basin outflow structure should be cleaned of all accumulated silt and debris.**

The motion was seconded by Walter Rich and unanimously passed.

Ice House Lane subdivision

Mr. Boches informally presented drawings of the Ice House Lane area. The Board discussed his plans to use the existing road to access two lots. Gil Guerin suggested that it is not an existing road but a railroad bed. What needs to be done? The Board suggested that Mr. Boches obtain a copy of the Subdivision Rules and Regulations, research what is required (as had been done with the Story Hill subdivision) and return to the Board with his plans. Condo. The issue of creating frontage for a land-locked piece of land came up. It was clarified that a land-locked lot cannot "share" frontage with an abutting lot. Commercial, residential uses were discussed briefly. The property is in the Watershed

Protection area. Any plans would need to be proposed and approved by appropriate agencies. If subdivision approved, Graham would be involved.

Other Business

Sewer

Vacant Lots - The Board agreed that work sessions are needed to determine whether specific lots are buildable. Cannot respond tonight. Westley Burnham and Betsy Shields did original research. Some of the field cards are confusing. It was agreed that site visits are required. Site visits will be conducted over the weekend of November 18, 19, 2000. A special meeting will be called for 7:00 p.m. Monday, November 20, 2000. Notice will be posted tomorrow, Thursday, November 16, 2000 at Town Hall.

Approval of Bills Payable

Board members signed miscellaneous bills payable and one payroll request.

Letter of Gerard Hayward, 40 Spring Street

A letter from Gerard Hayward of 40 Spring Street was given to the Planning Board regarding the property at 36 Spring Street. This matter will be referred to the Building Inspector.

Due to the lateness of the hour, other agenda items were tabled.

The Board adjourned the meeting at 10:15 p.m.

The next meeting is scheduled for Wednesday, December 6, 2000

Presented by: Genie Dorfman
Genie Dorfman, Admin. Assistant

Attested to: Scottie Robinson
Scottie Robinson, Clerk

DONALD E. BROWNING

Fine Painting & Decorating

APPLE STREET, ESSEX, MASSACHUSETTS 01929

TELEPHONE: 768-7712

March 28, 1995

Mrs. Patricia Dunn, Chairwoman
Essex Planning Board
Town Hall
Essex, MA 01929

Dear Mrs. Dunn and Members of the Essex Planning Board,

Water run off problems resulting from the creation of Peter Van Wyck's roadbed which raised, by several feet, the level of the driveway strip existing between my northern and the Hildonen's southern boundaries have persisted for the past 15 years. Water continues to wash away my lower driveway and undermine the fieldstone foundation of my barn.

Despite numerous complaints by me, directives by many Planning Boards to rectify the problem, and promises by Mr. Van Wyck to do so, obviously, nothing has been done. It is my understanding that with the lifting of the stipulation, placed by the Court on Lowland Farms, it was agreed by all parties that Mr. Van Wyck was to have addressed the problem by December 1994. Mr. Van Wyck's appeal of your approval of his subdivision plan creates yet a further delay. However, in no way do I wish to see you waver on any conditions set forth in your approval of said plan and the Town's agreement with Mr. Van Wyck filed in Court in November, 1993.

Your attention to this matter will be appreciated.

Yours truly,

Donald E. Browning

Dick Carter: The footprint was not increased.

Altholtz: We had no power to issue the permit, the applicant needs a variance.

Dunn: I can call applicant and ask him to come back before us.

MOTION: ALTHOLTZ MOVED, BASED ON CLARIFICATION FROM TOWN COUNSEL, TO ASK THE BUILDING INSPECTOR TO PUT A HOLD ON THE ISSUANCE OF BUILDING PERMIT ON BROOKSIDE APARTMENTS, PENDING THE APPEARANCE OF THE APPLICANT BEFORE THIS BOARD, JERMAIN SECONDED, IN FAVOR WERE ALTHOLTZ AND JERMAIN, AGAINST GINN, DUNN ABSTAINED FROM VOTE, THE MOTION CARRIED.

John & Marilyn Heath: 83 Western Avenue, Form A, Lot #1 and Lot #2, East side of Wood Drive.

MOTION: ALTHOLTZ MOVED TO APPROVE THE PLAN OF JOHN & MARILYN HEATH FOR ANR - 2 LOTS CREATED ON WOOD DRIVE, HAVING FRONTAGE ON PRIVATE WAY FOR PUBLIC USE, MAINTAINED BY THE TOWN, ROAD MEETS SPECIFICATIONS, GINN SECONDED, IN FAVOR WERE ALTHOLTZ, JERMAIN, GINN AND DUNN, THE MOTION CARRIED.

Peter Van Wyck/Low Land Farms:

Van Wyck asked to come before the Planning Board tonight to state his position for filing suit against the board members relative to the approval with conditions for Low Land Farm Subdivision. Van Wyck stated the items which led to his filing suit were:

1. Timing (6 mth. and 2 year limits), he still needs to go before and gain approval of DEP and Conservation Commission. Van Wyck doesn't feel the clock should start yet.
2. The Browning/Hildonen issue. Van Wyck stated this is a personal issue, he has no intention of doing the wrong thing.

Dunn: I feel the decision we came to was the best for both parties.

Altholtz: I voted against the approval due to the Board of Health opinion.

Van Wyck: I'm not here to argue, you don't need to defend yourself. I just wanted to state my position.

B. J. Frye: In Westley's motion to approve, where did the stipulations come from?

*DEP
& Conserv.
Comm.
(4/10/95)*



ESSEX PLANNING BOARD

Essex, Massachusetts 01929

January 27, 1995

RECEIVED
FEB 16 1995

Town Clerk
Town of Essex
Town Hall, Martin Street
Essex, Massachusetts 01929

ESSEX
BOARD OF HEALTH

It is hereby certified by the Planning Board of the Town of Essex, that at a duly called and properly posted meeting held on January 18, 1995, it was voted to approve with conditions a definitive subdivision plan entitled "Lowland Farms", as drawn by Survey Associates, dated September 1, 1990, and revised on September 30, 1994.

This plan having been filed for reconsideration by Peter Van Wyck on October 5, 1994, the public hearing was opened on November 16, 1994, following all requisite notifications and advertising. The hearing was closed on January 18, 1995.

The following conditions are considered part of the approval and shall be so indicated on the plan where appropriate.

1. Construction shall commence within six months of the date of endorsement and is expected to be completed within two years. If either of the time constraints set forth cannot be met, the Essex Planning Board shall exercise its responsibility under the performance guarantee in effect or rescind its approval. Any further plans submitted will be considered a new submittal subject to all regulations and ordinances in effect on that date.
2. The terms and conditions related to the Lowland Farms property 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.
3. Any further subdivision of the remaining property shall include Board of Health approval to insure adequate percolation sites are available prior to any Form "A" application submittal.
4. The applicant shall allow access for the purposes of pass and repass to the immediate abutting property owners and their successors in the area of the road intersection with Apple Street. An agreement in writing shall be available for Planning Board review prior to endorsement of the plan following the required appeal period.

*Two Years
from date of
Approval*

5. Lot #1 shall be designated as non-buildable based on the Essex Board of Health recommendations.

Endorsement is conditional upon the following conditions:

- a. A suitable performance guarantee is in place, noted on the plan and filed with the registry of deeds.
- b. A written agreement to fund a "clerk of the works" to oversee and certify construction IAW the approved plan.
- c. Written certification from the Town Clerk of Essex that the twenty day appeal period has expired with no appeals having been filed.

Reference to this approval decision is to be annotated on the plan prior to endorsement and filed with Land Court when recorded.

Regards,

Frances A. Dunn

Frances Dunn
Chairperson,
Essex Planning Board

FD/ejd

Burnham: We can close the public hearing, and the public input has been more than adequate, I think we know everyone's position. We can ask the applicant for an extension to obtain town counsel opinion if we so choose.

MOTION: WESTLEY BURNHAM MOVED TO CLOSE THE PUBLIC HEARING ON LOW LAND FARMS, ALTHOLTZ SECONDED, ALL WERE IN FAVOR WITH DUNN VOTING PRESENT, THE MOTION CARRIED.

The Public Hearing was closed.

Altholtz: I feel comfortable using the information we obtained from Board of Health.

Pennoyer: Kimberly is taking this letter from the Board of Health, holding on to it and saying "denial". Maybe we use it as a denial, but maybe we use it in an approval.

Burnham: We need to vote on this tonight.

Dunn: I think this Board has a lot of information on this plan, and I think it's time to put it to a vote. It is unfair to the applicant to drag this on and on. We could sit here and pick this apart forever.

MOTION: WESTLEY BURNHAM MOVED TO APPROVE THE DEFINITIVE SUBDIVISION OF PETER VAN WYCK FOR THE LOW LAND FARMS SUBDIVISION AS PREPARED BY SURVEY ASSOCIATES, DATED SEPTEMBER 1, 1990, AND REVISED ON SEPTEMBER 30, 1994. THE PLAN MEETS ALL LISTED REASONS FOR DISAPPROVAL AS STATED IN ESSEX PLANNING BOARD DECISION DATED MAY 4, 1994 (SEE ATTACHED). THIS APPROVAL IS BEING MADE IN ACCORDANCE WITH MGL CHAPTER 41, SECTION 81U.

CONSTRUCTION SHALL COMMENCE WITHIN SIX MONTHS OF THE DATE OF ENDORSEMENT AND IS EXPECTED TO BE COMPLETED WITHIN TWO YEARS. IF EITHER OF THE TIME CONSTRAINTS SET FORTH CANNOT BE MET, THE ESSEX PLANNING BOARD SHALL EXERCISE ITS RESPONSIBILITY UNDER THE PERFORMANCE GUARANTEE IN EFFECT OR RESCIND THIS APPROVAL. ANY FURTHER PLANS SUBMITTED WILL BE CONSIDERED A NEW SUBMITTAL SUBJECT TO ALL REGULATIONS AND ORDINANCES IN EFFECT ON THAT DATE.

THE TERMS AND CONDITIONS RELATED TO THE LOW LAND FARMS PROPERTY 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.

ANY FURTHER SUBDIVISION OF THE REMAINING PROPERTY SHALL INCLUDE BOARD OF HEALTH APPROVAL TO INSURE ADEQUATE PERCOLATION SITES ARE AVAILABLE ON ALL BUILDABLE LOTS CREATED PRIOR TO ANY FORM "A" APPLICATION SUBMITTAL.

THE APPLICANT SHALL ALLOW ACCESS FOR THE PURPOSES OF PASS AND REPASS TO THE IMMEDIATE ABUTTING PROPERTY OWNERS AND THEIR SUCCESSORS IN THE AREA OF THE ROAD INTERSECTION WITH APPLE STREET. AN AGREEMENT IN WRITING SHALL BE AVAILABLE FOR PLANNING BOARD REVIEW PRIOR TO ENDORSEMENT OF THE PLAN FOLLOWING THE REQUIRED APPEAL PERIOD.

THIS MODIFIED PLAN WAS SUBMITTED ON OCTOBER 5, 1994. THE REQUISITE PUBLIC HEARING WAS OPENED ON NOVEMBER 16, 1994 AFTER ALL REQUIRED NOTIFICATIONS AND ADVERTISING HAD BEEN PERFORMED.

THE PUBLIC HEARING WAS CLOSED ON JANUARY 18, 1995. ENDORSEMENT OF THE PLAN IS CONDITIONAL UPON THE FOLLOWING REQUIREMENTS:

- A. A SUITABLE PERFORMANCE GUARANTEE IN PLACE.
- B. WRITTEN AGREEMENT TO FUND A "CLERK OF THE WORKS" TO OVERSEE AND CERTIFY CONSTRUCTION IAW WITH THE APPROVED PLAN.
- C. WRITTEN CERTIFICATION FROM THE TOWN CLERK THAT THE TWENTY DAY APPEAL PERIOD HAS ELAPSED WITH NO APPEALS HAVING BEEN FILED.

THE MOTION WAS SECONDED BY PENNOYER.

Pennoyer: Do we want to make the road shorter, thereby restricting the number of lots?

Burnham: As far as reconstructing the road, we should have put that as part of the last denial. We have subdivision regulations in place which allow people to develop their property, I don't think that gives us the power to restrict the number of lots. We could make Lot 1 unbuildable in our motion.

Jermain: Why isn't it appropriate to deny this, and let the applicant come back with a plan that we will approve? Why do we need to decide how to restrict this? Let them come back with something to our liking, then we would want to approve it.

AMENDMENT TO MOTION: BASED ON THE RECOMMENDATIONS FROM THE BOARD OF HEALTH BASED ON THEIR LETTER OF 11/16/94, LOT #1 WOULD BE DESIGNATED NON-BUILDABLE, SECONDED BY WESTLEY BURNHAM, IN FAVOR WERE PENNOYER, GINN, DUNN, BURNHAM, ALTHOLTZ VOTED PRESENT, JERMAIN VOTED AGAINST, THE MOTION CARRIED.

Pennoyer: The Board of Health mentions the drainage issue, shouldn't we restrict the number of lots on the property?

Burnham: The maximum number of lots on the property would be 12, because he only has frontage for 12 lots.

Altholtz: How do we know if we restrict the number of lots, that the the drainage issue would be solved? We don't know what the right number would be.

Ginn: He can build as many lots as he wants, but he cannot get Board of Health approval until he gets a suitable septic system plan, they won't be buildable without that.

Dunn: I want to remind everyone of the time, because we're not going to get to the by-law discussion, because we need to get out of here by 10:00.

Altholtz: Sometimes we may have to stay late.

Dunn: I don't know about the rest of the Board, but I will not stay late, we didn't get permission and I'm not asking the custodian to stay late.

Altholtz: You don't need permission, he's perfectly happy to stay, as he has said before. We can take the money out of the Planning Board budget to pay the extra hour because we need to take care of town business.

MOTION: ALTHOLTZ MOVED TO STAY LATE AND TAKE THE MONEY FROM PLANNING BOARD BUDGET, JERMAIN SECONDED, IN FAVOR WERE ALTHOLTZ, JERMAIN AND PENNOYER, AGAINST WERE GINN, BURNHAM AND DUNN, THE MOTION DIDN'T CARRY.

Dunn: I didn't ask for a second, and I am the Chair.

Ginn: We can't vote on this, there is a motion on the table.

Pennoyer: According to this, he can have up to 13 lots up there.

Burnham: Let's go with twelve.

Ginn: Where are we going with this?

Pennoyer: My desire to pull the road back is too arbitrary.

Altholtz: Can we move forward on the motion?

A VOTE WAS TAKEN ON THE AMENDED MOTION, IN FAVOR WERE BURNHAM, DUNN, GINN AND PENNOYER, OPPOSED WERE JERMAIN AND ALTHOLTZ, THE MOTION CARRIED.

MOTION: WESTLEY BURNHAM MOVED TO HOLD A PUBLIC HEARING ON WEDNESDAY, FEBRUARY 8, 1995 AT 8:00 PM AT THE ESSEX ELEMENTARY SCHOOL ON SCHOOL STREET, ESSEX, MA FOR BY-LAW REVISIONS AND CERTAIN ASPECTS OF SITE PLAN REVIEW TO BE PRESENTED AT THE 1995 ANNUAL TOWN MEETING. PENNOYER SECONDED, ALL WERE IN FAVOR, WITH DUNN VOTING PRESENT, THE MOTION CARRIED.

THE MEETING ADJOURNED AT 10:10 PM.

PREPARED BY:

P. A. Douglas

ATTESTED TO:

Frances A. Dunn

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:

[Signature]

ATTESTED TO:

[Signature]



CONSERVATION COMMISSION

TOWN HALL 30 MARTIN STREET ESSEX MASSACHUSETTS 01929-1219

THE ESSEX CONSERVATION COMMISSION WILL HOLD A CONTINUATION
OF A PUBLIC HEARING UNDER THE WETLANDS PROTECTION ACT,
M.G.L. CHAPTER 131, SECTION 40, ON A NOTICE OF INTENT FILED
BY PETER VAN WYCK COVERING REMOVAL OF WEED GROWTH FROM POND
AND RECONFIGURING POND BORDER AND SLOPE AT 9 TURTLEBACK ROAD.
THE HEARING WILL BE HELD AT THE ESSEX FIRE STATION, MARTIN
STREET, ON TUESDAY, NOVEMBER 21, 2000, AT 8:15 P.M.

EDWIN PERKINS
CHAIRMAN
ESSEX CONSERVATION COMMISSION

received
11/15/00

Gerard Hayward
40 Spring Street
Essex, MA 01929

November 10, 2000

Town of Essex Planning Board
Town Hall
Essex MA, 01929

Dear Planning Board Members,

I am writing to express my concern regarding the home occupation activity regularly occurring at 36 Spring Street, the property next to mine at #40.

When I built my house six years ago, I was under the impression that I had done so in a primarily residential neighborhood, and that Essex Town Ordinances provided sufficient protection from excessive commercial activity.

Since then, the property at #36 has changed to the ownership of Mr. Leonard Manzo, and the establishment of a commercial venture involved in sound and film production, and equipment rental services, has resulted in my being subjected to a consistent barrage of noise and diesel fumes. Situated, under my bedroom windows, this activity has not been limited to daytime hours, nor have my attempts to alleviate the problem through direct contact with the offending party, and the building inspector, met with success. I am therefore putting my case before the planning board in an attempt to obtain some indication of whether in it's opinion, the town's ordinances should be enforced.

The Essex Town Ordinances specifically set forth 7 guidelines regarding how much impact a commercial operation may have on the surrounding neighborhood. The ordinances address amount of traffic generated by the business, number of parking spaces, size of commercial vehicles, prohibit most outdoor activity, and limit numbers of employees. It is my belief that the business located at #36, is in violation of 5 of those ordinances.

The result has impacted both my personal rights to reasonable quiet and freedom from noxious fumes, and the market value of my property which suddenly seems to be located in a commercial district.

received
11/15/00

Specific instances of the ongoing annoyances include the following:

Operation of a large, diesel powered truck engine at any hour of the day or night, which generates sufficient noise to wake people next door, and causes enough vibration to shake objects on furniture. It is left running for extended periods to warm up. It arrives and departs at all hours of the night. (11:28 PM, 6:07 AM, after 1:AM ...)

Fumes generated from the diesel engine whenever the prevailing wind is from the South or West.

Vehicular noise from employees' arrival and departure.

Vehicular noise from the constant jockeying of multiple parking spaces and movement of cars and trucks, to accommodate loading and unloading procedures.

Noise from having metal sound and film equipment thrown in and out of a metal truck, and the two buildings now given over to commercial usage. Loading procedures are customarily accompanied by shouted directions, and employee's varied musical tastes played at high volume.

Whirring noise from a hydraulic lift used to load heavy equipment.

Customer arrival in rented trucks to pick up rented equipment. Negotiations are often conducted outdoors.

Frequent business related deliveries arriving in additional trucks.

Telephone activity conducted outdoors on a wireless phone, shouted at sufficient volume to be heard over all the other noises.

I have on two occasions, roused myself from bed after midnight, walked over, and politely requested a lower noise level. I have phoned at night and requested that the truck engine be turned off and was told, "It has to run." I have installed a two fountains in my garden, hoping that the sound of moving water would, to some degree provide a distraction. But no amount of bubbling water can overcome the noise levels created by adult males, shouting orders to each other, as they load clanging metal trunks and scaffolding equipment, onto a hydraulic lift, over the roar of a diesel engine, accompanied by up to six hours of rock music (as was the case on May 4th).

Last spring, I contacted Robert Nelson, the building inspector, who is the town's designated enforcement officer, about my concerns, and suggested that an unofficial word from him might serve to mitigate the problem. I specifically made it clear that I did not wish to interfere in Mr. Manzo's business, but that I would appreciate more neighborly consideration in the manner in which it was conducted. Mr. Nelson appeared annoyed that I had brought the matter to his attention, and I was told that the town ordinances are "unenforceable" and to let him handle it. He stated that he would send Mr. Manzo a letter. What was said in that letter I do not know. There appeared to be a brief period of somewhat reduced noise levels over the course of the summer.

Last night, despite closed windows, I was awakened once again.

I am now soliciting the opinion of the planning board as to whether the Essex Town Ordinances are in fact "unenforceable". I do not believe that to be the case.

I am not of the opinion that Mr. Manzo's business is the sort of small "home occupation" that is intended for a residential neighborhood. His commercial success appears to have outgrown the limits of what town ordinances allow. I would appreciate knowing what the planning board thinks of the situation.

Respectfully,

Gerard Hayward

From Essex Town Ordinances:

d. HOME OCCUPATIONS. Home occupations shall be allowed only if meeting all of the following:

✓ 1. Not more than two persons who do not reside in the dwelling unit shall be engaged in such occupation.

2. There shall be no change in the outside appearance of the building or premises, except as provided by paragraph 3 below, or other visible conduct of such home occupation other than one sign as permitted accessory use.

✓ 3. No traffic shall be generated by such home occupation in greater volumes than would be normally expected in the immediate neighborhood. The determination of such a situation shall be decided by the enforcement officer, and any need for parking generated by conduct of such occupation shall be met off the street and other than in a front yard.

✓ 4. All home businesses and occupations conducted on residential property including storage and display shall be conducted in an enclosed building, except for the display and sale of shellfish, garden or poultry produce, or small homemade handcrafted items.

5. Not more than two (2) vehicles requiring registration as taxis, busses, or commercial vehicles shall be regularly parked outdoors on the premises.

✓ 6. No commercial vehicle with registered gross weights in excess of 17,000 lbs. shall be regularly parked outdoors on the premises.

? 7. No more than three parking spaces, in addition to those required for residential use are allowed for the home occupation.



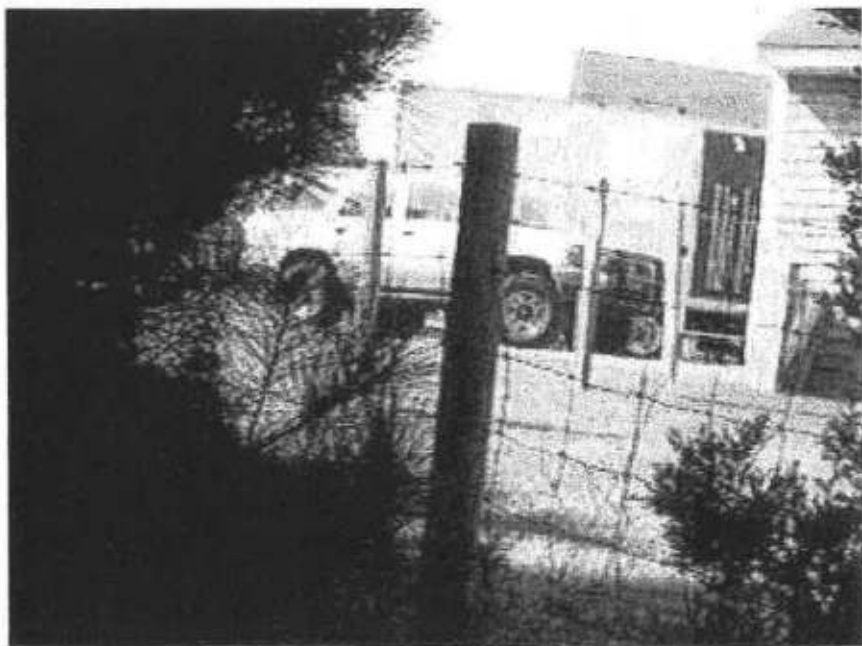
from front yard 40 Spring



from Staut



from street



from back yard 40 Spring

ESSEX PLANNING BOARD MEETING

AGENDA

NOVEMBER 1, 2000

7:30 P.M.

7:30 p.m.

Building Inspector Report

8:00 p.m.

Scott Boches

Evans Way - Requests return of Bond money.
Ice House Lane subdivision.

8:30 p.m.

Porcello Law Office – Lufkin Creek Way

9:00 p.m.

Other Business

VanWyck/Turtleback Road Extension

Develop list of requirements which need to be met
based on Graham's recommendations.

MAPC Representative

Site Plan Regulations

Cell Tower

Mail

Miscellaneous

Attachments
Nov 1 2000



CONSERVATION COMMISSION

TOWN HALL 30 MARTIN STREET ESSEX MASSACHUSETTS 01929-1219

THE ESSEX CONSERVATION COMMISSION WILL HOLD A PUBLIC HEARING UNDER THE WETLANDS PROTECTION ACT, M.G.L. CHAPTER 131, SECTION 40, ON A NOTICE OF INTENT FILED BY THE TOWN OF ESSEX DEPARTMENT OF PUBLIC WORKS BOARD OF COMMISSIONERS COVERING CONSTRUCTION OF A SEWER SYSTEM ON EASTERN AVENUE FROM THE GLOUCESTER BOUNDARY LINE TO EBEN CREEK INCLUDING LUFKIN STREET, HARLOW STREET, LEBARON ROAD, GOODWIN COURT, AND HASKELL COURT AND PUMP STATIONS, PUMP STATION #1 - RED BARREL PUB, 171 EASTERN AVENUE, PUMP STATION #2 - 94 EASTERN AVENUE, PUMP STATION #3 - 156 MAIN STREET, PUMP STATION #4 - SHEPHERD MEMORIAL DRIVE, PUMP STATION #5 - INTERSECTION OF POND STREET AND WESTERN AVENUE, FOR INTEGRATION WITH THE EXISTING GLOUCESTER WASTEWATER SYSTEM. THE HEARING WILL BE HELD AT THE ESSEX ELEMENTARY AND MIDDLE SCHOOL, STORY STREET, ON TUESDAY, NOVEMBER 7, 2000, AT 8:00 P.M. THE NOTICE OF INTENT MAY BE REVIEWED AT THE TOWN CLERK'S OFFICE, ESSEX TOWN HALL, DURING NORMAL BUSINESS HOURS.

EDWIN PERKINS, CHAIRMAN
ESSEX CONSERVATION COMMISSION

Please place legal notice in the Gloucester Daily Times on Friday, October 27, 2000
Size 1 column

Mail invoice to: Board of Selectmen
Essex Town Hall
30 Martin Street
Essex, MA 01929

Tel. No. (978)768-6531



CONSERVATION COMMISSION

TOWN HALL 30 MARTIN STREET ESSEX MASSACHUSETTS 01929-1219

THE ESSEX CONSERVATION COMMISSION WILL HOLD A PUBLIC HEARING UNDER THE WETLANDS PROTECTION ACT, M.G.L. CHAPTER 131, SECTION 40, ON A NOTICE OF INTENT FILED BY JOHN KUSULAS COVERING IMPROVEMENTS TO THE DRIVEWAY AND FOOTPATH, AND INSTALLATION OF A SPLIT-RAIL FENCE AT 2 ANDREWS STREET, ASSESSORS MAP 6, PARCEL 17. THE HEARING WILL BE HELD AT THE ESSEX ELEMENTARY AND MIDDLE SCHOOL, STORY STREET, ON TUESDAY, NOVEMBER 7, 2000, AT 8:20 P.M. THE NOTICE OF INTENT MAY BE REVIEWED AT THE TOWN CLERK'S OFFICE, ESSEX TOWN HALL, DURING NORMAL BUSINESS HOURS.

EDWIN PERKINS
CHAIRMAN
ESSEX CONSERVATION COMMISSION

Please place legal notice in the Gloucester Daily Times on Tuesday, October 31, 2000
Size 1 column

Mail invoice to: Mr. John Kusulas
C/o Margo Kusulas
2 Andrews Street
Essex, MA 01929

Tel. No. (978)768-0031



CONSERVATION COMMISSION

TOWN HALL 30 MARTIN STREET ESSEX MASSACHUSETTS 01929-1219

THE ESSEX CONSERVATION COMMISSION WILL HOLD A PUBLIC HEARING UNDER THE WETLANDS PROTECTION ACT, M.G.L. CHAPTER 131, SECTION 40, ON A NOTICE OF INTENT FILED BY PETER VAN WYCK COVERING REMOVAL OF WEED GROWTH FROM POND AND RECONFIGURING POND BORDER AND SLOPE AT 9 TURTLEBACK ROAD, ASSESSORS MAP 9, PARCEL 11D. THE HEARING WILL BE HELD AT THE ESSEX ELEMENTARY AND MIDDLE SCHOOL, STORY STREET, ON TUESDAY, NOVEMBER 7, 2000, AT 8:30 P.M. THE NOTICE OF INTENT MAY BE REVIEWED AT THE TOWN CLERK'S OFFICE, ESSEX TOWN HALL, DURING NORMAL BUSINESS HOURS.

EDWIN PERKINS
CHAIRMAN
ESSEX CONSERVATION COMMISSION

Please place legal notice in the Gloucester Daily Times on Tuesday, October 31, 2000
Size 1 column

Mail invoice to: Peter Van Wyck
Turtleback Road
Essex, MA 01929

Tel. No. (978) 768-7268



RAHAM ASSOCIATES, INC.

formerly associated with C.T. MALE ASSOCIATES, P.C. OF IPSWICH, MA

TWO CENTRAL STREET
IPSWICH, MA 01938
(978) 356-2756
FAX (978) 356-4880

ENGINEERS, SURVEYORS, PLANNERS
PROFESSIONAL SERVICES SINCE 1984

October 18, 2000

Town of Essex
Planning Board
Town Hall
30 Martin Street
Essex, MA 01929

Attn: Westley Burnham
Chairman

Re: *Story Hill Subdivision*
H.L. Graham Project No. 89-07658-6

Dear Board:

This letter report is intended to summarize the status of the improvements and wrap-up issues for the above referenced development.

As-Built Plan

A revised As-Built plan has been prepared and submitted to this office for review. The plan is entitled, "As-Built Roadway Plan and Profile, Story Hill Subdivision, Evans Way, Essex, MA". The plan was prepared by Gateway Consultants, Inc., is dated 2/9/00 and revised through 8/30/00.

The plan has been revised in accordance with our letter to the Board of February 23, 2000. We recommend the Board's acceptance of the plan. We further recommend the Board request the Applicant forward one print to each of the various Town utility departments.

Finished Paving

On September 25, 2000 the bituminous surface course was applied on Evans Way. As we were unable to inspect the work due to a short notice, the Essex DPW and Site Contractor, Joe Ginn, both assisted in some telecommunications and on-site observations to assure a proper job.

The Owner provided the material delivery slips which indicated that 118 tons of 1/2" top course were delivered to and applied at the site. This tonnage over the street area computes to the required average pavement thickness applied of 1 1/2". 1 1/2" (compacted thickness) of binder was applied July 21, 1999. The total average pavement thickness on Evans Way is 3".

New Drive Opening

A new driveway has been cut into Evans Way to serve #87 Martin Street. I am in receipt of a memo to the Board from the Essex DPW with some questions about this drive. I see no adverse impact to either Evans Way or Martin Street created by this driveway cut.

DPW Approval

The Board should solicit the Essex DPW approval prior to release of final funds.

Remaining Items

Aside from the DPW sign-off, the following remaining items should be completed prior to the release of any remaining funds:

- Stop sign installation on Evans Way at Martin Street.
- Replacement of a 3'± length of bit berm (curb) in the top left portion of the cul-de-sac.
- All catch basins (5) and drain manholes (3) and the detention basin outflow structure should be cleaned of all accumulated silt and debris.

If you have any questions, please contact me.

Very truly yours,

H.L. GRAHAM ASSOCIATES, INC.

H.L. Graham

H.L. Graham, P.E.
President
Technical Review Agent
Essex Planning Board

HLG/gb

cc: Town of Essex DPW
SMD Development
Gateway Consultants, Inc.
Northern Essex Ltd.

received
OCT 19 2000

March 1, 2000

RELEASE OF LOTS
(Provision of Surety)

Essex, Massachusetts, February __, 2000

The undersigned, being a majority of the Planning board of the Town of Essex, Massachusetts, hereby certify that sufficient surety, in the opinion of said Planning Board had been provided for the cost of the completion of the ways and certain services necessary to provide access and services to certain lots, hereinafter designated, in accordance with the provisions of a Covenant, dated October 28, 1998 and recorded with Essex South District Registry of Deeds in Book 15209, Page 449, said lots being shown on a plan entitled "Story Hill Subdivision, Map 36, Lots 79, 79A, 79B, Martin Street, Essex, MA prepared for SMB Development, 5 Dow Drive, Haverhill, MA 01832, Rural Land Surveys 130 Centre Street, Danvers, MA 01923 Office (978)777-8787 dated June 4, 1998 recorded with said Registry in Plan Book 330 as Plan 10. The lot (s) designated on said plan and released hereunder is Lot 3 and is hereby released from the restrictions as to sale and building specified in said Covenant.

PLANNING BOARD OF THE TOWN OF ESSEX

[Handwritten signatures of five members of the Planning Board]

COMMONWEALTH OF MASSACHUSETTS

Essex ss.

Then personally appeared the above named WESTLEY C. BURNHAM, one of the members of the Planning board of the Town of Essex, Massachusetts and acknowledged the foregoing instrument to be the free act and deed of said Planning Board, before me,

Sally A. Soucy
Notary Public

My Commission Expires: 7/1/2005

Town of Essex

SCHEDULE OF DEPARTMENTAL PAYMENTS TO TREASURER

No. Dep't Planning Date March 8 19 2000

Table with columns: FROM WHOM, SOURCE, AMOUNT, TOTAL. Includes entries for SMB Development, 5 Dow Drive, Haverhill, MA 01832, and a total amount of \$15,000.00.

SMB DEVELOPMENT CORP., INC. 5 DOW DRIVE HAVERHILL, MASSACHUSETTS 01832

Table with columns: DATE, INVOICE, AMOUNT

53-7129 2113

No 714

PAY AMOUNT Fifteen Thousand Dollars

Table with columns: CHECK NO., TO THE ORDER OF, DATE, DESCRIPTION, CHECK AMOUNT. Includes check number 714, Town of Essex, MA, date 3-1-00, and amount 15,000.00.

NORTH SHORE BANK - PEABODY, MASSACHUSETTS

Scott Boches

9.....



GRAHAM ASSOCIATES, INC.

formerly associated with C.T. MALE ASSOCIATES, P.C. OF IPSWICH, MA

TWO CENTRAL STREET
IPSWICH, MA 01938
(978) 356-2756
FAX (978) 356-4880

ENGINEERS, SURVEYORS, PLANNERS
PROFESSIONAL SERVICES SINCE 1984

February 23, 2000

Town of Essex
Planning Board
Town Hall
30 Martin Street
Essex, MA 01929

Attn: Westley Burnham
Chairman

Re: *Story Hill Subdivision*
H.L. Graham Project No. 89-07658-6

Dear Board:

I am in receipt of a plan entitled, "As-Built Roadway Plan and Profile for Story Hill Subdivision, Evans Way, Essex, MA" prepared by Gateway Consultants, Inc. and dropped off at our office on February 16, 2000 by the Developer, Scott Boches.

With regard to the referenced plan, we would recommend the following items be added to the plans before accepted by the Board:

- Drywells for the dwellings on Lots 1, 2 and 4 should be shown. Their approximate locations and certification of their installation as well as the roof leader system assuring that roof drainage is routed to them is the focus of this request. These were a Condition of Approval.
- Water shut-offs should be located and shown on the plan with two (2) swing tie distances to each from a concrete bound, catch basin, manhole, house corner or the like.

- Gas shut-offs should be located and shown on the plan with two (2) swing tie distances to each from a concrete bound, catch basin, manhole, house corner or the like.

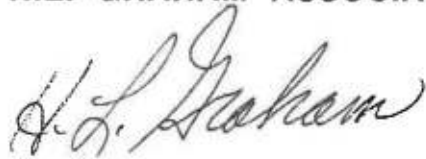
It is our understanding that the Board may be considering the final lot release. If so, we would recommend the Board secure the remaining improvements with a bond, tripartite agreement, escrow deposit or other form in the amount of \$15,000. This surety would cover the revisions to the as-built plans mentioned above, the wearing/surface pavement course (including sweep, clean and tack coat), final cleaning of all the drainage structures and pipes, and additional anticipated minor items which might evolve from a final punch list we would propose to do in April or May.

The Board should also seek a sign-off from the DPW with regards to the waterline and drainage. From our inspections and to the best of our knowledge, the drainage system has functioned adequately and there have been no problems with flooding or icing at the intersection of Evans Way and Martin Street.

If you have any questions, please contact me.

Very truly yours,

H.L. GRAHAM ASSOCIATES, INC.



H.L. Graham, P.E.
President
Technical Review Agent
Essex Planning Board

HLG/gb

cc: Town of Essex DPW
SMD Development
Gateway Consultants, Inc.
Northern Essex Ltd.



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ENGINEERS, SURVEYORS, PLANNERS
PROFESSIONAL SERVICES SINCE 1984

October 25, 2000

Town of Essex
Planning Board
Town Hall
Essex, MA 01929

Attn: Wes Burnham
Chairman

Re: *Turtleback Road Extension*
H.L. Graham Project No. 89-07658-4

Dear Board:

On Friday, October 20, I marked out approximately sixteen (16) areas of weak/unacceptable pavement at the above project. Most of these areas are within the previously identified roadway where the pavement failed to meet required thickness. All areas are along the roadway edges.

This effort was requested by VanWyck's General Contractor, Ray Fraser and is referenced in my October 2, 2000 letter to the Board on pages 1 and 2 under Pavement Thickness (second option).

Should you have any questions, please contact me.

Very truly yours,
H.L. GRAHAM ASSOCIATES, INC.

H.L. Graham, P.E.
President
Technical Review Agent
Essex Planning Board

HLG/gb

cc: Kopelman and Parge, P.C. Attn: George X. Pucci
Peter VanWyck
Thomas E. Neve Associates, Inc.
Mark B. Johnson
The Fraser Company

received
10/31/00



GRAHAM ASSOCIATES, INC.

formerly associated with C.T. MALE ASSOCIATES, P.C. OF IPSWICH, MA

TWO CENTRAL STREET
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ENGINEERS, SURVEYORS, PLANNERS
PROFESSIONAL SERVICES SINCE 1984

September 20, 2000

Thomas E. Neve Associates, Inc.
447 Old Boston Road
Topsfield, MA 01983

Attn: Thomas E. Neve, P.E., P.L.S.
President, CEO

Re: *Turtleback (VanWyck)*
H.L. Graham Project No. 89-07658-4

Dear Mr. Neve:

Peter VanWyck stopped by my office last Wednesday expressing his desire to move his project forward. While he was here and in his presence I was able to reach Planning Board Chairman, Wes Burnham, who requested that I resolve by correspondence, telephone, meetings or other means, any issues which you might have taken on Mr. VanWyck's behalf with my August 29, September 1 and September 8 letter reports to the Board and copied to your office.

Also in Mr. VanWyck's presence and on Wednesday, September 13, 2000, I left a message with your office that I would be available for a call or meeting Friday, September 15, 2000.

As I did not hear from you Friday and in light of the fact that I am not available at all this week, I wanted to give you some tentative dates when I can be available in regard to this matter. These dates are as follows: September 27 and 28, October 6, 11-13, 18-20 and 25-27.

Very truly yours

H.L. GRAHAM ASSOCIATES, INC.

H.L. Graham, P.E.
President
Technical Review Agent
Essex Planning Board

HLG/gb

cc: Essex Planning Board
Kopelman and Paige, P.C., Attn: George X Pucci



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ENGINEERS, SURVEYORS, PLANNERS
PROFESSIONAL SERVICES SINCE 1984

September 8, 2000

Town of Essex
Planning Board
Town Hall
Essex, MA 01929

Attn: Wes Burnham
Chairman

Re: *Turtleback Road Extension*
H.L. Graham Project No. 89-07658-4

Dear Board:

Unfortunately, a misprint occurred in my September 1, 2000 letter in the last line of the second to last paragraph.

The misprint was the word "not" which should not have been used. The corrected sentence should read:

"The test results indicate that the gravel base does meet the Towns/MHD material specifications requirements."

Very truly yours,

H.L. GRAHAM ASSOCIATES, INC.

H.L. Graham, P.E.
President
Technical Review Agent
Essex Planning Board

HLG/gb

cc: Kopelman and Parge, P.C., Attn: George X. Pucci
Peter VanWyck
Thomas Neve Associates



GRAHAM ASSOCIATES, INC.

formerly associated with C.T. MALE ASSOCIATES, P.C. OF IPSWICH, MA

TWO CENTRAL STREET
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ENGINEERS, SURVEYORS, PLANNERS
PROFESSIONAL SERVICES SINCE 1984

September 1, 2000

Town of Essex
Planning Board
Town Hall
Essex, MA 01929

Attn: Wes Burnham
Chairman

Re: *Turtleback Road Extension*
H.L. Graham Project No. 89-07658-4

Dear Board:

This letter is a follow-up to my August 29, 2000 letter report reference the above.

On August 30, I received Faxed copies of the asphalt delivery slips apparently used for the December 22, 1999 binder paving of Turtleback Road Extension. Attached thereto was a memo from Contractor, Ray Fraser to Tom Neve which included a mathematical calculation showing that an average of 2" of pavement was applied to the subject road.

The said calculation uses the correct square yardage paved and a generally accepted density of 105#/inch/square yard for "binder". However, the tonnage slips specify a State Dense Binder delivered from which a higher density may be expected. By increasing this density by only 5% to 15% the average thickness decreases by as much as 1/8" to 1/4". This is likely the reason that only half of the roadway meets the 2" thickness standard.

The above referenced information confirms the type of mix and general tonnage used and therefore the costly testing of the 6" core samples referenced in my August 29, 2000 letter, may not be required. I have, however, instructed the lab to hold the samples until further notice.

The above referenced information does not, however, change my assessment of the on-site coring thickness tests and my recommendation for the additional 1 1/2" of binder from Sta. 3+0 to 14+0 (1,100').

I have also received the Grain Size Distribution Test Report forms for the four (4) gravel base course samples I took on August 24, 2000. The test results indicate that the gravel base does not meet the Towns/MHD material specifications requirements.

If you have any questions, please contact me.

Very truly yours,

H.L. GRAHAM ASSOCIATES, INC.



H.L. Graham, P.E.
President
Technical Review Agent
Essex Planning Board

HLG/gb

cc: Kopelman and Paige, P.C., Attn: George X. Pucci
Peter Van Wyck
Thomas Neve Associates



GRAHAM ASSOCIATES, INC.

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TWO CENTRAL STREET
IPSWICH, MA 01938
(978) 356-2756
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ENGINEERS, SURVEYORS, PLANNERS
PROFESSIONAL SERVICES SINCE 1984

August 29, 2000

Town of Essex
Planning Board
Town Hall
Essex, MA 01929

Attn: Wes Burnham
Chairman

Re: *Turtleback Road Extension*
H.L. Graham Project No. 89-07658-4

Dear Board:

On Thursday, August 24, 2000, I was on-site at Peter Van Wyck's, Turtleback Road Extension Subdivision for the purpose of inspections and measurements as outlined in my letters to the Board of April 3, June 7 and August 22, 2000.

Also, present on-site were Owner/Developer Peter Van Wyck and his Engineer, Tom Neve. Mrs. Van Wyck and Neve left the site mid-morning. My Subdivision Inspector, Don Stone and I remained until approximately 2:30 P.M. conducting the necessary work. Core samples of pavement were taken by UTS of MA, Inc. of Stoneham, MA.

Twenty-five (25) 2" diameter and three (3) 6" diameter core samples were taken of the pavement to determine applied thickness. The results of the measurements taken from these 28 samples is given in EXHIBIT "A" included. My assessment of the results is that about half of the total binder pavement thickness meets the required 2" compacted depth standard and about half of the project falls short thereof. More specifically by roadway stationing, the roadway along Stations 0+0 to 3+0 and 14+0 to 20+0 is acceptable and the remaining roadway from Station 3+0 to 14+0 (1,100') is unacceptable.

To remedy this matter, I recommend the Board consider the requirement of an additional 1 1/2" binder course application over this 1,100' after all weak areas and ragged edges have been patched and the roadway has been swept clean and tack coated.

The measured width of the roadway as shown on EXHIBIT "B" is acceptable and within tolerance of the required 20 feet.

The 6" core samples were taken not only for a check of depths but also for potential analysis by UTS. The tests involved will provide us with the aggregate and asphalt mix and composition, density and other information. These tests will cost about \$700. I have this testing on hold pending receipt of information from Tom Neve and/or Ray Fraser which might alleviate the need for same. That information consists of receipt of copies of asphalt delivery slips for the Dec. '99 paving. If this information is not received within 2 weeks I will go ahead with the UTS testing unless otherwise advised by the Board.

Four (4) samples of the gravel base were taken at the roadway edges at Stations 4+0 R, 8+75 L, 14+0 L and 19 +0 L. These samples are at UTS for gradation analysis. One (1) sample of the gravel base used for the project according to the UTS report and faxed to me by Tom Neve, taken apparently on 12/22/99, meets the Town's MHD specifications. I have requested additional information about this test report dated 3/1/00 but have to date been unable to determine where and when this sample was taken. The four samples taken by the writer appeared to be 8" to 12" in depth. Results of the gradation analysis should be available within a week and I will continue to pursue the unknowns of the previous UTS gradation test.

The Rip-Rap Swale as constructed on-site does not meet the approved plans in regard to the material spec used. The approved MHD Material Specification M2.02.3 calls for rip-rap stone weighing not less than 50 pounds nor more than 125 pounds and at least 75% of the volume consisting of stones weighing not less than 75 pounds each. The stone used is considerably undersized from this standard. I have asked Tom Neve to revisit this issue and provide the Board and ourselves with the following:

- As-Built Stone Specifications
- As-Built Rip-Rap Swale Section and Grades
- Certification (if present stone is to remain) that the rip-rap swale section, grades and material are adequate for the calculated flows and velocities such that the stones are not washed out or displaced.

The other option the Board has of course is to refuse the as-constructed substandard (Mat. Spec.) rip-rap swale and require the Developer to construct same per the approved plans.

Following the testing and measurement exercises on August 24, Don Stone and I made a general inspection and overview of the project. The following issues and open construction items remain of concern to us and/or to be completed:

1. The 3'± grass shoulder between the edge of pavement and rip-rap swale is not finished. As in past reviews I have argued that this strip should be a compacted gravel shoulder. However, the Applicant and Engineer opted for and the Board approved 6" loam and seed. One spec or the other, needs to be installed.
2. I am concerned that the side slopes behind the rip-rap swales are not stabilized and that sediment will wash into the swales. We will not recommend acceptance of these swales if unchecked sediment has collected in the swales. The Applicant/Contractor should take appropriate measures to prevent this occurrence.



RAHAM ASSOCIATES, INC.

TWO CENTRAL STREET
IPSWICH, MA 01938
TEL (508) 356-2756
FAX (508) 356-4880

SHEET NO. _____ OF _____

CALCULATED BY HUG DATE 8-28-00

CHECKED BY _____ DATE _____

SCALE EXHIBIT "A"

PAVEMENT DEPTHS
(MEASURED BY 2" (DIA.) PAVEMENT CORINGS)

ROADWAY STATION	LEFT (L) RIGHT (R) CENTER (C)	MEASURED DEPTH	COMMENT
1+0	L	2"	OLD PVM'T. SECTION
1+0	R	1 5/8"	" " "
2+95	L	1 3/4"	NEW PVM'T. SECTION
3+0	L	1 5/8"	"
3+0	R	2 3/8"	"
5+0	L	1 1/2"	"
5+0	R	1 3/4"	"
5+0	C	1 5/8"	"
7+0	L	1 1/2"	"
7+0	R	1 1/4"	"
8+0	LOFC	1 3/4"	"
8+0	ROFC	1 7/8"	"
9+0	L	1 1/2"	"
9+0	R	1 5/8"	"
10+0	C	1 1/2"	"
11+0	L	2"	"
11+0	R	2 3/8"	"
13+0	L	1 3/8"	"
13+0	R	1 7/8"	"
15+0	L	2 3/8"	"
15+0	R	2"	"
17+0	L	2"	"
17+0	R	2 1/4"	"
19+0	L	2 1/4"	"
19+0	R	1 7/8"	"

(MEASURED BY 6" (DIA.) PAVEMENT CORINGS)

2+25	C	2"	OLD PVM'T. SECTION
8+50	C	2"	NEW PVM'T. SECTION
14+0	C	2"	"



RAHAM ASSOCIATES, INC.
 TWO CENTRAL STREET
 IPSWICH, MA 01938
 TEL (508) 356-2756
 FAX (508) 356-4880

JOB 01010307 1411 WOOD RD.
 SHEET NO. _____ OF _____
 CALCULATED BY HCG DATE 8.28.00
 CHECKED BY _____ DATE _____
 SCALE EXHIBIT "B"

PAVEMENT WIDTH

<u>ROADWAY STATION</u>	<u>MEASURED WIDTH</u>	<u>COMMENT</u>
------------------------	-----------------------	----------------

1+0	19.5'	
-----	-------	--

2+0	19.8'	
-----	-------	--

3+0	20.2'	
-----	-------	--

4+0	19.6'	
-----	-------	--

5+0	20.2'	
-----	-------	--

7+0	20.3'	
-----	-------	--

9+0	20.0'	
-----	-------	--

11+0	19.4'	
------	-------	--

13+0	20.2'	
------	-------	--

15+0	20.0'	
------	-------	--

17+0	20.0'	
------	-------	--

19+0	20.0'	
------	-------	--



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ENGINEERS, SURVEYORS, PLANNERS
PROFESSIONAL SERVICES SINCE 1984

June 7, 2000

Town of Essex
Planning Board
Town Hall
Essex, MA 01929

Attn: Westley Burnham
Chairman

Re: *Turtleback Road Extension*
H.L. Graham Project No. 89-07658-4

Dear Board:

It is my understanding that the Applicant, Peter Van Wyck has made a \$2,500 deposit to his account to clear a previous deficit and to allow for the development of a plan for additional inspection, testing and reviews in conjunction with the construction of Turtleback Road.

In keeping therewith both my subdivision inspector and I have made drive-thru inspections of the project and viewed the work which has been accomplished in absence of our presence on site. It would appear from those cursory inspections that a considerable amount of work has been accomplished and that it might be appropriate for us to proceed with the following more detailed inspection and testing agenda:

•Pavement Corings for Compacted Thickness (Approximately 20 Corings)	Estimated Fee:	\$1,750
•Gradation Analysis of Subbase Gravel (Approximately 5 Samples)	Estimated Fee:	\$1,500
•Measure Width of Roadway (Approximately 200' Spacing)	Estimated Fee:	\$ 150
•Inspection and Measurements of All Rip-Rap Swales, Drainage Pipe and Structures, Detention Basins, Guardrail, Other	Estimated Fee:	\$1,500
•Preparation of Report of Findings and Recommendations to the Planning Board	Estimated Fee:	\$1,000

Following the above assessment, report and recommendations I would expect additional construction work would be required and eventually a recommendation for as-built plans preparation and a review of same.

Hopefully, as the road binder course has been placed, the Water Department is satisfied with the watermain replacement and testing.

In making our cursory review I have noted several items which jumped right out at me:

- The 3'± grass shoulder between the edge of pavement and rip-rap swale is not finished. As in past reviews I have argued that this strip should be a compacted gravel shoulder. However, the Applicant and Engineer opted for and the Board approved 6" loam and seed. One spec or the other, needs to be installed.

The approved plans call for the rip-rap to be MDPW Material Spec. M2.02.3. The stone placed looks lighter. We will check the stone used against the stone specified on the approved plans.

We will check the rip-rap swale cross-section to be 8' in total width, 1'± deep with a 2' wide bottom and 3:1 side slopes laid in a smooth planed manner per the approved plans.

- I am concerned that the side slopes behind the rip-rap swales are not stabilized and that sediment will wash into the swales. We will not recommend acceptance of these swales if unchecked sediment has collected in the swales. The Applicant/Contractor should take appropriate measures to prevent this occurrence.
- The swale from Sta. 0+50± to 3+50± left has not been constructed. We argued for curbing along this portion of the roadway from the start. The Applicant and his Engineer insisted that the swale could and would be constructed.
- Mr. Van Wyck called me and wants to omit some guardrail from the the approved plans. I am unclear as to exactly where his request was intended. He should make his request in writing to the Board with copy to ourselves for clarity. We will review his request and make a recommendation to the Board.

We will proceed immediately with our in-house inspection, measurement and assessment work outlined above. We will proceed with the pavement coring, gradation analysis and report of findings and recommendations upon notification that additional monies have been deposited. We recommend the Board request an additional deposit of \$3,500 to cover these latter tasks.

If you have any questions, please contact me.

Very truly yours,
H.L. GRAHAM ASSOCIATES, INC.



H.L. Graham, P.E.
President
Technical Review Agent
Essex Planning Board

cc: Peter Van Wyck
Thomas E. Neve Assoc., Inc.

**TOWN OF ESSEX PLANNING BOARD
MINUTES
WEDNESDAY, NOVEMBER 1, 2000
7:30 P.M.**

The meeting was held in the Teachers' Lounge at Essex Elementary and Middle School and was opened at 7:40 p.m. by the Co-chairperson.

Attendees: Gil Guerin, Walter Rich, Elisabeth Shields, Joseph Walker, Bill Sanborn (Building Inspector), Genie Dorfman (Secretary).

Absent: Westley Burnham, Scottie Robinson, George Stavros.

Building Inspector Report:

7 John Wise. The request for a Building Permit was discussed, and the plans presented. A question was raised as to how to apply upland vs. wetland regulations when faced with an application for a structure within a wetland buffer. It was agreed that this should be discussed at length at a later meeting of the Board. It was determined that, as regards to this property, there is no problem. Conservation, Wetlands and Board of Health have signed off. The Board was presented with Wetland Form. Based on what we see it meets our regulations. Lot coverage, setbacks, boundaries, height, parking, all meet requirements.

Motion: Joe Walker moves to approve the application for Building Permit of Christopher and Susanne Weld for 7 John Wise Lane, Map 18, lot 13A, lot size - 43,268 sq. feet, seeing that the plan meets all of the minimum requirements as stated in the Bylaws and that approval from all appropriate Essex agencies is obtained. The permit is for a single story, 850 sq. foot addition consisting of a kitchen extension, sitting room and screened porch. The motion is seconded by Walter Rich and unanimously passed.

6 Scots Way : Mr. Phil Hansbury's application to erect a new garage to store vehicles for his tree cutting business was discussed. The lot size is 65,838 sq. feet. The garage will be 50 x 100 feet with no internal plumbing. The Board indicated that there are restrictions in that area of town. Questions arose regarding the storage of oil, drainage, the need for catch basins and runoffs. Will they drain toward the lake and wells? Mr. Hansbury asked if he could clear the lot and park 6-8 trucks immediately. The Board indicated that floor drains will need to go to catch basins. A decision cannot be made tonight. The construction of the garage is different from the use. If "use" requirements are met the Board feels that the building the structure will not be a problem. It was suggested that Mr. Hansbury obtain a copy of the Bylaws, determine drainage plans, and contact an engineer to design a containment-type drainage system, and then return to the Planning Board at a later date.

66 Choate Street: Three lots on Choate were discussed. Gil Guerin excused himself as he is an abutter.

Lot #1 – The buyer, Mr. Mark McKenna, was present and indicated that he simply wants to know if lot #1 is a buildable lot. Plans are presented indicating the type of structure

that will be built, but plans are hypothetical. The driveway application has been signed off by the DPW and has been rerouted to provide access to his property. A question arose regarding wetlands...can you drive across land without destroying it? The Board didn't know if that was an issue. A letter was presented from Ed Perkins dated October 20, 2000, indicating that wetland regulations were not an issue. Conservation Commission and DPW are okay. The site plan does not have dimensions of setbacks. The application is for a new dwelling. The owner/builder must return to the Planning Board with amended and finalized plans.

Motion: Walter Rich moves to approve the Building Permit according to plans dated 10/25/00, that have been stamped and approved by the Building Inspector, for a 3,500 sq. foot single family structure, 2 car garage, decks and porch. Dimensions are 52 x 44 x 30 feet. The lot has met Board of Health, Wetland and Conservation standards and a letter dated October 20, 2000 from Ed Perkins declares there are no wetland issues relevant to lot #1 access.

The motion was seconded by Joe Walker and unanimously approved.

Lot #4 – The application for Building Permit for Lot #4 was withdrawn after it was decided that the various plans for the lot must be coordinated.

Lot #5 – The Building Permit application of Matthew and Emily McCarthy was discussed. The Board of Health has signed off, but not the Conservation Commission. The lot size is 5.16 acres (plus or minus).

Motion: Joe Walker moved to approve the Building Permit of Matthew and Emily McCarthy, 66 Choate St, Lot 5, Map 16, lot #12, for a 3 bedroom, single family dwelling, approximately 3,000 sq. feet, farmhouse style, 100 yr. old elements, porches etc., seeing that it meets the requirements of all Essex boards and agencies, and that specifically they receive approval from the Conservation Commission. Dimensions are 65L x 35W x 23H.

The motion was seconded by Walter Rich and unanimously approved.

Gil Guerin returns to the meeting.

29 Main Street – First Congregational Church

The architect, Mr. Thomas Mayo, informally presented plans for the addition/renovation of the First Congregational Church, 29 Main Street, Essex. The renovation is to include handicap access ramp, elevator and additional offices. The Board determined that there is a need for a variance due to the nonconforming nature of the plans. The Board suggested that Mr. Mayo approach the Board of Appeals with the existing plans and that, because of the nature of the renovation (providing handicap access in church) and the desire to preserve an historical landmark would be beneficial to the community, the Board predicts few, if any, problems. After receipt of the variance, Mr. Mayo will return to the Board. Additionally, the Board indicated that they would forward a letter in support of the plans.

24 Lufkin Creek Way

Mr. Anthony S. Porcello, attorney for Joseph Whelton, presented plans dated October 30, 2000. He indicated that, rather than the easement discussed at the Oct. 18th meeting, he recommends the creation of two separate lots as a solution to the problem. The Board recommends that if approved, permanent lot markers should be placed. The original lot is 1.16 acre of upland and 6 plus acres of wetland. Two lots will now be on one deed.

Motion: Walter Rich moves to approve Form A application, dated October 6, 2000, amended November 1, 2000, submitted by Joseph Whelton, of 29 Lufkin Point Road, for the creation of two separate non-buildable lots – lots A and B.

Lot A - 4,150 square feet to be contiguous with the property at 24 Lufkin Creek Way owned by Jill Martin.

Lot B – 1,425 square feet to be contiguous with #22 Lufkin Creek Way owned by Josephine Zaffiro.

Joseph Walker seconds the motion and is unanimously passed.

Other Business

VanWyck/Turtleback Road Extension

The question arose as to what does the Board needs from VanWyck. Currently the Board feels there are two choices. The first is that we allow VanWyck to proceed with what Graham believes to be a poorly constructed road or the Board approach VanWyck as a unified group of Essex Boards and agencies to pursue a legal remedy. Who is preparing for the upcoming hearing? Joseph Walker suggested that he call Rolf Madsen. It was agreed that:

1. Westley Burnham, chairperson of the Planning Board, be contacted to see what he is doing regarding this issue. ‘
2. Joe Walker will contact Madsen; and
3. develop a “laundry list”

Cell Tower

It was brought to the attention of the Board that Ms. Christine E. Morrissey, a representative of SPRINT, has requested information about procedures involved with erecting a cell tower, in the vicinity of Mark Richey’s Woodworking business. It was agreed that the town could direct her to alternate sites when necessary.

Due to the lateness of the hour, other agenda items were tabled.

The Board adjourned the meeting at 10:00 p.m.

The next meeting is scheduled for Wednesday, November 14, 2000.

Presented by: 
Genie Dorfman, Admin. Assistant

Attested to: 
Scottie Robinson, Clerk

MASTER

Town of Essex Planning Board
AGENDA
WEDNESDAY OCTOBER 18, 2000

7:30 PM

- Open Meeting:
- Welcome Genie Dorfman
 - Building Inspector's Report

8:00 PM

- Porzello Law office
- presenting Form A

8:15 PM

- Mark McKenna
- 66 Choate St

8:30 PM

- Other Business
- Graham's estimate on story St. subdivision
 - Bd of Appeals notices
 - Peter van Wyck / C. Clark letter
 - Bills
 - Minutes / Tel. List
 - Site Review Regs
 - MAPC Rep.?
 - Mail
 - Sewer packet

PORCELLO LAW OFFICES

Whelton

Attachments
10/18/00

A. JOHN PORCELLO
ANTHONY S. PORCELLO
191 MAIN STREET
GLOUCESTER, MA 01930

TEL: (978) 283-3600

FAX: (978) 283-9493

JEAN PORCELLO-GIUSTO
81 WASHINGTON STREET
SUITE 2
SALEM, MA 01970

TEL: (978) 745-5553

FAX: (978) 745-3777

October 6, 2000

Essex Planning Board
Town Hall
30 Martin Street
Essex, MA 01929

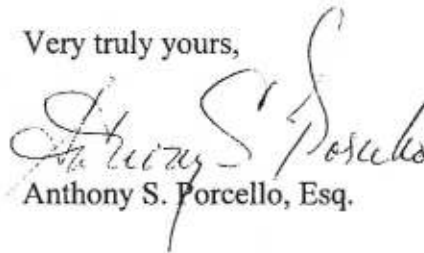
RE: Request for Approval of Form A Application at Town Meeting of October 18, 2000

Dear Essex Planning Board:

Enclosed please find an Application for Endorsement of Plan Believed Not To Require Approval, together with proposed Plan by Surveyor Matt Hautala. Please schedule this matter for the next Town Meeting on October 18, 2000, and confirm the scheduling of this matter at that hearing in writing to this office.

If any questions, please contact me at (978) 283-3600.

Very truly yours,


Anthony S. Porcello, Esq.

Enclosure

FORM A

APPLICATION FOR ENDORSEMENT OF PLAN BELIEVED NOT TO REQUIRE APPROVAL

Three copies of this form, filled out and signed, should be included with the original and two copies of the plan in question.* (Please type or print information in blanks below)

Date of Submission: Oct. 6, 2000 (See Section 4.01)

To the Planning Board:

The undersigned, believing that the accompanying plan of his property in the Town of Essex does not constitute a subdivision within the meaning of the Subdivision Control Law, herewith submits said plan for a determination and endorsement that Planning Board approval under the Subdivision Control Law is not required.

Name of Applicant Joseph Whelton

Address 29 Lufkin Point Road

Phone# 768-7279 (Please call Attorney Porcello 283-3600)

Name of Surveyor Matt Hautala

Address Rockport, MA

Deed of property recorded in Essex South District Registry of Deeds

Book No. 4694 Page No. 593

Location and Description of Property 5575 square feet more or less known as Lufkin Creek Marsh contiguous to property currently owned by Jill Martin (buyer)

List any Board of Appeals decisions pertaining to this site None

Reason plan does not constitute a subdivision small parcel which runs contiguous to land of buyer - non buildable lot (marshland)

*See Section 4 of Essex Planning Board Rules & Regulations

Signature of owner Joseph Whelton / asp
Address 29 Lufkin Point Road

PLANNING BOARD APPROVAL UNDER THE SUBDIVISION CONTROL LAW NOT REQUIRED

Signed _____

Signed _____ for the Essex Planning Board _____ 19__



GRAHAM ASSOCIATES, INC.

formerly associated with C.T. MALE ASSOCIATES, P.C. OF IPSWICH, MA

TWO CENTRAL STREET
IPSWICH, MA 01938
(978) 356-2756
FAX (978) 356-4880

ENGINEERS, SURVEYORS, PLANNERS
PROFESSIONAL SERVICES SINCE 1984

October 4, , 2000

Town of Essex
Planning Board
Town Hall
30 Martin Street
Essex, MA 01929

Attn: Wes Burnham
Chairman

Re: Cost Estimates
36 Story Street Subdivision (Joan Bucklin)
H.L. Graham Project No. 89-07658-8

Dear Board:

Per your request I have reviewed the plans and copy of the Board's August 2, 2000 Decision for the above referenced subdivision for the purpose of providing the Board with a construction cost estimate of same.

The plans I used were received September 21, 2000 from the law office of Glovsky and Glovsky. The plan prints are not signed by either the Preparer or the Board. We also note that an Engineer's name is missing from Sheet 2 of 2. An Engineer's certification should accompany that of the Surveyor's certification for work proposed on Sheet 2 of 2.

The plans are entitled, "Definitive Subdivision Plan in Essex, MA"; indicate the Owner/Applicant as Joan E. Bucklin, 36 Story Street, Essex, MA; indicate the Preparer as Vernon J. LeBlanc, PLS, 161 Holten Street, Danvers, MA 01923; are dated May 15, 2000 (revised August 22, 2000 - Sheet 1 of 2 only) and consist of two (2) sheets.

The referenced Board Decision is a 4-page document dated August 2, 2000 and signed by the (acting) Clerk of the Town of Essex Planning Board on August 10, 2000.

Based on the above referenced plans and documents I suggest that the following construction work items and estimated quantities should be guaranteed by the Owner/Applicant in accordance with Item 2. at Page Three of said Decision:

•Site Preparation, Mobilization and Demobilization, Miscellaneous and Contingencies	Lump Sum
•Unclassified Excavation	240 C.Y.
•12" Compacted Gravel	210 C.Y.
•Swale Construction	Lump Sum
•Shoulder Construction	135 S.Y.
•Loam and Seed	445 S.Y.
•Bounds	5 Each

I estimate the cost of the above referenced improvements at \$16,500.

In accordance with Item 8. at Page Two and Item 3. at Page Three of said Decision, we also recommend the Board secure a \$1,000 deposit from the Owner/Applicant for our construction inspection and reporting services required by the Board.

If you have any questions, please contact me.

Very truly yours,
H.L. GRAHAM ASSOCIATES, INC.

H.L. Graham

H.L. Graham, P.E.
President
Technical Review Agent
Essex Planning Board

cc: Joan Bucklin

Jeffries



BOARD OF APPEALS

TOWN HALL MARTIN STREET
ESSEX, MASSACHUSETTS 01929

September 19, 2000

Decision of the Board of Appeals on the appeal and petition of Janet Jeffries and Edward Jeffries, of 96 Southern Ave., Essex, MA, is that on September 19, 2000, following a public hearing held at the Media Center of the Essex Elementary School, and whereas undo family hardship could be the result of not granting a variance and whereas unforeseen difficulties in obtaining construction contractors, the Board of Appeals voted unanimously to grant a 12 month extension of their original permit to maintain a trailer home on the premises at 96 Southern Ave., Essex, MA. This extension is granted provided that it in no way conflicts with easements previously attached to the property..

Signed:

Michael J. Deas
Gilbert E. Guerin
Michael Cataldo

ESSEX BOARD OF APPEALS

PLANNING BOARD

Landry



BOARD OF APPEALS

TOWN HALL MARTIN STREET
ESSEX, MASSACHUSETTS 01929

October 11, 2000

NOTICE TO PARTIES OF INTEREST

Notice is hereby given that a Public Hearing will be held on the Petition of Robert Landry, of 164 Main St., Essex, MA, for certain variances to Town of Essex Zoning Bylaws, Chapter VI, Sec. 6.5 to allow for construction of a storage barn on the property located at 164 Main St., Essex, MA. and for such other relief as is necessary to allow such construction.

A Public Hearing will be held on Wednesday, October 25, 2000 at 7:30 p.m. at the Essex Memorial Fire Station, Martin St., Essex, MA

William E. Lueson Clerk
ESSEX BOARD OF APPEALS

CHARLES H. CLARK
COUNSELLOR AT LAW
122 MAIN STREET
GLOUCESTER, MA 01930

(978) 281 5900
FAX (978) 282-1700
chclark@shore.net

October 12, 2000

Rolf Madsen, Chairman
Essex Board of Selectmen
Town Hall
Essex, Massachusetts 01929

**Re: Peter Van Wyck v. Frances Dunn, et als.
Land Court Docket No. 215261
(Low Land Farm Subdivision)**

Dear Rolf:

I am writing to you at the suggestion of Westley Burnham with hopes of settling the above-mentioned case between Peter Van Wyck and the Town of Essex.

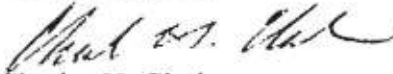
This case was an appeal of the Planning Board decision of January 27, 1995 approving the Low Land Farms subdivision but with conditions. Then Town Counsel Brian P. Cassidy and I negotiated an Agreement for Judgment wherein Mr. Van Wyck essentially dropped his objections to the conditions imposed by the Planning Board. The Agreement was never signed by the parties. As you know, both Brian Cassidy and Sheldon Pennoyer are no longer affiliated with the Town and the matter languished. Last June, I wrote to Westley Burnham (see attached) in order to try and settle this matter once again. I believe the matter was referred to your new Town Counsel.

Despite numerous attempts by phone and in writing, I never received a response from Kopelman & Paige or even an acknowledgment or a courtesy call. It was near the end of the fiscal year and perhaps the legal budget was spent because of the sewer issue, but it is incredulous to me that Town Counsel would not respond to numerous attempts to settle a lawsuit with the Town. I also do not think it was very professional for Town Counsel not to respond to another member of the bar regarding a pending matter.

Rolf Madsen, Chairman
Page Two
October 12, 2000

If you could try and get Town Counsel involved to advise the Planning Board concerning the proposed Agreement for Judgment and respond to me I will see what I can do to end this matter. I appreciate your efforts in this regard and if you have any questions, please let me know.

Very truly yours,


Charles H. Clark

Cc: Westley Burnham, Chairman
Essex Planning Board

Mr. Peter Van Wyck

CHARLES H. CLARK
COUNSELLOR AT LAW

122 MAIN STREET
GLOUCESTER, MA 01930

(978) 281-5900
FAX
(978) 282-4700

June 20, 2000

Westley Burnham, Chairman
Essex Planning Board
Town Hall
Martin Street Essex, MA 01929

**Re: Peter Van Wyck v. Frances Dunn, et als.
Land Court Docket No. 215261
(Low Land Farm Subdivision)**

Dear Chairman Burnham:

As we discussed, Peter Van Wyck has for some time been willing to settle the above-mentioned appeal. Enclosed is the relevant correspondence and other documents that pertain to this matter.

Brian Cassidy and I negotiated an Agreement for Judgment that was sent to then Chairman Pennoyer on February 26, 1999. On April 7, 1999, the Planning Board met and approved the proposed Agreement. However, it proposed adding a new condition which read " *....should construction not start within the next six months of the date of the Agreement for Judgment, the Board would require a submitted plan which shows the solution to mitigate the drainage problems affecting the two neighbors (Hildonen and Browning).* At that time, the Board approved changing the date for completion of the road as is seen in the enclosed letter from Sheldon Pennoyer to Brian Cassidy dated April 15, 1999.

In my letter to Brian Cassidy dated June 22, 1999, a copy of which is enclosed, I explained that the drainage issue was raised by the Board at the time of the original approval and Mr. Van Wyck added the entrance detail and roadway cross section on Sheet 4 of the plan. Mr. Cassidy was satisfied and it is my understanding that this met the approval of Mr. Pennoyer as well.

LOWLAND
Farms
Van Wyck

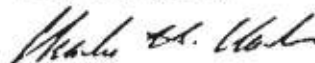
Mr. Westley Burnham
Page Two
June 20, 2000

Despite many attempts to finalize this agreement with Kopelman & Paige, I have received no response to over a half dozen communications to Ms. Quirk and Ms. Saint Andre.

I think a vote of the Board and then a signing of the Agreement for Judgment and "linen" would end this matter. I could then file the Agreement with the Land Court and the litigation would end.

I look forward to hearing from the Board as to the disposition of this matter.

Very truly yours,



Charles H. Clark

Enclosures

cc: Peter Van Wyck

**TOWN OF ESSEX PLANNING BOARD
MINUTES
WEDNESDAY, OCTOBER 18, 2000
7:30 P.M.**

The meeting was held in the Teachers' Lounge at Essex Elementary and Middle School and was opened at 7:50 p.m. by the Co-chairperson.

Attendees: Gil Guerin, Walter Rich, Elisabeth Shields, George Stavros and Bill Sanborn (Building Inspector). Absent: Westley Burnham, Scottie Robinson, Joseph Walker.

The new Administrative Assistant, Genie Dorfman, was introduced.

Building Inspector Report:

Scot's Way. A Special Permit had been issued for the property on Scots Way, which indicated that construction must begin within two years of issuance. The question was whether or not the owners had complied with the time requirement. The Board of Health has already acted upon this permit. Sanborn believes that the owners have complied. The Planning Board agrees. No action was taken.

46 Wood Drive: An application for an unheated, screened porch was presented. Plans were displayed. Lot coverage (3.3 acres) is not an issue. The Board of Health has approved the application.

Motion: Gil Guerin moved to approve the application for a covered, screened porch and deck for the single family home at 46 Wood Drive. The foundation is sona tube concrete, approximately 16' x 39'. The map/lot number is 0499B. The motion was seconded by Walter Rich and unanimously approved.

57 Southern Avenue: A discussion of the variance requested by Tim and Louise Holland ensued.

Motion: Walter Rich moved to approve the Building Permit of Tim and Louise Holland of 57 Southern Avenue, Map 34, lot 28 for the conversion of an accessory barn to a new structure to be attached to the existing main dwelling by a breezeway seeing that it meets all Essex Zoning Bylaws. The variance as granted by the Board of Appeals, dated and signed December 8, 1999, including all conditions specified therein, grants relief from the Essex setback requirements of the Zoning Bylaws for the northeasterly sidelines of the petitioner's lot. Under section 6.4-2, the Board finds the "existing non-conforming uses... that the proposed extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood."

The motion was seconded by Gil Guerin and unanimously approved.

70 Grove Street: An application was presented to build a barn. Plans were presented for a 30' x 36', 1 1/2 story barn to be built on 14.22 acres (Map 11, lot 3A). Set back and wetlands were fine.

Motion: George Stavros moved to approve the application providing siting meets all Essex requirements for setbacks and contingent upon obtaining Conservation Commission signatures (Ed Perkins). The motion was seconded by Walter Rich and unanimously approved.

66 Choate Street: Gil Guerin removed himself from the discussion and any potential action to be taken, as he is an abutter to the property in question. Potential buyer, Mark McKenna, indicated his desire to purchase Lot 1 of 66 Choate Street. Mr. McKenna explained that he is not requesting a Building Permit. Access to the lot must be through one's own land. It was suggested by members of the Planning Board that Mr. McKenna contacts the abutter to the property and determine what issues exist and that the Conservation Commission should be contacted also. No action was taken by the Planning Board.

(Note: Gil Guerin returns to the table.)

229 Western Avenue: A brief discussion of the parking problem at the Veterinary Office at 229 Western Ave. took place. A letter indicating the problems has been sent, but the secretary was asked to follow-up this action. She will contact the Essex Police Department and ask if the letter was hand-delivered by them.

Joseph Whelton, 29 Lufkin Point Road: Attorney Anthony S. Porcello, represented Mr. Joseph Whelton and asked for approval of Form A on the property located on Lufkin Creek Way (Book No. 4694, Page No. 593). Plan dated 9/22/00 by Matt A. Hautala, Reg. Prof. Land Surveyor, shows properties owned by Burnham, Martin, Zaffiro and Pappas. Martin wishes to buy the "non-buildable" marshland lot located behind her property and owned by Whelton.

The issue: Part of the structure on the property owned by abutter, Zaffiro has been built on the lot in question. The attorney, Mr. Porcello, is suggesting a legal remedy to the situation by granting an easement to Zaffiro. Members of the Planning Board are concerned that by granting this Form A, in effect creating a new lot, has the Board legitimized the illegality of the structure. Do we have the right to allow this easement? It was the consensus of the Board that we need advice on the easement issue before proceeding. Gil Guerin agreed to obtain the information necessary by the next meeting of the Planning Board on November 1, 2000.

Graham's Estimate on #36 Story Street Subdivision

The Board is waiting for further information.

Board of Appeals Notices

1. Notice of Public Hearing scheduled for Wednesday, October 25, 2000, on Petition of Robert Landry of 164 Main Street, Essex.
2. Decision of Board of Appeals granting a 12 month extension of original permit of Janet and Edward Jeffries of 96 Southern Avenue, Essex.

Peter VanWyck/C. Clark Letter

The Board is waiting for further information.

MAPC Representative

Gil Guerin agreed to contact the current representative to determine if he would like to become more involved with the community.

Sewer Packet

Betsy Shields will follow-up on what action, if any, the Planning Board should take.

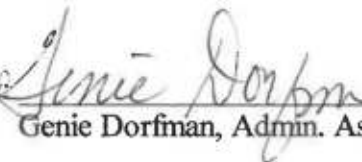
Site Plan Regulations

The Board agreed that Site Plan Regulations must be defined to the best of the Board's ability and a draft produced for the bylaws which will include criteria for buildable lots.

The Board, having no further business, adjourned the meeting at 9:45 p.m.

The next meeting is scheduled for Wednesday, November 1, 2000.

Presented by:


Genie Dorfman, Admin. Assistant

Attested to:


Scottie Robinson, Clerk

**TOWN OF ESSEX PLANNING BOARD
AGENDA
WEDNESDAY, SEPTEMBER 20, 2000**

- | | |
|-----------|--|
| 7:30 p.m. | Open Meeting; discuss business below before appointments
(No Building Inspector Report) |
| 8:00 p.m. | Jan Nichols, regarding 229 Western Avenue, Veterinarian Business |
| 8:30 p.m. | Peter Van Wyck/Low Land Farms |

Other Business:

- * Robert Bradley/Liberty Road Subdivision
Re: Letter from D.P.W.
- * D.P.W. Memo re: Evan's Way
- * AS-BUILT Plan of Evan's Way
- * Letter from Gail Pepe, re: Whitey's Garage
- * Minutes of August 2, and Sept. 6, 2000
- * Bills Payable: HL Graham and Postage
- * Payroll Voucher

**TOWN OF ESSEX PLANNING BOARD
MINUTES
WEDNESDAY, SEPTEMBER 20, 2000**

The meeting was held at the EEMS on 12 Story Street and opened by acting Chairman, George Stavros

Attendees: Gil Guerin, Walter Rich, Scottie Robinson, Betsy Shields, and George Stavros. Absent: Westley Burnham and Joseph Walker

Motion: Walter Rich moves to approve George Stavros as Acting Chairman for this evenings meeting. Seconded by Scottie Robinson. All members present voted to approve the motion.

Building Inspector Report: Mr. William "Bill" Sanborn came before the Board for a 6-4.2 finding on 18 Coral Hill. This application has been before the Board on several occasions because of its nonconforming and alleged illegally built decks which encroached upon required setback measurements. The applicants, John Davis and Nancy Deville, have been working along with the abutters, Linda Carnevale and Mr. and Mrs. Mahoney, and the Town, in order to rectify the previous owners additions to the property, and improve the quality of the existing nonconforming lot. Several site walks were arranged, and the previous building inspector, Robert Nelson, has come before the Board noting several changes in the plans to align this property to decrease the nonconformity. Decking and privacy fences concerning the views of the neighbors have been the main issues for the abutters. The height of the dwelling, which is on record to be approximately 30 feet, is an issue as well.

John Michaud, Architect for the applicants, showed at the 9/2/00 meeting that the dwelling was comparable to other dwellings in the neighborhood. The abutters felt that despite this, they maintained that they were not satisfied with the changes made. A variance given quite some time ago is being questioned by Ms. Carnevale, who will take the matter further, according to the building inspector.

The Board discussed at length the definition of the 6-4.2 finding, being "that the proposed construction shall not be substantially more detrimental than the existing nonconforming use to the neighborhood." Each member determined that this particular building application has been thoroughly discussed and investigated, and has shown to comply with the zoning bylaws.

Motion: Gil Guerin moves to approve the building application for John Davis and Nancy Deville for 18 Coral Hill Road, Map 4, Lot 91, for removal of existing camp style wood frame and portion of existing foundation. Replace wood frame into four-season home. Finding that based on Section 6-4.2 of the Essex Town Bylaws that the proposed construction shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. Lot coverage of

1,050 total square feet is decreased from the original dwelling by approximately 50 square feet. Setbacks are found to be within the existing nonconforming setbacks and do not increase the nonconformity that exists. Height of building is within the town's regulations, according to the plan certified by John Decoulos, dated 7/17/00. Prior to certificate of occupancy, applicants must secure all departments approvals and signatures, including fire and D.P.W. Board of Health and Conservation Commission have approved this application. Seconded by Walter Rich. Members approving the Motion: Gil Guerin, Walter Rich, Betsy Shields and Scottie Robinson. George Stavros votes Present.

233 Western Avenue/Jan Nichols: Ms. Nichols came before the Board with concerns about the Essex Animal Care Veterinarian located next to her property. Apparently, there have been many parking violations in which Mr. Kippenberger, the owner of the veterinarian, has been illegally parking on Ms. Nichol's property. Ms. Nichols is the owner of Jan's Encore, a restaurant. She also lives directly above the restaurant.

For quiet some time now, Ms. Nichols has had to deal with the annoyance of excessive barking at early hours, since the kennel there houses several dogs over night and daily. This has been an issue for her for many months. She realizes that the Town does not have a noise ordinance, but feels that Mr. Kippenberger has not been especially considerate.

The Board, after seeing a video of the many cars parked on Mr. Kippenberger's lawn and on Jan's Encore parking area, agreed that Mr. Kippenberger has allegedly violated the home occupation bylaw regulations. The Building Inspector will serve Mr. Kippenberger the home occupation bylaws along with another copy of a letter that Mr. Nelson had mailed explaining the home occupation bylaws. Mr. Sanborn will apprise the Board of any action being taken in order to rectify the situation.

Peter Van Wyck: Mr. Van Wyck came before the Board again to discuss planning and development of Essex. The Board listened to Mr. Van Wyck discuss his thoughts on how the Town needed to acquire tax dollars for expenses related to the sewer and the school. Mr. Van Wyck showed a plan/sketch called "Low Land Farms". The Board immediately asked Mr. Van Wyck to refrain from discussing Low Land Farms due to the pending litigation that is ongoing. Mr. Van Wyck ceased discussion and left the meeting.

Liberty Road: Mr. Robert Bradley, applicant for the Folsom/Woodman Subdivision-Liberty Road, requested approximately twenty thousand dollars held in escrow by the Town. The Town will hold the balance (20K) in order to guarantee completion of the road. A letter by the Department of Public Works states that the water gate valve at the beginning of the road needs to be raised, and the "as built" plans must show location of all underground utilities. Swales only partially exist, and the DPW feels that the road base and binder course inspection did not occur by the "clerk of works".

Page Three of 9/20/00 Planning Board Minutes, continued...

The Board will send Mr. Bradley a letter with the attached DPW letter and contact H.L. Graham Associates.

Evan's Way: Gateway Consultants, who are the certified engineers for the Story Hill Subdivision (Evan's Way is the Road) have forward a copy of an "As Built" of the road. H.L. Graham has been copied by Gateway, as well. However, a note from the Department of Public Works states that a new driveway, from a previously existing Martin Street residence has been put in to enter/exit onto Evan's Way. DPW is questioning drainage issues. The Board discussed the issue, and will contact HL Graham Associates for guidance.

Letter from Gail Pepe: Ms. Pepe lives across from Whitey's Garage, on Martin Street and is concerned about the noise coming from the garage since the building went through some construction and an additional bay was built. Ms. Robinson will send a letter to Ms. Pepe explaining the Planning Board's opinion that, despite her frustration, the Planning Board did not fall within the purview of her complaint. However, Ms. Pepe will be asked to remain part of the process should the garage change hands and become other than what it is now, which would require Site Plan Review.

Minutes of August 2 and September 6, 2000: Tabled.

Letter from Virginia Mulcahy of Milk Street: Ms. Robinson read a letter sent to Ms. Mulcahy regarding Kim's Beauty Shop and traffic on Milk Street. The letter was sent in response to Ms. Mulcahy's letter to the Board.

The Board will discuss the seat for Chairman at the next scheduled meeting. By then, they expect to have a Chairman chosen.

The Board, having no further business, adjourned the meeting.

Presented by: Lisa Randall
Lisa Randall, Admin. Assist.

Attested to: Scottie Robinson
Scottie Robinson, Clerk

**TOWN OF ESSEX PLANNING BOARD
AGENDA
WEDNESDAY, SEPTEMBER 6, 2000**

- 7:30 p.m. Building Inspector Report
- 7:45 p.m. Scott Steeves-Choate Steet ANR
- 8:00 p.m. George Stavros/ANR at 48-50 Western Avenue
- 8:30 p.m. John Michaud/18 Coral Hill Road
- 9:00 p.m. Peter Van Wyck/Turtle Back Road
- 9:30 p.m. Other Planning Business
- Letter from Larry Graham re: Bradley Subdivision Board of Appeals Public Hearing on 9/19/00 for Janet and Edward Jeffries
 - Letter from Virginia Mulcahy re: Kim's Beauty Shop
 - Letters regarding Vets on Western Avenue (Jan Nichols will be meeting with the Planning Board on 9/20/00 at 8:00p.m.)

Mark Glovsky will be present for signing of Joan Bucklin's Subdivision Plans.

TOWN OF ESSEX PLANNING BOARD
MINUTES
WEDNESDAY, SEPTEMBER 6, 2000

The Town of Essex Planning Board met at the EEMS on 12 Story Street. Chairman Burnham opened the meeting.

Attendees: Westley Burnham, Chairman, Gil Guerin, Scottie Robinson, Joseph Walker, and George Stavros. Absent: Walter Rich and Betsy Shields.

Building Inspector Report: New Building Inspector, Mr. William "Bill" Sanborn was introduced by Mr. Nelson, who is leaving the position.

Lot 2C, Patriot's Lane: Mr. and Mrs. Kenneth Sweet are requesting a change of use for a foundation for commercial building to a single-family dwelling.

Motion: Joseph Walker moves to approve the change of use from the proposed existing commercial office use foundation to a proposed single family residence located at Lot2C, Patriots Lane, Map 8, Lot 32B for Mr. and Mrs. Sweet, based on the finding that the change of use of the property is equally no more nonconforming than its original proposed use. Plan is dated July 17, 2000 by John Decoulos of 248 Andover Street, Peabody, MA, and certified by same. Lot size is 49,385 SF, proposed single family A certificate of compliance from BOH was issued on 7/24/98 for a total of five bedrooms, being 44x28 and having an attached two car garage being 24x24 and meets the requirements for a residential structure. Conservation Commission must approve permit. Seconded by: George Stavros. All members present voted unanimously to approve the change.

148 Main Street/George Fuller Bed and Breakfast Inn: Ms. Tilden, owner and operator of the Inn is requesting a finding from the Board regarding the dwelling built behind the Inn for handicap use and accessibility. The original barn/garage was approved in 1996 for a permit. Tilden is requesting an occupancy permit. The Building Inspector has been investigating indiscrepancies with the changes in size of the orig. permit and its present state. An original rudimentary plan was deemed inaccurate by the building inspector, and an approval from the Board of Health and Fire Chief indicated that the building was adequate for its use. The original nonconforming building setbacks and present setbacks were in question. It was found that the present building as decreased the nonconforming setbacks but has retained the same size in footprint. There was no reference in past planning board minutes relating to height or one-story requirements. The building does not extend beyond the regulations of the town.

Motion: Chairman Burnham entertained a motion to approve the application to grant occupancy for Ms. Tilden of 148 Main Str., for the building behind the George Fuller House Inn, being a conversion of a three-car garage to a one bedroom, one bath and shop area building. Based upon the findings of the Building Inspector as noted in a letter dated 8/25/00,

the Board finds that the building is within the Town of Essex Bylaws. The permit will adhere under the restrictions that are presently in effect. The motion was moved, seconded by Joseph Walker, and all members present voted to approve the motion.

(Note: Gil Guerin removes himself from the table, being an abutter for the discussion below.)

66 Choate Street, Lots 4 and 5/Scott Steeves, Creative Development: Mr. Steeves came before the Board with a request that the board approve siting of two dwellings on lots 4 and 5. They also came forward with a proposed Form A (an approval not required) to change lot lines on the existing subdivided lot (creating Lot 4R and Lot 5R). The board has previously asked Mr. Steeves to provide a plan showing an existing pond, which allegedly prevents frontage from being accessed by Choate Street. Currently, the lots have access through a common drive. Mr. Steeves was also asking the board to approve removal of loam from the properties. The board will contact the Selectmen on the proper procedure.

A letter by Mr. Steeves attorney disagrees that the board deny the approval of the lots since a common driveway has been established, regardless of the pond blocking access to frontage of the lots. The letter states that "as a preliminary matter, driveways necessary to provide access to an upland portion of a lot are exempt from most of the performance standards set forth in the Wetlands Regulations. 310 CMR 10.53(3)(e) provides that the construction and maintenance of a ...driveway of minimum legal and practical width acceptable to the planning board, where reasonable alternative means of access from a public way to an upland area of the same owner is unavailable" may be approved as a limited project, notwithstanding that the driveway would not otherwise comply with the applicable performance standards. It is, therefore, probable that such driveways may be approved and constructed, even if they infringe upon a wetlands resource area."

The Board will refer the matter to Town Counsel for an opinion. The proposed changes for a lot line change was requested by Steeves to be withdrawn.

(Gil Guerin returns to the table.)

(Note: George Stavros removes himself from the table for the next discussion.)

48-50 Western Avenue/Approval not Required: Previously, Mr. Stavros had requested that the Board approval division of a single lot with two existing dwellings, creating two, nonconforming lots. Attorney Paul Shea, representing the Stavros' noted that the lots being created were grandfathered, being pre-1953. Essex adopted the subdivision control law on March 29, 1954. The Town's counsel advised that the board could sign the ANR, but also that "...such endorsement does not grant the parcels or lot thereon any standing under the Zoning By-law."

Motion: Gil Guerin moves to approve the Approval Not Required for George Stavros of 132 John Wise Avenue for subdivision of Lot at 48-50 Western Avenue on Assessor's Map 36, Lot 65, plan

drawn by Frederick Forbes, of Rural Land Surveyors, dated 7/17/00. Property divided will create two lots with preexisting dwellings: Lot 1 being 7,319SF with frontage on Western Avenue, Lot 2 being 10,649SF. Both lots have frontage on Western and Prospect Streets. Approval is based on a letter dated 7/27/00 by Town Counsel. Seconded by Joseph Walker. All members (excluding George Stavros) present voted to approve the motion.

(Note: George Stavros returns to the table.)

Liberty Road Subdivision/Robert Bradley: Mr. Bradley came before the board requesting that 20K is released to him. Currently, there is approximately 40K held in escrow at the Town for insurance on the completion of the road. The board is in receipt of a letter from H.L. Graham, town's agent for the overseeing of the road, dated 9/1/00. The letter explains that the estimated remaining costs for completion of the road is 20K. This does not include inspection of road base and binder pavement placement (inspection was not done on road base and binder pavement placement), and any additional costs to bring watermain, services, hydrants or other appurtenances up to standards acceptable to the Essex DPW, if necessary. The board's clerk will forward a copy of HL Graham's letter to the DPW for comments.

Motion: Chairman Burnham entertained a motion to approve releasing all funds, being held in escrow, including interest due, except for an amount of twenty thousand dollars (\$20,000.00) to Robert Bradley, owner of Liberty Road Subdivision, Western Avenue, Essex. Seconded by Joseph Walker. All members present voted to approve the motion.

18 Coral Hill/Building Permit Application Finding Only: Architect John Michaud came before the Board for a finding that the proposed reconstruction of a dwelling at 18 Coral Hill Road be deemed not more detrimental to the neighborhood than its existing nonconforming use. This application has been ongoing for quite some time with discussions about its alleged illegal nonconforming decks and increased building on the nonconforming single-family dwelling. Site visits and redraws of the dwelling and numerous hours with the abutters resulted in changes to the original request. The plan was downsized and did not increase the nonconforming setbacks. The height of the privacy fence was discussed and it was not higher than existing fences in the neighborhood. Ms. Carnevale, an abutter, found it frustrating that a view could be decreased and there was nothing that could prevent this from happening, even if the fence was within the required height measurements. It was noted that the applicants were only asking to do what other residents already have. Joseph Walker, board member, wanted to go on record to say that he felt that any extension of the decking, or fencing, is extremely insensitive to the neighbors. Attempts to rectify this issue were that there will be a strip of land extending to the water line, and some abutters' views were saved (Mahoneys) and

Page Four of Pln.Bd. Minutes of 9/6/00, continued...

Mr. Carnevale has a limited view (which will remain the same as previous). Scottie Robinson felt that even if variances were granted previously, abutters have no recourse.

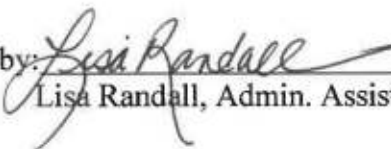
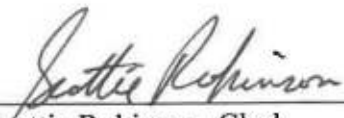
Motion: Chairman Burnham entertained a motion to approve the conceptual drawings and plan, for 18 Coral Hill Road, for John and Nancy Davis, for the removal of existing camp style wood frame and portion of existing foundation. Replace wood frame into four season home. Reference plan dated 9/6/00 by K.J.Savoie Architecture. Finding that based on Section 6-4.2 of the Essex Town Bylaws that the proposed construction shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. Final approval of the building permit only after Board of Health, Conservation Comm., Dept. Public Works, and Wetlands compliance. The motion was moved, Seconded by Scottie Robinson. Voting to approve the finding was Chairman Burnham, George Stavros, Gil Guerin, Scottie Robinson. Joseph Walker abstains from voting.

Peter Van Wyck for Lowland Farms: Mr. Van Wyck is scheduled for September 20 at 8:30 p.m.

Letter from Virginia Mulcahy on Milk Street: Mrs. Mulcahy is concerned about the traffic that she feels is generated by a beauty shop located at Milk Street. Scottie Robinson will address her concerns.

Resignations: Lisa Randall, Administrative Assistant to the board is resigning effective October 1. Westley Burnham is resigning as Chairman effective immediately. Plans to replace his chair will commence at the September 20 meeting.

The Board, having no further business, adjourned the meeting.

Presented by:  Lisa Randall, Admin. Assist. Attested to:  Scottie Robinson, Clerk



ESSEX PLANNING BOARD

Town Hall 30 Martin Street Essex, Massachusetts 01929 - 1219

NOTICE

Notice is hereby given that the Town of Essex Planning Board will schedule a meeting to take place

Tuesday on ~~Wednesday~~ August 16, 2000 *Tues. Aug. 15*
At 7:30 p.m.

to discuss matters relating to
Building Permit Applications
brought forward by
The Town of Essex Building Inspector.

All meetings are opened to the public.

For the Planning Board,
Scottie Robinson, Clerk

Posted:
/l.randall

*meeting to
Be at Council on Aging
Scout house on
Pickering Street.*

**TOWN OF ESSEX PLANNING BOARD
MINUTES
WEDNESDAY, AUGUST 15, 2000
7:30 p.m.**

and adjourned to the Fire Station

The meeting was held at the Scout House on Pickering Street and was opened at 7:30 p.m. by the chairperson.

Attendees: Westley Burnham, Gil Guerin, Walter Rich, Elisabeth Shields, George Stavros, Joe Walker.

Building Inspector: Bob Nelson.

66 Choate Street, Map 16, Lot 12.

Gil Guerin removes himself from the Board. Mike Stadies, of Creative Development Associates is present. A discussion takes place regarding a property's access. Wetlands were not shown on original plans. You must show access to your property. Case law is presented indicating that even if wetlands exist on the front of property, you can access that property through the wetlands. Essex Land Use Regulations require that every lot must be accessed from the property's frontage. It is recommended that the developer return with plans showing the lot line has been moved. The Sweets and Gil Guerin return to the table.

Patriot's Lane, Lot 2C

The Building Inspector presents an application for a single story office building.

Motion: George Stavros moves to approve the Building Permit application of Mr. and Mrs. Ken Sweet to build a single story office building on Lot 2 C, Patriot's Lane, Map 8, Lot 32B.

The motion is seconded by Joe Walker and unanimously passed by those members present.

148 Main Street


The Building Inspector discusses this property and suggests that he review the papers.

48-50 Western Avenue

George Stavros removes himself from the discussion regarding this property. The letter dated July 27, 2000, from town counsel regarding ANR Plan Showing Pre-Existing Buildings was referenced. No action was taken.

The Board adjourned at 9:20 p.m.

Presented by: _____

Attested to: 
S.S. Robinson, Clerk

**TOWN OF ESSEX PLANNING BOARD
AGENDA
WEDNESDAY, AUGUST 2, 2000**

The meeting is scheduled to meet at the Council on Aging/Scout House, Pickering Street

7:30 p.m.	Building Inspector Report
7:45 p.m.	Melvin Nunes, Eastern Ave., ANR
8:00 p.m.	Tentative: Meeting with Town Counsel for Turtleback Road and 48-50 Western Avenue/ANR

Other Planning Business:

- 36 Story Street Subdivision: Decision
- Minutes of June 21, July 19
- Patriot's Lane-Lot 2C (possible discussion)
- 18 Coral Hill Road (possible discussion)
-

**TOWN OF ESSEX PLANNING BOARD
MINUTES
WEDNESDAY, AUGUST 2, 2000**

The meeting took place at the Council on Aging/Scout House on Pickering Street and was opened by the Chairman.

Attendees: Westley Burnham, Chairman, Elisabeth Shields, Scottie Robinson, Walter Rich, George Stavros and Joe Walker. Absent: Gil Guerin

Building Inspector Report: Patriot's Lane, Lot 2C: Mr. Nelson came before the Board with applicant Ken Sweet, who wishes to build a single family dwelling on the lot, being 49,385 square feet. Applicant met at the 7/19/00 Planning Board meeting where it was discussed that the lot did not meet the 40,000 SF requirement of upland area. Mr. Nelson noted that the Patriot's Lane Subdivision was approved in 1987 and since that time, two other single-family dwellings have been built – being between 1994-1998. The lot has a Title V Certificate of Compliance for a five-bedroom home that was approved in 1998. Since the two homes were already approved, despite a possible error on the Planning Board's decision to site the homes, Mr. Nelson will be conferring with Town Counsel on the matter.

Chairman Burnham would schedule a special meeting on Wednesday, August 9, 2000 to provide the applicant time in order to resolve the matter, if Town Counsel deemed that the site could be approved. As the Bylaw stood now, Chairman Burnham noted that he would not be able to approve a siting. Mr. Nelson would contact the Board as soon as he had information.

Creative Development Associates: 66 Choate Street, Map 16, Lot 12. Applicants seek a siting for a dwelling. The Board refused approval siting that Creative Development Associates was aware that they were to provide the Board with a plan that shows the pond in relation to the frontage, on the property. No action was taken.

2 Lebaron Drive: Map 39, Lot 5, for second level on house, not expanding the footprint. Plan shows three parking spaces, adequate for additional apartment being created. Board of Health has approved the application.

Motion: Walter Rich moves to approve the Building Permit Application For Patricia McGrath of Two Lebaron Drive, Map 39, Lot 5, for addition Of second floor and apartment, finding that under Section 6-4.2 of the Town of Essex Bylaws that the proposed extension and alteration is not Substantially more detrimental than the existing nonconforming use To the neighborhood. Also finding that adequate parking has been shown, The application has Board of Health approval, and the additional building Is not increasing the footprint of the structure. Seconded by George Stavros. All members present voted to approve the Motion.

Page Two of Planning Board Minutes of 8/2/00, continued...

Building Inspector/Robert Nelson Resigns: The Board was made aware that as of September 1, 2000, Mr. Nelson will no longer serve as the building inspector. Mr. Rich asked if Mr. Nelson would be open to meeting with the Board and the new inspector prior to his departure.

Melvin Nunes-Rear 81 Eastern Avenue/ANR: Mr. Nunes submitted a plan to add to a preexisting nonbuildable lot onto an existing lot. Land will now have a total of 55,711 SF, on a plan known as Plan of Land Off Eastern Avenue, prepared by Gloucester Survey Associates, dated 11/27/98.

Motion: George Stavros moves to approve the Approval Not Required Form A Plan for Melvin S. Nunes, Trustee, Nunes Realty Trust, Rear 81 Eastern Avenue, Book 15513, Page 305 & 306, for lot line change to combine a preexisting nonbuildable lot with applicant's existing lot. Seconded by Walter Rich. All members present voted to approve the Motion.

36 Story Street Subdivision Decision: A short discussion about the site visit held by the Board in relation to the road concluded that the road would be allowed to be gravel. Ms. Robinson noted that the abutters did not seem to be concerned about the cutting of trees on the property line; a "no-cut zone" was not requested. Chairman Burnham read the Draft Decision to the Board.

Motion: Chairman Burnham entertains a Motion to Approve the Joan Bucklin/36 Story Street Subdivision:

The Essex Planning Board voted to **approve** the Definitive Subdivision plan submitted on 5/17/2000 for land owned by Joan E. Bucklin located on Story Street, (Book 6240, Page 255), Essex based on the following information and conditions:

Property owner of record and applicant is Joan E. Bucklin of 36 Story Street Essex, Ma. Represented as applicant by Glovsky & Glovsky, Attorneys, 8 Washington Street, Beverly MA 01915.

After all required notifications and advertising a Public Hearing was held on June 21, 2000 and closed that evening.

The following waivers from the Town of Essex Subdivision Rules and Regulations are approved:

These approvals are made based on testimony and information submitted to the Board indicating no more than one (1) house lot, single family residence, will be serviced by this access (the road). Any deviation from the plan submitted and subsequent discussions shall require prior approval of the Board or approval of the following waivers shall be null and void.

1. Relief from 7.02 4.a.1, and 7.02 4.c.1 Minimum width of Right of Way, 44 feet: at the intersection with Story Street. a width of 38.00 feet is authorized for the entire length of the proposed roadway.
2. Relief from the requirement of 3.05 Access Adequacy, fourteen-foot wide gravel is authorized in lieu of the 16 foot gravel requirements for 10 or less dwellings. All other construction standards shall be complied with.
3. Relief from the requirements of 7.02 2.j and 7.02 4.c.3, the 100-foot radius requirement will be waived in lieu of a "Hammerhead" turnaround deemed adequate to meet the intent of accommodating emergency type vehicles.
4. Compliance with 7.0.3 Drainage is waived except as follows: In accordance with 7.02 4g, 4h, 5 grassed swales are approved for the length of the roadway and meet the intent for controlled ground water recharge. The swales shall be constructed and maintained in such a way as to control the runoff and direct it to a discharge point on the applicant's property, minimizing any impact on neighboring properties.
5. Relief from 7.02 4.a.6b: Shoulders shall be granted to reasonable and appropriate for safe pass and repass of emergency type vehicles and be blended with the drainage swales.
6. Relief from the 7.01 (10) requirement of underground utilities: The small size of the project and lack of similar construction method in the area deems this excessive.
7. Relief is granted from the following requirements: 7.02 Streets and Ways: 4.a.2.b (see #2), 4.b, 4.c.1 (see #1), 4.c.3 (see#3) 4.i, 4.j, 6, 7, 8; 7.05 Blocks, 7.06 Lots. These waivers are based on the small scale of the project and the applicant's intent to maintain the natural vegetation to the maximum extent possible. 7.07: Monuments will be required to be placed only on the inner radius and side of the right of way bordering Lot 1.
8. Relief is granted from 6.04 Construction Plan contents: The Definitive Plan and Road Profile contain adequate detail for this project. A meeting of the implementing engineer and the overseeing engineer should occur prior to start of construction to insure there is no conflict as to inspection requirements and construction standards.

The following conditions are to be attached to this plan as part of the Approval.

1. All septic systems shall conform to the requirements of the Essex Board of Health, and shall be approved prior to issuance of any building construction permits.
2. Town water shall be provided for Lot 2, the Fire Department does not require installation of any additional fire hydrants. All water installations shall be in accordance with Dept. of Public Works regulations.
3. This plan was reviewed with the minimum requirements of 'Single Family Dwellings' being met, any other use may or may not conform to the requirements and will be held to the requirements of the Essex Zoning Bylaws.
4. A Covenant Agreement shall be attached to the two (2) lots created stating that this roadway is to be maintained as private road, all maintenance costs incurred will be the responsibility of the owner or owners of record of the properties.
5. In lieu of a street name a sign identifying the lot address numbers assigned to the lots created shall be erected at the intersection of Story Street, this sign will be adequate for reasonable identification of the location to assist emergency personnel.
6. Abutter names for the Southern lot line and the opposite side of Story Street are missing from the definitive plan.

Endorsement of the approval will occur after the following requirements have been met:

1. The missing abutting property owners, design and placement of the hammerhead turnaround, and proposed monument locations shall be added to the plan.
2. A Performance Guarantee is in place and agreed to by both the Applicant and the Essex Planning Board. Said agreement having been reviewed by Town Counsel if the Board deems necessary.
3. An individual to act as 'Clerk of the Works' (overseeing engineer) has been designated and agreed to by the Board. This individual will answer to the Board and will monitor construction IAW the approved plan. A written agreement to fund this individual is submitted to the Board by the applicant.
4. Written confirmation that no appeals have been filed with the Town Clerk within the statutory twenty-day (20) appeal period. The date for start of this period will be when this decision is filed with the Town Clerk.

The Motion, being Moved and Seconded: A Roll Call Vote to Approve the 36 Story Street Subdivision Decision as amended was taken:

Chairman Burnham, Voting in favor, siting that the subdivision waivers requested was adequate and meets the intent of the subdivision rules and regulations.

Elisabeth Shields, Voting in favor, siting that after reviewing the site, and based upon the size of the subdivision, and to the best of her knowledge of the bylaws, the approval and granting of waivers seemed appropriate.

Scottie Robinson, Abstains from voting (not being present for Public Hearing)

Walter Rich, Voting in favor, siting that the waivers were more than acceptable, and the response from the abutters being satisfied, felt that approval was appropriate.

Joseph Walker, Voting in favor, siting that after reviewing the subdivision rules and regulations and draft decision approves of the subdivision.

George Stavros, Voting in favor, siting that the waivers is in accordance with the small project and within the confines of the neighborhood.

Minutes: Motion: George Stavros Moves to approve the June 21, 2000 Minutes as written. Seconded: Walter Rich. All members Present voted to approve the Minutes.

Motion: Betsy Shields Moves to approve the July 19, 2000 Minutes as written. Seconded: Walter Rich. All members Present voted to approve the Minutes.

(Note: George Stavros removes himself from the table for the next discussion.)
48-50 Western Avenue: Mr. George Stavros, Sr. is requesting to divide a preexisting nonconforming lot with two existing dwellings on the property. (See Minutes of July 19, 2000) An opinion from Town Counsel noted that if each of the two dwellings were standing when the subdivision control law went into effect in Essex, the plan does not show subdivision and should be endorsed under G.L.c.41, Sec. 81P. Chairman Burnham questioned whether Town Counsel intended to say "dwelling" or "building". This led the Board to discuss the clarification of the description of a building and a dwelling. It was discussed that the intent of decisions of this sort were for farm families to divide land between themselves on the same property, and not for a garage, or "out house" or chicken coop to become a separate dwelling in which to divide the lots. The lot in question has two-family apartment building and a converted garage as another dwelling unit on it.

The Board would table the matter; ask Mr. Stavros for an extension, and inquire with Town Counsel about the dwelling versus building question. No action was taken.

The Board, having no further discussion, adjourned the meeting.

Presented by: Lisa Randall
Lisa Randall, Admin. Assist.

Attested to: Scottie Robinson
Scottie Robinson, Clerk

**TOWN OF ESSEX PLANNING BOARD
AGENDA
WEDNESDAY, JULY 19, 2000**

7:30 p.m.	Building Inspector Report
8:00 p.m.	*
8:15 p.m.	Peter Van Wyck/Turtle Back Road
8:30 p.m.	Mr. Nunes/ANR – Lot Change - <i>Eastern Ave</i>
8:45 p.m.	George Stavros - <i>48-50 Western Ave - ANR</i>
Other	Bills Payable H.L. Graham Invoice Minutes 36 Story Street Subdivision

**TOWN OF ESSEX PLANNING BOARD
MINUTES
WEDNESDAY, JULY 19, 2000**

The meeting was held at the Scout House/Council on Aging and opened by the Chairman.

Attendees: Westley Burnham, Chairman, Scottie Robinson, Walter Rich, Elisabeth Shields and Gil Guerin. Absent: Joseph Walker and George Stavros

Building Inspector Report: 50 Southern Avenue. The applicants are intending to extend a kitchen on an existing nonconforming lot. Current setback from the lot line is approximately three and one half feet. It was discussed that the applicant may not increase the nonconformity of the lot and must stay within twenty five percent lot coverage. No action was taken; for discussion only.

2 Lebaron Road: Applicant seeks to raze roof to make second apartment. The application has Board of Health approval and is a nonconforming lot of .44 acres, Map 39 Lot 5. A 6-4.2 finding from the Planning Board would be required and the applicant must show adequate parking. No action was taken; for discussion only.

Patriot's Lane, Lot 2C: the Planning Board approved this subdivision road in 1987. An ANR was approved on Jan. 6, 1999, giving this lot additional square footage being a total of 49,385 square feet. Applicant wishes to build a new modular single-family dwelling with farmers porch and attached two-car garage, being 44 x 27.8 x 33ht. The application has Board of Health approval dated 7/18/00. Chairman Burnham requested that the applicant show the upland area on lot remarking that the bylaws state that at least 40,000 square feet of uplands be shown for approval of this siting. This lot is within the Water Resource Protection District. No action was taken; for discussion only. Note: Building Inspector did not agree with Chairman Burnham.

Note: Walter Rich removes himself from the next application. Mr. Rich will be constructing the accessory building and is not representing a third party.

16 Water Street, Map 29, Lot 38: Applicant is proposing to demolish and remove an existing barn which is in disrepair and reposition a new 24 x 36 accessory barn, intending to decrease the nonconformity of barn (the barn is now located on an abutting property.)

Motion: Chairman Burnham entertained a Motion to approve the application for Mr. and Mrs. Walter Rich of 16 Water Street, approving the demolition and reconstruction of a 24 x 36 SF barn seeing that under 6-4.2 Existing Nonconforming Uses, that the proposed building shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. The Motion was Moved, Seconded by Gil Guerin, and all members present Voted to approve the Motion. Walter Rich abstained from voting on this application. The motion passes.

(Note: Walter Rich returns to the Table.)

Page Two of Planning Board Minutes of July 19, 2000, continued....

Peter Van Wyck/Turtleback Road: Mr. Van Wyck came before the Board to discuss improving his relationship with the Board. He gave the Board a two-page describing his opinions of Conomo Point and potential tax loss of 10 Million Dollars. A question of what the tax rate for town residents will be from the sewer and regionalization issues:

The land area of Town.

The protection of open space in Town.

The need to protect the Town's water supply.

The world population expansion.

Mr. Van Wyck's last paragraph reads: "I happen to own some land that could solve some of the expansion problems for the town. In this respect, I welcome the cooperation of the planning board. I need your assistance and cooperation. I hope we can put aside the problems of the past and look for the challenges of the future."

Chairman Burnham asked about the status of Turtleback Road Subdivision. Mr. Van Wyck did not agree that H.L. Graham Associates should do core samples of the road. He felt that Neve (his engineer) has already reported the work, and that perhaps a third party would need to be established. August 16th is the Court date set for the Agreement of Judgment.

Melvin Nunes-Eastern Avenue: Mr. Nunes came before the Board to change lot lines on property located off Eastern Avenue. The applicant will return on August 2, 2000 at 7:45 p.m. with the necessary documents in order to be approved by the Board.

George Stavros/48-50 Western Avenue: Attorney Paul Shea represented Mr. George Stavros for approval for a Form A on property located at 48-50 Western Avenue. Plan dated 7/17/00 by Rural Land Surveys shows two buildings on a pre-existing, nonconforming lot of approximately 17,968 SF. Applicant proposes to split the lot into two and notes that under MGL Section 81 L - "definitions" "... The division of a tract of land on which two or more buildings were standing when the subdivision control law went into effect in the city or town in which the land lies into separate lots on each of which one of such building remains standing, shall not constitute a subdivision..." The subdivision control law was adopted by Essex on March 29, 1954, and an enclosed record of the Essex Assessor's Office authenticates that in 1953 there was in existence at this location two buildings. In addition, the Town of Essex selectmen filed a taking for the layout of Western Ave. on 11/1/38, and the plan shows two buildings located at this address.

The Board did not act, and will refer to Town Counsel on the matter.

Minutes/6/21/00: **Chairman Burnham entertained a Motion to approve the Minutes with amendments/clerical corrections on Page 2, last paragraph under "Massachusetts Department of Housing and Community Development - Grant". The Motion was Moved, Seconded, and unanimously Voted.**

Page Three of Planning Board Minutes of July 19, 2000, continued...

36 Story Street Subdivision: It was agreed that a site visit would take place for all interested Board members before the Decision of the Subdivision on August 2, 2000 meeting.

The Board, having no further business, adjourned the meeting.

Presented by: *Lisa Randall* ^{LAR} Attested to: *Scottie Robinson*
Lisa Randall, Admin. Assist. Scottie Robinson, Clerk

**TOWN OF ESSEX PLANNING BOARD
AGENDA
WEDNESDAY, JUNE 21, 2000**

6:30 p.m. Meet at the Scout House/Pickering Street for a Site Visit at 18 Coral Hill, off Wood Drive.

7:30 p.m.

Building Inspector Report
County Road; Deck
18 Coral Hill Road

8:00 p.m.

Public Hearing of 36 Story Street for
Definitive Subdivision Plan for Joan Bucklin

9:00 p.m.

Peter Van Wyck for Turtleback Road and
Low Land Farm

Other Business:

Bills Payable
18 Coral Hill Road (site visit discussion)
Minutes of May 24, June 7
Payroll

**TOWN OF ESSEX PLANNING BOARD
MINUTES
WEDNESDAY, JUNE 21, 2000**

The Board met at 18 Coral Hill Road for a site visit at approximately 6:30 p.m. Discussion will follow during Building Inspector's report.

The Planning Board meeting was held at the Council on Aging/Scout House on Pickering Street and opened by the Chairman.

Attendees: Walter Rich, Betsy Shields, Westley Burnham, Chairman, Joseph Walker, Gil Guerin, and George Stavros. Absent: Scottie Robinson

(Note: Westley Burnham removes himself from the table as an abutter to this property.)

Building Inspector Report: 6 County Road, Map 31, Lot 14; Owner Ms. Henderson is proposing to build a 12x35 open deck to rear of single family dwelling. The deck will not extend the pre-existing setbacks of the nonconforming lot. Application has Order of Conditions from D.E.P.

Motion: Walter Rich moves to approve the building application for Sarah Henderson of Six County Road, Map 31, Lot 14, to construct a 12x35 open deck as per enclosed sketch. Deck is not to encroach on property line of existing structure, and finding under 6-4.2 Existing Nonconforming Uses, that the proposed extension or alteration shall not be substantially more detrimental than the existing use to the neighborhood. Seconded by George Stavros. Voting in favor of the Motion was: George Stavros, Joseph Walker, Walter Rich and Betsy Shields. Voting present: Gil Guerin and Westley Burnham. The Motion carries.

(Westley Burnham returns to the table.)

18 Coral Hill Road: Members Walter Rich, Joseph Walker, George Stavros and Westley Burnham met with the Building Inspector at the property earlier this evening. Architect John Michaud was present as well, representing the owners who wish to extend the nonconforming setbacks that already exist. The Board is aware that some of the building existing today does not have the proper permits for the work done, and these extensions are thought to be illegal nonconforming additions. The Board will receive drawings from Mr. Michaud for further discussion. No action was taken.

(Note: Westley Burnham removes himself from table as an abutter to applicant, James Ansara.)

Ansara-Andrews Street, Map 6: On June 7, 2000, the Planning Board approved a plan to combine Map 6, Lots 19, 19B, 19C into one contiguous lot containing 26.90 acres for Mr. and Mrs. James Ansara. Applicant seeks foundation permit only, for single family dwelling to be built. Access will be from Andrews Street, but the construction road

access will be on Apple Street. The applicant will not use this access to the property after construction is complete, realizing the safety issues off Apple Street in that vicinity.

Motion: Elisabeth Shields moves to approve a foundation permit for James and Karen Ansara at Andrews and Apple Streets, Map 6, as shown on site plan dated 6/21/2000, finding that the plan meets all minimum required setbacks. Permanent access to structure shall be utilized by the frontage on Andrews Street only. Entrance through Apple Street will be temporarily used for construction purposes only. Application must meet all other required approvals before further Planning Board approvals are given. Seconded by George Stavros. In favor of the motion were: Walter Rich, Betsy Shields, Gil Guerin, George Stavros and Joseph Walker. Westley Burnham votes present. The motion carries.

(Note: Westley Burnham returns to the table.)

Public Hearing for 36 Story Street Subdivision Plan/Joan Bucklin: The Chairman opened the public hearing and read the Legal Notice printed in *The Gloucester Daily Times*. Mark Glovsky, attorney for Joan Bucklin, explained the proposed two-lot subdivision. The plan shows one lot with the home of Joan Bucklin, a roadway, and one developable lot with a total lot area of approximately 3.16 acres. Frontage of new lot will contain 150 feet on the roadway created. Applicant proposed fourteen-foot wide, gravel road. Road plan shows drainage leaching swale not entering onto Story Street. A list of waivers is requested: Section 6.04- requirement for Construction Plan, which will ultimately be submitted to the Board. Section 7.01- requirement for underground utilities, 7.02(2)(j) and 7.02(4)(c)(3)-requirements for turnaround at end of dead-end street- applicant proposes a hammerhead. Section 7.02(4)(a)(1) and 7.02(4)(c)(1)- minimum width of right of way. The applicant submits that the 38-foot right of way is sufficient layout for proposed 14-foot gravel driveway (waiver 7.02(4)(a)(2). An alternate proposed 44-foot wide right of way would be achieved by a one-foot wide easement over Lot 1 for length of existing dwelling where required setback is 20 feet, being the maximum achievable width of the right of way as it passes the dwelling. Other miscellaneous requirements are requesting waivers in Section 7.02 such as sidewalks, esplanades, seeding, curbing, pedestrian and bicycle circulation systems, trees, blocks, lots. The 7.07 Monument Section will not be asked for by the applicant as shown in application.

Comments from other Departments in Town were read. The Board of Selectmen wanted clarification on lot width. They felt that as a Board, the Subdivision Rules and Regulations be followed and that waivers are carefully thought out before granting, and that this subdivision should be granted only those waivers that are necessary.

The Board of Health felt that one of the test pits shows a leach pit being less than the required ten feet from the property line. However, the applicant is not using that test pit

Page Three of Planning Board Minutes of 6/21/00, continued...

area for septic. Mr. James Knowlton, an abutter on Western Avenue, wanted to be sure the septic system did not encroach the setbacks to his well. The Board referred him to the Board of Health for Title V regulations.

The Fire Department noted an approval of the plans.

The Board will schedule time for discussion of this subdivision before decision.

Motion: George Stavros moves to close the Public Hearing for 36 Story Street Subdivision for Joan Bucklin. Seconded by Joseph Walker. All members present voted to approve the Motion.

Peter Van Wyck/Low Land Farms Discussion: Mr. VanWyck came before the Board to ask that the Board vote to agree to drop the suit, sign the Agreement for Judgement and sign the "linen" (subdivision plan). Chairman Burnham will discuss the arrangements with Town Counsel, feeling that there may be an appeal period after the signature of the Agreement for Judgement and the signing of the "linen". Not knowing the legal requirements concerning this case, the Board will look into the matter.

Peter Van Wyck/Turtle Back Road Subdivision Discussion: Mr. Van Wyck was asking that the Board accept the records for engineering and construction of the road, which was done by his engineer, Thomas Neve. The Board reminded Mr. Van Wyck that the subdivision rules and regulations requires an outside firm to represent the Town to do inspections at the applicant's expense. Mr. Van Wyck did not agree that H.L. Graham's inspections be necessary since Neve Associates have already inspected and recorded the work done. Chairman Burnham noted that if the funds were not available for H.L. Graham to inspect the work (do coring samples, etc. as listed in H.L. Graham's 6/7/00 estimated fee and work schedule), then the August 16, 2000 court date for hearing be held accordingly. The Board did not act.

Minutes: Motion: Joseph Walker moved to approve the May 24, 2000 Minutes as written. Seconded by Gil Guerin. All members present voted to Approve the Motion.

Motion: Walter Rich moved to approve the June 7, 2000 minutes As written. Seconded by Joseph Walker. All members present Voted to approve the Motion.

The Board, having no further business, adjourned the meeting.

Presented by: *Lisa Randall*
Lisa Randall, Admin. Assist.

Attested to: *Scottie Robinson*
Scottie Robinson, Clerk

Next scheduled meeting is Wednesday, July 19, 2000, 7:30p.m. at the Scout House.

**TOWN OF ESSEX PLANNING BOARD
AGENDA
WEDNESDAY, JUNE 7, 2000**

Welcome new Planning Board Member, Joseph Walker

7:30 p.m.

Building Inspector Report
Site Visit for Coral Hill w/copy of Variance
Tentative Date: June 17th or 24th
Gerome Creapeau/Building Permit
James Ansara for ANR-off Andrews Street

8:00 p.m.

Other:
Mail
Letter from Jan Nichols
Letter from Essex Animal Care Ctr.
Distribute Meeting Notice
Minutes of 4/19, 4/26, 5/3, 5/17
H. L. Graham Esq.

**TOWN OF ESSEX PLANNING BOARD
MINUTES
WEDNESDAY, JUNE 7, 2000**

The meeting was held at the E.E.M.S. on Story Street, and opened at 7:30 p.m.
Attendees: Betsy Shields, Walter Rich, Joseph Walker, Scottie Robinson, George Stavros, and Chairman Westley Burnham. Absent: Gil Guerin

New Planning Board Member: The Board welcomed Mr. Joseph Walker, newly appointed Board member.

Building Inspector Report: 11 Lufkin Point Road/Jerome Creapeau: Building application for siting of new, single family dwelling. This application was tabled on May 24th as access of driveway was not detailed on site plan. Plan now shows access off Lufkin Street, showing adequate access and frontage requirements on permit site plan, job no. 7319 by Hancock Eng. Assoc.

Motion: Elisabeth Shields moves to approve the siting of a single family dwelling being 118x34x32, which includes attached garage, for Jerome Crepeau, 11 Lufkin Street, Map 20, Lot 1B, being 8.820 acres, as shown on plan dated 4/7/00 by Hancock Survey Associates of 235 Newbury St., Danvers, MA, finding that the plan meets all of the minimum standards of required setbacks, including access, for the Town of Essex. The application has Board of Health and Conservation Commission approvals. Seconded by George Stavros. All members present voted to approve the Motion.

18 Coral Hill: The Board will visit the site on Wednesday, June 21, 2000 at 6:30 p.m. in order to view the existing structure. On 5/24/00, Mr. Michaud, architect for the applicants, came before the Board to discuss plans to build on the nonconforming lot. The Board will affirm what existing structures (decks) are legal, noting that the building cannot exceed the existing nonconforming measurements.

Letter by Jan Nicols/233 Western Avenue and Letter by Essex Animal Care Center/229 Western Avenue: Ms. Nicols sent a letter copied to all departments in Town regarding a nuisance pertaining to barking dogs at the 229 Western Avenue property. Ms. Nichols is insisting that the animals be put out no earlier than 8:00 a.m. Mr. Kippenger, owner of the animal center, writes to say that according to town bylaws, he is able to put the dogs out at 7:00 a.m.

This issue is not within the Planning Board's purview, adding that there are no noise ordinances in town, as well. No action was taken.

Minutes: **Motion:** Betsy Shields moved to approve the April 19, 2000 Minutes as written. Seconded by Walter Rich. Voting to Approve the Minutes were: Betsy Shields, Walter Rich, and Westley Burnham. Voting Present: George Stavros, Scottie Robinson, and Joseph Walker.

Motion: Betsy Shields moved to approve the April 26, 2000 Minutes as written. Seconded by George Stavros. All members Present voted unanimously to approve the Minutes.

Motion: Betsy Shields moved to approve the May 3, 2000 Minutes as written. Seconded by: George Stavros. All Members voted unanimously to approve the Minutes.

Motion: George Stavros moved to approve the May 17, 2000 Minutes as written. Seconded by Walter Rich. All members Voted unanimously to approve the Minutes.

ANR for James Ansara/Andrews and Apple Streets: The Approval Not Required is for reconfiguration of four existing lots being combined to form one continuous lot with sufficient area and frontage on an existing public way. Map 6, Lots 19, 19B, 19C, having 26.9 acres. Book No. 6152, Page No. 266. Plan drawn by Hancock Survey Associates, 235 Newbury St., Danvers, MA, dated 6/5/00.

Motion: George Stavros moves to approve the Form A, Approval Not Required, for James and Karen Ansara of 27 County Road, for property located on Map 6, Lots 19, 19B, 19C, Book No. 6152, Page No. 266, property located off Andrews Street. Lots to be reconfigured to be combined to form one continuous lot. Plan by Hancock Survey Assoc. Of 235 Newbury Str, Danvers, MA, meets all minimum standards of The Town of Essex Bylaws for Approval Not Required. Seconded by Betsy Shields. Voting in favor of the Motion: George Stavros, Betsy Shields, Scottie Robinson, Joseph Walker, and Walter Rich. Chairman Westley Burnham abstains from Voting as an abutter to the applicant. The Motion is approve.

MA Department of Housing and Community Development – Grant: Ms. Robinson explained that the grant for up to \$30,000.00 for Housing Development Support Program, provides federal Community Development Block Grand funds, usually in conjunction with other public and/or private resources, for the creation, preservation and improvement of affordable housing. Should the Town agree to apply for the grant, the Town would become housing certified, and acquire bonus points toward other competitive grants, and contribute to promoting affordable housing opportunities. However, there were certain criteria necessary, which the Town did not qualify. Ms.

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Page Three of Planning Board Minutes of June 7, 2000, continued...

Robinson went on to add that there were already many affordable opportunities in Town, considering the mixed uses already in existence, i.e., home occupations, commercial/residential uses.

Discussion: Mixed Uses: A short discussion about the mixed uses in Town and how to apply standards for these uses ensued. The Board tabled the matter for future discussion.

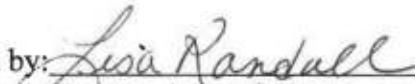
Turtleback Road/Escrow Account:

Motion: Chairman Westley Burnham entertained a Motion to have the Board send a letter to Peter Van Wyck relative to depositing an amount of \$3,500.00 in the account for services of H.L. Graham Associates. This amount will be placed into the account prior to July 1st, and will afford the cost of inspections and certifications of the subdivision road. The Motion was moved, seconded, and unanimously Voted.


Low Land Farms: The Board will review the Agreement and Terms of the suit in order to resolve the matter and close the case. Copies will be given at the June 21st meeting.

The Board, having no further business, adjourned the meeting.

Presented by:


Lisa Randall, Admin. Assist.

Attested to:


Scottie Robinson, Clerk

For:

**TOWN OF ESSEX PLANNING BOARD
AGENDA
WEDNESDAY, MAY 24, 2000
REGULAR PLANNING SESSION**

7:30 p.m.

Building Inspector Report
64 Wood Drive

8:15 p.m.

John Michaud, Architect for
Coral Hill Road

Other Planning Business:

- Minutes of April 19, April 26
May 3, May 17
- Approve Schedule for Summer/Fall
- Letter from Town Counsel re: PVW
- DHCD Letter (copy from B.O.S.)
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**TOWN OF ESSEX PLANNING BOARD
MINUTES
WEDNESDAY, MAY 24, 2000**

The meeting was held at the E.E.M.S. Media Center, 12 Story Street and opened by the Chairman.

Attendees: Westley Burnham, Chairman, Gil Guerin, Scottie Robinson, and Walter Rich.
Absent: George Stavros, Betsy Shields

Building Inspector Report: 64 Wood Drive Map 4, Lot 109: Mr. Nelson brought forth a building permit for siting of a single family dwelling for a pre-1972, nonconforming lot, which was found to be exempt from zoning laws regarding area, frontage and setback requirements, except for the Water Resource Protection Bylaw, Conservation, and Title V laws. The grandfathered lot has Conserv. Comm. and Board of Health approvals. Frontage is located on Wood Drive.

Motion: Chairman Burnham entertained a Motion to accept the siting of a single family dwelling at 64 Wood Drive for Essex Equity Real Estate Trust, Harold Grant, Map 4, Lot 109, Lot Size of 13,000 SF, for a single family, three bedroom home 36x24x29 with 16x22 attached garage, with gravel driveway. The property does not meet current zoning bylaw setbacks, but under MGL Chapter 40A, the property was in common ownership prior to 1972 and therefore, is exempt from the current zoning setbacks excepting the fifteen percent or 2,500 SF lot coverage of the Town of Essex Bylaw 6-13. The permit has Board of Health and Conservation Comm. approvals. Seconded by Walter Rich. All members present voted unanimously to approve the building permit.

Jerome Crepeau-Lufkin Point, Map 20, Lot 1B: Application has been approved by the Conservation Commission and Board of Health. Site plan shows 8.820 acres with single family dwelling 60x26, and 30x36 attached garage. Frontage is shown off Lufkin Point Road, a private way as 184 feet. Plan drawn by Hancock Survey Engineering Assoc., Danvers, MA. The building application was tabled by the Board who wanted a more detailed explanation of where the driveway was to be located, as the siting of the home was located to the far right of the frontage. If an easement was to be granted, this needed to be shown on plan.

Turtleback Road: Town counsel sent notice that a pre-trial conference date is scheduled for August 16, 2000. Mr. Van Wyck has remitted an amount of \$2,500.00 for services rendered by H. L. Graham Associates, Technical Engineer for the Town. Mr. Graham will continue to work with Thos. E. Neve Assoc., Mr. Van Wyck's engineer for the subdivision road. Mr. Graham will be instructed to assess the total cost for inspection and certification of the road and Mr. Van Wyck will be instructed to place an amount in the account to fund the work done.

Page Two of Planning Board Minutes of May 24, 2000, continued...

Low Land Farms: Town counsel is working with Mr. Van Wyck's attorney to finalize details to close this case.

18 Coral Hill Road: Architect John Michaud came before the Board to discuss plans to consolidate building lot coverage into one mass of 41x30 which would be a five percent decrease of lot coverage. Also, request to extend the deck out to the water line (Chebacco Lake) which would increase the deck at 11.5 % of lot coverage. Also requested is an increase of parking area off the street (Coral Hill Road), asking for a carport or Pergola Type of structure.

This building application was a difficult one to assess, as the previous owner had allegedly added decking to the property without the proper permits. Mr. Michaud wanted to rectify the matter, since the abutters of the property were concerned that the setbacks were illegal, and the new building would encroach their property lines. The Board explained that they did not have the authority to increase the nonconformity of the structure, and since this property was within the Water Resource Protection District, the 15 percent lot coverage could not be increased. The decks would need to conform to the existing zoning setbacks, and the applicant could only use the existing building, not adding to the existing nonconforming lot coverage. An investigation concerning the decks was discussed: No building permits were issued during 1989-1996, so any building during that time was allegedly done without authority. Any building prior to 1972 would remain the same as this was prior to zoning in Town. A six to eight year grace period was discussed in accordance with the decking built after 1972, and any decking built prior to 1996 would probably remain as an existing nonconforming structure (decks).

The Board tabled this matter; no action was taken until the Building Inspector could further investigate the dates of the additional decks built prior to 1996.

Summer Schedule Motion:

Motion: Chairman Burnham entertained a Motion to approve The next six months of meetings as listed. The Motion was Moved, seconded, and unanimously voted.

Special Town Meeting: The Board received notice that a Special Town Meeting will take place at the E.E.M.S. on Monday, June 26, 2000.

The Board, having no further business, adjourned the meeting.

Presented by: Lisa Randall
Lisa Randall, Admin. Assist.

Attested to: Scottie Robinson
Scottie Robinson, Clerk

TOWN OF ESSEX PLANNING BOARD
AGENDA
WEDNESDAY, MAY 17, 2000

Welcome to new member, Scottie Robinson

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|-----------|--|
| 7:30 p.m. | Building Inspector Report |
| 8:00 p.m. | Miranda Gooding, Definitive Sub division
of Joan Bucklin-Story Street |
| 8:15 p.m. | Other Planning Business: <ul style="list-style-type: none">• Site Plan Review submittal requirements• Building Inspector submittal requirements• Paving requirements and how this is handled by other communities• Home Occupations- Enforcement• Review/Approve Invoices for HL Graham for payment• Letter to Selectmen for appointment for Sheldon Pennoyer's position• Summer Schedule (July 5, Aug.2 – off)• ? Additional meeting next Wednesday?• Bills Payable• Mail/Con Com Notices• Comments re: Phase II from ACEC letter to be read by Board•• |

**TOWN OF ESSEX PLANNING BOARD
MINUTES
WEDNESDAY, MAY 17, 2000**

The meeting took place at the EEMS on Story St., Cafeteria. Attendees: Gil Guerin, Walter Rich, Scottie Robinson, and George Stavros.
Absent: Westley Burnham, Chairman, Elisabeth Shields.

Motion: Walter Rich moved to have the Board approve Gil Guerin as acting Chairman for this evening's meeting. The Motion was seconded by Scottie Robinson. All members present Voted to approve the Motion.

The Board welcomed Scottie Robinson, who was elected on May 8, 2000 by the Town. Walter Rich was also elected to serve a term, as well.

Building Inspector Report: 64 Wood Drive, Map 4, Lot 109. Application for a single family dwelling 36 x 24 x 29, three bedrooms with 16 x 22 one story attached garage. Board of Health, Wetlands, and Conservation Commission approvals. The lot contains 13,000 SF – nonconforming. Frontage is on Wood Drive. Mr. Nelson presented a December 1999 letter explaining that the lot existed from an 1895 deed, and has not been divided since about 1897. Mr. Nelson gave the Board a copy of *Land Use Manager*, which states that the lot is protected from the zoning ordinances of the Town. (See MGL, Ch.40A, Sec. 6.4) The lot cannot meet the required setbacks for a dwelling. The Board the application until the next scheduled meeting until they could examine the information given.

Site Plan Review: Mr. Nelson gave the Board a copy of Beverly's *Zoning Ordinance: Chapter 29* which will aide in assigning the submittal requirements for applicants. Copies will be made for each member.

Home Occupation: A short discussion about enforcement and definition of home occupations. Walter Rich noted that the Bylaws do not address the issue of ownership/tenancy, transfer, or enforcement of perceived inequities. Currently, the bylaws state that you must register with the Town Clerk as a d/b/a, but not all residents are registered. Mixed uses were discussed as well. No action was taken. The Board will address the matter at their next meeting.

36 Story Street – Definitive Subdivision owned by Joan Bucklin: Attorney Mark Glovsky and applicant Joan Bucklin presented the Board with a definitive subdivision plan at 36 Story Street, Map 35, Lot 30A for subdivision of two lots on 3.16 acres. The Plan shows one lot with an existing dwelling with a proposed right of way, being the driveway located on Lot 1, Bucklin's property. Lot 2 will be created to the rear of Bucklin's property. The applicant proposes waivers most of which address the roadway.

Motion: Acting Chairman Gil Guerin entertained a motion to accept the application for the Definitive Subdivision for Joan E. Bucklin, and to schedule a public hearing for Wednesday, June 21, 2000 at 8:00 p.m. The Motion was moved, seconded and unanimously voted.

Peter Van Wyck: Mr. Van Wyck came before the Board to ask that the engineers move the Turtle Back Road Subdivision process along. Mr. Van Wyck owes an amount of \$650.47 which is in arrears, to H.L. Graham Associates. A check in the amount of \$750.00 was received which will cover the balance due. The Board noted Mr. Van Wyck's request.

Motion: Acting Chairman Gil Guerin entertained a Motion to have the Board send a letter to Town Counsel requesting that Mr. Van Wyck deposit a sum of not less than \$2,500.00 into the account held at Town Hall, and that the \$2,500.00 be maintained in that account for fees incurred for services of the Technical Review Agent, H.L. Graham. The motion was moved, seconded and unanimously voted.

Resignation of Sheldon Pennoyer: The Board accepted the resignation of Mr. Sheldon Pennoyer, effective May 4, 2000. A letter will be drafted to the Board of Selectmen requesting that the position be posted and a joint meeting be held as soon as possible. A letter from a Mr. Joseph Walker who is interested in filling in the position will accompany the request. (The ballot for the May 14, 2001 Town Election will include a one year Planning Board term expiring in 2002 as Mr. Pennoyer's would have.)

Summer Schedule: Motion: Acting Chairman Gil Guerin entertained a motion to approve the following summer schedule: Wednesdays, regular Planning Board meetings, to be held on May 24, June 5, June 16, July 19, August 2, September 6, September 20th. The Motion was moved, seconded and unanimously voted.

Yearly appointment of Officers: Acting Chairman Gil Guerin entertained a motion to nominate Westley Burnham for the position of Chairman. The motion was moved and seconded to approve the nomination. George Stavros moved to nominate Gil Guerin as Vice Chairman. The motion was seconded to approve the nomination. Acting Chairman Gil Guerin entertained a motion to nominate Scottie Robinson for the position of Clerk. The motion was moved and seconded to approve the nomination. By unanimous Roll Call Vote, the Board moved to approve the nominations.

The Board, having no further business, adjourned the meeting.

Presented by: Lisa Randall
Lisa Randall, Admin. Assist.

Attested to: Scottie Robinson
Scottie Robinson, Clerk

**TOWN OF ESSEX PLANNING BOARD
AGENDA
WEDNESDAY, MAY 3, 2000**

7:30 p.m.

Building Inspector Report

7:45 p.m.

Discussion: Land Use Bylaws

8:00 p.m.

**TOWN OF ESSEX PLANNING BOARD
MINUTES
WEDNESDAY, MAY 3, 2000**

The meeting was held at the EEMS on Story St., and opened by the Chairman
Attendees: Gil Guerin, Brian Feener, Westley Burnham, Chairman, Betsy Shields, and
Sheldon Pennoyer. Absent: George Stavros and Walter Rich

Building Inspector: Mr. Nelson came before the Board for discussion about an applicant who proposes to install a bathroom in an adjacent detached garage that is used for a home occupation, currently. It was discussed that it must be established on a deed that the use would not change to a separate dwelling unit (i.e. adding a kitchen, etc.)

Site Plan Review: The Board will investigate the review requirements from surrounding towns. The standards for drawings/engineering plans will be addressed within the application requirements.

The Water Resource Protection District was discussed in relation to paving – How does the Site Plan Review trigger a permit or how to check that paving does not exceed fifteen percent impervious.

Only approved engineering plans should be placed in the regulations for every modification of an existing structure.

Summer Goals:

- Site Plan Review Regulations
- Improve quality of building permit policies and procedures
- Open meeting law
- Conflict of interest law
- Policies on submittal requirements for applications
- Form A, Special Permit
- Basic Timelines for Prelim/Sub Div/Special Permits, Advertising, Appeals
- “Cheat Sheet” for reviewing Building Permits, Setbacks, etc.
- ANR Check List
- Routing of Permits for other Boards/Format for Approval or Disapproval of Permit
- Target for end of summer to have a manual or framework for above

Resignation of Sheldon Pennoyer: Sheldon presented the Chairman with a letter of resignation explaining that he will no longer reside in Essex. The appropriate protocol will be followed to replace his seat.

The Board, having no further Business, adjourned the meeting.

Presented by: *Lisa Randall*
Lisa Randall, Admin. Assist.

Attested to: *Elisabeth Shields*
Elisabeth Shields, Clerk



ESSEX PLANNING BOARD

Town Hall 30 Martin Street Essex, Massachusetts 01929 - 1219

NOTICE

Notice is hereby given that the Essex Planning Board will schedule a Work Session Meeting for Wednesday, April 26, 2000 at 7:30 p.m. to be held at the EEMS on Story Street.

For the Planning Board,
Elisabeth Shields, Clerk

Posted: 4/22/00
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**TOWN OF ESSEX PLANNING BOARD
MINUTES
WORK SESSION
WEDNESDAY, APRIL 26, 2000**

The work session was held at the EEMS on Story Street and opened by the Chairman. Attendees: Chairman Westley Burnham, Sheldon Pennoyer, Gil Guerin, Walter Rich and Elisabeth Shields. Absent: Brian Feener and George Stavros

Proposed Land Use Bylaw Changes: The Board received a copy of a letter dated April 20, 2000 from Kopelman, and Paige (Town Counsel). The letter noted comments and recommendations relative to the Land Use Bylaw Changes proposed for Annual Town Meeting (May 1, 2000).

The Board, after reading the recommendations, agreed that several changes should be made to some of the bylaws being introduced, noting also that the timing for this event was not the best, given that ATM was next Monday evening. However, Chairman Burnham and Sheldon Pennoyer had researched some of the data and after discussion, it was agreed that:

ARTICLE 23

I, Elisabeth Shields, move that the Town vote to amend Chapter 6-3 *DEFINITIONS* of the Town of Essex Zoning Bylaw by making the following changes: **Replace the last sentence in 6-3.23 LOT with the following:** In computing the area of a lot for the purposes of dimensional requirements set forth in Section 6-6, tidal marshlands and wetlands, Chapter 131, Section 40 of the MGL Wetlands Protection Act, as defined as "bogs", "coastal wetlands", "freshwater wetlands", "swamps", "wet meadows", "marshes", shall be excluded. Delineation of wetlands and tidal marshlands is required on all plans submitted for review, and shall be drawn and certified by a professional engineer or land surveyor, or take any other action relating thereto.

ARTICLE 24

I, Westley Burnham, move that the Town vote to amend Chapter 6-13 *WATER RESOURCE PROTECTION DISTRICT* of the Town of Essex Zoning Bylaw by making the following changes: **Delete 6-13.3a.13 in its entirety.** 6-13.3a.13 now states, "Residential development which renders impervious more than 15 percent of a building lot (including the portion of any new street abutting the lot) or which has a lot area of less than 40,000 square feet (excluding wetlands) for each dwelling unit;" or take any other action relating thereto.

ARTICLE 25

I, Sheldon Pennoyer, move that the Town vote to amend Chapter 6-13 *WATER RESOURCE PROTECTION DISTRICT* of the Town of Essex Zoning Bylaw by making the following changes: **Replace 6-13.3b.7 with the following:** "Rendering impervious more than 4000 square feet or fifteen percent of lot area (whichever is greater) will require a plan for recharging storm water runoff such that it will not degrade ground water quality. For non-residential uses, recharge shall be by storm water infiltration basins or similar system covered with natural vegetation, and dry wells shall be used only where other methods are infeasible. For all non-residential uses, all such basins and wells shall be preceded by oil, grease, and sediment traps to facilitate removal of contamination. Any and all recharge areas shall be permanently maintained in full working order by the owner" or take any other action relating thereto.

ARTICLE 26

I, Walter Rich, move that the Town vote to amend Chapter 6-3 *DEFINITIONS* of the Town of Essex Zoning Bylaw by making the following changes: **Replace 6-3.25 definition of LOT FRONTAGE with the following:** "The front of a lot shall be construed to be the portion nearest the street. The minimum property depth required for computing the frontage shall be the minimum front yard requirements as measured perpendicular to the street which frontage is claimed. For the purposes of determining yard requirements on corner lots, all side of the lot adjacent to the streets shall be considered frontage, and yards shall be provided as indicated under "yards" in this section" or take any other action relating thereto.

ARTICLE 27

I, Gilbert Guerin, move that the Town vote to indefinitely postpone action on this article.

ARTICLE 28

I, Sheldon Pennoyer, move that the Town vote to amend Chapter 6-6 *LAND USE REGULATIONS* of the Town of Essex Zoning Bylaw by adding **6-6.12 SITE PLAN REVIEW. SPECIAL PERMITS:** "PURPOSE: The site plan review bylaw regulates the development of structures and sites in a manner which considers the following concerns and where necessary requires modification of development proposals to eliminate or minimize potential problems and nuisances. The principal areas of concern are:

- a) The convenience and safety of vehicular and pedestrian movement within the site adjacent areas and roads.
- b) The protection of historic and natural environmental features on the site under review, and in the adjacent areas.
- c) To ensure the placement and aesthetics of the proposed development is safe, healthy, and in keeping with the community and neighborhood character so as to avoid substantial detriment to the community and neighborhood.

PROJECTS REQUIRING SITE PLAN REVIEW: No permit for the new construction, reconstruction, relocation, or change of use for any building shall be given and no existing use shall be expanded in floor area except in conformity with a site plan approval by the Planning Board. Required approval includes proposals for commercial, industrial, office, multifamily dwelling, residential development, municipal, utility, recreational purposes, or the expansion of an existing use by increasing parking by fifteen or more parking spaces on site.

EXCEPTIONS FROM SITE PLAN REVIEW: Site plan review shall not be required for the construction or enlargement of any single or two-family dwelling or accessory building to such dwelling.

CRITERIA:

- a) **Traffic:** Convenience and safety of both vehicular and pedestrian movement within the site and in relationship to adjoining ways and properties.
- b) **Parking:** Provisions for the off-street loading and unloading of vehicles incidental to the normal operation of the establishment, adequate parking, adequate lighting, and internal traffic control, including any provisions for delivery, pick-up, and location of trash receptacle.
- c) **Drainage Control:** Adequacy of methods for surface waters and ground water control. This includes minimizing soil erosion both during and after construction. The applicant shall prove that the proposed project meets the minimum standards for state storm water management as specified in the most current edition of the Stormwater Management Policy Handbook.
- d) **Existing Vegetation:** Minimizing the area over which existing vegetation is to be removed. Where tree removal is required, special attention shall be given to planting of replacement trees and undergrowth.

- e) Amenities: The applicant's efforts to integrate the proposed development into the existing landscape through design features such as vegetative buffers, roadside plantings, and the retention of open space and agricultural land.
- f) Town Character: The (building setbacks) area and location of parking, architectural compatibility, signage, and landscaping of the development, and how these features harmonize with the surrounding townscape, neighborhood, and the natural landscape; as far as practicable by minimizing any grade changes and vegetation and soil removal.
- g) Screening: Screening consisting of a solid fence, wall or evergreen planting, in all cases not less than six (6) feet in height or as specified by the Planning Board, shall be provided, erected and maintained wherever feasible to shield the business and light and industrial uses for any residential property.
- h) Hazardous Material: Plans for use, storage, or disposal of any hazardous materials as defined by MEP.
- i) Site and or project-specific criteria may be considered in addition to the items above.

SEVERABILITY: Each provision of this Bylaw shall be construed as separate to the end, that if any provision, or sentence, clause or phrase thereof, shall be held invalid for any reason, the remainder of that section and all other sections shall continue in full force and effect" or take any other action relating thereto.

Omnipoint Special Permit: Chairman Burnham will confer with Town Counsel on the matter relating to the *Gloucester Daily Times*' omission of the Legal Notice. No action was taken.

The Board, having no further business, adjourned the meeting.



Lisa Randall, Admin. Assist.



For Elisabeth Shields, Clerk


**TOWN OF ESSEX PLANNING BOARD
AGENDA
WEDNESDAY, APRIL 19, 2000**

- 7:30 p.m. Building Inspector Report
- 8:00 p.m. Special Permit Hearing for Omni Point
- 8:30 p.m. Joan Bucklin/Story Street Subdivision
Preliminary Subdivision Plan
- 8:45 p.m. Other Planning Business:
- Minutes of 3/15, 4/5, and 4/12
 - Mail
 - HL Graham Assoc. Invoice for TBR
 - TBR Agreement

**TOWN OF ESSEX PLANNING BOARD MINUTES
WEDNESDAY, APRIL 19, 2000**

The meeting was held at the Council on Aging/Scout House on Pickering Street, and opened by the Chairman.

Attendees: Chairman Westley Burnham, Sheldon Pennoyer, Walter Rich, Brian Feener, Elisabeth Shields, and Gil Guerin. Absent: George Stavros

Building Inspector Report: Mr. Nelson was given a letter by the Board addressing concerns in relation to the storage/transport of clams by Kelly Corrao of Centennial Grove Road.

Minutes: **Motion: Sheldon Pennoyer moved to approve the March 15, 2000, April 5, 2000, and April 12, 2000 Minutes as written. Seconded by Brian Feener. All members present voted to approve the Motion.**

Proposed Bylaws for Annual Town Meeting: The Board discussed strategies for presentation of the six bylaws proposed. Members will be given individual sheets in order to announce the bylaws, and have short summaries ready for explanation of the changes for the residents. The Board will meet next week to finalize their presentation.

Motion: Chairman Burnham entertained a Motion to hold a work session meeting for Wednesday, April 26 in order to discuss presentation of the proposed bylaw changes at Annual Town Meeting. The Motion was moved, seconded and unanimously voted.

Public Hearing for Special Permit for Omnipoint: Chairman Burnham opened the meeting and read the legal notice published in *The Gloucester Daily Times*. Tom Murphy, Program Manager for Omnipoint explained that the special permit application requested is for proposed installation of nine antennas at the 100' level to the existing 150' monopole, owned by CellOne, located at 16 Tree Hill Road, property of Elizabeth F. Pratt. Equipment needs for Omnipoint consist of one 6x6 concrete base; two equipment cabinets with sealed battery back up. Service requirements will be minimum: approximately twice per month, then once per month and adequate access already exists, as two other companies already exist on the monopole.

The Board, having no further questions for Mr. Murphy, closed the hearing.

Motion: Sheldon Pennoyer moves to close the Public Hearing for Omnipoint. Seconded by Gil Guerin. All members present voted unanimously to close the hearing.

Page Two of Planning Board Minutes of 4/19/00, continued...

Chairman Burnham read a draft approval of the special permit:

TOWN OF ESSEX, MASSACHUSETTS
PLANNING BOARD ACTING AS SPECIAL PERMIT GRANTING AUTHORITY
DECISION OF SPECIAL PERMIT FOR OMNIPOINT COMMUNICATIONS, MB
OPERATIONS, LLC

April 19, 2000

TO: Omnipoint Communications,
MB Operations, LLC
59 Composite Way, Suite 100
Lowell, MA 01851

Affecting the rights of the owner, Elizabeth F. Pratt, Trustee of 15 Tree Hill Real Estate Trust, 16 Tree Hill Road, Essex, MA 01929, with respect to the use of premises on 16 Tree Hill Road located on the East side of Belcher Street, Essex, MA 01929, and Cellular One, the owner and operator, acting as agent for the owner of the property concerning all co-location applications.

The record title standing in the name of Elizabeth F. Pratt, Trustee, by a deed duly received in the Essex County—South Registry of Deeds in Book 7552, Page 128.

Notice is hereby given that following a Public Hearing on Wednesday, April 19, 2000, on the application in this case as so to permit, the Board, at its meeting on Wednesday, April 19, 2000,

VOTED TO GRANT the application under Section 6.6-9e of the Zoning By-Law to allow installation of an antennae for use in the relaying of wireless communications. This permit is being issued as an addition to the Special Permit issued to property owner of record Elizabeth F. Pratt, Trustee of 15 Tree Hill Real Estate Trust, 16 Tree Hill, Essex, MA 01929 on August 20, 1997.

This Special Permit is being approved based in part on the following:

The proposal involves addition of a triangular antennae array to an existing tower; said array will be placed at the 100-foot level on an existing 150-foot tower.

The following conditions shall apply:

1. This Special Permit is being issued independently but conditional to a Special Permit issued on August 20, 1997 which allowed the tower construction and initial facilities installation, and is subject to all terms and conditions attached therein. This Permit shall expire on September 30, 2007. At that time a new Permit may be issued based on the continuing need for such a facility. Renewal of the Permit shall be conducted in accordance with all applicable rules in effect at that time. The renewal shall include all parties operating equipment at this location and shall be considered on a single application.
2. The tower and all antennae authorized to occupy the tower shall comply with all applicable State and Federal guidelines concerning radio frequency emissions.
3. This permit shall be attached to the original on file at the Registry of Deeds and annotated as Addendum #2.
4. Fencing shall be provided to control access to the facility, a key(s) to the facility shall be made available to the Fire Chief of the Town of Essex to allow emergency access.
5. The existing on-site vegetation shall be preserved to the maximum extent practicable.
6. Night lighting of the facility shall be prohibited except that required for emergencies and maintenance.
7. Any proposed extension to the height, addition of cells, antennas, construction or reconstruction of any portion of this facility shall be subject to application of an amendment to this Special Permit.
8. Signs shall be limited to announcement, no trespassing, and shall include one stating the phone number of a responsible party available on a twenty-four (24) hour a day basis.
9. A copy of the Federal Communications Commission license to operate this facility is submitted to be included as and attachment to this Permit.

The Planning Board, acting as the Special Permit Granting Authority, finds the applicant adequately substantiated the following propositions in accordance with Appendix B Special Permit Issuance Rules.

1. The proposed use will be in harmony with the general purpose and intent of the Zoning by-law.
2. That the specific site is an appropriate location for such use.
3. That the proposed use as developed will not adversely affect the neighborhood.

Page Four of Planning Board Minutes of 4/19/00, continued...

Our finding is based on the testimony received at the Public Hearing held on April 19, 2000.

This Special Permit is not in effect until the applicant has filed a certified copy of the Decision with the Registry of Deeds. Certification that the twenty (20) day appeal period has expired with no appeals having been filed must be obtained from the Essex Town Clerk.

Certified copies of this decision will be available at the Essex Town Clerk's office and from the Essex Planning Board within ten (10) days of the date of this Decision.

Appeals shall be made pursuant to Section 17 of Chapter 40A MGL and shall be filed within twenty (20) days after the date of filing this Decision with the Essex Town Clerk.

Motion: By Unanimous Roll Call Vote, all members Voted unanimously To Approve the Special Permit Application for Omnipoint.

Joan Bucklin/Story Street: Attorney for applicant, Miranda Gooding, came before the Board with a preliminary plan for a two-lot subdivision. One lot consists of the applicant's existing home, together with the proposed right of way and driveway would be situated on one lot containing approximately 2.16 acres (Lot 1). A second, one-acre lot would be created to the rear of the property, being Lot 2.

Lot 1 has frontage on Story Street being 150.25 feet; Lot 2 shows frontage of 151.20 on the proposed right of way. The Board explained the proposed bylaw change for Lot Frontage and it was agreed that Lot 2 would be reconfigured to conform to the minimum lot frontage requirements of a corner lot.

The applicant is seeking to have a gravel driveway now located on the western side of the property. The Board discussed issues relating to drainage, siltation, and width of the road, preferring that the applicant look at paving the road.

The plan will be redrawn, showing full construction road plans, adequate access for emergency vehicle turnaround, and reconfiguration of lot 2, showing frontyard setbacks of the full 25 feet.

No action was taken by the Board; for discussion only.

By unanimous Roll Call Vote, the Board voted to move into executive session in order to discuss litigation strategies in connection with the Turtleback Road Agreement for Judgement. The Board would return to Open Session.

By unanimous Roll Call Vote, the Board opened the meeting, to discuss who would be presenting each of the proposed bylaws at town meeting. Each member assigned to a

Page Five of Planning Board Minutes of 4/19/00, continued...

By-law would write short proposals of the meaning/changes to be presented to the Town on May 1. The Board will meet next Wed., Apr. 26 at 7:30pm. as voted, with their written material.

The Board, having no further business, adjourned the meeting.

Presented by: Lisa Randall
Lisa Randall, Admin.Assist.

Attested to: Susan Scott Robinson
for ~~Elisabeth Shields, Clerk~~
S.S. Robinson, Clerk
6/7/00

**TOWN OF ESSEX PLANNING BOARD
MINUTES
WEDNESDAY, APRIL 12, 2000**

The meeting was held at the EEMS Media Ctr. And opened by the Chairman.
Attendees: Westley Burnham, Chairman, Sheldon Pennoyer, Elisabeth Shields,
Walter Rich, and Gil Guerin. Absent: Brian Feener and George Stavros.

Building Inspector Report: Kelly Corrao of Centennial Grove Road, for a shed to transport clams. The Board of Health has a memo that approves the building for receipt, storage, and shipping out. A tight tank will be installed; the Board of Health and DEP will oversee the operation. Upon the Board's permission, Chairman Burnham will generate a letter to Mr. Corrao on the approval of the home occupation, as long as the business does not move into a shucking business. There will be no outside storage; the facility will house a tight tank and the home occupation bylaws will be adhered to.

Public Hearing of Proposed Bylaw Changes: Chairman Burnham opened the public hearing and read the legal notice published in *The Gloucester Daily Times*.

It was discussed that the Town would only approve these bylaw changes with a two-thirds vote.

Chapter 6-3.23 Lot: This change was discussed at the April 5, 2000 Public Hearing.

Chapter 6-13 Water Resource Protection District/Delete 6-13.3a.13 in its entirety: Discussed was the issue that the Conservation Commission is requiring that paving be instituted in their order of conditions, in order to reduce siltation runoff.

Replace 6-13.3b.7 with the Following: "Rendering impervious more than 4000 square feet or fifteen percent of lot area (whichever is greater) will require a plan for recharging storm water runoff such that it will not degrade ground water quality." Impervious coverage is not lost, but residential uses would have the same advantages as a commercial business (Special Permit Process).

Chapter 6-3 Lot Frontage: Replace 6-3.25 definition with the following: "The front of a lot shall be construed to be the portion nearest the street. The minimum property depth required for computing the frontage shall be the minimum front yard requirements as measured perpendicular to the street which frontage is claimed. For the purposes of determining yard requirements on corner lots, all sides of the lot adjacent to the streets shall be considered frontage, and yards shall be provided as indicated under "yards" in this section."

Site Plan Review: Sheldon Pennoyer explained the special permit process for regulating the development of structures and sites in a manner which considers the following concerns and where necessary requires modification of development proposals to eliminate or minimize potential problems and nuisances.

Page Two of April 12, 2000 Planning Board Minutes, continued...

The Site Plan Review would give the Board certain requirements for each individual project. The Board felt that the definition of "Projects Requiring Site Plan Review", should be presented by what "isn't" required a site plan review.

The "exceptions" of the site plan review were discussed.

"Criteria" was also discussed: traffic, parking, drainage, existing vegetation, etc.


Flood Plain District: Chairman Burnham did not agree that Chapter 131.05 should be implemented, as per Mr. Fawcett, Apple Street requested.

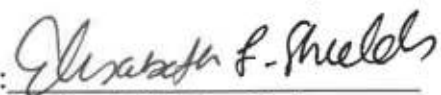
The Board discussed, at length the 4,000 SF versus 2,500 SF measurement in the **6-13.3b.7 bylaw.**

Also discussed was the approach that the Board would take to describe each bylaw at Town Meeting.

**Motion: Sheldon Pennoyer moved to close the Public Hearing.
Seconded by Elisabeth Shields. All members Voted unanimously
to Approve the Motion.**

The Board, having no further business, adjourned the meeting.

Presented by 
Lisa Randall, Admin. Assist.

Attested to: 
Elisabeth Shields, Clerk

**TOWN OF ESSEX PLANNING BOARD
AGENDA
WEDNESDAY, APRIL 5, 2000**

7:30p.m.

Building Inspector Report

7:45p.m.

Turtleback Road

8:00p.m.

Public Hearing of Proposed Bylaw Changes

TOWN OF ESSEX PLANNING BOARD MINUTES
WEDNESDAY, APRIL 5, 2000

The meeting was held at the EEMS Media Ctr. And opened by Chairman Burnham. Attendees: Westley Burnham, Chairman, Sheldon Pennoyer, Elisabeth Shields, Walter Rich, Brian Feener, Gil Guerin. Absent: George Stavros

Building Inspector Report: Building application for siting for a single family dwelling located at 57 Choate Street, Map 16, Lot 14C. Parcel has two acres; the Board calculated wetland and upland areas, finding that the parcel met the building criteria under the proposed bylaw change being discussed at the public hearing this evening. The dwelling unit to be 56x30x26, approved by BOH, ConCom and Wetlands.

Motion: Sheldon Pennoyer moves to approve the siting of Louis and Virginia Anoli, seeing that the application Meets the minimum standards of the Town of Essex Bylaws and also finding that the Board has done a Cursory calculation of uplands, seeing that the property Has the adequate upland area required for the proposed Bylaw. Seconded by Walter Rich. All members present Vote unanimously to approve the motion.

Scot's Way, Lot #3: Building permit application for John Coughlin of PMC Realty of 239 Western Ave. for a commercial, two-story building, Map 8, Lot 15C, lot size of 90,511 SF. This parcel has approval for the building under a Special Permit dated 6/3/98. The Board discussed the requirements of the special permit, including impervious coverage of 18,359 SF. Building size is 4,860 SF. Use of building is for office/rental space.

Motion: Sheldon Pennoyer moves to approve the building permit application for the siting of an office building, totaling 4,860 SF, for a Business Industrial Use "B", designated as office building, seeing that it meets all of the minimum standards of the Town of Essex Bylaws and meets all requirements of the approval of the special permit dtd. 6/3/98. Seconded by Brian Feener. All members present voted unanimously to approve the motion.

Centennial Grove Road: Kelly Corrao, owner of the property located at the corner of Harry Homan Drive and Centennial Grove Road is proposing to build a shed for storage of clams to be transported for sale out of Town. The Board of Health has made a determination that the building house a tight tank in order to be able to transport the material. Home occupation/commercial business was discussed. Chairman Burnham felt that this was a commercial business, which is also located within the Water Protection District. The Building Inspector did not agree. No action was taken; the matter was tabled.

Page Two of Planning Board Minutes of April 5, 2000, continued...

Public Hearing of Proposed Bylaw Changes: Chairman Burnham opened the Public Hearing and read the public hearing notice published in the *Gloucester Daily Times*.

6-12 Flood Plain District Article: Chairman Burnham noted that this bylaw change was to update the flood plain district bylaw in accordance with state and FEMA guidelines.

Fred Fawcett of Apple Street asked why Chapter 131.05, and bylaw 6-10 are not enumerated with this bylaw. As well as abiding with the 3.10 CMR 3.00, Mr. Fawcett felt that all other town, state and federal regulations should apply to this bylaw. He wanted the Board to look at this issue, and adopt the bylaw with the regulations noted by him (6-12.2a). Chapter 30, Section 105 and 6-10 will be studied by the Board.

Chapter 6-3 DEFINITIONS – 6-3.23 Lot, Replace the last sentence in 6-3.23 Lot with the following: “In computing the area of a lot for the purposes of dimensional requirements set forth in Section 6-6, tidal marshlands and wetlands (as defined by Chapter 131, Section 40 of the MGL Wetlands Protection Act) shall be excluded. Delineation of wetland and tidal marshlands is required on all plans submitted for review, and shall be drawn and certified by a professional engineer or land surveyor.” Chairman Burnham noted that after the MAPC buildout analysis, the Board noted that wetland area calculations should not be calculated in total lot size throughout the whole town, not just the water protection district. This would diminish a portion of the buildout analysis figures of building lots within the town that can now use wetland area calculations in lot area. Mr. Fawcett again felt that 6-10 should be included in this change. Chairman Burnham felt that this bylaw was already included in the town’s bylaws.

Chapter 6-13 WATER RESOURCE PROTECTION DISTRICT: Replace 6-13.3b.7 with the following: “Rendering impervious more than 4000 square feet or fifteen percent of lot area (whichever is greater) will require a plan for recharging storm water runoff such that it will not degrade ground water quality.” Chairman Burnham explained that this bylaw was drafted based upon the Mass. DEP Water Well Head regulation changes. He also explained that commercial buildings within the water protection district have a distinct advantage over residential homes, by applying for a special permit. The change will not change the fifteen percent or 2,500 SF guidelines. Currently, you cannot build a residence on existing 40,000 SF with 5,000 or 6,000 SF of wetlands, yet a commercial use can create a large, impervious surface with the special permit process. Maria Burnham of Southern Avenue did not agree that this change would be for the better. Sheldon Pennoyer noted that he felt that this bylaw would allow residential uses the same “playing field” as commercial/industrial uses.

Time did not allow the public hearing to continue, as Town Counsel is scheduled to meet with the Board.

Page Three of Planning Board Minutes of April 5, 2000, continued...

Motion: Sheldon Pennoyer moves to continue the Public Hearing on the Proposed Bylaws scheduled for Wednesday, April 12, 2000 at 8:00 pm. at the EEMS on Story Street. Seconded by Gil Guerin. All members present voted unanimously to continue the public hearing for April 12.

Motion: By unanimous Roll Call Vote the Board moved to close the meeting and moved into Executive Session in order to discuss strategies with Town Counsel in relation to the Turtleback Road Extension, and any other matters deemed appropriate, noting that the Board would be returning to Open Session.

After a Roll Call Vote, the Board moved to return to Open Session.

Attorney Quirk reviewed the draft Agreement with Peter VanWyck's attorney who commented on several issues, stating that they would take the Agreement under consideration and return with their answer.

The Board, having no further business, adjourned the meeting.

Presented by: Lisa Randall
Lisa Randall, Admin. Assist.

Attested to: Elisabeth S. Shields
Elisabeth Shields, Clerk

**TOWN OF ESSEX PLANNING BOARD
WORK SESSION MINUTES
WEDNESDAY, MARCH 15, 2000**

Meeting was held at the EEMS Cafeteria and opened by the Chairman.
Attendees: Chairman, Westley Burnham, Betsy Shields, Gil Guerin, and Walter Rich.
Absent: George Stavros, Brian Feener and Sheldon Pennoyer.

Building Inspector Report: Mr. Nelson brought to the Board's attention a home occupation on Eastern Avenue, Jeto Engineering. The owner would like to expand the business. The Board discussed the zoning classifications of the current use and the impact on the neighborhood, especially the traffic conditions on Eastern Avenue. No action was taken.

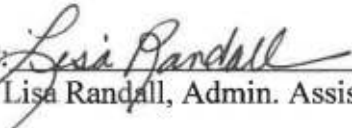
Scot's Way: Mr. Nelson discussed the possibility of a business wanting to store vehicles/trucks at Scot's Way. The Board referred Mr. Nelson to the Water Protection District Bylaw and the Board of Health regulations. No action was taken.

Choate Street: The former property of Dr. Sauer, now being developed by Creative Development Assoc. was discussed, as the abutters are pursuing a matter relating to a pond that is located on one of the lots created. The Conservation Commission is involved with the matter. No action was taken.

Minutes:

Motion: Walter Rich moves to approve the March 1, 2000 and March 8, 200 Minutes as written. Seconded by Betsy Shields. All members present voted unanimously to approve the Motion.

The Board, having no further business, adjourned the meeting.

Present by: 
Lisa Randall, Admin. Assist.

Attested to: 
Elisabeth Shields, Clerk

**TOWN OF ESSEX PLANNING BOARD
WORK SESSION MEETING
WEDNESDAY, MARCH 8, 2000**

7:30 p.m.

Proposed Bylaw changes

**TOWN OF ESSEX PLANNING BOARD
WORK SESSION MINUTES
WEDNESDAY, MARCH 8, 2000**

The meeting was held at the EEMS on Story St. and opened by the Chairman.
Attendees: Chairman Westley Burnham, Brian Feener, Walter Rich, Elisabeth Shields and Sheldon Pennoyer. Absent: Gil Guerin and George Stavros

Building Inspector Report: Mr. Nelson came before the Board to have a building application approved for Lori and Scott Woodward of 247 Western Avenue, Map 8, Lot 1. A portion of the house is located in Hamilton and will be leveled to reconstruct a new two-family dwelling, which will be located in Essex only. The lot will still show a portion in Hamilton and Essex. Currently, this is a nonconforming lot, which will have a decrease in its nonconformity after reconstruction.

Motion: Elisabeth Shields moves to approve the building permit application for Lori and Scott Woodward of 247 Western Avenue, Map 8, Lot 1, for the demolition and reconstruction of a two-family dwelling measuring 28x40x28. The reconstruction will decrease the nonconformity of the lot setbacks. Also seeing that the application meets the minimum standards and under Section 6-4.2 "Existing nonconforming uses" that the proposed alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. Seconded by Walter Rich. All members present voted to approve the motion.

Bylaw Discussion: The Board continued last week's general discussion of the proposed bylaw changes for annual town meeting in May. The Sewer District bylaw will be drafted by the Selectmen or the Sewer/Wastewater Commission, according to Chairman Burnham. The Site Plan Review was discussed in detail, as also 6-3.25 Lot Frontage. Please see attached bylaw proposals that will be included in the Warrant.

The Board, having no further business, adjourned the meeting.

Presented by: Lisa Randall
Lisa Randall, Admin. Assist.

Attested to: Elisabeth L. Shields
Elisabeth Shields, Clerk

The Planning Board wishes to have the following Articles placed on the Warrant for the Annual Town Meeting in May:

Article ____ To see if the Town will vote to amend Chapter 6-3 *DEFINITIONS* of the Town of Essex Zoning By-law by making the following changes: **Replace the last sentence in 6-3.23 LOT with the following:**

"In computing the area of a lot for the purposes of dimensional requirements set forth in Section 6-6, tidal marshlands and wetlands (as defined by Chapter 131, Section 40 of the MGL Wetlands Protection Act) shall be excluded. Delineation of wetlands and tidal marshlands is required on all plans submitted for review, and shall be drawn and certified by a professional engineer or land surveyor."

Article ____ To see if the Town will vote to amend Chapter 6-13 *WATER RESOURCE PROTECTION DISTRICT* of the Town of Essex Zoning By-law by making the following changes: **Delete 6-13.3a.13 in its entirety.**

6-13.3a.13 now states, "Residential development which renders impervious more than 15 percent of a building lot (including the portion of any new street abutting the lot) or which has a lot area of less than 40,000 square feet (excluding wetlands) for each dwelling unit,"

Article ____ To see if the Town will vote to amend Chapter 6-13 *WATER RESOURCE PROTECTION DISTRICT* of the Town of Essex Zoning By-law by making the following changes: **Replace 6-13.3b.7 with the following:**

"Rendering impervious more than 4000 square feet or fifteen percent of lot area (whichever is greater) will require a plan for recharging storm water runoff such that it will not degrade ground water quality."

Article ____ To see if the Town will vote to amend Chapter *LOT FRONTAGE* of the Town of Essex Zoning By-law by making the following changes: **Replace 6-3.25 definition with the following:**

"The front of a lot shall be construed to be the portion nearest the street. The minimum property depth required for computing the frontage shall be the minimum front yard requirements as measured perpendicular to the street which frontage is claimed. For the purposes of determining yard requirements on corner lots, all sides of the lot adjacent to the streets shall be considered frontage, and yards shall be provided as indicated under "yards" in this section."

Flood Plain District Article:

Article _____. To see if the Town will vote to amend the Zoning Bylaw as is pertains to Section 6-12 "Flood Plain District" by deleting the entire existing Section 6-12 and replacing it with a new Section 6-12 as follows:

J.W. McCormack Post Office and Courthouse, Boston, MA 02109

Use Regulations:

The Floodplain District is established as an overlay district to all other districts. All development in the district, including structural and non-structural activities, whether permitted by right or by special permits must be in compliance with Chapter 131, Section 40 of the MGL and with the following:

Section of the Massachusetts State Building Code which addresses floodplain and coastal high hazard areas (currently 780 CMR 2102.0, "Flood Resistant Construction");

Wetlands Protection Regulations, Dept. of Environmental Protection (DEP) (Currently 310 CMR 10.00);

Inland Wetlands Restriction, DEP (currently 302 CMR 6.00);

Coastal Wetland Restriction, DEP (currently 302 CMR 4.00);

Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5);

Any variance from the provisions and requirements of the above referenced state regulations may only be granted in accordance with the required variance procedures of these state requirements.

Other Use Regulations:

In Zones A1-30 and AE, along watercourses that have a regulatory floodway designated on the Town of Essex FIRM encroachments are prohibited in the regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

Prohibit man-made alteration of sand dunes within Zones V1-30, VE, and V be located landward of the reach of mean high tide.

Review all subdivision proposal to assure that : a) such proposal minimize flood damage; b) all public utilities and facilities are located and constructed to minimize or eliminate flood damage; and c) adequate drainage is provided to reduce exposure to flood hazards.

- a.) Section of the Massachusetts State Building Code which addresses floodplain and coastal high hazard areas (currently 780 CMR 2102.0, "Flood Resistant Construction");
- b.) Wetlands Protection Regulations, Dept. of Environmental Protection (DEP) (Currently 310 CMR 10.00);
- c.) Inland Wetlands Restriction, DEP (currently 302 CMR 6.00);
- d.) Coastal Wetland Restriction, DEP (currently 302 CMR 4.00);
- e.) Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5);

Any variance from the provisions and requirements of the above referenced state regulations may only be granted in accordance with the required variance procedures of these state requirements.

1. *Other Use Regulations:*

- a.) In Zones A1-30 and AE, along watercourses that have a regulatory floodway designated on the Town of Essex FIRM encroachments are prohibited in the regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- b.) Prohibit man-made alteration of sand dunes within Zones V1-30, VE, and V be

internal traffic control, including any provisions for delivery, pick-up, and location of trash receptacle.

c) Drainage Control: Adequacy of methods for surface waters and ground water control. This includes minimizing soil erosion both during and after construction. The applicant shall prove that the proposed project meets the minimum standards for state storm water management as specified in the most current edition of the Stormwater Management Policy Handbook.

d) Existing Vegetation: Minimizing the area over which existing vegetation is to be removed. Where tree removal is required, special attention shall be given to planting of replacement trees and undergrowth.

e) Amenities: The applicant's efforts to integrate the proposed development into the existing landscape through design features such as vegetative buffers, roadside plantings, and the retention of open space and agricultural land.

f) Town Character: The (building setbacks) area and location of parking, architectural compatibility, signage, and landscaping of the development, and how these features harmonize with the surrounding townscape, neighborhood, and the natural landscape; as far as practicable by minimizing any grade changes and vegetation and soil removal.

g) Screening: Screening consisting of a solid fence, wall or evergreen planting, in all cases not less than six (6) feet in height or as specified by the Planning Board, shall be provided, erected and maintained wherever feasible to shield the business and light and industrial uses for any residential property.

h) Hazardous Material: Plans for use, storage, or disposal of any hazardous materials as defined by MEP.

i) Site and or project-specific criteria may be considered in addition to the items above.

SEVERABILITY: Each provision of this Bylaw shall be construed as separate to the end, that if any provision, or sentence, clause or phrase thereof, shall be held invalid for any reason, the remainder of that section and all other sections shall continue in full force and effect.

**TOWN OF ESSEX PLANNING BOARD
AGENDA
WEDNESDAY, MARCH 1, 2000**

- 7:30 p.m. Building Inspector Report
- 8:00 p.m. **Bylaw for Sewer District:** Must be ready for Public Hearing for April 5 if to be on Planning Board's list of Articles. (Must be posted along with the other bylaws to be published on March 13 and March 20th.) March 8th Work Session will be Deadline for finalizing this Bylaw
- 8:15 p.m. Scott Boches, Evan's Way, Vote to Release Lot #3 – Deposit for paving road to be held in escrow.
- 8:30 p.m. Site Plan Review Bylaw- Final Draft for Vote to be proposed at the Annual Town Meeting. Finalizing by Mar. 8th.
- Other Planning Business:
- Minutes of January 26, 2000
 - Minutes of February 2, 2000
 - Minutes of February 9, 2000
 - Minutes of February 16, 2000

 - Vote to hold a Work Session Meeting for March 8, 2000, if Necessary

 - Vote to Hold a Hearing for a Special Permit for OmniPoint, at Cell Tower Located at 16 Tree Hill Road (Meeting Date suggestion: April 19, 2000 at 8p.m.)

 - Mail

 - NOTE: Special Town Meeting will Take place on March ~~14~~₂₀, 2000-7:00pm₃

 - Reminder: If the **Site Plan Review Bylaw and Sewer District Bylaw** will

be on your Public Hearing Date April 5th
the exact wording for ALL PROPOSED
BYLAWS must be ready for the
Selectmen NO LATER THAN
MONDAY, MARCH 13TH.

- Conservation Comm./Notices

**TOWN OF ESSEX PLANNING BOARD
MINUTES
WEDNESDAY, MARCH 1, 2000**

The meeting was held at the EEMS on Story Street and opened by Chairman Burnham.

Attendees: Chairman Westley Burnham, Sheldon Pennoyer, Gil Guerin, and Walter Rich. Absent: Elisabeth Shields, Brian Feener, and George Stavros.

Minutes:

Motion: Chairman Burnham entertained a Motion to approve The Minutes of February 16, February 9, February 2, and January 26, 2000 Minutes. The motion was moved, seconded, and unanimously voted.

Evan's Way/Story Hill Subdivision: Applicant Scott Boches came before the Board for the release of Lot 3, and to place an amount of \$15,000.00 in escrow at the Town for the completion of Evan's Way. HL Graham Associates has included some recommendations for the road, advising the amount of \$15,000.00 to be secured for revision to the as-built plans, the wearing/surface pavement course, final cleaning of all the drainage structures and pipes, and additional anticipated minor items at the final sign-off of the subdivision.

Motion: Sheldon Pennoyer moved to have the Board release Lot 3 of Story Hill Subdivision, and agree to receive an amount of \$15,000.00 to be held in escrow for the completion and revisions of Evan's Way. Seconded by Gil Guerin. All members present voted to approve the Motion.

Bylaw discussion: The Board discussed the bylaw changes proposed and voted to hold a work session scheduled for March 8, 2000.

Motion: Chairman Burnham entertained a Motion to schedule a work session meeting on Wednesday, March 8, 2000 at 7:30pm at the EEMS on Story St. The motion was moved, seconded, and unanimously voted.

Site Plan Review: Sheldon Pennoyer will produce a final draft for inclusion of the Warrant for annual town meeting on March 8th.

Special Permit for Omnipoint: Omnipoint is requesting to hold a Special Permit Hearing in order to be added onto the 16 Tree Hill Cell Tower. The Board voted to hold a special permit hearing.

Motion: Sheldon Pennoyer moved to schedule a Public Hearing on the Application by Omnipoint Communications for a Special Permit for use under Section 6-6.9e of the zoning bylaw. Meeting to be held on Wednesday, April 19, 2000 at 8:00pm at the Scout House on Pickering Street. Seconded by Gil Guerin. All members voted to approve the Motion.

The Board, having no further discussion, adjourned the meeting.

Presented by: *Lisa Randall*
Lisa Randall, Admin. Assist.

Attested to: *Elisabeth L. Shields*
Elisabeth Shields, Clerk

**TOWN OF ESSEX PLANNING BOARD
AGENDA
WEDNESDAY, FEBRUARY 16, 2000**

7:30 p.m.

Building Inspector Report

8:00 p.m.

Scott Patrowicz/ANR for
Mr. Ben Winskowicz – Centennial Grove
Road

- Other Business:
- Payroll Voucher
- Minutes
- Proposed Bylaws, Vote on Public Hearing Date
- Site Plan Review
- Sewer District Bylaw (?)
- Elisabeth Shields/Discussion of Coastal Zone Mgmt. Mtg.

**TOWN OF ESSEX PLANNING BOARD
MINUTES
WEDNESDAY, FEBRUARY 16, 2000**

The meeting was held at the EEMS on Story St., Staff Lounge, and opened by the Chairman.

Attendees: Westley Burnham, Chairman, Sheldon Pennoyer, Brian Feener, Betsy Shields. Absent: Gil Guerin, Walter Rich and George Stavros.

Building Inspector Report: Evan's Way, Lot 3: SMB Development Applicant of Story Hill Subdivision, Map 36. Siting of foundation of single family dwelling measuring 28 x 54 with frontage on Evan's Way.

Motion: Sheldon Pennoyer moves to approve the application of the siting only for a single family dwelling being 28x54, on Lot #3, being 8 Evan's Way for Scott Boches of SMB Development, 5 Dow Drive, Haverhill, MA, seeing that the foundation location meets all setbacks of the Town of Essex Bylaws. Seconded by Brian Feener. All members present Voted to approve the Motion.

(Brian Feener refrains from discussion on this next application, being an abutter)

David Pitman/31 Eastern Avenue: Map 38, Lot 60. Nonconforming existing property with house, barn and deck. Applicant proposes to rebuild a barn, deck and new section being 6x3. Lot coverage will be eleven percent, and nonconforming setback will be changed from three feet to four feet setback that decreases the nonconformity. The new barn will be larger than the existing, being 25x15.

Motion: Sheldon Pennoyer moves to approve the Building Permit Application for David Pitman of 31 Eastern Avenue, for the replacement of an existing barn and addition of studio and greenhouse as shown on site plan, seeing that the existing setback of three feet from the property will increase to four feet, and that under Section 6.4-2 "Existing Nonconforming Uses...that the proposed extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood." Seconded by Betsy Shields. All members present voted to approve the motion. Brian Feener votes present, as an abutter to the property.

Robert Landry/164 Main Street: Map 38, Lot 12, having 1.5 acres. Applicant proposes to build a barn in the rear of the existing dwelling. The plan did not show the wetlands delineation therefore, the Board requested that the applicant return with a definitive plan showing the percentage of upland area.

10 Centennial Grove Road/ Ben Winskowicz: Map 31, Lot 39, Applicant, Scott Patrowicz came before the Board for Approval Not Required, creating one additional lot

off Centennial Grove Road, being Lot 2B with 58,785 SF, Lot 2A being 45,830 SF. The Board of Appeals granted a Variance dated May 11, 1999 (and modified December 8, 1999, by reflecting corrected figures of variance requested, current frontage, and former road frontage.) There was a "wedge-shaped" parcel of Town Land created when Centennial Grove Road was laid out that prevented Mr. Winskowicz from having frontage of 190.07 feet, originally. The current frontage is 23.10 feet. Variance requested and granted was for 126.90 feet. This allowed the applicant an additional house lot.

Motion: Elisabeth Shields moves to approve the Form A for Endorsement of Approval Not Required Plan dated 2/16/00 By Patrowicz Land Development Engineering, 10 Centennial Grove Road, Essex, for the creation of Lot 2B, being 58,785 SF, Lot 2A is 45,830 SF, Book 6620, Page 265, including the Variance Of 5/11/99 and modified 12/8/99, relieving the Applicant stating That Mr. Winskowicz is exempted from frontage requirements. Finding that the lots created meet all the minimum requirements Of the Town of Essex Bylaws. Seconded by Sheldon Pennoyer.

Discussion: Sheldon Pennoyer moves that a sentence should be added To the Motion:

The Form A Decision is based on the Variance from the Required 150 feet of frontage by waiving 126.90 feet, seeing That it already has 23.10 feet of frontage. Seconded by Brian Feener. All members voted to approve the Motion.

Motion to hold Public Hearing for proposed changes to Bylaws:

Motion: Chairman Burnham entertained a Motion to Schedule a Public Hearing for Wednesday, April 5, 2000 At 8:00 p.m. for proposed changes to the following Bylaws: 6-3.23 Lot, 6-13.3a.13 Water Resource Protection District, 6-13.3b.7 Water Resource Protection District, 6-12 Flood Plain District and submission of proposed Site Plan Review, Under the Special Permit 6-6.9. The motion was moved, Seconded, and unanimously voted.

Sewer District Area-Conversion of single-family to two-family Dwellings:

Chairman Burnham noted a conversation he had with Tom Noble, former Wastewater Coordinator for the Town. The calculations for the figures on water uses and frontage for each property within the district and how many new connections would be included was a question that Chairman Burnham felt wasn't answered definitively. The conversion from a single-family use to a two-family use within the current bylaws, have the same

requirements. Controlling infrastructure growth by limiting changes to existing properties was discussed. Under the current bylaws, only the 6-5.8 Off-Street Parking Requirements carried minimum standards to follow for multi-family dwellings. Altering the lot size for two-family dwelling conversions was discussed. Mr. Noble was to provide information-showing calculations for each lot, which would allow the Board to identify the specific uses/calculations on how the 225k/gpd were derived. If single-family dwellings converted into two-family, usage within the sewer service district would expand daily usage. Growth management needed to be addressed. The Board will continue to work on these issues.

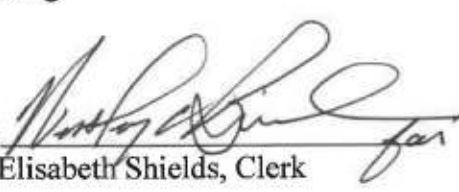
Site Plan Review Draft: Sheldon Pennoyer gave the Board this draft for studying and commenting. Chairman Burnham noted some changes, as adding under *Criteria*, "site or project specific criteria can be considered in addition to below". Elisabeth Shields had a letter from Andrea Cooper of Mass. Coastal Zone Management. This letter noted suggestions within the Site Plan Review as adding verbiage in *Drainage Control*, "...project meets state stormwater standards..." The exact dated version would be left out, in order to keep the bylaws from changing because of a volume additions, etc. Ms. Cooper suggested adding zoning districts –

"Hazardous Materials: Plans for use/storage/disposal of any hazardous material as defined by M.E.P. (under 6-13 definition) was a suggestion by Chairman Burnham.

Sheldon Pennoyer will review the changes and have a draft to vote for admission to the Warrant for Annual Town Meeting for the next Board meeting.

The Board, having no further business, adjourned the meeting.

Presented by: 
Lisa Randall, Admn. Assist.

Attested to: 
Elisabeth Shields, Clerk

Jan. 26, 2000
6-6.9 Special Permits:
Site Plan Review

PURPOSE: The site plan review bylaw regulates the development of structures and sites in a manner which considers the following concerns and, where necessary requires modification of development proposals to eliminate and minimize potential problems and nuisances. The principal areas of concern are:

- a) The convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent areas and roads.
- b) The protection of historic and natural environmental features on the site under review, and in the adjacent areas.
- c) To ensure that the placement and aesthetics of a function are safe, healthy, and in keeping with the community and neighborhood character so as to avoid substantial detriment to the community and neighborhood.

PROJECTS REQUIRING SITE PLAN REVIEW: No permit for the construction, ~~alteration~~ exterior relocation, occupancy, or change of use of any building shall be given and no existing use shall be expanded in floor area except in conformity with a site plan approval by the Planning Board. Required approval includes proposals for commercial, industrial, office, multi-family dwelling, residential development, municipal, utility, or recreational purposes, or the expansion of an existing use by increasing parking by 15 or more parking spaces on site.

EXCEPTIONS FROM SITE PLAN REVIEW: Site plan review shall not be required for the construction or enlargement of any single or two-family dwelling, or accessory building to such dwelling.

CRITERIA: - Site or Project Specific Criteria can be considered in addition to below:

- a) **Traffic:** Convenience and safety of both vehicular and pedestrian movement within the site and in relationship to adjoining ways and properties .
- b) **Parking:** Provisions for the off-street loading and unloading of vehicles incidental to the normal operation of the establishment, adequate parking, adequate lighting, and internal traffic control , including any provisions for delivery, pick-up , and location of trash receptacle.
- c) **Drainage Control:** Adequacy of methods for surface waters and, ground water control. This includes minimizing soil erosion both during and after construction.
- d) **Existing Vegetation:** Minimizing the area over which existing vegetation is to be removed. Where tree removal is required, special attention shall be given to planting of replacement trees and undergrowth.
- e) **Amenities:** The applicant's efforts to integrate the proposed development into the existing landscape through design features such as vegetative buffers, roadside plantings, and the retention of open space and agricultural land.
- f) **Town Character:** The (building setbacks) area and location of parking, architectural compatibility, signage, and landscaping of the development, and how these features harmonize with the surrounding townscape, neighborhood, and the natural landscape. far as practicable by minimizing any grade changes and vegetation and soil removal.
- g) **Screening:** Screening consisting of a solid fence, wall or evergreen planting, in all cases not less than six (6) feet in height or as specified by the Planning Board, shall be provided, erected and maintained wherever feasible to shield the business and light industrial uses of land from any residential property.

As per
Stormwater
Management

Site or Project H) Hazardous Materials: Plans for use/storage/disposal of any hazardous materials as defined by M.C.P. (613 def. - same)

**TOWN OF ESSEX PLANNING BOARD
AGENDA
WORK SESSION
WEDNESDAY, FEBRUARY 9, 2000**

7:30 p.m.

Site Plan Review

Bylaws for ATM

Liberty Road Subdivision, Final Decision
On Modification

Map depicting sewer service areas

8:45 p.m.

Board of Selectmen, Jack Schwartz to
Discuss the Inter Municipal Agreement

**TOWN OF ESSEX PLANNING BOARD
WORK SESSION MINUTES
WEDNESDAY, FEBRUARY 9, 2000**

The meeting was held at the EEMS on Story Street, Staff Lounge, and opened by the Chairman.

Attendees: Chairman Westley Burnham, Brian Feener, Elisabeth Shields, Walter Rich, and Gil Guerin.

Absent: Sheldon Pennoyer and George Stavros

(Brian Feener abstains from discussion for the next application, being an abutter)

Building Inspector Report: Mr. Nelson came before the Board with David Pitman of 31 Eastern Avenue, Map 38, Lot 57, is proposing to build a new barn, being 25x15, decreasing the nonconformity of the setback by two feet. The existing barn will be demolished, but the deck will remain. Chairman Burnham questioned the total land area of the lot, and the applicant will need to return, showing a plan for the total land area, calculating the existing footprints. The Board cannot approve increasing a nonconforming lot.

(Brian Feener returns for discussion.)

Board of Selectmen, Jack Schwartz: Selectmen Schwartz came before the Board producing a copy of the Intermunicipal Agreement for Wastewater Collection, Treatment and Disposal between City of Gloucester, and Essex. The copies were distributed; Brian Feener asked how long this agreement has been discussed with Gloucester: Mr. Schwartz felt that for about two years, this was an alternative being addressed.

Chairman Burnham asked Mr. Schwartz who would write the specific regulations for connections, etc. The Planning Board would need to have a growth control bylaw correlate with the specifics on the sewer district management's bylaws.

Mr. Schwartz asked whether Horsley and Witten have aided the Board in their decision for language specific for growth management. The Board has just been given a specific map outlining the actual lots to be included in the sewer district, and the language for the bylaw has not been defined.

There will be a Forum on March 6, 2000, for the Town to discuss the Agreement between Gloucester and Essex.

Proposed Annual Town Report of the Planning Board: The report will be published in the Annual Town Report for 1999.

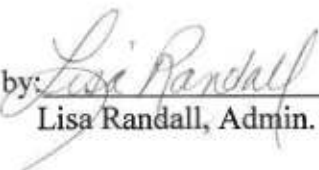
Discussion of Sewer Service Map/Proposed Bylaw: The Board examined a map that was presented by Dames & Moore, which showed the lot, by lot delineation of the area included to be connected. The legend shows the 150-foot measurement. The lots are matched with assessor's map and lot numbers. The determination of how each lot and its present usage was questioned by the Board. Each 150-foot of frontage was calculated as

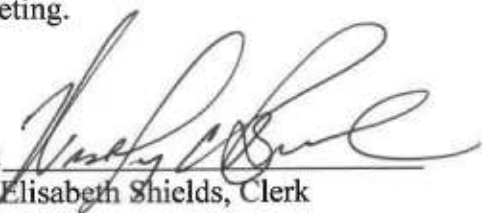
one single-family dwelling, therefore, deriving the estimated flow rate of each 150 feet of frontage.

The Planning Board's obligation was to look at the sewer area and agree that a creation of a general bylaw creating the sewer district, according to Chairman Burnham. Elisabeth Shields added that she thought the Board could create the district and allow or eliminate certain lots within the district. Gil Guerin noted that a general bylaw needed to be established, but the Board should look at the now unbuildable lots that will have the capability of building when the pipe goes by. Centralizing or controlling growth is what Mr. Guerin felt that should be addressed. Chairman Burnham asked the Board: "Are there any major parcels that are going to be impacted, is there something, that if they create this district as drawn, are there any potential growth problems that the Town will need to address ahead of time?" The potential of units that could be expanded was the biggest issue for the Board. How many single-family units could be converted into multi-family? The frontage issues were not as problematic, except for John Duncan's property on Western Avenue, and Markham's property on Western Avenue. It was the conversions that the Board was concerned by. If Dames and Moore calculated the lots as existing uses only, then the potential for growth within the sewer district must be controlled. Currently, the land use regulations for converting a single-family to a two-family dwelling are the same. The sewer district would need to mandate the additional connection or additions for flow rate for those additions. It was Chairman Burnham's belief that if a conversion were to be proposed, then the additional bedrooms would need to maintain a separate, Title V system.

A sewer district through a general bylaw for vote at Town Meeting would be drafted. The regulations for the district must be in place as well, added Chairman Burnham, who will contact Kelly Whalen in order to have several questions answered, one being the calculations for each lot use and how the flow rate for each use was determined.

The Board, having no further business, adjourned the meeting.

Presented by: 
Lisa Randall, Admin. Assist.

Attested to: 
Elisabeth Shields, Clerk

**TOWN OF ESSEX PLANNING BOARD
AGENDA
WEDNESDAY, FEBRUARY 2, 2000**

- 7:30 p.m. Building Inspector Report
- 8:00 p.m. Ken Hudson/discussion about property
at Conomo Drive/Rocky Hill
- 8:15 p.m. Site Plan Review/Discussion of Draft
- 8:45 p.m. Liberty Road final Decision on Modification
(Tabled)
- Other Planning Board Business:
- Mail
 - Bills Payable
 - Letter from Building Inspector, re: 44 Pond St.
 - ConCom Notices
 - Letter from Horsley & Witten to Dames&Moore
 - TBR/letter from Town Counsel on ^{Pre}-Trial
Date (FYI only)
 - DEP – “Guide for Developing Local
Groundwater Protection Controls (pp.17-20)
 - ? Are we meeting on the 9th of February
 - Map by BOH, Dames & Moore, discussion

**TOWN OF ESSEX PLANNING BOARD
MINUTES
WEDNESDAY, FEBRUARY 2, 2000**

The meeting was held at the EEMS on Story St., Staff Lounge, and opened by the Chairman.

Attendees: Westley Burnham, Chairman, Elisabeth Shields, Walter Rich, Brian Feener, Gil Guerin and Sheldon Pennoyer

Absent: George Stavros

Building Inspector Report: 18 Coral Hill Road-Map 4, Lot 91, having 5,067 square feet. Applicant wishes to consolidate building lot coverage into one mass of 41x30 which is a five percent (5%) decrease of lot coverage, extend deck out to the water line which would increase the deck – 11.5% of lot coverage, would also like to increase parking area off the street for car port or Pergola type of structure. The Board discussed at length, the nonconformity of the lot and whether or not this plan would increase the nonconformity of setbacks and impervious coverage. Mr. Nelson, who will plan a site visit, would investigate the deck dimensions and age of the structure. The Board did not act.

Ken Hudson/Riverhill Road: Map 9, Lot 16, having 4.37 acres (parcel is off Pond Street). Mr. Hudson came before the Board to discuss his desire of acquiring the property for storage of a large, wooden boat and to be able to have living quarters along with a place to store his antique car. The land has no access to frontage on a Town approved way, but has an existing “old way”. The Board discussed the issues and requirements of upgrading the old way through the subdivision process. Another dilemma was that the “way” passed through at least two other parcels, necessitating a “right of way” access from those parcels. The regulations of the Water Resource Protection District were discussed. The Board did not act.

Liberty Road Subdivision – Modification: The Board tabled the matter for further investigation before Moving to Vote on the final Modification of the Subdivision.

44 Pond Street: The Board received a copy of a letter by the Building Inspector to Mr. Grimes, which notifies the applicant that during a June 4, 1997 Planning Board meeting, it was Voted to have the existing dwelling demolished after completion of a new single family residence on the same property. Mr. Grimes has ninety days to demolish the home.

Motion: **Gil Guerin Moves to schedule a Work Session Meeting for Wednesday, February 9, 2000, at 7:30p.m. Meeting is to be held at the EEMS on Story Street. Discussion will include the Draft of Site Plan Review, the Sewer Service Map, the Bylaws scheduled for Annual Town Meeting, and the Liberty Road Subdivision Modification. Seconded by Brian Feener. All members present Voted unanimously.**

Page Two of Planning Board Minutes of February 2, 2000, continued...

Planning Board "Check List": Walter Rich brought up an idea that perhaps each member should be designated to handle certain tasks, having separate jobs and expertise on one particular field, such as home occupation, or water resource protection, etc. Sheldon Pennoyer noted that this is done only when a construction of subdivision is in process, having one member being a contact person, keeping the Board informed of the progress, etc. Gil Guerin noted that a procedure should be established for the Board, so that it would aide new members coming in with no experience. Chairman Burnham agreed that perhaps a flow chart or check- list should be developed.

The Board, having no further business, adjourned the meeting.

Presented by: Lisa Randall
Lisa Randall, Admin.Assist.

Attested to: Elisabeth Shields
FOR: Elisabeth Shields, Clerk FOR

**TOWN OF ESSEX PLANNING BOARD
AGENDA
WORK SESSION MEETING
WEDNESDAY, JANUARY 26, 2000**

7:30 p.m.

Meeting with Board of Health and Jon Witten,
Horsley and Witten – Discussion about
By-laws in relation to the wastewater facility
Plan

Other Planning Business:

- Building Permit Information – Ltr. from Bldg. Inspector
- Minutes of 1/5/200, 1/19/2000
- Bills Payable
- Payroll Voucher
-

**TOWN OF ESSEX PLANNING BOARD MINUTES
WORK SESSION - WEDNESDAY, JANUARY 26, 2000**

The meeting was held at the EEMS on Story St., Staff Lounge, and opened by the Chairman. Attendees: Westley Burnham, Chairman, Sheldon Pennoyer, Walter Rich, Betsy Shields and Gil Guerin. Absent: Brian Feener and George Stavros
Also in attendance: Board of Health members Cliff Ageloff, Chairman and Mike Dyer.

(Gil Guerin is not present at the time of this particular discussion.)

Building Inspector: Choate Street – Map 16, Lot 2, 122,000 SF, applicant is Scott Steeves of Creative Development in Boston. This plan is brought to the Board for location of home to be sited. Discussion about the fact that the Conservation Commission has approved this plan, and the size on the building permit is for 24x50, and the plan shows a 50x24 house. (This plan came before the Board previously and needed to be brought back with the correct rear setbacks.)

Motion: Sheldon Pennoyer moves to approve the building permit application for Creative Development Associates, 6 Hamilton Pl., Boston, MA, for a single family dwelling located on Choate Street, Map 16, Lot 2, as shown on a revised plot plan dated 1/26/00, showing a house that measures 24x50. Seeing also that the plan meets the minimum standards of the zoning bylaws. Plan shows Board of Health, Conservation Commission and Wetlands approvals.

NOTE: Applicant must comply with the Conservation Commission Regulations, making sure that the proposed house sits outside of the buffer zone. Seconded by Walter Rich. All members present voted to approve the Motion.

28 Choate Street/John Byrne: Map 17, Lot 5, building application shows a site plan for a proposed barn with living space above. Lot has an existing dwelling located on the property.

Motion: Sheldon Pennoyer moves to approve the siting of a barn with an apartment above for John and Patty Byrne at 28 Choate St., Essex, on a pre-existing lot. Barn measures 38x50, and meets all minimum setbacks, having approval by Conservation Commission, Wetlands, and Board of Health. Finding also that under 6-4.2 Existing Nonconforming uses, that the proposed alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. Seconded by Walter Rich. All members present voted to approve the Motion.

(Gil Guerin enters.)

Discussion with Jon Witten of Horsley and Witten regarding the Waste Water Treatment Sewer System: Mr. Witten briefly ^{visited} ~~revisited~~ the Dec. 13, 1999 meeting with the Board discussing several land use bylaws relative to the connections of lots in

existence and lots that would or would not be allowed to connect. The avenues to achieve laws through a General Bylaw, a Board of Health Bylaw or Zoning Bylaw was discussed at length. Mr. Witten explained also that the service area was currently being dictated by the Dames and Moore study, based on the capacity of the treatment area, which was controlled by DEP. The Board's responsibility is to link the service area (the "MAP", to a bylaw – General Bylaw or Zoning Bylaw. Mr. Witten suggested that the Town adopt the following: "To see if the Town would vote to establish a sewer service area..., (the "MAP")...for the centralized wastewater treatment facility as follows: Those lots existing as of record _____ and supported in the Essex County Record of Deeds as of _____ and fully identified and described on the map contained in the wastewater facilities plan."

Chairman Burnham noted that the DEP has not approved the facilities plan depicting that "MAP". There has not been a final map given to the Board to discuss. The map that was given to the Board does not show enough detail for each particular lot. (i.e., how many bedrooms, flow, map and lot detail) and it was not clear how Dames and Moore accounted for the unbuilt lots (every 150 feet of frontage should be assigned a flow for a single family home). Mr. Witten thought that the calculations for the buildout should have assumed the maximum density possible under current zoning for each existing lot.

Sheldon Pennoyer noted that the map was not truly defined by the assessors' map with each lot showing existing uses or showing who is "in" and who is "out" of the sewer service area.

It was apparent that the Planning Board would require a more defined MAP from Dames and Moore in order to proceed with the bylaw – The Board wanted the opportunity to have a hand in the decision process for accepting the sewer service area. It was mentioned that calculations were figured by existing use, existing flow rate and potential based on present zoning- not potential buildability.

The date of establishment for the bylaw was clear, such as "any pre-existing use as of 1/1/2000 will be able to connect". Chairman Burnham noted that in his opinion, adopting a General Bylaw versus a Zoning Bylaw had two very different adoption regulations by the Town. A general bylaw adoption only needed the majority of the Vote at a Town meeting. A zoning bylaw required a two-thirds majority vote of the Town meeting. These two differences were discussed at length. After several scenarios were created, it was noted that perhaps a "sister" zoning bylaw be created by the board of health and the planning board which would address control of growth along with the adopted general bylaw. There would be no avenue for a "grandfathered" lot to be able to expand over and above the existing connecting eligibility. Creation of additional lots or connections within the facilities plan could be allowed through a special permit process.

Page Three of Planning Board Minutes of January 26, 2000, continued...

In closing, Jon Witten would contact Dames and More to provide the Board with a detailed map delineating the lots of record on which parcels were "in" and "not in" the sewer service area, and how the calculations were done would be given.

Minutes: Motion: Elisabeth Shields moves to approve the January 5, 2000 Minutes as written. Seconded by Sheldon Pennoyer. All members present voted to approve the Motion.

Motion: Sheldon Pennoyer moves to approve the January 19, 2000 Minutes as written. Seconded by Walter Rich. All members present voted to approve the Motion.

Presented by: Lisa Randall
Lisa Randall, Admin. Assist.

Attested to: Elisabeth Shields
For: Elisabeth Shields, Clerk

**TOWN OF ESSEX PLANNING BOARD
AGENDA
WEDNESDAY, JANUARY 19, 2000**

7:30p.m.

Planning Board Business

- Discussion about 1/18 mtg. With the Con Com.
- Liberty Road – DPW Update and other information
- Turtle Back Road – Update
- Minutes of Jan. 5, 2000
- Joint Meeting with BOH and Jon Witten on Jan. 26, 2000 - Reminder
- Sign Invoice to PVW re: Balance Due to HL Graham Associates
- DPW letter regarding *Failure to comply with driveway by-laws*
- DPW letter to R.O'Connell, 48 Belcher Str., regarding runoff
- DPW Memorandum re: Water Resource Protection District By-Law (proposed) Changes
- Annual Report – Draft (for review; due on Feb. 14)
- FY 2001 Budget – Draft (for review; due on Feb. 14)
- Other Planning Business

**TOWN OF ESSEX PLANNING BOARD
MINUTES
WEDNESDAY, JANUARY 19, 2000**

The meeting was held at the EEMS on Story St.-Staff Lounge, and opened by the Chairman.

Attendees: Westley Burnham, Chairman, Elisabeth Shields, Walter Rich, Brian Feener, Sheldon Pennoyer and Gil Guerin. Absent: George Stavros

(Gil Guerin is not present at the meeting for this discussion.)

Building Inspector Report: 66 Choate St., Lot 2, Siting for single family dwelling-Creative Development. The rear lot setback was shown at 25 feet, not the 30 feet required in the bylaws. The Board did not act.

Conservation Commission Meeting/Tuesday January 18: Westley Burnham, Elisabeth Shields and Walter Rich were present for last night's meeting with the ConCom to view a presentation by Mark Howland on the installation standards for the Howland Swale, which was well done, according to the group. The Howland Swale is "*a constructed wetlands stormwater management system*".

Concern about tracking building applications and communication between the two Boards was discussed. It was decided that the two administrative assistants for each Board would be the liaison. This would help to keep each Board aware of certain issues that would have otherwise fallen through the cracks, making certain that provisions for requirements in the bylaws were implemented before certificates of occupancy were allowed.

Building Permit Routing: The Board discussed at length different avenues in which the building permit process could be improved. A memorandum from the D.P.W. stated that some occupancy permits were being signed off when driveways, etc. were not completed, or in compliance. A check list on the back of this Cert. Of Occupancy should list the appropriate departments for a final signature before giving the certificate. A letter by Town Counsel substantiates the issue that the Building Inspector has the right to withhold an occupancy permit until all provisions of the permit are completed and working properly. No action was taken, but the Board would look into the matter later.

(Gil Guerin enters.)

48 Belcher Street/O'Donnell: The Board was privy to a drainage problem at the site. The applicant would not receive a certificate of occupancy until the problem was corrected.

Site Plan Review: Sheldon Pennoyer has several ideas on how to proceed with this potential bylaw, and felt that there were issues for the Board to decide. What should *trigger* the site plan review: Should a hearing process commence with the size of a building having 5,000 square feet or larger (except for single family homes), or a creation or change of use. Change of use would be if changing from single family to commercial,

or vice versa. A creation of use would be any new construction (except for single family homes), forgoing the full hearing process, but requiring the same information on site plans.

Walter Rich wanted to know what the actual purpose for a site plan review was for: He noted that if in the beginning, as when a permit is pulled, that all of the requirements were in place and were in compliance with the requirements, there should be no need for a site plan review. It seemed to him that the site plan review was a requirement "after the fact", and that the permitting process in Essex is what lacks consistency, with poorly enforced bylaws, no organization, weak requirements. In addition, if an applicant has the necessary requirements met for changes on his lot, this should be allowed. Brian Feener agreed. Gil Guerin noted that being organized in the beginning of the process is essential. Enforcement of the bylaws needed to be addressed, as well.

Sheldon Pennoyer and Westley Burnham pointed out that if this was a substantial change of use or change, the public should have the opportunity to be notified that "this" is going on. Neighbors should have an input for impacting changes. As the Town changes, Sheldon Pennoyer felt that the Site Plan Review was a process to allow these changes – A hearing and documentation of the process.

The Site Plan Review would give the Board a permitting process for "hot buttons" – projects that will have impacts on neighbors and that would provoke the review anyway. The 5,000 S.F. for new construction or commercial property and the creation or change of use would allow a Special Permitting process where lighting, special conditions, etc. could be implemented, leaving the public with the opportunity to impact decisions; and developers a chance to work with the neighborhood.

Sheldon Pennoyer will have a draft for the Board to review by the next meeting or by February 2.

Liberty Road: Westley Burnham will submit a final modification for the subdivision by Feb. 2,, noting that the money held at the Town will not be released until conditions have been met which include issues pertaining to the turn around at the end of the road, and HL Graham's comments in a Dec. 1, 1999 letter. He noted that if the subdivision changes from any more than three, the conditions for the road requirements would change.

Turtle Back Road Subdivision: The Board was given a copy of the Town Counsel's Answers to PVW's Complaint to Land Court.

Minutes of 1-5-2000: Tabled.

Joint Meeting with the Board of Health: The meeting with the BOH and Jon Witten is scheduled for Jan. 26, 2000 at 7:30pm at the School. The bylaws proposed for the Annual Town Meeting will be discussed, in relation to the wastewater sewer facility plan.

6-13.3b.7: Water Resource Protection District Bylaw/Proposed: The D.P.W. forwarded a Memo to the Board noting that the proposed b-law changes are not in line with DEP regulations, and may impose undo hardships on property owners (litigation). The DEP is mailing an informational packet, and model by-laws that conform to their regulations. Westley Burnham noted that a change on the proposed by-law should be changed to read "4,000 square feet or fifteen percent of lot area (whichever is *greater*)..." The by-laws will be discussed later, as a hearing will take place before Town meeting.

The Board, having no further business, adjourned the meeting.

Presented by: 
Lisa Randall, Admin.Assist.

Attested to: 
Elisabeth Shields, Clerk

**TOWN OF ESSEX PLANNING BOARD
AGENDA
WORK SESSION MEETING
WEDNESDAY, JANUARY 12, 2000**

7:30p.m.

Planning Board Business

- Joint meeting for 1/18/00 w/ Con Com.
- Liberty Road – DPW Update and other information
- Bylaws for Wastewater Facility Plan
- Turtle Back Road – Update
- Minutes of Jan. 5, 2000
- Joint Meeting with BOH and other interested Departments regarding Bylaws - ? Jan. 19th at 8:00 pm? Is Jon Witten to Attend this meeting?
- Sign letter to PVW re: Balance Due to HL Graham Associates – ALSO, there is another invoice dated 1/11/00
- DPW letter regarding *Failure to comply with driveway by-laws*
- DPW letter to R.O'Connell, 48 Belcher Str., regarding runoff
- DPW Memorandum re: Water Resource Protection District By-Law (proposed) Changes
- Other Planning Business

*No Quorum
for 1-12-2000
mtg.*

**TOWN OF ESSEX PLANNING BOARD
AGENDA
WEDNESDAY, JANUARY 5, 2000**

7:30 p.m. Building Inspector Report

Other Planning Business:

- Horsely and Witten/Discussion about Bylaws
- Minutes of December 15, 1999
- Update on TurtleBack Road – Sheldon Pennoyer

**TOWN OF ESSEX PLANNING BOARD
MINUTES
WEDNESDAY, JANUARY 5, 2000**

The meeting was held at the EEMS on Story Str., Staff Lounge, and opened by Acting Chairman Brian Feener.

Attendees: Brian Feener, Elisabeth Shields, Walter Rich, Sheldon Pennoyer, Gil Guerin

Absent: Westley Burnham, Chairman, and George Stavros

Building Inspector Report: Mr. Nelson did not have applications for signature this evening, but brought one matter to the Board's attention: **18 Coral Hill Road:** Resident desires to increase the present coverage of 46 percent to an additional 12 percent, although there would be some elimination of impervious coverage. Bylaw 6-13 was read and discussion noted that the Board could not approve a permit for the increase. No action was taken.

Joint meeting with Board of Health: Elisabeth Shields noted that the Board of Health is willing to meet with the Board regarding issues relating to the bylaws being proposed in conjunction with the wastewater facility plan. No date has been set: The Board is awaiting information from Horsley and Witten on draft examples of proposed bylaws.

Turtle Back Road Update: The Board is in receipt of a Complaint filed by Peter Van Wyck against the Planning Board members.

Sheldon Pennoyer noted that Town Counsel will receive information by Mr. Pennoyer, including photographs of the circle, the date and temperature the day the road was paved (allegedly on Dec. 21, 1999), a letter by Susie Preston which substantiates the photographs. Mr. Pennoyer requested that the Board vote to have him send the information.

HL Graham is owed a total of \$743.75 for services leading up to December 1, 1999. A balance of \$354.22 will be outstanding. The Board recommended that a letter go to Mr. VanWyck requesting the balance be submitted to the Town as soon as possible to clear up this account.

Motion: Sheldon Pennoyer moves that the Planning Board request Town Counsel, Kopelman and Paige, P.C., to defend the Planning Board in a law suit brought upon the Town by Peter Van Wyck, as Filed in Land Court, Docket No. 260879.

Horsley and Witten Letter: A December 17, 1999 letter from Jon Witten recanted the items discussed at a 12/15/99 meeting. Although planning issues were identified in the letter, the Board felt that more information needed to come from Mr. Witten. The Board was looking to have certain bylaws drafted, including the language, and given to the Board to approve, adding changes if needed. Mr. Witten recommended the Board adopt a general town bylaw which "...not to allow connection to the treatment plant of any lot not accounted for by Dames & Moore's analysis (e.g., the build-out analysis). He felt

Page Two of Planning Board Minutes of January 5, 2000, continued...

that adopting a new zoning bylaw verses a general town bylaw will protect the state and the Town, and also that "...Massachusetts provides too many protective mechanisms from zoning changes to ensure the lots created via an approval not required or definitive plan will not claim authority to connect to the treatment system."

Mr. Witten's draft: "To see if the Town will vote to establish the service areas for the centralized wastewater treatment facility as follows: Those lots existing as of record and recorded in the Essex County Registry of Deeds as of _____, _____, (the Board should discuss an appropriate date to be inserted here. This date should reflect the Town's desire that no new lot connect to the wastewater treatment system beyond those included in the Dames & Moore build-out analysis) more fully identified and described on the Map contained in the Draft Wastewater Facilities Plan, dated ____, _____, (this date is the date of the Dames and Moore Draft Plan).

The letter stated that the Town would need to consider adopting other bylaws regarding betterment assessments and borrowing, allocating the "excess" capacity, and transferring wastewater rights, etc.

The Board recommended that Brian Feener contact Mr. Witten to have more information forwarded for the next work session, Wed. Jan. 12, 2000.

Minutes: Motion: Sheldon Pennoyer moved to approve the December 15, 1999 Minutes as written. Seconded by Walter Rich. All members present voted to approve the motion.

Annual Report Due on February 14, 2000.

Articles for Warrant deadline is March 13, 2000.

The Board, having no further business, adjourned the meeting.

Presented by: *Lisa Randall* Attested to: *Elisabeth Shields*
Lisa Randall, Admin. Assist. Elisabeth Shields, Clerk

**Town of Essex Planning Board
Minutes
Wednesday December 19, 2001
7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School and was opened at 7:30p.m. by Scottie Robinson, Chairman

Attendees: Scottie Robinson, Michael Cataldo, Westley Burnham, Jud Lane. Betsy Shields arrived at the beginning of the discussion of 70 Grove Street. Gil Guerin arrived during the discussion of the Community Development Plan.

Building Inspector: Bill Sanborn

Secretary: Lorie Woodward

Martin Street / Town Community Development Action Grant

Brendan Zubricki appeared before the Board with the completed application for the CDAG, the application will be mailed on Friday. In addition the PWED application has also been completed, although the funds will not be available for two or three months.

Motion: Michael Cataldo moves that the Board formally endorse the submission of the Community Development Action Grant application as prepared and submitted on December 5, 2001.

The motion was seconded by Westley Burnham and passed unanimous

In addition Scottie Robinson prepared a letter from the Board in support of the project.

Building Inspectors Report

30 Belcher Street / Angus Means / Building Permit

The applicant is requesting a Building Permit to enlarge the family room, adding a sunroom, add new deck, remodel master bath and bedroom install and replace windows. No finding was required.

70 Grove Street / Martha Tattersail / Building Permit

The applicant is requesting a Building Permit to build a 24-ft by 17-ft run in shed for the horses. The shed is for private use and is not near the lot lines. No finding was required.

48 Southern Avenue / Marc Fagan / Building Permit

The applicant is requesting a Building Permit to build a garden shed. The applicant has received a variance from the Zoning Board of Appeals allowing this structure to be sited one foot four inches off of his rear set back. No Finding was required.

229 Western Avenue / Dr. Kippenberger / Special Permit

No progress has been made.

Planning Board Business

Ice House Lane / Dog Day Care

The Board received a letter proposing a dog day care/overnight facility on Ice House Lane. The attorney making the inquire will be set a letter and information regarding Essex Bylaw 6-6.12, Site Plan Review Special Permits.

Special Permit Notices

The Special Permit notices were reviewed.

Meeting Minutes

November 14, 2001

Motion: Westley Burnham moves to approve the November 14, 2001 minutes with corrections.

The motion was seconded by Michael Cataldo and passed unanimously.

December 5, 2001

Motion: Michael Cataldo moves to approve the December 5, 2001 minutes as amended.

The motion was seconded by Westley Burnham and passed unanimously.

30 Belcher Street / Letter of Understanding

The Board edited the letter provided by Westley Burnham. The letter outlines the improvements the Board views as necessary to provide adequate access.

Motion: Michael Cataldo moves to execute the memorandum of understanding with 30 Belcher Street LLC, as authored at this meeting with revisions to take care of the access at the property located at 30 Belcher Street.

Warrant Articles

Articles for inclusion in the Warrant will be accepted on or before 3:00 p.m. on Monday, March 18, 2002.

Water Resource Protection District

Betsy Shields and Michael Cataldo met with Damon Boutchie regarding DEP changing district. They will meet again on January 22, 2002 or sooner if possible.

Planning Board Appointments

Lakeview Road / George Benoit / ANR request

Mr. Benoit presented the plan again. The easement was sited on the plan as well as the disclaimer.

Motion: Michael Cataldo moves to approve the Approval not Required plan submitted by Benoit Realty Trust plan dated December 18, 2001 finding that we are making no determination of compliance to zoning requirements and approval under the Subdivision Control law is not required.

The Motion was seconded by Westley Burnham and passed unanimously.

51 Pond Street / Barry Levine / ANR request

The applicant Barry Levine appeared before the Board. She would like to subdivide the property and create two buildable lots. The property does not meet the frontage requirements for two lots. Ms. Levine was told she needs a denial from the Planning Board before she could appear before the Zoning Board of Appeals. The Planning Board advised her to go directly to the Zoning Board of Appeals rather than pay for the ANR submission.

25 Apple Street / Gloria and Ed Story / Subdivision Plan

Clay Morin appeared before the Board to address the items outlined in the subdivision approval. All additions required by the Board were made. The plan conforms to the DPW's suggestions. The engineer will return to the next meeting because the linen he has was signed in blue ink and the registry will not accept it that way. The applicant will have a covenant drawn up. The secretary will forward Gloria a copy of the Bucklin covenant for reference.

41 Forest Avenue / Jerome French / Special Permit

Mr. French appeared before the Board to discuss his proposal for a cell tower on his property. Before the board could approve such a proposal he would need to appear before the Zoning Board of Appeals and be granted relief from the two-mile restriction. The Board returned his \$100.00 check and advised that he talk to the Zoning Board.

Community Development Plan

The sub-committee, Betsy Shields, Westley Burnham, Michael Cataldo, Dave Folsom and Brendan Zubricki met and decided to recommend MAPC for the consultant to the Town, as they have a working knowledge of Essex and the surrounding areas.

Motion: Westley Burnham moves to authorize the Selectmen to enter an agreement with MAPC for development of a Vision Statement and scope of the work for Community Development Grant money.

The motion was seconded by Michael Cataldo and passed unanimously.

Scottie questioned whether or not the committee was ready for community input. Lysa Leland had previously expressed an interest in this project. Currently the project is not at that point yet.

16 Martin Street / John Coughlin / Special Permit

The Zoning Board of Appeals will meet with the Planning Board for the Public Hearing on January 16, 2002 to discuss all aspects of this project.

Possible items for Warrant

Site Plan Review,

Mixed Use, probably won't get to this year

Frontage, (last year) reword definition, ability to access through frontage

Cap on number of lots with a common driveway, access adequacy,

Water Resource Protection, new DEP restrictions

**Motion: Michael Cataldo moves to adjourn the meeting
The motion was seconded by Gil Guerin and passed unanimously**

The next meeting is scheduled for Wednesday, January 2, 2001, commencing at 7:30 p.m.

Presented by: Lorie Woodward **Attested to:** Jud Lane
Lorie Woodward, Admin. Assistant **Jud Lane, Clerk**

**Town of Essex Planning Board
Agenda
December 5, 2001
Essex Elementary/ Middle School
Room 9
7:30 p.m.**

- 7:30 p.m. **Building Inspector's Report**
- 8:00 p.m. **106 Southern Avenue / Paul Famolari, Lori Watson**
- 8:20 p.m. **16 Main Street / John Coughlin / Paul Shea / Special Permit**
- 8:40 p.m. **Town Grant application for New Parking**
- 9:00 p.m. **Lakeview Road / George Benoit / ANR**
- 9:15 p.m. **31 Forest Avenue / George & Ruth French / ANR**
- 9:30 p.m. **Planning Board Business**
*Approval of Minutes
11/14/01*

Approval of Calendar

Payroll request

Mail

**Town of Essex Planning Board
Agenda
November 14, 2001
Essex Elementary/ Middle School
Room 9
7:30 p.m.**

- 7:30 p.m. **Building Inspector's Report**
- 8:00 p.m. **106 Southern Avenue / Paul Famolari / Site Plan Review**
- 8:15 p.m. **78 Belcher Street / Wendy Fossa / ANR**
- 8:30 p.m. **Planning Board Business**
 Three Dwellings on One Lot
- 9:00 p.m. **Lakeview Road / George Benoit / ANR**
- 9:15 p.m. **Planning Board Business (continued)**

 Approval of Minutes
 11/7/01

 Mail

**Town of Essex Planning Board
Minutes
Wednesday November 14, 2001
7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School and was opened at 7:40 p.m. by Scottie Robinson, Chairman

Attendees: Scottie Robinson, Michael Cataldo, Jud Lane, Betsy Shields. Andrew St. John arrived at 7:50 p.m. at the beginning of the discussion of 106 Southern Avenue, Special Permit application

Building Inspector: Bill Sanborn

Secretary: Lorie Woodward

Building Inspectors Report

30 Belcher Street / Request for a Building Permit

The applicant, Megan Means appeared before the Board requesting a foundation only, Building Permit. This would allow Ms. Means to install the foundation before the ground freezes. At the last meeting the Board chose not to issue a Building Permit because they would prefer the issue of access resolved before granting any Building Permits to lots using this driveway. The attorney for Peter Creighton, the developer for the other lots located on the driveway, reported to the Building Inspector that a draft for the proposed renovations for the road will be available for the next Planning Board meeting.

Motion: Michael Cataldo moves to approve the siting of the single family house at 30 A Belcher Street for a foundation only.

The motion was seconded by Jud Lane and passed unanimously.

229 Western Avenue

Scottie Robinson updated the Board and the Building Inspector with regard to a letter that was sent to Dr. Kippenberger requesting again that he appear before the Board and explained specifically why it is necessary.

Planning Board Business

106 Southern Avenue / Paul Famolari / Special Permit Application

Lori Watson presented a plan with drainage calculations. Their intention is to build a storage building with oil heat and no plumbing or septic. The Board questioned whether or not vehicles would be stored in the building and the applicant stated no. On the plan shown to the Board it is unclear if the parking area is the required 30-ft. off the road. In addition the square footage of the building requires more parking spaces than shown. The Board was unsure what the dotted line surrounding the building signified and whether it was connected to the drain. The Board suggested that the definitive plan have more detail. The plan that was reviewed did not have an engineer's stamp or signature. The Board again advised the applicant to read the section on Special Permits and fill out the application and return to the Board for the next meeting to submit the plans, applications and check.

16 Main Street / John Coughlin / Special Permit application

Paul Shea attorney for the applicant was present at the meeting to discuss the Special Permit application he gave to the Town Clerk. The application given to the Town Clerk was not the application required by the Town and unclear as to the intention of the applicant. Mr. Shea explained that the applicant would like to demolish the existing garage and clean the site. The new structure would be a mixed-use two-story structure. Mr. Shea presented the plans to the Board. In addition the applicant plans to add a drive through window for the Bank located next door. The proposed building would have two residential units as well as office space, on site parking will be provided for the residential units. In addition Mr. Coughlin is working with the Town to create more parking behind the garage and new bank building next door. The applicant has also submitted an application to the Board of Appeals for a plethora of variances due to the lot being undersized. The Board requested a comprehensive plan for the downtown project, which would include the Bank building, the garage and the area behind the two buildings. The Board questioned the access to the proposed parking behind buildings. **An Application will be submitted on Dec 5, 2001**

78 Belcher Street / Joe and Wendy Fossa / ANR application

Joe Fossa appeared before the Board requesting a land swap with his neighbor. Mr. Fossa appeared before the Board last week without the neighbor's signature on the application. This week he presented a letter from his neighbor, Dennis Wilk, stating that he is fully aware of the ANR application. Mr. Fossa presented the plans for trading the property.

Motion: Jud Lane moves to approve the Form A application from Joe Fossa, 78 Belcher Street for changing the lot lines as presented. No new lot will be created, just a land swap to change the property line. The second applicant is Dennis W. Wilk.

The motion was seconded by Michael Cataldo and passed unanimously.

The applicant submitted a check for \$100.00.

Lakeview Road / George Benoit / ANR application

Mr. Benoit appeared before Board to discuss his ANR application. Scottie updated the Board on information that she received at a recent seminar. The ANR Handbook states, A plan showing proposed lots with sufficient frontage and access, but showing some other zoning violation, is entitled to an endorsement that "approval under the Subdivision Control Law is not required." The Planning Board may properly add on the plan under its endorsement an explanation to the effect that the Planning Board has made no determination regarding zoning compliance. Mr. Benoit informed the Board that when the lot was resurveyed he was told he has additional area. There is an additional 12,000-sq. ft of land that was never dedicated to the roadway. Mr. Benoit proposed adding it to the lot that does not meet the 40, 000-sq. ft. requirement. The Board informed him that this would cut off frontage for the other two lots. The Board discussed the frontage issue and whether or not Mr. Benoit intended to convey the 12,000-sq. ft. to the town for the roadway or to the individual lots to ensure that the three lots have frontage. In addition the Board would require that the disclaimer noted in the ANR handbook be added to the

plan, "No determination of compliance with zoning requirements has been made or intended."

Planning Board Business

106 Southern Avenue, Betsy will check with the DPW to see if they have received drainage material from the applicant.

Minutes

Motion: Michael Cataldo moves to approve the October 29, 2001 minutes with minor corrections.

The motion was seconded by Andrew St. John and unanimously passed by members present.

Motion: Michael Cataldo moves to approve the November 7, 2001 minutes allowing the secretary to make requested editions and correct typing errors.

The motion was seconded by Betsy Shields and unanimously passed by members present.

Three Dwelling per Lot

The Board questioned how many lots in Essex would fit this criteria. The lot would need 3 acres of upland and must be perkable as well as 150-ft. of frontage. The Board has some concerns that there is no review process for these lots and that drainage issues may not be dealt with. Concerns were raised that this may be used to bypass the regular subdivision process. Currently there are three lots in Essex with three dwelling on them that the Board is aware of.

Town Meeting

The deadline for putting items before Town Meeting vote is March. Discussion of items must begin in December. A first draft must be written in January. Last year the Board considered issues of frontage, decks, and driveways.

The next meeting is scheduled for Wednesday, December 5, 2001, commencing at 7:30 p.m.

Presented by: Lorie Woodward
Lorie Woodward, Admin. Assistant

Attested to: Judith A. Lane
Judith Lane, Clerk

**Town of Essex Planning Board
Agenda
November 7, 2001
Essex Elementary/ Middle School
Room 9
7:30 p.m.**

- 7:30 p.m. **Building Inspector's Report**
- 8:00 p.m. **Lakeview Road / George Benoit / ANR**
- 8:15 p.m. **106 Southern Avenue / Paul Famolari, Lori Watson**
- 8:30 p.m. **78 Belcher Street / Wendy Fossa / ANR**
- 8:45 p.m. **Belcher Street / Peter Creighton / ANR**
- 9:00 p.m. **25 Apple Street / Mr. & Mrs Story / Tara Road Subdivison**
- 9:30 p.m. **Planning Board Business**
 "Voices of the Great Marsh" video
- Approval of Minutes*
 10/29/01
- Letter from Brendan Zubricki regarding 3 principle*
 dwelling on 1 lot
- Payroll request*
- Mail*

**Town of Essex Planning Board
Minutes
Wednesday November 7, 2001
7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School and was opened at 7:38 p.m. by Scottie Robinson, Chairman

Attendees: Scottie Robinson, Michael Cataldo, Andrew St. John, Westley Burnham. Betsy Shields and Gil Guerin arrived at 7:45 p.m. during the discussion of 36R Story Street, request for a Building Permit. Jud Lane arrived at 9:00 p.m. at the beginning of the 25 Apple Street, Tara Road Subdivision discussion.

Building Inspector: Bill Sanborn

Secretary: Lorie Woodward

Building Inspectors Report

36R Story Street / Request for a Building Permit

The Kempisks have received a foundation permit and would like to receive a Building Permit for the completion of the house. Larry Graham has visited the site to asses the cost of the remaining work to be completed on the driveway. The Kempisks are willing to provide the town with a performance guarantee in the form of a check. The updated amount recommended by Larry Graham is \$5,000.00. The Kempisks provided the Board with a check for that amount.

Motion: Westley Burnham moves that the Planning Board release the hold on the lot located at 36 R Story Street and replace the covenant with a \$5,000.00 performance guarantee to be placed in an escrow account until the balance of work indicated in the letter from Larry Graham dated November 7, 2001 is complete.

The motion was seconded by Michael Cataldo and passed unanimously.

Motion: Westley Burnham moves to authorize the Building Inspector to issue a Building Permit for Michelle and David Kempiski, for a single family dwelling on 36 R Story Street. The covenant has been adjusted to released the lot and a cash deposit is in place. The Board finds this Building Permit request meets all the minimum requirement of the Town of Essex.

The motion was seconded by Gil Guerin and passed unanimously.

The Board explained to Michelle the process for the return of the performance guarantee. Larry Graham must inspect the driveway and write a letter to the Board stating it is completed to the specifications required by the Planning Board.

30 Belcher Street / Megan Means / Request for a Building Permit

Megan Means Map 13 lot 2, is requesting a Building Permit. Discussion of an ANR recently approved for Peter Creighton which uses the same driveway access. The current driveway is not adequate for the number of lots that will be using it. When the Board approved this ANR it was discussed with the applicant that no Building Permits would be issued until the driveway was upgraded to handle the increased traffic and make it accessible for safety vehicles. Westley did walk the road with Mr. Creighton recently and gave him his personal view of what changes would need to be made to the driveway to make it adequate. The current road varies from 10 to 12-ft. in diameter. Westley recommended at least 16-ft wide pavement to one point and 14-ft wide pavement for the remainder. The Board would like the issue of access resolved before granting any Building Permits to lots using this driveway as access. If the applicant would like to install her own driveway the Board would have no reason to hold her up.

Buildable Lot Determination

Discussion of letter from Brendan Zubricki requesting a comment from the Board on whether a vacant lot located on Eastern Avenue, Map 38 lot 74, is buildable. The Board determined that it does not have frontage and is therefore not a buildable lot.

229 Western Avenue / Dr. Kippenberger

Westley Burnham recused himself from the discussion because his sister-in-law is an abutter.

Scottie Robinson updated the Board with regard to a conversation she had with Barbara Saint Andre, one of the attorneys at Kopelman and Paige. Barbara informed Scottie that she had reviewed the documents requesting Dr. Kippenberger attend the Planning Board meeting and his response. The Board has two options at this point. The Board can request that the Building Inspector immediately revoke the improperly issued change of use permit. The other option available to the Board is to write Dr. Kippenberger another letter in response to his rather heated letter explaining specifically why he needs to come before the Board. The Board agreed that writing another letter was the best course of action. Scottie will draft a letter.

Scottie offered Bill the phone number for Barbara Saint Andre if he had any further question with regards to Dr. Kippenberger.

Westley Burnham returned to the table following this discussion

63 Main Street / Nancy Roberts / Requesting a Change of Use

The applicant currently has a split use, half-commercial and half-residential, she would like to change the use to a two family residence only. The footprint will not be changed, all building alterations will be made inside. The applicant has received Board of Health approval.

Motion: Westley Burnham moves to approve the application for Nancy Roberts, 63 Main Street to change the use of an existing shop to an apartment, which will render the use a two family total. Finding the

**proposed change will be no more detrimental to the neighborhood. The footprint will not change, Bd of health has approved.
The motion was seconded by Andrew St. John and approved unanimously.**

Lakeview Road / George Benoit / ANR

Mr. Benoit returned to the Board with new plans showing the dwellings sited on the 3 lots. Two of the dwellings are two family and one is a 6 unit complex. Westley was unsure if the Board had the authority to change the lot lines that would create a new lot that is non-conforming in the Water Resource Protection District. Scottie will be attending a forum on non-conforming uses and have one of the attorneys look it over and advise the Board. Mr. Benoit will return for the meeting on November 14, 2001.

106 Southern Avenue / Paul Famolari / Special Permit

Paul Famolari and Lori Watson appeared before the Board. Their intention is to build a storage building with oil heat and no plumbing or septic. The lot is a grandfathered pre-existing non-conforming buildable lot. Mr. Famolari had submitted his application earlier this year but was unable to provide the Board with adequate plans or drainage calculations. He withdrew his application without prejudice. Paul will return to the Board on November 14, 2001 with the completed Special Permit application, plans drawn to scale and drainage calculation. The Board can not set a date for the Public Hearing until the application is completed. The applicant was mailed a copy of the Land Use Bylaws as well as appendix B to help them prepare their application.

78 Belcher Street / Wendy & Joe Fossa / ANR

Joe Fossa appeared before the Board requesting a land swap with his neighbor. He showed the plans for trading the property. The Board requested that he return the following week with the neighbor or at least his name and signature on the ANR application. Joe told the Board he would try to get Dennis Wilk to attend the next meeting.

Belcher Street / Peter Creighton / ANR

Christopher Adams from Haynes Engineering presented the ANR plan. Mr. Creighton will take off a piece of existing lot 3 and convey it to existing lot 2. Mr. Creighton explained that as an afterthought Angus Means, the owner of lot 2, decided that he would like to own that small piece of land to ensure that there would be a significant space between whatever was built on lot 3 and his property.

**Motion: Westley Burnham moves to approve the form A, ANR application for 30 Belcher Street LLC, to create a lot 3B off of 30 Belcher Street. Lot 3B and lot 2 are to be combined and held in common ownership as indicated on the plan by Haynes Engineering Land Surveyors dated November 7, 2001.
The motion was seconded by Andrew St. John and approved unanimously.**

In addition Mr. Creighton said he will look into the driveway concerns proposed earlier in the meeting when the Building Inspector presented a Building Permit application from Megan Means. Mr. Creighton will get back to the Board as soon as possible.

25 Apple Street / Tara Road Subdivision / Gloria and Ed Story

Betsy Shields recused herself from the discussion, as she is an abutter.

The Board discussed the additions made in the draft approval from the previous meeting and the actual wording that should be used.

Quick note regarding The Department of Housing and Community Development and the information that they offer on subdivisions, ANRs and more.

Motion: Westley Burnham moves to approve the Tara Road Subdivision Plan, XLO Realty Trust , 25 Apple Street, based on the written draft dated November 7, 2001.

The motion was seconded by Jud Lane.

The vote:

Gil, Michael, Westley, Jud, and Scottie: aye

Andrew: abstain, as he was not at the public hearing.

Betsy: recused from the discussion, as she is an abutter.

Betsy Shields returned to the table following this discussion.

Lowland Farms / Peter Van Wyck

Peter Van Wyck has been in touch with Scottie Robinson and Westley Burnham with regard to developing some of the lots in the Lowland Farms Subdivision. Mr. Van Wyck would like to replace the covenant on the land with a cash performance guarantee. He would like the Board to send Larry Graham to the site to determine the amount of money to be set aside. Westley has informed him that all conditions of the Agreement for Judgment need to be met before the Board will send Mr. Graham to the site. Money needs to be put aside for the payment of Mr. Graham's engineering services for his overseeing of the completion of the road. Westley has agreed to be the contact person for Peter Van Wyck.

Community Development Plan

Mention: Community Development sub-committee, Michael, Betsy, and Westley. The Selectmen on the committee is Dave Folsom. The committee must set up a meeting time to look at the scope of the project and agree on a consultant.

Evan's Way / Road Acceptance

Evan's Way is a five lot subdivision and the residents on the road would like to have it accepted as a public road. The contact person is Janice Migliaccia. When the road was created there were very few waivers given, so the Board does not anticipate a problem. Westley will be the contact person for the Board on this matter.

Three Dwellings per Lot

The Board had a brief discussion of a memo that Brendan Zubricki sent to the Board with regards to three dwelling units per lot. Opinions were voiced for and against.

The Board will add this item to the next agenda and discuss this further and send a memo back to Brendan.

The next meeting is scheduled for Wednesday, November 14, 2001, commencing at 7:30 p.m.

Presented by: Lorie Woodward Attested to: Jud Lane
Lorie Woodward, Admin. Assistant Jud Lane, Clerk

Town of Essex Planning Board
Agenda
October 29, 2001
Essex Elementary and Middle School

ROOM #9
7:00 p.m.

Building Inspectors Report
101 Western Avenue Karen & Chris Bernier

25 Apple Street/Tara Subdivision Plan

Planning Board Business

Approval of Minutes
10/3/01

Mail

**Town of Essex Planning Board
Minutes
Monday, October 29, 2001
7:00 p.m.**

The meeting was held at the Essex Elementary/Middle School and was opened at 7:00p.m. by Scottie Robinson, Chairman

Attendees: Scottie Robinson, Michael Cataldo, Jud Lane, Betsy Shields, Westley Burnham, Gil Guerin, Andrew St. John
Building Inspector: Bill Sanborn
Secretary: Lorie Woodward

Building Inspectors Report

101 Western Avenue / Request for a Building Permit

Chris and Karen Bernier, Map 32 lot 10, are requesting a Building Permit to expand their home. The construction would add onto the kitchen/family room on the first floor and the master bed and bath on the second floor. The proposed dimensions are 15-ft. by 20-ft. The lot is 15000 sq. feet. The applicant has proved that none of the property is located in the Water Resource Protection District per the DPW map. The applicant has received Board of Health, Conservation Commission and DPW approvals.

Motion: Andrew St. John moves to approve the Building Permit application, for Chris and Karen Bernier map 32 lot 10 to expand the house with a 15-ft. by 20-ft addition.. The applications meets all the required Bylaws. The motion was seconded by Gil Guerin and passed unanimously.

25 Apple Street / Tara Road Subdivision / Ed and Gloria Story

The Board reviewed and revised the draft document approving the Definitive Subdivision Plan for XLO Realty Trust drawn up by Westley Burnham. The following is a copy of the current agreed upon revisions.

November 7, 2001

The **Essex Planning Board** voted to approve the Definitive Subdivision plan submitted on 7/18/01 for land owned by XLO Realty Trust located at 25 Apple Street, Essex based on the following information and conditions:

Definitive Plan dated 8/28/01 drawn by Stephen Desroche, PLS of Neponset Valley Survey Associates Inc. 95 White Street Quincy Ma. 02169.

No preliminary plan was filed.

After all required notifications and advertising a Public hearing was held on 8/15/01 and closed on 9/5/01

Correspondence was read from: Department of Public works, Board of Health, several neighbors and interested parties.

The following waivers from The Essex Planning Board Subdivision regulations are approved:

These approvals are made based on testimony and information submitted to the Board indicating no more than two (2) house lots, single family residences, one existing and one proposed will be serviced by this access. Any deviation from the plan submitted shall require prior approval of the Board or approval of the following waivers shall be null and void.

1. Relief from the requirements of 7.02-2g The proposed roadway is to remain in private ownership with the lot over which it passes. Rounding lot lines is not required.
2. Relief from the requirements of 7.02 -2j and 7.02-4.c.3, the proposed "Hammerhead" turnaround is deemed adequate to meet the intent of accommodating emergency type vehicles.
3. Relief from the requirements of 7.02-4.2.a.2.b, 16 foot gravel road width is authorized. (see 3.05.2_ standards of adequacy)
4. Relief from 7.02 4.a.6b: shoulders shall be granted to reasonable and appropriate for safe pass and repass of emergency type vehicles and be blended with the drainage swales.
5. Relief from 7.02 4.b. small scale of the project deems sidewalks unnecessary.
6. Relief from the requirements of 7.04-1 Water systems, Town supplied water is not required due to the limited scale of this project. Potable water will be provided by on site wells. Board of Health certification will be required prior to issuance of Certificate of Occupancy for any new construction.
7. Relief is granted from the following requirements: 7.02 Streets and Ways: 2b, 4i, 4j, 6, 7, 8; 7.05 Blocks, 7.07 Monuments. These waivers are based on the small scale of the project and the applicants intent to maintain the natural vegetation and existing trees to the maximum extent possible.
8. Relief is granted from 6.04.3 Construction plan contents: The definitive plan and road profile contain adequate detail for this project.
9. Compliance with 7.0.3 Drainage is waived except as follows: In accordance with 7.02 4g, 4h, 5 grassed swales are approved for the length of the roadway and meet the intent for controlled ground water recharge. The swales shall be constructed and maintained in such a way as to control the runoff and direct it to a discharge point on the applicants property minimizing any impact on neighboring properties. The ultimate discharge point is subject to final design approval of the Dept of Public Works (see below under final requirements for endorsement)
10. Relief from the 7.01-10 requirement of underground utilities is **Not Allowed**: the existing utilities may remain but all extension of utilities serving the new lot shall be underground.

The following conditions are to be attached to this plan as part of the approval.

1. All septic systems shall conform to the requirements of the Essex Board of Health, and shall be approved prior to issuance of any building construction permits.

2. A covenant or other form of legal instrument shall be attached to Lot #1 and Lot #2 stating that no further subdivision of land shall occur with out filing for a modification to this subdivision decision under the provisions of Chapter 41 section 81U.
3. This plan was reviewed with the minimum requirements of 'Single Family Dwellings' being met. Any change of use may require modification of this subdivision approval.
4. A maintenance agreement shall be attached to the two (2) lots created stating that this roadway is to be maintained as private road, all maintenance costs incurred will be the responsibility of the owner or owners of record of the properties being served by the roadway.
5. A sign identifying the road as "Tara Road" shall be erected at the intersection of Apple street., this sign will be adequate for reasonable identification of the location to assist emergency personnel.
6. Existing rights to pass and repass along Emerson Lane shall be maintained for the property owners so entitled.

Endorsement of the approval will occur after the following requirements have been met:

1. The Town's Water Resource Protection District overlay across the property shall be identified on the Plan
2. The lot line between abutters VanWyck and Frye on the southeastern border of Lot 2 should be corrected.
3. A note shall be added to the plan indicating that no further subdivision of Lots 1 and 2 will be allowed.
4. A note shall be added to the plan indicating the existing rights to pass and repass along Emerson Lane remain for those property owners so entitled.
5. Final design of the drainage system at the intersection with Apple street has been accepted by the Dept of Public works. Road construction plans shall be revised accordingly.
6. A performance guarantee IAW MGL Chapter 41 section 81U, to insure the road construction, is in place and agreed to by both the Applicant and the Essex Planning Board. Said agreement having been reviewed by Town Counsel if the board deems necessary.
7. An individual to act as 'Clerk of the Works' has been designated and agreed to by the Board. This individual will answer to the Board and will monitor construction IAW the approved plan. A written agreement to fund this individual is submitted to the Board by the applicant.
8. Written confirmation that no appeals have been filed with the Town Clerk within the statutory 20 day appeal period. The date for start of this time period will be when this decision is filed with the Town Clerk.

Planning Board Business

Meeting minutes 10/3/01 and 10/17/01.

**Motion: Jud Lane moves to approve the October 17, 2001 minutes allowing the secretary to edit and correct typing errors.
The motion was seconded by Michael Cataldo and unanimously passed by members present.**

**Motion: Andrew St. John moves to approve the October 3, 2001 minutes allowing the secretary to edit and correct typing errors.
The motion was seconded by Michael Cataldo and unanimously passed by members present.**

The next meeting is scheduled for Wednesday, November 7, 2001, commencing at 7:30 p.m.

Presented by: Lorie Woodward **Attested to:** Jud Lane
Lorie Woodward, Admin. Assistant **Jud Lane, Clerk**

Town of Essex Planning Board
Agenda
October 17, 2001
Essex Elementary and Middle School
7:30 p.m.

- 7:30 p.m. **Building Inspectors Report**
- 8:00 p.m. **25 Apple Street/Tara Subdivision Plan**
- 8:45 p.m. **Peter Van Wyck / ANR Turtleback Road ext.**
- 9:15 p.m. **6 Lakeview Road / Reconfiguring of a Lot**

Planning Board Business

Approval of Minutes

9/19/01

10/3/01

1 Payroll request

OSRD, Open Space Residential Design

Mail

**Town of Essex Planning Board
Minutes
Wednesday, October 17, 2001
7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School and was opened at 7:32p.m. by Scottie Robinson, Chairman

Attendees: Scottie Robinson, Michael Cataldo, Jud Lane, Betsy Shields, Westley Burnham, Gil Guerin, Andrew St. John
Building Inspector: Bill Sanborn
Secretary: Lorie Woodward

Building Inspectors Report

36R Story Street / Request for a Building Permit

The Kempisks have received a foundation permit and would like to receive a Building Permit for the completion of the house. They have been unable to have the driveway completed because of the weather. Per the covenant on the property when the applicant purchased it, the driveway must be complete before the issuance of a Building Permit. The Board advised the applicant to discuss this with the attorney that handled the sale of the property. The Board could accept a performance guarantee from the applicant for the work to be completed. This performance guarantee would need to be in place before the Board could release the property from the original covenant. The Kempisks will look into this and return to the Board at a later date.

101 Western Avenue / Request for a Building Permit

Chris and Karen Bernier, Map 32 lot 10, are requesting a Building Permit to expand their home. The construction would add onto the kitchen/family room on the first floor and the master bed and bath on the second floor. The proposed dimensions are 15-ft. by 20-ft. The lot is 15000 sq. feet. The Board questioned whether the property was located in the Water Resource Protection District. If more than 1/3 of the property is located in the Water Resource Protection District the property must meet all the requirements of the District. No more than 15% of the lot may be rendered impervious in the Water Resource Protection District. The Board instructed the Building Inspector to request the overall lot coverage from the applicant. If the applicant can prove that the property has less than 1/3 located in the Water Resource Protection District they do not have to conform to those restrictions.

75 Western Avenue / Request for a Building Permit

Robert and Cynthia Cameron, Map 35 lot 39, are requesting a Demolition Permit to take down an existing garage and a Building Permit to add on to the existing house. The proposed addition is 28-ft. by 32-ft. This is a non-conforming lot. The proposed addition to the house will not increase the non-conformity.

Motion: Westley Burnham moves to approve the Building Permit application from Robert and Cynthia Cameron, 75 Western Avenue for the demolition of an existing garage and construction of a 28-ft by 32-ft. single story addition. The applicant has received Board of Health and Conservation Commission approval. We make this finding under 6-4.2 the proposed structure will not be substantially more detrimental to the neighborhood. The motion was seconded by Jud Lane and unanimously passed.

61 Harlow Street / Request for a Building Permit

Kevin and Pam Flaherty are requesting a Building Permit to construct a single story family room to the side of an existing dwelling. The proposed addition is 13-ft. by 18-ft. The lot is 4600-sq. ft. The applicant has received a variance from the Board of Appeals for relief from conforming to bylaw 6-6.2. The Appeals Board determined that the proposed addition would constitute a minor variation from present non-conformity of the house and the literal enforcement of the bylaw would involve substantial hardship. The proposed addition is within the 25% lot coverage bylaw.

Motion: Gil Guerin moves to approve the Building Permit application from Kevin and Pam Flaherty, 61 Harlow Street, for the construction of a 13-ft. by 18-ft. single story addition. Relief from bylaw 6-6.2 A 6 Sideline minimum requirements, was granted by the Board of Appeals under a variance dated October 4, 2001. We make this finding under 6-4.2 the proposed structure will not be substantially more detrimental to the neighborhood. The motion was seconded by Michael Cataldo and passed unanimously.

242 Western Avenue / Request for a Building Permit

Christopher Gangi is requesting a Building Permit for garage. He is demolishing an existing garage and replacing it with a larger garage. The proposed structure is a 24-ft. by 45-ft. single story building. The existing garage is a non-conforming structure, it is only 9-ft. from the side property line. The percentage of lot coverage is not an issue. The applicant is not requesting a Home Occupation, the garage is for personal use. The applicant has Conservation Commission approval.

Motion: Westley Burnham moves to approve the siting for a single story garage, 24-ft. by 45-ft. for Chris Gangi 242 Western Avenue, to be located in the location of the present garage, showing a 9-ft sideline clearance finding under 6-4.2 that the extension of the non-conformity and the location of the building will not be substantially more detrimental to the neighborhood. The motion was seconded by Jud Lane and passed unanimously.

Three dwellings on a single lot

The Board acknowledged the letter sent by the Building Inspector regarding the Bylaw allowing three dwelling on a single lot. Bill has noticed an increased interest in this option. As time permits the Board will look into this further.

229 Western Avenue / Dr. Kippenberger

Westley Burnham recused himself from the discussion because his sister-in-law is an abutter.

The Building Inspector did not issue a Building Permit to Dr. Kippenberger because there was a question of use with regard to this property. In response to the Building Inspector's request for Dr. Kippenberger to attend a Planning Board meeting Dr. Kippenberger sent a letter declining. Dr. Kippenberger feels he is being persecuted. Scottie Robinson will speak with Town Counsel and send a letter to Dr. Kippenberger explaining the Planning Board's interest in this matter. The Building Inspector requested a letter stating that upon review of the records the Permit issued was invalid because the proposed change of use was never brought before Planning Board as required by the Bylaws. Scottie informed the Board that Town Counsel was reluctant to use the word invalid, the permit was issued, it is in effect, and there is a state law in effect that allows the town to require Dr. Kippenberger to go through the process of being certified as whatever the obtained permit says.

Westley Burnham rejoined the discussion.

Structure built by Elizabeth Story on Lebaron Road

Discussion of a structure built by Elizabeth Story on Lebaron Road. It was not permitted and now the Storys are going through the process of trying to get it approved after the fact. They have been informed that they may have to take it down. Conservation Commission is looking into this as well, the structure is built near the water.

Scottie Robinson recused herself from the discussion as she is an abutter to an abutter. Westley Burnham chaired the Turtleback Road discussion.

Turtleback Road / Peter Van Wyck

Town Counsel has received a signed copy of the Agreement for Judgment. It is in the process of being filed by Town Counsel. According to the Agreement for Judgment once the document is filed with the court Mr. Van Wyck has 10 days to present the performance guarantee to the Town.

Discussion of the Performance Guarantee and giving Mr. Van Wyck the signed linen without having the Performance Guarantee in hand.

Discussion of approving the ANR and holding out the last signature on the linen until the Performance Guarantee is received.

The State allows the Board 21 days to review the plans offered by the applicant. Betsy Shields feels that there has been so much confusion with this project the Board should use the full allotment of time to review all aspects of this project. She would like to make sure all the information has been transferred correctly to the new plan, that the survey has been done properly, that the lots have been shown accurately, the abutters names are correct, and the easements are shown accurately, there are a lot of areas to be reviewed.

Discussion of frontage on lot in the center of the circle. The board determined frontage on one side was adequate.

Mr. Van Wyck did make changes in the plans presented at the previous meeting. He updated the abutters on the plan. In addition the surveyor on the linen is the same as on the application.

Westley Burnham requested a motion to approve or deny the ANR. If the motion is to approve, three Board members would sign tonight and Westley would withhold the forth member's signature until the Performance Guarantee is in place. Then Mr. Van Wyck may file his linen with Land Court.

Mention of the legitimate hardship that could be caused by putting off the decision, as winter is coming. The Board must not treat Mr. Van Wyck any differently than any other applicant presenting an ANR.

Motion: Gil Guerin moves to approve the ANR Plan submitted by Peter Van Wyck, Turtleback Road, Lots 29, 30, 31, 32, 34, and 33. Lot 33 is annotated as non-buildable. Reference the plan dated February 1, 2001 revised 10/8/01 by James Popotosky, finding that it meets all of the Bylaw requirements, final approval to be contingent on receipt of \$26,400.00 surety under the terms noted in the current Agreement for Judgment filed with land court. The motion was seconded by Michael Cataldo.

Vote:

Michael, Jud, Gil, and Westley: aye

Betsy: nay

Andrew: abstain

The motion passes.

The Board accepted a check for \$600.00 for the application fee.

25 Apple Street / Tara Road Subdivision

Scottie asked the Board if they had any changes to make to the memo she sent to the Storys, so that she could give it to Westley to draw up a draft approval.

There was a question about whether or not Andrew St. John voted on this project at the last meeting. There was not an official vote so it was not an issue. Andrew will not be voting on this Subdivision Plan, as he was not at the Public Hearing.

The plan that the Board is working with is dated 8/28/01. Prior to endorsement the plan must have certain modification and conditions requested by the Board.

The Board is still waiting for an update on the negotiations between the Story's engineer and the DPW regarding drainage.

The Planning Board approval will have to stipulate that it is subject to Conservation Commission and DPW approvals.

Mention of road maintenance on the entire road and whether or not there will be an additional lot.

Westley offered to draw up a draft.

The Board scheduled an extra meeting to discuss all aspects of this project October 29, 2001 at 7:00 p.m. at the Essex Elementary/Middle School.

The Board was made aware that the Storys and Mr. Benoit had been waiting out in the hall for over an hour. The Board was unaware of their presence and apologized for the delay. The Planning Board must be out of the School by 10:00 p.m. so they were unable to extend the meeting.

The Board did view Mr. Benoit's plans briefly and requested that he come to the next meeting with the building sited on the plans so the Board can make an informed decision.

The meeting was closed at 10:05 p.m.

The next meeting is scheduled for Monday, October 29, 2001, commencing at 7:00 p.m.

Presented by: Lorie Woodward
Lorie Woodward, Admin. Assistant

Attested to: Jud Lane
Jud Lane, Clerk

**Town of Essex Planning Board
Minutes
Wednesday, October 3, 2001
7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School and was opened at 7:32p.m. by Scottie Robinson, Chairman

Attendees: Scottie Robinson, Michael Cataldo, Jud Lane, Betsy Shields, Westley Burnham, Gil Guerin, Andrew St. John
Building Inspector: Bill Sanborn
Secretary: Lorie Woodward

Building Inspectors Report

35 Apple Street / Julie Lake / Request for a Building Permit

The applicant would like to add a second story bedroom, laundry room. The Board members reviewed the drawings provided by the applicant. The applicant has Board of Health approval, and Conservation Commission is not applicable, no wetlands.

Motion: Betsy Shields moves to approve the application by Julie Lake, 35 Apple Street, map 9 lot 11 for raising the roof on an existing structure to add a second floor bedroom and laundry room, it meets all bylaws. The applicant agrees that the height of the building will not exceed 35ft.

The motion was seconded by Michael Cataldo and passed unanimously.

68 Grove Street / Paul and Cecile Pennoyer / Requesting a Building Permit

The applicant is requesting a Building Permit to make an addition to single family connected to an existing barn. The addition is 2000 sq. ft. The Board questioned whether or not there was an apartment in the existing barn. The Builder could not confirm or deny this. Essex Bylaws do allow 3 residence on a lot as long as they meet all setbacks.

Motion: Michael Cataldo moves to approve the application for a Building Permit for Paul and Cecile Pennoyer, 68 Grove Street, for the construction addition to a wood framed single family addition connecting to existing barn subject to final approval of septic system.

The motion was seconded by Jud Lane and passed unanimously.

51 Pond Street / Stephen Wood / Consultation

Mr. Wood is considering buying a 10-acre lakefront lot. He would like to build three residences on the one lot, no subdivision. The lot is located in the Water Resource Protection District. The Board advised that he review Bylaw 6.6-13. The Board also advised that Mr. Woods speak with the Conservation Commission and the Board of Health regarding wetland and sewer issues. There is one dwelling on the lot, built in 1957.

Peter Van Wyck / Turtleback Road

Scottie Robinson recused herself from the discussion, as she is an abutter to an abutter within 300 ft.

The Board agreed to enter into Executive Session. Upon completion of Executive Session the Board invited Mr. Van Wyck to re-enter the meeting.

The Board informed Mr. Van Wyck that the revisions he had requested had been approved by Town Counsel.

Motion: Gil Guerin moves to accept the Agreement for Judgment signed by Mr. Van Wyck attorneys and forward it to Town Counsel as per this document dated 10/2/01, document being the revised Agreement for Judgment.

The motion was seconded by Betsy Shields and passed unanimously.

Mr. Van Wyck was informed that Town Counsel has advised the Board not to act on any ANR plan from Mr. Van Wyck until the approved Agreement for Judgment has been filed with land court.

The Board did view the proposed ANR and found some corrections to be made. Many of the abutters noted on the plan are outdated. In addition the Board also questioned why the surveyor was different on the plans and the linen.

The Board explained that they would not accept the application for the ANR until the Agreement for Judgment was filed with land court because the Board only has 14 day to act on a ANR once it has been submitted.

Scottie Robinson rejoined the meeting as chair.

Lakeview Road / George Benoit

Mr. Benoit appeared before the Board to discuss options available for property that he owns on Lakeview Road. The lines were drawn originally in 1970 with frontage on Icehouse Lane. In 1972 frontage was re-determined on Lakeview Road and the lot lines were redrawn to allow the correct amount of frontage for three buildable lots on Lakeview Road. When the lot lines were redrawn they passed through a two family dwelling constructed in 1970. Mr. Benoit would like to adjust the lot lines to allow the lot to return to the exact same square footage as the originally approved lot so it will remain a buildable lot.

The Board requested that Mr. Benoit get a new survey to show the current dwelling sited on it. Mr. Benoit said he was in the process of having the survey completed.

Tara Road Subdivision / The Storvs / XLO Realty Trust

Betsy Shields recused herself from the discussion, as she is an abutter to the property.

The Board reviewed information previously presented to the Board to bring the new Board member Andrew St. John up to speed.

Drainage issues will be resolved by the applicant's engineer and the DPW. The Board expects an update from the DPW.

Discussion of the waivers requested by the applicant.

6.01 Plans must be reviewed by

All Board members agreed that this was necessary and is required in all cases.

6.03 No catch basins, pipes or sidewalks

The Board determined that this requested waiver was not applicable.

7.01 Underground Utilities

The Board was divided on this issue. Currently overhead utilities exist partially up the existing driveway. There was disagreement on the interpretation of the intent of Subdivision Rules and Regulation Page 22 #10.

7.01 Street Trees

The Board found when they visited the site that there were plenty of trees and determined a waiver appropriate.

7.02 Property rounding at the proposed roadway and Apple Street.

The Board feels this waiver is appropriate, the single house didn't warrant the cutting down of the trees at the head of the driveway.

7.02B Sidewalk

The Board determined this waiver appropriate.

7.02 4A.7 Road Radius.

The plans have been adjusted to meet the specifications required, so the waiver is appropriate.

7.02 4C.3 Turnaround Diameter

The plans have been adjusted to meet the specifications required, so the waiver is appropriate.

7.02 8 Trees

The Board determined that this waiver is appropriate.

The applicant entered the wrong number for the waiver, it was entered as 7.03 the Board assumed it should be 7.04.

7.04 Water System in its entirety
The Board determined this not applicable.

7.07 No monuments proposed, the ownership of the roadway is to remain private.
The Board discussed requiring only the monument at the Apple Street end of Tara Road.

The Board agreed to discuss this project further at the next meeting.

Planning Board Business

Discussion of the letter received from Kopelman & Paige with regards to 142 Eastern Avenue. All information available to the Planning Board will be forwarded them.

Scottie informed the other Board members of several upcoming seminars, State Zoning Acts, Special Permits, and Non-Conforming Structures and Uses.

Scottie handed out information provided by Green Neighborhoods. Contained in the information is a model bylaw.

The next meeting is scheduled for Wednesday, October 17, 2001, commencing at 7:30 p.m.

Presented by: Lori Woodward
Lorie Woodward, Admin. Assistant

Attested to: Jud Lane
Jud Lane, Clerk

Executive Session 10/3/01

Members Present: Michael Cataldo, Gil Guerin, Betsy Shields, Scottie Robinson, Andrew St. John, Jud Lane.

Scottie Robinson recused herself from the discussion, as she is an abutter to an abutter within 300 ft.

Turtleback Road / Peter Van Wyck

Michael Cataldo reported to the Board the new developments in this project. Town Counsel has informed Michael that they are in agreement with Mr. Van Wyck's Counsel regarding the revisions that were made. In addition Town Counsel has informed Michael that once they receive the signed copy of the Agreement for Judgment from Mr. Van Wyck's attorney they will file it with land court. Town Counsel advised that the agreement should be filed before the Board acts on the ANR that Mr. Van Wyck has been trying to present to the Board. This new agreement will make null and void all old agreements.

Michael feels that the Board should vote to accept the modification of the Agreement for Judgment as presented tonight and instruct Town Counsel to execute it when they receive the signed copy.

Further approvals from the Planning Board will be conditional on Conservation Commission, Board of Health and DEP approvals.

Motion: Michael Cataldo moves to end Executive Session.

The motion was seconded by Andrew St. John.

The Vote:

Gil: Aye

Betsy: Aye

Jud: Aye

Andrew: Aye

Michael: Aye

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

LAND COURT DEPT.
MISC. CASE NO. 260879

PETER VAN WYCK,
Plaintiff

v.

WESTLEY BURNHAM, SHELDON
PENNOYER, BRIAN FEENER, WALTER
RICH, GEORGE STAVROS, GILBERT
GUERIN, JR., and ELISABETH SHIELDS,
as they are all Members of the PLANNING
BOARD for the TOWN OF ESSEX,
Defendants

AGREEMENT FOR JUDGMENT

The parties to the above action agree that judgment in this action shall enter as set forth below and that all parties shall bear their own costs and attorneys' fees and hereby waive all rights of appeal in this action:

1. The parties hereby jointly request the Land Court to reopen the October 9, 1996 Agreement for Judgment in Land Court Misc. No. 201167 and request the Land Court to modify that Agreement as follows:

MODIFICATION:

Whereas, as of the date of this document, the Planning Board's Subdivision Regulations and the Town's Zoning provisions have not changed since the original approval for the Subdivision or a zoning freeze is in effect, the October 9, 1996 Agreement for Judgment is modified as follows, by agreement of the parties:

- 1) The approved plan that is the subject of this Agreement is dated August 1, 1987 and revised November 20, 1987, was prepared by Survey Associates, and is entitled: "Subdivision Plan of Land in Essex" (the "Plan").
- 2) The remaining work to be done is the placement of the Cape Cod berm and the final coat of one inch thick asphalt for the road surface. All work will be done in compliance with the recommendations set forth in Exhibit A.
- 3) The work shall be completed within one year of this agreement, unless an extension of this time is granted by the Planning Board.
- 4) Mr. Van Wyck agrees to provide the Planning Board with surety, in accordance with G.L. c.41, §81U, ¶7, in the amount of \$26,400. The Planning Board agrees to release the security upon the completion of the work set forth in paragraph 2.

Said surety, in a form acceptable to Town Counsel, shall be provided to the Planning Board within 10 business days following endorsement of this modification by the Land Court.

- 5) Mr. Van Wyck agrees that, if the roadway work and other improvements, are not completed in compliance with the recommendations set forth in Exhibit A, and time deadlines set forth in this Agreement, Mr. Van Wyck shall be adjudged in contempt of the Land Court's Judgment upon application to the Land Court by the Planning Board and a showing that the required improvements were not completed within the time required. If that occurs, Mr. Van Wyck agrees that the following penalties shall apply:

- i) An injunction shall issue from the Land Court requiring Mr. Van Wyck to complete the work and the surety, once the work is done to the satisfaction of the Planning Board, shall be made available to Mr. Van Wyck to pay for the work. Mr. Van Wyck agrees to submit for issuance of such an injunction; and

- ii) Mr. Van Wyck shall pay the Planning Board's reasonable attorney's fees and costs incurred in the contempt proceeding.
- 6) The parties agree that this Modification shall regulate the course of the parties' conduct in this matter and that this Modification can be varied only by further amendment of the Judgment.
- 7) The parties hereby waive any and all rights of appeal of this Modification.

PETER VAN WYCK,

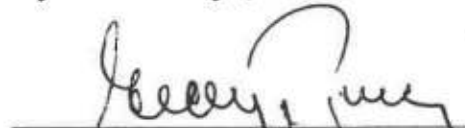
By his attorneys,



Mark B. Johnson (BBO #252760)
12 Chestnut Street
Andover, MA 01810
(978) 475-4488

ESSEX PLANNING BOARD,

By its attorneys,



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Boston, MA 02116
(617) 556-0007

ENDORSED BY LAND COURT:

Dated: _____, J.



GRAHAM ASSOCIATES, INC.

Formerly associated with C.T. MALE ASSOCIATES, P.C. OF IPSWICH, MA

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ENGINEERS, SURVEYORS, PLANNERS
 PROFESSIONAL SERVICES SINCE 1984

August 8, 2001

Town of Essex
 Planning Board
 Town Hall
 Essex, MA 01929

Attn: Wes Burnham
 Chairman

Re: *Turtleback Road Extension*
H.L. Graham Project No. 89-0765B-4

*Dear Planning Board - The R&O
 MARGINAL NOTES INDICATES THE STATUS
 OF IMPROVEMENTS AS OF TODAY'S*

DATE, 8/15/01

H.L. Graham

Dear Board:

This letter report has been prepared to inform the Board of the status of work performed and remaining at the above subject project. This letter report is also a follow-up to our October 2 and November 30, 2000 reports.

For the Board's convenience in comparing the previous reports to the current status, I have retained the October 2 report format in standard type. The current status and revised completion dates are presented in ***bold italics***.

Gravel Base

Reiterating my letter to the Board of September 8, 2000, which clarified my letter of September 1, 2000, the gravel base Grain Size Distribution Test Reports from UTS and my field observations indicate that the gravel base applied meets the minimum requirements of the Town/MHD material specifications criteria.

No change since October 2, 2000 report.

Pavement Thickness

Again, reiterating my letters to the Board of August 29, 2000 and September 1, 2000, the pavement thickness at Sta. 9+0 to Sta. 14+0 (1,100') is inadequate. Neve and Eraser have acknowledged same. During our meeting we discussed two options to rectify this problem.

The first option was my previously recommended minimal patching of the weak areas, sweep, tack and 1 1/2" binder overlay.

The second option and the one they have chosen is a thorough patch/replacement of the weak areas, sweep, tack and 1" (shim course) bituminous concrete overlay. The mix to be used for this shim course would be approved by this office.

If this alternative is acceptable to the Board, we would paint out the weak areas to be patched/replaced and the Contractor would complete this work and overlay by November 30, 2000.

Approximately sixteen (16) areas of weak/unacceptable pavement were identified and marked out October 20, 2000 by the writer. On November 27, 2000 these weak areas were cut out and replaced. On November 28, 2000, a 1" bituminous concrete (shim course) overlay was placed from Sta. 3+0 to Sta. 14+6 (1,100'). We inspected this work which was performed to our satisfaction.

The above steps satisfy and conclude the issue we took with the initial binder pavement effort.

A current review of the binder pavement course has shown no apparent additional failures to be repaired prior to the final surface course pavement application. This should be checked again prior to the finished surface course paving.

Rip-Rap Swales

in the middle of the second page of my August 29, 2000 letter I discussed our concerns with regard to the rip-rap swale construction. The following action in regard to this issue was agreed upon by Neve, Fraser and myself:

- a. Neve and Fraser will review all rip-rap swales and confirm that the proper sections have been constructed.
- b. Neve will provide engineering calculations to demonstrate that all swale sections, grades and stone sizes will carry the calculated runoff and velocities. If there are sections of the swales which will not provide for calculated flows and velocities (and there are some areas where this condition is expected to occur), Neve will provide designs and locations for velocity reducing dams and submit them to our office for review and approval.
- c. All engineering and construction work in regard to these rip-rap swales will be completed by November 30, 2000.

Thomas E. Neve Associates, Inc. has provided engineering calculations to show that the "as-constructed" swale sections are adequate for the estimated 25-year design storms flows and velocities. Observations since construction enforce these calculations in that the sections and flow lines have remained stable. A current review of this issue has shown no need for additional rehab work.

The following items were discussed in my August 29, 2000 letter. The same numerical references have been used for the following summary:

1. Shoulders

Neve, Fraser and I have agreed that they may finish the 3' shoulders between the edge of pavement and rip-rap swale by one of two options as follows:

- By use of 6" loam and seed per the approved plans or,
- By use of 6" dense graded gravel.

Neve, Fraser and the Owner will decide on which option they will construct. We recommend the Board approve the use of either option. We have consistently endorsed the second option.

This work will be completed by November 30, 2001.

The Owner has chosen to opt for the use of 6" loam and seed per the approved plans. The loam work has been accomplished to our satisfaction. Final raking, smoothing and seeding remains to be done. We recommend that this work be delayed such that seeding can be accomplished the week of September 17, 2001.

2. Side Slopes

Neve, Fraser and I agreed that all disturbed areas and particularly those upslope of the rip-rap swales need to be stabilized to prevent any further erosion and sediment wash into the swales. This will be done with 6" loam and slope mix seed.

This work will be completed by November 30, 2000.

Shoulders have been adequately loamed and dressed. Final raking, smoothing and seeding remains to be done. We recommend that this work be delayed such that seeding can be accomplished the week of September 17, 2001.

3. Roadway Runoff Control

(Sta. 0+50+ to Sta. 3+50+ Left)

Neve, Fraser and I agreed that construction of a swale in this area as shown on the approved plans is not practical.

As an alternative to same and as we have repeatedly advocated, a bituminous berm will be constructed in this area to control roadway runoff.

To accomplish same, an 18"± wide by 6"± thick bituminous binder pad will be constructed along the left side of the existing pavement. A bituminous concrete Cape Cod berm, 12" in width with a 6" reveal will be constructed with 6"± of its base over the existing pavement and 6"± of its base over the new pad.

The above work will be completed by November 30, 2001.

In conjunction with a recommended delayed completion date of the finished pavement course (to be discussed later herein) we recommend that this work be accomplished in the next construction season (2002) and be completed by September 30, 2002.

4. Guardrail

Neve, Fraser and I agreed that as opposed to guardrail at Sta. 12+75± to Sta. 14+00± left, large 3' to 5' diameter boulders at 6' to 8' on center, with maximum spacing of 4' between boulders may be used. We recommend the Board give the Owner and Contractor their option in this matter.

Neve, Fraser and I also agreed that additional guardrail is needed at Sta. 0+0 to 0+50± right and Sta. 19+0± to 20+0± right. It would appear that there is inadequate shoulder space to permit the boulder option in this area and that the approved wood guardrail section is the component of choice.

The above work will be completed by November 30, 2001.

This work has been satisfactorily completed excepting the guardrail needed at Sta. 0+0 to 0+50± right and Sta. 19+0± to 20+0± right. I have since revised the need for guardrail in this area as follows: Sta. 0+0± to Sta. 0+32± right and Sta. 19+60± to 20+0± right, providing the Owner modifies the unprotected (by guardrail) swale sections in the field as I have instructed him.

The Owner has verbally committed to complete this work within the next few weeks.

5. Drain Pipe End at Sta. 2+0± Right

Neve, Fraser and I agreed that they would rectify this condition by relocating the pipe end and/or providing some type of pipe and protection.

This item will be completed by November 30, 2000.

This item has been rectified to our satisfaction.

*2/15/01
IN PROGRESS
AS OF 2:30 P.M.
EXPECT TO BE
COMPLETED BY END
OF DAY. KLL*

6. WQI
The Contractor will provide cast iron access covers (3) to the three (3) chambers of the WQI at Sta. 3+75± Right. These covers will be set at or near the bottom of swale grade. The WQI will be cleaned when this work is done.

This work will be accomplished by November 30, 2000.

This work has not been accomplished. We have instructed the Owner to install cast iron frames and solid covers over all three (3) access openings to all three (3) chambers. At the Owners option we will permit a grated cover (grate) at only the uppermost (first and inlet) chamber. When opened for this work we will inspect the structure to assure that the chambers have been constructed per the plan and BMP guidelines.

The Owner has verbally committed to complete this work within the next few weeks.

*8/15/01
COMPLETED TO OUR
SATISFACTION
HLL*

7. Access Drive to Detention Pond #6
The access drive to Detention Pond #6 will be constructed per plan.

This work will be accomplished by November 30, 2000.

This work item remains unfinished. I have instructed the Owner how I want this access road finished.

The Owner has verbally committed to complete this work within the next few weeks.

*8/15/01
COMPLETED TO OUR
SATISFACTION
HLL*

8. Rip-Rap Swale at Sta. 10+30± to Sta. 10+60± Left
The rip rap swale not in place at Sta. 10+30± to Sta. 10+60±, left will be constructed.

This work will be accomplished by November 30, 2000.

This work has been completed to our satisfaction.

9. Detention Ponds 4 and 5
Final grading, 6" loam and seed around Detention Ponds 4 and 5 will be completed. Access drives to and around these ponds will be completed. Where these drives cross rip-rap swales, culverts will be installed.

This work will be completed by November 30, 2000.

The access road to Detention Pond 5 crosses a rip-rap swale. I have reviewed with the Owner the need for a 20' section of 12" PVC pipe culvert to provide access over the swale.

*8/15/01
COMPLETED TO
OUR SATISFACTION
HLL*

The Owner has verbally committed to complete this work within the next few weeks.

In addition to the above, a final punch list maybe necessary next year and prior to application of the final finished wearing course (top coat) of bituminous concrete.

No change since October 2, 2000 Report.

The Owner has suggested to me that he would like to apply the finished pavement course next construction season (2002) after he gets some of the heavy house construction completed. I concur with this thinking and recommend the Planning Board consider same if they conclude that the Agreement for Judgement allows them this flexibility.

I recommend that this finished pavement course and the bituminous concrete Cape Cod berm mentioned above, be completed by September 30, 2002.

If the Owner completes all remaining work discussed above by the end of August (2001), except the finished grading and seeding by the end of September (2002), the Board may want a construction cost estimate for that latter work.

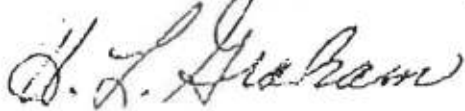
Our estimate for the above is as follows (see our letter to the Board dated December 11, 2000):

<u>Item No.</u>	<u>Description</u>	<u>Estimated Cost</u>
4	<i>Bit. Conc. Berm, 0+50 to 3+50 L</i>	\$ 1,500
9	<i>1" Bit. Conc. Finish Course</i>	12,500
10	<i>Engineering (As-Built Plans, Road Bounds, Other)</i>	<u>8,000</u>
	Sub-Total:	\$22,000
11	<i>Contingencies (20%±)</i>	<u>4,400</u> -
	TOTAL:	\$26,400

We trust this report adequately addresses the subject project status to the Board's understanding. However, should you have any questions, please contact me.

Very truly yours,

H.L. GRAHAM ASSOCIATES, INC.



H.L. Graham, P.E.
President
Technical Review Agent
Essex Planning Board

cc: Peter Van Wyck
Thomas E. Neve Associates, Inc.

**Town of Essex Planning Board
Minutes
Wednesday, September 19, 2001
7:30 p.m.**

The meeting was held at the Scout House and was opened at 7:35p.m. by Scottie Robinson, Chairman

Attendees: Scottie Robinson, Michael Cataldo, Jud Lane, Betsy Shields, Westley Burnham

Building Inspector: Bill Sanborn

Secretary: Lorie Woodward

Building Inspectors Report

154 Rear Eastern Avenue / Request for a Building Permit

Paul and Catherine Xavier map 15 lot 32 would like to add a second story to their house. They have Board of Health, Conservation and DPW approvals. The current structure is non-conforming. There will be one over hang over the original footprint. The elevation is 26-ft. No addition of bedrooms the applicant is just changing the configuration.

Motion: Westley Burnham moves to approve the Building Permit for Paul and Catherine Xavier, 154 Rear Eastern Avenue to allow construction of second floor to an existing house. The existing building is a pre-existing non-conforming use, proposed change to the building will not increase any of the pre-existing non-conformities, we make this finding under 6-4.2.

The motion was seconded by Michael Cataldo and unanimously passed.

105 Choate Street / Request for a Building Permit

The height of the building is 34-ft 7 in. the Bylaws require it be under 35-ft. The property has frontage in Essex. The town line runs down the center of the street.

Motion: Betsy Shields moves to approve the Building Permit application for Brian and Michelle McCormack, 105 Choate Street, map 16 lot 7 for a new construction of a single family home on a 2.7 acre lot, seeing that it has proper frontage in Essex on Choate Street. It meets all single family Bylaws contingent on verification of Conservation Commission approval.

The motion was seconded by Jud Lane and unanimously passed.

5 Pickering Street / Requesting a Building Permit

Debra and William French are requesting a Building Permit to add a second story to their home. They have received Board of Health and Conservation Commission approvals. The proposed addition meets all setbacks, no change in footprint, they will be cantilevering one corner to square off the house, currently is pre-existing non-conforming house.

Motion: Westley Burnham moves to approve the Building Permit application for Debra and William French, 5 Pickering Street for the addition of a second story on a pre-existing structure, finding under 6-4.2, that the proposed use will be no more detrimental to the neighborhood. The motion was seconded by Michael Cataldo and passed unanimously.

Mention of a non-permitted shed owned by Beth Story on Le Baron Road. The Storys will come to the Building Inspector once the Conservation Commission has reviewed the shed.

Mention of Sprint PCS's application to the Zoning Board of Appeals for variances to locate a cell tower behind Chebacco Market on Western Avenue.

229 Western Avenue / Request for a Building Permit

Westley Burnham recused himself from the discussion as his sister-in-law is a direct abutter to the property.

The Board did not visit the site as discussed at the last meeting. Scottie was advised that there is no basis for a site visit by the Board. Instead the Board should ask the Building Inspector to request Dr. Kippenburger appear before the Planning Board. At this meeting the Board could address the improperly permitted change of use from residential to commercial. Scottie has drafted a letter to the Building Inspector. The letter was read, and is included in these minutes.

Motion: Michael Cataldo moves that the Board authorize the sending of the draft letter dated 9/19/01 to Bill Sanborn the Building Inspector instructing him request Dr. Kippenburger to appear before this Board, after review to make sure the 6-4.2 Bylaw applies.

The motion was seconded by Betsy Shields and passed unanimously

The Board will schedule time for Dr. Kippenburger at 8:00 p.m. at the October 17, 2001 meeting.

In addition there was a report of more concrete being poured at the property.

Westley rejoined the discussion.

Turtleback Road / Peter Van Wyck

Scottie Robinson recused herself from the discussion as she is an abutter to an abutter within 300 feet.

The Board asked if Mr. Van Wyck if he had signed the Agreement for Judgment. He had not, so the Board went into Executive Session to discuss litigation regarding Mr. Van Wyck and Turtleback Road

Executive Session was then held. Upon the regular meeting's resumption,

Peter Van Wyck rejoined the meeting and requested changes in the Agreement for Judgment.

Peter Van Wyck read his requested changes: Mr. Van Wyck agrees that if the road work and other improvements are not completed in strict compliance with the recommendations and time deadlines set forth in exhibit A except in acts of God that prevent compliance, The Planning Board shall have rights to pursuant to MGL 41 81 U.

Mr. Van Wyck is prepared to put \$26,400.00 in a passbook for collateral.

The Board agreed to approve the agreement provided by Mr. Van Wyck contingent on Town Counsel approval.

Motion: Gil Guerin moves to approve the substitution of a paragraph five on page five pending approval by Town Counsel.

The motion was seconded by Jud Lane and passed unanimously.

The Board agreed to meet with Mr. Van Wyck at the October 3, 2001 meeting.

25 Apple Street / Tara Road Subdivision Plan / XLO Realty Trust

Scottie informed the other Board members that several people have come forward with concerns about to the relationship between Gil Guerin and the attorney originally representing the Storys, John Guerin, and between Westley Burnham and John Guerin. Some residents feel the process has been flawed.

At this time the Board will postpone the discussion until the issue of conflict of interest has been resolved. The Board will discuss this project at the next meeting October 3, 2001. The Board explained the situation to the Storys who were present.

Ethics Commission Seminar

Westley Burnham discussed some of the pertinent information received from the Ethics Commission Seminar.

Discussion of an ANR on Forest Avenue, the French property and the various ways available to the applicant to divide the property.

Discussion of the open position on the Planning Board and questions for the prospective member at the interview and how the process works.

Discussion of Seminars available from the Citizens Planner Training Collaborative,
Scottie has information.

Discussion of Community Development Plan.

**The next meeting is scheduled for Wednesday, October 3, 2001, commencing at 7:30
p.m.**

Presented by: Lorie Woodward
Lorie Woodward, Admin. Assistant

Attested to: Jud A Lane
Jud Lane, Clerk

Executive Session 9/19/01

Members Present: Michael Cataldo, Westley Burnham, Jud Lane, Betsy Shields, Gil Guerin

Scottie Robinson has recused herself from discussion of the Turtleback Road Subdivision.

Michael Cataldo addressed the Board to update the other members on what has been happening with Kopelmen and Paige and Mr. Van Wyck and his counsel. Mr. Van Wyck has objections with part 5 of the Agreement for Judgment. The section explains the consequences if Mr. Van Wyck does not finish the road by October 2002. Town Counsel told Mr. Van Wyck that they could not make change in the agreement with out the Planning Board's direction. Mr. Van Wyck then contacted Michael and Michael explained that if Mr. Van Wyck wanted to make changes to the agreement he needed to come before the Board at the next meeting and any changes considered by the Board would needed to be reviewed by Town Counsel.

Michael contacted George Pucci, with Town Counsel today, and was told that they had received no new information form Mr. Van Wyck's counsel.

Mr. Van Wyck's attorney has asked for an agreed list of items to be completed. Town Counsel had enclosed exhibit A, which was the punch list of items to be completed.

In addition Mr. Van Wyck wanted to alter part 5.

Michael Cataldo informed the Board that Mr. Van Wyck has complained that Michael does not seem to have enough time to devote to his project and has requested that someone with more time take over as key person on this project. Michael has been on the phone several times with George Pucci and with Mr. Van Wyck he has not been neglecting this case, and will continue to do whatever it takes to get this situation resolved.

The Board agreed listen to Mr. Van Wyck's proposal, if it seems acceptable forward it to Town Counsel for their review and move on.

Motion: Michael Cataldo moves to end Executive Session.

The motion was seconded by Betsy Shields.

Jud Lane: aye

Westley Burnham: aye

Michael Cataldo: aye

Betsy Shields: aye

Executive Session was closed and Peter Van Wyck joined the meeting.

Town of Essex Planning Board
September 5, 2001
Scout House
7:30 p.m.

- 7:30 p.m. Building Inspectors Report
- 8:00 p.m. Selectmen
MAPC
Open Planning Board Position
- 8:30 p.m. 25 Apple Street/Tara Subdivision/XLO Realty Trust
Public Hearing Continued
- 9:00 p.m. 68 Grove Street / ANR / Paul and Kathy Pennoyer
- 9:15 p.m. Turtleback Road/Peter VanWyck

Planning Board Business

1 Bill Payable

Approval of Minutes
August 15, 2001

Mail

**Town of Essex Planning Board
Minutes
Wednesday, September 5, 2001
7:30 p.m.**

The meeting was held at the Scout House and was opened at 7:35p.m. by Scottie Robinson, Chairman

Attendees: Scottie Robinson, Michael Cataldo, Jud Lane, Betsy Shields, Westley Burnham, Gil Guerin
Building Inspector: Bill Sanborn
Secretary: Lorie Woodward

Building Inspectors Report

The Building Inspector questioned whether a Building Permit was need for the work being done at Hardy's Farm. The Board advised the Building Inspector to give Roger Hardy a call to let him know that even though his land is agricultural he should have a permit.

50 Southern Avenue

The applicants Roger Brown and Judith Lawson would like to alter the plans originally submitted and approved. They are not changing the footprint and the height is within the guidelines of the Bylaws. The changes in the roofline were suggested to the applicant by the builder for astethic reasons. The board reviewed the changes with the Building Inspector. No motion was deemed necessary since the footprint was already approved and is not changing.

229 Western Avenue

The applicant Dr. Kippinburger is requesting a Building Permit to pour a slab 220-sq. ft. to install the dog kennels on. The property is located in the Water Resource Protection District. The parking lot that has been installed is not paved and is considered pervious. The plan provided by the applicant shows that with the proposed slab will increase the impervious area 2.9%. The Board questions whether or not this percentage includes the wetland area of the property. In addition the project has already been started. The Building Inspector records indicate that the applicant has a veterinarian hospital and storage for dogs receiving medical attention.

The Board needs to make a determination on the use of the lot. The Building Inspector's records indicate that Dr. Kippenburger has received a Home Occupancy Permit. In addition he has received a Change of Use to make the property commercial. The Change of Use was not properly permitted, it never came before the Planning Board. The Board needs to decide if they are prepared to repeal the improperly granted permit.

The Board discussed visiting the site to better understand the scope of the business being conducted at the site. The date was set for Saturday September 15 at 9:00 a.m.

Planning Board Business

The Selectmen, Rolf Madsen, and Joseph Davis as well as the Town Administrator Brendan Zubricki were present to discuss the progress made with MAPC planning, and the open seat on the Planning Board.

The Town received certification by the State Department of Housing and Community Development under Executive Order 4.18 for the period of a year and a half. Brendan did a great job of writing up 14 proactive steps that Essex has accomplished to encourage housing production. Since the town has received this certification we may begin applying for certain grants for improving the causeway and developing some municipal parking behind the Bank and Terminal Garage. The thrust of the grants being worked on are the (PWED) Public Works Economic Development Program and the (CDAG) Community Development Assistance. These grants would assist with the alterations needed for the parking area and some sewer related issues. The PWED money would not be available until sometime around Christmas, CDAG is on a rolling basis.

Mass Downtown Initiative is free planning money. It provides for an expert to come into town and look at the downtown, in concert with the Planning Board, Selectmen, citizens and other groups and try to determine the overall picture, i.e. the parking, and causeway resurfacing, and other issues to be incorporated. Through NDI the Planning Board could try to get the downtown piece of the Community Development Plan in place. The Community Development Plan is the umbrella that covers the entire town.

Discussion of Open Space and where it falls under this umbrella.

Discussion of MAPC and the \$30,000.00 available. The Board needs to choose a consultant and how they want the money spent. The Board then needs to comply with the major aspect of the planning process.

Discussion of transportation component that is called for in the MAPC grant.

The Board will set up a subcommittee with one Selectmen, to be determined, and a couple of Planning Board members. This committee will be responsible for fact finding and submitting recommendation. Betsy Shields and Mike Cataldo volunteered as did Westley Burnham.

Rolf advised the Planning Board to advertise in the Gloucester Daily Times for the vacant seat on the Board to allow all residents of Essex to submit a resume and interview for the position. The interviews will take place in a joint meeting with the Selectmen on September 24, 2001.

25 Apple Street / Tara Road Subdivision Plan / XLO Realty Trust

The Board formally reopened the Public Hearing that was begun on the last meeting of 8/15/01, concerning the application by XLO Realty Trust for a subdivision off of Apple Street entitled Tara Road.

Betsy Shields excused herself from the table.

Attorney David E. Babson addressed the Board. He is an attorney at law practicing in Gloucester at 111 Main Street and will be representing the XLO Realty Trust. Mr. Guerin has withdrawn as counsel before this board. He is withdrawing because of the perception of others that there is a conflict of interest because his brother is on the Board, even though his work for XLO Realty Trust was on a pro bono basis.

Westley announced that he had filed the appropriate paperwork with the Town Clerk concerning conflict of interest because John Guerin is representing him in an unrelated real estate transaction.

Engineer Clay Morin addressed the Board with the revision made to the plan based on the site visit. The stonewalls were added to the plan, between the parcel and Mrs. Frye, as well as Mr. Van Wyck. The catch basins were located as well as two large trees at the end of the driveway. Additional changes are shown on new plan on file dated August 28, 2001.

The proposed subdivision road is a little shy of 1080 feet.

The Planning Board received comments from the DPW. The letter is on file. One request from the DPW was that the first 400 feet of the road be paved. The Board will discuss the request as well as proposed options from the applicant.

Lot 2 is located in the Water Resource Protection District which should be noted on the plan. There was some question as to where the Water Resource Protection District lines are.

Discussion of the language to restrict any further subdivision on the property without further approval from the Planning Board. The attorney David Babson suggested making a statement on the plan that there may be no further subdivision without approval from the appropriate Boards and that the waivers are only applicable to single unit house. The applicant is free to reapply to the Planning Board and upgrade for increased traffic.

Discussion of advisability of having a subdivision road go over Emerson's Way. Scottie Robinson spoke with Debra Ellison of Kopelman & Paige, Town Counsel, and she advised that rights of passage along Emerson's Way be recognized on the plan.

The meeting was open to the public.

Peter Van Wyck Turtleback Road. Claims that he believes he may have rights to Emerson's Way.

David Babson: This decision of the Board has no effect on what your rights are, if you have rights.

Betsy Shields 18 Apple Street: My biggest concern is drainage. I am in favor of people being able to subdivide their property properly and according to the laws. On Apple Street there have been a number of subdivisions that have been done poorly and a number of spots in the road that it shows up. I recommend the Board have another objective engineer look at this.

Westley stated assuming that this is approved it would be submitted to an engineer. The town has been using Larry Graham, who will review the design and drainage calculation and if further modification is necessary he will work it out.

Linda Seppala Apple Street: There has been horrible drainage on Apple Street with some of the new house going in. The current driveway at 25 Apple Street does not wash out. Hopefully the new drainage will be a lot better.

**Motion: Michael Cataldo moves to close the Public Hearing.
The motion was seconded by Jud Lane and passed unanimously.**

Betsy returns to the table.

68 Grove Street / Paul Pennoyer / ANR Plan

Paul Pennoyer presented the plan provided by Surveyors Donohoe and Parkhurst for the creation of a lot. The lot is a triangle shape.

**Motion: Westley Burnham moves to approve the form A application of Paul G. Pennoyer Jr., 68 Grove Street, Essex, for the creation of lot three 1.95 acres, out of a sizable lot, leaving remaining 29 + or - acres as shown on a plan from Donohoe and Parkhurst dated July 23, 2001. Finding it meets all the minimum requirements of the Town of Essex Bylaws.
The motion was seconded by Michael Cataldo and passed unanimously.**

Turtleback Road / Peter Van Wyck

Scottie Robinson recuses herself from the discussion as she is an abutter to an abutter within 300 feet.

Westley Burnham was designated to acting chair.

**Motion: Michael Cataldo moves to enter the Planning Board into Executive Session to discuss pending litigation.
The motion was seconded by Betsy Shields and pass unanimously.**

Executive Session

Executive Session Closed

Turtleback Road / Peter Van Wyck

Westley explained to Mr. Van Wyck that Town Counsel has advised the Board to adopt a new version of the Agreement for Judgement. The Board has voted to accept it and will provide him with a copy for him to give to his attorney. Once it has been accepted and signed the Board can move on and look at the ANR that Mr. Van Wyck has wanted to present to the Board.

Mr. Van Wyck introduced Tom Avelon, General Contractor, to the Board. Mr. Van Wyck intends to sell some of his property to Tom to develop.

Scottie resumed participation in the meeting.

Planning Board Business

Scot's Way / Requesting to make more than 15% of the lot impervious

Discussion of the inspection and maintenance.

Per the approval the applicant must work with the DPW and meet all of their conditions before the Special Permit comes into full effect. The DPW will make all determinations with regards to dry well, gas traps, catch basins and maintenance in general.

Westley Burnham moves to approve the Special Permit application submitted by Scot's Way Realty Trust, 1 Liberty Road, Essex MA, in accordance with the attached draft dated August 15, 2001.

The Motion was seconded by Michael Cataldo.

The Vote:

Michael Cataldo: I vote in favor, finding that the plan as presented meets all the conditions necessary in the Water Protection District.

Betsy Shields: I vote in favor, the applicant has or will address all the drainage concerns so that I feel that they will not degrade the water quality in the Water Protection District.

Jud Lane: I approve, based on the fact that it meets all the requirements.

Westley Burnham: I approve. It meets all the conditions, all the minimum standards required under 6-13, Water Resource Protection District.

Gil Guerin: I am in favor of the application where as it meets all the applicable standards for this situation.

Scottie Robinson: I vote in favor of the application as it meets the Water Resource Protection District Use regulation and the applicant has demonstrated the additional impervious surface will not adversely affect the water recharge.

The Vote was unanimously in favor, the application is granted.

The Board will notify the applicant and interested parties.

Planning Board Business

142 Eastern Avenue

The attorney for the Pallazolas has filed an appeal with Superior Court. They appeal to the court because it is a state privilege to grant Special Permits. Brendan Zubricki, Town Administrator has been notified and has forwarded this information to Judith Cutler with Town Counsel. The Board needs to take no further action at this time, Town Counsel will advise.

Announcement: There is a State Ethics Commission Workshop on September 19, 2001 at 1:00 p.m. and 7:00 p.m.

105 Choate Street / Request for a Building Permit

The Board discussed a Building Permit dropped off by the Building Inspector. The Permit being requested is for a new construction, single family. The Board has questions regarding where the Ipswich line is located on the property, wetlands on the property and whether or not the proposed construction conforms to the height restriction in the Town Bylaws. The Board needs clarification from the Building Inspector/Applicant before a decision can be made.

The Board discussed the minutes from August 15, 2001. Corrections were noted and agreed upon by the Board members to be made.

Motion: Westley Burnham moves to approve the August 15, 2001 minutes allowing the secretary to correct typing errors.

The motion was seconded by Betsy Shields and unanimously passed by members present.

Motion: Westley Burnham moves to adjourn the meeting at 10:15 p.m.

Motion was seconded by Gil Guerin and unanimously passed by those members present.

The Board approved one payroll request and one expense request.

The next meeting is scheduled for Wednesday, September 19, 2001, commencing at 7:30 p.m.

Presented by: Lorie Woodward Attested to: Judith Lane
Lorie Woodward, Admin. Assistant Jud Lane, Clerk

Executive Session 9/5/01

Michael Cataldo, Betsy Shields, Jud Lane, Westley Burnahm, Gil Guerin
Scottie Robinson has recused herself from the discussion.

Michael Cataldo gave the Board an update on the information received from George Pucci. Michael sent him a copy of Mr. Van Wyck's covenant proposal and requested some guidance. George suggests that the Board get the Agreement for Judgment settled. Counsel advises that the Board vote to adopt the Agreement for Judgment faxed to Michael and offer it to Mr. Van Wyck. If Mr. Van Wyck would like to make any changes to this document he should do it through his counsel and Kopelman and Paige. The approval of the document and the settling of the case need to take place before the Board can act on an ANR plan.

Mr. Van Wyck and his counsel have offered a passbook as collateral for the work to be completed on the road. If Mr. Van Wyck does not complete the road the town must hire contractors to finish it with the money set aside in the passbook.

Motion: Michael Cataldo moves to vote to approve the Agreement for Judgment between Peter Van Wyck and the members of the Planning Board dated 9/5/01 as prepared by Counsel, George Pucci at Kopelmen and Paige, based on his suggestion that the Board approve it and present it to Peter Van Wyck for future action.

The motion was seconded by Jud Lane and passed unanimously.

Motion: Michael Cataldo moves to close this Executive Session.

The motion was seconded by Jud Lane.

Jud Lane: aye

Westley Burnham: aye

Michael Cataldo: aye

Betsy Shields: aye

Gil Guerin: aye

Executive Session Closed

TOWN OF ESSEX PLANNING BOARD

AGENDA

AUGUST 15, 2001

Scout House

7:30 p.m.

- 7:30 p.m. Building Inspectors Report
- 8:00 p.m. Public Hearing
25 Apple Street/Tara Subdivision/XLO Realty Trust
- 8:45 p.m. Turtleback Road/Peter VanWyck
- 9:00 p.m. 284 Southern Avenue/Donohoe & Parkhurst Land Surveyors
Form A Plan Submission
- 9:30 p.m. Ralph Pino Attorney for Means Property on Choate Street
Presenting and ANR

Planning Board Business

68 Grove Street application for an ANR

Approval of Minutes

August 8, 2001

Planning Board Meeting Dates 9/7-12/19/01

Mail

**Town of Essex Planning Board
Minutes
Wednesday, August 15, 2001
7:30 p.m.**

The meeting was held at the Scout House and was opened at 7:34p.m. by Scottie Robinson, Chairman

Attendees: Scottie Robinson, Michael Cataldo, Jud Lane, Betsy Shields, Westley Burnham

Absent: George Stavros

Building Inspector: Bill Sanborn

Secretary: Lorie Woodward

Building Inspectors Report

229 Western Avenue

The owner has written a letter requesting in writing why he needs to have a Building Permit for the work he has already started at his property. In the last meeting the Building Inspector informed the Board that the owner has poured one concrete slab and has another ready to be poured.

Discussion of deck construction and whether it is necessary to for the applicant to receive Board of Health approval on the Building Permit application. It is necessary per the agreement with the Board of Health relative to the consent order from the State requiring all Building Permits to go to the Board of Health with the exception of something like re-siding.

Planning Board Business

The Board signed off on a Bill Payable form for Larry Graham for an inspection done on Turtleback Road. Currently there is approximately \$975.00 in the Turtleback Road account.

The Board discussed that there has been no comment received from the other Boards regarding the 25 Apple Street Subdivision and decided to continue the hearing till the September 5, 2001 meeting to allow the other Boards to respond.

The Board discussed the minutes from August 8, 2001. Corrections were noted and agreed upon by the Board members to be made.

Motion: Westley Burnham moves to approve the August 8, 2001 minutes as amended.

The motion was seconded by Michael Cataldo and unanimously passed by members present.

The Board discussed the resignation of George Stavros and how the Board goes about filling the vacancy. The Selectmen will be attending the next meeting and the Board can discuss it with them at that time. The Planning Board may solicit someone i.e. a past Board member to step in, or run an advertisement in the Gloucester Daily Times for any interested parties to contact the Board. This is then followed by an interview process with a joint meeting of the Selectmen and the Planning Board to decide who is most desirable candidate to fill the term until May. The Selectmen appoint the new member but the vote is a combined Board vote with the six Planning Board members and three Selectmen making up the vote. The vote and interview for the new member is conducted at a Selectmen's meeting.

Westley Burnham has discussed it with Walter Rich, past Board member. Other Board members will discuss it with interested parties that they know.

Chairman Scottie Robinson called the Public Hearing to Order for the consideration of 25 Apple Street, Tara Road Subdivision plan, submitted by XLO Realty Trust.

Betsy Shields removed herself from the discussion.

John Guerin attorney for the applicant presented the final plan to the Board. He explained that there is a pre-existing 40 right of way, which currently has two houses on it. The plan would and widen it to 44 ft. and bring it around the corner to create a stack lot. The applicant would like to keep the road gravel to keep with the country feel and not create a major through way. On the new plan the hammerhead is moved up further and extended simply because of wetland issues. The applicant intends to keep the road privately held with the lot and granting rights of way to the back lot, to pass and re-pass. The back lot, per a land swap that was done years ago, has a right to bring their utilities across the subdivision property.

Morin Engineering discussed the proposed 16-ft. wide gravel drive. The crossing of wetland is under 5000 sq. ft. of fill. There will be a replication area. The grade of the 16-ft wide gravel driveway, the descent will not be steep at all. There will be very little runoff created by this project as shown in the drainage calculations.

Michael Cataldo: questioned the width of the road. On the plan the existing road is 12 ft. wide, the proposed road will be 16 ft. wide.

Westley Burnham: It is unclear in this plan how the run off be dealt with, where the water will go.

Engineer: There is a catch basin that was just put in less than a week ago so it is not on the plan.

Westley Burnham: You have extended the turnaround, which increases the frontage to 377 ft of frontage. When the original plan was discussed there was less than 300 ft. of frontage and the plan was for a single lot subdivision.

Engineer: The main reason for changing the turnaround was to push it away from the wet lands.

Westley Burnham: Questioned whether the applicant would be willing to put a covenant on the property stating that there will be no further subdivision. The Board to this point has only been examining this proposed subdivision as a single lot creation.

John Guerin: I don't think that would be a problem allowing for a covenant to that degree in that they would have to come back to the Board if they would like to create an additional lot. We will put it in writing if necessary.

Michael Cataldo: The Board feels that there should be no further subdivision on the lot.

Westley Burnham: A lot of the waivers that have been requested the Board justifies based on the fact that the proposed subdivision is a single house/single family/single lot. The waivers that the applicant is requesting must be justified by the potential amount of traffic expected on the road.

Engineer: Main reason the turnaround has been changed is the wet lands. Something that the applicant may be able to do is instead of counting this turnaround as frontage is make it a turnaround easement.

Michael Cataldo: Beyond that if you just restrict the deed then it eliminates further subdivision of the lot.

John Guerin: I don't mind restricting the deed, but I don't want to have the deed so restrictive in such a way that any people that buy the back lot couldn't come back to the Board and do the improvements to the road that the Board may allow to be waived for just a single lot subdivision. Part of the reason for looking at this is the potential in the future that it could be divided at some point by extending the road. The new owner of the back lot would need to come back through the subdivision process again to do so. We do not want to do the covenant and language in such a way they can not come back.

Westley Burnham: The Board can write the permit, but just be advised that I would insist that there be some language in there that clearly states that there was only consideration for a single family, single lot and any further subdivision is going to require a re-application under chapter 81.

John Guerin: I think that is fair.

Westley Burnham: The same goes for the original piece of property because technically you have created 800 ft of frontage.

John Guerin: I think that is fair. I don't see a problem with that. I assume that the parties will agree to that. That was our intent in the first place not to make more than one lot, but

again if you are going to give us waivers now and we would like to have those waivers removed in the future by complying with them in the future obviously we could file another chapter 81.

Scottie Robinson: Am I correct in my reading of the deed that you provided us that there is already a restriction on that property that not more than two residences can be built there or did I misunderstand which parcel that applied to. My take was that it was this exact parcel.

John Guerin: This area here in that deed from Peter VanWyck to the Story's is considered, that was the parcel three that it refers to in the deed where there is no building at all and the conveyance is further made parcel two is restrictive and it says that no more than two residential dwellings shall be constructed.

Scottie Robinson: I have a question about the wetland replication from flag 23 to 15 is that a swap for the land that you are going to put under the road.

John Guerin: Yes. The statute allows us up to 5000 sq. ft. We will be dealing with the Conservation Commission.

Scottie Robinson: I didn't see that it was noted on the plan that the road goes through wetlands.

Engineer: The flags.

Scottie Robinson: Am I correct that the road was never built in front of the Seppala property that that first turn off the right of way doesn't exist.

John Guerin: The wetland is more in the vernacular. The blueberry bushes that flag it as wetlands were planted and are not wild.

Scottie Robinson: Where were the drainage calculations.

Engineer: They should have been submitted.

They were located.

Westley Burnham: Most of the issues have waivers requested for them. The general waivers are there.

Jud Lane: There was no abutter name for the property across Apple Street. It needs to be on the plan.

Scottie Robinson: There are several problems with abutters names and some of them, the properties have turned over several times i.e. Hopkins, Mears, it should be the correct abutters, it makes it difficult to place the properties.

Gil Guerin: I have noticed that it often takes the registry a long time to distribute the information about abutters

Jud Lane: In the items in section 6.0.2 proposed street names should be penciled in.

Jud Lane: Section 6.0.3 requires turn radiuses, they are not shown on the plan.

Westley Burnham: What are your intentions with town water and any future sewer. The Fire dept. may require fire hydrant.

John Guerin: The immediate plan for water is well water, they would prefer to waive the fire hydrant, and the sewer line does not reach that area.

Jud Lane: Visibility from the center line of the street shall never be less than 75 feet is not shown of the plan

Westley Burnham: The new catch basin should be reflected on the plan.

Scottie Robinson: I would like to hear from the applicant what the length of the road is because I counted more that 1200-ft. There is a bylaw that states that every dead end street shall not exceed 1200-ft in length. I added it up this afternoon and got twice that. It needs to be delineated on the plan.

Michael Cataldo: If it is over the 1200-ft there needs to be a request for a waiver.

John Guerin: I think that people are forgetting that what we are doing is taking an existing road.

Scottie Robinson: It is not an existing road, it is not recognized by the town, it is a right of way.

Westley Burnham: The present status of the road is irrelevant, the way the rules are we can not create a dead end street greater that 1200 feet.

Scottie Robinson: I have a question about Emerson' s Way. My understanding is that the wood road at the end that forks is a continuation of Emerson's Lane and it sort of in the picture disintegrates and then this other road picks up. My understanding is that it is a Private Way that it is recognized by the Town, by the DPW as a Private Way it is something that the owners all have rights to pass over and you sort of let it drop in the middle. I think it should be shown that it is a road that is recognized that it exists and should be drawn on the plan.

John Guerin: We do not intend to prevent anyone from passing. The abutter to the rear of the property has recinded his right to the road in his direction and by deed the Story's when they bought this property rescinded their rights on the other side of the property. So two direct abutters on this property can not go either way on this road. The only other

people that can use it is up to the point where they are going that there are people past that that there are not going to be any restriction on allowing them to pass through there in the future. The two main properties that are abutting this property have resounded their right north and south, east and west.

Scottie Robinson: My understanding was that everyone who is an owner has rights to pass throughout the road in its entirety, it doesn't matter that these two neighbors are not going to be walking across each other property, it is a way and other people have rights of way on it and it is to be shown on the plan.

John Guerin: We can show it on the plan, and it won't be built on that's for sure, but the argument as to who has rights to go across it will probably be the people that say they have the right to cross it, some have it written into their deed. We will not be preventing anyone who has rights of way from passing on the new road.

Scottie Robinson: I would like to see it on the plan, labeled in its entirety across the property.

Jud Lane: The second requested waiver, 6.0.3-6.7 does that mean items six and seven. There is no 6.7, does it mean 6 and 7.

Scottie Robinson: I understood that there was a 60ft. radius required as a turnaround at the end of a dead end road.

Westley Burnham: He is using a Hammerhead, and there are different standards that would apply. The dimensions are not on there. Mass State Highway has all of those standards.

Scottie Robinson: Because it is a Hammerhead turnaround at the end of a cul de sac as opposed to a turn off for two driveways or some kind of turnaround on a road that continues, wouldn't the requirements be more stringent? On a dead end road isn't a 60-ft. radius required?

Westley Burnham: In lieu of a cul de sac we are allowing them to use a Hammerhead turnaround. It is supposed to be adequate enough for public safety vehicles.

The Board will look into the requirements on the Hammerhead turnaround.

The Chairperson opened up the meeting to the public for questions or comments.

B. J. Elizabeth Frye, Apple Street. We measured the road up to a lot more than 1200-ft. I am personally concerned about the drainage, although some of that has been addressed, but the Board ought to look carefully at that issue. Of course I am interested in the wet land, it is a wet property. From the plan the 100ft buffer zone is near the area of the perk test, and where the house would be. The Board needs to address Emerson Lane with Town Counsel for a legal opinion, and what obligations the owner/applicant has.

Emerson's Lane extends from Apple Street, through the Bruce property up to the Story's, Van Wyck, down to Rocky Hill Drive. The Bruce deed was read to the Board with regards to the right of way on Emerson's Lane.

Gil Guerin: If there is a deeded right of way and the plan as shown does not restrict the right of way in any way then it becomes a civil matter.

John Guerin: The fee interest in the Lane as referred to in the Bruce deed as I hear you reading it, everyone who has the lane travel through their property, they actually own the property that the Lane is on, because it is a private way, and that's the fee interest and the fee interest is not an inherited thing it means, I own it.

This is getting at an issue that really doesn't matter; the applicant may have easements through the property that is being subdivided. We have agreed to mark this plan with Emerson's Lane all the way through, we are not going to block it, and in fact are improving it in one place.

Norm Seppala 25 Apple Street. We are abutters to the property and we have no objections to the plan. Has there been a specific site for the house set yet?

Engineer: Nothing definite yet the septic area was identified on the plan, as was Emerson's Way and wetlands.

Linda Sepalla 25 Apple Street. The area being described as wetlands is not boggy water and lady slippers. It is high and dry I walk all through that area. The Blueberry bushes in the area were planted there and are not indigenous. It is difficult to worry about what someone might build in fifty years.

David Germain 15 Apple Street. Confused by the frontage issue.

Scottie Robinson: There is no frontage on Apple Street and in order to have frontage on a road, a road must be created and there are certain standards for creating a road.

David Germain 15 Apple Street. There is variability in the size of a subdivision road?

Michael Cataldo: In terms of the width and standards.

Westley Burnham: Specifically there are standards in the Subdivision Regulation for 1-10 dwelling units and greater than 10. 1-10 is allowed to go down to gravel road 16-ft. wide. 10 and greater are required to be 20-ft. wide and paved.

David Germain 15 Apple Street. The number of potential waivers?

Scottie Robinson: They have formally requested in the initial application for 10 waivers and there may be additional requirements if it's to meet with the Regulations for Subdivision Development. Just because the applicant makes a request for the waiver does not mean it is granted.

David Germain 15 Apple Street. Comment as a lay person, Essex has a lot of back land presumably the frontage bylaws and subdivision regulations were put in place to regulate the growth of the town so if you bought a piece of land you knew what it was worth. I feel that the number of waivers requested is unreasonable.

Peter Van Wyck Turtleback Road. I agree with David Germain. I do not feel that it is right to have to request a long list of waivers. If it is a clear cut issue that is one thing. The Board must be careful making these decisions. I am concerned about the continuation of Emerson's Lane; I would like to see it go away.

Kim Germain 15 Apple Street. Who from the Board has excused themselves from the discussion? In addition how long will the Board accept public comment?

Scottie Robinson: Betsy has excused herself and the other members of the Board are here as voting members.

Kim Germain 15 Apple Street. Is Gil Guerin here as a voting member?

Gil Guerin: I have no financial interest.

Westley Burnham: In this situation if Mr. Guerin were to excuse himself it would be impossible for the Board to act on this application. A unanimous vote of the remaining members would be required to approve this application since the Board has had one member resign. There are six sitting members, one of which is a direct abutter.

Scottie Robinson: In any case that is the way the Board is operating this evening. The Board will continue the Public Hearing to the September 5, 2001 meeting in order to accept comments from the other Boards that have been notified but not yet commented in writing. In addition the Board will accept anything in writing, as well as continue the Public Hearing to public input till the next meeting.

Kim Germain 15 Apple Street. Will the Board be receiving information about the recent drainage work that has been done, and will the Board be assuming that it was made to accommodate this subdivision road.

Scottie Robinson: The Board is making no assumptions. The DPW will make comments to the Board for the next meeting.

John Guerin: The applicant could provide an application that requested no waivers and install street lights, two sidewalks, and force a real subdivision road down that could not be refused because it would comply with all the Subdivision Rules and Regulations. But the intent is to keep a nice driveway look to this project and not open it up and bastardize the property that is already there and make one single lot at the back of this property. This could be divided further but that is not the intent of the potential purchaser and I don't believe it will ever be divided.

David Germain 15 Apple Street I don't have any problem with anyone developing their land as long as it's legal. I am uncomfortable with minimal development/multiple waiver and developing in a way that is not consistent with the Town Bylaws.

Scottie Robinson: That is the Planning Board's job to accept requests from developers and to consider the pros and cons, we are not supposed to give waiver off the top of our heads, some of the requests that this project is making are because the standards for subdivision assume that you are going to have 20 houses and assume that you need a certain size curbing on all roads and so on and we may find it appropriate to say if you are making a road for only 2 houses you don't need the granite curb all the way around. It is as simple as that, some of the waivers are more than simply aesthetic and some are for safety. And the Board has to make that determination on each one. It sounds like a lot but just because it is ten, it doesn't make it a bad thing. Be assured that the Board will examine each waiver carefully before it approves any of them, for the public interest, as the Board is required to do.

Philip Lane Apple Street. What is the difference between private ways and successive easements and how that applies to Emerson's Lane?

Scottie Robinson I am concerned about Emerson's Lane because it is recognized by the town as a private way and we have to consider the impact and the probable eventual building out of any subdivision that we create. Where there is already a private way that is recognized that traverses the entire subdivision even if two of the people on the private way are not going to use it, if the other owners have that right of way then I have to be concerned that eventually somebody is going to want to save another part of it between Rocky Hill and Apple Street. Mrs. Frye has asked us to have town counsel check into this and the Board will check in to it.

John Guerin: Emerson's Lane as it exists now does not have the width to become a public way. In this case we have access via Apple Street over private property to get to this back land. Where Emerson's Lane lies actually belongs to the Story's they actually own the land that Emerson's Lane traverses, as well does Peter Van Wyck and Mr. Bruce down further. Only if everyone widened their road along the way, Peter Van Wyck just said he doesn't plan on doing it, we purposely did not abut this property for that very same reason so that they couldn't cut into it at that point as well. No one intends to make this an access road.

Michael Cataldo: I think there have also been a number of cases where the easements defined are basically what is on the ground so if you take something that is a foot path and establish a 40 ft. wide right of way, is something that does not randomly happen.

Westley Burnham: It would not be a simple upgrade. In the past, the one thing that has come, if there is an existing right of way across a property we are not allowed to block it. In other words if he had to put up a retaining wall on the outside of that corner that would render that right of way impassable in its present state either accommodations would

have to be made for that or you couldn't put it there. The Board could not approve a house siting on top of the way.

John Guerin: The only people that can use a road on private land would be the people that have deeded access to that road.

Scottie Robinson: I am going to continue the Public Hearing until the next scheduled meeting which is September 5.

Westley Burnham moves to continue the Public Hearing in it's entirety until the Planning Boards next meeting which is September 5 at 8:30 p.m. to allow the receipt of written comment from the other town Boards and or the public and also to allow a corrected definitive plan to be submitted based on the comments and correct delineation of the site.

The Motion was seconded by Michael Cataldo and unanimously passed by the voting members.

Betsy Shields returned to the table.
Gil Guerin left the meeting.

Turtle Back Road / Peter Van Wyck

Scottie Robinson turns the Chair over to Westley Burnham as she is an indirect abutter to the project under construction and she will not be voting.

Discussion of Larry Graham's amended report as of 8/15/01, hand written addition on original letter, copy on file in Planning Board office.

Michael Cataldo reported on a conversation that he had with George Pucci, Town Counsel. The concern is what subdivision plan we are looking at the plan has basically lapsed, and there is a need for the Board to get together with Peter to work out this agreement for judgment. We can then build on it and define what the plan is that we are supposed to be working on. This would then give us an approved subdivision plan that if Peter wanted to use a lot as collateral it would be a tangible.

Peter hypothetically offered a passbook with the amount of \$26,400.00, which is the amount required to finish the additional work according to Larry Graham. Would that then get this problem resolved?

The Subdivision was originally approved in 1989 by default, with no road plan as an error on the Planning Boards part.

The Agreement for Judgment can not be closed out until the road is considered complete.

The Board can either hold the money needed to finish the road, and let Mr. Van Wyck continue as done in the past with other projects, or require that he conform to the guidelines in the agreement for judgment which require that he put the last coat of asphalt on the road with run off and do the seeding.

If Mr. Van Wyck is willing to put up a performance bond of something other than a lot on the plan that we don't know if it is a valid plan the Board would consider it.

If Mr. Van Wyck is willing to do the cash bond with necessary documentation, certified by the town accountant, and resolves the legal problems then the Board would be willing to allow the ANR to be presented.

284 Southern Avenue / Douglas DeAngelis / ANR

The plan was presented by Paul Donohoe from Donohoe and Parkhurst Land Surveyors. The form A application was presented for the division of the property. The property has no frontage. It borders the Coolidge Trust. The property is not a buildable lot and has no existing structures and they will not be creating any additional non-conformity. The applicant intends to convey the property to the Trustees of Reservations, which abuts the property in Manchester. The Board accepted a check for \$100.00

Motion: Westley Burnham moves to approve the Form A application of Douglas DeAngelis, System Developers, 175 North New Boston Street Woburn MA, for a 2 lot approval not required. Lot 1 being pre-existing with a dwelling and out buildings, parcel A being created 15.295 acres designated on the plan as not a buildable lot. Lot 1 with existing structures is in excess of 4 acres.

Motion was seconded by Betsy Shields and unanimously approved.

Belcher Street / Sharon Means Trust / 5 Lot ANR Plan

Ralph Pino attorney for the Sharon Means trust. The property is 165 acres. Peter Creighton is the developer. They would like to create 5 estate size lots. There is a 50-ft. right of way through the property. Explanation of the frontage that belongs to each lot on Belcher Street. The lots meet the frontage requirements. Two small parcels A and B are not buildable. The current driveway varies between 11 ft. and 16 ft. The Board advises that the shared driveway be at least 14 to 16 ft. wide for access of Safety Vehicles. Mr. Creighton informed the board that there are pullouts along the drive for safety. In addition it would be difficult for them to expand the drive in certain areas because wetlands are on one side and ledge on the other. There have been no provisions for fire hydrants in the plan. Mr. Creighton pointed out that there are two ponds and a river on the property. The Board pointed out that dry hydrants are better than nothing. The current driveway is 2/3 of a mile. The remaining non-buildable lots will not remain as common ownership, but instead be sold with one or more of the properties.

The Board accepted a check for \$500.00 for the five lots being created by the ANR plan presented.

When the applicant applies for a building permit they should be aware in advance that the Board does have safety concerns about the width of the driveway.

The Board advises that the applicant have some kind of maintenance agreement in place for the access drive.

Motion: Jud Lane moves to approve the Approval Not Required application for Sharon B. Means Trust, 46 Middle St. Gloucester MA, Surveyors Hayse Engineering, 165 acres, finding the 5 lot subdivision meets all required rules and Bylaws under section 81.

The Motion was seconded by Michael Cataldo and passed unanimously by those members present.

Planning Board Business

Discussion of the Gloucester Daily Times and the best way to disseminate the information from the meetings to the residents of Essex. Lorie try to get a copy of the agenda to Carolyn Kessel in time to be in the paper.

The Planning Board Secretary has been given a key to the office.

Discussion of the open Planning Board position.

Scot's Way must be discussed at the next meeting. Short discussion about the catch basin proposed by the applicant and oil/gas separators and what they can handle. The DPW is responsible for reading the calculations.

Escrow accounts were discussed, as to how to hold money for the inspection and maintenance of sites approved by the Board if the owner does not. The performance guarantee is regulated under chapter 81. The Board needs to consider if they want to be in the maintenance and inspection business. If the DPW feels it is necessary they should make the demand and be responsible for keeping track of the maintenance schedule. They have agreed to do so.

The DPW has more questions about the dry wells proposed by the applicant.

A site visit was set up on Saturday August 18 at 9:00 a.m. to tour the proposed subdivision at 25 Apple Street, and the Board will request that the Engineer attend.

At the next meeting the Selectmen will be in attendance to discuss the MAPC and the open Planning Board seat.

Motion: Michael Cataldo moves to close the meeting.

Motion was seconded by Jud Lane and unanimously passed by those members present.

The next meeting is scheduled for Wednesday, September 5, 2001, commencing at 7:30 p.m.

Presented by: Lorie Woodward
Lorie Woodward, Admin. Assistant

Attested to: John A. Lane
Jud Lane, Clerk

TOWN OF ESSEX PLANNING BOARD

AGENDA

AUGUST 8, 2001

(Fire Station)

7:30 p.m.

7:30 p.m.

Planning Board Business

Approval of fall schedule

Approval of Minutes

July 18, 2001 with corrections

Approval of Minutes

August 1, 2001

Approval of Bills Payable

1 payroll request

1 Bill

Mail

8:00 p.m.

142 Eastern Avenue/Change of use application

**Town of Essex Planning Board
Minutes
Wednesday, August 8, 2001
7:30 p.m.**

The meeting was held at the Essex Fire Station on Martin Street and was opened at 7:35p.m. by Scottie Robinson, Chairman

Attendees: Scottie Robinson, Michael Cataldo, Jud Lane, Betsy Shields, Gil Guerin, Westley Burnham

Absent: George Stavros

Building Inspector: Bill Sanborn

Secretary: Lorie Woodward

Building Inspectors Report

69 Main Street/Building Permit

The applicant Dana Guarnera is requesting a Building Permit to enlarge his living room. The site is a business/residence. The proposed construction meets all setbacks. The applicant intends to push out the east wall 4 ft. The board discussed the project, no problems noted.

12 Prospect Street/Change of Use/Two Family from a One Family residence

The Building Inspector returned to the Board with the information request since the last time he presented the request. In addition the applicant has obtained Board of Health approval. The lot has 3 off street parking places. The applicant is required to have one parking space per dwelling unit for a single/2 family house, 6.5-8. The requirement on new parking for a residence is 30 ft from the street, 6.6-2. This parking area is pre-existing.

Motion: Westley Burnham moves to approve the change of use from a single to two family for property owned by Ernest L. Doucette, 12 Prospect Street. Finding all the required approvals have been met, the Board of Health. Under 6.4-2 finding that the proposed conversion will not be substantially more detrimental than to the neighborhood than the existing use. The motion was seconded by Michael Cataldo and unanimously passed by those members present.

229 Western Avenue/Dr. Kippenburger

Westley Burnham removes himself from the discussion

There was discussion as to whether the resident is conforming to the Home Occupation Requirements, and whether or not the business use was properly permitted. Gil Guerin will review the permits on file and advise Jan Nichols, who has requested information regarding how long the time period is to request a review by the Zoning Board of Appeals on this site. The Building Inspector believes the requirements are 6 years if the

town is in error, and 10 years if no permit was issued. These dates recognize either the town or the owner may have made a mistake.

On August 3, 2001 the Building Inspector visited the site. The resident is indeed pouring concrete slabs, he has one completed and has cages on it which applies the Board of Health, as well as one ready to be poured. The Building Inspector was told the owner was not there. The Building Inspector identified himself and said that the owner needs to talk to the Building Inspector and no more work is to be done until he speaks to the Inspector.

The property is located in the Water Resource Protection District and he should have requested a permit before putting down more pavement.

Westley Burnham returns to the meeting.

Discussion of Draft of Meeting Dates. Dates were approved with changes.

Discussion of Minutes from August 1, 2001. Betsy Shields and Scottie Robinson provided corrections to be made.

Motion: Westley Burnham moves to approve the August 1, 2001 minutes with the minor corrections.

The motion was seconded by Michael Cataldo and unanimously passed by those members present.

Discussion of minutes from July 18, 2001 and corrections made after meeting. Two paragraphs were added to clarify a discussion of Chapter 40 A. Corrections were read to the Board.

Motion: Michael Cataldo moves that the Board accept the minutes of the meeting of July 18, 2001 as amended.

The motion was seconded by Betsy Shields and unanimously passed by those members present.

142 Eastern Avenue/ Site Plan Review/ Change of Use

Scottie shared the information she received from Town Counsel. Town Counsel confirmed that the Special Permit Process requires an affirmative vote of 5 of 7 members to approve an application. In that case the three to three tie that we achieved last week when the Board voted could be deemed a denial.

Since a super-majority did not find the applicant's proposal to meet the requirements of the Site Plan Review Bylaw the Board could write up a finding and notify the applicant that it was denied. The Board would then need to give the specifics of why it was denied.

However counsel did confirm that Site Plan Review is most often used as a review of a site plan, and a way for the Planning Board to modify proposals that are otherwise acceptable with the town bylaws.

Since it is noted in the Essex Bylaws as a Special Permit process application it is reasonable to understand that as in other Special Permit applications that a vote which did not pass could be a denial and wouldn't require any additional voting.

The law is very squishy. In one case there was a denied application from MacDonalds Corp. to put in a store where the neighbors didn't want it. People thought the noise and the traffic and smell would make it an unsightly/unseemly part of their nice quiet neighborhood. The Board denied the permit based on the danger posed by the increase of traffic at the site. The denial was overturned by a court judge, because it was not specific to the internal use of the site. The Board's decision was overturned by a Massachusetts court judge who decided that the traffic generated by the MacDonalds on the street surrounding the site was not the concern of the Planning Board under Site Plan Review.

However it is perfectly reasonable to deny an application that has internal elements of danger concerning traffic.

Essex does not have rules regarding the cutting of trees over a certain width or noise regulations, so even though we may not like the cutting of the trees or noise from trucks, there is no basis for denial on those grounds.

The proposed business is a stand-alone nursery so no special agricultural zoning applies.

Options for the Board:

The Board accept the vote to approve at the last meeting as a denial, since it did not pass. Reconsider a motion to approve and revote.

Motion: Westley Burnham moves we reconsider the Special Permit application for TJP Realty Trust, 94 Lovette Street, Beverly MA, for property located at 142 Eastern Avenue The motion was seconded by Michael Cataldo and unanimously passed by those members present.

Discussion and editing of the Draft of the approval.

The edited draft is a part of these minutes and follows.

August 8, 2001

DRAFT DRAFT DRAFT DRAFT

The Essex Planning Board acting as the Special Permit Granting Authority hereby approves the application for a Special Permit under 6-6.12 Site Plan Review submitted by TJP Realty Trust, 94 Lovett St. Beverly Ma. 01915 subject to the following findings and

This Special Permit is being approved based in part on the following:

Our finding is based on the testimony received at the public hearing held on May 16, 2001, correspondence, and our own determination that the site meets the minimum requirements for commercial development.

Proposed conversion of existing residential and construction of a commercial building at 142 Eastern Ave. New use: Base for landscaping business operation and retail outlet for nursery related products.

The accompanying plan prepared by Modern Continental, dated 6/19/01, appears to meet the intent of Town of Essex zoning bylaw 6-6.5 Business Land Use, and meets or exceeds 6-5.8 and 6-5.9 relative to off street parking requirements.

The site is located within the 'Sewer district' as defined in the Town of Essex bylaws, and therefore is subject to Board of Health and to be formed Wastewater department regulations.

The following conditions shall apply:

1. The property shall be used only for the following uses:
 - Nursery / Landscaping material
 - Office space.
 - Storage / Warehouse/Landscaping base of operations.
 - Vehicle storage, material stockpiling.
2. Normal Business operating hours shall be restricted to 7 AM to 7 PM Monday thru Saturday and 9 AM to 3 PM on Sunday
3. No bulk or material deliveries will be allowed outside the normal operating hours.
4. The driveway entrance shall be designed to maximize vehicle operator line of sight views and maximize the safe ingress and egress from the property. Permit for 65 ft. curb cut as shown on plan dated 6/19/01 to be obtained from Mass Highway prior to this permit going into full effect.
5. All parking created shall be designed to reduce or eliminate storm water runoff onto neighboring properties. Any water discharged from the property shall not degrade any existing wetlands.
6. No below grade loading docks will be permitted.
7. Composting piles shall consist of grass clippings, leaves, and other residual materials from the landscaping operations only, as presented at the public hearing.
8. Storage of Hazardous materials related to the operation of the business or for sale shall be stored indoors in such a way that no hazard will be posed to any neighboring properties, and in all cases IAW with the regulations maintained by Mass DEP.
9. In no event shall the property be used for the storage of any septic handling trucks or equipment, or for the storage of any hazardous waste. Nor shall it be used for any use with the potential of introducing noxious, hazardous, or unpleasant odors into the atmosphere.
10. The clearing of existing trees and vegetation should be minimized. A buffer along neighboring residential properties will be required to minimize the impact of commercial operations on the neighborhood. This buffer can be a combination of existing or transplanted trees, bushes or fencing, etc.
11. Lighting shall be minimized outside of normal operating hours. No internally illuminated signs will be allowed.
12. The applicant shall produce a statement of approval from the Essex Conservation Commission stating their approval, and any conditions or restrictions which they require prior to this Special Permit becoming in full effect. Any additional conditions or restrictions shall be added to this permit as an addendum and filed with the Registry of Deeds accordingly.

13. No building permits shall be issued until confirmation that this Special Permit has been filed with the Salem Registry of Deeds.

Approval of this proposal is not to be interpreted as certification of any engineering solutions by the Essex Planning Board (acting as the Special Permit Granting Authority). Any liability for inadequate performance of the proposed storm water control system shall remain with the property owner.

Approval of this plan does not constitute approval of any building siting, except that any building proposed to be built shall be located within the confines of the area delineated "proposed building". The proposed use and exact location of the building shall conform to the applicable bylaws of the Town of Essex. This determination shall be made at a later date and time.

This Special Permit is not in effect until the applicant has filled a certified copy of the decision with the Registry of Deeds. Certification that the twenty (20) day appeal period has expired with no appeals having been filed must be obtained from the Essex Town Clerk.

Certified copies of this decision will be available at the Essex Town Clerks office and from the Essex Planning Board within 10 days of the date of this decision.

Appeals shall be made pursuant to Section 17 of Chapter 40A MGL. and shall be filed within twenty (20) days after the date of filing this decision with the Essex Town Clerk.

Attested to:

Chairman / Clerk of the Essex Planning Board / Date

DRAFT Document prepared during consideration of a Special Permit/Change of Use Application. The application was denied on August 8, 2001 by the Essex Planning Board.

Discussion of the Special Permit.

The Special Permit is special that is why it requires a super-majority and it is stated it is easier to deny than it is to pass.

The applicant has the right to appeal the Board's denial. If the Board decides to deny then the Board has to be specific enough to explain why the plan does not meet their expectations and specific enough for the reviewing authority, Superior Court, to understand the reasoning and either uphold or overturn the Board's decision.

Motion: Westley Burnham moves to approve the Special Permit application for TJP Realty Trust, 94 Lovett Street, Beverly MA for property located at 142 Eastern Avenue, based on the draft approval dated 8/8/01.

The motion was seconded by Jud Lane.

Special Permit votes require individual polling, with a brief explanation of specific reasons for or against.

Westley Burnham: I vote aye. I believe the proposal, although possibly undesirable by the neighborhood, is in fact appropriate for the location on Eastern Avenue, it is allowable under our present zoning rules, the change of use is allowable under our present zoning rules, and I believe the conditions and

restrictions of the Special Permit under consideration adequately meet the concerns of the neighborhood.

Gil Guerin: I vote no, and I do that as a result of realizing that this specific site is inappropriate for this operation and will adversely affect the neighborhood.

Michael Cataldo: I vote no, in essence for the same reasons that Gil stated, that the conduct of the business's as presented at this location will have an adverse impact on the neighborhood and it is an inappropriate use for this location based on internal traffic.

Betsy Shields: I vote no, based on the fact that I feel it is an inappropriate use for this specific site, that it will adversely affect the neighborhood, and I am not convinced the layout is safe for pedestrians and vehicles on the site.

Jud Lane: I continue to vote yes on this primarily because I grapple with what substantial detriment to the community and neighborhood is. I tried to look at both sides of this and did quite a bit of research and I looked in to the Pallazolla brothers, and I got recommendations from Corliss Bros., that they are an outstanding business, and guys and they keep quality trucks, their stuff is clean, they do a great job. I felt that based on the requirements in the Special Permit and Bylaws that we have, I didn't feel that I could vote anyway but yes.

Scottie Robinson: I vote no, and my reasons are because I don't feel that internal traffic control issues have been dealt with in a way to insure safety of pedestrian and vehicular traffic. Especially I am concerned with traffic between the parking lot and the retail outlet. I am concerned with the line of site for vehicles going from the front to the back of the property. I am not convinced that there has been a reasonable description of how when and where employees will be parking and how that will affect the general internal traffic. I don't see any specified turnaround area for trucks going into the back of the property. I would imagine that in addition to the trucks going into make deliveries there would be trucks going in and picking up inventory that they are purchasing and I just don't see them described in a way to insure the safety of people coming and going. I am also concerned with their suggestion about the 65-ft. curb cut and I do see they needed something more than 20 ft. but I think 65 ft. is pushing it on the site, but I am content to let the Mass Highway Dept. handle that.

The vote: 4 no votes and 2 aye votes on the motion to approve the Special Permit application under Site Plan Review, Change of use, and the motion does not pass, the application is denied.

Discussion of letter to notify the applicant of denial. Scottie Robinson has draft and will add additional comments from opposed Board members. Copy of the final letter.



ESSEX PLANNING BOARD

Town Hall 30 Martin Street Essex, Massachusetts 01929 - 1219

TO: TJP Realty Trust

August 11, 2001

FROM: Scottie Robinson, Chair
Town of Essex Planning Board

RE: Special Permit Application for Change of Use, 142 Eastern Avenue

On August 8, 2001 a supermajority of the Planning Board did not find the Special Permit/Site Plan Review application of TJP Realty Trust (application dated April 10, 2001, revised engineer's site plans dated June 19, 2001) to meet the requirements of the Essex Zoning Bylaw 6-6.12 Site Plan Review and Special Permit procedure, Appendix B of the Essex Bylaws.

Because of the failure to achieve Special Permit approval the application is denied.

The Board voted on a motion to approve the plan with conditions included in a working document, "Draft, Approval with Conditions" dated August 8, 2001 (attached). The Board vote on the motion to approve the application was 2 in favor and 4 opposed.

Reasons stated by those opposed include:

This specific site is inappropriate for this operation and will adversely affect the neighborhood. (Board member Gil Guerin)

The conduct of the business as presented at this location would have an adverse impact on the neighborhood. (Board member Michael Cataldo)

It is an inappropriate use for this specific site that will adversely affect the neighborhood and I am not convinced the layout is safe for pedestrians and vehicles on the site. (Board member Betsy Shields)

I don't feel that internal traffic control issues have been dealt with in a way to ensure safety of pedestrian and vehicular traffic. I am especially concerned with traffic between the parking lot and the retail outlet. I am concerned with the line of sight for vehicles going from the front to the back of the property. I am not convinced that there has been a reasonable description of how, when and where employees will be parking and how that will affect the general internal traffic. I don't see any specified turnaround area for trucks

going into the back of the property. I would imagine that in addition to the trucks going in to make deliveries there would be trucks going in and picking up inventory that they are purchasing and I just don't see them described in a way to ensure the safety of people coming and going. I am also concerned with their suggestion about the 65 ft. curb cut. I do see that they needed something more than 20 feet but I think 65 feet is pushing it on that site but I am content to let the Mass. Highway Department handle that. (Board member Scottie Robinson)

Reasons stated by those in favor were:

I vote aye. I believe the proposal, although possibly undesirable by the neighborhood, is in fact appropriate for the location on Eastern Avenue, it is allowable under our present zoning rules. The change of use is allowable under our present zoning rules and I believe the conditions and restrictions of the Special Permit under consideration adequately meet the concerns of the neighborhood. (Board member Westley Burnham)

I continue to vote yes on this primarily because I grapple with what substantial detriment to the community and neighborhood is. I tried to look at both sides of this and did quite a bit of research and I looked into the Pallazola brothers, and I got recommendations from Corliss Brothers, that they are an outstanding business, and guys. and they keep quality trucks, their stuff is clean; they do a great job. I feel that based on the requirements in the Special Permit and bylaws that we have, I didn't feel that I could vote any way but yes. (Board member Jud Lane)

Board member George Stavros was not present at the meeting and did not vote.

Enclosure: "Draft Approval with Conditions" of 8/8/01

Cc: Thomas Beatrice, Esq.
Town Clerk, Essex
Essex Board of Selectmen
Kopelman and Paige, P.C.

Motion: Gil Guerin moves to approve the draft denial notification with additional comments from Board members in opposition to the Change of Use at 142 Eastern Avenue.

The motion was seconded by Michael Cataldo.

**Vote: Gil Guerin, Scottie Robinson, Betsy Shields, and Michael Cataldo aye.
Westley Burnham and Jud Lane present.**

The motion passes.

Short recess to allow all people in attendance for the 142 Eastern Avenue to exit the meeting.

Meeting re-adjourned

Approval of 1 Payroll request.

Approval of 1 Bill Payable.

Planning Board Business

Gil is heading up concerns with 229 Western Avenue. Discussion of letter sent by Elaine Wozny, Board of Health Administrator, on 8/8/01, letter on file copy to go to Scottie and Gil.

Discussion of MAPC and what items the Board is looking for help with. Further discussion is needed to determine where the money should be spent. The Board has received additional information regarding grants available for planning. Betsy will look up our initial concerns and advise us next week.

Scot's Way Realty Trust/Application to render more than 15% impervious

Scottie asked Damon Boutchie with the DPW to review the new information from the engineer. Damon still has questions regarding the catch basins and dry wells, it is necessary to have detailed drawings. Westley will draft an approval letter.

25 Apple Street/Tara Road Subdivision/Public Hearing

The Public Hearing is scheduled for 8/15/01. Jud and Westley will go over plans and information provided by John Guerin before the Hearing.

Betsy to draft a letter to George Stavros, requesting that he either attend meetings or resign.

Peter Van Wyck/Turtleback Road

Michael Cataldo will be the point person dealing with the project.

Discussion of new routing form for Building Permit. The form was developed to be more clear for applicant. It is the applicants job to obtain all approvals necessary before a Building Permit is issued.

The Handbooks developed by Westley Burnham and distributed to the Board members have been appreciated.

The Meeting was adjourned at 10:35 p.m.

The next meeting is scheduled for Wednesday, August 15, 2001, commencing at 7:30 p.m.

Presented by: Lorie Woodward Attested to: Jud Lane
Lorie Woodward, Admin. Assistant Jud Lane, Clerk

TOWN OF ESSEX PLANNING BOARD

AGENDA

AUGUST 1, 2001

(Scout House)

7:30 p.m.

- 7:30 p.m. **Building Inspector's Report**
- 8:00 p.m. **MAPC informal presentation**
- 8:50 p.m. **Peter Van Wyck/ Turtleback Road**
- 9:00 p.m. **142 Eastern Avenue/Change of use application**
- 9:30 p.m. *Planning Board Business*
- Discussion of fall schedule*
- Approval of Minutes*
 July 18, 2001
- Approval of Bills Payable*
 1 payroll request
- Mail*

**Town of Essex Planning Board
Minutes
Wednesday, August 1, 2001
7:30 p.m.**

The meeting was held at the Scout House and was opened at 7:35p.m. by Scottie Robinson, Chairman

Attendees: Scottie Robinson, Michael Cataldo, Jud Lane, Betsy Shields, Gil Guerin, Westley Burnham

Absent: George Stavros

Building Inspector: Bill Sanborn

Secretary: Lorie Woodward

Building Inspectors Report

23 Gregory Island Road/Requesting a Building Permit

Lori and Anthony Silva reappeared before the board, requesting a building permit to reconstruct and enlarge the existing house, as well as enclose the porch. At the last meeting Michael Cataldo questioned whether there was a restriction on expanding the home either on the deed or with the Conservation Commission. The Conservation Commission Secretary was unable to find any information regarding this in their files although she did forward a copy of minutes from the Board of Health dated June 26, 2001. The minutes stated that the plan has been approved with a one-bedroom deed restriction. The Board of Health endorsed the Building Permit.

Kerry Kaplon, 27 E Gregory Island Road, an abutter, addressed the board in opposition to the renovation/reconstruction, as it will cut down on his views. In addition he feels that the construction will substantially impact his property values. The existing structure is within 10 ft. of his home. The new renovations will overlook the abutters deck.

Motion: Westley Burnham moves to approve the Building Permit application for Lori and Anthony Silva, 23 Gregory Island Road, for renovation of a two story single bedroom structure and enclosing of an existing porch. Conservation Commission and Board of Health approvals have already been received and the Board sited 6-4.2 that the proposed change will not be substantially more detrimental to the neighborhood. The motion was seconded by Michael Cataldo. Members approving the motion Westley Burnham, Gil Guerin, Jud Lane and Scottie Robinson. Members opposing the motion Betsy Shields and Michael Cataldo. The Building Permit application was approved.

11 Choate Street/ Request for Building Permit

Michelle Myers is requesting a Building Permit to construct a 6 stall horse shelter, 2 separate units no foundation, 11 x 11 freestanding stalls. The applicant has approval from Board of Health and Conservation Commission. Property has a conservation

restriction held by the Essex County Greenbelt but the applicant does own it. The applicant has a letter from the Greenbelt approving the application with conditions. The proposed structures meets all the setback restrictions. The structures will be 36 ft. x 12 ft. 34ft x 12 ft. with an 11 ft. separation and a breezeway between connected by a roof. One of the Greenbelt restrictions on the construction is that the buildings may not be used commercially. There will be no utilities.

Motion: Betsy Shields moves to approve the Building Permit for two accessory buildings with six horse stalls that will have no utilities and meet all restrictions from Board of Health and Greenbelt for residential use only. Motion was seconded by Michael Cataldo and unanimously passed by those members present.

2 Moses Lane/Requesting a Building Permit

The applicant, Lloyd Waites, is requesting a Building Permit to construct a garage with deck. The applicant claims that the permit issued for the home construction covered this. The Building Inspector is unable to locate any records regarding this. The proposed structure meets all setbacks. The board discussed the project, no problems noted.

8-10 Martin Street/Requesting a Building Permit

Westley Burnham removed himself from the discussion due to a financial interest in an abutting property.

Michael Cataldo removed himself from the discussion as he has been asked by the Selectmen to work on a Public Works grant on an adjacent property.

Gil Guerin's brother is an abutter but Gil has no financial interest in the property so he remained in the discussion.

The applicant PMC Realty is requesting a Building Permit to rebuild a building that burned. Doug Jordan architect with Financial Concepts and Paul Shea presented the plans to the Board. The changes are less non-conforming than the original building. The height of the new building will be lower than the original. The new building will stay on the original footprint.

Motion: Gil Guerin moves to approve a Building Permit for PMC Realty at 8-10 Martin Street, to reconstruct a burned and condemned building, to be built in the same footprint, with a 6-4.2 finding that the new structure will be no more detrimental.

The motion was seconded by Betsy Shields and unanimously passed by those members present.

Westley and Michael rejoined the discussion

Presentation by MAPC

Betsy Shield introduced Mark Racicot and Sam Cleves from MAPC to have an informal discussion with the Planning Board, Selectmen, and Town Administrator regarding Executive Order 418 consulting available to the town. Handouts included at the end of the minutes.

Turtleback Road/Peter Van Wyck

Peter addressed the Board to let them know again that he feels that the road is complete except for the final coat of asphalt and the grass that needs to be planted. The final coat of asphalt should not be applied until the home construction on the road has been completed and grass should not be planted until September according to Peter. Westley did talk to Larry Graham who agreed with Peter about the asphalt. The board instructed Peter to contact Larry to perform an inspection so that the Board has confirmation regarding the remaining items to be completed as well as estimated costs. Scottie reminded the rest of the Board members that if they allow waivers they are in effect abrogating the Agreement for Judgment that was signed by Peter in 1996 with the town. Regardless of what the town engineer recommends, as agents of the town Scottie does not recommend that we go outside of the original agreement. Gil was unsure if the courts would uphold the original order. Peter requested that the Board vote on this issue. The Board agreed to discuss the matter with town counsel to get their advice. Scottie reminded the board that according to the agreement, the lots that the town is holding are not to be released until the road is finished. Westley suggested that Peter Van Wyck talk to Larry again to see if he can confirm or deny Peter's claims as well as Scottie contact town counsel to see what it is that they view as completed.

Scot's Way Realty Trust/Request to revise siting of the Building

Robert Griffin presented the original plans to the board as well as new plan which relocates the building. Mr. Griffin explained the differences in the plans and gave the Board the new calculations. The board was provide with two separate plans C-3 25% plan and C-4 15% Building Permit modification plan. The Board was given a copy of the water quality inlet report.

**Motion: Westley Burnham moves approve the revised siting for proposed garage applicant, Phillip Hansbury/Scot's Way Realty Trust, Lake Drive South Hamilton MA for 50 ft x 100ft garage to be sited in accordance with plan dated 7/25/01, notify the BI of siting approval w/ no interior plumbing
The motion was seconded by Michael Cataldo and unanimously passed by those members present.**

Scot's Way Realty Trust/Application to render more than 15% impervious

Robert Griffin of Griffin engineering came before the Board requesting to make 25% of the land area impervious. Westley informed the Board that the 15% triggers the Special Permit, Under the Special Permit the Board can effectively allow the applicant to pave the entire area assuming that he can provide a system that will recharge the ground water with no degradation, according to bylaw 6-13. The water run off will be directed to a water quality inlet and then into a retention basin, so in case of a spill the water could be captured and prevented from entering the water table. The Board accepted the detailed information to examine at a later time.

142 Eastern Avenue/Change of Use

Tom Beatrice attorney addressed the board for the applicants Tom and Joe Palazolla, also present, the engineer Ward Eisenhour and the record owners.

Mr. Beatrice explained changes to the plan to address the concerns of the board.

Synopsis of Mr. Beatrice's presentation.

Entrance/exit as well as potential trucks entering the property – The new plan shows that they intend to widen the driveway to a 65-ft. curb cut to make it easier for tractor-trailer trucks to enter the driveway. In addition the amount of tractor-trailer entering the property would be negligible. The business does not receive shipments of mulch and other items more than once or twice a month.

Snow Plowing – Historically there are not that many storms a year that would call out the large equipment and during those events there will be snow plows clearing the road up and down Eastern Avenue. In addition he pointed out the distance between the proposed building and the abutters, which is roughly between 400 and 900 feet.

Determining whether the proposed business would fit into the area – During a visual survey they were able to come up with at least 10 business within a quarter mile of the site, including 4 restaurants, Puna's, antique business, gift shop and a fuel company. The Bylaw at issue states the concern of the board should be in keeping with the community and neighborhood character to avoid substantial detriment. They suggest that this business does not rise to the level of substantial detriment.

Ward Eisenhour the engineer presented the revision of the plan to the Board. Both sets of plans are available in the Planning Board office.

Tom Beatrice informed the Board that there was a ceramics business operated out of the property previously. The Board acknowledged this and believes it was a home occupation.

The Planning Board continued to discuss concerns about the proposed change of use.

There were concerns for the abutters and the odd hours kept when snow plowing and whether that is keeping with the neighborhood. Snow plowing and the hours it requires will greatly inconvenience the 7 immediate abutters. None of the neighbors are in favor of this business in their neighborhood, as well as the noise created by the large trucks This in not in character with the other businesses in the area.

The Board also acknowledges that snowplows are necessary in inclement weather. Many of the other business and residence in the neighborhood are made accessible by snowplows. Some places are plowed several times, night and day, in the course of a

storm to clean their driveway/parking lot. In addition snowplows are repeated driving 133 to keep the state road clear.

The Board has concerns about the size and scope of the proposed business. This in essence is two separate business, retail and commercial landscaping on a site that was previously a home occupation. This is a major expansion of use of a piece of property that doesn't seem appropriate.

The Board appreciated all the effort that the applicant has put into the changes to conform to the Planning Board's suggestions and the Conservation Commission's Order of Conditions. They have worked hard to improve the plan, ie enlarging the curb cut. (although, the Board is unsure if the applicant could get a curb cut that large) Changes were made to make the parking lot safer. Plans are available in the Planning Board file to view other changes.

Discussion of the how many votes were necessary to approve or deny the application of a Special Permit. Five votes are necessary in the affirmative. The Board will consult with Town Counsel as to the specifics necessary for a denial.

**Motion: Michael Cataldo moves that the Essex Planning Board acting as a special Permit granting authority hereby approve the application for a special permits under 6-6.12 Site Plan Review submitted by TJP Realty Trust 94 Lovett Street Beverly, MA subject to conditions as referenced in draft document dated July 18,2001.
Westley Burnham seconded.**

Scottie would like to delete at the discretion of the applicant from number 10 in the draft document

Motion: Westley Burnham moves to amend the draft approval sentence number 10 to remove the last 4 words, at the discretion of the applicant. The motion was seconded by Michael Cataldo and unanimously passed by those members present.

Vote:

Westley Burnham I vote in the affirmative for the Special Permit with the conditions, I find the proposal does meet the minimum zoning requirements as explained and laid out in the town Bylaws and I believe the additional conditions that will be applied will address most of the concerns of the neighborhood and I would like to think that within those guidelines they will become a good neighbor.

Jud Lane vote aye as well. I was originally against the project but based on their initiative and their really wanting to be here in Essex I think that they could be a positive addition to the neighborhood not a negative.

Michael Cataldo vote no I find there are still outstanding issues having to do with traffic, overall treatment of vegetation on the property, the general size and scope of the business and just in general.

Betsy Shields vote no based on the traffic through the lot. Also I don't believe the project will be in harmony with the general purpose and intent of the zoning Bylaw, or appropriate for the location for such a use and the intended use will adversely affect the neighborhood.

Gilbert Guerin vote in the affirmative. I believe that they have met the intent of the Bylaw and I believe it is my obligation to vote yes. I wish that I had more time and information to understand this a little better because I don't necessarily believe this project is in keeping with the neighborhood.

Scottie Robinson voting not to approve the Special Permit application because I don't think the proposed use is in harmony with the purpose or intent of the zoning Bylaw, and I don't think the site is appropriate for the use proposed and I do not believe that it will not adversely affect the neighborhood.

The Chair stated the motion does not pass.

Motion: Betsy Shield moves to deny the Permit based on the fact that the proposed use is not in harmony with the general purpose and intent of the zoning Bylaw, and that the site is not appropriate for the proposed use, and that the proposed use will adversely affect the neighborhood, and that the applicant did not produce evidence adequate info about the traffic and safety on the location.

The motion was seconded by MichaelCataldo.

Westley Burnham I vote against the denial for the same reasons that I cited in the support of the approval.

Jud Lane I vote against the denial for the same reasons that I cited in the support of the approval.

Michael Cataldo in favor of the denial for reasons previously stated.

Betsy Shields in favor of the denial for reasons previously stated.

Gilbert Guerin against the motion reasons cited in approval vote

Scottie Robinson voting in favor of the motion to deny because I am in agreement with reasons stated in the denial.

Westley left the meeting at 10:30 to go to work.

The meeting minutes were reviewed.

Motion: Michael Cataldo moves to approve the minutes July 18, 2001 with corrections.

Betsy Shields seconded the motion and unanimously passed by those members present.

229 Western Avenue/Dr. Kippenburger

Scottie informed the Board that she has receive a letter from Jan Nichols of Jan's Encore restaurant, a abutter 20 Dr. Kippenburger, complaining about the noise coming from the barking dogs next door. Scottie will accompany Jan to a meeting with the Health Agent in Essex tomorrow. Gil will look into the problem and see what the Planning Board may be able to do to help the situation.

Gil reported he is making progress on a mixed-use bylaw he is drafting.

Meeting was adjourned at 11:35 p.m.

The next meeting is scheduled for Wednesday, August 8, 2001, commencing at 7:30 p.m.

Presented by: Lorie Woodward
Lorie Woodward, Admin. Assistant

Attested to: Jud Lane
Jud Lane, Clerk

TOWN OF ESSEX PLANNING BOARD

AGENDA

JULY 18, 2001

(Scout House)

7:30 p.m.

- 7:30 p.m. **Building Inspector's Report**
- 8:00 p.m. **Public Hearing Scot's Way**
- As time allows **Peter Van Wyck/Turtleback Road**
- 8:30 p.m. **142 Eastern Avenue TJP Realty Trust/Change of use**
- 9:00 p.m. **25 Apple Street/Final Plan submission**

Planning Board Business

*Presentation of digital copy of Rules and Regulations Relative to
Subdivision Control Essex, Massachusetts and other pertinent
information*

*Approval of Minutes
June 20, 2001*

Mail

Town of Essex Planning Board
Minutes
Wednesday, July 18, 2001
7:30 p.m.

The meeting was held at the Scout House and was opened at 7:35p.m. by Scottie Robinson, Chairman

Attendees: Scottie Robinson, Michael Cataldo, Jud Lane, Betsy Shields, Gil Guerin
Absent: George Stavros, Westley Burnham
Building Inspector: Bill Sanborn
Secretary: Lorie Woodward

Building Inspectors Report

97 Martin Street/Application for a two family

The applicant is applying for a two family occupancy permit. The assessor's office has had the house listed as a two family since 1992. The applicant claims that they received a two family occupancy permit back in 1992. The records can not be found. The applicant has Board of Health and Fire dept. approval as well as appropriate number of parking spaces.

Motion: Michael Cataldo moves to approve the change of use for James and Elizabeth, 97 Martin Street, to legalize the occupancy as a two family. The motion was seconded by Betsy Shields and unanimously passed by those members present.

80 R. Eastern Avenue/Requesting Building Permit

Henrietta Meyer is planning to remove two existing structures and build a new home. The preexisting non-conforming barn will remain. The applicant has Conservation Commission approval

Motion: Betsy Shields moves to approve Henrietta Meyer, 80 R. Eastern Avenue, to rebuild existing house as a one family home, as it meets all appropriate Essex By-laws.

The motion was seconded by Michael Cataldo and unanimously passed by those members present.

36 R. Story Street/Requesting Building Permit

David and Michelle Kempksie are requesting a Building Permit for the foundation for a new house. Foundation only. The lot has been approved by the Planning Board with the provision of the driveway being completed first. In order to secure financing the applicant needs a Building Permit. The applicant will need to reapply for a new Building Permit to begin construction of the house. The applicant has acquired all approvals

Motion: Michael Cataldo moves to approve David and Michelle Kempksie, 36 R. Story Street, for a Building Permit for the foundation only.

The motion was seconded by Betsy Shields and unanimously passed by those members present.

23 Gregory Island Road/Requesting Building Permit

Lori and Anthony Silva are requesting a Building Permit for renovation/reconstruction of their existing two story structure and to enclose the porch. Michael Cataldo questioned whether there was a restriction on expanding the home either on the deed or with the Conservation Commission. The applicant has received Conservation Commission approval. The Board will look in to this for the next meeting. Two letters were received from Kerry and Patricia Kaplon, 23 E Gregory Island Road, who were unable to attend the meeting, in opposition to this renovation. The abutter claims the renovations will reduce the view of the lake for their house. Their letters are on file in the Planning Board Office. Both the applicant and the Kaplons presented pictures to the board. The Board has agreed to visit the site before the next meeting to get a clear picture of the site. Constance Tippens, 22 Gregory Island Road, an abutter to the property spoke to the Board in opposition to the renovation. She felt that the renovation would negatively affect the value of her property, by cutting down on the limited view she has now. She is also concerned about how much larger the applicant is making the house from its existing size. The board made no decision in this matter, they will research Conservation Commission imposed deed restrictions which may exist. The applicant will appear before the board on August 1, 2001 to continue this discussion.

Public Hearing /Scot's Way Realty Trust/Application to render more that 15% of the land surface impervious

Daniel Mayer TRS, 1 Liberty Road applying for a special permit under section 6-13.3 Water Resource Protection District Use Regulation. The applicant seeks approval for rendering impervious more than 15% of the lot area of the property located at lot 6-north side of Scot's Way 1000ft from the intersection of Scot's Way and Western Avenue.

Peter Flink of Griffin Engineering presented the project to the Board, no abutters were present.

The roof drains are directed to dry wells.

The Board discussed grading into swales instead of catch basins. Historically the Board has found that the catch basins are not maintained.

The Board requested additional details on the catch basins proposed.

A review from Damon Boutchie of the Essex DPW was discussed.

Damon found incorrectly answered questions on the application which will affect the applicant's calculations. The Board will need more information on this.

The Board requested annual maintenance schedules and inspections for catch basins to be filed with the Department of Public Works with this agreement

Per Damon floor drains to a tight tank are required for the building to be built to code.

Currently this is not in the plan. The Board will fax a copy of the letter from Damon to the applicant.

The Board suggests that the O/M plan, which the Board would like to view, have a budget in escrow so that the town can do the inspections if the owner does not provide the inspection in a timely manner. Inspections to include lot up keep if paved, inspection of catch basins and pumping of tight tank for the building.

The applicant may begin construction of the building at any time as permit was approved earlier this year.

The Board suggested that the applicant look in to adding floor drains and a tight tank. The Board of Selectmen forwarded a letter to the Planning Board advising that the Planning Board request sufficient engineering data from the applicant, and a special permit be granted only where no detriment to ground water recharge is suspected. The applicant must return to the Board with details and more information about this project.

**Motion: Betsy Shields moves to close the Public Hearing
The motion was seconded by Jud Lane and unanimously passed by those members present.**

Turtleback Road/Peter Van Wyck

Peter Van Wyck requested for the benefit of the town, that the road not be completed until construction of houses on the road are finished. He would like to postpone putting the last coat of asphalt on the road so the heavy equipment will not damage it. He would like the Board to request a letter from Larry Graham confirming this is good practice. Peter let the Board know his intention is to subdivide the property and sell it to a developer. Michael Cataldo expressed some doubt, that if the Board allows Peter to bypass the agreement for judgment, now in effect, that the road will ever be completed. The Board listened to Mr. Van Wyck's request and agreed to discuss it with Larry Graham. No decision was made on the postponement of the completion of the road.

142 Eastern Avenue/TJP Realty Trust/Request Change of Use/Site Plan Review

The Board addressed and discussed changes made. Revised engineering drawings submitted earlier this week as a result of the Conservation Commission's review of the applicant's plan.

Points brought up by the Board:

Normal Business Operating hours restricted to 7 a.m. to 7 p.m. Monday thru Saturday and 9 a.m. to 3 p.m. on Sunday.

No bulk or material deliveries will be allowed outside the normal operating hours.

The driveway entrance shall be designed to maximize vehicle operator line of sight views and maximize the safe ingress and egress from the property.

Discussion was put on hold to address 25 Apple Street

25 Apple Street/Tara Subdivision/XLO Realty Trust/Gloria and Edwin Story

Betsy Shields withdraws from the discussion as she is an abutter.

Clay Morin, Engineer, presented a definitive subdivision plan to the Board which would divide the existing lot with existing house into two lots. The attorney John Guerin was unable to attend the meeting. The Board requested information from him regarding deed

restrictions no later than July 25, 2001. The board accepted the application with plans as well as a check for \$200.00.

Motion: Michael Cataldo moves to set the date for a Public Hearing contingent on the applicant delivering the deed and easement information by July 25, 2001. The date for the Public Hearing would be August 15, 2001. The motion was seconded by Gil Guerin and unanimously passed by those members present.

Discussion of 142 Eastern Avenue resumes.
Betsy Shields rejoins the discussion.

142 Eastern Avenue/TJP Realty Trust/Request Change of Use/Site Plan Review

The Board discussed at length concerns that they had with the tractor-trailer trucks and company trucks with trailers, entering the driveway as well as driving through the parking lot to access the back storage area.

Points brought up by the Board

All parking created shall be designed to reduce or eliminate storm water runoff into neighboring properties. Any water discharge from the property shall not degrade any existing wetlands.

No below grade loading docks will be permitted.

Composting piles shall consist of grass clippings, leaves and other residual materials from the landscaping operation only, as presented at the public hearing.

Storage of Hazardous materials related to the operation of the business or for sale shall be stored indoors in such a way that no hazard will be posed to any neighboring properties, and in all cases IAW with the regulations maintained by DEP.

In no event shall the property be used for the storage of any septic handling trucks or equipment, or for the storage of any hazardous waste. Nor shall it be used for any use with the potential of introducing noxious, hazardous, or unpleasant odors into the atmosphere.

The clearing of existing trees and vegetation should be minimized. A buffer along neighboring residential properties will be required to minimize the impact of commercial operations on the neighborhood. This buffer can be a combination of existing or transplanted trees, bushes or fencing.

The Board has concerns about screening for the 7 direct abutters, the town by-laws require this screening and it is not noted sufficiently in the plan.

Lighting shall be maintained so as to create a safe environment, but shall be minimized outside of normal operating hours. No internally illuminated signs will be allowed.

The Board members individually indicated to the applicant that if they were to vote this evening that they would be inclined to vote against the project. All board members agreed that there were problems with safety, parking and access through the lot, perimeter concerns (fencing/screening trees/leaving original vegetation) and how this proposed business's affect on the neighborhood. The scope of the proposed business and the configuration of the lot do not appear to work well together.

The applicant requested that the board not vote on this project tonight and allow them time to amend the plan to address the problems with regards to safety and screening cited by the Board.

The Board agreed to delay a vote until the meeting on August 1, 2001 to allow the applicant to address concerns of the Board.

The Board discussed MGL Chapter 40 A Section 9. This section explains the differences between Site Plan Review and Special Permit proceedings. According to MGL the Special Permit process allows the Board to permit or deny based on their findings. In addition this chapter gives the Board the authority and details how to modify the permit if approved.

The Board discussed MGL Chapter 40 Section 10. This section explains the voting procedures for a Special Permit.

Planning Board Business

The Board decided to set aside some time at the beginning of each meeting for Jud Lane to address the members and advise them what he has learned at the Conservation Commission meetings he attends as liaison.

The meeting minutes were reviewed.

Motion: Gil moves to approve the minutes from the 6/20/01 with minor correction.

The motion was seconded by Jud Lane and unanimously passed by those members present.

Meeting was adjourned at 11:10 p.m.

The next meeting is scheduled for Wednesday, August 1, 2001, commencing at 7:30 p.m.

Presented by: Lorie Woodward
Lorie Woodward, Admin. Assistant

Attested to: Jud Lane
Jud Lane, Clerk

TOWN OF ESSEX PLANNING BOARD

AGENDA

JUNE 20, 2001

(Scout House)

7:30 p.m.

7:30 p.m.

Building Inspector's Report

8:00 p.m.

Peter VanWyck
ANR Turtleback Road Extension

8:30 p.m.

Planning Board Business

Scot's Way Lot 31F Robert Griffin Engineer
Scot's Way Realty Trust/Special Permit Application

142 Eastern Avenue TJP Realty Trust/Change of use

DPW Commissioner Nomination

List Board members and addresses

Approval of Minutes
June 6, 2001

Approval of Bills Payable
1 payroll request

Mail

**Town of Essex Planning Board
Minutes
Wednesday, June 20, 2001
7:30 p.m.**

The meeting was held at the Scout House and was opened at 7:35p.m. by Scottie Robinson, Chairman

Attendees: Scottie Robinson, Westley Burnham, Jud Lane, Betsy Shields
Absent: George Stavros, Michael Cataldo, Gil Guerin
Building Inspector: Bill Sanborn
Secretary: Lorie Woodward

Building Inspectors Report

36 Lakeshore Drive/Request for Permit to raise building 4 ft. 7 in. and add deck
Conservation Commission granted approval with order of conditions. Board of Health approval for 4 bedroom Septic System. Applicant needs approval from Board of Health of floor plan. Bill will not issue permit until Board of Health has approved. Total height of house, 21 ft. 4 in.

Motion: Westley Burnham moves to approve the application from Russel Ulrey, 36 Lakeshore Drive, to reconstruct existing house and extend as shown on plans presented with decks as defined on the application. Board of Health approval is tentative, Conservation Commission has approved, Building Inspector will hold the permit until final Board of Health approval. 6-4.2 Existing structure is nonconforming and the proposed alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.

The motion was seconded by Betsy Shields and unanimously passed by those members present.

39 Main Street/1st Congregationalist Church/Building Permit for addition
Map 40 lot 28. No change of use, addition to church consisting of poured concrete foundation and wood framed structures designed by architect. Demo permit previously issued. Part of the property has been demolished. Discussion of the renovations by architect, Tom Mayo, with the plans. The applicant will continue to use the current septic system, approved by the Board of Health until the sewer comes through. Discussion of moving the crosswalk and adding a handicapped parking space. The Board advised the applicant to talk to the state about the parking space because it is a state road. The applicant has been dealing with Conservation Commission even though they are not inside the 100ft. boundary. The height of the renovated area will be 27 ½ ft. The footprint has been increased. Discussion of drainage, gutters and down spouts that go to dry wells. The applicant needs final sign off from the Board of Health before the permit will be issued. The Building Inspector will continue to monitor the building permit process.

Motion: Westley Burnham moves to approve the Building Permit for the 1st Congregationalist Church of Essex, 39 Main Street, for an addition to the church as presented, plans with the Building Inspector, finding that the proposed addition meets all the required zoning as defined in Essex Zoning Bylaws, the existing building is nonconforming in several ways, and due to the nonconforming nature of the lot under 6.4-2 the proposed alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. Final Building Permit issuance to be withheld until the Building Inspector has the necessary approvals.
The motion was seconded by Betsy Shields and unanimously passed by those members present.

23 County Road/Peter and Caroline Harrison/Request for Building Permit
Map 12 lot 3 has Board of Health approval, Conservation approval and Wetlands approval, DPW approved that the construction is not in the sewer district. \$800,000.00 in renovations to existing house. Existing house is a split level they plan to change it to a colonial. The renovations will make the house less nonconforming than it is currently.

Motion: Betsy Shields moves to approve the application for Building Permit by Peter and Caroline Harrison 23 County Road for renovation and alteration of the one family house with minimal addition to the house, they are decreasing the nonconformity. Under 6.4-2 the proposed alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.
The motion was seconded by Jud Lane and unanimously passed by those members present.

7 Hardy Lane/Charles & Nancy Ronchetti/Request for Building Permit
Expansion of 2nd floor dormer, space for 3rd floor attic, dormer added to rear of structure. Board of Health approval, Conservation and DPW not required. The Board discussed the project, no problems noticed.

9 Indian Rock Road/Mr. & Mrs. Mike Dyer/Request for Building Permit
Map 34 lot 79B. The applicant would like to install bed lofts in playroom, new screen room with deck over, replace some windows and closets. Board of Health and Conservation Commission approvals. The Building Inspector needs plans stamped by Board of Health before issuing a permit. The Board discussed the project, no problems noticed.

Discussion of new sign off sheet, with the Building Inspector as the conductor of the procedure of the applicant through the different Boards, i.e. Board of Health, DPW, Planning Board Conservation Commission, Fire Department.

Scottie Robinson has stepped down as Chairman, Westley Burnham has assumed the position, Scottie has not removed herself from the table in order to maintain a quorum, invoking the rule of necessity. Scottie is a neighbor to the applicant Peter VanWyck.

Turtleback Road Subdivision/Presentation of ANR

The intent of tonight's request is to release the existing covenant so the applicant can subdivide another portion of Turtleback Subdivision, creating 5 new lots, in place of that the applicant has developed this new covenant which is going to cover new lot 34 and that will be the towns insurance for the performance guarantee for the remaining work required under subdivision requirements.

The road currently is about 90% complete. Larry Graham estimates the expense to finish the road at \$80,000.00.

The lot offered was perked 3yrs ago, but will need to be re-perked as the date will run out in June 2001. The lot has drainage easements on the property.

According to the Agreement for Judgment the subdivision road needs to be completed before and future subdivision of lots.

Scottie will accept the covenant and give it to the town council to review before the Board makes any motion on the ANR.

Any land that does not meet the guidelines for a buildable lot needs to be delineated as non-buildable per the state. The board can not sign an ANR that does not have lots that do not conform to the zoning delineated as non-buildable on the plan.

Motion: Betsy Shields moves to hold a public hearing for the purpose of reviewing a Special Permit application for Scot's Way Realty Trust for making more than 15% of upland area impermeable, (constructing a garage) on July 18, 2001.

The motion was seconded by Jud Lane and unanimously passed by those members present.

Westley Burnham exited the meeting 9:20 p.m.

142 Eastern Avenue/Change of Use Residential to Commercial

Discussion 142 Eastern Avenue by remaining members. The Board has not received updated plans changed for Conservation Commission to meet the order of conditions. Discussion of 6-6.12, the site plan review bylaw regulates the development of structures and sites in a manner which considers the following concerns and where necessary requires modification of development proposals to eliminate or minimize potential problems and nuisances, and how it relates 142 Eastern Avenue. The Board questions whether the nursery will fit into the neighborhood with restaurants, antique stores, Puna's market, and homes. As well as the shape of the property does not seem conducive to the

proposed use with regards to the traffic traveling in and out of the property. Other commercial ventures at this site could be much worse.

Areas to be addressed in the permit

- Hours of operation i.e. vehicle start up and stop
- Lighting hours and placement
- Screening trees
- Fence materials
- Storage of salt/sand mixtures – clarification
- Plan for entire perimeter – screen trees, 10ft no cut zone...
- Traffic/Safety Study – Applicant to provide
- Minimize amount of vegetation to be removed
- Turning radius of vehicles on paved areas

Scottie informed the board that Sandy Patrican consented to serve another term on Public Works Commission.

The Board approved one payroll request.

Meeting was adjourned at 10:20 p.m.

The next meeting is scheduled for Wednesday, July 18, 2001, commencing at 7:30 p.m.

Presented by: Lorie Woodward Attested to: Jud Lane
Lorie Woodward, Admin. Assistant Jud Lane, Clerk

TOWN OF ESSEX PLANNING BOARD

AGENDA

June 6, 2001

7:30 p.m.

- 7:30 p.m. **Building Inspector's Report**
- 7:45 p.m. **Southern Avenue Lot A next to #206 Brian & Heidi
McKeon Represented by Robert J. Moriarty, Jr.**
- 8:00 p.m. **Peter Van Wyck**
 ANR Turtleback Road ext.
 Lowland Farms
- 8:15 p.m. **Scot's Way Lot 31F Robert Griffin Engineer
Dan Mayer/Scot's Way Realty Trust**
- 8:30p.m. **142 Eastern Avenue TJP Realty Trust/Change of use**
- 9:00 p.m. **Planning Board Business**
- Approval of Minutes
 October 4, 2000
 April 19, 2001
 May 2, 2001
 May 16, 2001
- Designation of liaison for Open Space and Conservation
 Commission
- Discussion of meeting start time
- Mail

**Town of Essex Planning Board
Minutes
Wednesday, June 6, 2001
7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School and was opened at 7:45p.m. by Scottie Robinson, Chairman

Attendees: Westley Burnham, Scottie Robinson, Gil Guerin, Jud Lane
Absent: George Stavros, Michael Cataldo, Elizabeth Shields
Building Inspector: Bill Sanborn
Secretary: Lorie Woodward

Building Inspector's Report

Lot A off Southern Avenue near 126 Southern Avenue

Present at meeting, Mr. Moriarty the attorney, and Heidi and Brian McKeon, prospective buyers for the property. Also present were Sandra Fritsch and her husband, current owners of 126 Southern Avenue, and Joe Knowles former owner. Mr. Moriarty is prepared to present an ANR for approval. The Chair informed Mr. Moriarty that town tax records indicate the owner of record is different from the owner identified by Mr. Moriarty at the May 10 meeting. Per the attorney it is not the Board's duty to determine ownership of the property. Frontage for the property in question was determined to be nonexistent. The ANR application was not formally submitted.

40 Lakeshore Drive/Essex Trust/Tim Briar

The applicant wants to raise the house 5 feet to install a new septic system. There will be no change in the original footprint. The additional height will not exceed the height restriction in the bylaws. The Board has no zoning concerns at this time. Letter will be sent to the Building Inspector and copied to Conservation Commission to this effect.

12 Prospect Street/Ernest Doucette

The applicant would like to add an additional story to his house. He would also like to change the use from a single-family house to a two family house. The Board sent the Building Inspector back to the applicant with questions, lot size, parking, etc.

Scot's Way/ Cell Tower

The board offered some guidance to the Building Inspector on what variances might be required, and informed the Inspector once the variances are obtained the Board would require the applicant to through the Special Permit process.

Planning Board Business

Turtleback Road Extension/Peter VanWyck/presentation of an ANR for signature
Scottie Robinson removed herself from the discussion, Westley Burnham assumed the position of Chair for the duration of this discussion.

The board determined that the ANR for six lots could not be signed until the Board receives the performance guarantee that the applicant was made aware of last year. The Board also determined that they would be willing to consider other options, including holding a buildable lot as surety, if cash is unavailable. The applicant was told bank letters of credit (with expiration dates) are not acceptable, and that cash is preferred. Peter will return at a later date.

Lowland Farms

Scottie returns to the discussion and assumes the position as Chair.

Per the town council the Board will refrain from any discussion on this property until the agreement for judgment negotiated last November is signed and filed with land court.

Scot's Way Lot 31F/Robert Griffin Engineering

Reviewed plans presented by Robert Griffin for making more than 15% of upland area impermeable. Discussion of time timeline for the Special Permit/Site Evaluation process. Robert to deliver application and check on 6/7/01. The Board discussed holding a public hearing on 7/18/01 so as to allow time for advertising, further discussion at the next meeting.

142 Eastern Avenue

Tudy and Kim Bartlett, addressed the Board because they are abutters of 142 Eastern Avenue and they were not notified of the Special Hearing on May 16 to provide input regarding the change of use at this address. They have strong concerns about the nursery and provided the Board with a detailed letter. They were not on the certified list of abutters provided to the Planning Board secretary. The Board notified the Assessor's office of this and has not heard back. If the Bartletts have further concerns they may contact the Board of Appeals. The Board expressed their dismay that the Bartletts were not notified and that it was not the Board's intent to deceive. Other concerned neighborhood residents, Lysa Leland and Joanne Jordan were also present.

Planning Board Business

Motion: Westley Burnham moves to approve the minutes for May 16, 2001. The motion was seconded by Gil Guerin and unanimously passed by those members present.

Motion: Westley Burnham moves to approve the minutes for October 4, 2001. The motion was seconded by Jud Lane and unanimously passed by those members present.

Motion: Westley Burnham moves to approve the minutes for April 18 and May 2, 2001. The motion was seconded by Gil Guerin and unanimously passed by those members present.

The Chairman of Conservation Commission has contacted the Board to request that one of the Planning Board members also be a member of the Conservation Commission as George Stavros has resigned. Ed Perkins has requested Betsy Shields. Betsy will

continue to serve as a member of the Open Space Commission and so is not available.
Jud Lane volunteered to serve as a Conservation Commission member.

Motion: Westley Burnham moves to write a letter to the Selectman recommending Jud Lane to the Conservation Commission. The motion was seconded by Gil Guerin and unanimously passed by those members present.

Discussion of the meeting start time, 7:30 p.m. It was decided that the time should remain the same for now.

Meeting was adjourned at 10:00 p.m.

The next meeting is scheduled for Wednesday, June 20, 2001, commencing at 7:30 p.m.

Presented by: Lorie Woodward
Lorie Woodward, Admin. Assistant

Attested to: Jud Lane
Jud Lane, Clerk

TOWN OF ESSEX PLANNING BOARD

AGENDA

May 16, 2001

7:30 p.m.

- 7:30 p.m. **Building Inspector's Report**
- 8:00 p.m. **Public Hearing on application by TJP Realty Trust
142 Eastern Avenue**
- 8:30 p.m. **Scott Boches SMB Development 4 Lot Subdivision off Ice
House Lane presentation of preliminary plan**
- 9:00 p.m. **Planning Board Business**
- 106 Southern Avenue
- Elect Officers
- Approval of Minutes
 October 4, 2000
 April 19, 2001
 May 2, 2001
- Approval of Bills Payable (3)
- Letters
 Brendhan Zubricki
 Dept. of Public Works
- Mail

**Town of Essex Planning Board
Minutes
Wednesday, May 16, 2001
7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School and was opened at 7:47p.m. by the chairperson.

Attendees: Westley Burnham, Scottie Robinson, Elizabeth Shields, Gil Guerin, Jud Lane, Michael Cataldo

Absent: George Stavros.

Building Inspector: Bill Sanborn.

Secretary: Lorie Woodward

Planning Board Business

66 Choate Street map 16 lot 12 New house 5 Bedroom approved by Board of Health Conservation Commission and wet lands, site plan appears in order, building plans in order, only item in question is the height of the building which will be verified before issuing the permit.

Motion: Betsy Shields moves to approve the application for a building permit for William Guerriero, 66 Choate Street Lot 4 R map 16 lot 12 for one single family new house located on plan as shown dated 4/11/01. The motion was seconded by Scotti Robinson and unanimously passed by those members present.

Southern Avenue Lot A near 206 Southern Avenue

According to the applicant's attorney, Robert Moriarty, Jr., the lot has been in existence since 1831 in its present configuration. The issue is frontage. Per the board the applicant must prove that it was an accepted way in 1972, which the town has a specific list of approved ways in existence when the latest subdivision laws were created, or it was created under chapter 41 section 81 subdivision control.

Mike Cataldo removed himself from any discussion or voting on this issue.

Robert Moriarty claims there is a deeded easement to the property. According to the attorney they have a 1974 endorsement by the planning board in relation to another lot on this private way. The board will consult the minutes from 1974, to see how they apply to this lot. The applicant will be placed on the agenda of the next meeting on 6/6/01 to bring further information.

Mike Cataldo rejoins the meeting.

Public Hearing/Special Permit/142 Eastern Avenue/Change of use.

Move meeting to cafetorium.

Westley Burnham opened meeting.

The intent of the meeting is not to give permission to do a project or not, it is only to allow input and legitimate concerns from the neighbors and citizens as to how it is going to occur, if there are special considerations for whatever reason, i.e., lighting or drainage. Under the town bylaw the applicant has the right to do what has been proposed.

Mr. Beatrice, Esq., brief synopsis

Represents Tom and Joe Pallazola, brothers who have been in the landscaping business for about 10 years. The engineer is Ward Eisenhour. Background: the brothers currently work out of Manchester where they rent. They have an opportunity to purchase the property in Essex. They plan to use the existing dwelling, install a parking lot and build an accessory building. The intent is to store the equipment and vehicles in the accessory building and run the business of the nursery out of the dwelling. They feel it is an appropriate use for the site, and it will be an asset for the community

Ward Eisenhour engineer brief synopsis

Long parcel

Existing on site is a residence, it will be refurbished for office space. A septic design has been approved for the site and it will provide service for the office space as well as a bathroom for the accessory building out back. They intend to provide a parking area as well as drainage for parking area, see site plan available at planning board office for more details. The rear of the parcel will be for storage of materials, stock, trees, bushes, topsoil, mulch and items of that nature. The driveway they intend to construct will be made of a reprocessed material which will be porous and cut down on runoff. There are wetland concerns, they currently have a silt fence in place to protect the areas. There is an up coming meeting with the Conservation Commission to discuss other concerns in this area. The building to be constructed in the rear of the parcel is to be steel, dimensions 6500sq. ft. single story building.

Board member's questions

Scottie Robinson: Will you be growing on site or in containers? for purposes of drainage and fertilizing.

Applicant: We intend to do both. We will definitely try to grow as much stock as we can. There will be some storage of mulch as well as a mulch pile of grass and leaves

Scottie Robinson: Where will you be growing on the property?

Applicant: Toward the back of the lot.

Michael Cataldo: What is the total land area?

Applicant: Nearly 4 acres.

Michael Cataldo: What percentage of the property is going to be covered over?

Applicant: The percentage is relatively small, the dwelling is 1200 to 1500 and the accessory building is 6500 sq. ft.

Gil Guerin: Concerns about added traffic in both directions.

Applicant: We have not done any studies, we feel there will be minimal impact.

Gil Guerin: How many trucks do you have?

Applicant: There are 5 trucks currently.

Michael Cataldo: How many employees?

Applicant: Seasonal 5-10

Gil Guerin: The current dwelling will be used for retail business, there will be no residence and no change in the foot print?

Applicant: Correct.

Betsy Sheilds: What are the hours?

Applicant: Landscaping hours are 7:00am to 3:00pm

Westley Burnham: The point of this hearing is to discuss the conversion from residential to commercial and the impacts which need to be addressed as far as the over all project, i.e. drainage, (conservation commission) exterior lighting and anything else relevant.

Mike Cataldo expressed concerns about parking, Westley said this would be addressed at a latter time based on the bylaws.

Open up Hearing to the Public

Westley acknowledged that the Board received a letter from Lysa Leland with a list of concerns about the change of use. The board will keep it on file for review.

Christa MacDonald 146 Eastern Avenue

Concerned about how close the proposed parking lot is to her property line, worried about exhaust fumes. The applicant intends to put screening trees along the property line. Other concern is drainage. The applicant intends to tilt the parking lot so it's pitch is in the other direction so it should help the situation.

Ruth Savage 138 Eastern Avenue

Concerned about increase in traffic and the clearing of property. The rear of the property will be cleared for stock. Concerned about the parking of vehicles and equipment. The applicant intends to keep these items in the accessory building out back. Ruth was concerned about the enforcement of this.

There will be additional discussions regarding the change of use. The public is welcome to attend. The next meeting is June 6.

Discussion about the increase in traffic, considered negligible since 133 has so much traffic already.

Jo Ann Jordan 143 Eastern Avenue

Concerned about having two businesses so close together, on opposite sides of the road, causing accidents. The Police dept. and other boards were notified of this meeting but did not choose to attend. The visibility aspect will be looked into further to ensure that it is adequate for safe egress and ingress.

Concerned for the children's safety having a business on the same side of the road as the sidewalk. The board is not able to deny access to the property.

Ruth Savage 138 Eastern Avenue

Concerned about lighting after hours. The Board will address the issue of area lighting. The board can not overly regulate the hours that they are open for business.

Todd Dawson 153 Eastern Avenue

Concerned about the nursery's runoff into the wetland. The Conservation Commission will address this issue.

Bruce Johnson

Will there be fuel tanks. No, there will be no tanks.

Jo Ann Jordan 143 Eastern Avenue

What will be the composition of the compost pile. Grass and leaves nothing else.

Westley Burnham

It can be very difficult and costly to enforce the compliance to the regulations.

Jo Ann Jordan 143 Eastern Avenue

Will the compost pile be visible from across the street. Not very likely

Motion: Mike Cataldo moves to close the Public Hearing.

The motion was seconded by Gil Guerin and unanimously passed by those members present.

Scott Boches Informal preliminary plan 4-lot subdivision Arielle Lane located off of Ice House Lane. The board viewed the plans. The existing buildings will be demolished. Concerns about railroad easement and who owns property. Forty thousand square feet total, very small amount of wet lands. For the definitive the board will need the wetlands delineated, and a calculation of the remaining uplands. Fire hydrants will most probably be needed. Clear up land swap (Sylvia's Property) with an ANR before the subdivision. The Board recommends that the applicant review the list of subdivision rules and basically identify everything that they don't meet and request a waiver for it. If there are no waivers requested the board assumes that the applicant will comply with all rules.

106 Southern Avenue

Westley Burnham had a discussion with Paul Famolari. There is a communication problem between Mr. Famolari and his builder. Paul has asked to withdraw without prejudice the application that is presently in front of the board based on the fact that the plans that were submitted to board were woefully inadequate, specifically in terms of the off street parking and drainage issues. He has hired a civil engineer to complete a set of plans that are in scale and will address these issues and resubmit at a latter date.

Motion: Michael Cataldo moves to accept without prejudice the withdrawal of the application for Paul Famolari, 106 Southern Avenue, based on a request due to an inability to obtain the required material in the required time frame.

The motion was seconded by Gil Guerin and unanimously passed by those members present.

Election

Motion: Westley Burnham moves to nominate Scottie Robinson for Chairman.

Michael Cataldo seconded and passed unanimously by members present.

Motion: Gil Guerin moves to nominate Betsy Shields for Vice-Chair.

Michael Cataldo seconded.

Motion: Gil Guerin moves to nominate Westley Burnham for Vice-Chair.

Michael Cataldo seconded. The vote taken by the Board members present elected Westley as Vice Chair.

Westley Burnham moves to nominate Jud Lane for Clerk.

Michael Cataldo seconded, passed by board members present.

The board may expect the resignation of George Stavros.

The board needs to assign a new liaison for the Conservation Commission.

Betsy Shields will continue as the Open Space liaison.

Each Board member will take the lead on a project.

Gil Guerin – Mixed use, business and residence on the same property

Betsy Shields – Community Development Plan

Westley Burnham – Develop a handbook for new members, and procedures for site plan review

Scottie Robinson – Drafting an Open Space residential design bylaw

Discussion about trying to get the information from the meetings into the paper so that the town is more informed of what the board is doing.

There was a complaint issued against Westley Burnham from Dr. Kippenberger, of Essex Animal Care Center, for conflict of interest. The complaint was immediately forwarded to the board of selectmen and to the town council, at which point he was effectively exonerated in town councils opinion. Westley has been cautioned to refrain from virtually any further discussion of this address because Jan Nichols is his sister in law and a neighbor.

Approval of Bills Payable

Board members signed one payroll request and two bills payable forms.

The meeting adjourned at 10:00 p.m.

The next meeting is scheduled for Wednesday, June 6, 2001, commencing at 7:30 p.m.

Presented by: Lorie Woodward Attested to: John A Lane
Lorie Woodward, Admin. Assistant Jud Lane, Clerk

TOWN OF ESSEX PLANNING BOARD

AGENDA

May 2, 2001

6:30 p.m.

6:30 p.m. **Building Inspector's Report**

7:00 p.m. **Planning Board Business**

Letter to Town Administrator
Re: Community Development Plan
Dated April 19, 2001

Update from Kopelman and Paige

Approval of Minutes
4/18/01

Approval of Bills Payable

Mail

**Town of Essex Planning Board
Minutes
Wednesday, May 2, 2001
6:30 p.m.**

The meeting was held at the Essex Elementary/Middle School and was opened at 6:30 p.m. by the chairperson.

Attendees: Westley Burnham, Walter Rich, Scottie Robinson, Betsy Shields, Joe Walker, Gil Guerin.

Absent: George Stavros.

Building Inspector: Bill Sanborn.

Secretary: Lorie Woodward

Planning Board Business

142 Eastern Avenue/Special Permit/Site Plan Review Application The applicant never provided the board with a survey plan, only an engineer's blueprint. At the last meeting extra copies of the blueprint were requested. The copies were distributed to the Fire Department, Police Department, Conservation Commission, Department of Public Works, Board of Health, Selectmen, and Sally Souci for the Special Hearing scheduled for Wednesday May 16, 2001. The hearing will stand.

106 Southern Avenue/Special Permit/Site Plan Review Application The board has not received the information requested by letter on April 19, 2001. The hand drawn plot plan was not drawn to scale and is insufficient to make conclusions about drainage. If the information requested in the letter is not received by May 15, 2001 the applicant will have to reapply. At the next meeting the board will either set a date for a special hearing or rescind the application

This is the last meeting for Joe Walker and Walter Rich.

Building Inspector's Report

219 John Wise Avenue: The contractor is requesting a change of use from a single to a two family home. The plans show the apartment is to be built over the garage. The site is not inside the sewer district

Motion: Joe Walker moves to approve the change of use for 219 John Wise Avenue, from a single family home to a two family home. The motion was seconded by Walter Rich and unanimously passed by those members present. Note: Previous building permit was issued and all other approvals were received prior to initial issuance.

247 Western Avenue: The owner is requesting a building permit to install an apartment in the basement of the home recently completed. The original structure on the site, a two family was demolished in April of 2000. The site is located in the sewer

district. The installation of the apartment is a direct replacement of the original structure and within the two-year statute of limitations.

Planning Board Business

The Planning Board is in the position to take the lead in a Community development plan. Brendan sent the state notebook of information, the how to develop a community development plan to Betsy. The State will only deal with the Chair or CoChair of the Board.

Westley Burnham is not interested in being chair on the board for the next session. His main goal is to create the planner's handbook for new members. The handbook will contain subdivision regulations, chapter 40 and a list of definitions and clarifications.

Gil Guerin is not interested in being the chairman. He is very busy between his family and his own business.

Scottie Robinson and Betsy Shields are willing to be chairman

Westley's suggestions for major projects for future

Chair - Scottie

Vice Chair - Westley

Cluster Zoning - Scottie

Community Development - Betsy

Mixed use by law - Gil

Site Plan review regulations - Westley

Discussion regarding George Stavros's lack of attendance to meetings.

Discussion regarding cluster zoning. Essex needs to decide, if they would like to have the standard cookie cutter thought process, or to have a new process for subdivisions. Once the applicant makes the submission there is only a small window of time for dealing with the situation.

Scottie and Walter went to workshop last month. Scottie attended a seminar concerning regulations for maintenance and access to utility poles. Scottie has a 14-page bylaw from a surrounding town for dealing with utility companies. Currently Essex has a reasonable cell tower bylaw that requires a two-mile radius. This may be a not be an issue if cell phones are declared a utility.

Approval of Bills Payable

Board Members signed one payroll request.

Letter from the Selectman regarding an up coming meeting May 14, 2001 in the cafetorium, exclusively devoted to the coordination of several projects involving the Essex cause way. Mass Highways plans to raise the cause way so it does not flood at abnormal high tides, and would like to drop the utilities under ground with the sewer.

Integrated set of Essex Bylaws

Brendan Zubricki has completed an electronic version of the bylaws. It has not been proof read yet. It is necessary to get this completed.

Westley is working on an electronic version of the subdivision regulations. Currently they need to be proofed. Scottie has offered to assist.

The chairperson adjourned the meeting at 8:30 p.m.

The next meeting is scheduled for Wednesday, May 16, 2001, commencing at 7:30

Presented by: Lorie Woodward Attested to: Jud Lane
Lorie Woodward, Admin. Assistant Jud Lane, Clerk

TOWN OF ESSEX PLANNING BOARD

AGENDA

APRIL 18, 2001

(Scout House)

7:30 p.m.

- 7:30 p.m. **Building Inspector's Report**
- 8:00 p.m. **142 Eastern Avenue**
*Special Permit/Site Plan Review Application – Request
For Public Hearing*
- 8:15 p.m. **106 Southern Avenue**
*Special Permit/Site Plan Review Application – Request
For Public Hearing*
- 8:30 p.m. **Planning Board Business**
- Letter from Town Administrator*
Re: Community Development Plan
dated April 10, 2001
- Approval of Minutes*
April 4, 2001
- Approval of Summer Schedule*
- Approval of Bills Payable*
- Mail*

**TOWN OF ESSEX PLANNING BOARD
MINUTES
WEDNESDAY, APRIL 18, 2001
7:30 p.m.**

The meeting was held at the Scout House and was opened at 7:30 p.m. by the chairperson.

Attendees: Westley Burnham, Walter Rich, Scottie Robinson, Betsy Shields, Joe Walker.

Absent: Gil Guerin, George Stavros.

Building Inspector: Bill Sanborn.

Secretary: Genie Dorfman, Laurie Woodward.

BUILDING INSPECTOR REPORT

135 Eastern Avenue: Plans of the structure are presented by the Building Inspector. No site plan is available. Original permit was issued as an in-law apartment. According to the Planning Board the dwelling is still a single-family. Applicant has never applied for a change of use. Board can convert to two-family but property is in the Sewer Betterment District. There exists a five-year moratorium on change of use. Permit should be changed to two-family. The Board recommends that the Building Inspector bring the permit back after All Town Meeting on May 1, 2001, at which time the Selectmen may or may not modify the language of the Sewer Betterment Bylaw. No action is taken.

Pork Chop Lots: The Building Inspector posed a question about "pork chop lots" and whether they exist in Essex. It was stressed that Essex has "creatively designed lots".

142 EASTERN AVENUE/SPECIAL PERMIT/SITE PLAN REVIEW APPLICATION

Tom Pallazola is present to answer questions regarding the application of TJP Realty Trust. Plans are presented. Applicant is seeking approval for a change of use from residential to commercial for the above-mentioned address. The Board indicated that the property is in the Sewer Betterment District, and suggested that the wording of the Bylaw may or may not be changed at All Town Meeting on May 1, which may effect the property in question. The Board does not foresee any problems with the plan from a functional standpoint. There may be a problem legally, however, due to the Sewer Betterment Bylaw. Pallazola requests a hearing date be scheduled to commence the required procedures.

Motion: Scottie Robinson moves to approve the Special Permit/Site Plan Review application of TJP Realty Trust and to schedule a Public Hearing for a Special Permit for change of use under Section 6-6.12 of the zoning bylaw. Hearing to be held on Wednesday, May 16, 2001, at 8:00 p.m. at the Essex Elementary and Middle School on Story Street.

The motion was seconded by Walter Rich and unanimously passed by those members present.

106 SOUTHERN AVENUE/SPECIAL PERMIT/SITE PLAN REVIEW APPLICATION

Members of the Board reviewed the application of Paul Famolari for the property located at 106 Southern Avenue. A Site Plan Review is required because plans are non-residential in use. Applicant is requesting a date be set for the Public Hearing. The Board requested height, parking and abutters information at the last meeting. The applicant sent revised rough plan to the Board

and a letter dated April 11, 2001. The Board reviewed the revised plan and suggests that it would be prudent for the applicant to submit information requested to scale (i.e. parking spaces) and to include drainage plans particularly in an area with historical drainage issues.

Motion: Joe Walker moves to accept the application of Paul Famolari for the property at 106 Southern Avenue, for a Special Permit for use under Section 6-6.12 of the zoning bylaw. A letter is to be sent to the applicant stating that the Board believes that it would be prudent for the applicant to submit information requested to scale (i.e. parking spaces) and to include drainage plans particularly in an area with historical drainage issues. The 8 ½" x 11" plans are difficult to read. Updated material is requested by May 2, 2001, and required by May 15, 2001 to comply with time restrictions set in place now that the application is accepted. The hearing date will be set once these materials are received and reviewed again at a Planning Board meeting.

The motion was seconded by Walter Rich and unanimously passed by those members present.

PLANNING BOARD BUSINESS

May 2, 2001 Planning Board Meeting

Motion: Joe Walker moves to commence the Planning Board's meeting scheduled for May 2, 2001, at 6:30 p.m., to avoid possible conflict if All Town Meeting scheduled for May 1, 2001 is continued to a second evening. The meeting schedule posted at Town Hall will reflect that change.

The motion was seconded by Walter Rich and unanimously passed by those members present.

Approval of Minutes

April 4, 2001

Motion: Scottie Robinson moves to approve the minutes of the April 4, 2001 meeting as written. The motion was seconded by Joe Walker and unanimously passed by those members present.

Administrative Assistant Job

Laurie Woodward is in attendance and will be acting as the new Administrative Assistant to the Planning Board.

Community Buildout Presentation

Planning Board members responded to the memo from Brendhan Zubricki, dated April 10, 2001, by indicating the following areas of involvement:

1. Take GIS data on plots in Essex and overlay the 1995 flyover wetland maps. Potentially GIS data can be used to initiate a system of other map overlays.
2. Development of a Conservation Subdivision Bylaw (cluster zoning).
3. Investigate and initiate a Mixed-Use Bylaw.

It was noted that the Open Space Committee will be involved.

Approval of Summer Schedule

The schedule of meetings from April, 2001 to August, 2001 of the Planning Board was presented.

Motion: Joe Walker moves to approve the schedule of meetings from April, 2001 to August, 2001, realizing that it is subject to change if issues arise.

The motion was seconded by Betsy Shields and unanimously passed by those members present.

Approval of Bills Payable

Board members signed one payroll request and a Bills Payable form.

The meeting adjourned at 9:30 p.m.

The next meeting is scheduled for Wednesday, May 2, 2001, commencing at 6:30 p.m.

Presented by:


Genie Dorfman, Admin. Assistant

Attested to:


S.S. Robinson, Clerk

TOWN OF ESSEX PLANNING BOARD

AGENDA

APRIL 4, 2001

7:30 p.m.

7:30 p.m.

Building Inspector's Report

8:00 p.m.

106 Southern Avenue

Special Permit Application

8:30 p.m.

Planning Board Business

Approval of Minutes

March 21, 2001

Dates to Remember

Community Buildout Presentation

April 9, 2001 at 7:45 p.m. at the school

Approval of Bills Payable

Mail

**TOWN OF ESSEX PLANNING BOARD
MINUTES
WEDNESDAY, APRIL 4, 2001
7:30 p.m.**

The meeting was held in the Teachers' Lounge at Essex Elementary and Middle School and was opened at 7:45 p.m. by the chairperson.

Attendees: Westley Burnham, Gil Guerin, Walter Rich, Scottie Robinson.

Absent: Elisabeth Shields, George Stavros, Joe Walker.

Building Inspector: Bill Sanborn.

Secretary: Genie Dorfman.

BUILDING INSPECTOR REPORT

113 Eastern Avenue: The Building Permit application of Shane and Mary Ehlers was presented. Plans are to excavate for foundation, place concrete, wood frame, garage unit and entry connection. A site plan was presented. Board of Health has approved plans and plans meet setbacks. No action is required, for information only.

106 SOUTHERN AVENUE/SPECIAL PERMIT/SITE PLAN REVIEW APPLICATION

Members of the Board reviewed the application of Paul Famolari for the property located at 106 Southern Avenue (previously identified as 101/103 Southern Ave.). A Site Plan Review is required because plans are non-residential in use. Applicant is requesting a date be set for the Public Hearing. Plans are for a 1,500 square foot, two-story barn. Questions regarding the number of abutters, parking and the height of the structure were discussed. Section 6-5.8k of the Land Use Regulations was referenced. Members of the Board request the following information before a date can be set for the Hearing:

1. Parking: Specify the location of the lot and the number of spaces. Refer to Section 6-5.8k of the Town of Essex Land Use Regulations, which states "One parking space for each 500 square feet of floor area...". For a 3,000 square foot non-residential structure, six parking spaces need to be indicated on the plot plan.
2. Height: Specify the height of the planned structure.
3. Verify abutters list.

APPROVAL OF MINUTES

March 21, 2001 - Scottie Robinson requests the following change to Planning Board Minutes of 3/21/01. Under the Section titled Approval of Minutes:

Revise the revision by inserting the word "maintenance" as follows: "The Board will be looking for a permanent maintenance agreement."

Motion: Walter Rich moves to approve the minutes of the March 21, 2001 meeting as amended. The motion was seconded by Gil Guerin and unanimously passed by those members present.

ADMINISTRATIVE ASSISTANT JOB OPENING

Genie Dorfman, the current Administrative Assistant to the Board has given notice. It was agreed that she would stay through the meeting on the 18th of April. An ad in the Gloucester Times will be Faxed tomorrow for publication on Monday the 9th and will be posted at Town Hall.

COMMUNITY BUILDOUT PRESENTATION

Members were reminded of the Community Buildout Presentation scheduled for April 9, 2001 at 7:45 p.m. at the school.

GREEN NEIGHBORHOODS SEMINAR

Scottie Robinson agreed to attend the seminar scheduled for Thursday, April 12, 2001, from 7:30 to 9:00 p.m.

APPROVAL OF BILLS PAYABLE

Board members signed one payroll request.

The meeting adjourned at 9:00 p.m.

The next meeting is scheduled for Wednesday, April 18, 2001 at the Scout House.

Presented by:

Genie Dorfman
Genie Dorfman, Admin. Assistant

Attested to:

S.S. Robinson
S.S. Robinson, Clerk

TOWN OF ESSEX PLANNING BOARD

AGENDA

MARCH 21, 2001

7:30 p.m.

7:30 p.m.

Building Inspector's Report

8:00 p.m.

**Public Hearing/Special Permit
TJP Realty Trust – 142 Eastern Avenue**

8:30 p.m.

Planning Board Business

Approval of Minutes

March 14, 2001

Information for Articles for Warrant

Dates to Remember

March 28, 7:00 p.m. – Public Hearing with Selectmen
Re: Vacant Lots in Sewer Service Area

Mail

**TOWN OF ESSEX PLANNING BOARD
MINUTES
WEDNESDAY, MARCH 21, 2001
7:30 p.m.**

The meeting was held in the Teachers' Lounge at Essex Elementary and Middle School and was opened at 7:30 p.m. by the chairperson.

Attendees: Westley Burnham, Gil Guerin, Walter Rich, Scottie Robinson, Elisabeth Shields, Joe Walker.

Absent: George Stavros.

Building Inspector: Bill Sanborn.

Secretary: Genie Dorfman.

BUILDING INSPECTOR REPORT

101/103 Southern Avenue: The Building Permit application of Paul Falomari to build a barn for storage was presented. There will be no plumbing, no animals, no septic. Plans meet setbacks for principle building. Site plan was presented. The lot is 28,000 square feet. An original Building Permit was approved for storage on 2/26/96, but applicant did not proceed with plans within the six month time period required. Plans have approval from Board of Health and Conservation. A question was raised regarding Site Plan Review. According to Section 6-6.12.2 of the Bylaws this will require a Site Plan Review in order for him to continue with his plans. Also, he should provide the Board with documentation that there is a pre-existing nonconforming structure. The Building Inspector will notify the applicant that a Site Plan Review is required.

4 Soginese Creek Road: The Building Permit application for Mr. and Mrs. R. Carter Hall was presented to add a 16' x 22' addition and a 10' x 10' addition to be built on a slab. The resulting buildings will be a breezeway and a pottery room (for non-commercial use only). Board of Health and Conservation has approved plans. A plan was presented. This application was presented for the Board's information only. No action was taken.

7 Main Street: A recent complaint regarding Sea Meadow was discussed. The Building Inspector has contacted the owner(s) of Sea Meadow regarding the display of merchandise in the yard. One idea discussed is that a deck be built on the side of the house, or enclose it with a fence on the side of the house that would meet setbacks. The Building Inspector believes that they would meet bylaw requirements. A Home Occupation can display homemade items made on the premises. The intent of the Home Occupation bylaw is that it allows a person to make items at home and retail the merchandise in the yard. Mail boxes and chairs, for example made on the premises of Sea Meadow would be allowed. The other option is to seek a variance, but that cannot be done until Sewer Bylaw is complete. The owners have been given some time to decide on a solution.

PUBLIC HEARING/SPECIAL PERMIT

TJP REALTY TRUST – 142 EASTERN AVENUE

Tom Beatrice, attorney for Thomas Pallazola, trustee, TJP Realty Trust, provided notice to the Board that, at his client's request, the Petition for Site Plan Review and Special Permit be

withdrawn without prejudice. The process can commence in the future after receipt of all required materials.

Motion: Scottie Robinson moves to approve the request of Tom Beatrice, attorney for Thomas Pallazola, trustee, TJP Realty Trust to withdraw the Petition for Site Plan Review and Special Permit for the property located at 142 Eastern Avenue, without prejudice.

The motion is seconded by Gil Guerin and unanimously passed by those members present.

APPROVAL OF MINUTES

March 14, 2001

Scottie Robinson requested the following changes to Planning Board Minutes of 3/14/01.

25 Apple Street:

Revise the 11th sentence as follows: "The Board will be looking for a permanent ^{maintenance} agreement." SR

Delete the 17th sentence and add a new 17th sentence: "Waiver requests for drainage calculations, engineering review, underground utilities, property roundings and water provision requirements were among those said to be unlikely."

Revise the 18th sentence as follows: "The preliminary plan was not formally submitted."

Motion: Joe Walker moves to approve the minutes of the March 14, 2001 meeting as amended. The motion was seconded by Elisabeth Shields and unanimously passed by those members present.

ARTICLES FOR WARRANT DEADLINE

The deadline of March 19, 2001 has passed. The Board will attempt to include in the articles for warrant the following:

...To see if the Town will vote to amend Chapter 6-3 *DEFINITIONS* of the Town of Essex Zoning By-law by making the following changes: **Replace 6-3.25 DEFINITION OF LOT FRONTAGE with the following:**

"The front of a lot shall be construed to be the portion nearest the street where adequate access to required parking facilities and principle buildings can be provided. The minimum property depth required for computing the frontage shall be the minimum front yard requirements as measured perpendicular to the street which frontage is claimed. For the purposes of determining yard requirements on corner lots, all sides of the lot adjacent to the streets shall be considered frontage, and yards shall be provided as indicated under "Yards" in this section".

The meeting adjourned at 9:15 p.m.

The next meeting is scheduled for Wednesday, April 4, 2001.

Presented by: Genie Dorfman
Genie Dorfman, Admin. Assistant

Attested to: S.S. Robinson
S.S. Robinson, Clerk

TOWN OF ESSEX PLANNING BOARD

AGENDA

MARCH 14, 2001

7:30 p.m.

- 7:30 p.m. **Building Inspector's Report**
- 8:30 p.m. **25 Apple Street/Edwin and Gloria Story**
- 8:45 p.m. **Planning Board Business**

Vacant Lots in Sewer Service Area

Reanalyze Ref #19, Map#34, Lot 74A

Approval of Minutes

February 21, 2001

August 15, 2000

Dates to Remember

March 19 - Articles for Warrant Deadline

March 21, 8:00 p.m. – Public Hearing

Re: 142 Eastern Avenue

March 28, 7:00 p.m. – Public Hearing with Selectmen

Re: Vacant Lots in Sewer Service Area

Site Plan Review Regulations

Cluster Zoning

Definitions

Approval of Bills Payable

Mail

**TOWN OF ESSEX PLANNING BOARD
MINUTES
WEDNESDAY, MARCH 14, 2001
7:30 p.m.**

The meeting was held in the Teachers' Lounge at Essex Elementary and Middle School and was opened at 8:00 p.m. by the chairperson.

Attendees: Westley Burnham, Gil Guerin, Walter Rich, Scottie Robinson.

Absent: Elisabeth Shields, George Stavros, Joe Walker.

Building Inspector: Bill Sanborn.

Secretary: Genie Dorfman.

BUILDING INSPECTOR REPORT

34 Lakeshore Drive: Original plans were approved 9/19/91. After approval plans were scaled back. Current plan is to raise the roof and add a dormer. The "footprint" will not be altered. Plans have Board of Health approval.

Motion: Gil Guerin moves to approve the Building Permit application of Daniel and Janet Rice, of 34 Lakeshore Drive, for the addition of a wood framed dormer on original part of house and a deck on existing sunporch, finding that the proposed alteration will not be substantially more detrimental than the existing nonconforming use to the neighborhood (Section 6-4.2-Bylaws). Plans have Board of Health approval.

The motion was seconded by Scottie Robinson and passed unanimously by those members present.

229 Western Avenue: The Building Inspector reported that the owner is working within the bylaws. No action has been taken. A discussion of what constitutes an impervious surface ensued. A consistent definition is needed. Scottie agreed to discuss the issue with Damon Boutchie.

7 Main Street: A recent complaint of SeaMeadow, 7 Main Street was discussed. The Building Inspector reported that he and the complainant have come to an agreement. The Building Inspector will contact the owner(s) of SeaMeadow and request all merchandise in the yard be removed every evening as specified in the Bylaws.

25 APPLE STREET

Because of a potential conflict of interest, Gil Guerin requests that he recuse himself. If he does, however, a quorum will not be present. As Gil has no financial connection to the applicant, is not an abutter, is only related to the person representing the buyer, attorney John Guerin, and as plans are preliminary and no action will be taken, the chairperson Burnham invokes the rule of necessity, and requests Gil remain at the table. All Board members present agree.

Preliminary plans, dated 4/19/99, revision date 3/5/01, were presented by Clay Morin of Morin Engineering for the subdivision of 25 Apple Street to create one lot. The buyer, Ms. Clair Spofford, and the sellers XLO Realty Trust represented by Mr. and Mrs. Ed Story, were present. They request the Board's opinion regarding their plans to date. The road was discussed. It will continue to be private, will be 16 feet of gravel. A sixty-foot radius will be created for emergency vehicles. The Board will be looking for a maintenance agreement, ~~tied to the~~

~~agreement to guarantee the completion of the road.~~ If frontage created is in excess of 300 feet, the Board will assume the creation of two lots. The Board encourages the creation of a single lot by keeping the frontage under 300 feet. Does frontage need to be perpendicular to the road? Plans need to meet setbacks for entire frontage. Waivers listed on the plans were summarized. With the exception of possible drainage issues, the Board does not foresee any problems going forward with the definitive plan. The preliminary plans were ^{was} not formally submitted. No action was taken.

* Waiver requests for drainage calculations, engineering review, underground utilities, property roundings and water provision requirements were among those said to be unlikely.

APPROVAL OF MINUTES

August 15, 2000

Motion: Gil Guerin moves to approve the minutes of the August 15, 2000 meeting as amended. The motion was seconded by Walter Rich and unanimously passed by those members present.

February 21, 2001

Motion: Gil Guerin moves to approve the minutes of the February 21, 2001 meeting as amended. The motion was seconded by Scottie Robinson and unanimously passed by those members present.

ARTICLES FOR WARRANT DEADLINE

Information for the Articles for Warrant must be submitted next week. The deadline is March 19, 2001. Possible definitions were discussed.

Access requirements: Buildings and lots containing more than one principle use shall be permitted provided converted or existing buildings with mixed use shall not create a new or increase in existing nonconformity of existing zoning requirements for all uses expected. Off-street requirements shall be added for all uses expected in compliance with 6-5.8 and 6-5.9. New construction shall meet zoning requirements for all uses.

Mixed Use: Mixed use shall be permitted provided they meet minimum zoning requirements for all uses to be contained. A conversion shall not extend the increase in nonconformity.

Frontage: Section 6-3.25 shall read: "The front of a lot shall be construed to be the portion nearest the street where adequate access to required parking facilities and principle buildings can be provided. The minimum property depth required...."

The meeting adjourned at 10:05 p.m.

The next meeting is scheduled for Wednesday, March 21, 2001.

Presented by: Genie Dorfman
Genie Dorfman, Admin. Assistant

Attested to: S.S. Robinson
S.S. Robinson, Clerk

TOWN OF ESSEX PLANNING BOARD

AGENDA

FEBRUARY 21, 2001

(Scout House)

7:30 p.m.

7:30 p.m. **142 Eastern Avenue/Tom Pallazola**
Special Permit Application

7:45 p.m. **Planning Board Business**

Approval of Minutes

January 24, 2001

February 7, 2001

Letter from Kopelman & Paige dated 2/13/01

Re: Low Land Farms

Letter from Glovsky & Glovsky dated 2/15/01

Re: Bucklin/36 Story Street

Articles for Warrant Deadline

March 19, 2001

Vacant Lots in the Sewer Service Area

Selectmen to Schedule Public Hearing

Site Plan Review Regulations

Cluster Zoning

Definitions

Approval of Bills Payable

Mail

**TOWN OF ESSEX PLANNING BOARD
MINUTES
WEDNESDAY, FEBRUARY 21, 2001
7:30 p.m.**

The meeting was held at the Scout House on Pickering Street and was opened at 7:40 p.m. by the chairperson.

Attendees: Westley Burnham, Gil Guerin, Scottie Robinson, Elisabeth Shields, Joe Walker.
Absent: Walter Rich, George Stavros.
Secretary: Genie Dorfman.

APPROVAL OF MINUTES

January 24, 2001

Motion: Betsy Shields moves to approve the minutes of the January 24, 2001 meeting, as amended to include and identify vacant lot reference #31, Map 8, Lot 31D, as a buildable lot. The motion was seconded by Scottie Robinson and unanimously passed by those members present.

February 7, 2001

Motion: Joe Walker moves to approve the minutes of the February 7, 2001 meeting, as amended. The motion was seconded by Betsy Shields and unanimously passed by those members present.

LETTER FROM KOPELMAN & PAIGE (2/13/01)

The letter regarding Low Land Farms was reviewed. No action was taken.

LETTER FROM GLOVSKY & GLOVSKY (2/15/01)

The letter regarding Bucklin/36 Story Street was reviewed. No action was taken.

ARTICLES FOR WARRANT DEADLINE

The deadline for the articles for warrant is March 19, 2001.

SITE PLAN REVIEW

Westley Burnham will review material Joe Walker has presented regarding Site Plan Review. It was brought to the attention of the Board that Appendix B is not part of the Bylaws, and any changes that are developed do not have to go to ATM. Joe Walker offered that the Special Permit application should be more specific, to be completed in more detail, that the Board must continue to educate property owners that procedures are not as "informal" as in the past.

DEFINITIONS

Decks – A definition was again discussed, the following issues were identified.

- The primary concern is for preexisting, nonconforming structures, not for new construction.
- A deck is open, unroofed, unwallled.
- A deck is not part of the principle structure.
- A deck is not habitable space.
- Are decks to be held to principle sideline requirements?

- A deck is not impervious – will not be able to roof it.
- Identify why there are setback requirements.
- Identify that decks should not go closer than ^{ten} eight feet from the property line.
- Can we define open deck as an accessory structure that would limit extension to ten foot sideline?

Frontage (access) – Wes Burnham will draft definition to include access capabilities and bring to the next meeting on March 7th.

CLUSTER ZONING

A community Buildout presentation is scheduled for March 5th at 7:00 p.m. at the school. Planning Board members agreed to attend if possible. However, the Board needs a standard cluster zoning bylaw.

MISCELLANEOUS

Additional topics that require discussion:

- Permit Process for Home Occupations – A process is needed at least to register the home occupations with Building Inspector. Joe Walker agreed to get regulations.
- Paving Permits – Essex appears to be only town that does not require permits. Joe Walker will bring in a copy of the Rivers Act.
- Mixed Use - A provision for mixed use would at least legitimize the pre-existing, but illegal mixed use in the town.

142 EASTERN AVENUE/TJP REALTY TRUST

The special permit application regarding 142 Eastern Avenue, received on Tuesday, February 20, 2001, was presented to the Board. Applicant is seeking approval for a change of use from residential to commercial for the above-mentioned address.

Motion: Joe Walker moves to schedule a Public Hearing on the Application by TJP Realty Trust, for a Special Permit for use under Section 6-6.12 of the zoning bylaw. Meeting to be held on Wednesday, March 21, 2001 at 8:00 p.m. at the Essex Elementary and Middle School on Story Street. The motion was seconded by Betsy Shields and unanimously passed by those members present.

The Board having no further business adjourned at 9:15 p.m.

The next meeting is scheduled for Wednesday, March 7, 2001.

Presented by: Genie Dorfman
Genie Dorfman, Admin. Assistant

Attested to: S.S. Robinson
S.S. Robinson, Clerk

TOWN OF ESSEX PLANNING BOARD

AGENDA

FEBRUARY 7, 2001

7:30 p.m.

- 7:30 p.m. **Building Inspector's Report**
- 8:15 p.m. **25 Apple Street/Edwin & Gloria Story**
Feasibility Plan
- 8:30 p.m. **Brook Pasture Lane/Eric and Nancy Mears**
- 8:45 p.m. **Planning Board Business**
- Approval of Minutes*
 January 17, 2001
 January 24, 2001
- Annual Report Deadline*
 February 20, 2001
- Articles for Warrant Deadline*
 March 19, 2001
- Site Plan Review Regulations*
- Cluster Zoning*
- Definitions – Frontage (access)*
 Decks with relation to setbacks
- Approval of Bills Payable*
- Planning Board's Office Move*
- Mail*

**TOWN OF ESSEX PLANNING BOARD
MINUTES
WEDNESDAY, FEBRUARY 7, 2001
7:30 p.m.**

The meeting was held in the Teachers' Lounge at Essex Elementary and Middle School and was opened at 7:30 p.m. by the chairperson.

Attendees: Westley Burnham, Gil Guerin, S.S. Robinson, Joe Walker.

Absent: Walter Rich, Elisabeth Shields, George Stavros.

Building Inspector: Bill Sanborn.

Secretary: Genie Dorfman.

BUILDING INSPECTOR REPORT

66 Choate Street: The Building Inspector presented a new set of plans on the same footprint as previous plans for Mr. Mark McKenna and Ms. Cheryl DeSousa for a single family home. The dwelling is approximately 3,600 square feet plus a three-car garage. The height is not in excess of 32 feet. The foundation permit has been approved. All other specifications are met.

Motion: Joe Walker moves to approve the final building plans as presented of Mark McKenna and Cheryl DeSousa for a single family dwelling at 66 Choate Street, Lot 1, Map 16, Lot 12.

The motion was seconded by S.S. Robinson and passed unanimously by those members present.

229 Western Avenue: The Building Permit, dated January 12, 2000, approved by the previous Building Inspector was discussed. It appears that the Permit was handled improperly. The building inspector approved the change of use from single family residential to the proposed use of an animal care facility. Only the Planning Board can approve a change of use. It was agreed that the Building Inspector should ask the Selectmen to discuss this with Town Counsel.

142 Eastern Avenue: Pallazola Brothers are interested in purchasing this property. Preliminary plans were presented for a landscaping business. The current structure will be torn down, two new buildings will be built (60' x 80'), a new septic system will be added, the driveway will be processed material not "hot top". It was agreed that the change of use requires a Special Permit Process and Site Plan Review. No action was taken.

36 Lakeshore Drive: The Building Inspector presented rough plans for Mr. Russell Ulrey of 36 Lakeshore Drive. Formal architectural plans and engineering drawings will be submitted at a later date. The property is 50,000 square feet. Planning Board members don't see any obvious problems with the preliminary plans except perhaps Board of Health issues.

18 Coral Hill: John Michaud, Architect for the applicants, John Davis and Nancy Deville of 18 Coral Hill presented drawings. The original drawings included three piers. Because of the contour of the land a solid wall is needed. The plans are still within the lot coverage requirement. Original Title V research was inaccurate. A new septic system is

required. The total impervious dimensions have been increased but still are within the lot coverage requirement. The straight wall will cover 25 square feet. The Board cannot authorize any increase in the non-conforming nature of the building. No action was taken.

4 Scots Way, Lot 4: The Building Inspector presented the Building Permit application for PMC Realty Trust. The Special Permit granted June 3, 1998, is still in effect as site work is underway, and because this special permit process started before the approval of recent bylaw amendments, and because plans have not been altered, a site plan review is not required. The proposed use is commercial. The building is 9,720 square feet. The footprint is 4,860.

Motion: Gil Guerin moves to approve the Building Permit application of PMC Realty Trust, 239 Western Avenue, Essex, MA, for new construction at 4 Scots Way, Lot 4, finding the plans meet all requirements of Town of Essex Bylaws and conditions as set forth in the Special Permit. Estimated cost is \$300,000. Use of building is office space and warehouse. Plans submitted dated 12/2/97, as referenced in the Special Permit granted June 3, 1998. The motion is seconded by Joe Walker and unanimously passed by those members present.

Fences

The Building Inspector asked if permits are required for fences 6 feet and under. The Board indicated that it's entirely up to the Building Inspector.

25 APPLE STREET

Because of a potential conflict of interest, Gil Guerin requests that he recuse himself. If he does, however, a quorum will not be present. As Gil has no financial connection to the applicant, is not an abutter, is only related to the person representing the buyer, and as plans are preliminary and no action will be taken, the chairperson Burnham invokes the rule of necessity, and requests Gil remain at the table. All Board members present agree.

Preliminary plans, dated January 31, 2001, were presented for the subdivision of 25 Apple Street to create one lot. The buyer, Ms. Clair Spofford, and the sellers, Mr. and Mrs. Ed Story were present. Greg Saab is the engineer, filling in for Clay Morin. This is not an ANR but a subdivision. They request the Board's opinion regarding their plans to date. The intent is to continue the existing roadway to increase the frontage, thereby creating a buildable lot. The lot is approximately 6-7 acres, which will maintain the rural nature of the area. The roadway is planned to be 16 feet, gravel. From a technical standpoint the plans are feasible.

Questions regarding an "approved or adopted way" were raised, as the "roadway" is only a driveway privately owned and does not have frontage on Apple Street.

BROOK PASTURE LANE

Eric and Nancy Mears presented a rough drawing of their plans to build a single family home on Brook Pasture Lane, and requested the Board's opinion of their plans to date. Recently the lot in question was found to be buildable, based upon preliminary Planning Board research requested by the Selectmen. It was recommended that the buyers contact the Conservation Commission regarding wetland issues and all other pertinent Essex boards and agencies. No action was taken.

APPROVAL OF MINUTES

January 17, 2001

Motion: Joe Walker moves to approve the minutes of the January 17, 2001 meeting as amended. The motion was seconded by Gil Guerin and unanimously passed by those members present.

January 24, 2001

S.S. Robinson suggested the Board table minutes dated January 24, 2001, until worksheets used in determining the data regarding Vacant Lots in the Sewer Service Area can be referenced.

ANNUAL REPORT DEADLINE

The deadline for the annual report is February 20, 2001. Wes Burnham will draft the report.

ARTICLES FOR WARRANT DEADLINE

The deadline for the articles for warrant is March 19, 2001.

SITE PLAN REVIEW

Joe Walker will research the existing Appendix B of the Bylaws and make suggestions to clarify and organize at the next meeting.

CLUSTER ZONING

Betsy Shields continues to gather information

DEFINITIONS

Frontage (access) – Wes Burnham will draft.

Decks – A new definition is needed, but requires further discussion.. What constitutes a deck? Why do setback requirements exist? Are decks living space? Are they a part of the principle structure? Do existing decks need to be “grandfathered”? Further discussion is required before a definition can be finalized.

The meeting adjourned at 9:45 p.m.

The next meeting is scheduled for Wednesday, February 21, 2001, at the **Scout House**.

Presented by: Genie Dorfman
Genie Dorfman, Admin. Assistant

Attested to: S.S. Robinson
S.S. Robinson, Clerk

TOWN OF ESSEX PLANNING BOARD
AGENDA
WEDNESDAY, JANUARY 24, 2001
7:30 P.M.

7:30 p.m. **Planning Board Business**
Vacant Lots in the Sewer Service Area

**TOWN OF ESSEX PLANNING BOARD
MINUTES
WEDNESDAY, JANUARY 24, 2001
7:30 p.m.**

The meeting was held in the Teachers' Lounge at Essex Elementary and Middle School and was opened at 7:30 p.m. by the chairperson.

Attendees: Westley Burnham, Gil Guerin, Walter Rich, S.S. Robinson, Elisabeth Shields, Genie Dorfman (Secretary).

Absent: George Stavros, Joe Walker.

VACANT LOTS IN THE SEWER SERVICE AREA

The Selectmen had previously identified vacant lots in the sewer service area in their letter dated November 6, 2000 and requested that the Planning Board identify which of these lots are buildable and which are not. After several work sessions and another work session this evening the following motion was made:

Motion: Gil Guerin moves to approve the preliminary findings as specified on the attached list titled *Vacant Lots in the Sewer Service Area*, dated January 24, 2001.

and revised on 2/21/01

The Board needs to inform selectmen in a letter accompanying this list of the following:

- a) that the criteria we used were based upon incomplete written records, common knowledge and information provided by long-time residents of the community;
- b) that our findings are based on town zoning issues;
- c) that we need to reiterate that when the town notifies property owners of our determination, they must be informed that other town and state agency rules and regulations will need to be met if and when they wish to build on property the Board has identified as buildable; and
- d) that the Board will entertain reviews on a lot by lot basis at the owner's request.

The motion was seconded by Walter Rich and unanimously approved by those members present.

*original list given to Selectmen
omitted ref # 31. This list was
amended on Feb 21 @ PB mtg to
include #31 and identified same
as Buildable lot.*

Robinson
Clerk

Essex Planning Board

Vacant Lots In the Sewer Service Area (January 24, 2001)

Map #8			
Ref No.	Lot No.	Buildable Vote Yes/No	Reason(s)
#22	Lot #43C	NO	Unable to locate.
#23	Lot #38A	NO	Frontage on Lakeview/not accepted road/upland issues. Abutts nonconforming property. Lack of area < 40,000 sq. feet.
#27	Lot #32H	YES	Upland in question.
#28	Lot #10E	YES	
#30	Lot #31F	YES	
#31	Lot #31D	YES	
#39	Lot #52C	YES	
#43	Lot #56	YES	
#44	Lot #55	YES	House exists.

Map #10			
Ref No.	Lot No.	Buildable Vote Yes/No	Reason(s)
#17	Lot #27	NO	Does not have proper frontage or acreage.
#18	Lot #33	NO	Does not have proper frontage and possibly wetlands.

Map #15			
Ref No.	Lot No.	Buildable Vote Yes/No	Reason(s)
#16	Lot #36	YES	Has proper frontage and acreage.
#20	Lot #32	NO	Does not have proper frontage or acreage.

Map #31			
Ref No.	Lot No.	Buildable Vote Yes/No	Reason(s)
#5	Lot #19	YES	Already has business on it.
#6	Lot #8A	YES	Already has been built on.
#7	Lot #8B	YES	Has frontage and acreage.
#8	Lot #8C	YES	Has enough acreage and frontage.
#42	Lots #10 & #11	YES YES	House on it. Does have proper frontage.

Map #32			
Ref No.	Lot No.	Buildable Vote Yes/No	Reason(s)
#41	Lot #5	YES	Appears to have been "grandfathered" and created pre-1954.

Map #34			
Ref No.	Lot No.	Buildable Vote Yes/No	Reason(s)
#19	Lot #74A	YES	We believe there is a house on this lot.
#26	Lot #57	YES	Existing barn.
#29	Lot #62	NO	No frontage.
#33	Lot #35	YES	"Grandfathered."
#34	Lot #31	YES	"Grandfathered."
#35	Lot #3	YES	"Grandfathered."

Map #35			
Ref No.	Lot No.	Buildable Vote Yes/No	Reason(s)
#36	Lot #5	YES	

Map #36			
Ref No.	Lot No.	Buildable Vote Yes/No	Reason(s)
#1	Lot #56A	YES	
#25	Lot #45	YES	
#37	Lot #74	NO	Undersized/frontage inadequate.
#38	Lot #5	YES	
#45	Lot #27	NO	Undersized lot/inadequate frontage.

Map #37			
Ref No.	Lot No.	Buildable Vote Yes/No	Reason(s)
#3	Lot #11	NO	Lack of upland, lack of frontage.
#24	Lot #44	YES	"Grandfathered".
#32	Lot #68	NO	Lack of frontage on accepted way.

Map #39			
Ref No.	Lot No.	Buildable Vote Yes/No	Reason(s)
#14	Lot #43A	YES	Frontage on Haskell Court not on Eastern Ave.
#15	Lot #33A	YES	Lot #33A is nonconforming, therefore, considered to be part of lot #33B. (33B plus 33A = one lot.)
#21	Lot #42	YES	Appears to have proper frontage on Haskell Court.

Map #40			
Ref No.	Lot No.	Buildable Vote Yes/No	Reason(s)
#40	Lot #46A	NO	It is considered part of lot#46 and is nonconforming. (46A plus 46 = one lot.)

Map #41			
Ref No.	Lot No.	Buildable Vote Yes/No	Reason(s)
#2	Lot #44	NO	Lack of frontage on accepted way. Potentially wetlands and lack of square footage.
#4	Lot #41	NO	Deed restriction states "no building shall ever be built on the premises."
#9	Lot #23A	NO	Nonconforming, inadequate frontage and is used as R.O.W.
#10	Lot #23B	NO	Cannot find definite lot description on maps or lot # - possibly part of road or marsh.
#11	Lot #28	NO	Inadequate square footage and frontage.
#12	Lot #45	NO	All wetland, marsh.
#13	Lot #22	NO	Inadequate frontage and square footage.

TOWN OF ESSEX PLANNING BOARD

AGENDA

JANUARY 17, 2001

7:30 p.m.

7:30 p.m. **Building Inspector Report**

8:00 p.m. **Lowland Farms/Peter VanWyck**

8:30 p.m. **Rolf Madsen**

Planning Board Business

Approval of Minutes
January 3, 2001

Site Plan Review Regulations

Cluster Zoning

Definitions – Frontage (access)
Decks with relation to setbacks

Approval of Bills Payable

Mail

**Town of Essex Planning Board
Minutes
Wednesday December 5, 2001
7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School and was opened at 7:35p.m. by Scottie Robinson, Chairman

Attendees: Scottie Robinson, Michael Cataldo, Andrew St. John, Betsy Shields. Westley Burnham and Jud Lane arrived at the beginning of the discussion of 2 Rocky Hill Road. Gil Guerin arrived during the discussion of the Town Grant Application for parking lot.
Building Inspector: Bill Sanborn
Secretary: Lorie Woodward

Building Inspectors Report

10 Rear Apple Street / Keith and Shelly Carter / Building Permit

The applicant is proposing to tear down an existing single family dwelling and build a new single family dwelling.

As Betsy Shield is an abutter to the property she recused herself from the discussion. The Board would not have a quorum without her. The Board put off discussing this application until other Board member arrived.

Betsy Shields returned to the discussion.

2 Rocky Hill Road / Jay Ramsey / Building Permit

Map 5 lot 10 The applicant is requesting a Building permit to erect a horse barn 25-ft by 30-ft. Per the applicant, there was a barn there previously, they are rebuilding it. Scottie recused herself from this discussion, as she may be an abutter and requested Westley Burnham chair this part of the meeting.

Motion: Andrew St. John moves to approve the application for a Building Permit for an accessory building for Jay and Evonne Ramsey at 2 Rocky Hill Road. The size of the building is 25-ft. by 30-ft. no sewage disposal, no water supply, no heating, no mechanical, no chimney or fireplaces. The proposal meets the minimum requirements of the Town of Essex Bylaws. The motion was seconded by Michael Cataldo and unanimously passed by those members participating in the discussion.

Scottie Robinson rejoined the meeting as Chairman.

The Board returned to the discussion of 10 Rear Apple Street, previously mentioned.

Betsy Shields recused herself from this discussion.

The proposed dwelling will be a two-story structure; the existing is a single story structure. The proposed structure will be on a new footprint. The existing structure will

remain until the occupancy permit is issued for the new dwelling. The proposed structure is a modular home.

Motion: Westley Burnham move to approve the Building Permit application, Keith and Shelly Carter, 10 Rear Apple Street, replace an existing dwelling with a new one. The existing dwelling will be allow to remain in place until the occupancy permit is has been issued, after disconnecting the original building from the septic system. The original building is to be destroyed and removed within 6 months of issuance of the Occupancy Permit. The Board finds this application meets all the minimum requirement of the Town of Essex Bylaws.

Betsy raised the question of where the actual property lines are. The applicant offered to show her where the granite marker was.

The Motion was seconded by Jud Lane and unanimously passed by Board members participating in this discussion.

229 Western Avenue / Update

Scottie informed the Board that the secretary had mailed a letter requesting that Mr. Kippenberger appear before the Board and address the circumvented Special Permit process. After two weeks with no response a second letter was mailed return receipt. At this time no response has been received by the Board.

Martin Street / Town Grant Application for Parking lot

The Board and the Building Inspector will be required to sign off on the application. In addition the Board will need to issue a letter of support of project. Brendan will be attending the meeting on December 19, 2001 to obtain the Board's signatures, and the application will be mailed the next day. The draft of the application was distributed to Board members prior to this meeting. Brendan apologized for the lack of a good drawing on this project. In essence there will be a paved parking lot, the DPW barn will be removed and relocated to the Water Dept. area on Centennial Grove. Brendan will provide a detailed map as soon as possible. Andrew St. John requested that the Board be provided with a drawing that shows as much of the surrounding area as possible to assist the Board in making an informed approval. Discussion of Handy-capped accessible parking.

Mention of 3 Dwellings per Lot

Brendan sent a memo regarding how many lots in Essex currently meet the requirements of this Bylaw. In addition none of the surrounding Town offer this option.

Planning Board Appointments

106 Southern Avenue / Paul Famolari, Lori Watson / Special Permit Application

The applicant appeared before Board to present the application updated with the information requested at the previous meeting. All information was added and the

engineers stamp was shown on the plans. The Board accepted the application and check for \$100.00. The Board set a date for the Public Hearing for January 16, 2002 at 8:00 p.m.

Motion: Westley Burnham moves to accept the application from Paul Famolari for a Special Permit at 106 Southern Avenue. Public Hearing to be scheduled for January 16, 2002 at 8:00 p.m.

The motion was seconded by Michael Cataldo and passed unanimously.

Meeting Dates

The Board approved the proposed meeting dates.

25 Apple Street / Tara Road Subdivision / XLO Realty Trust

Gloria Story checked with the Town Clerk and no appeals have been filed on the Tara Road Subdivision. She would like to bring the plan in for signatures. Scottie reminded her that she must conform with the all of the approval requirements before the Board signs the plans.

16 Martin Street / Paul Shea / Special Permit Application

Mr. Shea presented the plan to the Board and informed the Board that a comprehensive plan for the surrounding area would be forth coming to assist the Board in making an informed decision. The Board accepted the application and check for \$100.00. A Public Hearing was set for January 16, 2002 at 8:30 p.m. Discussion of easements on property. The applicant is appearing before the Zoning Board of Appeals on December 19, 2001.

Motion: Westley Burnham moves to accept the application for a Special Permit Hearing for John Coughlin, Trustee of Gateway Trust, for the property relative to 16 Martin Street to hold a Pubic Hearing to start a 8:30 p.m. January 16, 2002.

The motion was seconded by Jud Lane and passed unanimously.

Discussion of Mixed Use

The Town Bylaws do not address Mixed-Use properties. In the past the Board has approached these proposals by requiring the applicant abide by the more conservative of the two uses. The Board discussed proposing a new Bylaw to address this at the next town meeting.

Discussion of Erection of more than one principle structure on a lot

Attached is the memo from Scottie Robinson to the Town Administrator with the Board's comments.

Lakeview Road / George Benoit / ANR

Mr. Benoit appeared before Board to discuss his ANR application. Mr. Benoit presented the new plan, showing the changes requested at the last meeting. Correct abutters were noted on the plan, the 20-ft strip of land previously dedicated to the roadway was distributed between the three lots, and the requested disclaimer was noted on the plan. The Board informed Mr. Benoit that they could not sign the plan until the right of way was shown of the plan. Mr. Benoit will return to the next meeting.

31 Forest Street / George and Ruth French / ANR

Mr. French appeared before the Board and presented a plan to subdivide his property creating two lots, one of the lots will be non-buildable. Lot A contains the existing house and 31,477-sq ft. Lot B is 46,235-sq. ft., has no frontage and is not buildable.

Motion: Michael Cataldo moves to accept the application from George and Ruth French for a subdivision of land, Lot A and Lot B set on a plan dated September 26, 2001, creating two parcels of land, one 31,477sq. ft. and the second 46.235-sq. ft. find that Lot B is not a buildable lot. This plan meets the approval under Subdivision Control not Required Standards. The Motion was seconded by Jud Lane and passed unanimously.

30 Belcher Street / Peter Creighton / Proposed Upgrades to Driveway

Peter Creighton's engineer presented a plan for upgrading the Driveway. The starting width of the driveway is 16-ft., the width decreases to 11-ft. at the end. There are several pullouts and a turn around for fire trucks. The Board will draft a letter confirming that the upgrades proposed are acceptable, and in addition require that the driveway be completed by September 1, 2002.

Planning Board Business

New DEP Water Resource Protection District

DEP has developed new rules with regards to the Water Resource Protection District. Damon Bouchie is requesting a meeting with one of the Planning Board members to discuss the changing district and its effect. The Town of Essex Bylaw pertaining to the Water Resource Protection District will need to be revised. Betsy Shields and Gil Guerin volunteered to meet with Damon.

41 Forest Avenue / Jerome French / Cell Tower

Jerome French contacted Scottie for assistance in completing an application for a Special Permit. The secretary will mail the application and appendix B.

Lowland Farms

The Board received a letter from Larry Graham advising an escrow account be set up for Mr. Van Wyck with an original deposit of \$2000.00 and additional deposits as necessary for clerk of the works expenses. There are additional items on the Agreement for Judgment that need to be completed before the Board can sign off.

Tara Road Subdivision

The Board received a letter from the Conservation Commission. They will require the applicant to appear before their Board before any work may begin.

Handouts

Reference handouts provided by Scottie Robinson, published by the State Dept. of Housing, and Community Development (special permit, ANR, and others) were distributed to the Board.

Motion: Michael Cataldo moves to adjourn the meeting
The motion was seconded by Gil Guerin and passed unanimously

The next meeting is scheduled for Wednesday, December 19, 2001, commencing at 7:30 p.m.

Presented by: Lorie Woodward
Lorie Woodward, Admin. Assistant

Attested to: Jud Lane
Jud Lane, Clerk

**TOWN OF ESSEX PLANNING BOARD
MINUTES
WEDNESDAY, JANUARY 17, 2001
7:30 p.m.**

The meeting was held in the Teachers' Lounge at Essex Elementary and Middle School and was opened at 7:30 p.m. by the chairperson.

Attendees: Westley Burnham, Gil Guerin, Walter Rich, Elisabeth Shields, Joe Walker, Bill Sanborn (Building Inspector), Genie Dorfman (Secretary).

Absent: S.S. Robinson, George Stavros.

BUILDING INSPECTOR REPORT

7 Main Street (SeaMeadow): The Building Inspector discussed, briefly, the status of the pending complaint regarding this property, bringing the Board's attention to the letter dated October 7, 1999, to the previous Building Inspector. At that time, the buyers of the property asked the Building Inspector to determine whether they would be allowed to continue the business use on the first floor and rent the second floor as an apartment. No answer was provided, and they proceeded with the purchase. Is there a procedure that would allow the owners to continue the "mixed-use"? Should they apply for a variance? The Zoning Bylaws were written with single use in mind, they do not acknowledge "mixed-use". The owners cannot obtain a variance from a regulation that does not exist. It was agreed that the Bylaws need to be updated taking this issue into consideration.

59 Western Avenue: The application for Building Permit of Richard Clark was reviewed for a 36' x 32' addition for 59 Western Avenue, Map 36, lot 2A. Plans were presented and meet all criteria previously discussed, and all setbacks. All appropriate town boards and agencies approved previous plans, which are identical to current plans with the exception of the removal of the kitchen. No finding of the Planning Board is required for this application.

Essex Street Numbers

Westley Burnham indicated that the ^{Fire} Essex Police Department has agreed to identify confusing or inaccurate street numbers whenever possible.

LOWLAND FARMS – AGREEMENT FOR JUDGMENT

The letter from the Kopelman and Paige dated January 17, 2001, was discussed.

Motion: Joe Walker moves to accept the revised Agreement for Judgment, Peter Van Wyck v. Francis Dunn, et al., as they are members of the Planning Board for the Town of Essex, Land Court Department of the Trial Court Misc. No. 215261. The motion was seconded by Elisabeth Shields and unanimously passed.

LOWLAND FARMS/PETER VAN WYCK

Peter Van Wyck appeared for his 8:00 appointment, requesting permission to use a new engineer, Matt Hautala, to draft and stamp an original mylar for the plans approved in 1995. The Board is not concerned with who drafts the plans, as long as the resulting mylar overlays exactly the plans that were previously approved by the Board.

SITE PLAN REVIEW REGULATIONS

Walter Rich presented the Board with a copy of Hamilton's Site Plan Implementation Policies. Additional information will be gathered. A copy of the Bylaw amendments regarding Essex Site Plan Review, as approved by the attorney general, will be forwarded to members of the Board by the next meeting.

VACANT LOTS IN SEWER SERVICE AREA

Rolf Madsen appeared at the meeting requesting a resolution concerning the buildability of vacant lots in the sewer service area. The Selectmen have requested that the Planning Board identify which vacant lots are buildable and which are not. If the lots are buildable, the owners will be assessed a betterment fee. If they are not buildable the owners will not be assessed a betterment fee. In either case, the owners will be allowed to contest the Planning Board's preliminary findings by virtue of a letter drawn up by Town Counsel. The purpose of this exercise is to give property owners an indication of the buildability of their lot(s). If the owners proceed to contest the findings, an in depth investigation of that specific lot will be required. If the property owners agree with the Planning Board's findings, the preliminary finding will become final. The Selectmen have asked for a list of each lot (Map #, Lot #) and an indication per lot as to the rationale behind the findings. The Board agreed to have a work session as soon as possible.

CLUSTER ZONING

Betsy Shields presented cluster zoning regulations from Coastal Zone Management, and agreed to forward Westley a copy. Also, Betsy will ask a representative to make a presentation to the Board on how to write a cluster zoning bylaw, what steps would be required, etc.

TOWN MEETING

The Board is hopeful that the following topics can be addressed before Town Meeting.

- Cluster Zoning
- Mixed Use
- Home Occupation – Required Permit
- Paving permit
- Building Inspector's Wish List - Fees
- Decks – Exclusion of decks as part of principle structure.
- Frontage Language

APPROVAL OF MINUTES

Motion: Walter Rich moves to approve Planning Board Minutes dated January 3, 2001, as written.

The motion was seconded by Joe Walker and unanimously approved.

APPROVAL OF BILLS PAYABLE

Board members signed one bills payable and one payroll request.

The Board adjourned at 9:30 p.m.

The next meeting is scheduled for Wednesday, February 7, 2001

Presented by: Genie Dorfman
Genie Dorfman, Admin. Assistant

Attested to: S.S. Robinson
S.S. Robinson, Clerk

TOWN OF ESSEX PLANNING BOARD

AGENDA

JANUARY 3, 2001

7:30 p.m.

7:30 p.m.

Building Inspector Report

8:15 p.m.

36 Story Avenue/Bucklin

Acceptance of Signed Covenant

Receipt of Check

Signatures

Planning Board Business

Letter from Judy Field (12/26/00)

Re: 59 Western Ave. Addition

Approval of Minutes

December 20, 2000

December 6, 2000

November 15, 2000

November 15, 2000 (Exec. Session)

November 1, 2000

October 18, 2000

September 20, 2000

September 6, 2000

August 2, 2000

Letter from Atty. General

Re: Zoning Bylaw Changes

Site Plan Review Regulations

Cluster Zoning

Definitions – Frontage (access)

Decks with relation to setbacks

Approval of Bills Payable

Mail

**TOWN OF ESSEX PLANNING BOARD
MINUTES
WEDNESDAY, JANUARY 3, 2001
7:30 p.m.**

The meeting was held in the Teachers' Lounge at Essex Elementary and Middle School and was opened at 7:30 p.m. by the chairperson.

Attendees: Westley Burnham, Walter Rich, S.S. Robinson, Elisabeth Shields, Joe Walker, Bill Sanborn (Building Inspector), Genie Dorfman (Secretary).

Absent: Gil Guerin, George Stavros.

"In-Law Apartment"/2 Family Use Issue

Westley Burham, Brendhan Zubricki, Dave Folsom and Bill Sanborn have recently met to discuss the controversy that exists surrounding this issue. The resulting opinion is that a separate suite of rooms, with kitchen, bath(s), egress, that appears to be separate from the rest of the dwelling is an apartment. This will continue to be a subjective opinion based on the plans presented. Members agreed that a set of informal guidelines need to be developed to help make determinations on a case by case basis. Members agree to draft their ideas and create these guidelines at a later date.

BUILDING INSPECTOR REPORT

35 Rocky Hill Road: The Building Permit application for Mark Hinkam and Cotton Talbot was discussed. Plans were presented for the following additions: 6' x 12' dining room addition, 6' x 12' deck, a 12' x 32' deck, the conversion of a 12' x 24' deck to screen porch with addition of 6' to screen porch deck. The property is 10.1 acres. Board of Health and Conservation have signed-off.

Motion: Joe Walker moves to approve the Building Permit application of Mark Hinkam and Cotton Talbot of 35 Rocky Hill Road, Subdivision 17B, Map 5 lot 17B, for 6' x 12' dining room addition, 6' x 12' deck, a 12' x 32' deck, the conversion of a 12' x 24' deck to screen porch with addition of 6' to screen porch deck, as noted on the Permit application and plan, finding that the applicant has Board of Health and Conservation signatures and that Wetlands is not required. The property is 10.1 acres.

The motion is seconded by Walter Rich and unanimously passed.

151 Main Street: The Building Permit application of Don and Ann McPhail was discussed. Most of the renovations are on the interior of the home but a dormer is to be added to the exterior, which does not meet setback requirements. It is, however, over the existing structure. The change appears to be no more detrimental to the neighborhood and does not increase the non-conformity of the dwelling. It was agreed that the application does not require Planning Board approval.

Essex Street Numbers

The Building Inspector brought to the attention of the Board the difficulty of finding homes due to the lack of consistent numbering within the town. Problems include common driveways, the absence of mail boxes and street numbers. The Building Inspector was asked to take note when he comes across any problem and let the Board know.

7 Main Street, Sea Meadow: A question was asked regarding the status of the recent complaint regarding non-conforming business use of the above property. The Building Inspector referred to a letter from the current owners of the property to the previous Building Inspector, which stated their desire to continue the mixed use of the property and requested a determination that the property can continue as mixed use. Further discussion was postponed until the letter from the owners of 7 Main Street can be found.

36 STORY AVENUE/BUCKLIN

Miranda Gooding, attorney for Joan Bucklin appeared for her client. The covenant dated December 18, 2000 and plans dated May 15, 2000 (revised August 22, 2000), were reviewed.

Motion: Betsy Shields moves to accept the covenant agreement for the performance guarantee, dated December 18, 2000, with all conditions stated therein, from Joan Bucklin of 36 Story Street, receive \$1000 to be held in account for the clerk of the works, Larry Graham, and to endorse plans dated May 15, 2000 (revised August 22, 2000).

The motion was seconded by Walter Rich and unanimously passed.

Note: The Board requested that Ms. Gooding forward recording information for the covenant to the office as soon as possible.

APPROVAL OF MINUTES

Motion: Walter Rich moves to approve Planning Board Minutes listed below, as written with one exception. Exception is noted below.

The motion was seconded by S.S. Robinson and unanimously passed.

December 20, 2000 (exception is noted in Minutes)
December 6, 2000
November 15, 2000
November 15, 2000 (Exec. Session)
November 1, 2000
October 18, 2000

BYLAW CHANGES

The letter from the attorney general's office dated December 18, 2000 were reviewed. Briefly, it states that the bylaw amendments adopted at Town Meeting on May 1, 2000, were approved by their office.

SITE PLAN REVIEW REGULATIONS

Appendix B, Special Permit Issuance Rules, needs to be reconstructed. Betsy Shields volunteered to research other local towns' procedures and develop a procedure that the Board will need to implement Site Plan Review.

CLUSTER ZONING

Betsy Shields will obtain a draft copy of information from Coastal Zone Management. Also, a workshop entitled "Green Neighborhoods", to be held on February 8, 2001, was brought to the attention of Board members. It was recommended that some members attend.

VACANT LOTS IN SEWER SERVICE AREA

Betsy Shields has spoken with Rolf Madsen regarding this issue. The Selectmen shall desire that the "buildability" of each vacant lot be voted on by the Planning Board. The Board feels that their

preliminary findings cannot be turned into a definitive list in a timely manner. Westley Burnham will speak with Rolf Madsen before the next meeting. No action was taken.

DEFINITIONS

The following terms must be redefined. Board members agreed to come to the next meeting prepared to discuss the following:

- Frontage access capability
- Deck coverage
- Mixed Use

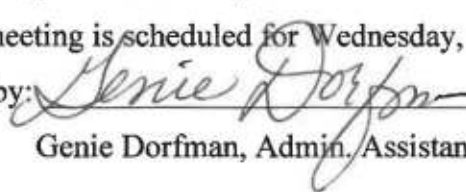
APPROVAL OF BILLS PAYABLE

Board members signed one bills payable and one payroll request.


The Board adjourned at 9:30 p.m.

The next meeting is scheduled for Wednesday, January 17, 2001

Presented by:


Genie Dorfman, Admin. Assistant

Attested to:


S.S. Robinson, Clerk

**Town of Essex Planning Board
Agenda
January 2, 2002
Essex Elementary/ Middle School
Room 9
7:30 p.m.**

- 7:30 p.m. **Building Inspector's Report**
- 8:00 p.m. **25 Apple Street / XLO Realty Trust / Subdivision**
- 8:15 p.m. **Warrant Articles**

Planning Board Business

*Approval of Minutes
12/19/01*

*Approval of Bill Payable
1 Payroll
2 Larry Graham*

Mail

**Town of Essex Planning Board
Minutes
Wednesday January 2, 2001²
7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School and was opened at 7:30p.m. By Westley Burnham.

Attendees: Michael Cataldo, Westley Burnham, Jud Lane and Andrew St. John.

Building Inspector: Bill Sanborn

Secretary: Lorie Woodward

Building Inspector's Report

8-10 Martin Street / Change of Use

The owner would like to change the use from a wood shop to a hair salon. The building is currently a commercial building and no finding from the Planning Board was made.

30 Belcher Street / Megan Means / Request for a Building Permit

The Planning Board has drawn up a letter of agreement with 30 Belcher Street LLC, with regard to the upgrades necessary for the access to the newly created lots.

Motion: Andrew St. John moves to approve the Building Permit application for construction of a single family residence, 30 Belcher Street, for Megan Means lot 2 map 13, Board of Health approval, Conservation Commission not required.

The motion was seconded by Michael Cataldo and passed unanimously.

Planning Board Business

Discussion of new Bylaw proposals.

The Building inspector requested a Bylaw that would double the Building Permit fee for a job completed without a Permit. The Board suggested that he discuss this with the Selectmen.

Discussion of requiring a Permit for a Home Occupation, so the Town can keep better track of how many are in operation and where they are located. In addition the Building Inspector would have the authority to revoke the Permit if the privilege was being abused. The Board will look into this further as time allows.

Water Resource Protection District Bylaw draft needed.

Westley Burnham presented the board with a handout outlining new Bylaws and revisions. The handout will be attached to the minutes.

The Building Inspector has not made any progress getting information regarding the work being done at Hardy Hatchery on Island road. The Building Inspector will place another call to the owner.

25 Apple Street / Gloria & Ed Story / Endorsement Subdivision Plan

Discussion of the maintenance agreement that should be attached to each lot so there is no confusion and the owner of each lot will know what he is responsible for.

The Board reviewed the modifications made and discussed at the last meeting.

Motion: Michael Cataldo moves to accept the covenant as presented by the XLO Realty Trust, for the subdivision plan entitled Tara Road Essex MA dated 7/1/01 revised 8/28/01 finding that it meets the requirements of the performance guarantee as required.

The motion was seconded by Jud Lane and passed unanimously.

The Board requested a stamped copy that it has been filed.

Motion: Jud Lane moves to endorse the Subdivision Plan finding that it has met all of the requirements of the November 7, 2001 approval. Larry Graham will be the Clerk of the Works acting on behalf of the Essex Planning Board.

The Motion was seconded by Michael Cataldo and passed unanimously.

The Subdivision Plan was signed.

Planning Board Business Continued

Discussion of new Bylaw proposals.

Site Plan Review, revision

Confine Site Plan Review to larger scale building projects.

By refining the scope of Site Plan Review it would allow the Board more time for planning issues.

Frontage

Frontage must be reasonably used as access; a driveway could be installed. The property owner may not use the accessible frontage, but it must be available.

All Bylaw revisions must be run by Town Counsel

Common Driveways

The draft Bylaw is based on Ipswich & Hamilton's current zoning for common driveways. Both Ipswich and Hamilton are restricted to two lots on one driveway.

In addition the Board discussed minimum driveway standards for a common driveway as well as single lot driveway, to ensure the emergency vehicles can access the site.

All pre-existing driveways would be exempted from this Bylaw.

Discussion of Maps, and what is available for the Planning Board to use.

Motion: Michael Cataldo moves to adjourn the meeting
The motion was seconded by Jud Lane and passed unanimously

The next meeting is scheduled for Wednesday, January 16, 200³~~1~~, commencing at 7:30 p.m.

Presented by: Lorie Woodward **Attested to:** Jud Lane
Lorie Woodward, Admin. Assistant **Jud Lane, Clerk**

**Town of Essex Planning Board
Agenda
January 16, 2002
Essex Elementary/ Middle School
Room 9
7:30 p.m.**

- 7:30 p.m. **Building Inspector's Report**
- 8:00 p.m. **Public Hearing / 106 Southern Avenue / Paul Famolari**
- 8:30 p.m. **Public Hearing / 16 Martin Street / John Coughlin**
 The Zoning Board of Appeals will be joining the meeting
- 9:30 p.m. **Planning Board Business**
 Warrant Articles
- Approval of Minutes*
 12/19/01
 1/02/02
- Liberty Road*
- Mail*

**Town of Essex Planning Board
Minutes
Wednesday January 16, 2001
7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School and was opened at 7:34 p.m. By Scottie Robinson Chair.

Attendees: Michael Cataldo, Westley Burnham, Jud Lane, Betsy Shields, Scottie Robinson, Gil Guerin and Andrew St. John.

Building Inspector: Bill Sanborn

Secretary: Lorie Woodward

Building Inspector's Report

Essex Ship Building Museum / Essex Historical Society / Building Permit discussion
Gil Guerin recused himself from the discussion; he is on the Ship Building Museum Board.

Dave Brown and Les Moore appeared before the Board to discuss a steel structure that has been erected over the Evelena Goulart, one of their exhibits. The structure is intended to protect the Evelena Goulart from the damage that snow, rainwater and sunshine would cause. It is not their intent to enclose the Goulart, just protect it from the elements. Plans for the structure were presented to the Board. The Board reminded the applicants that they must conform to the Building Inspectors regulations. The applicant offered an apology for not requesting a permit before building the structure, it was not their intent to ignore the Building Permit Process. The applicant is in the process of having an architectural engineer review the structure.

The property is owned by the Essex Ship Building Museum and the Essex Historical Society therefor it falls under MGL Chapter 40A Section 3 which exempts the structure from the Town of Essex Zoning regulations. The Special Permit process would not apply in this circumstance.

Motion: Westley Burnham moves to approve the application for the Essex Historical Society/Ship Building Museum for the erection and construction of a protective building, roof system for the protection of the Evelena Goulart. Finding under MGL Chapter 40A Section 3, that the applicant is a non-profit educational corporation. The building is expected to be removed when the exhibit is no longer viable.

The Motion was seconded by Jud Lane and passed unanimously.

Gil Guerin returned to the discussion

1 John Wise Avenue

The Building inspector questioned the current use of the lot. The Board confirmed that the lot has previously been used a commercial

229 Western Avenue / Dr. Kippenberger / Change of Use

Westley Burnham recused himself from this discussion

No progress has been made, Dr. Kippenberger has not responded to the letters sent requesting he appear before the Board to address his improperly permitted change of use. Scottie will discuss the Board's options with Brendan and the Selectmen to confirm their views on the matter before beginning the costly process of revoking the permit.

Westley Burnham returned to the discussion.

106 Southern Avenue / Paul Famolari / Public Hearing Special Permit

Scottie Robinson called the Public Hearing to order on the application by Paul Famolari, for a new construction at 106 Southern Avenue for a Special Permit under Town of Essex Bylaw Section 6-6.12 Site Plan Review. Mr. Famolari is seeking approval to erect a barn for commercial storage use.

Paul Famolari and Lori Watson presented the plan and drawing of the proposed barn. Mr. Famolari's main business is painting storage. There will be no plumbing in the new building. The proposed building is two stories. The building will have electricity and heat. There will be no hazardous material stored in the barn and no retail sales out of the building.

The hearing was opened to the public,

Janet and Ned Jeffreys 104 Southern Avenue

Mr. Jeffreys questioned if anymore blasting would be necessary.

Mr. Famolari, I do not anticipate anymore blasting to be necessary.

Mr. Jeffrey's requested more information about the dry well.

Andrew St. John, there is a perimeter drain around the building and the run off leads into the dry well.

Mr. Famolari, The lot was originally a gravel pit so he does not anticipate drainage problems.

Mr. Jeffrey's questioned why so many parking spaces were necessary for a storage barn. Scottie Robinson, The parking shown on the plan is required by the Essex Bylaws because the building is commercial. The square footage of the building determines how many parking spaces will be required.

Mr. Famolari, The lot will be lint pack or some other pervious material.

Gil Guerin, It is the right of the property owner in the future to possibly hook into Town Sewer and create a residence and retail from this location.

Westley Burnham, If the property owner decides to do take that option they would need to appear be for the Board at that time and make that request.

Scottie Robinson, unless or until there is a sewer pipe in that area that option is unlikely.

Betsy Shield questioned what feed back had been received from the DPW regarding curb cut.

Lori Watson, stated the engineer determined the driveway shown on the plan to be the best placement for the site.

Betsy Shield questioned the traffic required for Mr. Famolari's storage barn. Mr. Famolari, I will be there several times a day and a U-haul truck once every five months.

Andrew St. John questioned if the seven parking spaces were necessary. Lori Watson, We have no problem conforming to that restriction.

Motion: Westley Burnham moves to close the Public Hearing for 106 Southern Avenue.

The Motion was seconded by Jud Lane and passed unanimously.

16 Martin Street / John Coughlin / Public Hearing Special Permit

Scottie Robinson called to the Public Hearing to order on the application by John E. Coughlin, Joseph P. Coughlin, John T. Coughlin and the First National Bank of Ipswich for a Special Permit under Town of Essex Bylaw section 6-6.12 Site Plan Review. The applicant is seeking approval for demolition of an existing garage building and construction of a new 2 story building with mixed use; office and residential.

Sam Hoar Chair, of the Zoning Board of Appeals noted for the record that the Board of Appeals will be present for this hearing pursuant to an understanding reached with the applicant on the application for variance their hearing which was continued to this meeting with the Planning Board. Mike Davis and Dick Carter of the Zoning Board of Appeals were in attendance. There are several variances requested, including construction of two one bedroom apartments on the second floor of the proposed building, 3000 sq. ft. of office space on the first floor, the basement to be backup for the Bank next door, lot area, lot depth need 23 ft, side yard need 7 ft, rear yard need 16 ft, 3 parking spots.

Westley Burnham stated for the record that he was a corporate officer of the corporation that sold the Coughlin's this property. The property is free and clear. There is no conflict of interest. If there are questions please direct them to the Board.

Attorney Paul Shea addressed the Board, his office is located at 7 Revere Street Gloucester MA. In addition Doug George of Financial Concepts, Charlie Ware of Meridian Engineering, and John Coughlin were present for the hearing. Mr. Shea stated this is a prior existing non-conforming lot with non-conforming building situated thereon, and the prior use was a non-conforming use. The applicant intends to reconstruct the building substantially on the same footprint that there is currently.

A 21 E has disclosed that there is still some residual fuel oil contamination at the site to be cleaned up. The most practical way to clean up the site is to demolish the building and

engage Enviro Business to perform the clean up. At that time the new footings would be poured and the back walls.

Pictures of the current site were provided. Mr. Shea stated that they feel the alterations would be no more detrimental than the prior use.

Mr. Shea discussed the septic restraints of the site under the new sewer plan. The proposed usage does conform the required amount.

Mr. Shea presented the Board with comprehensive drawings to include the rear parking area as well as the Bank building next door.

The abutters have been contacted by Mr. Coughlin and Mr. Shea for their input on the design of the building as well as the proposed landscaping and parking.

The applicant has already received permission from the Zoning Board of Appeals to waive the setback requirements so the ATM canopy can be constructed at the property line.

Discussion of the Handi-capped parking space provided at the front of the proposed building. Mr. Cataldo asked if it was possible to install the Handi-capped parking space as a parallel parking space on the street. Mr. Shea informed him that that is Town property. Mr. Shea indicated to the Board that Mr. Coughlin would be amenable to providing the sidewalk on the Town property at the edge of his property.

Ms. Robinson asked if making one of the parking spaces located between the Bank Building and the proposed building would be possible. Mr. Shea explained that the parking in that area was to be very active parking, and intended to alleviate some of the parking in and around the Bank and Martin Street.

Mr. Cataldo asked if there was one Handi-capped parking space proposed for the front of the building how many were proposed for the rear.

Mr. Coughlin told the Board there were four but it has been increased to eight for the purposes of the grant.

Ms. Shields asked if the four parking space provide between the proposed structure and the bank were dedicated to the bank.

Mr. Shea explained that there were no written agreements.

Mr. Shea discussed the canopy to be installed, with asphalt shingles for aesthetic reasons, and the traffic flow for the drive up window.

Mr. Guerin, the Comak landscaping plan is a little misleading, it makes the area to the front of the proposed building look larger than it is, making the proposed handi-capped parking space appear to have plenty of space.

Mr. Shea agreed.

Scottie Robinson opened the hearing to the public.

Jack Schwartz 1 Winthrop Street

Mr. Schwartz informed the Board that he and his wife Gail Pepe have meet with Mr. Coughlin with the express purpose of reviewing some design ideas, and what the outcome will look like. Mr. Coughlin has been entirely receptive to themes his wife has suggested. Mr. Schwartz invited anyone with questions about the themes proposed to contact his wife for clarification. In keeping with the town of Essex a two story clapboard, house style structure as opposed to brick was suggested.

Mr. Cataldo suggested that on the Meridian site plan, it might be helpful for the Board, if even though it might not be your property, that the sidewalk be delineated, so we have an understanding of where the public walk way might go.

Mr. Shea suggested that the Board talk to the DPW for their input. The existing painted sidewalk is adjacent to the property. It could be misinterpreted if Mr. Coughlin brings in a plan proposing to put a sidewalk on town land.

Mr. Burnham, stated that it is a very danger thing to ask an applicant to put a design on an abutting piece of property, and traditionally the Board needs to stick with the property in question and the specific designs in question. He has offered to build it, and it has probably already been discussed by other Boards. The offer can be referenced in the finding for the Special Permit, but with enough of a caveat to allow the DPW further input.

Mr. Guerin, This is the core downtown area we are shaping, and I appreciate Mr. Coughin coming forward and working with the town. I would like to discuss the big picture of the whole downtown plan.

Mr. Cataldo, How do you propose to treat the lighting in the drive through area?

Mr. Shea, 4 down cast lights on 8-ft. poles with luminar illumination. As suggested by some of the abutters, Mr. Coughlin is amenable to shorter poles for the lights of about 4-ft.

Ms Robinson, requested clarification of the traffic exiting the parking/drive through area. Essentially 2 cars could be driving out onto Martin Street next to each other. Should there be some signage regarding this situation.

Mr. Shea on an hourly basis the odds of have two cars exiting at the same time are remote.

A traffic study was done to provide for the stacking of cars waiting for the ATM as well as to assure field of vision for cars entering and exiting.

Mr. St. John, would it be possible to join the exit for the parking area with the exit for the ATM to make the exit area narrower.

Mr. Burnham, There is very little space to work with, the plan provided makes the area look larger than it is.

Mr. Shea, we will look into this further.

Sam Hoar The Zoning Board of Appeals would be interested if the Planning Board has any conditions that they would like to add. The Zoning Board of Appeals will be meeting again on February 13, 2002 and would like to have the input of the Planning Board at that time.

Mr. Guerin observed the Mr. Coughlin has done a good job with the Bank building, of integrating the brick and clapboard themes in the center of town.

Jack Gale 105 Pond Street

I have been listening to the discussion of issues and while they may be important they pale in significance to some of the bigger concerns I have. First of all I am sure that Mr. Coughlin has the best interest of this town in mind, as well as his own. Has anyone noticed since the new building has been built down there that it is dark down there, it blocks the light in a really big way, the new building is much bigger, and while Mr. Coughlin maintains that it is the same footprint it is certainly higher and more dense and it looks to me like he wants to repeat the exercise next-door. The drive through is not quite as bad because at least it is on columns and there would be a feeling of space and you could see through it. I question whether or not this is what we want for the downtown, to have more big boxes down there, it just doesn't seem to me that it has anything to do with Essex. It is not the kind of building that we would all feel proud of when we all drive by it, and while I don't think you can legislate taste as a town Board, you do have some influence here because Mr. Coughlin wants a variance or some concessions. I think this is substantially more detrimental to the area and I hope you consider that. I don't think the Terminal Garage is any great beauty but it is the right scale, the light comes in over it. You can walk by it and feel like you are in a New England Town with space around it, and I think that is really important I don't know how you get there from here. Mr. Coughlin seems agreeable to working through things with people. Does anyone else feel that it is too dense that it blocks too much light and space?

Mr. Burnham, In actuality the new building is almost 7 ft. shorter than the old one the roof lines are different.

Mr. Gale, I would really like to see the Planning Board facilitate a discussion that brings architecture into the picture.

Mr. St. John, As an architect and a planner, not speaking specifically to Mr. Coughlin's plan, I agree with you that this town could well use a forum for discussion of what the downtown looks and feels like, and I do think that there are very well established structures and methods for this to happen. I am more than willing to take some of the suggestions tonight and sponsor some sort of public meeting, a charette, a highly facilitated design process where everybody's interests are taken into account and then people with designing and planning expertise take those concerns and turn them into actual drawings. I believe this Board is committed to thinking about those questions.

Mr. Gail, I am glad to hear it.

Mr. Guerin, This sound like a great idea, although the Board is also working with a timetable that has already been extended. In addition there is hazardous clean up that needs to be taken care of. The Board of Appeals would like input from the Planning Board by February 13, 2002.

Mr. Burnham pointed out the time line that the Planning Board is working with; the next Planning Board meeting is February 6, 2002. I would prefer to be discussing the end product at that meeting so that we could have some discussion towards any restrictions we feel the Board of Appeals may have to build into theirs. I would suggest that we close the hearing tonight.

Scottie Robinson requested any addition questions or comments, none were made.

**Motion: Westley Burnham move to terminate the Public Hearing for 16 Martin Street Special Permit proceeding.
The motion was seconded by Michael Cataldo and passed unanimously.**

Planning Board Business

Warrant Articles

Site Plan Review revision; reduce the square footage requirement from 3000 to 2000.
Deletion of the 15 parking space trigger for Site Plan review. Accessory building exception will remain.

Special Meeting Scheduled

Wednesday 30, 2002 7:30 p.m. work meeting,

List of Ongoing Initiatives

Building a School
Open Space
Community Preservation Act

Gil Guerin will draft 106 Southern Avenue approval

Westley Burnham will draft 16 Martin Street approval

Betsy Shields will meet with Damon Boutchie regarding a new Water Resource Protection District Bylaw.

Liberty Road

Robert Bradley requested that Larry Graham return to Liberty Road to assess work done to possibly receive funds from escrow.

Letter from Board of Health to Peter Van Wyck

Turtleback Road Extension, problem with lot 37, so no building permits should be issued.
Letter on file.

Motion: Michael Cataldo moves to adjourn the meeting

The motion was seconded by Jud Lane and passed unanimously

**The next meeting is scheduled for Wednesday, January 30, 2001, commencing at
7:30 p.m.**

Presented by:

Lorie Woodward

Lorie Woodward, Admin. Assistant

Attested to:

Jud Lane

Jud Lane, Clerk

**Town of Essex Planning Board
Agenda
January 30, 2002
Essex Elementary/ Middle School
Room 9
7:30 p.m.**

- 7:30 p.m. **Warrant Articles**
 Frontage
 Common Driveways
 Site Plan Review
- 8:30 p.m. **Down Town Initiative**
- 8:45 p.m. **16 Martin Street Draft Approval**
- 9:00 p.m. **106 Southern Avenue Draft Approval**
- 9:15 p.m. **DEP Draft Warrant Article**

Approval of Minutes
 12/19/01
 1/02/02
 1/16/02

Mail

**Town of Essex Planning Board
Minutes
Wednesday January 30, 2002
7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School and was opened at 7:35p.m. by Scottie Robinson, Chairman

Attendees: Scottie Robinson, Michael Cataldo, Andrew St. John, Betsy Shields, Westley Burnham, Jud Lane, Gil Guerin arrived during the Building Inspector's report.

Building Inspector: Bill Sanborn

Secretary: Lorie Woodward

Building Inspector Report

Bill requested the Board's guidance regarding a letter he received from Attorneys Pino and Shea of Gloucester. The lot that they are inquiring about is 6 acres and has 125 ft of frontage, there is a house on the lot. They would like to know if it would be possible to build 2 additional houses on the lot as noted in Essex Bylaw 6-5.5, Erection of more than one principle structure on a lot. The Board concurred that the lot is a pre-existing non-conforming building lot, and as long as the proposed houses meet all other restriction, i.e. area, and set backs, that option is available. The Board advised the Building Inspector to remind the attorney that the property must remaining common ownership.

229 Western Avenue tabled till the next meeting.

16 Martin Street / John Coughlin /Special Permit Request

Westley Burnham provided the Board with a draft approval. Three Sections, Summary of information presented at the public hearing, list of Conditions, and a Summary.

Discussion of term reconstruction vs. new construction, and if it is in the Town best interest to have the construction take place on a different area of the lot.

The applicant has received a variance from the Zoning Board of Appeals for the ATM canopy.

Discussion of the environmental clean up required at the site.

Discussion of Handy-capped parking space and if it should be a parallel parking space or a pull in parking space. DPW has final say on curb cut and on street parking.

Discussion of drainage, it will be directed toward the marsh with the drain currently in place.

1 NO space

Board of Health input in the draft approval #5 & 6.

Discussion of lighting, and the color, the applicant has been exploring possibilities. The experience the Town has had with Mr. Coughlin has been positive as a whole and his previous projects have exceeded the Town's expectations.

Discussion of stairs and placement.

Discussion of curb cut and how many lanes of cars will be entering traffic.

Mr. Coughlin intends modify the exits.

Discussion of the Site Plan Review process.

Discussion of change in draft.

Final design of the front area of the Building shall include plans for a sidewalk to traverse the frontage and safe ingress egress from the proposed drive up teller particularly reducing the egress lanes to two lanes and one curb cut, and the DPW will approve final plans.

For more detail see the revised draft approval.

6-5.14 Frontage

Discussion of requiring frontage to be continuous.

6-5.14 Driveways

Common Driveways, limiting to three lots.

Discussion of Driveway standards, and removal of "financial or otherwise" before hardship in construction. The consensus of the Board was to leave financial or otherwise.

Discussion of the impact of this Bylaw on current driveways. If this Bylaw passes, any driveway that is less than 12 ft in width or in any other way does not meet these standards will create a non-conforming situation. Often lending institutions require non-conforming situations be rectified before offering a loan.

6-6.12 Site Plan Review

Discussion of the revision in the Bylaw to exclude projects less than 3000 sq. ft. Scottie Robinson and Andrew St. John both felt the number of square footage should be lower. No conclusion was reached

6-13 Water Resource Protection District

Betsy discussed the new Water Resource Protection District Bylaw recommended by DEP. DEP has reduced the size of the district, zone 2. DEP has developed a model Bylaw as a direct replacement for the Town's current Water Resource Protection District.

The Board decided to cancel the February 6, 2002, as many of the members are unable to attend.

The Board decided to add a meeting for February 13, 2002.

Motion: Westley Burnham moves that the Board hold a Public Hearing for proposed Bylaw changes, hearing to be held March 6, 2002, 8:00 p.m. relative to Bylaws 6-6.12 Site Plan Review, Special Permits, 6-3.25 Lot Frontage, 6-5.14 Driveways, 6-13 Water Resource Protection District.
The Motion was seconded by Michael Cataldo and passed unanimously

Meeting Minutes

December 19, 2001

Motion: Jud Lane moves to approve the December 19, 2001 minutes.

The motion was seconded by Andrew St. John and passed unanimously.

January 2, 2002

Motion: Gil Guerin moves to approve the January 2, 2002 minutes.

The motion was seconded by Michael Cataldo and passed unanimously.

January 16, 2002

Motion: Andrew St. John moves to approve the January 16, 2002 minutes.

The motion was seconded by Gil Guerin and passed unanimously.

Motion: Michael Cataldo moves to adjourn the meeting
The motion was seconded by Gil Guerin and passed unanimously

The next meeting is scheduled for Wednesday, February 13, 2001, commencing at 7:30 p.m.

Presented by: Lorie Woodward Attested to: Jud Lane
Lorie Woodward, Admin. Assistant Jud Lane, Clerk

**Town of Essex Planning Board
Agenda
February 13, 2002
Essex Elementary/ Middle School
Room 9
7:30 p.m.**

- 7:30 p.m. **Building Inspector's Report**
- 8:00 p.m. **Lowland Farms / Peter Van Wyck**
- 8:30 p.m. **Bylaw review**
 6-6.12 Site Plan Review . Special Permits
 6-3.25 Lot Frontage,
 6-5.14 Driveways,
 6-13 Water Resource Protection District
- 9:15 p.m. **Bucklin / Kempsey Subdivision**
- 9:30 p.m. **Special Permit**
 106 Southern Avenue
 16 Martin Street

Mail

**Town of Essex Planning Board
Minutes
Wednesday February 13, 2002
7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School and was opened at 7:35p.m. by Scottie Robinson, Chairman

Attendees: Scottie Robinson, Andrew St. John, Betsy Shields, Westley Burnham, Jud Lane, Michael Cataldo.

Building Inspector: Bill Sanborn

Building Inspector Report

87 Martin Street / Pete and Kim Rutherford / Request for a Building Permit

Map 36, lot 80. The applicants, Pete and Kim Rutherford would like to add a front porch to their house, open with a roof. No finding was made.

25 Centennial Grove / Thayre Symmes / Request for a Building Permit

The applicant is requesting a Building Permit to build a second house on their lot. The proposed structure is a modular home. The lot is 50,000 sq. ft. They are located in the Water Resource Protection District, which requires 40,000-sq. ft. of upland per dwelling. No permit was granted.

151 Main Street / McPhail / Request for a Building Permit

The applicant is requesting a Building Permit for a 16-ft. by 16-ft. screen porch. The porch has already been built. Approvals were already received from other boards. The applicant is changing the use from a home occupation back to a single family.

Motion: Westley Burnham moves to approve the Building application from Don and Ann McPhail, 151 Main Street, for the construction of a 16-ft. by 16-ft screened in porch, finding the proposed construction to be not substantially more detrimental to the neighborhood than the existing use. The motions was seconded by Michael Cataldo and passed unanimously.

Swimming Pool Requirements

The Board received a letter from Brendan Zubricki requesting the Board review the current Bylaw and consider adding specific details. A copy of Gloucester Bylaw was provided.

Low Land Farms / Peter Van Wyck / Subdivision Plan

Mr. Van Wyck presented the definitive plan to the Board. Five lots one marked non-buildable. Mr. Van Wyck did not have the required agreement between himself and the immediate abutting property owners, Hildonen and Browning, allowing them access for the

purpose of pass and repass. This agreement is required in writing by the Agreement for Judgment from 1995 before the Planning Board can sign off on the Subdivision Plan. In February 2001 Mr. Van Wyck's lawsuit was settled and both the Town and Mr. Van Wyck agreed to the 1995 Agreement for Judgment and the plan provided at that time.

Mr. Van Wyck will fax agreement and copy of covenant before the next meeting, and appear at the next meeting. The agreement should reference the 1995 Agreement for Judgment.

Mr. Van Wyck has submitted a check for \$2000.00 to the Treasurer for Clerk of the works expenses.

Discussion of the drainage and when and how it will be addressed. As the project is started the drainage may be changed to best suit the site and abutters. There is concern that the water from the road will be shed onto the abutters property.

Planning Board Business

The Board received some information from Mark McKenna. He has some questions regarding an ANR that was approved on Choate Street.

Bylaw Review

Frontage

Two separate revisions, one with the word continuos^{sp} and one without.

Driveways

Removed "financial and otherwise".

Site Plan Review

Reduce the footprint square footage?

Concern for residents having some say in commercial structures built near their property. Site Plan Review is a valuable tool in allowing resident to have input in proposed projects.

Concern for small business and this process being used to veto their application as with 142 Eastern Avenue.

Concern that the Board will micro-manage.

Discussion regarding the time that is taken up with the process, taking away from other business the Board is responsible for.

Discussed removing residential accessory building and from the exceptions and add a 2500 square footage threshold.

Discussion of Hearing Notices, Bylaw number and title will be noted in the paper.

Larry Graham

Mr. Graham will be doing some design work for a horse barn at the corner of Andrews Street.

Mr. Graham wanted the Board to be aware that he is doing this and check to see if the Board had a problem with this. No conflict of interest was noted.

16 Martin Street / John Coughlin / Special Permit

The Board reviewed the changes forwarded by Mr. Coughlin addressing the egress from the ATM and parking. These changes cannot be referenced in the approval, the approval must be based on the information presented at the public hearing. The Board still has reservations about the hand-y-capped parking space at the front of the DPW. Wings responded in writing that they would like curbing so there will be no illegal parking on sidewalk. In addition they are concerned about snow removal. This letter was received after the public hearing.

Water Resource Protection District

Monday February 25, 2002 before the Selectmen's meeting sub committee meeting.

Bylaw

Swimming Pool Bylaw

Should be added to the warrant.

229 Western Avenue

Westley Burnham recused himself from this discussion.

Scottie updated the Board. ~~Brendan Zubricki~~ told her she had the full support of the Board of Selectmen, but suggested that she try talking to Mr. Kippenberger before turning the matter over to the Building Inspector.

Motion: Andrew St. John moves to adjourn the meeting.

The motion was seconded by Michael Cataldo and passed unanimously.

The next meeting is scheduled for Wednesday, February 19, 2001, commencing at 7:30 p.m.

Presented by: Lorie Woodward
Lorie Woodward, Admin. Assistant

Attested to: Jud Lane
Jud Lane, Clerk

one word

Rolf Madsen

Meeting Minutes

February 13, 2002

Motion: Westley Burnham moves to approve the February 13, 2002 minutes as amended.

The motion was seconded by Andrew St. John and passed.

January 30, 2002

Motion: Betsy Shields moves to approve the January 30, 2002 minutes with corrections

The motion was seconded by Westley Burnham and passed.

Lowe Land Farms / Peter Van Wyck

Scottie reminded Mr. Van Wyck that he need to amend the Agreement for Judgement with a sentence recognizing that the two abutting property owners, Hildonen and Browning, to the proposed subdivision road shall have rights to pass and repass on to the road from their property.

A performance bond is required prior to endorsement of the plan. In addition if the performance guarantee is in the form of a covenant it must be noted or inscribed on the mylar. Both letters must also be filed with the approval, and with the deed.

Abutters to the proposed Lowe Land Farms subdivision road were present to express concerns regarding drainage problems in the area. The Board assured Mr. Browning and Mr. Hildonen that as the project progressed the drainage problem would be addressed by Larry Graham, engineer and Clerk of the Works on the project and Mr. Van Wyck's engineer.

Discussion of the covenant and if the Board should accept the covenant or require a cash bond. According to MGL 41 section 81U it is the applicants choice.

Approximately 78 acres of property, 45-50 acres upland.

Lot 1 in its current configuration is non-buildable. The applicant may come back to the Board at a later date and reconfigure the lot.

Discussion of the elevation of the road.

Motion: Westley Burnham moves to accept the covenant as drafted by Peter Van Wyck, to fulfill the requirements of the performance guarantee required under MGL chapter 81 for the project known as Lowe Land Farms, Apple Street, Essex.

The Motion was seconded by Gil Guerin, the motion passes.

Scottie and Mr. Van Wyck will work out getting the covenant signed and notarized together, before the next meeting.

The Board reminded Mr. Van Wyck to reference the covenant on the cover sheet of the overlay layout. Covenant made with the Planning Board Town of Essex running with the property dated 2/25/02.

106 Southern Avenue

Discussion was postponed until the March 6, 2002 meeting.

16 Martin Street / John Coughlin Gateway Realty Trust / Special Permit

Discussion of the revised draft. First page "a" was added. Retail was added to conditions on the second page. Sentence # 9 reduction of lanes to two lane. Sentence # 11 addressing the removal of non-required parking. Change date on approval with conditions to 2/20/02.

Motion: Westley Burnham moves that the Planning Board approve the Special Permit for John E. Coughlin Trustee of Gateway II Trust, Joseph P. Coughlin Trustee Gateway II Trust, John T. Coughlin, 239 Western Avenue, Essex MA, and The First Nation Bank of Ipswich, 31 Market Street, Ipswich, MA in accordance with the draft dated 2/20/02 attached.

The Motion was seconded by Gilbert Guerin.

The Vote:

Andrew St. John, Aye, I find that it satisfies the minimum requirements of the Town of Essex.

Westley Burnham, Aye, I believe an adequate review was taken, limitations will safeguard the best interest of the Town of Essex.

Gilbert Guerin, Aye, I find that the proposed project meets all the requirements for the Town of Essex, and has addressed the safety issues.

Susan Scott Robinson, Aye, it meets all the requirements of the Town of Essex Bylaws.

Elizabeth Shields, Aye, it meets the minimum requirements of the Town of Essex.

Michael Cataldo, Absent

Jud Lane, Absent

The Motion Passes.

Lorie will check with Sally Soucy about the correct way to hand in the Special Permit.

Discussion of Public Hearing and reasons for continuing.

Swimming Pool Fencing Bylaw

The Board was unable to meet the deadline for advertising the Swimming Pool Fencing Bylaw, and tabled it until the next Town meeting.

Water Resource Protection District Bylaw

The Board agreed that the Town should accept the DEP proposed Bylaw. The Board can install stricter guidelines in addition. The Board felt that commercial and residential should be treated equally. Betsy will present information at the public hearing.

Driveways

Minimum driveways standards should apply to all driveway, including single dwellings. Westley Burnham will present at the public hearing

Frontage

The Board determined after much discussion, that continuous was not necessary in the Frontage definition.

Site Plan Review

Discussion was spirited.

The next meeting is scheduled for Wednesday, March 6, 2001, commencing at 7:30 p.m.

Presented by: Lorie Woodward Attested to: Jud Lane
Lorie Woodward, Admin. Assistant Jud Lane, Clerk

**Town of Essex Planning Board
Agenda ²⁰
February 19, 2002
Essex Elementary/ Middle School
Room 9
7:30 p.m.**

- 7:30 p.m. **Building Inspector**
- 8:30 p.m. **Lowe Land Farm / Peter Van Wyck**
- 8:20 p.m. **106 Southern Avenue / Special Permit Application**
- 8:50 p.m. **16 Martin Street / Special Permit Application**
- 9:20 p.m. **Warrant Articles**
 Fencing, Swimming Pool
- 9:45 p.m. **Accepted Way**
 Evans Way
 Lowe Hill Road
- Approval of Minutes**
 1/30/02
 2/13/02
- Mail*

**Town of Essex Planning Board
Minutes
Wednesday February 20, 2002
7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School and was opened at 7:35p.m. by Scottie Robinson, Chairman

Attendees: Scottie Robinson, Andrew St. John, Betsy Shields, Westley Burnham. Gil Guerin arrived before the Lowe Land Farms discussion.

Absent: Jud Lane, Michael Cataldo

Building Inspector: Bill Sanborn

Secretary: Lorie A. Woodward

Building Inspector Report

25 Centennial Grove / Thane Symmes / Request for a Building Permit

The applicant intends to add a third dwelling to the lot. The applicant has a total land area of 9.36 acres, 5.32 acres of upland. The request is within the lot coverage requirement.

Motion: Betsy Shields moves to approve the Building Permit for Thane & Karen Symmes, 25 Centennial Grove, Map 8 Lot 50, to add a third house on the lot, the lot is pre-existing non-conforming, approval has been received from the Board of Health and Conservation Commission. The third house being erected under Bylaw 6-5.5, allowing three dwellings per lot.

The motion was seconded by Andrew St. John and passed unanimously by those members present.

Planning Board Business

Evans Way and Lowe Hill

Bruce Jullian, from the DPW called and requested that the Planning Board look into recommending that the Town accept Evans Way and Lowe Hill as town maintained accepted ways. The Board reviewed as built plans for Evans Way, minimal waivers were granted.

The Board was unable to locate as built plans for Lowe Hill. Bruce Jullian told Scottie that the metes and bounds have not yet been set at Lowe Hill. The Board will hold any recommendation until the Board receives as built plans for this road.

Motion: Andrew St. John moves that the Board recommend to the Board of Selectmen that the Town accept Evans Way as a Town way, finding that it has been build in accordance with the Town of Essex Subdivision Regulations according to the as built plans dated 2/9/00

The motion was seconded by Westley Burnham and passed by all present.

Town of Essex Planning Board
Minutes
Wednesday March 6, 2002
7:30 p.m.

The meeting was held at the Essex Elementary/Middle School and was opened at 7:35p.m. by Westley Burnham

Attendees: Westley Burnham, Andrew St. John, Elizabeth Shields, Gil Guerin, Michael Cataldo, Jud Lane

Building Inspector: Bill Sanborn

Secretary: Lorie A. Woodward

Building Inspector Report

136-38 Southern Avenue / Warren Grant / Request for a Building Permit

Map 10 Lot 11c The applicant intends to tear down an existing structure 22' 6" by 22' 6" and build a new larger barn 36' by 36'. The Building Inspector presented the Board with a letter of approval from the Trustee of the Reservation. Requested structure meets setbacks. Discussion of the Boards authority to enforce covenants and restrictions placed on property through private sales as in this case as opposed to covenants place on property by the Town. No motion was required.

Planning Board Business

Discussion of the dispute between the Kempskys and Joan Bucklin. Joan Bucklin is responsible for the cost of the installation of the road monuments. Ms. Kempsky talked to Scottie and asked if they would be able to have the required monuments waived as Ms. Bucklin is refusing to have the monuments installed. Currently the Town is holding a cash performance guarantee from the Kempskys to cover the completion on the road.

The Board discussed this and agreed that the monuments were important and noted that if there was animosity between the neighbors now it would be better to have the monuments in place so there would be no question as to where property rights are. The Board agreed that the best course of action would be for the Kempskys to install the monuments themselves, and close out the performance guarantee. Then it would be their option to sue Ms. Bucklin for reimbursement of the installation cost.

106 Southern Avenue / Paul Famolari / Special Permit

Joe Ginn the contractor for Mr. Famolari wanted to check with the Board about the possibility of running a waterline into the building so it will be built in while excavation is being done. In addition the applicant may want to install a spigot outside the building. Mr. Ginn talked to the Board of Health and they told him as long as there was no sink or toilet indoors they would consider it no plumbing. The Planning Board acknowledged that the applicant intends to install the waterline to the building, and that there will be no "plumbing."

Gil Guerin presented the Board with a draft of the approval with conditions. The Board reviewed and edited the draft. The final copy was filed with the approval with the Town Clerk.

Motion: Michael Cataldo moves to approve the Special Permit in accordance with the edited draft reviewed
The motion was seconded by Jud Lane.

Gilbert Guerin: aye, I feel that it meets all criteria for acceptance as a special permit under a the Town of Essex By-Laws.

Elizabeth Shields: aye, I am in favor of the plan, meets the standards set up by the Essex By-Laws.

Andrew St. John: aye, I am in favor of the plan, meets the standards set up by the Essex By-laws.

Jud Lane: aye, I am in favor of the plan, meets the standards set up by the Essex By-laws.

Michael Cataldo: aye, finding that it meets all the minimum standards established by the Essex By-laws

Westley Burnham: Abstain

Public Hearing / By-law revisions

Westley Burnham opened the Public Hearing at 8:10 p.m. for By-law changes to be presented at the May Town Meeting. Specifically 6-3.25 Lot Frontage, 6-5.14 Driveways 6-6.12 Site Plan Review. Special Permits and 6-13 Water Resource Protection District. Proposed changes have been properly advertised in the Gloucester Daily Times and have been on file with the Town Clerk and available for public review. No members from the public were present for the meeting.

Motion: Michael Cataldo moves to close the Public Hearing.
The motion was seconded by Gil Guerin, and passed unanimously.

Discussion of Site Plan Review.

Elizabeth Shields is concerned that this change in the By-law will allow projects to slip through the system unchecked. Rather than change the By-law this year a subcommittee should look into the current By-law as well as other options.

Discussion of the Special Permit fee, and whether or not the fee will cover the advertising cost.

The Board agreed to send the By-laws as written and edited to the Board of Selectmen.

Low Land Farms / Peter Van Wyck / Endorsement of the Plan

The Board reviewed the plan to be sure requested changes were made. The Board found changes had been made.

Scottie has reviewed the overlays against the plans provided.

Motion: Andrew St. John moves that the Board endorse the Subdivision plan for Lowe Land Farms in accordance with the agreement for judgment previously arranged with the Board and the Court.
The Motion was seconded by Michael Cataldo and passed unanimously.

Turtleback Road / Peter Van Wyck / Request to rearrange the circle

Westley informed Mr. Van Wyck that the DPW has some concerns. Mr. Van Wyck agreed to go to the DPW and clear up their concerns first. Then come back to the Planning Board with a more detailed plan, as it is unclear from the drawing sent what he plans to do.

Evans Way, Lowe Hill

Discussion of metes and bounds.

Discussion of the process of getting an accepted way transferred to the Town so it can become a Town maintained accepted way.

Reason for accepting

Previously in good economic times towns received chapter 90 money to maintain roads based on the number of road miles in each town.

Minutes

Motion: Andrew St. John moves to accept the minutes as amended for February 20, 2002.

The secretary informed the Board that there were some additional editions from Scottie Robinson that need to be made.

The Board agreed to hold its approval until next week.

Motion: Andrew St. John moves to withdraw his motion

The motion was seconded by Elizabeth Shields and passed unanimously.

Andrew St. John will not be able to attend the April meetings.

Michael Cataldo will probably not be able to attend the second meeting in April.

Motion: Michael Cataldo moves to adjourn the meeting.

The motion was seconded by Gil Guerin and passed unanimously.

The next meeting is scheduled for Wednesday, March 20, 2002, commencing at 7:30 p.m.

Presented by: Lorie Woodward Attested to: Jud Lane
Lorie Woodward, Admin. Assistant Jud Lane, Clerk

**Town of Essex Planning Board
Minutes
Wednesday March 20, 2002
7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School and was opened at 7:35p.m. by Scottie Robinson.

Attendees: Scottie Robinson, Andrew St. John, Elizabeth Shields, Gil Guerin, Michael Cataldo, Jud Lane

Building Inspector: Bill Sanborn

Secretary: Lorie A. Woodward

Building Inspector Report

30 Water Street / Jane LaChance / Request for a Building Permit

The applicant is requesting a permit to add an 8-ft. by 13-ft. deck to the back of the house. Board of Health approval, waiting for Conservation Commission approval.

Motion: Betsy Shields moves to approve the LaChance permit for a proposed deck 8-ft. by 13-ft. finding under 6-4.2 that the proposed use is not substantially more detrimental to the neighborhood. Finding that the proposed deck meets all other Essex By-laws. The Planning Board approval is subject to the Conservation Commission's approval.

The Motion was seconded by Michael Cataldo and passed by those members present.

18 John Wise Avenue / Bridget Vente/ Request for a Building Permit

The applicant is requesting a permit to build a 24-ft. by 36-ft. garage with cupola (23-ft in height). There will be no plumbing. The plans show a sprinkler system. The Building Inspector will inform the applicant that the Board of Health will not allow the plumbing required for the sprinkler system in the requested building and remove that item from their application. Discussion of frontage and setbacks. Frontage is on Ancient Way.

Motion: Gil Guerin moves to approve the application for a Building Permit for a new accessory building for storage of antiques, two story garage 24-ft. by 36-ft with cupola, for Bridgett Vente, 18 John Wise Avenue, Lot size is 24,271 sq. ft. Finding that the proposed project meets all Essex By-laws.

Lebaron Road / Story / Request for a Building Permit

The Storys have already added an addition to an existing accessory building and are now going through the process of getting the building properly permitted. They have received Board of Health and Conservation Commission approval. The placement of this accessory building makes what was two separate lots one large lot for zoning purposes.

Motion: Michael Cataldo moves to approve the application and grant Elizabeth Story a permit for the construction of an addition to an existing shed. The addition is 18-ft. by 30-ft. Finding that it meets the Essex By-laws.

The applicant has received Conservation Commission and Board of Health approval.

The Motion was seconded by Jud Lane and passed unanimously by those members present.

Brook Pasture Lane / Request for a Building Permit

The Board has questions regarding the frontage as well as whether or not the applicant has received Conservation Commission approval. The secretary will locate the Brook Pasture Lane folder and any other pertinent information and the Board will look at this matter at the next meeting.

Planning Board Appointments:

Low Land Farms / Peter Van Wyck

Mr. Van Wyck appeared before the Board with Brian Buia from Apple Associates and Michael McCarron legal council to present tentative plans and options for this subdivision. He currently owns approximately 78 acres, approximately 48 of upland.

Mr. McCarron gave the Board a brief overview.

The first plan shown was a yield plan. This plan was developed to determine under Essex By-laws, with the current approved roadway, the maximum amount of lots available.

The second plan would potentially require a Special Permit request for a multi-family dwelling. This plan would involve some clustering as well as the dedication of some open space.

The third plan would make some small modifications to the current approved road configuration and incorporate multi-family dwelling and open space ideas.

Mr. Buia presented and explained the three different options

The first plan presented, the yield plan produced 24 available lots according to their calculations to the current approved subdivision road and applying the Essex Bylaws.

The Second plan used the number developed by the yield plan, 24, and applied cluster zoning. This plan showed 12 single-family houses and 6 two family houses using common driveways. This would allow 80% of the land to be dedicated to open space. The term open space is being used as a generic term with a variety of potential uses, such as town athletic fields, and common areas. This plan shows the current approved subdivision road with out any modifications. There is a community septic system marked on the plan, and soil samples have been taken to confirm that the area could handle the flow.

Mr. Van Wyck added that he would like to have some of the single-family residence designated for high end uses (5). In addition some of the clustered houses would be ear marked for age 55 and over residences (19).

The Third plan used the number developed by the yield plan, 24, and applied cluster zoning. This plan showed 12 single-family houses and 6 two family houses using

common driveways. This would allow 80% of the land to be dedicated to open space. This plan shows the current approved subdivision road modified to be straighter. There is a community septic system marked on the plan, and soil samples have been taken to confirm that the area could handle the flow.

Perked Sites

Mr. McCarron explained to the Board that with any of these plans a communal septic system would most probably have to be used.

Currently there are approximately 5 or 6 available perks.

With a shared system a condo lien can be placed on units to support the system.

Multi-family driveways.

The longest of the driveways was approximately 550-ft. The multi-family driveways will be made accessible for emergency vehicles with turn outs at driveways.

Traffic Study

Mr. Van Wyck told the Board that a traffic study was done.

The Subdivision process for this road was started ten years ago. The Board is concerned that there is much more traffic on the road now and the proposed development will cause a strain on the road.

Mention of the Subdivision Road modification, and the process that needs to be followed to accomplish this.

The Board questioned what Mr. Van Wyck's time line is.

Mr. Van Wyck would like to continue the process of building the road.

The Board agreed to take some time to review the provided plans and develop constructive input as well as apply the Essex By-laws to the proposed project.

Discussion of the density of the project, and concern that it is a much larger project than the Board originally planned on.

Mr. McCarron addressed the legal concerns as he viewed them.

- 1) Application for a 6-6.9 Special Permit, multi-family development
- 2) Application for Site Plan Review, must meet all requirements
- 3) Application for chapter 41 section 81w to modify the Road way

It would be feasible for the town to run the three hearing simultaneously.

Understandably this take a couple of months.

Mr. Buia discussed a project that he is currently involved in Newbury. Newbury's new cluster zoning By-law offers perks for the elderly housing by allowing additional units.

The Board complimented Mr. Van Wyck on the placement of the unit and keeping the development from the sight of Apple Street.

The Board advised Mr. Van Wyck to bring the plan before the Conservation Commission to see what their concerns are i.e. drainage, cutting etc.

The Board requested a narrative to go along with the plans present tonight, so the Board can present it to the other interested Boards; Board of Health, Board of Selectmen, Conservation Commission, and Department of Public Works.

Andrew St. John agreed to be the point person on this project and offered to draft a very brief informational piece about the project for the Gloucester Daily Times.

Minutes:

Motion: Michael Cataldo moves to accept the 2/20/02 and 3/6/02 minutes as written.

The Motion was seconded by Andrew St. John and passed unanimously.

Alewife Training

Scottie informed the Board about an upcoming training by the Audabon Society to count Alewife fish in the river by the Apple Street Bridge.

Prospective School Siting

Van Wick , Atwater and Drinkwater.

Motion: Betsy Shields moves to adjourn the meeting.

The motion was seconded by Andrew St. John and passed unanimously.

The next meeting is scheduled for Wednesday, April 3, 2002, commencing at 7:30 p.m.

Presented by:

Lorie Woodward
Lorie Woodward, Admin. Assistant

Attested to:

Jud Lane
Jud Lane, Clerk

Town of Essex Planning Board
Minutes
Wednesday April 3, 2002
7:30 p.m.

The meeting was held at the Essex Elementary/Middle School and was opened at 7:35p.m. by Scottie Robinson.

Attendees: Scottie Robinson, Elizabeth Shields, Michael Cataldo, Jud Lane, Westley Burnham

Absent: Andrew St. John, Gil Guerin

Building Inspector: Bill Sanborn

Secretary: Lorie A. Woodward

Building Inspector Report

106 Southern Avenue

No finding was necessary. The secretary will forward a copy of the Special Permit approval to the Building Inspector.

129 John Wise Avenue / Holly Riehl / Request for a Building Permit

The applicant intends to connect the existing garage to the house and convert the existing room above the garage to a master bedroom and change the existing floor plan. No finding was required

36 Lake Shore Drive / Ray Ulrey / Request for a Building Permit

No new finding was required.

2 Brook Pasture Lane / Kathleen Newman / Request for a Building Permit

The applicant has received Conservation Commission and Board of Health approval.

Motion: Jud Lane moves to approve the Building Permit application from Kathleen Newman, 2 Brook Pasture Lane to construct a single-family dwelling, map 36 lot 56A, lot size 82802, plan meets all Essex Bylaws.

The motion was seconded by Westley Burnham and passed unanimously by those members present.

Belcher Street / Peter Creighton, Land Resources Associates

Westley informed the Board that he had talked to Mr. Creighton on the phone today. Mr. Creighton told Westley that the driveway improvements that they had agreed to make had been made. Westley agreed to drive out to the site to view the improvements.

Liberty Road / Robert Bradley / Subdivision Road

Robert is looking to recover some of the money held by the Town for the completion of the road. The secretary has been unable to locate the Liberty Way file. The secretary will contact Mr. Graham and request that he visit the site and note what items need to be finished.

(Scottie Robinson recused herself from the discussion, and Westley Burnham chaired the Turtleback Road Extension discussion)

Turtleback Road Extension/ Peter Van Wyck / Modification of a Subdivision Road

Mr. Van Wyck presented a hand drawn plan showing how he would like to change the end of Turtleback Road. (Copy of map on file)

The Board informed Mr. Van Wyck that in order to modify the existing roadway he would need to follow the MGL chapter 81w process, which would involve a public hearing process to allow input from other Boards as well DPW, Fire Department, abutters and residents. In addition changes that affect the drainage will be reviewed

Discussion of moving the waterline. The Board has received a letter from the DPW requesting the waterline be moved. Mr. Van Wyck does not feel it needs to be and would prefer not to move the water line. The Board informed Mr. Van Wyck that they would be in touch with the DPW to find out the reasons why they feel the waterline should be moved.

Discussion regarding the end of the road and where the end is and why Mr. Van Wyck can add on to the end of the road.

The extension was permitted by an improper denial.

Per Westley the end of the road is where the loop begins, and the circle at the end of Turtleback Road is connected to Turtleback Road extension loop, which would provide two options for egress.

(Scottie Robinson rejoined the discussion as chair)

Low Land Farms / Peter Van Wyck / Subdivision

The Board discussed the fact that the Town does not currently have a cluster-zoning Bylaw. The Board agreed that Mr. Van Wyck's counsel is correct that Chapter 6-6.9k, Special Permits, Multi-family dwelling and/or apartments would be the appropriate instrument to use if common ownership is maintained. In addition the Board acknowledged that any dimensional requirements may not be waived by the Planning Board and would require variances from the Zoning Board of Appeals.

The Board agreed to forward a letter informing Mr. Van Wyck of their thoughts so far.

Discussion of requesting a new Traffic Study, and if it would be more restrictive than the original. Per Westley the standard have declined.

B.J. Frye mentioned concerns about the wetland area. She was told that Mr. Van Wyck has been informed that he will need to get Conservation Commission approval.

Discussion of the proposed road modification which could require the MA Ch. 81w process. Discussion of what the trip for the MA Ch. 81w process would be. The Board will look into this and probably check with Town Counsel. The Board will wait for more information from Mr. Van Wyck before making any decision regarding this process (Westley Burnham left the meeting)

Warrant Articles

Discussion of Warrant Articles and their presentations. Shorter revisions are read in their entirety. Longer revisions like the Water Protection Overlay District the major changes are discussed.

Betsy Shield will discuss the Water Protection Overlay District. Discussion of the section in the proposed Bylaw which will restrict the commercial uses of undersized lots currently in the district.

Michael Cataldo will discuss the Frontage Bylaw revision.

Westley Burnham will discuss the Site Plan Review and Driveway revisions.

(Westley Burnham returned to the meeting)

Betsy informed the Board there were several changes that she would like to make in the proposed Water Protection Overlay District Bylaw. The new version does not address the section in the current Bylaw that requires 40,000 sq.-ft. per dwelling unit. This would control the density in this district. Westley does not feel that that requirement belongs in the Water Protection Bylaw. The Town has density restrictions, if changes need to be made they should be made there. The Board discussed this and no substantial changes can be made after the public hearing.

Evan's Way - Discussion of letter received by the Board from Larry Graham regarding his assessment of the road. All repairs must be made and the road must conform to the Town's requirements before final acceptance even if accepted a Town meeting.

Minutes

Motion: Michael Cataldo moves to accept the minutes of 3/20/02 as written with amendments.

The motion was seconded by Westley Burnham and passed unanimously.

Motion: Betsy Shields moves to adjourn the meeting.

The motion was seconded by Jud Lane and passed unanimously.

The next meeting is scheduled for Wednesday, April 17, 2002, commencing at 7:30 p.m.

Presented by:

Lorie Woodward
Lorie Woodward, Admin. Assistant

Attested to:

Jud Lane
Jud Lane, Clerk

Town of Essex Planning Board
Minutes
Wednesday April 17, 2002
7:30 p.m.

The meeting was held at the Scout House in Essex and was opened at 7:35p.m. by Scottie Robinson.

Attendees: Scottie Robinson, Elizabeth Shields, Michael Cataldo, Westley Burnham, Gil Guerin

Building Inspector: Bill Sanborn

Secretary: Lorie A. Woodward

Building Inspector Report

39 Belcher Street / Dainton / Building Permit request

The applicant is requesting a Building Permit to add on to an existing deck. Has received other Board approvals. No finding was required by the Planning Board.

14 Lowe Hill Road / George Marsh / Building Permit request

The applicant is requesting a Building Permit to add a 36-ft. by 14-ft. two story addition. The applicant has received approval from the Conservation Commission, Board of Health and DPW. The proposed addition does not encroach on the sidelines. No finding was required by the Planning Board.

Planning Board Business

Discussion of Home Occupation. There is no application required. Essex Zoning does not consider Home Occupation a change of use. The Building Inspector is concerned that the sewer line coming through town will complicate this issue.

Discussion Temporary Construction Trailers and if they require a permit. If the Trailer is on the road without a registration then the Police can have it removed.

Discussion of Building Application requests within the Sewer District. The Planning Board is under the impression that if the Board of Health has given their approval, the Planning Board would approve as long as the project meets all Essex Bylaws.

Mention 239 Western Avenue, nothing has been received from Dr. Kippenberger or his attorney.

Lowe Land Farms, Planning Board discussion.

Discussion of 6-3.45 Dwelling Multi-Family and 6-5.5 Erection of more than one principle structure, how they apply to Mr. Van Wyck plan as presented.

The Board agreed that the plan as presented is not permitted by the Essex Bylaws.

Options:

Mr. Van Wyck can reconfigure the plan so it will meet the Essex Bylaws and present it to the Board.

He can put the project on hold and see if the Planning Board can put together a Cluster Zoning/Open Space Bylaw for the next Town Meeting that would give the Planning Board a mechanism to deal with this type of project. The Planning Board can not put a time table on this Bylaw as it may not be accepted at Town Meeting.

Discussion of the communal septic system. DEP would oversee this process.

Story Street Subdivision / The Kempskis

Per discussions with Larry Graham he advised that the Board hold on to the funds until the project is finished or closer to completion.

Belcher Street / Peter Creighton / Driveway Upgrades

Westley Burnham visited the site and viewed the upgrades and found them to be satisfactory. The letter approving the upgrades was read.

Motion: Westley Burnham moves that the Board forward the letter to Mr. Creighton. The Motion was seconded by Michael Cataldo and passed unanimously.

Planning Board Appointments

Low Land Farms / Peter Van Wyck / Subdivision

Scottie Robinson explained the Board's earlier discussion of 6-3.45 Dwelling Multi-Family and 6-5.5 Erection of more than one principle structure, how they apply to the plan as presented. The way the Board interpreted these two Bylaws, one limits single family dwelling on one lot to three, the other defines multifamily residential buildings as three or more.

Discussion of reconfiguring the plan.

Discussion of waiting for the Cluster Zoning Bylaw.

Discussion of putting some land in Conservation.

Mr. Van Wyck mentioned the communal septic system. The Board told him that review would be done by DEP, the Board of Health, DPW and Conservation Commission. The Board also advised that Mr. Van Wyck begin working with the Board of Health. Mr. Van Wyck assured the Board according to the test results, the land will support 80 bedrooms at 10,000 gal per day.

Warrant Article Presentations

Water Overlay Protection District

Discussion of the Water Overlay Protection District Article, and that the copy at Town Hall did not have the map discussed in the proposed revision.

In addition Betsy Shields brought up two points:

She would like to amend the proposed Bylaw to retain the 40,000 sq. ft. requirement currently in the Water Resource Protection District Bylaw.

She would also like to amend the Bylaw to include the pesticide requirements currently in the Water Resource Protection District Bylaw.

Betsy ran it by David Lane and he agreed that if the exact same language was used in the old Bylaw and proposed Bylaw he would have no problem with it.

Per Betsy the DPW is also in favor of retaining the two restrictions.

Westley Burnham is strongly in favor of leaving the 40,000 sq. ft. out of the proposed Bylaw. He feels it will encourage commercial development instead of residential. He does not feel the Water Resource Protection District should have different sq. ft. requirements than the rest of the Town. If the Board feels the 40,000 sq. ft. requirement is necessary it should appear in the Town Zoning.

Betsy Shields is strongly in favor of leaving the 40,000 sq. ft. requirement in the proposed Bylaw. She provided the Board with a letter regarding the pollution generated by residential dwellings.

The Board agreed to keep the exact language from the Water Resource Protection District Bylaw in the proposed Bylaw if Kopelman and Paige approve the amendment.

Betsy Shields also added that the Town does not need to adopt the DEP recommended Bylaw this year, the Board can review it further and present it at next year's Town Meeting.

Westley Burnham pointed out that if the Water Overlay Protection District Bylaw does not get approved that the Planning Board will be unable to use the new map, since it has not been approved.

Site Plan Review

Discussion of the proposed threshold of 2500 sq. ft. and if it is necessary.

Discussion of Site Plan Review and 142 Eastern Avenue.

John Wise Avenue

Discussion of placement of two story garage being constructed and if it met the setbacks.
Check with Building Inspector.

Minutes:

Motion: Westley Burnham moves to approve the 4/3/02 minutes with amendments. The motion was seconded by Michael Cataldo and passed unanimously.

Motion: Michael Cataldo moves to adjourn the meeting. The motion was seconded by Gil Guerin and passed unanimously.

The next meeting is scheduled for Wednesday, May 1, 2002, commencing at 7:30 p.m.

Presented by: Lorie Ann Woodward Attested to: Jud Lane
Lorie Woodward, Admin. Assistant Jud Lane, Clerk

Lorie
OK 5/15
-SR

**Town of Essex Planning Board
Minutes
Wednesday May 1, 2002
7:30 p.m.**

The meeting was held at the Essex Elementary Middle School in Essex and was opened at 7:40p.m. by Scottie Robinson.

Attendees: Scottie Robinson, Elizabeth Shields, Andrew St. John, Michael Cataldo, Westley Burnham, and Jud Lane, Gil Guerin arrived during the Site Plan Review discussion.

Building Inspector: Bill Sanborn

Secretary: Lorie A. Woodward

No Building Inspector Report

Lowe Land Farm / Peter Van Wyck

Discussion of Mr. Van Wyck new plans for Lowe Land Farms, removal of all existing lot lines to create one lot. Per the Agreement for Judgment, in order for an ANR Mr. Van Wyck needs to present a current Board of Health approved perk to the Planning Board.

In addition the Board discussed the provision in the Agreement for Judgment that required the road to be started within 6 months of the endorsement of the plan and completed within 2 years.

Open Space Residential Design

Scottie provided copies of several other towns Open Space Residential Design Bylaws to the Board.

Lowe Land Farm / Peter Van Wyck

Mr. Van Wyck appeared before the Board to request an ANR. The Board reminded him in the Agreement for Judgment a current Board of Health approved perk is required. The Board also informed Mr. Van Wyck that they intend to discuss this request with Town Counsel before endorsing an ANR removing all lot lines to create one large lot. The Board reviewed with Mr. Van Wyck the requirement in the Agreement for Judgment that the road must be started within 6 months of the endorsement of the plan and completed within 2 years.

The Board renewed its request for a narrative on the project.

The Board also noted to Mr. Van Wyck that he needs to have the plan recorded before any amendments may take place. Chapter 81 W.

Site Plan Review Westley Burnham to Present

Discussion of how this would affect vacant lots.

Discussion of time required for the Site Plan Review process.

Discussion of allowing abutters and residents to have some say in changes of use.

After discussion of Bylaw revision the Board decide to amend, on the floor at the Town Meeting, the revision to include change of use as a trigger for Site Plan Review.

Lot Frontage Michael Cataldo to Present

The Board discussed the importance of clarifying the definition of Frontage, and that it must be accessible.

Drive Way Standards Westley Burnham to Present

Water Resource Protection Bylaw Betsy Shields to Present

The Board voted to postpone indefinitely. There was a procedural error. The map that was included with the Bylaw was not available at Town Hall for viewing.

Discussion of letter from William Taylor. Mail copy of Land Use By-laws.

Minutes:

Motion: Michael Cataldo moves to approve the minutes for 4/17/02 as written and amended.

The motion was seconded by Gil Guerin and passed

Motion: Gil Guerin moves to adjourn the meeting. The motion was seconded by Westley Burnham and passed unanimously.

The next meeting is scheduled for Wednesday, May 15, 2002, commencing at 7:30 p.m.

Presented by: Lorie Woodward
Lorie Woodward, Admin. Assistant

Attested to: Jud Lane
Jud Lane, Clerk

**Town of Essex Planning Board
Minutes
Wednesday May 15, 2002
7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School in Essex and was opened at 7:35p.m. by Scottie Robinson.

Attendees: Scottie Robinson, Elizabeth Shields, Westley Burnham, and Jud Lane and Andrew St. John.

Building Inspector: Bill Sanborn

Secretary: Lorie A. Woodward

Building Inspector Report

14 Turtle Back Road / Jeanne and Mark Raney / House Siting

The footprint does not exceed 2500 sq. ft.

Motion: Betsy Shields moves to approve the siting for Jeanne and Mark Raney, single family house roughly 63-ft. by 38-ft., 25-ft. in height, as it meets all the setbacks. The applicant has received approval from the Board of Health and the Conservation Commission.

The Motion was seconded by Jud Lane and was passed. Scottie Robinson abstained from the vote.

10 Turtle Back Road / Avallone Essex Properties LLC / House Siting

Map 9 Lot 116, single family house. The Board roughly computed the actual footprint to be lower than 2500 sq. ft.

Motion: Andrew St. John moves to accept he Building Permit application for Avallone Essex Properties LLC, 10 Turtle Back Road, Map 9 Lot 116, it appears to meet all the requirements of the Town of Essex Zoning Ordinance. Conservation Commission and Board of Health have approved the siting.

The motion was seconded by Westley Burnham and was passed. Scottie Robinson abstained from the vote.

Agenda Items

51 Pond Street /Barrie Levine / ANR Application

Ms. Levine presented the proposed subdivision of land. The Board had met with Ms. Levine previously and advised her to go to the Zoning Board of Appeals and acquire a frontage variance before requesting an ANR, as she did not have the frontage required for two buildable lots. She returned to the Planning Board with variance and the Board viewed the application. A copy of the variance is on file in the Planning Board office.

Motion: Westley Burnham moves to approve the subdivision of property for 51 Pond Street, Map4 lot 79A Essex Assessor's map, finding that it meets the minimum standards required by the Town of Essex, having received a variance to allow 128.29-ft. frontage from the Board of Appeals in a decision

dated 2/13/02, properly filed with the Salem District Registry, Reference # 397509.

The motion was seconded by Jud Lane and passed unanimously.

36R Story Street / Michelle & David Kempskie / Performance Guarantee

The Board reviewed a letter from H. L. Graham Associates with regard to the single house subdivision road. Larry Graham called the secretary to make the Board aware that he had received a call from Joan Bucklin and she was unhappy with the condition of the road.

Motion: Westley Burnham moves to contact the Kempskies and release all funds in excess of \$3000.00 in accordance with the letter written by Larry Graham dated 5/8/02. Understanding the stipulation that David and Michelle Kempskie will accept the single house subdivision road in its present condition, and will bear the responsibility to repair and maintain. The remaining \$3000.00 to be held until as As-built plans have been received and monuments have been installed.

The motion was seconded by Andrew St. John and passed unanimously.

Liberty Road / Robert Bradley / Performance Guarantee

The Board reviewed a letter from H. L. Graham Associates with regards to Liberty Road subdivision road. In addition Larry had called to update the Board that he had since talked to the DPW and found that additional funds could be returned and that a letter to that effect was in the mail. The second letter advised the Board to release all funds in excess of \$9,800,00.

Motion: Westley Burnham moves to authorize the release of funds in excess of \$9800.00 to Robert Bradley, from the revenue account for Liberty Road based on the 5/8/02 report from Larry Graham. The motion is contingent on the Board's receipt of Larry Graham's updated letter.

The motion was seconded by Andrew St. John and passed unanimously.

Discussion of Larry Graham and his work in the Town of Essex.

Discussion of Conservation Commission position.

Jud Lane would like to step down as the current Conservation Commission member.

Motion: Westley Burnham moves to adjourn the meeting. The motion was seconded by Jud Lane and passed unanimously.

The next meeting is scheduled for Wednesday, June 5, 2002, commencing at 7:30 p.m.

Presented by: Lorie Woodward
Lorie Woodward, Admin. Assistant

Attested to: Jud Lane
Jud Lane, Clerk

Town of Essex Planning Board
Minutes
Wednesday, June 5, 2002
7:30 p.m.

The meeting was held at the Essex Elementary/Middle School and was opened at 7:30p.m. by Scottie Robinson, Chairman

Attendees: Westley Burnham, Scottie Robinson, Gil Guerin, Andrew St. John, Michael Cataldo, Jud Lane

Absent: Building Inspector: Bill Sanborn

Secretary: Lorie Woodward absent

Building Inspector's Report

Discussion of Water Resource Protection District and how it applies to 245 Western Avenue, George and Marcie Ricker.

Larry Graham / Clerk of the Works on the 36 Story Street Subdivision Road.

Discussion of the agreement made in the purchase in sale as to who is responsible for the construction of the road. Per Michelle Kempski, she and her husband accepted responsibility to construct the road to the Town's specifications.

Larry Graham gave a quick background

H. L. Graham Associates was given plans in the fall of 2000, for a simple one lot subdivision road and asked to act as clerk of the works for the job. As the project unfolded some field deviations were made that Mr. Graham felt were appropriate for intended use.

There are some drainage concerns. Mr. Graham suggests a soil assessment to ascertain what needs to be done to alleviate the 60-ft puddle being formed during rain, and added that the drainage should be dealt with now at the problem usually becomes worse with time.

Larry Graham offered to send a letter to the engineer, Vernon LeBlanc, who designed the road to get his thoughts on how to redesign the road to fix the existing problem.

Low Land Farms / Peter Van Wyck / Presentation of Narrative

Tom Avalone developer for Turtleback Road attended meeting with Mr. Van Wyck.

A packet of information was presented to each Board member.

Mr. Van Wyck reiterated that he would like to see the Town adopt a Cluster Zoning Bylaw to make his vision for the land possible.

Western Avenue / Bob Tyack, Fredrick Markum / ANR Application

Mr. Markum would like to subdivide approximately 20 acres. The larger parcel would belong with the Saw Mill approx. 18 acres.

Motion: Westley Burnham moves to approve the application for Fredrick Markum, 127 Western Avenue for subdivision of land creating two lots.

Total land area is 20+ acres, one lot consisting of just under 18 acres and the second with existing house and swimming pool and accessory building, finding it meets all the minimum requirements of the Town of Essex Bylaws. The Motion was seconded by Michael Cataldo and passed unanimously.

A check for \$200.00 was requested and received by the Board.

16 Tree Hill / Rick Conners, Anderson & Krieger / Special Permit Application

Mr. Conners of the law firm of Anderson & Kreiger addressed the Board of behalf of AT & T Wireless. It is their intent to add a three antenna array and necessary ground equipment to the pole located at 16 Tree Hill.

Motion: Westley Burnham moves that the Board hold a public hearing for AT & T Wireless to add an antenna array to the existing antenna pole located at 16 Tree Hill Road on July 17, 2002.

The motion was seconded by Michael Cataldo and passed unanimously.

Minutes

Motion: Jud Lane moves to accept the minutes dated 5/1/02 and 5/15/02 with amendments

The motion was seconded by Michael Cataldo and passed unanimously.

Election of Officers and Conservation Commission Rep

Motion: Westley Burnham moves to elect Andrew St. John Clerk for the Planning Board. The motion was seconded by Jud Lane and passed unanimously.

Motion: Gil Guerin moves to elect Westley Burnham as Chairman for the Planning Board. The motion was seconded by Scottie Robinson and passed.

Motion: Scottie Robinson moves to elect Michael Cataldo as Vice Chair for the Planning Board. The motion was seconded by Gil Guerin and passed unanimously.

174 Western Avenue / The Conways / Special Permit Application to increase impervious area to above 17% and to add additional new buildings on the parcel.
Discussion of impervious area and total footprint.

Motion: Michael Cataldo moves that the Board accept the Special Permit application from the Conways for 174 Western Avenue and set a public hearing date for July 17, 2002. The motion was seconded by Jud Lane and passed unanimously.

84 Apple Street / Arthur Eloise Hodges / ANR Application

Craig Vancura of Hancock Survey addressed the Board for his client Arthur Hodges. Discussion of Conservation Restriction which has not yet been approved but is shown on the plans. The property is 22 acres. When land was conveyed to Eloise there was a restriction on land allowing for only 3 houses with at least 5 acres per building lot. This restrictions stands.

Gil Guerin informed the board that the apparent driveway between the lots, is in fact a subdivision road.

The Board suggested that the property line not be drawn down the center of the subdivision road.

Discussion of frontage requirement and what part of the property is wetlands. Mr. Vancura will return to the Board and show where access on is available for each property. Attorney for this project is John Thompson.

Motion: Jud Lane moves to adjourn the meeting. The motion was seconded by Andrew St. John and passed unanimously

Meeting was adjourned at 10:00 p.m.

The next meeting is scheduled for Wednesday, June 19, 2002, commencing at 7:30 p.m.

Presented by: Lorie Woodward
Lorie Woodward, Admin. Assistant

Attested to: Andrew St. John
Jud Lane, Clerk

Andrew St. John, Clerk

**Town of Essex Planning Board
Minutes
Wednesday, June 19, 2002
7:30 p.m.**

The meeting was held at the Scout House and was opened at 7:30p.m. by Westley Burnham, Chairman

Attendees: Westley Burnham, Scottie Robinson, Andrew St. John, Michael Cataldo, Jud Lane

Absent: Gil Guerin

Building Inspector: Bill Sanborn

Secretary: Lorie Woodward

Building Inspector's Report

46 Lake Shore Drive / LaForge / Request for a Building Permit

The LaForge's had been granted a Building Permit previously but were unable to start the project, and appeared before the Board to request that the permit be reissued. This is a non-conforming lot

Motion: Jud Lane moves to reissue the Permit from 1999 for owner Daniel and Lisa LaForge, to build deck on existing non-conforming lot under 6-4.2 finding that it will not be more detrimental to the neighborhood. The motion was seconded by Andrew St. John and passed unanimously.

23 Gregory Island Road / Laurie and Anthony Silva / Change in Building Permit

Laurie Silva appeared before the Board to request a change in the height of the original building permit.

Motion: Betsy Shields moves to amend the original Building Permit under 6-4.2 finding that increasing the height from 28.2-ft. to 29.2-ft will not be substantially more detrimental than the existing Building Permit.

The Motion was seconded by Jud Lane. Voting Aye were Scottie Robinson, Westley Burnham, Jud Lane and Betsy Shields. Voting Present were Andrew St. John and Michael Cataldo.

245 Western Avenue / George & Marcie Ricker / Building Permit

The applicant proposes to build a 40-ft. by 60-ft. vehicle storage building. Discussion of letter received from the Board of Health. The lot currently a non-conforming grandfathered lot exceeds the impervious area requirements in the Water Resource Protection District. The Engineer, Clay Morrin addressed the Board to explain that the applicant intends to remove some of the current paved area to accommodate for the new building, so the impervious area will not be increased. The applicant indicated that there will be no plumbing in the building so this structure will not affect the waste water calculation for this lot. Mention of the access to the new building, it will be gravel. Discussion of required parking. Discussion of new Floor Drain requirements.

Discussion of use regulations for the new storage building. The applicant has a copy of the regulations.

Motion: Scottie Robinson moves that the Building Permit application for George and Marcie Ricker to construct a storage shed 40-ft by 60-ft on a concrete floor slab at 245 Western Avenue be approved. They have submitted plans that indicate that they are removing an equivalent amount of impervious surface from the parcel of land that will ensure that there is no change in the overall surface coverage. The storage building will have no water supplied directly to it although there is water supplied to the parcel of land and other buildings on it. In addition the Board requested as built plans upon completion of the building showing the removed impervious area and results of the new drainage flow. The Board also advises the applicant that there are DEP regulations pertinent to the interior drainage of the building. The Motion was seconded by Jud Lane and passed.

Low Land Farms / Peter Van Wyck / Discussion of options for the land

Mr. Van Wyck appeared before the Board with Scott from Apple Associates and Joe Ginn Northern Essex Limited.

Mr. Van Wyck was advised that the Board can not proceed with the plan as presented with the current Bylaws of the Town of Essex. The Town of Essex does not currently have an Open Space Residential Design Bylaw.

The Board encouraged Mr. Van Wyck to begin construction of the road as outlined in the Agreement for Judgment.

Discussion of Communal Septic Systems. Communal systems are allowed for new developments. The System would need to be reviewed by the DEP. DEP and Board of Health will determine the total possible units.

Discussion of Mr. Van Wyck requesting a modification in the Agreement for Judgment to allow Mr. Van Wyck to determine the number of houses and placement before the road is built. This would require Mr. Van Wyck return to Land Court to request an official modification.

The Planning Board informed Mr. Van Wyck that they do not have the authority to offer variances. Variance must be requested from the Zoning Board of Appeals.

Jud Lane advised Mr. Van Wyck to present the plan to the Conservation Commission to receive feedback. Scottie advised Mr. Van Wyck to provide the Board of Health with the sewer flow calculations so they can be reviewed.

Mr. Ginn, Northern Essex Limited, addressed the Board to confirm that the Road was approved and construction could begin. There are drainage issues on the Apple street end of the road. Apple Associates, Mr. Van Wyck' engineer and Mr. Graham the Clerk of the

Works will determine the best way to resolve this. The Board advised Mr. Ginn that any modifications must be reviewed by Mr. Graham and he will make his recommendations to the Board.

84 Apple Street / Hodges / ANR Application

The Board informed the engineer that if the two lots being created intend to use the subdivision road currently there it will need to be upgraded. The Subdivision road currently there was given multiple wavers because it was a single house subdivision road. The Board accepted a check for the ANR.

Motion: Andrew St. John moves that the Board approve the application from Eloise Hodges for the subdivision in the area of 84 Apple Street. The applicant is requesting an ANR and does not constitute a subdivision, both lots have required lot frontage, area and suitable access off Apple Street. It should be noted that should access to buildable areas on either lot be required off the existing Subdivision road the applicant will have to modify the existing roadway.

The motion was seconded by Jud Lane and passed.

Public Hearings

16 Tree Hill / AT & T Wireless Public Hearing set for 8:00pm July 17, 2002

174 Western Avenue / James & Elaine Conway Public Hearing set for 8:30pm July 17, 2002

Agenda of items for completion this year

Discussion of implementing a Paving Permit

Who would oversee, Building Inspector or DPW.

Mention of Open Space Residential Design Bylaw

Scottie has the lead on this project.

Discussion the Town's vulnerability to 40B.

Discussion of 142 Eastern Avenue and the Palazolla's on going court case, and mention of the members support for the decision made.

The Conservation Commission appointment remains open.

Discussion of the process for a subdivision.

Motion: Michael Cataldo moves to adjourn the meeting. The motion was seconded by Jud Lane and passed.

The next meeting is scheduled for Wednesday, July 17, 2002, commencing at 7:30 p.m.

Presented by: Lorie Woodward
Lorie Woodward, Admin. Assistant

Attested to: Andrew St John
Jud Lane, Clerk
Andrew St John

Town of Essex Planning Board
Minutes
Wednesday, July 17, 2002
7:30 p.m.

The meeting was held at the Scout House and was opened at 7:30p.m. by Westley Burnham, Chairman

Attendees: Westley Burnham, Scottie Robinson, Andrew St. John, Michael Cataldo, Gilbert Guerin *Betsy Shields*

Absent: Jud Lane

Building Inspector: Bill Sanborn

Secretary: Lorie Woodward

Building Inspector's Report

12 Story Street / Town of Essex, Essex Elementary Middle School / Building Permit

The School is requesting a Permit to build an addition onto the school. Town of Essex is exempt from the Site Plan Review process. The modular type building will not be temporary, they will be permanently attached to the foundation. No sprinkler systems. Only one means of egress from classroom. The Building Inspector will review all regulations with the applicant.

27 Turtleback Road / Building Permit

The applicant is requesting a Building Permit to build a house 42-ft. by 60-ft. with a footprint of 2899sq-ft. The Board advised the Building Inspector to take the plan back to the applicant and advise him to apply for a Special Permit under Site Plan Review as he is over the 2500sq-ft limit.

80 Main Street / 78-80 Main Street Trust / Request for a Building Permit

The applicant is requesting a Permit to demolish existing Quonset hut style building and replace with a new steel building. The new building will basically be placed on the existing footprint. The applicant has been to the Conservation Commission and is waiting for an order of conditions.

Motion: Betsy Shield moves to approve the application for 80 Main Street, 78-80 Main Street Trust, Map 34 lot 5 for demolition of existing building and to build a new foundation and building roughly the same size, with slightly different footprint. A 6-4.2 finding is required, that the proposed structure is not substantially more detrimental. Approval is given contingent upon Conservation Commission approval and subject to the Order of Conditions. In addition the Building Inspector must receive a copy of engineered drawing of the proposed foundation.

The motion was seconded by Gil Guerin and passed unanimously.

**Public Hearing
AT& T Wireless**

The Public Hearing was opened at 8:10 p. m. for AT & T Wireless for a Special Permit to add an antenna array to and existing monopole structure situated at 16 Tree Hill Road. All proper notifications have been made, mailed to abutters and Planning Boards of surrounding towns, Gloucester Daily Times and posted at the Town Hall.

No members of the public appeared for the Hearing.

Jeff Roelofs an attorney for AT & T wireless appeared before the Board to discuss the proposed array. He informed the Board that they had given notification to the other carriers on the tower of their intention as well as notification of the public hearing. The applicant intends to add an array to the 150-ft monopole. There are currently 3 carrier on the pole already. AT & T will be at the lowest station at 90-ft above ground level. Coaxial cables will run from the antenna to a small equipment cabinet installed on a concrete pad.

G. Guerin Is the antenna array consistent with the existing style.

J. Roelofs It is, in fact what we are proposing is an antenna array that contains only 3 antennas one in each sector. Visibly it is less than the arrays that are already up there.

W. Burnham You have reviewed the existing Special Permit, for Omni Point, which references the original Special Permit which allows the pole to exist until 2007. At that time a Special Permit must be reapplied for and you will be a part of that.

J. Roelofs We understand and are fine with that.

Motion: Michael Cataldo moves to close the Public Hearing.

The motion was seconded by ~~Jud Lane~~ and passed unanimously.

BGG Gilbert Guerin

Westley Burnham agreed to draft Special Permit.

Planning Board Business

Discussion of letters received in opposition to the amendment to the Silva's Building Permit from the previous meeting. Letters were distributed to all Board members and will be filed.

Lowe Land Farms

Scottie Robinson drafted a letter at Mr. Van Wyck's request regarding the lack of an Open Space Residential Design Bylaw in the Town of Essex, which would allow the Planning Board to address his most recent plan. The Board discussed the letter and approved it. Copy of letter enclosed with minutes.

Discussion of Drainage, still under discussion with the engineers.

Discussion of the last coat of asphalt and if it should be withheld until heavy construction is complete.

Letter from Larry Graham regarding Mr. Hildonen wanting to have his own surveyor check the lot lines that he shares with Mr. Van Wyck. Letter put in file.

Term Limits for Board of Appeals Members

Letter from Brendan Zubricki, Town Administrator, asking the Board to look into removing term limits for the Board of Appeals. The Board discussed this and felt it need more thought. The Board agreed that it should be voted on at the annual Town meeting, not a special meeting.

Public Hearing 174 Western Avenue

The Public Hearing was opened at 8:30 p.m. for 174 Western Avenue, request under Site Plan Review and the Water Resource Protection District for a Special Permit, to add 630-ft. of office space and 920-ft. of warehouse space to the rear of the building. All proper notifications have been made, mailed to abutters and Planning Boards of surrounding towns, Gloucester Daily Times and posted at the Town Hall.

Application was made on May 30, 2002

The Board received a letter from the DPW it is on file.

The Board received a letter from the Board of Health it is on file.

The Board received a letter from the Conservation Commission, it is on file.

Mr. Conway was informed that any approval would be contingent on the Conservation Commission approval.

Mr. Burnham The Board will need updated evaluation and run off calculations for the drainage swale, and calculation that show run off is directed to the swale from the gravel surface.

Mr. Burnham You have an application in to the Zoning Board of Appeals for relief from setback requirements, side yard variance of three feet, rear yard twelve feet, and a variance under 6-5.9 parking closer to the street.

Mr. Burnham The Board will need an engineering evaluation on the existing soil and documentation of it's present condition to answer the Conservation Commission concerns. The issue with the Board of Health regarding the location of the Septic System will need to be resolved. DPW concerns must be addressed, and maintenance agreement must be approved.

- Mr. Cataldo The meeting will be continued to allow the applicant to provide the requested information.
- Mr. Conway I did talk to Mark Howland who designed the Swale and had him come by and look at it. Mark said it was a little over grown but he is looking to get some different planting in after the warm spell is over.
- Mr. Burnham What we need is some kind of formal written documentation.
- Mr. Shea The system was designed for twice times the runoff generated there currently.
- Ms. Shields There is no possible way to add a second floor instead of building out?
- Mr. Conway Well we didn't want to do that because the last time I applied for the permit the neighbors were very upset about the height.
- Mr. Conway One of the things that we did prior to this meeting was go around and talk to the neighbors and show them the drawing get feedback, as a general rule the response was favorable.
- Mr. Cataldo **Motion: I move that we continue the hearing to the August 7, 2002 meeting at 8:30 p.m. The motion was seconded by Gil Guerin and passed unanimously.**

Mention of the Annual Town Meeting

Address: Open Space Residential Design
Zoning Board of Appeals term limits (elimination)
Water Resource Protection
Mixed Use and possibly using it to avoid 40B
Paving Restrictions
Swimming Pool fencing

First meeting in October should be a rough draft session or possibly the first week in September. Should be ready for a mid-January Hearing Date.

Discussion of reducing the 1200-ft. maximum for the subdivision road, for safety reasons.

Motion: Michael Cataldo moves to adjourn the meeting. The motion was seconded by Betsy Shields and passed unanimously.

The next meeting is scheduled for Wednesday, August 7, 2002, commencing at 7:30 p.m.

Presented by: Lorie Ann Woodward Attested to: Andrew St. John
Lorie Woodward, Admin. Assistant Andrew St. John, Clerk

**Town of Essex Planning Board
Minutes
Wednesday, August 7, 2002
7:30 p.m.**

The meeting was held at the Scout House and was opened at 7:40p.m. by Westley Burnham, Chairman

Attendees: Westley Burnham, Andrew St. John, Michael Cataldo, Gilbert Guerin, Jud Lane, Betsy Shields.

Absent: Scottie Robinson

Building Inspector: Bill Sanborn

Secretary: Lorie Woodward

Building Inspector's Report

29 Turtleback Road / James and Susan McKenna / Building Permit

The applicant amended his plan from the last meeting, the new footprint will be less than 2500 sq. ft. The Board reviewed the amended plan. The applicant has Conservation Commission approval, the Building Inspector will confirm Board of Health approval before issuance of Permit.

Motion: Betsy Shields moves to approve the Building Permit application for James and Susan McKenna, 29 Turtleback Road, Map 9 Lot 11L, they are requesting to build a new home as presented on site plan dated, 6/3/02. The applicant has received Conservation Commission approval. The Board finds that the application meets all of the minimum requirements of the Town of Essex.

The motion was seconded by Andrew St. John and passed unanimously.

118 R. Martin Street / Kenneth Tucker / Building Permit

Betsy Shields recused herself from this discussion and vote as she is an abutter.

The applicant intends to erect a 3 car garage 36 ft. x 24 ft. with storage above, as an accessory building to a single family dwelling. The applicant has received Conservation Commission and Board of Health approval.

Motion: Andrew St. John moves to approve the siting of an accessory building for Kenneth Tucker 118 R. Martin Street, Map 33 lot 10, finding that it meet all the requirements of the Town of Essex Bylaws.

The motion was seconded by Jud Lane and passed unanimously.

27 John Wise Avenue / Patricia Tullercash / Building Permit

The applicant is seeking approval for the addition of a bathroom and handi-capped access ramp. Ramp maybe within setbacks but it is exempted.

Motion: Jud Lane moves to approve the Building Permit, 27 John Wise Avenue, for Bathroom addition and handi-capped hallway. Finding under 6-4.2 that the proposed addition is not substantially more detrimental to the neighborhood.

The motion was seconded by Michael Cataldo and passed unanimously.

107 Belcher Street / Sandy Patrician / Building Permit

Mr. Patrician addressed the Board to explain that he has been in the process of applying for a Building Permit for over a year and a half. His Notice of Intent with the Conservation Commission was dated February 20, 2001. He was unaware of the change in the Bylaws that requires applicants with a footprint of over 2500 sq. ft. to go through the Special Permit process. He would like to be exempted from the Special Permit Process because his Building Permit process was started before the Bylaw was changed at the last Town Meeting.

Motion: Andrew St. John moves that the Board approve the application of Sandy & Diane Patrician, contingent on Board of Health approval, finding that it meets all of the requirements of the Town of Essex Bylaws.

The motion was seconded by Gilbert Guerin and passed unanimously.

229 Western Avenue / Dr. Kippenberger

Westely Burnham recused himself from the discussion.

Gil Guerin informed the Board that he had received a phone call from Jan Addison. He was told that the situation had gotten worse. Gil will follow up with Scottie Robinson.

51 Pond Street / Barry Levine / ANR Endorsement

The applicant appeared before the Board to request that the Board endorse her new plan. The new plan had addition measurements requested by Land Court, there were no other changes.

Motion: Betsy Shields moves that the Board sign the amended plan for Paul and Barry Levine, 51 Pond Street, revised, July 11, 2002, with administrative corrections for Land Court, fee was waived.

The motion was seconded by Michael Cataldo and passed.

16 Tree Hill / Special Permit / Cell Tower

The Board reviewed the provided draft approval. Draft was based on and tied to the previous approvals, ie Sprint, Cell One and Omni Point.

Motion: Michael Cataldo moves to grant the Special Permit in the form contained in this document dated August 7, 2002.

Motion was seconded by Andrew St. John.

Vote

Andrew St. John, I approve based on the fulfillment of all requirements of Town of Essex Bylaws for the proposed antenna array.

Jud Lane, present, excluded from the vote as he was not at the Public Hearing.

Michael Cataldo, I vote in favor finding it meets all the criteria that we have to judge the Special Permit application

Betsy Shields, I vote in favor on this application, I feel it meets all the applicable Essex Bylaws.

Westley Burnham, I vote in favor, finding that the use is in harmony with the intent of the Bylaw, site specific, and the proposed use will not adversely affect the neighborhood.

The motion was passed, the Special Permit was approved.

Minutes:

Motion: Andrew St. John moves to accept the minutes of July 17 as amended. The motion was seconded by Betsy Shields and passed unanimously.

Motion: Michael Cataldo moves to accept the minutes of June 19 as amended. The motion was seconded by Jud Lane and passed unanimously.

**Public Hearing
174 Western Avenue**

The continued Public Hearing was opened at 8:30 p.m. for 174 Western Avenue, request under Site Plan Review and the Water Resource Protection District for a Special Permit, to add 630-ft. of office space and 920-ft. of warehouse space to the rear of the building.

Mr. Shea addressed the Board and informed them that the addition to the rear of the existing building had been deleted. Several other Boards had concerns regarding the siting of the building. Mr. Shea cited the decline in the economy as the reason for the applicant being able to reduce the scope of his original plan. In addition Mr. Shea confirmed that the Board of Health had been given verification that the septic tank was located 15 ft. from the building.

Mr. Shea and Mr. Conway were unable to get in touch with Mr. Howland who installed the swale, to get the calculations that would verify that it can accommodate the additional runoff. They will provide the information at the next meeting.

Betsy Shields: What is the total proposed impervious coverage change.
Mr. Shea: From 27.5% to 30%

Betsy Shields: There is no way to add another story.

Mr. Shea: Due to the heavy nature of the product it can only be stacked so high.

Gil Guerin: The height of the front of the building will be different than the existing building.

Mr. Shea: The proposed height will be 31 feet.

Betsy Shields: So what we are waiting for is calculations for the Howland Swale.

Mr. Shea: We have been trying to get in touch with Mr. Howland since the last meeting.

We were finally able to reach him the day before this meeting, we will have the calculations for the next meeting.

Mr. Shea requested that the Board divide the two projects and approve the office addition as it does not fall into the buffer zone and has no bearing on the water shed. Mr. Conway would like to start the project while the weather is good. If he could get his permit for the office addition we could continue to the next meeting with no problem at all.

Mr. Burnham stated he would have no problem with forwarding a memo to the Building Inspector to that effect, and continuing the public hearing till the next meeting so the Board can review information from Mr. Howland.

The Board agreed.

Motion: Michael Cataldo moves to continue the Public Hearing Special Permit application until August 20, 2002 at 8:00.

The motion was seconded by Gil Guerin and passed unanimously.

Discussion of the office addition, which does not effect the impervious area calculations and appears to conform in all respects. Discussion regarding authorizing the chair to forward a memo to the Building Inspector stating that the Board reviewed the office addition and has no issue, and authorize him to issue a permit to allow the construction of the office addition.

The Board agreed to forward the memo.

131 Eastern Avenue / Edward Ackerly Jr. / Discussion

It is their intent to build an additional dwelling on the current lot, and they wanted to know what their next step should be. They have 1.72 acres with no wetlands. The Board advised them to develop a site plan with the existing house and proposed house showing they have at least 60,000 sq. ft. In addition they were advised to talk to the Building Inspector and get an application. They will need a perk test and a title 5 septic system for the proposed house. Advised them to look into the new Bylaw that addresses common driveways.

Mixed Use

Discussion of Mixed Use and the motivation behind drafting a Bylaw. Discussion of District Zoning. Discussion of using Mixed Use to increase low-income housing.

Motion: Michael Cataldo moves to adjourn the meeting. The motion was seconded by Betsy Shields and passed unanimously.

The next meeting is scheduled for Wednesday, August 21, 2002, commencing at 7:30 p.m.

Presented by: Lorie Woodward
Lorie Woodward, Admin. Assistant

Attested to: Andrew St. John
Andrew St. John, Clerk

DRAFT
(ms)

**Town of Essex Planning Board
Minutes
Wednesday, August 21, 2002
7:30 p.m.**

The meeting was held at the Scout House and was opened at 7:40p.m. by Westley Burnham, Chairman

Attendees: Westley Burnham, Gilbert Guerin, Jud Lane, Betsy Shields, Scottie Robinson.

Absent: Andrew St. John, Michael Cataldo.

Building Inspector: Bill Sanborn

Secretary: Lorie Woodward

Building Inspector's Report

6 Water Street / Peter Lazasseur / Building Permit

Removal of old addition and replacement with new addition. The Planning Board found no setback issues.

Planning Board Business

142 Eastern Avenue

Letter from Kopelman and Paige, informing the Board that the parties have agreed to terminate the litigation.

Turtle Back Road

The Board received a letter from Mr. Van Wyck requesting an extension for the final coat of asphalt, as built drawings, and the placement of some of the stone boundaries as the August 30, 2002 due date is fast approaching. The Board agreed to discuss this later in the meeting as Larry Graham Clerk of the Works will be attending the meeting.

Minutes

Motion: Jud Lane moves to approve the minutes of August 7, 2002 as written.

The motion was seconded by Betsy Shields and passed unanimously.

Planning Board Secretary

The Board agreed to have Westley talk to the Town Administrator about an appropriate raise in salary for the secretarial position.

174 Western Avenue / James Conway / Special Permit

Reopen Public Hearing

Mr. Shea addressed the Board and provided them with a handout, on file. One of the handouts addressed the Howland Swale and additions requested by Mr. Howland.

Ms. Robinson: Confirmed that the addition to the rear of the existing building has been removed.

Mr. Shea: Confirmed this.

Ms. Robinson: The parking. Wasn't there a request before the ZBA to allow parking at the front of the lot?

Mr. Shea: We have not been able to find anything regarding this so we will be leaving the pavement the way it is.

Motion: Gil Guerin moves to close the Public Hearing.

The motion was seconded by Jud Lane and passed unanimously.

Westley Burnham agreed to write up a Special Permit draft.

36 Story Street / Joan Bucklin / Modification to existing approved subdivision

The Board reviewed the application and found that the plan presented lacked adequate frontage. The applicant withdrew her application without prejudice and will correct the plan and resubmit at the next meeting.

The Board advised the applicant to develop their list of requested waivers to be submitted with the application, if no waivers are requested, the Board will assume none are needed.

84 Apple Street / Arthur Hodges / discussion of a subdivision road

John Thompson, an attorney with Hutchins, Wheeler and Ditmyer of Boston addressed the Board. Craig Vancura, Hancock Survey and Arthur and Eloise Hodges were also present.

The Board was unsure how to proceed with putting one subdivision on top on another, and felt that the original Subdivision would need to be modified.

The Board advised the Hodges to plan on going through the entire modification process with public hearing and obtaining input from other Boards and abutters.

Mr. Thompson informed the Board that there is a Conservation Commission restriction on the lots allowing for only one single family dwelling on each lot.

Discussion of access for Safety Vehicles and what would be considered adequate. Turnarounds for emergency equipment. Discussion of having driveways adjacent to each other to accommodate the turnaround.

Discussion of Driveway Standards.

Lakeview Road / George Benoit / ANR Request

Mr. Benoit appeared before the Board to request an ANR to change his existing lot lines. The Board reviewed the plan and found that they could not sign the plan. The Water Resource Protection District requires buildable lots to be 40,000 sq.-ft. One of the lots

shown on the plan is (vacant) 30,000 sq.-ft. In addition the lot located next to the vacant 30,000 sq.-ft. lot has a multifamily located on it and does not have the square footage required in the Water Resource Protection District. As the two nonconforming lots have been held in common ownership for greater than three years according to MGL they must be combined to reduce the nonconformity. The Board did not accept a check.

Turtleback Road / Peter Van Wyck

Larry Graham addressed the Board and agreed with Mr. Van Wyck that final coat of asphalt and the stone bounds should not be installed until after the heavy construction is complete.

Motion: Gil Guerin moves to authorize August 1, 2003 for the final layer of asphalt and stone bounds.

The motion was seconded by Jud Lane and passed unanimously.

Lowe Land Farms / Peter Van Wyck / Subdivision Road

Larry Graham addressed the Board to give an update. In June Larry contacted Apple Assoc. regarding the re-survey and design of the road as the original approved plan would not work. The revision was received by Larry on August 5. Larry still had some concerns with the first 250-ft. of the road and forwarded Apple his recommendations, a slight redesign in the horizontal and vertical alignment. On August 19 Larry received another set of revised plans from Apple with more of the changes made on the plan. August 21 the day of the meeting Larry received the most recent revision which included raising the road in front of Hildonen and Brownings Driveways to remove the water runoff problem. Larry referenced his letter from August 12 in which he made recommendations regarding the horizontal and vertical alignment changes. Apple followed those recommendations. In his letter Larry explained that in order to use his recommendations the Planning Board would have to offer a waiver for 7.02.4.8.4 where the maximum grade within 50-ft. of an intersection is supposed to be 3%. In the redesign the center line vertical alignment is 4.6%.

Discussion of drainage coming in from Apple Street, and explanation of the double graded catch basin with cascade vein to be installed to accommodate the runoff. Addition discussion of the raised area in front of Hildonen and Brownings driveways to stop the drainage into their properties. Discussion of talking to town about continuing the berm in front of Hindonen's property so the water runoff from Apple street will be channeled down into Lowe Land Farm's drainage system.

Discussion of Conservation Commission approval,

Mr. Hildonen and Ms. Frye attended the meeting to voice concerns regarding drainage.

Discussion of the retention basin near B.J. Frye's property line.

Explanation of Hydrants.

Larry Graham summed up his discussion by saying that he was very pleased with Apple's most recent plan and that his recommendations have been followed to a T.

Discussion of the modification proposed by Larry Graham and if it constitutes a major of minor modification. The Board found MGL Chapter 41: Section 81W Modification, amendment or rescission of approval of plan; conditions to be vague and subjective.

**Motion: Gil Guerin moves to accept and approve the proposed waiver finding that the proposed change is a minor modification with regard to drainage and the pitch of Lowe Land Farm Road as presented on plan dated 7/5/02. The Board recognizes the Subdivision Rules and Regulation Section 7.02.4a.4 and waives the required 3% and allows 4.6%.
The motion was seconded by Jud Lane and passed unanimously.**

Copy of motion and revision for folder, copy of revision to Sally.

Discussion of Shade Tree Act.

**Motion: Gil Guerin moves to adjourn the meeting.
The motion was seconded by Betsy Shields and passed unanimously.**

The next meeting is scheduled for Wednesday, September 4, 2002, commencing at 7:30 p.m.

Presented by: Lorie Woodward
Lorie Woodward, Admin. Assistant

Attested to: Andrew St. John
Andrew St. John, Clerk

Town of Essex Planning Board

Agenda

September 4, 2002

Scout House

7:30 p.m.

- 7:30 p.m. **Building Inspector**
- 7:50 p.m. **Lake Shore Drive / George Benoit / Question**
- 8:00 p.m. **36 Story Street / Joan Bucklin / Application Subdivision
modification**
- 8:30 p.m. **84 Apple Street / Arthur & Eloise Hodges / Discussion of
use of Subdivision Road**
- 9:00 p.m. **Planning Board Business**
- 174 Western Avenue / Review Draft of Special Permit**
- 229 Western Avenue / Dr. Kippenberger / Discussion**
- Approval of Minutes*
 8/21/02
- Mail**

**Town of Essex Planning Board
Minutes
Wednesday, September 4, 2002
7:30 p.m.**

The meeting was held at the Scout House and was opened at 7:40p.m.

As neither the Chair, nor the Vice Chair were present the following motion was made.

**Motion: Andrew St. John moves that Scottie Robinson act as Chairman.
The motion was seconded by Jud Lane and passed unanimously.**

Attendees: Jud Lane, Betsy Shields, Scottie Robinson, Andrew St. John. Michael Cataldo and Gilbert Guerin arrived during the discussion 52 Main Street.

Absent: Westley Burnham.

Building Inspector: Bill Sanborn

Secretary: Lorie Woodward

Building Inspector's Report

52 Main Street / Roman Catholic Church / Building Permit

Remove existing single car garage and construct new garage on same site 5-ft. by 11-ft., slightly larger, with additional storage at rear.

Michael Cataldo arrived during this discussion and stepped in as Chair for the remainder of the meeting.

**Motion: Andrew St. John moves that the application of the Roman Catholic Church to replace the existing single car garage and construct a new garage at 52 Main Street be approved pursuant to section 6-4.2 of the Essex Bylaws finding it meets all other requirements of the Bylaws and finding the proposed use to be no more detrimental than the existing nonconforming use, and the approval will be contingent on Conservation Commission approval.
The motion was seconded by Gil Guerin and passed unanimously.**

Grove Street / Tad and Kathy Pennoyer / Siting of a New House

The applicant is requesting a Building Permit to construct a 40-ft. by 50-ft. single family home. The applicant has received approvals from Conservation Commission, Board of Health, and Fire Dept. Approval is needed from DPW for a curb cut, the Police Dept. for 911, and a Board of Health Stamp.

**Motion: Betsy Shields moves to approve the Building Permit Application to site the house for Tad and Kathy Pennoyer, Grove Street Map 20 lot 31, finding the single family house meets all setbacks, and other Bylaws. Approval is given contingent on receipt of DPW curb cut, 911 and Board of Health Stamp. In addition the approval is contingent on the Conservation Commission's Order of Conditions.
The Motion was seconded by Gilbert Guerin and passed unanimously.**

24 Apple Street / Michael & Sarah Rodier / Building Permit Application

Betsy Shields recused herself from the discussion.

The applicant is requesting a Building Permit for a 3 ½ car garage, 24-ft. by 42-ft. with storage above, no plumbing. The lot is 6 acres. The proposed structure meets all set backs. The applicant is adding on to the home as well under a separate Building Permit application, no motion was found necessary.

Motion: Scottie Robinson moves to accept the Building Permit Application of Michael and Sarah Rodier, 24 Apple Street for construction of a 3 ½ car garage with storage above, detached from the home, the dimensions 24-ft. by 42-ft., there will be no plumbing.

The motion was seconded by Andrew St. John and passed unanimously by those members present.

Betsy Shields rejoined the meeting.

16 Tree Hill / Cell Tower

The secretary will forward a copy of the Special Permit to the Building Inspector.

229 Western Avenue / Dr. Kippenberger

Scottie Robinson gave the Board brief review of the situation.

The Building Inspector forwarded a letter on October 11, 2001 to Mr. Kippenberger requesting that he appear before the Planning Board to go through the Special Permit Process to correct the improperly permitted change of use for his property.

The Building Inspector received a letter on Oct 17, 2001 stating that Mr. Kippenberger would not appear before the Board as he felt he would be attacked by a biased Board.

The Board consulted with Kopelman and Paige, Town Counsel, who suggested that the Board can either require Dr. Kippenberg to file a Site Plan Review by sending a him a letter and as well as write a letter to the Building Inspector asking that he enforce the law, or send Dr. Kippenberger a letter requesting he appear before the Board to discuss the situation.

The Board chose to send a registered letter to Mr. Kippenberger on November 13, 2001 again requesting that he appear before the Board. The Board received no response.

In February Scottie telephoned Mr. Kippenberger and was told that his attorney Michael Shea would forward a letter they received from the Planning Board that was seated at the time he acquired the change of use, that substantiated his claim that he was going to be able to change the use on his property without Board review. The Board never received any information.

Gil Guerin informed the Board that he has received several phone calls complaining about the noise and odor being generated at the property. In addition Gil has talked to

Brendan Zubricki regarding Board of Health issues, how many dogs can be housed at the facility at any given time.

Gil feels that the Planning Board needs to pursue this and forward a letter to the Selectmen.

239 Western Avenue / Randy Nichols

Mr. Nichols addressed the Board with his complaints regarding 229 Western Avenue. The amount of noise from the barking dogs at the site has increased dramatically in the past months, it is consistently 6-7 hours a day. The customers in the restaurant have been complaining about the noise and the noise travels through their apartment above the restaurant affecting their quality of life. In addition the odor coming from the site drifts across the driveway every morning.

Mr. Nichols informed the Board he had done some research on the Internet and found MGL Chapter 140 title 20 Public Safety and Good Order. This section addresses unreasonable extent of barking dogs at a kennel maintained in a city or town. It mentions that upon a petition of 25 citizens filed to a Mayor of Selectmen of a Town that official can set forth a hearing. Mr. Nichols was able to get the required signatures within a couple hours walking around the neighborhood.

The Board advised the Mr. Nichols to forward the petition to the Town Administrator. In addition the Planning Board will send a letter to the Board of Health.

Scottie Robinson stated that she believes the Board should contact the Selectmen and inform them that the Planning Board would like the Selectmen to pull the permit or issue a cease and desist order until he appears before the Board to go through the previously circumvented Site Plan Review process.

Bill Sanborn told the Board that in his discussion with Dr. Kippenberger, Bill was told that he is running a home occupation. As Dr. Kippenberger applied for a Change of Use and was granted it, although improperly, the Planning Board will continue on the premise that he is operating commercially, until such a time as he appears before the Board to address the situation.

Scottie Robinson agreed to draft a letter to the selectmen.

Michael Cataldo agreed to call the Board of Health after Scottie drafts the letter.

Lakeview Road / George Benoit

Mr. Benoit appeared before the Board with a brief question regarding changes made to his ANR plan. The Board was unable to sign his plan because one of the lots shown on the plan is a vacant lot with only 30,000 sq. ft. situated beside 40,000 sq. ft. lot with a duplex located on it. As the two nonconforming lots have been held in common ownership for greater than three years according to MGL they must be combined to reduce the nonconformity.

Story Street / Joan Bucklin / Subdivision Plan

Joan Bucklin appeared before the Board with Dick Tomiallo. The revisions suggested by the Board at the previous meeting were made to the plan. The lot being created is 30,000 sq. ft. The Board informed Ms. Bucklin that the Essex Bylaws require new buildable lots to be 40,000 sq.ft minimum for lots on roads created after 1972. Discussion.

Discussion of money being held by the Town from the Kempinski's for the completion of the road, and resolving this issue before starting a new Subdivision process.

Discussion of requested waivers.

The construction drawings with elevation were not included with the application. Mr. Tomiallo informed the Board that the Engineer was working on the drawings and was unable to have them ready for this meeting. The Board refused to accept the application without the drawings.

On July 25, 2002 the Clerk of the Works, Larry Graham requested engineered drawings to alleviate the drainage problems currently found with the road. The Town has yet to receive any corrections from the engineer, Mr. Leblanc, who presented the original plans for the subdivision road.

84 Apple Street / Eloise and Arthur Hodges / Subdivision Road discussion

John Thompson, an attorney with Hutchins, Wheeler and Ditmyer of Boston addressed the Board along with Eloise Hodges and Engineer, Jim Mol. The engineer provided concept plans for the improvements for the subdivision road.

It is their intention to use the current subdivision road as access for two single family homes located on 21 acres with 1000 feet of frontage. Plans were presented to the Board showing the road widened from approx. 10-ft. to 16-ft to the location of the two driveways. In addition a hammerhead is added in the area of the proposed driveway access for the houses.

The Engineer felt that the proposed hammerhead will be very beneficial in case of a fire in the area. The hammerhead will allow a fire, pumper, truck to turnaround.

Discussion of numbering of the proposed houses for 911 service.

Mention of a maintenance agreement for the road.

Mention of utilities, currently the utilities are underground. They will consult with the Hays to see if they can tie into their service, otherwise they will run their own underground.

The Planning Board requested the applicant update the abutters list.

174 Western Avenue / James Conway / Special Permit Application

Letter from Board of Health was read and is on file.

Discussion of letter from received from builder of Howland Swale, whether it is working correctly and being maintained correctly, and if it will work for the additional water flow.

Discussion of annual maintenance agreement to be reviewed by the DPW. Secretary to add maintenance agreement from Scot's Way Special permit to draft approval. In addition last sentence from letter from Howland to be added "The detailed maintenance schedule to be provide by Mark Howland must be filed with the DPW on an annual basis.

Discussion of mitigation of runoff of proposed new building.

Discussion of Proposed Position Paper

Andrew St. John passed out some information that he researched since the last meeting. There were not enough copies for secretary.

Discussion of interpretation of dimensional requirements, 40,000-sq.ft.

Motion: Gil Guerin moves to adjourn the meeting.

The motion was seconded by Jud Lane and passed unanimously.

The next meeting is scheduled for Wednesday, September 18, 2002, commencing at 7:30 p.m.

Presented by: Lorie Woodward
Lorie Woodward, Admin. Assistant

Attested to: Andrew St. John
Andrew St. John, Clerk

HS corrected
Approved
Forward Minutes

**Town of Essex Planning Board
Agenda
September 18, 2002
Essex Elementary/Middle School
7:30 p.m.**

7:30 p.m.

Building Inspector

8:00 p.m.

~~36 Story Street / Joan Bueklin / Application Subdivision
modification~~ *Cancel*

~~8:00
8:20 p.m.~~

Planning Board Business

174 Western Avenue / Review Draft of Special Permit

229 Western Avenue / Dr. Kippenberger / Discussion

**Discussion of Position Paper Proposed at previous
meeting**

Mixed Use

Approval of Minutes

8/21/02

9/4/02

Mail

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30

1350

**Town of Essex Planning Board
Minutes
Wednesday, September 18, 2002
7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School and was called to order at 7:40p.m by the Chairman, Westley Burnham

Attendees: Westley Burnham, Betsy Shields, Andrew St. John, Gilbert Guerin.

Absent: Jud Lane, Michael Cataldo, Scottie Robinson.

Building Inspector: Bill Sanborn

Secretary: Lorie Woodward

Building Inspector's Report

199 Western Avenue / Scott Dewitt / Building Permit

The applicant would like to demolish existing commercial building and replace with a two family town house, One unit having a single bedroom and the other having two bedrooms. The property is located in the Water Resource Protection District, which would require 80,000 sq.-ft. of upland. The lot is only 40,000 sq.-ft. and there are wetlands located on the property. The Board advised the applicant that they could not approve any dwelling for the site unless he received a variance from the Zoning Board of Appeals, exempting him from sentence 13 of the Water Resource Protection District Bylaw. The applicant withdrew his application to review his options.

Discussion of Water Resource Protection District Bylaw.

33 Pond Street / George & Sally Souci / Foundation Permit

The applicant is requesting a permit to install a 24-ft. by 36-ft. foundation to convert her home to a two family. Andrew questioned how much of her property was wetlands and if she had enough upland to accommodate the Water Resource Protection District Bylaw. The Board was unable to tell from the plan provided. The Board requested that the Building Inspector request more information about the amount of wetlands on the property.

16 County Road / Terminal Garage / Building Permit

Westley Burnham stepped down as chair and Gil Guerin accepted the position as Chair.

The applicant is requesting a permit to build a new 30-ft. by 45-ft. steel building. The Board reviewed the plan. No wetland on property meets setbacks.

Motion: Betsy Shields moves to approve the application of Terminal Garage, 16 County Road, map 31 lot 19, to construct a new steel building 30-ft. by 45-ft. seeing that it meets setbacks and watershed protection district restrictions, and contingent on receipt of approval of other Boards.

The motion was seconded by Andrew St. John. Betsy Shields, Andrew St. John and Gil Guerin voted aye and Westley Burnham voted present. The motion passes.

Discussion of Change of Use and Vacant Lots with the Building Inspector.

174 Western Avenue / James Conway / Special Permit

Discussion of the Howland letter, whether the swale is working at this time, and whether it will continue to work for the additional flow. There is currently no maintenance agreement.

Decision on draft approval was postponed to the next meeting when hopefully more Board members are present.

229 Western Avenue / Dr. Kippenberger

Letter was sent to the Selectmen, a copy was read to the Board

Westley raised himself

Minutes

**Motion: Gil Guerin moves to approve the minutes for 9/4/02 as ammended.
The motion was seconded by Andrew St. John and passed unanimously.**

**Motion: Gil Guerin moves to adjourn the meeting.
The motion was seconded by Betsy Shields and passed unanimously.**

The next meeting is scheduled for Wednesday, October 2, 2002, commencing at 7:30 p.m.

Presented by: Lorie Woodward
Lorie Woodward, Admin. Assistant

Attested to: Andrew St. John
Andrew St. John, Clerk

**Town of Essex Planning Board
Agenda
October 2, 2002
Essex Elementary/Middle School
7:30 p.m.**

7:30 p.m. **Building Inspector**

8:00 p.m. **Planning Board Business**

174 Western Avenue / Review Draft of Special Permit

Mixed Use

Approval of Minutes
9/18/02

Mail

239 Western Ave. Dr. Kippenberger

**Town of Essex Planning Board
Minutes October 2, 2002
7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School and was called to order at 7:40p.m by the Chairman, Westley Burhham

Attendees: Westley Burnham, Jud Lane, Andrew St. John, Gilbert Guerin, Scottie Robinson. Betsy Shields and Michael Cataldo arrived during the Building Inspector's Report.

Absent:

Building Inspector: Bill Sanborn

Secretary: Lorie Woodward

Building Inspector's Report

34 Belcher Street / James & Chris Georgeoulakos / House Siting

The applicant presented a plan for a home with a footprint of greater than 2500 sq. ft. The Board reviewed MGL Chapter 81 P and found that since the lot was created by an ANR before the Site Plan Review Bylaw change, the applicant has 3 years from the lot creation (8/01) to be exempted from the new restrictions. The applicant has not received Conservation Commission approval or Board of Health. One large house, a carriage house and a barn with bathroom and shower on 28 acres of land.

Motion: Gil Guerin moves to approve the siting for the property located at 34 Belcher Street, lot 4 map 13, seeing that it meets all setback and requirements of the Essex Bylaws. There will be three structures, a barn a carriage house and a house. The applicant is exempted from the Site Plan Review Process under MGL Chapter 81 section P which requires the Bylaws in effect at the time of the ANR to stay in effect for 3 years. Contingent on approval from Board of Health and Conservation Commission.

The motion was seconded by Jud Land and passed unanimously.

33 Pond Street / George and Sally Soucy / Building Permit

This lot came before the Board last meeting. The Building Inspector presented the Board with the requested new information, there are no wetlands located on the property. The applicant has more than the required 80,000 sq. ft. of upland required for a second dwelling.

Motion: Betsy Shields moves to approve the application by George and Sally Soucy at 33 Pond Street, map 8 lot 53. They have applied to demolish an existing 10-ft. by 10-ft. shed and install a new foundation for a 24 x 36 new dwelling which will be connected to the principal dwelling, to create a two family, contingent on Board of Health approval. The applicant has received Conservation Commission approval. The proposed foundation meets all minimum requirements of the Town of Essex Bylaws.

The motion was seconded by Gil Guerin and passed unanimously.

239 Western Avenue / Dr. Kippenberger

Westley Burnham recused himself from the discussion.

Discussion of the letter from the Selectmen in response to the letter the Planning Board forwarded to them.

According to the Building Inspector Dr. Kippenberger has said he is still operating as a Home Occupation. The Board discussed that he has not conformed to the many of the requirements of a Home Occupation.

At this point the Board of Selectmen has received a petition from the neighbors and will hold a Public Hearing with regard to this problem.

Site Plan Review

Discussion of what structures are included in the 2500sq. ft. footprint. Any structural slabs, or anything that requires a foundation. Front steps and non-enclosed porches/decks are exempt if not an impervious surface.

Cell Towers

Discussion of cell tower, on Scot's Way, before the Zoning Board of Appeals, and the two mile minimum between cell towers.

Home Occupation

Discussion: Should there be some kind of official permit process where the applicant outlines the specifics of the business being conducted on site, and is made aware of the restrictions placed on Home Occupations.

Choate Street / Steven Jawarski / Informal Discussion

Mr. Jawarski appeared before the Board for Mr. Donovan the owner of the property. He would like to construct a 3800 sq. ft. barn for cows. The lot is located in Essex and is essentially land locked by other lots owned by Mr. Donovan held in common ownership. The frontage would need to be incorporated into one lot. The Essex Planning Board would need proof from Ipswich that the lot is considered buildable by their town Bylaws before the Essex Planning Board could proceed. In addition the land between the lot in question and the frontage would need to be held in common ownership through an ANR to make the lot buildable by Town of Essex Bylaws.

174 Western Avenue / James Conway / Site Plan Review

Discussion: The Board reviewed the Draft Approval and amended (see attached approval with conditions.)

Discussion: Is it appropriate to extend impervious coverage in the Water Resource Protection District.

Discussion: The applicant has had a Special Permit in effect since 1999 and has not properly maintained the Howland Swale, and it is only being maintained currently because the applicant has applied to extend the impervious coverage.

Discussion: As Built plans from first Special Permit were not been submitted as required by the first Special Permit

Motion: Jud Lane moves that the Board approve the Special Permit for James Conway, 174 Western Avenue, with the conditions as amended tonight by the Board. The motion was seconded by Andrew St. John.

Poll of the Board

Michael Cataldo, Aye. I find that it meets the requirements of the Town of Essex Bylaws.

Andrew St. John, Yes. I find it complies with all of the Town of Essex Bylaws.

Scottie Robinson, No, because the owner has been holder of a Special Permit and has not met the requirements, by his own admission, and I am not inclined to give him the benefit of the doubt and issue another one.

Gil Guerin Aye. I think that the applicant is going to meet all the new provisions of the Special Permit.

Jud Lane Yes, I do not feel the proposed structure will be anymore detrimental than the current situation, and that the Special Permit conditions will hold him to the yearly maintenance agreement.

Betsy Shields No, based on the fact that I feel that from the engineers letters that the applicant was not in compliance with the current zoning for the wetlands area.

Westley Burnham Aye, I believe the Special Permit in the plan presented meets all the minimum requirements of the Water Resource Protection District.

Minutes

Motion: Andrew St. John moves to approve the minutes for 10/02/02 as amended.

The motion was seconded by Gil Guerin and passed unanimously.

Motion: Gil Guerin moves to adjourn the meeting.

The motion was seconded by Betsy Shields and passed unanimously.

The next meeting is scheduled for Wednesday, October 16, 2002, commencing at 7:30 p.m.

Presented by: Lorie Woodward
Lorie Woodward, Admin. Assistant

Attested to: Andrew St. John
Andrew St. John, Clerk

**Town of Essex Planning Board
Minutes
Wednesday, October 16, 2002
7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School and was called to order at 7:40p.m by the Vice Chairman, Michael Cataldo

Attendees: Jud Lane, Betsy Shields, Michael Cataldo, Scottie Robinson.

Absent: Westley Burnham, Andrew St. John, Gil Guerin.

Building Inspector: Bill Sanborn

Secretary: Lorie Woodward

Building Inspector's Report

69 Choate Street / Brian Setzer / Building Permit

The applicant is requesting a Building Permit for a 27-ft. by 100-ft. green house

Motion: Betsy Shields moves to approve the siting of the new building at 65 Choate Street for Brian Setzer, Map 16 lot 9 for a 27-ft. by 100-ft greenhouse. It seems to meet the setbacks and all bylaws. Has Board of Health and Conservation Commission approval.

The motion was seconded by Jud Lane and passed unanimously.

3 Andrews Street / Jim Ansara / Building Permit

The applicant is requesting a Building Permit for an unfinished barn 32-ft by 50-ft for storage of a Boat. There will be no bathroom, forced air oil heat and an outside spigot. The height of the building will be 26ft. 8in.

Motion: Scottie Robinson moves to accept the application for Jim Ansara, 3 Andrews Street to construct an unfinished 32-ft by 50-ft barn with no plumbing, spickot outside and forced air by oil heat. Approval is contingent on Conservation Commission approval.

The motion was seconded by Betsy Shields and passed unanimously.

1 Riverview Hill / Brian Bernier / Building Permit

Joe Walker appeared for the applicant to request additions to the existing house. They intend to glass in the existing porch for exercise room, dog kennel storage in existing garage and a new garage. The board discussed impervious surface and found that it was not and issue.

Motion: Betsy Shields moves to approve the application of Brian Bernier, 1 Riverview Hill, map 41 lot 23c to glass in existing porch for exercise room, dog kennel storage in existing garage and a new garage seeing that it meets all zoning Bylaws.

The motion was seconded by Jud Lane and passed unanimously.

6 Evans Way / Terry Lafferty / Building Permit

The applicant is requesting a Building Permit to construct a 16-ft by 20-ft garden shed.

Motion: Betsy Shields moves to approve the Building Permit application for Terry Lafferty, 6 Evan's Way, to construct a 16-ft. by 20-ft. garden shed with no plumbing or heating, it appears to meet all Town of Essex Bylaws.

Approval is contingent on Board of Health and Conservation Commission approvals.

The motion was seconded by Jud Lane and passed unanimously.

199 Western Avenue / Scott Dewitt / Discussion

Mr. Dewitt appeared before the Board with his wife and Clay Morin from Morin Engineering. Mr. Dewitt informed the Board that he intends to appear before the Zoning Board of Appeals to request a variance so he can construct a two family with a single bedroom unit and a two bedroom unit. He is restricted as to what he can do with the lot due to a deed restriction which requires the lot to be used for residential, antiques or log splitting. The secretary will forward a copy of the change in Site Plan Review as well as copy of the Land Use Regulations to Mr. Dewitt.

Laurel Lane /

Attorney John Keilty addressed the Board for his clients Paul and XXX. Attorney Keilty appeared before the Board to discuss possible uses for property that his clients are interested in purchasing. They intend to operate a commercial golf course development at the site. The Board informed them that they must demonstrated that the lot is on an accepted way and has real frontage before they proceed further.

4 Ice House Lane / Scott Boches / Preliminary Subdivision dicussion

Mr. Boches addressed the Board to submit his plan for a preliminary subdivision. The Board viewed the plan and had questions with regard to wetlands and where exactly the buffer zone is located. In addition the Board instructed Mr. Boches to demonstrate that the land was held by the parties on the plan. The Board did not accept the preliminary subdivision plan as he had no application or the correct number of copies of plans.

2 Andrews Street / Margo Kusulas / Site Plan Review

Larry Graham engineer for the project appeared before the Board to discuss the plans presented with the application. Discussion of height of building, 39- 40ft. Discussion of view/line of sight. Copies of plans and application to go to Conservation Commission, DPW, Board of Health, and Fire Department.

Motion: Jud Lane moves to adjourn the meeting.

The motion was seconded by Betsy Shields and passed unanimously.

The next meeting is scheduled for Wednesday, November 6, 2002, commencing at 7:30 p.m.

Presented by: Lorie Woodward Attested to: Andrew St. John
Lorie Woodward, Admin. Assistant Andrew St. John, Clerk

Town of Essex Planning Board
Minutes
Wednesday, November 6, 2002
7:30 p.m.

The meeting was held at the Essex Elementary/Middle School and was called to order at 7:30p.m by the Chairman, Westley Burnham

Attendees: Westley Burnham, Andrew St. John, Gil Guerin, Jud Lane, Betsy Shields, Michael Cataldo, Scottie Robinson.

Absent: none

Building Inspector: Bill Sanborn

Secretary: Lorie Woodward

Building Inspector's Report

Brief discussion of Tennis Courts and fences surrounding, and what setbacks apply. The Board felt if fell under accessory use which the setbacks are 10-ft.

4 Landing Road / Nicholas Chareas-Shirley Burnham / House Siting

The applicant is requesting a permit for a foundation only for a two-family. Conservation Commission, Waste Water and Board of Health approvals have been received. Lot area 34,273 sq. ft. Discussion of the lot being grandfathered because it was in place before the Bylaws regarding wetland area were changed. In addition there is a 5-year statute of limitations on anything that changes lot area regulations for residential dwellings, under non-conforming uses.

Motion: Gil Guerin moves to approve the siting for Nicholas Chareas and Shirley Burnham, map 33 lot 16b, lot has 34,273 sq. ft., for a two family dwelling seeing that it meets all Town of Essex Bylaws. The applicant has received approvals from Board of Health, Conservation Commission, and Waste Water.

The Motion was seconded by Jud Lane and passed unanimously.

15 Apple Street / Kimberly & David Germain / Building Permit Request
Betsy Shields recused herself from the discussion.

The applicant is requesting a Building Permit to construct a story and a half barn/workshop 22ft. by 32ft. The Board sent plans back with Building Inspector for more detailed information with regard to wetland delineation if any and impervious coverage information.

Scot's Way / Sprint Spectrum L. P. / Special Permit Application Submission

The applicant would like to install a 120 ft. tower which would allow them three carriers. Brief discussion of the fact that the appeal period for the Zoning Board of Appeals decision has not elapsed yet, and if the decision is appealed then the Special Permit Process will have to be on hold until the litigation is resolved. The Board accepted the application and check for \$100.00, a public hearing was set for December 4, 2002.

Motion: Michael Cataldo moves to accept the application from Sprint Spectrum L. P. for construction of a cell tower and set a Public Hearing date for December 4, 2002 commencing at 8:00 p.m. at the Essex Elementary/Middle School.

The motion was seconded by Gil Guerin and passed unanimously

Public Hearing

2 Andrews Street / Margo Kusulas / Special Permit application

At 8:30 on November 6, 2002 the Public Hearing was opened for 2 Andrews Street. The notice as advertised, Notice is hereby given that the Essex Planning Board will hold a Public Hearing on Wednesday November 6, 2002 at 8:30 P.M. at the Essex Elementary/Middle School, on the application of Margo Kusulas, 2 Andrews Street, Essex, MA 01929, for a Special Permit under Town of Essex Bylaw Section 6-6.12 Site Plan Review. Said property is located at 2 Andrews Street, on the east and west sides of Andrews Street just south of Southern Ave. Applicant is seeking approval to add a new horse barn, indoor hall, outdoor ring associated parking and utilities. The documents can be reviewed at the Town Hall and have been available for public viewing.

Westley Burnham: At this point in time I would like to take a moment to review how we plan on proceeding this evening. The Site Plan Review Bylaw that we are considering this under is Section 6-6.12. I am not going to read the entire bylaw, just set the stage. This is the bounds of which we are addressing this evening. The purpose is to regulate development of structures in a manner that considers the following concerns and where necessary requires a modification of development and proposals to eliminate or minimize potential problems and nuisances.

Second order of business the conduct of this meeting, we will allow the applicant to present their proposal, at which point, once they are completed we will ask for any questions from the Board members, specifically to the applicant, after that is complete then we will go for general public input/questions. I wish to reiterate that you need to start by identifying yourself so we can get you on record, your name and address so we can try to be as concise as possible.

Mr. Henderson, Southern Avenue: It would be helpful for me, as many of you all know that this land has a deed restriction on it. We have someone here from The Trustees of Reservation. It would be helpful to hear what their position is prior to the presentation.

Mr. Burnham: The process that I am going to follow is the same one that we follow for every other Special Permit application. We allow the applicant to present to us, because we have not been presented to yet. Then the Trustees and anyone else will be allowed, once the applicant is done with their presentation, to offer any comments, questions or any other evidence that you want us to consider during the Special Permit process. So the answer to that is no.

Mr. Henderson: Can you just abbreviate what you consider the Planning Board's issues for consideration?

Mr. Burnham: The Planning Board's issues are to consider the permit application in front of us under the guise of 6-6.12 Site Plan Review.

Mr. Henderson: Could you explain?

Mr Burnham: Under 6-6.12, I am not going to read everything verbatim, but generally the principal areas of concern are traffic, parking, drainage control, existing vegetation, amenities, town character, screening, hazardous materials, and or project specific criteria which leaves the Board a caveat to address anything of substantial impact. That is a brief overview of what we will be considering.

Mr. Henderson: In this situation there is a conservation restriction on the property and the Trustees were in fact responsible for the interpretation of that were the Board to know that the Trustees had turned down that proposal would the Planning Board under those circumstances sit and listen to the presentation?

Mr. Burnham: Mr. Henderson we have an application in front of us and we have an obligation to allow the applicant to go through the procedure, the answer to that is yes. They have a legal right and we have an obligation to allow them to apply, expect to be heard, and treated the same as anyone else.

Mr. Henderson: Even under these circumstances?

Mr. Burnham: Blanket statement, The Planning Board's area of concern is limited to the Zoning Bylaws and any other items which directly interface with the Town of Essex. If The Trustees of Reservation or others have a private covenant that part of the agreement between he seller and the buyer that is not grounds for swaying the outcome of this. The Board will listen and may consider information but will not use a private agreement for swaying the outcome one way or another. You have your own area of recourse, it is a private deal. If there is a conservation restriction of some sort that we are not privy to at this time I am hoping it will come out. If there is any evidence of it we will take that into consideration. At this point in time I would prefer to get started, allow the applicant his due time to present to the Planning Board what his intents are, and then we will move on.

Mr. Fred Fawcett, Apple Street: If someone presents a plan to you claiming to own the land would you make any attempt to determine whether or not that person actually did own or have right to develop that property?

Mr. Burnham: The answer to that is going to be no, because we do not in anyway shape or form perform title searches for any applicant that comes in front of us.

Who is representing the applicant.

Mr. Cataldo: As part of the process Westley is describing we also submit the plans and application to other Town Boards and as part of the review we take their comments into account as well.

Larry Graham, H. L. Graham Associates, Engineer for the applicant provided presentation.

Larry Graham: My name is Larry Graham, representing the applicant Margo Kusulas, accompanied by her attorney Dennis Crimmins. H.L. Graham Associates are the project engineers and design engineers for the project. The project is located at 2 Andrews Street. The land is comprised of 2 parcels, one on the west side of Andrews Street of about 3.3 acres and one on the east side of about 9.5 acres. The west side is a wooded tract of land, has an existing barn on it up very near the corner of the intersection. There is a stream basically severing the property running north to south, an unnamed stream as far as I know. The property is generally wooded.

On the east side of Andrews Street there is an existing dwelling up near the corner of Southern Ave. and Andrews Street. The address of the property is at that location, which is number 2 Andrews Street. The balance of the property is generally in pasture. The front half, the northern half of the property is in fence pasture and the back is just an open field. There is one small portion of the property to the very south center of the easterly portion of the property that it wooded.

Ms. Kusulas is in the horse business, she operates now at her house and with existing barn across the street with a few horses and would like to expand her business, and her private ownership of horses and also expand her horse instructional operation.

The proposal is to construct on the easterly portion of the property, the 9.5 acre parcel a 20 horse stall barn in the northerly part and a T shape indoor riding hall kickback to the southerly half with a connector bar between them. The stall barn is a little over 7000sq. ft. in dimension of about 45ft. by 158ft. the indoor hall is around 13,600sq. ft. the dimensions are 170ft. by 80ft. the connector building between the two is 80ft. by 40ft. 3200sq. ft.

The Site Plan that we developed for Margo is a comprehensive plan, it that we have shown the entire property with the intent to develop over time. This is a full phase development.

The other part of the application is an outdoor ring, which would be in the northeast center of the easterly parcel of the property.

We are before the Planning Board tonight having submitted to the Planning Board on October 15, 2002 a complete set of drawings, 5 sheets, there were some supplemental drawings submitted to the Planning Board, those which we submitted to the Board of Health for a septic system approval in support of the barn. We also submitted a supplemental sheet, which has a few lines on it. The remainder of the application is a document package which contained a cover letter, the application itself, a deed to the property, abutters list, and a drainage/storm water management report.

We are before the Planning Board for Site Plan Approval. We have filed this week with the Conservation Commission because the property as I mentioned with the stream, on the westerly part does have Conservation Commission consequences with respect to buffer zone. There is no proposed impact to any resource area, but there are buffer zones and this is a perennial stream so there is a river front area application within the Conservation Commission application that had to be made. That notice of intent was filed with the Conservation Commission this week. On or about October 15 we also filed an application with the Board of Health for the septic system again which will support the barn for horse wash activity as well as a couple of toilets which will be in the barn. I have had some response from the Board of Health through the Health Agent and made revisions to the plan suggested by the Health Agent increasing the design flow and also relocated the proposed well which is a secondary source of water for irrigation, horse washing and watering. The well has been relocated at the Agent's request.

As was already mentioned this evening we have been working for the past several months with The Trustees of Reservation because there is a conservation restriction on the property. We have been working with the Trustees and some of the plan features are the result of conversations and meeting we have had with the Trustees particularly with respect to some of the grading and proposed landscaping that has primarily been put on the plans to lessen the visual impact of the project. This site plan is complete in its nature with respect to grading, parking, access to the proposed facility, a very comprehensive drainage plan, landscaping, a manure handling area, septic system, well and cistern. The cistern is actually part of the drainage system. We will collect the roof water and direct it into subsurface infiltration but route it through a cistern so the cistern can be used for dust control within the project and outside. That is essentially the broad brush of the application. I can get into any particular details of any of the features which the chairman or I just mentioned. I would be happy to get into those details but I am not going to do that at this time.

Mr. Burnham: Do we have any questions from the Board members for Mr. Graham.

Ms. Robinson: Can you tell us if the well has been relocated since the Planning Board received plans?

Mr. Graham: Yes it has, let me show you where, we pulled it up slightly so we could get a little more spacing between the well and the proposed infiltration chamber at Elaine Wosney, the Health Agent's, request.

Ms. Robinson: What was the change in the design flow?

Mr. Graham: The original design for the septic system was for 530 gallons per day that was based on 20 horses at 25 gallons per day plus three employees at 10 gallons per day, that will give you the 530. We went back and looked at Elaine's request, the fact that there is a room which will be in the stall barn, in the front part which would have a toilet in it, it may be used by someone there tending to a sick horse, or a horse during foaling and that person may stay overnight with that horse. Elaine requested that we treat that as

a bedroom so we went to 500 gallons for the 20 horses at 25 gallons plus the 110 for the bedroom, within the 110 we include 2 employees plus 10 for the third employee to come up with a figure of 620.

Mr. Burnham: Any other questions? I do have a question myself. You stated the well water is a secondary source. I assume the primary source is the Town of Essex, and how is that going to be split.

Mr. Graham: Yes, There will be no cross connection. There will be back flow preventors on both systems. Is that what you meant?

Mr. Burnham: I guess what I was asking more whether there was going to be any delineation between what was fed with Town water and what was fed with well water?

Mr. Graham: I think the objective would be to use the well water primarily for the horse washing and barn activities, and the Town water for the domestic use of the toilet, sink and basin in the barn.

Mr. St. John: Clarification of how many horses to be housed in the barn 20 or 29.

Mr. Graham: 20 horses 20 stall barn.

Mr. St. John: Does the existing house have its own septic system?

Mr. Graham: The existing house has it's own system that is shown on the plan in a dotted fashion. That system will not be changed at all unless in the future addition to this house if and when that occurs and the Health Agent requires it. The septic system for the barn is totally separate.

Mr. Guerin: What is the suggested use, is it private or is it a business.

Mr. Graham: It is private and business, I guess, this is how Margo makes her living. The operational questions I would have to defer to the applicant.

Ms. Kusulas: The business basically the way it runs now is I do a few lessons I have a few horses in for training but primarily the new facility will basically be for breeding down the line, sale of horses, and maybe a few boarders here or there, primarily horses in for training. I don't want increase the number of people that are at the facility, it is my back yard so I don't want a million people there. Right now we have eight of our own horses, that is almost half of what I will have, with a couple of sale horses that would probably be in all the time, two stalls are also opened up during foaling season. Sometimes we won't even have the stall filled so if anything we may have less horses than the 20 stalls that we actually have. I don't know if that answers your question.

Mr. St. John: To clarify what I am hearing this is a business, the use is a business.

Ms. Kusulas: Yes, I would say I am making money off of it yes, it is commercial to a point, I would say it is commercially open to the public, I don't know if there is a way to clarify that but if you are saying will I be making money off it, yes.

Mr. Burnham: It is a commercial venture.

Ms. Shields: And the other current nine stalls what will happen to them.

Ms. Kusulas: They will be taken out.

Mr. Burnham: The Board will open the Hearing to the general public.

Richard Trebowicz, 131 Apple Street: The question I have is there any traffic study that they have conducted since this is a commercial enterprise, and as I understand it vehicular access is off Andrews Street. There is a pretty severe drop down onto Apple Street that really impedes the line of site so if you have any significant traffic now coming off of Andrews Street especially coming up to the stop sign at the intersection of Apple and Southern Avenue there is a concern if your going to see traffic coming out of Andrews Street. I don't know how many vehicles are anticipated to go through here and what size.

Mr. Burnham: At this time we are essentially at the discovery process ourselves. In answer to your question there has been no traffic study as yet. It is one of the points that we have to address.

Richard Trembowicz, 131 Apple Street: And then I ask also whether the sight line with increased traffic is appropriate coming up on Apple Street towards Southern Avenue because it is a pretty severe hill, with the stop sign actually on the hill.

Mr. Burnham: Understood, we will take it on consideration.

Mr. Wesley Ward of The Trustee of Reservation: If the Board would like I will summarize the status of the property under the Conservation Restriction.

Mr. Burnham: And this Conservation Restriction is?

Mr. Wesley Ward of The Trustee of Reservation: It is between Mrs. Bartlett and The Trustees of Reservation. It was dated December 15, 1976 and it was approved by the Town of Essex, and the Secretary of Environmental Affairs, so it is a statutory Conservation Restriction.

Mr. Burnham: Okay do you have a copy of that for the Board to review?

Mr. Wesley Ward of the Trustee of the Reservation: Yes I do. So Mr. Chairman I understand that this a different process from the Trustee's approval process under the

Conservation Restriction so I don't want to take your time to summarize where we are unless you feel that it is relevant.

Mr. Burnham: The Board would like to have a summary.

Mr. Cataldo: It is also relevant for the people in the audience.

Mr. Wesley Ward of The Trustee of Reservation: Very good, so I beg your indulgence here, I will go through the history of this and tell you where we stand now. As most of you know a conservation restriction is negotiated between an owner or a grantor and a grantee which must be a qualified conservation organization, municipality or state agency. In general the restriction lays out the activities that are prohibited and that are permitted in general. An activity that is not prohibited is permitted because it is impossible to say out all the activities that could be permitted and prohibited, you would have a very long document. This document is very short. Nowadays conservation restrictions are about 10 or 12 pages long on average, this one is I believe 3 pages long. The grantee or the holder cannot apply restrictions which are not specifically in the document.

This conservation restriction specifically permits construction of additional structures "necessary or useful in the operation of the farm." Subject to approval by The Trustees of Reservation. The structures must not be inconsistent with the intent of the restriction. The intent of the restriction is described as three things. Preservation of the premises in their present rural condition, we think that means 1976 rural conditions. Second, protection of environmental systems, and third scenic enjoyment. We have a letter from Gordon Abbot, which confirms that in his recollection those were in fact her concerns in putting the conservation restriction on the property. Gordon Abbot was the director of The Trustees of Reservation at the time the restriction was negotiated and recorded.

Ms. Kusulas presented a proposal to us, we have denied that proposal because of concerns about three major topics. First the intensity of the use as it affects the condition of pastures and the present rural condition. Second, the effect of manure and barn waste and the effect of run off and the management of those as they would effect the perennial stream and other environmental systems. Third, the scenic impact of the location, orientation, size, design, and the screen of the structure. Also is that as they would effect present rural conditions and the scenic enjoyment of the public. We believe by scenic enjoyment the restriction is really talking about the scenic enjoyment of the public rather than the scenic enjoyment of neighbors or abutters. Ms. Kusulas has responded very very seriously with some design modifications and other information and she has been very responsive throughout this process. Nevertheless we are not satisfied with the project as originally submitted or as modified it is not approvable under the terms of the restriction for the reasons I have cited. We expect that the applicant will be willing to make further modification to address the concerns that we have set forth.

Just a couple of other remarks. We understand that the Town permit process is independent from our approval process, we are not a public body although this restriction was publicly approved it is our job as the grantee of the restriction, the holder of the

restriction, to interpret that restriction according to our best lights. But we have not been just thinking about it in a vacuum, we held a neighborhood meeting a couple weeks ago and there was very good attendance from the immediate and nearby neighbors of the property and we received some very different view points. Questions were raised, some of which we had not raised ourselves and we are in the process of considering those views and the information that was presented to us at that meeting, which was by the way at Castle Hill which Mr. Henderson mentioned. We are here tonight not to oppose this project or to support this project because we don't think that is the proper role for us, but simply to learn from the information that is presented to you and learn from the questions that are raised. And it certainly is true that for the project to proceed requires approval by The Trustee of Reservation and by the Town Boards that are involved. So I am sorry to take so long but that's my attempt to summarize where we stand.

Samuel Hoar, Rocky Hill Road: Do I understand that this means that the plans which are before you for approval tonight are in fact not the final plans that we may be involved with, that we are involved with an ever changing scene.

Mr. Burnham: From my perspective, and my intent is we deal with the plans which are presented to us tonight.

Samuel Hoar, Rocky Hill Road: But aren't you seemingly wasting a lot of time because if these are not the final plans for the construction that is going to go forward why are we wasting our time looking at them. Pure and simple.

Mr. Burnham: Mr. Hoar I have to deal with what is presented the process is underway they have requested Site Plan Review and I have to deal with what was applied for.

Samuel Hoar, Rocky Hill Road: So you are going to be approving something that we now know is going to be changed. You are being asked to approve something that they have publicly said there are going to be changes.

Mr. Burnham: That is correct.

Thad Beal Southern Avenue: Under the circumstances of what has just occurred might the Board inquire of the applicant whether she wants to proceed with this plan.

Ms. Kusulas: Unfortunately the way everything works, we have tried to make our modifications for the Trustees, we have not really been able to come to an agreement. We worked back and forth and unfortunately they have asked one thing and then we have gotten more questions so unfortunately we thought we had answered their questions or concerns now they have come up with new concerns, which I know is not their fault they were brought up by the people or however it works. But we felt by doing this it would make the Town's issues and concerns present and then we could go through the steps parallel and figure out where to go exactly. This is my time as well but we are stuck at a rock and a hard place as far as how the Trustee stand and how the Town is going to stand on it.

Dennis Crimmins Attorney for Ms. Kusulas addressed the Board

Dennis Crimmins: If I might, just to clarify with what Mr. Ward acknowledged, they have refused to approve the plan that was presented to them which is by and large the same plan last generation as before you tonight. The Trustees of Reservations have also indicated that they are not likely to approve a plan until they know there is a plan that is about to be approved or to be approved by this Board and the Conservation Commission. So if we are to wait to proceed we will never get there. I have been involved with permitting for 15 to 20 years now. It is an iterative process, we are not here to waste people's time we are trying to hear what people have to say, particularly the Board members who are listening to what the public has to say. We will try to respond to those in some efficient and responsive manner and will proceed as I do on almost every other project that I have been involved in, in the past years.

Mr. Burnham: Mr. Ward, if I may, obviously you have alluded to some impending changes to this plan, do you have any reasonable details as to what those may involve such that it appears that we are going to be moving ahead with this, if those changes are relative to our review process that we may at least in some way address them.

Mr. Ward: I have no knowledge of any changes. The plan stands disapproved by The Trustees of Reservations, and we will not reconsider that unless new information is presented. So I am sure that based on the history that there will be modifications forthcoming.

Mr. Cataldo: Are you saying at this point you have not approved this plan.

Mr. Ward: We have disapproved this plan.

Mr. Burnham: Anybody else, Mr. Henderson

Mr. Henderson: Could you remind me this Board met on another situation with regard to a septic system the Town wanted to put on this property. The Trustees did not approve of this application and said they would sue the Town if that were to happen.

Mr. Burnham: Point of clarification at this point, this Board never was formally reviewing any septic system or sewer use of that property.

Mr. Henderson: I was told it was.

Mr. Burnham: I believe there may have been some discussion at Town Meeting there was Board of Health Review. Planning Board was never officially involved. Anyone else?

Katie St. John Forrest Avenue: Where will the manure pile be located?

Mr. Graham: The proposed manure handling facility will be located here at the highest point of the property. It is not totally finalized yet I would say, but what we are proposing there are two concrete rectangular shaped facilities with expansion available for a third. The inside of the concrete will be pitched away from the opening where the manure is brought in. It is about 12ft. wide it has the proper height for a backhoe to get in and a front end loader to turn it and move it around. Along the back part of the facility there will be a drain if there is any liquid which comes out it will drain to a septic tank similar to what you would have at your house.

David Davis Kings Court: What is the use for the existing barn, will it be used when it comes time for weaning of foals, to separate foals from their mother in a separate structure?

Ms. Kusulas: The existing barn will only be used for storage. We have found it is more beneficial for the mother and foal to be able to hear each other. The existing barn has been used to wean a foal this year and we did not have any problems or excess noise.

Mr. Henderson: Has an engineering plan regarding composting been developed?

Mr. Burnham: That would be the Board of Health's purview.

Mr. Graham: We do have some details in the application made by Derosa Environmental to the Conservation Commission there is a section on page 13 that deals with manure management, and I can loan that to you for a moment if you would like to read through it.

Mr. Henderson: I would.

Mr. Burnham: I would like to make one statement relative to the manure handling, it will be addressed in the Special Permit process, but seeing how manure is not specifically addressed as a zoning issue, and that is what we are primarily dealing with tonight. We will address any concerns that are put forth to us from the Board of Health in any restrictions or conditions that they wish to have placed relative to that, same as we would as with the well or septic system concerns or whatever. We have several items that have already been listed out to us in a letter but they have not completed their final review either, which brings up the last point which is the Public Hearing will not close tonight because we have to allow ample time for the rest of the Boards to respond, so we will have at least one more meeting. I just wanted to make sure everyone was aware of that.

Mr. Trembowicz, 131 Apple Street: On that issue of the manure and the potential risk to groundwater and well systems what is the appropriate forum to comment on that, is it here?

Mr. Burnham: The Conservation Commission and the Board of Health I am sure are going to address it. The Board of Health is the one I would consider to be the one to deal with it. They are the ones that deal with the keeping of animals etc.

Mr. Trembowicz, 131 Apple Street: Will they hold a public hearing do you know as far as process

Mr. Burnham: I am not sure exactly, I don't want to comment because I am not positive on how their review works. The Conservation Commission is, based on what I read I am sure is already considering it because of runoff concerns with wetlands rivers act and a host of other issues. I would rather try to keep focus in our own purview. Any decisions made or conditions put upon the project will be included in the Special Permit, either approval or denial.

Mr. Burnham: I would like to clarify, there was an earlier question about whether we are wasting our time reviewing this based on the belief that there may be some impending changes due to further negotiations with The Trustees of Reservations. I just want to try to reiterate at this point in time we have an application in front of us, we deal with the project as presented in front of us. We will go through the process, we will expect, lets say for the sake of argument that we approve with a list of conditions and stipulations, if down the road in order to get The Trustees of Reservation's approval in order to continue based on the conservation restriction which is attached to the property she has to undergo some changes, that will have to be reviewed by the Planning Board and if the changes are substantial enough it will reopen the Special Permit Hearing for a modification to that permit. Is that clear as to how the process should proceed, or how I expect it to proceed?

Mr. Hoar, Apple Street: Mr. Chairman might I suggest that the applicant might consider withdrawing the application until she has a application which has been approved by The Trustees of Reservations so we can go forward with a complete plan which has been approved and not keep going back.

Mr. Burnham: I believe earlier this evening that was posed to her and my read was that they wish to continue. It is their option.

Mr. Ellsworth, Belcher Street: When you were summarizing this process one of the things you brought up was town character, this is a fairly large structure I am wondering if you can give us some feeling as to what thought process you go through in determining whether or not this is in keeping with the neighborhood.

Mr. Burnham: I would prefer not to try to quantify a subjective opinion. I think the answer is no. That is a little to squishy to put out a hard core definition.

Vicky Cataldo Rocky Hill Road: Back to the approval process, I know you have to work with what the Board is presented. What happens if you go through all the process and go through all the reviews and decide to approve this and The Trustees are still disapproving it. What happens then?

Mr. Burnham: From our perspective they have completed the required Town process for Site Plan review. They have the ability from the Town's perspective to apply for a Building Permit, and this is assuming a positive outcome and proceed. The conservation

restriction is between The Trustees of Reservations and as it is tied to the deed. The applicant is obligated under whatever purchase and sale agreement they had to abide by this restriction, it becomes between those two private parties and we are done. From our perspective we will have reviewed it from Town's involvement. If I may let me just reread the purpose of Site Plan Review just to keep it in perspective. Purpose: The Site Plan Review Bylaw regulates the development of structures and sites permissible under present zoning. That is a key point. The conservation restriction is not a part of our present zoning, it is tied to an individual piece of property, between two individual parties. Our review process considers the following site-specific concerns, where necessary require, modifications, development of proposals to eliminate/minimize potential problems and nuisances. We have already been through the considerations that we are looking at, traffic control, run off, etc. The very first step of our review process will be to sit down and review all of the Town's Zoning Bylaws to ensure the presented plan does meet the minimum zoning in existence today, or what is applicable to that property. Then we will move on to the site-specific concerns and try to address them one at a time. We have a list and minutes will reflect conversations and input that we have gotten tonight plus any issues sent to us from the Conservation Commission, Board of Health or any other interested party.

Mr. Cataldo: I have a quick question for Larry, I thought when you submitted the plan a couple of weeks ago the stream was labeled a seasonal stream and I think tonight you said that you were filing your Conservation Commission application under the Rivers Protection Act.

Mr. Graham: That's correct

Mr. Cataldo: So you are acknowledging now that it is more than a seasonal stream.

Mr. Graham: If I said it before I misspoke at the initial meeting, it has always been a perennial stream, we have always known we would have to file with the Conservation Commission.

Mr. Guerin: Question of the applicant, can we be expecting any special provisions as a result of this property being under the State Farm Act Code, is it presently.

Ms. Kusulas: No it is not currently and I don't think we will.

Mr. Davis: I would just like to comment on the public/private I can't speak definitively but I can say that the conservation restriction that you have there has been accepted, if you look at the last page at the bottom you will see that Paul Mugford, Chairman of the Selectmen in 1976 accepted on behalf of the Town and deemed it public interest, and as a result of that the tax burden on that land was dramatically reduced which is a cost to the Town. It also is therefore in the public interest, certainly there is an entity in this Town that is concerned about the fact for all these years in time there has been an agreement and that the public has an interest in the scenic routes and the intent of the grantor that the

property remain rural and open. So when you say this is potentially a private matter I would like to contend that it is far from a private matter.

Mr. Burnham: It is my intention to at least run this restriction by Town Counsel for an exact status. I do not believe that it is our Board's responsibility to enforce Conservation, I believe the Conservation Commission takes care of that aspect, however we have not gotten a formal reply. I fully intend to run that by to find out what our legal obligations are relative to it. My gut feeling at this point is it is not exactly in our arena.

Karen Ansara, 3 Andrew Street: Mr. Ward if the permit is granted tonight, and if it has been disapproved by the Trustees or the Conservation Commission, what are the legal ramifications for building using that permit.

Mr. Ward: The Trustee of Reservation would report the conservation restriction so if we disapproved it and building took place, we would enforce the restriction to the best of our ability. I don't really want to go into the legal process, I am not a lawyer, we would be advised by our lawyers how to enforce this restriction.

Karen Ansara, 3 Andrews Street: So if a permit was granted tonight or at subsequent meetings, we would essentially be setting up the owners of the property for legally violating their conservation restriction.

Mr. Ward: Well only if they proceeded with their construction.

Karen Ansara, 3 Andrews Street: I don't see the point of getting the permit and proceeding with it.

Mr. Burnham: I'd like to clarify a couple of items. There will not be a permit issued tonight. This hearing will be continued to at least the next meeting, for reasons that we are obligated to. Second we have 90 days after the close of the public hearing in which to compile, review and filter any information that we are going to utilize to write the permit. As far as the applicant getting the permit itself they still have to go through Conservation and get that signed off, Board of Health, and come back to us for building sitings. We are not granting building sitings with this permit this is just under the Site Plan Review. Although if we approve it, it is pretty much a given that we are going to approve the siting because we would not issue the special permit in favor if they did not meet the zoning requirements. There is also a 20 day appeal period following the issuance of our final decision that any one who does not agree or wishes to contest it has the legal right under state law to appeal that and place the final approval on hold. And lastly we are not making a decision on this until I find out what exactly our responsibility with regard to this conservation restriction are. However we are under a time frame where we have to complete this within x amount of time and make a decision within x amount of time because inaction grants them an unconditional approval if the time has expired with no decision.

Katherine Davis Kings Court Road: I was wondering after the buildings and structures are built on the lot 9.5 acres how much open land is left after construction.

Mr. Graham: The existing conditions as far as building coverage now leaves 98% of the property open, the proposed conditions remaining uncovered will be 91%, an increase of 7%.

Mr. Faucet: Could you tell us what numbers those x represent? You were talking about x numbers of days for this and that.

Mr. Burnham: 65 days in which to hold the hearing, 90 days in which to make the decision from the close of the hearing.

Mr. Beal: I am sympathetic with the applicant and the Planning Board. I would with all due respect suggest that, you don't have to adjudicate this but if an applicant is submitting a plan that they know ahead of time that they can't proceed on they are not proceeding in good faith and the proposal is not going to be what is ultimately intended.

Mr. Henderson: The document I was shown was not an engineering plan, just a paragraph, so as far as I know there isn't one.

Jack Gail, Pond Street: I would like to say that I am opposed to this project, and I would welcome other people to say whether they are in favor of it or not. We have been reminded recently by the transformation of the Terminal Garage site, a Site Plan Review approval doesn't have much of an effect on the design of the structure and I would like to hear from the land owner or Mr. Graham 1) how tall is the proposed building is likely to be and what kind of design they have in mind, and perhaps you could be a little more specific about how the contours of the land would change with all this construction.

Mr. Graham: In the application package there are 3 sheets 11 by 17 I think which give the elevations of above the stall barn and the...(Mr. Gail cut in)

Jack Gail, Pond Street: I wonder if you could tell us in your own words.

Mr. Graham: Well let me refer to those, the one question you asked is the height, the height is 32 ft. (refer to information in application)

Jack Gail, Pond Street: Would you care to discuss what kind of changes to the topography

Mr. Graham: Absolutely, The general contour where the new structure is proposed is right in the area of contour 52. The entire facility proposed first floor is 48 so that is 4 feet below the existing grade where it is proposed to sit. That grading will allow the front of the barn to sit almost at grade, slightly above it. So there will be very little grading to take place here. The grading in this corner will locate the floor approximately 5 feet below at this grade. On the Andrew's Street side it will locate approximately 2 feet

above in this area here. So that gives you a fairly long building, it is located essentially at the crown of the hill, if you will, so there is not a lot of earth moving, but because of its size and the need to keep the floor the same level throughout it requires a 5-6 foot cut back in this corner basically level here and fill at the Andrews Street side. On the Andrews Street side we have a parking area proposed with the access. This is about a 4-5% grade from Andrews Street up into the parking area, and then a 2-3% grade across the parking area.

If you look at the application package and the submitted plans you can see the proposed contours but I will point them out.

Jack Gail Pond Street: So essentially you are flattening it.

Mr. Graham: We are setting the building down as far as we can so that we can have the front of the barn not up out of the ground.

Jack Gail Pond Street: My objection has to do with the criteria of the character of the neighborhood.

Mr. Burnham: At this point in time I have a couple of question and I am going to make a suggestion of the applicant. One question that we are going to need answered is your total number of intended employees. That aspect will have to be addressed in the permit based on the presentation from the Board of Health either confirming or denying their findings in writing. Also the question of the traffic study, not being fully cognizant of what the final result will be we need to either request a traffic study or justification as to why it should not be offered. Part of that is what your end product is going to be, we will address it in the permit based on how you come back to the Board. Andrews Street is recognized as a small rural narrow road so that has to be considered, any justification one way or the other will be required. As a member of the Fire Dept. also I just wanted to point out that the requirement is going to be for sprinklers, I don't know if you were aware of that or not. We have not received a formal letter from the Fire Chief yet but I have had conversations with him.

Mr. Henderson: I just wanted to thank The Trustees of Reservations.

Mr. St. John: Is it reasonable to suppose that if the application is changed in any substantive manner the by the negotiations with the Trustees that the clock would restart?

Mr. Burnham: My position on that is that we have in front of us an application. That is the application that we are going to act on. If the applicant in next two weeks (my intent is to carry this hearing open to the 20th of November at which time we have allowed ample time for the other Boards input and received any other information) If the applicant intends to submit a substantive change (substantive in the eyes of the Board) it could and potential would warrant reopening and re-advertising the hearing and going through the process to allow adequate input on the latest revision, essentially a substantial change would restart the Special Permit Process. If the change is made post permitting, in other words post public hearing, we will continue on and make our decision, if through

negotiation there is a substantive change it would require a modification to the existing special permit assuming that we write one in favor, this is all supposition at this point, it will require reopening and re-addressing it at which point the public hearing process and all of the appropriate advertising would occur and everyone would be allowed once again their input. Are there any further questions on that?

Lisa Leland, 142 Eastern Avenue: What would you consider substantive?

Mr. Burnham: That is once again a squishy word, if they change the location of the septic tank for the horse wash from point A to point B that is not substantive. If they change the size of the building by 25% either up or down that would be substantive. In my opinion and in the board in general (agreed by Gilbert and Michael) Any alterations would have to be reviewed, we have already had one minor one at the request of the Board of Health, they have relocated the well. In my view that is not substantive, it was at the request of a Town Board and the well is still there, and will hold very little bearing on the outcome.

Greg Crocken, Rocky Hill Road: I was curious, as I understand it there have been some changes that have gone on before this Board was presented to, I was wondering if it was ever a consideration to locate the structure closer to the rear of the lot.

Mr. Burnham: I cannot answer that question as we are in the beginning legs of our discussion. Any discussion that took place before was between the applicant and the Trustees to the best of my knowledge.

Mr. Ellsworth: May I suggest that there be required a visual impact study or analysis.

Mr. St. John: I think he is speaking of 3 dimensional views.

Mr. Burnham: We can think about that.

Kim Bartlett, Co-Chair of the Open Space Committee: The Board has asked me to make a statement. The Open Space Committee urges the Planning Board to not approve this proposal under grounds it constitutes an enormous or substantive rearrangement of the open space that has historically been a hay field, more recently a pasture, never a 30,000+ sq. ft. stable riding ring complex. The Committee sites 6.6-12.1b and 6.6.12.41 of the Site Plan Review grounds for not approval.

**Mr. Cataldo: Moves to continue the public hearing to 8:30 p.m. November 20, 2002.
The motion was seconded by Gil Guerin and passed unanimously.**

Planning Board Business

Minutes for 10/2/02

Motion: Andrew St. John moves to approve minutes as amended.

The motion was seconded by Gil Guerin and passed unanimously.

Minutes for 10/16/02

Motion: Betsy Shields moves to approve minutes as amended.

The motion was seconded by Jud Lane and passed unanimously.

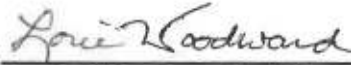
Quick mention of Site Plan Review for Scot's Way cell tower. Copies of application to go to Conservation Commission, DPW, and Selectmen.

Motion: Jud Lane moves to adjourn the meeting.

The motion was seconded by Betsy Shields and passed unanimously.

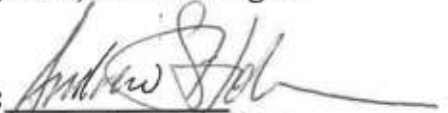
The next meeting is scheduled for Wednesday, November 20, 2002, commencing at 7:30 p.m.

Presented by:



Lorie Woodward, Admin. Assistant

Attested to:



Andrew St. John, Clerk

**Town of Essex Planning Board
Minutes
Wednesday, November 20, 2002
7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School and was called to order at 7:35p.m by the Chairman, Westley Burnham

Attendees: Westley Burnham, Andrew St. John, Jud Lane, Betsy Shields, Michael Cataldo, Scottie Robinson.

Absent: Gil Guerin

Building Inspector: Bill Sanborn

Secretary: Lorie Woodward

Building Inspector's Report

47 Main Street / Village Market / Natalie Sullivan

Discussion of addition of dormers to existing house, has received all other Board approvals. No expansion of footprint. No finding necessary.

82 Eastern Avenue / Essex County Greenbelt / Building Permit

The applicant is proposing to build a 30-ft. by 40-ft. barn, height 29-ft. Applicant has Board of Health and Conservation Commission approval.

Motion: Michael Cataldo moves to approve the application of Essex County Greenbelt for the construction of a new 30-ft. by 40-ft. by 24-ft. high, wood framed barn, finding it meets all requirements and has approval from Board of Health and Conservation Commission.

The motion was seconded by Jud Lane and passed unanimously.

Planning Board Business

199 Western Avenue/ Scott Dewitt / Special Permit

The Board suggested that Mr. Dewitt hold off submitting his application until after he has met with the Zoning Board of Appeals with regard to 6-13.3 sentence 13 as they have 90 days to render a decision. The Planning Board would not be able to approve the Special Permit until they have a copy of any variances granted available to them. If The Planning Board does not receive the variances within their time frame the Special Permit would be denied and the applicant would not be allowed to reapply for two years according to the Essex Bylaws.

Discussion of the 60 gallons per day per 10,000 sq. ft. of lot area and the Board of Health. Mr. Dewitt told the Board to expect a memo from the Board of Health. The Board suggested this be addressed by the Zoning Board of Appeals.

Discussion of signs and the allowable sizes. Signs for apartments are allowed to be 6 sq. ft. or 20 sq. ft. if internally illuminated.

Minutes

Motion: Michael Cataldo moves to approve the minutes of 11/6/02 as amended.

The motion was seconded by Betsy Shields and passed unanimously.

2 Andrews Street discussion

Scottie Robinson gave a brief report to the Board with regard to comments and requests addressed by the Conservation Commission on 11/19/02. Alternative scenarios/proposals have been requested on the basis that the drainage is not allowed into the perennial stream, the Conservation Commission is required by law to make this request by the Rivers Act and that the project is located within the buffer zone. In addition there are concerns because it is a spotted turtle habitat (endangered species.)

Discussion of commercial business at the site and what the Site Plan Review trigger is on this project is.

Public Hearing Reconvened

2 Andrews Street / Margo Kusulas / Special Permit application

Westley Burnham: The original hearing was opened 2 weeks ago at our regular meeting it was voted to be continued to allow some input from a variety of sources, some of which I will address in a moment and to allow the applicant to answer some of the questions which were posed to them.

First in the last two weeks we have received several letters relative to the project, one of which, was an updated letter from the Board of Health, it will be available, it is rather lengthy and detailed but it is relative primarily to the septic systems for the manure and compost pile etc. they have some request that have to be considered.

One from the DPW in which they state that our driveway permit system only allows for a 20-ft opening and we have a request on behalf of Turning Leaf Farm from Graham Associates requesting a waiver. That particular item will be between the DPW and the applicant, we don't make judgments on curb cuts.

The Board received a letter from Cory and Richard Trembowicz of which it is far to lengthy to read at this point in time, but we will be taking under advisement and further discussion.

Last I was in contact with Town Counsel relative to the Conservation Restriction which was delivered to us at the last meeting concerning this property. This I am going to read in its entirety just so everyone is clear with where we are going to proceed relative to that.

Dear Member of the Planning Board

You have requested an opinion as to the application for Site Plan Review filed by Margo Kusulas, 2 Andrews Street (the "Property") for the proposed construction of a 20 horse stable barn, riding arena, paddocks, and related structures. At the Planning Board hearing

on the application, the Board received a copy of a conservation restriction granted by the former owner of the property, Evelyn F. Bartlett, to the Trustee of Reservation (the "Restriction"). Certain citizens of the Town have stated to the Board that the Restriction prohibits the proposed use of the Property, and therefore, is grounds for denial of site plan approval. The copy of the conservation restriction provided to me does not include a description of the property, and I cannot determine if it applies to the Property. For purposes of this opinion, I will rely upon the representation that the restriction does apply to the Property.

In my opinion, the Restriction does not provide grounds for denial of site plan approval.

In general, "the planning board is not authorized to determine the existence of easements or to settle other property disputes." Hahn v. Planning Board of Stoughton, 24 Mass. App. Ct. 553, 555 (1987). In this case, the question before the Planning Board, in my opinion, is whether the site plan complies with the requirements of the Zoning By-law. In my opinion, the Board should not deny site plan approval based upon a conservation restriction on the property held by a private entity.

If you have further questions in this regard, do not hesitate to contact me.

Barbara J. Saint Andre

Is there any question as to what that means to us? Frankly the Conservation Restriction is off the table as far as our consideration.

I will move on and we will address some of the other items that were brought up. In the last meeting I asked the applicant for a couple of items. One was total number of employees anticipated, so we could address it in one way shape or form and also provide justification for or against a traffic study.

Dennis Crimmins, attorney representing the applicant.

I faxed a letter over today and brought other copies, sounds like maybe the letter that I faxed didn't get in the file, on the issue of the traffic study and I believe in the context of that letter it says the anticipated number of employees is 2 employees at the maximum. I would be happy to summarize. You have asked us to either provide a traffic study or give some reasons why we don't think one is necessary. I have opted for the latter, in our view, first of all the traffic impact from the site will be minimal at the most there will be two employees even at peak hours that traffic doesn't even become a blip on the radar screen in terms of increases resulting from the project. The second significant factor is we think that the operations of the farm once the building is built and the horses are moved across the street from where they are now will actually improve the situation in several significant ways. First of all there won't be horse traffic coming across that street, bringing them over to the field where they are now brought for exercise and turned out for short periods. We think that is a benefit to pedestrians and people in vehicles and to the horses and riders as they come and go because they won't be on the road. The second factor is as proposed it will be much easier although we don't anticipate a huge

volume of trailer activity or horse truck activity, it will be much easier for trailers and or truck to maneuver as well as coming and going. They won't have to back out onto Andrew's Street as they have been currently. So we think that will improve traffic. But the key issue with traffic is how much more we are going to generate and we really don't think that there is going to be a significant increase in the traffic.

Mr. Burnham: Any questions from the Board Members?

Ms. Robinson: I would not think that two employees would increase the traffic substantially either but I would think that 20 horses would require quite a bit of feed and so on, and I am concerned about hay trucks making deliveries going in and out of Andrews Street and I am concerned that there will be a number of trailers going in and out if you are boarding, horses and people come and go who knows when. There are certain things you can't anticipate but you can anticipate what you will need as regular traffic just to feed the animals that are stabled there, can you give us some idea what that might be?

Ms. Kusulas: If anything there will be more storage so the hay and feed deliveries will be lessened. Currently a shavings truck comes once a week, a feed truck comes once a week and a hay truck comes once a week, from three different places. That is three trucks per week and they are all fairly large trucks. If anything with the extra storage the deliveries would decrease to every 2 months, so I would think that would minimize the traffic drastically.

Ms. Robinson: And what about the owners of the horses coming and going or moving the horses around, I am asking because I don't know this business.

Ms. Kusulas: Well we ship the horses ourselves. If there was a tractor-trailer and we weren't there that would be a rarity maybe once a year.

Ms. Shields: I would like to know more about the lessons and what kind of traffic that will generate.

Ms. Kusulas: Right now I teach maybe 2-3 a day depending on weather.

Mr. St. John: How many employees do you have now?

Ms. Kusulas: Just me I take care of the 10 horses.

Mr. St. John: And 20 horses can be taken care of by two people?

Ms. Kusulas: I do it all right now riding, mucking, turning out seven days a week 24 hours a day. So two people would be a luxury.

Mr. Burnham: Anybody else, we will open the hearing to the general public.

Martha Hoar, 48 Rocky Hill Road, Is Andrews Street a Town Road?

Mr. Burnham: Andrew's Street is a Town Road.

Martha Hoar, 48 Rocky Hill Road, has it been laid out to 24-ft.

Mr. Burnham: It has not been laid out, but it is on the list as being an accepted way, a list which is maintained by the Town Clerk.

Martha Hoar, 48 Rocky Hill Road, When trucks are unloading they stick into the road.

Mr. Crimmins: We believe the situation will improve because those trucks won't have to be on the street, they will be able to come into the parking area.

Richard Trembowicz, 131 Apple Street, Just a couple of points, I had written a letter on that issue of standing which was a procedural issue and the question in there was whether a person has a sufficient title and interest in the land to go forward with the project that they propose. Massachusetts like many states recognizes that you can split title from interest. The whole purpose of conservation restriction, you have title to the land but you may not have all the interests in the land with rights to develop the land. In this particular case the point of my letter was simply that here there is clearly a legal title residing with the owner of the land to have the land, but it is also clear from the conservation restriction which is incorporated into the deed by reference that the rights to develop are conditioned upon receipt of an approval from the Trustee of Reservation. My point on standing is until that approval is presented to this body they have no rights to develop the property and so the simple answer here is until they furnish that approval from the Trustees there is no need to conduct this hearing at all, it is a procedural question. The rule of standing in the letter that you referenced actually did not address standing at all as an issue because standing is a very precise doctrine in the law.

Mr. Burnham: Can I respond for just a moment. The letter that you wrote I received after the conversation I had with Town Counsel. Obviously I don't have free access at one hundred and fifty some odd dollars an hour of the town's peoples, so I try to keep the cost down.

Mr. Trembowicz: I appreciate that and in fact part of the purpose is not to use town resources when you don't have to, and that is the importance of standing.

Mr. Burnham: In the conversation although not specifically addressed here, I did pose the question whether we had the right to proceed and whether this overrode. Her response to me was essentially that is between the Trustee's and owners. As far as from our perspective I understand what you are saying about standing, I am not a lawyer but I have been around a while. I understand what you are saying but we can not take that particular aspect into our consideration. At this point in time, as far as the standing of the property goes from a Planning Board perspective, it was legally created, it was approval not required approximately 3 years ago, when the prior owners broke it up so in our

perspective it is a legally existing lot from zoning perspective, and that is what we have to address it as.

Mr. St. John: May I suggest that you tell Mr. Trembowicz that we understand his point and we will take it under consideration and in courtesy to all the other people here tonight we are going to proceed with the hearing.

Mr. Trembowicz: My other point was on parking. This plan has proposed 10 parking spaces. The use of this property is in question, is it a home occupation because it is two employees or less and you take all the other factors into consideration, but if it is a home occupation you are limited to 3 parking spaces in addition to what it takes to support the residential activity. The plan proposed 10 parking spaces. The people already live there they already have parking spaces, the 10 spaces are in addition to the parking spaces that are already there for residential use. It would be a violation of the existing Bylaw to have 10 spaces, it is limited to 3. The other point is if it is deemed to be a commercial property it would have to go under the commercial rules which are 1 parking space per 500 sq. ft. which would require a minimum of 40 parking spaces given the size of the project. So defining of the use is necessary before you can judge which rules apply to this particular piece of property. I think that is critical in this particular case. Whether something is commercial or a home use I am not making a judgment what it is, but that is a factual question and I think you have to get all the facts on the table as to how the property is going to be used.

Danielle Sawanson, 125 Apple Street: I am a horse woman and have been in the business for years. I am reluctant to be against this project. I am concerned about the run off with regard to the manure on the environment. Maybe the project could be refigured.

Sam Hoar, Rocky Hill Road, I should report that the Conservation Commission has required the applicant to do an alternative study, which would place this complex outside of the Rivers Act. Currently the main building is located within 200 ft. of the perennial stream.

Mr. Crimmins: It is our client's intention to submit the alternatives analysis to the Conservation Commission. The DEP's regulations fairly DPL, that could result in a building or some other aspect of this project being moved. We are not going into that alternatives analysis saying we are going to analyze this in a way that is going to determine that what we have proposed today is the absolute final and the only way it can be done. I think Margo has engaged Mike Derosa who did the initial filing with the Conservation Commission to go ahead and do that analysis. We don't know how that will come out and in fact it is not just our decision it is in large part a decision of the Conservation Commission. I don't want people to think that we are not here listening, we are here listening to what people are saying, we are here saying is there a way to make this work. We understand that the Board Members would probably prefer to be doing something else this evening as would all of us, but we are trying to keep this process moving. I don't think at this point we are ready to say, we will just fold our tent and wait

until Conservation takes an action because I don't know when that is going to be. Our next hearing with the Conservation Commission is 12/17/02.

Mr. Burnham: Assuming the Conservation Commission is going to require you to move things would you expect or want us to maintain this hearing open such that we could receive any changes at that time in a public quorum?

Mr. Crimmins: I think that would probably make sense, because if we get into a position where we have to make changes, we could propose a modification while the hearing is still open.

Mr. Burnham: I would like to caution you on one thing, modification would have to be minor in nature. If it is a substantial rebuild, we would have to go through the entire advertising process, make plans available prior to the public hearing process the same as if it were a brand new filing.

Mr. Crimmins: We understand that.

John Henderson, Southern Avenue: One of the participants at the last meeting asked if we could have a scaled plan on this building, has that been taken under advisement? And is one available.

Mr. Burnham: I remember the question, and I did not request it of the applicants and no it is not available.

John Henderson, Southern Avenue: Could it now be asked again, could it become available?

Mr. Burnham: I would like to discuss that amongst the Board before we get to that point, as my personal opinion on that issue, we have not to the best of my knowledge ever required anyone to build a scale model of any project that came before us, and I am leery of singling any one applicant out for anything that might be construed as unreasonable, but we will discuss it.

Mr. Cataldo: We were reading through the minutes earlier, and there was a question of you Margo, had the other field been considered, and it didn't look like it had been answered. Had the rear field been considered for this complex?

Ms. Kusulas: It had, but for safety reasons we felt it should be closer to the house and The Trustees steered us in that direction.

Ms. Robinson: I have a couple other questions, the need for water for dust control was mentioned at the hearing two weeks ago, can you talk a little bit about dust control and I am concerned whether that is going to be an inside the enclosed ring issue or is it something that will need to be done outside as well. I am wondering what the impact will be on the neighborhood.

Ms. Kusulas: There should be little to no impact, you mostly do that so that if any horses as they go along kick up any dust, which does happen in every single facility. Most people don't have it, it is a luxury, you do it mostly for the respiration system of the animal so that they don't inhale dust as they go along.

Ms. Robinson: Is this dust that needs to be controlled inside or outside?

Ms. Kusulas: Inside and outside we are going to put sprinklers, just for the condition of the dry season when there is no rain, and you simply walk on your lawn and kick up dust when it is that dry.

Ms. Robinson: I have another question about site lines on Southern Avenue mostly because that is where most of the traffic is and so on. And I note that on the plan that you prepared Larry there are some site lines drawn on it at specific elevations but what happens if you go a little farther toward Manchester on Southern Ave. I don't have the plan in front of me at the moment, but it occurred to me that if you are coming up to Essex from Manchester you would actually see the side of that barn for quite a distance.

Mr. Graham: We just developed one site line through the property from the position on Southern Ave., just as you come past the property line. We extended that right on through the site, and then the reciprocal of that site line coming off of Andrews Street. We felt that we were picking a point through the peak of the roof of the proposed stall barn so that would be important and generally going across the indoor section of the hall. I agree with you that as you approach the project from Manchester that a little bit further toward Manchester you will also have a view of the indoor hall as well as the end of the barn. I can do other site lines but I have just done the one to illustrate what the proposed planting would do to mitigate that exposure. At this particular site line if your view or site of view went back past where we proposed some screening around the outdoor ring you can see where it would catch the very back of the indoor hall.

Mr. Cataldo: Is that a revised plan.

Mr. Graham: Yes

Mr. Cataldo: It is different than the one in our packet.

Mr. Graham: Yes, I am going to mention that tonight, this is in response to the input. We can pick another site line, but I picked the one that I thought probably was as critical a view line as we could. I have driven that road a lot of times, probably not as many times as the members of the audience and members of the Board, but when I drive that road my eye moves to the right and it looks to the pond and it has always looked that way, and I never really knew what was here (indicating Margo's property). When you are coming this way you are hopefully not taking your eyes to far off the road so your view is the pond, not looking almost 90 degrees to the road.

Ms. Robinson: Can you give us some idea what kind of view I would have, would I be looking at the side of the barn, or the side of the ring actually?

Mr. Graham: Yes, at this point you are going to see the side of the indoor ring. To do a true site line like we have done, and submitted to the Board, and I have a revision to that as was requested. I would have to select a point, get the elevation and then do that true view line.

Ms. Robinson: I was just asking from your knowledge of the site, what am I going to look at further down the road.

Mr. Graham: There are some trees and all that block your view and then in front of Putman's driveway you can begin to look across this field.

Mr. Cataldo: It looks like you have extended the screening along the Andrews Street side?

Mr. Graham: Yes, what I have done in response to some of the questions at the last meeting, and some of the other meetings we have been to, we have previously proposed 30 trees in this area on the proposed map, 18 in the front 12 in the back, after hearing some comments with regard to visual impact from Andrews Street, I replace the Blue Spruce with Arboviti or Cedar, because that seemed to be in general what people thought were more indigenous type trees to the area, and also what trees are planted on other portions of the farm. Extended on in a curved fashion along between the indoor ring and pasture C in an effort to soften the visual of the end of the ring. In addition we added more additional trees, these Arbovitis are to be planted at approx. 6-ft. height and will grow to approx. 6-8ft in width and taller. So eventually very near after planting, will become a hedge of Arboviti. That is the proposed addition.

Mr. Burnham: Larry you just mentioned some revised plans are you submitting any of those revision to us this evening?

Mr. Graham: I haven't yet, I brought them tonight for discussion only.

Mr. St. John: You have 10 horses now? How many square feet do you have in paddocks now?

Ms. Kusulas: We have one paddock which measures 90-ft. by 190-ft. one that measures 100-ft. by 200-ft., another that measures 100-ft. by 200-ft. and various smaller electric fences. Virtually where the proposed outdoor riding ring is and below that and closer to Southern Avenue the other triangular paddock. Currently we are using $\frac{2}{3}$ to $\frac{3}{4}$ of the front field with 10 horses right now.

Mr. St. John: So that would be what ratio of area per horse, just roughly? How much do you have enclosed at this moment to take care of 10 horses?

Mr. Graham: These two paddock here are approx. 1 acre total, and those are the ones that have the post and rail fence. If you look on the existing conditions plan, sheet 2 there are additional electric fences.

Mr. St. John: So approx. 2 acres. So now we are going to have 20 horses on how many square feet?

Mr. Graham: Approx. 190 thousand square feet so that is 5 acres.

Mr. St. John: You were saying the horses are not out there everyday necessarily?

Ms. Kusulas: It all depends on time, weather, exercise, horse shows, schedules, sickness/lameness, plus some horses are away in Florida for 2 months.

Mr. St. John: My question is based on the fact that the paddocks that are currently there have basically been denuded of grass, from looking from Southern Avenue they are basically dirt. I am wondering how much land it takes to support a horse being outside?

Ms. Kusulas: I don't think you have been looking at our paddock, I think it would be in your best interest to actually walk around the site.

Mr. St. John: I look at it everyday going by.

Mr. Burnham: In the future the Board will make a site visit.

Mr. Cataldo: Do you develop a rotation plan for the different fields so that over the course of two year they don't become...

Ms. Kusulas: Right now they currently only go out for 3 hours a day, depending on the weather especially this time of year. Right now they are on a little bit of a rotation plan but unfortunately we have not put up more permanent fencing because we have been trying to see what is going to happen and how it will change where we will put things. We do temporarily rope of some of the pasture to allow them to re-grow. The only places that they are dirt is by the gates where the horses will sometimes congregate when they want to come in. For the entire property if the plan is approved we do plan a 4-6 week rotation of the larger paddocks, they will be roped in half. All the smaller paddocks will be rotated on a 4-6 week schedule with reseeding and watering in the summer time. Different grasses, pasture mix, will be planted because during the different times of the year different mixes are more beneficial. In addition during spring time horses may be exercised in the indoor ring to keep from ripping up the grass.

Mr. St. John: Do you have a business plan that we could look at?

Ms. Kusulas: It is not really a business it is agriculture, we raise horses for our own personal use, as well as raising horses for sale, but that is agriculture.

Mr. Crimmins: It has been part of the discussion with The Trustee of Reservations that if they were to approve anything that one of their conditions would basically be a plan for pasture rotation.

Richard Trembowicz, On that issue of use, whether this is single family residential, home occupation, business/commercial. I just note under Home Occupation you can't have any change in the outside appearance of the building or premises so that this project would seem to be automatically excluded from the Home Occupation qualification under the Bylaw. So then the question is do we go with the commercial standard, which does that constitute a change of use. What does Change of Use mean in this whole circumstance and what set of requirements apply. I bring that point up because I am concerned however this property is judged in this application that we put it in the right use.

Daniel Swanson: I have a question about water use which has come up already with regard to how much is needed per horse per day, but I don't remember hearing about sprinkler systems and actually watering new pastures. So I am wondering how many gallons per day is anticipated and how that will effect the Town water.

Mr. Graham: The project proposes a well to be located up close to the barn. That well will be used primarily for uses within the barn, horse washing and perhaps some dust control/sprinklers inside the indoor hall. We also have a cistern proposed as part of the storm drain system which all of these roof areas after some potential for infiltration to overflow to. We are hoping that the infiltration system will not work so well that we will have a dry cistern. So we are hoping to have the cistern fill this well to draw from for the same uses. So the proposed use for horse washing and indoor dust control will not come from the Town's water supply system. The Town's water supply system will of course continue to the dwelling and at some point in time we are going to be talking to the Fire Dept. about their sprinkler requirements and that sprinkler will be fed from Town water.

Mr. St. John: Irrigation for the fields?

Mr. Graham: Irrigation for the fields will be from the well and the cistern.

Danielle Swanson, Apple Street: But what about in the case of this summer, when we had the terrific drought and if you are not getting the rain to fill the cistern where is the water going to come from?

Mr. Graham: Well I think they are no different from anyone else, if the well is there and the cistern perhaps has some water that is what they are going to use. If the well is dry like everyone else's then they are going to suffer the same consequences.

Daniel Swanson, Apple Street: What is the proposed water usage per day?

Mr. Graham: The horse washing flows which we had to use for the design of the septic system for the Board of Health were required to be 25 gallons per day per horse. So that is 500 gallons per day.

Daniell Swanson, Apple Street: That is just for watering and washing?

Mr. Graham: And that would be the largest use.

Daniell Swanson, Apple Street: And then what is the proposed amount for sprinkling fields for dust control and field irrigation?

Mr. Graham: I don't have a number on that.

Daniell Swanson, Apple Street: But that would run into hundred and thousands of gallons.

Mr. Graham: Again that is not going to be coming from the Town water supply that will be from the cistern and the well, and if it is there and available and required then they are going to do their best to manage that water...

Daniell Swanson, Apple Street: My point is the well goes into the aquifer and the aquifer is our common water which we all use, and it is important to know the water usage as it will effect all of us in that area.

Richard Trembowicz, 131 Apple Street, That was going to be my question, I have no idea about hydrology, but if there is a big demand on water and my well is with in 10 ft of their property. I am just concerned that if there is a big demand and the rest of us don't have water anymore, is it just we are out of luck?

Mr. Burnham: Larry can you give us the Board of Health total for the horse arena water usage was going to be?

Mr. Graham: The total design flow for the septic which was based on 620 gallons per day.

Mr. Burnham: And that was coming off of the well?

Mr. Graham: Yes.

Catherine Davis I was wondering when you were talking about the horse washing, is that the drinking for the horses too or was the 25 gallons per horse just the washing?

Mr. Graham: The 25 gallons per horse per day was a requirement of the Board of Health it is not water that is going to be consumed by the horse.

Catherine Davis So there would be additional water usage for horses to drink per day, do you have any idea what that might be?

Ms. Kusulas: about 10 gallons maybe...

Mr. Cataldo: We talked the last time about the site work, do you have an estimate of how many yards of loam are going to be moving? It is a pretty substantial cut and fill that you are doing.

Mr. Graham: What we have tried to do is set the barn at the existing grade and the indoor level back through here which causes us to have a 6-ft. cut. As I mentioned over here there is a 2 1/2 foot fill and then at the highest part of the outdoor it is approx. 4 ft. fill.

Mr. Cataldo: I am talking about the parking lot and behind, you are taking out most of that hill right?

Mr. Graham: Yes.

Mr. Cataldo: So is most of the material you are moving staying onsite?

Mr. Graham: We anticipate that most of it will although we have not done any final take out until we are a little more confident that we are not going to be moving buildings. But about half of this hill is going back as well. It is now about 18-19ft. from the road surface in this area to the peak of the hill and the mound which will go back in will go up to about 8-9ft. above the same point. So about half of the mound is going back.

Richard Trembowicz, Apple Street: Could we have the applicant submit information about the number of gallons that will be used for the total project, which includes all the watering of the fields? Whether it is Town water or the well simply because it is going to effect the aquifer, just want to get a sense of what kind of demand it is going to be.

Mr. Graham: We will do our best with regard to the irrigation, you have to understand that it will have to be based on certain assumption and estimates.

Mr. Burnham: Do we have any other pressing issues? In light of the applicants December 17, 2002 date with the Conservation Commission I would propose that we continue this hearing to January. Mr. Hoar as a member of the Conservation Commission, assuming that you review this and come up with an Order of Conditions for proposed modifications, how much time would you require to make a reasonable submittal. Right now the only thing the Board has from the Conservation Commission is a letter that basically says it is under review.

Mr. Hoar: If in fact the project is moved out of the jurisdiction of the Conservation Commission, the Rivers Act/the wetlands, there will be no further Conservation Commission involvement.

Mr. Burnham: Assuming that you (the applicant) and the Conservation Commission can redesign this thing outside their jurisdiction how much time would you need for the redraw and resubmission assuming that we are going to make some minor modification to the building or locations.

Mr. Graham: I think that the question really is, they have required us to provide a alternatives analysis which I hope we can take back to them at the next meeting, December 17, 2002. And I think at that time we would hopefully go away from that meeting with an understanding of where things might move to or end up. It would depend on the severity of the change to the site, as to how quickly we could come back to the Board with revised plans. If we simply move the building back this way, then that is not quite as much of a design change as moving it all the way back here.

Mr. Burnham: If you are going to move it all the way out back, I am going to assume that that is not exactly a minor modification, and we will start all over from ground zero.

Mr. Crimmins: I guess the question is if the hearing is still open at that point, I don't think it is mandated.

Mr. Burnham: I am not sure it is mandated but in fairness to the review process, it would in my view and how the Board has acted in past history not be prudent to make major modifications to what was initially presented and available for review. Minor changes ie twisting the building, moving it a few feet, moving a well here to there, at least the basic components were there and the basic locations were evident. What I am trying to get to is, would you prefer that we continue this hearing to December 18, January 8 or January 15.

Mr. Graham: I think what we should look for perhaps is some alternatives because it is an alternatives analysis coming out of the next Conservation Commission meeting. Maybe not something that is set specifically because we are not only dealing with this Board and the Conservation Commission but also The Trustees and I think that if we are going to move that building in any way shape or form we are going to have to go back to The Trustees to see if we can get their blessing on it. Would it be appropriate for us to come back to this Board on the 8th with the ideas and concepts that we received from the Commission and hopefully between the 17th of December and the 8th of January we could at least have one meeting or more with The Trustees to get some input from them before we go to a final design of any reconfigure.

Mr. Burnham: What you are asking for is a negotiating meeting on the 8th ?

Mr. Graham: An information session to keep the hearing open but to let this Board know where the Conservation Commission has suggested we go and hopefully where The Trustees have suggested where we can stay.

Mr. Cataldo: The only problem with that is if you come in with a substantially changed plan, what we will have to do on the 8th is say sorry this is outside the parameters of what we have been dealing with, we are going to have to go back and start the whole process over.

Mr. Graham: And I think that is fair, because rather than have us come back with a fully designed set of plans for you on the 8th that the Conservation Commission sent us to do. I think it is more appropriate for us to seek the input from this Board after we have received input from the Conservation Commission and The Trustees and then go to that final plan, and if you deem that to be a substantial change that requires a resubmission then that is what we do.

**Mr. Guerin: I move to continue the Public Hearing to January 15, 2003 at 8:30.
Mr Cataldo: I second the motion.**

Daniel Swanson Apple Street: Have any modifications to the proposed plan been received, and where do The Trustees stand on this proposal

Mr. Burnham: As far as this plan goes we have received no modifications and The Trustees have not approved this plan.

A vote was taken with regard to Mr. Guerin' s motion and was unanimously approved.

**Motion: Michael Cataldo moves to adjourn the meeting.
The motion was seconded by Andrew St. John and passed unanimously.**

The next meeting is scheduled for Wednesday, December 4, 2002, commencing at 7:30 p.m.

Presented by: Lorie Woodward Attested to: Andrew St. John /15/03
Lorie Woodward, Admin. Assistant Andrew St. John, Clerk

Hall, Essex MA, Clerk's office during the regular business hours. For the Essex Planning Board Westley Burnham Chair.

Does anyone have any question on advertisement or notifications?

For the members of the public we will briefly introduce ourselves. My name is Westley Burnham, I am the Chairman, Mike Catlado Vice Chairman, Jud Lane, Betsy Shields, Andrew St. John, and Scottie Robinson, Secretary Lorie Woodward.

We will allow the applicant to make his presentation, after which I will allow the Board members to ask question followed by the general public. Prior to speaking please state your name and address so we can try to keep track for the record.

Who do we have representing Sprint?

Scott Lacy: Scott Lacy representing Sprint Spectrum, I am with the law firm of Brown ~~and Rudnick~~ and Rudnick. Tim Green, Consultant TerraSearch, Project Manager, David Eichler Sprint Spectrum Radio Frequency Engineer, and Skip Reed who is with the engineering firm that prepared this application.

Rudnick Berlack
Israels LLC

Scott Lacy: Just a quick recap of the proposal before you tonight, it is for a wireless communications facility. A 120-ft monopole. The monopole is designed as a flag pole, meaning the antennas are internal mount so it will basically resemble a flag pole, there will be no external antennas. 120-ft is the minimum height that Sprint needs to close this gap in it's coverage. The site is designed as a multi-carrier site, meaning that Sprint would take one slot, but then there are two additional slots within the pole. If another licensed carrier be it AT & T, Verizon one of the other carriers also has a gap in that area they would be able to use the pole. At this time what I would like to do is have Tim Green who has done a lot of the site acquisition work go through the history of trying to find alternative sites and explaining why this site was chosen. After that David Eichler will present testimony with respect to Sprint Spectrum's significant gap and how the site will enable Sprint Spectrum to close the gap.

Tim Green: My name is Tim Green I am with TerraSearch I represent Sprint PCS. This is map #8, a brief overview. Sprint is looking in this area for a site. We originally went to Zoning for lot #44 back in November of 2001 and were denied zoning for side variance, front variance, and within 500-ft. of a residential use, as well as within 150-ft. of a wetland. Anything as you go east from here gets us closer to an existing site that we already have in Essex. Our site was needed in this area. Looking through all the lots there were a number of lots (listed in the package that we gave you) that are residential primarily, lots 4, 7, 8, 9, 14. As you come out here 5C, 5B, 5D, 33, 33A, 52C, 52, all residential. One of our goals was to stay out of residential properties as much as we possibly could, as well as limiting the amount of variances we needed in order to proceed. We went along Scot's Way which is Industrial/Commercial in nature and looked at all the lots to determine what was buildable and not buildable we came to lot 15E which is in the back of Scot's Way where we needed 2 side variances. We did not

find any lots where we did not need at least one variance, and most lots we needed 2,3, 4 or 5, and that is how we came to lot 15 E, 12 Scot's Way.

David Eichler: I am David Eichler and I am an RF engineer with Sprint PCS. What I have here is basically a topographical map of the area, it is basically centered on Essex, it is hard to see all the roads, you have to look up close. The next overlay is a plot of the current signals we have from Sprint right now. Anywhere that is green on this plot is an area where you would expect to be able to make or receive a phone call with a Sprint PCS phone. Where the green falls off is where there is no service. The red dots are existing cell tower sites except for the Scot's Way site (proposed tower) green is generated by using the towers that are already there. The last plot is an overlay of what we would expect to see from the Scot's Way site, it would fill in this area here, mostly along route 22 and Apple Street to the border. Are there any questions?

Scottie Robinson: Could you describe the area that we can not really reach where the signal still wont exist.

David Eichler: Area west of Apple Street as it curves around. The main reason it doesn't get in there is there is a lot of terrain right there.

Westley Burnham: Are you done with your presentation?

Scott Lacy: We submitted a lot of information to the Board, instead of recapping exactly all the information that was submitted with in the application, with respect to real estate evaluation, our emission, whether or not the tower has to be lit, at this point where there are a large number of concerned citizens here, I would be happy to open it up.

Westley Burnham: Board members, do you have any other questions.

Scottie Robinson: What kind of plan do you have to address this gap. I can assure you that everybody has a gap in that area

David Eichler: This remaining gap we probably would not address.

Scott Lacy: It would depend on if another carrier had a gap in the same area, whether or not another carrier were to build on that site. It would depend, each company has a different buildout cycle. Not all companies are focusing on certain towns at the same time, but most towers are designed as multi-carrier poles so they can accommodate more than one user. So if there is another carrier that has a gap in that area and they are prepared to buildout, and have a lot of buildout in Essex they may propose a multi carrier pole and if that is in existence, both the By-law and just proper practice would say that we would try to go in with that carrier.

Andrew St. John: Just so I understand how this process works, I had understood previously that there are tower companies that go out and find locations and build towers and then sell you space on them. That is not what is happening here?

Scott Lacy: That is not necessarily true, there are what we call spec companies which means that they don't actually have an FCC license but they will attempt to go out, if it is along a main road (route 495, 95) where they know that the carrier is going to want to provide coverage, they may try to zone a tower with the expectation that most By-laws are written that if you have an existing structure that is tall in the area you have to go attempt to attach to it first, prior to building it, and that is what some companies have done. That is different when a licensed carrier puts it up. In this case Sprint is proposing to build it's tower. It is not based on speculation, it is based on what Sprint's actual needs are as opposed to someone just picking a popular road and hoping that AT&T Sprint, Verizon or other licensed carriers have a gap in the area.

Andrew St. John: How far is the proposed tower from the Hamilton line?

Scott Lacy: From the Hamilton line it is about 17-ft approximately.

Andrew St. John: And how many Sprint phone customers are in the area covered by the green on the map, or on the North Shore.

Scott Lacy: I don't know how many Sprint customers are there. The way a gap is defined in the industry and legally is a carrier is trying to maintain a reasonably uninterrupted call, which generally is along main roads. That is targeted both because that is the area where most people are going to use them and for emergency purposes. When you are trying to ascertain who is going to use the product you have to take into account who currently has a Sprint phone and who is not choosing Sprint because there are gaps in the area. If you go into a Sprint store and you are trying to purchase a cellular phone you can ask them "This is where I live do you have coverage here or not?" and the store is supposed to have access to something similar to our maps here, where they would know if you live along route 22 in Essex you might have spotty coverage or no coverage, depending on where you live.

Andrew St. John: What is the dimension across it's widest part where coverage is out along Route 22.

David Eichler: About a mile and a half and two miles of bad coverage.

Westley Burnham: I was deeply involved in writing the initial By-law, correct me if I am wrong, but aren't you obligated under your FCC license to continue building out to provide coverage. You are supposed to have a plan in place for a continual buildout as part of the FCC license.

Scott Lacy: The FCC license requires you to, based upon the geographical area, say within five years, you have to buildout a third of that area, within 10 years two thirds of that area and then so on and so forth... That is the purpose in essence.

Westley Burnham: Any other questions?

Scottie Robinson: We have not done a site visit yet, is this metal shed actually there, and you do not intend to build any additional accessory buildings?

Scott Lacy: Correct that is Gunite Corporation building, their main building 75-ft by 45-ft. We will have up to 5 outdoor equipment cabinets 6ft. tall, other carriers require different cabinet configurations, I am not sure what those requirements are.

Westley Burnham: Point of clarification, Essex By-laws require a subsequent carrier to come in and go through the special permit process also. At that time we would address any accessory structures with that company then and we can insist on screening if needed then. For tonight's purposes we are only addressing the folks presenting. We have been through this with the cell tower located at 15 Tree Hill. That special permit has been amended twice to allow 3 different carriers.

Scottie Robinson: You say you are 17-ft. from the Hamilton boarder but how close are you to actual structures on anyone's property

Scott Lacy: On the Hamilton line based on public information we are more that 500-ft from the nearest residential structure.

Westley Burnham: Lets open the hearing to the general public.

Derick Spingler, 128 Blue Berry Lane: Although our address is Hamilton two thirds of our property is in Essex. First item, in the package, town lines are not marked on the map. If you look at the coverage approximately 1/2 falls within the Hamilton line and 1/2 within the Essex line when the point of coverage that they are concerned with is a section along route 22. The site acquisition information they talk about a location behind the Gullwing property, which would actually be west of Apple Street, the other space they suggested as missing coverage, What is interesting is that there is only one variance missing from acquiring that place and this location at Scot's Way has more variances, so I don't know if there are more variances that are not in this booklet of information. They only have one variance requested that it is within 2 miles of the Pratt tower. They are asking for the exact same variance on this tower in addition to extended variances at this location 12 Scot's Way.

Westley Burnham: Let me clarify one point, variances are not addressed by this Board. The variances have already been addressed and granted. I understand there is an appeal out there, the status of according to our Town Counsel is it will be dealt with later.

Derick Spingler 128 Blue Berry Lane: If in fact this variance does pass with a less that 2 mile, does this then set a precedent that they would be able to further down the road accept a less that 2 mile variance on those towers and do these fellows then look to put another tower at that location, at Gullwing court west of Apple Street. That then brings into question is it necessary that there is a 120 ft. tower. I actually went out there today and took some photos, partially because the wording in here says the majority of the year you can not see the houses, I would say and argue that it would be 50% of the time. You

can clearly see our houses in the background. That brings up the question do they really need a 120 ft. tower to cover what they are proposing in that mile and ½ distance or are they saying they need 120 ft. because they are looking to cover parts of Hamilton which maybe they are concerned with, but more concerned with covering the greatest part of Essex.

Bill Bowler Essex Street: I am a member of the Board of Selectmen in the Town of Hamilton. I am aware of the Telecommunications Act of 1996 and that you are limited in what you can do, and I am aware of the variances granted by the Zoning Board of Appeals. That said looking at the project as a whole and you said you were involved in writing the (Cell Tower) By-law you could see that the variances granted are so out of line with what is required by the By-law I would ask you to look at the project as a whole. The second more specific thing is you probably received correspondence from the Hamilton Town Administrator, Candice Wheeler regarding Hamilton's request for clarification as to whether any of the proposed envelope actually falls within Hamilton.

Mr. Burnham: Could I interrupt for just a minute, I have several letter that once we get through this initial stage I was going to make everyone aware that we have received.

Mark Boden, 1 Surrey Lane: I am an abutter, and I guess the one thing I am addressing here tonight is what they did with the Zoning Board of Appeals, there is a quantity of mis-information presented by TerraSearch and by the presentation here, and I will point some of that out. Mr. Green you are with TerraSearch and you represent Sprint PCS or Sprint Spectrum? There is no TerraSearch registered

Mr. Burnham: Please direct your questions as if to the Board I do not want to get into an argument. We are not here to argue the validity or what was said at the Board of Appeals, these variance have been granted, they have relief from those requirements.

Mark Boden, 1 Surrey Lane: Except my whole question to you would be the application was incomplete, two variances that they need were not on the application.

Mr. Burnham: That is another avenue that may be pursued but it is not appropriate for here. I have to go with the Board of Appeals decision that was written that basically gives them, I don't really like the way they wrote it because it basically wrote them a blank check, however, this is what we have to deal with. They did not address specific variances or specific requirements, they literally gave them "grants variances from those provisions necessary to allow construction of proposed wireless communications facility including from the setback requirements and requirement that the facility be more that 2 miles distance from any other facility". That is about as blank a check as they can get. I would rather not pursue this line any further.

Mark Boden, 1 Surrey Lane: My whole point of raising that is the fact that the application was incomplete and there has been a lot of misinformation in how they apply the information to that.

Mr. Burnham: If you would care to document the mis-information feel free to submit it before the end of the hearing and we will consider it.

Mark Boden, 1 Surrey Lane: The other concern was when we dealt with their presentation in the Zoning Board of Appeals the whole issue was based on finances, whether they were financially able to support the tower and keep it there and prove their viability. They say they represent Sprint PCS and Sprint Spectrum Limited Partnership. The concerns on the financial basic and this is by analysts from different brokerage firms is the fact that Sprint PCS is in trouble right now. They are financially having difficulty and secondly...

Mr. Burnham: I have no intention of getting into the financial basic of the companies behind it. Part of our Special Permit will have an end date. This statement is based on what you would consider the worst case, that the Board approve this, based on that there would be an expiration date on the permit that would have to be renewed should Sprint or whatever go under and the pole would no longer be utilized they will have 90 days to remove it, and that will be the responsibility assigned to the land owner to back that up.

Mark Boden, 1 Surrey Lane: I appreciate that, but I just want to point out North Hampton and Nantucket have 2 cell phone towers that went under and they can't get rid of them, so I hope that works.

Mr. Cataldo: Do you also represent the owner of the property at this point. (Mr. Lacy: No) Is there anybody here that represents the owner of the property? I am just wondering if the building that is on the property is going to be continued and used as another business.

It was indicated that he intended to continue his business at the site.

Ms. Robinson: I would like to hear from the gentleman, what he thought the other variances that were required that were not put before the Zoning Board of Appeals.

Mark Boden, 1 Surrey Lane: The second variance 6-6.9E.10 tower located with in an established wooded areas with a minimum radius of at least 150-ft. measured from the base of the tower to the edge of the woods, basically 150-ft. clearance of wood around the area. This is abutting my property line frankly and is approximately 30-ft. from the woods. The second piece is they have no basis for clearing that out of which I am sure will create disturbances. I want to point out one other piece of information that I forgot about, the tower is within 500-ft. of dwellings, I have 3 livestock sheds, I raise pheasants, quail, guinea hens and peacocks, I have 50 chickens for eggs, The guinea hens peacocks and pheasants, and quail I turn loose.

Mr. Burnham: I can positively say that when we put the residential clause in it was not for quail.

Sheila Solada, 120 Blueberry Lane: I am a direct abutter, I would like clarification as to what issues we can discuss tonight? I understand you can not talk to the variances.

Mr. Burnham: Essentially you can speak to anything that concerns you, with the exception of the variances which would be a waste of time because they have been granted by another Board, and also the RF emissions which are controlled by the FCC and we are not allowed to address at all. So other than that the aesthetics, the color of the pole, etc.

Stanley Ward, 125 Blueberry Lane: Is your decision making on whether the tower could exist or not exist or is it stipulations on it's existence?

Mr. Burnham: We have a tremendous amount of discretion, there are certain criteria which we have not reviewed as a Board, because we have not dealt with this issue in a while which the Telecommunication Act of 1996 excludes us from considering, I intend to review that before any final decision is made, and make sure everyone is clear. We have the By-laws of the Town of Essex, they have to prove they are within, there are a variety of issues. Do we have the power just to say no with out justification, I don't believe so but it is also a Board decision that must be made.

Mark Boden, 1 Surrey Lane: You have set a precedence by allowing 2 other towers and the issue is not saying no to a tower the issue is the placement of the tower.

Mr. Burnham: Let me reiterate, they have set a proposal before us it is their responsibility to justify why this is the placement that they require, we do have an obligation under federal law to hear them out and respond.

Mr. St. John: There is a paragraph under the Special Permit By-law that could answer this "Before granting a Special Permit the Board shall find that the proposed use or activity is in compliance with all provisions and requirements of the zoning By-law and in harmony with the general purpose and intent." That is what we will do. Anything anyone here has to say, those are issues we are here to listen.

Jim Stamus, 200 Sagamore: I think everyone will agree the tower is going to be unsightly. My question is as it applies to the variances I am sure they showed you a proposed footprint both where the tower would be and the mechanical buildings, and my first question is how far are those building and the tower from the actual town line. For liability purposes I am sure there is a plan for security to keep the children from climbing into it and for the Town of Essex, am I correct in that assumption.

Mr. Burnham: We have in front of us a complete set of full size plans. One of the pages in there dictates or has laid out plans for the fencing and security around it.

Jim Stamus, 200 Sagamore: And that is within the Essex Town line?

Mr. Burnham: My understanding is and my read on the plans as presented shows the entire facility within the confines of Town of Essex.

Mr. St. John: Actually the fence in on the Town line.

Peter Bachini, 88 Blueberry Lane: Along those same lines that Jim just brought up, if this thing were to fall over, more than likely it would fall into Hamilton. Is Sprint Spectrum or TerraSearch prepared to present safety and security plans and haz-mat training to the Fire Dept. of Hamilton and Essex should there be some kind of environmental problem with these refrigerator transformers that are at the base of this thing or if this thing were to topple over. Like wise if they had a guy climb this pole doing some kind of repair or maintenance or paint it and this guy gets stuck up there does the Essex Fire Dept. prepared to deal with a 120-ft structure, is the Hamilton Fire Dept. prepared to deal with that, and should these people be required to provide that type of security and safety for our safety personnel for both towns. And it has been said that there are over 100 children that live in the various neighborhoods, and though the law says you can't talk about health issues however there could be health issues but if this thing just falls over it could fall on my children, and how are they prepared to deal with that in conjunction with Town services.

Mr. Scott Lacy, I have indicated in the packet of information, the Goldwing property was rejected because it did not meet our particular gap area needs. The proposed installation at 120-ft. is designed to close the significant gap along route 22. It is not designed to close any other gap. I can have David Eichler address where the intent of the coverage is I can have Dave address again that the primary purpose of the coverage is in Essex along route 22 for the record

David Eichler, The site as we have been saying all along is right on the boarder and most of the coverage hole that we have is into Essex, most of Hamilton is already covered on either side. Naturally some of the coverage from here is going to get into Hamilton.

Mr. St. John I am curious about that coverage, because it appears that the two towers that you have flanking the proposed tower provide coverage a mile to a mile and a half toward the proposed tower and the gap in coverage is much smaller than the coverage provide by the other towers. Let me ask a hypothetical question, is it likely that advances in communications technology over the next five years will make it possible for the existing towers to close that coverage gap. (Mr. Eichler, No.) Why not?

Mr. Ichler: Because of the terrain and the amount of power we have available.

Mr. St. John: What do you mean "power we have available?"

Mr. Ichler: Well we are licensed to transmit a certain amount of power, and we have a limit as to what that can be, and so much power only goes so far, kind of like a light bulb.

Mr. Lacy: Just in terms of the towers, these towers are designed to collapse on themselves they don't fall over. Like anything else if there is any act of negligence on the part of the company, anyone who is damaged has a course of action. Initially we can provide to the Board an analysis there are special analysis done to explain what the wind loading is, how structurally safe they are what it really takes to knock them down. A number of these monopoles survived the hurricanes in Florida and other states the last couple of years they weren't knocked over, I would be happy to provide that information.

Derick Spingler, 128 Blueberry Lane: Is this the same tower that is on School Street down by the 128 Bridge in Manchester? Are you familiar with that site? There is a monopole there.

Mr. Lacy: This design will look basically like a flag pole, it is pre-fabed so the slots for the antenna panel are inside instead of actually being made out of steel it is just fiberglass. So as you look at it doesn't stick out, it is a sleek profile.

Mr. Burnham: Can I ask you one question, up on route one on the Rowley/Newbury line at the golf course, is that similar, they actually run a flag off of it.

Peter Bachini, 88 Blueberry Lane: So the position of Sprint and TerraSearch is that they are not going to provided any assistance or training for security personnel, I just want to be clear on that?

Mr. Lacy: From a security standpoint it already has a gate and proper wiring to prevent climbing, there are anti-climbing devices on the pole. From a security stand point no the tower is secure from that standpoint. It does not generate or store hazardous waste.

Peter Bachini, 88 Blueberry Lane: You made a statement that some of the towers withstood the hurricanes in Florida, but not all.

Mr. Lacy: Actually I am not aware of any towers that have fallen.

Peter Bachini, 88 Blueberry Lane: You made the statement that some withstood the hurricane.

Mr. Lacy: I do not have personal knowledge of every tower that has been constructed, and am not aware of any falling.

Peter Bachini, 88 Blueberry Lane: This falls in the water shed overlay district, this whole area has been designated. (Mr. Burnham: More specifically our Water Resource Protection District) I live in the general vacinity of Blueberry Lane, my property is surrounded by wet lands. So obviously there is a concern that any work that takes place some of which will have to take place in Hamilton, excavation work and such that any work that they do will affect the aquifer underneath and contaminate the ground water.

Scott Solombrino, County Road: I own approximately 500 acres, Turf Meadow and the adjacent properties. I have had every cell phone company, satellite company, radio station, contact me in the last 10 years to attempt to put towers, satellites etc. on my property. Over the years I have turned every one of them down, because it hasn't been in the best interest of the neighborhood. It hasn't been aesthetically correct and I am not convinced that their coverage maps are necessarily accurate, because none of you are actually engineers on the Planning Board, not the Zoning Board, you have no clue what you are reading. They bring it, they present it, you have no idea what it is. This whole thing is no longer about the technicality that the lawyer wants to present, it is really about their greed of wanting to continually put more towers up. I sat by and watched from my hill, because it is the highest elevation on the North Shore, and I watched them put up the other towers, which I now look at every day. I watched them put up the tower in Manchester, which I now look at everyday. I watched them put up the tower in Salem, which I can watch everyday. At what point does a community, and a Board such as yours basically make a decision on behalf of the people in the community and say "we don't really care what the FCC says, we don't care what technicalities really are the law, but as a community we have enough cell towers, we are tired, we don't want to look at more cell towers." You people's Board can't really address health issues, my longitude is directly in line with each one of these towers, so my bedroom, all these wave are going back and forth through my house. What I want to know, is the Town of Essex going to post a 500 million dollar bond in perpetuity for my health, my children's health 30 years from now? Is Sprint, the shysters, the big corporate people are they going to post a billion dollar bond in a fund in the event that anyone gets cancer in this neighborhood, because asbestos was perfectly legal 50 years ago, and our parents and grandparents are now the result of asbestos. I don't really believe you should be looking towards the FCC regulation because they are really not protecting the local interest. You people as a Board have to look at the broader project and say what is in the best interests of our community who we serve. You serve us. I don't serve you, I am a huge taxpayer, I subsidize the Town. I came here from the city, to get away from these hazards, to get away from this greed and corporate madness, and that is why I live up there on that hill, and there is no development. I haven't come to try to ram through a 60-unit development here. I haven't put any towers on my property. I have turned all the money away, it is not about the money, it is about fairness to people's neighbors. I am most appalled by the neighbor who has allowed these maniacs to even show up and put it on his property. That is what is appalling to me, because, people, if they don't have a place to go, you can't put the tower up, no matter what the FCC says. You people as a Board have to take into consideration the real need in the community that you serve, because I can assure you there will be a court challenge if it does happen and they will spend all their money fighting the court for a long time. I am glad the people have come together and realized it is not good for the community, what we now have to convince is you people, the Board, that serves us that this is not good for the community for a whole wide variety of reasons, some of which meet your technical analysis of what you can vote on and some of which doesn't. You have to do the right thing morally, and morally these people no more belong here than the man on the moon, putting more towers. My Sprint phone works perfectly fine, I have a Nynex phone as well, I have a Cingular blackberry and they all work perfectly fine. I don't trust the data, I don't believe any of them, I don't believe

the engineer, I think it is nonsense, and until you can prove to me that any one of you are experts enough to really do your own analysis and what they are saying with their over lay maps and technical nonsense, I am not convinced, and you represent my interests. You need to now really look at the project in a really different light. It is not about these poor people coming to a Board trying to find a way to stop something because every where they turn they are getting blocked, they are not lawyers. They don't have representation here, they are simple people living in a neighborhood trying to protect their lifestyle and it is wrong. I hope that you people will become rational as you may not have been in the past by approving the prior things you have approved, which I think are appalling. The time has come to say no, there is enough cell coverage, and if there are dead spots on Apple Street, guess what, use a tin can and a string.

Chris Dogged, 112 Blueberry Lane: I am a direct abutter, I am not an Essex taxpayer. I share a lot of the concerns that have been voice tonight. I do have some additional concerns that haven't been voiced yet. One question that hasn't come up yet is very simple in terms of coverage and that is what time of year were these readings taken. I think you will find that during different times of year the reading vary quite a bit, sometimes there are gaps sometimes there are no gaps. That would be a point I would ask the Board to look into. An additional point that has not been touched on yet, in addition to the visual aesthetics which have been clearly voiced, we also have the potential for noise. I don't think that is a question that has been voiced or addressed in the application. I know we have a number of large transformers that will be immediately behind a lot of people's property. I don't have any sense from what I have read or what I have heard as to whether that is going to be an issue. Another general comment closer to the comment just made, obviously you are aware of the Zoning Board of Appeals decision and the manner in which it was written up, you may not be aware of the proceedings. I personally did not think the proceeding were at all represented the common interest, I think there was an initial first meeting, which the attempt was made to be general, and I think there was a second meeting in which there was very little if any consideration given to the people in the surrounding community. I simply state that as a matter of saying I really hope that this Board approaches the issue differently, because I don't think it was handled properly in the case of the Zoning Board of Appeals, and I would say that all of the people here, if it is not abundantly clear, tend to hold the folks on this Board accountable for the decisions that are made. So it is not meant to be a threat, it is just meant to be a statement of fact so I would put that forward as well. Another issue that I have not heard addressed is what sort of lights are going to be emitted from this property if any. That would be an additional thing to add to the list. I don't think Peter Bachini's question about hazardous response training or any of the emergency issues have been addressed yet so I would like to hear that addressed or I would at least like to know that you are considering it, because that certainly will be a cost to at least the Town of Essex. I think the last thing that I would like to note is, this Board is the perfect example of it, is that everything from my perspective appears to be oriented strictly towards those folks that are in Essex and the Board members in Essex and this Board is a perfect example there are no perspective views from Blueberry Lane for example, or the surrounding streets, which happen to fall immediately next to this area and again taking a rational approach if you look at the over all lines of the Towns

this is located up in the very very corner of Essex, it is basically from my perspective, this is my opinion, being snuck in, as something that is being tucked right into the very corner with things literally sitting on the Town line, and I think that that's just as an over all matter not a great way to approach things. I certainly hope and I have heard you mention that you are going to read what you have heard from the Town of Hamilton. I know the Town of Hamilton has tried to be involved in this process and I have not heard at other hearings any consideration. So I would like to address the fact that we are really talking about Hamilton and Essex here, given the proximity here involved, and I certainly hope that you are considering the Town of Hamilton's officials appeals to enter into the process.

Mr. Burnham: A couple of points I would like to respond to at least what you have addressed. I was a lieutenant, and am still on the Fire Dept. myself in Essex when the first tower went up in Essex. The engineers and the officers did review and feel that we have adequate facilities to deal with any emergency, in a very similar type. Just to answer that question point blank, that has already been reviewed, not specific to this, but in the Prat tower. As far as the lights go, we didn't allow anything except minimal security lights on the other one and I would assume we would not allow them to do anything different. We have no desire to have a blazing candle at the top of that either. Just in one response to Mr. Solombrino, I would like to think that we are trying to be ration and will remain so.

Mary Lou Mallony, 81 Sagamore Street: For the last 35 years I have been in a variety of micro biology and cancer therapy. And as many of these technologies evolve we have learned that there are hazards involved. It is not your domain to find out whether this is hazardous or not I would like to say as a resident I don't want to be a guinea pig, I would like to retire in Hamilton and be safe.

Ms. Robinson: Can we hear from the applicant with regard to the noise?

Mr. Lacy: We don't have any actual generators per se there are no back-up generators. The cabinets do have fans, which emit approx. 57 decibels at a distance of 5-ft. At 25-ft it would be significantly less, the sound doesn't travel well, 57 decibels is usually lower than the ambient noise of the area. No mechanical, no clacking or beeping, it is strictly electrical equipment.

Mark Boden, Surrey Lane: A car engine runs at 70 decibels.

Michael Cataldo: You have a 40-ft. by 40-ft lease hold, to anchor this tower is there any pavement going within the perimeter of the fence?

Mr. Lacy: No crushed gravel.

Mr. Burnham: I just want to briefly let everyone know what other types of communication we have had. The Conservation Commission, Town of Essex, at their meeting on December 3, "The Conservation Commission reviewed the wetland's maps

and plans submitted and found no wetlands issues, therefore it has no jurisdiction over the proposed project.

From the Town of Hamilton Planning Board we have a letter, to the Essex Planning Board with a copy of what they submitted to the Zoning Board of Appeals. They write "The Hamilton Planning Board has received your notice of public hearing for special permit for a cellular tower to be held on December 4, 2002. We also received a copy of the Zoning Board of Appeals decision dated October 25, 2002. The Planning Board has written a letter to the ZBA and a copy is attached for your reference.

The Planning Board's primary concern is the health, safety and welfare of the residents of the Town of Hamilton. The proposed cell tower is extremely close to the town line and, therefore, property lines of Hamilton residents. We do not feel the Town of Hamilton should suffer from the impacts from the new tower construction, and request that you consider Hamilton residents when evaluating this proposal.

The ZBA decision in paragraph 4 is to grant "variances from those provision of Section 6-9.9e to allow construction of the proposed Wireless Communications Facility, including from the setback requirements and the requirement that the facility be more than 2 miles distant from any other similar facility". The variances sited do not mention the 500-ft setback from all residential structures (Section 6-6.9e.7 of your By-law.)

Please confirm to this Board that the proposed location is at least 500-ft. from all residential structures including those located in Hamilton. Please note further that the Hamilton By-law requires a distance of at least 500-ft. from all structures, excluding existing structures on a lot.

We urge you to consider the proximity of the town line and conformance with your By-law in relation to Hamilton residents when reviewing this special permit application.

We also have one from the Town of Hamilton, Board of Selectmen, which is a copy of one that the Town of Hamilton sent to Tim Green and Stephen Zagorski. The one addressed to us, "I am attaching a copy of the letter sent to Mr. T.W. Green of Sprint and Sephen Zagorski, Trustee, North Star Realty Trust.

We feel the request made in this letter is very reasonable. It is within your powers and purview to ask the applicant to have a survey performed for a determination by a registered professional surveyor that the installation is located entirely within the boundaries of the Town of Essex and not located, in any part, in the Town of Hamilton. Please enter this letter and accompanying correspondence into your hearing record.

Those will be reviewed as part of the process. At this point in time I have been requested by the Essex Board of Health to hold the hearing open as they have not had adequate opportunity to review the plans and make any comments. What I would like is a motion from the Board to continue this hearing to our next meeting in order to allow the full 35 day, which we are about 6 days short, for the Board of Health to respond.

Motion: Andrew St. John moves to continue the hearing to December 18, 2002 at 8:30 p.m. in the Essex Elementary/ Middle School.

The motion was seconded by Betsy Shields and passed unanimous.

Skip Tweed, Bay State Design who was hired by Sprint: We hired a land surveyor to go out and identify the site. When he went to identify the town land, the definitive subdivision of Scot's Way that both Essex and Hamilton has seen and approved as the line. That was done in 1988.

Mark Boden, Surrey Lane: I abut that area, the first thing that discourages me the most is I live approximately 500-ft, my dwelling is 500-ft. from the tower. I have a porch that extends out beyond their estimation from a satellite picture it was 584-ft. It has never been surveyed to determine whether it is 500-ft. or not. But the biggest discouragement I have, is I have a 24-ft. by 15-ft. deck that I walk out on, the east side, south side of my house, and I will be looking up above the tree line seeing a tower 60-ft above the tree line, and that is disheartening, because I moved out there, and I have acreage there to be in the woods, not to have the encroachment. The second thing is, another example of misinformation in the application, presented as this is the town lot line when it is really an approximation. The last thing that I will say is no one as addressed the issues of the satellite solar observatory, because there is a paragraph in there by the Zoning Board saying that this is null and void.

Brief discussion of site visit by the Planning Board to take place on 12/8/02. The visit is only to view the site no discussion or decision will be conducted or made at that time.

Barbara Essensa, Blueberry Lane: I question whether you people in Essex know what you are doing, you have been letting Quinn Bros. grow unchecked for years.

Jeffrey Bird, Blueberry Lane: I feel you should look at the letter of the law and also consider if the neighborhood was located in Essex if the response would be different. The Planning Board should consider the intent of the Town of Essex By-laws.

Peter Bachini, 88 Blueberry Lane: The Board should consider construction and grading that may need to take place in Hamilton. I have been on the phone with Senator Kennedy's office, the Planning Board is authorized to make a judgment on this. There will be locators for 2 other carriers on the pole.

Mr. Burnham: Additional carriers would need to go through the Site Plan Review process as well.

Arielle Lane / Brian Knowles, Apple Assoc. / Preliminary Subdivision Plan Submission

The Board reviewed the application to make sure it was complete.

Apple Street

Brief discussion of drainage problem in the area of Lowe Land Farms and how it is affecting Ken Hildonen's property. In addition there is some concern about the elevation of the road and whether it would be appropriate for Larry Graham to look in to it now.

Brief Discussion of outstanding & up coming issues:
Andrews Street/ Turning Leaf Farm
Arrielle Lane/ Preliminary Subdivison
Town of Essex / Special Permit for sewer construction
199 Western Avenue / Scott Dewitt / Special Permit application
Sagamore Street (Hamilton) / Donovan Conservation / Site Plan Review
By-law changes

Motion: Andrew St. John moves to adjourn the meeting.
The motion was seconded by Michael Cataldo and passed unanimously.

The next meeting is scheduled for Wednesday, December 18, 2002, commencing at 7:30 p.m.

Presented by: Lorie Woodward
Lorie Woodward, Admin. Assistant

Attested to: [Signature] 12/15/03
Andrew St. John, Clerk

**Town of Essex Planning Board
Minutes
Wednesday, December 18, 2002
7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School and was called to order at 7:35p.m by the Chairman, Westley Burnham

Attendees: Westley Burnham, Andrew St. John, Jud Lane, Betsy Shields, Michael Cataldo, Gil Guerin.

Absent: Scottie Robinson.

Assistant Building Inspector: Walter Rich

Secretary: Lorie Woodward

Building Inspector's Report

36 Belcher Street / Christopher & Barbara Taron / Building Permit

Property is located on the old Means property, which was subdivided.

Motion: Michael Cataldo moves to approve the application from Christopher & Barbara Taron for construction of a house 36 Belcher Street, finding that it has received approval from the Board of Health, and the Fire Dept. The Conservation Commission has determined that it is not in any kind of wetlands. Finding that it meets all appropriate setbacks.

The motion was seconded by Jud Lane and was approved unanimously.

Betsy arrived at 7:45

15 Apple Street / Kimberly & David Germain / Building Permit Request

Discussion of the status of the Building Permit for 15 Apple Street. The Building Inspector informed the Board that the applicant said she had talked to Scottie and that she did not need to appear before the Planning Board again. The permit was issued. No Planning Board motion for the siting was ever issued. The Board originally sent plans back with Building Inspector for more detailed information with regard to wetland delineation if any and impervious coverage information. The Board will discuss at the next meeting.

Arrielle Lane / Apple Associates / Preliminary Subdivision Plan

The Board informed the applicant that they have been to view the site.

Brian Buia from Apple Associates presented the application to the Board for Scott Boches, SMB Development.

Discussion: Once the lot configuration is approved in the preliminary process the Planning Board can not request additional changes.

This is essentially a small subdivision. Wetland flagging and soil testing was done in April of 2001.

There are two existing lots in the area with homes on them. Those lots will remain intact, with 3 additional lots being proposed. The applicant may seek a rounding easement from the lot on the corner at a later time.

Discussion of small rectangle of property, and if it will be merged with one of the lots. If not it needs to be marked nonbuildable.

Discussion of the old Railroad right of way. Mr. Buia assured the Board that all title research done by the attorney shows that right of way to be Mr. Hidden's property now.

Discussion of frontage requirements. The Board requested it be delineated on the plan that each lot has adequate frontage.

Discussion of paving for Icehouse Lane and Arrielle Lane. It is there intent to upgragde Icehouse Lane and extend the water line. They have been in touch with the DPW.

Discussion of road ownership. The applicant intends to build it to town standards with the intent of turning it over to the town. The Board informed Mr. Buia that roads are rarely accepted and the Board will require some kind of maintenance agreement for the road.

Discussion of maintenance for Icehouse Lane.

Reconvene Public Hearing

Scot's Way

Cell Tower

Reconvene public hearing for Sprint Spectrum LP request for a special permit hearing to build a cell tower off of Scot's Way. This is continued from our last meeting on December 4, 2002. Primary reason for keeping the hearing open was the Board was awaiting Board of Health response to the request. We have received a response from the Board of Health and I will read it. **See Attachment 1 (9 pages)**

Gary Uring, 97 Blueberry Lane, Does the Essex Board of Health represent the residents of Blueberry Lane and the children of Blueberry Lane?

Mr. St. John: Perhaps it is more accurate to say did they consider?

Mr. Burnham: I don't know I was not at their meeting, I was not privy to discussion. I have an excerpt from the 1996 Telecommunication Act Section 704. I am not going to get to carried away but there are 2 paragraphs here that I feel are relevant to let everyone understand where we have to make our decision from.

The Heading of the section is Facility Siting Radio Emission standards National Wireless Telecommunicaiton Siting Policy under section 7 below there is Preservation of Local Zoning Authority it delineates the general authority and then it goes into a section B which is limitation. Under there it states shall not prohibit or have effect of prohibiting the provision of personal wireless services. Subparagraph any decision by a State or Local government or instrumentality thereof to deny a request to place construct or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record. That is one of the requirements that we have to adhere to in formulating a denial. Next subparagraph, no State or Local government or

instrumentality thereof may regulate the placement, construction and modification of personal wireless facilities on the basis of environmental effects of radio frequencies emissions to the extent that such facilities comply with the commission regulation concerning such emissions. Therefore that is the paragraph that specifically excludes us from utilizing any emissions in the process of a denial. Just as further information for everyone here there is a whole other paragraph which specifically gives, within 30 days, a method of appeal which is a little different, and is expedited and generally speaking I believe it is the aggrieved petitioners that utilize it but I am sure it could be utilized in both directions should you feel necessary. It will also be detailed out in however we make our decision. I will add that paragraph detailing the appeal process.

(Gil Guerin arrived 8:40)

Scott Lacy, Attorney for Sprint: This is just an authorization letter from Sprint confirming that TerraSearch represents Sprint at these hearings. This is information on a noise study for the equipment cabinets, and this is a report on the structural integrity of the poles. They are generally designed to withstand winds of up to 157mph.

Mr. Cataldo: Are you here representing the owner of the property? (Scott Lacy, No) Is anyone here who represents the owner of the property?

Stephen Zagorski, I am the owner of the property.

Mr. St. John: I have one additional question to the owner of the property. I believe there is on the application a requirement that should Sprint cease to be a viable corporate entity that the owner take the tower down within 60 days, and the question is, is there a document with his signature on it stating that he will do that. Are you prepared to sign such a document?

Mr. Burnham: The previous tower that the Board approved, we had a paragraph near the bottom assigning the owner of the property the responsibility for removal within 90 days of either the special permit being withdrawn or whatever reason the use being abandon and essential once it is no longer a viable entity under the special permit you have 90 days. What we would be looking for from you is a signed document or letter of acknowledgment that would become part of the special permit and filed with the registry of deeds.

Mr. St. John: I have a follow up question which has to do with technology for which this tower is being constructed. My understanding is that cell phone technology is developing rapidly and within the next 5 years or so they will change to the point where the need for towers 120-ft. tall will disappear.

Scott Lacy: The way most Boards handle that is they insert a clause into the special permit whereby the special permit would expire in 5 years and as part of the renewal process the applicant would demonstrate the need for the facility.

Mr. Burnham: The previous permit we did 10 years.

Mr. St. John: And do you have any response to that issue of the technology which is on it's way up.

Scott Lacy: As of right now the application you have before you, there is a need for technology. If the facility were not approved Sprint Spectrum would have a substantial gap in coverage that they could not close in the Town of Essex.

Mr. Cataldo: You have that gap today, and how long have you had that gap?

Scott Lacy: I'm not exactly sure, since the launch of the network, the date of the license is 1996.

Mr. St. John: Do other carriers have that gap?

Scott Lacy: I don't know about the coverage of other carriers.

Bruce Fortier, Southern Avenue: The Board went before the Town and adopted this Bylaw using language like, in this case or whatever use and now as often is the case I hear the Board improvising it's own definitions. The case law of the interpretations of Zoning Bylaws regarding abandonment is 2 inches thick. When you start saying oh gee if the company goes bankrupt or something, as long as the tower is standing there and capable of being used it hasn't been abandon. Even if something ceases to be used it doesn't constitute an abandonment. I discourage the Board to, rather than improvise with definitions, perhaps you should consult with, I hate to say your attorneys, because my experience with your attorneys is not too impressive, but some competent attorney, how the existing Bylaw could be interpreted by a court.

Mr. Burnham: I have discussed this with our attorneys and I would rather keep any opinions out of the public. I would like to move on to any further public input, I would ask that we pretty well covered the topics of aesthetics, emissions and basically I would rather not get into a complete rehash of hour that we had at the last meeting, because time is limited, but if there is anything else pertinent that someone would like to add.

Bill Lundy, Pond Street: I think this tower is really needed in the falls area of Essex. Sprint happens to be one of the better ones where I live, but on my street you can't get any cell phone to work. It is being put in an industrial park, there are other things in that area, Sagamore Hill. A cell tower in my opinion with my information regarding emissions, I think it is a safe issue at this point nobody has proved it otherwise. I am 100% for the tower.

Stan Ward, 125 Blueberry Lane: I have a petition that was...

Mr. Burnham: The Board was present this afternoon with 3 petitions, 2 of which do not look pertinent to this Board because one is a petition for reconsideration of the ZBA

decision which we have no power on, Notice of Intent to pursue legal action which I assume is against the ZBA and we do have a petition for denial of the special permit.

Stan Ward, 125 Blueberry Lane: I would like to read the petition **See Attachment 2 (9 pages)** petition. (the petition was read at meeting.) The petition was signed by all people that are directly effect by this proposed cell tower. One other thing **See Attachment 3 (2 pages)** Letter from Stan Ward

John Celata, 120 Blueberry Lane: I do pay taxes to the Town of Essex, for my swamp land, it seems to be worth money to you guys. I request that you deny this application. I have 4 reasons, but one of them I know you don't care about, and that is the property values in Hamilton. The monopole site would have a negative effect on the area's wetlands, plants and animals. I don't know if you care about that one. The Essex Zoning Board of Appeals did not give application proper, thorough and adequate consideration before granting the variances sought by Sprint and the Essex Zoning Board did not notify the Town of Hamilton of its public meetings to discuss this application. **See Attachment 4 (2 pages)**

Karen Doggett, 112 Blueberry Lane: I am a direct abutter and I would like to submit to your Board tonight a copy of a letter with regards to my belief and my husband's belief that the TerraSearch report is insufficient and inaccurate. **See Attachment 5 (5 pages)** letter from Karen Doggett.

Mr. Burnham: As far as your request for any information relative to the Building Permit you should mail that direct to the Building Inspector, we are not the proper place to submit that through.

Karen Doggett, 112 Blueberry Lane: I have not received a response.

Bruce Fortier, Southern Avenue: A general question for the Planning Board, as what one would presume to be the guardian of our Bylaws, when you place them before the Town. When the Planning Board received the decision from the Appeals Board essentially nullifying any significant part of our Zoning Bylaw regarding towers basically wiping out the previous requirements and everything else. My question is did the Planning Board discuss appealing this decision. Apparently as I understand it, the neighbors, I am astonished, but they failed to appeal. (Mr. Burnham: we received our initial copy of the Board of Appeals decision, two weeks after the appeal date, did we discuss appealing it, no. For one we had never read it, we were aware that it was coming, but we had not seen the wording and we had not seen the final decision until long after the 20 days.) I don't know how many people here understand that essentially your Board has no choice but to rely on the Appeals Board decision to throw out all the sections of the law that would have protected them, and that so much of what is being said maybe 100% true from the Hamilton residents but it is totally irrelevant to the actions of the Planning Board. These people that we see up on the bench here are limited to enforcing the Zoning Bylaw. Unfortunately we have an other Board, the Board of Appeals, who just totally ignored the limitations that, chapter 40 section A 10, is the section of the State Laws that says that

they have to make a specific finding in order to issue a variance, that the situation is something unique to the particular property and it is something that violates the spirit of the law. This obviously met none of the requirements, and had it been appealed in a timely fashion there would have been a good chance that it would have been thrown out. These people sitting up front don't have a say in that so at this point all they can do is go by the fact that they have no grounds to say no to the applicants, as far as what is within their jurisdiction. There are excellent arguments being advanced as to why they should say no but they are limited to what they have been given authority over which is the Zoning laws. If I had adjoined this property you can be sure that I would have been in court the next day but ...

Mr. Burnham: Mr. Cataldo brings up a point that we probably ought to make public right now. There was a request earlier for us to assign jurisdiction to the Hamilton Planning Board. We are not empowered to do that. The project is in the Town of Essex, if it drifted over the line then it becomes a joint venture so to speak, and we have been in that situation several times before. I caution everyone that we are running out of time.

Richard Ceremsak, 26 Blueberry Lane: Why is this being treated as the only location for this tower in the Town of Essex, when there is so much more available area. I am speaking of this from the viewpoint of an engineer.

Mr. Burnham: I understand your question, from our position we have an application in front of us, we did not solicit the tower, they have applied for a special permit for this location and that is what we have to consider. We do not have the authority or the responsibility to promote it. We don't have the authority to tell another property owner that they must place one there. We have the responsibility to review what has been applied for in front of us in the context that it has been applied for. If there is ample reason and basis to reject it, then we will reject it. We have rejected special permits in other applications in the past based on testimony.

William Martin, 101 Blueberry Lane: I have a question of the Board if I might, in light of this gentleman's comment. Before I get to that, very briefly, I am of course opposed to having the cell tower essentially be in our neighborhood for a number of reasons. First of all it sounds like this cell tower, and I have gone to a number of these meetings before with the ZBA, this cell tower of course is just going to be a matter of feet from the Hamilton Town line. A common sense point of view, it doesn't make a lot of sense that the Town of Hamilton was not consulted really in any regard, in regards to having this cell tower in such close proximity. For purposes of maybe having the towns work together in the future this is definitely not going to help matters. The Town of Hamilton did in fact write a letter that was supposedly considered at least somewhat at the ZBA. It was reviewed but obviously not adhered to. Also from a common sense point of view, having such a large tower be right next to a neighborhood, and a large neighborhood at that, in the Town of Hamilton again as far as trying to work things out with the two towns in the future. This just doesn't make a lot of sense. I attended all Zoning Board Hearings and unfortunately it was a substantial waste of time. At the time I didn't realize that and walked away after all of the variances were basically granted and am a little bit upset

about the matter, not thinking that we got a fair shake and now certainly believing that. I went so far as to write a letter to Salem Evening New, also sending a copy to Brad Hill, who has just entered the room, our state representative, and also to Bruce Tarr, hoping that perhaps it would bring to light that things were not done on the up and up. I went through the detail, all the variances that essentially were just kind of not really considered. Now what I am concerned about is the comments that this gentleman just made, and that is assuming, as many of us do, that the decision that was made by the Zoning Board was a bad decision and maybe even an illegal decision, illegal. If that is the case what if anything can we do at this point, what ability do you have, do you have the authority to deny?

Mr. Burnham: As a Planning Board we are bound by the Zoning Board of Appeals decision, whether we agree with it or not, they are their own Board, they are their entity, they have granted the variance. We are bound to recognize their decision. (Mr. Cataldo: Their decision in this case supersedes us, they have set the rule.) There is legal recourse. There are 2 separate processes, this particular process would not proceed unless they were in conformance with the Town of Essex Bylaws. They were granted relief from the aspects that they were not able to comply with, therefore, any pieces of the puzzle or pieces of the Bylaw that they can't comply with are off the table for us to use as basis for denial. (Mr. St. John: There are however, additional pieces which are still on the table and which we are in the process of considering.) This particular process allows us to look beyond the Bylaws, in other words it is designed for a site specific/project specific review for specific criteria, in other words we can put additional restrictions on how they operate. The denial process still has to be, from our Town Counsel's advice and also the Telecommunications Act, basically we need a substantial....

Karen Dogget, 112 Blueberry Lane: The report that you are reviewing, that has been submitted is misleading and inaccurate. The Town of Hamilton was not notified of the Zoning Board of Appeals meetings.

Mr. Burnham: That contention can be brought up in another venue.

Karen Dogget, 112 Blueberry Lane: I would also like to add that you said tonight sir that you are here on behalf of the Planning Board, the Planning Board is reviewing what the applicant has submitted with regard to this special permit, and what they have submitted in regards to their TerraSearch report. What are any comments at all, in regards to what I have shared earlier, that this report is inaccurate and insufficient in regards to it abutting multiple residences on Blueberry Lane in Hamilton, and Surrey Road. How is that a proper form of review on your behalf if what you are reviewing does not include the direct abutters.

Mr. Burnham: We will review the report based on your opinion. Obviously if we consider a submittal inadequate then we will deal with it accordingly.

Chris Doggett: I did not hear you announce who the people who are present were for the Planning Board, and I know there are a couple of new faces tonight.

Mr. Burnham: One new face Mr. Guerin at the end was not present at the last hearing and he will also be ineligible to vote on this permit, Scottie Robinson is also missing she will also be ineligible, that leaves 5 remaining members.

The voting member identified themselves as follows:

Michael Cataldo
Betsy Shields
Westley Burnham
Andrew St. John
Jud Lane

Gil Guerin was at the meeting but will not be voting on this special permit.

Karen Dortsen, 601 Essex Street: I am a stones throw from the Essex line. I do have concerns about the Tower going up, I have two children. I have sensitivity to cell phones. Personally I have had headaches from them, I feel heat, I feel waves, I have real concerns about a tower going up in my neighborhood. The neighbors around me, I have tried to get here to night but it was rather short notice, and I would like to sign that petition as well. I also am a real estate broker, been in real estate for 20 years. I have seen that high tension wires and cell towers impact on real estate. I think it is a real problem if the tower goes up, it is not only going to effect on the Hamilton property but Essex too. I am totally against the cell tower.

Brad Hill, State Representative for Hamilton: Senator Tarr and I would like to know from this point on do you have a time frame of when you are planning to vote on this special permit? The reason I ask is we have a couple of concerns that we have been working on with the neighbors. One of them of course being the boundary of the line between Hamilton and Essex, it is my understanding that Sprint has notified the Town of Hamilton that they will be going out and figuring out exactly where the line is. As we heard last time we don't know exactly where the line is. Of more concern to us at this point is the wetlands question. You have received at the last meeting a letter from the Conservation Commission saying that there are no issues out there in regards to wetlands issues and we are concerned about that because just by looking at it, by walking it we can see the potential for wetlands questions and we have gone forward and we have had DEP not only look at the map they have on record, but come out and possibly do a site walk within the next week or two and what we are hoping is that we have time to be able to go and look at those issues and be able to come back to you with our findings. It maybe that it is not a wetlands. We are concerned that water that falls from upper water goes right into our drinking source yet in that letter if I understood it, when you read it, there is no concern about that in regards to the Essex Conservation Commission. That has a red flag flying high in my eyes and we want to make sure through DEP records that that is truly the case. My understanding is we went looking for that in the Town of Essex, we really could not find any wetland maps, and correct me if I am wrong about that assumption. We are concerned about it so we want to be able to investigate it a little further but we

want to make sure that we have time to do that investigation before you make your final decision, do we have that time?

Mr. Burnham: My intent is to proceed along as expeditiously as possible. My reasons for that are several fold. One of which by the middle of January potentially we have the probability of having 5 special permits running and also a subdivision going. It is in our best interest to try to move some things along before we get so cluttered. (Ms. Shields: What are our days legally?) Legally we have 90 days from the close of hearing in which to render a decision. Obviously it will be done in that time frame.

Brad Hill, State Representative: So your next meeting will be in January?

Ms. Shields: Our next meeting is January 8, 2003 and then the 15th

Mr. Burnham: I can assure you there will be no decision made on the 8th because I will not be here and there will not be a quorum with which to vote. So at the earliest would be the 15th.

Brad Hill, State Representative: Will we have the opportunity on the 15th if we were to find something different than what we have developed here? An opportunity to a talk to you about that before the vote?

Mr. Burnham: If there is a procedural or misinformation having been delivered there is the appeals process which can be followed. To hold the hearing open any further than tonight, I am reluctant to do that, because as you can see, the Board is already one member down from the first hearing and a second member tonight and to hold it open runs the risk of potentially dropping below a voting quorum and we would have to restart the whole process. Which may leave them the opportunity for an appeal and we would potentially wind up having a positive decision being made with no considerations that we may have been able to add.

Brad Hill, State Representative: May I ask this question to Sprint, if that is the case we are closing tonight we don't know all the boundaries tonight and we would need to get that information to you, how would that happen?

Mr. Burnham: The town boundaries being identified is a question,

Brad Hill, State Representative: If that information is coming to you by Sprint within a months time so if you are closing tonight?

Mr. Burnham: If we close the public hearing I intend to receive no further information.

Brad Hill, State Representative: Including the boundaries?

Mr. Burnham: The boundaries are delineated on the map, if they have in fact placed them incorrectly on the map then the Town of Hamilton has jurisdiction over it in which case an appeal could be written and we both start the process over again.

Brad Hill, State Representative: My understanding is that they are going through that process right now of finding out where the boundary is according to a phone call I had with the town administrator.

Mr. Burnham: The application which is in front of us and the map that is in front of us shows the entire project within Essex, that is what we are dealing with.

Brad Hill, State Representative: You are saying if the information came back differently then during your appeal process we would bring that information up, is that correct?

Mr. St. John: Westley what you are saying is that we are going to vote on the information that we have so far is that correct? (Mr. Burnham: yes) And that then if the survey by Sprint turned up that the boundaries were wrong that would certainly provide the basis for an appeal or if there were wetland issues involved.

Brad Hill, State Representative: Knowing that there are 2 issues at hand that are being worked on where questions will be answered with in 2 weeks why would you vote to end.

Mr. Cataldo: One of the issues we are running up against is we know right now that Wes is going on vacation for the first meeting in January, so he would not be a voting member if we kept the hearing open. We would not even have a quorum to vote on it. Then we have the second meeting in January that we already have 2 hearing scheduled.

Mr. Burnham: You have potential issues, I have in front of me a letter from the Conservation Commission that says there are no issues. If you disagree with that that is your privilege/right. There is a process for you to dispute the information that was dropped in to us. As far as the line delineation, locating the line and ensuring that the plan is built as drawn, it is very reasonable and quite frankly something that would be included as a condition to ensure that they did not build in Hamilton or went through the Hamilton process to ensure that they are in compliance. Now both of those issues from our perspective right now have been addressed. If you want to dispute them that is your privilege and right.

Brad Hill, State Representative: I thought I heard at the last meeting they admitted that they don't know where the town line is.

Mr. Burnham: What I heard at the last meeting is that where the actual town line is in the dirt may be in question and I believe that they offered or intended to hire a surveyor to actually mark it so there is no question as to where they locate their facility relative to that line.

Mark Boden 1 Surrey Lane: First of all the one issue that you have not dealt with yet is, I recommend and respectfully request that you deny the application based on the fact that you have not received the definite definitive information from the US Air Force on the observatory and that was a qualification given by the Appeals Board asking for that.

Mr. Cataldo: Well if that is a condition in the Appeals Board decision so that is going to be met before anything goes up.

Mark Boden, 1 Surrey Lane: No definitive decision or information has been given by the Air Force at all. All the information on the application is completely incorrect including the drawings and I don't understand how you can approve. (Mr. Burnham: Did you delineate exactly what was incorrect) Yes. Specifically the outline on the lot as to where the plot is, specifically stating it is not in Hamilton, when it is cause they are doing grading on a plot line. So there are specific things I have outlined in a letter. The drawings were completely in question because the survey is completely wrong. So the complete design is completely wrong. Also Terra Sprint is boarding and actually on the Hamilton line when they do the grading. I am asking you to deny it based on environmental and ethical and aesthetics. Based on the fact that you are also dealing with an area where it hasn't been done, research with a conservation impact statement has never been done on that area, and that needs to be done, that study. I am also asking you to deny that based on the fact that the TerraSearch inspector stated specifically lot F 29 is another appropriate site and they also stated specifically they have not researched the water tower site as a possible site. I am also submitting finally that with this particular application, that it could create aesthetic damage for the neighborhood. Don't mind a 60-ft. tower, 120-ft tower could be seen for 2 miles and that is bad. **See Attachment 6 (7 pages)**

Peter Bachini, 88 Blueberry Lane: I would like to make a comment on what this gentleman made some statements about the Board, your hands are tied in voting on this issue. One Board in the town does not dictate all decision made in the town. You folks do have the authority to vote yes or no on this, it is not a rubber stamp, I just want to make that clear, for the record. I also have several issues that I would like to present. One is about public safety, I think that documentation needs to be presented and certified documentation about emergency procedures should there be any type of environmental fall over resulting from this tower. Both Essex and Hamilton it is more than likely that this tower would probably fall over into Hamilton, most of us live in Hamilton we would be contacting Hamilton Emergency Services, those folks should be certified in how to handle this type of situation, I submit that to you. The second is the Massachusetts Department of Environmental Protection as Brad Hill and Senator Tarr have indicated that they are talking to the DEP about possible wetlands. I also submit a request that a 21E report be done, this is an industrial site, I have worked in industrial real estate myself and in most cases when land is being proposed for further development core wholes are drilled, soil testing is done, and I submit that a 21E report complete for that parcel given the condition it should be completed. That is for Essex protection as well as everyone else. In terms of the wetlands a formal determination and a notice of intent should also be completed, all the abutters, everybody has stated that this property is surrounded by wetlands. There are cat nine tails growing across the street. You have admitted that it is in a watershed district that does feed a public water supply. I submit that that be requested. Insurance coverage, proper insurance coverage, Sprint the property owner, everybody should submit appropriate documentation that says that this thing is going to

be insured in case it does fall over. I would also submit that Essex review their property violations in case there is any kind of pool or hot tub pond on the property that does not have appropriate fencing around it, that could be in violation. I request to postpone the vote officially or deny the vote, deny the permit so that all of these types of environmental work and wetlands work can be completed in a timely manner. I then submit, you referenced the Telecommunications Act. In addition to that paragraph that you read, there are other paragraphs here that clearly state that you folks do have the authority to vote on this yes or no, it is not a rubber stamp situation. I also have a letter from Senator Edward Kennedy office that clearly says that you are not discriminating against cell towers companies, you have other cell towers in town and that you do have the authority to vote no on this and I submit that for you. I then submit 3 cases in which many of the issues that we talked about here tonight have all successfully defended Planning Board Decisions against cell companies, in that aesthetics or for other reasons that these have all held up in court, so I submit these three. **See Attachment 7 (33 pages)** One is and I will read these off for the record so that they are recorded, Citizens to Preserve Pioneer Park vs. City of Mercer Island, US West Wireless, Puget Sound Energy, the second is Sprint Spectrum vs the Town of Ontario New York, the third is AT & T vs. Virginia Beach.

Chris Doggett, 112 Blueberry Lane: Respecting your interest to proceed with the timing this evening, I won't read these **See Attachment 8 (4 pages)** and I won't go over several other issues that are concerns or comments but what I will submit is for consideration to the extent that it effects your decision we do intend to pursue legal counsel in regards to proceedings both with the ZBA hearing and this evenings proceeding such that they fall outside of correct procedural boundaries and with respect to that I would note that a lot of information and documentation has been and submitted to you today and this evening which you have not had the opportunity to review and I would caution you with that situation and the outstanding issues which are still pieces of information that you do not have in you hands that you have reason to reasonably question specifically the town boundary and the wetlands issue, that if you were to proceed on making a decision this evening based on knowing that you have reason to question that that could be construed as something that is not appropriate for this Board to do.

Mr. Burnham: Rest assured that there will be no decision on this, this evening.

Chris Doggett, 112 Blueberry Lane: I think the point that I would make is if you were to proceed on the basis of making the decision tonight or any other night without having that information in hand that that is perhaps not a legally defensible position. I am not a lawyer so I don't know that but I would present that a. we do intend to have legal counsel with regard to any proceedings that might not be correct this evening, also there is an affidavit of non-receipt that you may want to consider, I understand that is outside of your purview, but it relates to how the previous processes were handled, notwithstanding anybody's comments or opinions about that, this would be an additional piece of information for you to have. In terms of the proceeding without this information, we have asked for as you may have heard, asked for a formal determination from the Town of Essex be made from their Conservation Commission, as I understand it that is one of

two types of decisions, the other being the one that is in front of you. I think it is within the Board's, but I am not an expert on it, it is within your power to request that the formal determination be made since you are in receipt of a formal request from us to do so, and I would encourage you to pursue that in addition to any of the DEP studies that would occur.

Elizabeth Uhring 97 Blueberry Lane: I want to submit a copy of the petition, Notice of Intent to pursue legal action (Mr. Burnham: Actually we have the original) And I would like to clarify that all of the signatures on this are people who are directly impacted. This wasn't just a canvas of the community. **See Attachment 9**

Gary Uhring, 97 Blueberry Lane: I manage a whole bunch of design engineering teams, and just reading your variances, listening to what is going on here, I am very disturbed and when I look at the maps and set backs and look at the variances that the town granted, basically has biased the location of this tower and the detrimental effects of this tower so it impacts the town of Hamilton. You can't make a decision on that, that's the Appeals Board, but you can take it into account when you make your decision. So I respectfully ask that you consider that, if you just sit there and read these, ¾ of these zones of concern and variances that you have actually are in the town of Hamilton they are not in Essex at all.

Derrick Spengler, 128 Blueberry Lane: I believe earlier in the meeting you mentioned that we should concentrate on aesthetics unfortunately we weren't allowed to be given that time (Mr. Burnham: what I was trying to do was avoid a complete rehash of the hour and a half we already went through.) I would hope that all of the Board would take time to review this, this is just a letter personally from me stating the aesthetic effects of having lived in the Hamilton Essex area for 27 years, traveled the road of route 22, passing the Junction Ice-cream store on my left where thousands of people gather each summer, each year, and sitting there this morning having my cup of coffee I can see the white tower, you went up there you saw it, your now deciding that this is really the first thing people are going to see as they enter the town of Essex, and I am absolutely appalled by that, and I hope that you are as well, and that you do whatever you can in your power to change that, and that this is something that personally, I am not overly opposed to cell towers when they are placed properly and concealed properly. This is definitely not a case, and I think if you spend time on Western Avenue that is actually the area that is going to be most impacted aesthetically speaking. And there are other health issues and environmental, I am not concerned about that it is only the aesthetics that we are here for tonight. **Attachment 10**

Nicholas Burk, 12 Juniper Lane: I apologize for not having a formal proposal put together, I have been just recently educated as to what has been going on. I think in saving time, there have been a lot of great points made tonight. I'll keep it to two points. One is, living in Hamilton and having it, this discussed about the impact in Essex, there is no question of impact in Hamilton and it seem like taxation without representation because here we are most definitely going to be impacted by this yet we, the timing of

notification and all it seems, timing is important but it is not a matter of convenience. Doing the right thing is probably the most important thing.

Mr. Brunham: Can I interrupt just one moment? In ten minutes we are supposed to be out of this building. Could you please get to the point.

Nicholas Burke, 25 Juniper Lane: My point is that the inconvenience in time should not dictate the decision relative to this. My second point is, and maybe a naive statement, but if Sprint is putting up this tower in the hopes that we will be the end users of their service, I would throw out that maybe they should consider backing off on the timing of this until there is consensus among both communities.

Mr. Burnham: The earliest the Board would vote on this would be the January 15th meeting, which assumes the Board has had time to read through all the information given and all voting members are present. All Board decisions are made at open meetings.

Bruce Fortier, Southern Avenue: When the hearing closes that is the end of the input of the public. We can attend the meeting and we can watch and listen, but we have no right to participate. One of the things that concerns me is that previous Town Counsels have explained to the Planning Board at my insistence once the hearing is over, no they can't continue a private hearing after the meeting with a select few.

Peter Bachini, 88 Blueberry Lane: Are you closing the hearing on this? (Mr. Burnham: I am hoping to yes) So we will not have an opportunity on the 15th to express any other opinions. (Mr. Burnham: That is correct, you are more than welcome to sit in on the deliberation) My point is I travel throughout New England for my work and in this past week I have traveled to Manchester NH and to Hartford CT along both of those routes there are in both directions at least 25 cell towers not one is a monopole. It looks like they started out as monopoles but eventually there is all kinds of antenna and external stuff on the outside not one is a monopole. I challenge you to take those two routes and find one monopole. In viewing this I think, and you look at the documentation, the way that law is written it is easier for you to find reasonable discrimination today against the location then to put up this monopole and you won't be able to discriminate against 10 other companies that want to put exterior antennas on.

Scott Lacy: This is just a memo summarizing the 1996 Act.

Mr. Burnham: When the meeting is closed this evening we will make our decision based on the information we have on hand in our records right now.

Chris Doggett, 112 Blueberry Lane: I would like to make a comment, in regards to that statement, I formally request you continue this hearing for the reason that, which I think I heard you say a minute ago, that if there is new information that is for the appeal process to take care of for the sake of your own schedule, you are putting the burden financially on all of us who are tax payers, and residents of an adjoining community to overturn your

decision because of your concern about scheduling on the calendar, and that that is not an appropriate thing for you to do.

Bill Lundy, Pond Street: There isn't an organization or anything in the United States including Congress that doesn't have limits on their meetings, and every speaker gets to speak so much, and if he doesn't get his point across within that certain time that is it, the next guy speaks. I know for a fact that the 15th of January, there could be another group that wasn't here tonight and they would be submitting the same amount of stuff.

Mr. Burnham: The only issues I hear left open are the Conservation Commission and the town line. The town line issue is a locator, the Conservation Commission we have our answer, if they disagree with it that is their privilege. (Mr. Cataldo: Can we say that we will still receive the information) (Ms. Shields: We can't base our decision on it, but we can receive it)(Mr. Burnham: We can not, we can address it in whatever finding we make.)

Chris Doggett, 112 Blueberry Lane: Since you do not have all the information, there is a lot of information that is incorrect, then a no vote would create a need for reapplication and that is the only vote I see you have a choice of, based on the fact that you don't have the correct information and you don't have the decisive information from the US Air Force observatory.

Mr. Burnham: I would prefer to close this, we will make the decision with what we have. We will examine all of their opinions and we will move on. The Board can address any issues in whatever finding is made.

Mr. Cataldo: If the DEP determines that there are wetlands here that would supersede the Essex Conservation Commission's finding that there isn't, therefore there is another avenue there. That would not enter into our realm of decisions anyway. All DEP has to do is contact the Essex Conservation Commission and they can supersede them. The main thing we are talking about now is the property line and if that is shown to be wrong then there is an issue the Town of Hamilton can take up. We have enough information here to make the kind of decision that we need to make, keeping this meeting open indefinitely, I agree with Westley we lost one member tonight we need at least 5 members to vote. So if we keep this open and somebody gets hit by a bus we can't even vote on it. While we would like to keep it open indefinitely until everything comes in.

Motion: Mr. Cataldo: I would like to make a motion that we close the public hearing.

The motion was seconded by Jud Lane and passed by those members present.

Sagamore Street / Donovan Conservation / Site Plan Review

Motion: Michael Cataldo moves to accept the application for Site Plan Review from Donovan Conservation to construct a barn on Sagamore Street

(Hamilton) Barn to be built on land in Essex. The Board will hold a public hearing on February 5, 2003 at 8:30 p.m.

Motion: Michael Cataldo moves to nominate Andrew St. John as the Planning Board's representative to the Designer Selection Committee. The motion was seconded by Betsy Shields and passed unanimously.

Motion: Michael Cataldo moves to adjourn the meeting. The motion was seconded by Jud Lane and passed unanimously.

The next meeting is scheduled for Wednesday, January 8, 2003, commencing at 7:30 p.m.

Presented by: Lorie A. Woodward Attested to: Westley Burnham
Lorie Woodward, Admin. Asst. Westley Burnham, Chairman

**Town of Essex Planning Board
Minutes
Wednesday, December 4, 2002
7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School and was called to order at 7:35p.m by the Chairman, Westley Burnham

Attendees: Westley Burnham, Andrew St. John, Jud Lane, Betsy Shields, Michael Cataldo, Scottie Robinson.

Absent: Gil Guerin

Assistant Building Inspector: Walter Rich

Secretary: Lorie Woodward

Building Inspector's Report

36 Belcher Street / Christopher & Barbara Taron / Building Permit

Mr. Rich presented plans for a new single family home with a footprint of 3500sq. ft. The site is the old Means estate, divided by an ANR early this year, site plan review does not apply because of the grace period. The Board would need to know where the house will be located on the property before a siting could be approved.

Planning Board Business

Schedule Site Visit for Andrews Street, Scot's Way and Arielle Lane on Sunday December 8, 2002, to be posted at Town Hall.

**Public Hearing
12 Scot's Way**

Westley Burnham: I declare a quorum present. It is 8:00 p.m. Planning Board acting as a Special Permit granting authority is opening a public hearing relative to a application submitted by Sprint Spectrum, for a free standing tower for the use as a cell phone tower. Notice having been duly advertised in the Gloucester Times, on 11/18/02 & 11/25/02, as required by law, and notification sent out to all abutter and surrounding towns.

Town of Essex Planning Board acting as a Special Permit granting authority notice of public hearing. Notice is here by given the Essex Planning Board will hold a public hearing scheduled for Wednesday December 4, 2003, at 8:00p.m. at the Essex Elementary/Middle School, Story Street, on the application of Sprint Spectrum L.P. c/o TerraSearch, 270 Center Street, Holbrook, MA 02343 for a special permit under section 6-6.9e of the Zoning By-law Radio, Telecommunications, Cellular, and Television facilities including free standing tower type structures. The land is situated at 12 Scot's Way, located on the north side of Western Avenue, the record title to said land stands in the name of Steven Zagorski, Trustee of Northstar Realty Trust of 474 Asbury Street, Hamilton, by a deed duly recorded in Essex County South Registry of Deeds, in book 12795 page 356. There now exists a commercial lot which houses Gunite Corporation. Sprint Spectrum proposes to install a 120-ft monopole with related telecommunications equipment located adjacent to the monopole. Plans are available for review at the Town

**Town of Essex Planning Board
Minutes
Wednesday, January 8, 2003
7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School and was called to order at 7:35p.m by the Vice Chairman, Michael Cataldo

Attendees:, Jud Lane, Betsy Shields, Michael Cataldo, Gil Guerin, Scottie Robinson.
Absent: Westley Burnham, Andrew St. John.
Building Inspector: Bill Sanborn
Secretary: Lorie Woodward

Building Inspector's Report

1 John Wise Avenue

Discussion of the use of the property. The Building Inspector received a request to put up a sign. The applicant is intending to open a small retail store, and the Building Inspector questioned if the applicant would need to go through the Site Plan Review to change the use from office to retail sales. The Planning Board determined that they would need to review to be sure there was adequate parking and other requirements were met. Discussion of the current use and whether the commercial use had been abandon. Discussion of the trigger for Site Plan Review, any change of use, commercial to commercial? Secretary will check with the DPW to confirm determination on site from the sewer project. The Building Inspector will advise the applicant to go through the Site Plan Review process.

Swimming pool fence Bylaw

Discussion of bylaw proposed last year, secretary will bring copy to next meeting.

12 Scot's Way

Secretary to review minutes from 1994 to try to find siting for building on site.

Planning Board Business

Water Resource Protection District Revision

The new version would incorporate DEP verbiage into the Essex Bylaws. Discussion of section 7, and changing it to the Planning Board having Special Permit granting authority. Discussion of changes with zone 1 and zone 2. Zone 1 is right around the wells. Discussion of changes from DEP version: Section B Prohibited uses, on page 6 just above the C, inserted is the exact wording that is in our existing Bylaw, it says residential development which renders impervious more that 15% of a building lot including the portion of any new street abutting the lot or which has a lot area of less that 40,000 sq. ft. including wetlands for each dwelling unit. Discussion of septic systems effects on the drinking water. Residential being a bigger problem that commercial. Discussion of changing the 30,000 sq. ft. for commercial to 40,000 sq. ft. which would render vacant lots of 30, 000 sq. ft. unbuildable after the 8 year grace period. Discussion

of decreasing the residential to 30,000 sq. ft. Also on page 7, sections 5 & 6 which talks about application of pesticides and fertilizers for commercial users, and is currently enforced by the Water Dept. The new wording would require a special permit, although still enforced by the Water Dept. Discussion of whether that is really appropriate for the Planning Board to be reviewing pesticide and fertilizer. Discussion of breaking out the process to be under the Water Dept.'s jurisdiction. Discussion of removing the details of Special Permit process, as it is outlined in Appendix B of the current Essex Bylaws. Discussion of changing mandatory to suggested that the applicant give a list of chemicals and fertilizers, #1e page 8. Discussion of public hearing date for 3/5/03.

53 John Wise / David Lane-Curlew Cove Realty Trust / ANR Application

Jud Lane recused himself from this discussion and will not vote on application.

David Lane presented the plan to the Board. Due to a failed septic system the applicant is requesting to change the lot lines to accommodate the repaired system. Mr. Lane informed the that the Board of Health has checked set backs and is read to approve this plan. ^{Board}

Motion: Scottie Robinson moves to accept the application for endorsement of a plan believed not to require approval of David Lane, trustee of Curlew Cove Realty Trust at 53 John Wise Avenue Essex, MA for revision of lot lines of Lots 6 and 6A on John Wise Avenue as shown on map dated November 25, 2002, prepared by Eastern Land Survey Associates.

The motion was seconded by Betsy Shields and passed unanimously by those members voting.

Jud Lane rejoined the meeting.

Sagamore Street /Donovan Conservation / Site Plan Review

Discussion of the plan, the frontage is in Hamilton, and he has supposedly done an ANR in Hamilton to remove the lot lines to give the lot in Essex adequate frontage. Discussion of whether the applicant needs approval from Hamilton, since frontage is in Hamilton. The Board requested the applicant get a letter from Hamilton approving the frontage. The applicant needs an ANR stating that it is all one lot in Hamilton and Essex.

Arrielle Lane / Apple Associates / Preliminary Subdivision Plan

The Board reviewed the checklist.

Easements/Rights of Ways were not noted on the plan ie for utilities or other

Proper labeling of Subdivision Road (not a right of way) Maintenance agreement for the road must be in effect

More drainage details for the road

Note on plan that it is located in the Water Resource Protection District

Note in letter that the Planning Board is not making any judgments about the leaching fields noted on the plan, that falls under the Board of Health

Adequacy of Access via Icehouse Lane/what improvements for Icehouse Lane

Redraw front lot lines to show conformity with Essex frontage regulations (the 25-ft depth minimum from lot 3 & 4 and each frontage requirement is 150-ft.)

The previous qualifications must be incorporated into your definitive subdivision plan.

Motion: Gil Guerin moves to approve the preliminary subdivision submission with modifications, the proposed subdivision of Arrielle Lane, applicant SMB Development, land owner Dave Hidden, property is located at 4 Icehouse Lane currently there is one dwelling and two workshops located on the property. The Board approves this preliminary plan with the following modifications to be incorporated into the definitive plan:
Easements/Rights of Way were not noted on the plan ie for utilities or other
Proper labeling of Subdivision Road (not a right of way) Maintenance agreement for the road must be in effect
More drainage details for the road
Note on plan that it is located in the Water Resource Protection District
Note in letter that the Planning Board is not making any judgments about the leaching fields noted on the plan, that falls under the Board of Health Adequacy of Access via Icehouse Lane/what improvements for Icehouse Lane
Redraw front lot lines to show conformity with Essex frontage regulations (the 25-ft depth minimum from lot 3 & 4 and each frontage requirement is 150-ft.)
The motion was seconded by Jud Lane and passed unanimously.

Turning Leaf Farm

Per the Conservation Commission secretary, the Conservation Commission has written an order of conditions, and the plan has changed to move the barn/riding ring outside the Buffer Zone. The Conservation Commission will be forwarding a copy to the Planning Board.

Betsy Shields did some research on Kopelman and Paige's advice to ignore the conservation restriction. The case cited seems to say the reverse. It is not the Planning Board's job to be an advisory board.

If the plan has changed, such as the separation of the buildings, the entrance and location of buildings the Board feels the process should be restarted.

Minutes

No copies have been requested as of yet the Board postponed approval until the next meeting to allow time for everyone to review the drafts.

Cell Tower

Update, the hearing was closed, the Board does not have a voting quorum tonight.

Motion: Gilbert Guerin moves to adjourn the meeting.

The motion was seconded by Jud Lane and passed unanimously.

The next meeting is scheduled for Wednesday, January 15, 2003, commencing at 7:30 p.m.

Presented by: Lorie A. Woodward Attested to: Andrew St. John 1/15/03
Lorie Woodward, Admin. Assistant Andrew St. John, Clerk

Town of Essex Planning Board
Minutes
Wednesday, ^{Feb} January 15, 2003
7:30 p.m.

The meeting was held at the Essex Elementary/Middle School and was called to order at 7:35p.m by the Chairman, Westley Burnham.

Attendees: Jud Lane, Westley Burnham, Michael Cataldo, Gil Guerin, Scottie Robinson, Andrew St. John, Betsy Shields.

Absent: none

Building Inspector: Bill Sanborn.

Secretary: Lorie Woodward

Building Inspector's Report

Mention of Plumbing Codes, the state is cracking down on issues, ie cast iron perimeter drains, floor drains, applicant should be reminded to run new construction by the plumbing inspector.

Gil Guerin arrived at 7:40

164 Western Avenue / Joanne Jordan / Discussion

The applicant intends to demo the existing dwelling and build a larger dwelling, 28-ft. by 36-ft. There is an existing garage that will be demolished as well. The location of dwelling meets setbacks. DPW will need to be consulted by the applicant for the circular driveway. The Board found no issues as long as the plan meets the Water Resource Protection District's 15% impervious coverage restriction. The lot is technically undersized, but it is a pre-existing non-conforming residential lot.

Low Land Farms / Discussion

Mr. Van Wyck requested the Building Inspectors opinion on the determination of the multifamily/apartment house. The building inspector told him he believed it to be one ~~is~~ and the same. Discussion of 6-6.9k. Discussion of 3 dwelling per lot. Discussion of 6-3.45 three or more units within the same building. Mr. Van Wyck is currently going before the Board of Appeals asking for relief from the definition of multifamily. Discussion of the continuing efforts of the Board to develop a Open Space Residential Design Bylaw.

Planning Board Business

8 Lufkin Point Road / Ann Hoar DeGalvan / ANR application

The applicant is requesting an ANR to divide the lot into two buildable lots. The Board discussed the odd shape of the lot being created and access issues for the small portion at the end.

Motion: Gil Guerin moves to approve the plan dated 1/12/03 for Ann Hoar-DeGalvan seeing it meets all applicable Town of Essex Bylaws.

The motion was seconded by Jud Lane. Westley Burnham, Scottie Robinson, Jud Lane, Betsy Shields, Gil Guerin voted in the affirmative and Andrew St. John voted present.

Apple Street / Eloise Hodges / Subdivision modification submission

Jim Comeau from Hancock Engineering addressed the Board with the application. The Board briefly reviewed the application with the modifications requested at the last meeting, and agreed that no fee would be required since no new frontage was being created, but that the applicant would pay for advertising. Copies of plan and application to be distributed to Con Com, DPW, BOH, and Fire Dept.

Motion: Andrew St. John moves to accept the application from Eloise Hodges and set the public hearing for March 19, 2003, 8:30 p.m. at the Essex Elementary/Middle School

The motion was seconded by Jud Land and passed unanimously.

Sagamore Street (Hamilton) / Donovan Conservation LLC / Site Plan Review, Public Hearing

The Chairman opened the public hearing for Donovan Conservation LLC for a Site Plan Review.

Dylan James from Meridian Engineering requested by phone that the Board hold the hearing open to the next meeting. The Board received a letter today from attorney Steven Rosenthal stating that he is the contact person for Donovan LLC and no action may be taken on the property without his authorization. There is some question as to who has the authority to act in behalf of Donovan Conservation LLC.

Ms. Robinson: Suggested closing the public hearing.

Mr. Burnham: The options as I see it are continuing the public hearing until March 19, 2003, and wait and see what they want to do. In which case if all is settled. The second option is to close the public hearing tonight, at which point we are obligated to act, write a decision based on no input.

Mr. Guerin: My impression is the applicant has made a request to hold the meeting open, and aside from the letter, we should keep it open.

Mr. Burnham: Based on the input from the neighborhood, the interest level, I think that it is going to be irrelevant.

Lorie Woodward: The phone call from the engineer did indicate it was just a lack of communication.

Mr. St. John: Would it be appropriate to ask for whom the engineer is acting?

Lorie Woodward: The engineer thought he was acting on behalf of Donovan Conservation LLC, but he may have been dealing with Donovan Sr. not Donovan Conservation.

Ms. Robinson: My take is that if somebody comes in and puts an application before us, and we schedule a public hearing at their convenience and then they don't show up that they are wasting our time.(Mr. St. John: They called.)

Mr. Burnham: The bottom line comes down to, if we close the public hearing tonight, then we have to render a decision.(Ms. Shields: You want them to withdraw it.) If they were here I would ask them to withdraw it, but in light of the fact that we can't even speak to them, and they did call request that the hearing remain open. I would like to hear a motion that we continue it to March 19, 2003 at 9:30 p.m.

Motion: Andrew St. John moves to continue the public hearing till March 19, 2003 at 9:30 p.m. at the Essex Elementary/Middle School.

The motion was seconded by Gil Guerin. Westley Burnham, Andrew St. John, Jud Lane, Betsy Shields, Gil Guerin voted in the affirmative. Scottie Robinson was opposed.

2 Andrew Street / Margo Kusulas Turning Leaf Farm / Site Plan Review

Ms. Kusulas addressed the Board and presented copies of the letter from attorney Crimmins requesting to withdraw their original application with out prejudice. The Board did receive copies of the letter earlier in the day.

Motion: Andrew St. John moves to accept the request to withdraw the application for Site Plan Review without prejudice.

The motion was seconded by Scottie Robinson and passed unanimously.

Michael Cataldo arrived for the meeting at 8:50 p.m.

12 Scot's Way / Sprint Spectrum LLC / Special Permit request

As members of the Board the Scottie Robinson and Gil Guerin can participate in the discussion but not in the vote as they each missed one of the public hearings.

The Board took some time to reread through the memo sent to the Board by town counsel.

Mention of the Board's general displeasure of the way the ZBA variance was written.

A draft approval with a host of conditions was e-mailed to Board members for their review. All members received except Gil.

Betsy Shields expressed concerns with regard to the special permit Bylaw on the second page. Two things, that the proposed use as developed will not adversely affect the neighborhood, and the site is an appropriate location for such use. My biggest concern is that the TerraSearch report doesn't fully examine the area. It is a tricky situation because it abuts Hamilton, and the whole Hamilton neighborhood was not fully considered in

their evidence in terms of property values changing or real effect on people. It just dealt with Essex and an industrial zone and steered the application like that.

Westley Burnham: Lets put aside the variances that were granted and the town line didn't exist. Lets look at it with our minimum requirements, would that in fact meet our zoning as it sits. The important part is we put a 500-ft. minimum radius from any residence, and they do meet that.

Michael Cataldo: I am concerned that our Board has never passed another cell tower application that is within the 2 mile radius. When we have looked at it before we always cited the 2-mile radius as with Jerome French.

Westley Burnham: This is the second tower and they have previously been granted relief from the Appeals Board. Jerome wanted to build the tower first without a carrier backing it. The other site behind the package store was not an appropriate site (Scottie Robinson: it was a very small lot and there was a lot of water, and there were many variances requested.)

Betsy Shields: It was a different Board then.

Discussion of the significant gap in coverage, and what constitutes a gap. The definition is in the package provided by the applicant.

Andrew St. John: I am not sufficiently convinced that that is a significant gap.

Westley Burnham: We do not have the expertise or the assets to go out and measure the cell frequencies so we have to take it at somewhat face value.

Betsy Shields: discussion of criteria of Special Permit

- 1) that the proposed use will be in harmony with the general purpose and intent of the Zoning Bylaw.
- 2) That the specific site is an appropriate location for such use.
- 3) That the specific site has adequate public sewer and water facilities, Not applicable
- 4) That the proposed use as developed will not adversely affect the neighborhood
- 5) That there will not be a nuisance or serious hazard to vehicles or pedestrians
- 6) That adequate and appropriate facilities will be provided

Discussion of the 80 ft tower currently on the site.

Discussion of the Hamilton neighborhood

Discussion of alternate sites

Discussion of the ZBA's removal of controls available to the Planning Board for making a decision on the cell tower

Discussion of basis for denial available to the Board

Scottie Robinson: Number 4 , use as developed will not adversely affect the neighborhood, could be argued, it will adversely affect the neighborhood. It will affect property values because the view is not unspoiled treetops.

Westley Burnham: The view is already spoiled by an 80-ft tower on the site.

Discussion of the appearance of the proposed tower

Discussion of the proposed draft approval provided to the Board members.

Discussion of ensuring the applicant re-surveys the property for the town line

Discussion of securing an escrow account for removal of the tower pending it no longer being viable

Discussion of the Air Force station, nothing was received and it was written into the variance.

**Motion: Michael Cataldo moves to approve the application for a special permit submitted by Sprint Spectrum L.P., c/o of TerraSearch, 270 Centre Street, Holbrook, to erect a telecommunications tower and support structures. Proposed construction is to be located at 12 Scot's Way per the Approval with Conditions dated February 5, 2003
The Motion was seconded by Jud Lane.**

Jud Lane, affirmative, I went through all the documentation including all the letters, I went to the site, I went to Blueberry Lane to looked through the trees, and I did research on the web, and I looked through the whole application. Based on the Zoning Bylaws and the variances that they have been granted, we meet that requirement. As far as the site being appropriate, again because of the variances, I think it is probably as appropriate place as could be based on any other site. The final thing in site plan review that I looked at, is it substantially detrimental to the community and neighborhood, and I could not see that it was substantially detrimental, so I vote in the affirmative on this document.

Michael Cataldo, yes, much as I don't want to, I am going to vote yes on this. I think that given the fact that our hands are tied, and given the fact that the Board of Appeals has sort of preempted us, I don't see that we have the grounds to deny.

Betsy Shield, affirmative, of the proposed special permit granting document, although I have some reservations also, I

feel that we tried to look thoroughly at all the issues, it meets most adequately our Bylaws.

Andrew St. John, affirmative, Having visited the site and reviewed all of the materials submitted to the public hearing and gone over the records several times, and going through the Town Bylaws carefully, I have a large number of reservations about this application. Each one of those reservations has been preempted by the Zoning Board of Appeals or the Telecommunication Act, I am therefore compelled to vote affirmatively.

Westley Burnham, affirmative, I myself vote affirmatively, under the circumstances I believe this decision considers all of the concerns and positions as well as we are able.

Gilbert Guerin, present, was unable to vote, as he was not in attendance of the 12/04/03 hearing.

Scottie Robinson, present, was unable to vote as she was not in attendance of the 12/18/03 hearing.

Westley Burnham, I declare the special permit granted we will get a copy of this within the next 10 days to the town clerk as well as record of proceedings, at which point it is filed with the town clerk the 20 day clock will start the appeal period.

Approval of minutes

Motion: Jud Lane moves to approve the minutes from 12/18/03.

The motion was seconded by Michael Cataldo and passed unanimously.

Motion: Scottie Robinson moves to accept the 1/15/03 minutes.

The motion was seconded by Jud Lane and passed unanimously.

Dates for upcoming Hearings

Motion: Jud Lane moves to accept the application from the Town of Essex for a Special Permit, and set a date of March 5, 2003 8:00 p.m. for the public hearing

The motion was seconded by Betsy Shields and passed unanimously.

Motion: Andrew St. John moves to accept the application from Scott Dewitt for a Special Permit, and set a date for public hearing of March 19, 2003 9:00 p.m.

The motion was seconded by Michael Cataldo and passed ~~unanimously~~.

Motion: Gilbert Guerin moves to adjourn the meeting.

The motion was seconded by Jud Lane and passed unanimously.

The next meeting is scheduled for Wednesday, February 19, 2003, commencing at 7:30 p.m.

Presented by: Lorie Woodward
Lorie Woodward, Admin. Assistant

Attested to: Andrew St. John
Andrew St. John, Clerk

Town of Essex Planning Board

Minutes

Wednesday, ~~January 15, 2003~~ Feb 19

7:30 p.m.

The meeting was held at the Scout House in Essex and was called to order at 7:55 p.m.

Attendees: Jud Lane, Scottie Robinson, Andrew St. John, Betsy Shields.

Absent: Westley Burnham, Michael Cataldo, Gil Guerin

Building Inspector: Bill Sanborn.

Secretary: Lorie Woodward

As the Chair and Vice Chair were not in attendance the following motion was made

Motion: Scottie Robinson moves to nominate Andrew St. John as acting chair for the meeting. The motion was seconded by Jud Lane and passed unanimously by those members present.

Building Inspector's Report

The Building Inspector presented the Board with a table he had hand drawn with respect to building regulations. He found that many items unaddressed. The Board was provided copies of the table and was requested to review it and address it at the next meeting. The Board discussed briefly. The Building Inspector suggested filling in the unaddressed items and temporarily using it before officially enacting the changes it to see how it would work. The Secretary was requested to make a digital copy of the table to work with, and put on the agenda for a very brief check in at the next meeting.

104 Martin Street / Tim & Holly O'Leary / Building Permit

Proposed addition meets all setbacks and has received approval from other Boards. Lot is only 24,500-sq. ft., non-conforming lot.

Motion: Betsy Shields moves to accept the application of Tim & Holly O'Leary, 104 Martin Street, Map 33 Lot 11, for a two story addition, full basement, finding it meets all Town of Essex Bylaws and has received approval from, Board of Health and Conservation Commission. The Board finds that under 6-4.2 the proposed addition will not increase the non-conformity. The motion was seconded by Scottie Robinson and passed unanimously.

Planning Board Business

Bylaw Review

The Public Hearing for the revision of the Water Resource Protection District Bylaw and the Swimming Pool Fencing Bylaw is scheduled for the 3/05/03. Due to time constraints the other proposed Bylaw revisions were not discussed by the Board and not advertised in the paper.

Discussion of changing the acceptable length of a dead end road.
Discussion of changing the Bylaw that allows 3 dwelling per lot.
Discussion of Cluster Zoning and how that will affect the town.
Discussion of trying to identify the direction the town would like to proceed.
Discussion of Open Space meeting coming up to inform the public of the concerns for Essex.

Discussion of the Board meeting with MAPC again, similar to last year, to assist the Board in figuring out the direction the town would like to go. The Board never received any information from MAPC from last year's meeting. Mention of adding a meeting to the schedule for April to meet with MAPC and the public. Discussion of adding meeting for Tuesday April 29, 2003 beginning at 7:00 till 9:00. Betsy to provide a blurb for the Gloucester Daily Times to encourage public attendance. MAPC ½ hour discussion on the April 16 meeting to prepare for the April 29 meeting.

Minutes:

Motion: Jud Lane moves to accept the minutes as amended for 2/15/03
The motion was seconded by Scottie Robinson and passed unanimously by those members present.

Jud Lane moves to close the meeting.
The motion was seconded by Betsy Shields and passed unanimously by those members present.

The next meeting is scheduled for Wednesday, March 5, 2003, commencing at 7:30 p.m.

Presented by: Lorie Woodward
Lorie Woodward, Admin. Assistant

Attested to: Andrew St. John
Andrew St. John, Clerk

Town of Essex Planning Board
Minutes 12
Wednesday March 5, 2003
7:30 p.m.

The meeting was held at the Essex Elementary/Middle School in Essex and was called to order at 7:45 p.m.

Attendees: Scottie Robinson, Jud Lane, , Betsy Shields, Westley Burnham, Michael Cataldo, Gil Guerin. Andrew St. John arrived at 8:30.

Absent:

Building Inspector: Bill Sanborn.

Secretary: Lorie Woodward

Building Inspector's Report

16 Martin Street

The Building Inspector confirmed that it was the lights on the poles that were not downward facing enough, and that complaints had been received. The Building Inspector did talk to John Coughlin and it is possible to get a shield that will limit the light. The Building Inspector will ask Mr. Coughlin to do this.

Scot's Way / Cell Tower

The Building Inspector talked to Town Counsel, and it is their opinion that the original Board of Appeals decision appeal is valid, so he has been instructed not to issue a permit. The Board informed the Building Inspector that the Special Permit had been appealed as well.

Town of Essex / Special Permits (5) / Public Hearing reopened at 8:10 p.m. by Chairman

Discussion of question regarding a need for a variance at the Richdale site. The Building Inspector addressed the question. After speaking with Town Counsel he confirmed that the generator pad and cabinet could not be considered a structure.

Kelly Whalen: Presented a plan for pump station # 4 that included the parking lot. The only thing that is nailed down at this time is the pump station. The town is still negotiating with the engineers to design the parking lot and playground. Only the pump station has been official approved by the town.

Ms. Shields: What is currently in that location

Kelly Whalen: Right now it is just grass, part of the island area, fire hydrant. Fire hydrant will be moved.

Bruce Fortier: Questioned the validity of the map and whether it matches the deeds and surveyors maps.

Discussion of where the actual property lines lie.

Kelly Whalen: (the source of the map) Aerial photography and topography map that was created for the sewer map with the property lines from the tax assessor's office. Property lines are not surveyed in.

Mr. Guerin: (Bruce) Unless you have some evidence that this is different, we have this presented to us by the Town, and we have to believe that they have come to this through due diligence.

Kelly Whalen: The design for the parking lot should happen some time mid summer.

Mr. Cataldo: I feel this is adequate detail for the point we are at right now.

Joe Ginn: Is there any flexibility in the placement of the pump station?

Dave Folsom: A redesign would probably cost another \$50,000.00 and cause the Town to rebid the contract, so it is not feasible.

Mr. Burnham: Relative to the other stations do we have any concern?

None were voiced

Mr. Burnham: I will accept a motion to close the public hearing for the Town of Essex.

Ms. Robinson: So moved.

Mr. Cataldo: Seconded the motion

The motion was passed by those members present.

Discussion of Site Plan Review in the Bylaws.

Reopening of the Zoning Bylaw Hearing

Mr. Burnham: We will start with the swimming pool Bylaw, as there have been comments back from Town Counsel. "State building code has extensive provisions addressing enclosures for public or private swimming pools, see 780CMR421-10 Private swimming pools. The Board has received a faxed copy of these provisions. It states in lieu of any zoning bylaws or ordinances to the contrary private swimming pools, spas, hot tubs shall be enclosed in accordance with CMR421-10-4 for other approved barriers. Furthermore the sun setting provisions of Chapter 802 1972 as amended nullify competing building code like bylaws that conflict with state building codes therefore it is my opinion that the Attorney Generals Office would likely consider this proposed bylaw to be preempted by State Building Code which addresses the same issues. I recommend you review the provisions of the State Building Code and determine whether those provisions satisfy the Town's concerns.

Bill Sanborn, Building Inspector: Essex does have a Bylaw currently and we are looking to change that bylaw. The way the Bylaw was written it pretty much follows the State Building Code except under State Code you can have a pool 4-ft high above ground with out fencing. Young kids can get over that, and that is what we are trying to stop. The amendment would require a 1-ft addition fence around 4-ft. pools.

Mr. Brunham: What is the lower threshold of the State Code right now?

Bill Sanborn: 4-ft around the pool.

Bill Sanborn: I believe pools deeper than 2-ft. deep require fencing.

Ms. Robinson: I suggest we go with what we wrote, your recommendation.

Mr. Burnham: We will represent it as you request (Bill) but I am going to ask that you make yourself available at Town Meeting to defend you position.

Mr. Cataldo: Are current pools grandfathered?

Mr. Sanborn: Town Counsel will look into it.

Mr. Burnham: Do we agree that we will submit the bylaw as amended?

Mr. Burnham: Water Resource Protection District, based on confusion with the maps and concerns about some of the wording and requirements I suggest that we forgo submission for now, and have a Special Town Meeting to address only Zoning issues.

Bruce Fortier: By having a Special Town Meeting it allows more input from the town. Could your Board take note of my specific objection to this plan so you could get it corrected. (Mr. Burnham: I would suggest that you take that up with the DPW as they provided the map.) I am not going to go to the DPW, that area of my property has a 15-ft. drop, water does not run up hill. The topographic map was probably made before the property was used as a gravel pit approximately 100 years ago. If it does not get corrected I will bring that up at the future town meeting when the Planning Board tries to get the WRPD amended.

Mr. Burnham: For now the Board will continue to use the bubble map.

Ms. Robinson: Can I make a motion that we close the public hearing on the Bylaws having agreed to present the Swimming Pool Bylaw as advertised and amended at the first part of the public hearing and having agreed to withdraw the second bylaw concerning the Water Resource Protection District from the Town Warrant.

Mr. Cataldo: I'll second

The motion was passed by the voting members present: Betsy Shields, Westley Burnham, Scottie Robinson, Gil Guerin, Michael Cataldo.

Town of Essex / Special Permit / Decision

Discussion of the 5 Pump stations and their locations.

Pump Station # 1 Harlow and Eastern is awaiting a variance from the ZBA. That is a 38-ft. by 20-ft. building, stone veneer, landscaped and minimal lighting, no permanent lighting just maintenance and emergency lighting only, no fencing.

Pump Station # 2 94 Eastern Avenue 90% below grade, small generator and control panel with fiberglass enclosure, no external lighting, no fences. Discussion of changing impervious surface, and changing the negotiated concrete pavers. The Board will maintain the agreed upon impervious material.

Pump Station # 3 156 Main Street, behind Richdales, same as Pump Station # 2 not a structure by State Standards.

Pump Station # 4 30 Martin Street, This one is going to have restrooms, 40-ft. by 35-ft. building. Overview map was presented.

Pump Station # 5 Western Avenue and Pond Street, short guard rail, no issues
After brief discussion the vote was taken.

Andrew St. John and Jud Lane did not participate in the vote as they each missed one hearing meeting.

Vote

Pump Station #1 Harlow Street and Eastern Avenue

Motion: Michael Cataldo moves to approve the special permit for Harlow and Eastern as applied for with the limitations of lighting to be restricted to maintenance and emergency conditions only, and final approval of the special permit is contingent on receiving the required variance from the ZBA.

The motion was seconded by Betsy Shields

Poll of Board

Gil Guerin yea, I think it is good.

Betsy Shields yes, I think it meets the standards of the Essex Bylaws

Scottie Robinson in favor, as it meets the standards set by the Bylaw

Michael Cataldo in favor, finding that it conforms to the standards contained in the special permit

Westley Burnham aye, finding it is a necessary step, and the minimum standards have been met for the protection of the citizens of Essex

Pump Station #2 94 Eastern Avenue

Motion: Scottie Robinson moves to approve the application as presented with the contingency of no external lighting

The motion was seconded by Michael Cataldo.

Gil Guerin yea, I think it is good

Betsy Shields yes, I think it meets the standards of the Essex Bylaws

Scottie Robinson aye, seeing that it meets the standards set by Essex Bylaws

Michael Cataldo yes, conforms to the requirements set by the Bylaws

Westley Burnham yes, conforms to the minimum standards

Pump Station #3 156 Main Street

Motion: Michael Cataldo moves to accept the application as presented.

The motion was seconded by Betsy Shields

Gil Gurein, yea, I think it is good

Betsy Shields aye, Conforms to the Essex Bylaws

Scottie Robinson in the affirmative, seeing that it meets the standards set by Essex Bylaws

Michael Cataldo yes, conforms to the requirements set by the Bylaws

Westley Burnham yes, conforms to the minimum standards

Pump Station #4 30 Martin Street

Motion: Michael Cataldo moves to accept the application.

The motion was seconded by Scottie Robinson.

Gil Gurein, yea, I think it is good

Betsy Shields affirmative, Conforms to the Essex Bylaws

Scottie Robinson in the affirmative, seeing that it meets the standards set by Essex Bylaws

Michael Cataldo yes, conforms to the requirements set by the Bylaws

Westley Burnham aye, conforms to the minimum standards

Pump Station #5 Western and Pond Street

Motion: Michael Cataldo moves to accept the application.

The motion was seconded by Scottie Robinson.

Gil Gurein, yea, I think it is good

Betsy Shields aye, Conforms to the Essex Bylaws

Scottie Robinson in the affirmative, seeing that it meets the standards set by Essex Bylaws

Michael Cataldo yes, conforms to the requirements set by the Bylaws

Westley Burnham aye, conforms to the minimum standards

Planning Board Business

Low Farms

Scottie Robinson updated the Board regarding a ZBA meeting the night before. Mr. Van Wyck was requesting relief from the 3 residence per lot. The ZBA questioned the completion date of Lowe Land Farms Road, Scottie provided a copy of the Agreement for Judgment. RJ understood the Agreement for Judgment to read that the time had expired two weeks ago. As a result the ZBA would like to have a conversation with Kopelman & Paige, Brendan Zubricki and a Planning Board member, on the phone to confirm the deadline. If the deadline has passed the Planning Board has to make the decision, to extend the time, take the bond and build the road, or take the approval away. Westley agreed to talk to Brendan and include Betsy if she was interested in attending the phone conversation.

Bruce Fortier pointed out to the Board what would happen if the ZBA gives Mr. Van Wyck the variances and that Mr. Van Wyck would not need to appear before the Planning Board except for ANR approvals.

**Motion: Michael Cataldo moves to adjourn the meeting.
The motion was seconded by Andrew St. John and passed by those members present.**

The next meeting is scheduled for Wednesday, March 19, 2003, commencing at 7:30 p.m.

Presented by: Lorie Woodward Attested to: Andrew St. John
Lorie Woodward, Admin. Assistant Andrew St. John, Clerk

#1
#2



BOARD OF HEALTH

TOWN HALL, 30 MARTIN STREET, ESSEX, MASSACHUSETTS 01929 - 1219

TELEPHONE (978)768-7614

TO: Planning Board

FROM: Board of Health

SUBJECT: R197 Western Ave.
Davis Family Realty Trust
Map 8, Lot 52D

DATE: March 4, 2002

We are in receipt of the application for a special permit regarding the variance for a *Change in Use from commercial to residential* for the above referenced property.

The applicant, Mr. DeWitt, appeared before the Board of Health last year and was granted approval to use the existing septic system for a maximum 3 bedroom design flow with the requirement that the applicant connect to public sewage upon its availability.

The information in the Planning Board application has been reviewed and the BOH has no objection to the Planning Board's approval with the above stated restrictions of a maximum three bedroom design flow and mandatory connection to the public sewer. The applicant should be aware that the Board of Health's endorsement of this application is not a guarantee of construction permit approval from this Board.

If you have any questions, please contact our Administrator, Elaine Wozny.

ESSEX BOARD OF HEALTH:

Paul Rullo
Chairman

Sandra Pelkie

Karin Staiti Carroll

Cc: applicant
file

c. **NONCONFORMING SIGNS.** All signs in violation of this chapter, except as to size and number limitations, shall be removed or made conforming within one year from June 7, 1972. Any change of use or ownership shall require conformity to all sign regulations in this chapter within 30 days, Signs required for public safety shall not be included in total sign area.

d. **MEASUREMENT.** Area limitations refer to the total sign area. In computing area only one side of a double-faced sign is to be included. Signs within a building are not included.

6-5.11 **UNREGISTERED AND INOPERATIVE MOTOR VEHICLES; JUNK YARDS.**

a. There shall be no unregistered or inoperative motor vehicles permitted in a front yard.

b. No more than two operative unregistered motor vehicles shall be permitted in a back yard or side yard.

c. No inoperative cars shall be allowed unless they are in an enclosed building or screened from public view.

d. Junk yards, as defined in subsection 6-3.6 shall not be permitted in the town.

6-5.12 **TRAILERS.**

a. No trailer shall be placed, moved, erected, or allowed to remain upon a lot for more than three months.

b. The Board of Selectmen for cause may grant a license for a trailer for more than three months, but not to exceed one year.

6-5.13 **INFLUENCE OF VACANT LOTS ON ADJOINING LOTS.** Where dimensional or other requirements for a use of a lot are influenced by the land use on adjoining lots, any adjoining lot not occupied by a use specified in subsection 6-6.1 of this chapter shall assume the character of the lot being influenced for purposes of determining the aforementioned requirements.

6-5.14 **DRIVEWAYS.**

a. No person shall hot top or construct a driveway or entrance from the traveled portion or from the curb of any public street or way for purpose of passing to or from abutting property, nor cut any curbing with out applying for and receiving a permit from the Department of Public Works, under conditions and restrictions the D.P.W. commissioner deem proper.

b. **Common Driveways.** Access driveways may be shared by no more than three lots with approved frontage on a public way. No building permits will be issued unless the following has been complied with:

- 1. Curb cut approval has been obtained in accordance with a. above.

2. A common driveway shall lie entirely within the lots to which it provides access, and shall comply with the minimum standards stated in c. below.
3. No building permit shall be issued for any lot with access by a common driveway until an easement running with the land in perpetuity providing for maintenance and snow removal is executed by the owner(s) of the lots sharing the driveway, recorded at the Registry of Deeds, and evidence thereof is submitted to the Building inspector.
4. Common driveways may never be used to satisfy zoning frontage requirements.
5. Permanent signs shall be installed indicating the assigned street address of all lots. Signs shall be placed within 10 feet of the intersections with the public way and individual driveways served by the driveway.

c. Minimum driveway standards for new common driveways.

1. Driveway access to the dwelling or other building site shall be indicated on the plans submitted to the Building inspector at the time of Building permit application.
2. Driveways shall provide both access and turnaround for vehicles including moving vans, ambulance, fire and police vehicles without substantial hardship in construction. Such a driveway shall have:
 - a. Width of at least 12 feet, but shall be cleared to a width of at least 14 feet, applicable to the portion used by more than one lot.
 - b. Centerline radius of at least 60 feet,
 - c. Maximum grade of 10 percent
 - d. Adequate clearing at the intersection of the public way to provide a minimum of 100 foot sight lines.

6-6 LAND USE REGULATIONS.

6-6.1 *GENERAL*. Residential, business, motel and hotel, and industrial land uses shall be permitted provided that they conform to the requirements for the use contemplated as hereafter specified for each use.

6-6.2 *RESIDENTIAL LAND USES, SINGLE FAMILY.*

- a. *DIMENSIONAL REQUIREMENTS.*
 1. Lot area 40,000 square feet minimum. Lot area for land on street in existence on June 7, 1972, minimum 30,000 square feet.
 2. Lot frontage minimum 150 feet.
 3. Lot width minimum 150 feet.
 4. Lot depth minimum 100 feet.
 5. Front yard, all buildings, minimum 25 feet.
 6. Side yard, principle building, minimum 20 feet.

**Town of Essex Planning Board
Minutes
Wednesday March 19, 2003
7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School in Essex and was called to order at 7:40 p.m.

Attendees: Jud Lane, Betsy Shields, Westley Burnham, Andrew St. John. Gil Guerin arrived at 8:00 p.m.

Absent: Scottie Robinson, Michael Cataldo,

Building Inspector: Bill Sanborn.

Secretary: Lorie Woodward & Sandy Ginn

Building Inspector's Report

Discussion of the appeal of the ZBA Cell Tower decision. It was not made with in the time frame available.

Discussion of the appeal of the Planning Board's decision, Betsy did not receive a copy of the notification.

Discussion of Chart provided by the Building Inspector and the best way to complete and use it. Mention of completing and using before adopting into the Bylaws so any errors can be correct first. Mention of adding as an appendix. Future copies provided will contain the word Draft and the dated printed.

Minutes:

Motion: Andrew St. John moves to approve the 3/5/03 minutes as adjusted. The motion was seconded by Betsy Shields and passed unanimously by those members present.

Motion: Andrew St. John moves to approve the 3/12/03 minutes with minor typo corrections. The motion was seconded by Betsy Shields and passed unanimously by those members present.

Low Land Farms

Teleconference between the Planning Board member or members, ZBA, Kopelman & Paige and Brendan to take place either Thursday or Friday between 9:00 a.m. and 12:00 p.m. Discussion to confirm the deadline for the completion of the road.

6-5.5 Erection of more than one principle structure on a lot

Bruce Fortier presented verbiage to the Board to replace the existing Bylaw 6-5.5. The new wording would be more in keeping with the intent of the original bylaw and close loopholes available to developers and Peter Van Wyck. Mr. Fortier checked with the Selectmen and reported that there was still time to get this on the warrant for the next

Town Meeting, although with advertising the Public Hearing would not be able to take place before 4/16/03. The Board discussed the pros and cons of presenting the revision at Town Meeting. Discussion of new bylaw that address driveways, and determined it would not solve the problem associated with the original wording in 6-5.5. See **Attachment 1**

84 Apple Street / Modification to a Subdivision / Eloise Hodges

The Chairman called the Public Hearing to order in accordance with Chapter 41 Section 81 at 8:35 p.m. The public hearing was scheduled for Wednesday, March 19, 2003 at 8:30 p.m. at the Essex Elementary/Middle School on Story Street, on the modification to a definitive subdivision plan of land off Apple Street, located on assessor's map 10 lot 2. Deed of property recorded in Essex So. Registry of Deeds, Book 8701, Page 87. Applicant/Owner is Eloise Hodges, 93 Apple Street. The proposed modification to definitive subdivision property is situated in the general area of 84 Apple Street. Applicant is seeking approval to modify the previously approved definitive subdivision off Apple Street which consists of improving access to 3 total, existing residential house lots by widening the existing 12' wide gravel access roadway to a 16' wide gravel surface access roadway, complete with gravel surface hammerhead turnaround. Plans were available at the Town Clerk's Office at the appropriate time. Legal notices were made on March 3, 2003 and March 10, 2003 and all abutters were notified. First is there anyone contesting the advertising and notification process.

John Thomson, Attorney for Eloise Hodges, I am here with Art Hodges and Dick Doherty, Engineering Division Manager of Hancock Associates. Brief discussion of history, the applicant has appeared before the Board several times to discuss the general design and what the applicant hoped would be a simple driveway. We are here actually seeking a modification to subdivision road that was previously built on waivers for a single lot, owned by Mr. Haye. The property consists of 20 acres of land and over 1000-ft. of frontage on Apple Street. The preference of the Hodges is not to put 2 new driveway cuts in on Apple Street. Mrs. Hodges is voluntarily limiting her division of property to 2 lots, each to have approximately 10 acres of land. We are trying to make the roadway as straightforward and conform to your requirements for safety. One of the main features of the plan, at the Planning Board's request, was a hammerhead turnaround, that would be acceptable to the Fire Dept. Also expanding the existing 12' gravel pathway to 16' at your request. We would just as soon keep it as narrow as we can but my understanding is 16' is what you are more comfortable with.

Dick Doherty, Engineer Hancock Survey, All waivers requested are the result of working within the 16' easement/right of way that is bounded by the stone walls. We have met with the Conservation Commission on a initial basis, they are withholding any decision until the Planning Board makes it's decision, however they did make one minor request. It concerns the implementation of a sediment bay in two locations. I have made those minor changes to the site plans, I would like to give them to the Board because they represent what we are proposing now. (Replacement of 1 page) The existing facility has a 12' roadway that comes up between 2 stone walls which are the legal limits of the right of way up to the property of Haye. What we are proposing is to widen that to 16', again

staying within the 16' right of way, and providing a hammerhead turnaround that would be suitable to the Fire Dept. for the passage for one of their single unit pumpers. There are limits put on by the Essex County Green Belt which limit where the structures can be placed. Title five test have been done and show that it will support on site subsurface sewer disposal, although a system has not yet been designed, nor submitted to the BOH. The drainage is being addressed on site, however because of the grading of the property there will be runoff along the gravel road. The Con. Com. Asked that we address that situation by the installation of 2 small sediment bays approx. 2-ft. deep. One located at the intersection of the turnaround and one very small one at the roadway. We are proposing to stay entirely within the stone walls. One of the waivers that we are asking for is a reduction in the steepness of the roadway coming off of Apple Street. The Town requirement is minimum of 3% and we are proposing a 5.2%. However that is approx. a 1% improvement over what is there today. Utilities will be brought down in conduits, we are evaluating existing, and may have to put down new ones.

The Board reviewed the list of waiver requested.

Discussion of naming or leaving the roadway unnamed, as it affects the Police and Fire Department's ability to locate the property.

Charlie Haye, 84 Apple Street, Mr. Haye brought up several points: The hardship of changing the name of the street would change their mailing address. Although this is not a driveway it will only be accommodating 3 homes and 16' seems excessive. The view of the Hayes is that it will be much more attractive if the gravel area does not extend from one stone wall to the other, which would also require the removal of many trees. Currently the road is approximately 8-ft. and large trucks have made it down the road as is. They understand the access issues of ambulances and fire trucks. As abutters the Hayes request that the Board consider their request to not widen the road to 16' and instead 12' to 14'. They would prefer that the trees not be removed for the sediment bays maybe there is a better way, and they will bring that up to the Con. Com.

Ms. Shields: My initial feeling is that given that it is restricted to 3 lots I don't see any reason it could not be reduced.

Mr. Burnham: We will plan to do a site visit to further explore. At this point if no one has anything further to add I would like to entertain a motion to close the public hearing portion.

Mr. St. John: So moved

Ms. Shields: Seconded

The motion was passed unanimously by those members present.

Attorney John Thomson requested that the Board discuss any deviations from what was requested by the Con. Com. be discussed with them before finalizing the decision.

The Board will contact the applicant with a date for site visit.

The hearing was declared closed.

199 Western Avenue / Site Plan Review / Davis Family Realty Trust & Pondview Realty Trust

The Chairman declared the hearing open.

Mr. Burnham: Hearing being held in accordance with special permit requirements section 6-6.12 for a change of use on a property located at 199 Western Avenue. The applicant is seeking approval for a change of use from a present commercial use to residential two-family. Advertisements were placed on March 3, and 10, 2003 in the Gloucester Daily Times, all abutters have been notified in accordance with the State of Massachusetts requirements. Do we have any questions on advertising or notifications to start with?

None were made.

Kevin Dalton, 8 Washington Street Beverly, Attorney for the applicant, Mr. Davis from the Davis Family Realty Trust and Mr. Dewitt from the Pondview Realty Trust. As you have noted this is a application for a Site Plan/Special Permit involving the conversion of what is now a commercial use, an antique store, into what is proposed to be a two family residential dwelling, restricted to one 2 bedroom unit and one 1 bedroom unit. Historically the applicants have already received a approval on their septic design from the Town of Essex BOH and health agent. They have also gone through the Board of Appeals and obtained a variance with respect to this use proposed, because of certain issues involving the Water Resource Protection District. In terms of the specifics of the project I think Mr. Dewitt is here to show you his plans and give you a little bit more detail in terms of what he is specifically proposing for the site.

Scott Dewitt, Lakeview Road, What I would like to start out with, I have a copy of the deed that is highlighted. There is actually a deed restriction on the property that it can only be residential, not commercial. That restriction was put in prior to the Water Resource Protection District, at the point in time that it was put into the Deed a residence could be put in at that site with no variance. There was another issue with regard to 60 gal. a day per 10,000 sq. ft. of lot area. There is a memo from the BOH.

Mr. Burnham: We do have a correspondence from the BOH dated March 4, 2002. See **Attached #2** Read to Board & audience.

Scott Dewitt, That is the most recent one, there was one back in November that referenced a Bylaw that you have 6.13.3.b.1 Clay Morin did an estimation of the estimated sewer flow which came to 198 gal. per day. Elaine Wozny agrees with that, and also gives back up that Title V is actually 200% of your flow. So 110 gal. per day per bedroom would actually be about 55. Clay averaged it out and put in 64 gal. per day. (Letter from the BOH and Clay Morin in file.) We feel we are allowed 60 gal. per day 10,000 sq. ft. thus we have 240 gal. per day that we are allowed and we are at 198. The DPW has signed off on it (copy in file) What we are proposing to do is keep the building there and add an addition on for an additional unit, so it would be a 2 family. The total square footage is 2400 which is actually smaller than some single families around that

pond. I have a site plan with what is actually around the property now. On one side we have package/convenience store, across the street a two family, diagonally across a 6 family, the next building to the right is actually a machine shop. The site has been a motorcycle shop and antique store. We have gone around and talked to all our abutter directly adjacent to the property, not one person has been in opposition to it, except for the person who appealed it, which is Scott Solombrino. The abutters that signed the petition, have seen the plans, not one person was in opposition to it.

The Board examined the site plan as well as what is currently existing.

Mr. Burnham: What is the total footprint, the bylaw requires 40,000sq.ft. per dwelling unit.

Scott Dewitt, the footprint of the building is 1200 sq. ft. we are at 12% impervious coverage.

Mr. Burnham: Do you have any calculation/documentation of that.

The Board viewed the plan submitted with calculations on it.

Discussion of impervious surface requirements, applicant offered to make paved driveway gravel.

Mr. Burnham: Do the Board members have questions/comments, general public?

Alan Lipkind, Burns & Levinson LLP, representing Scott Solombrino
I represent Scott Solombrino he is an abutter. Can I take a look at the plan that was just submitted? Just a housekeeping measure, I am not sure it is a big difference but the date of this plan is different than the one referenced in the variance was given for. It may be minor adjustment, I don't know, but it is a different dated plan. The second point I would make, and I couldn't hear everything back where I was sitting but I understood that your Site Plan Review Bylaw to require compliance with the State Storm Water guidelines. I didn't hear anything about that, where the storm water is going to go and what the quality is going to be. Maybe I missed that sitting over there, maybe there was a piece of paper that addressed that.

Mr. Burnham: I don't think anything was specifically addressed towards storm water.

Alan Lipkind, Burns & Levinson LLP, representing Scott Solombrino
Well I am looking at your Special Permit Bylaw, 6-6.12 4c, it says drainage control. This property is in the Water Resource Protection District and if you looked at the proposed dwelling it is, I don't know how many feet from the wetland, but it is also in the Water Resource Protection District. In any event this section of the Bylaw states that the applicant shall prove that the proposed project meets the minimum standards for State Storm Water Management as specified in the most current edition of the Storm Water Management Policy Handbook. I only brought 4 extra copies, if the Board would

consider taking this as evidence, I don't know how formal you are here, but it is here for your review. It lists 9 standards, that the Bylaw has used to incorporate that reference, 1. No new stormwater conveyances may discharge untreated stormwater directly to or cause erosion in wetlands or water of the Commonwealth. 2. Stormwater management systems must be designed so that no post development discharge can't exceed predevelopment discharge. 3. Loss of annual recharge to groundwater has to be minimized through the use of infiltration measures to the maximum extent practicable. 9. All stormwater management systems must have an operation and maintenance plan to ensure that system function as designed. And there are a few other. I didn't hear anything about that, it is the applicant's burden of proof to be in compliance with those standards and I didn't hear anything about that, so I don't think the applicant has met his burden. This is particularly important in the Water Resource Protection and within 50 ft. of a wetland. The other point I wanted to raise is that this is in a district that requires 40,000sq.ft per dwelling unit to build in this district. Roughly half of this site is wetlands, 21,000 sq. ft. is buildable and this application is for 2 dwelling units, it's a 2 family house on a lot that is half the size of what is acceptable. I don't know why the applicant needs a 2 family house where your Bylaw seems to call for a 1 family house.

Mr. Guerin: Is your client interested in the way the water runs off the property?

Alan Lipkind, Burns & Levinson LLP, representing Scott Solombrino
My client is worried about compliance with the Bylaw and the interest that is served by that Bylaw, the protection of the wetland resource.

Kevin Dalton, 8 Washington Street Beverly, Attorney for the applicant
A couple comments in response to the comments Mr. Lipkind has raised. One is this is a project of relatively minimal impact as in terms of drainage, normally site plan review would accompany a project of more significance, something commercial in nature. As the Town of Essex has seen fit to include this project within the purview of its site plan review, I think it is also within the purview of this Board to realize that this is a project of relatively minor impact, and not hold the applicant to the strict standards of the Bylaw on this particular point requiring fairly complex drainage calculations under a state guideline that is obviously geared toward larger scale projects. I think also the indication is the abutter or abutter to abutter is fairly well removed geographically from the area that will be impacted by this particular 2 family. I think that it raises a genuine standing issue also as to whether this particular abutter will be impacted specially by this project, to an extent different in kind and nature than any other person within the Town of Essex. I think the concern rings rather hollow.

Alan Lipkind, Burns & Levinson LLP, representing Scott Solombrino
With all due respect it is not up to him to say whether this project has minimal impact, it is up to him to present evidence. It is not up to him to decide whether your Town Meeting intended the Bylaw to mean what it says, you have to go by what it says, it says you have to prove it. With regards to Mr. Solombrino's standing I think everyone has an interest in protecting the wetlands and the Town has entrusted that task to you.

Mr. St. John: As I recall this property has a gravel forecourt, and that is going to be removed? (Scott Dewitt, yes)

Mr. Burnham: Are there any more comments or questions? (none were made) I will entertain a motion to adjourn this public hearing and we will take it under consideration.

Ms. Shields: So moved

Mr. Guerin: Second

The motion was passed unanimously by those members present.

The Board has 90 days to render a decision.

Sagamore Street / Site Plan Review / Donovan Conservation LLC

The Chairman reopened the public hearing continued from February 19, 2003.

The Board received a letter from the applicant. Dear Members of the Board: On behalf of Donovan Conservation LLC, we would like to request that the pending application to Planning Board for Special Permit filed on December 17, 2002 be withdrawn without prejudice. The applicant does not wish to proceed with the construction of the accessory barn structure at this time.

Mr. Burnham: Do I have a motion to accept the request to withdraw with out prejudice.

Ms. Shields: So moved.

Mr. St. John: Seconded.

The motion was passed by those members present.

Mr. Burnham: Do I have a motion to close the hearing?

Mr. St. John: So moved.

Ms. Shields: Seconded.

The motion was passed by those members present.

Planning Board Business

The Board was provided copies of the results from the last MAPC meeting.

In addition the Board discussed the up coming meeting scheduled for Tuesday April 29, 2003 to take place at the Essex Elementary Middle School. This meeting will be the first of 4 to get more public input. The 4 areas are Housing, Economic Development, Transportation, and Natural Resources. Discussion of a title to put on up coming meeting and what should appear in the Gloucester Daily Times to generate interest. The first meeting is to be on Natural Resources and how to protect them. There will be a pre-meeting at the School on April 7, 2003. Secretary will contact the paper to find out about lead time. Betsy will write up something for the Gloucester Daily Times.

Motion: Betsy Shields moves to adjourn the meeting.

The motion was seconded by Andrew St. John and passed unanimously by those members present.

The next meeting is scheduled for Wednesday, ^{April 2} ~~March 12~~, 2003, commencing at 7:30 p.m.

Presented by: Lorie Woodward Attested to: Andrew St. John
Lorie Woodward, Admin. Assistant Andrew St. John, Clerk

**Town of Essex Planning Board
Minutes
Wednesday April 9, 2003
7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School in Essex and was called to order at 7:40 p.m.

Attendees: Scottie Robinson, Jud Lane, Betsy Shields, Westley Burnham.
Andrew St. John arrived at 7:45
Gil Guerin arrived at 7:55
Absent: Mike Cataldo
Secretary: Sandy Ginn

Approval of Minutes:

Motion: Jud Lane moves to approve the amended minutes from March 19, 2003. The motion was seconded by Betsy Shields. The members present voted unanimously except for Ms. Robinson who wasn't present at the March 19 meeting.

Motion: Andrew St. John moved to approve the amended minutes from April 2, 2003.

The motion was seconded by Betsy Shields.

The motion was passed by Mr. Burnham, Ms. Shields, Mr. Lane, Ms. Robinson, and Mr. St. John.

Mr. Guerin voted present.

199 Western Avenue / Special Permit/Site Plan Review

A discussion was held on the Special Permit that was drafted by Mr. Burnham.

Motion: Andrew St. John moves to approve the Special Permit as drafted.

The motion was seconded by Gil Guerin.

Jud Lane: I vote affirmative to approve the Special Permit approval document based on the feeling it covers everything we need and meets all the town of Essex bylaws.

Betsy Shields: I vote to approve the Special Permit for 199 Western Avenue given that with its variances it meets all the Essex bylaw requirements.

Gil Guerin: I vote affirmative based on the decision of the Board of Appeals in addition to it meets the requirements of this board.

Andrew St. John: I vote to approve based on the variance obtained by the Board of Appeals in addition it meets all of the conditions of the Planning Board and it's not substantially detrimental to the neighborhood.

Westley Burnham: Yea. I believe the conversion to residential is in keeping with the neighborhood and will not be substantially detrimental. It was overwhelmingly endorsed by the neighbors.

Ms. Robinson did not vote as she was not present at the March 19 meeting.

Mr. Burnham: I declare this permit having been approved. (gavel)

Review Public Hearing Announcement for Arielle Lane and confirm date

Ms. Shields: I move to reschedule the public hearing for the Arielle Lane Definitive Plan to Wednesday, May 21, 2003 at 8:30 p.m. at the Essex Elementary/Middle School, Essex.

The motion was seconded by Ms. Robinson and passed unanimously.

Ms. Robinson also volunteered to go through the Arielle Lane plans and application and will make a list of minimum requirements and compare to subdivision regulations.

84 Apple Street/ Hodges / Subdivision decision

There was discussion of the modification of the Definitive Subdivision Plan as drafted by Mr. St. John.

Motion: Jud Lane moved to approve the modification of the Definitive Subdivision Plan at 84 Apple Street, Essex, in accordance with the draft as agreed upon.

The motion was seconded by Gil Guerin.

Jud Lane: I vote affirmative for the modification of the Definitive Subdivision at 84 Apple Street in that it meets town bylaws and is not substantially detrimental to the neighborhood.

Betsy Shields: I vote in favor the modification to the Definitive Subdivision plan seeing that it meets our regulations and the town bylaws.

Gil Guerin: I vote affirmative based on the fact it meets the minimum standard required by the town of Essex.

Andrew St. John: I vote affirmative in that it meets the town of Essex subdivision rules and regulations.

Westley Burnham: I vote affirmative where it meets the subdivision bylaws minimum standards and where it was created appropriate for the size of the project.

.2.

Ms. Robinson was present but unable to vote as she was absent from the Public Hearing.

Announcements:

The town insurance company has recommended that the board watch videos on liability. This is scheduled for the May 7, 2003 meeting.

A letter from Kopelman & Paige, P. C. was read stating essentially, that the Sprint Company will be defending the cell tower decision.

Low Land Farms Discussion

There was discussion of the draft written by Mr. Burnham for Barbara Saint Andres, town counsel, regarding the board's vote on April 2, 2003 to rescind approval of the Lowe Land Farms subdivision permit.

Motion: Andrew St. John made a motion to adjourn at 9:40 p.m. It was seconded by Jud Lane and passed unanimously.

The next meeting is Wednesday, April 16, 2003 at 7:30p.m.

Presented by:

Sandra J.M. Ginn
Sandra J.M. Ginn, Administrative Assistant

Attested to:

Andrew St. John
Andrew St. John, Clerk

05.21.03

.3.

Town of Essex Planning Board
Minutes
Wednesday, April 2, 2003
7:30 p.m.

The meeting was held at the Essex Elementary/Middle School in Essex and was called to order at 7:40p.m. by Michael Cataldo.

Attendees: Scottie Robinson, Betsy Shields, Westley Burnham, Michael Cataldo, Jud Lane, Andrew St. John
Absent: Gil Guerin
Building Inspector: Bill Sanborn
Secretary: Sandy Ginn

Building Inspector's Report

99 Main Street / Fortune Palace / Addition

The applicant is requesting a permit to add on a sunroom and a walk-in refrigeration unit. After discussion of parking and the fact that there will not be additional seating a motion was made.

Motion:Ms. Shields moves to approve the application for a building permit for Fang Lue at 99 Main Street, map 37, lot 51, Fortune Palace to add a sunroom and a walk-in refrigerator assuming they pass the Conservation Commission and Board of Health reviews and given that we found that the addition of the walk-in refrigerator won't be substantially more detrimental to the neighborhood under the 6.4.2 bylaw. The motion was seconded by Jud Lane and passed unanimously.

Westley Burnham arrived at 7:50.

Scenic Roads

The Building Inspector wanted a definition of scenic roads and where to find some guidelines specifically whether or not one can add to a stone wall.Mr. Burnham told him to look at chapter 40 section 15C of Massachusetts Scenic Roads Act.

Mr. Cataldo asked if the Building Inspector had inspected the new storage building on Southern Avenue. He has not been able to get inside as there hasn't been anyone there when he attempts the inspection. He feels they are not using the building yet.

It was reported that Joe Coughlin was having shields made for the lights at the bank that are too bright.

The board discussed the addition at the Fortune Palace with Mr. Burnham and it was decided that the vote should be rescinded because with the addition the building will cover more than 25% of the lot. The number of parking spaces needs to be determined also. They will need a variance for approval of the addition.

Motion: Ms. Shields made a motion to rescind the previous vote and Mr. Lane seconded. It was passed unanimously.

Arielle Lane / S.M.B. Development Corp., Inc. / Subdivision Application

Presented by Paul Alunni of Apple Associates for a brief overview only. Mr. Burnham reviewed the application and set May 14, 2003 for a public hearing.

Motion: Ms. Robinson made a motion to hold a public hearing for the Arielle Lane Subdivision on Wednesday May 14, 2003 at 8:30p.m. at the Essex Elementary School. It was seconded by Ms. Shields and passed unanimously.

84 Apple Street / Modification to a Definitive Subdivision Plan / Eloise Hodges / Vote

There was no draft from Mr. St. John so no vote could be taken. If the vote isn't taken in 2 weeks Mrs. Hodges will have to start the permit process over again. Discussion of roadway width in regards to safety issues with the fire department.

199 Western Avenue / Site Plan Review Special Permit / Davis Family Realty Trust & Pondview Realty Trust / Vote

Discussion of the draft approval while waiting for Gil Guerin as the fifth voting member. It was determined that the Conservation Commission has issued an extensive Order of Conditions on the project. The neighbors are in favor of housing rather than business use. There was discussion of two driveways necessary because a driveway over a septic system isn't allowed. Corrections were made to the draft. At 9:30p.m. Ms. Robinson asked that they move on because Mr. Guerin hadn't yet appeared and no vote could be taken.

Low Land Farms / Discussion

There was an extensive discussion of the history of the perceived facts surrounding the Agreement for Judgement dated February 21, 2001.

Before the formal motion was asked for and the board was polled Orestes Brown, attorney for Mr. VanWyck asked if there could be any public discussion. Mr. Burnham explained that at this point it was an internal board issue and no comments were allowed.

Motion: Ms. Shields: I move to rescind the approval of Lowe Land Farms definitive subdivision plan dated September 1, 1990 and revised September 30, 1994 being that the time constraints set forth were not met by given date according to the Agreement for Judgement dated February 21, 2001.

Ms. Robinson: Seconded

Mr. Lane: I agree with rescinding the subdivision approval based on the Agreement for Judgement agreed on by both parties because the time limit has ended.

Ms. Robinson: Yes, for the same

reason. The Agreement for Judgement has not been met.

Mr. Cataldo: Yes, because the defining terms for the subdivision road time frame have expired.

Mr. St. John: Yes, in favor of the motion finding that the Agreement for Judgement, article II, time frame has not been met.

Ms. Shields: Yes, in favor of the motion considering that the time frame dating from February 2001 has not been met.

Mr. Burnham: I vote no. I believe that this board has culpability on why the time expired. Constantly asking for upgraded plans caused inability to start the project.

Mr. Burnham will draft a letter for the Zoning Board of Appeals and for town council.

Mr. Burnham: I would entertain a motion to adjourn.

**Motion made by Mr. Lane. It was seconded by Mr. Cataldo.
The meeting was adjourned at 10:40p.m.**

The next meeting is scheduled for Wednesday, April 9, 2003 at 7:30p.m. at the Essex Elementary/Middle school.

Presented by:  Attested to: 
Sandra J.M. Ginn, Admin. Assistant Andrew St. John, Clerk

4/16/03

**Town of Essex Planning Board
Minutes
Wednesday April 16, 2003**

The meeting was held at the Essex Elementary/Middle School in Essex and was called to order at 7:35 p.m.

Attendees: Andrew St. John, Jud Lane, Scottie Robinson, Mike Cataldo, and Westley Burnham

Absent: Gil Guerin and Betsy Shields

Building Inspector: Bill Sanborn

Secretary: Sandy Ginn

Building Inspector Report:

A letter was received from Joe Coughlin that the bank lights have been filtered.

Clay Morin from Morin Engineering presented a plan from Fortune Palace to put on an addition. Morin explained that only 24.4% of the 25% allowable building coverage will be used. He also calculated that there will be enough 9X18 parking spaces for the 3,142 square feet that the dining room and lounge cover.

Motion: Mike Cataldo moves to approve the application for an addition of a sunroom and refrigeration finding that the plan meets the requirements of the board and is not detrimental to the environment.

The motion was seconded by Jud Lane and passed unanimously.

The building inspector had a question about 3 houses on the same non-conforming lot with no frontage. He was referred to Chapter 40A Section 6 of the state by laws. It was agreed that the language in 6-5.5 of the town bylaws is very vague.

4 Goodwin Court / Joe and Robin Lafata / Demolish and rebuild

They plan to tear down an existing garage and reconstruct a new garage and family room. All the setbacks were met.

No motion was necessary as this was only a review.

180 Southern Avenue / John Filias

Mr. Filias would like to house his family and his landscape business on this property. The existing buildings would be used for office space and a new barn would be built for truck repair and maintenance. Part of the property would be used to grow nursery stock and trees and to stockpile materials. Another part of the property would be used for his landscape business. Mr. Filias stated that no retail sales would take place so traffic would not be impacted.


The board does not feel this conforms to Home Occupation under bylaw 6-6.5 and tried to advise him as to what his options were for changing his proposal and asking for relief.

At 8:30 p.m. Sam Cleaves of the MAPC briefed the board on the upcoming April 29 Essex Natural Resources Forum. He discussed how the forum would work and agreed to come back to the board with a report in June.

The meeting ended at 9:15 p.m. with Westley Burnham announcing that he will not be interested in being the Chairman of the Planning Board after the upcoming election. He explained the amount of time it takes and asked present members to think about the commitment that the chairman has to make.

The next meeting will be held May 7, 2003 at 7:30 p.m.

Presented by:


Sandra J.M. Ginn, Administrative Assist.

Attested to:



Andrew St. John, Clerk

06.18.03

**Town of Essex Planning Board
Minutes
Wednesday June 4, 2003**

The meeting was held at the Essex Elementary / Middle School in Essex and was called to order at 7:45 pm by Jud Lane co-chairperson of the board.

Members present: Jud Lane, Westley Burnham, Mike Cataldo, Rob Fitzgibbon
Betsy Shields arrived at 8:15 pm.
Building Inspector: Bill Sanborn
Recording Secretary: Sandy Ginn

There was nothing to report from the building inspector.

Attorney John Thompson / Eloise Hodges / Warren Way

The board signed off on the final plans for the definitive sub-division at 84 Apple Street now called Warren Way. The order of conditions was discussed with Attorney John Thompson and Mr. Hodges presented the town with a check for \$30,000.00 for the performance guarantee. The Board received the covenant that the sub-division will remain private and the maintenance agreement for the road.

Motion: Westley Burnham moved to endorse the plan for Eloise Hodges' definitive sub-division road proposed at 84 Apple Street. The sub-division road having been approved on April 16, 2003 finding that the endorsement is warranted having fulfilled all the requirements stated on April 16, 2003.

The motion was seconded by Mike Cataldo and passed unanimously.

At 8:15 pm the Youth Commission joined the Planning Board to watch two MIAA videos entitled Employment Practices and Conducting Public Meetings. The Planning Board then viewed the last video entitled Zoning and Land Use.

It was suggested that Jud Lane and Rob Fitzgibbon use the Lowe Hill sub-division as a guideline to draft a letter of approval for the sub-division Arielle Lane. The same developer is involved.

Betsy Shields voted to approve the minutes of April 16, 2003 as amended. It was seconded by Mike Cataldo and passed unanimously.

A motion was made to adjourn at 9:15 by Mike Cataldo, seconded by Rob Fitzgibbon and passed unanimously.

The next meeting will be held on June 18, 2003 at the Scout House.

Presented by: *Sandra J. Ginn* Attested to: *Rob Fitzgibbon*
Sandra J.M. Ginn, Administrative Assist. Rob Fitzgibbon, Clerk

July 2, 2003

Town of Essex Planning Board
Minutes
May 21, 2003

The meeting was held at the Essex Elementary/Middle School in and was called to order by Chairman Westley Burnham at 7:40 p.m.

Attendees: Westley Burnham, Scottie Robinson, Jud Lane, Andrew St. John, Betsy Shields, Rob Fitzgibbon.

Absent: Mike Cataldo

Building Inspector: Bill Sanborn

Secretary: Sandy Ginn

Building Inspector's Report:

50 Lake Shore Drive / Tear down and rebuild

It was decided that the board should view the site before making any preliminary decisions.

Ed Mulry / 11 Pickering Street / Two story addition

Jud Lane made a motion to approve the application of Edward Mulry of 11 Pickering Street for a new two story addition finding that it is not more detrimental than the existing building and is in accordance with 6-4.2 of the Essex bylaws and meets all the board requirements.

The motion was seconded by Betsy Shields and passed unanimously by those members present.

David Burbridge and Ruth Price / 82 Martin Street / Rear deck

A motion was made by Andrew St. John to approve the application of David Burbridge and Ruth Price for the addition of a 12'X26' deck under provision 6-4.2 of the Essex bylaws finding that the new construction is not more detrimental than the existing.

The motion was seconded by Scottie Robinson and passed unanimously by those members present.

David Doane / 33 Story Street / Second floor addition and new roof

It was determined that this application meets all requirements and does not need a finding from the Board.

Sandy Patrican / 107 Belcher Street / Barn

Jud Lane made a motion to approve the application of Sandy Patrican of 107 Belcher Street for the construction of a 30'X46' barn with water but no bathroom finding that it meets all minimum requirements of Essex bylaws.

The motion was seconded by Andrew St. John and passed unanimously by those members present.

Corey and Kathy Jackson / 17 Addison Street / Tear down and rebuild

Betsy Shields made a motion to approve the application of Corey and Kathy Jackson for 17 Addison Street map #34, lot #15 to take down and replace the existing single family home and replace it within the existing footprint finding it meets all Essex bylaw requirements and will not be more detrimental to the neighborhood than the existing use under 6-4.2.

The motion was seconded by Scottie Robinson and passed unanimously by the members present.

The minutes of the April 16, 2003 were approved as amended by a motion from Andrew St. John and seconded by Jud Lane.

Old Business:

The videos provided by the state must be viewed by the Board before June 30th. It was not determined when this could be done.

The town asked for a representative from the Planning Board to attend a meeting on June 4th at 10 a.m. in Brendan Zubricki's office regarding the reconstruction of route 133 tying in with the sewer work that is planned. Westley Burnham volunteered to attend.

Mr. Burnham also volunteered to complete the state's request for a "Decision's Check List" which he has been working on for several years. He would like to develop a tracking sheet for building applications. That would include a guide for the applicants to follow.

Public Hearing

The public hearing for a definitive subdivision called Arielle Lane was opened at 8:30 p.m. The purpose of the meeting was to discuss details of construction and to discuss comments from the other Boards.

Paul Alunni of Apple Associates presented the plan. He submitted a new drawing with a modified lot line as was discussed at the preliminary meeting.

Several corrections were made as suggested by Scottie Robinson who reviewed the proposal for the Board. The corrections must be submitted prior to final endorsement. The comments from the Board of Health and the DPW will be included in the Board's final endorsement along with the order of conditions from the Conservation Commission. Kevin Goldenbogen of 2 Ice House Lane expressed concerns he has as an abutter. A discussion between Mr. Goldenbogen and Scott Bouches, the developer, was held. With no further questions, a motion to close the public hearing was made by Andrew St. John and seconded by Betsy Shields. The motion was passed unanimously by the members present.

There was a discussion held about the decision by Town Counsel in regard to Peter Van Wyck and Lowland Farm.. A decision was made to have Betsy Shields meet with Brendan Zubricki about having time to talk with Town Council.

Election of New Officers

Westley Burnham made a motion to elect Jud Lane as Chairman of the Planning Board. However, Mr. Lane stated his concerns about his job and rehabilitation of his shoulder and could not accept the position.

Andrew St. John made a motion to elect Scottie Robinson as Chairperson. It was seconded by Betsy Shields and passed unanimously by those members present.

Rob Fitzgibbon was nominated by Betsy Shields to be the Clerk which is, by tradition, held by the newest person elected to the board. It was seconded by Scottie Robinson and passed unanimously by those members present.

Westley Burnham made a motion to elect Jud Lane as Vice Chairman. It was seconded by Andrew St. John and passed unanimously by those members present.

Andrew St. John expressed thanks to Westley for his diligent work as Chairman.


Out going Chairman Burnham finished up with some advice. He recommended that he be the single person liason to Larry Graham who oversees several projects for the Planning Board.

Burnham also recomends that the Board start working on bylaw changes for the upcoming Town Meeting in September.

A motion to adjourn at 10 p.m. was made by Scottie Robinson and seconded by Andrew St. John. It was passed unanimously by the members present.

The next meeting is scheduled for June 4, 2003 at 7:30 p.m.

Presented by:  Sandra J. M. Ginn

Attested to:  Andrew St. John

06.18.03

**Town of Essay Planning Board
Minutes
Wednesday June 18, 2003**

The meeting was held at the Scout House on Pickering Street in Essex and was called to order at 7:35 pm by Scottie Robinson, Chairperson.

Members present: Westley Burnham, Jud Lane, Rob Fitzgibbon, Betsy Shields, Scottie Robinson, Andrew St. John

Secretary: Sandy Ginn

Absent: Bill Sanborn, Building Inspector, Mike Cataldo, Board member

Building Inspector's Report:

Given by Westley Burnham – A motion was made to authorize approval for a new foundation for a new home at the site of 27 Forest Avenue owned by Tim and Laurie Hunt. A ranch style house will be torn down.

Motion by Westley Burnham: I move to approve the siting for a new foundation for a single family home for Tim and Laurie Hunt to remove their ranch style home and replace it with a new one on the condition that the new foundation shall not encroach on the west side sideline any closer than 20' or the existing footprint. Finding that the Board of Health and the Conservation Commission have already granted their approval and under 6-4.2 we find the house replacement will not be more detrimental than the existing dwelling.

The motion was seconded by Jud Lane and approved by Scottie Robinson and Rob Fitzgibbon.

Andrew St. John abstained from the vote.

A motion was made by Westley Burnham to approve the Building Permit Application for Sean Reed and Charles Foss to tear down a 22'X22' garage and replace it with a 24'X30' garage at 202 Western Avenue finding that the Board of Health has approved, the Conservation Commission has approved, the DPW has no issue and the Fire Department has no issue and in accordance with 6-4.2 the proposed building will be no more detrimental to the neighborhood than the existing building.

The motion was seconded by Scottie Robinson and passed unanimously by the members present.

Turtleback Road Extension / ANR Request

Scottie Robinson removed herself from the Board as she is an abutter. Jud Lane acted as Chairperson.

Peter VanWyck was accompanied by attorney Michael McCarron. Mr. VanWyck discussed a remaining piece of land that was approved for 12 lots in a 1996 agreement with the Planning Board. There is one remaining lot not yet conformed for building. The

Board could not approve the plan because of changes in Title V. He was advised to bring his engineer and his plan to the Board of Health for approval of the septic system. The definition of frontage was explained also.

The chair was given back to Scottie Robinson

Lowland Farms

Mr. VanWyck was advised that the Board did not have a definitive answer from Town Council as to whether or not his development had to desist. Attorney McCarron wanted to know if the Board could approve the road as finished according to subdivision by laws. Scottie Robinson explained that the road was not finished according to Larry Graham, the clerk of the works.

The question of the rescinding is still not clear and needs to be discussed and the Board asked Mr. VanWyck in good faith, to allow them 2 more weeks for a decision.

Arielle Lane / Approval Letter

Jud Lane had questions as to the verbiage of the waivers. The waivers were discussed and it was decided that all the waivers had to be itemized in the approval letter. A 3 year completion time of the subdivision road was implemented subject to chapter 81W.

Westley Burnham left the meeting at 9 pm..

An account of the Lowland Farms subdivision was given to Rob Fitzgibbon so he could better understand the history of the project.

After a lengthy discussion about the advice from Town Counsel it was decided to hold a public hearing on July 16, 2003 at 8pm to discuss the rescission of the Low Land Farms subdivision.

Andrew St.John moved that the Board vote to withdraw the previous vote on rescission of the January 27, 1995 Agreement for Judgement as it was determined that the vote had been procedurally in error and further that the Board institute the rescission process in conformance with the requirements of Chapter 81W.

The motion was seconded by Scottie Robinson and passed by all members present except Rob Fitzgibbon who was not on the Board at the time the vote to rescind was taken.

A second motion was made to take action on the rescission: Andrew St.John made a motion that the Planning Board take action under G.L. c.41, chapter 81W to notice, advertise, and hold a public hearing to determine whether the Planning Board will vote to modify, amend, or rescind the approval of a definitive subdivision plan dated September 1, 1990 and revised September 30, 1994, as modified by an Agreement for Judgment dated February 21, 2001, and known and referred to as the Lowland Farms Definitive Subdivision Plan ("Plan"), or to require a change in the Plan as a condition of its retaining the status of an approved Plan.

The motion was seconded by Jud Lane .

A motion was made at 10:20pm by Andrew St John to adjourn and seconded by Rob Fitzgibbon. It was passed unanimously

The next meeting will be held on July 2, 2003 at the Scout House.

Presented by: Sandra J.M. Ginn
Sandra J.M. Ginn, Administrative Assistant

Attested to: Rob Fitzgibbon
Rob Fitzgibbon, Clerk



ESSEX PLANNING BOARD

Town Hall 30 Martin Street Essex, Massachusetts 01929 - 1219

July 2, 2003

The Essex Planning Board voted to approve the Definitive Subdivision plan of Arielle Lane submitted on April 2, 2003 for land owned by S.M.B Development Corp., Inc. located at 4 Ice House Lane, (Book 5415 and 17496, page 659 and 269), Essex based on the following information and conditions:

Property owners of record are S.M.B Development Corp., Inc. with business address of 253 Low Street #189 in Newburyport, MA. The Applicant is the same. Apple Associates Inc. of Byfield, MA is the engineering firm of record.

Preliminary Subdivision plan dated November 27, 2002 was approved by the Essex Planning Board on January 15, 2003. After all required notifications and advertising a Public hearing was held on May 21, 2003 and closed that evening.

Arielle Lane as proposed is a 4-lot cul-de-sac off of Ice House Lane, which is accessed from Western Avenue. It is referred to as Lot #47 on Essex Assessor Map #8 and consists of approximately 4.4 acres of land. The entire subdivision is within the town's Water Resource Protection District and all pertinent regulations will apply.

The following waivers from The Essex Planning Board Subdivision Rules and Regulations are approved:

These approvals are made based on testimony and information submitted to the Board indicating that no more than four (4) house lots, single family residences, will be serviced by this access. Any deviation from the plan submitted and subsequent discussions shall require prior approval of the Board or approval of the following waivers shall be null and void.

1. Relief from 7.01 (10) – Utilities: requirement of street lights. All utilities must still be underground.
2. Relief from 7.02 – Streets and Ways: 2b, 2c, 4b, 7, 8.
3. Relief from 7.02 – Streets and Ways: 4a11; one fourth inch per foot for the road crown. The applicant's use of a 2% crown for the roadway and 1% crown for the cul-de-sac will be accepted.
4. Relief from 7.05 – Blocks.

The following rules from The Essex Planning Board Subdivision Rules and Regulations are required but not on plan:

1. 7.07 – Monuments: Monuments shall be installed at all street intersections.

The following conditions are to be attached to this plan as part of the approval.

1. All septic systems shall conform to the requirements of the Essex Board of Health, and shall be approved prior to issuance of any building construction permits.
2. This plan was reviewed with the minimum requirements of 'Single Family Dwellings' being met. Whereas this project is located within the Water Resource Protection District any other use may or

may not conform to the requirements and will be held to the requirements 6-13 of the Essex Zoning bylaws.

3. A sign identifying the road shall be erected at the intersection of Ice House Lane, to be adequate for reasonable identification of the location to assist emergency personnel.
4. Existing rights to pass and repass along the access roadway shall be maintained for the property owners so entitled.
5. Construction is to commence within (6) months of endorsement and be completed within 3 years.
6. No building permits shall be issued for any new lots being accessed from this road until the road is completed or an escrow account established as a performance guarantee.

Endorsement of the approval will occur after the following requirements have been met:

1. A Performance Guarantee is in place and agreed to by both the Applicant and the Essex Planning Board. Said agreement having been reviewed by Town Counsel if the board deems necessary.
2. An individual to act as 'Clerk of the Works' has been designated and agreed to by the Board. This individual will answer to the Board and will monitor construction IAW the approved plan. A written agreement to fund this individual is submitted to the Board by the applicant.
3. A covenant shall be attached to the four (4) lots created stating that this roadway is to be maintained as private road, all maintenance costs incurred will be the responsibility of the owner or owners of record of the property. Proof of filing shall be provided to the Board before any building permits will be issued.
4. A maintenance agreement shall be provided to the Board for the four (4) lots being accessed stating how this roadway is to be maintained as a private road, and all maintenance costs incurred will be the responsibility of the owner or owners of record of the properties being served by the roadway.
5. Written confirmation that no appeals have been filed with the Town Clerk within the statutory 20 day appeal period. The date for start of this time period will be when this decision is filed with the Town Clerk.

**Town of Essex
Planning Board Minutes
Scout House – Pickering Street
July 2, 2003**

The meeting was called to order by Scottie Robinson at 7:35pm with all members present.

Building Inspector's Report:

Bill Sanborn had a question about landscaping on Ice House Lane from Kevin Goldenbogen who has concerns for the about the drainage on his property.

The selectmen have asked the building inspector to issue a letter to Everett Reed about his property on Southern Avenue where he has stored several unregistered motor vehicles. They would like to see the lot cleared of the vehicles. There was a discussion about the bylaws and what he can legally store on that property.

At 8:00pm **Sam Cleaves** of the MAPC presented a review of the April 29 meeting of the Essay Natural Resources forum. He had maps and surveys taken at the meeting. He would like to meet with the board on September 17 to have a preliminary housing discussion.

At 8:30pm **Robert Swan** showed the Board his **ANR** plan to subdivide his parents' property at Lufkin Pt. Road. The lot will be bought by Louis Lima. Westley Burnham moved to approve the ANR plan for Walter and Mary Swan being applied for by Louis Lima, surveyed by Hancock Survey as noted on plan dated June 26, 2003 for property of land located off of Lufkin Pt. Road finding that it meets all the minimum requirements for the town of Essex. The motion was seconded by Jud Lane and passed unanimously.

The Arielle Lane Approval letter was discussed and corrected and a motion was made by Westley Burnham to approve the definitive sub division plan based on the draft decision discussed. It was seconded by Betsy Shields.

Poll:Betsy Shields: I vote yes in favor in that it meets all Essex sub division rules and regulations.

Andrew St. John: I vote affirmative in that it meets all rules and regulations of the Town of Essex subdivision bylaws and is not more detrimental to the neighborhood than what exists now.

Jud Lane: I vote affirmative as it meets all rules and regulations of the Town of Essex subdivision bylaws.

Westley Burnham: I vote in the affirmative where it meets the minimum standards required by the Town of Essex.

Scottie Robinson: I vote yes in that it meets all rules and regulations of the Town of Essex.

Rob Fitzgibbon: I vote in favor of the Arielle Lane Definitive sub division plan as it meets all the minimum standards of the sub division rules and regulations of the Town of Essex.

Mike Cataldo was not at the May 21st Public Hearing therefor he was unable to vote.



Andrew St. John made a motion to accept the amended minutes for June 18th and it was seconded by Betsy Shields. The motion passed unanimously.

Westley Burnham brought to the attention of the Board that there are several accounts still active with the Board from unfinished sub divisions. The subject will be on the next agenda.

Betsy Shields presented a composite check list of sub division rules and regulations from other towns for consideration. It includes items that may be requested for special permits or site plan review. The Board decided to take up the discussion at the August 6th meeting.

It was decided to cancel the August 20th meeting as several members will not be present. The Chairperson reminded everyone that the next meeting is a Public Hearing.

A motion to adjourn was made by Mike Cataldo at 10:40pm . It was seconded by Rob Fitzgibbon and passed unanimously.

Presented by:  Attested to: 
Sandra J.M. Ginn, Administrative Assist. Rob Fitzgibbon, Clerk

**Town of Essex Planning Board
Minutes
Wednesday July 16, 2003
7:30 p.m.**

The meeting was held at the Scout House in Essex and was called to order at 7:30 p.m. by Scottie Robinson, Chair.

Attendees: Jud Lane, Westley Burnham, Andrew St. John, Scottie Robinson, Michael Cataldo, Rob Fitzgibbon

Absent: Betsy Shields

Building Inspector: Bill Sanborn.

Secretary: Lorie Woodward

Building Inspector's Report

16 Martin Street, brief mention of shields installed on lights located at the Bank building.

Mention of memo from Town Counsel, which was circulated to the Board, Westley to forward copy to the Building Inspector.

1 John Wise Avenue, brief discussion of whether removing the apartment from the building and using the building as only commercial would constitute a change of use. The Board found no Special Permit would be required as it was already used for business.

9 Lufkin Road / Sharon & Peter Pinciario / Building Permit

The applicant is requesting a permit to build a 3-car garage with apartment above. The applicant has received Board of Health and Conservation Commission approval. No action was required by the Board.

164 Western Avenue / Joanne & Mark Jordan / Demolition and Foundation Permit

The applicants are requesting a permit to demolish existing house and rebuild. Board of Health sign off has not been received yet.

Motion: Michael Cataldo moves to authorize issuance of a foundation permit to Mark and Joanne Jordan, 164 Western Avenue, for the construction of a single family dwelling, once they receive final permission from the Board of Health, and finding that it is located within the Water Resource Protection District.

The motion was seconded by Westley Burnham and was approved unanimously.

12 Coral Hill / Katherine Rueda / Building Permit

The applicant is requesting a building permit to add a second story to the existing garage for storage and office type room, no bathroom shown. The applicant has received Board of Health and Conservation Commission approval.

Motion: Westley Burnham moves to approve the Building Permit application for Katherine Rueda 12 Coral Hill Road to add a second floor to the existing garage

over the existing footprint, finding the proposed use shall not be substantially more detrimental to the neighborhood than the existing use.

The motion was seconded by Michael Cataldo and passed unanimously.

52 Martin Street / Albert & Joyce Stewart / Building Permit

The applicant is requesting a permit to rebuild existing barn on the same footprint.

Motion: Michael Cataldo moves to authorize the Building Permit application of Albert an Joyce Stewart, 52 Martin Street, to rebuild the existing barn, finding that it will not be substantially more detrimental than the existing use. Also finding that it has received approval from the Board of Health and Conservation Commission.

The motion was seconded by Westley Burnham and passed unanimously.

Shea Court Lot 1/ Innovative Properties, Inc. / Building Permit

The applicant is requesting a Building Permit to construct a single family dwelling on lot 1. Conservation Commission and Board of Health approvals have been received.

Motion: Andrew St. John moves to approve the application of Innovative Properties, Inc., for a single family dwelling on Lot 1 of Shea Court.

The motion was seconded by Westley Burnham and passed unanimously.

Public Hearing

Lowe Land Farm / Peter Van Wyck

The Public Hearing was opened at 8:00 p.m. by Scottie Robinson.

The Board is considering rescission of the approval of the subdivision plan.

Michael Cataldo: The Board is concerned with the lack of progress being made on the subdivision. In reviewing the process we found that in the Agreement for Judgment that we had entered into, it was crafted to put a time limit on the construction of Lowe Land Farm. From past experience with another subdivision and finding it ran over, when we set up this Agreement for Judgment we wanted assurances that Lowe Land Farm which had been in court for more that 5 years and was dormant, would have a definitive starting and ending date. When the agreement was reached and finalized on February 5, 2001, both sides agreed upon 2 years from the filing of the Agreement for Judgment for the construction to be concluded on the subdivision road. When we reviewed the progress that has been made in the last 2 years we didn't think that it was adequate. Most of the Board has gone back and taken a look at the letter that was dated January 24, 2001, that was written to Mr. Clark, Mr. Van Wyck's Attorney from the Town's Attorney clearly defining that the subdivision roadway should be commenced within 6 months of the endorsement, and then Mr. Van Wyck will have and additional 2 years from the date of the filing of the Agreement for Judgment to complete the roadway. In addition if you look at the actually summary for judgment #2 it says that the subdivision road including the installation of all utilities shall be completed within 2 years from the date of the filing of this agreement, which was filed on 2/5/01. Our Board has come together to decide what to do about this.

Andrew St. John: The original time limit was put on the process, was thought to be reasonable and to keep the project from dragging on. There has been a great deal of

discussion, and Mr. Van Wyck has been in several times to discuss it. A majority of the Board felt that in order to keep the process moving they must use the tools provided by the Agreement for Judgment.

Westley Burnham: I have been on the Board since 1985, and the Board is well aware that I have been an advocate for applicant's rights as well as the Boards. I do have a statement that I would like to read:

Essex Planning Board
Town Hall
Martin Street
Essex Ma. 01929

RE: Hearing for ^{discussion}recession of Lowland Farms Subdivision.

As a board member, Vice Chairman and Chairman during the period of the initial approval, negotiations for settlement, acceptance of the Agreement for Judgment, and final Endorsement of the Lowland Farms subdivision I feel obligated to include the following facts and opinions as part of this proceeding.

First, is to point out the wording in the Agreement for Judgment signed on 2/15/01 by Peter VanWyck, Charles Clark and on 2/21/01 by Ilana Quirk. I reference sentence #2:

"The subdivision road, including the installation of all utilities, shall be completed within two(2) years of the filing of this Agreement for Judgment with the Land Court."

Based on this statement alone the Planning Board's contentions that the time limit expired on 2/21/03 is inaccurate and in error.

On June 2, 2001 approved minutes of the Planning Board meeting refers to a discussion by Scottie Robinson as Chairperson informing Mr. VanWyck that the "Board will refrain from any discussion on the Lowland Farm property until the Agreement for Judgment negotiated last November is signed and filed with Land Court."

Apparently the filing took place some time after June 6, 2001. The exact date which this occurred is unknown to me and obviously the remainder of the Board members.

This agreement was presented to the Board by Town Counsel in Draft form for review and approval. At the regular meeting of November 15, 2000 this agreement was discussed in executive session and apparently revised during a telephone conference with Ilana Quirk. (I was not in attendance at this meeting due to my work schedule.)

The Executive session minutes were not available in the Town Hall until April 16, 2003 when the one member of the board produced a copy from her personal files.

The Motion made and unanimously approved by the Board upon returning to Open session was "Motion was made by Gil Guerin to authorize town counsel to execute the Agreement for Judgement previously negotiated with Mr. VanWyck regarding the litigation concerning Lowland Farms subdivision. Seconded by Scottie Robinson and unanimously approved."

No mention of changing the wording, specifically the time frames and conditions from the previously distributed draft was mentioned or authorized. Without the Executive session meeting minutes available for review I believed the original agreement had been executed. No copy of the signed Agreement was available in the Lowland Farms file until Scottie Robinson located one in the Selectmen's office sometime in March of 2003 after the question of time limit expiration arose.

Based on my understanding of the original unmodified agreement I asked Mr. VanWyck to refrain from discussing the Lowland Farms project with the Board until we finalized the construction plans and other issues related to his Turtleback Extension project. This request was based on management of available meeting and the need to deal with other applicants and issues presented to the board. In light of this request and the confusion surrounding the application of the time limit imposed by the Agreement for Judgment, it is my contention the Essex Planning Board must admit to some culpability in Mr. VanWyck's inability to complete this project.

In addition to the culpability described above, we have effectively prevented a decision by the Essay Board of Appeals relative to a petition by Mr. Van Wyck which has been pending since the end of 2003. This action has delayed final design of the underground utilities for a period of at least six months. The road installation work is substantially complete, remaining work includes electric and phone utilities which is pending on the Board of Appeals decision. Some curbing and finish drain work is also pending. Mr. VanWyck has progressed in a very timely manner and probably would have completed the project except for the finish coat of asphalt this year without interference.

My personal recommendation at this point is to inform Town Counsel to revise the Agreement for Judgement in effect for Lowland Farms Subdivision to allow one additional year to complete the work. Included in the revision is a definition of "Complete" to be "all work, utility installation, drainage, and curbing in place with the exception of the final coat of asphalt." Our subdivision regulations require the road endure a winter prior to final release of the Performance Guarantee, (ref. Rules and Regulations relative to Subdivision Control Town of Essay Massachusetts: section 6.06 Action by the Planning Board, paragraph 4.c).

In closing I present:

MGL Chapter 41 sections 81BB: Appeal to superior court; counsel; costs; surety or bond; speedy trial; which delineates the procedure and limits of the appeal process. One excerpt reads "Costs shall not be allowed against the planning board or board of appeals unless it shall appear that such board acted with gross negligence or in bad faith."

MGL Chapter 41 section 81 DD: Application of law; damages. Excerpt reads: "any person injured in his property by reason of the modification, amendment or rescission of the approval of a plan under section eight-one W without his consent in writing, or by entry of his land not within the limits of a subdivision as shown on a preliminary or definitive plan submitted by him for approval, may recover the damages so caused under chapter seventy-nine. The modification, amendment or rescission of the approval of a plan shall not entitle any person to damages, unless and to the extent that he shall have changed his position or made expenditures in reliance upon such approval. No damages shall be awarded for the modification, amendment, or rescission of the approval of a plan obtained as a result of material misrepresentation of facts, whether willful or otherwise, by the persons submitting the plan.

In light of the above circumstances I believe continued action to rescind the approval of Lowland Farms Subdivision based on the advertised reasons for this hearing is a fine example of the Essay Planning Board acting in "Bad Faith" and will leave the Town of Essay in a precarious position should Mr. VanWyck wish to pursue this further in either Superior or Land Court.

Sincerely,

Westley C. Burnham, Planning Board member
22 County Road
Essay Ma. 01929

Scottie Robinson: Do you now understand that I was under the impression that it had not been filed and that it was quickly resolved. That I went to the Selectmen's Office and asked the secretary for a copy of the Agreement for Judgment which had been filed in February. The Planning Board did not have a copy in the file. It was in the file by the 2nd or 3rd week in June. There were other folks that saw it in the file at that time, I am not sure why you had trouble finding it after it was retrieved from the Selectmen's office.

Westley Burnham: In reference to the 2/21 filing date, Scottie had confirmed that our Town Counsel had in fact filed it.

Scottie Robinson: It was signed on 2/15 and filed on 2/21. Mr. Van Wyck's signature was on it. Is there a mortgage on the property? Can you tell us how to contact the mortgage holder?

Peter Van Wyck: Yes, it was put on recently, I can get the address to you.

Scottie Robinson: So the mortgage holder is not present here tonight.

Peter Van Wyck: No

Scottie Robinson: So is the entire property mortgaged?

Peter Van Wyck: Yes.

Scottie Robinson: Is the land registered?

Michael McCaron Attorney: The land is recorded not registered.

Scottie Robinson: Peter do you want to tell us why it has been over 2 years and the road hasn't been finished?

Michael MCCaron: I am the attorney for Mr. Van Wyck. I am late to the process. I am relying on the information I have received. In our mind there has not been a delay. Mr. Van Wyck proceeded to commence construction upon endorsement of the plan, which occurred on March 6, 2002, and has proceeded expeditiously there in. Thinking as in accordance with statements which were issued by the Board that he had 2 years from the date of endorsement of this plan in order to complete it.

Scottie Robinson: That was a part of a draft that was circulated a little over a year in the year 2000 and early 2001 and the wording was changed between Ilanna Quirk and Mr. Clark and Mr. Van Wyck and some Board members.

Michael McCaron: What I am saying is that he was operating under that assumption because part of the original Agreement for Judgment also said that the Planning Board would endorse the plan. The process with the Subdivision Control law requires that you commence construction after endorsement because prior to the endorsement you have to submit the statutory security as required by the Board, which he has done, and then you endorse the plan and then you start the process. Mr. Van Wyck's case there was a lot of discussion prior to endorsement. The Agreement for Judgment was recorded in February of 2001, the first one,

Scottie Robinson: that was not the first one that was the second one, the one that is in effect now.

Mr. McCaron: We don't know that that is the case but I will jump into what I was going to say, I know I have the minutes from your Board meeting of October 3, 2001 in which is says the Board voted to accept the Agreement for Judgment dated 10/2/01 a revised one, there is a new Agreement for Judgment that was entered into by the Board, these are copies of your minutes, in which this was this way.

Scottie Robinson: Wait a minute, I am going to look at this before going forward. This relates to Turtleback Road, this has nothing to do with Lowe Land Farms.

Michael McCaron: It gets a little confusing, but basically is that in the Lowe Land Farms, in May of 2002 the Board suggested that the revision in the Agreement requires the road be started within 6 months, which it was, and completed within 2 years, which

would seem to be that it would start from the endorsement of the plan. That was the representation that was made in February before the Board of Appeals, prior to a review of this document by the Chairman of the Board of Appeals. At that time, it was thought by the parties, that the date of completion, which makes sense, is 2 years from the endorsement of the plan. Because the Planning Board, remember was under affirmative requirement to endorse the plan immediately upon signing of the Agreement for Judgment, and the Planning Board didn't endorse the plan until one year after.

Scottie Robinson: I want to set you straight on a few facts on the case, We did receive information in June that the Agreement for Judgment had been signed and the Agreement for Judgment which was signed back in February of that same year specifically states 2 years from the date of filing of this Agreement for Judgment is when the time clock starts. Mr. Van Wyck could have come in with the linen for that approved plan any time after the Agreement for Judgment was signed, and it was his decision, had nothing to do with any Board action that he waited almost a full year to come in for endorsement.

Michael McCaron: My point to you is the minutes that were presented to him, or at least the representation that was made to him by the Board as shown by the minutes of May 1, 2002, of this Board. Saying that the plan was endorsed on March 6, 2002...

Scottie Robinson: Wait a minute, nothing was signed on March 6, 2002. I am reading minutes on Lowe Land Farm, there is a discussion of Lowe Land Farm for an ANR, this Board discussed the Agreement for Judgment that required the road to be started within 6 months of the endorsement of the plan and completed within 2 years. Mr. Van Wyck came before the Board to request an ANR of Lowe Land Farm, we reminded him in the Agreement for Judgment a current Board of Health approved perk is required, they also informed Mr. Van Wyck their intention to discuss the request with Town Counsel before endorsing an ANR removing all lot lines to create one large lot. The Board reviewed with Mr. Van Wyck the requirement in the Agreement for Judgment the road must be started within 6 months of the endorsement of the plan, That was a mistake admittedly, and completed within 2 years.

Michael McCaron: My point to you is that this Board and Mr. Van Wyck were operating under the assumption of what was represented to him, that having worked with the Board and completed the plans in accordance with making sure everyone was happy with them, which he did do. Is that he was under this assumption that was represented to him in open meeting, that he couldn't start the plan until the endorsement.

Scottie Robinson: No one told him that, because it was not the case.

Michael McCaron: Would you advocate someone commence construction prior to endorsing...

Scottie Robinson: No, I would advocate a developer who has a time limit on an Agreement for Judgment come in with a linen and get it signed, there was nothing to stop our endorsement of the plan except he didn't bring it in.

Mr. McCaron: My point to you is the representations of the Board was to him as reflected by the minutes was that he would get the plan endorsed which makes sense, that's the way the process goes, and again you were here and I wasn't so I am only looking back on the written documents and what was represented to him and what was your understanding as of March of 2003. In fact you made statements before the Board of Appeals to the effect that he had to finish it by March 2004 and that he was under that requirement and it was only subsequent to that, that that was changed. If this is the idea that everyone was operating under that he get the plan endorsed and commences within 6 months of the endorsement to construction and that construction is completed within 2 year of the endorsement that is what everyone was operating under.

Mike Cataldo: I would like to read you a letter that is dated January 24, 2001. It is to Mr. Clark, Mr. Van Wyck's attorney at the time, it is from Ilanna Quirk who is representing the Town.

"Dear Mr. Clark, Thank you for your correspondence dated January 19, 2001 regarding the above referenced litigation. You indicated in your correspondence that you believe that you and I agreed last December that we would hold off on filing the Agreement for Judgment until Mr. Van Wyck had his plan signed by the Planning Board. My memory of our conversation is different. According to my records we spoke about this matter on December 8, 2000 by telephone. You told me that Mr. Van Wyck wanted to tie the 2 year deadline to complete the Lowe Land Farm subdivision to the date of the endorsement of the plan by the Planning Board. In response I informed you that the Planning Board already had informed me that it would not agree to this arrangement, because the Board can not control the date that the plan is presented to it for endorsement. As you know, one of the conditions of the subdivision approval that Mr. Van Wyck has challenged is that the subdivision roadway shall be completed within 6 months of endorsement. At this point the litigation and the underlying approval of the subdivision is already 6 years old. The Planning Board is willing to settle the matter by agreeing that Mr. Van Wyck will have an additional 2 years from the date of the filing of the Agreement for Judgment to complete the roadway. In order to expedite this matter perhaps we should consider further amending the proposed Agreement for Judgment to provide that Mr. Van Wyck must present the plan to the Planning Board for endorsement within 30 days of the filing of the Agreement for Judgment with the Land Court. I will forward this suggested amendment to the Planning Board and request that you discuss it with your client. As you noticed litigation has been pending since 1995. The issue of the wording in the Agreement for Judgment has been pending since at least April of 2000. I understand that you are in meeting with your client today and hope to hear from you today as to how your client is willing to proceed. Thank you for your cooperation in this matter."

And then if you go on to look at the Agreement for Judgment they have negotiated since that letter, it says the subdivision road, including the installation of all utilities, shall be completed within 2 years from the date of the filing of this Agreement for Judgment with the Land Court, and Peter's signature is on that. I think at that point we had established what the standard was.

Michael McCaron: They may have been clear at that point but the Planning Board may not have made representations consistent with the Agreement for Judgment. Mr. Van Wyck and the Board were operating under another assumption until March of 2003.

Peter Van Wyck: Larry Graham, Clerk of the Works required certain changes to the Plan and I could not go forward until they were resolved. The exact wording of what was worked out is a matter of record. That is the cause for delay. I spent a lot more money make the requested changes. I thought that I had the 2 years from date of endorsement and I was not as careful as I might have been. If I was aware of it I would have requested an extension. I will be honest that if you take the position to rescind the road, you are putting the pressure on me to respond, and I would have to say to you that I would bring the Board to Court. I have no other choice and I did it once before. The road is built. I can't believe the Judge reading the documentation in existence and the discrepancies and the fact that the road was built would side with the Planning Board and stop the process. I think we should go forward. I have owned the land for 20 years and paid taxes equal to what I paid for the property. I have given my neighbors free use of the open space for 20 years, but now I have to go forward. I have been a good neighbor. I am amazed that the Board would want to spend their legal dollars this way.

Scottie Robinson: You know there are other remedies available other than appealing any decision we make one way or the other. You have always the possibility of submitting a modified subdivision plan as your plans have changed it might make sense to go that route.

Peter Van Wyck: The Board needs to decide what it is going to do with this business of revoking the subdivision. I am willing to make modifications. The land is able to accommodate 23 houses. I have presented pictures of what I would like to do. The Board should review the project up in New Hampshire.

Scottie Robinson: I think we are getting off track this is a Public Hearing there are a number of other people in the room.

Michael McCarron: I just want to follow up and address, the issue of the plan and the extra work that was done. You have made the representation that Mr. Van Wyck could come in immediately and have the plan endorsed and commence construction, and yet when your engineer went and reviewed it he submitted a letter on June 25, 2002, as Mr. Van Wyck commenced the process and it was recommended that Mr. Van Wick perform additional survey engineer and plan preparation.

Scottie Robinson: That was already endorsed at that point in time.

Westely Burnham: We refused to endorse the plan until the road construction plans were brought up to today's standards.

Michael McCarron: Mr. Van Wyck went and did additional work that theoretically he should not have been able to do because the plan was already approved, and it delayed his construction during that time frame and now that is being held against him. Now that time frame is being taken away from him, 4-5 prime construction months taken away from him

Scottie Robinson: I can understand that there was a need for that additional reengineering it appears that he had never presented the plan to the Conservation Commission.

Michael McCaron: That doesn't matter.

Scottie Robinson: No we are talking about drainage onto other people's property, that is my understanding of the reason that additional engineering was required.

Michael McCaron: So what your recommending he should have done is simply say I don't have time to do this additional work for the benefit of the Planning Board. I have an approved plan just accept what it is. Which is not what he intended to do. The subdivision control law is intended to allow for some give and take between the applicant and the Board.

Scottie Robinson: And there was give and take, and there was an agreement that he signed.

Peter Van Wyck: In hind sight what I should have done is said I am sorry I will build the road as it is.

Scottie Robinson: Let me ask you now given that, what sort of additional time do you think would be required to complete the road?

Peter Van Wyck: If I knew where the utilities were going to go I could get the thing done very quickly.

Scottie Robinson: My question to you is what time in addition to today?

Peter Van Wyck: Whenever the Board decides what should be built there.

Scottie Robinson: Peter that is your call, it is not up to us. You have an approved subdivision plan, you can build that one. You can ask to modify it, if you want to modify it substantially....In order to change the lot lines you have to have the road completed. That is the law.

Mike Cataldo: You have an approved subdivision plan from this Board, that at this moment is what the Board is allowing. Anything beyond that is going to require that we start again and you revise things. It is not for us to tell you where you can put the utilities.

Michael McCaron: With regard to completion of the roadway, without the utilities and the final coat, which should not go on until after a winter, there is very little to do.

Scottie Robinson: The utilities are a part of the roadway and should be run to the end of the road.

Westley Burnham: If he at least runs the utilities beyond Brownings property and well into his own I think that is a reasonable compromise. Then we can release the hold that we have on the Board of Appeals and let them make a decision. Right now we are holding them up.

Scottie Robinson: No we're not, their process is separate from ours.

Westley Burnham: But their process is being held up based on our outcome of the status of the subdivision.

Scottie Robinson: That is not our consideration

Westley Burnham: It is because we have to make a decision where we are going to go before they will move, before Peter can make a final decision on what he is going to do.

Scottie Robinson: I don't believe that their consideration of whether or not he has standing for an approved subdivision should be waiting for our decision it is July. His Board of Appeals request was made late last winter.

Westley Burnham: and it is still pending. The last conversation I had with Dick Carter and R.J. was the day he had extended the decision date pending our resolution of the status of this subdivision until sometime in July.

Scottie Robinson: They should have told us, there has been no formal communication, I didn't even know it was still open.

Scottie Robinson: So what additional time do you need to finish the road?

Michael McCaron: If he were to place the utility line in to a common area and finish the curbing and all other work minus the final coat would that constitute completion?

Scottie Robinson: Utilities in the length of the road, and finishes the road surface not the final coat but everything else that is required by the subdivision plan.

Michael McCaron: My understanding that most of the work is done, the only thing is some curbing and remedial small work all of which could be completed by the end of the summer. The finish coat would follow a winter. Water is in, electric is the only utility not in yet.

Scottie Robinson: I want people to know that we are going to have to continue this hearing because we need to have the holder of the mortgage at least notified, they can choose to come or not, we will have to continue this public hearing, and I am suggesting to our first August meeting. Wednesday August 6, 2003 at 8:00 p.m. Are there other comments from members of the public?

Marsha Greenbaum: I am an abutter, first I have seen this photo lots of time and I hope that is not something which the Board is going to make a decision here, it is more a fantasy photo than the real thing. Also I think the road that has taken place in the last month or so is essentially illegal because the Agreement for Judgment expired in February and everything since then is basically illegal because he doesn't have a permit to do it, beyond February 2003.

Scottie Robinson: I believe it was incumbent upon us to take action to formally halt his work. The interpretation of Town Counsel was that although the deadlines were spelled out it did not make his further action illegal unless or until we took a more formal action to rescind the decision.

Marcia Greenbaum: I would also like to respond to Mr. McCarron's claim that the Board gave Mr. Van Wyck the impression that it was 2 years from the date endorsement. If you read those notes carefully they say that at that time the Agreement for Judgment was reviewed by Mr. Van Wyck and in fact the reference to 2 years is a reference to the 2 years in the Agreement for Judgment not a reference to the 2 years from the date of that meeting. So it seems to me that even in the context of those minutes the statement of the Board was not unclear and was a reminder to Mr. Van Wyck that he had 2 years as set fourth in the Agreement for Judgment. If he erroneously misunderstood that it seems to me that that is not the Planning Board's fault. It is obvious from the question that was asked about why there was a 2 year delay and about how much more time it would take that the answer is always dependent upon something else, there is not a straight answer. It is always difficult to pin down Mr. Van Wyck as to what his intention is and how long it is going to take him to do it. And so if there is going to be any extension here I would like to see something very iron clad. Something that is signed and in fact if he doesn't meet that deadline that he no longer has any rights. I am not opposed to Mr. Van Wyck building on this property, it is his property and I think he can build on it. What I am opposed to is the excessive number of dwellings he intends given the nature of Apple Street.

Scottie Robinson: The plan is before the Zoning Board of Appeals in some sense, but it hasn't come before the Planning Board in a formal sense, and it has no standing with us.

B.J. Frye: Did you ever receive a revised plan for the road and did you approve it?

Scottie Robinson: The answer to your question is no. The revisions that were made to the plan were determined to be minor in nature and conformed to the specs that were written into the original and approved engineered plans.

Westley Burnham: The minor modifications were primarily to deal with drainage and appearance.

B.J. Frye: I am referring to the retention pond.

Westley Burnham: There was a request from Mr. Van Wyck to alter the original design retention basin which was denied. The retention basin is being installed as per the original 1995 plan. There has been no alteration to that authorized by this Board. The primary change to the drainage on that plan amounted to removing the swales drainage collection and going with underground drainage catch basins primarily to provide Mr. Hildonen a better cleaner access. 99% of the changes have been associated primarily with the intersection area and cleaning it up with a different drainage system.

Mr. Hildonen: The drainage has been changed, by whose authority I have no idea, it was originally designed in March as a retention pond with a drain, it was revised in April again and the pipe was moved 50 ft. from where it was in March.

Scottie Robinson: We have a letter from Mr. Graham stating that that retention pond should be there. Does anyone have any comments on the question before this Board, the rescission of the approval of the subdivision plan?

Westley Burnham: I would like to request that you get a hold of the Board of Appeals and find out if in fact they are waiting for us to make a decision one way or the other.

Scottie Robinson: I will attempt to get something in writing from their chairman.

Marcia Greenbaum: Given that there is an Agreement for Judgment which was filed with and signed off by the court doesn't any amendment have to be filed with the court?

Scottie Robinson: Yes it would need to be filed as an amendment to the Agreement for Judgment.

Michael Cataldo: I would like to make a motion we extend the hearing and continue it to August 6, 2003 at 8:00 p.m. at the Scout House

Andrew St. John: Second

The motion was passed unanimously.

Peter agreed to forward the mortgage holder information to Scottie Robinson.

Jud Lane and Westley Burnham exited the meeting.

Minutes:

Motion: Michael Cataldo moves to accept the minutes of July 2, 2003 as read with an attachment of the Arriel Lane subdivision.

The motion was seconded by Andrew St. John and passed by those members present.

Open Escrow Accounts

Craig Doyle/170 John Wise Avenue/January 1999

Fund Balance \$1,500.00 Applicant is waiting for as built plans.

Scottie will forward a letter

Scott Boches/Evans Way

Fund Balance \$700.00

Scottie will forward a letter

Joan Bucklin/Story Street

Negative balance

Scottie will forward letter to Ms. Bucklin and The Kempski's

Peter Van Wyck/Turtleback Road

Fund Balance \$27,000

Michael Cataldo will draft a letter for the next meeting

Motion: Mike Cataldo moves to adjourn the meeting.

The motion was seconded by Andrew St. John and passed unanimously by those members present.

The next meeting is scheduled for Wednesday, August 6, 2003, commencing at 7:30 p.m.

Presented by: Lorie Woodward
Lorie Woodward, Admin. Assistant

Attested to: Rob Fitzgibbon
Rob Fitzgibbon, Clerk

Essex Planning Board
Town Hall
Martin Street
Essex Ma. 01929

RE: Hearing for recession of Lowland Farms Subdivision.

As a board member, Vice Chairman and Chairman during the period of the initial approval, negotiations for settlement, acceptance of the Agreement for Judgment, and final Endorsement of the Lowland Farms subdivision I feel obligated to include the following facts and opinions as part of this proceeding.

First, is to point out the wording in the Agreement for Judgment signed on 2/15/01 by Peter VanWyck, Charles Clark and and 2/21/01 by Ilana Quirk. I reference sentence #2:

“ The subdivision road, including the installation of all utilities, shall be completed within two (2) years of the filing of this Agreement for Judgment with the Land Court.”

Based on this statement alone the Planning Board's contention that the time limit expired on 2/21/03 is inaccurate and in error.

On June 6, 2001 approved minutes of the Planning Board meeting refers to a discussion by Scottie Robinson as Chairperson informing Mr. VanWyck that the “Board will refrain from any discussion on the Lowland farm property until the Agreement for Judgment negotiated last November is signed and filed with Land Court. “

Apparently the filing took place some time after June 6, 2001, The exact date which this occurred is unknown to me and obviously the remainder of the Board members.

This agreement was presented to the Board by Town Counsel in Draft form for review and approval. At the regular meeting of November 15, 2000, this agreement was discussed in Executive session and apparently revised during a telephone conference with Ilana Quirk. (I was not in attendance at this meeting due to my work schedule)

The Executive session minutes were not available in the Town Hall until April 16, 2003 when the one member of the board produced a copy from her personal files.

The Motion made and unanimously approved by the Board upon returning to Open session was “ Motion was made by Gil Guerin to authorize town counsel to execute the Agreement for Judgment previously negotiated with Mr. VanWyck regarding the litigation concerning Lowland farms subdivision. Seconded by Scottie Robinson and unanimously approved.”

No mention of changing the wording, specifically the time frames and conditions from the previously distributed draft was mentioned or authorized. Without the Executive session meeting minutes available for review I believed the original agreement had been executed. No copy of the signed Agreement was available in the Lowland Farms file until Scottie Robinson located one in the Selectmen's office sometime in March of 2003 after the question of time limit expiration arose.

Based on my understanding of the original unmodified agreement I asked Mr. VanWyck to refrain from discussing the Lowland Farms project with the Board until we finalized the construction plans and other

issues related to his Turtleback Extension project. This request was based on management of available meeting time and the need to deal with other applicants and issues presented to the board. In light of this request and the confusion surrounding the application of the time limit imposed by the Agreement for Judgement, it is my contention the Essex Planning Board must admit to some culpability in Mr. VanWyck's inability to complete this project.

In addition to the culpability described above, we have effectively prevented a decision by the Essex Board of Appeals relative to a petition by Mr. VanWyck which has been pending since the end of 2003. This action has delayed final design of the underground utilities for a period of at least six months. The road installation work is substantially complete, remaining work includes electric and phone utilities which is pending on the Board of Appeals decision. Some curbing and finish drain work is also pending. Mr. VanWyck has progressed in a very timely manner and probably would have completed the project except for the finish coat of asphalt this year without interference.

My personal recommendation at this point is to inform Town Counsel to revise the Agreement for Judgement in effect for Lowland Farms Subdivision to allow one additional year to complete the work. Included in the revision is a definition of "Complete" to be "all work, utility installation, drainage, and curbing in place with the exception of the final coat of asphalt." Our subdivision regulations require the road endure a winter prior to final release the Performance Guarantee, (ref. Rules and Regulations relative to Subdivision Control Town of Essex Massachusetts: section 6.06 Action by the Planning Board, paragraph 4.c).

In closing I present:

- MGL Chapter 41 section 81BB: Appeal to superior court; counsel; costs; surety or bond; speedy trial; which delineates the procedure and limits of the appeal process. One excerpt reads "Costs shall not be allowed against the planning board or board of appeals unless it shall appear that such board acted with gross negligence or in bad faith."
- MGL Chapter 41 section 81 DD: Application of law; damages. Excerpt reads: "any person injured in his property by reason of the modification, amendment or rescission of the approval of a plan under section eight-one W without his consent in writing, or by entry of his land not within the limits of a subdivision as shown on a preliminary or definitive plan submitted by him for approval, may recover the damages so caused under chapter seventy-nine. The modification, amendment or rescission of the approval of a plan shall not entitle any person to damages, unless and to the extent that he shall have changed his position or made expenditures in reliance upon such approval. No damages shall be awarded for the modification, amendment, or rescission of the approval of a plan obtained as a result of material misrepresentation of facts, whether willful or otherwise, by the persons submitting the plan."

In light of the above circumstances I believe continued action to rescind the approval of Lowland Farms Subdivision based on the advertised reasons for this hearing is a fine example of the Essex Planning Board acting in "Bad Faith" and will leave the Town of Essex in a precarious position should Mr. VanWyck wish to pursue this further in either Superior or Land Court.

Sincerely,

Westley C. Burnham, Planning Board member
22 County Road
Essex Mass.

Town of Essex Planning Board
Minutes
Wednesday August 6, 2003
7:30 p.m.

The meeting was held at the Scout House on Pickering Street in Essex and was called to order at 7:35 by Scottie Robinson, Chairperson.

Members present: Westley Burnham, Jud Lane, Andrew St. John, Scottie Robinson, Michael Cataldo, Rob Fitzgibbon.
Building Inspector: Bill Sanborn
Absent: Betsy Shields
Secretary: Sandy Ginn

Building Inspector's Report:

156R Eastern Avenue – Weinberg - removal of ½ of the house and put on a new addition. They have Conservation approval, Board of Health approval, and wetland approval. No vote was needed as it is an existing 2 family house now.

129 John Wise Avenue – Ken and Holly Riehl – new addition to be 2 family house. The Board of Health has signed off as has the Conservation Commission. No vote was needed as all the set backs are being met.

Shea Court – There is a Stop Work order in effect until permission to proceed is granted is granted by the Conservation Commission.

189 Southern Avenue – Common driveway dispute. The building inspector has determined that this is a civil issue between the owners.

Arielle Lane Subdivision

The Board was told that the name of the owner/developer has changed his name to Northland Property Development. The engineer brought new mylar showing the lot line dividing lots 2 and 4 changed, the added catch basin included, and a change in the curbing from sloped granite to concrete. This item was not included in the approval letter and therefore, cannot be accepted.

The builder was advised that he needs the signed notice from the Town Clerk stating there were no appeals in the 20 day waiting period. He needs to change the detail sheet #8 back to sloped granite curbing. He must also come in with a performance guarantee, a letter from Larry Graham stating he will oversee the project for the Town, and a maintenance agreement in order for the Board to sign the Approval Letter.

Lowland Farms Public Hearing Continued:

The Public Hearing was called to order at 8:10 p.m. by Scottie Robinson, Chairperson

Ms. Robinson: Peter, Is the mortgage holder present?

Peter VanWyck: No

Ms. Robinson: Okay. Does anyone on the Board have any further questions?

Arrestes Brown: Banknorth is the mortgage holder. I don't know that they know about this meeting.

Scottie Robinson: I know that they know there is a meeting tonight because I spoke with them two and a half weeks ago. And he was mailed a notice as well. Anybody on the Board? Anyone else have anything to say tonight?

Mr. Brown: Does anyone have anything to ask my client? Any public comment? If I may, I represent Peter VanWyck. I am Arrestes Brown. I am Peter's lawyer. I've taken some time to review the situation and I have a comment or two. The Board knows there is an Agreement for Judgement filed some time after February 21st. I see that it was sent to court sometime at the end of February. And the Agreement for Judgement called for Mr. VanWyck to complete the subdivision road according to the plan within 2 years of that date. Austensively, that's why this hearing is going on. The threshold question that is unresolved in my mind that the Board needs to consider is whether or not this Agreement pre-empts any contemplation of a modification because this Approval was done by the Judgement of the Land Court and accepted as modified by the Agreement for Judgement. These plans were approved and it may very well be that this Judgment contemplates that there would not be any further modification/revocation to the Approval because that would typically not be within the spirit of entering a Judgement of this kind.

Ms. Robinson: I'm going to stop you right there Mr. Brown because we've been over this and I know you just walked into it, or it appears that way but I don't want to cover stuff we've already been through but for your benefit this Agreement for Judgement was not handed down by some Court. It was entered into after extensive negotiations by Mr. VanWyck's representatives and Town Counsel and the Planning Board and it was very pointedly written with the time periods that are in it. It didn't come from the sky. It's not that no one was expecting it - we all did it and Peter signed it.

Mr. Brown: All right. I just wanted to add that I understand that part but the remedies for violation of this Agreement may be pre-emptively what's said in this Agreement and that would be by injunctiver relief or contempt proceeding by the Land Court. That being said because that is specifically itemized as the manner for relief for violation of this Agreement. And this is the word of the Land Court. We know that at some point that the Board appointed Graham Associates to be their representative to supervise the construction of the road. And I can see in his letter that Mr. Graham accepted that appointment on behalf of the Planning Board to supervise the construction of the road. And sometime in July he wrote a letter detailing that in agreement with the Planning Board that the plans as originally approved, left much to be desired. And I'm sure the Planning Board received Mr. Graham's letter saying that so he recommended that we redesign some of the aspects of the subdivision road. And he says specifically in his letter that on behalf of the Planning Board the contractor and Mr. VanWyck were forced to

cease operation at his recommendation until some of these design issues were resolved. Then Apple Associates responded to his cease and desist...

Ms. Robinson: That was not a cease and desist. I think it was a conversation. There was never a cease and desist order.

Mr. Brown: Well, Mr. Graham characterized it as having forced Mr. VanWyck to cease operation of the construction of the road. That's what his letter says. If you don't have a copy I can give you a copy now. But Mr. Graham did say that and he informed the Board that he had stopped Mr. VanWyck because he wanted to work out these redesign issues.

Ms. Robinson: Are you talking about this year?

Mr. Brown: In 2002.

Ms. Robinson: Okay

Mr. Brown: In 2002 I see this letter and I assume it's in the Planning Board's records.

Ms. Robinson: It must be I'm sure.

Mr. Brown: He says "as you know the contractor began work on this project in July but had to cease work upon my recommendation until these redesign issues are resolved. The owner and contractor are anxious to move forward again before winter weather approaches and therefor completion of the recommended design plan and approval should be expedited as soon as possible. This issue went before the Board and Apple engineers redesigned in accordance to Mr. Graham's recommendations. Then in October Mr. Graham wrote to the Board "I have received and reviewed revised (9/23/02) subdivision plans from Apple Associates, Inc. The minor horizontal and vertical road alignment changes shown thereon are acceptable and the Board has previously authorized, in concept, changes of this nature providing the road remains with the right-of-way.

The Developer is reminded, however, that he and his contractor are expected to construct the roadway within reasonable (field) compliance with these revised plans unless further revisions are reviewed and approved."

So on October 4th he gets the go ahead to get going but now we're coming into winter months and a certain kind of construction just isn't going to happen in the winter months. So at least from July to October you have 4 months of delay. Now I was at, it might have been the last meeting, when your Chairman reminded the Board – the Chairman of this Planning Board said "we stopped - this Planning Board stopped construction." And there was some argument about that. I don't think all of the members were in agreement but the Chairman of the Planning Board was stating emphatically that this Planning Board stopped Mr. VanWyck's road construction because they wanted to work out the design issues. Now I suppose at that time Mr. VanWyck's remedy would be to seek a contempt

order of the court but he worked with the Planning Board at that time. But certainly, much of this delay or significant delay of the construction of the road was because Mr. VanWyck stopped the Planning Board's request or the Planning Board appointed representative's request and to say now that he's not allowed any leeway with I think and ofcourse I may have a different opinion of this but I think that a judge is going to find that to be I think, somewhat in bad faith and that this Board certainly runs the risk of having by ignoring or stopping Mr VanWyck – if you ignore that you run the risk certainly the Court consecrating that certainly there is a willful kind of contempt going on with -

Ms. Robinson: Thank you. Do you have anything else to say on behalf of your client about what sort of length of time would be required for finishing the road?

Mr. Brown: The road is complete now. To the best of my knowledge the road is complete except for....

Ms. Robinson: But last time there was no electricity. It seems that curbing has been put in since we met last – 2 weeks ago.

Mr. Brown: Well, Mr. Graham made a recommendation that the electricity not be installed until the house plans are approved.

Ms. Robinson: Well that's really not his per view. He can make a recommendation but we don't consider it completed until the utilities are installed and that's across the board. It has nothing to do with who the applicant is or what the is so in the interest of talking realistically, do you have some kind of time frame in mind for when the road might be completed including the utilities?

Mr. Burnham: Can I ask a question?

Ms. Robinson: No. I want to see if there is an answer to my question.

Mr. Burnham: It relates to your question because why are we here? Are we here negotiating an extension or are we here rescinding as advertised?

Ms. Robinson: We're here to get some facts and evidence as to whether permission should be rescinded. He's making progress on the road so if he were to continue, how long would it take is my question?

Mr. Brown: Okay. Did the Board receive the June 9th letter from Mr. Graham?

Ms. Robinson: Yes. Doe everyone have a copy of this letter from Larry Graham? It says the road is all finishedThere's been a lot more progress since the last meeting.

Mr. Brown: When will the utilities be in?

Mr. VanWyck: They'll be done unless we decide on the houses in the rotation...

Mr. Burnham: Scottie – Can I point out one thing? He came in for Form A to commence redesigning so he could come up with the final project. He was informed at the time that we wouldn't allow him to do a form A and re-cut any lots until the road is done. So we're holding him – he can't really put the electricity in a legitimate manner until he finds out where the houses are going to be.

Ms. Robinson: I disagree with that. That isn't a problem at all. If he wants to do a design that he wants approved then he'll have to do it later. He has an approved subdivision with 5 lots and the most he can put on is 3 houses on each lot.

Mr. St. John: Is it reasonable to make a suggestion? Peter, put the conduit in. Put a couple of handles in. Cover it over. You don't have to put the feeders in. Doesn't it make sense? You've done the work. Until you finish negotiations with the utilities...

Ms. Robinson: Is that a problem Peter?

Mr. VanWyck: It's more than just putting conduit in. You've gotta have boxes where you want the step-ups so you can basically – I was offering the Planning Board a more imaginative use of the land.

Ms. Robinson: You've presented us with an informal proposal that we told you we couldn't consider because it doesn't conform to land use regs in this town and we can't do anything for you on that score. You have an approved subdivision plan with a certain number of lots multiplied by 3. That's how many houses you can put on it. If you don't want to build that one, then come in with a modification to your subdivision plan. You decline to do that. That's the most we can do for you at this point.

Mr. VanWyck: That's true.

Mr. Brown: We can put the electrical in. The only thing that we would have to schedule for electricity is with Mass Electric. That's a relatively simple procedure. It's not a very deep trench.

Mr. VanWyck: What do you want to do about the gas?

Ms. Robinson: What gas?

Mr. Burnham: There was no gas listed on the plan.

Mr. Brown: The only thing left to be done is the electrical and it's a small trench.

Ms. Robinson: Then what's the problem?

Mr. Brown: There is none. There is no problem at this time.

Mr. St. John: It's just conduit. Spell it out.

Ms. Robinson: From one end of the street to the other.

Mr. Brown: Then we can run off electrical lines to the feeders.

Ms. Robinson: Yes, because we know he's going to run stuff off the end.

Mr. Burnham: I would suggest running at least down to the main piece of the property. Legitimately Peter, you can't drag the electric lines down until you know what kind of lead you're going to carry.

Ms. Robinson: You can either build it to the plan that's approved or you can leave it empty and try to modify the plan and get approval for your other alter plan but we can't act on it now. That's what's holding us up. You're saying you don't know what you're going to build and we're saying you have approval for one thing and not the other.

Mr. Burnham: Can I ask one question of the entire Board here? Let's say for instance if Peter runs the electric conduit the length of the road are we going to accept the road as completed with the exception of the final coat and obviously some other work that need to be completed? Tradition holds that we allow work to continue well beyond for the heavy construction time before we put the finish coat on or are we going to go around in circles stating that the road isn't done because the finish coat is not on?

(A question from Mr. Fitzgibbon about the final asphalt coat)

Ms. Robinson: What Westley is referring to is the fact that even after we've let the first coat sit for a winter, many times in this town it has been the tradition that the developer doesn't put the finish coat on until the construction is finished. I would argue that that's not a good idea because I live in an area where there's a lot of traffic on an unfinished road that's been that way for a lot of years and all it does is fall apart. But that's something for the whole Board to consider.

Mr. Burnham; That's why construction standards have changed so much over the last 10 or 15 years.

Mr. St. John: Are you suggesting that the base coat is now adequate to withstand years of construction travel?

Mr. Burnham: Much the same as we did on Turtleback Road, much the same as we've done on others is let the builders go in, let the concrete trucks go in and out, let the excavators go in and out on the rough coat. When the heavy construction is completed we hold a Performance Guarantee, we're already holding \$26,000.00 of his money on Turtleback right now until most of the heavy construction is done so we don't wreck the road for people that are moving in.

Mr. Lane: We need a date on it.

Mr. Cataldo: We've been holding that money for how long?

Mr. Burnham: First off we're still holding his cash so if he wants his cash back.....

Ms. Robinson: That's not the point. The point is people are traveling on roads that are far from regular standards for years and years and years.

Mr. Burnham: Another option would be, it depends a lot on what kind of project he's going to put in. If he's going to build 5 houses I'd expect a year to 2 years, we're going to hold it for a year anyway. But a couple of years he should be nearing completion. Most of the heavy loads are done.

Ms. Robinson: Take a look at Turtleback Road extension then maybe you'd be surprised. That road is not done and it's the same situation. But that's not for us to argue now.

Mr. Burnham: No. The point I'm trying to get to is if we're not going to declare the road complete holding the escrow then he still can't come back and perform his Form A so he can finish the thing. In other works we've got to come up with an end point somewhere and if we agree that the lack of final coat and an escrow account...

Ms. Robinson: I think this is a discussion for us as a Board and not for a Public Hearing.

Mr. Burnham: I'm trying to figure out where we're going so they can get some direction.

Ms. Robinson: We're not here to give direction. We're here to collect facts so we can consider whether or not we want to rescind the approval of the subdivision.

Mr. Burnham: I thought we moved into a negotiation stage here for a while.

Ms. Robinson: I wanted to get an idea – I asked Mr. VanWyck several times last time if there was a time period you can tell me when you can complete the road and got nothing. Now I'm hearing "yes – we can put in the conduit easily." I'm not going to negotiate when to put that binder coat on.
Anyone else have any comments or questions?

Ms. Greenbaum: I'd just like to emphasize that I think you're heading in the right direction. You need to be very definitive about the time frame that you're going to set here and what the deadlines are and perhaps indicate what the consequences are if the deadlines are not met.

Mr. Burnham: Mr. Hildonen, at the last meeting asked about the drainage change. I spoke to Larry and Larry in fact authorized that because he felt it was in the interest of Mr. Hildonen.

Ms. Robinson: Are you talking about the detention pond?

Mr. Burnham: Not the detention pond. Just the outlet where the pipe goes across the road. He felt it was a better location based on the actual grades. It sounded like basically, to keep a stagnant pond from existing. So that was authorized. I wasn't particularly aware of it but it would fall under the category of a minor modification.

Mr. Hildonen: My only question to that is Larry told me personally that with the new grading of the lot behind me where the retention pond was, it was all changed and graded to slope towards my property now and he said he was not going to okay that but if you people meaning the Planning Board okayed that it was fine by him.

Ms. Robinson: It is not okay by us.

Mr. Burnham: First off there is a plan to fill that we refused. In other words the retention pond was going to go away or shrink drastically....

Mr. Hildonen: It was all done in March the way it was supposed to be done according the '95 plan. But it was revised and changed and the detention pond was removed and they filled it and made the land slope towards me or run towards me to go into a drain area.

Mr. Burnham: What do you mean there's no detention pond there?

Ms. Robinson: It means it's not there. There's a hill that goes towards Kenny's house. That's what's there.

Mr. Burnham: I'll have to consult with Larry a little more on that one.

Mr. Hildonen: Once they're working there's no questionable argument there. The only thing that I was concerned about was Mr. Graham said he was not going to okay the way the land was structured. The whole lot, the whole back yard is slanted toward my property.

Mr. Burnham: I didn't get that out of the last meeting. All I got was where the pipe crossed the road it shifted 40 or 50 feet. So let me investigate that a little more.

Ms. Frye: Just based on what I tried to say last week was when you said everything was just the way it was on the plan. There was a detention pond. In the beginning you could see it. And then it was filled in. That's what I'm saying – it always changes. I would look at the whole thing for changes.

Mr. Burnham: There have been some substantial changes to the reconstruction through the whole process. There are no two ways about it.

Ms. Robinson: We're not aware that the pond was done away with.

Mr. Burnham: That's what I have to find out about because he was given specific guidance that the detention pond was not to be removed. There was some talk about filling it in. But I have to find out from Larry what the issue is. I'll follow up with him next week.

Ms. Robinson: Anyone have any other questions or comments?

Mr. VanWyck: I want to just make sure about the conduit. Now you want conduit to the end of the street. And just bury it?

Ms. Robinson: And the remaining items on Larry's checklist. I'm not saying just put in the conduit. We're saying finish the road including the electrical conduit.

Mr. Cataldo: Larry as our clerk, we've got a letter that was given to us dated June 9th, I assume was the most recent correspondence? There is a checklist of things that need to be done.

Mr. St. John: Let's go right through it to eliminate any questions.

#1 Finished loam and seed.

#2 Underground electrical – that's the conduit.

#4 Sloped granite curbing must be installed now.

#5 Paved gutter and additional sloped granite edging must be in.

#6 Drainage system must be done. Now this strikes me that this could have some effect on this detention pond that we're talking about because all pipes and structures should be cleaned and the drainage system put into full operation with appropriate siltation control in place until all disturbed area in the contributing drainage area have been stabilized. So we're going to check that out.

Mr. Burnham: I rode down today all catch basins and drain manholes have been raised.

Mr. St. John: And the plan should include the finish grading and swale in the Proposed (Detention) Basin Area. So that's been changed.

Mr. Burnham: That's the As-Built Plan.

Mr. St. John: Fine. It says this plan should include finished grading and swale etc. So we've got to find out what's going on there.

Mr. Burnham: One possibility that I can think of with that detention basin, we raised the entire road altitude shifted about a foot and a half from the original one. That may have something to do with what's going on. I will follow up.

Ms. Robinson: And I'd like to follow up on something that was raised at the last Public Hearing. We had some discussion about whether or not here was a proposal from Mr. VanWyck in front of the Zoning Board of Appeals and whether or not our deliberations were holding them up. I have received a letter from the Chairman of the ZBA and it states

that there is currently no applications from Mr. VanWyck before the Board and that Mr. VanWyck withdrew his original application. I don't have a copy – I just received it this afternoon but I will get a copy for you.

Ms. Robinson: Anything else? Any other comments? Questions?

Mr. Hildonen: Do you know if the gas line coming in later is going to be a problem or do you look at that later?

Mr. St.John: It's not part of any design now but you can put in a gas line at any point that you want. You require a building permit to do it.

Ms. Robinson: It's not part of the approved plan.

Mr. Brown: Is the Board aware that many of these things were redone in the last couple of days?

Mr. St.John: Yes. The next step is for you to do is an As Built. Produce an As Built showing the things we discussed in #1,4,5, and 6.

Mr. Burnham: The As Built is delivered to us when we sign off and release. Larry wanted included in the As Built a Progress As Built.

Ms. Robinson: There's a lot been going on in the last five weeks and I guess he wants to see where the stuff is. Peter, did you want to ask something else of us?

Mr. VanWyck: I asked you a question whether or not you wanted an update on what needs to be done. Is it correct that you want an As Built Plan?

Ms. Robinson: We want you to follow the list that Larry has written on June 9th and the last item on it is a Progress As Built Plan should be prepared and submitted for review when you complete the work above. You're saying some of this stuff has already been done so when it's done – that's what we're all after. We want the road done – that's the whole point of putting an end date on it.

Mr. Brown: That's simple enough. He wants an interim As Built Plan.

Mr. Burnham: There have been some substantial changes...

Mr. Brown: That sounds completely reasonable. We can do that. Can we come back in 60 days with that?

Mr. Burnham: Has Larry been over to inspect the curbing yet?

Mr. VanWyck: He was there yesterday.

Mr. Burnham: He knew a couple of days ago that it was going in. I just wanted to be sure.

Ms. Robinson: we're not prepared to agree that you can come back in 60 days. Because we still have to deliberate on the information that we collected at this hearing but yes, it sounds like a reasonable plan for us to consider. And we would like to be reasonable.

Mr. St.John: If we have the As Build of we're speaking at our next meeting, we should be able to wrap it up. We'll have your information. We'll find out about the detention basin and should be able to wrap it up assuming you have the plan.

Mr. Brown: When is your next meeting?

Mr. St.John: The first Wednesday in September.

Ms. Robinson: If there are no more comments or questions, I will declare this Public Hearing closed.

Mr. Burnham: I move to close the Public Hearing.

Mr. St.John: I second it.

The motion passed unanimously. The meeting was closed at 8:40 p.m.

Mr. VanWyck: I have a question. What do you want to do about Turtleback Road?

Ms. Robinson: We don't want to talk to you about it now. We have a lot of other business. You said you were going to come in with new linen with some changed lot lines and apply for ANR. When you want to do that let us know and we'll put you on the agenda.

Ms. Robinson reminded everyone that Sam Cleaves is coming in on September 17 to discuss the housing forum coming up on October 28th. She asked everyone to think of suggestions for him.

The Board decided to wait a bit longer to hear from those contacted about outstanding subdivisions. Mr. VanWyck was asked about his Turtleback Road subdivision and he said he would like to delay the final asphalt for another year because he needs to dig up the street. He said he could not guarantee the Board that he won't have to dig up the road in the future. Mr. Graham will be asked for his opinion.

Discussion of the Lowland Farms rescission of Approval.

Motion by Andrew St. John: I move to consider the Lowland Farms subdivision road as complete for purposes of the Agreement for Judgement dated February 21, 2001 contingent on completion of items 1,2,4,5,6,and 7 of Mr. Graham's letter of June 9, 2003. Item 2 to be considered completed with the installation of conduit only to the end of the road. Expectation is these items will be completed by December 31, 2003 without any


further action relative to the expired completion date by either party. All remaining work will be performed in accordance with the requirements of the subdivision rules and regulations of the Town of Essex. Final completion in accordance with subdivision rules and regulations shall be completed by March 31, 2005.


The motion was seconded by Westley Burnham and the vote was unanimously in favor.

The July 23rd meeting minutes were amended.

A motion to adjourn was made at 9:45 p.m. by Andrew St.John and seconded by Jud Lane.

The next meeting is scheduled for Wednesday September 3, to be held at the Essex/Manchester Elementary/Middle School on Story Street commencing at 7:30 p.m.

Presented by: 
Sandra J.M. Ginn, Administrative Assistant

Attested to: 
Rob Fitzgibbon, Clerk

Town of Essex Planning Board
Minutes – Draft
Wednesday October 15, 2003

Members present: Scottie Robinson, Rob Fitzgibbon, Mike Cataldo, Jud Lane
Building Inspector: Bill Sanborn
Secretary: Sandy Ginn

The meeting was called to order at 7:30 pm by Scottie Robinson Chairperson.

Building Inspector: A building permit was issued for a new home at 16 Turtleback Road for Robert Matiacki. The plan had approval from the Board of Health and the Conservation Commission. The permit was granted for a 4 bedroom house with an unfinished attic.

Motion: Jud Lane made a motion to approve the application of Robert Matiacki for 16 Turtleback Road, map #9, lot #11 for a single family residence as it appears to meet all the Essex rules and regulations.

The motion was seconded by Mike Cataldo and passed unanimously.

Sam Cleaves from MAPC came in for a discussion on the housing forum which had to be moved to a different date (December 17th). Some of the suggestions for the forum from the Board members were zoning, town owned land for affordable housing, 40B and linkage, and the sewer agreement with Gloucester. (Andrew St. John arrived at 8:20pm)

Turning Leaf Farm/ 2 Andrews Street: Margo Kusulas applied for a special permit to build a barn and riding arena. A public hearing is scheduled for November 19th at 8pm.

Planning Board Business: Apple Associates asked for a minor modification concerning Arielle Lane and was denied permission to eliminate the granite curbing. The Essex DPW recommended that bituminous curbs not be used. *berm*

Motion: Mike Cataldo made a motion to deny the request to substitute the granite curbing on the subdivision plan that has already been approved.

The motion was seconded by Rob Fitzgibbon and passed unanimously.

Acting as Clerk of the Works, Larry Graham of Graham Associates sent several letters:

Joan Bucklin – The bounds have been set but the driveway still has a drainage problem. He recommended releasing the money for the boundaries but not the driveway.

Liberty Road – Graham recommended the funds be released for this subdivision as it is in good order with the exception of a STOP sign at the end of the street. Rob Fitzgibbon will speak with the DPW and find out who is responsible for the sign.

Turtleback Road – The Board gave Mr. VanWyck a date of May 31, 2004 to have the final paving completed on the recommendation of Graham.

Lowland Farm – Status report. An updated as built is needed from the developer. Mass Electric can now install underground conduit.

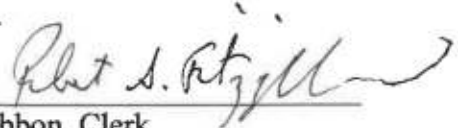
Memo from Brendan Zubricki: In order for the Town to receive a discount on the Liability Insurance a member of the Planning Board would have to attend courses to attain certification in “How to Hold the Perfect Public Hearing, Roles and Responsibilities of Zoning and Planning Boards, Writing Reasonable and Defensible Decisions”. It was determined that the travel time was too much.

Interviews: Discussion of how to interview prospective new secretary.
The minutes of the October 1, 2003 were accepted as amended.

Mike Cataldo made a motion to adjourn the meeting at 10:00pm.
It was seconded by Jud Lane and passed unanimously.

Presented by: _____
Sandy Ginn, Administrative Assistant

Attested to: _____
Rob Fitzgibbon, Clerk



Planning Board, Town of Essex
October 1, 2003

Present: Rob Fitzgibbon, Jud Lane, Mike Cataldo, Betsy Shields, Andrew St. John, Scottie Robinson
Absent: Westley Burnham, secretary
Building Inspector: Bill Sanborn
Meeting was called to order at 7:40

Building Insp. Report;

James Richardson, 30 Island Road, Map 22 Lot 13A submitted a request for permission to site a single family home on 30 acres with conservation restriction attached. Sign offs from Con. Comm., BOH, DPW are present. In addition, The Trustees of Reservations signed off on the plan. Much of the property is deeded for no development, under a conservation restriction.

Andrew St. John made a motion to approve the application for a building permit for a single family residence as it meets the requirements outlined in Town of Essex bylaws. Motion was seconded and passed unanimously by those present.

Scottie had been contacted by **Joanne Jordan**, who is in the process of building on a Western Avenue lot. Joanne wanted to know whether she may build a 5 ft. covered porch and steps on the front of the house, with the front foundation sitting at the 25 ft. required setback for the front yard. The Building Inspector and Planning Board members agreed, the 25 ft. setback is for all construction of the building and she may not invade that perimeter with a porch and steps.

Michelle Kempinski telephoned to ask that the Town's engineer be sent to review the boundary markers on the **Bucklin subdivision** so her bond for that work may be released to her.

Robert Bradley asked that the **Liberty Road subdivision** be given a final inspection by the Town's engineer for purposes of finishing all work and clearing the account held by the Town. It was noted that easement and right of way issues should be double checked before it is settled.

The Building Inspector announced that Bill Allen's barn has been determined to be unsafe.

Consideration of comprehensive changes to special permits—see 2 page drafts circulated at last meeting for this discussion. PLEASE ATTACH.

The Building Inspector recommended taking Appendix B (Special Permit application procedures) out of the bylaws and inserting them instead into Planning Board regulations. It was agreed to **delete 4. School Impact** entirely.

Betsy Shields will circulate these draft changes to other boards for their input, and will further research the process for changing Appendix B.

Mike Cataldo led a discussion of **Turtle Back Road extension paving**. Scottie Robinson recused herself as an abutter within 300 feet of the project.

The agreement for Judgment now in effect calls for the subdivision road's completion by September 2002. The Board voted to have Mike draft a letter referencing Larry Graham's (forthcoming) punch list to Peter Van Wyck, with May 30, 2004 as the deadline for completion.

Scottie returned as Chairperson.

September 17th minutes were approved with amendments.

The Chair notified Board members of one applicant for the open Board Secretary position. She circulated the application and asked members to send her questions to be asked of all interviewees for the job. It was agreed an ad should be placed in the GDTimes next week and the Board will conduct interviews shortly thereafter.

The meeting was adjourned.

Presented by:

Scottie Robinson
Scottie Robinson, Chairperson

Attested to:

Rob Fitzgibbon
Rob Fitzgibbon, Clerk

**Town of Essex Planning Board
Minutes
Wednesday September 17, 2003**

The meeting was held at the Essex/Manchester Elementary/Middle School on Story Street. It was called to order at 7:30 by Scottie Robinson, Chairperson.

Members present: Westley Burnham, Andrew St. John, Betsy Shields, Mike Cataldo, Jud Lane.

Absent: Rob Fitzgibbon

Building Inspector: Bill Sanborn

Secretary: Sandy Ginn

Building Inspector's Report:

Georgolakos/ 34 Belcher Street

It was agreed that the plan for this one story guest house on a 40 acre lot already having one single family residence is fine. ~~It was~~ It was suggested that access to their swimming pool be maintained in case the Essex Fire Department needs to get to it as this property is located at least ¼ mile from the nearest fire hydrant.

Motion: Mike Cataldo made a motion to approve the application of Jim and Chris Georgolakos, 34 Belcher Street, for construction of a second single family home on map #13, lot #2 finding that it meets all of the requirements for the Town of Essex bylaws. The motion was seconded by Westley Burnham and passed unanimously by the Board.

Innovative Properties/Shea Court

Map #8, lot #10C. Finding there was no conservation concern on this lot, this is the third application for a single family dwelling on the approved subdivision.

Motion: Andrew St. John moved to approve the application for a building permit for Shea Court, map #8 lot #10C for a single family house finding that it meets all the Town of Essex zoning bylaws.

The motion was seconded by Jud Lane and passed unanimously by the Board.

8:00 pm/Damon Boutchie/DPW

Mr. Boutchie presented new EPA permitting requirements for stormwater permits for anyone developing a site with more than one acre. The Conservation Commission would be the primary enforcer but all boards should be in compliance. These requirements have been in effect since March of 2003. Street flow is preferred to stormdrain directed flow. Catch basins are a last resort.

8:30 pm/Jim Wilson/41 Choate Street

Mr. Wilson presented the Board with a Form A to change his lot lines. He was given one acre by his mother which abuts his present land.

Motion: Westley Burnham moved to approve the ANR for James Wilson and Louise Wilson of 41 and 37 Choate Street, plan of land dated August 25, 2003 as drawn by Thomas Neve Associates of Topsfield Massachusetts to change lot lines as it meets minimum requirements for the Town of Essex bylaws.

The motion was seconded by Mike Cataldo and passed unanimously by the Board.

Planning Board Business: Westley Burnham will follow up with the engineers for Joan Bucklin's subdivision.

Scottie Robinson presented a job description for a new secretary for the Planning Board. The Chairperson presented a CD from Green Neighbors and Mass Audobon called "Open Space Residential Design" that she offered to the Board.


Betsy Shields reported that in order to change requirements for special permit applications the Board needs only to file the new requirements with the Town Clerk. She will present a comprehensive list for consideration at the next meeting.

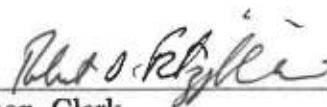
Mike Cataldo brought up the question of paving Turtleback Road. It was agreed to ask Larry Graham for guidance as to placing a time limit on the paving.

Westly Burnham discussed the "mixed use issue" under special permits. The discussion will continue at the next meeting.

Andrew St. John made a motion to adjourn at 9:15 pm. It was seconded by Mike Cataldo.

The next meeting will be held on October 1, 2003 at the Essex/Manchester Elementary/Middle School on Story Street at 7:30 pm.

Presented by: 
Sandra J.M. Ginn, Administrative Assistant

Attested to: 
Rob Fitzgibbon, Clerk

**Town of Essex Planning Board
Minutes
Wednesday November 5, 2003
7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School in Essex and was called to order at 7:30 p.m. by Scottie Robinson, Chair.

Attendees: Westley Burnham, Scottie Robinson, Rob Fitzgibbon, Betsy Shields, Andrew St. John
Absent: Michael Cataldo, Jud Lane
Building Inspector: Bill Sanborn.
Secretary: Lorie Woodward

Building Inspector's Report

Tara Road / Jonathan & Claire Spofford / Building Permit

Betsy Shields recused herself from the discussion, as an abutter to the property. Jeff Allsopp architect for the Spoffords appeared before Board. In addition to the building permit request the applicant is requesting permission to modify the previously approved subdivision road. The modification included a reducing the hammer head by 15 ft. and softening the curve of the road easement. The Board found the modification to be minor in nature.

Motion: Andrew St. John moves to approve the revised subdivision plan for Tara Road by Neponsit Valley Survey Associates, dated 11/1/03 finding that the changes indicated are minor in nature, softening of the curve of the roadway and reducing the hammer head of the roadway by approximately 15 ft.

The motion was seconded by Rob Fitzgibbon and was passed unanimously by the voting members..

Motion: Rob Fitzgibbon moves to approve the building siting for Jonathan and Claire Spofford, Tara Road, lot 7B map 9, for a new 1 family residence, 4450 sq. ft., 3 story, finding that it meets all the minimum requirements of the Essex Bylaws.

The motion was seconded by Andrew St. John and was passed unanimously by the voting members.

Brief discussion of the performance guarantee. The Board requested that the Building Inspector issue a foundation only Building Permit until the performance guarantee has been satisfied. The engineer will drop off 5 signed copies of the modified subdivision for distribution by the Planning Board Secretary.

Betsy Shields rejoined the discussion.

18 Lufkin Point Road / Nick Pappas / Building Permit Request

The applicant is requesting a permit to demolish the existing structure and build a new dwelling. The proposed dwelling is under the 25% lot coverage requirement, the Board roughly computed the footprint to be less than 2525 sq. ft. Board of Health approval has been received. Wally Bruce of the Conservation Commission informed the Board that their preliminary review had found no direct violation, but they do have some concerns. The proposed structure is within the area of critical concern.

John and Patricia Divlasi 22 Lufkin Point Road: Concerned about the square footage covered by the proposed structure being in excess of 2800 sq. ft. They also provided pictures taken during different storms. Concerned about breakaway panels shifting flood waters into their basement.

Don Burnham, 26 Lufkin Point Road: Mr. Burnham questioned the criteria for Planning Board approval. Concerned about tight tank underneath the structure, flooding, increased usage, and the lot is non-conforming. Concerned about the road access during the demolition and construction for other residents using the road.

The Board agreed to visit the site separately before the next meeting in order to make a more informed decision. The Board postponed any finding until the next meeting 11/19/03.

35 Rocky Hill Road / Mark Minkin / Request for a Building Permit

No finding was required by the Board.

ANR | Harlow St

Bill Sanborn presented plans which add 2 lot lines not in Essex. This subdivision was approved by Gloucester and Essex and divided up 3 other lots. The Board signed the original subdivision plans. Mr. Sanborn will supply the mylar signed by Gloucester at the next meeting to get the signatures of the Essex Planning Board. The Mr. Sanborn will provide a check at the next meeting.

Motion: Westley Burnham moves that the Board approve the ANR requested by the Bill Sanborn.

The motion was seconded by Andrew St. John and passed unanimously.

Water Resource Protection District Bylaw

Damon Boutchie of the Water Department attended the meeting to discuss the proposed Bylaw. Discussion of changes to model bylaw should be run by DEP and Town Counsel. Discussion of handing the WRPD bylaw enforcement off to the Board of Health. The Board of Health has more enforcement capability, and a better understanding of the issues. The Planning Board would still hold the Public Hearing in conjunction with the Board of Health and the Planning Board would be the granting authority. The DPW currently works well with the BOH in many other areas.

Planning Board Secretary Position

The Board discussed applicants, and met with one of the most qualified for the position. Joanne Jacobsen met with the Board and confirmed her availability to work several hours a week in the office and Wednesday night meetings. She was also informed that occasionally due to Public Hearings for Special Permits extra hours maybe required for time sensitive deadlines. In addition the keeping of minutes from meetings is required, and disbursement of minutes in a timely manner, within 1 of 2 days of the meeting. The Chairman may change each year. She will not be available the December 3 meeting. Joanne has worked for the telephone company for 15 plus years, is very professional and has experience dealing with people. She is currently a real estate appraiser and has knowledge of the area and term used by the Planning Board.

Andrew St. John recommended Jenny Connors, who he had interviewed. Her resume is on file.

The Board agreed to offer the job to Joanne Jacobsen.

Liberty Road

Discussion of process for releasing funds held in escrow for the completion of the road. Larry Graham has sent a letter informing the Board that the road is complete and in good order, letter

dated October 14, 2003. The Board will need a copy of the maintenance agreement before releasing the funds.

Motion: Westley Burnham moves that the Board release the funds being held in escrow for a performance guaranty on Liberty Road subdivision based on Larry Graham's final analysis that the road has been completed to his satisfaction and in accordance with the approved plan, money to be released subject to confirmation that Larry Graham's fees are paid up too date and receipt of a copy of the maintenance agree associated with Liberty Road.

The motion was seconded by Betsy Shields and passed unanimously by those members present.

Low Land Farms

Discussion of the utilities required for the road by the approved subdivision plan. Westley Burnham spoke to Mass Electric, at Mr. Van Wyck' request, with regard what they will put in for utilities at this time. Other members of the Board thought this was inappropriate and felt that Mr. Van Wyck should address the Board on his own behalf in the future.

Minutes

Motion: Betsy Shields moves to approve the minutes of October 15, 2003 as amended. The motion was seconded by Andrew St. John and passed unanimously.

Motion: Andrew St. John moves to adjourn the meeting.

The motion was seconded by Betsy Shiels and passed unanimously by those members present.

The next meeting is scheduled for Wednesday, November 19, 2003, commencing at 7:30 p.m.

Presented by: Lorie Woodward
Lorie Woodward, Admin. Assistant

Attested to: Rob Fitzgibbon
Rob Fitzgibbon, Clerk

Town of Essex Planning Board
Minutes
Wednesday, November 19, 2003
7:30 p.m.

The meeting was held at the Essex Elementary/Middle School in Essex and was called to order at 7:30 p.m. by Susan (Scottie) Robinson, Chair.

Attendees: Westley Burnham, Scottie Robinson, Rob Fitzgibbons, Betsy Shields, Andrew St. John, Michael Cataldo and Jud Lane

Building Inspector: Bill Sanborn

Secretary: Lori Woodward, Joanne Jacobsen

Building Inspector's Report:

180 Southern Ave/ John Filias

Mr. Sanborn's summary: Owner John Filias requests permission to build a garage on his property. Purpose is to house his construction equipment and vehicles and for storage. He has submitted a site plan and proposed building plans for a 2,400 sf garage. Planning Board (SR) asked if there would be a "change in use" for the property from residence to business and if his business would be based at that location, asked if there were more than 2 employees. Mr. Filias said it would be used as a mixed use property. Mr. Sanborn commented that he went before the Planning Board last March with the mixed use proposal and believed that it had already been agreed upon by the Planning Board at that time. Discussion ensued by members of the Planning Board regarding the interpretation of the existing laws regarding business uses in residential zoned property. Comments from Planning Board:

(WB) can they appropriate enough land to house both a business and a residence?

(ASJ) what type of access does he have to the land? (SR) read a letter from Southern Avenue neighbors Sara Caviston regarding Filias' driveway being an easement over her property and her concern about possible damage to the road. Board agrees that that is a civil matter between neighbors. Mr. Filias stated that he had researched the easement.

Planning Board (MC) stated that this matter is not one of access but of granting a permit for business use. Planning Board (SR) stated bylaws did not allow business use on residential property. (WB) stated that the town does not have anything that regulates or limits such use. Planning Board members discussed the issue of mixed use. Comment from Building Inspector that the property has formerly been used as a farm/business.

Planning Board (ASJ) moves to continue the discussion to a later date. (WB) stated PB will have 14 days to make a decision. Mr. Filias stated that his attorney's opinion that there was no law against his proposed use of his property.

Motion: Scottie Robinson moved to continue to next Planning Board meeting.

Motion seconded.

Proposal continued to December 3

Motion brought by Westley Burnham:

I move to approve the permit for Nick Pappas of 18 Lufkin Point Road for the reconstruction of an existing residence to a new single family residence, finding that it meets all the required set backs and by-laws with the exception of the land area. It is a pre-existing buildable lot. And the Board finds the new use will not be substantially more detrimental than the existing use to the neighborhood.

Motion was second by ASTJ.

The vote was unanimously in favor.

Motion passed.

Chair asked if Mr. Filius would meet to continue the discussion on this building permit on December 3rd. He agreed.

Public Hearing:

2 Andrews Street/ Margo Kusulas

Request presented for permission of add new house, horse barn, and outdoor arena.

Site plan review for special permit. Permit required due to size of proposed buildings, including 7 parking spaces and additional utilities.

Question from Bruce Fortier: cited state law concerning agriculture --- Section 40A, Section 3: special permit is not required for agricultural use of land. Question is in this case: is the owner engaged in agriculture or recreational use or business use?

Board Chair (SR): not aware of that law, will consult with town council.

Sheldon Pennoyer, the land owner's architect, presented site plan and engineering plans by Larry Graham; requirements meet Section 6-6-12.1

Discussion on site plan:

Mr. Pennoyer has taken great care to minimize the visual impact from the street by placing the new buildings behind the existing buildings: to preserve the land sway; 200 ft set-back to be maintained; new buildings to be shingled with painted trim to conform to the style of the existing dwelling. Re: stable and arena, building will be parallel to each other; stable will block arena from sight. The stable will block the arena from sight. Arena will be 80' x 60', the stable will be 100' x 144', hiding roof view and will be hidden from Andrews Street; 2 courtyards will be added for parking. Mr. Pennoyer presented animated computer presentation of a drive-by of the property.

Mr. Pennoyer has worked with the Trustees and Tom Noble from Horsley & Whitten, regarding issues related to wildlife habitat and the nitrogen run-off. Septic system has a 570 gallon per day capacity, cistern has 12,000 gallons for irrigation purposed.

Proposed dimensions of the building:

Stable will have 6,576 sf

Arena will have 13,840 sf

Equipment building will have 1,152 sf

Total sf = 21,568

Regarding the heights of the arena and stable: has an actual height of 32 ft to the ridge, but using the Town by-laws Section 6, 3.9, it calculates to 21ft, 3inches, not including the cupola (not required by bylaws).

Board asked if plans had been submitted and Mr. Pennoyer said Larry Graham (LG) has submitted the engineering plans.

Bruce Fortier asked: what is the law cited for building restrictions?

Board Member WB cites bylaws concerning towers, cupolas, etc.

Board (WB) asked Wesley Ward, Chairman of the Trustees to comment:

Mr. Ward:

- Director of the land conservation
- Status of the proposal discussed
- The reason for the Trustees' involvement: Conservation restrictions held as set by Mrs. Bartlett in 1976
- Granted preliminary approval of general design and site plan of the project
- Trustees' approval is subject to environmental impact plan, not yet complete
- Proposed plan is designed to include plans:
 1. to maintain vegetative cover
 2. to maintain water conservation
 3. to monitor nitrogen run-off
 4. to provide screening from the road view
 5. to provide means for monitoring the performance of the ownership

Mr. Ward stated that it has conditionally been approved by all relevant State and municipal officials

Board asked are the Trustees going to be responsible for maintaining the environmental impact plan, how is the plan going to be monitored ?

Mr. Ward answered the owner is responsible, with monitoring provided by the Trustees.

Board (WB) agreed that it was not meant to be totally screened from street view, but to be maintained in a natural, rural, "Essex-like" fashion, with no formal plantings.

Mr. Ward: expressed concern about the visibility from the south and has not seen detailed landscaping plan.

Mr. Pennoyer said his plan is meant to be conceptual until the Board has approved the permit. They do have a landscape architect involved in the project.

Mr. Ward: concerned about the screening at the corner where Marlene Putnam's property lays.

ASTJ: asked if the trustees have been involved in managing any other plan such as this?

Mr. Ward: not to this extent

BS: asked if the property is sold, are the same conditions passed along to the new buyer?

Mr. Ward: yes

ASTJ: each year would there be an audit?

Mr. Ward: they plan to review the site more than once per year.

Mr. Fortier: do the Trustees have any question about the agricultural use of this property?

Mr. Ward: conservation committee concludes that the use of this property is of an agricultural nature.

Mr. Ward: using Chapter 16A under state law

AF: reading a letter from Ms. Kendall, asking about the conservation restrictions, preserving the present rural conditions. Asked how did the Trustees interpret a rural condition?

SR: clarifies that letter from the members of the Trustees and is addressed to the Trustees, not the Planning Board.

Mr. Ward: present term "rural condition" did give them some trouble but they were guided by competent council; in order to reach a compromise, there needed to be a range in the spectrum to meet those conditions and to apply a reasonable interpretation of the standards.

WB: conservation restrictions are not grounds for legitimate discussions.

SR: has considered this discussion useful, to understand what's going on; discussion is for informational purposes only.

ASTJ: discussion on improvements to the operation of the existing farm

Mr. Ward: farm was originally divided into 6 parcels, each parcel has some conservation restrictions.

Sam Hoar: what is PB going to do regarding site plan review? What is the impact to natural and historical esthetics of the site and features of the neighborhood of the proposed development in keeping with the neighborhood characteristics, safety and health of the area?

SR: the Planning Board has jurisdiction in reviewing site plan on the matters of vehicular and pedestrian movement in the site; we can look at the historical and natural and environmental features of the site under review and adjacent areas; we can ensure the placement of esthetics of the proposed development as a safe, healthy and in keeping with the neighborhood and community character, so as to avoid substantial detriment to the community and the neighborhood in general.

SH: is the PB aware that the plan was adopted by the Conservation Commission?

SR has jurisdiction on public safety, protection on

Mr. Hoar: plan has not gone before Conservation Committee

SR: yes, knows that it's not gone before CC, BP is the first pass in the project, and is awaiting comments from the other municipal boards

Mr. Hoar: have you considered legal issues with Andrews Street; regarding the width of the street; matters of public safety?

SR: yes will get comments from the owner regarding traffic issues.

Mr. Fortier: thinks this scope of project exceeds restrictions; questions agricultural use, citing state law 1-11, section 158 which says differences between stables and agriculture: may revoke usage as a stable as its considered pleasure, or is it a business use?

SR: Board should determine "usage"

SR: determined this plan is for breeding stable, not business

BF: expressing concern about usage; why has the Board not come to a conclusion?

MR. Pennoyer: reaffirms use as agricultural; barn is planned for 18 horses, for breeding and riding horses.

WB: if agricultural use: whole process is a mute issue

Maria Burnham: if use ceases to be agricultural in use, who sees that the buildings are removed?

SR: the buildings would probably not be removed; PB proceed on the assumption that it is agricultural in use and for lessons until they confer with town council

Jim Ansara: (an abutter) requests a definition of "raising horses and riding"

Board asked owner MM to define:

Ms. Kusulas: riding, training, giving lessons, raising horses and boarding horses. Superior Court of MA – Court of Appeals: wherein training & giving lessons were defined as "agricultural". The stable will have 18 stalls, 16 of which will be double wide for foaling

Someone from audience: are all lessons on site?

Ms. Kusulas: yes, there will be no trail riding

Audience: so no one will be leaving the property (during lessons)?

Ms. Kusulas: agreed: horses are not trained to be around cars and traffic.

Richard Trembowicz: what are the parking requirements; to apply parking standards:

Will the Town share in the legal analysis of this permit?

MC: yes, at the continuance

SR: will be addressed later

Jay Sweet: how do the Trustees plan to enforce the restrictions?

WW: the basic issue is run-off; this being of most interested will be monitored by testing on a regular basis; engineers proposed a regimen/ notice will be given; with a time period; many result in a reduction in of the number of horses or a fine; must have only 16 adult horses and 2 fozls; management plan has to define all rules & details and will have regular observations; to address the handling of manure and other waste

Planning Board: will the management plan be recorded with deed?

WW: yes, will be recorded with the deed.

MC: will there be a report?

WW: will be a report with approvals

Sam Hoar to WW: is WW aware that this is an area part of a larger conservation area?

WW: Con Com is aware of the conservation and riverfront areas and the protection of such.

Sam Hoar: and why did you approve it?

WW: Trustees have no say in the approval process; has voice in what is allowed to be moved and what will produce least impact to the area for maximum protection.

Sam Hoar: is the Board aware that plan is in violation of the Rivers Act?

WB: Board has no authority to enforce the Rivers Act

SR: wants to proceed with presentation

Larry Graham: change from last year's plan, with new proposal and new engineering plan:

- septic plan gone to Board of Health
- Planning Board should have a letter from the Board of Health
- 620 gallons per day is still in effect; acknowledges that change in the plan would have to be resubmitted to Board of Health
- Board of Health has not responded yet
- New plan has septic and pump chamber: previous plan used a gravity system with new septic tank & pump chamber
- New design plan calls for 570 gallons/day
- Reducing plan from 20 horses to 18 horses
- Run off will be used for irrigation with 3 - 4000 gallon cisterns to handle the run-off from the arena and barn roofs
- Also has designed a storm water management system
- Also catch basins will capture the run-off from the roofs, going into foundation drains
- Explaining in detail the drainage system run off to capture system with the site plan
- Has a capacity of 4000 gallon cistern which will fill with 1 inch of rain fall

- Will have well drilled near barn for the barn and the arena
- And will be additionally supported by town water
- With no cross flow from cistern and town systems

Regarding access from Andrews Street:

There will be 8 parking spaces with comfortable turning radiuses

ASTJ: can that be done if all spaces are filled.

LG: yes, though better if no one there

MC: can you/ how do you calculate turning radius?

LG: yes, they can calculate and then they may more selective in their need to change what, if any, tree or trees need to be removed.

SR: asked LG to explain the turning radius

LG: explains the traffic flow demonstrating on the site map

MC: question road surface

LG: road surface will be gravel

MC: any kind of drainage:

LG: yes, catch basins, he demonstrated their location on the site map

ASTJ: asking 1" of rain run off will fill all the catch basins?

LG: explained the design of the run-off into the infiltration system demonstrating on the site map

ASTJ: how much rain would it take to overwhelm the system?

LG: his design was calculated by using the 100 year storm hypothesis

MC: what purpose do the long walls on the property serve?

Mr. Pennoyer: they mark off the activities between the barns and arena areas

SR: is all the access from Andrews Street from one driveway?

LG: yes

MC: when you submitted the original plan, there was a detailed manure/waste management plan. Has that changed?

LG: not totally aware of previous manure management plan, but the new plan has incorporated a waste management.

MC: questioning the storage of manure and waste management plan.

Ms. Kasulos: manure will be stored until it's shipped out every couple of weeks to another farm that makes it into compost.

ASTJ: questioning the status of the overall waste management plan

Ms Kasulos: she has negotiated plans with the Trustees, discussed different plans, presented different calculations; explained the use design of paddocks, 1 will be rested, while others are used, allowing for rain days, no red flags on water conservation; no fertilizer to be used; will use a variety of feeds; fields will be used to grow feed; manure to be shipped out every couple of days by using a 6' x 10' trailer for storing the manure; manure will be stored in a shed that is 24 feet deep.

BS: will there be testing of the run-off?

Ms. Kusulas: yes, there will be testing of the run-off, particularly after it rains.

BS: questioning the water quantity/quality.

Ms. Kusulas: systems are maintenance free.

Larry Graham: regarding the quality – he has designed test plans and run tests; tested 4 times in the months of March & April, when there had been substantial rains, was

successful in 4 out of 6 samples, at brooks & catch basins (noting on the site map which brooks were tested), Horsley & Whitten requested to sample the bacteria which tested once over 200; others under 100, waters are clean now; will continue to monitor; 12,000 gallon cisterns are very rare and these testing procedures and results far exceed state standards; this means that the applicant has very tough standards to meet and maintain. He is confident that the quantity and quality far exceeds the storm water management policy. Re: water infiltration – not an issue.

BS: when you did the baseline test in March of 2003, were there 10 horses on site at that time?

Ms. Kusulas: yes, there were 10 horses

MC: are all the utilities going to be sub-surface?

LG: yes

SR: asks for a description of the typical traffic patterns

Ms. Kusulas: 2 - 3 times per week there will be hay, feed & shavings are transported in; 1 large truck 2-3 times per month; Saturday is the busiest day where 2-3 people per day is expected, with a maximum of 3-4 people daily, and not at the same time; she will be doing more training of horse than lessons.

SR: why will there be less traffic?

Ms. Kusulas: Because now we will have more storage and can have fewer, but larger supply deliveries.

ASTJ: so less truck traffic, and fewer lessons?

Ms. Kusulas: she will be doing more training, more boarding, with less owner involvement

Lessons are done in half hour to 1 hour increments and with more boarding, there will be less time for lessons. So traffic will probably not exceed what it is now.

SR: there exists a dicey traffic pattern on Andrews Street now because it's so narrow; how reasonable is it that truck drivers will be on definite schedules?

Ms. Kusulas: most truck drivers call ahead of time to make sure there's someone there; commercial truckers are very well trained and can maneuver professional

ASTJ: question- 10 horses now? How many are boarded?

Ms. Kusulas: 4 are boarded

ASTJ: then you'll increase it to 16?

Ms. Kusulas: yes, with a 6 stall increase, it will vary whether there will be more boarded and/or trained.

ASTJ: will there be an increase in the number of employees?

Ms. Kusulas: we plan to hire just 1 more person

SR: is that different? Just 2 people to operate the farm?

Friend of Ms. Kasulos: yes, I build houses during the week.

ASTJ: is it usual or unusual to have 16 horses? If you vacate, how would a new owner operate this business? Is it likely to be the same type of operation?

Ms. Kusulas: the barn is very attractive; many breeders have typically 10-20 horses; this is set-up extremely efficiently, so 1 person can easily operate it; it can be private or public; will not be an issue because of the 16 horses restriction will be enforced forever; is now and will probably continue to cater to the elite.

Peter Phippen: question for Larry Graham: regarding the roof run off and infiltration: how does that impact not only the brook, but the down stream and salt marsh? Proposes a hydrology study of the area.

LG: acknowledges that he is not a hydrologist, but the current plan is a sound plan because the barn is positioned for natural flow and run-off.

Mr. Phippen: the underground resource is why the brook is natural; what will be the impact to flow of brook & hydrology? The critical issue is where the water is infiltrated, that's what feeds the brook; he suggests that the hydrology of the area be studied. Also, the well will also be pulling water from somewhere, will it be from the brook?

LG: using the site map, to explain the designs and flow

Mr. Phippen: so you are comfortable that there will be no impact to the hydrology of the brook?

LG: yes, has confidence in the design plan

Jim Ansara: question for LG: what happens in the winter when the ground is frozen and the run off is already an issue into that brook?

LG: a very wide infiltration drain allows for the water to be trapped and released and will allow the run-off from the roofs into the sub-systems.

MC: regarding winter run-off concerns in the ring area

LG: demonstrated on the site plan - there will be a stone trench under the rink with a filter cloth over it, explained the design and how it will work, using the site map.

MS: concerns about the run off from the ring area outside the long driveway?

LG: has designed berming to direct the run-off which is blocked from entering into Andrews Street plus there is gravel trench to handle more of the run-off and will have not affect on the hydrology of the fields.

SR: this will be continued to the December 3rd meeting to allow for input and comments from the other municipal Boards

Mr. Ansara: concerned about construction mitigation in such a tight area; do you have a construction mitigation plan? A plan is needed to lessen the impact to the ecology overall, but also concerned about site during construction.

LG: wouldn't be a large amount of construction vehicles during the day, construction and the delivery of construction equipment will take place in stages, but will be extensive excavation in the area of the arena; he will guarantee that proper provisions around the site will prevent erosion.

Sam Hoar: is 1 corner barn right on the 200 ft line of the river?

LG: yes, as Mr. Hoar requested last year, everything is out of the riverfront area .

SR: (addressing the audience) the plans are on file with the clerk. Anyone interested is invited to inspect the plans at town hall.

Ms. Frey: asks permission to read a letter from another stable owner.

SR: Board will read the letter at next meeting.

SR: Motion to continue to next meeting:

Seconded by MC

All in favor.

Site plan review to be continued to next meeting.

Additional Business Matters:

Bucklin Subdivision:

Discussion regarding the Kempski's request for a refund of the escrow funds.
No decision, to be determined.

Andrew Street project:

ASTJ: need more discussion on issue of "agriculture"
WB: cites the case of Steege vs. Stowe (town of) in which Stowe Planning Board lost in the Court of Appeals
SR: will request that town council review whether it's agriculture or not.

Liberty Street project:

SR: re: Liberty Road sub-division: BP is holding \$10,000, no report on "as built"
WB: clarifying the location of this project as being near the mini-storage facility; suggest we ask LG for update on estimate for "as built"; Robert Bradley is working on Liberty Road; used the same engineer as the Bucklins & Kempski's.
SR: delegated to Rob Fitzgibbon to follow up.

Arielle Lane subdivision:

SR: need to decide on Arielle Lane plans, but the latest version of the plan is missing from our files; Lori will call for more plans

180 Southern Ave:

WB: discussion on Filias' plan to build a storage facility, not running retail business, need to give him an answer, he has enough land then we don't have any right to restrict the use.
SR: sees it as a full change to commercial use from residential
WB: nothing in the bylaws to restrict; it's non-conforming already
SR: straw vote
1 vote

Next meeting is set for Wednesday, December 3, 2003, commencing at 7:30 p.m.:

Presented by: Joanne Jacobsen
Joanne Jacobsen, Adm. Assistant

Attested to: Rob Fitzgibbon
Rob Fitzgibbon, Clerk

**Town of Essex Planning Board
Minutes
Wednesday, December 3, 2003
7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School in Essex and was called to order at 7:30 p.m. by Susan (Scottie) Robinson, Chair.

Attendees: Westley Burnham (WB), Scottie Robinson (SR), Rob Fitzgibbon (RF), Betsy Shields (BS), Andrew St. John (ASTJ), Michael Cataldo (MC) and Jud Lane (JL)

Building Inspector: Bill Sanborn

Secretary: Lorie Woodward

Building Inspector's Report

9 Turtleback Road

Bill Sanborn: first item is 9 Turtleback Road review of site plan

SR: withdraws from the table, she is an abutter to an abutter

MC: move that we approve the application of the PVW for the construction of a house on lot 34 of the subdivision plans of Turtleback Road, having been approved by the Board of Health and the Conservation Committee and having met the requirements of the town by-laws.

WB: 2nd the motion

Poll of Planning Board: all in favor.

Motion passed unanimously, permit granted.

Sandy Shores

Bill Sanborn: next item is Sandy Shores

WB: Lufkin Point Road, specifically, Map 20, Lot 31

MC: I move that we approve the application of Sandy Shores for the reconstruction of an existing 1 bedroom, 1 bath guesthouse, to be replaced by a new 1 bedroom, 1 bathroom guesthouse, finding that meets town by-laws and is not substantially more detrimental than the existing non-conforming use to the neighborhood and has been approved by the Board of Health and Conservation Committee.

Motion second by: ASTJ

Unanimously decided for approval by the Planning Board.

5 Southern Avenue: Tim Lane

Bill Sanborn: the next one is Tim Lane at 5 Southern Ave.

Planning Board discussion on size and set backs.

MC: I move to approve the application to build at 5 Southern Heights, to construct a new 40 x 60 foot barn, fining that it meets all the set back and necessary requirements; and has received approval from the Board of Health; still pending approval from the Conservation Committee.

WB: seconds the motion

SR: all in favor?

All in favor, unanimously approval of the building permit.

180 Southern Avenue/ John Filias

Bill Sanborn: the last one I have is 180 Southern Avenue;

Planning Board has discussion

Meeting recessed by SR.

At 8:35 p.m. the public hearing was resumed by Chairperson S. Robinson

Turning Leaf Farm/Margo Kusulas

Regarding Turning Leaf Farm, to ... do you have the letter that I had at the end of the last meeting? From BJ? Who was the letter from?

At last meeting, I accepted a letter from BJ Frey, from Mary Ann Morrill to the Essex Planning Board. To be read in the record. I'm going to start with this.

Reading letter from Ms. Morrill (see exhibit #)

Do any Board members have any questions for Ms. Kusulas or anyone else present?

WB: are you going to give an explanation?

SR: yes, we did consult with town council over the point that Mr. Fornier made at the last meeting. He suggested that we had no justification to review this property under the town's site plan by-laws and special permits rules as it is an agricultural use.

But town council has advised that since it is a new building on an agricultural property that we do have every right and we are in the correct procedure for reviewing the proposal.

Barbara Frey: did town council cite this verbally or was this a written answer?

SR: you were not recognized. I'll be happy to recognize you if you ask.

Ms. Frey: did town council actually cite a statute or state law to support this or was it oral?

SR: It was an oral question with an oral answer. But she did cite the statutes but I didn't bother to write them down. But she's town council advising us that we're on the right track and she's also advised that Ms. Kusulas council agrees that we're on the right track and here we are.

Dennis Crimmins: I did speak with Barbara St. Andre and I have memos for the board. I did realize there would be so many present tonight. I would like to clarify that Ms. St. Andre and I agreed that the Board does have some jurisdiction with respect to this application. But I'd also like to make it clear and I'd think Barbara St. Andre would agree with me, that the Board's jurisdiction and authority is limited as apposed to the

authority, it might have with any other special permit applications. In fact I have specifically cited the case law and language in the cases that limits you in my view in imposing only reasonable conditions and only as to certain issues. So, yes, the Board has authority with respect to the new structure, but that authority cannot be asserted in a way to prevent the property agricultural use and expansion of the use.

SR: that what's she told me and that's what I've communicated to the other Board members, that we have ... we should conduct a site plan review with a special permit attached. However the review is to be without constructive denial. Meaning that we can look over the proposal with a view to safety, esthetics and several other things that are named in our site plan review by-laws, without the ability to say no, we don't like it. But we're not going to say you can't have a permit .

Mr.Crimmins: I would agree that you have the opportunity to look at it with respect to public safety, public health and welfare and your findings have to be based on substantial evidence. But you don't have any authority with respect to esthetics. If you think you need that sort of authority, you should ask town council.

SR: does any one on the board have any questions?

ASTJ: a basic question with regard to the plan: at the 1st go-round proposal was the reason why you did not consider pushing the development to the rear, closer to the Southern Avenue?

Mr. Crimmins: As I mentioned, we addressed both issues and confirmed with the help of Sheldon Royer and looked at many different schemes and the whole issue of how to use the stable building the best way to hide the arena building and I mentioned it last time, as you know the grade rises up here and drops here.

Discussion of site grading

So bringing the complex tightly together and using the courtyard between the buildings to hide a lot of the activity and holding those close as the road. This preserves the quality of Andrews Street and limits the circulation over the site.

Demonstrates flow using the site map. Discussing the view from the road and esthetic values.

ASTJ: an argument could be made of this. You made the best solution for Ms. Kusulas. There's a strong disagreement. Many people in town, including myself, feel that view going op Southern Avenue is being wiped out by large buildings.

Unidentified person: I don't know if you thought the previous schemes were hiding

ASTJ: No it wasn't. We actually did a view of the site and we considered if it were moved back it would be better.

Unidentified person:: we did a number of studies on this and I think the issues that you're addressing have been heavily addressed by the Trustees of the Reservation. They wanted to see multiple schemes. We worked on this quite hard with them. And they addressed based on the amount of time they spent. I think those issues were dealt with well by the Trustees. And id we all agreed if we didn't have to stay outside the 200 feet we would have been able to condense it a little more, but at this point we had no choice. I feel the Trustees have looked at this very hard and that they have given us a site plan building location approval and to come back here now to have to defend the thing as a set of buildings and where they're located ...

ASTJ: our jurisdiction is ...

Unidentified person:: they have more jurisdiction over the issue of visual impact

ASTJ: it's just a necessary discussion.

WB: the info we received so far. I think we've received everything we're going to receive relative to the parameters in which we are allowed to operate in. If there isn't any new information pertaining to safety, morals, etc. What is the purpose of this questioning?

SR: my direction from Barbara St. Andre is slightly different than the summary that Mr. Crimmins just gave us. And I personally have a few questions that do relate to the criteria that he made. So the purpose is for the Planning Board members to get all their questions answered and to members of the public who have come here tonight to raise their concerns, for us to hear them.

WB: inaudible

MC: at our last presentation Larry gave us some information on the basics involving such things as drainage and stuff. One of my concerns having driven the road again over the past week and watching the runoff. Is how are you going to address the road that's going to be the access point, that you're creating off Andrews Street? In terms of run-off and things such as that? I know we talked about the rear access to the lot, but I don't remember you saying anything about what's going to happen to the widening of the road that's going to access where the existing barn is now. And how that's going to be treated. Larry Graham: Last week I had also indicated to you we were going to possibly look at site realignment coming off Andrews Street from access to the site. To directly answer you, to utilize the upper part of the driveway which is there already. It exists now as the access point to the site and intends to improve the surface of that and extend the horseshoe driveway and come out into the site. The remaining part of the horseshoe drive will be abandoned and greened; the storage shed will be relocated. In my view an extreme amount of run-off this is a 12 foot gravel drive and once we get up to the site, we will have another catch basin there which especially catch all the drainage from the roofs will pick up as well.

Continues to explain the driveway flow and run-off design

MC: that's not happening now. It's pouring down the road now. So if you're not going to regrade the rear lawn that you still going to have the problems as you create more defined roadway, but the water is going to pour back onto Andrews Street. .

Unidentified person:: I heard there is water in that location now. What I'm suggesting to you is that we're not going to increase the run-off down Andrews Street if anything as the restoration of the remaining part of the horseshow driveway down here which comes off Andrews Street. This part of the backyard of the applicant's property that the problem will be reduced.

MC: I don't think so. Because if you look at the grade there I don't think it's going to flow with the existing roadway. If you're not going to fix it going back into Andrews Street. If request that you take another look at it.

Mr. Crimmins: the water does run 90 degrees in this area across this way to the upper part of the driveway which is the new part.

The water will run across the drive and to the back of the applicant's house and not down the road. This grading reflects that.

SR: I want to raise a concern that we received from the DPW. I don't know if you have seen this or not. It says: it speaks to the same issue that's why we're bringing it up ---

(See exhibit X, letter from Damon Boutchie)

Mr. Crimmins: The engineer has already set forth in the plan and addressed that and with testing

SR: But what about... Am I correct if it goes down Andrews Street then it's going to go down Apple Street as well? Isn't it?

Mr. Crimmins: The drainage that now comes down Andrews Street goes into the catch basin at the intersection that runs down the south side of Apple Street to the brook. We are taking all the roof drains and putting them through the cistern as I described. The only contribution would be in this general area (addressing the site plan). And that will be limited. Town can hope this application will try to make improvements to the public drainage.

SR: I want to address one issue that someone asked how you plan to determine parking requirements: The answer I guess was common sense. If you don't have any formula that we have for other uses for the property. We really have to believe that Ms. Kusulas knows what she needs of her business and that her parking is designed for ease of access and safely and so on. We haven't heard any substantial criticism at all from any town department or that we've circulated your plan to. So I'm putting my faith in that the Fire Department knows they can get a truck in and a truck out. Or they' can't or they would have let you know that they couldn't. I say I don't know who asked it.

Anyone have a comment?

Richard Trembowicz: identifies himself as being from Apple Street: just a point regarding parking: the definition of agricultural use, some people have a different view about what the by-laws say, about off street parking, if even the difference of agricultural under the state law says that keeping of horses, or boarding of horses is essentially a commercial enterprise and that interpreted by-law catch all business and provisions applies here. So that you have to look at the piece.

Referring to Section 128 of the state law (see exhibit X) regarding boarding of horses and the definition of agriculture. Would you like me to read it?

SR: we don't have to read it. We're in agreement on the definition. You don't have to reiterate.

Mr. Trembowicz: so the question would be with the general catch-all provision for off-street parking for business activities would apply. So the question would be if this case regardless of the owners, this isn't directed at this particular owner, if this project were built as envisioned. If there was a riding exposition with spectators at the site in that arena. Is there sufficient parking to do that? Is there anything in our by-laws that can stop someone from doing that? The by-laws in this town Catch all really intended to address provisions that large buildings have a tendency to attract a lot of people. And to have the foresight to understand that situation could occur. So that would be apoplectic application of the standard in this circumstance. Because those things could be done in a large building. So that's one of the things I've been concerned about just as part of the standards that the board would apply. There is a basis to apply the general catch all standard in this definition of agriculture.

SR: ok

WB: is some someone from the Trustees here?

Unidentified person: I have a question: how does the land go from Mrs. Bartlett to Ms. Kusulas?

(the rest of the comment is inaudible)

SR: other questions or concerns?

Mr. Hoar from the Conservation Committee: (inaudible)

SR: that's my understanding.

BS: assuming that the practice of agriculture is an agricultural lot, do you have all the required licenses or certifications for that, i.e. instruction, training, etc?

Ms. Kusulas: (inaudible)

BS: the keeping of animals?

Ms. Kusulas: (inaudible)

SR: anything else?

One of my Board members reminds me that we should remind the applicant that what you've proposed is what's going to be reviewed and if its approved then that's what you're going to be allowed to do and if you want to make changed presumably then you would have to come and tell us that you were going to do something else.

I'm going to recognize Martha Hoar.

Mrs. Hoar: (inaudible)

SR: could you hand that to me after you read it?

Unidentified person: another question from the audience is inaudible

Mr. Crimmins: we were asking in the initial plan, the Board may recall, that we had the drainage system up here. If we had an over flow from our drainage system, which would essentially come down here. We removed that at the request of the Trustees , as well as the Conservation Committee. The overflow is redirected (remaining comment is inaudible).

MC: (inaudible) referencing the management plan

Unidentified person: answer inaudible

MC: on the bottom of the other side of the street, what's going to happen then. No longer using it for the horses. Are you going to do anything else?

Ms. Kusulas: inaudible response

Unidentified person:: the farm will have 3 sources of water: town water, which will be extended from the house to the barn, well water from a well which is proposed in this corner and lately cistern water from the 3,000 - 4,000 gallon cisterns that are all trying into the drain system, which is as I mentioned at last hearing, to fill those 3 cisterns will only require 1 inch of run-off from the barn and the indoor hall. SO there will be available water to draw from those we believed for the purposes of dust mitigation and irrigation, as the applicant sees fit. So I'm not a hydrologist, but I don't know the plan that well. It's put in, what will be. But from as far as using that water, I can not see that it's going to be a large draw. I don't believe there will be any impact on existing wells, which are quite a distance from this location.

Mrs. Hoar: (inaudible)

SR: any other comments or concerns?

Unidentified speaker: inaudible question from the audience

SR: we have 90 days in which to write a decision, just so you know.

WB: I move to close the public hearing.

SR: this is the last point at which we can accept any comment or questions or information or what ever from anyone who is concerned.

Inaudible exchange

Bruce Fornier: are the other materials that the Board is taking under consideration that we haven't see or heard about?

SR: we have received comments from other public boards. Would you like us to read them?

Bruce Fornier: as long as they're simply available; they should be available at the hearing, that's the whole function of the hearing.

SR: would you like to hear them?

Bruce Fornier: not particularly

SR: not....

Bruce Fornier: but I'd like to point out that its part of the system.

SR the only other letter that I have is the one from Mr. Tremowicz in that he refers to parking and that he discussed orally.

SR: I have a letter from the Open Space Committee and I have a letter from Dennis Crimmins about our reviewing powers.

Mr. Crimmins: you're just getting that letter now?

SR: Why am I getting a copy of a letter that Gordon Abbott wrote to Wesley Ward?

WB: that letter is not addressed to us.

SR: yes, this is someone else's correspondence and it's written a year ago. We will take it under advisement from a citizen that is concerned and has just showed at the hearing.

Reads letter from Gordon Abbott (see exhibit X)

Mr. Crimmins: I do intend to make some provision to the plan but I have not had a chance, have not been submitted to you with respect primarily with the alignment of the driveway that I referred to here, If that is something that you want to see this evening and can't not allow it to be entered after the hearing.

SR: we need to see it now.

Mr. Crimmins: briefly, on the 1st sheet, when reviewing became apparent the plans the stable under the existing and proposed improvements we had not included the existing dwelling. The 2nd sheet has been added just for clarification. There were no revisions to Sheet 2. Sheet 3 is revised to indicate the realignment of the driveway as I had just spoke about, it also indicates the grading that I spoke about that would be directly the run-off. The purpose of the realignment is primarily to take the sharp curve out of the roadway. Sheet 4 reflects the same realignment and puts in another catch basin at the corner that I spoke about a few minutes ago.

Sheet 5, simply takes care of the addition of the catch basin and drain line by revising the tables of the drainage system schedules. So there's 2 inserts for that catch basin.

(remaining conversation inaudible)

Unidentified speaker: I understand there's no hydrology study. There should be a hydrology report.

SR: is it your concern because of the horse manure leaching into...

Unidentified person: inaudible

SR: what tremendous drain of water are you referring to?

Unidentified speaker: inaudible

Again I'm not a hydrologist, but I think the issue is not one of what it's going to do, the aquifers but the issue is what is the tremendous drain of water that is contemplated here? We've designed out a septic system based on a certain amount of usage, which right now is 470 gallons a day and that water can come from 3 difference sources. There's no other

usage being contemplated that's not being done right now on the site. It's the same piece of property and there's no additional usage. So I don't know....

Before you get to the problem that's being caused, what is the problem?

Unidentified person: inaudible

Mr. Trembowicz: inaudible

MC: do you know when this required management plan will be done?

Mr. Ward: It's due before our final approval. No particular date.

MC: ok, no time table

BS: if we wanted a hydrology report, don't we have the ability to request additional studies to be done?

SR: didn't think that comes under our jurisdiction by any stretch of the imagination. It may be a concern, but it's not something the Planning Board can address. And our site plan review process, I don't have off the top of my head. The Board of Health has control of how the animals are kept and maintained, how irrigation of pastures are arranged and perhaps it may have something to do with the Conservation Committee review. Because they will be reviewing the proposal vis a vis, the Rivers Act, but I'm not a hydrologist either and I know that's not our purview.

Bruce Fornier: to support what you just said, selective enforcement as you may have noticed is often .. will hydrology report, to simply then is pointless. I can't image seeing that a meaningful study like that can be done for less than \$200,000. How could you do a study to see whether that water down from that parcel was going to affect our parcel off the way, about the same distance from the applicant. It's an absurd requirement. My concern is the state, regarding the agricultural use. State laws do not require a special permit. When the attorney mentioned that the town's have the right to make reasonable restrictions. I think you should keep in mind that those laws give the power to the Town. If the Town... I would urge your Board to adopt reasonable requirement regarding agricultural uses and proper organizations like churches. If this applicant wanted to put a 99,999 sf building 10 feet from someone's property line, under existing law you wouldn't be having this hearing. No ground what so ever. I would rather be protected from that than the possibility that my will might go down an inch. Because someone else drilled a well because in fact...

SR: ok, we get the idea. If we didn't have lots of people with lots to say at public hearings, we'd have time to craft intelligent by-laws.

Jim Ansara; question to Larry Graham: inaudible

Larry Graham: no other calculations when he did for the usage of the barn.

Inaudible

SR: I think we're done.

WB: I make a motion to conclude the hearing.

MC: I second the motion.

Mr. Ward: I have a little more information on the management plan

WB: we do have a motion and a 2nd on the floor.

SR: do you want to advise me on the procedure of holding off voting with a 2nd on the floor?

WB: you have spoken before the 2nd.

Mr. Ward: on the issue of water, I frankly hope that the Planning Board would be willing to look more closely at the water resources. Quite frankly I don't think we, the Trustees,

have looked closely enough at this. (continues but inaudible at point) We don't know what the irrigation; not sure about the next steps should be; we are going to ask for more details in the management plan about the irrigation' it appears that substantial additional water would be required; should ask an engineer to view this water resources again. And if her requests a hydrology study, then we should consider doing it. But I agree that this hydrology study would be an expensive proposition.

SR: All in favor?

Planning Board: All respond affirmatively.

Public Hearing adjourned by Chairperson

Meeting to be continued in another room for regularly scheduled Planning Board business issues.

Continuation of regularly scheduled business items:

General discussion on Payne property: Planning Board discussed location, proposal in general.

Regular Business:

Invoices

Mail

Meeting dates discussed.

Meeting adjourned at 9:55 p.m.

Next meeting is set for Wednesday, December 10, 2003, commencing at 7:30 p.m.

Presented by: Joanne Jacobsen
Joanne Jacobsen, Adm. Assistant

Attested to: Rob Fitzgibbon
Rob Fitzgibbon, Clerk

**Town of Essex Planning Board
Minutes**

Wednesday, December 10, 2003, 7:30 p.m.

The meeting was held at the Essex Elementary/Middle School in Essex and was called to order at 7:30 p.m. by Susan (Scottie) Robinson, Chair.

Attendees: Westley Burnham (WB), Scottie Robinson (SR), Rob Fitzgibbon (RF), Betsy Shields (BS), Andrew St. John (ASTJ), Michael Cataldo (MC) and Jud Lane (JL)

Building Inspector: Bill Sanborn

Secretary: Lorie Woodward

Building Inspector's Report:

Payne ANR

SR: First agenda item: Mr. Payne's ANR

Bill Sanborn: (using a diagram as reference) Regarding the current configuration of long along School Street

Mr. Payne: it appears that creating easements would be the easiest plan;

Thanks given to the Planning Board for their recommendations.

Liberty Road Subdivision :

SR: Next agenda item: to close out Liberty Road subdivision:

WB: apparently the as builts were delivered to us, but were lost, so we just need to verify the certified copy is the same as the one on file. We don't need Larry to inspect them; he's already inspected Damon's copy.

180 Southern Avenue/ John Filias:

Bill Sanborn: introduces the next item: application of John Filias that has already been before the Board twice

Letter read by Board member, Michael Cataldo

SR: solicits for comments on this subject

WB: I move to approve the building permit of the new 40 ft by 60 ft. barn for John Filias at 180 Southern Avenue, finding that it meets the all the minimum requirements under the town zoning laws, for the purpose of storage of a garage and shop used for maintenance and storage of construction equipment on an existing residential lot.

MC: is this to site the building?

BS: yes

MC: second the motion

WB: I'd like to move the question.

SR: all in favor?

Board unanimously approves the motion.

Turning Leaf Farm/ Margo Kusulas

WB: does everyone have a copy of the Turning Leaf Farm approval notice?

MC: I have some issues. Shall we address those at the next meeting?

SR: new problem: has been notified that Sam Cleaves wants the housing meeting date to January 7, which is the next Planning Board meeting. The December 17 meeting has been cancelled. Do we want to reschedule our next meeting or notify him to change his date?

Board consensus: agrees to change the housing meeting. SR will notify him.

WB: I made 1 change on the plans, Page 2, #5: corrected to say "Mass Building Code" required, not "Mass Fire Code".

MC: re: #7 – final determination by Planning Board or by Building Inspector?

WB: by the Building Inspector. Conservation Committee hasn't signed off yet.

MC: suggests they say they approved after Board of Health and Conservation Committee have approved; has been revised since they approved it, would like to make Board's approval conditional on that.

WB: Board of Health has already approved it. I know that Conservation Committee has it now. They're the only Board left to approve.

MC: I just want a caveat on there that both have to give their final approval. I don't agree with #3, don't put that in there where it says not adversely affects the neighborhood.

SR & ASTJ: agree

WB: if it doesn't meet all 3 standards then we can't approve it.

MC: then we need to discuss, let's take it the next meeting.

WB: under 40A, sec. 3, 2 condition governing special permits issues have to be addressed. We can't make enforceable.

ASTJ: I think it is substantially more detrimental. I think it does have a negative impact on the neighborhood.

MC: we can say that we reviewed it as part of the standards required.

RF: we have said according to the by-laws they are within their rights, However, esthetically is another issue.

WB: there is a similar size riding academy close by.

MC: we can't use what other previous boards have done in the past as to the standards in making these decisions now.

WB: we've said that. Where does it not comply? Personally I don't think it's adverse to the neighborhood.

MC: but to say that it won't affect the neighborhood is not correct.

WB: it has 13 acres to build on and they want to building on it.

MC: it's not just a building, it's a half acre of building on it.

BS: plus regarding the land

MC: they're only putting it on 2 acres, not 13 acres.

WB: still they have 11 acres surrounding it

MC: which is pretty much claimed with paddocks and whatever.

RF: what is the role of esthetics?

SR: when we look at the site plan review. Even though we can look at our site plan criteria.

MC: if they don't agree they have to appeal.

WB: bottom line is they may take us to court and we don't have a leg to stand on ---- 40A sec. 3: can't hold them to special permit. Essentially we can write anything we want as

long as they agree it. We need to agree to approve. A matter of setting reasonable requirements.

SR: sites vehicles safety statue: the Planning Board has jurisdiction in reviewing site plan on the matters of vehicular and pedestrian movement in the site; we can look at the historical and natural and environmental features of the site under review and adjacent areas; we can ensure the placement of esthetics of the proposed development as a safe, healthy and in keeping with the neighborhood and community character, so as to avoid substantial detriment to the community and the neighborhood in general.

ASTJ: here's a theoretical question looking at the site plan: why can't they push it back, so it couldn't be seen from the road? Is this covered under esthetic values?

RF: Sheldon said his design was best.

MC: do we have the ability to have a clerk of the works out on this site?

Bill Sanborn: no.

SR: within what they proposed, we have the ability to ask that they screen a part of it, but we can't say we don't like it where it is positioned on the site.

ASTJ: we don't have a say to disapprove; I want to know does "esthetics" mean?

WB: sentence #3, proposed change to "the proposed use and development will not be substantially detrimental to the neighborhood".

RF: regarding esthetics, I'm not saying don't build, but I am disappointed that the Trustees sold it off the lot and am not happy about the management plan.

BS: can we say that we feel it is detrimental, placement is causing that, so we can request that it be pushed back Can we say that?

Planning Board: discussion of esthetics and shrubs and other yard items in the neighborhoods in general

MC: who has a copy of the drainage plan?

SR: it's in the office.

WB: I will reword #7.

BS: if they don't comply with the Trustees management plan? This would hurt the Town. If the water and the neighborhood are affected, can they be forced to pay the Town's legal fees?

SR: Board of Health would have to chase them.

ASTJ: Isn't the Town of Essex the holder of the covenant?

SR: WB: no, there is no avenue to insist that they comply with the management plan. They do have to comply with the by-laws and requirements.

MC: but they volunteered to do it and submit a report to us.

BS: given that they have that deal with the Trustees, in the event that they don't.

WB: there are already mechanisms in place for the Board of Health to chase them.

ASTJ: Page 2, item 4: suggest change to omit "reconfigured", suggested the phrase: "shall be solely utilized as storage."

MC: I don't believe they'll do what they say they're going to do.

SR: Sam Cleaves wants to change the date of the Community housing meeting to January 7. I suggests moving to the following Wednesday.

WB: suggests don't reschedule the next Planning Board meeting; we have business that requires attention.

ASTJ: bump him to the 14th.

SR: won't change the Planning Board's date. I will not be able to attend another date. How about the 14th? Who will introduce him?

BS: I will introduce Mr. Cleaves that the Housing meeting.

SR: the Planning Board has 90 days for a final version of Turning Leaf Farm site plan, that brings it to February 3.

WB: if we want anything before the agenda for the Town meeting, we need to advertise it in late January.

SR: does anyone have anything for the Town Meeting?

BS: regarding the watershed by-laws, he talked to the Board of Health she is thinking about what to do, it might come back to the Planning Board to be adopted, and we can work with them to enforce it.

WB: according to state laws there is an avenue designating the Board of Health as a special permitting granting authority for water resource protection special permit.

SR: I don't want to relinquish control of that to them.

WB: not the site plan review. There is a section that requires a special permit in the water resource district. We could decide whether to let the Board of Health run a hearing, since they can enforce it, they should have the whole thing. Since they have the enforcement capabilities over wetlands with the beginning in Conservation Committee.

BS: so they're supposed to have an annual check a business or is it only when they come into town?

WB: no idea. They're still using the old regulations.

SR: anything else?

SR: he could put a bridge over the wetlands for a driveway.

MC: like John Henderson did the same thing with his driveway.

WB: just because it's on wetlands, doesn't make it exclusionary. There are rules that have to be followed, but they're not exclusionary.

ASTJ: anyone wants to create zoning districts:

WB: any proposal will be 4-5 years from now, that would mean we'd have to create all the districts at the same time.. Let's deal with today's problems.

BS: one thing we can address is addressing more than 1 principle structure on a lot.

ASTJ: we could talk about mixed use.

WB: I propose that mixed use are permissible if all the requirements are met for the most restrictive use.

ASTJ: are you happy with the by-laws now? Because there's no way of denying Mr. Filias.

WB: I have no objection. He has 8 acres. If he wants to use it as a mixed use, it's ok.

BS: with a shared driveway, presents a problem.

WB: they didn't look ahead.

ASTJ: they may have run his own driveway over wetlands.

WB: he has to have the ability to access the land over wetlands.

JL: we should focus on defining change of use and defining mixed use. Then if one is going from 1 use to another, i.e. from residence to business or mixed, then it would trigger a site plan review.

WB: the next thing if you run special permits for everyone who wants to do anything, then you have to look at time availability and where it ends result it going to be ----

JL: looking into zoning districts, don't see that ever happening. My father tried to do it 20 years ago. We should just focus on gaining control.

MC: everything along the causeway needs to be addressed. They have the potential for being a business downstairs and with apartments upstairs but not now.

WB: they do already.

MC: As the sewer comes through, people will want to legitimize it. There needs to be a way to do that.

WB: 1 possibility is to create a new overall district, downtown district, I suggest a that district with a different set in standards, that might have a possibility of going through, virtually all properties in the downtown area are non-conforming, if you change the lot requirement to 50 ft frontage and try to build a district. You want to keep what's there

BS: you can't put anything more there already.

MC: there isn't much left to build on; there are only about 2 buildable lots now. There are already pre-existing non-conforming lots less than 150 ft frontage.

BS: and we don't want to encourage anymore.

WB: we can relax the off street parking requirements for the existing businesses that don't have parking now.

ASTJ: the point is we are trying to build what we'd like to see – a more pedestrian area.

WB: try to delineate business uses in the mixed use category from the residential i.e. requiring 2 off-street parking spaces per residential or whatever we designate it as. The important thing is to make off street parking in winter available for residential use. It's not to address off-street parking for antique shops and restaurants. Off street for residential use should be reasonable and accessible.

SR: need provisions for mixed use outside the downtown area.

WB: yes, but we need to take 1 thing at a time. We have existing mixed uses that exist now. Regarding housing: Brendan has figured out all the uses in town. We're at 2.73%; we need to encourage the remaining buildings to create apartment use to boost the low income numbers to somewhat reduce our exposure under 40B.

MC: I think you may see antique businesses starting to go away, with more sales being done over the Internet.

WB: someone told me last summer that there are 171 licenses to sell antiques in the Essex now. Look at all the multiple dealer locations in town.

RF: A friend that's in the business told me that New England antiques have dried up; New York City is the new hot antique center.

MC: there are multiple dealer locations in 1 retail shop; retail may not make in Essex anymore, then there will be more conversions to residential.

MC: retail image will change. There will be more, like the one next to the Village.

WB: so we need to keep on top of the parking situation.

WB: only consistent in life is change, we need to maintain the character of Essex in its current stance.

SR: what is the consensus definitive agreement in changing the by-laws? What do we want to do?

RF: We need to address mixed use changes.

ASTJ: no one has any strong sense in what to do or the best way to go.

WB: getting back to Turning Leaf Farm: we need to take a look at what she has proposed and make suggestions.

Planning Board: A discussion of the exact number of horse stalls

Regular Planning Board business:

Planning Board discussion regarding the sidewalk construction project in town.

SR: she solicits comments from Board..

SR: Board has no official comments?

BS: I move to end the meeting.

SR: seconded the motion.

All in favor, motion passed. Meeting adjourned.

Next meeting is set for Wednesday, January 7, 2004, commencing at 7:30 p.m.

Presented by: Joanne Jacobsen
Joanne Jacobsen, Adm. Assistant

Attested to: Rob Fitzgibbon
Rob Fitzgibbon, Clerk

**Town of Essex Planning Board
Minutes
Wednesday, January 7, 2004
7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School in Essex and was called to order at 7:30 p.m. by Susan (Scottie) Robinson, Chairperson.

Attendees: Westley Burnham (WB), Scottie Robinson (SR), Rob Fitzgibbon (RF), Betsy Shields (BS), Andrew St. John (ASTJ), Michael Cataldo (MC) and Jud Lane (JL)

Building Inspector: Bill Sanborn

Secretary: Joanne Jacobsen

Building Inspector's Report:

Bill Sanborn: I have no items for this meeting.

General Board Meeting:

Liberty Road:

SR: RF has verified that the as built in file are the same as what is on record at the DPW.

SR: will someone make a motion to release the escrow account

MC: I motion to approve to approve the \$9,536.37, held as a performance bond and authorize the reimbursement.

WB: second the motion, but reword as the "remaining balance"

MC: will word as \$9,536.37 or whatever the remaining balance

SR: present invoice for the Board to sign off; all in favor?

Motion received unanimous approval.

Lowland Farms, Peter VanWyck

Planning Board discussion of project status

Review and acceptance of 11/19/2003 meeting minutes

Planning Board discussion and review of the 11/19 meeting minutes

WB: motion to accept the 11/19 minutes

ASTJ: 2nd the motion

All in favor, unanimously accepted.

John Wise Avenue

Board discussed the authorized filling of wetlands, found to be temporary action with the sewer construction project

180 Southern Avenue, John Filias

Discussion of mail received from Sara Caviston and the Maynards; letter read. The letter summarized is that alleges that Mr. Filias is not allowed to use the site or the driveway for commercial use.

Planning Board member RF volunteers to write the letter reiterating that this is not in the Planning Board's jurisdiction.

Lowland Farms, Peter VanWyck

Mr. VanWyck (PVW): had 3 issues to discuss with the Planning Board and expressed a need to get assurance from the Board that the project is on the way to approval.

Discussion centered around the original agreement that Mr. VanWyck would give the Town of Essex 10 acres of dry land in return for permit on his lots. The 10 acre parcel has not yet been identified. Maps examined by the Board were segmented and dated, Board asked for more recent and complete map of the area and a written proposal. Discussion continued to next meeting.

Turning Leaf Farm:

SR: next item: Turning Leaf Farm

WB: The first question would be: What are our intentions here: do we have to break it all out again?

SR: Yes, I want to look at it again. We have comments from the DPW, the Board of Health and other boards in Town. I'd like to review them.

SR: my notes from that conversation with Barbara, do relate the fact that it's subject to a site plan review because it's a new structure and review may include such items as drainage, shrubbery and reasonable regulations with denial of the application.

"Reasonable" is the fulcrum of our decision process. I didn't see it as narrowly as Mr. Crimmins did at all.

Planning Board discussion of the rewording of the Decision on Special Permit

SR: not everyone on the board can agree on one set of 3 items. We reviewed under special permit issuance instructions and we agreed that conditions are met.

ASTJ: we are approving the special permit, having gone over how Boards have to go over their rules and regulations and since this is high on the public's awareness list. We need base our approval on public regulations and we need to document that. If we're going to vote on this approval, we need to agree that some modifications in these provisions 1- 6 have been satisfied.

Do we agree on 1-6? I'd like to poll the members of the Board.

1. all agreed
2. all agree, but 1
3. all agreed
4. all agree, but 1
5. all agreed
6. all agreed

SR: 1, 3, 5, 6 all in favor

General discussion and rewording of decision continues.

SR: Board of Health said:

“the Board of Health has approved septic design plan for the stalls and 3 employees; we will address any addition flow or changes in design when a building application is presented; the applicant will have to comply with the regulations pertaining to keeping of animals and proper management of manure. Will need the Board of Health review and approval with Title V”.

Conservation Committee has reviewed with comments. Letter read.

DPW signed off approval with modifications. Letter from Damon Boutchie read.

ASTJ: Conversation Committee letter doesn't count as a letter of approval

So they still need their approval.

SR: order of conditions of Conversation Committee need to be met

ASTJ: they're going to have to move building then they have to come back to us

WB: yes, depending if you called it a minor or major modification

SR: Fire Department had no comments

WB: I move to approve the special permit for Margo Kusulas of 2 Andrews Street, Essex, MA, in accordance with the draft permit, discussed and revised. Permit dated January 7, 2004 .

JL: I second

SR: I'm going to take a polling of the members for the purpose of approval of this special permit application by Margo Kusulas of 2 Andrews Street.

BS: aye, because it meets the Essex by-laws and required standards for special permits rules.

WB: aye, seeing that the engineering and design plans adequately proves compliance with the special permit rules and regulations.

JL: aye, I believe it meets Essex town by-laws and special permit requirements and because of its agricultural use we don't have jurisdiction to restrict.

MC: present, but I am not convinced that it meets all the specifications of that were set out, so I cannot in good conscience. I realize that I can't vote against it, so I just vote "present".

SR: I vote in favor of the application as it has met requirements for special permits under the site plan review by-law and with considerations that we've made show that it's adequately designed and meets Essex by-laws.

RF: aye, having found the plan satisfies Essex town by-laws and Kusulas, the applicant, satisfied the requirements of the special permit issues rules particularly Section K, points 1,3,5,and 6.

ASTJ: noting to approve, finding that the applicant has met the special permit minimal requirements of Essex by-laws and Appendix B required for special permits, sub-section K: 1, 3, 5, and 6

SR: the application having received a super majority vote of 6 out of 7, with 5 being required for approval; certainly has been approved.

Now we have to file this decision with the Town Clerk. Secretary will file with the aid of WB in the absence of SR, who will be away.

Meeting continues with the discussion of regular business issues.
WB: I move to adjourn the meeting
ASTJ: I second
SR: all in favor?
Unanimously in favor.
Meeting adjourned at 9:55 p.m.

Next meeting is set for Wednesday, January 21, 2004, commencing at 7:30 p.m.

Presented by:  **Attested to:** 
Joanne Jacobsen, Adm. Assistant Rob Fitzgibbon, Clerk

**Town of Essex Planning Board
Minutes
Wednesday, January 21, 2004, 7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School in Essex and was called to order at 7:37 p.m. by Jud Lane, Vice Chair.

Attendees: Rob Fitzgibbon, Betsy Shields, Andrew St. John, Michael Cataldo and Jud Lane

Absent: Westley Burnham, Scottie Robinson,

Building Inspector: Bill Sanborn

Secretary: Joanne Jacobsen

Building Inspector's Report:

147 Eastern Avenue

Complaints have been lodged regarding the commercial use of the property at 147 Eastern Avenue.

Planning Board discussion regarding the type of business being done on the property (auto repair and sale), description of the appearance of the site and the business (cars on the property), discussion of Section 6.3.6 and 6.5.11, possible mixed use of property; may need a site plan review.

5 Harlow Street/ DeLacy

Planning Board discussion regarding the building permit for residential remodeling. Board found that it met set backs, no further action necessary.

52 Martin Street/ Steward

Discussion regarding the addition of a new 15 ft x 15 ft addition on an existing deck. Board will require a site plan. Approval subject to review of site plan.

30 Forest Street/ Carroll

Discussion regarding the permit requested for the addition of a bedroom over an existing structure. Planning Board examines the site plan. Board of Health and Conservation Committee have signed off.

ASTJ: I move to accept the permit for Karen and Greg Carroll, residing at 30 Forest Street for the addition of a bath over the present one story portion and finding that it would not be substantially more detrimental to the neighborhood and has Board of Health and Conservation Committee approvals, under 6.4.2

MC: seconded the motion

All in favor, motion passed unanimously.

100 Choate Street/ Michael Phelan

Permit for new home construction

Has had all the Town boards required sign off: Board of Health, Waste Water review, curb cut, Conservation Committee, and Fire Department; Planning Board discussed site plan.

MC: I make a motion to the application for Michael Phelan for construction of a single family home at 100 Choate Street, finding that meets the requirements for set backs, sidelines, finding that the Board of Health, Fire Department, Conservation Committee and the DPW have already approved it. .

BS: I second the motion.

All in favor, unanimously passed.

Public meeting:

Harlow Street/ William Taylor

Richard Laud representing Mr. William Taylor, presented a request for 3 lots on the corner of Harlow Street. Board examined and questioned the site plan. Discussion on: wetlands on the property, a need for buffer zone; registered land and required frontage; Board cited Section 4 and its requirements.

Mr. Laud will return at a later date with revised plans and required copies of Form A.

Turtleback Road, Peter VanWyck

Mr. VanWyck reviewing the site plans with the Board; refers to the original 1996 agreement to give the Town 10 acres of dry land, requests that the Board postpone the gift while the Board approves his request for additional lots. Donated land has not yet been determined and he is undecided as to where the portion will be apportioned. BS suggested that he enlist the help of the Open Space Committee to assist him in determining the best site; Board makes recommendations on the areas of land best suited for the Town's use. Mr. VanWyck will return when the gift land has been designated.

Regular Planning Board business:

Invoices

Mail

Announcement: Cape Ann housing meeting 1/28 at Gloucester High School

ASTJ: move to adjourn the meeting

JL: second the motion

All in favor, meeting adjourned at 9:28.

Next meeting is set for Wednesday, February 4, 2004, commencing at 7:30 p.m.

Presented by: Joanne Jacobsen
Joanne Jacobsen, Adm. Assistant

Attested to: Robert Fitzgibbon
Robert Fitzgibbon, Clerk

Addendum:

Note that the minutes of the 11/19, 12/3 and 12/10 minutes were signed at this meeting. They had been previously approved by e-mail.

**Town of Essex Planning Board
Minutes
Wednesday, February 4, 2004, 7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School in Essex and was called to order at 7:40 p.m. by Susan (Scottie) Robinson (SR), Chair.

Attendees: Rob Fitzgibbon (RF), Betsy Shields (BS), Andrew St. John (ASTJ), Jud Lane (JL), and Westley Burnham (WB)

Absent: Michael Cataldo (MC)

Building Inspector: Bill Sanborn

Secretary: Joanne Jacobsen

Building Inspector's Report:

17 Apple Street/ Andrew & Judith Messersmith

Bill Sanborn: presented an application by the Messersmiths for a new greenhouse.

Planning Board discussed the set back requirements, accessory use and examined project plan.

Bill Sanborn: they have Board of Health and Conservation Committee approvals.

WB: I make a motion to approve the building permit for a 25 ft. by 30 ft. greenhouse, finding that it meets the Town of Essex by-laws for accessory use and set-backs.

ASTJ: I second.

All in favor.

Motion unanimously approved.

Arielle Lane/ Brian Boches

Bill Sanborn: Request for new house at Lot 2 Arielle Lane: a single family dwelling, with 4 bedrooms and 2.5 baths.

Planning Board reviewed the plans and discussed the set-backs and Town by-laws 6.6.2C regarding residential parking and 6.5.9 regarding parking lots.

ASTJ: I make a motion to approve this application for Brian Boches at #2 Arielle Lane for a new single family dwelling, finding that it meets the Town of Essex by-laws and set-backs.

RF: I second the motion.

All in favor.

Motion unanimously approved.

152 Eastern Ave/ Chris Nunes

Bill Sanborn: Permit for addition, a 2nd story and wrap-around farmer's porch. Needed a finding under Section 6.4.2.

Planning Board discussion of 6.4.2 and the existing non-conformity.

Bill Sanborn: has the approval of the Board of Health, Conservation Committee, Waste Water and the Fire Department.

ASTJ: I make a motion to approve this application of Chris Nunes of 152 Eastern Ave for an addition to his house, finding that it meets the Town of Essex by-laws and set-backs

and finding under Section 6.4.2, that the extension would not be substantially more detrimental to the neighborhood.

WB: I second the motion.

All in favor.

Motion unanimously approved.

50 Lake Shore Drive/Robert Stover

Bill Sanborn: Permit to tear down an existing house and put up a foundation for new module house. Has the approval of the Board of Health and the Conservation Committee. Planning Board examined the plans and discussed the existing non-conformity and present set-backs. Building on existing foot print with some enlargement of the structure. New building to be 1800 sf; lot is 9,844 sf.

BS: I make a motion to approve the application for Robert Stover at 50 Lakeshore Drive, Map 4, Lot 59, to replace the existing house with a new foundation and to demolish the existing house, finding that it is not substantially more detrimental to the neighborhood under Section 6.4.2 and meets all the other Town of Essex by-laws and has been approved by the Board of Health, Conservation Committee.

ASTJ: seconded the motion

WB: present.

All in favor except WB.

Motion passed.

Discussion on John Wise Ave

Regarding the work on wetlands there. Bill Sanborn noted that the hay bales are up; SR noted that it is part of the sewer project; Bill Sanborn clarified that this is a temporary situation, the site is being used as a staging area for the sewer project in progress, this is a municipal project and not under the Planning Board's jurisdiction.

Public meeting:

Turtleback Road, Peter VanWyck

SR: exempts herself from the discussion, as she is an abutter to an abutter; WB will chair this discussion.

Mr. VanWyck presented his legal counsel, Russ Brown, who was present to join the discussion and answer questions and concerns. Planning Board reviewed the site plans and the original 1996 Agreement for Judgement in which Mr. VanWyck is to give the Town 10 acres of which 3.3 acres may be dry, 3.3 acres may be wet and 3.3 acres may be under water for the Town recreational use. Mr. VanWyck requested that the Board approve his request for additional lots. Donated land has not yet been determined and he is undecided as what portion will be placed under conservation restriction with an easement for public access. BS suggested that he enlist the help of the Open Space Committee to assist him in determining the best site; Mr. VanWyck will attend the February 11 Open Space Committee planning meeting. Board requests that he return with the Conservation Committee's comments on restricted land. Planning Board asked where future house lots will be located. Mr. VanWyck doesn't know yet, it's still open space, but he did have an additional proposed road noted on the plan.

SR: will send a set of plans to the Conservation Committee, in order to get their input as soon as possible.

Planning Board suggested that he return no sooner than March 3 with the required Form A for an ANR.

Mr. Brown: offered to draft a planned easement and release from previous covenant for the next meeting.

SR: will double check on the cash bond.

Mr. Brown: apparently there is no release from Planning Board on file at the Registry of Deeds.

Planning Board will review and approve subject to Conservation and Open Space Committees' comments.

Discussion to be continued at the March 3 meeting.

SR: resumes the chair.

Harlow Street/ William Taylor

Mr. William Taylor presented a proposal to revise 3 lots on the corner of Harlow Street. Board examined and questioned the site plan. All lots were pre-existing. Discussion on: wetlands on the property, need to remove or move hen house. Mr. Taylor also asked about the feasibility of adding an apartment above the existing structure, which is of a commercial use; discussion ensued regarding mixed use.

Mr. Taylor will return at a later date with revised plans and required copies of Form A.

Corner of School and Grove Street/Steve Payne and Lee Nameche-Reid

Mr. Payne brought in the site plan for a lot reconfiguration, proposed revision of 4 existing lots. Planning Board examined the plans, made suggestions and Mr. Payne will return at a later date with a plan incorporating revisions for all 4 lots and a Form A.

Regular Planning Board business:

General discussion:

Arielle Lane: discussion on road, drainage and redirecting access

Invoices

Mail

Correspondence: latest Kopelman letters on cell tower siting court case.

Outstanding Issues:

Turtleback Road Extension – 10 acres

Bucklin subdivision: drainage issue

Other outstanding subdivisions

Will schedule a public hearing regarding draft proposals for amendments to the special permit rules and subdivision rules

ASTJ: move to adjourn the meeting

SR: second the motion

All in favor, meeting adjourned at 9:35.

Next meeting is set for Wednesday, February 18, 2004, commencing at 7:30 p.m.

Presented by: Joanne Jacobsen
Joanne Jacobsen, Adm. Assistant

Attested to: Robert Fitzgibbon
Robert Fitzgibbon, Clerk

**Town of Essex Planning Board
Minutes
Wednesday, February 18, 2004, 7:30 p.m.**

The meeting was held at the Scout House in Essex and was called to order at 7:35 p.m. by Susan (Scottie) Robinson (SR), Chair.

Attendees: Rob Fitzgibbon (RF), Betsy Shields (BS), Andrew St. John (ASTJ), Michael Cataldo (MC), and Westley Burnham (WB)

Absent: Jud Lane

Building Inspector: Bill Sanborn

Secretary: Joanne Jacobsen

Building Inspector's Report:

1 Coral Hill/Ed Lane

Requesting approval of a new building: a 10ft by 24ft horse shed with split rail fence, Board discussion on set backs and site plans. Found to meet all requirements. Has received Board of Health, Conservation Committee and Fire Department approvals.

RF: I move to approve the siting of a 10ft by 24ft horse shed, to be built by Edward G. Hill, finding that it meets all Town by-laws and requirements.

MC: I send the motion.

All in favor

Motion passed.

3 Arielle Lane, Lot 4/Thomas W. Bowden

Map 8, Lot 47

Requesting approval of a new home.

Has Board of Health, Conservation Committee, Waste Water, Fire Department approvals and curb cut approval from DPW.

Board discussion on set backs, parking requirements and reviewed the site plan.

MC: I make a motion to approve the siting of a new house and building permit for Thomas W. Bowden at 3 Arielle Lane, Lot 4, for a 3,000 s.f. house, finding that it has received the necessary approvals and meets all the requirements of the Town of Essex By-laws.

RF: I second the motion.

All in favor.

Motion passed.

Planning Board Business:

221 Western Ave/John Janes

Essex Mini-Storage

Mr. Janes requests approval of an addition building, the current maintenance building on that site will be demolished to make way for a new climate controlled build'g with

increased security monitoring. Mr. Janes presented his site plans, explained that he has increased business that warrants this expansion for the storage of museum-type items.

MC: gave background information on the history of the business site.

MC: (addressing Mr. Janes) Board has had complaints about the lights being on all night.

Mr. Janes: has worked to develop good working relations with his neighbors by toning down the wattage and has offered to plant trees for the neighbors to shield those lights and the buildings.

MC: this site is an existing non-conforming lot.

Mr. Janes: the house in front is 25 ft high, the new building will be behind the house and will 22 ft high and he will plant more trees to shield the building from view. He presented his Form A. He has a meeting scheduled with the Conservation Committee on March 2.

Planning Board: needs Board of Health approval as well.

Mr. Janes: agreed to return at a later date with both Board of Health and Conservation Committee approvals.

Brief Planning Board discussion of LowLand Farms.

11 School Street/Steve Payne & Lee Nemeche-Reid

Present with Mr. Payne and Ms. Nemeche-Reid is their attorney, Brian Cassidy

Mr. Payne and Mr. Cassidy review the new plans with the Board.

Mr. Payne presented the Form A and the appropriate fee to Board Chair.

BS: I make a motion for Stephen Payne on 11 School Street, on the corner of School and Grove, to revise his lot lines, finding that it meets all the Town by-laws.

MC: I second the motion.

All in favor.

Motion unanimously passed

Board signed the site plans.

Unscheduled discussion regarding 180 Southern Avenue, property of John Filias:

Bill Sanborn: returned to the meeting, having found that the Zoning Board of Appeals meeting scheduled for this evening has been postponed due to a scheduling conflict. ZBA hearing will be continued to the following Wednesday.

Attorneys Lake and Dalton, who were scheduled to address the ZBA, addressed the Planning Board, and asked for the Board to reconsider their approval of the building at 180 Southern Avenue by John Filias.

Mr. Cassidy, still present from the Payne discussion, and who also represented John Filias, addressed the Board in response to the request from Mr. Lake and Dalton, detailing why the Board should stand by its original decision.

MC: advising that the Board should not reconsider their decision and advised that the attorneys should follow the process, which means going through the Zoning Board of Appeals.

Mr. Dalton: the abutters were denied their right to present their views and issues.

SR: not at all – everyone who wanted to speak was allowed to express their opinions and views.

ASTJ: the process was correct.

Mr. Dalton: the abutters did not have enough time to retain counsel.

SR: it was an approval for a building permit.

Mr. Dalton: the abutters should have a fair shake.

Mr. Lake: the Courts may send it back to the Board and a lot of time and money will be spent unnecessarily.

SR: asks the rest of the Board if anyone wanted to reconsider.

Board agreed not to reconsider.

MC: if we review, then we will be re-neging on our prior approval and may be faced with a suit from Mr. Filias.

Bill Sanborn: it was not a special permit needing a hearing, it was a simple building permit.

WB: all we do is approve the building siting.

MC: there is a process for an appeal.

SR: with the ZBA

Bucklin Subdivision/Dave Kempsey

Regarding the refund of the bond

SR: explained the method and reasons for the bond; Larry Graham has advised them to keep the \$5800 bond for the finishing of the road, she has also had several conversations and correspondence to and from Joan Bucklin, who now wants approval for another lot. SR told her that she cannot submit a request for another lot until she has finished the current project, i.e. the road work. She is paying for the cost of the engineering and the Board is waiting for her to replenish the funds to finish the road work.

Mr. Kempsey: explained the history of the project; bounds have been completed; has a letter dated 11/7.2001 from Larry Graham, in which Mr. Graham detailed what was necessary to complete the project. Mr. Kempsey paid the \$5,000 (\$2,000 for the road and \$3,000 for the bounds). Town accepted the check based on the Graham letter, which he claims is a form of a contract.

SR: it's not how much, but when it will be refunded, per Larry Graham it may take another \$5,800 to complete. Reading a letter from Mr. Graham dated 12/29/03. She fears that the town may get stuck finishing the road.

Mr. Kempsey: he still has to pay his contractor and acknowledged that \$2,000 to fix the road but requested the refund of the \$3,000 for the completion of the bounds.

MC: explained that engineers have found more problems and we still need work completed.

Mr. Kempsey: acknowledged that it is his problem with Mrs. Bucklin and that Board is outside of the issue.

MC: Chapter 81 requires the Town to hold the performance bond and Mr. Kempsey is in an unusual situation.

SR: it's customary that the owner post the bond; clarified that the bond is also for the "as-builts", which are not done until the project is completed. Prices change over time due to unanticipated problems that may arise.

MC: when the road drainage is fixed and the as-builts drawings are done, then we can close out the project and refunds can be made.

SR: I have asked Mrs. Bucklin for an update, but have not received any reply. She will send him copies of the letters to and from Larry Graham.

Turtleback Road/Peter VanWyck

Presented a copy of the covenant and proposed release.

Mr. VanWyck wanted to discuss the break out of the final 5 lots and presented a new proposed plan, changing 1 lot, #26, into 5 lots.

Board discussion.

Proposal will be continued at a future meeting.

Lowland Farms/Peter VanWyck

MC: recapped the covenant details, requested a vote to release the covenant, but does not have the instrument to release it.

Discussion by the Board on the method and procedure for the release.

WB: I make a motion to release the bond for lots 23, 24, 25, 26, Land Court 32098, for \$28,000 cash surety on deposit with the Town Clerk, finding that it satisfies the requirements for performance guarantees, under M.G.L. Chapter 81.

MC: I second.

All in favor

Motion unanimously passed.

Mr. VanWyck reviewed what he intends to do at LowLand Farms, modeling the project after one in Manchester, in a cluster concept; he wants to bring in members of the Manchester Zoning Board to the March meeting to explain their concept.

MC: town warrant will come up on 3/15, we don't have time to review and have a public hearing.

Mr. VanWyck: requests 2 meetings with the Planning Board: 1 with Attorney Russ Brown and the Board and another with the engineers and Board.

SR: there are conflicts in scheduling due to the Town warrant regarding the ZBA term limits and the public hearing for special permit changes. She will contact him to schedule his meetings.

Turtleback Road/Peter VanWyck

SR: steps away from the table as an abutter to an abutter

WB: assume the Chair.

Board discussion regarding the donation of land under the 1996 agreement; the Board received a list of suggestions from the Conservation Committee/Martha Hoar.

WB: was she in favor of the plan?

BS: I was at the meeting and reviewed the original plan and made suggestions for the land plan.

WB: can we ask Martha for her opinion? Would like input from Conservation Committee.

Mr. VanWyck: would like to know when this will be approved?

MC: will make our best effort to resolve this issue within 30 days.

BS & SR: agreed that at present the land is under snow and ice and an ideal site cannot be determined at this time.

Board agrees to walk the property on Saturday, February 21, to explore possible sites.

Discussion continued to next meeting.

Planning Board regular business:

Discussion regarding other meetings and hearings coming up:

March 25: Design hearing for the Causeway redesign

March 30: the Economic Forum

Edited minutes of January 7 and January 21, previously approved via e-mail and passed, were signed.

Minutes for February 4 meeting discussed and edited.

RF: I make a motion to accept the February 4 meeting minutes.

ASTJ: I second

All in favor.

Motion unanimously passed.

Discussion regarding the warrant article for the Town Meeting on April 7 at 8:00 p.m. for ZBA term limits – Planning Board will need to hold a public hearing for that and will need public hearing for special permit changes.

WB advised that they have until mid-April for the hearing, being within 60 days.

SR will contact Brendan to discuss a date.

Invoices signed

Mail reviewed

ASTJ: I motion to adjourn the meeting.

MC: I second.

All in favor

Meeting adjourned at 9:35 p.m.

Next meeting is set for Wednesday, March 3, 2004, commencing at 7:30 p.m.

Presented by: Joanne Jacobsen
Joanne Jacobsen, Adm. Assistant

Attested to: Robert A. Fitzgibbon
Robert Fitzgibbon, Clerk

Town of Essex Planning Board Agenda
March 3, 2004
Essex Elementary/Middle School
7:30 p.m.

- 7:30 p.m. Building Inspector's report
- 8:00 p.m. Public hearing concerning the proposed changes to the by-laws
- 8:30 p.m. Peter VanWyck: Open space residential design concept

Regular Planning Board Business:

Discussion of 10 acres next to Turtleback Road
Review letter of support for the Mass Audubon grant funding for open
space
2/4 & 2/18 minutes to be approved
Invoices to be signed
Mail

Town of Essex Planning Board
Minutes
Wednesday, March 3, 2004, 7:30 p.m.

The meeting was held at the Scout House in Essex and was called to order at 7:40 p.m. by Susan (Scottie) Robinson (SR), Chair.

Attendees: Rob Fitzgibbon (RF), Betsy Shields (BS), Jud Lane (JL), Michael Cataldo (MC), and Westley Burnham (WB)

Absent: Andrew St. John

Building Inspector: Bill Sanborn

Secretary: Joanne Jacobsen

Building Inspector's Report:

10 Lufkin Point Road/Ann deGalvan and Robert Marquis

A permit for a new house, 1,700 s.f., 2 stories, on pre-existing lot.

Has the Board of Health and Conservation Committee approvals.

Planning Board reviewed the site plans and discussed the height requirements.

JL: I make a motion to approve the application for Ann deGalvan and Robert Marquis at 10 Lufkin Point Lane for a new single family dwelling, new construction, as it meets all the Essex Town By-laws.

WB: I second the motion.

All in favor

Motion unanimously passed.

Discussion concerning the building on Martin Street next to Town Hall. Planning Board had approved an addition, but there have been concerns raised about the barn being converted into an apartment. Bill Sanborn will investigate.

Public Hearing opened by Chair Scottie Robinson at 8:05 p.m.

Hearing was centered on the proposed changes in the Special Permit Issuance Rules, Section K and an Amendment to the Essex Subdivision Rules and Regulations, to be listed as item 6:02, 15. (see attached draft proposal)

BS: lead the discussion of the proposed changes to the Special Permit Issuance Rules in four categories, adding more guidelines to help the Board determine the appropriate location of roadways, easements, and infrastructure. The categories are: environmental inventory, groundwater resource information and analysis, traffic impact and waste water impact. Commented that if they seem overly demanding or necessary to the project, then the Board can waive them.

Planning Board discussed the wording of the proposed amendment.

WB: presented a newly formatted Appendix B.

SR: recommended that this issue be held over to another meeting. The Board should review the current proposal with an eye to adopting new changes.

Board discussed need for change in Special Permit Rules and the Rules & Regulations for both small and large projects.

Building Inspector, Bill Sanborn, indicated the need for a change in wording with regard to the future needs of the new sewer system. Discussion included items that would trigger the new rules, the need for more and better information from all persons interested in presenting new projects in town and the need to coordinate this information with other Town Boards.

MC: in summation: thought that this a great tool; we are not taking power away from any other Board, we would be handing them more information to help them make better decisions.

SR: We will continue this at our next meeting on March 17. Discussed scheduling of the next 2 meeting dates.

MC: I make a motion to continue this public hearing to our next meeting on March 17, at 8:00 p.m., so we can take up this issue and review Westley's changes. In the meantime, you can review these with other Boards.

RF: I second the motion.

All in favor

Motion passed unanimously.

Public hearing continued to March 17.

SR: Notices will be posted for the next public hearing.

SR: Examined and discussed the letter from Elaine Wozny of the Board of Health.

Regularly scheduled meeting resumed:

Cluster developments and open space planning/Peter VanWyck and Russ Brown

Mr. VanWyck introduced his attorney, Russ Brown and a prospective new resident of Turtleback Road Extension.

Mr. VanWyck: wanted to discuss the land swap.

SR: this meeting is about cluster zoning, the Board is not prepared to discuss the land swap, the 10 acre acquisition will come before the ANR.

Mr. Brown: asked if the other town Boards have returned comments yet and is there a timeline when the comments need to be returned?

SR: we have the comments from the Conservation Committee, but none from other Boards.

BS: we discussed waiting until Spring to determine the area because of the snow cover.

SR: the Board has not had a chance to discuss the results of their findings and proposed routes over the land.

Mr. VanWyck: volunteered to sketch up a plan based on the Board's walking the land and making their decision.

Board discussion on Green Neighbors website (www.greenneighbors.org) and information obtained from that site.

Mr. Brown: referring to the Green Neighbor website, there are two models of cluster zoning: (1) the special permit and (2) "as right" cluster zoning and explained the difference between the models.

While larger lots tend to reduce the open space, with cluster zoning open space tends to be increases and usage can be regulated by the governing association.

There are bonus incentives for developers built-in to the models; Board and attendees had discussion of examples of bonuses and model plans.

WB: explained different scenarios for divisions of land and housing.

Mr. Brown: discussed 2 types of by-laws: planned unit development (PUD) and reduced size lot in exchange for donated land to the town.

Board discussed issues of water supply provisioning and waste water control; percability was a basic issue.

RF: asked if there were any demographic studies of people wanting to live in cluster type housing and would people object to cluster zoning?

SR: there are such studies and she will research.

Mr. Brown: cited marketability for older citizens wanting cluster housing to reduce crime and desire to live in a community and not be isolated, and desire for tracks of open space.

Board discussed the need for this type of zoning, but it would take a series of town meetings to inform and communicate the need and desirability of such designs and a community-wide process of re-educating citizens as to the benefits of such design.

Mr. Brown: Essex Board may review Manchester's by-laws, which are on-line. And recommended conferring with John Whitten, who is versed in this type of zoning.

Board took recommendations under consideration and will continue this discussion at future meetings.

Regular Planning Board Business:

SR: read and discussed the letter of support sent to the Bruce J. Anderson Foundation and its proposed outreach for the Cape Ann area.

SR: cited the need to form a sub-committee to research cluster zoning. WB, BS and RF volunteer to participate, research, report findings and make recommendations; will report back at the April 7 meeting.

RF: initiated discussion regarding billboard and signs by-laws in reference to signs on a certain property on Southern Ave; WB noted that political signs are exempt.

SR: presented the Planning Board 2003 Annual Report

Discussion on dates for the Community Development Plan open forum, slated for March 30, with Sam Cleaves.

SR: discussion on 10 acre parcel for town recreational use; will present a list of questions to the Conservation Committee and solicit their comments; will call Board of Health for comments.

Board examined the proposed plan from Mr. VanWyck

Invoices signed

Mail reviewed

WB: I motion to adjourn the meeting.


RF: I second.

All in favor

Meeting adjourned at 9:55 p.m.

Next meeting is set for Wednesday, March 17, 2004, commencing at 7:30 p.m.

Presented by:


Joanne Jacobsen, Adm. Assistant

Attested to:


Robert Fitzgibbon, Clerk

DRAFT
Amendment To Essex Subdivision Rules and Regulations

Insert the following language and list as item 6.02 15:

Proposed developments or those applying for modification located within Essex containing 6 acres or more, or propose or are capable of proposing 4 or more houses shall provide the information referenced below as a part of plan submission.

The following information shall be used to assist in determining the appropriate location of roadways, easements, and infrastructure. The information shall be generated by the appropriate certified professionals and submitted in hard copy format and may be submitted in electronic format compatible with the Town System. It may be used for the basis of possible mitigation when reviewing waivers of the Rules & Regulations Governing the Subdivision of Land.

1. Environmental Inventory
 - a. Location of resources subject to the Wetlands Protection Act
 - b. Describe wildlife habitat and/or observe activities, specifically rare, endangered, or threatened species or habitat
 - c. Provide plant inventory
 - d. Identify Areas of Critical Environmental Concern (ACEC)

2. Groundwater Resource Information/Analysis
 - a. Indicate location of private and public wells within the property.
 - b. Identify Aquifer Protection District (if applicable)

3. Traffic Impact Analysis
 - a. Projected trip generation at build-out
 - b. Identify adjacent roadway, sidewalks, pedestrian/bike paths and cart paths
 - c. Intersection Level of Service (LOS) analysis within ¼ mile
 - d. Identify proposed mitigation, if any

4. Wastewater Impact Analysis
 - a. Projected wastewater (gallons per household and total project)
 - b. Identify potential location and capacity of leaching field areas under Title V or the Groundwater Discharge Permit, including percolations results or groundwater mounding analysis.

DRAFT
Amendment to Special Permit Issuance Rules

Insert the following language and list as item K. 7:

Proposed residential or commercial developments located within Essex containing 8 acres or more, or propose or are capable of proposing 5 or more houses shall provide the information referenced below as a part of final plan submission.

The following information shall be used to assist in determining the appropriate location of roadways, easements, and infrastructure. The information shall be submitted in both hard copy format (and electronic format compatible with the Town system.) It may be used for the basis of possible mitigation when reviewing waivers of the Rules & Regulations Governing the Subdivision of Land.

1. Environmental Inventory
 - a. Location of resources subject to the Wetlands Protection Act
 - b. Describe wildlife habitat and/or observe activities, specifically rare, endangered, or threatened species or habitat
 - c. Provide plant inventory
 - d. Identify Areas of Critical Environmental Concern (ACEC)
2. Groundwater Resource Information/Analysis
 - a. Indicate location of private and public wells within the property.
 - b. Identify Aquifer Protection District (if applicable)
3. Traffic Impact Analysis
 - a. Projected trip generation at build-out
 - b. Identify adjacent roadway, sidewalks, pedestrian/bike paths and cart paths
 - c. Intersection Level of Service (LOS) analysis within ¼ mile
 - d. Identify proposed mitigation, if any
4. School Impact
 - a. Project number of school age children
5. Wastewater Impact Analysis
 - c. Projected wastewater (gallons per household and total project)
 - d. Identify potential location and capacity of leaching field areas under Title V or the Groundwater Discharge Permit, including percolations results or groundwater mounding analysis.

**Town of Essex Planning Board
Minutes
Wednesday, March 17, 2004, 7:30 p.m.**

The meeting was held at the Scout House in Essex and was called to order at 7:40 p.m. by Jud Lane (JL), Vice-Chair.

Attendees: Rob Fitzgibbon (RF), Betsy Shields (BS), Andrew St. John, (ASTJ), Michael Cataldo (MC), and Westley Burnham (WB)

Absent: Susan (Scottie) Robinson (SR)

Building Inspector: Bill Sanborn

Secretary: Joanne Jacobsen - absent

Building Inspector's Report:

227 Western Ave/John Janes, DBA Essex Mini-Storage

Board reviewed Mr. Janes site plans, found no issues.

MC: I make a motion to approve the application for siting a building and issuing a building permit for John Janes, 227 Western Ave, to tear down an existing structure and to construct a newer and larger building, finding that it has been approved by the Board of Health, but is pending approval of the Conservation Committee.

BS: Second the motion

All in favor

Motion passed unanimously

86 Southern Ave/Ben Lower

Mr. Lower has land off Southern Ave with no frontage; has easement from previous owner; asked the Board for advise for building on the land. Board proposed 2 options for him to either :

- (1) go through the subdivision process to create a road and gain frontage. This would require Jerome French and other owners to come to agreement on the plan.
 - (2) go through the Board of Appeals to request a variance from lot frontage requirements.
-

Public Hearing opened by Vice-Chair Jud Lane at 8:05 p.m.

This hearing, a continuance from the March 17 Public Hearing, was centered on the proposed changes in the Special Permit Issuance Rules, Section K and an Amendment to the Essex Subdivision Rules and Regulations, to be listed as item 6:02, 15.

Planning Board discussed the need for incorporating the changes proposed by Westley Burnham and Betsy Shield. Consensus was that changes were necessary in specific areas with respect to defining what is needed on an application and what information is necessary to be included in the application process. Some of the documents have not

circulated to all the Board members. All agreed to review all pertinent documents which the Board secretary will send to them via e-mail. Bill Sanborn suggested that streamlining the process, with specific guidelines. The Board agreed to continue the hearing after everyone had a chance to read all the documents.

JL: I make a motion to continue the hearing.

ASTJ: I second the motion

All in favor.

Motion passed unanimously. Board will continue this at the public hearing on April 7, at 8:00 p.m.

Regular Planning Board Business:

Discussion of 10 acres next to Turtleback Road Extension

Mr. VanWyck wanted to go forward with his plans and needed Planning Board approval, will then forward that to the Board of Health. He provided the Board with 2 options in a previous meeting. Board agreed to coordinate another meeting with other Town Boards and the Open Space Committee in order to review the current plan options and discuss what is best for the Town.

Minutes of February 18 and March 3 were approved.

WB: I motion to adjourn the meeting.

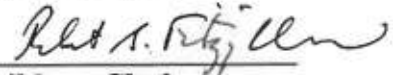
ASTJ: I second.

All in favor

Meeting adjourned at 9:55 p.m.

Next meeting is set for Wednesday, April 7, 2004, commencing at 7:30 p.m.

Presented by: 
Joanne Jacobsen, Adm. Assistant

Attested to: 
Robert Fitzgibbon, Clerk

Town of Essex Planning Board Agenda

April 7, 2004

Essex Elementary/Middle School

7:30 p.m.

- 7:30 p.m. Building Inspector's report
- 7:50 p.m. Christopher Osborne: preliminary discussion for sub-division plan at 143 Western Ave
- 8:00 p.m. Public Hearing: Regarding a proposal to eliminate the present terms limits of the Zoning Board of Appeals, to consolidate all Board of Appeals by-law references to Section 6 and to reference additional relevant statutes
- 9:00 p.m. Continuance of public hearing: regarding the proposed changes to the Special Permit Issuance Rules and Subdivision Rules and Regulations
- 9:45 p.m. Peter VanWyck: Bond for LowLand Farms

Regular Planning Board Business:

Discussion of 10 acres next to Turtleback Road Extension (if time allows)
3/17 minutes to be approved
Invoices to be signed
Mail

**Town of Essex Planning Board
Minutes
Wednesday, April 7, 2004, 7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School in Essex and was called to order at 7:35 p.m. by Susan (Scottie) Robinson (SR), Chair.

Attendees: Rob Fitzgibbon (RF), Andrew St. John, (ASTJ), Michael Cataldo (MC), and Westley Burnham (WB), Jud Lane (JL)

Absent: Betsy Shields

Building Inspector: Bill Sanborn

Secretary: Joanne Jacobsen

Building Inspector's Report:

Questioning how fireplaces and overhangs are considered within set-back regulations. Board discussed.

12 Scot's Way/North Star Realty Trust

For a new telecommunications facility.

Board stated that had already approved the siting by special permit. Per site plan, construction was reviewed by the Board on or about 1/20/2004. Secretary will look up the date in the file and respond to the Building Inspector.

SR: Let's review what was approved and compare that to what is on the site plan now. No further action required at this time.

30 Choate Street/James Horrocks

Request for a 2,300 square foot addition for a new family room, laundry room and storage, on an existing foundation. Has approvals from the Board of Health and Conservation Committee. Garage exists now is 24 ft. by 26 ft., new family room will be 20 ft. by 26 ft. (520 sq ft); 24 ft. by 24 ft. foundation already exists. Board reviewed, found that addition meets requirements, no vote necessary. Application permitted.

71 Southern Ave/Barry Ewing

Request to remove an existing garage and rebuild on foot print with same 16 ft by 24 ft. structure; present structure is two feet from side line; same height. Has Board of Health and Conservation Committee approvals.

WB: I make a motion to approve the application of Barry Ewing for the reconstruction of an existing 16 ft by 24 ft building to be located within 2 feet from the sidelines, finding that it has been approved by the Board of Health and the Conservation Committee and in accordance with Section 6.4-2., finding that it is not substantially more detrimental to the neighborhood.

RF: I second the motion.

All in favor.

Motion unanimously passed.

SR: requested that Bill Sanborn check the garage at the home next to the Town Library. It appears that an apartment has been added to the garage. Mr. Sanborn will check and report findings at the next meeting.

Board discussion on the Nick Pappas building on Lufkin Point Road, which had the Conservation Committee approval, but the decision was appealed by the abutters and the DP rejected the approval and turned it back to the Conservation Committee. Bill will check on the status with the Conservation Committee and report findings.

143 Western Ave./Chris Osborne

Mr. Osborne appeared before the Board with an initial request to subdivide his lot and build a new house on his 3.5 acre property. The existing dwelling, located on Lot 11, would be divided adding Lot 12. Board of Health has approved a new septic design for his proposed dwelling. However, since his property is within the Water Resource District, he would need to restructure the new lot with 40,000 s.f. and with 150 foot frontage. His current plan called for 30,000 s.f. and 140 foot frontage. Mr. Osborne will return with new lot division plan and Form A.

Public Hearing opened by Chair, Scottie Robinson at 8:05 p.m.

This hearing concerns the changes to the Town by-laws with respect the Zoning Boards of Appeals.

SR: I am going to open the hearing now for consideration of the changes to the zoning by-laws concerning the Board of Appeals. I'm going to read the proposed changes. I expected someone from the Zoning Board would be here to speak to the issues, but I don't see anyone yet. I was told that Rolf (Madsen) would be here. Does everyone have copies of the changes? (copies of proposed changes were distributed to the audience).

Rolf Madsen appeared before the Board to present the proposed changes and to give substantiation for the changes.

SR: I'm glad that you're here, I was just opening the hearing.

WB: I would like to hear from the proponents – what they have to say.

SR: Yes, that's what I'd like to hear. Let's keep this a little formal, not just a conversation.

Mr. Madsen: the general purpose was that we have trouble finding candidates for the Board of Appeals. As it reads now you can only serve 2 terms.

WB: consecutively

Mr. Madsen: If you can't find someone to fill the seat and the other thing is like the position your group is in now on the Planning Board. It takes time to come up to speed on the by-laws and the other thought was that the way ours is set up is somewhat different from how the state is set up. We thought we would like to change it so that if someone wanted to serve, then the Planning Authority would be able to appoint someone.

WB: with no limit at all?

Mr. Madsen: with no limit.

SR: May I ask --- how do you go about looking for candidates now?

Mr. Madsen: it's announced in the newspaper and at our meetings. We recently had a situation when there was an opening and the alternates did not want to step up to the plate and become permanent.

RF: so there is a lack of civic participation and the idea is by making these ... how would these changes that you propose encourage people to participate?

Mr. Madsen: it's not necessarily to encourage people to come forward, but also if someone serving on the Board now wants to serve an additional term, they can remain for another term.

RF: so more of a retention plan?

ASTJ: was there any consideration for changing the term, to increase the term limit? What you're saying is that members may be appointed to an additional term without limit.

Mr. Madsen: yes, basically that's what it's saying.

ASTJ: was there any consideration given to....

Mr. Madsen: Remember that the Appointing Authority will be changing over time as well. So if there's a viable member of the Board of Appeals that's doing a decent job or good job for the Town and they want to serve an additional term and the Appointing Authority agrees. I think a person should be able to be appointed to the Board.

RF: So for the first proposal, deleting 2-8.4, then the proposed section 6-8.1, sounds like you want to get everything into 6. Is that the general gist? Is there any reason in Chapter 41, section 81R, the change is not mentioned?

Mr. Madsen: I can't say right now.

RF: just curious

WB: 81R section allows the Town to set up a Planning Board and part of that allows a process to set up to appeal Planning Board decisions.

RF: is it a good idea to mention Chapter 41 in the section 81R?

SR: Does anyone else from the Planning Board have a comment?

ASTJ: does anyone from the audience have any questions?

WB: I have a comment. I have deep reservations about an open-ended term on the Board of Appeals. The longer you're in there, the more you are hunkered down in there.

MC: and you're hunkered down

WB: When the next election comes around, and someone else attempts to oust that member, it's not as easy as you think it is.

RF: if you waived the term limit that will encourage someone to sit on the Board for a long term?

SR: I would think so.

WB: the danger is not encouraging someone. The danger is when some gets anchored in and it's easy to become dominant. I'm a perfect example. You take an individual, the more they get to know and are able to make quicker decisions, then you wind up running the whole show, especially if you have a high turn-over rate. So if you add a 3rd term, then you get 9 years out of them, and you run the risk of having a one-man show. I think there ought to be a termination point, where you have a chance to have a break in the flow.

SR: I agree with that. My observation is that that has happened on other town Boards, that people have served beyond their useful time. And it may be the same problem. There aren't a lot of people standing around saying "pick me next". You just can't dump someone if you don't have someone to replace them. But I think.....

Mr. Madsen: in

SR: I'm not saying, it's your problem and you should deal with it. It's just a problem.

Mr. Madsen: If we leave the process the way it is today, when a vacancy comes up and no one comes forth, now you're searching and begging people, and you have a term expiring, so you may have someone that's not the best choice. We wouldn't be having this situation and having a very difficult time choosing, you don't want to be haphazard in filling it. I believe it's important to have qualified people. What happens when we don't have any candidates? Do we leave the position vacant? That scenario could exist. It's almost happened, because we had conflicts.

WB: we have other ways to resolve this.

SR: it's not the only issue.

Mr. Madsen: there could be conflicts.

ASTJ: it's an interesting comparison with the Planning Board. We have had some discussion on how to go about finding people. We need 2 people now. We've identified candidates and people have taken out their papers. The Planning Board has no limits.

WB: but the Planning Board is an elected position.

MC: so your term is up...

SR: the other thing is when new members come on, there is

MC: and the other thing is they need to have some experience.

ASTJ: I agree with WB and SR that we shouldn't have "no limits", but you could extend it somewhat. And there should be a level of qualifications; and a concern about what you're getting.

WB: Can you interrupt the term?

Mr. Madsen: then you can go off and then come back.

WB: I see that as a good thing. That gives a break. Not a contiguous term. Then that lessens the potential for someone to become too dominate for too long.

RF: then there would not be a forceful personality in dominance on the Appeals Board for a rein of more than 10 years. That issue won't happen.

WB: 5-10 years from now, when you don't have term limitations, and someone does come along At least the Planning Board is an elected position. With a definite term, you have to re-apply. You have to get re-voted in. If people don't like what you are doing then

Mr. Madsen: But if there's only one person running, then

Bruce Fortier: what your problem is you don't have Selectman with sufficient oversight of the Appeals Board. You're talking about symptoms of the problem. It's a lack of Selectmen.

WB: you could twist my statement into something like that, but I really wish you wouldn't.

Mr. Fortier: That was more my statement than yours.

SR: Bruce, you can be recognized.

Mr. Fortier: First you should read the 1st paragraph, starting with section 2-8.4, that of the general section. Did you get my note, Scottie?

SR: yes, I got it. Do you want me to read it now out loud?

Mr. Fortier: no, the reason that section is in there is that back in 1972, when we adopted the new zoning laws, we adopted 6-8.1, membership was mentioned in the 2nd paragraph. Then 10 years ago when I was editor of the by-laws, in the course of my work, it came to my attention that that section still existed and had never been referred to, but was still there. So I recommended to the Selectmen that they put that article in the warrant in the 1982 Town Meeting as redundant and obsolete. Instead they managed to delete the Board of Selectmen instead.

SR: do you have any comments on the Zoning by-laws?

Mr. Fortier: yes, the first one you might as well approve and recommend to the Board to say yes to the first section. The second one on the membership, that's up to you. The problem is when you get to "by amending 6-8.3A administrative review", everything before that is fine. But when you proceed beyond that, it's going to compound the existing flaws of the laws instead of correcting them. The reason for that is Chapter 41 where it says "by amending section" and so forth. The problem is Chapter 41, section A, referred to subdivision laws has nothing to do with the Appeals Board. What is not generally understood is that the Appeals Board is supposed to have authority over the Town administration offices. The Appeals Board has no authority over the elected Planning Board. Presently the by-laws have the Planning Board and the Building Inspector having to approve building permits. Originally it said the Planning Board, when the law first started. Then it was recognized in the state law that the Building Inspector was supposed to be the enforcing officer. Instead of adding the Building Inspector to the law, they changed the law to say the Planning Board should review building permits and a lot of time they don't do that. If that were done, then change needs to be done, is to change the by-law to require the building permits to be *reviewed* by the Planning Board, but approved by the Building Inspector. Because the process is supposed to be that someone who is aggrieved by the Building Inspector's refusal to approve to grant their permit, then they would go to the Appeals Board. The Appeals Board is not supposed to have any authority over the Planning Board. But this flaw in our law makes you guys also one of the people who approve or disapproves the building permits, which means that you get entangled with the Appeals Board and it shouldn't be. That's the problem when you get into... but in 81A

WB: 81A has no business being there. I agree.

Mr. Fortier: here's the intriguing thing, at the end of Chapter 41, 81Z is the only thing that has to do with an Appeals Board. Now what it says is that there can be a Special Appeals Board, which can also be the same thing as the Appeals Board, that has this unusual authority relative to Chapter 41, they have the authority only over sections 81Y and 81Y is a provision that if someone wants to put up another building that actually happens to be located on a subdivision lot, which I presume would be something like a utility building, that Special Appeals Board has authority over that single section Z. I'm not sure that that subject has ever come up, but it might. But those Chapter 41 Sections 81 Y, Z, AA, BB, which refers to the establishment of a Special Appeals Board, are the only ones. But all the rest of the section for Appeals Board and zoning laws are fine. But if you adopt these changes you are entangling the Appeals Board with the decisions of the Planning Board relative to subdivisions. This is not a new thing.

SR: I'd like to ask you to hold there a minute. It's not a problem. We're just having a hearing. People are making suggestions. Would you be suggesting that Chapter 41A in its entirety be removed and instead of just Chapter 41, 81 Y,Z, AA, BB?

WB: the only change is that Chapter 41, 81A, which has no business being there.

Mr. Fortier: The problem is this hearing is being held after the warrant has been published. My suggestion to your Board is to encourage your Board or better, Rolf, to make a suggestion to move that the proposal be adopted up to the words: "by amending Section 6-8.3 administrative review...." I'm saying, fine, but the changes to the Appeals Board, don't mess it up further and it's going to make it worse instead of better and make those corrections that are necessary, sometime in the near future and establish 81 Y, etc. The reason I know that, is years ago when Franklin Walker was Town Counsel, some developer brought that up. There was a problem with the Appeals Board. Franklin said the Appeals Board had power over the Building Inspector, not the Planning Board and we had no-idea. So wherever it says the "town offices" it should be changed to say "administrative offices". So that it conforms to the State Law. But they would be changes that would be difficult to make. But

ASTJ: it would be worth looking into.

RF: when was section 81 added?

WB: When we sat down with Brendhan, when we discussed the pumping station. They wanted to use 81A. We decided to go through the special permit process. Chapter 41 is when subdivision deals with the control and the process is pretty well spelled out. We don't want to cloud that line; that's the same thing as the special permit granting authority. The Planning Board in the Town of Essex is the special permit granting authority. Each appeal process is spelled out in the state law. We don't want to go there. Mr. Fortier: What's also in there is fine line in the last section, which states specifically that appeals from decisions of the Planning Board regarding subdivisions goes to the Supreme Court.

WB: or Land Court.

Mr. Fortier: It's key in the future to get the Planning Board out of the business of approving building permits, but to keep on reviewing them.

WB: I know it says that, but we don't have to (approve),

SR: that's not a topic for this discussion.

Mr. Fortier: the by-laws say you have to approve them. Presently that section does give authority to the Appeals Board to review the discussions made by the Planning Board.

WB: Under 2 conditions: 6-4.2 finding and we've made that termination that it's not substantially more detrimental and appeals of the Board of Appeals.

Mr. Fortier: do you have a copy of the by-laws?

Mr. Madsen: I'm just glad that you are reviewing it and if you have any suggestions or if you feel that there are changes you want to make, you won't find any objection from us.

I'm sure some of these changes have to come from Town Counsel.

MC: if you modify from 2 to 3 consecutive terms, which would give them a total of 9 years, would that help the problem?

SR: do you mean 3 consecutive terms?

MC: would it make sense to change from 2 to 3 terms?

ASTJ: then it would indicate that only change to this entire proposal would be reduced to one word.

SR: no, there are other small changes.

ASTJ: substantively

WB: keep in mind that any alteration has to be approved by the Town Meeting and cannot be substantive in nature. The limited half of it no big deal. But if you make changes

Mr. Fortier: law says that you need a public hearing on what is going to be proposed, not a hearing on the general subject.

RF: how do we proceed?

SR: does anyone have any comments here?

WB: do you guys realize what our obligation is coming out of these hearing?

We are supposed to give feedback

SR: anyone have any other questions?

BJ Frey: I have a comment. Changing from 2 terms to 3 terms is not going to solve your problems if you don't have anyone who wants to jump in and join the Board of Appeals. They have to try harder and let them know about the openings. They should have the power to control over to override the Planning Board decisions. The Planning Board works long and hard to make those decisions. Depending on the make-up of the Board you could have a group of people that are slanted only one way and that could be potentially dangerous. I think it's a good idea to keep it the way it is and make a greater effort to tell the people about the (open) positions. I would like to see retiring Planning Board members serve 1 term on the Board of Appeals.

SE: so you believe people should be limited to 2 terms and that should be the end?

Mr. Fortier: no they can serve now, then take a break and come back later.

SR: so what you think, is they should not serve 3 terms in a row.

BJ Frey: yes

WB: the only difference is 3 terms on the Board of Appeals is effectively the same thing as 2 terms of 4 years on the Planning Board.

SR: I'm allowing comments from the audience.

Peter VanWyck: we should make a better effort to find qualified people. A lot of times when you put announcements in the Gloucester Times, a lot of people don't see them. You need more effort and they will come forward. Make it an issue for the Town Manager, for him to research and ... I agree with BJ.

Mr. Madsen: People who are coming into Town now aren't the people that you want on the Board. The other thing you said about the Town Manager searching for qualified people - that could be a very difficult thing to do because then someone could say that the Select Board is using their manager to hand pick the person that they want on the Appeals Board. From a political point, I'm sure there are several members of the community right now that would find fault with that process.

ASTJ: Select Board appoints those guys, so that finding these however way that want to....

Mr. Fortier: Select Board is that term been creeping into this conversation. It should be the Board of Selectmen.

SR: any other comments from the audience?

MC: I make a motion to close this hearing.

SR: I recognize BJ Frey.

BJ Frey: doesn't you Board (addressing Mr. Madsen)... why don't you guys call people (candidates)?

Rolf: yes, we do.

ASTJ: I second the motion.

SR: All in favor?

Board passes the motion unanimously.

Mr. Fortier: when will you be discussing and making recommendations on this subject?

SR: possibly tonight or at the next meeting. Do you want to be advised?

Mr. Fortier: what's the need to adjourn?

SR: we have an agenda to follow and another public hearing to be heard.

Regular Planning Board business

Planning Board discussion of the minutes of the March 19 meeting. Recommendation for changes made.

WB: I make a motion to accept the revised minutes of the March 19 meeting.

MC: I second the motion.

SR: All in favor

Board unanimously passed the minutes of the March 19 meeting with revisions.

Mail reviewed.

Invoices signed.

Chair Scottie Robinson called for a discussion and brief report from Westley Burnham and Rob Fitzgibbon on their process in the research of cluster zoning and open space design.

WB: I would like to see a draft by mid-September. We'll have the initial framework started. Then we should bring in outside people to review it.

SR: I was approached by the Open Space Committee member Rebecca Dawson for a sub-committee post on open space residential design and by-law changes.

Board accepts the proposal to have WB and RF return on June 2 with the results of their findings.

Public Hearing opened by Chair, Scottie Robinson at 9:05 p.m.

This hearing, a continuance from the March 17 Public Hearing, was centered on the proposed changes in the Special Permit Issuance Rules, Section K and an Amendment to the Essex Subdivision Rules and Regulations, to be listed as item 6:02, 15.

SR: I am reopening the hearing concerning the proposal to our Special Permit Issuance Rules and Regulations. Could someone give me a review of what went on at the last meeting?

Board gave brief overview of the progress made at the last meeting.

SR: Does anyone from the public have any comments?

No comment from people in attendance.

JL: we needed to look at both Westley's and Betsy's proposals and assess what makes sense to do.

ASTJ: And we all agreed to review and give input at tonight's meeting.

MC: we kept it open so we could make changes.

WB: reviewed all the changes with the Board. Agreed to re-edit the document and distribute to all Board members via e-mail for their review.

Board agreed to consider and review all the changes and re-open the discussion at the next Board meeting.

Regular Planning Board Business:

Discussion of 10 acres next to Turtleback Road Extension

Mr. VanWyck appeared before the Board with his new plans and agreed to post a \$70,060 cash bond to release the current covenant on the land. He will return to the Board at the next meeting with the appropriate release forms, after the check has been deposited. Then the Board agreed to review his ANR for new lots. They have set a date for a meeting with the Conservation Committee and Board of Selectman for May 19 to review the proposed 10-acre conservation area.

WB: I would like to make a motion to accept a \$70,060 cash bond from Peter VanWyck for a surety bond for completion of the road at Turtleback Road Extension based on the estimates given by Larry Graham.

ASTJ: I second the motion.

All in favor.

Motion passed unanimously.

Minutes of February 18 and March 3 were signed.

Minutes of March 17 were reviewed, edited and approved

Invoices signed and mail reviewed.



MC: I make a motion to adjourn the meeting.

RF: I second.

All in favor

Meeting adjourned at 10:00 p.m.

Next meeting is set for Wednesday, April 21, 2004, commencing at 7:30 p.m.

Presented by:  Attested to: 
Joanne Jacobsen, Adm. Assistant Robert Fitzgibbon, Clerk

**Town of Essex Planning Board
Minutes
Wednesday, May 5, 2004, 7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School in Essex and was called to order at 7:35 p.m. by Susan (Scottie) Robinson (SR), Chair.

Attendees: Andrew St. John, (ASTJ), Michael Cataldo (MC), and Westley Burnham (WB), Jud Lane (JL), Betsy Shields (BS)

Absent: Rob Fitzgibbon

Building Inspector: Bill Sanborn

Secretary: Joanne Jacobsen

Building Inspector's Report:

SR: requested at last meeting that Bill Sanborn check the garage at the home next to the Town Library. It appeared that an apartment has been added to the garage. Mr. Sanborn reported that there is a guest suite, owner would not be renting it out, it would only be used for visiting guests/family members.

85 Choate Street/Rich Salters

Mr. Sanborn: had talked to him before he bought the property around February, 2003. Mr. Salter has a current permit to finish a bath in the barn. Both Mr. Sanborn and Ms. Robinson have received a report from a concerned neighbor. Mr. Salters told Mr. Sanborn that he was constructing a polo field and a track.

Mr. Sanborn advised him to call the Conservation Committee to check on necessary requirements. No building permit was required as there was no physical building construction planned. Was aware of a by-law that pertained to earth removal, but was not sure that it had ever been used.

SR: it had been used in the VanWyck developments.

Mr. Sanborn: prior to Mr. Salters purchasing the property, it had been used for storage of horses.

ASTJ: how large is the property?

SR: approximately 11 acres.

MC: is it classified as a recreational facility?

ASTJ: it would be if he started to charge admission to the events held there.

WB: then they would need bathroom facilities/public restrooms and that would trigger something with the Conservation Committee.

SR: will contact the neighbor and advised him that no permits were required at this time unless Mr. Salter opens it up as a business.

Lufkin Point Lane

Discussion regarding the tearing down of an old shack and replacing with new construction, to clarify the location on Lufkin Point Lane.

7 Maple Street/Michele and Todd Kennedy

Permit requested for an addition: adding a mudroom (6 ft x 10 ft) and family room (18 ft x 20 ft). Has the approval of the Conservation Committee and the Board of Health. They also own the adjacent lot; SR and ASTJ questioned the need for setback compliance if they own both lots.

Mr. Sanborn: no need to make setback requirements.

Planning Board reviewed the site plan, found no need for further information; no objection to building permit.

32 Pond Street/ Dennis DiGregorio

Permit requested to extend the house out additional 10 feet with a 2-story addition. Has received the Conservation Committee and Board of Health approvals. They are adding a bath and extending a second story room. There is no change of use. Planning Board reviewed the site plan. MC noted that the site plan included a garage and apartment over the garage. Mr. Sanborn explained that though they obtained the permit for the garage and apartment, they never built them.

24 Apple Street/Michael and Sara Rodier

Betsy Shield excuses herself from the discussion, as she is an abutter.

Permit requested to add a 2nd building on their lot. They wish to make an apartment over the garage. They have the approvals of the Board of Health and the Conservation Committee approval was not required since there was no soil removal. The property presently contains an existing house, a barn, a new garage on approximately 5 acres. The previous owner has approvals for a 4 lot subdivision, but did not build. The property will then contain 2 dwelling units and require a "change of use".

JL: read Section 6-5.5

ASTJ: I move to approve the application of the Rodiers' of 24 Apple Street, for the conversion of a garage into a dwelling unit under Section 6-5.5 of the Essex By-laws, which will create 2 dwelling units on the same lot, finding that it meets all the requirements of the Essex zoning.

MC: I second the motion.

All in favor.

Motion passed unanimously.

44 Lufkin Street/Peter Meyer

Permit requested for a new barn/garage.

Planning Board examined the site plan.

JL: I make a motion to approve the building of a new barn at 44 Lufkin Street, owner Peter Meyer, and the siting of the barn, finding that it meets the set backs and approved by other Town boards.

MC: I second the motion.

All in favor

Motion passed unanimously.

9 Western Ave/ Jerry Chase

Permit requested for an addition to the main house. A foundation did exist at one time, but was never used. Now they will put in a new foundation for the addition. Has received the Board of Health and Conservation Committee approvals. Planning Board reviewed the site plan and had no objections.

Regular Planning Board Business:

Scheduled Meeting Agenda:

208 Southern Ave/Vern LeBlanc, representing Raymond Ramsdell

Submitted an ANR. Planning Board reviewed the site plan, noting the wetlands and uplands designated and calculated as required by zoning.

JL: I make a motion to approve the ANR for the application by Raymond Ramsdell at 208 Southern Ave, represented by Vern LeBlanc, Book 13916, page, 304; creating an second lot with appropriate frontage and area according to the Planning Board By-laws.

BS: I second the motion.

All in favor

Motion passed unanimously.

Arielle Lane/Scott Boches

To release the covenant on Arielle Lane by posting a bond for road completion as estimated by H.L. Graham Associates for \$120,000. Mr. Boches had the cashier's check, however it was made out incorrectly to the Town of Exeter instead of Town of Essex; he will deliver a new check May 6 to the Planning Board office and obtain the notarized release.

Mr. Sanborn: next order of business at Arielle Lane--- to site a new house at 2 Arielle Lane. Site plan reviewed by the Planning Board.

BS: I make a motion to approve the siting of a new dwelling at 2 Arielle Lane owned by North Land Construction, Map 8, Lot 47B, for a new single family home, finding that it meets all Town of Essex by-laws.

ASTJ: I second the motion.

All in favor

Motion passed unanimously, contingent of the receiving the bond on May 6.

Turtleback Road Extention/Peter VanWyck

Mr. VanWyck presented a Form A for 5 new lots.

Planning Board discussed the number of lots approved and examined the proposed site plan.

Planning Board discussion included the following issues:

- Whether lots approved needed input and approval from other Town boards and the Selectman
- Mr. VanWyck was asked to identify the access point for each lot
- WB pointed out that this project was an exclusionary area, bound by the original agreement (1988), and not subject to current access requirements
- Discussion on State Law, referring to Chapter 41, in particular section 81M

- Original agreement for judgment was for 8 lots, until the 10 acre agreement was completed for a total of 12 lots.
- ASTJ added that there are 3 issues at large: agreement for judgment is not satisfied yet; there is a need for other Boards to approve; access to one lot is not clear.

Planning Board advised Mr. VanWyck to attend the May 19 meeting for further discussion. Mr. Van Wyck agreed to appear and to bring his counsel. Mr. Van Wyck insisted on submitting his Form A, though lot approval had not been ratified. An memo was drafted by the Board acknowledging the receipt of the Form A and a \$600.00 check for the 5 additional lots, contingent on all conditions being met in full.

143 Western Ave./Chris Osborne

Presented a revised site plan and Form A for subdividing his lot. Planning Board reviewed, signed off on Form A and site plans.

ASTJ: I make a motion to accept and endorse the ANR of Christopher and Deborah Osborne, 143 Western Ave, Book 15579, Page 106, Lots 11 and 11A; accepting the ANR as it meets the frontage requirements and other Town of Essex by-laws.

MC: I second the motion.

All in favor

Motion passed unanimously.

Discussion of 10 acres next to Turtleback Road Extension

SR: has invited representatives from the Board of Selectman, the Conservation Committee and the Open Space Committee to the May 19 Planning Board meeting to hear their recommendations or concerns regarding the 10 acre parcel at Turtleback Road.

MC: we should ask Town Counsel on the process.

SR: agreed.

JL: how do we formally accept the 10 acre gift?

WB: they need to submit a formal plan and it has to meet the terms set up in the original agreement.

SR: this will create an easement granted to the Town. Martha Hoar from the Open Space Committee had voiced some concern about the vernal pool on the property. Will need to ask Town Counsel about the viability of creating an easement on a easement and other questions.

Planning Board also discussed the need for access from the existing road.

Discussion to be continued to the next meeting.

Minutes of April 7 were reviewed and approved.

WB: I make a motion to accept the April 7 minutes.

ASTJ: I second.

All in favor.

Invoices signed and mail reviewed.

SR: Discussion of Metro Area Planning Council Essex Community Development Plan and questionnaire.

WB: I make a motion to adjourn the meeting.

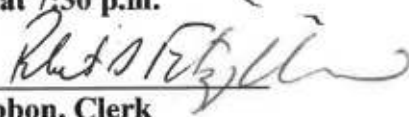
ASTJ: I second.

All in favor

Meeting adjourned at 10:00 p.m.

Next meeting is set for Wednesday, May 19, 2004, commencing at 7:30 p.m.

Presented by: 
Joanne Jacobsen, Adm. Assistant

Attested to: 
Robert Fitzgibbon, Clerk

~~Essex~~
Town of Essex Planning Board
Minutes
Wednesday, May 19, 2004, 7:30 p.m.

The meeting was held at the Essex Elementary/Middle School in Essex and was called to order at 7:40 p.m. by Susan (Scottie) Robinson (SR), Chair.

Attendees: Andrew St. John, (ASTJ), Michael Cataldo (MC), Jud Lane (JL), Kim Jarvis (KJ), Jay Sweet (JS), Rob Fitzgibbon (RF)

Building Inspector: Bill Sanborn

Secretary: Joanne Jacobsen

Building Inspector's Report:

Bill Sanborn: No reports.

Discussion with Planning Board regarding:

Town administrator's office has received complaints by neighborhoods on Choate Street regarding the polo field and track being built at 89 Choate Street. Neighbors reported stone walls and trees being removed. Board discussed legal status of Essex roads and rules that applied to scenic ways. Bill Sanborn cited 40A, Sec. 15, which states that a "tree warden" would give approval to remove trees, in addition to the Planning Board however in the absence of an official "tree warden", the head of the DPW would take that charge.

SR: cited pages 79-82 in the Scenic Roads section that addressed the cutting of trees on scenic ways.

Bill Sanborn: had not observed any wall or trees being disturbed.

SR: requested that Mr. Sanborn take another look at the property and check with the DPW.

Bill Sanborn: gave permit to complete a bathroom in the barn, no other permits for any other construction have been issued. Was told by the property owner that he was building a "stick field" (1/2 the size of a regular polo field) and a warming track, and there would be no outside horses or tournaments held on the property, only the ones that he is already boarding, as the previous owner had done. He will go by and observe the conditions and report back to SR and the Town Administrator's office.

SR: received a call from someone asking if they purchased the old motel across from Woodman's if it could be changed into apartments. Board discussed the necessary requirements. Board found that all apartments would be subject to a site plan review, sewer impact would have to be studied and it would be a change of use from commercial to residential. This would require a public hearing and site plan review, as well as approvals from the Board of Health and the Conservation Committee.

Planning Board welcomed the newly voted members: Kim Jarvis and Jay Sweet. Chair explained the general Planning Board issues and methods of conducting business and the organizational plan.

10 Acre Discussion

SR: asked Mr. VanWyck after the last meeting for extra maps and he presented her with a completely new set of maps. She talked to John Goldrosen at Kopelman & Paige and was informed that they are not required to act on the ANR within 21 days because the agreement for judgment supercedes the ANR. Once the parcel is mutually agreed upon and then they can act on the ANR and development of Lots 25 & 26 will be allowed and may be subdivided up to 12 lots. One lot has illusory frontage; the law states that there has to be practical access to a lot. The Board had walked the property several months ago, now has a completely different plan from Mr. VanWyck with a non-contiguous 10 acre plot identified.

Scheduled Meeting Agenda:

Discussion of 10 acres next to Turtleback Road Extension

SR: stepped away from the table as she is an abutter to an abutter; Jud Lane (JL) chaired the discussion.

Representatives from the Board of Selectman, the Conservation Committee and the Open Space Committee were invited to attend to the May 19 Planning Board meeting to talk about their recommendations or concerns regarding the 10 acre parcel at Turtleback Road.

Martha Hoar from the Open Space Committee: she discussed Mr. VanWyck's plans with the Open Space Committee and presented their comments and recommendations. Mr. VanWyck submitted a new plan last week, but neither his previous plans nor the current proposed plan have been accepted by the Open Space Committee.

JL: (addressing Mr. VanWyck) wanted to know why the plans had changed again?

Mr. VanWyck thought:

- he had the ability to cross and recross his property.
- his neighbors appreciated that there was no through street
- that the Planning Board was forcing him to do this.

Russ Brown (counsel for Mr. VanWyck): explained his interpretation of the agreement for judgment, referred as the 1986 agreement.

ASTJ: the original intention was pedestrian access to the land, a pedestrian loop and access to the area.

JL: If you have a break in the easement then pedestrians would have to have the right to cross over.

Russ Brown: question arose – can this include the 50 acre parcel with the 10 acre agreement for judgment?. The 37 acres could have been a mistake.

Mr. VanWyck: he swapped 5 acres with Ed Story.

Mrs. Hoar: presented an update of what she presented to the Conservation Committee: (see attached Open Space Committee report) in points #3 & 4 the Open Space Committee did not accept Mr. VanWyck's latest proposal. She identified 2 other possible sites (see bottom of page 2 and top of page 3 of the Open Space Report) around vernal pools. Her

priority is preserving wildlife habitat and recreational opportunities for the town citizens.

Mr. VanWyck: had misconception that he could not have access to the grant land.

MC: asked if Conservation Committee had approved the Open Space suggestions – answered affirmative.

JL: at the last meeting the previous plan was identified as “the plan”. Since that time, they now have a new plan, with a huge amount of new information.

MC: we’ve been working on the old plan and have gotten comments from other Town Boards on that plan.

Betsy Shields: as a member of the Open Space Committee, the members had discussed and walked the land, did research, brought in experts on wildlife and birds, vernal pools have been identified, one in particular that is extraordinary and valuable.

JL: requested that Jay Sweet, formerly of the Open Space Committee, to work with Mr. VanWyck to identify the patch of land recommended by the Open Space Committee, so prevent future confusion,

JS: accepted the suggestion.

JL: asked Mr. VanWyck if that was acceptable.

Mr. VanWyck: no one asked his opinion. In 1996 his intention was to protect his wetlands and to present as a gift to the Town. Now Mrs. Hoar wants to take a patch out of the middle of the property. “I can’t live with what Martha proposes”.

JL: if that’s not an option....

Mr. VanWyck: according to Section B regarding contiguous access, he would give a 10ft wide easement.

JL: reread agreement to define the term “contiguous”.

Wally Bruce: (chairman of Conservation Committee): regarding the original agreement, he would check with Joel Lerner to find out what was intended. “Ten acres is ten acres, no matter what shape it’s in.

RF: volunteered to contact Mr. Lerner

ASTJ: in 1996 Sheldon (Pennoyer) was concerned about a walking path on the gas line. He was concerned about walking, hiking, biking area.

MC: we need something that follows the agreement and benefits the Town.

Mr. Brown: would like to know what the Planning Board “wish list”.

Board recommended that Jay Sweet work with Mr. VanWyck and his counsel to identify possible sites.

Mr. Brown: wanted to discuss aspects of the ANR: issue with the frontage of Lot 39, us usury access, what constitutes “reasonable and practical access”?

Planning Board – discussion of driveway requirements; need for 12 foot wide driveway for Lot 39.

JL: sees 2 issues: (1) Mr. VanWyck not meeting the agreement for judgment and the pending ANR, needs to meet the agreement for judgment first, (2) access to Lot 39

SR: asked Mr. VanWyck if he would redraw the plan with the driveway as requested by the Board.

JS: asked Mr. VanWyck to come back with a plan that identifies the wetlands

JL: since there is a need to vote on this agenda item this evening because the ANR was submitted at the last meeting, he can have it rejected or he can withdraw without prejudice.

SR: clarified the number of lots called for in the agreement for judgment; development of the last 4 lots is contingent on the 10 acre agreement.

Mr. Brown: asked that the time limit for a decision be waived.

JL: according to the Town by-laws, the Board must vote tonight, either denying it or accepting the withdrawal.

Mr. VanWyck: agreed to withdraw.

Regular Planning Board Business:

Discussion of new Chairperson and new Clerk:

Referring to the 418 Process of the Metropolitan Area Planning Council

ASTJ: reviewed some of the extra curricula requirements of the Board members: he is liaison and deputy for the Executive Order 418 development with MAPC, Rob Fitzgibbon is involved in the open space/cluster zoning team.

After discussion it was decided that Kim Jarvis would be the new Clerk and Conservation Committee liaison, Jay Sweet would be the liaison to the Open Space Committee, Jud Lane and Rob Fitzgibbon would be Co-chairs.

JL: I nominate Rob Fitzgibbon to be Co-Chair.

MC: I second the motion.

All in favor.

Motion passed unanimously.

ASTJ: would like to express gratitude to Scottie Robinson for all her hard work as Chair.

ASTJ: I nominate Kim Jarvis as Clerk

MC: I second the motion.

All in favor.

Motion passed unanimously.

Minutes of May 5 were reviewed and approved.

ASTJ: I make a motion to accept the May 5 minutes.

MC: I second.

All in favor.

Invoices signed and mail reviewed.

Tara Road brief discussion.

RF: I make a motion to adjourn the meeting.

ASTJ: I second.

All in favor

Meeting adjourned at 10:00 p.m.

Next meeting is set for Wednesday, May June 2, 2004, commencing at 7:30 p.m.

Presented by: 

Joanne Jacobsen, Adm. Assistant

Attested to: 

Robert Fitzgibbon, Clerk

April 5, 2004

To:

Mr. Wallace Bruce, Chairman, Conservation Committee

Ms. Martha Hoar, Chairperson, Open Space Committee

Mr. Rolf Madsen, Chairman, Board of Selectman

Other Interested Parties

The Planning Board will meet on Wednesday, May 19 at 8:00 p.m. at the Essex Elementary/Middle School, 12 Story Street, Room 9, to discuss the 10 acre conservation restriction near Turtleback Road Extension and is inviting you or a representative of your committee to attend and give feedback concerning this issue.

Preliminary plans and related information concerning this area may be viewed at the Planning Board office during regular business hours.

For questions or concerns, please contact Chairperson, Scottie Robinson, at 978-768-1183.

Planning Board

Joanne Jacobsen, Secretary

**Town of Essex Planning Board
Minutes
Wednesday, June 2, 2004, 7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School in Essex and was called to order at 7:35 p.m. by Jud Lane, Chair.

Attendees: Andrew St. John, (ASTJ), Michael Cataldo (MC), Scottie Robinson (SR), Kim Jarvis (KJ), Jay Sweet (JS), Rob Fitzgibbon (RF)

Building Inspector: Bill Sanborn

Secretary: Joanne Jacobsen

Building Inspector's Report:

Town of Essex/Albanese Construction

Request to build 2 pumping stations on Eastern Ave and at Shepherd Memorial Park on Martin Street.

Does not yet have sign-off's from Board of Health and Conservation Committee.

Board will check original plans, pumping stations may have already been approved on the original pumping station permit; item continued to next meeting.

38 Southern Ave/Samuel and Judith Crocker

request to add a family room in the rear of their home. Required a 6.4-2 finding as it does not meet side yard setbacks, house was built before 1972.

Board reviewed site plans.

MC: I make a motion to approve the permit for Samuel and Judith Crocker, at 38 Southern Ave, for an addition to their single family home, a 20 ft by 25 ft addition, finding that it has the Board of Health and Conservation Committee approvals and under Section 6-4-2, finding that it would not be substantially more detrimental to the neighborhood.

KJ: I second the motion.

All in favor

RF and ASTJ vote "present", as they arrived after the discussion had started.

Motion passed with sufficient number of votes.

48 Southern Ave/ Mark and Christine Fagan

Request to add one bedroom, a living room and half bath; property already meets all the required setbacks; has the Board of Health and the Conservation Committee approvals. Board reviewed and discussed the proposed site plans, found that there was a discrepancy concerning the number of baths, however that did not affect the overall project plans.

ASTJ: I make a motion to approve the application for Mark and Christine Fagan for an addition to their home, finding that there is no change of use and that it meets Town by-laws.

SR: I second the motion.

All in favor.

Motion passed unanimously.

Discussion: ASTJ asked Mr. Sanborn what was going on outside the Elementary School property. Mr. Sanborn replied that the owner had received permission from the DPW for a curb cut and was storing fill on his land.

Report on 89 Choate Street:

Mr. Sanborn reported that he visited the premise and found no substantial removal of stone walls and only 2 trees had been cut down, one small and one slightly larger. He also spoke to DPW head, Mr. Bouchie, as tree warden, and was told that unless the trees are on Town land he has no authority and that actions taken on scenic roads only pertained to the Town, i.e. if the Town wanted to take down stone walls or trees they had to have the DPW permission.

Scheduled Meeting Agenda:

64 Eastern Ave/Brent Flemming

Mr. Flemming is considering the purchase of property at 64 Eastern Ave; he asked the Board the feasibility of adding 2 additional houses on the existing lot. Board reviewed his proposed plans and offered suggestions; site and driveway requirements were discussed. Since the property is under a conservation restriction, they advised Mr. Flemming to speak with the Conservation Committee and Board of Health before going forward.

Scot's Way/T-Mobile, represented by Peter Cook

Mr. Cook represented T-Mobile and its subsidiary, Omnipoint. They are requesting to co-locate telecommunication facilities on the proposed Sprint cell tower, which has already been approved.

JL: advised Mr. Cook that this request will follow the special permit procedures, which entails a \$200 fee and a public hearing. Though the Sprint mono-tower has been pre-approved for a total of 3 boxes, the public will want to be able to ask questions concerning anything else that might be changing, i.e. any additional antenna, any changes in frequency or radio waves.

RF: this would be covered under section 6-6-9E

JL: explained the special permit process: advertising for a public hearing would be posted 3 weeks prior to the hearing, a hearing notice would be advertised and posted and abutters would be notified.

Mr. Cook assured the Board that there would be no noticeable external changes to the proposed mono-tower; no height changes nor any other external features.

JL: advised Mr. Cook to be prepared to answer questions from the public.

Mr. Cook will submit the special permit request, fee and 10 copies of the proposed plan. Special permit process will then be initiated.

Western Ave/Larry and Tim Shanks

Mr. Shanks asked the Board's advice on the feasibility of building on this lot that has been owned by his family for many years, Map 8, Lot 56. Mr. Shanks presented a proposed site plan to the Board, has also had discussions with the Board of Health and

Conservation Committee. Board advised Mr. Shanks on the zoning codes and set-back requirements. SR cited the regulations for building in the Water Resource Protection area. Board acknowledged that the plans have been previously approved.

Discussion of 10 acres next to Turtleback Road Extension

Mr. Peter VanWyck presented a new plan with newly proposed lot lines; now has 34 acres because he swapped some land with a neighbor. He is also planning on purchasing some abutting land from Sy Perkins to add onto Lot 40.

JS: Manchester- Essex Conservation Trust is seeking some abutting land; he has not walked the land yet.

Russ Brown (counsel for Mr. VanWyck): suggested a plan so that the Board would approve the latest plan with a covenant, recording this covenant with the AND which would restrict the further division of Mr. VanWyck's land, with the exception of Lot 39, until the full performance of the agreement for judgment.

Board discussion: regarding the number of lots originally allowed and which are now being proposed.

Chair:

1. Requested Jay Sweet to research the 10 acre plan and walk the Turtleback Road area and report on findings and make a recommendation
2. Chair will check with Town Counsel regarding the proposed covenant.

Discussion continued to subsequent meeting.

Regular Planning Board Business:

Invoices signed and mail reviewed.

Discussion on candidates for DPW Commission.

Discussion of the definition of an abutter.

JL: I make a motion to adjourn the meeting.

ASTJ: I second.

All in favor

Meeting adjourned at 10:10 p.m.

Next meeting is set for Wednesday, May June 16, 2004, commencing at 7:30 p.m.

Presented by: Joanne Jacobsen
Joanne Jacobsen, Adm. Assistant

Attested to: Kimberly Jarvis
Kimberly Jarvis, Clerk

Town of Essex Planning Board
Minutes
Wednesday, June 16, 2004, 7:30 p.m.

The meeting was held at the Essex Elementary/Middle School in Essex and was called to order at 7:40 p.m. by Jud Lane, Chair.

Attendees: Michael Cataldo (MC), ~~Kim Jarvis~~ (KJ), Jay Sweet (JS)
Absent: Rob Fitzgibbon, Scottie Robinson, Andrew St. John, ~~Kim Jarvis~~
Building Inspector: Bill Sanborn
Secretary: Joanne Jacobsen

Building Inspector's Report:

Town of Essex/Albanese Construction – Pumping Stations

Request to build 2 pumping stations on Eastern Ave and at Shepherd Memorial Park on Martin Street.

Confirmed that they did not yet have sign-off's from Board of Health and Conservation Committee. Brendhan Zubricki visited each Board and obtained their signatures. Also have Wetlands approval.

He presented the locus maps with all the pumping stations. Had 2 copies and stamped Plans and copy of the variance, which has been recorded at the Registry of Deeds. The Board must vote to site the buildings at Harlow Street and behind the Fire Station, which has a building with public bathrooms. Harlow Street location will have a building and did not need a variance.

MC: I make a motion to approve the application of the Town of Essex to build sewer pumping stations on site #1, a masonry building, plan stamped 6/11/2004, finding that it has the approval of the Board of Appeals, the Board of Health and the Conservation Committee.

JS: I second the motion.

All in favor.

Motion passed unanimously.

MC: I make a motion to approve the construction of a pumping station off Harlow Street, A building 34 feet in length and 31 feet wide. Plans dated 6/11/2004, finding that it conforms to the Town of Essex by-laws, having a lot size of 16 acres.

JS: I second the motion.

All in favor.

Motion passed unanimously

79 Eastern Ave/Ronald Magus

Mr. Magus plans to add on to an existing building currently used as a business; doing business as Designs for Toys, the building is being used as an office. Board reviewed the site plans, has the Board of Health and Conservation Committee approval. Needed a 6-4-2 finding, needs to be 50 feet back as a business, but is a pre-existing structure.

MC: I make a motion to accept the application of Ronald Magus for an addition, 18 feet by 36 feet, with a height of 14 feet, consisting of 1 room, a utility room, a bath room and a study; finding that it is not substantially more detrimental.

KJ: I second the motion.

All in favor.

Motion passed unanimously

162 Western Ave/Steven Pelligrini

Application to add a second story to a one-story cape, not changing the footprint; has approvals of the Board of Health and the Conservation Committee. The site does not meet the side yard setbacks, but is a pre-existing structure. A 6-4-2 finding is necessary.

JS: I make a motion to approve the application of Steven Pelligrini at 162 Western Avenue, which has the approvals of the Board of Health and the Conservation Committee, for a second story, and is not increasing the footprint.

MC: I second the motion.

All in favor.

Motion passed unanimously

12 Coral Hill/Catherine Rueda

This is a complete tear-down of the existing building and garage; has the approvals of the Board of Health and Conservation Committee. Has 2 existing building permits for a 2nd story and garage and to repair the existing foundation, but never acted on either. The owners finding that they needed a new septic system discovered that the only way to put one in was to remove the buildings. The current garage is detached, the new garage will be attached to the dwelling. The new footprint will be less than the current structure, thereby decreasing its non-conformity. Building Inspector had checked the set backs and determined that a 6-4-2 finding was necessary.

KJ: I make a motion to approve the application of Catherine Rueda for a new replacement structure at Map 4, Lot 94, as a 6-4-2 finding, as it has the Board of Health and Conservation Committee approvals. The new structure will have a less lot coverage than the existing structure.

MC: I second the motion.

All in favor

Motion passed unanimously.

Discussion on property of David Ray has launched a complaint against neighbor who has put in a new septic system in a 6-foot mound, which is now visible over his fence.

Mr. Sanborn explained to Mr. Ray that fences higher than 6 feet must be approved by the Zoning Board of Appeals, whereas 6 feet is the current code.

Discussion on routing of permit requests.

KJ: Conservation Committee recommended that permit requests go before the Planning Board before them. Board disagreed, current process has proved to be the best practice, as by-laws state that permits must have the Board of Health and the Conservation Committee approvals first.

Arielle Lane

Board discussion: the builder has posted a \$120,000 bond for completion of the road work. New houses are nearly completion, however the road is not complete. Mr. Sanborn raised the question of certificates of completion and suggested that those be withheld until the roadwork is complete.

JL: reread the order of conditions, however they were not specific relative to completion of roadwork.

Mr. Sanborn felt that it is a matter of public safety. Voiced concern about houses nearly completion on a road that is still in rough condition.

Discussion of 10 acres next to Turtleback Road Extension

Mr. Peter VanWyck presented a new plan with newly proposed lot lines; Board discussion regarding the total number of lots to be allowed under the agreement for judgment.

JL: On advise of Town Counsel, the agreement for judgment should be met in full before allowing further subdivision of the existing parcel.

Mr. Brown (counsel for Peter VanWyck): brought in a new plan; seeking approval of Lot 35 for buyer, Mr. Cambridge.

Board will consider a new plan in which 2 lots are declared "unbuildable", until all of the conditions of the agreement for judgment have been met.

Mr. VanWyck and Mr. Brown will return at the next meeting with new Mylar to be signed by the Board.

7 Lufkin Point Rd/John Judd, representing Louis Lima and Jerome Crepeau

Mr. Judd presented a plan to reconfigure Lot 7. Board reviewed the site plan.

JL: need appropriate access from the frontage; need to review the previous plan that was approved several years ago.

Board advised that the plan will need to be re-drawn. Mr. Judd will withdraw the application until such time as the new plan is presented and approved by the Board.

Scot's Way/T-Mobile, represented by Peter Cook

Discussion continued from last meeting: Mr. Cook, of Wellman Associates, representing T-Mobile and its subsidiary, Omnipoint. They are requesting to co-locate telecommunication facilities on the proposed Sprint cell tower, which has already been approved.

Board questioned Mr. Cook on the mounting options, which were presumed to be a unit located inside the pole.

Mr. Cook:

- The plan just submitted showed the antenna that is mounted inside the pole.

- He submitted the plan with RF emissions noted.
- Sprint has previously included in their original application process a report that contained an RF emissions study for their company and 1 additional carrier.

KJ: raised a question on Page E2.

Mr. Cook addressed the question; small GPS is in compliance with E911.

JL: asked for a full view of the area.

Mr. Cook: demonstrated the view on Page A1.

Board agreed to hold a public hearing on July 7. Hearing notices will be mailed to newspapers, abutting town offices and abutters in accordance to special permit rules.

Mr. Cook will return at the public hearing July 7.

Larry Graham: Update on current projects

Warren Way:

Mr. Graham advised the contractors that they needed to build detention basin, which has not been started and the road is essentially complete.

Tara Road:

The contractors are not going to restart work on the road until July. Mr. Graham advised that they also need a detention basin on Apple Road and need swale work.

MC: asked about the timing of finishing road work and the issuance of a Certificate of Occupancy; requested that Mr. Graham urge developers to finish road work before seeking a Certificate of Occupancy.

Mr. Graham: presently the procedure calls for occupancy to be permitted after the site work is done or a bond to insure road completion is posted. The degree of completion of site work is not specifically cited in the by-laws.

JL: suggested that this be added to the subdivision rules.

Mr. Graham: the house on Tara Road is coming along quickly.

Bucklin subdivision (36R Story Street):

Just got some new information on that project, but has not had a chance to review it yet.

Arielle Lane:

Mr. Graham: this is the main reason for appearing this evening. He addressed his letter dated May 4 to the Board after having met with the abutters, Mr. & Mrs. Kirker on April 30. The developer, Scott Bouches, and the abutters, Mr. & Mrs. Kirker, have since discussed their differences and have reached agreement on the issues. Mr. & Mrs. Kirker expressed their satisfaction with the current situation. The first issue was the 2 catch basins (existing) in the roadway. Mr. Graham also suggested and sought approval to create a cross slope to redirect the water into the new catch basins across the road.

There was also concern about the potholes and soft spots on Ice House Lane. Mr. Graham has asked the developer to work on that, considering that it is not a Town issue.

The next item concerned the mailboxes currently located in an island in the middle of Ice House Lane. The plan calls for a standard width roadway. The Board will draft a letter to the Post Office and ask for the Post Master's input on the relocation of the mailbox and establishing mail service for the new occupants. Another issue focused on the paving of

the new road; Mr. Graham will inspect before paving begins. Concern about the affects on the existing pond were discussed: it appears that the edges of the pond appear to be breaking down; there was no sign of surface erosion from Lot 2, the problem appears to be hard to identify. Mr. Graham recommended that a dry well be installed at the roof drop of the house on Lot 2 and that berm be constructed between the Kirkers and Lot 2. The last issue: the Kirkers driveway, is in the process of being paved.

Mr. Graham requested that the Board send him a letter reconfirming his recommendations.

JL: agreed to draft the letter this week.

Mr. Kirker: questioned whether the road was going to be completed and paved before the new sewer lines were brought in.

Mr. Graham asked the Board if they could find out if the sewer lines could be installed before the road is completed.

JL: agreed to discuss the issue with the DPW and the Town Administrator.

Mr. Kirker expressed his appreciation for Mr. Graham's responsiveness to their issues throughout the development of Arielle Lane, but was still concerned about the elevation in the road, which is now higher than his property.

JL: the DPW had looked at the situation and did not want the water to flow across Western Ave.

Mr. Kirker: the original plan for road on Arielle Lane did not show his driveway. The whole road is now 5 – 12 feet higher than their lot because of the fill that was brought into the other lots.

Mr. Graham: the actual difference is 2.5 feet higher, but he will keep monitoring the development for any potential problems.

Turning Leaf Farms:

Mr. Graham: the Conservation Committee came up with an amended order of conditions, amongst other things calling for an increased berm and a statement from the owners as to what will happen to the existing barn.

JS: The Open Space and Conservation Committees also wanted to see the maintenance plans.

Mr. Graham will send the Board a copy of the amended order of conditions and his response.

Mr. Graham suggested that in the future, he be involved in the subdivision plans from the beginning to avoid issuances after the fact. Board took that under advisement.

Regular Planning Board Business:

Review of June 2 meeting minutes.

JS: I make a motion to accept the minutes of the June 2 meeting.

MC: I second the motion.
All in favor.
Motion passed unanimously.

JS: provided feedback on the Turtleback Road 10 acre proposal; the original plan called for 10 contiguous acres. Board discussed ensued.

JL: recommended that Mr. Brown be advised that the Board was willing to accept a compromise, that they would accept 10 acres of what is considered valuable land in place of 10 contiguous acres.

Invoices signed and mail reviewed.

MC: I make a motion to adjourn the meeting.

KJ: I second.

All in favor

Meeting adjourned at 10:05 p.m.

Next meeting is set for Wednesday, July 7, 2004, commencing at 7:30 p.m.

Presented by:


Joanne Jacobsen, Adm. Assistant

Attested to:


Kimberly Jarvis, Clerk

**Town of Essex Planning Board
Minutes
Wednesday, July 7, 2004, 7:30 p.m.**

The meeting was held at the Scout House, 17 Pickering Street in Essex and was called to order at 7:35 p.m. by Jud Lane, Chair.

Attendees: Andrew St. John, (ASTJ), Michael Cataldo (MC), Scottie Robinson (SR), Kim Jarvis (KJ), Rob Fitzgibbon (RF)
Building Inspector: Bill Sanborn
Absent: Jay Sweet
Secretary: Joanne Jacobsen

Building Inspector's Report:

109 Choate Street/ Brian & Michelle McCormack

Request to build a detached garage

Board reviewed the site plans, acres, access to lot, height requirements and setbacks were discussed.

SR: I make a motion to approve the building permit for Brian and Michelle McCormack at 109 Choate Street. They propose to build a 2- car garage, 26 feet by 26 feet, on their existing driveway, no apparent plumbing appears on the plan, simply a garage. I make a motion to approve the application as it meets all the Town of Essex by-laws and has been approved by the Board of Health and the Conservation Committee.

MC: I second the motion.

All in favor: aye.

Motion passed unanimously.

Turtleback Road Extension/ Peter VanWyck

Mr. VanWyck submitted another ANR for the approval of another lot.

SR: I step away from the table as an abutter to an abutter.

JL: gave update to the Board; reviewed the discussion from the last meeting for members that were not present and to bring everyone up-to-date. Mr. VanWyck has presented an ANR for a total of 8 lots, but according to the Agreement for Judgment, these 2 lots could be divided for a total of 5 total lots. In order for him to sell one lot now, we agreed to declare Lot 37 temporarily unbuildable until the 1996 Agreement for Judgment has been satisfied. He will have to submit another ANR to further subdivide later on.

There will be a possibility of 12 lots once we deal with the 10 acres. Lot 25 has already been broken down into 3 lots. So it says in the agreement there can only be 5 lots within Lot 25 & 26, by breaking this 1 out, we have to declare it unbuildable.

RF: What is the process of declaring lots unbuildable?

MC: He would have to re-file in the future to create a new ANR.

JL: We're going to see a new plan sometime in the future.

SR: So you've work the arrangements?

JL: Yes, at the last meeting with Peter.

Mr. VanWyck presented the mylar for signatures.

JL: He has done everything we have asked of him and we have a new plan showing the lots, we wanted to make sure it matched to Agreement of Judgment so there will only be 5 lots, so I think this is reasonable.

MC: Peter and his attorney thought it would be amendable solution.

JL: There should be 7 lots and 2 are unbuildable at this time.

RF: Lot 32 is not buildable because of the dimensions/size?

JL: Yes and we put "not buildable" on there to be clear.

RF: But can anyone declare their lots unbuildable?

SR: No, this is because of a reason - which is the agreement for judgment.

RF: So this is an unusual agreement?

Board accepted the Form A.

JL: He has already submitted a check for \$600.00, which had been submitted with the previous Form A.

Mr. VanWyck: the town now owes me money.

Board discussion on the correct amount. With the new agreement, the amount should be \$300.00. The secretary will arrange for a refund of the balance.

RF: I make a motion to accept the ANR for Turtleback Road Extension, finding that it meets the requirements of Essex by-laws regarding ANR's, in this case Lots 33 7 34.

ASTJ: I second the motion.

All in favor: aye

Motion unanimously passed.

Mr. VanWyck's application, mylar and copies were signed.

Public Hearing:

12 Scot's Way/Wellman Associates for Omnipoint Holdings Inc., wholly owned subsidiary of T-Mobile, represented by Amy White, accompanied by Ben Benton, engineer.

JL: Wellman Associates is representing Omnipoint Holdings, which is a T-Mobile subsidiary. And this is for a special permit with a site plan, to co-locate facilities on the Sprint tower, which has already been approved by our Board on 12 Scot's Way. Just to give you an overview of this: the cell tower has already been approved and all that's going on here now is another antenna and peripheral equipment that's going to be inside the mono-pole and that is going to be located in the same fenced-in area. So this is just to put another antenna inside the mono-pole. So the public knows the plan has been approved, that this is not a new tower, but is an existing one, which has not been built yet. So tonight what we're going to do is - Omnipoint is going to present their plan. Then we'll take questions from the Board, then we'll open it up to questions from the public.

Amy White: My name is Amy White. I am here on behalf of Omnipoint Holdings Inc. a subsidiary of T-Mobile Communications and Ben Benton our engineer is here to answer any questions that the Board might have. Tonight we are seeking a special permit from the Board to co-location on a cell mono-pole, which is presently being constructed at 12 Scot's Way. T-Mobile is an FCC licensed carrier that provides wireless service throughout New England and the nation. These pole facilities will provide service for T-Mobile in an area that they have a significant gap in coverage. I have the current

coverage plots to show areas that have present coverage. In the application that we presented to the Board, we submitted plot plans, which is what I have here in a larger format, which I'll show this to the audience.

First, coverage areas addressed, provided a significant amount of coverage on Route 22, which they presently have over a 2 mile gap in service, where customers cannot make a contiguous call, while driving through Essex.

Board and public examined the plans.

Ms. White: Sprint is constructing a 120 foot stealth mono-pole. Three antennas are going to be located at the top of the mono-pole. T-Mobile is going to locate an antenna at 107 feet. There are going to be a total of 3 antennas within the mono-pole itself. There will be 3 equipment cabinets on which the antennas are going to be connected with coax cable. They will be located on a 6 foot by 8 foot pad within a fenced compound that Sprint will be constructing. The one that I wanted to point out – there was some concern about the ice bridge was shown above the fence line. On the construction diagrams, they can make it a condition of approval, we will be lowering them below the fence line. So that they will not be visible above the fence line. So what you'll see is the actual plan that Sprint submitted originally.

The Board asked for clarification of the term "ice bridge".

Ms. White: An ice bridge connects the coax and protects it from the weather.

JL: Yes, I think we'll be asking for that to be changed.

Ms. White: If you have any questions, I'll be happy to answer them. T-Mobile feels this meets the intent and spirit of the by-laws; that is co-locating on an almost existing facility. We feel that it's an appropriate location, where it is located in a somewhat secluded area. And the installation is the proper thing for our needs and the needs of the Town's people.

RF: I have a question regarding the construction of the pole and who will maintain the grounds?

Ms. White: The pole looks very much like a flagpole without a flag. Sprint will maintain and is regularly serviced by Sprint technicians.

JL: We have the Sprint plans at Town Hall.

Ms. White: usually it's a gray galvanized steel pole that blends in with the horizon. The grounds will be maintained by Sprint. The carrier usually services their equipment, one or two times a month, accessed by a technician driving an SUV. There's really not much to maintain unless the fence may be damaged or something like that. And then Sprint will maintain that.

RF: Will there be a notice on the fence that says to call Sprint in case of emergency?

Ms. White: Yes, there will be sign out front with a telephone number.

RF: Will there be a generator?

Ms. White: There will be a battery back-up.

RF: When you talk about the ice bridge, will the fence be higher, so you can't see it?

JL: On the copy of the plan, there was something that looked like an antenna, but apparently it was the ice bridge, but it was above the fence, coming from the ground. And we didn't think you should see this popping over the fence.

RF: But the fence is a chain link fence, isn't it?

JL: Yes, but I believe it has slats in it. It's supposed to hide.

RF: If the fence is greater than 6 feet, do we have to go to the Zoning Board of Appeals?

SR: Technically, yes.

Ms White: Presently the ice bridge was at 12 feet, but that can be changed.

RF: Is there a reason why it's constructed at 12 feet?

Ms. White: That is a standard detail. So when the engineers drafted the plan, they just put it in at whatever the standard detail was, which is the normal design, not taking into consideration that the fence was only going to be 6 feet.

JL: Again, this is fairly insignificant.

The Board re-examined the plans.

JL: We'll just ask that you lower that below the fence.

RF: Will the trucks that come to do the servicing, will they be marked?

Ms. White: That's a good question. I'm not sure that they are. T-Mobile's are not; they're just standard SUV's.

JL: This is part of the plan: they will be leased from Sprint by the owners. Sprint will take care of their spot. There are businesses up there. We all did a site visit. You can go up there and take a look.

JL: Any more questions from the Board? No? I'll open it up to the public: any questions or comments?

Peter Bachini: I'm Peter Bachini from 88 Blueberry Lane. On the map it appears that half of it is located in Hamilton. Have they applied to Hamilton for coverage in Hamilton?

Ms. White: We have not applied to Hamilton. Hamilton doesn't have authority over a site located in Essex.

Mr. Bachini: Because signals shooting through Hamilton, doesn't the town have to have input on this matter?

Ms. White: Only has authority on what happens on the ground in Hamilton.

JL: As far as the Planning Board – we are only concerned about what is being constructed on the ground in our Town and where the antenna is.

Mr. Bachini: Has the construction begun?

Ms. White: Construction has begun on digging for the foundation.

Mr. Bachini: Are there any statutes of limitations on the original permit?

JL: No, because a lawsuit was pending and that was dropped not too long ago. That's what was holding it up. Then there was an appeal.

Mr. Bachini: Would that impact the building permit?

SR: That would actually extend it, because any time take up in a formal appeal in the court would not count toward the time of the building permit expires.

Mr. Bachini: And that's standard procedure?

JL: Yes, because they don't have any control over that.

Mr. Bachini: Do you know how much time has elapsed since then?

SR: I don't know exactly. But I believe it was approved about a year and a half ago; not that long ago.

Mr. Bachini: What is the normal life of a building permit?

SR: Two years.

Mr. Bachini: So on this one, it would be two years?

SR: It might be longer.

JL: But when you say "approved", that was the Board approval. But it was held up in a court case. So it's actually been less than a year and a half.

Mr. Bachini: With the addition of more equipment, does this equipment make any noise? Does it hum or have fans cooling it or anything like that sound deading equipment would need to be installed? Or different cabinets be installed so it would not be intrusive to local residents in the area?

Ms. White: I have the building permit for Sprint here. The permit was issued April 14, 2004. With regards to the noise: T-Mobile did submit with its application an affidavit that addresses the noise emitted from the equipment. And what emits noise is actually the air conditioning that's located inside the door, which is measured at 38 decibels, that is the level of noise at the property line, which is equivalent to stagnant air time noise at night, which is 37 decibels.

MC: What is stagnant air time noise?

Ms. White: Noise at night when it's quiet.

Mr. Bachini: Just to ensure, this is just another company going in there collectively adding more cabinets and equipment?

JL: There are only 3 allowed in this antenna and that's what Sprint applied for in the beginning. So the original approval actually approved this site with 3 antennas. However they're only using one, so we know when we approved the first one, that they just has to have this special permit in order for everyone to understand that we're going to locate another antenna in that pole.

Mr. Bachini: In my reading there were 3 external antennas, that there was no other actual limitations beyond that. It was after that if they were adding any other equipment.

SR: We're not. That's not what the application is about.

Mr. Bachini: I understand now.

JL: The special permit specifically says that there is a mono-pole with three total antenna and they have to be inside the pole and that was determined in the first special permit.

Stan Ward, of number 25 Blueberry Lane: The internal antenna -- is it actually a panel on the outside of the antenna or is it actually inside the mono-pole?

Ms. White: They are panel antennas on the inside of the mono-pole.

Mr. Ward: So they will be sheer outside?

Ms. White: Yes, the outside will be slick. The cabinets are on the ground.

Chris Doggett, 112 Blueberry Lane: Does T-Mobile bear responsibility for removal of the equipment should it be de-commissioned at some time in the future?

Ms. White: It is a condition in our lease agreement with Sprint, that we would remove the equipment in the event that would qualify that as lease termination. I would be happy to help coordinate that condition of approval.

JL: Yes, it is actually covered in the special permit requirements. The Sprint one requires first Sprint, and the owner of the property, would be required with Sprint to do that and that's in our conditions for the special permit.

Mr. Doggett: Would the Board consider adding that condition to this permit, as it would be an additional expense to the town?

JL: What we will do is their special permit will be linked to the Sprint one, so we would refer to that and we will put that condition on that they will need to remove their equipment and if they don't then the owner of the property will have to.

Mr. Doggett: What would (inaudible)

Ms. White: We will post a removal bond if necessary.

Mr. Doggett: I have another question regarding RF emissions and what effect they have. I am not happy about this . I have a 5 year old son being exposed to this. I'm concerned about the increase levels.

Ms. White: With the original application that Sprint submitted, they submitted a report prepared by Bill Irwin, who is a health expert at Harvard. He holds a PHD in this field. In his report, he actually contemplated two carrier antennas, so he both contemplated Sprint and this installation. And both of those installations taken into consideration still only produced .033 % of the maximum allowed by the FCC. So it's 3300 times lower than which is actually acceptable by the Federal Government. And I actually have a copy of the report if you'd like to look at it or like it submitted into the record.

RF: I'd like it submitted into the record.

JL: Any other comments or questions from the public? Is everyone all set on that? Well, if there's no other questions from the public, can I get a motion to close the public hearing?

MC: I'll make a motion to close the hearing.

ASTJ: I'll second the motion.

All in favor: aye.

Motion passed unanimously. Public hearing is officially closed.

JL: We have concluded the public hearing. We probably won't vote on this until the next meeting because we have a pretty full schedule. But at this point, I don't see any problem with the application. And since it's just an addition to an existing approved site, it's not a very complex thing to look at. We should have a result by our next meeting.

Ms. White: When is the next meeting?

JL: The third Wednesday of the month, that should be July 21.

Ms. White: Do I need to submit a mylar for signature?

JL: No.

Ms. White: Thank you.

RF: I did research on this before I moved there and found no evidence that this was harmful. But they do farm out the maintenance to 3rd parties and their vehicles are not marked. So you have no idea who they are when they enter the property.

Board requested the secretary to send copies of the site plans to other Town departments.

Board held a discussion on candidates for the position of Public Works Commissioner.

SR: I make a motion that we recommend Walter Rich as Public Works Commissioner.

MC: I second the motion.

All in favor: aye.

Motion passed unanimously.

JL: We will write a letter to the Selectmen and notify Walter.

RF will call Mr. Rich to inform him of the decision.

Board continued discussion of cell towers:

Regarding the one on 16 Tree Hill Road:

JL: I talked to Wes (Burnham) about that one but that one has external antennas.

We have to come up with approval letters and order of conditions, so we can vote on it at our next meeting.

Regular Planning Board Business:

Invoices signed and mail reviewed.

Turning Leaf Farm

Board discussion of the status of the project.

Board reviewed the letter and revised site plan just received from Larry Graham, noting his changes and comments on the project, noting the new grading and access points to the property.

JL: We will note the changes to this new plan and sign the plan. We will discuss this matter again after the Conservation Committee has made their decision.

Board reviewed the minutes of the June 16 meeting; minor edits were recommended.

MC: I make a motion to accept the minutes of the June 16 meeting.

ASTJ: I second the motion.

All in favor: aye.

Motion passed unanimously.

10 acre Discussion

Board discussed the criteria document created by Conservation Committee member, Martha Hoar, and as advised by Joel Lerner.

JL: we need to document the history of this plan and discussion, should any questions arise in the future. Jay Sweet has also proposed to develop a one-page letter of recommendations to present to Mr. VanWyck. We will discuss that at the next meeting.

MC: it appears that the Open Space Committee is under the impression that the primary purpose of this 10 acre parcel is for the protection of wildlife. That was not the primary intent of the original agreement. We need to be careful that we're not setting two standards.

We need to maintain contact with the Conservation Committee to monitor their recommendations.

SR: Martha (Hoar) wants Peter (Van Wyck) to delineate his future development plans in the surrounding area and I don't think that's fair to Peter and shouldn't be expected.

JL: What Peter is looking for – he wants us to come up with a plan. We should draft recommendations.

MC: We should look at ...

JL: we should invite Martha to the next meeting.


MC: We should invite the Open Space Committee to the next meeting.

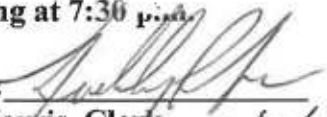
ASTJ: The Open Space Committee is having a meeting July 8.

Board reviewed and accepted the minutes of the June 16 meeting with minor edits.
MC: I make a motion to accept the minutes of the June 16 meeting.
RF: I second the motion.
All in favor: aye.
Motion passed unanimously.

JL: I make a motion to adjourn the meeting.
ASTJ: I second the motion.
All in favor: aye.
Meeting adjourned at 9:08 p.m.

Next meeting is set for Wednesday, July 21, 2004, commencing at 7:30 p.m.

Presented by: 
Joanne Jacobsen, Adm. Assistant

Attested to: 
Kimberly Jarvis, Clerk 8/18/04

**Town of Essex Planning Board
Minutes
Wednesday, July 21, 2004, 7:30 p.m.**

The meeting was held at the Scout House, 17 Pickering Street in Essex and was called to order at 7:35 p.m. by Jud Lane, Chair.

Attendees: Jud Lane (JL), Andrew St. John, (ASTJ), Michael Cataldo (MC), Scottie Robinson (SR), Rob Fitzgibbon (RF)
Building Inspector: Bill Sanborn
Absent: Jay Sweet, Kim Jarvis
Secretary: Joanne Jacobsen

Building Inspector's Report:

3 Hardy Lane/Robert Morin

Bill Sanborn: Request to add a deck, 24 feet by 8 feet to the front of the house. They have the approvals of the Board of Health, Conservation Committee and Wetlands. But they need a 6.4.2 finding, because there is a problem on the left side setback and because the deck projects beyond the wood stairs.

Board reviewed the site plans, acres, height requirements and setbacks were discussed.

SR: I make a motion to approve the application for Robert Morin and Toby Nathan of 3 Hardy Lane to erect a deck to the front of the house, making a 6.4.2 finding as a portion of the deck will extend into the normal sideline set back to the width of the existing stairway, which we have been told is 3 feet, 6 inches; finding that it is not substantially more detrimental than the existing non-conforming stairs.

MC: I second the motion.

All in favor: aye.

Motion passed unanimously.

Turning Leaf Farm

Bill Sanborn: checked the property recently. They are not building a building. They are Leveling the ground for a riding rink. And because she's a "farm", therefore, she's exempt from the Earth removal and zoning restrictions and she's not removing it off the property, just moving it. The Trustees of Reservation can only regulate buildings on land.

Fence on Andrews Street

SR: I called Damon (Bouchie) regarding the fence with the pineapples next Turning Leaf Farm: that is associated with the driveway that is adjacent to the Turning Leaf Farm property.

MC: But it never came onto the road.

Bill Sanborn: According to Damon, it is a pre-existing use.

Discussion on the right of way for utilities and ROW issues for a new home construction on Western Ave, previously approved by the Board, which is addressed in 6.3.2.5.

10 Acre Discussion

JL: I want to highlight what we're going to do (later) tonight. After the next ANR, we will have Wally Bruce from the Conservation Committee and Martha Hoar from the Open Space Committee is coming in to discuss the 10 acre parcel (Turtleback Road Extension). And Peter is going to come in at 9:00 p.m. and discuss the issue of cluster zoning. And Martha wants to promote cluster zoning to aid in preserving vernal pools. But that issue has to go to be approved that the Town Meeting.

7 Lufkin Point Road/John Judd and Louis Lima

Mr. Judd, engineer for Mr. Lima, presented a revised plot plan. Mr. Lima wants to create 1 additional lot by reconfiguring his 3 existing lots. Mr. Judd presented the revised proposed site plan, with a common driveway for 3 lots. Board discussion on frontage, access and delineating lot lines. Board expressed concern with width of the common driveway and access for public service vehicles. Mr. Lima offered to put a covenant of the lots limiting the development to only 1 dwelling unit per lot; driveway currently is 12 feet wide and 1,700 feet in length.

MC: a normal subdivision road does not exceed 1,200 feet.

JL: referred to driveway standards in the by-laws.

Discussion involved:

Matter of access for public safety vehicles, because of the length of the driveway; turn-offs were recommended. Mr. Lima offered to position the driveways opposite each other, making it a condition of sale, to facilitate vehicles to be able to turn around and being able to pull off to yield to public service vehicles.

JL: recommended widening the easement and inserting the turn-outs/driveways in a hammerhead fashion, on the site plan; and referred to the minimum driveway standards in the by-laws.

Form A has been submitted and fee of \$200 has been paid already.

Discussion of 10 acre parcel on Turtleback Road Extension

JL introduced Martha Hoar (Open Space Committee) and Wally Bruce (Conservation Committee).

Mrs. Hoar pointed out the vernal pools on the Turtleback Road Extension site plan, also pointing out the wetland corridor; pointed out that cluster zoning may be an issue. Jay Sweet (member of the Planning Board) who has been working with Mr. VanWyck, suggested that Mr. VanWyck identify the piece that he wants to offer, but within our suggested areas.

JL noted that plan originally called for 10 contiguous acres. But the Board would be willing to break up the area if we can get the land around the vernal pools.

MC remarked that it needs to be built around access to the area, like the gas pipeline.

JL: We need a plan that meets the needs of the Conservation Committee and the Open Space Committee, but we need to give him options.

Mr. Bruce commented on his personal observation on the 10 contiguous acres.

Mrs. Hoar noted that some trees have already been knocked down.

Mr. Bruce:

JL: I see 3 possibilities.

Mrs. Hoar: I promised the Open Space Committee that the report would be complete by July 30.

JL: Is there any other feedback that the Conservation Committee has?

Mr. Bruce: No, just wanted to know if this is going to be discussed?

SR: I'm learning that we share the same concerns.

JL: We need to come up with recommendations.

Board recognized Mr. VanWyck

Mr. VanWyck noted that he has been trying not to give up areas that can perk.

JL asked Mr. VanWyck if he had a plan yet and did not. Mr. VanWyck wanted to talk about the Perkins property, however Mr. Lane noted that there would be no discussion because the land had not been purchased yet.

The Board discussion: points included the perk sites on the Van Wyck property, the vernal pools found to be located on that property, the use of the land for townspeople and the original decision for judgment. The Board was willing to discuss the break-up of the 10 acre parcel, which was originally set as being contiguous, in exchange for the vernal pool areas. However, Mr. VanWyck was unable to commit to this suggestion.

Result of the discussion: Mr. VanWyck promised to return in a few weeks with his proposed 10 acre area. Jay Sweet would address the next meeting as to his findings and suggestions as a result of his research and discussions with the Open Space Committee and the Conservation Committees.

12 Scot's Way – Cell Tower for Omnipoint Holdings Inc.

Board discussed and summed up their findings regarding the proposed addition of telecommunications equipment on the previously approved cell tower for Sprint.

Discussion on conditions of the decision

ASTJ: I make a motion that we accept the application for the new antenna, an existing Sprint cell tower on 12 Scot's Way, with the original permit issued to Sprint. This special permit is approved and conditional to the original special permit, finding that it is not substantially more detrimental and they are just adding an internal antenna and equipment within the pole. Referencing as a draft July 21, as amended by discussion

MC: I second the motion finding that the proposed use is in harmony with the general purpose and intent of the zoning by-laws and is in an appropriate location. And there will be no adverse impact on the neighborhood, because this is an additional installation on a pre-existing antenna.

RF: I am in favor of the motion to approve the installation of an antenna for Omnipoint on the Sprint cell tower, finding that there will be no adverse affects and finding that the antenna fulfills the requirements of section 6.6.9.b of the Essex by-laws.

SR: I vote to approve the application for their additional antenna in the existing cell tower on Scot's Way. The applicant has met the requirements of the special permit by-laws and the installation is an appropriate location for such use.

ASTJ: I vote to approve the application for antenna on the existing Sprint cell tower for Omnipoint, finding that the applicant has met the requirements of the special permit process and they are not substantially more detrimental to the neighborhood.

JL: I, Jud Lane, vote to approve the application of Omnipoint Holdings/T-Mobile, for the addition of an antenna to the existing Sprint cell tower, finding that it is a minor upgrade to the existing site and that it is in an appropriate site and will not have any detrimental affects on the neighborhood.

Regular Planning Board Business:

Invoices signed and mail reviewed.

Discussion of Larry Graham's letter regarding Ice House Lane.

Discussion of posting Planning Board business on the Essex.org website by Rob Fitzgibbon.

MC: I make a motion to adjourn the meeting.

RF: I second the motion.

All in favor: aye.

Meeting adjourned at 9:48 p.m.

Next meeting is set for Wednesday, August 4, 2004, commencing at 7:30 p.m.

Presented by: Joanne Jacobsen
Joanne Jacobsen, Adm. Assistant

Attested to: Kimberly Jarvis
Kimberly Jarvis, Clerk

8/10/04

**Town of Essex Planning Board
Minutes
Wednesday, August 4, 2004, 7:30 p.m.**

The meeting was held at the Scout House, 17 Pickering Street in Essex and was called to order at 7:35 p.m. by Jud Lane, Chair.

Attendees: Jud Lane (JL), Andrew St. John, (ASTJ), Michael Cataldo (MC), Rob Fitzgibbon (RF), Jay Sweet (JS), Kim Jarvis (KJ)

Building Inspector: Bill Sanborn

Absent: Scottie Robinson

Secretary: Joanne Jacobsen

Building Inspector's Report:

143 Western Ave/Chris Osborn

Bill Sanborn: Request to build a foundation, at this point. He has the Board of Health, Conservation Committee and Wetland Committee approvals.

Board reviewed the site plans, acres, ROW access discussed.

RF: I make a motion to approve the permit to build a foundation at 143 Western Avenue for Chris Osborn, finding that it meets all the set-back requirements and has all the proper sign-offs.

JS: I second the motion.

All in favor: aye.

Motion passed unanimously.

224 Western Ave/Gangi Plumbing

It appears that he is in violation of the home occupancy regulations, but now he is renting it building out and he is living elsewhere. It sounds like he has more than 2 employees. He only has .94 acres. I tried to call him, and left him a message. He may need to go to the Zoning Board of Appeals.

MC: Can we notify him in writing? When we signed off on the building permit for the garage, it was considered a home occupation.

Bill Sanborn: But I wanted to try to talk to him first. If I don't reach him, I'll send him a letter.

RF: cited the 6.6.4.d-1 by-law on home occupations.

Bill Sanborn: He needs 40,000 sf for the house and another 40,000 for the business, but he only has .94 acres of land now, that would be a violation of 6.6.4.a-1. Damon Bouchie wanted to know if that was a legal use for sewer easement regulations, i.e. is it 1 unit or 2?

Discussion to be continued to next meeting.

18 Coral Hill

Neighborhood has been complaining, saying that the contractor is trying to build an extra large dwelling; it had been approved by the Planning Board under

a 6.4.2 finding, but believes that it should not have been approved, because he considers it detrimental to the neighborhood as it over shadows abutters.

Board discussion on the use of the 6.4.2 finding.

Mr. Sanborn recommended that the

Board re-visited the 6.4.2 by-law and the process in which permits are approved under This ruling. Mr. Sanborn recommended that the process for approval under this finding should be advertised as a public hearing, because the public does not have the ability for input on what is happening in their neighborhoods.

Discussion of methods of determining the height requirements according to current Town by-laws.

Regular Meeting:

8 Turtleback Road/Heidi McKeon

Mrs. McKeon appeared before the Board to request a building permit for a second building on her property as an in-law dwelling. She has 3.75 acres and sufficient setbacks. The 6.5.5 by-law was cited by Rob Fitzgibbon. Mike Cataldo asked about access and Mrs. McKeon said that the existing driveway would be used. She attempted to get Conservation Committee approval the previous evening, but the meeting was cancelled. She has gone before the Board of Health and they requested a few minor changes in her site plan. Board determined that the site plan was in order, but advised her to return with the proper sign-offs.

7 Lufkin Point Road/Louis Lima

Mr. Lima presented his revised site plan for a subdivision. Board inspected the new plan and noted the new driveway revisions with hammerhead turn-off's.

RF: I make a motion to approve a request for 7 Lufkin Point Lane for a conforming lot, presently 2 lots, now to be 3 lots, finding that it meets all the requirements.

JS: I second the motion.

All in favor: aye.

Motion passed unanimously.

Cluster Zoning Discussion

Discussion included the following:

RF – sought guidance, parameters and time-lines for this project.

MC – seeking language that could be crafted into by-law.

JL: Whatever we come up with will ultimately have to go to the Town Meeting.

JL: Green space may be more desirable.

KJ: there is a difference between cluster zoning and green space.

ASTJ: was highly in favor of this concept, but commented that the Towns people will be very interested as well. Commented that the process will be important.

JS: noted that the Open Space Committee has been working on this same project for the last year and a half. The project has entailed sending a questionnaire and building a handbook, comparing what is being done in other surrounding towns, taking a ranking of what is important to the Townspeople and compiling what the people of Essex consider

important and what they are looking for. And they have gotten feedback from every Board in town.

ASTJ – preservation and affordable housing are hot issues in town. Explained the EO – 418 team, which is a statewide project. The steps involved:

1. Data collection phase
2. Data analysis – what the people in town want
3. Taking that mandate and turning it into a by-law

ASTJ: There may be State money available to help the Board hire a consultant to work on this project. That money may come from the Housing and Development fund. A 5-year plan may be initiated. And the Town meeting would be an opportunity to education the Townspeople.

Other comments in the discussion concerned the logistics of the plan and timing the stages of the plan development with the Town meeting and warrant closing.

JS: offered the assistance of the Open Space Committee in helping the Planning Board with this project. The official paper (results of their project) will be published in October.

MC: wanted to explore the concept of linkage, that would curtail people from selling off large amounts of land, making huge profits and then leaving town.

JS: pointed out that he put 98 acres of land under conservation restrictions last year and has expertise in this area.

Rob Fitzgibbon proposed to meet with Westly Burnham and review the EO418 and the Open Space publication.

JL: asked that he review Hamilton's new by-laws relating to this issue.

Board discussed the timetable for the project.

ASTJ: suggested contacting Sam Cleaves as a resource.

JL: proposed that a draft be completed by mid-November, in order to meet the timetable.

RF: will review a review of his findings at the September 1 Board meeting.

JS: commented that two-thirds of Essex's developable land is unused, so there is an urgency to get this done.

10-acre Turtleback Road discussion

JL: I would like to come up with 3 possible map options for Mr. VanWyck. Three things I'd like to see are:

1. go to the letter of the law in the original agreement for judgment, with 10 contiguous acres in the 25.6 acres that is left in his remaining 37 acres.
2. 1 continuous lot of 10 acres across the 25.6 and the 50 acre parcel
3. 2 separate pieces and 1 of those has to contain the vernal pond that Martha Hoar has found as valuable.

JS: We (the Open Space Committee) have given him 4 proposals and he has rejected all of them.

JL: At the last meeting he said he would come back with his proposed lots, with perk sites noted, so we could go around those.

JS: He said that we would never get that pond.

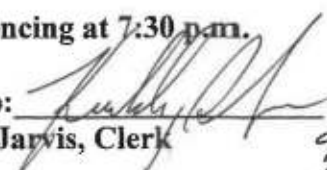
Regular Planning Board Business:
Invoices signed and mail reviewed.

MC: I make a motion to adjourn the meeting.
ASTJ: I second the motion.
All in favor: aye.
Meeting adjourned at 9:40 p.m.

Next meeting is set for Wednesday, August 18, 2004, commencing at 7:30 p.m.

Presented by: _____
Joanne Jacobsen, Adm. Assistant

Attested to: _____
Kimberly Jarvis, Clerk


9/1/04

**Town of Essex Planning Board
Minutes
Wednesday, September 1, 2004, 7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School in Essex and was called to order at 7:37 p.m. by Jud Lane, Chair.

Attendees: Jud Lane (JL), Rob Fitzgibbon (RF), Jay Sweet (JS), Kim Jarvis (KJ), Scottie Robinson (SR), Andrew St. John (ASTJ), Michael Cataldo (MC)
Building Inspector: Walter Rich, substituting for Bill Sanborn
Secretary: Joanne Jacobsen

Building Inspector's Report:

No issues or permits

10-acre Turtleback Road discussion

In a result of conversations with the Open Space Committee and Conservation Committee, Jay Sweet had a list of pro's and con's and led the discussion.

Con's:

1. Massachusetts Division of Conservation Service would not accept any of Mr. VanWyck's proposals as a CR; they don't believe in strips or patches as a conservation area
2. Ease of management: a CR would be hard to manager because it may abut several properties, with multiple owners
3. Proposed land is not contiguous, which goes against the Agreement for Judgment and would be difficult for pedestrians using the land
4. The proposed land is not completely in the original Agreement for Judgment.
5. Some of the proposals contained land that Mr. VanWyck does not currently own.
6. Mr. VanWyck has already altered the land with earth moving/removing equipment, which compromises the wildlife and recreational uses.
7. The proposals have gone against the spirit and letter of the original Agreement for Judgment.
8. It would be preferable if the lines of the proposed acreage were in straight lines, so that it would be easily identifiable for pedestrians using the land.

Pro's:

1. The Planning Board's proposal includes the bluff overlooking the pond and has a view of the forest.
2. The Planning Board's proposed lot is accessible at several points, including via the gas line.
3. The Planning Board's proposed lot does not include any of Mr. VanWyck's perk sites, as he showed on his latest map.

KJ: Noted that 100 feet buffer around the vernal pond is preferable, but does not absolutely restrict development in that area.

JL: Adding another item to the pro's – the Open Space Committee had submitted documents to the Planning Board; after review and discussion with the Conservation Committee and the OPC, the Board feels that these areas (referred to as area "a", are better for the townspeople and would be their first choice. The Board has reviewed wildlife and environmental studies and species reviews and have come to the final conclusion that "area a" best suits the needs of the townspeople.

ASTJ: Reviewed the original criteria, which was recreational access, sustaining wildlife and ease of management.

JL: Requested that Jay Sweet draft a letter to Mr. VanWyck informing him of their proposal.

Ice House Lane discussion

With Larry Graham, H.L. Graham Associates, Mr. Allan Kirker of Ice House Land, Mrs. Deirdre Goldenbogen of 2 Ice House Lane, and Scott Boches, developer of Arielle Lane Mr. Graham reviewed the progress:

- Arielle Lane is in good shape, with minor details to be completed
- There is a need to reconstruct Ice House Lane, but the sewer line needs to be installed first
- The developer has verbal permission from the Sewer Commission to go ahead, but needs approval of the project engineer.
- Mr. Goldenbogen came to him with questions concerning the ownership of the road and maintenance issues.
- There was concern about the mail box island at the intersection of Ice House Lane and Western Avenue: it appeared that the has not been fully decided as to move or leave the island as it stands.
- He told Mr. Kirker that there is a possibility of paving the end of Ice House Lane, but it has pot holes that need to be fixed.
- Some of the engineering work needs to be done at the south end of Ice House Lane.
- He felt that it's not the developer's responsibility and it may be the Town's issue.

MC: Noted that Ice House Lane is a private way and it would not be the Town's obligation to maintain or make decisions concerning the roadway.

Mr. Kirker expressed concern about the elevated roadway and the drain issues that ensue as a result.

ASTJ: pointed out the engineer designed the plans to prevent run-off into Western Avenue.

Mr. Kirker: noted that it runs off into both Ice House Lane and into Western Avenue.

Scott Boches: commented that the roadway is not complete, catch basins were not done, but he was waiting for the sewer lines to be installed, then he will work on the final grading.

RF asked how long it would take to run the sewer line. Mr. Bouches replied approximately 1.5 days, but he had to wait for the project engineer to issue the approval before he can pave. MC wanted to know if the sewer line would be run to the end of the street. No one knew. Mrs. Goldenbogen commented that the again the road was on her land, no one asked them for their permission to pave the road. They had no notice or communications about what was transpiring with the roadway. MC commented that they do have an easement to the town. Mrs. Goldenbogen commented that if the Town is requiring that the road be paved, but no one asked if they wanted it to be paved. If the Town was putting down pavement on their property, why would they require them to maintain? What would happen if they requested that the road not be paved? MC felt that the Town did this as a public safety issue. So the Town would require the owners of the property to be jointly responsible under a maintenance agreement. He continued to say that if a road is developed according to the town standards, then the owner can petition the Town to make it a town road. RF cited section 6.36 of the by-laws. MC advised them that they may petition the Town at a Town meeting to make it a public road. SR commented that because they required by the Town to pave that it could be a mitigating factor in having the way made a public road. When asked what she preferred, Mrs. Goldenbogen said she preferred that the Town take it over and maintain it. She also wanted to be informed as to the road construction progress. Mr. Boches commented that it was written into the Goldenbogen's deed that the roadway serve as a way for other houses on the road. Jud Lane advised that the developer and the owners need to reach an agreement, the Board can advise what is required. Mrs. Goldenbogen wanted to know what the Town required and what were their options and wanted to know who sees that the plan meets their requirements. The Board explained that Mr. Graham oversees the project and ensures that the requirements are met. Mr. Graham felt that the road approval and construction was up to the Board and he would talk to the Town Administrator. SR noted that when the Board looked at the original plan, they approved the road for the safety of those coming out onto Western Avenue.

Discussion regarding the mailboxes:

Mr. Kirker said originally the island would remain, then he was told that it was going to be removed.

JL commented that plans may have changed because there was more traffic on the road, with snowplowing and snow banks becoming an issue.

SR asked if the approved plan had the island in it.

Mr. Bouches replied "no" and had no preference as to whether it stayed.

Mr. Graham explained that the design without the island was preferable, but it can be redesigned to accommodate the island.

JL explained that they needed to get approval from the DPW, because the original plan had no island.

Mrs. Goldenbogen said that she would check with the DPW.

Discussion concerning 36 Story Street/Bucklin Subdivision

Larry Graham presented an update of the road completion project:

On August 6 he got a response from Rand Associates, engineers for the Bucklin project, with a revised plan. However the new plan still presented issues with the road swales. He also had minor issues with the materials. He recommended that the Board not accept the new plan. Scottie Robinson volunteered to call Mrs. Bucklin and discussed the new developments.

Discussion of Cluster Zoning

Rob Fitzgibbon led the discussion with a review of his research.

He has reviewed open space plans of Camden, ME and Hamilton, MA and the Essex Community Development Plan.

He talked to Westley Burnham (former Planning Board member) to get some background information and history of the Board's efforts. He will meet with him next week.

He also contacted Ed Becker of the Essex County Greenbelt Association and Vince Sloan and the State Wetlands Department.

Board members recommended several other individuals and agencies as possible sources of information and expertise.

RF: identified the following as requirements:

1. expertise: the Board would need a professional consultant with expertise in Open Space planning
 - a. ASTJ: recommended that he draft an RFP for a land use planner
2. build a coalition with the Open Space Committee and COA
 - a. SR: commented that he draft the by-law first then build a coalition to support the effort
3. communications: need to communicate plans to other town boards and the community
 - a. ASTJ: recommended forming a sub-committee to help

MC: Expressed "linkage" should be a concern; "linkage" requiring land developers to give back a portion of the profits to the community in exchange for development rights.

RF: Will give a follow-up report at the next meeting.

JL: Requested that a draft plan be ready before the holidays.

Turtleback Road Extension

JL: reviewed the discussion held earlier in the evening

JS: will write a memo to Mr. Van Wyck, referencing the latest map provided by KJ and Board's proposals

Mr. Peter VanWyck appeared before the Board (not on the agenda). The Board informed Mr. VanWyck that the Board was not prepared to make a decision (the item was not on the agenda) this evening.

Mr. VanWyck: wanted the Board to look at the total land; wanted the Board to "get over the hurdle that these things need to be simultaneous". He wanted the Board to make the 10 acres conditional on the next subdivision, of which he is in the planning stages now.

He wanted to develop another closed end road. Discussion ensued about the safety issues involved in road construction.

JL: noted that Mr. VanWyck was moving into the next step, but the Board wanted to discuss the 10 acre parcel.

Mr. VanWyck: "what I've decided to do – I want to do this the right way. I feel that we're not going to come to a meeting of the minds. I think we need the Land Court to help us. I want to meet on the 15th and see if we can work it out. I think the best thing for me to do is take this up with the Land Court that we're having this problem. And we might have to eventually ask them to intercede in this. Hopefully we can avoid this. But I am going to take this step. Because I don't think we can come to some agreement, because there are too many diverse groups here. I unfortunately feel"

JS: asked what he meant by diverse groups.

Mr. VanWyck replied that he felt that there were various groups around Town. He hoped that an agreement can be reached on the 15th. "Time is of the essence for me. I will ask the Land Court to get involved."

JS: asked how long this issue has been going on?

SR: responded since the agreement for judgment was issued in 1996.

JL: We will address this at 8:00pm on the 15th, we'll try to hash out the details. Jay will put together a letter and some plans that take into account the Agreement for Judgment and the input from the other groups have given us input. We'll go over those with you and maybe we can come to an agreement.

Mr. VanWyck: requested a copy of the letter and plans before the next meeting so that he could be prepared for the meeting.

Board agreed.

Regular Planning Board Business:

Invoices signed and mail reviewed.

Board reviewed the minutes of the August 4 and August 18 meetings.

JS: I make a motion to approve the minutes of the August 4 and August 18 meetings, with revisions.

SR: I second the motion.

All in favor: aye

Motion passed unanimously.

MC: I make a motion to adjourn the meeting.

JS: I second the motion.

All in favor: aye.

Meeting adjourned at 9:45 p.m.

Next meeting is set for Wednesday, September 15, 2004, commencing at 7:30 p.m.

Presented by: Joanne Jacobsen
Joanne Jacobsen, Adm. Assistant

Attested to: Kimberly Jarvis
Kimberly Jarvis, Clerk

9/15/04
AS AMENDED

**Town of Essex Planning Board
Minutes
Wednesday, August 18, 2004, 7:30 p.m.**

The meeting was held at the Scout House, 17 Pickering Street in Essex and was called to order at 7:36 p.m. by Jud Lane, Chair.

Attendees: Jud Lane (JL), Rob Fitzgibbon (RF), Jay Sweet (JS), Kim Jarvis (KJ), Scottie Robinson (SR)

Building Inspector: Bill Sanborn

Absent: Andrew St. John, Michael Cataldo

Secretary: Joanne Jacobsen

Building Inspector's Report:

43 Pond St/ Tom & Lucinda Foley (Map 8, Lot 65)

Bill Sanborn: A request to add a 2 story addition, 1st floor adding onto the kitchen and 2nd floor adding onto the master bedroom, with new master bathroom. Has all the setbacks, has Conservation Committee and Board of Health approvals, has 3.54 acres of land.

Board discussed the application and reviewed the site plan.

SR: I make a motion that the Planning Board accept and approve the application of Tom and Lucinda Foley, of 43 Pond Street, for a 12 foot by 22 foot addition and alteration of their single family home.

RF: I second the motion.

All in favor: aye.

Motion passed unanimously.

8 Turtleback Road/ Brian McKeon (Map 9, Lot 35)

SR: steps away from the table, as an abutter to an abutter

Bill Sanborn: Request to build a studio home, a separate residence for a family member, meets all the criteria and setbacks; has Board of Health and Conservation Committee approvals; has approximately 3.75 acres. Board discussed the application and reviewed the site plan.

RF: I make a motion to approve the application of Brian McKeon at 8 Turtleback Road for the proposed use as a 2nd principle building on one lot.

JS: I second the motion.

All in favor: aye.

Motion passed unanimously.

77 Eastern Ave/ Nancy Roberts (Map 38, Lot 50)

Bill Sanborn: This is a 3 family house, I have an application to enclose a porch on an existing stoop; this is a one story enclosure; however this does not meet the set back requirements and needs a 6.4.2 finding. She has the Board of Health and Conservation Committee approvals. Board held a discussion and reviewed the building requirements

for 3 family dwellings in Section 6.6.9.

RF: I make a motion to accept the application by Nancy Roberts at 77 Eastern Avenue for an alteration of an existing 3 family dwelling, based on the 6.4.2, finding that it has the Board of Health and Conservation Committee sign-offs.

JS: I second the motion.

All in favor: aye.

Motion passed unanimously.

Public Hearing:

Joanne Jordan, 164 Western Avenue, for the removal of a tree on public property.

JS: We will let the Jordan's show us what they want to do and show us whatever they have this evening. Then we'll let the Board ask questions, then we'll open it up to the public for questions.

Mrs. Jordan: proposing to cut down a tree in front of her house at 164 Western Avenue for safety purposes. She had a letter from DPW supervisor Damon Bouchie, in which he gave his approval. She had been granted approval for a new driveway October/November, 2003. She presented the as-built plan, showing the proposed new driveway extension and additional parking. She commented that she and her husband propose to plant more trees away from the street and between her property and the neighbor's property as a screening. The main reason for removing the tree is for safety for those trying to pull out of the driveway. She was also concerned that drivers trying to dodge people trying to pull out of her driveway often pull over into the on-coming lane, further endangering the public. The previous owner had had several accidents there. The Electric Company has already trimmed the tree and there is not much left of it as it stands now.

Mr. Jordan: I would also like to plant fruit trees in the back.

JL: Any questions from the Board?

RF: So you are going to pay someone to cut it down?

Mrs. Jordan: Yes.

Bill Sanborn: And will the stump be removed?

Mrs. Jordan: Yes

SR: Commented on behalf of Damon Bouchie, who could not attend the meeting: Damon (in a phone conversation) expressed his support of the Jordan's plan. They went to him first with the issue and plan. He felt that this would increase public safety and because the Electric Company would be cutting more the tree in the future or some of the tree may fall into the roadway. The new driveway design will be safer for everyone. He also requested that trees be planted to replace the one being taken down; those trees to equal the size (diameter) of the tree being removed.

JL: Any questions from the public?

No questions heard.

JL: I don't think this is an issue, if Damon is satisfied. We will now close the public hearing.

JS: I make a motion to approve the plan of Mark and Joanne Jordan to cut down a tree on public land, to better the safety of the road on Western Avenue.

KJ: I second the motion.

All in favor: aye.

Motion passed unanimously.

Peter Lucido, regarding 78R Southern Avenue

Mr. Lucido appeared before the Board to ask their advise on planning another dwelling at 78R Southern Avenue, property now owned by Jerome French. Board found that currently the property is not a buildable lot because it does not have frontage, has no driveway, would have to have a right of way granted for access.

Board discussion of requirements.

Board advised that Mr. French would have to go through the normal subdivision process to have a second lot approved.

Discussion on memo from Brendhan Zubricki

Board discussed the recent memo from Town Administrator, Brendhan Zubricki, regarding the definition of a "bedroom", which only pertains to dwellings affected by the sewer project.

10-acre Turtleback Road discussion

Jay Sweet led the discussion. He reviewed his discussion with David, a member of the Greenbelt Association and Martha Hoar of the Conservation Committee. He pointed out 3 important items:

1. In a discussion with legal counsel, ownership of the proposed 10-acre parcel has been ambiguous, whether it should be under town ownership or as a conservation restriction. His recommendation was that it should be town owned and that it also be made a CR, with control under a designated town group, to be named. He also recommended that the CR be put on only 1 person's land. He also noted that Mr. VanWyck has already bulldozed many trees and much of the land, so the land is currently being compromised.
2. The donated land be defined in straight lines, so it's easily identifiable for pedestrians using the area.
3. Until he owns Mr. Perkins' land, Mr. VanWyck should be proposing to donate only land that he currently owns.

Mr. VanWyck has bulldozed a ditch in the front of his land several years ago that contains a stream. The Open Space Committee wanted to propose that stream be declared a perennial stream and would like 200 feet on each side be put under protection, so it could not be further altered.

The best proposal was the first proposal, that which was around the vernal pond. There are several access points to that area already.

JL: presented Mr. VanWyck's latest proposals, with perk sites noted.

Board reviewed and discussed those proposals.

JS: The vernal pond has been certified.

Board discussed the issues of town ownership versus conservation restriction.

Regular Planning Board Business:

Invoices signed and mail reviewed.

Board reviewed the minutes of the July 7 and July 21 meetings.

SR: I make a motion to approve the draft minutes of the July 7 meeting, as they appear to be complete and true, except for the word "virtually" on page 6, that to be corrected.

JS: I second the motion.

All in favor: aye

Motion passed unanimously.

JS: I make a motion to approve the minutes of the July 21 meeting.

RF: I second the motion.

All in favor: aye

Motion passed unanimously.

JS: I make a motion to adjourn the meeting.

RF: I second the motion.

All in favor: aye.

Meeting adjourned at 9:45 p.m.

Next meeting is set for Wednesday, September 1, 2004, commencing at 7:30 p.m.

Presented by: Joanne Jacobsen
Joanne Jacobsen, Adm. Assistant

Attested to: Kimberly Jarvis 9/1/04
Kimberly Jarvis, Clerk

AS NOTED PP3

**Town of Essex Planning Board
Minutes
Wednesday, September 15, 2004, 7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School in Essex and was called to order at 7:37 p.m. by Jud Lane, Chair.

Attendees: Jud Lane (JL), Rob Fitzgibbon (RF), Jay Sweet (JS), Kim Jarvis (KJ), Scottie Robinson (SR), Andrew St. John (ASTJ)

Building Inspector: Bill Sanborn

Absent: Michael Cataldo

Secretary: Joanne Jacobsen

Building Inspector's Report:

Lot 35 (#17) Turtleback Road/Miles Cambridge

Map 9, Lot 35

He has Board of Health, Conservation Committee, DPW, Wetlands and Fire Department sign-offs. Had the house plans, but not the site plan. To be continued to next meeting.

8 Deer Hill Farm/Richard Stevens

Mr. Stevens wanted to build a 2-stall barn. He has the Board of Health and Conservation Committee sign-offs; meets the set-back regulations, has no heat, no plumbing on the plans. Board reviewed the site plan.

JS: I make a motion to accept Richard Stevens application for a building permit on 8 Deer Hill for a 2 stall barn, 18 ft. by 36 ft., on a poured concrete foundation with an asphalt roof.

RF: I second the motion.

All in favor: aye.

Motion passed unanimously.

4 Ralston Drive/William Wolbach

This needs a 6.4.2 finding. Located on Conomo Point area. Questioned the Board as to the Conomo Conservation boundaries.

Mr. Wolbach wanted to add a 15 ft. by 30 ft. lean-to for boat storage, adjacent to his garage. Needs a 6.4.2 finding because it doesn't meet the setbacks. He has the Board of Health and Conservation Committee sign-offs.

Board inspected the site plans.

JS: I make a motion to approve a building permit for William Wolbach for a lean-to shelter for his board at 4 Ralston Drive, as he has the Board of Health and Conservation Committee sign-offs, finding that it would not be substantially more detrimental to the neighborhood.

ASTJ: I second the motion.

All in favor: aye.

Motion passed unanimously.

Discussion point:

Mr. Sanborn had a question for the Board regarding the development of a parcel of land on Martin Street for an assisted living project. Board discussed, but decided that it would ultimately go to the Zoning Board of Appeals due to the lack of current zoning regulations for that type of development.

Discussion point:

Mr. Sanborn brought another question concerning home occupation, specifically more than one home occupation per property. Board discussed existing criteria, particularly the number of allotted employees.

Update on Western Avenue, Gangi Plumbing:

Mr. Gangi informed Mr. Sanborn that he was not storing his vehicles on his property, but across the street and would also be moving soon.

10-acre Turtleback Road discussion

Mr. VanWyck was present with his counsel, Russ Brown.

Mr. VanWyck:

- offered to pay Mr. Brown's legal fees for the Board if they would like to use Mr. Brown's services to investigate the new Town of Manchester zoning regulations.
- distributed the Town Assessor's Map 9 (dated 1/1/2001) to the Board for discussion points.
- stated that his plan was to develop two subdivisions in circular pattern giving the Town conservation easement between the two circles.
- cited the 1996 Agreement for Judgment: "the land to be dedicated shall be limited in use to walking, hiking, running and /or bicycle paths, picnic areas, fishing, wildlife and nature study and similar activities."

JL: asked why has he dug up the land if he knew that it was to be considered for part of this agreement?

Mr. VanWyck: disagreed; "only 1 small area has been dug up, it never said that I couldn't and I still own the land."

Discussion centered on the usage rights of Emerson Lane. SR pointed out that the rights pertain only to abutters.

Mr. VanWyck: lot 17 is Town owned land, and he suggested that perhaps the Board would be interested in connecting that lot to the 10 acre parcel.

JS: pointed out that is the land that has been most compromised.

Board: in developing their proposals they have been very careful to avoid his perc sites, however he has been adding new perc sites every week.

Mr. VanWyck agreed that he is testing every week and will be adding more sites.

JL: explained in view of that, it may be impossible to identify a single 10-acre parcel that does not have at least one perc site on it.

Mr. Brown commented there had been mistakes made in the past and that Mr. VanWyck had given away some plan prior to the Agreement for Judgment, so there wasn't 37 acres at the beginning.

ASTJ commented that Mr. VanWyck wanted the Board to approve 16 house sites, but requested that he give the Board a site plan showing exactly where the 16 house sites are to be located and where the 10-acre parcel could be granted.

Mr. VanWyck: commented that "if you insist on holding 10 acres hostage until I get this thing done, I will pick and stick with what I think is the most convenient 10 acres to me, that is not part of a perc site and it has meaning for the purpose of the agreement".

SR: we want to stay within the area that was named in the Agreement for Judgment.

Mr. VanWyck: replied "if you don't consider the Perkins land, I think you're making a big mistake, because it's beautiful, untouched land."

Discussion concerning the Perkins land and access to Rocky Hill via Emerson Lane.

JS: pointed out that land was the most compromised.

JL: asked why are the Board's proposed options out of the question?

Mr. Brown: replied that Mr. Van Wyck preferred to have a conservation restriction in the area near the pond. Maybe a judge would let him include the Perkins property. It's more optimal for Mr. VanWyck that the conservation restriction be in this area; for pure conservation purposed, though it's not inflected in the Agreement for Judgment. These parcels are more aimed at pure conservation.

SR: wanted to talk specifically about the Board's proposed plan options, A, B & C.

About option A:

Mr. Brown: option A bisects the entire parcel.

About option B:

Mr. Brown replied that's where most of the perc sites are located.

About option C:

No reply

Mr. VanWyck commented that his gift was intended to be of his extra land that he didn't need.

JL: commented that he was not considering the viewpoint of the Townspeople. If the Townspeople were to use this land, they would not be inclined to do so if they had to cut through other people's property. The Board would like to see more land around the pond.

Mr. VanWyck replied that he'll have an updated plan with more perc sites next week.

The Board suggested that he continue his development plans on paper and return when he was completely ready to discuss the 10-acre parcel.

Mr. Van Wyck commented that he asked his attorney, Mr. Brown "to get the Court involved".

SR: asked about his thoughts on option D?

Mr. Brown and Mr. VanWyck had not seen option D noted on the site plan and wanted more time to review that option.

JL: commented that options A, B, & C were very reasonable and preferable, having gotten input from other Board that have walked the land; that plans A, B, C were the best plans and that D would be the least desirable option.

The Board suggested that Mr. VanWyck return on the next Planning Board meeting to discuss D and the other options.

JS: commented that plan D would be rejected by the Open Space Committee and Conservation Committee, because it is of no value for the Townspeople.

143 Western Ave/Chris Osborne

Presented a modified subdivision plan to the Board. He had previously received approval to subdivide his lot, but found that when ready to start building the new house that the slope was too close to the house, so he redrew the lot lines.

Board examined the new site plan and questioned Mr. Osborne on several items, but was satisfied that the new plan was acceptable. Site plans and mylar copy were signed by the Board. Mr. Osborne filed a Form A and paid the required fee.

Regular Planning Board Business:

Invoices signed and mail reviewed.

Board reviewed the minutes of the September 1 meeting.

ASTJ: I make a motion to approve the minutes of the September 1 meeting, as amended.

JS: I second the motion.

All in favor: aye

Motion passed unanimously.

JS: I make a motion to adjourn the meeting.


ASTJ: I second the motion.

All in favor: aye.

Meeting adjourned at 9:45 p.m.

Next meeting is set for Wednesday, October 6, 2004, commencing at 7:30 p.m.

Presented by: 
Joanne Jacobsen, Adm. Assistant

Attested to: 
Kimberly Jarvis, Clerk

10/20/04

**Town of Essex Planning Board
Minutes
Wednesday, October 6, 2004, 7:30 p.m.**

The meeting was held at the Essex Elementary/Middle School in Essex and was called to order at 7:34 p.m. by Jud Lane, Chair.

Attendees: Jud Lane (JL), Kim Jarvis (KJ), Scottie Robinson (SR), Andrew St. John (ASTJ), Michael Cataldo (MC)
Building Inspector: Bill Sanborn
Absent: Rob Fitzgibbon, Jay Sweet
Secretary: Joanne Jacobsen

Building Inspector's Report:

8 Scot's Way/ Scot Savory

Map 8, Lot 15B (located in the Water Resource Protection District)

Mr. Savory has an existing structure, an auto repair garage on the property and requested a permit to build a second building, 40 ft. by 60 ft. for storage purposes. He has the Board of Health, Conservation Committee, Wetlands, Waste Water and Fire Department sign-offs. Board examined the site and building plans. Board discussed the need for drains. Since this lot is located in the Water Resource Protection District, the Board requested Mr. Savory have the plans revised to include a drainage system and noted with the impervious surface dimensions.

Lot 35 (#17) Turtleback Road/Miles Cambridge

Map 9, Lot 35

Permit request to build a new home: 4 bedrooms, 3 baths, a kitchen, plans also included an in-ground pool. Had presented the house plans at the last Planning Board meeting, but did not have the site plan at that time. He has Board of Health, Conservation Committee, DPW, Wetlands and Fire Department sign-offs.

Board examined the plans.

KJ: noted a common driveway. Board acknowledged that condition as a secondary means of access.

MC: I make a motion that we approve the application of Miles and Susan Cambridge, Lot 35 Turtleback Road for the construction of a new 4 bedroom, 3 bath single family dwelling, finding that it has the approvals of Board of Health, Conservation Committee, DPW, Wetlands and Fire Department and that it meets the requirements of the Town of Essex.

ASTJ: I second the motion.

All in favor: aye

Motion passed unanimously.

161 Southern Ave/Peter Winslow

Request to demolish and rebuild a storage shed, the building is 14 ft by 28 ft (formerly a stable and chicken coop) and approximately 12-13 feet high, which is presently non-conforming as it does not meet the setbacks. Board examined the site plans; plans did not present the existing and proposed structures in a clear manner and the side set-backs, asked that he return with appropriated marked plans.

184R Western Ave/Larry Shanks

Mr. Shanks has appeared before the Board in June to get approval for the subdivision of an existing lot. Recently in the process of surveying the lot, he discovered an encroachment by his neighbor. He has reached an agreement with the neighbor to sell him 6,423 s.f. of his land (marked Lot 56C on the plans) that he needs.

ASTJ: I make a motion to approve the division of a lot on Western Avenue, Map 8, Lot 56, also to create a new non-buildable lot of 6,423 s.f., Lot 56C, finding that it meets all the requirements of the Town of Essex by-laws.

MC: I second the motion.

All in favor: aye

Motion passed unanimously.

Board signed the mylar copy and site plan copies. Mr. Shanks will submit the Form A and check to the Planning Board Office the following day.

10-acre Turtleback Road discussion

Mr. VanWyck was present with his counsel, Russ Brown. Martha Hoar, from the Open Space Committee, was also in attendance.

JL recapped the last week's events: Mr. VanWyck had reviewed the 4 proposed plans that the Board had shown on the last map presented. Mr. VanWyck had proposed another plan, named Plan E, earlier in the week. The Board examined the new Plan E. Mr. VanWyck had previously expressed interest in Plan D, now was interested in Plan E. However, in exchange for the Board agreeing to Plan E, Mr. VanWyck wanted the Board to sign-off on the 4 lots on Turtleback Road.

Mr. Brown wanted a waiver on the limitations of the 1,200 foot road (without a 2nd egress) requirement.

Mrs. Hoar discussed the criteria of the Division of Conservation Services and regarding vernal pools.

The Board expressed the satisfaction with Plan E, however they would need to have the plan examined by Town Counsel and get feedback from the Conservation Committee and the Open Space Committee.

Mr. VanWyck pressed the Board to approve the road length waiver.

ASTJ requested that Mr. VanWyck return with a plan of the new, not yet proposed, subdivision which is clearly marked the proposed roads, the proposed lots and any variance needed. He expressed his satisfaction with the new Plan E, however formal plans needed to be submitted.

Discussion ensued on possible 40b housing.

Mr. Brown said that they could discuss the 40b issues at a later date.

JL: we need to decide on the 10-acre parcel first. We can't approve plans without knowing how many lots there will be and the proposed road design.

Mr. Brown agreed to return with a more complete plan.

Mr. VanWyck again asked for a commitment from the Board regarding the road construction.

Discussion ensued regarding road construction criteria.

Mr. VanWyck said that he had identified 20 perc sites and planned to do further testing.

JL: requested that Mrs. Hoar have the new plan examined by the Massachusetts Conservation Committee and also needs the approvals of the Board of Health and DPW.

Mr. VanWyck withdrew the proposed Plan E, resubmitted Plan D again.

Discussion closed.

Regular Planning Board Business:

Invoices signed and mail reviewed.

Discussions:

- The October 20 Board meeting will take place at the Town Library. The agenda was discussed.
- Kim Jarvis gave feedback on the October 5 Conservation Committee Board meeting that she attended.
- Scottie Robinson gave a report on the latest developments on the Arielle Lane subdivision road. She spoke to Larry Graham and he explained that the neighbors on Arielle Lane have made a decision to keep the existing plan to remove the island and mailboxes. She also gave an update on the Bucklin subdivision: Dick Tomailo had presented new engineering plans for the road to remediate that drainage issues. Mr. Graham gave his approval and construction will commence. She also gave feedback on the Tara Road subdivision: changes have been made to the drainage swales in the front and the as-builts may be ready by the end of this building season.

MC: I make a motion to adjourn the meeting.

JL: I second the motion.

All in favor: aye.

Meeting adjourned at 9:40 p.m.

Next meeting is set for Wednesday, October 20, 2004, commencing at 7:30 p.m. at the Town Library.

Presented by: _____

Attested to: _____

JL: we need to decide on the 10-acre parcel first. We can't approve plans without knowing how many lots there will be and the proposed road design.

Mr. Brown agreed to return with a more complete plan.

Mr. VanWyck again asked for a commitment from the Board regarding the road construction.

Discussion ensued regarding road construction criteria.

Mr. VanWyck said that he had identified 20 perc sites and planned to do further testing.

JL: requested that Mrs. Hoar have the new plan examined by the Massachusetts Conservation Committee and also needs the approvals of the Board of Health and DPW.

Mr. VanWyck withdrew the proposed Plan E, resubmitted Plan D again.

Discussion closed.

Regular Planning Board Business:

Invoices signed and mail reviewed.

Discussions:

- The October 20 Board meeting will take place at the Town Library. The agenda was discussed.
- Kim Jarvis gave feedback on the October 5 Conservation Committee Board meeting that she attended.
- Scottie Robinson gave a report on the latest developments on the Arielle Lane subdivision road. She spoke to Larry Graham and he explained that the neighbors on Arielle Lane have made a decision to keep the existing plan to remove the island and mailboxes. She also gave an update on the Bucklin subdivision: Dick Tomellio had presented new engineering plans for the road to remediate that drainage issues. Mr. Graham gave his approval and construction will commence. She also gave feedback on the Tara Road subdivision: changes have been made to the drainage swales in the front and the as-builts may be ready by the end of this building season.

MC: I make a motion to adjourn the meeting.

JL: I second the motion.

All in favor: aye.

Meeting adjourned at 9:40 p.m.

Next meeting is set for Wednesday, October ~~13~~²⁰, 2004, commencing at 7:30 p.m. at the Town Library.

Presented by: Joanne Jacobsen
Joanne Jacobsen, Adm. Assistant

Attested to: Kimberly Jarvis
Kimberly Jarvis, Clerk

10/20/04

**Town of Essex Planning Board
Minutes
Wednesday, October 20, 2004, 7:30 p.m.**

The meeting was held at the Essex Town Library in Essex and was called to order at 7:31 p.m. by Jud Lane, Chair.

Attendees: Jud Lane (JL), Kim Jarvis (KJ), Scottie Robinson (SR), Michael Cataldo (MC), Rob Fitzgibbon (RF), Jay Sweet (JS)

Building Inspector: Bill Sanborn

Absent: Andrew St. John

Secretary: Joanne Jacobsen

Building Inspector's Report:

161 Southern Ave/Peter Winslow

Request to demolish and rebuild a storage shed, the building is 14 ft by 28 ft (formerly a stable and chicken coop) and approximately 12-13 feet high, which is presently non-conforming as it does not meet the setbacks. Board examined the site plans at the last meeting; new plans presented showing the precise area to be torn down and replaced in the same footprint.

MC: I make a motion to approve the application of Peter Winslow of 161 Southern Avenue to repair/replace an existing 14 ft by 28 ft stable/shed on the same footprint, under Section 6.4.2 finding that is not substantially more detrimental.

JS: I second the motion.

All in favor: aye

Motion passed unanimously.

30 Landing Road/Department of Public Utilities

Request to site a new building

The Board examined the site plans for a new salt shed to be built at 30 Landing Road. Has the EPA approval.

SR: I make a motion to approve the application for a building permit for the Town of Essex to construct of a new salt shed with wood walls and a steel roof, as described in their application, at 30 Landing Road, finding that it has the Board of Health and Conservation Committee approvals.

JS: I second the motion.

All in favor: aye

Motion passed unanimously.

27 Lufkin Street/Stephen Payne

Presented as a change of use: he is converting from a single family to a two family dwelling; has all the setback and lot size requirements; has the DPW, Board of Health approvals, has two separate driveways already, with ample parking.

Board examined the plans and discussed the requirements; no further action required.

3 Southern Avenue/Michael and Lynn March

This proposal has already been approved by the Zoning Board of Appeals.

Mr. March proposes to raise the building, add a new foundation with parking spaces under the building and will continue to use it for business on the first floor and live on the second floor. There will be no change of setbacks; he went before the Zoning Board for a variance for an existing deck. He has DPW sign-off for the parking. He needs a 6.4.2 finding because he's going up.

Board discussed setbacks and zoning requirements.

MC: Make a motion to approve the application of Michael and Lynn March for a building permit at 3 Southern Avenue to raise the existing building and to pour a new foundation, under Section 6.4.2 finding; finding that is not substantially more detrimental to the neighborhood.

All in favor: aye

Motion passed unanimously.

Rob Fitzgibbon: Update on his research into town growth and cluster zoning:

He and Scottie Robinson attended a Smart Growth meeting in Essex on September 18 and will attend another Smart Growth meeting in Rowley on November 6, both conducted by the MAPC.

Regular Planning Board Business:

Invoices signed and mail reviewed.

Minutes of October 6 reviewed and discussed, minor corrections/spelling were recommended.

MC: I make a motion to approve the minutes of the October 6 meeting as amended.

KJ: I second the motion.

All in favor: aye

Motion passed unanimously.

RF and JS abstained from voting as they did not attend the October 6 meeting.

Minutes of the September 15 meeting were reviewed and discussed, minor corrections were recommended.

JS: I make a motion to approve the minutes of the September 15 meeting as amended.

SR: I second the motion.

All in favor: aye

Motion passed unanimously.

MC: abstained from voting, as he did not attend the September 15 meeting.

Discussion on Arielle Lane/Ice House Lane

Mr. Goldenbogen, resident of Ice House Lane had called the Planning Board office to ask who would be responsible for the maintenance of the paved portion of the road. Scottie Robinson had spoken with him earlier in the day and explained that since it was written in the deed, the owners of the land would be responsible for the maintenance since the road was part of their land.

10-acre Turtleback Road discussion

Mr. VanWyck was present with his counsel, Russ Brown.

Mr. Brown introduced himself for the record.

JL: Checked with Town Counsel regarding Mr. VanWyck's latest proposal of 10 acres and found that it was not a problem as long as it was a simple agreement though it is outside the original parcel.

Mr. Brown: was not prepared for that and commented that it appeared that the process was getting too complicated, so he was prepared to submit a preliminary subdivision plan for a preliminary discussion. Peter decided to leave that and wanted to go with Plan D. So he would be giving undisturbed areas.

PVW: I took your last letter and I fixed numbers 2,3,4,5, and 6. So I'm giving the only unaltered land there. He presented his new site plan with new perc sites.

Discussion on easement/access to the 10 acre site.

JS: What is the possibility that the easement would be on someone else's driveway?

Mr. Brown: Yes, that is very probable. He (Myles Cambridge) has a non-exclusive easement for his driveway. He shares this in common with the rights of those including the rights of any possible future subdivision road.

MC: Where do you envision public parking?

Mr. Brown: we did not think about that.

MC: What about parking at this portion of the circle?

SR: Please describe the abutting property (to the south)?

Mr. VanWyck: That's marsh area.

SR: Who owns it?

Mr. VanWyck: I believe it's Jay Dow and he has access off of Pond Street.

JL: Do you have a copy of the Agreement for Judgment? I have a question for you in Section 6. I want to get an understand of the conservation process.

Discussion of the process of having land declared as a conservation restriction.

JS: But in section 5, it says that Mr. VanWyck "will donate the land".

RF: Then Section 5 & 6 conflict with each other.

Mr. Brown: It sounds like it should be a conservation restriction.

JS: But then it would have to go to the State to be approved.

Mr. Brown: There is a law that prohibits the granting easements without having a land benefit. I haven't looked in to whether a CR can be given to a town without State approval. I know you have to go to the DEP for a conservation restriction. But when you're giving it to a municipality - I don't know if we're similarly constricted.

I have drawn up a draft of the conservation restriction and I can e-mail it to you. Town Counsel and I can come to an agreement as to what the process will be.

SR: So you would deed it over to the Town?

Mr. Brown, No, I would create a conservation restriction.

JL: The Agreement for Judgment says that "the Town may create paths".

Mr. Brown: I can work it out with Town Counsel is to how it would be given as a grant or conservation restriction.

JL: I would like to get comments from the individual members of the Board now. This is not a vote. I'd just like to let the Board members express their opinions.

Board comments;

JL: Because it meets with the Agreement for Judgment and meets the basic requirements, I think it's a reasonable compromise and we should seriously consider this.

KJ: I also agree, it appears to meet all the basic requirements that are set forth from having walked it. I think it's a nice piece of property and I wouldn't have any objections in accepting it.

RF: I think it's definitely a plan we can work with. I think it satisfies the Agreement for Judgment. I'm pleased to see it. But I have questions about the driveway easement and the 10 foot walkway and the verbiage in the grant to the town – is it a conservation restriction or out right grant? But I'm sure that Mr. Brown and Town Counsel can probably work out those details.

MC: I think the parcel being offered conforms with the requirements, which were originally set out to be. Peter has managed to put together something that that appears to address what our requirements were. My only concern is that access. We just need to be sure that we have a firm understanding of how it's going to be provided.

SR: I'll be honest, I'm clearly disappointed, because of its irregular shape lot that nobody is going to be able to find and unless it's very clearly marked every 25 feet or so. It doesn't look like an easy walk in the woods. It looks like people will stray all over private property. I don't know what's down there (noting the southern boundary), I assume it could be someone's back yard. I don't understand why it couldn't be more concentrated and as we discussed several times, with some logic to it. That being said, I also think that it does conform with the Agreement for Judgment and that one of the ponds is included and that's a big feature for us. And I have to say thank you for giving us a plan that we can work with.

JS: I appreciate Peter coming up with an actual plan we can work with. I have the same reservations about the irregular shape. I'm not enamored with the pond, because it has no wildlife, it's a man-made, dug pond. I think regardless ... there have been problems with kids drinking out there and I think we're just taking a problem off of Peter's lands. I'm anxious to see about southern boundaries. What this is. Obviously it's not our 1st, 2nd or 3rd choice, but it is what it is.

JL: Just a correction, we don't know if it would be our land anyway and Town wouldn't be responsible. If it's a conservation restriction, under joint ownership, the Town be responsible for kids drinking there.

JS: I'm curious to see whether or not it would be a grant or if the State has ...

I don't want to saddle the Town with land that no one is going to use.

MC: One other question --- is there a reason why you didn't include this piece?

Mr. VanWyck: I wanted to keep it for myself. If I were on the Board, the solution is very clear, that the Agreement for Judgment can be changed if all the parties agree. There are 88 acres here, to make it worthwhile.... We're going this way, because I want access to these 4 lots.

JL: We have the general idea. I want to talk to Brendhan and run it by them. Then we need their input on if it's to be a grant or conservation restriction. Then I think we can vote on it next meeting.

Mr. Brown: In my experience with municipalities, they like the method of least liability and maintenance. To have it deeded is more complicated.

JL: First of all it has to be surveyed and markers placed, that it would need to be done before a conservation restriction, then we should walk it first.

Mr. Brown: We'd like to register this land.

JL: What I'll do it run it by Brendhan.

The Board and Mr. Brown discussed the process and next steps.

JS: If it's granted to the Town, they can turn it over to a watch dog committee like the Greenbelt.

Next meeting agenda will include time for Rob Fitzgibbon's update on open space and rewriting the by-laws.

Sam Cleaves from MAPC will be on the agenda at one of the November meetings, to address the topic of the Smart Growth Technical Assistance program, date to be determined.

MC: I make a motion to adjourn the meeting.

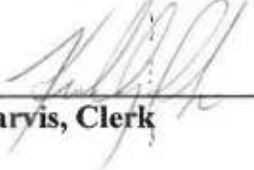
JL: I second the motion.

All in favor: aye.

Meeting adjourned at 9:20 p.m.

Next meeting is set for Wednesday, November 3, 2004, commencing at 7:30 p.m. at the Town Library.

Presented by: 
Joanne Jacobsen, Adm. Assistant

Attested to:  11/17/04
Kimberly Jarvis, Clerk

**Town of Essex Planning Board
Minutes
Wednesday, November 17, 2004, 7:30 p.m.**

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:35 p.m. by Jud Lane, Chair.

Attendees: Jud Lane (JL), Kim Jarvis (KJ), Scottie Robinson (SR), Michael Cataldo (MC), Rob Fitzgibbon (RF), Jay Sweet (JS), Andrew St. John (ASTJ), Scottie Robinson (SR)

Building Inspector: Bill Sanborn

Secretary: Joanne Jacobsen

Building Inspector's Report:

15 Cogswell Court - Richard & Mary Anne Beaton

Richard and Mary Anne Beaton are looking to purchase the lot and tear down the existing building. The lot is a non-conforming lot and the existing house was non-conforming. They are requesting a foundation permit to put on a modular home. The new footprint will conform to the set backs but the lot will be non-conforming. They have the request for sewer. They have approval from Con. Com., B.O.H.

ASTJ: I move we approve Richard and Mary Anne Beaton's request for a foundation finding that it is an extension of a non-conforming use under Essex zoning by-law 6.4.2.

JS: I second the motion.

All in favor: aye

Motion passed unanimously.

199 Western Avenue

The most recent use of this property was as an antique shop. The current owner has a variance from Board of Appeals. The property is in the watershed district and the owner would like to convert the building from it's present use to a to a two family dwelling. The B.O.A. gave him a variance for 40,010 feet. The board approved the plan on April 9, 2003 and then an abutter appealed the variance. The abutter withdrew the appeal three days before trial last week. The board examined the plans that were previously approved with no further comments.

17 Winthrop Street - Dean & Patricia Richards

They have B.O.H., Waste Water and Con. Com. Approval, which all the necessary approvals. The current dwelling is a two family dwelling and they are requesting to square off the back of the house with the addition of 96 square feet, which would be only 19 feet from property line. The lot is 24,300 square feet and the property is only 12% coverage on the lot. There will be no change of use.

JL: I move to approve the request of Dana and Patricia Richards at 17 Winthrop Street for an addition that will add 96 square feet to an existing two family house under Essex zoning by-law 6.4.2 because it is already 19 feet from the lot line.

KJ: I second the motion

All in favor: aye

Motion passed unanimously.

35 Rear County Road – Michael Doyle

The owner is requesting to build a two-car garage with two bedrooms above the garage. The lot has approximately 50 feet of frontage and he had been granted a variance for the original lot. He has the B.O.H. & Con. Com. approvals. The application shows 192,000 square feet vs. the plan that shows 38,000 square feet. The board requested a correct lot size. The board requested that Michael Doyle in order to put an addition for a garage and three bedrooms, submit a correct application.

18 Lufkin Point Lane – Nick Papas

The plan was presented to the board for review only. The plan has already been reviewed and had been previously approved but was on hold on appeal due to a conservation issue. That has been resolved and the Board reviewed the site plans.

Tara Road

Bill Sanborn asked for a resolution on the Tara Road project. Scottie Robinson will write a letter to Larry Graham and the developer to explain the need to finish the project.

Essex County Forum for Smart Growth

Scottie Robinson and Rob Fitzgibbon attended the forum and discussed with the board what was discussed at the forum. The speakers at the forum included: Katherine Glenn, Peter Phippen, Amesbury Town Planning, Glenn Gibbs, Audubon Speaker, Plymouth Planning Board, Rowley, Newbury and Gloucester members of Planning boards, ECCF.org

Topics included:

The Low Impact Density and they suggested that L.I.D. information is given to developers.

Another goal of the forum was not to talk about not just focusing on the writing by-laws, but the importance of being able to incorporate educational outreach and to network with the community in order to create by-laws that make economical sense and involve the public.

The Amesbury Demolition delay by-law was discussed which helps preserve historically significant properties. The demolition delay can be extended up to six or twelve months. The fact that the town of Plymouth has had a dilemma with their coastline and town forest in that the challenge they face is that developers are attempting to develop a forest area.

Glenn Gibbs discussed a barn development law which focuses on the fact that people

were converting barns/carriage houses to homes.

Ellen Preston from Gloucester Development discussed the fact that cluster zoning in Gloucester was passed 20 years ago and the first development that applied for cluster zoning was in 2004.

There were numerous plans and acronyms discussed:

R.D.D. – Rural Density

Development Plan, which is an open space plan.

Recreational Development Plan, which is a plan for building centers in rural communities.

O.S.P.D. -which is used for spot zoning.

V.O.S.D., which is the Village Open Space Development.

ASTJ: Rob, could you write these notes up because it appears that a lot of important information was discussed at this forum.

RF: I would be happy to do that.

ASTJ: We need to look carefully on developing the process. There is a lot of information here and we need to design a process. There is a lot of information we will need to sift through.

ASTJ suggested to the board that a process is designed with the following steps: 1. Accumulating options, 2. Selecting options, 3. Selling the process.

SR: I suggest we use Sue Moses from the E.C.C.A. to help the town in this project. She is a planner and she is available for free and she is available to towns in Essex County that has planning issues. I have met her four or five times in the past year and she seems very good.

RF suggested a Planning Board Web Site as a communication plan to post information regarding posting planning board issues. He would need assistance with the production work, it was suggested that perhaps a high school student as a civic project would be a good volunteer.

JL stated that the fundamental problem is that if you do not have someone to update the web site then people can become upset when it isn't updated.

RF suggested that the secretary updates the web site or a link with planning board meeting times/location, planning board hours.

WB volunteered to assist in helping to write the changes of the by-laws. The board discussed the small steps and changes that should be completed to change the by-laws with a target date of 2006 and to get a draft for the Town Meeting to review by next fall. WB suggested that the board completes the following: write new by-laws in Section 6, plug in Open Space by-laws under a special permit process that will allow waivers. He suggested that the Cluster Zoning under a Special Permit process but that it is dictated under zoning by-laws that there is a process would be performed as a special permit. Examples are that there would be a 20% increase in use or to drop the frontage requirements. Provide incentive for developers; present a finished product that the townspeople can agree on to help keep the by-laws simple.

ASTJ suggested that the board has a training session on a weekend to discuss the by-laws. JL stated that if there were a quorum then it would need to be posted as a public meeting.

SR had a proposal that ASTJ wrote to go for the \$50,000 of the priority development funds money that is available. SR will call Brendan and proceed with the proposal.

JL has been contacted by developers about 40B housing on John Wise Ave., Essex Woods and River house, Island Road, the Hardy's land. He stated that it is important to proceed with Open Space; 40b states that these developers can basically do what they want to do; 40b allows them that if they can make a case that they are going to use the buffer you can not stop them. The board expressed urgency and the need to proceed with new by-laws to preserve the town character but also to provide affordable housing.

10-Acre Discussion

The lawyers are working on the C.R. Peter Van Wyck refuses to grant the town a parcel out right so he will own the land with a Conservation Restriction. The board discussed what is needed to complete the transaction: a survey, the easement defined, the need to have the agreement drawn by the lawyers. MC asked if the issue that the road has not been completed should be addressed and it was stated that it is in the Agreement for Judgment that he finishes the road and the utilities. The board wants a plan, monuments, easement designated on the plan, wetlands and pond designated on the plan - one third of the land should be upland. The plan needs to state how many acres are wetlands and how many acres are uplands.

JL: I make a motion to adjourn the meeting.

AJ: I second the motion.

All in favor: aye.

Meeting adjourned at 10:00 p.m.

Next meeting is set for Wednesday, December 1, 2004, commencing at 7:30 p.m. at the Town Library.

M.E. Feener
Interim Adm. Asst.
Presented by: _____
Joanne Jacobsen, Adm. Assistant

Attested to: _____
Kimberly Jarvis, Clerk

**Town of Essex Planning Board
Minutes
Wednesday, December 15, 2004 - 7:30 p.m.**

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:40 p.m. by Jud Lane, Chair.

Attendees: Jud Lane (JL), Kim Jarvis (KJ), Michael Cataldo (MC), Rob Fitzgibbon (RF), Andrew St. John (ASTJ)

Building Inspector: Bill Sanborn

Absent: Scottie Robinson, Jay Sweet

Interim Secretary: Mary-Ellen L. Feener

Building Inspector's Report:

4 Tara Road

Bill Sanborn asked the members of the board for the status of the approval of the subdivision located at 4 Tara Road due to the fact the builder has been contacting him in Gloucester regarding this issue. The answer from the board was that Scottie Robinson was going to write a letter and that she had already talked to Larry Graham regarding this subdivision.

8 Lufkin Point Road/Alison & Scott Faulk

The property is part of a subdivision that was approved in August 2004. The plan for the subdivision application has received all approvals by the boards and commissions. There is an approval and it does have frontage. There is a new plan. The new plans are not approved because the structure is too close to property line. What the owners are going to do is buy adjacent parcel of land. The owners are now siting a new one family house, which meets all the criteria and all the setbacks. This plan has all the necessary approvals. The current plans indicate a garage and a sunroom. The sunroom has been approved; the garage has not been approved.

KJ: Motion to accept the application of Alison & Scott Faulk for a new building at 8 Lufkin Point Road which meets all the required setbacks and has approval from the B.O.H. and Con. Com. Pending the purchase of appending parcel of land, the sunroom indicated in the plans will meet all required setbacks, etc.

MC: I second the motion.

All in favor: aye

Motion passed unanimously (ASTJ not present at this time)

200 Western Avenue/Ramie Reader

The owner of the property located at 200 Western Avenue would like to add a one-story garage. It is a pre-existing lot. The owner has the approval of the B.O.H., DPW and Con. Com. He also has Variance Approval from Board of Appeals.

KJ: It is right on the property line.

BS: Yes.

RF: The garage will have what type of foundation?

BS: It will be a regular foundation.

KJ: When they do go for a special permit do they need to contact the abutters?

BS: Yes, there is a process. Owner has received a Zoning Variance from the Board of Appeals, B.O.H. & Con. Com approvals.

JL: When was the building approved?

MC: November 3, 2004.

JL: Then the twenty days have passed.

RF: Motion to approve the application of a building permit for property located at 200 Western Ave. which has B.O.H., Con. Com. and has been granted a Zoning Variance by the Board of Appeals approval for the two side yard set backs.

KG: I second the motion.

All in favor: aye

Motion passed unanimously (ASTJ not present at this time).

5 Scott's Way/Holden Gas, LLC

The owner of Holden Gas has requested to add an additional propane tank to the property located at 5 Scott's Way. There is an existing propane holding facility. He has the approval of Con. Com., B.O.H., Fire Department and the Board of Selectmen. The purpose of the tank is for additional storage for business purposes. The board has previously looked at this and approved it.

JL: Are they asking for a new permit?

BS: No.

RF: Motion to approve the building permit to add an additional third propane tank and the expansion of an existing propane gas storage facility for the property located at 5 Scott's Way. The installation of the foundation will support the tank and we find that it meets all the requirements of the by-laws.

MC: I second the motion.

All in favor: aye

Motion passed unanimously (ASTJ not present at this time).

Bill Sanborn did state that he received a complaint regarding the log storage on Story Street – Dunn's property. The complaint said that the logs were stacked too high and were dangerous and may fall over. He left a message with Mr. Dunn's nephew and he will follow up to make sure it was completed.

Public Meeting Closed for Executive Session at 8:30 p.m.

Public Meeting Re-Opened at 9:30 p.m.

Regular Planning Board Business:

Rob Fitzgibbon spoke to Sue Moses, planner of E.C.C.F. (Essex County Conservation Forum). She has agreed to look at our By-Laws. She will look at any issue that the board presents to her and Rob invited anyone who would like to have something looked at to let him know and he will ask her.

Invoices signed and mail reviewed.

2005 Planning Board Meeting Schedule was reviewed and all present agreed to the schedule.

RF: I make a motion to adjourn the meeting.

KJ: I second the motion.

All in favor: aye.

Meeting adjourned at 9:50 p.m.

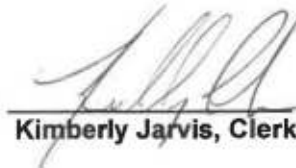
Next meeting is set for Wednesday, January 5, 2005 commencing at 7:30 p.m. at the Town Library.

Presented by:



Mary-ellen L. Feener, Adm. Asst.

Attested to:



Kimberly Jarvis, Clerk

**December 18, 2004
Meeting Minutes**