

FALMOUTH PLANNING BOARD MEETING MINUTES

TUESDAY, AUGUST 4, 2009, 6:30 P.M.

FALMOUTH TOWN HALL, COUNCIL CHAMBERS

MEMBERS PRESENT: William Lunt, Stan Bennett, Rebecca Casey, Jay Moody, David Fenderson

ABSENT: Tony Calcagni, Bernard Pender

STAFF PRESENT: Ethan Croce (Senior Planner), Robert Lynn (Recording Secretary)

The meeting was called to order at 6.36pm.

Rebecca Casey and Jay Moody were designated as voting members for the meeting.

1. Approval of June and July Meeting minutes

Stan Bennett moved to approve the item, Rebecca Casey seconded. The motion carried 4-0.

AGENDA ITEMS:

2. Charles DeSieves – 185 Woodville Rd – Request for approval of an after-the-fact fill permit. Tax Sheet 140; Map-Lot R03-031. Zoned Farm & RCZO.

Ethan Croce said the key issues are whether the proposed work complies with the fill permit standards in Section 5.34 of the Ordinance and the erosion control standards of Section 5.39 as well as if the Board is comfortable that the existing sediment stockpile has been adequately stabilized and poses no erosion or sedimentation control risk. He noted that projects of this nature are frequently reviewed by the Cumberland County Soil and Water Conservation District (hereafter 'the District') for conformance with their own erosion and sedimentation control practices and the Board often deals with that as a condition of approval. Also, given the Maine Department of Environmental Protection involvement in the project the Board may not feel it is warranted in this case.

Stan Bennett asked for clarification.

Ethan Croce said the proposal in the package would satisfy the Maine Department of Environmental Protection (hereafter 'MDEP') requested corrective actions; it is up to the Board to determine if it satisfies the Town's local Ordinance provisions.

George Theborge, Planning Consultant, was contracted last year to help with some planning on his property for a future country estates lot. He asked Sweet Associates to do a wetland survey of the property and discovered that one of the three ponds on the property had been excavated in 2005 without the MDEP permit or Town of Falmouth fill permit as required when conducting work in a wetland area. He advised Mr. DeSieves to report these violations to the Town and the MDEP and to bring the property into compliance. The excavated pond has a surface area of 27,000 sq ft and the excavation was approximately 4,600 cubic yards (based on a bathymetry study by Steve Marcott of Sweet Associates). He wanted to emphasize that the excavation was not done to create a commercial parking lot or residential subdivision but instead to create a wildlife habitat. Steve Pelletier evaluated the wildlife there and noted that the environment is far better than it was before. Mr. DeSieves proposed a 21-acre conservation easement at the rear of the property as compensation for his wetland alterations on this Tier 2 permit. The applicant hoped the support of conservationists (Falmouth Conservation Commission and the Falmouth Land Trust) and the pond wildlife would allow them to leave the pond intact; however, MDEP staff based their decision on the letter of the law which required minimal disturbance and ordered the removal of the 2ft dam at the outlet (which would lower the pond level by 3ft and expose an additional 8600 sq ft of the perimeter). They have been ordered to remove the dam and are solely here for after-the-fact approval of the original excavation of 4600 cubic yards. Part of the MDEP requirements include a restoration plan for after the dam is removed since new soil will be uncovered. The restoration plan by Mr. Marcott proposes pumping water out for 5 days to lower the level by 3ft, then an excavator will remove the dam, a horticulturist will replant the exposed soils with wetland seeds and exposed areas will be covered with erosion control fabric and mature plantings will be installed in the outlet area of the dam to accelerate rehabilitation in that area. Mr. Marcott will be supervising the work and John McClain of the MDEP will ensure they are complying with their order. Additionally, in reference to Ethan Croce's comments, they do not see anywhere in the Ordinance that mandates review by the District; also, given the level of inspection they do not see the

need for additional or further survey by the District and request this is not a condition of approval. He noted a small pile of *loam* which was excavated in 2005; part of Section 5.34 requires that any fill located within 10ft of a wetland needs to have a permit from the Board. The pile is about 4ft high at the peak with gentle slopes, he said it is stable and poses no risk to the environment; additionally, his client is planning to build a barn and will likely bring that soil to the barn within the next month.

Stan Bennett asked what action triggered all of this work.

Mr. Thebargue said the applicant asked him about creating a country estates lot. This would be created by splitting out the front house with 8 acres from the rest of the lot.

Stan Bennett asked whether Mr. Thebargue would be before the Board if Mr. DeSieves was not looking to create the country estates lot.

Mr. Thebargue said that was not necessarily the case but the intent to create the project precipitated his presence.

Bill Lunt noted that the country estate issue has nothing to do with tonight's agenda item.

Rebecca Casey asked about the original purpose of the pond.

Mr. Thebargue said it was created for aesthetics and wildlife habitats, no construction was intended at that time.

Jay Moody asked where the excavated soil from 2005 was moved.

Mr. Thebargue says they do not know where it was moved to.

Rebecca Casey asked where the small pile of soil is from.

Mr. Thebargue said it is top-soil removed during the excavation but it is only 300 cubic yards or 5% of the total excavation.

Bill Lunt asked Ethan Croce whether the MDEP would have allowed the pond to be located in a wetland had the applicant come before the Town prior to construction.

Ethan Croce declined to answer as he did not feel comfortable speaking on behalf of the MDEP.

Jay Moody said it is unlikely that the pond would have been approved unless there was wetland improvement since there would have been significant disturbance of about half an acre.

Bill Lunt said there is a strong possibility that the pond would not have been allowed to be built; however, MDEP were fairly adamant that it did not need to be completely refilled. He opened the item to the public.

Ken Bixby, 32 Wildwood Way, his house sits across from the pond on the DeSieves property that was excavated in 2005. He distributed a number of documents including a highlighted sheet from the SW Cole engineering report, a general review of the MDEP statute, standards and rules pertaining to an excavation in a wetland area and highlighted sections of Section 5.34 and 5.39 of the Ordinance. Mr. Bixby read from a pre-prepared statement.

Please note Mr. Bixby read from the transcript that is reproduced on the subsequent six pages as well as an excerpt from a SW Cole Engineering report by Lee Burman which is not documented in these minutes.

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→ Ken Dixby
32 Wildwood Way
Falmouth

ALL SEASON WIND FASH
(Robert Planning)

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Handwritten note: Hate's Copy
781 8577 FAX

Fill Permit Address 8/4 - to Planning Board
(Action by Board's Approved)
- Fill Permit application

As abutters to the Charles de Sieyes' 185 Woodville Road property my wife, Beverly, and I were notified last week of tonight's Planning Board meeting to hear an after-the-fact fill permit application for the creation of a pond that took place laterally across from our front property line.

We have been keenly aware of- and deeply distressed by the changes that occurred as a result of this pond construction, after losing three- quarters of an acre of mature tree buffer and rich natural wildlife habitat that was clear-cut, bulldozed, back-hoed, and hauled away in 2005.

The notice we were given in February of this year, of the initial de Seiyes application for an after-the-fact permit, made us aware for the first time that this destruction had taken place in protected wetlands and with brazen disregard for the law, and with no consideration of our legal right to speak out against the project.

As we looked further into the matter, we found that a "Notice of Violation" had been issued by the State of Maine DEP on November 4, 2008 to de Sieyes, listing the following "Specific Violations":

1. By removing vegetation in a forested wetland without first obtaining a permit from the Department, Charles de Sieyes violated the Natural Resources Protection Act, 38 M.R.S.A / 480-C.
2. By disturbing soil and creating a pond in a freshwater wetland without first obtaining a Permit from the Department, Charles de Sieyes violated the Natural Resources Protection Act, 38 M.R.S.A / 480-C.

Although we recognized that the de Sieyes application was an attempt to keep his pond and fully recognized his right to try and do so, there was nothing intuitive that allowed us to reconcile that such a result would in any way be fair, or right, or sensible. And it occurred to us that our rights had been trampled on and that we had an obligation to defend those rights.

So we entered the process with the Maine DEP. We studied their Statutes and Rules and standards. And we made copies of their files, which showed in great detail the interchanges between de Sieyes (and his many representatives) and the DEP.

We promptly wrote a letter to the DEP ^{in February} stating that we recognized that even though it might be a little difficult, that they must view the after-the-fact application as though the construction- destruction activity was merely a "proposed" activity. And we stated with confidence that we expected the DEP to hold to its Statutes and Rules and that therefore these forested wetlands across from our property line were fully protected from alteration by the Natural Resources Protection Act in the specific circumstances relating to this case; and, that therefore the permit could not be granted.

It is safe to say that we have continued to stay well-informed with matters as they have progressed between the DEP and de Sieyes.

This Planning Board may recall that in a letter I wrote and provided in time to go out with the April packet mailings to the members, I directly confronted critical misstatements that George Theborge had presented as fact in the first de Sieyes application to the Town for a fill permit. As a result, Ethan Croce looked into the matter, as I had implored him to do, and found that a DEP permit would not be forthcoming prior to the meeting. I further pointed out that whereas the Town does not hold jurisdiction over the state-protected wetlands in question, that reviewing the application at this time might well prove to be an exercise in futility. Ultimately, Ethan asked the de Seiyes' to self-table their application until such time as the DEP might issue a permit, which would presumably give the Town the jurisdiction to also grant the necessary local permit for the activity... if the ordinance were to lead the arguments in that direction... It has come as no surprise to us that the much sought-after DEP permit never materialized.

With all this being said, I would like to take a look at tonight's "revised" Fill Permit Application.

It is entirely clear that this fill permit application is, at its very essence, asking this Planning Board for the right to remove well over 1000 cubic yards of soils from professionally delineated wetlands. The Planning Board must view this request as though the activity has not yet taken place; and therefore it would be appropriate if all discussion were to make use of present and future tense.

Surely the Planning Board understands that the Town simply does not have the jurisdiction to grant such a permit, without the DEP first granting a permit from their side of the question. We now know that de Sieyes has withdrawn his application from the DEP and that therefore no permit for the removal of vegetation or for the removal of sustaining wetland soils in their proposed pond area has been issued.

What the Planning Board does have the right to do, and has had the right all along, is to deny the permit. *the P.B. is not limited as to their level of restrictiveness by any limit that the DEP may have arrived at.*

The de Sieyes application states "we have addressed the DEP requirements". Once again, this statement appears to be misleading and is not completely true. Certainly, no permit has been issued; and the work that has taken place on a DEP restoration plan is not complete. In a series of conversations I had only last Friday with John Maclaine, the DEP enforcement agent in this case, he made it clear that he has been waiting 6 weeks for de Seiyes to present him with a time-frame for the proposed restoration plan, and that a clear and concise monitoring plan still has not been agree to, as required. *we stated that a violation has been served and that that will remain in effect until it is signed off on. And that consent agreement has been signed.* But even if the restoration plan were complete and signed off on, it remains a "corrective action", and as such does not give the town jurisdiction to approve 4,600 cubic yards of soils, most of which is located in protected wetlands, to be removed, in this case.

These notes were read 7/1

The Town fill permit form that de Sieyes used for this application aptly references that "permits may be required from either the D.E.P. and/or the Army Corp of Engineers". Because of the size and location of this proposed activity, the Town permit cannot be granted without prior approved permits from both of the entities referenced.

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Furthermore, the Fill Permit form states that "approval of permit is subject to the provisions of Section 5.34 of the Zoning Ordinance". The de Sieyes application states that "we have provided documentation for review...to establish compliance with the Ordinance".

Yet, removal of vegetation and soils from wetlands is clearly contrary to the objectives of the Falmouth Comprehensive Plan and to the many applicable provisions in the Ordinance.

Section 5.34 ---Placement or Removal of Fill Material---states that "the purpose of this provision is to... (among other things) protect wetlands". 5.34b states that "all activities regulated under this section shall implement erosion and sedimentation measures as required in Section 5.39"...

5.39.2 states that "the provisions of this section apply to...procedures required by...fill permits".

5.39.4 states that "control measures shall protect the following resources to the greatest practical extent": (which include) wildlife habitat and wetlands. And finally, we interpret 5.34 is clearly intended to state that "Fill shall not be removed within 10' ...of wetland areas".

Thus, whatever measures de Sieyes claims to have taken, in a look back at this activity, they most certainly did not protect the wildlife habitat nor the soils within these Sweet Associates-designated high-value wetlands. Nor would they meet the objectives of the Ordinance in the forward-thinking model...therefore this permit can only be denied.

Granting of a permit would surely lead to a devastating loss of mature forest and ground wildlife habitat, and would eradicate the soils and conditions that support the existing wetland plant species.

We wish to stress that to "protect", which is the term used again and again in the Ordinance, is not remotely the same as to alter into a completely new form. And any argument that this artificial pond is somehow a higher value than the forested wetlands is purely a selfish perspective.

Additionally, we point out that Section 1.5 states that "it is the intent of this Ordinance that any (proposed) use not specifically allowed as...a permitted use...is specifically prohibited. And note that transformation of a protected wetland into a man-made pond is not listed in Section 3.2.

We believe it is imperative that the Planning Board first and foremost strictly follow the Ordinance in the clear denial of this application. We do not believe that the Board should intermingle any discussion it may have as to a proposed correction action or partial restoration plan with the fill permit discussion, just as we think it would be inappropriate to enter into any discussion about the development plans for the property. These are both independent of the application that was presented this evening.

However, in the event that the Planning Board chooses to discuss the proposed partial restoration plan, we will present our relevant commentary here with:

From the onset, let us be clear that we believe the only appropriate corrective action, for the violation notice that has been served on de Sieyes by the DEP, is either full restoration, to a point which would start to bring back the vegetation and wildlife habitat that existed in 2004, or a partial restoration that would bring the pond surface area to under 4300 square feet.

In his agenda notes, Ethan Croce states that "Conversations with DEP revealed that one of the reasons the DEP did not require the pond area to be filled back in is because the material used to fill the pond should ideally be the same fill composition that was originally removed from the pond. ^{the composition} In this instance, DEP staff represented that since that fill has been sitting for several years in its remote location, there is a good chance that invasive plants or invasive seeds have infiltrated the stockpile which would seriously damage the wetland's chances of recovering."

In my effort to inform myself of the facts regarding the "whys and wherefores" of the approach taken by the DEP when requesting corrective action, three weeks ago I spoke extensively with Mike Mullin, who is the chief enforcement agent at the MDEP in Augusta and who is John Maclaine's superior. He was not familiar with the de Sieyes case. When I explained details of the proposed restoration plan, which would result in about 19,000 square feet of pond surface area, as a result of lowering the dam, he said that that made no sense to him, and that the corrective action must bring the square footage below the exempted 4300 square feet and that he would call John Maclaine to tell him so. A week later he sheepishly got back to me and did his best to not say that because of the extent of the ~~negotiations~~ with the de Sieyes camp that had already taken place, that he was not willing to press the issue further.

When I talked with John Maclaine last week to get updated and informed, he explained just as Ethan noted, that the potential for invasive species contamination was but one of the reasons he was not requiring the hole to be filled back in. He did not say that there was a "good chance" that invasive species had infiltrated the stockpile.

Note that the DEP has not issued any formal basis, for their limited restoration decision, in writing.

John then stressed to me twice that the "DEP does not want to stand in the way of the town!"

I am certain that what he meant by that is that the Town is not estopped from issuing a more appropriate and more restrictive corrective action request than the DEP came up with before they were aware of the negative impact that the Pond construction had had on us.

The DEP plan gives deSieyes 70% of his ill-gotten pond, and 100% of the vegetation and its associated wildlife are gone...all within a mapped deer yard of special significance.

In March of this year, we commissioned a report from the senior wetland specialist, Lee Burman, at S.W. Cole Engineering, asking her to explain to us her understanding of the MDEP Rules and practices, in order that we would have a sound footing to jump off from.

[Read page ~~7~~ 6 of report]

This report does not indicate an overriding concern for invasive species having settled into the stockpiled soils.

To clear this up, I left a voice mail for Lee Burman yesterday. She called me today from her son's summer cub scout camp, by cell phone, and on vacation. She felt strongly that the stockpiled soils could be inspected for evidence of invasive species and that if this threshold was to be surpassed that they could likely be used in a successful restoration project. On-site monitoring would reveal anything that might get missed in the soils inspection. She also added that fresh soils could certainly be brought in. Again, John MacLaine specifically stated to me that if the Town were to require full restoration that he would be able to approve a plan that would achieve that goal.

Full restoration would make a lot of sense:

- Restores all functions and values of the preexisting wetland conditions, over time.
- Eliminates the nuisance created by having a 7' deep pond with a steep slopes at a location out in the woods where children play.
- Restore the noise -attenuating properties, as compared to the pond, that reflects noise when calm in a crystal clear and broadcasting fashion. (Both the traffic noise from the Maine turnpike spur and noise associated with the new opened up and directly adjacent development project. (A well planned and well-executed plan that restored a full perimeter buffer might also help in this regard)
- Serve as a ^{deterrent} ~~detriment~~ to other landowners who might think they could create a pond wherever they want to, without following environmental laws and end up getting something they could never have been permitted to have gotten in the first place.

Eliminate the possibility that we could have our well water contaminated by toxins that could enter the pond and then be spread by means of groundwater interchange. The de Sieyes Stantec Report states that this "interchange could be occurring, but that detailed hydrologic studies would be needed to confirm this". (We would certainly expect the Planning Board to require this test if the pond is not fully restored).

~~Comment on de Sieyes presentation~~

Bill Lunt offered the applicant the opportunity to respond.

Robert Crawford, the DeSieves attorney, recommended that Mr. DeSieves bring the property back into compliance before attempting to make changes in the future on his property. The MDEP was involved in the licensing and enforcement side. Bill Bollard (licensing) noted it was a fine pond when he visited the site; however, there were issues in not having the permit. Mr. Bollard said a notice of violation would be issued and they then met with John McClain to see how viable the permit route was and to meet the criteria to ensure the wetland could remain intact. They conducted various studies to conform with the compliance aspect; however, when MDEP decided the applicant's proposal was inadequate they reverted to the enforcement arm. The plan in the packet is the one recommended by the MDEP. He noted that if you look in the materials for the restoration plan there are numerous methods and techniques that will be followed during the restoration of the pond. There has been a suggestion that the restoration program has not been approved, he cited an email received by him from Mr. McClain that outlined that what has been proposed is what has been accepted (dated May 27th). He asked Mr. Marcott to follow up to see if they could get a letter of affirmation from the MDEP. An email from Mr. McClain states that once he has received the timing portion of the plan he will send a letter stating that everything has been approved. Mr. Crawford noted that on August 10th-11th the draining of the pond will occur, on the 17th the removal of the dam will ensue with all the soil stabilization and soil erosion control measures employed subsequently. The erosion and sedimentation control methods will meet the standards outlined in Section 5.39 (fill is not to be placed within 10ft of the drainage way, streams, wetland area). He noted the main issue is whether the fill stock needs to be moved and if this needs to be a condition of approval. The building permit for the barn was issued in February, (this has also been protested by the Bixby's), and the site has been stabilized. In reference to Section 5.39 of the Ordinance he noted that wildlife and wetland buffer areas have to be subject to control measures and are governed by the same regulations under the building permit and are being followed by the contractor. He noted that since it is such a contested issue that he, Mr. Thebarger and Mr. Marcott have checked the buffer zones to ensure everything is being adhered to and monitored - they also went into the woods and put an extra buffer to make sure there was no activity in any area that was subject to any restrictions. Stormwater management facilities and existing vegetation are covered under the MDEP program. Mr. Marcott will ensure planting and all other activities there remain compliant over the next few years. He noted it is hard to anticipate what the correct approach should be when looking at the Ordinance since they are being applied retroactively in this case. They feel the after-the-fact permit should be issued since all of the standards and overlays are in compliance with the Ordinance.

Jay Moody asked Mr. Bixby what he is requesting.

Mr. Bixby reiterated that he is requesting a denial of the application because the applicant is asking to remove 4,600 cubic yards of soils directly out of a fully protected wetland. Secondly, he noted if there is discussion tonight about the restoration plan he hoped that the Town could be more restrictive than the MDEP recommends.

Rebecca Casey asked about the clearing of the forested area, she wondered where this clearing took place.

Mr. Bixby said they now have full view of the pond in the wintertime and that it is not that far away from his property.

Jay Moody suggested approaching it from the perspective of whether they would have issued the permit before the work was conducted.

Stan Bennett suggested that if the applicant had come to them originally they probably would not have granted the permit, nor would MDEP have supported it. Additionally, the applicant is only here because they want to add another lot to the property. He stated that the applicant should have known what the rules were prior to commencing work on the property. He felt that they should simply deny the permit request.

Bill Lunt asked Ethan Croce what would happen if the Board denied the permit.

Ethan Croce said the applicant would remain in violation of Section 5.34 of the Ordinance until they submitted a plan that addressed the Board's concerns.

Jay Moody recalled that previously they sent the applicant back for more information since the work had been conducted in 1991 and none of the Board members knew what had occurred. According to the Ordinance, the applicant would have had to come before the Board because they were excavating more than 1,000 cubic yards. The Board would probably have referred them to the MDEP who would have allowed it provided they met certain requirements.

Bill Lunt said the problem is because the MDEP is recommending that they do not fill the pond.

Rebecca Casey noted it makes sense that while the pond is not in compliance they should not necessarily approve it but if they denied it then it would remain in violation. Once the MDEP conditions have been met the issue would return to the Board, she wondered at what point they would get into the details of what would be required by the MDEP and the District.

Bill Lunt noted that if they turned down the after-the-fact fill permit then the pond would not be in compliance until it was completely restored to its original state.

Ethan Croce said there are two issues; the MDEP issue and the Town issue. They would be out of compliance with the Town's Ordinances until they got approval, they could theoretically be in compliance with MDEP's restoration order if they completed the work recommended in the plan.

Stan Bennett said they would not be in non-compliance if they did more than requested by the MDEP - they are only requiring the applicant to partially restore the environment because it would be burdensome to require more; he felt they should return it to its original state.

Jay Moody noted there are two options - the first would be to return it to its original state, the second would be to go with the restoration plan as recommended by the MDEP. He noted it is a compromise restoration plan and asked if the Board would be happy with it. He felt they could approve the after-the-fact fill permit as presented to them but to require more than what the MDEP has asked for would take on a lot of responsibility.

Bill Lunt said it is a difficult situation because at some point common sense comes into play. Granting the permit could set a bad precedent but trying to restore it to its original state will never fully accomplish that goal; following the MDEP's recommendations makes the most sense since the area has changed and nature has already healed itself to an extent. He noted that in some situations it is better to let nature deal with the problem itself, however, there has been a violation and that should be addressed to dissuade similar actions in the future.

Jay Moody said it is obvious that the MDEP restoration plan is a compromise and the claim that invasive species in the *lolm* topsoil is a problem is an exaggeration, rather the real concern is the burden of refilling it with 4,600 cubic yards of earth. The MDEP opted for a compromise to try to fix the issue without refilling the pond. He noted that 70% of the pond's surface area will remain in the MDEP plan.

Robert Crawford mentioned this is due to the topography of the environment; even if the dam was taken out the natural basin would remain. He said it is just the way the bathymetrics come out in that area.

Bill Lunt said the wet area was 19,000 sq ft before they put the dam in and raised the water level.

Mr. Crawford said the MDEP did not want to excavate down into the bedrock so instead they opted to remove the fill area, the rip-rap and the dam to allow nature to reduce the water level. Then the restoration plan is to create a wetland margin as a good offset and to bring back the lost habitat.

Jay Moody said he would vote to approve the after-the-fact fill permit since the aerials do not look like there has been destruction and MDEP approves the plan. He does not feel they are in the business of enforcing a full 4,600 cubic yards of re-fill, re-seeding and monitoring. The MDEP plan is more of a compromise with an emphasis on nature resuming its course. It is not a natural drainage way or major stream so they should be able to grant it as is.

Rebecca Casey said she is leaning the same way as Jay Moody provided they meet all the MDEP requirements. She feels they are not in a position to say what else should be done; additionally, they are making a more informed decision this time.

Stan Bennett noted that he remains in opposition to the request to ensure the Board makes it clear that they are strongly against after-the-fact fill permits - citizens should not be able to violate the Town Ordinances and those of the MDEP.

Jay Moody said that since the MDEP approves the plan they too should be able to because MDEP's Environmental Protection Plan is far stricter than the Town's environmental Ordinances. If the neighbor wants to attempt to secure more restrictive action he can pursue that with the MDEP. He said he is comfortable with the District not surveying the area since there is so much oversight already by Sweet Associates and MDEP.

Bill Lunt said Ethan Croce is comfortable without the District reviewing the work. He noted that if the Board is not unanimous about the fill permit they should consider keeping the District survey condition since they do it regularly and on the basis of consistency; also, it would allow an additional comfort level and avenue to make questions.

Jay Moody moved to approve the item, Rebecca Casey seconded. The motion carried 3-1 (Bennett)

They request that the District review the application to ensure proper erosion and sedimentation controls are being used as a condition of approval and that these control measures be installed prior to construction. The restoration plan resulting from the notice of violation from the MDEP should be implemented as presented to them tonight. If the District does not agree with the MDEP plan the applicant will have to bring it back to the board for Administrative Action.

3. (Item tabled) Ellen Josephs – Parker Way – Request for preliminary approval for a six-lot conservation subdivision. Tax Sheet 220; Map-Lot R03-036. Zoned Farm and Forest, RCZO, & SP (Shoreland).

4. Falmouth School Department – 74 Woodville Rd – Request for site plan approval for new elementary school. Tax Sheet 300; Map-Lot R05-020. Zoned Farm and Forest & RCZO.

Ethan Croce summarized the main issues. He noted the issue of right title of interest and property rights are to be dealt with up front and as of the submission deadline the applicant had only received consent from 1 of 3 of the private property owners who will be affected; although he received an email today from the applicant stating they have consent of all 3 affected residents. He mentioned that many of the issues are fairly minor. As requested the applicant is showing some canopy trees along Woodville Road frontage, staff have requested that there is no conflict with utilities and the applicant should place the trees within the esplanade to create more of a street-tree canopy affect over the road and to provide some buffering for pedestrians using the sidewalk. The applicant is now showing a raised traffic island in response to the addition of the left turning lane, staff have asked that they incorporate plantings into the island to soften its affect. The applicant is requesting a waiver from the Board not to construct 9 parking spaces until such time as they may be necessary and could do so without consulting the Board. Ethan Croce noted this would require a waiver if the Board decided to reserve those spaces for future development. The applicant requested a parking program for the Superintendent's lot to be shared between the middle school, the Superintendent's buildings and the athletics fields. That shared parking program is provided under Section 5 of the Ordinance. They are asking for a waiver on the aisle-width standards of the Ordinance in the Superintendent's lot to go down from 25ft to 24ft only in the most southerly portion of the lot. One board member had previously asked for a cost-estimate for the underground utilities to replace the overhead wires serving the site and perhaps they had a revised figure. Regarding lighting staff have asked the applicant to slightly reduce lighting around the gym entrance canopy, the applicant has revised their lighting plan to include different fixtures. The lighting levels are about 50% higher in that area than at the main project entrance and staff would support a reduction to similar levels as the front entrance. With respect to circulation, a proposed condition of approval would be to have a traffic officer presence there in the beginning of the fall but to defer installing a traffic signal until monitoring could be completed 6 months later. If a light was required then it should be installed within a year after the new school opens. Staff have asked if they can reduce the width of traffic lanes (from 11.5 ft to as low as possible while fulfilling safety objectives) to reduce disturbance to the area without impinging upon emergency services. Lastly, under circulation, the applicant proposed in their newest submission to defer constructing the *twinky* (the connector driveway with curb cut that would come off of Woodville Road and connect to the middle school drop-off lane) until monitoring has occurred. One of the issues that the Board will want to hear about is whether or not they believe an appropriate condition of approval would be to include the construction of the *twinky* as an option and if the Board determines that it might be appropriate if the level of service in that area is poor then they should establish what parameters or thresholds would need to be met to support its construction. Ethan Croce noted he did not go into any of the details raised by the landscaping peer-reviewer or the traffic peer-reviewers. Lastly, the applicant is asking if they can begin construction on the school prior to receiving final MDEP approval for the sidewalks and a revised movement permit from the MDOT.

Jacques Gagnon said they have permission from the 2 land-owners who they need grading rights from; and the one owner from whom they needed buffer planting rights from.

Robert Tillotson, President of Oak Point, summarized what they have done. The only issue is they left the lane with the *twinky* in the packets in case they needed it in the future. He mentioned their concern with landscaping and shifting the trees to the esplanade because they did not feel they have enough space for it.

Kerry Green, Landscape Architect at Oak Point, said the trees are placed on the outboard side of the sidewalk rather than in the 5ft esplanade; they did this because the esplanade is only 5ft wide and they wanted to ensure they did not have a fixed object that close to the road; also, the environment near to the road is harsh (plow damage, salt); even so, being canopy trees they will still shade the sidewalk. The trees are in front of the Superintendent's lot and in front of the High School.

Bill Lunt suggested staff were concerned the trees were in the esplanade itself, it also separates the sidewalk from the street.

Ms. Green noted the trees still provide the same benefit in this proposed location.

David Fenderson asked for confirmation if the Board was fine with this idea.

Stan Bennett and David Fenderson said they were.

Rebecca Casey asked whether there was space in front of the High School where the esplanade could be widened.

Mr. Gagnon said there is an area of wetland impact which they would not want to interfere with, while further up they would be interfering with the buffers.

Bill Lunt noted they discussed separating it in front of the Middle School to make it difficult for people to exit cars and cut across. He asked whether it makes sense to have the sidewalk behind the trees (away from the road) so you have the esplanade to cross over too.

Mr. Gagnon said he is considering pulling the sidewalk closer to the parking lot and swapping the trees in this location.

Jay Moody said Bill Lunt is talking about walking from the Superintendent's lot to the entrance of the Middle School. He asked if it could be pulled back from the roadway to prevent a child from trying to run across the road.

Mr. Gagnon said they could consider doing that.

Rebecca Casey said they could also swap the trees and sidewalk along the parking lot side and the crosswalk would be setback with the sidewalk.

Mr. Gagnon said they would need to have the sidewalk in front of the stop-bar.

Bill Lunt said this was just to discourage people from trying to cross the street in the wrong location.

Mr. Tillotson said they would be willing to do this as best as they could.

Jay Moody said it should be a condition of approval to pull the sidewalk back from the road to the best of their ability.

Ms. Green said they could also soften the traffic island using planters and they will look into it for the wider areas.

Jay Moody said it should be a condition of approval for them to work with Staff to beautify and soften the traffic islands in front of the Schools.

Tom Emery, Stantec Consulting, said the issue with the esplanade is that there is an optimal location of trees and then areas where you make the best of what you have, given that this is a public project and that they would not want to pay to replace trees regularly. He said the safer alternative would be to place the trees as far away from edge pavement as possible. He referenced the plantings alongside Route 1 as a successful implementation of this and suggested that if it can survive on Route 1 it should be able to do so here.

Bill Lunt noted that it encourages people to cross at the island rather than at will.

Mr. Tillotson said they agree with Staff with regard for the parking waivers.

Ethan Croce said Staff were in support of all three of the parking waivers.

Bill Lunt asked if he would like to have all these waivers listed as COA's.

Ethan Croce said he has draft conditions that include the waivers and the catch-all condition is that the applicants final plans reflect the testimony presented to the Board at the meeting.

Mr. Gagnon discussed the cost-estimate for underground utilities with Central Maine Power. The middle school has overhead lines that go to the back of the school and then drop down to a transformer, this would require underground utility structures on the south side of Woodville and new transformers. The estimate from CMP was that this would cost \$70,000 plus additional costs for trenching and patching (around \$20,000-25,000). The service to the high school runs overhead to a drop-pole on the same side of the road as the school and drops underground from there, this would cost less - probably around \$30,000 in total.

Bill Lunt asked about the service entrance for the new elementary school.

Mr. Gagnon said they are proposing this to be underground from the Superintendent's side of the road so there would be no wires crossing Woodville and these would go under the road and this would not be a large additional cost because they will already be doing some work there.

Jay Moody asked to be shown where the current middle school and high school services are currently.

Mr. Gagnon showed these on the map. The high school service is located near to the rear entrance where it goes overhead to a pole and then underground to a transformer at the reverse of the building.

Stan Bennett asked about these costs relative to some contingency plan fund.

Mr. Gagnon said the contingency fund is not for increased scope but for construction contingency; he noted there is also a design contingency.

Mr. Tillotson said they have set aside some money for concept approval for the state for about \$175,000 and they have already exceeded that number.

David Fenderson said this is not required; however, based on the longevity of a \$40 million project and the effort they are putting into it he feels they should put all the power underground.

Jay Moody said it is expensive to do this nor is it a requirement.

Stan Bennett asked if the applicant would consider a compromise to go underground for the High School power.

Jay Moody, Bill Lunt and Rebecca Casey said they were not in favor of this.

Rebecca Casey said that since the power is at the extremities she is content to have it above ground.

Bill Lunt said they should bury the power anywhere they are doing grading work to reduce maintenance and safety issues.

Mr. Tillotson said all the new work is going underground, and the overhead line that goes from the back of the middle school to the existing track is being removed completely. He discussed the lighting issue - they will reduce it from 5 to 4 lights at the gym (which is similar to what they have out front). With regard to the circulation; they are content to have the monitoring however if monitoring required the installation of a light there would have to be time for designing, bidding and construction to ensure it was installed. They were hoping they could do the monitoring a little earlier and are glad the monitoring has been accepted by everyone as a good idea.

Bill Lunt discussed the intersection on Falmouth Road; the main issue is who will do the monitoring and determine whether it should or should not be done. He noted there have been conflicting opinions between the two traffic engineers throughout the whole project.

Jay Moody suggested addressing the item after all the others had been dealt with.

Mr. Tillotson agreed to narrowing the pavement.

Bill Lunt asked if this was an issue for any of the engineers

Mr. Gagnon said there would be an issue on Falmouth Road with the MDOT, on Woodville Road there is a little more leeway.

Diane Moribedo said she accepts 10.5ft on Woodville Road.

Peter Hedrich agreed and noted that is for the 2 lanes on Woodville Road.

Bill Lunt asked about the curb-cut by the middle school drop-off lane. He noted the Board was in support of removing the curb-cut and wished to determine if they were still in favor of this.

Ethan Croce said that the applicant's proposal is not to include it in the initial construction but to include it at some later date if certain thresholds are met regarding operating conditions in that area. The applicant is also asking that this would not require Board approval if it was to be constructed.

Bill Lunt asked if the Board still supported eliminating the curb-cut.

Jay Moody said they should remove it completely as well as the associated monitoring condition and if the School Board wants to bring it back they could do so as a site plan amendment.

David Fenderson said he supports Jay Moody's suggestion.

Rebecca Casey said she would support not having the curb-cut; although allowing it as an option for the future would be good.

Stan Bennett supported the Board's stance.

Bill Lunt said he is in agreement, as is Peter Hedrich. He noted that the applicant is asking for an allowance to put it in at a later date without having to return to the Board. He said the Board would not allow this request and if they wanted to put it in at a later date they would need to return to the Board for a site-plan amendment.

Mr. Tillotson said he is concerned the State has not weighed in on whether or not they can do it without the *twinky* yet.

Ms. Moribedo said MDOT wants to see it in there, they are concerned people will not use the drop-off and thus the drive will be very congested. For this reason they decided they would like to leave it in as a future build option. She noted that if things were working well then it would not be built but if there were problems then it would already be approved and could be built quickly. She thought monitoring would be a condition of the revised MDOT permit and that it would only be built if there was a problem.

Rebecca Casey said she would like to see it monitored in the future.

Jay Moody disagreed.

Ms. Moribedo said the concern now is that they are not using the drop-off and will be dropping kids off in the street, a concern also held by the MDOT.

Jay Moody said he felt this will make it easier as it is a 2 lane drop-off.

Stan Bennett asked if MDOT will let the project proceed if there is a condition that requires a future curb-cut if necessary.

Jay Moody said MDOT has already acquiesced to Falmouth's concerns and are unlikely to stand against it.

Mr. Gagnon said MDOT will require them to monitor it after construction; however, if they monitor and find out it is not working then they will require the installation of the *twinky*. He noted the Board wants to see it again with the monitoring results before approving it.

Bill Lunt said he is concerned that if MDOT requires monitoring he would like to know who will monitor it and how this will be determined.

Mr. Tillotson said MDOT did not acquiesce to this issue; he is concerned about getting approval from the Board and not the MDOT or vice versa. He said that MDOT typically does not like curb-cuts but in this case they want one strongly then there has to be a reason for it. He noted it is just another way into the site.

Jay Moody said they should not approve the curb cut and not have any monitoring.

Rebecca Casey said she is fine without the curb cut.

David Fenderson said he is in agreement.

Stan Bennett said he supports the elimination of the curb cut or to allow it and then work things out with the MDOT.

Jay Moody asked what they were proposing; he is understanding is that it is two lanes on Woodville Road and maintaining the status quo on Falmouth Road.

Ms. Moribedo agreed and said that is what will be built. She noted they are using 10.5ft lanes instead of 11.5ft lanes. The monitoring is to see if a traffic signal is needed and is based on traffic volumes which will then be used to determine if a light is necessary. The applicant's engineer usually conducts the traffic count and the Town could peer-review their findings.

Bill Lunt noted that there is a possibility they could have a highly-fluctuating traffic-count and asked what affect this would have.

Ms. Moribedo said they could look at a peak hour warrant in addition to a four hour warrant for the light, she thought that the school could probably meet both the one and four hour warrant conditions.

Stan Bennett asked what would happen if the monitoring met the one hour timeframe but did not meet the four hour one.

Ms. Moribedo said this would allow them to install the light but would not require it.

Jay Moody proposed an alternative. He suggested that a light would be excessive for non-peak times. He suggested they have a left-hand turn lane on Falmouth Road coming from West Falmouth. He said the left and right on Woodville Road would not change this, only a left hand turn lane and a straight lane on Falmouth Road would ameliorate the situation. He suggested they have no light and a left hand turn lane and a straightaway lane on Falmouth Road as well as a left and right hand turn lane on Woodville Road.

Mr. Tillotson said he should talk to the Town's and Oak Point's traffic engineers as well as the police chief since they had already unsuccessfully suggested that alternative.

Ms. Moribedo said providing a left turn lane on Falmouth Road would not correct the level of service issue for Woodville Road; it would make it safer for Falmouth Road turns and faster for the through traffic on Falmouth Road but the left turns exiting Woodville Road would still be held up.

Peter Hedrich, Gorrill-Palmer, agreed with this assessment. He said the low-level of service turning left off Woodville Road would require either a traffic light or a police officer. The Police Chief mentioned he would not have a police officer there if there is a left-turn lane and through lane on Falmouth Road because it would not be safe. He would have the officer there with a single lane in each direction on Woodville Road.

Jay Moody asked whether it would be an officer or a signal permanently.

Mr. Hedrich said it would either be an officer or a traffic signal permanently.

Bill Lunt said there was meant to be an officer for the 1999 high school.

Mr. Hedrich agreed, he said the traffic light warrant is just by the numbers, they have been using some forecast numbers to determine if the signal is warranted but once the school is opened they will go and count the actual cars and use that data for the actual warrant.

Bill Lunt asked if Ms. Moribedo's description of the method for counting was standard; he felt that having a 20 minute issue requiring a traffic light was nonsensical.

Mr. Hedrich said more than 20 minutes of traffic would be required to meet the threshold.

Stan Bennett asked if a traffic signal warrant could be addressed by the use of a police officer instead of the signal itself.

Mr. Hedrich said it was an option.

Jay Moody asked if the study recommended a light whether they could still have an officer.

Mr. Hedrich said it depends on how the MDOT permit is written. If the warrant is met MDOT will require a traffic light.

Jay Moody said a permanent officer does not supersede the need for a traffic light if it is warranted.

Mr. Hedrich said the traffic signal, if it is set up properly and maintained well it will work well, even when it is not warranted.

Bill Lunt asked if the project has the funding for the light and if it is available.

Mr. Tillotson said the funding will be available for a year, this money is part of the state funds and they would like to the project to be finished but they will allow MDOT to hold the funds for a year. The monitoring would ideally be done within the first year of operations so the light, if warranted, could be built the next summer. He said monitoring would occur for one day.

Mr. Hedrich said traffic volumes associated with schools are predictable and they would look at an average for it. While the school is in operation there will be little difference in traffic levels from day to day.

Ms. Moribedo said their studies for the High School have little variance over an 8 year period.

Stan Bennett asked whether the current traffic level leads to the need for a light.

Ms. Moribedo said it does not currently trigger the need for a light and will depend on how those traffic levels interact across those two school periods.

Mr. Tillotson said they have taken the 5th graders from the middle school to the elementary school so their effect will be less.

Stan Bennett asked how the counting is done.

Ms. Moribedo said it is counted in 15 minute periods.

Bill Lunt said that once all the children are on the same campus then they could have all the children on the school bus and that would solve the problem.

Jay Moody said they should follow their approach and what has been recommended. If a light is there it could be set up intelligently to encourage smooth traffic flow.

Stan Bennett said they should settle the matter tonight and asked if the lights could be turned off at night.

Ms. Moribedo said they could flash at night but not during the day.

Jay Moody said they should follow what they have recommended (Plan B).

Mr. Hedrich said he supports Plan B.

Bill Lunt said the only thing that has changed is there is a 10.5ft lane instead of a 11ft lane on Woodville Road.

Jay Moody said he did not like the reduction in bike lane width to lessen the expansions of impervious surface area and lessen the chance of disturbance to natural vegetation along the roadway; if possible, he would like it to remain 4ft.

Rebecca Casey said she agrees.

Ethan Croce said it would be less desirable to reduce the bike shoulder than the lane width, but since they have reduced the lane width they do not have to reduce the shoulder width.

Mr. Emery, Stantec Consulting, said the first issue was the pillar at the student access from the drop-off at the main entrance. He suggested bringing down the scale of the building gradually due to the imposing structure of the building. He noted that in this case there is no opportunity for street frontage, as such, he suggested they should have a way to identify the gateway to the campus. There are a number of gateways now and they should accent the one closest to the parent drop-off lane. His issue with the signage is to ensure they did not have bright, galvanized metals all over the environment. Rather than having painted metal, which would later become a maintenance issue, they should employ galvanized metal since it is used extensively at the high school and to have the galvanized posts on the signs. He said that there is significant visual pollution due to the rusting and twisting of the signs; thus, perhaps they could use wooden posts for the larger signs. He mentioned the increased costs for banding on the building and noted that the applicant wished to eliminate those. He noted he supports the reduction of the 24ft aisle width as well as the pillars and metal finishes to the poles.

Mr. Tillotson said they would be happy to incorporate the recommendations for the exposed blue metal columns that support the library roof as a similar point of reference to define the gateway area.

Mr. Emery said he is in agreement with Mr. Tillotson.

Bill Lunt asked about permitting construction of the school prior to MDOT and MDEP approval as a condition of approval.

Ethan Croce said staff do not have any issue with that proposed condition.

Rebecca Casey asked when the planned construction would begin.

Mr. Tillotson said if they get approval they would go to bid in two weeks and start construction in the Fall.

Bill Lunt asked about the bidding process and if the sidewalks would be included in it.

Mr. Tillotson said they intend to keep that part separate; either as a separate contract or amended contract.

Bill Lunt asked what the hold-up with the MDEP has historically been.

Mr. Gagnon said the sidewalks that were developed after the school were under-designed and they had already put their applications into the MDEP by that point. He noted the athletic fields had some wetland impacts and they received approval from the MDEP for those, the boiler plant had no wetland impacts and neither did the elementary school until the

off-site sidewalks were considered (specifically stream by the middle school and a smaller wetland impact close to the high school). The applicant is requesting the amendment of the sidewalks as a separate application so as not to delay the construction of the elementary school as this could take an additional 45 to 60 days to push through; additionally, they have not made that amendment yet but will do once they have MDEP approval.

Mr. Tillotson said this is something that could occur at the end of construction period.

Bill Lunt said he hoped to have it during the road construction period rather than having two separate construction periods and contractors.

Stan Bennett asked whether the applicant was asking the Board not to require these two items as a condition of approval and instead deal with it as a prior-to-permit issue.

Mr. Gagnon said their MDEP permit for the elementary school is coming shortly and the sidewalks will come later.

Bill Lunt asked for confirmation that they would not be doing road improvements until they are further into the project.

Mr. Gagnon said they would not be doing the road and sidewalk improvements until the MDEP amendment is received.

Ethan Croce asked the traffic peer-reviewer to go over recent dialogue between himself and the applicant traffic engineer.

Mr. Hedrich said the last letter they issued was July 28th and noted the applicant has addressed most of those issues, all that remains are some minor signing and pavement marking issues. He asked that this July 28th letter be included as a condition of approval.

Ethan Croce said a final issue concerns having the architecture come back to the Board if the materials and colors need to be changed.

Bill Lunt asked if this was a likelihood.

Mr. Tillotson said the color palettes might be slightly different between bidders. During the bidding period they bring the color samples to the school and building committee for recommendations. He asked at what point they would be expected to come back to the Board to review it.

Rebecca Casey said they would not be able to differentiate changes in color based on the drawings they have reviewed.

Jay Moody said it would be important to have the provision in there concerning substantial changes.

Bill Lunt asked what would constitute substantial.

Rebecca Casey said if it is equal to what has been proposed then the Board should not need to revisit it.

Jay Moody said if a wholesale change came out of the building committee the Board would need to review it.

Bill Lunt said they could put the changes before the Town peer reviewer to determine the significance of any changes.

Mr. Emery, said that typically the things that would trigger further review would be a program change that alters the building - perhaps a change in material or quality of construction. He feels that whatever colors are selected will be different than those presented.

Bill Lunt asked for public comment.

Barbara Hunt, 249 Falmouth Road, said she met this morning with Mr. Gagnon and Dan O'Shea about options for them. She asked that any approval from the Board be contingent on what they discussed and agreed upon. Such as driveway relocation and tree-planting to make a buffer on the Falmouth Road side. She noted they have not agreed to anything but have talked about it.

Bill Lunt said he does not have a problem with it.

Ms. Hunt said the property is for sale and wants to ensure the agreement is on it before the sale.

Mr. Gagnon said they plan to move the driveway closer to the barn to move it away from the intersection (this would take place as part of the initial construction); they discussed providing a buffer between the road and where the old driveway was to block noise and replace the 1' diameter fir tree which will be removed for the new construction.

Bill Lunt asked if this was a standard procedure.

Ethan Croce said this was not a standard procedure and asked for greater specificity.

Mr. Tillotson suggested they would replace the driveway 40ft further up Woodville Road, finish it in a quality equal to what it was, install a 6 tree evergreen buffer of 8ft high trees and replace the old driveway area.

Lori Daniels, 256 Falmouth Road, had questions regarding the light. She asked whether the traffic officer will be there when they monitor it.

Bill Lunt said it is simply a vehicle count and it makes no difference whether the officer is there or not.

Ms. Daniels asked if her property value decreased after a light was put in if her taxes would decrease.

Bill Lunt said he is not the person to ask that question to.

Ms. Daniels said she is in favor of having a traffic officer.

Bill Lunt said the project would begin with a traffic officer. He closed the public portion of the hearing.

Jay Moody said the playground areas behind the elementary school look small and asked about the space there.

Ms. Green said the developed playground area are larger than what is currently at Plummer Moats but Plummer Moats has a larger gravel playfield area. She said the children would also be able to use the softball and lower soccer field during recess.

Jay Moody asked to confirm that they would allow the children out to the softball and football fields provided the teachers chose to monitor them there.

Bill Lunt said there is a relatively large parking lot to the north-east side of the building on Plan CS-101. The fire lane that passes behind the elementary school suggests you have to drive into the parking lot, navigate the islands and the compact spaces to enter the fire line. He felt it looked tight for a 45ft fire truck and asked whether the fire chief has been brought into it.

Mr. Gagnon said the deputy chief has reviewed the plan and has approved it. There will be some crossing of the 25ft aisles when the make the corner round the traffic island; if desired they could revisit this with the fire chief.

Bill Lunt said he would like to ensure that it was not missed and to double-check that.

Jay Moody noted the project is 20-odd acres in total with 10 acres of impervious surface, he asked how it is that they are not increasing net surface runoff.

Mr. Tillotson said the project is very sustainable, their LEED checklist is in the mid-gold range. They will have green roofs on the front part of the building, rainwater collection areas for toilet flushing water and other sustainable features within the buildings which reduces stormwater dramatically; additionally, they have to treat everything on site.

Mr. Gagnon said they are using underground sand filters underneath for treatment and detention. They are using grassed under-drain *swails* for overland areas behind the school which will fill to a max of 18" and enters the ground and is picked up by under-drains. These systems are designed to fully drain between 24 to 48 hours. They also will use bio-retention basins which are shallow 6" depressions filled with plants underlined by a soil-filter and picked up by under-drains. They are also using a porous pavement. All these systems ensure that stormwater is detained and it is slowed down, the quantity is increased off-site but is being discharged in a slow manner so that peak-rates are not increased. He noted this has been reviewed by the District and their page of comments will be easy to accommodate.

Bill Lunt asked how they are going to maintain the porous pavement.

Mr. Gagnon said there is a maintenance section included in their MDEP and District applications - it needs to be vacuumed once a year, salt needs to be used instead of sand (in fact salt use decreases on a porous pavement), there are catch basins to monitor under-drain flow, these under-drains have balancing valves to ensure the water does not pass through them too quickly.

Ethan Croce read the conditions of approval in to the record and noted the project is to be constructed in line with the textual submissions and the testimony presented by the applicant. He also asked for details on Condition 6 regarding whether they would have monitoring on two separate days as this was discussed but not decided upon, the Board should determine whether this should be done on one day or multiple days to accommodate potential anomalies.

Bill Lunt said the only wildcard would be that things are new there since it is fairly constant day-to-day.

Ethan Croce asked if they would stick with the one day traffic survey.

Jay Moody suggested they should do different days of the week separated by two weeks.

Mr. Tillotson said they would be happy to do whatever the Town's traffic engineer was comfortable with.

Bill Lunt said the two traffic engineers could determine the program.

Ethan Croce noted that Condition 7 has been scratched along with Condition 10.

Condition 11 MDEP approved blasting plan

Condition 12 - the applicant shall relocate the existing driveway at 249 Falmouth Road and plan an appropriate evergreen buffer consisting of up to eight 6ft trees. Condition 13 additional Planning Board approval will be required for any substantial changes to the building architecture as determined by Staff.

Stan Bennett moved to approve the item subject to the conditions of approval, David Fenderson seconded. The motion carried 5-0.

5. Strenhoex Associates – 202 US Route 1 – Request for site plan approval for the redevelopment of Foreside Place Office Complex to include a new drive-through bank. Tax Sheet 320; Map-Lot U52-004. Zoned SB-1 and Village Center Overlay

Ethan Croce identified the key issues. He mentioned staff noted a slight increase in the post-development run-off for the 2 and 10 year storm events at one point on the plan; this requires a waiver from the Board. A memo from the District which signs off on the proposed development (the Stormwater management plan and the erosion and sedimentation control plan), the District does agree with the applicant's representation that the difference between pre and post-development run-off is negligible. The second issue concerns the architectural treatment of the west building elevation, this was identified as an issue in a meeting between staff, Mr. Emery and the applicant. Subsequent to that the applicant has submitted revised elevations. The third issue concerns staff's requests for the applicant to extend the sidewalk an additional 50ft up Clearwater Drive to make a direct perpendicular connection to the existing Tidewater Village sidewalk network. This has changed since the last time the applicant was before the board; previously the intent was to have the sidewalk cross the street at the bend in the road, staff have now asked if the applicant could bring it a further 50ft up Clearwater Drive. The fourth issue was raised by Jay Reynolds at a prior meeting - he said it would be preferable to have a public easement over the portion of the proposed sidewalk that runs from the corner focal point, through the applicant's property to the point where the sidewalk crosses the public right of way. The fifth issue concerns the need for the applicant to secure a waiver for the portion of the driveway which encroaches the 10ft side setback behind the existing building, the applicant has narrowed that driveway area and has provided some additional landscaping; however, a very small portion of the driveway still lies within that 10ft area. The sixth issue relates to staff's request for the applicant to explore possibly relocating the stop bar and crosswalk that is located just South of the bank's drive-through exit lane, there appeared to be some difficult turning movements with respect to getting cars exiting that drive-through lane queued up behind the stop bar. The applicant has perhaps looked at that issue and has revised plans reflecting those comments. The seventh issue concerns the raised pedestrian traffic island, the Ordinance does require a pedestrian island in instances where crosswalks cross an area greater than 32ft. Issue eight concerns lighting levels below the drive through canopy; Staff asked that lighting be appropriately shielded and recessed to prevent light spillage and also ask the applicant to look at the lighting levels along the Clearwater Drive sidewalk to make sure they comply with the design guideline illumination requirements for pedestrian areas. The ninth issue relates to buffering and screening of the rear service area; behind the existing building there is a transformer pad, a dumpster and some propane tanks - given that the abutting property will likely be developed at some point in the future Staff request some buffering occur to ensure that it is not visible from adjacent properties, they also asked the applicant to explore some additional buffering along the area of the Clearwater Drive sidewalk next to the drive through facility to ensure the area is appropriately shielded from the public view. There is currently an existing utility pole in the Clearwater Drive right of way that supports a guy-wire, they asked the applicant to research relocating the pole to the other side to eliminate the overhead crossing in that area of the street to clean up that portion of Clearwater Dr. Ethan Croce noted the applicant had some subsequent discussions with CMP regarding that issue and there is a question about whether there is enough right of way width to accommodate the bracing pole that would be necessary to eliminate the guy-wire that currently crosses the street. Finally, the Board will often approve a project without signage and require them to return to the Board as a regular agenda item or administrative

action item as there are some issues that Staff have mentioned that have been omitted from the signage plans. He noted he had received an email relating to signage but has not had time to review it yet. The Board should determine how they want to move forward with this.

Chris DiMatteo, Sebago Technics, noted that they are happy with the comments and are content to comply to almost all of them; however, there are two site issues they wish to discuss further. With regard to the turning out of the drive-through area here, they had discussed potentially shortening the crossing distance to allow more room for car maneuvers, but they have developed a new solution with Owens McCollough which he will present. The second issue is the design guidelines require pedestrian islands; the length here is part of the distance of the travel lane where the lines of parking stalls meet, this is dictated by the maneuvering of the vehicles through that area.

Ethan Croce said the area in question is actually the main entrance from Clearwater Drive.

Mr. DiMatteo said they would be able to reduce that width by 2ft to negate the need for a traffic island there too.

Owens McCollough, Sebago Techniques, said that those seem to be extremely long radii and it is not clear if those are vehicular; it is not apparent what size they are but they look to be about 35ft or more.

Mr. DiMatteo said the entrance is about 35ft on one side and you want something that works but it seems that those radii could be shortened a little bit.

Mr. McCollough said that exiting the drive-through and making a left-hand turning movement leads you into a crosswalk. The crosswalk has a stop sign and coming out of the drive-through also has a stop-sign, thus a vehicle exiting the facility with a left-hand turn has difficulty because of the locations of those stop-bars. One of the options was to look at possibly pushing the crosswalk a little further towards Route 1, they felt they could eliminate the stop bar *here* because there is another stop-bar and sign further down; instead they could just put in a pedestrian crossing sign since people exiting the site would have a clear field of view and that would also eliminate the need to have the awkward maneuvering and the possibility that someone could get stuck out there in the middle of the intersection. Also, it would be appropriately signed as a pedestrian crossing and since pedestrians have the right of way there really is no reason to have that additional stop-bar.

Bill Lunt said it does not make sense to have three stop-lights in a row.

Mr. McCollough agreed.

Mr. DiMatteo said there was a discussion regarding the area and they lengthened the road to allow people to get closer to the intersection.

Mr. McCollough noted they are still stopping traffic in that location in this new design.

David Richards, Gawron-Turgeon Architects, said the building has a conservatory entryway - a client driven feature so that when the clients enter there is a display area. There is a 24-7 office accessed from the conservatory that can also be used for bank business; the lobby has a 1.5 story vaulted space with a teller area and a drive-through window with an ATM, a night-deposit, safe room and an accessible restroom which they are considering putting a shower in. He said the building is eclectic with an emphasis on a clapboard shingle style. People enter under the canopy through the conservatory, another prominent feature is the eyebrow window with a barrel-vault back through the lobby. The materials of construction are stone-based, clapboards with painted wood trim and an asphalt shingled roof.

Mr. Emery, Stantec Consulting, noted that when the building was originally presented the west elevation had a blank roof and the canopy was a hip-roof and it did not fit with the other detailing on the building or the design guidelines. Looking at the way dormer windows were treated on the front of the building and they way they have responded to the windows below, they discussed putting dormer windows in the back and doing something with the canopy. He said he fully supports the proposed changes made by Mr. Richards.

David Fenderson asked Mr. Emery to confirm that the red ring takes those changes into account.

Jay Moody asked if it fits with the Route 100 design guidelines.

Mr. Emery said it does and he said he likes the motif they have pursued.

Bill Lunt asked about the public easement request.

Mr. DiMatteo said they are looking to create meets and bounds around *this* public piece; he noted there were two ways of accomplishing this. They could provide an easement on what was actually built but it would be preferable to incorporate some flexibility for the Town. They have a 5ft sidewalk and a 6ft width along the centerline and they could delineate some meets and bounds and break it out as an easement for public access.

Bill Lunt asked about the extension of the sidewalk.

Mr. DiMatteo said the owner is agreeable to moving the sidewalk 50ft so the crosswalk meets the existing sidewalk that comes out of Tidewater.

Bill Lunt asked about the issue of increased run-off.

Mr. McCollough said that there are two watersheds on the project, and in the two-year storm event, in one of the watersheds it went from 6.5 cubic feet per second to 7.3 cubic feet per second (cfs). There was a 0.1 cfs increase in the 10-year storm event. He noted you often see a smaller increase in the bigger storm events because that is due to the nature of the stormwater run-off. He said there is actually a decrease in stormwater run-off in the 100-year storm event. He noted that the differences are very slight and said he doubted one could identify the difference between 6.5 cfs and 7.3 cfs. He noted that the District reviewed it and agreed. In the other watershed they actually decrease the net run-off in each storm event so the net balance is more or less equal.

Mr. Emery asked about the sheet run-off going directly into the wetland area and he wondered if this needed to be pre-treated with a buffer.

Mr. McCollough said they are not proposing to pre-treat the water going into the wetland buffer because it is consistent with what is coming off in the pre-development period (they are just re-constructing a parking lot there). He mentioned they will be treating run-off in the other pieces of the site where it is collected in catch-basins, in those instances there have been requests by public works (Jay Reynolds) to put in a pre-treatment system that goes in the catch-basins to absorb hydrocarbons, there is also a maintenance plan accompanying that. He noted they have accepted his recommendations.

Bill Lunt asked if they had addressed the lighting levels under the canopy.

Mr. DiMatteo said the lighting under the canopy is recessed and they do not anticipate that will change the photometrics as proposed. The issue regarding the pedestrian sidewalk, they will look at either the fixtures or the distances between the poles to make it fall within the minimum 1ft candle that the Board requested. They are looking to secure a good balance between the design guidelines and the Ordinance. He noted they are essentially in agreement with the comments.

Bill Lunt asked about the relocation of the utility pole on Clearwater Drive.

Mr. DiMatteo said that currently Central Maine Power will take a look at the request to determine how far the brace would go into private property. They will quickly look at where the right of way will fall (assuming it is a 60ft right of way on Clearwater the existing pole is probably about 4ft or so within the right of way - thus the brace will likely be a little longer than that). He suggested he will defer to the Town to see if they are interested in discussing with the owner and continue the conversation with Central Maine Power. If it has to be on private property then Central Maine Power at least needs an easement to put the brace in there.

Ethan Croce said Staff would not require that they do this if it means an easement had to go on private property and since the existing pole needs to be relocated anyway it would not be too much more effort to have the pole accommodated in the public right of way - there would be no expectation that they pursue it with the private property owner if it could not be done in the public right of way.

Bill Lunt asked about the possibility of buried power.

Ethan Croce said the applicant is removing the overhead lines that serve the site from across Route 1.

Mr. DiMatteo said there is currently an existing overhead line that runs *there*, he said they were out with Central Maine Power on a site visit to figure out what the best scenario would be. Originally they thought they could connect to some substantial poles that feed the Tidewater Development, however, when they visited with the field engineer they realized that was not going to be possible. The goal was two-fold - to relocate the existing service for the building and provide a new service for the bank. They were concerned with having to deal with a transformer for new service to the bank but apparently there is a pole across the street with an existing transformer that can accommodate the bank; thus the bank can actually have a new service without a transformer on site. With regard to reconnecting the building to the existing service,

Central Maine Power suggested that since they would be pulling the sidewalk out a little bit for more of a continuing esplanade they could put a pole in that esplanade that would be in line with these two poles and require a small brace or guy on their property.

Bill Lunt asked if the power supply for the new bank would be on the opposite side of Clearwater Drive.

Mr. DiMatteo agreed and noted that they will have to trench through. He reiterated they will be adding a pole to the existing overhead line.

Stan Bennett if they would be removing any poles.

Mr. DiMatteo said they will be removing a pole on Route 1.

David Fenderson asked for clarification.

Mr. DiMatteo said they will be going underground with the power.

Stan Bennett asked if the applicant had commented about the waiver of the driveway within 10ft of the side property line.

Mr. DiMatteo said they are asking for a waiver and noted they reduced the service drive *here* from 18-20ft down to 16ft; they are within the requirement by about 3ft in the area before the dumpster. He said they are around 7ft within the property line and are at this distance for about 20 to 30ft.

David Fenderson asked if they were all set with the buffering and screening.

Bill Lunt said they were.

Ethan Croce noted he had forgotten to mention his suggestion from his agenda notes which asks the applicant to place the trees in the esplanade instead of the inward side of the sidewalk.

Mr. Emery said he was concerned with the side yard and the issue of an encroachment with the existing pavement behind the building. He wanted to ensure the accessible parking space is eliminated since that vehicle would have to reverse into a maneuvering lane or into oncoming traffic. He also noted he would like them to identify the existing trees and determine whether anything can be done with them. It costs about \$1000 or more to transplant a good size maple tree with no guarantee that it will survive but you can buy a nice tree for \$500 for a new tree and it is guaranteed to grow. He is not suggesting the applicant will give the trees away but if someone can deal with the matter they should take advantage of the opportunity. The other issue he discussed with Mr. DiMatteo was the edge treatment at the drop-off area - there is no curving proposed there because they are allowing sheet flow into that retention area but it is important to have some sort of a durable edge there (a double-row of cobblestones) and he feels the applicant is amenable to this. Lastly, he noted most of the plant material is low in the area near to the bank where it faces the intersection; there is an opportunity to put in some flowering trees.

Stan Bennett suggests the sign issue be brought to them later as an administrative action item.

Ethan Croce said the Board should find out how content the applicant is to agree to the issues raised by the peer reviewer.

Mr. DiMatteo said they are hoping to postpone the signage for a later date. Out with the exceptions they discussed earlier, they are looking to comply with staff on all issues.

Jay Moody, Rebecca Casey, Bill Lunt said they should look to the signage issue later.

Bill Lunt opened the session to public comment. He closed the public section of the comment.

Ethan Croce read the conditions into the record.

Jay Moody moved to approve the item with the conditions as proposed by Ethan Croce, Stan Bennett seconded. The motion carried 5-0.

6. (Item Tabled) Norway Savings Bank – 266 US Route 1 – Request for pre-application sketch plan review for proposed bank branch. Tax Sheet 240; Map-Lot U58-010-A1. Zoned Business Professional and Village Center Overlay

Meeting adjourned 10.56pm

Respectfully submitted,

Planning Board meeting minutes

08/04/09

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Robert Lynn

Recording Secretary