

**FALMOUTH PLANNING BOARD MEETING MINUTES**  
**TUESDAY, NOVEMBER 2, 2010, 6:30 P.M.**  
**FALMOUTH TOWN HALL, COUNCIL CHAMBERS**

**MEMBERS PRESENT:** Bill Lunt (Chair), Bernard Pender, Becca Casey, William Brogan, Heddy Snyder (alternate)

**MEMBERS ABSENT:** David Fenderson

**STAFF PRESENT:** Ethan Croce (Senior Planner)

The meeting was called to order at 6:34 pm.

Heddy Snyder was appointed as voting member.

**1. Approval of October Meeting minutes**

Becca Casey moved to approve the minutes; Bill Brogan seconded. Motion carried 4-0 (Bernie Pender abstained).

**Administrative Action Items**

**2. Ridgewood Associates, LLC** – Request for a site plan re-approval for Ridgewood Estates. Tax Sheet 310 and 611; Map-Lot R04-026; Zoned Open Space Residential District.

**3. James & Elizabeth Lesser** – Eureka Rd. Ext. – Request for an amendment to Eureka Road Ext. Tax Sheet 210; Map-Lot R03-002-C. Zoned Farm and Forest & RCZO.

**4. Portland Dry Cleaners** – 240 US Route 1 – Request for approval of two new wall signs. Tax Sheet 240; Map-Lot U24-005. Zoned SB-1 & VCO.

Bill Brogan asked to pull the Lesser item.

Becca Casey moved to approve the administrative action items number 2 and 4; Bernie Pender seconded. Motion passed 5-0.

**Agenda Items**

**3. James & Elizabeth Lesser** – Eureka Rd. Ext. – Request for an amendment to Eureka Road Ext. Tax Sheet 210; Map-Lot R03-002-C. Zoned Farm and Forest & RCZO.

Ethan Croce explained that this is a 3 lot private way approved in 1999. It is required to be built to the standards of a 3 lot private way under section 5.27. The applicant has requested to keep the roadway at its current standard and for the lots to gain access over the existing driveways with a new driveway built across lot 2 to access lot 3. They also indicated that they don't want to build that driveway to private way standards. The Board does not have the authority to waive private way construction.

Bill Brogan asked if Ethan Croce is suggesting that they not approve this. Ethan Croce said he put it on as an administrative denial.

Becca Casey asked if the lots are approved and reconfigured as shown. Ethan Croce yes.

Becca Casey asked if they would have legal frontage if this was granted.

Ethan Croce yes, they would still have the legal right of way, but would have no approved access without the road being built to the standards.

Becca Casey asked about the new building on lot 2. Ethan Croce said the house shown as “existing house” on Eureka Road Extension was relocated to lot 2.

Jim Lesser explained that he filed the application based on the fact that there are currently two houses already there without a private way; his request is for an easement over lot 2 to get to lot 3.

Becca Casey didn't see an approval from the owner of lot 2. Mr. Lesser said he isn't an owner, but he has approval of the owners to file the application.

Bernie Pender asked when the two residences that are there were built.

Peter Zacharias, lot owner, said the original house was built in the late 1800's; it should not be considered part of the three houses – it has its own access and is on Eureka Road. The other house was built in 1943 and was moved from Eureka Road when the Town purchased his land; they asked him to move his house. His house is now part of this easement.

Bill Lunt thought the original plan that was approved was a three lot private way, which includes Mr. Zacharias' house that was moved to lot 2, his mother's house, and the lot that the Lessers are interested in. His understanding is that the private way was not built out. He asked if the request is to not build out the private way.

Mr. Zacharias said yes. The driveway that now exists from the end of Eureka to the end of his lot is as wide as the Town road that is now on Eureka Road. He knew there was concern about fire trucks getting in there, but the access is better than that of Eureka Road. The fire department was there the other day teaching a new driver to back up in front of his dairy barn and it wasn't a problem.

Heddy Snyder asked if the issue is the road construction standards. Ethan Croce yes.

Heddy Snyder said it isn't clear that the Board has the authority to grant a waiver from those standards. Ethan Croce said he didn't believe they did.

Bill Lunt said this would be the first time the Board would have granted such a request to his knowledge. Whether the house was moved or built, it is on a new lot with frontage on the right of way. He thought this was an unrealistic precedent to set, and he wasn't willing to do it. He also wasn't in favor of lot 3 getting its access over an easement across lot 2.

Bernie Pender agreed. They don't have anything with which to overturn the Board's decision from 1999.

Becca Casey thought the outside of the driveway is skirting the edge of the right of way. She wondered if there was an issue with building within the right of way or building the road itself. They have granted waivers for width in the past.

Mr. Lesser said according to what was recorded in the deed the actual construction of the private way goes back to the beginning of Eureka Road, down the extension and along where the new private way would be. Roughly 900 feet of road would have to be built to meet the standards. It is probably less than 300 feet from the barn to lot 3.

Bill Lunt asked if the extension of Eureka Road itself was supposed to be done by the Town and the applicant was supposed to build Eureka Road Extension. Ethan Croce thought that was right.

Mr. Zacharias said he was supposed to move his house. He was supposed to have two buildable lots. He was supposed to take down the barn. It bothered him that he was building a road for Community Park.

Ethan Croce said it wasn't clear looking at the approved plan who was supposed to build what. It would require more detailed research. He wasn't sure it was directly relevant to waiving the construction standards on the part of the private way that the applicant was supposed to build out.

Bill Brogan said notes 8 and 9 touch on it.

Mr. Zacharias said it didn't seem fair that he would have to build a road to Community Park, to provide access to his lot that was supposed to have access.

Bill Lunt understood where he was coming from, but it doesn't release him of the responsibility of building the road to those three house lots.

Mr. Zacharias said there shouldn't have been three house lots. That front lot has its own private driveway on Eureka Road.

Bill Lunt said they don't have any control over that. They have to deal with the private way as it was approved in 1999, as a 3 lot private way.

Becca Casey asked about the width of the driveway past lot 1. She thought it was about 20 feet.

Mr. Zacharias said it is between 19.6 to 21.6 feet. It is actually wider than Eureka Road. That road varies from 17.8 to 18 feet wide. He spoke about Greta Way, which is between 19.8 and 18 feet, and has 5 houses on it.

Becca Casey was concerned about forcing the applicant to do something that the Town was supposed to do, but it didn't make sense to her to allow access to lot 3 across lot 2. The width of the driveway is okay, but she doesn't know the makeup of the roadway. She would like to at least see that something that accesses lot 3 goes through the right of way.

Heddy Snyder thought the Board didn't have the authority to grant this, but maybe the applicant should work with staff and bring another proposal that the Board could grant.

Bill Lunt thought they had the authority to narrow the road up. Ethan Croce said they don't, because this was a private way and not a subdivision; the Board does not have that waiver authority. Under this current proposal they have to build the road to 16 feet.

Bill Lunt asked if the Eureka Road that the Town uses is on lot 1. Mr. Zacharias said yes.

Bill Lunt thought that the private way should have been built before lot 2 was occupied. That lot shouldn't have gotten a certificate of occupancy.

Mr. Zacharias said the Town was in a hurry to move the house and build a road down to Community Park. None of the roads ever got done after his house got moved.

Bernie Pender asked if he ever got a Certificate of Occupancy after he moved the house.

Mr. Zacharias said Skip Varney took care of that, and he didn't know if there was one or not.

Becca Casey was trying to find a happy medium because this was triggered by the Town and not Mr. Zacharias's desire to develop his land.

Mr. Zacharias said he sold the majority of his land to a developer; the developer ended up selling it to the Town who bought it to make a park. He wasn't involved in the transaction between the developer and the Town. He had an agreement with the developer that he would get two lots. The town indicated which two lots they wanted him to take so that it wouldn't interfere with the park. Now that he wants to sell that lot, the Town wants him to build a road that will be used for the Park.

Bill Lunt asked if the 900 feet would be needed to reach lot 3. Mr. Lesser said it is roughly 900 feet; it goes up including Eureka Rd ext. He described the roadway involved. Mr. Zacharias said it goes to the end of the property line of lot 3.

Bill Lunt asked what they would have to build if they left out the Eureka Road Extension. Mr. Lesser thought it would be roughly 100 feet.

Bill Lunt asked if they have the authority to not require the roadway to be built the entire length. Ethan Croce said they had the authority to require that it be built only to the access point on lot 3.

Bernie Pender asked why they have authority to waive length not width. Ethan Croce said they are only required to request that the road be built out to service the driveways serving the house lots.

Bill Lunt asked if they have the authority to move the hammerhead. Ethan Croce said that isn't being requested tonight, but if the applicant was to hire someone to redraft the plans there is no reason the

hammerhead couldn't be moved. If this application were denied it could be resubmitted as a different proposal.

Becca Casey moved to table the application; Heddy Snyder seconded. Motion carried 5-0.

**5. Oceanview Retirement Community** – 20 Blueberry Lane - Request for preliminary and final subdivision approval and site plan amendment for an expansion and renovation of the Main Lodge. Tax sheet 310; Map-Lot U27-013-B & 013-D. Zoned RB and RCOD.

Ethan Croce said the applicant has addressed most of the staff issues raised, but there are a couple key issues. The applicant has requested three waivers: 1. combining preliminary and final approval this evening; 2. post development stormwater flows for the 10 year storm at one point; and 3. parking lot landscaping and buffering standards. The applicant has combined the driveway serving the underground garage with the driveway to the new parking lot for the north end of the lodge. This was in response to the request for combining curb cuts. The applicant can take advantage of the residential driveway standards which would allow the applicant to narrow the driveways by 5 feet; the driveways will largely be serving automobiles and not large vehicles. Staff have asked for clarification on mounting heights for lighting in parking lots; the Board should indicate whether they want to see the lighting levels brought down to .6 fc level for residential; the current level on the plan is between that standard and the standard for parking lots. The applicant should verify that all utilities will be placed underground.

Rick Licht reviewed the staff comments. They realigned the driveway to the Hilltop Lodge garage and the parking lot. They were trying to minimize the curb cuts. It is not a perfect situation. They will put in interpretive signage and striping throughout. There are very few residents that use the garage. People using that garage will not be visitors; they will be people familiar with the area. They designed the width in what they thought was conformance with the ordinance; if they are asked to narrow that, they can. There is a 6-7% grade down to the underground garage. There will be a flat area at the stop.

Becca Casey asked about traffic coming out of the garage; she wondered what the signage would be. Mr. Licht said there will be a yield sign for people coming out of the garage.

Bernie Pender asked about other signage.

Mr. Licht said there is a stop bar and stop sign exiting the parking, and a yield sign and interpretive signage at the garage exit/entrance. There will be Y striping at the entrance, and two directional striping in several locations.

Bill Lunt asked how many cars will be coming from both the parking lot and the garage. Mr. Matt Teare of Oceanview said there are about 10 resident cars at Hilltop Lodge, with 15 spaces in the garage. They estimate one trip a day per resident.

Mr. Licht said they have a landscaping plan; it is completely wooded around the north lot. They will have to remove trees both for the filter bed for stormwater management and the grading for the parking. Some trees will remain. They have proposed landscaping and buffering to fill in those gaps, as well as landscaping along Blueberry Lane. David Hanes their landscape architect proposed white pine, juniper, and witch hazel among others. They want the opportunity to make some changes/substitutions in the field. They are proposing a small screening fence along the north parking to prevent headlights from shining in to the abutting homes. They are looking at the whole campus, to the benefit of all the residents and will be in touch with the homes abutting the north parking as to what they want in those gaps, which are in their backyard. For the waiver area, the south lot, they are shy a couple of trees from the requirements of Section 9. They have a continuous wooded buffer along the south edge. He felt the requirements of Section 9 were more for a commercial parking lot; this is more of an environment they are trying to create. He said they would provide the lighting heights; their lighting plan includes 10 new lighting fixtures. They would be glad to review the foot-candles; they are currently at an average of .9fc. Most of the fixtures are 100-150 watts; they want to keep the lighting more residential. They have removed the underground parking planned for the south end. They added a few spaces in the southern lot, and a few in the northern lot. They are required to have one space per unit; they have 83 units and now have 83 spaces, including the required ADA spaces. They agree with the staff that the project is

under review with CCSWCD; they haven't gotten back with final comments. The plan is also under review at MDEP. They would appreciate a condition of approval for those items. There are no actual utilities being proposed except the electrical service for the new lighting, which will be underground. If that should change, anything they do will be underground.

Bernie Pender said the Board needs to know what type of fence/wall they are proposing, including materials and heights. He wasn't sure how much flexibility they were asking for with the landscaping plan.

Mr. Teare said they are not trying to avoid landscaping, but trying to make it better.

Bernie Pender said a lot of these are supposed to be buffering; someone might like a certain type of tree but it isn't a good buffer. Mr. Teare said they would review the plan as approved with the residents and see if they agree with it. They are trying to meet the needs of both the Board and residents.

Becca Casey said she understood the flexibility for the landscaping, but she thought the fence/wall would be right up against the parking. It is going to be very visible and it will be important whether it is a wood fence or a stone wall. It is called out on the plans as a stockade fence, but not how high it would be.

Mr. Licht asked if they can treat that as a condition with staff reviewing, or as a note that it be added to the final plan after it is reviewed with residents.

Bill Lunt said if they are going to submit something later, he wanted to make sure that staff are comfortable approving it, or whether it should be reviewed by the peer reviewer.

Ethan Croce said staff are happy to review it in-house if the Board is comfortable; if the Board wants to see it again, that is fine. If the applicant proposes something to them tonight to move this forward, they could always come back for an amendment as an admin approval, including switching out one species for another on the landscaping.

Mr. Licht said coming back for an amendment would be fine with them if the Board would approve the plan as submitted.

Bill Lunt said since they don't have outside neighbors and everyone directly impacted is part of the development, he was inclined to grant the waiver on the specific plantings. He asked about the post development flows for the 10 year storm.

Mr. Licht said there are several watersheds and he explained each one. The stormwater from the northern parking lot runs through the pipe system to the Whipple Farm basin and ultimately to the bay. There is a slight increase at the 10 year level; they think it is an insignificant increase. It is a 1% total increase.

Bill Brogan thought they should look at the treatment buffer; it buffers into a mound, so it won't distribute properly.

Mr. Licht said there is a natural depression in the woods to the east. They are using that area as a treated stormwater buffer. Everything other than that plateau is very sloping.

Bill Brogan didn't think it was meeting the standard. You need 150 feet of sheet flow, and it is basically going directly into concentrated flow as it is currently designed. Also, he thought they should look at the berm length based on the new impervious surface.

Bill Lunt said they don't have the report from CCSWD. Mr. Licht said no, they haven't gotten the final review yet.

Bill Lunt asked if that basin area would flow onto the Town's property. Mr. Licht said no, it grades down along the stone wall. At Middle Road it goes into a culverted system and directly into the bay.

Bill Lunt asked the Board how they felt about the final waiver request: to combine preliminary and final approval. The Board has discussed that before. The Board indicated agreement with that waiver.

Becca Casey said the building elevations for all sides of the building were not included. She said that, in consideration that all the neighbors were part of the development and that she felt confident that the building would fit the characteristics of the area, she didn't feel that was a critical issue with this application.

Mr. Licht said they provided elevations for the primary faces of the building.

Ethan Croce read the conditions into the record.

Bill Lunt asked if they needed to put a condition in there for the landscaping. Ethan Croce said he was comfortable with it being under the first condition, that the plan conforms to the testimony at the hearing.

Becca Casey asked about the width, signage and marking as they were discussed. Ethan Croce said they could add a condition that the final plans reflect the driveway widths, signage and striping as discussed at the meeting.

The Board agreed with that proposal.

The applicants were comfortable with the conditions as read and amended.

The consensus of the Board was to grant the waivers.

Becca Casey moved to grant preliminary and final approval, with the conditions as read by staff and amended as discussed and that the Board grants the waivers as discussed. Heddy Snyder seconded.

Public comment period opened; no public comment.

Motion carried 5-0.

**6. Hundred Acre Woods, LLC - 570-578 Blackstrap Road – Request for final subdivision approval for an eighteen lot conservation subdivision. Tax Sheet 90; Map-Lot R08-059-002; Zoned Farm and Forest & RCZO.**

Ethan Croce discussed the threshold issue; the applicant has proposed some site improvements on two abutting properties – the N/F Williams and N/F Hopkins properties. They would typically look for permission in writing from the lot owners.

Art Colvin, of ADP, said one lot owner, Mr. Williams, has approved the landscaping plan as part of their access over the roadway. They have been in touch with the Hopkins' and they haven't heard back from them. There is about 160 feet of their property that is affected by this. He discussed the property line and said there is ample room between the tote road and the stone road on the Hopkins' property to put in the plantings.

Bill Lunt asked if there is any indication that they would agree with it. Mr. Colvin said he didn't seem adverse to it.

Bill Lunt asked if there was any way to put those plantings on their property. Mr. Colvin said they would have to re-grade the detention pond.

Ethan Croce discussed the key issues. The applicant has requested a waiver on the post-development flows for one control point for the 2 and 10 year storms, near the wetland complex. It was discovered later that there was actually a second waiver needed regarding the stormwater plan; the applicant has revised the plan so they don't need the second waiver. The applicant has requested approval of a conditional agreement in lieu of posting a full financial performance guarantee. This would be reviewed and the amount set by the town engineer and staff. The applicant should clarify which trails are going to be maintained and which aren't. The applicant should clarify whether the intent is for the interceptor ditch to parallel the trail for its entire length, or if it will diverge in places. If it is going to deviate from the trail, there should be some limits of disturbance called out for those areas. The applicant should clarify the extent of re-vegetation planned for the existing tote road. The abutter has requested re-vegetation as well as stones to be placed there. It also should be clarified when those improvements are anticipated to be completed. The Board had requested that the applicant use construction fencing to mark the limits of disturbance; the applicant is currently proposing yellow tape. The

limits of disturbance shown on the plans seem to have been expanded to 25-20 feet from the 15 feet previously discussed. Regarding the vegetation management plan, staff had questions on plan notes 3, 4, 5 and 8 as well as: whether filling/grading are prohibited in the no-disturb buffers; the intent to preserve trees that are located in clearing zones; prohibiting lawns within areas of well-distributed trees; and the method of identifying significant trees that are indicated for preservation in the future. Staff have questions about the location of driveways. Prior representation has been that the driveways would not be allowed to deviate from their locations on the plans. The common open space and stewardship plan should indicate the allowed uses of the open space, including where motorized vehicles might be allowed. The permanent conservation restrictions proposed and the amount of the stewardship fee needs to be approved by the Planning Board. The Land Trust has indicated that \$10,000 would be appropriate. The peer reviewer has indicated several issues as well.

Mr. Terry DeWan, the Town's peer reviewer for this project, has had a chance to talk with the applicant about their responses to his comments. They have responded for the most part in agreement with his comments and have made adjustments to their plans.

Ethan Croce thought, if the Board made it clear that if the applicant hadn't addressed the peer reviewer's comments they will have to come back to the Board, it is fine for the Board to not review those instances where the applicant has agreed with the peer reviewer's comments.

Mr. DeWan summarized some of the comments he had made, and the responses the applicant made. He has not seen any of the changes they have made and so cannot comment on their responses. For example, he had suggested a continuous buffer and the applicant stated in their response that they didn't agree in full but had made some changes in response. He hasn't seen the plan that was revised in response to his comment, so he isn't sure what they have done in response. He and Ethan Croce exchanged some emails regarding options for tree identification in the future. Regarding guardrails next to walking trails, he doesn't like to see industrial strength guardrails next to walking trails. The applicant responded that they are not comfortable with anything other than a metal guardrail and they had planned what the ordinance requires. He thought there were other options. He had said that additional detail on the entrance way should be provided for the plantings and the lighting. The applicant indicated that additional information would be submitted; he doesn't know if that has been done.

Mr. Colvin said if they say they made the changes they have made them. He has documents that detail how they have responded to each of the comments submitted by Mr. DeWan, Ethan Croce, and Jon Earle the Town Engineer. The trees have been survey located, and the Town has an electronic copy so they can verify whether trees have been removed. He would be happy to give a coordinate list with a description of the tree itself. That is already part of the record.

Mr. DeWan asked if the list had species included. Mr. Colvin said that information is available as well.

Bill Lunt asked how they protect the trees to be sure they don't get removed.

Mr. Colvin said Mr. DeWan has asked to put snow fencing around the drip edge. That will protect the roots and demarcate a tree that has to be protected.

Bill Lunt asked if that addressed the concern. Mr. DeWan said he hasn't seen the detail, but it sounds like the proper thing to do. He would like to see those trees in relation to grading.

Heddy Snyder was surprised with how much new information has come in; she wondered if they would be able to provide staff with enough guidance to give final approval tonight.

Bill Lunt thought that was what they are trying to determine. He asked about the grading around trees.

Mr. Colvin said trees that are not in areas of heavy grading are trees to be maintained. Trees where there will be grading will have to be removed. There are some trees that might have to be removed and might not, and they have identified those on the plans as well.

Mr. DeWan said the ultimate question is whether what is on the plan is what is actually carried out by the person with the chainsaw.

Bill Lunt asked if staff thought they could administer this as it is proposed.

Ethan Croce said if there will be construction fencing around the trees it is an easy identifier. It is his understanding that it would be a no-disturb area within that area, including filling and grading.

Mr. Colvin said there would be a lot of oversight on this. He said they did maybe 90% of what Mr. DeWan suggested; they only left out the guardrails and the buffering. The guardrail is basically the only point of contention; he wasn't sure that a wooden guardrail with a metal background would meet AASHTO standards. He would really like to see the Corten type oxidized guardrail. It is the Town's requirement. He was sympathetic to the design from Mr. DeWan but he thought safety might trump it.

Mr. DeWan said he wasn't sure that MDOT has approved a wooden guardrail with a steel back in Maine. He thought a call to a company like Mainline fence might answer that.

Mr. Colvin has asked the question of MDOT and hasn't been able to get a finite answer.

Jim Thibodeau, of ADP, said the wood rails don't meet the AASHTO requirements. It would look nice, but it doesn't meet the Town requirement. The steel of the guardrail has a rusted look; it blends in, and has a surface corrosion that prevents it from further corroding.

Bill Lunt asked if these are similar to what you see in the White Mountain National Forest. Mr. Thibodeau said yes.

Becca Casey said they talked about a little stretch of sidewalk along that rail, and a stretch of split rail fence at a previous meeting.

Mr. Colvin said that was at the trailheads. It was generally in the same area.

Ethan Croce said under appendix 5.6.c it says guardrails should be constructed of wood or self-oxidized steel. That appears to give some flexibility to the Board to approve the materials of the guardrail.

Mr. DeWan thought they were looking for a guardrail that met AASHTO standards and the criteria of the ordinance, and would also be more pedestrian friendly.

Bill Brogan felt the Corten steel was allowable, but he preferred another material.

Bill Lunt asked if they are looking at all the guardrails, or just in the location of the trail. He asked how much guardrail is there.

Mr. Colvin said he hadn't counted it up. He indicated where the guardrail is located on the plan. It isn't much of an issue where it isn't adjacent to the sidewalk.

Ethan Croce thought it was approximately 700 feet.

Becca Casey asked if it passed in front of the house lots. Mr. Colvin said it is only in front of one.

Becca Casey was amenable to the steel. Bernie Pender liked wooden guardrail, but safety has to be the first concern and so he would have to go along with the steel. Heddy Snyder would be fine with the steel because it satisfies the ordinance requirements. Bill Lunt didn't have a problem with the steel.

Bill Lunt asked about the buffering suggested by Mr. DeWan.

Mr. Colvin discussed the recommendations by Mr. DeWan as to buffering. Most of the trail is buffered, and they added additional snowberry bushes along the trail. He showed the changes to Mr. DeWan.

Mr. DeWan wondered why they couldn't have some buffer near the road.

Mr. Colvin said the septic designs are just preliminary; he didn't want to put them in such a corner that it is prohibitive to put in the septic systems.



Mr. Thibodeau said there are 54 acres of undisturbed area as part of the project. The lots are very small, and they are getting squeezed so tight they can barely build them. He felt they have cut a reasonable balance, but some of the buffers suggested by Mr. DeWan are too constrictive. He felt they need some flexibility with lots 5 and 17.

Mr. DeWan said he appreciated what they are saying. They are showing the septic but not what grading they will need. He encouraged as much landscaping as possible between the lots for privacy's sake.

Becca Casey asked if they were able to add the buffer at lot 5. Mr. Thibodeau said they have graded every lot and have evaluated each one.

Mr. Colvin said for the most part the buffers are not going to be where there will be septic systems. They have tried to put buffers where they make sense and where they won't have a negative impact on the construction.

Bill Lunt agreed with Mr. Colvin. He didn't want to make it so tight that they have to keep coming back.

Becca Casey wanted to have some landscaping at the trailhead to define it. Mr. Thibodeau said they have done that. They are really talking about the yard.

Becca Casey thought trees could be planted after the area is disturbed.

Mr. DeWan asked at what point the snowberry bushes will be planted and when the lots will be cleared. Doug McAtee, of 100 Acres LLC, said the lots will be cleared as they are sold. Mr. Thibodeau said the trees that will be saved act as a buffer themselves.

Bill Lunt wondered if the control measures will be in place when the road work begins. He asked if someone from the Town looks at each lot and makes sure the lot fits with the approved plan as the developer sells each lot and a building permit is issued for each lot.

Ethan Croce said yes, they would ask for a plot plan that showed the resources that were intended to be preserved according to the subdivision plan.

Mr. DeWan said that was the beauty of the vegetation management plan as well. Each homeowner will know what they can and can't do within each area. He asked what happens when these trees age, or are found to be diseased, and need to be removed. He wondered whether an arborist should come out and review the trees with staff.

Bill Lunt thought the vegetation management plan would address that issue. Mr. Colvin said the plan states that any removal within the buffer must be reviewed by a Maine licensed forester as well as the CEO.

Bill Lunt said there needs to be somebody that can review those trees if they need to be removed.

Ethan Croce said that if the plan note is expanded beyond the buffers it will cover that. He asked about Mr. DeWan's comment about no-disturb buffers around the lots in general. He wanted clarification that the Board is happy with the changes the applicant has made, including the additional buffering on lot 5.

The Board agreed with that statement.

Becca Casey asked about additional detail at the entrance. Mr. DeWan said the applicant said they would provide additional detail on the plantings.

Mr. Colvin said Fred Panico is working on that. He handed the Board the response letters he wrote addressing the staff comments.

Bill Lunt opened the public comment period relative to the peer reviewer's comments only. There was no public comment on those issues.

Mr. Colvin addressed the staff comments. They are still dealing with the Hopkins' but he had documentation from the Williams, dated June 2008. They are no longer asking for an additional waiver on the stormwater because they no longer have an increase at the culvert under Blackstrap. They will submit revised plans to Chris Baldwin at CCSWD for him to review. They have changed a note on plan SUB-1 to defer to the note on

STEP-3 for the trail maintenance. He read the revised note. Some trails will be maintained and some will not and those trails are indicated on the STEP-3 plan.

Heddy Snyder asked for clarification on the waiver on the stormwater. Ethan Croce checked the conditions of the preliminary approval and the waiver on the stormwater was not granted. The Board deferred granting that waiver until the question of the second control point was answered.

Bill Brogan asked what change they made to fix the issue at the second control point. Mr. Colvin said they increased the size of the pond a little bit.

Bill Lunt asked about the conditional agreement. Mr. Colvin said each subdivision plan has a conditional agreement note on it. The notes are verbatim from the ordinance. Ethan Croce sent them the wording for the note.

Mr. Colvin spoke about the interceptor ditch; it is set to run at a gradual 2-3% slope along its run. They are not asking for flexibility for the location of the ditch. They will add additional details as requested by staff.

Bill Lunt asked about motorized use on the trails. Mr. Colvin said there will not be any ATV trails, and there will be no motorized vehicles at all except for snowmobiles on the regional trails. They added a note to plan L9 identifying the regional trails system.

Ethan Croce said this is the trail that crosses the stream, cuts across the subdivision and goes through the Hopkins property before reemerging on the 100 Acre Woods property.

Mr. Colvin said Jed Harris of the Land Trust is reviewing the documents and they are going to specifically allow snowmobile use on the trail being used currently. There will be no ATV's. The trail license had not been reviewed by the Land Trust yet; it was a boilerplate. They will review it and change it as needed. L4 shows the entrance detail requested by Mr. DeWan. Mr. Panico is going to clean up that plan, addressing identification of species of trees and the tree along the top of the retaining wall. On sheet C-1 they revised the note to say the entire span of the tote road to be loamed, seeded, planted and mulched. There will be hemlocks and boulders. It will not be used as a construction entrance. This will be addressed first thing after the erosion control measures are placed.

Mr. Thibodeau said a portion of the trail will go across that.

Ethan Croce asked if the portion above the trail will also be loamed and seeded. Mr. Colvin said yes, that entire section.

Ethan Croce asked if where the trail overlaps will be kept.

Mr. Colvin said the trail will be going across the new loamed area. It will go in after the work on the tote road. The changed the color of the limit of disturbance lines on the plan. He asked the Board about snow fencing versus yellow taping. He felt the tape lasts a long time and is more cost effective.

Bill Lunt said this has been a concern of his for along time – tape doesn't stay where it is supposed to be. He thought they needed to stick with the fence.

Mr. Colvin said they have a note on sheet C-4 that indicated the snow fencing marking the limit of disturbance area. Each lot will have to have a snow fence around the drip edges of trees meant to be preserved. They have a new set of notes for the vegetation management plan; they are willing to work with staff on those and conform to Ethan Croce's recommendations.

Ethan Croce asked for the intent on the mature trees in the clearing zone.

Mr. Colvin said they added a note that says that trees identified to remain shall not be cut. They will have the snow fencing.

Ethan Croce asked about the trees that are marked "may have to be removed". He wondered if the homeowners have discretion to remove those, or if that has to be removed.

Mr. Colvin said their intent is for those trees to be removed only if they interfere with septic or house installation. He didn't know the best way to enforce that.

Becca Casey thought they could clarify the note to express the intent. It is to be preserved unless it interferes.

Bill Brogan wondered who makes that determination. Mr. Colvin thought the homeowners would not cut a beautiful tree if it didn't need to be cut. Bill Lunt thought this was an area where they would have to trust; it is not enforceable.

Heddy Snyder asked for clarification on the trees identified on the plans.

Mr. Colvin explained the different classifications on the trees on the plans. Mr. DeWan has seen this. They have added the streetscape and perimeter buffer into the matrix as requested by staff.

Bill Lunt said somewhere on the plan it should be mentioned that people should do anything in their power to avoid cutting the trees identified with the white "x" on the plans.

Mr. Colvin agreed. They made a note limiting the widths of the driveways to 12 feet, except for the turn around areas, and that the locations should be limited to those shown on the plans.

Ethan Croce asked about the note regarding the well-distributed stands of trees. Mr. Colvin said they removed that note completely.

Bill Lunt asked about the stewardship fee. The land trust is asking for \$10,000. Becca Casey asked if the applicant has a problem with that number.

Mr. Colvin said the trust won't even take the land without that; that money establishes their maintenance of the land.

Ethan Croce asked about the limits of clearing when the trails and the interceptor ditch diverge.

Mr. Colvin said they will not show an associated clearing limit around those; the trail will try to avoid mature trees and not really have a clearing limit. The ditch itself will have no greater than the 15 feet maximum.

Bill Lunt asked if they can incorporate both the ditch and the trail in those 15 feet in those places where the ditch hugs the trail. Ethan Croce said that is what is shown on their plans.

Mr. Colvin estimated that the ditch would take 8 feet; if the trail takes 4 feet then it can be done within the 15 feet.

Mr. Thibodeau said he has been working with FTAC on building trails. There have been several NEMBA trails, and the method has been to weave the trail in among the trees. It's all about trail selection and routing.

Heddy Snyder asked about filling/grading in no disturb buffers. Mr. Colvin said there will be no grading within those areas and there is a note to that effect.

Heddy Snyder clarified that the note regarding a forester and the CEO would be consulted regarding the removal of dead/diseased trees would be expanded to trees that would remain even in clearing zones.

Mr. Colvin agreed and said it would be expanded to include other trees as well.

Ethan Croce asked about conservation and/or deed restrictions to provide for the permanent protection of the open space by the Land Trust; those documents will have to be reviewed by the Town Attorney. Mr. Colvin didn't have an answer; Mr. Harris of the Land Trust couldn't be here tonight.

Ethan said it is more of a concern for the Board to review those restrictions when it is a third party taking the land, rather than when the Land Trust is taking it.

Bill Lunt was comfortable with the Land Trust taking that land. The Board indicated agreement.

Bill Brogan observed that there is a difference in the documents listing the owners as either "100 Acre Woods" or "Hundred Acre Woods". He wanted to make sure the DEP permit is consistent. He asked about the issues with the Secretary of State and the tax bill with the Town.

Ethan Croce said they are in good standing with the Secretary of State, and owe a small amount of interest on their property taxes.

Bill Brogan asked about proving financial capacity. Ethan Croce said in this instance financial capacity is proven by paying the property taxes.

Bill Lunt wondered if it would affect their approval if they get behind on their taxes again.

Ethan Croce said only the Board can make a determination on financial capacity. Staff can't make that determination, and there is no mechanism for them to come back before the Board for that.

Mr. Colvin didn't think they would mind that being a condition of approval.

Bill Lunt asked for that to be made a condition.

Bill Brogan asked about Mr. Thibodeau's payment agreement. Mr. Thibodeau said he is being paid with lots. Mr. Colvin has done most of the design work. Mr. Colvin said he has done 99% of the design work; he works for Mr. Thibodeau.

Bill Brogan thought that was a conflict of interest. He thought that kind of situation would require a peer review. Bill Lunt wondered if how someone gets paid was within the purview of the Board. Bill Brogan thought it was unethical.

Mr. Colvin said the project was reviewed by many people, staff, peer reviewer and the Board.

Bill Brogan said there was no civil review; the staff reviewed it and a landscape architect reviewed it. The landscape architect peer reviewer recommended a civil review.

Mr. Colvin reviewed the comments from the Town Engineer, Jon Earle. If they get final approval they will proceed to get the NRPA permit by rule for the stream crossing with the bottomless culvert. ADP designs a large number of segmental block walls; they do need to be stamped by a PE. On sheet C-1 the slopes greater than 3/1 and over 20 feet are hatched.

Public comment period opened.

Mark Smith, 565 Blackstrap Rd., asked if lot 1 can be sold before the erosion control measures are installed. Lot 1 fronts Blackstrap Rd.

Mr. Colvin said they have portrayed that the erosion control measures have to be put in place first.

Mr. Smith said on C-1 it says there will be 140 foot buffer on the southern edge going to the house lot. He wondered how the homeowner would get that information.

Ethan Croce said that one of the draft conditions of approval is that the property owner will be required to submit a plot plan showing all the buffers as shown on the subdivision plan. Deed restrictions listing all buffers on each lot would also be required.

Mr. Smith asked about the third or fourth owner; how would they have information readily available to them about the no cut buffer.

Bill Lunt said it is part of the deed restriction.

Mr. Smith asked what recourse he would have if someone was cutting a tree on a Saturday and he thought it was a tree that should be protected. Town staff are unreachable on a weekend.

Ethan Croce said they would hope that situation wouldn't happen. The town engineer would be the primary site inspector of the project. If there were any violations of the plan it would become a code enforcement issue.

Mr. Smith asked about the overall schedule, when they plan to start and finish the project.

Ethan Croce explained that subdivision approvals don't technically expire. Conditional agreements are limited to two years; in two years the applicant would have to come back to the Board to renew that agreement unless

they posted a full performance guarantee. There is no mandate from the Board as to the schedule of build out of the lots.

Public comment period closed.

Becca Casey moved to approve the waiver request for the increase in post development flows; Bernie Pender seconded.

Bill Brogan thought a 38% increase for a 2 year storm is a lot. Mr. Colvin said the number in cfs is a very small increase; it goes from 3.6 to 5.

Bill Brogan said when you look at stormwater flow increase you look at percentage, not numbers.

Mr. Colvin said Chris Baldwin at CCSWD was comfortable with it as well. It is in a wetland going into a pond. He would be more concerned with an increase into a controlled drainage structure than across an open field.

Bill Lunt said they have had a peer review from CCSWD. Percentages don't always say the real picture.

Motion carried 4-1 (Brogan).

Ethan Croce read the conditions of approval into the record.

The applicant indicated that they were comfortable with those conditions.

Bernie Pender wondered if they wanted to specify "written" consent from the abutting property owners under condition 4-d. Ethan Croce amended the condition.

Becca Casey moved to approve the application, with conditions as read by staff. Heddy Snyder seconded. Motion carried 4-1 (Brogan).

**7. (Tabled) Bangor Savings Plaza** - 215 US Route 1 - Request for sketch plan review for site redevelopment. Tax Sheet 320; Map-Lot U11-035-A. Zoned SB-1 & VCO.

### **Discussion item**

The Board discussed the inclusion of hydrocad calculations with their packets. Bill Brogan has asked for them to be included in his packet and the question was whether it should be included in all the packets, just in his packet, or in none of the packets and Bill Brogan could come to Town Hall to review them. The Board agreed that it was acceptable for them to be included only in Bill Brogan's packet.

Meeting adjourned 10:42 pm.

Respectfully submitted,

Melissa Tryon  
Recording Secretary