

**PLANNING BOARD MEETING
TUESDAY, OCTOBER 22, 2002
37 North Main Street**

- Members Present:** Norman Russell, Troy Robidas, Hiram Watson, Marty Chagnon, Brad Anderson, Jim Horgan
- Selectmen's Rep:** Absent
- Staff Present:** Paul Charron (CEO), Fran Osborne (Secretary)
- Public Present:** Barry Elliott, Cathy & Robert Place, Melissa Anderson, Chet Bryant, Joyce & Gary White, Jane & John Wingate, Margaret Russell, Jim Shannon (Attorney for RSA Development)
- Chairman called meeting to order at 7:00 p.m. Brad Anderson is seated for vacant seat and Marty Chagnon seated for Kelly Parlman. The minutes of October 8, 2002 were reviewed. After discussion of minutes, Jim Horgan made motion to table to the November 12, 2002 PB meeting to allow Fran time to check the tape for remarks made by Attorney Shannon. Corrections as follows were made:
 - Page 2 - (4th line from bottom) change word "units" to **lots**.
 - Page 3 - (bottom line after 1st word meeting. **Attorney Shannon - this plan as it is presently designed based on the previous issue of lot size, is doomed not to be approved.**
 - Page 4 - (add to Dave McGuigan's remarks) **This is the last pine grove in the village center and the proposal is too urban for the character of the neighborhood.**
 - Page 5 - (top line after requirements, **the application would be approved.** Chairman - yes, if they meet
 - Page 5 - (3rd line after Garfield St.? Add - **She is concerned about multiple driveways.**
 - Page 5 - (bottom line Jim Horgan - the road - change to - Jim Horgan - the **homeowners** association
 - Chairman asked Fran to go over changes in the "Site Review Regulations" she had noticed needed to be addressed. Motion was made by Brad, 2nd by Jim Horgan to approve the minor changes as follows:
 - Page 1 - **1.05** - (2nd line after chapter, the Land Use - change to the **Zoning Ordinance, adopted March 13, 2001, the 1990** Boca Code
 - Page 2 - **2.01** - 2nd line - change **Regulation to Regulations**
 - Page 2 - **2.04** - 4th line - change of to **or** re-subdivision of
 - Page 3 - **3.01** - 6th line - delete Appendix A entitled, Telecommunications Facility Site Review Regulations, (Amended September 22, 1998). Change to - set forth in **the Zoning Ordinance adopted March 13, 2001 and amended March 13, 2002, Section 3.11.**
 - Page 3 - F. (**Amended September 24, 2002**).
 - Page 7 - **B.** correct paragraph formation.
 - C.** correct paragraph formation.
 - Page 8 - under **B. 8.** 2nd line - by the Board so **as** to
 - Page 13 - **7.02 C.** change per singular living unit per residential development to **per residential unit in each residential development.**
 - Page 13 - **7.03** - add after paragraph (**Amended September 24, 2002**).
 - Page 13 - **7.04** - add after paragraph (**Amended September 24, 2002**).
 - Chairman said he received a letter from PB member Kelly Parlman stating she has given her resignation effective this evening on both the PB and liaison on the ZBA/PB. Hiram - made motion to have a plaque and a letter of appreciation done for Kelly, Marty Chagnon 2nd, all in favor. Fran will look into a plaque.
 - Chairman Russell presented a letter to board members he had written to the "Farmington School Board." Discussion followed. Troy - if the School Board was in disagreement, then fees could be used to develop impact fees? If this is a cost control measure, we should do it. Hiram - the School Board had nothing for the CIP process. Jim - we have had problems for the last 10 years with not receiving anything from the School Board to help us with CIP. Jim - we cannot develop an effective CIP without School Board input.

Discussion. Brad Anderson made motion, Jim Horgan 2nd, to change Line 4 - change implement measures such as impact fees or growth control ordinance to **employ certain important planning tools**. Fran was asked to type this letter and send certified with a self-addressed stamped envelope. (copy attached)

- Chairman Russell brought up a driveway application permit which is on a State Highway, Rte. 11. Applicant is Scott Jewell. Norm checked this site out and has written a letter (copy attached). No improvements were noted at this site. Jim Horgan motioned and Troy Robidas 2nd to send the letter as presented.

7:30 Public Hearing

- **Cluster Subdivision Review Application continuation RSA Development, LLC** for Elm St./Dick Dame Lane (Tax Map R34, Lot 1-8 and U9, Lots 18 and 19). Marty Chagnon has excused himself from the board for this hearing. Jim Horgan asked the chairman if he could present some thoughts for review. As I review these last PB minutes, I feel like we're almost on a merry-go-round. This is October 2002 and it's a year later and I can almost put October 2001 on these minutes here. I'd like to ask some questions and see if I'm on the same wave length as the rest of the board if you have no objections. Norm - no I don't. Jim - When this thing started there were several discussions on what this plan was going to be and how it was going to form and as things developed, we went from a discussional arrangement to a formal arrangement and we killed about 6 months in the woods there. As of this particular point in time, we are dealing with 3 parcels of land and of these 3 parcels of land there are 2 zones included. It was my understanding way back when the plan was to go with the larger of the zones which I believe is the SR zone and the standards that apply to that zone are the ones that would apply to that zone. Based on the 3 lots, the calculations were done for the number of units going in there. At the time there were approximately 60 individual family units. The original plan was for a combination of single-family homes, row homes or condos and multi-family dwellings and that changed several times over the 1st couple of months. Somewhere in here we settled on 60 single-family homes, then the applicant adjusted the roadway because of an issue of the 900'. At the same time we got an emergency exit which accommodated a longer road length going in from Elm St. but the bonus was he reduced the road to 900' and we had the housing area and exit going out which was to be gated and for emergency use - he would have a mutual agreement between that lot and abutters going out the back there. It would be an agreement but prohibit traffic except for emergency vehicles. These are just things the board generally agreed to and accepted. Brad - no completed application though. Jim - these were things we were progressing on. At this point we have 3 lots we are working on, the calculations supported 60 individual family home units and we had a back gate for emergency access to a pedestrian walkway. It was later decided there was an agreement between the abutters there that would cover pedestrians going out that back entrance or exit is you will. Dick Dame Lane was pretty much off limits - the road couldn't handle the traffic and we didn't want an entrance there or anything to do with Dick Dame Lane which is what prompted going out the back. We determined the deceleration lane was not necessary because the clearance was what the State requires, a minimum of 400' which they have there, so unless the state dictates it, there is no deceleration lane required. I thought that was a dead issue and it seems to keep reoccurring. Across from the entrance (assuming this is approved) there would be some development required of the other side of the street where this entrance goes in, it would include some sort of barriers to diminish the headlights reflecting in homes across the street, at least that's my understanding. This development was to take place in 2 phases as it progressed from Elm St. in and that portions of Phase I would overlap into Phase II or in the area of Phase II. Portions of Phase I would have to be done in order to complete Phase I. That's my understanding on these issues and as I read the previous minutes the PB seems to change direction every time. On one hand we mention condos and on the other hand we mention single-family dwellings. The thing that was agreed on (at least my understanding) was single-family dwellings and not unless we changed the plan again. I believe the applicant is waiting for the PB to make a decision on whether it is going to be condos or homes and the PB is wanting the applicant to make a decision on whether its condos or homes or the determination of the lot size which I understand is 1/2 acre or can be 1/2

acre per unit providing water and sewer is provided which is the case here. We keep flip flopping on a decision. I need clarification on the definition of a condo. My understanding is that a condominium is a dwelling unit separated by a wall where 2 or more families are separated by a wall in a legal document all under the same roof as opposed to a single-family dwelling. I thought at some point we decided that condos were least desirable. I don't know that you can sell a single-family home under a condo deed and that the general consensus was that this was a cluster development because we consolidate the homes in the least amount of space to maximize restoring or retaining the forested or brushed areas as undeveloped area. I would like to know where the board differs on these things and if we can move from that point and decide whether we are building single-family homes or condos before we walk out of here tonight and which way the applicant and the PB is going. I have to get off this merry-go-round here. Brad - some of those things I actually recall the applicant asked us to vote on before the application was accepted. Some of those things were voted on. The things we didn't vote on I don't know that we can say there was a decision by the PB - at least I wouldn't want to say the board made a decision on any of those items that were binding, so I don't know what was or was not voted on. I remember when that road thing came up, specifically I was uncomfortable about taking a vote so I don't remember if we did or didn't vote on whether the road was acceptable on the preliminary drawing. I thought the application was accepted as complete as single-family homes and not condominiums. Troy - I'm thinking the same train of thought as Jim was talking about before the meeting tonight. I think that's our problem, we need a determination what's going on there. The plan just needs to be laid out with what is definitely going to be there, we can't just keep going little steps at a time, we need to see what we're dealing with so we can make proper decisions. Hiram - he has single-family homes on the plan now and if he can't do that he's going to change it to condominiums the way I understand it. Chairman - I don't think the board was saying we think it should be condos, I know they have mentioned it several times to change it to condominiums - that's basically another application. Hiram - he's right, he'll do it whatever needs to be done. Troy - but at that stage we go back to square one and start all over again because the whole project has changed - right. Someone needs to make a decision with what way it's going to be - condos or single-family homes. Brad - one way to resolve that is to look at the plan we accepted and go forward with it or scrap it and start over. Brad - still the issue came up at the last meeting of the minimum lot size. It seemed like a fairly large obstacle to get around. Norm - that's a pretty good summary of where we stand. I don't believe it's the boards that's saying well we're going to be condos, we've heard it. Jim - I just thought the general consensus of the board was the concept is still 60 single-family dwellings and if you read these minutes there's still the issue of, well maybe its going to be condos. It shouldn't be at the idea phase here, that's a done deal and this should be resolved between you and the applicant and should be resolved before we go much further and this will bring up several issues on the other side of my list. Norm - I think we can get the applicant to tell us what their present plan is. Packy - there is a lot of confusion. Jim did a good job of summarizing this process. On January 10th this year, this application was accepted as a cluster subdivision and I have several times handed out cluster subdivision regulations and asked the board if they realized this is a cluster subdivision. I don't believe this can be interpreted any other way. The plan was approved and accepted as complete as a cluster subdivision, that's a matter of record. To clarify the question, the problem with the minimum lot size in the Cluster Regulations is when it says minimum lot dimensions it just says a lot shall be defined as a tract or parcel of land designated for the purposes of building. What I've come forward with is a plan for 60 lots. The minimum requirement for setback and minimum frontage may be waived. CEO, Mr. Russell and I met and consensus of that meeting was that the PB didn't have the authority to waive the area. Because it specifically said area we had to go with 1/2 acre lots in that zone. Whether I agree or disagree with that interpretation doesn't really matter. So the answer to that question is how do we get around the lot thing without substantially changing the plan and the answer I came up with is the idea of condominiums. The definition of a condominium is. A condominium can be a single-family house, it's simply a legal term to define area of ownership for a legal area you are selling and that area can be in some condos from the walls in, in some it can include the windows and in other condo association the windows are owned in common with everybody. It would be my intent to continue with my present application, that I can continue with my present application as condominiums, that because the board has chosen to take the position they took on the

lot sizes which the whole spirit and intent of the cluster subdivision was that you can waive lot size requirements. I don't think anyone disagreed at least at my meetings that that was the intent of the ordinance but that the ordinance was clear with the word area so the board felt they could not waive area. Section B of the cluster subdivision regulations reads: Land to which cluster development may be applied will be land where there are a minimum of five (5) available lots and when the lots are to be conveyed separately: condominiums as eight (8) or more condominium units are proposed. We would be conveying these lots separately. I am proposing more than 8 condo units. Condos are allowed under the Cluster Regulations and I came forward with a Cluster Development. It is now being directed into the process of a condominium cluster subdivision. It's been a year, it's time for both the applicant and this board to come to an agreement on a final plan and I would submit to you that this plan we've been looking at the last 3-4 months is the road design, the crossing with special use permit being granted, we have access you have been looking for, we have road profiles, drainage with retention ponds, a punch list with remaining items we felt the board needed to cover before we vote this plan up or down. The condo or private lot was one of them. I now think that issue is abundantly clear. My position is not is I'm doing condos because the board wouldn't waive lot sizes. I would rather convey individual lots. I think its more desirable and more saleable, better for the town, but done properly I can make the condo idea work whether I do single-family houses or duplexes. Duplexes as condos as the zone allows gives me more flexibility as an applicant. The density calculations when I was coming in I was talking about 60 lots, that's land lots. The cluster regulations are very clear as to how many units I can have under condos and that we have been talking about 60 lots - what I was looking for was 60 single-family house lots. The other vote I am looking for is, yes, you can do condos, then we need to negotiate the actual number of condo units because when you open up that pandora's box of condo units you are no longer limited by setbacks and number of lots you can carry there. You can actually put units in and the cluster regs. is one of the things we have to verify is the actual footprint of the buildings we are going to put in. We have to really decide what is Atypical plan. What I wanted to get at specifically and wanted the board to vote on was because I had significant issues (under F. The number of units in a cluster development shall be determined by dividing the number of net acres, after subtracting acreage needed for roads and common parking, by the conventional lot size for the zoning district. We have been going forward like Jim said in the SR zone. It is in 2 zones as a cluster subdivision so when you do these density calculations, previously we came up with about 86 units if you just said the whole project was in the SR zone, but that really wasn't accurate because when you read the permitted density (referred to Section 1.14 of the Zoning Ordinance). Where zoning districts cross 2 parcels, they can be subdivided they take on the characteristics of that zoning district. Its clearly laid out in our zoning ordinance. Then I had to redo my density calculations. That comes out with the letter I handed out at the last meeting and wanted the PB to acknowledge that in fact if you take the acreage and subtract out the roads and this and that you come out with much higher number of units, actually 121 units, nearly twice the number here and that was the intent of the cluster subdivision regulations to provide relief to this growth and sprawl and concentrate it in dense areas to reclaim this abandoned gravel pit and hopefully not have all sorts of development on every piece of road frontage in our community eaten up by this huge demand for new housing. This was designed to be a pressure relief valve. The PB needs to recognize the benefits of this plan and move forward (4 issues on this list) or vote it down, or I would like the PB to approve or deny this thing. I would like the board to acknowledge that this document means something and its written for a reason and this is the plan and the document to use to approve or deny this thing. Lets get on with it. I'm willing at this point to go over the list - the agreement with Mr. Phillips, phasing, or any other issues the PB wants clarified are issues we can deal with. Brad - we acted on the request in the letter at the last meeting. Our obligation is to approve or deny the plan. We have gotten into trouble by entertaining these requests to vote on this or that and give him commitments on this and that on specific items on the plan. Separate from that our legal responsibility is to approve or deny the plan and if it denied say why. I think we dealt with that at the last meeting. That's what has been eating up our time and why we've been here a year. Brad - When a condo or building is on a delineated area, is there any difference on what is defined as the building lot? If this applicant brought in plans originally accepted showing lot lines - now we're talking about a

building plan that shows building footprints and no lot lines, is that a different proposal? Is this a resolved issue? Chairman - I think there was something that showed a limited common area instead of transferring ownership of these individual dwelling units, they were going to be transferred with this limited common area, that was the information I was given. We haven't seen that officially but that's what they stated that they were going to transfer it with limited common areas. The question would be is a limited common area actually a lot by a different name and with a limited common area some of the questions about those areas would be these limited common areas for the exclusive use of one unit owner as opposed to everyone in the development. If the applicant is proposing condominiums because he has hinted he has, would there be condo documents provided to the board so they could assess what they actually lack. Brad - I'm not so sure he can do 121 units without a new application. Chairman - certainly when he's proposing 120 units instead of 60 that's a substantial change from what was approved. Hiram - in a cluster subdivision can we waive the 1/2 acre lot size? Brad - no, the Cluster Development Regulation and the Zoning Ordinance which is accepted by the town, we can't vote ourselves the power to waive or vary provisions of the zoning ordinance. Hiram - so right now it's a cluster subdivision for condos, is everybody agreeing to that? Attorney Shannon - if you are asking the applicant, yes, the application is a cluster subdivision utilizing the option of a condominium as provided by paragraph B. of the Cluster Development Regulations which specifically allows condominiums. Hiram - if those lots are going to be condos now and you are calling them condos is the application still good. Attorney Shannon - yes, that is the applicant's opinion and I have been doing some research in Rochester on a specific condominium development that was approved in the late 80's which I have pulled the records on. It was technically called a condominium mobile home park. We're disregarding the mobile home park and the characterization of it, but it was a condominium in which the condominiums defined areas on land on the ground. It's in contrast to the understanding of Mr. Horgan as to a condominium being from the walls in. This particular development was a condominium in which the unit was a defined section of ground on the plan. If you looked at the plan and didn't see on the bottom it was a condominium subdivision, it would look like a subdivision similar to the one which is being presented here. This is one of the things we have been trying to ascertain and be able to apply to this plan as one of the condominium features, but whether that's the only thing it is going to be or is it going to be lots with duplexes or single-family homes or other. The applicant is still in the process of determining that. Obviously as we said and correctly said by Mr. Horgan based on last week's vote we clearly needed to deal with the character of this in order to proceed with things on the map shown on the previous application plans. Hiram - each lot as you see it now is going to be a condo as you see it right now. Attorney Shannon - that's not exactly how the condominium is going to be defined. We haven't determined exactly how the condominium is going to be defined - we haven't determined that as we are still working on this at this time. We are still trying to see what condominium fits under these regulations. A specific example was the condo that was approved in a different city that the condo was a designated area on the ground, for example monuments on the corners and the condo where everything was in the corners. Hiram - when you spoke of condo on those lots - you could put 2 dwellings on 1 of those lots you are talking about right now. Attorney Shannon - that's one of the things we are trying to ascertain right now. Packy - I'm not sitting here saying I want 120 units, I don't want to disagree with the board. I'm just trying to establish that under these cluster subdivision regulations either we are following them and that's been the problem for the year and why the process took so long because the 1st 5 months I was coming here with a cluster subdivision application. I met all these requirements and gave you the information you requested and I was under the impression that when you accepted me on January 10th as a cluster subdivision that it was possible that you accepted my application because there was a clear review process in this ordinance for me to follow and I was following that process. The board through interpretation by the chairman and CEO said no we didn't accept you as complete. In order to accept this application we want x, y, & z. Rather than fight the system which I didn't think was correct I said fine if this is the information you want I'm going to have to provide it at some point and I provided it, then my application was accepted as complete as a cluster subdivision for what I then thought was a 2nd kind of acceptance of me as a cluster subdivision reg. And then me meeting all the regular subdivision regs. for an application to be complete. Another concept of a cluster subdivision reg. (i.e.,

clusters, things together, something that doesn't eat up all the existing road frontage in town), that there's a lot of benefit of this project that the approval process would be more expedient and easier which is one thing the town does control is whether this takes a year and a half or 3 PB meetings. I don't care at this point Brad whether there is a limited common area, whether its from the walls in, from the roof out, whatever it takes to get my plan approved. I think we're all in agreement it's time to get this thing approved or if it's the board's inclination, deny it, give me my reasons for denial and lets go on to the next step in the process. I'm not upset, I'm not hostile. I'm tired of this process and I think we all are. If you think I need a whole new application I would say you are wrong. If you want to deny my application for that reason, let's go to court on it, or whatever. Brad - if we're entertaining an application now that is potentially 2 units per delineation, whatever we're calling this, then to me that's a different application. Hiram - he just said he wasn't doing that. Brad - he just said he doesn't know yet. Hiram - that's right. Brad - when do we know, when do we approve it, what are we approving if we approve the plan like that? Hiram -if we make the stipulation, tell him what we want. Packy - that's the point, if you are going to approve 60 units or 80, that's not negotiation Brad. If we're going to go to court and I'm not threatening you here, but it's basically a threat and I can't disguise it. The plan could be 120 units. It's the next step in the process and if I have to go to court over this and I'm going to be denied and continue to get different feedback on different issues, let's move forward and say Packy you're right, what's the next thing. I mean the \$9000 study I had I might have to add a few units just to pay for that, so there's been some costs along the way. I've tried to negotiate some give and take with the board on number of units, so let's get to a point where O.K. Packy that's fine. I've spent \$60,000 in the last year folks. Brad - we're supposed to evaluate this plan on its merits not on whether you're planning to take this to court or no matter what you've spent on it, lets stay focused. A lot of times the discussion gets dissipated and we're on to other topics other than what's being addressed. Are the lots meeting the minimums, can we waive it, are they not lots, is it a condo, is it multiple units. Hiram - we've already said that 6 times, no they're not, they're not building lots. Attorney Shannon - they are not building lots. At the last meeting, you as a board made the determination in order for it to be a single-family building lot, you need to be 1/2 acre and my statement at the time was which sorts to elude to your comments regarding the minutes before is that obviously we can't proceed with this single-family building lots if they are defined as 1/2 acre lots, then we are preordained to have a denial, so we are responding to that and the way we are responding is that it will be a condo development and our research tells us that it can't be 4 corners on the ground as I referred to in that Rochester condo development, then that's what it's going to be. Troy - is that the only one you've got to refer to. Attorney Shannon - that's the only 1 I've been able to find at Strafford Registry of Deeds, does that mean I go to other counties in the state, perhaps, but this was approved by the Attorney General as a condo development. It does sound like a co-op, but obviously there can be a number of different ways that a property is developed but I don't care to talk much about a co-op, but it's not, it was approved by the Attorney General's office and by a particular municipalities PB as a condo development in which the condo unit was a designated area on the ground, and that's what we're trying to equate to the plan that's currently on the table with the board. Packy - I think the decision tonight is either you agree with paragraph B. of the Cluster Regulations which states we can do this as a condo or you don't? I think its kind of black and white. Troy - I don't think we got the determination of what's a condo though, that's where I'm kind of hung up, if they are single-family houses, then that's not condos. Condos are at least 2 properties together. Hiram - and he's going to put 2 if he does this, I'd rather see one. Brad - he's not saying that really, he's just saying a condominium is the ground. Discussion. Attorney Shannon - if the board is not clear of "condo" definition, maybe you should talk to your attorney to see how you define condominium and is it limited to within the 4 walls as Mr. Horgan said or can it be some other definition of a designated interest in land in which the bulk of the property is held in common and the condo unit is as defined in the instruments. You need that opinion from your attorney. Packy - I have a book that defines a condo - it's not complicated, it's not difficult. It actually puts another layer on the applicant in that we have now have to go get attorney general approval before we can sell our 1st unit. That's a 90 - 120 day process as well, so I would like to get direction from the PB that yea, we are going forward with condos, yea your right Mr. Applicant - it says in your regs. you can do that. I can show you plenty of stuff for sale right

now that has single-family houses in a condo unit and will have condos, multi-family and houses that are sold as condos. Discussion. Brad - the question is not on whether condos are allowed, the question is, is this, does the fact that they are condo units change the fact that these are delineated areas for the purpose of building that are being conveyed and do they qualify as lots. These are the 2 key questions to me. Troy - they are lots if they are conveying a space with a single-family house and nobody else connected to it. Chairman- the area will be defined by metes and bounds - is it actually a lot when you define the portion of area of land by metes and bounds is it not a lot. Brad - and I thought it was. Packy - I can say I will come forward with condo units and we are going to define the units from the outside edge of the walls in or 1' around the perimeter of the building or some defined specific area. Chairman - do you have an example of a condo document to show it is being transferred? Attorney Shannon - I have that in my research, but not here. I would like to make a suggestion on this point because clearly the cluster subdivision from my knowledge this is the first time a development has been processed by this board using the cluster development regulations and clearly this is the 1st time that a condo has come before the board in a proposal that is contrary to the traditional notion represented by Mr. Horgan of a building under 1 roof in which the condo is defined within the 4 corners of the walls. Perhaps it is appropriate for the board to confirm whatever process is appropriate, whether its legal counsel or otherwise so it understands what the definition of a condo is and that the things we are referring to as to whether a condo is a defined area on the ground, whether that is a valid condo under N. H. law because of the historical conduct of subdivisions is viewed as something on the ground to be a lot. It might look like a lot but if the law allows it to be considered a condo unit, then that's what it can be and that's the point the board needs to clarify. Brad - is it also a lot by definition, does the area by metes and bounds convey it's also a condo, or is it a lot by definition? Attorney Shannon - legal opinions have been asked by the PB and we've never seen these, so we don't know where you are coming from. We have never seen these but we need to know how to share information on these legal opinions in an appropriate manner so we can understand. If you are operating in your secret alcove and we are operating in our secret alcove we have no ability to exchange information or need to amend or recommend. We would ask you seek an opinion on a condominium with defined areas on the ground and leave it up to the board to decide to seek if that's an appropriate condominium. I would say that condo I referred to as approved Attorney General voted itself out of existence but it was approved and started to be built prior to the membership voting itself out of it. CEO - we have a legal opinion already. The only our legal counsel can make a decision is with some description. If you can give us a reference or if the condos you are referring to that have existed and have been accepted or if you can give us a sketch of how the condo documents will be drawn, if your condo documents draw lines on the ground, those lines make lots and must equal 1/2 acre, there's no question about it. Right now if you draw lines in the sand it must equal 1/2 acre, there's just no way around it. Packy - that answers my question and I would agree with that but not in its entirety. There are no minimum frontages, side setbacks, lot size, they are all owned in common even if you define it as a limited common area. All the people in the condo subdivision have a limited interest in the limited common land. Traditional lots go away when you deal with condos. Hiram - I think we ought to get a legal opinion from our lawyer and get together and discuss it. Chairman - we have a legal opinion. CEO - I think the lawyer is willing to talk but she either needs to see condo documents or other court law that establishes that a condo does not have to abide by minimum lot sizes. Right now she is of the opinion that if you draw lines in the sand it has to equal 1/2 acre. If you don't draw lines she would want to review the documents. If you do draw lines you better have some case law to support the fact it does not have to equal 1/2 acre. Packy - I'm comfortable with that direction. Chairman - one thing that has come up is also the question of what constitutes a substantial change, I think we intended to ask that since the last meeting. What constitutes an application being substantially changed so that its actually a different application. I'm suggesting the CEO ask the town attorney this. Packy - my preference is to convey lots - I talked before this meeting about limited common areas. I think there was a lot of assumptions made that these were private lots. I came to the board to convey it is my preference. I talked about this issue of it becoming a condo development to overcome the lot issue and the minutes reflect that on several occasions. I think it is important the attorney gets all the information because the way a question is asked gets a certain answer.

Both times the application was accepted as complete I got the feeling it may not go thru, but I got the road design. I don't want to have to change my road profile, drainage and everything around, etc. CEO - what we are looking at now is not ownership, ownership has nothing to do with being accepted as complete by the PB. What we're looking at is if your concept changes from an ownership of lots to condo and that condo draws lines in the sand, those lines have to equal 1/2 acre. It has nothing to do with how the property is owned, it has to do with how the land is transferred, or what is transferred to that owner. Lines in the sand must equal 1/2 acre. She has already said that. That relates to the question about substantial change in the application. A substantial change is not to do with the ownership it has to do with the quantity of land that is being transferred by the condo documents or maybe not. Brad - I remember what Packy is talking about, we've heard the word condo since before I was on the PB but my understanding was when we accepted the plan, the impact study, it was all done on single-family residences and that was the plan we accepted. I don't know if this is a substantial change to say now there's no lot lines, just all shared common area and we're conveying simply the building on a spot. Chairman - and is that what is going to be conveyed. Are there going to be certain privileges (ball field, lawn maintenance, bushes, parking, driveways, etc.) of a common area without drawing lines in the sand. Brad - just the building itself could be conveyed as a condo, one building, a single-family residence conveyed with all the land around it (driveway, bushes, everything could be common area. That's a valid description of a potential condo development with no transfer of land other than the land the building is sitting on, all land is common, that's a potential for a condo development without drawing lines in the sand. Discussion. We want condo documents. Packy we can now take this to the next level, is there a substantial change in the plans, its still a cluster subdivision, do we need to notify abutters? Chairman - we may have to ask ourselves a lot of things besides that because there's always things changing. Chairman asked for public input. Bob Place asked if this is his plan, then he has a substantial change I think. Barry Elliott - I find it odd you have cluster development regulations and can't modify lot sizes - what the hell good is it? It's a useless document. Norm - you are preaching to the choir. Troy - we can change setbacks and put them closer together defining the setbacks issue. Barry - it doesn't go the whole distance with what it needs. There must be some mechanism to come up with a reasonable adjustment to make this work (120 units is possible). Packy could come back with a true condo plan with 120 units now you have 120 instead of 60. The board needs to look at this, some of this is a board situation to come up with a reasonable adjustment. Brad - nobody said 120 except the applicant. Discussion on lot sizes. Brad - its open to interpretation. Chairman - I'd rather not get personal here. we could rewrite the Cluster Regulations which would probably not be a bad idea, but right now this is what we have to work with now. Packy - negotiation is what we need to work with so there's some flexibility for the applicant - there's an opportunity for the board to do something and I would ask the board to approve the plan the way it is. Attorney Shannon - from the legal perspective for the record to the extent that you are entertaining consideration amongst the board whether there's been a substantial change, I just want to make sure obviously Mr. Campbell has dealt with it but the legal position of the applicant is that its not a change, that at this point the application is still as has been duly noticed 60 lots in a cluster subdivision and the cluster regs. allows condos and therefore there is no substantial change whether the area shown on the map is considered a single-family house lot or a condo lot, the key magic number for what has been duly noticed to the community is 60 units and I believe and in the call of the notice it is written 60 units on one lot and that hasn't changed so to the extent that you need a formal position of the applicant, there has been no substantial change in the application as it has been noticed and accepted by the board. Chairman - you made a definition that the definition of a condo will be a defined area on the ground. Attorney Shannon - I don't recall I said it will be, I said it **may** be. We're in the process of making sure how to define the condo and it may be 4 stakes on the ground, it may be otherwise, but at this point clearly the plan shows 4 corners and that is what we want to be able to submit to the board for the condo classification as it has been referred to by the CEO. Chairman - the plan shows 4 corners. Packy - that's on the ground whether it's a condo or a lot. Chairman - and each one of those land areas are going to be considered a condo. Attorney Shannon - that's correct but we're trying to make sure that's doable and your attorney's interpretation is even if it's a condo if it is according to what CEO said, if it has lines on the ground, those are lots and must be 1/2 acre

each. The burden is put on me to be able no that's not correct and here's the case law and I believe the CEO mentioned we have to show case law or other approvals that would show this kind of a condo so that's what we'll do. I think the condo development is designed to be flexible and we're responding to decisions of the board as I said last time when you formalized the decision that it has to be 1/2 acre, then clearly we have to respond to that and that's what we've done. Chairman - so it's **may** not **will** be. Attorney Shannon - yes sir. Based on a may you wouldn't expect us to be able to take action on this application. Attorney Shannon - to make a final vote tonight, I would agree that would be premature because if we haven't defined what it is we are asking you to approve as to whether 4 corners on the ground or a building. Chairman - I was thinking you wanted us to finalize a vote to get it over with and I wanted to clarify that. Jim - I just want some clarification on the term 60 units still exists whether 60 deeds, 60 individual homes or 60 buildings containing multi-families. Attorney Shannon - 60 units within this development there will homes for 60 families, 60 units whether individual house, set alone or otherwise that is clearly what we are responding to tonight and for the next PB meeting - 60 families will reside in 60 family home units. Packy - the SR zone only allows duplexes so we're not proposing multi-family. Brad - for us to act on this we have to get rid of this may. We have to know what we're talking about. Are we talking about conveying as the plan we accepted shows, conveying that or may we be talking about something else. You need to respond to CEO's remark that those are lots as shown. Attorney Shannon - clearly Mr. Anderson I've said in response to what he said from discussions with your town counsel that I need to respond to that. Clearly we have to come back because 2 weeks ago we would be preordained to be denied. We're not here for an exercise in futility, we're actually trying to get something approved. I will clearly respond to what town counsel's opinion is. Jim to CEO - is there any legal avenue to address the 1/2 acre lot size without getting a town approved modification of our regulation? CEO - is there any way for the PB to do it? I don't think so. The ZBA may be able to vary it, but I don't think the PB can't reduce it further than 1/2 acre. Jim - O.K. then the definition defined on that plan is no longer accurate so it should be a revised plan. Although the concept has been here since the beginning the plan no longer reflects the buildings or the buildings no longer reflect the distribution of buildings in those spaces. We should have a floor plan of units since lots are no longer the issue under however you define condominium, the plan should reflect how they are going to be laid out on that general street. Attorney Shannon - if I understand your point correctly sir, if we were doing a straight single-family house lot subdivision we would have been showing the building setbacks as required. If it's a condo I would agree with you we wouldn't have shown exactly where the house was because as long as the house is built in conformance the CEO would make sure it conformed to the setbacks. Under a condo I would agree we now have to show where they are. We would have to deal with this. I would agree with your interpretation, that's our understanding as well. Packy - clarify whether we're coming back with a new application or not. I'd like to determine that in the next few minutes because if we are going to go away for 2 weeks and come back with an answer to a specific question and then find out in 2 weeks we need to start our application all over again because the board voted in a certain way that made us go in a different direction. We didn't choose not to have to do 1/2 acre lots. Discussion on road layout. I have the right to make those kind of changes in my layout as long as it is still a cluster subdivision, as long as its still an accepted plan and the changes from condos to single-family house lots are similar to that. If I wanted to lay out my road in a different vain would it negate the fact that you accepted the application as complete. I think that has been clear with many plans that go through this PB and others. Things can change after the plan has been accepted as complete. Your road profile can change, sewer pump station design could change, number of units from a practical matter. I would like to clarify that this is a proposal for a cluster subdivision, the unit issue is an issue that the board is going to say to me, Packy we want you to have 60 units. Will you promise us to have 60 units and I'm going to say to you approve my plan with 60 units and I'm not going to contest it, let's move on. If we can get to that point it would be very productive. CEO - besides the 1/2 acre lot size the SR district only allows a density bonus when its connected to a single-family dwelling so you have to be careful how you define your buildings. You have to be talking about single-family dwellings on commonly owned land that does not draw lines in the sand, or you don't get the bonus. You don't get down to 1/2 acre lots. Chairman - we haven't forgotten about the other issues and I don't really want to get into them right now, I just don't want you to go

don't really want to get into them right now, I just don't want you to go away thinking that all you have is the condo issue. I have a list but not right in front of me. Packy - if you can get it to me - some of the things are utilities and locations, wetlands permits, driveway access, that sort of stuff. Packy - I have this original list and not tonight but if you want to take some time after you get done your business either tomorrow or the next day. Chairman - I know what your saying, but I think if we say, well yea we'll accept this application and then some abutter says who just lot his view shed going to say - I didn't really know that. We want to know what we are approving. We need to continue this meeting. Brad - he just made one comment that I'm a little concerned about. I don't think this guy should go away and spend more money on drawing up another plan or a new road layout or even showing building footprints as condos or whatever until we know the answer to the question to what is a substantially changed plan and condo definition. Chairman - I don't want to make light of how much money he has spent **Jim Horgan made a motion to continue to November 26, 2002, Hiram 2nd, all in agreement.** Discussion. Chairman - we have to act upon an application (regarding items being put on the upcoming agenda) from the time the application is submitted within 30 days it has to be scheduled. Brad - well how is our business going to be conducted. Are we continually going to accept and start, or is Packy going to be bumped or does the new guy have the potential of not getting on. Chairman - the new guy has the potential of not getting on. Brad - then we should establish some kind of policy so that we can say that definitively to applicants when they come and ask to be put on the agenda for Site Review. CEO - your own rules of procedure say just the opposite though that the new business comes before unfinished business and that unfinished business gets kicked to the end. The PB can obviously change the agenda but that is what it says so an applicant coming in is going to figure he's 1st on the list. Brad - oh great so what do we have to change the rules of procedure, it doesn't seem right to me? CEO - I agree, you might want to finish what you have already started. Jim - we don't need to change the rules of procedure but you can schedule RSA Development for a particular time and make sure that your business is concluded by then in order to get RSA in. Brad - but then the clock starts and when do we do other work besides Site Reviews. Jim - you do what you gotta do. Brad - what do we have to do? Chairman - they have a statutory right to be heard within the 30 days and on a site review we have a clock that starts as well once we accept an application as complete but we can delay the consideration but we have certain time periods to act upon. If we schedule it on the agenda they have a statutory right to be heard. Packy - I'm not necessarily adverse to being scheduled for 4 weeks if the board can tell me this isn't a substantial change. Chairman - we can't do that. Discussion. Packy - if we're back to ground zero I don't think it's right. Attorney Shannon - frankly Mr. Chairman it was my suggestion he volunteer to go back in 4 weeks instead of 2 weeks because the level of work your town counsel wants will require time. Chairman - I have no issue to moving it to 4 weeks, we have an extension and if your asking to continuation we would like you to reciprocate understanding we're up against a time frame. If you need more time we need more time. Attorney Shannon - I believe I said that to the selectmen at that meeting that you requested a 90-day extension was granted. Certainly if we haven't completed giving you all the information we feel you need to make a decision, then we would agree to extend it, but I would assume if we overcome the issue of the condominium and 1/2 acre lots and issues raised by CEO tonight, we're pretty close to being done. Packy was instructed to stay in touch with the CEO. Chairman - we're authorizing him to communicate with you. Packy - it may even be the CEO who makes the interpretation of the zoning ordinance. Under the states statute, it's the CEO's job to interpret the ordinance. We need to clarify who needs to make that decision. CEO will be in touch with Packy. **Jim Horgan made motion to recess at 9:05 p.m., Brad 2nd to return at 9:15 p. m. Meeting reconvened at 9:15 p. m.** Marty is back on the board.

- Chairman presented copies (attached) of changes recommended by the Subcommittee to the Master Plan and Zoning Ordinance. Kelly has left the subcommittee because of her moving and we need another member. Hiram volunteered to serve as a member of this subcommittee. In 2003 we will have to review the Master Plan to see if the town would want changes incorporated. Our work is never really done. We

need to schedule this for public hearing. We need to adopt changes. This will help guide us with the Zoning Ordinance changes also. Discussion on the use of community facilities for local plays, programs, exhibits, workshops, etc. and development and financing of a program to maintain the areas of the Community Arts Center. Schedule for a public hearing. Suggestion was to do one set of the old Master Plan along with the new changes. **Jim made a motion to schedule these Master Plan recommended changes for Public Hearing on November 26, 2002, Marty 2nd, motion carried.**

- Coastal Materials - ? Inspection Station. CEO and Chairman discussed a form received from the State (DOT) on allowance of an "inspection station" on this property. Comments were made on this site. This would not be open to the public. They have a repair facility now. Chairman - Camerons and Barrons inspect their own vehicles. They can do owner's of the business, but not the public. Jim - this is an opportunity to make sure hazardous materials are contained, etc. CEO said he has been dealing with several attorneys on this property transfer but the inspection station didn't come up in conversation. Jim - get more information (documentation) on what is there. CEO - we should be able to get what we need. We could in fact deny them this inspection facility. Jim - we need a written narrative. Brad - motion to table for review, Troy 2nd, all in agreement. CEO will call and ask for information and plans along with recommendations. Chairman- verify they are only doing fleet inspections. **Brad made a motion to extend the meeting, Troy 2nd, all in agreement.**
- **Brad made a motion to rescind the Cluster Development Regulations until such time as we can re-write them.** Discussion followed on the town being sued because of these regulations. **Brad's motion failed for lack of a 2nd.** Chairman - we need to work on a good cluster development regulation. Discussion. We need to look at maximum lot sizes. Brad - I've got to believe other towns approve condos and have some good regulations. Chairman - we need to look into some of these.
- The next item of discussion by the Chairman was that of hiring a planner, possibly a regional planner with other towns sharing the cost. Norm said to bring up the Cluster Development Regulations at the next meeting.
- Chairman discussed the PB Budget. He presented a spreadsheet printout he and CEO had worked on. The Selectmen will be asked about a regional planner. Discussion on equipment being made available for use in rewriting regulations using transparencies, etc. A part-time planner or regional planner was discussed. We have a lot more to discuss and issues are more complex than they used to be. Jim - what can we get from SRPC. Chairman - we get about 20 hours a year and we've eaten up this time this year with the Master Plan subcommittee. SRPC charges about \$50 an hour. Brad - put out a request for proposals and see what we get. We need to look around. Chairman - should we ask for additional funds for a planner at around \$20,000? The Selectmen may differ. The Town Administrator seems to agree with this suggestion. Brad - they (part-time planners) work on a subcontract basis. Discussion. CEO - we are looking at funds the PB and ZBA bring in from scheduled public hearings. The board was in consensus on the Planner and \$20,000 figure to be added as a line item.
- Chairman informed the board members of a "Growing Smarter" seminar to be held November 16, 2002 at UNH in Manchester.

- With no further business to discuss, Brad made motion to adjourn at 10:30, Marty 2nd, motion carried. Minutes recorded by Fran Osborne. Taped transcript available in the Code Enforcement Office, 41 South Main Street.

APPROVED

Norman Russell, Chairman
Planning Board
Town of Farmington

Date