

ZONING BOARD OF ADJUSTMENT  
268B MAMMOTH ROAD LONDONDERRY, NH 3053

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5 DATE: APRIL 17, 2013  
6  
7 CASE NOS.: 10/17/2012-2, 3, AND 4 (REHEARING CONTINUED)  
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9 APPLICANT: ALFRED WALLACE, HENRY WALLACE, AND HAROLD WALLACE  
10 62 PERKINS ROAD  
11 LONDONDERRY, NH 03053-2416  
12  
13 VAN STEENSBURG ONE FAMILY TRUST,  
14 LEO AND MELANIE VAN STEENSBURG, TRUSTEES  
15 48 PERKINS ROAD  
16 LONDONDERRY, NH 03053-2416  
17  
18 LOCATION: 62 PERKINS ROAD; 16-3; AR-I (WALLACE) AND  
19 48 PERKINS ROAD; 16-1; AR-I (VAN STEENSBURG)  
20  
21 BOARD MEMBERS PRESENT: JIM SMITH, CHAIR  
22 LARRY O’SULLIVAN, VOTING MEMBER  
23 JAY HOOLEY, VOTING MEMBER  
24 JAMES TOTTEN, VOTING ALTERNATE  
25 NEIL DUNN, CLERK  
26  
27 REQUESTS: CASE NO. 10/17/2012-2: VARIANCE TO ALLOW PROJECT PHASING TO  
28 EXCEED THE MAXIMUM NUMBER OF DWELLING UNITS LIMITED BY  
29 SECTION 1.3.3.3, AND TO PROVIDE RELIEF FROM BUILDING PERMIT  
30 RESTRICTIONS UNDER SECTION 1.4.7.2.  
31  
32 CASE NO. 10/17/2012-3: VARIANCE TO ALLOW A REDUCTION IN THE  
33 NUMBER OF WORKFORCE HOUSING UNITS FROM 75% AS REQUIRED BY  
34 SECTION 2.3.3.7.1.1.4 TO 50%.  
35  
36 CASE NO. 10/17/2012-4: VARIANCE TO ALLOW 24 DWELLING UNITS IN A  
37 MULTI-FAMILY BUILDING WHERE A MAXIMUM OF 16 UNITS IS  
38 PERMITTED BY SECTION 2.3.3.7.3.1.2, AND A VARIANCE FROM THE  
39 DIMENSIONAL RELIEF CRITERIA OF SECTION 2.3.3.7.4.5 AND THE  
40 ADDITIONAL CRITERIA OF SECTION 2.3.3.7.4.6.  
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42 PRESENTATION: The Clerk read Case Nos. 10/17/2012-2, 3 and 4 into the record with no previous cases listed.  
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44 NEIL DUNN: Since [the last meeting], we did get a letter from Jack Mettee [see Exhibit “R”].

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JAMES SMITH: I presume you had a chance to read the memo from our consultant?

THOMAS LEONARD: Yes, we have. And thank you very much. Just for the record, my name is Thomas J. Leonard. I am here with Thomas Monahan. He is the applicant. And we are ready to go on this session, whatever it may be. So we appreciate your efforts in this regard. Jaye Trottier did send me and Tom and copy of the memo, so we have seen it. I think it confirms what we have been thinking. So rather than make any more comments on that memo, unless there are questions, we'll...

JAMES SMITH: Okay, I'll just ask the Board. Does anyone on the Board have any comments or questions about the memo?

NEIL DUNN: I, to be honest with you, just now am reading it.

JAMES SMITH: Okay, I'll give you a chance to. For those in the audience, the memo was basically about two questions we had. One was about the rate of return of 6.5% and the second part was the cost of construction of the 16 versus the 24 units and how that all worked together. The gist of the memo confirmed what we had already heard in the previous presentations, as I would interpret it.

LARRY O'SULLIVAN: Well, the Mettee response was pretty much using the same yardstick that the proposed variance used, so I couldn't imagine coming up with something different for those, what was that called? The Means? The name of the service that provides...?

JIM BUTLER: R.S.? R.S. Means?

THOMAS LEONARD: Yes.

NEIL DUNN: Yeah.

THOMAS LEONARD: So, kind of in a summary sense, as you say, Mr. Mettee, your advisor, reviewed the construction costs with our advisors, Rick Scudder and Russ Thibeault, and then he also independently verified them with both developers and with several treatises. I guess that's the Means, that was one of them. And he confirmed that the construction cost estimates that we had included through Mr. Thibeault's report seem to be reasonable and a strong foundation for the theories that Mr. Thibeault put forth. He also looked at the rate of return that Mr. Thibeault had used and confirmed that that, too, was a reasonable and well thought out rate of return. Basically confirming the economic analysis of Mr. Thibeault and Mr. Rick Scudder.

NEIL DUNN: If I may, Mr. Chairman?

JAMES SMITH: Sure.

NEIL DUNN: Are these units going to be similar to your Bedford properties in design and appropriations?

88 TOM MONAHAN: Tom Monahan. The Bedford property is an 83-unit building, four story building. We're  
89 talking, of course, hoping, for 24-unit buildings, three story. So the scale of the buildings are smaller. The  
90 exterior of the buildings, our plan is to use a stone exterior along with a vinyl façade.  
91

92 NEIL DUNN: I guess I should have been more specific. Interior-wise, I believe, the one in Bedford has granite  
93 kitchen countertops and bathroom and custom, a lot of custom is advertised as luxury...  
94

95 TOM MONAHAN: That's correct.  
96

97 NEIL DUNN: And we're talking workforce housing and I'm having trouble with...although the cost projections  
98 are correct, providing workforce housing with luxury...I don't have granite and a lot of the things, so I'm just  
99 trying to look at how do we weigh, from a cost basis...that we have to support a workforce housing project  
100 that is very high end and I'm trying to get a handle on that, I guess.  
101

102 THOMAS LEONARD: So the answer to that really depends on the rest of the market. Because what we're  
103 obligated to do is we need to build a project that, of course, has some market units, whether it's 50% or 25%  
104 and those have to be viable in the economic world. We have to be able to make enough money on those to  
105 justify the entire project. But we're also restricted to construct the workforce housing units in a similar  
106 fashion, so that's the balancing that has to occur.  
107

108 NEIL DUNN: But only because you want to apply the workforce housing densities and the benefits of the  
109 workforce housing. You could build this as an upper scale, all...  
110

111 THOMAS LEONARD: We could absolutely do that. We're just relying on the Town's incentive and stated goals  
112 to provide a diversity in some of the rental projects and specifically encouraging this kind of development. So  
113 without going through things, but to kind of put us back into our context, what we did from the beginning was  
114 identify this as a workforce housing project. We opted for two separate paths to get relief from the three  
115 restrictions that we've been focusing on; the first path is the path of variances which has the typical  
116 requirements of a variance. The second path is the path of workforce housing which is a separate process,  
117 more of a give and take process that we talked about the last time. Because the economics are so important  
118 to both discussions, we included Mr. Thibeault's comments. But basically, after all is said and done, I think  
119 what this Board is doing and what is up for consideration is balancing the goals of the several ordinances,  
120 restrictions, and balancing them with the goals of the workforce housing ordinance, which of course is a stated  
121 incentive to provide diverse rental housing. And that's what this Board is charged with. You can do it by way  
122 of a variance or you can do it by way of a workforce housing give and take. The most important factor that I  
123 want to leave and make sure we keep in context here is that this is rental property. And one of the incentives,  
124 one of the goals of the incentive inclusionary housing in the Town of Londonderry is to provide rental  
125 properties and that's the difficulty here because as we discussed last time, the financing of rental properties is  
126 so different and has so many more variables because of the term of the financing. It's so much more difficult  
127 to meet all those demands for a viable project. And that's what Mr. Thibeault said, that's what your expert  
128 has said, and basically that's why we're asking for relief. Again, the relief is not for the use, not for the  
129 permission of the nature of the project. It's really just on these three very specific items. We're asking for  
130 three year phasing instead of five, we're asking for 50% workforce component instead of 75% and we're  
131 asking for buildings of 24 units a building rather than 16. And I think we talked at length about how each of

132 those restrictions, in the context of a rental project on this property is actually counterproductive. It does  
133 exactly what the ordinance says that they didn't want to do. So that's kind of where we are. We can go...I  
134 don't know if you want to go one at a time and then do the workforce housing discussion. I'm not sure how  
135 you would like to proceed, but we're happy to do it in any way you would like.

136  
137 JAMES SMITH: Okay. At this point, does the Board have any additional questions or comments that they  
138 would like to make?

139  
140 NEIL DUNN: I have questions. You went in front of the Planning Board already with this proposal and you  
141 were talking to the increase in units?

142  
143 THOMAS LEONARD: Well, we don't have to get permission for the increase in units. It's a permitted use.  
144 What the workforce housing ordinance that the Town has adopted does is it falls, and we talked last time  
145 about incentive zoning and inclusionary zoning, the workforce housing ordinance in the Town of Londonderry  
146 is inclusionary and incentive zoning and it is permitted to encourage the development of affordable housing.  
147 That's why it was adopted. That's how the State law authorizes it. This particular ordinance that we're  
148 working under is that inclusionary zoning ordinance. And it says that if you will build workforce housing, we  
149 will give you more units. That's basically what the Town of Londonderry is saying. We are complying with  
150 that. Now, the first step we took was to discuss some of the issues with the Planning Board. And several  
151 months ago, six or eight months ago, we went to the Planning Board. I personally was not at those meetings,  
152 but the discussion focused on the layout, some of the concerns of buffering, things like that. But we had the  
153 three issues that are before you because under the incentive zoning, these three requirements apply. But as  
154 they are applied to a rental project, they present barriers to the viability of the project. So that's why we're  
155 looking at these three. Now once we get permission to build as proposed, we have to go to the Planning  
156 Board. There will be more discussion about siting of these buildings. Even though right now you see, as we've  
157 discussed, we've moved many of them to the rear and we've done whatever they had suggested. There's still  
158 a lot more work to do on that front. So yes, we've been to the Planning Board, but we are going to back to  
159 them. We have to get a Conditional Use Permit and that's all part of the process.

160  
161 NEIL DUNN: Speaking specifically to 10/17/2012-4, the maximum...request a variance to allow 24 dwelling  
162 units in a [multi]-family building where only 16 are allowed. You did bring that up with the Planning Board  
163 previously and they did say that they would not increase to the 20 that they could...

164  
165 THOMAS LEONARD: No, they said that...

166  
167 NEIL DUNN: ...is what I read in the minutes.

168  
169 THOMAS LEONARD: They said they didn't have authority to and that's why...it's a zoning ordinance. So we  
170 had to come to the Zoning Board for relief from that. And that's why we're here. It's just like any other zoning  
171 ordinance, although it is not a use variance. You know, it is what it is. But it is a zoning ordinance that we  
172 have to look to you, the Zoning Board, for relief. And you, the Zoning Board, have two paths you may follow;  
173 you can follow the legal requirements of a variance or under the new workforce housing statute, you can  
174 provide relief under the workforce housing statute. We are offering you either path.

176 TOM MONAHAN: If I may, we had submitted a plan for discussion purposes only to the Planning Board and  
177 actually it was five 48-unit buildings, as opposed to the plan, and upon their recommendation, not a  
178 recommendation of 24-unit buildings, I don't want to say that, but they certainly felt that the 48-unit buildings  
179 would be too much and so that was a major topic of discussion with the Planning Board.  
180

181 JAMES SMITH: Neil, do you have anything else at this point?  
182

183 NEIL DUNN: I'm just trying to get past the...I'm looking at the points of law, and when we get to the...on case  
184 number four, when we talked about the 24 units versus the 16, the spirit of the ordinance seems pretty clear  
185 that they can go to 20 and then they talk also under 2.3.3.2 that if the Planning Board denies the increase, that  
186 they can't come to the Zoning Board. So, for them to come to us first still seems to be kind of circumventing  
187 the intent of the ordinance and I'm just trying to get a handle on that component of those five points there, I  
188 guess...  
189

190 JAMES SMITH: Well, okay, I think the problem with that line of thought would be, in my mind, the ordinance  
191 addresses going from 16 to 20. They couldn't work it with 20. So they were trying to go directly from 16 to  
192 24, which is beyond the scope of what the Planning Board can do.  
193

194 LARRY O'SULLIVAN: Which is why we're here.  
195

196 JAMES SMITH: Right.  
197

198 NEIL DUNN: But also, when you get into this same 2.3, and that's where all of this is starting, under 2.3.3, it  
199 also says that the Zoning Board...the Planning Board...if you look at 2.3.3.2, it says "any person aggrieved by  
200 the Planning Board's decision that constitutes a denial" has to go to the Supreme Court. They cannot go to  
201 the Zoning Board of Adjustment. So when we're talking 2.3.3 and all those, and the dwelling units, how do I  
202 get around the spirit of the ordinance? It seems quite clear that we are stepping beyond our boundaries and  
203 that I'm not comfortable. So I'm trying to get help to help me get that by that spirit of the ordinance. It seems  
204 like it was written fairly...  
205

206 JAMES SMITH: It was the spirit of the ordinance...part of the spirit of this ordinance is to provide incentives to  
207 build this type of a unit.  
208

209 NEIL DUNN: I understand that, but they're so clear in saying that it's 16 or 20 and that if this went through the  
210 normal course and it was denied, the Zoning Board couldn't step in there, so I'm reading it as it's written that  
211 I'm having trouble with that, so I'm just trying to get with that.  
212

213 LARRY O'SULLIVAN: We had this discussion the first meeting...  
214

215 NEIL DUNN: Right, and it still wasn't answered clearly for me, or...  
216

217 LARRY O'SULLIVAN: Well, I thought that Richard had the answer to that one based on, I think, maybe it was  
218 the second meeting, but...because the builder has the option to go to the Planning Board or here first. Isn't  
219 that right, Richard?

220  
221 RICHARD CANUEL: Yeah, there's a couple of issues there. Under the ordinance, the Planning Board is  
222 authorized to allow an increase in density for the number of units per building, from 16 to 20. That's the  
223 maximum the Planning Board can do through the issuance of a Conditional Use Permit. If, during the process,  
224 the Planning Board denies that Conditional Use Permit, the appeal of that denial goes to Superior Court. Now,  
225 if the Zoning Board were to vote to authorize up to 24 units per building, the Planning Board would still have  
226 to go through the Conditional Use Permit approval criteria. They would have to go through that entire process  
227 anyway because it's an increase in density. The Planning Board still has the authority to deny that, whether  
228 you grant the variance or not, if they do not meet the criteria of that Conditional Use Permit. Follow me?  
229

230 LARRY O'SULLIVAN: So they're not sidestepping it. They had the choice to come here first or there first.

231  
232 RICHARD CANUEL: That's right. Simply because they're asking for an increase in the density beyond what the  
233 Planning Board is authorized to do. Because that is part of our ordinance, it is this Board's purview to grant  
234 that increase.  
235

236 LARRY O'SULLIVAN: Wouldn't any sane person want to come here instead of going to Supreme Court?  
237

238 NEIL DUNN: Well, no, again, but I'm looking at how it was spelled out and what they wanted to do. So I'm  
239 good. That's my point of...  
240

241 JAMES SMITH: But that's talking about the Conditional Use Permit.  
242

243 THOMAS LEONARD: Right.  
244

245 LARRY O'SULLIVAN: Yeah.  
246

247 RICHARD CANUEL: Correct.  
248

249 JAMES SMITH: It's not talking about the 16 versus 24.  
250

251 NEIL DUNN: No, it absolutely is. It's all...when you look at case 10...I don't know if we're getting more in  
252 deliberations. I hate to do this, but in order...I mean, where we're at now, I'm having issues with it. It's all  
253 referencing Section 2.3.3 and then you can go 7 and all the other dots, but it all starts with 2.3.3., and that's  
254 where it's spelled out and that's what they're asking for relief from here. So that's [indistinct].  
255

256 THOMAS LEONARD: Mr. Chairman, may I just make one comment? I believe the difficulty you're having is  
257 that the Planning Board, in the Conditional Use Permit process, there is some discretion. They are given an  
258 opportunity to adjust some of these densities, et cetera. But the bottom line is that the ordinance is as it is.  
259 And it is a zoning ordinance. We are saying that the discretion the Planning Board is afforded is not sufficient.  
260 We need relief from the ordinance, even from the discretionary portion of that. So it's as if, putting it in  
261 another completely different context, if the Planning Board had the right to allow a setback of 20 or 30 feet,  
262 but we needed a setback of 10 feet, we would have to come here because they don't have the authority.  
263 Their discretion does not get us to where we need to be. And that's where we are. The Planning Board does

264 not have discretion to give 24-unit buildings. The ordinance says they only have discretion between the 16  
265 and 20. We need 24. So we have to get permission from you as the Zoning Board to proceed with 24. We  
266 then need to go to the Planning Board for the balance of the discussion of their discretion. And that's where  
267 we are. Because the rules do not give them the right to adjust, we need to ask you to adjust first. And that's  
268 true of all of these restrictions that we're requesting relief of.

269  
270 NEIL DUNN: Okay. That helps. Thank you.

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272 JAY HOOLEY: Neil?

273  
274 JAMES SMITH: Neil?

275  
276 JAY HOOLEY: If I could just put my two cents in and, Richard, jump in if I'm misreading this or  
277 misunderstanding it, but in 2.3.3.2, in the very beginning, what that is speaking to is the Conditional Use  
278 Permit to allow a workforce housing development. They're still planning to go to the Planning Board and  
279 request a Conditional Use Permit to build a workforce housing development. That's all 2.3.3.2 is speaking to:  
280 the initial Conditional Use Permit to build an inclusionary housing. They're still going to do that. So they're  
281 not asking for relief from that. So on page 37, 2.3.3.3.2, that is speaking only to that initial CUP, asking  
282 permission to build an inclusionary housing development.

283  
284 NEIL DUNN: The whole...

285  
286 JAY HOOLEY: You need a CUP to make this project happen as such.

287  
288 RICHARD CANUEL: Yes.

289  
290 NEIL DUNN: Which I understand. Conditional use.

291  
292 JAY HOOLEY: Okay.

293  
294 NEIL DUNN: But if we look at the variance as it is applied, 2.3.3 Section 7.3.1.2 is still part of the inclusionary  
295 use permit. It's part of the same chapter and that's where it's giving us those numbers of 16 and no more  
296 than 20.

297  
298 JAY HOOLEY: Right but it says 'anybody who is aggrieved by a denial of the Conditional Use Permit.' That  
299 hasn't happened.

300  
301 NEIL DUNN: Right, but I'm trying to package it all together because 2.3...

302  
303 JAMES SMITH: I think you're trying to put too much together.

304  
305 THOMAS LEONARD: Yeah. So what we're going to do...  
306

307 NEIL DUNN: And it helped when Attorney Leonard said, you know, that's why they're here for us, and that  
308 helps, but it's still...the Section 2.3.3.7.3.1.2 is still part of that inclusionary ordinance. And where it says 20  
309 and 16, and he's saying that's where we have the authority to go above it...

310  
311 THOMAS LEONARD: And that's why you have to...

312  
313 NEIL DUNN: ...so that helped clarify it, but it still gets back with me, personally, to the intent of the ordinance.  
314 That's all I'm saying now. And so that did help. I appreciate that.

315  
316 THOMAS LEONARD: So with regard to the intent...

317  
318 NEIL DUNN: Or the spirit, I'm sorry.

319  
320 THOMAS LEONARD: Or the spirit, because they're both very similar.

321  
322 NEIL DUNN: Yup.

323  
324 THOMAS LEONARD: We spent some time the last time, but I...it's very important to truly look 'what's the  
325 intent?' The intent is not to create 16-unit buildings. The intent is to create affordable housing. And we  
326 examined all of those purposes and intents and that's what I'm talking about; balancing that restriction, what  
327 I'm going to suggest to you is arbitrary restriction of 16 units in a building. What is that accomplishing? And  
328 the question is by imposing that restriction on Mr. Monahan for a rental project, is the town accomplishing a  
329 legitimate goal that they are trying to accomplish? And I'm suggesting no. There is no such legitimate goal  
330 that is accomplished by the 16-unit building. The goal is not to have 16-unit buildings. We talked about scale.  
331 It doesn't accomplish scale. We are within the scale that is permitted by the ordinance. So I think for you to  
332 say that it's contrary to the spirit, you're forgetting what the real goal, the real spirit of the ordinance is and  
333 what the real goal of the ordinance is. It is not 16 unit buildings. That happens to be the restriction that works  
334 most of the time, but it does not work with a rental project because of the economics that we've talked at  
335 length about. I appreciate the...it's confusing and I appreciate the difficulty in this decision process and how  
336 thoughtful everybody is, but I think as you step back and look at the basic reasons for these things and what  
337 the Town of Londonderry has stated as the basic reasons, that's where it starts to become clear. When you  
338 balance 'Why do we have this restriction?' and 'How does that fit in what we're trying to accomplish?', I'm  
339 suggesting there's no reason for imposition of the restriction.

340  
341 JAMES SMITH: Okay. Neil? Jay? James?

342  
343 JAY HOOLEY: Sure. Additional clarifying...

344  
345 THOMAS LEONARD: Yes, sir.

346  
347 JAY HOOLEY: In your first request, which is...

348  
349 THOMAS LEONARD: Phrasing?



351 JAY HOOLEY: ...10/17/20012-2, restrictions under 1.4.7.2, I just want to make sure that what I believe I've  
352 heard you say and what I believe I read in the minutes is accurate. You've actually, through your verbal  
353 presentation, amended your request that you're not necessarily concerned with the GMO and that you  
354 believe this project can move forward without relief from the GMO. Is that an accurate statement?  
355

356 THOMAS LEONARD: Well, yes. So...

357  
358 JAY HOOLEY: No, you can stop there.  
359

360 [Laughter]

361  
362 JAY HOOLEY: That was good. You're done.  
363

364 THOMAS LEONARD: I'll stop there. Yes.  
365

366 JAY HOOLEY: Not that you wouldn't take it, but that you're...  
367

368 THOMAS LEONARD: No.  
369

370 JAY HOOLEY: Okay.  
371

372 THOMAS LEONARD: Well, and let me...I feel like I've got to explain a little bit. To be honest with you, if it ends  
373 up being imposed, we would ask for relief later.  
374

375 JAY HOOLEY: But you're certainly not...  
376

377 THOMAS LEONARD: But we would have developed facts specific to that point in time, so for today's purposes,  
378 yes.  
379

380 JAY HOOLEY: And by the testimony of most of your expert witnesses, you don't reasonably anticipate that  
381 circumstance arising.  
382

383 THOMAS LEONARD: We don't.  
384

385 JAY HOOLEY: Okay.  
386

387 THOMAS LEONARD: We don't.  
388

389 JAMES SMITH: So we can take that off the table.  
390

391 NEIL DUNN: That's what were...  
392

393 JAY HOOLEY: I think what they're saying is they, you know, are comfortable that we don't need to deliberate

394 too much about the GMO. They're comfortable if they don't get that, so we can save ourselves some  
395 aggravation on that one.

396  
397 JAMES SMITH: Okay.

398  
399 LARRY O'SULLIVAN: Aggravation?

400  
401 JAY HOOLEY: Well, time.

402  
403 LARRY O'SULLIVAN: It was my issue, so I'm glad it was kind of like moved away, so...They ought to move it to  
404 further Boards or future Boards.

405  
406 JAY HOOLEY: The second question I had on 10/17/2012-4, which is your third request, you're seeking relief  
407 from three sections, one of which is 2.3.3.7.4.5, and I'm going to get to that.

408  
409 THOMAS LEONARD: Yes, that's...

410  
411 JAY HOOLEY: And that is "The following criteria must be satisfied in order for the Planning Board to grant the  
412 Conditional Use Permit for dimensional relief," which I guess you're looking at the 24 versus 16 a dimensional  
413 relief.

414  
415 THOMAS LEONARD: Yes. The only reason we included that is because the language is so general, it seems to  
416 incorporate it. But the bottom line is, it is the request for 24 units as opposed to 16. And our plan, to make it  
417 very clear, we fully intend to go through the conditional use process next step.

418  
419 JAY HOOLEY: The second one for the increase.

420  
421 THOMAS LEONARD: Not for the increase.

422  
423 JAY HOOLEY: Not for the...okay.

424  
425 THOMAS LEONARD: Not for the increase. So the way I envision this, unless someone tells me differently, is  
426 that if you approve the 24-unit buildings, we will go to the Planning Board and say that we have authority to  
427 build 24-unit buildings and we want to go through the conditional use process to discuss where they should be  
428 sited, how they should look, et cetera, in a typical manner. But the Planning Board doesn't need to address  
429 the number of units in the building. They simply need to do all the other things that the Planning Board does  
430 in the conditional use process.

431  
432 JAY HOOLEY: And I apologize because I know, I believe I've asked this question before, but are you looking to  
433 do that second Conditional Use Permit process for an increase at all? In other words, we could give you relief,  
434 saying the number shall be 24, not 20, but there's still, and I comprehend why you're...  
435

436 THOMAS LEONARD: No, we're not going to ask more than that. No. We don't read that to allow or enable  
437 the Planning Board to go beyond what you say here tonight. So in other words, our plan will be 24-unit  
438 buildings. That's what our plan will be.  
439

440 LARRY O'SULLIVAN: Ten of them.  
441

442 THOMAS LEONARD: Ten of them. Yes. We're not going to ask for increased density, we're not going to ask  
443 for any other adjustments except what the Planning Board has authority to review.  
444

445 LARRY O'SULLIVAN: Be specific now. This is...  
446

447 THOMAS LEONARD: Yeah.  
448

449 LARRY O'SULLIVAN: ...ten of 24 on 26 acres.  
450

451 THOMAS LEONARD: That's correct. Yeah. And we're perfectly happy with that being part of the approval.  
452

453 LARRY O'SULLIVAN: Are you looking at me because it's my turn now?  
454

455 JAMES SMITH: Well I keep thinking that's better than 15.  
456

457 LARRY O'SULLIVAN: You keep skipping over me, so...  
458

459 JAMES SMITH: Fifteen on...15 16-unit buildings on the same acreage.  
460

461 LARRY O'SULLIVAN: I understand.  
462

463 JAMES SMITH: Because one of the big things I consider about the whole thing, is the amount of impervious  
464 surface you create. And by increasing the number of buildings, you're increasing the impervious by a third,  
465 which just creates even more problems with the site regarding runoff and how to control the runoff and all  
466 the rest of it. So it just makes sense to have the ten buildings versus the 15 to me.  
467

468 LARRY O'SULLIVAN: I don't disagree with you.  
469

470 JAMES SMITH: Well...  
471

472 LARRY O'SULLIVAN: Again, my major issue is that we would be bypassing our Growth Management  
473 Ordinances, so in my opinion, the reason that we have the growth management is for everyone's protection.  
474 It isn't just for this particular lot. It's for the rest of the town because who knows what's going to come up  
475 with 1,000 acres near the airport or the things that are being discussed someplace else. And we can't think, I  
476 can't think four years out. And I'm glad that's off the table now because frankly, I couldn't imagine four years  
477 from now, a turn in the economy that makes it all of a sudden, Londonderry is the place everybody wants to  
478 be. And if we have the housing, I mean this is the whole purpose of workforce housing as far as I'm  
479 concerned, to help to balance out our community, frankly. The issues, though, that I've been hit with in the

480 past month, since our last discussion...I guess we've been playing this a lot on cable TV, because people have  
481 brought it up at a variety of different locations to me. I don't know if it's because I had a beard and then trying  
482 to go incognito now and I'm trying to do whatever I can not to look like me anymore, so I hope the cameras  
483 not on, but the issues are that they have this...okay, so if it's gonna be all rentals, people have asked me how  
484 are we going to ensure that it doesn't turn out to look like some of the other rental facilities that are in town  
485 that recently traded hands that were always a mess, always had 15 cars dead, parked, stopped on blocks in  
486 the parking lot, sat there with kids playing in the parking lot. What else did they say? Oh, trash. Trash  
487 buildup, trash pickup was private. Those are the types of things that they said, how...because there's less  
488 incentive, less ownership of the surroundings in the area that rental housing provides, you know, rental  
489 tenants in and of themselves. They don't feel an ownership. So how does the property manager intend to  
490 address those issues and can we address them in advance? I think that's pretty much what I've been asked by  
491 several people, all in one question. How do you address that?  
492

493 THOMAS LEONARD: Well, I appreciate the question. I'm going to give you part of the answer, I think, and  
494 then I'm going to turn to Tom for some, probably more detail, but first off, he's going to build this and he's got  
495 to...it's a business. He's got to do a good job or people aren't going to rent it. And he's gonna have to make  
496 some substantial payments along the way to keep this thing going, so there is an incentive, in a new property  
497 especially, one that is recently financed, there's an incentive to do a job that will bring in tenants. The other  
498 thing is that the town has actually said they want rental properties. So I think that's a partial answer. Now I  
499 think what you're going to hear from Tom is he can give you an example of what he does at other sites and  
500 how it works and you could take a visit and see. I mean, he takes care of his properties and that's because the  
501 economic incentives are important in order to keep the demand for rental properties as strong as it is. But he  
502 can give you some specifics on what he does in Bedford.  
503

504 TOM MONAHAN: Well, on a general statement, I think that the workforce housing rental rate is a fixed rate.  
505 But the other, hopefully 50% of the units are market rate rents, and that's where I've got to make my hay. So  
506 it's critically important to me to have the site, that the entire site, be in pristine condition. Same as in Bedford  
507 where we 75% market rate units. But first of all, I have professional management companies. It's not me and  
508 wife going out and sweeping the...because I would agree, who would? We have a professional management  
509 company that monitors on a daily...we have people on site every single day. We do have rules and regulations  
510 and the rules and regulations are specifically to have it...the analogy I guess is a Cadillac as opposed to a  
511 Cutlass. And it's important to me for that reason and it's also important to me because I plan on building  
512 many more apartments in southern New Hampshire. And so, you know, I'm not leaving. I'm looking at the  
513 long term. And again, you know, there will be an owner and it will be me. And it's important that it look good  
514 for my reputation, you know? I can proudly say go to Bedford and you'll see something that's totally  
515 seamless. You can walk in any unit and they're luxury. You don't know which ones are workforce. They all  
516 have granite countertops. They all have the same appliances. So I hear the question, but I think these are the  
517 first new apartments that will be built in Londonderry in some 30 years. And I think that might be part of the  
518 problem is that these have changed hands, there haven't been any capital improvements for years, maybe.  
519 And I don't even know which ones you're talking about, but I just think the age has a lot to do with it and  
520 where these are new, and as Attorney Leonard said, I'll be restricted by my lenders. I mean, they're going to  
521 be doing site inspections and it's their investment, so there will be an owner and it will be me, so...  
522

523 LARRY O'SULLIVAN: The other thing that I see in my notes here was the, is there any way to make the  
524 landowners responsible for incremental impact on schools and roads? However, if you're avoiding or don't  
525 plan on addressing any longer the GMO, I don't think that's going to be an issue.  
526

527 THOMAS LEONARD: Right.  
528

529 LARRY O'SULLIVAN: And you still have to go through Planning Board regarding traffic and so forth.  
530

531 THOMAS LEONARD: We have to do all of that process, yes.  
532

533 LARRY O'SULLIVAN: Mm-hmm.  
534

535 THOMAS LEONARD: Which is, as you know, a very detailed process.  
536

537 LARRY O'SULLIVAN: That's all I had.  
538

539 JAMES SMITH: Anyone else? Okay. At this point, do we want to go into deliberation on these cases or...?  
540

541 LARRY O'SULLIVAN: Are you going to have public?  
542

543 JAMES TOTTEN: Are we going to have public comment?  
544

545 JAMES SMITH: You want public? Is there anyone in the public who have any comments at this point? You  
546 want to identify yourself, Ma'am, and...?  
547

548 DEB PAUL: Sure. My name is Deb Paul and I live at 118 Hardy Road. And there were four things that I wanted  
549 to discuss. You had brought up parking as one of the things. You still have to accommodate, even though it's  
550 building size, you still have to accommodate for at least two cars in each one of those apartments, so those  
551 parking lots are still going to have be larger. And you're going to add other buildings onto this, correct?  
552

553 TOM MONAHAN: Not on this.  
554

555 Not this project but on that 26 acres.  
556

557 TOM MONAHAN: No.  
558

559 You're not?  
560

561 TOM MONAHAN: No.  
562

563 That 26 acres is juts the ten and the rest will be open space and then...?  
564

565 TOM MONAHAN: The 26 acres, correct.

566  
567 Okay. I know that we...I was one of the people who really, really...I'm against the workforce housing. I really  
568 think it shouldn't be shoved down our throats. I don't think it's something we do. I don't think that the Town  
569 actually assessed properly what we had in the bank. I think it was rushed. I think that, you know, I know you  
570 brought up the workforce housing thing. That was done a long time ago in a totally different climate. And by  
571 rights, we probably should really reevaluate it and re-look at it. I see you come here meeting after meeting.  
572 Sorry I couldn't have been here. There were issues. The thing that bothers me is you're saying you're trying  
573 to make it work, trying to make it work. Why does someone do something? There's always a reason to why  
574 someone does something. I believe there is no such thing as a selfless act. We give blood because it makes us  
575 feel good, not because it's the right thing to do. So, at different levels. So, in my mind, I'm sitting here going  
576 why would he be spending 'x' amount of dollars and lawyers and engineers and all these people who...the  
577 whole entourage that come along with you, if there wasn't ...and you wouldn't fight so hard month after  
578 month after month if, sincerely, there wasn't money to be made in this property in different ways and I  
579 personally, you know, I just can't wrap my head around the necessity of it and, you know, say 'Oh, I want to do  
580 it for the town because the town wants apartments.' Well, apartments are fine. I have nothing against  
581 apartments. But within the rules and regulations that we have put in place as a town. And I can't remember  
582 my other two reasons, but anyway, I ran down here because I actually was able to drive today for the first  
583 time in a while, so I figured I'd throw my two cents out there, so thank you.

584  
585 JAMES SMITH: Is there anybody else in the audience? And please direct your remarks to the Board.

586  
587 HEATHER ANDERSON: Heather Anderson, 31 Perkins Road. And I guess I have a question why we don't allow  
588 these folks to go back to the Planning Board, ask for the 20...why don't they follow the normal process, which  
589 is to go to the Planning Board, be denied, and then come to the Zoning Board? Why are they skipping that  
590 whole step altogether? I agree with Deb. There's just a lot of posturing, a lot of legal fees here. I personally  
591 live on the street, so we have concerns over traffic, which I understand the Planning Board will address, but I  
592 don't understand how they can't build 16 or 20 units with non-granite countertops. There's lots of other  
593 rental properties that don't have to be luxury. And I think people who are even searching for low rental  
594 properties, people who are searching for regular rental properties would be just as happy living with the  
595 linoleum countertops and that might make the property more affordable. Why does it have to be luxury?  
596 Thank you.

597  
598 LARRY O'SULLIVAN: That was a question for us. That was one of the thing that we had discussed earlier. But  
599 the thing is that when it's brought to us, we don't get to get into the detail of the modifications of things like  
600 that. If I'm answering for everybody, I think.

601  
602 JAMES SMITH: Yeah.

603  
604 LARRY O'SULLIVAN: You know, that's not really what we're here for. You know? It's what was brought to us  
605 and if something else less expensive had been brought to us, we'd be discussing it as well.

606  
607 HEATHER ANDERSON: [indistinct] ask a question...

608  
609 JAMES SMITH: Wait a minute, Ma'am. Ma'am?

610  
611 HEATHER ANDERSON: Yes?  
612  
613 JAMES SMITH: If you're going to say anything, you have to come to a mic.  
614  
615 HEATHER ANDERSON: [indistinct] in the independent study on...  
616  
617 JAMES SMITH: Ma'am, please get to a mic.  
618  
619 HEATHER ANDERSON: [indistinct] else?  
620  
621 LARRY O'SULLIVAN: Yes.  
622  
623 JAY HOOLEY: Yes.  
624  
625 HEATHER ANDERSON: We did?  
626  
627 LARRY O'SULLIVAN: Today. Okay.  
628  
629 HEATHER ANDERSON: And can you go into detail as to what it said?  
630  
631 LARRY O'SULLIVAN: They said it earlier, it was...  
632  
633 HEATHER ANDERSON: Like for like? It would have...  
634  
635 LARRY O'SULLIVAN: Pretty much.  
636  
637 HEATHER ANDERSON: ...the same?  
638  
639 LARRY O'SULLIVAN: Pretty much the same.  
640  
641 HEATHER ANDERSON: Okay.  
642  
643 JAY HOOLEY: It validated the applicant's position.  
644  
645 HEATHER ANDERSON: Okay. Alright, thank you.  
646  
647 JAMES SMITH: Any other comments or questions? Seeing none, I'll give it back to the applicant if he has any  
648 rebuttal at this point.  
649  
650 THOMAS LEONARD: Well, I know I've said this, but just to help some of the neighbors understand where  
651 we're coming from. The process to get to 24 units requires us to go to this Board. It's not something that the  
652 Planning Board can do. We can only ask for 20 units at the Planning Board and only under very specific  
653 circumstances of having a site and a tract of land that doesn't otherwise work. Ours, as we've said, is really

654 unique because it is so good for this kind of project. So we just don't fit into that, which is why we came here  
655 first and that's a partial answer to Mr. Dunn's comment also. The point about luxury; 'Luxury' may be a bit of  
656 a...the term might not be the exact right term. The market demands certain things now. Rental units have to  
657 look neat and clean and they've got to seem up to date. And everybody is so used to finishes that are as we  
658 are describing. That's basically what the market demands. It's not that we are building these as expensive  
659 units. Our goal is not to build an expensive unit. Our goal is to build a unit that will meet the demands of the  
660 market and that's really what we're doing. The finishes are appropriate to the demand. And the parking  
661 question; I know this Board knows, but just so the members of the audience know, we have to address the  
662 parking concerns. The present regulations for the Planning Board require 1.75 spots per dwelling unit. And  
663 we're gonna have to deal with that. We have to either demonstrate we don't need that or we have to supply  
664 that. This particular plan, I believe, provides 1.75 spaces per unit. But that certainly is part of the discussion at  
665 the Planning Board. The only other comment I have is the comment about workforce housing in a general  
666 sense and again, sometimes that term is not understood. But all workforce housing means is that it's  
667 affordable by the median income group. It's not subsidized in any fashion. It is not low income housing. It is  
668 simply affordable to the average income or the median income in the region. So thanks for...I know you've  
669 heard that before, but I think sometimes it helps for the public to understand.

670  
671 JAMES SMITH: Okay. We'll give anyone in opposition any additional rebuttal. Having none, I'll bring it back to  
672 the Board. Any other questions? Comments? So at this point, we'll take it under advisement and I'd like to  
673 have about a five minute recess.

674  
675 [Six minute break].

676  
677 THOMAS LEONARD: Mr. Chairman, could I just make one clarification? I think it's clear, but I worry that it  
678 might not be. When Mr. Hooley asked about the GMO, we are still requesting phasing over three years, we're  
679 just willing to postpone the discussion of the GMO. Is that...?

680  
681 JAY HOOLEY: Yeah, that was exactly what I understood.

682  
683 JAMES SMITH: Okay.

684  
685 THOMAS LEONARD: Thank you very much.

686  
687 DELIBERATIONS:

688  
689 JAMES SMITH: Okay. I believe we were going to take each case...

690  
691 LARRY O'SULLIVAN: Three cases.

692  
693 JAMES SMITH: ...separately. Now, do we want to take them in the order they're in or is there any other order  
694 we want to take them in?

695  
696 NEIL DUNN: It doesn't really matter, I don't think. Oh, it may though, to some, I suppose.



698 LARRY O'SULLIVAN: Rather than sit here all night writing down the different restrictions that we want to put  
699 on each with them, may I make a suggestion to move this along a little bit, is that one of us pick one of the  
700 three different cases and if any restrictions, that we work on those independently, so that we can have some  
701 well thought out restrictions? Because I suspect that's what we're going to wind up with, so...Let's have...

702  
703 JAMES SMITH: Okay, who wants to do some writing? Neil? Alright, who's a good...? I'm not a very good  
704 writer.

705  
706 LARRY O'SULLIVAN: Yeah, we're gonna volunteer Neil for that one.

707  
708 JAMES SMITH: Okay, Neil. Okay, the first case number...number two here. This is the one on phasing. And  
709 [indistinct] of dwelling units...okay. So let's discuss that one first.

710  
711 LARRY O'SULLIVAN: I think if their intention is to allow us to put a restriction on that involves the GMO, that's  
712 fine with me. My whole issue has been that we wind up with something uncontrollable and instead of...like,  
713 what was it? Eighty a year as opposed to what it would be...240 divided by five is less than 50, right? A year?  
714 If that would be something that was a real influence on schools and specifically fire and safety issues that the  
715 town has. Because if we add people, 240 apartments, two people an apartment, you're looking at, what? I  
716 think another fireman and another policeman at the very least? You know, those are the kinds of ratios that  
717 we have in town and we're not going to...I don't believe our Council would even consider lessening the ratio  
718 that we have currently, which has been pared down significantly, as far as I'm concerned. So the issue is, I  
719 guess, on the table, we're not going to have a GMO influence on that, so I have, with that as the restriction,  
720 that the GMO not be included, that the impact...

721  
722 JAY HOOLEY: I think when the motion gets made, if we state that we are providing relief of 1.4.7.2...

723  
724 LARRY O'SULLIVAN: You want to be specific about that one?

725  
726 JAY HOOLEY: Yeah.

727  
728 LARRY O'SULLIVAN: One point four?

729  
730 JAY HOOLEY: That if you were to, and not that we are or that it's limited to, but if we approve relief of 1.3.3.3  
731 with whatever restrictions we come up with, we are...just state it clearly, not providing relief for 1.4.7.2. So it  
732 would be approved in part, conditionally. Does that make sense?

733  
734 LARRY O'SULLIVAN: Well, that's where I'm at with this.

735  
736 JAY HOOLEY: Okay. I heard that that's what they understand and are...they're certainly comfortable, so I  
737 don't think we need to belabor that...

738  
739 LARRY O'SULLIVAN: Anybody see any holes in that?

740  
741 JAY HOOLEY: They've even stated they are, you know...

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LARRY O'SULLIVAN: Any holes in that or any issues?

JAY HOOLEY: So I don't think we need to...I'm sure they'd take it, but we don't need to grant them something that they're willing to live to without relief from, certainly, and I think that would alleviate a lot of people's concerns that that's still there, should it ever need to come into play.

LARRY O'SULLIVAN: You alright with that, James?

JAMES SMITH: Yeah.

JAMES TOTTEN: Yeah, I'm in agreement with that, because that's the safety net.

JAMES SMITH: Okay.

LARRY O'SULLIVAN: Neil? We're taking them one case at a time.

NEIL DUNN: Yeah, no, I understand that, but I'm looking at...all the GMO is is a numbering system so that if it does go into a count, they get points for it.

LARRY O'SULLIVAN: No. No, because we can limit the number of...

JAY HOOLEY: But it limits the total number of permits issued.

LARRY O'SULLIVAN: Per year.

JAY HOOLEY: So it will limit the aggregate growth of the town...

NEIL DUNN: Right.

JAY HOOLEY: ...and limit their aggregate growth.

NEIL DUNN: But we have them both on the same variance, so I appreciate getting it out of there because it's not impacted and if we do hit the GMO portion, then they'll have to cross that bridge.

JAY HOOLEY: Yeah.

NEIL DUNN: So I guess I'm, yeah, I'm fine with that statement. We're not providing relief to 1.4.7.2. I guess it's the next discussion we're gonna have on the phasing. So if you grant it, does...?

LARRY O'SULLIVAN: What's the purpose of the phasing, then?

NEIL DUNN: I don't know. That's why I'm waiting to hear where you guys are going with that because I'm still...

786  
787 LARRY O'SULLIVAN: The phasing issue is always going to be...it's a Planning Board thing, of course. They  
788 always recommend and suggest, for all the builders that come to town, that you take a big project like this and  
789 you move it in sections. There's a variety of reasons. You sit on the [to Jim Butler]...no, I'm sorry, you don't sit  
790 on the...Planning Board Liaison. But I know that phasing, to me, didn't mean as much as the impact on the  
791 growth management because, frankly, the growth management is something that effect the entire town and I  
792 don't believe phasing does. I think phasing is more lot oriented, more parcel oriented, whether it be the 24  
793 acres or 26 acres we're talking about, but that area. And that's it. Can we get a professional opinion from our  
794 Zoning Officer? Zoning Administrator?  
795

796 RICHARD CANUEL: Yeah, basically, the phasing of development is essentially a growth management tool. But  
797 it's applicable to site specific rather than town wide as the Growth Management Ordinance is. The whole  
798 intent of phasing is to basically control a development in an orderly fashion so that we're not exceeding what  
799 the Town's facilities are able to provide. It's essentially the same as the Growth Management Ordinance, like I  
800 said, except it's project specific.  
801

802 JAMES TOTTEN: Yeah, and I think we've established that it's not a burden on the town and the school.  
803 There's benefits to...  
804

805 NEIL DUNN: Well, year one it wouldn't necessarily be.  
806

807 LARRY O'SULLIVAN: It wouldn't get controlled anyway, so...  
808

809 NEIL DUNN: Year two or three, if we have other projects that come beating heads...  
810

811 JAMES SMITH: Well, I think we have to look at this project by itself.  
812

813 LARRY O'SULLIVAN: Because we don't have anything in writing. We don't have anything...  
814

815 NEIL DUNN: No, but I think it's our responsibility to the town to look to the future and say...  
816

817 LARRY O'SULLIVAN: To plan. Yeah.  
818

819 NEIL DUNN: ...based on this standard, based on this ordinance and the five years that it would normally take,  
820 that we could start butting heads and the GMO. So if we say he can do it in three and we're overloading the  
821 system, again, it is part of the growth management thing. We still have to be able to balance our financial  
822 projects, too, as far as providing the support mechanism for a project like this. The schools, the fire, and all  
823 that. So if we say that he can do it in three years instead of five is essentially what the waiver is. I guess,  
824 actually, the way it's written, he could do it in one year, I guess, based on the variance we're going give.  
825

826 JAY HOOLEY: It will get specified.  
827

828 LARRY O'SULLIVAN: No, no. We will specify. Three years is...  
829

830 NEIL DUNN: Well, okay. Well, I mean...so we're doing it in three years instead of five.  
831  
832 LARRY O'SULLIVAN: Mm-hmm.  
833  
834 NEIL DUNN: So, if we say he can do that and say year two, the GMO kicks in just because so much is going on  
835 in town, or the third year...  
836  
837 JAY HOOLEY: Then...  
838  
839 JAMES TOTTEN: They're subject to that.  
840  
841 NEIL DUNN: Are they subject to it when we've already given a variance to go ahead and put in the...?  
842  
843 JAY HOOLEY: Because we are not providing relief of 1.4.7.2. It still applies.  
844  
845 LARRY O'SULLIVAN: They've taken that away.  
846  
847 NEIL DUNN: Even though we've already said, according to 1.3.3.3 that they can go ahead and do it? I guess I  
848 don't...am I...?  
849  
850 JAMES SMITH: The two are different mechanisms to control the same thing.  
851  
852 NEIL DUNN: Right, but they...is that correct, Richard? If we say they could do it in three years and the GMO  
853 kicks in in year two, do they have to...? They don't have to apply to the GMO. They've already been given a  
854 variance to go ahead and do it, no?  
855  
856 RICHARD CANUEL: Well, they would be given the variance to the phasing for the total number of units and the  
857 total number of buildings per year. As far as the Growth Management Ordinance, when the Planning Board  
858 makes the determination that we're in a period of unsustainable growth and they limit the issuance of  
859 building permits, then that would apply to the project. If a year or two down the road, as this project is under  
860 development, the Planning Board does restrict the issuance of building permits, they will not receive any other  
861 building permits for that project unless they request relief from that from the Planning Board.  
862  
863 NEIL DUNN: So 240 divided by three is 80, so they're...  
864  
865 JAMES SMITH: Probably 80, 72, 72 would be....So it would be four buildings in one year, three the other two  
866 years.  
867  
868 LARRY O'SULLIVAN: Okay, so...  
869  
870 NEIL DUNN: Okay.  
871  
872 LARRY O'SULLIVAN: ...do we have a decent enough definition, I think, between phasing and the GMO?  
873

874 NEIL DUNN: Well, because they do look similar, my concern was I just want to make sure that we don't let  
875 that stuff over the GMO...even though he covered it with...because it's in the same variance, I wanted to make  
876 sure it wasn't side stepping it and not giving us the ability to react, was my concern.  
877

878 LARRY O'SULLIVAN: My entire fear of this whole thing was that the Town would lose control.  
879

880 NEIL DUNN: Exactly.  
881

882 LARRY O'SULLIVAN: Right? By taking the GMO portion of that away from the variance, the Town regains the  
883 control. Now, that's all of the town as opposed to this particular development, so I've got a, you know, a  
884 relief, as far as I'm concerned. My relief that we're not going to have to prove the legality of this in court  
885 because of that. Because, frankly, that's where I think we would wind up because I firmly believe that our  
886 GMO is only the legal portion of our ordinances. And...  
887

888 JAMES SMITH: Eighty.  
889

890 LARRY O'SULLIVAN: Anyway, let's keep on going.  
891

892 JAMES SMITH: Okay, I would suggest if we do give a variance on that, that we suggest or write into it a limit of  
893 80 units year one, 72 units year two and three.  
894

895 LARRY O'SULLIVAN: That doesn't give them their 240.  
896

897 JAMES SMITH: Yes it does.  
898

899 LARRY O'SULLIVAN: That's two 72's and an 80.  
900

901 NEIL DUNN: It would be three 80's...  
902

903 JAMES SMITH: No, no. Seventy two units. Living units. Because we haven't decided on the 24 versus the 16  
904 at this point.  
905

906 LARRY O'SULLIVAN: Oh, I see where you're going.  
907

908 JAMES SMITH: You understand what I'm getting at?  
909

910 LARRY O'SULLIVAN: What would be the advantage to doing that?  
911

912 JAMES SMITH: Because it puts...it gives a certain particular limit to each year. In other words, then they could  
913 build three buildings in the first year if they're 24-unit buildings...four buildings the first year, three buildings in  
914 the other two years. Because if you have 24, you've got to divide it up somehow and if you had 24 each  
915 year...I mean, three buildings of 24, then you have 24 left at...one building left at the end. What do you do with  
916 it? It wouldn't fit into three years.  
917

918 NEIL DUNN: Yeah, but your numbers aren't right...  
919  
920 JAMES TOTTEN: Yeah, what are your numbers for each year?  
921  
922 NEIL DUNN: Yeah.  
923  
924 LARRY O'SULLIVAN: Eighty, 72, 72.  
925  
926 JAMES SMITH: Eighty units the first year, which would be four buildings.  
927  
928 JAY HOOLEY: No.  
929  
930 JAY HOOLEY: No, they were talking about...[indistinct]  
931  
932 JAMES TOTTEN: That's not...no...  
933  
934 JAY HOOLEY: ....24 units each, how many buildings is it?  
935  
936 JAMES TOTTEN: It's 96, right?  
937  
938 NEIL DUNN: Yeah, you're...  
939  
940 JAY HOOLEY: They can't build two and three in half buildings.  
941  
942 LARRY O'SULLIVAN: You're jumping the gun, though. Jim is saying that we haven't approved 24 yet.  
943  
944 JAMES SMITH: Seventy two...  
945  
946 JAMES TOTTEN: But 80, 72, 72 doesn't get you to 240 either way.  
947  
948 JAMES SMITH: No.  
949  
950 JAMES TOTTEN: I don't follow the math.  
951  
952 JAMES SMITH: Seventy two...  
953  
954 JIM BUTLER: Ninety six, 96...  
955  
956 JAMES SMITH: ...is 216, and then you got a 24 left over, right? And...oh, my addition's wrong. It would be 96.  
957 So 96, 72, 72.  
958  
959 LARRY O'SULLIVAN: Right, that way they get their 240.  
960  
961 JAMES TOTTEN: Yeah, they get to 240.

962  
963 JAMES SMITH: Yeah.  
964  
965 LARRY O'SULLIVAN: Okay, yeah.  
966  
967 JAMES TOTTEN: So that's four, three, three.  
968  
969 JAMES SMITH: Yeah. If we go 24 units.  
970  
971 JAY HOOLEY: I think this goes way back. I believe we did discuss briefly that maybe if we took these out of the  
972 sequential order and we're taking all three now and we resolve case number four and decide how many units  
973 we have, that will allow us to have a firm understanding of what we're doing with case number two. Does  
974 that make sense?  
975  
976 JAMES SMITH: Yeah.  
977  
978 LARRY O'SULLIVAN: As far as I'm concerned, it's up to you, Jim?  
979  
980 JAMES SMITH: Okay. Why don't we go to case four, decide that one, then come back to case two?  
981  
982 LARRY O'SULLIVAN: Okay.  
983  
984 JAMES SMITH: So we're now looking at case four. That's where they're trying to increase the 16 unit to the 24  
985 in the building.  
986  
987 JAY HOOLEY: Right.  
988  
989 LARRY O'SULLIVAN: Now what's part B of that one? So it's...increases to 24...  
990  
991 JAMES SMITH: Right.  
992  
993 LARRY O'SULLIVAN: ...and then what was the other? There's a part B on that one.  
994  
995 JAMES SMITH: Well, the other part, I think, can you read that section? Just...  
996  
997 JAY HOOLEY: I think it's 2.3.3.7.4.6.  
998  
999 LARRY O'SULLIVAN: 2.3.3.6.  
000  
001 JAY HOOLEY: 2.3.3.7.4.6: "Additional criteria to increase the maximum number of units allowed in a multi-  
002 family building."  
003  
004 LARRY O'SULLIVAN: That's it.

005  
006 JAY HOOLEY: "In addition to all the criteria listed in 2.3.3.7.5, the following additional criteria must be met in  
007 order to increase the maximum number of units in a multi-family building from 16," it says 20, but this is what  
008 they need to meet in order to do it. "There needs to exist on the property limitations such as steep slopes,  
009 wetlands, CO district areas, flood hazards or other natural constraints that are on the subject parcel that the  
010 reduced area of such a parcel is limited to less than 50% of the permitted density allowed under 2.3.3.7.3.1.2,  
011 utilizing 16 units per building. Such calculation must be demonstrated by the Planning Board by a New  
012 Hampshire licensed professional engineer..." I won't go on there. The other one, 2.3.3.7.4.6.2 is that "The  
013 applicant must demonstrate to the Planning Board that the limitation of the number of units per building at 16  
014 makes the overall project unfeasible," and I think, without reading the rest of this, that was presented by them  
015 and validated by the third party review. I think in their presentation, and I don't know which night it was at  
016 this point, we looked at the ten target areas for a workforce housing. This was number one because  
017 everything was right. It didn't have any of those limitations such as steep slopes, wetlands, CO, et cetera. So  
018 certainly there was...if limited to this, they'd never get beyond 16. And then the question became, was the  
019 project as a workforce housing project still economically feasible at 16 units? And the presentation and the  
020 third party review indicated otherwise.

021  
022 JAMES SMITH: Okay, I'm going to ask Richard for an interpretation. On that section, is it one or the other?

023  
024 RICHARD CANUEL: No, it's not one or the other. The Planning Board still needs to go through that criteria in  
025 granting the Conditional Use Permit. However, because those sections say 20 versus 16, the Planning Board is  
026 limited to the 20 units.

027  
028 JAMES SMITH: Yeah, I understand that.

029  
030 RICHARD CANUEL: So...

031  
032 JAMES SMITH: But what I'm questioning; there's two different criteria. One relates to economics, one relates  
033 to land.

034  
035 RICHARD CANUEL: Mm-hmm.

036  
037 JAMES SMITH: Is it one or the other that qualifies?

038  
039 RICHARD CANUEL: I think they both apply. And that's something that the Planning Board has to take into  
040 consideration when they go through that review.

041  
042 JAY HOOLEY: But they would not, if we grant relief to 2.3.3.7.4.6?

043  
044 RICHARD CANUEL: Yeah.

045  
046 JAY HOOLEY: That would come off the Planning Board's table, correct? That's...

047  
048 RICHARD CANUEL: No. No.



049  
050 JAY HOOLEY: No?

051  
052 RICHARD CANUEL: No. If you grant relief, if the Board so chooses to grant the variance to allow 24 units,  
053 essentially is what you're doing is empowering the Planning Board to exceed their limitation of 20 units when  
054 granting that Conditional Use Permit.

055  
056 JAY HOOLEY: Okay, but if, as presented, they request relief from that section, everything I just read,  
057 2.3.3.7.4.6, that would mean they don't need to comply with that is what I'm understanding.

058  
059 RICHARD CANUEL: That they don't need to go through that additional criteria for the maximum number of  
060 units.

061  
062 JAY HOOLEY: Yes.

063  
064 RICHARD CANUEL: If you're granting the entire relief to that, you know, entire section, then essentially, that's  
065 true.

066  
067 JAY HOOLEY: Okay, I just want to make sure we understand why that's...

068  
069 LARRY O'SULLIVAN: Okay, and what's the significance?

070  
071 JAMES SMITH: Okay...

072  
073 JAY HOOLEY: That they wouldn't need to demonstrate this to the Planning Board in order to make the  
074 increase.

075  
076 LARRY O'SULLIVAN: To 24.

077  
078 JAMES SMITH: Right.

079  
080 JAY HOOLEY: Right.

081  
082 LARRY O'SULLIVAN: Okay. I think [indistinct] that all the way, all along, that was exactly what they were  
083 looking for.

084  
085 JAMES SMITH: Well, I think the problem with the way the thing is written, there is two criteria. One relates to  
086 finances and one relates to the way the land is.

087  
088 LARRY O'SULLIVAN: Right.

089  
090 JAMES SMITH: I think whoever wrote that probably was thinking one or the other, not both.

091  
092 LARRY O'SULLIVAN: I don't think it matters.

093  
094 JAMES SMITH: Well, again, that's the problem I have with the way that's written. Typically...you're given two  
095 different criteria. One is very clear, talks about economics and all the rest of the stuff, so that would be one  
096 reason to grant the increase.  
097  
098 LARRY O'SULLIVAN: Mm-hmm.  
099  
100 JAMES SMITH: The other one talks about how the land is laid out, whether there's rock or whatever you want  
101 to call it, and that would be another reason to allow that. I think...you know, again, whoever wrote the thing,  
102 you don't what they were thinking at the time, but typically, in a lot of things in zoning and regulations, they'll  
103 give you several different criteria and they'll tell you one, two, or three, not all of them. And that's what I  
104 have a problem with that, where it seemingly says you've got to both have problems with the land and...  
105  
106 LARRY O'SULLIVAN: And economically viable.  
107  
108 JAMES SMITH: ...a financial problems...  
109  
110 LARRY O'SULLIVAN: Right.  
111  
112 JAMES SMITH: ...to get that. Which is almost impossible, I would think.  
113  
114 LARRY O'SULLIVAN: That's not the way I read it at all, so...or interpreted it at all.  
115  
116 JAMES SMITH: I think Richard confirmed that that's the way you would interpret it, right Rich?  
117  
118 NEIL DUNN: It says "the following criteria must be met," so both.  
119  
120 JAMES TOTTEN: Yeah, it's both.  
121  
122 JAMES SMITH: Yeah.  
123  
124 LARRY O'SULLIVAN: Okay. So your point is?  
125  
126 JAMES TOTTEN: And five as well, right? Because that's on the table too; 7.4.5.  
127  
128 JAY HOOLEY: Mm-hmm.  
129  
130 JAMES TOTTEN: All of that.  
131  
132 LARRY O'SULLIVAN: What was the 7.4.5?  
133  
134 NEIL DUNN: Well, that's part of the prerequisite for 7.6.  
135  
136 JAMES SMITH: The 4.5 is the one that said 16 versus...

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LARRY O'SULLIVAN: Right. Okay, gotcha.

JAMES SMITH: The second one gave that criteria to get to that point.

LARRY O'SULLIVAN: Okay, so can we get to the point there then; are we comfortable with 24...?

JAMES SMITH: Yes.

LARRY O'SULLIVAN: For whatever reason, whether it be slopes, soils, or economics?

JAMES SMITH: I think...

LARRY O'SULLIVAN: Isn't that what's in front of us right here in this question?

JAY HOOLEY: Yeah.

JAMES TOTTEN: Right.

LARRY O'SULLIVAN: Right? Okay, so are you comfortable with the presentation, that it met all the requirements for...all five requirements of a variance?

JAMES SMITH: Neil?

NEIL DUNN: If we look at 2.3.7.4.5.1, the proposed use is consistent with the purpose of inclusionary housing set forth in 2.3.3.1. There were...it gets back to where the inclusionary housing and this one particularly being the workforce housing, we're looking at both reducing the percentage and the number of units in 2.3.3, right? Bear with me a minute.

LARRY O'SULLIVAN: Increasing the number of units overall per building is really what this is. And then it's the inclusionary housing part of it with...usually this...what do we have about...? I'm sorry. I'll shut up.

JAY HOOLEY: So what part of it...?

NEIL DUNN: Well all I'm saying is that it...we're looking at 4.6 and it says "in addition to all the criteria in 2.3.3.7.5, and then 2.3.7.5 says it must be inclusive of all the inclusionary housing in Section 2.3.3.1 and no we're looking at in 2.3.3.1 changing the...

JAMES TOTTEN: It's consistent with the purpose of the inclusionary...

NEIL DUNN: 2.3.3 purpose. We can't read words into something like that.

JAMES TOTTEN: Well, those are the words.

181 JAY HOOLEY: 2.3.3.1 is purpose only.  
182  
183 JAMES TOTTEN: Purpose.  
184  
185 JAY HOOLEY: The reference of 2.3.3.1 speaks to purpose only. "The purpose of this section is to encourage  
186 and provide the development of workforce housing within Londonderry. It is intended to ensure the  
187 continued availability of a diversified..."  
188  
189 NEIL DUNN: 2.3.3.1. Okay I'll but that. I'm sorry.  
190  
191 JAY HOOLEY: Okay? So that's...  
192  
193 NEIL DUNN: Alright, yeah.  
194  
195 JAY HOOLEY: I think it hits that right on the head.  
196  
197 NEIL DUNN: If it had said 2.3.3.3, then it would have been the whole section.  
198  
199 JAY HOOLEY: A whole different ball game. But it...  
200  
201 NEIL DUNN: Gotcha. Thank you.  
202  
203 JAMES SMITH: Okay. Would somebody care to make a motion on case number four?  
204  
205 LARRY O'SULLIVAN: I thought we were gonna take notes on these things first. Are you ready for a motion,  
206 really, as opposed to have they hit all the variance criteria? I think you need to hit all the variance criteria.  
207  
208 JAMES SMITH: Well...Okay, the first point. Would it be in the public interest?  
209  
210 LARRY O'SULLIVAN: Yes, we're increasing workforce housing.  
211  
212 JAMES SMITH: Okay. Is it in the spirit of the ordinance?  
213  
214 LARRY O'SULLIVAN: Same thing. Same [indistinct].  
215  
216 JAMES SMITH: Okay. Would it do substantial justice?  
217  
218 LARRY O'SULLIVAN: It would provide the town with the workforce housing that we've said we needed and the  
219 State requires.  
220  
221 JAMES SMITH: Okay.  
222  
223 JAY HOOLEY: And based on all presented material up to this point, would actually allow the presented project  
224 to happen.

225  
226 JAMES SMITH: Okay. Special conditions.  
227  
228 NEIL DUNN: What about pricing? Values, I'm sorry.  
229  
230 LARRY O'SULLIVAN: Value of the surrounding properties? Did you miss that one, Jim? Or did you skip it  
231 deliberately?  
232  
233 JAMES SMITH: I skipped it by accident.  
234  
235 JAMES TOTTEN: They would not be, right?  
236  
237 LARRY O'SULLIVAN: Okay, so how does 24 affect the property values?  
238  
239 JAMES TOTTEN: Versus 16 and more buildings?  
240  
241 LARRY O'SULLIVAN: Versus 16 and more buildings? I think it's...because 16 and more buildings is allowed.  
242 Twenty four and fewer buildings isn't and that's why they're here, that's why they're asking. I fell that that's  
243 better.  
244  
245 NEIL DUNN: So that it's no worse than the allowed approach.  
246  
247 LARRY O'SULLIVAN: Than what would have been there. Right.  
248  
249 JAMES SMITH: And we have buildings of similar...  
250  
251 LARRY O'SULLIVAN: Size.  
252  
253 JAMES SMITH: ...number of units within the general neighborhood.  
254  
255 LARRY O'SULLIVAN: Yeah.  
256  
257 NEIL DUNN: Well, I guess my bigger concern is what it does to the road, but I don't think it...  
258  
259 JAMES SMITH: Well, see that's a Planning Board issue and it's gonna...  
260  
261 NEIL DUNN: No, yeah, no...  
262  
263 JAMES SMITH: ...they're gonna have to address it at that point.  
264  
265 NEIL DUNN: No, but what I'm, saying, the ones behind them are different than changing the whole character  
266 of the neighborhood. Although what is allowed there, this does no more harm than what would be allowed  
267 there, I guess, would be my point.

268  
269 JAY HOOLEY: Without the variance.

270  
271 JAMES SMITH: Right.

272  
273 LARRY O'SULLIVAN: But we could also include in our exceptions or our restrictions that the landowners need  
274 to be responsible for any additional road or infrastructure changes...

275  
276 NEIL DUNN: That's a Planning Board...

277  
278 LARRY O'SULLIVAN: ...based on the population. That's not what the relief is for for any one of these, right?  
279 We can put this on every single one of them as far as I'm concerned.

280  
281 NEIL DUNN: Say that again? Everybody follow that?

282  
283 LARRY O'SULLIVAN: That the landowners are responsible for any incremental impact on schools and roads. Or  
284 skip the schools part because we're not going to have any real issues there, but roads or infrastructure.

285  
286 NEIL DUNN: Isn't that Planning Board purview?

287  
288 JIM BUTLER: Mm-hmm.

289  
290 LARRY O'SULLIVAN: So what?

291  
292 NEIL DUNN: Well...

293  
294 JIM BUTLER: It's Planning.

295  
296 LARRY O'SULLIVAN: Yeah, but there's other things that we haven't or have discussed that aren't in these  
297 requests.

298  
299 JAMES TOTTEN: Something like that might be more relevant to the phasing, but...

300  
301 LARRY O'SULLIVAN: Okay, well...

302  
303 JAMES TOTTEN: Sixteen to 24 doesn't feel relevant.

304  
305 LARRY O'SULLIVAN: Okay. I'll put it in later. Just as long as we have it in one of them.

306  
307 JAMES SMITH: Well...

308  
309 JAY HOOLEY: Are we functionally creating a new way to impose and impact fee?

310  
311 JAMES SMITH: That's what I'm thinking.

312  
313  
314  
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JAY HOOLEY: I would think maybe that is something we would want to consider carefully.

JIM BUTLER: That would be...

LARRY O'SULLIVAN: It's not our...

JIM BUTLER: ...I'm pretty sure, the purview of the Planning Board.

JAMES SMITH: Yeah.

LARRY O'SULLIVAN: Yeah.

JIM BUTLER: Because right now our impact fees have been suspended.

LARRY O'SULLIVAN: Well, this is...

JAMES SMITH: The Planning Board...

LARRY O'SULLIVAN: This has nothing to do with impact fees. Who said anything about an impact fee?

JIM BUTLER: Yeah, it does when you think about it.

JAMES SMITH: It's a backhanded way of doing it. If you're going to make them responsible for offsite improvements, which is what is another way of saying it, that's an impact fee.

JAY HOOLEY: Functionally, you're facilitating the same thing...

JAMES SMITH: Yeah.

JAY HOOLEY: ...I believe.

JAMES SMITH: However, the Planning Board, in their discussion on the whole thing, is going to have to address the impact on traffic and so forth, so that would be within their purview, I would think, depending upon the state of the impact fee program at that point,.

JIM BUTLER: At that point.

LARRY O'SULLIVAN: Okay. You don't need to put my restriction in there then.

JAMES SMITH: Yeah, I wouldn't...that's making it even worse. Okay, having said that...Okay, that was value. Special conditions that distinguish this property from others in the area dealing...a variance would result in unnecessary hardship because...

356 JAY HOOLEY: I think in this one, rather than (A)(i) and (A)(ii), if we go down to (B); "strict conformance with  
357 the ordinance" takes the workforce housing component of it into play a little bit more than addressing it and  
358 maybe others will feel differently, but I think strict conformance imposes the financial lack of feasibility, I  
359 guess.

360  
361 JAMES SMITH: Yeah. See, at one time, we couldn't consider finances, but now we can. So, any other  
362 comments or objections?

363  
364 LARRY O'SULLIVAN: Did we hit them all?

365  
366 JAMES SMITH: I believe we have.

367  
368 LARRY O'SULLIVAN: Okay, so that met all the requirements then.

369  
370 JAMES SMITH: Correct.

371  
372 LARRY O'SULLIVAN: So then I'd like to make a motion...this is...

373  
374 JAY HOOLEY: 10/17/2012-4.

375  
376 LARRY O'SULLIVAN: Dash four. Okay, we're back at four. I'd like to make a motion to approve 10/17/2012-4  
377 as presented. And you don't want my restriction in there, so...

378  
379 JAMES SMITH: Do we have a second?

380  
381 JAY HOOLEY: Second.

382  
383 JAMES SMITH: Jay seconds. All those in favor?

384  
385 LARRY O'SULLIVAN: Aye.

386  
387 NEIL DUNN: Aye.

388  
389 JAY HOOLEY: Aye.

390  
391 JAMES TOTTEN: Aye.

392  
393 JAMES SMITH: Aye.

394  
395

396  
397 The Clerk read the result into the record.

398  
399 LARRY O'SULLIVAN: So now they have the 24. Can we talk about...?



400  
401 JAY HOOLEY: We can do the math on the other one.  
402

403 LARRY O'SULLIVAN: Now the economic feasibility of the project changes because we don't have to consider  
404 the 16.  
405

406 JAMES SMITH: So which case are we talking now?  
407

408 JAY HOOLEY: 10/17/2012-2.  
409

410 JAMES SMITH: Two, okay.  
411

412 JAY HOOLEY: [Section] 1.3.3.3, which is "For multi-family development meeting the definition of workforce  
413 housing as defined by RSA 674:58 and approved by the Planning Board per the procedures outlined in RSA  
414 674:60: Three multi-family buildings, the total number of dwelling units not to exceed 48 per year" is the  
415 limitation that we're talking about. And that's three 16's, obviously, is why that math comes out that way.  
416 And then under 1.3.3.3.1 "In the event that the Planning Board grants a conditional use permit" for more than  
417 16, it shall be limited to 40. Well, obviously, multiples of 24 doesn't get you there.  
418

419 LARRY O'SULLIVAN: This is where Jim's math comes in, right? Jim, you're going 96...  
420

421 JAMES SMITH: Ninety six, 72, 72. Or four buildings of 24 and three buildings of 24 the second and third year.  
422

423 LARRY O'SULLIVAN: Either way. Same math. Any objections? Issues?  
424

425 JAY HOOLEY: Can I ask...?  
426

427 JAMES SMITH: Wait...  
428

429 JAY HOOLEY: ...a question of staff? Richard?  
430

431 JAMES SMITH: Sure.  
432

433 JAY HOOLEY: How do we, when granting this, consider a year? Calendar year? Twelve months from the day  
434 of ground break...? I just want to be sure I understand what is one year?  
435

436 LARRY O'SULLIVAN: And how firm is one year? Twelve months? Three sixty five?  
437

438 RICHARD CANUEL: As the ordinance reads, it's a year from the date of final approval. So it's not necessarily a  
439 calendar year.  
440

441 LARRY O'SULLIVAN: Date of final approval. Planning Board approval?  
442

443 RICHARD CANUEL: Right.

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LARRY O'SULLIVAN: Oh, that's cool. That's awesome. Let's keep that.

JAY HOOLEY: So final approval happens January 1, the way this reads, the, in theory, three buildings by December 31<sup>st</sup> of that...? Okay.

LARRY O'SULLIVAN: Now, in the way of restrictions, it goes 50% is gonna be something that comes up later. Should we...or is that part of this one? Is that sub-subparagraph part three or...?

JAMES SMITH: That's part...that's case three.

LARRY O'SULLIVAN: That's case three. Okay.

JAMES SMITH: We're on case two.

LARRY O'SULLIVAN: We'll go along with that, then. I'll wait until then as far as my restriction because I'd like to be able to restrict that the growth be happening 50/50 as well as...

JAY HOOLEY: An equal number of...?

LARRY O'SULLIVAN: An equal number at the same time so we have...

JAY HOOLEY: Yup.

LARRY O'SULLIVAN: ...building permits issued for 48 workforce housing/affordable...

JAY HOOLEY: Yeah.

LARRY O'SULLIVAN: ...and then 48 of them non.

JAY HOOLEY: Or they might be mixed equally in each building, but...

LARRY O'SULLIVAN: It doesn't matter.

JAY HOOLEY: ...that it be equal proportions.

LARRY O'SULLIVAN: Just as long as they're issued, you know, equals to equals.

JAMES SMITH: Well, that could be in the...when we get to that point.

LARRY O'SULLIVAN: Okay. That's my point, is...

JAMES SMITH: It doesn't have to be in this one.

488 LARRY O'SULLIVAN: No.  
489  
490 JAMES TOTTEN: For the 96, 72, 72, is there any reason to prescribe which year? Could we just say that it's  
491 gotta be over the three years...  
492  
493 JAMES SMITH: Yeah.  
494  
495 JAMES TOTTEN: They could do 72 the first year, 96 the second, 72, right?  
496  
497 JAY HOOLEY: You could phrase it 'not to exceed 96 only in one year of the project, 72 in any other year of the  
498 project.'  
499  
500 JAMES SMITH: Yeah, that sounds...  
501  
502 LARRY O'SULLIVAN: Okay, that will work...  
503  
504 JAMES SMITH: Yeah.  
505  
506 LARRY O'SULLIVAN: ...but they also have said again and again and again...  
507  
508 JAY HOOLEY: Assuming that you want to do it...  
509  
510 LARRY O'SULLIVAN: ...that they want a shovel in the ground and they would like to get this thing rolling as  
511 soon as possible, so...  
512  
513 JAY HOOLEY: You just allow for the option.  
514  
515 JAMES TOTTEN: It just gives them more flexibility.  
516  
517 JAMES SMITH: Yeah and the only reason I said it that way was just a way to get it out on the floor.  
518  
519 JAMES TOTTEN: Yeah.  
520  
521 LARRY O'SULLIVAN: I think they would like to build it all in one year if they could.  
522  
523 JAY HOOLEY: Is it the mood of the Board to grant it...just reading this strictly, "three multi-family buildings per  
524 year," you could relieve the number of units, it wouldn't get them from five all the way down to three, yeah,  
525 you would end up with potentially one in one 12-month increment out from final approval, but it could be  
526 within the same calendar year, and I'm not stating this well obviously, by Larry's reaction.  
527  
528 LARRY O'SULLIVAN: No you've got an over...I see, you've just got an overlap, but I see. I see.  
529

530 JAY HOOLEY: In other words, you could do three in any year and if they got approved on July 1, you could not  
531 give complete relief but certainly in part and yeah, you couldn't have the 40 units, it just isn't going to work at  
532 all.

534 LARRY O'SULLIVAN: Isn't that up to Richard? I mean, who's issuing the permits?

536 RICHARD CANUEL: That would be me. My department, yes.

538 LARRY O'SULLIVAN: Well, you've got a computer.

540 RICHARD CANUEL: Yeah. Yeah.

542 JAY HOOLEY: But it doesn't allow for more than three multi-family buildings and it only allows for two if the  
543 numbers is increased.

545 RICHARD CANUEL: Mmm.

547 JAY HOOLEY: What they're asking for is four, in theory, in any one year...

549 LARRY O'SULLIVAN: Ninety six, right. Yeah.

551 JAY HOOLEY: Yeah, well, is it the mood of the Board that we are granting that in full or have we given...?

553 JAMES SMITH: Well...

555 NEIL DUNN: If we go through the five points...

557 JAMES SMITH: ... if they wanted it in three years, there's got to be four buildings in one unit [sic] and three in  
558 the other two years.

560 JAY HOOLEY: Yeah, but...

562 JAMES SMITH: To get to that point. If you max it out at three buildings, you're going to end up with one  
563 building left over at the end of the project in the fourth year, I guess.

565 JAY HOOLEY: Within one 12-month period out from final approval. You may end up with four in a given  
566 calendar year.

568 JAMES SMITH: Yeah, we're not talking calendar years.

570 JAY HOOLEY: Right, so...I'm not sure doing it that way...

572 JAMES TOTTEN: My feeling is one year will be allowed four, right? However it's broken up. Three buildings of  
573 24 each. One year will exceed to be four [indistinct] of 24.

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JAMES SMITH: So basically, we're going to have a variance that says four 24-unit buildings could be built in one year and the other remaining two years, three 24-unit buildings in each of those other two years.

JAY HOOLEY: In other words, if you just say 'three year phasing,' he can build eight of them, one, and one.

JAMES SMITH: Say that again?

JAY HOOLEY: If you simply say 'three year phasing,' to interpret that literally, it could be eight, one, one.

NEIL DUNN: Can we go through the five points while we're thinking about the numbers or are you guys trying to get your numbers down?

LARRY O'SULLIVAN: I think that that is the real gist of it. I think everybody's feeling fairly comfortable that the points have been met.

NEIL DUNN: Oh, okay.

JAY HOOLEY: But I guess until we know finally what we're proposing, I mean, maybe you would feel differently if it was eight the first year, one the second year, one the third year.

JAMES SMITH: No, no...

JAY HOOLEY: Well, that's what, you know...

NEIL DUNN: No, that's a valid point. That's a very valid point. Considering it's all about phasing.

JAY HOOLEY: Yeah. Just want to be clear on how you really want to see that happen.

JAMES SMITH: I think, to make it the most flexible for the builder, it should be set up so that he has his choice between whether it's four buildings first, second, or third year, and three buildings the remaining two years.

JAY HOOLEY: Is everybody comfortable on the five points?

JAMES TOTTEN: That sounds [indistinct].

LARRY O'SULLIVAN: Absolutely. I'm sorry, [indistinct].

JAMES TOTTEN: Neil?

LARRY O'SULLIVAN: Two different [indistinct].

JAMES TOTTEN: [Indistinct] go through them.

618 NEIL DUNN: I have issues with the public interest and spirit of the ordinance.

619  
620 JAMES SMITH: Public interest...

621  
622 NEIL DUNN: Because this is one of the...one of these sections, 1.3, is one of the sections that gives us purpose  
623 and it defines what the purpose of it, and maybe more so the intent. And it's to manage the growth without  
624 going into the GMO mode and to also maybe divide up what kind of permits are available to other people who  
625 want to develop. So when it talks about the purposes 'to guide, monitor, evaluate, and plan residential  
626 growth and to provide for future housing needs and to control implementation of tracts of land provide us  
627 protection for fire and additional services,' I have a real big problem with the spirit and the public interest  
628 because you're also locking out other developers because this person is going to get 80 permits one year and  
629 some other guy's not going to be able to get 80 minus 48...

630  
631 JAMES SMITH: No, no. No, that's not legitimate because in the way it was interpreted, if the growth control  
632 ordinance kicks in, then you have to follow the criteria in issuing the permits that's in the growth control  
633 ordinance.

634  
635 NEIL DUNN: And he'll get points for being workforce and he'll get...

636  
637 JAY HOOLEY: But that's...

638  
639 JAMES SMITH: Well, that's just the way the ordinance is set up.

640  
641 JAY HOOLEY: ...strictly in compliance.

642  
643 NEIL DUNN: No, but...alright, so say that again. So if...normally, we would let him do 48 and in five years, he  
644 would have his even numbers for your even numbers of 240. And so here the purpose is to let us respond  
645 more quickly, so if he's the first one in the block and he gets 80 permits for units...

646  
647 JAMES SMITH: Well, that's just the way the growth control ordinance is set up then.

648  
649 NEIL DUNN: Yeah, but this portion of it is for phasing, so other people have shots at permits, I guess is the  
650 way I'm looking at it and by...

651  
652 JAMES SMITH: No, no.

653  
654 NEIL DUNN: ...by letting him go more than the 48 in this section, then he could get them and the GMO kicks in  
655 and he already has. He's good. And so other people, maybe, aren't getting the opportunity to develop things  
656 they want because he's going to kick it earlier.

657  
658 LARRY O'SULLIVAN: Sure.

659  
660 NEIL DUNN: So, to me, the public interest and the intent of the ordinance I'm having an issue with.

661

662 LARRY O'SULLIVAN: But we also can't control...

663  
664 JAMES SMITH: But again, just to go on your argument, the growth control ordinance has a set of rules and has  
665 a set of points and everything else. If his project happens to meet that, they've met the intent of the growth  
666 control.

667  
668 LARRY O'SULLIVAN: That's right. That's it.

669  
670 JAMES SMITH: That's just the way it's set up.

671  
672 NEIL DUNN: I'm not talking about the growth control right now. What I'm saying is right now, under just 1.3,  
673 the phasing, which is not the growth control, it allows a multi-unit developer to put up 48 units.

674  
675 LARRY O'SULLIVAN: Right.

676  
677 JAY HOOLEY: Yup.

678  
679 NEIL DUNN: Right? And he wants to exempt that and push it up to three so he can do more than that. And all  
680 I'm saying is if he's the first one to the gate, which he might be, based on everything doing, then he can do 80  
681 one year and so other people, other developers who may have gotten in under it won't have access and the  
682 GMO will kick in quicker because somebody else has taken a bigger chunk that's not in the spirit of this section  
683 of the ordinance which we're referring to.

684  
685 LARRY O'SULLIVAN: I get your point. I get your point.

686  
687 NEIL DUNN: So that's my...

688  
689 LARRY O'SULLIVAN: I had that argument...

690  
691 NEIL DUNN: I have trouble with it...

692  
693 LARRY O'SULLIVAN: I had that argument before because I had said in the past that that limits the options for  
694 the rest of the builders around, alright? Because it would. But this is the phasing part of it. We're really only  
695 talking about those lots now, the impact on those lots and phasing, right? We're not talking about all the rest  
696 of the lots in town that are potentially going to be built. We're talking about these. Richard, am I barking up  
697 the wrong tree here?

698  
699 RICHARD CANUEL: No, you're correct. You're not talking town-wide, you're talking development specific.

700  
701 JAMES SMITH: Right.

702  
703 RICHARD CANUEL: You know, and the whole point of the phasing being applicable to the development is so  
704 that the Town has an opportunity to sort of monitor that growth and ensure that we have the services to  
705 provide for that development.

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LARRY O'SULLIVAN: So if we're using two different...

RICHARD CANUEL: Pretty much the same as the Growth Management Ordinance, except it's not town-wide. It's project specific.

JAY HOOLEY: Site specific. So in lieu of GMO kicking in, this would not reduce the number of permits available to somebody else...

RICHARD CANUEL: Not whatsoever.

JAY HOOLEY: ...on another [indistinct].

RICHARD CANUEL: Not whatsoever.

LARRY O'SULLIVAN: Did you catch that?

NEIL DUNN: No, I caught that, I'm just trying to catch up and see if I believe that. If the magic number is 200 and we're allocating 80 to one builder where the spirit of this says no, the one builder on a multi-project...a mufti-family unit of workforce housing is only allowed 48, and we're letting him take a bigger chunk than the normally would, then in my eyes, it is against the spirit because someone still could get a bigger chunk of the pie when the GMO gets kicked in.

RICHARD CANUEL: When the Growth Management Ordinance does kick in, and the Planning Board makes a determination that we're in a period of unsustainable growth, it will apply to this development as well. When the Planning Board says 'We're unsustainable, we're going to restrict the number of permits...'

NEIL DUNN: Right, and...

RICHARD CANUEL: ...they are going to be restricted just like any other developer.

LARRY O'SULLIVAN: Wait, wait, wait. Before you go too far; if we had a builder come in who was going to build 200 homes on 200 acres, we're in the same scenario for phasing. We're going to ask them to...

NEIL DUNN: I'd have to look at that. We're not talking...1.3.3 is multi-family with workforce...

LARRY O'SULLIVAN: I'm trying to help with the phasing part of...

NEIL DUNN: Oh, okay.

LARRY O'SULLIVAN: ...only. Right? And how that affects our GMO. Right?

NEIL DUNN: Okay. Go ahead, help.



750 LARRY O'SULLIVAN: Instead of having it over 240 acres, he's got it over 24 acres, or 26 acres. That's the only  
751 significant difference. There's still [indistinct]. Right now there's no limit on the number of permit that we're  
752 going to issue. Is there a limit on the number of permits that we can issue?  
753

754 RICHARD CANUEL: Not this year.  
755

756 LARRY O'SULLIVAN: There is no limit.  
757

758 JAMES SMITH: How many years since we've had a limit?  
759

760 LARRY O'SULLIVAN: But the point is...  
761

762 RICHARD CANUEL: Like four years, five years now?  
763

764 JAMES SMITH: Didn't he say 2005?  
765

766 LARRY O'SULLIVAN: It's been a number of years.  
767

768 RICHARD CANUEL: Yeah, 2005, 2006 maybe.  
769

770 NEIL DUNN: So the purpose is to control that and it's very clear what they want for the number of units, so I  
771 have trouble...I can understand where you would argue it either way. It gets back to the spirit and the intent  
772 and the way it's written. I personally think you could bump against that wall and he would be getting more  
773 units than he might, in year three, he might otherwise be allowed because he was first in line and got...I mean,  
774 I don't...it's kind of a stretch, but...or maybe it isn't. I guess it all depends on what goes on in the next few  
775 months with all the other projects.  
776

777 LARRY O'SULLIVAN: We can't assume anything. That's the problem. That's why, when I brought up all those  
778 other developments that were around, I mean, I still have the list here, Neil.  
779

780 NEIL DUNN: Yeah, no, no, and we all, I think, are quite aware of what they are. I'm just concerned that what  
781 would have taken five years to build out and when we might be in a GMO period, and I understand that that  
782 might make his calculation, but the whole world's based on calculations and we could be giving up our ability  
783 to plan growth and that's what that whole phasing is about. Maybe in five years where he...if he was just  
784 doing his 48, there might be some limitations. And now we're letting it all come in. I don't know. I'm having  
785 trouble with the intent and the spirit of that and although it might not be an issue, I think...Do we know what  
786 the magic is? It's based on previous units and capacities, right? There's no magic number.  
787

788 RICHARD CANUEL: It's based on the previous development in previous years and number of permits that were  
789 issued. Then there's a certain percentage, I don't know whether it's two percent...  
790

791 NEIL DUNN: Those are just my thoughts. I mean...  
792

793 RICHARD CANUEL: Yeah, it's...Like I said...

794  
795 JAMES SMITH: You'd think the first one talks about...  
796

797 RICHARD CANUEL: You're essentially...you've got the same issue, I mean, it is growth management, but it's  
798 two specifically different sections of the ordinance and like I said, one is town-wide, one is project specific.  
799

800 NEIL DUNN: Alright, maybe the project specific is [indistinct]. Alright, thank you.  
801

802 JAMES SMITH: Okay. Does anybody else have any other observations about the various points of law? If not,  
803 I would...Yes?  
804

805 JAY HOOLEY: If you don't mind, Mr. Chairman. Neil, 1.4.4, "Determining the Maximum Sustainable  
806 Growth...Not later than March 1 of each year, the Planning Board shall determine Londonderry's maximum  
807 sustainable rate of residential development for 12 months beginning March 1 of that year. The maximum  
808 annual sustainable rate of growth shall be the highest figure that does not exceed a two percent increase in  
809 Londonderry's housing stock over the preceding calendar year and does not exceed more than two of the  
810 following three measures: The average rate of dwelling unit authorizations in Londonderry over the six  
811 preceding calendar years; A percentage increase in housing units over the preceding calendar year equal to  
812 the rate of increase in housing units for that preceding year summed across the six municipalities which abut  
813 Londonderry (Auburn, Derry, Hudson, Litchfield, Manchester, and Windham)..." as I'm going through it, I'm  
814 realizing...I'm not sure what it says.  
815

816 NEIL DUNN: Well, I think it shows that it's a long process, but...  
817

818 LARRY O'SULLIVAN: Yeah and we don't have to declare it.  
819

820 NEIL DUNN: Our numbers have been down for quite a while...  
821

822 JAMES SMITH: Richard?  
823

824 RICHARD CANUEL: Mmm.  
825

826 JAMES SMITH: Read the first one again, that first...no, the one about the permits. The Town is authorized.  
827 What is it?  
828

829 JAY HOOLEY: "...does not exceed a two percent increase in Londonderry's housing..."  
830

831 JAMES SMITH: Okay, the next one after that.  
832

833 JAY HOOLEY: "...average rate of dwelling unit authorizations in Londonderry over the six preceding calendar  
834 years."  
835

836 JAMES SMITH: Does that...I know it's been interpreted the number of permits issued, but what's the actual  
837 number authorized? It's an unlimited number.

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RICHARD CANUEL: Yeah, it's the number of authorizations that the Planning Board establishes. Not the actual number of building permits that were issued, but the actual number of authorizations.

JAMES SMITH: Well, do they come up with a number for that?

RICHARD CANUEL: Two percent of the maximum housing growth over the, you know, previous year. Two percent added to that on the average of the six communities that the Town looks at. You know, it's...It's like I say, it's the number of allocations, not necessarily the number of permits.

JAMES SMITH: Okay. That's...

RICHARD CANUEL: There could be 200 allocations of permits for this year, we only issue 100 permits...

JAMES SMITH: Yeah.

RICHARD CANUEL: ...the determination is on the allocations, not the permits.

JAMES SMITH: Okay, if that's the way they're interpreted, that makes...because I think I heard him say 40 or something in the...Okay, that's off the subject. Okay, let's have a...somebody make a...

RICHARD CANUEL: If I could just make a recommendation before you make a motion...

LARRY O'SULLIVAN: Yeah, pleas.

RICHARD CANUEL: If you are looking to approve the maximum number of units per year, rather than restrict the developer by saying 'four buildings in year one, three buildings in year two,' do it to a maximum number of units per year, not to exceed 'x' number of units per year.

LARRY O'SULLIVAN: So just go with the 96 in four 24's, right?

RICHARD CANUEL: Yeah. You could say, yeah, 'not to exceed more than 96 units per year.' That way, the developer has the flexibility of whether to do four buildings in one year or three buildings in the first year.

LARRY O'SULLIVAN: And it keeps our restriction simple.

RICHARD CANUEL: He still has that flexibility.

LARRY O'SULLIVAN: Okay, more importantly, it keeps our restriction simple.

JAMES SMITH: Well, then he could do...

NEIL DUNN: He could do two 96's.

882 LARRY O'SULLIVAN: Alright.  
883  
884 JAMES SMITH: Two 96's and then...]  
885  
886 LARRY O'SULLIVAN: Okay.  
887  
888 RICHARD CANUEL: Or, you know, whatever the Board chooses. I'm saying that, you know, rather than restrict  
889 it to a number of buildings, just restrict it to a maximum number of units per calendar year. Or not to exceed  
890 'x' number of units.  
891  
892 NEIL DUNN: So you could do 96, 72, 72 units.  
893  
894 JAMES SMITH: Yeah, that's...  
895  
896 NEIL DUNN: Alright.  
897  
898 JAMES SMITH: That's kind of what I said in the first place.  
899  
900 LARRY O'SULLIVAN: Write it down. Write it down.  
901  
902 NEIL DUNN: It's already down.  
903  
904 LARRY O'SULLIVAN: You ready yet for your restriction?  
905  
906 NEIL DUNN: I have it down for the numbers.  
907  
908 LARRY O'SULLIVAN: Okay, well I'm looking for the restriction, because...  
909  
910 NEIL DUNN: My motion, I don't think, is going that way.  
911  
912 LARRY O'SULLIVAN: Alright, are we going to talk about the five points or...?  
913  
914 JAMES SMITH: We've kind of gone over that. Everybody said they were pretty much satisfied with it from  
915 what we did before. Is there any particular ones that you...? Neil had...  
916  
917 LARRY O'SULLIVAN: That we're gonna pass on the cumulative impact thing. Okay. Fine.  
918  
919 JAMES SMITH: Okay. Who's going to be the author of this motion?  
920  
921 LARRY O'SULLIVAN: Since he did such a good job the last time, Jay...  
922  
923 JAY HOOLEY: I'll make a motion to approve case number 10/17/2012-2 in part, conditionally, that we provide  
924 relief of 1.3.3.3; that the phasing not exceed 96 units in any one given year and not to exceed 72 units in the  
925 other remaining years of the project and that we not provide relief of 1.4.7.2.

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JAMES SMITH: Do we have a second?

LARRY O'SULLIVAN: Second.

JAMES SMITH: Larry seconds. All...

JAY HOOLEY: Does anybody want to talk about, before you go to a vote, what I just said?

JAMES SMITH: No, I think you covered it.

LARRY O'SULLIVAN: Do you need further restriction, do you mean? Does this need further restriction?

JAY HOOLEY: I'm just, you know...

JAMES SMITH: No, I think...

JAY HOOLEY: If everybody's comfortable with it, that's fine. I just didn't want him to shoot right to a vote before we had a chance at least to...

LARRY O'SULLIVAN: For discussion.

JAMES SMITH: Jim?

LARRY O'SULLIVAN: James?

JAMES TOTTEN: I don't need to discuss it.

JAMES SMITH: Neil? Larry?

LARRY O'SULLIVAN: You don't want me to talk about cumulative impacts? I'm not gonna do that then.

JAMES SMITH: Okay. All those in favor?

JAY HOOLEY: Aye.

LARRY O'SULLIVAN: Aye.

JAMES SMITH: Aye.

JAMES TOTTEN: Aye.

JAMES SMITH: Any opposed?

970 NEIL DUNN: Aye.

971  
972  
973  
974 The Clerk read the result into the record.

975  
976 JAMES SMITH: We're now down to case number three. And this was the 50% versus the 75%. Discussion?  
977 Do we want to go through the five points or are we...?  
978

979 LARRY O'SULLIVAN: Are we duplicating everything by just...I mean, we kind of used all the points again and  
980 again and again in this case.  
981

982 JAMES SMITH: Yeah. So unless...does anyone have any particular concern about any...  
983

984 LARRY O'SULLIVAN: Any one of them?  
985

986 JAMES SMITH: ...particular points on this case? Public interest, spirit, substantial justice, values, conditions,  
987 and again, we end up going to part (B), I think, of that one because of the financials.  
988

989 LARRY O'SULLIVAN: The economic part, yup. [Indistinct], yes. The impression I've had all along is that we had  
990 both ways to get there and I think we've used both of them. The economics as well as the multiple points, all  
991 the five points.  
992

993 JAMES SMITH: So...does someone want to make a motion?  
994

995 LARRY O'SULLIVAN: Our Postmaster's been doing a wonderful job.  
996

997 JAY HOOLEY: Motion to approve case number 10/17/2012-3, in that through much testimony and  
998 presentation...  
999

000 JAMES SMITH: So "as presented," basically.  
001

002 JAY HOOLEY: ...they have...  
003

004 LARRY O'SULLIVAN: And primarily due to the economic impact and economic cost that are involved with it.  
005

006 JAMES SMITH: Yeah, economics is the key to that one.  
007

008 LARRY O'SULLIVAN: I'll second.  
009

010 JAMES SMITH: Okay, have you made a motion?  
011

012 LARRY O'SULLIVAN: He made it, I'll second it.  
013

014 JAMES SMITH: Larry seconds it. All those in favor?

015

016 NEIL DUNN: Aye.

017

018 JAY HOOLEY: Aye.

019

020 LARRY O'SULLIVAN: Aye,

021

022 JAMES TOTTEN: Aye.

023

024 JAMES SMITH: Aye.

025

026 **RESULT: THE MOTION TO APPROVE CASE NO. 10/17/2012-4 AS PRESENTED WAS GRANTED, 5-0-0.**

027

028 The Clerk read the result into the record.

029

030 CASE NO. 10/17/2012-2: GRANTED WITH RESTRICTIONS, 4-1-0.

031

032 CASE NO. 10/17/2012-3: GRANTED AS PRESENTED.

033

034 CASE NO. 10/17/2012-4: GRANTED AS PRESENTED.

035

036 RESPECTFULLY SUBMITTED,

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038 

039

040 NEIL DUNN, CLERK

041

042 TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

043

**APPROVED MAY 15, 2013** WITH A MOTION MADE BY LARRY O'SULLIVAN SECONDED BY JAY HOOLEY AND

APPROVED 4-0-0.