

ZONING BOARD OF ADJUSTMENT  
268B MAMMOTH ROAD  
LONDONDERRY, NH 03053

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5 DATE: DECEMBER 19, 2012  
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7 CASE NOS.: 10/17/2012-2, 3, AND 4; MOTION TO REHEAR  
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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  
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18 LOCATION: 62 PERKINS ROAD; 16-3; AR-I (WALLACE) AND  
19 48 PERKINS ROAD; 16-1; AR-I (VAN STEENSBURG)  
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21 BOARD MEMBERS PRESENT: JIM SMITH, ACTING CHAIR  
22 LARRY O’SULLIVAN, VOTING MEMBER  
23 NEIL DUNN, CLERK  
24  
25 ALSO PRESENT: JIM BUTLER, TOWN COUNCIL LIAISON  
26  
27 REQUEST: TO GRANT A REHEARING OF CASE NOS. 10/17/2012-2, 3, AND 4;  
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29 CASE NO. 10/17/2012-2: VARIANCE TO ALLOW PROJECT PHASING TO  
30 EXCEED THE MAXIMUM NUMBER OF DWELLING UNITS LIMITED BY  
31 SECTION 1.3.3.3, AND TO PROVIDE RELIEF FROM BUILDING PERMIT  
32 RESTRICTIONS UNDER SECTION 1.4.7.2.  
33  
34 CASE NO. 10/17/2012-3: VARIANCE TO ALLOW A REDUCTION IN THE  
35 NUMBER OF WORKFORCE HOUSING UNITS FROM 75% AS REQUIRED BY  
36 SECTION 2.3.3.7.1.1.4 TO 50%.  
37  
38 CASE NO. 10/17/2012-4: VARIANCE TO ALLOW 24 DWELLING UNITS IN A  
39 MULTI-FAMILY BUILDING WHERE A MAXIMUM OF 16 UNITS IS  
40 PERMITTED BY SECTION 2.3.3.7.3.1.2, AND A VARIANCE FROM THE  
41 DIMENSIONAL RELIEF CRITERIA OF SECTION 2.3.3.7.4.5 AND THE  
42 ADDITIONAL CRITERIA OF SECTION 2.3.3.7.4.6.  
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44 PRESENTATION: The Clerk read into the record the cover letter of the Motion to Rehear from Attorney  
45 Thomas J. Leonard dated December 11, 2012.

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JAMES SMITH: Okay. Discussion or thoughts.

LARRY O'SULLIVAN: Well there's lots of documentation that was provided for the summing up, I guess, of the...our requests and the facts of the case in the letters...is it from Attorney Leonard, was it? In their request for a rehearing. But I guess they make 20 or 30 points.

JAMES SMITH: Yeah.

LARRY O'SULLIVAN: Or more. Let's see, we're going 40...50...80, 90, 100 points.

JAMES SMITH: It's very extensive.

LARRY O'SULLIVAN: A hundred and one points. And I've read through them and I still don't see how they address some of the things that we requested. So that was what I was hoping to get out of that. I suspect, Jim, that you are in the same boat as, again and again, we had said we didn't have enough information. I'm specifically referring to the cost analysis that would be provided by an external or independent party, so that we could be more secure in our decision about allowing this, something that we actually, we want in town, the way of workforce housing, but to avoid our...

JAMES SMITH: Well, you know...

LARRY O'SULLIVAN: ...to void, I guess, our Master Plan with the fact that we have phasing that we request or that we have control over our growth ordinance. And this isn't kind of helping us to develop that information, so I'm kind of missing something I think.

JAMES SMITH: You know, when it comes to the growth control, I sometimes wonder if there's still justification to even have that.

LARRY O'SULLIVAN: Have it, what? Now or...?

JAMES SMITH: Right.

LARRY O'SULLIVAN: The only reason we have the growth control, Jim, is so that we can match our services and the things that the Town can provide and then provide for the safety and welfare of everybody else. But this is just one...

JAMES SMITH: Yeah, but I think if you look at the law, though, it's really set up to allow a town to get some time to catch up and get into position, and I don't think the law was meant to have it as an ongoing thing.

NEIL DUNN: Yeah...

JAMES SMITH: Because one of the things I have a hard time with it is part of that law, it looks back at the amount of the growth over the preceding number of years.

91 LARRY O'SULLIVAN: Mm-hmm.  
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93 JAMES SMITH: Well, if you look at that right now, we've had absolutely almost no growth. So any growth,  
94 when you compare it to nothing, is gonna be considered...you know? So I...  
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96 LARRY O'SULLIVAN: Okay, so the issue that you're bringing up is something that this Board really has had no  
97 say on. We've had it as individuals when the Town decided to use a growth ordinance.  
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99 JAMES SMITH: Yeah.  
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101 LARRY O'SULLIVAN: So the growth ordinances are in place for all those other reasons and they're not in place  
102 or affecting anything, let's put it that way, while there isn't growth. Everything stays the same. But in order to  
103 control it, imagine having the opportunity to say in five years we're going to have 240 of these things...of this  
104 workforce housing units full of people. Completely populated. But we can't say that. Neither can the  
105 builders.  
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107 JAMES SMITH: Sure.  
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109 LARRY O'SULLIVAN: But at the same time, how many other projects do we have in town that are going on  
110 right now?  
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112 JAMES SMITH: Well, I think that that's...  
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114 LARRY O'SULLIVAN: Just think about the 60 plus homes that are across the street from Mountain Home that  
115 are gonna be...that are approved.  
116  
117 JAMES SMITH: Okay...  
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119 LARRY O'SULLIVAN: There are 60 workforce housing homes there that are being converted from the elderly  
120 housing. That's on the...I don't know, we've had meetings about it already in the Master...I'm sorry, the  
121 Planning Board. It's just that the publicity of it isn't out there. We don't have everybody saying, you know,  
122 we're gonna be building some of these workforce housing projects right across the street from Mountain  
123 Home Road. And that's what the intention is. They're gonna convert, instead of going to the senior or elderly  
124 housing, to 60-some-odd workforce housing project...units. So how does that affect? Well, you add the 240  
125 here, the 60 there, the 20 that we approved two months ago, all of a sudden, you know, we're talking some  
126 serious numbers here. That's why we need to grow smart and take the opportunity to look back and say, you  
127 know, we need to justify the fact that we have spending that's going to happen as a result of an increase in  
128 residences. It's gonna happen. Guaranteed. If we have very little in the way of additional housing that's built  
129 in Londonderry, the existing forces, the services that we provide, are going to stay flat or level, barring any  
130 major, you know, catastrophes or what have you. So that's why we have the whole Planning Board deciding  
131 that, yeah, this is something that over the years, we've determined that we've been outside of and we had to  
132 enforce it and have to restrict it and then other times like today, right now we can build...I don't really know  
133 what the number is, but it's...  
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135 JAMES SMITH: They can build as many as...

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137 LARRY O'SULLIVAN: ...a couple of hundred homes right now. Right? Without having any effect. Because  
138 there's only 200-some-odd, you know, possibilities of permits out there. I don't really know what the number  
139 is, but this will allow us the opportunity to phase it in and that's why our ordinances request or require that  
140 the growth be phased over a period of time. It only makes sense to me to be stable as a...

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142 JAMES SMITH: Okay, I think we're getting off to...

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144 LARRY O'SULLIVAN: No, this is the point. The growth ordinance.

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146 JAMES SMITH: I mean, but I think the point is whether or not we have enough information here on whether  
147 we should have another...

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149 LARRY O'SULLIVAN: Oh, I hear you. Just stick with that? Alright.

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151 JAMES SMITH: That's the question.

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153 LARRY O'SULLIVAN: Sure. Well...

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155 JAMES SMITH: I would say they raise more than enough questions.

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157 LARRY O'SULLIVAN: What do you mean, "they raise more than enough questions"?

158

159 JAMES SMITH: To justify a new hearing.

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161 NEIL DUNN: Yeah, but my under...my under...

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163 LARRY O'SULLIVAN: I'm trying to pick the ones that I was talking about in the 101 that are listed, so...

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165 NEIL DUNN: But my understanding is for the rehearing, there has to be something new that wasn't brought up  
166 during the case and I mean, I do see...you know, they're quoting, maybe, some case study or past cases, but I  
167 don't really see anything new. I haven't finished reading it all, though, so you if you wanna give me a few  
168 more minutes. For example, point 28, he's saying "The applicant provided credible and uncontroverted  
169 evidence from an expert economist that the project is not economically feasible if [sic] phased over 5 to [sic]  
170 six years." When I looked at the report, I brought it up, it came up to the same rate of return. It wasn't easy  
171 for us to read. That was presented to us. So, to me...

172

173 LARRY O'SULLIVAN: That didn't answer the question.

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175 NEIL DUNN: It didn't answer the question and the expert economist that's being pointed here, that's not new.  
176 We had that information. It...the numbers didn't jibe in my head and we offered prior to that for them to  
177 come back with better support, which they really didn't come back with, so I mean, short of going through  
178 every point, Jim, I'm trying to look through it and find something that does bring up something that maybe  
179 wasn't mentioned or new because that's really the only reason we were supposed to rehear a case was

180 because there was something new. So, I...you guys, if you've read through it, did anything stick out that made  
181 it new, that was new information?

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183 LARRY O'SULLIVAN: That's what I was hoping to receive in there, is one of the things that the Planning Board  
184 would require or does require for this type of thing is an independent cost analysis and I still don't see it. I  
185 don't see the request to do it, I don't see the proposal that, 'yeah, we'll have that done.' That...that's just an  
186 item, one single item, that, to me, made a big difference as to why the...why 50% as opposed to some other  
187 percentage...what do we require? We require, what, 75%...?

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189 JAMES SMITH: Correct.

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191 LARRY O'SULLIVAN: ...being low cost or controlled housing or whatever you wanna call it.

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193 JAMES SMITH: Well, okay...

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195 LARRY O'SULLIVAN: Anyway, it helps to make a better decision if we have independent information to support  
196 it.

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198 JAMES SMITH: Yeah. Okay, in looking in this [*NH Planning and Land Use Regulation – 2008-2009 Edition*],  
199 which is a 2008/9 edition, what it says, "A motion for rehearing made under RSA 677:2 shall set forth fully  
200 every ground upon which it is claimed this [sic] decision or order complained of it unlawful or unreasonable.  
201 No appeal from any order or decision of the zoning board of adjustment," da da da, "shall be taken unless the  
202 applicant [sic] shall have made the application for rehearing," da da da. So...

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204 NEIL DUNN: Alright, so if we're using that as the criteria, then I'm not sure if we're qualified to rule on it. I'd  
205 like to continue it until we get a ruling from our attorney. If we're gonna point...point the law, I'm not  
206 qualified to determine if we're at a point of law here. And if that's what it says, that he's bringing up points of  
207 law that, I mean, I'm seeing some things that, gosh, without being an attorney, I don't know if I could rule on  
208 that. My thought is, the five points were brought up, they were grouped together instead of addressed  
209 individually, although I know it gets crazy when you have that many cases going on and trying to go through  
210 every five points for every case, but there tends to be a way to group it together where you don't specifically  
211 address each. I think we had a discussion about how the phasing impacted the values and all that. Well, if we  
212 don't...they didn't really talk individually to each of them, and I understand again, the parameters there, but  
213 based on what I heard...

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215 JAMES SMITH: Okay, look in...there's a letter in the... talks about the point you were raising about  
216 capitalization. In don't know what page it is. Page number [indistinct]. No, I would say they're giving you  
217 some information on how that...how to compare the two.

218  
219 NEIL DUNN: Well, I mean, if we...in his ref...in the reference to case 10/17/12-2, where it starts at point 30,  
220 and he's saying it's unlawful because we're not temporary and there's no demonstrated need to regulate, I'm  
221 kind of to what your point was, but I tend to go along with Larry there, that...so if someone wants to come in  
222 in a year and say they wanna put up 500 units and because there was no growth prior to that, we, as a town,  
223 have no right to regulate that so it doesn't impact our school and services? I think...

225 LARRY O'SULLIVAN: Without us being ready for it.  
226  
227 NEIL DUNN: I don't think that's the intent of the law and that's where I'm saying if we're gonna get legalese,  
228 let somebody legally look at that. These points. If he's gonna make everything based on these legal points.  
229 To me, it doesn't make sense, as a commoner, that if someone wants to come in and put in 500 units, we can't  
230 say no. We have to regulate that. We can't control the services and all of that. And basically, he's saying  
231 that's what the rationale is there. And so if it's a legal thing, I think we need someone else to rule on it 'cause I  
232 don't think I'm qualified.  
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234 JIM BUTLER: I would agree. I would agree to that.  
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236 LARRY O'SULLIVAN: Do you see these points, Jim? Do you have...?  
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238 JIM BUTLER: Yeah, I mean I'm... this is the first time that I've actually looked at them. But you know, we have  
239 conflicting information. We have Andre saying that, you know, there's not a problem with limiting our growth.  
240 I don't know. I think Neil's right. I think that we need a lawyer to take a look at this and give us an opinion.  
241 There's just too much here.  
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243 JAMES SMITH: Well, see, part of what our problem is was we're supposed to make a decision within 30 days  
244 upon request of...So we have a time constraint on this.  
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246 LARRY O'SULLIVAN: When was the...when was the request for rehearing...?  
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248 JAYE TROTTIER: What is that stamped on the cover letter?  
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250 NEIL DUNN: December 14<sup>th</sup> it was stamped.  
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252 LARRY O'SULLIVAN: *December 14<sup>th</sup>*?  
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254 JAYE TROTTIER: Yeah. This past Friday. And there aren't many dates that the meeting room is available.  
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256 LARRY O'SULLIVAN: Do we...do we have a Town attorney [indistinct], by the way?  
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258 NEIL DUNN: Well, we...well, hold it. I would maybe state that we have...we have looked at making a decision.  
259 Does it say we have to make a decision or we have...?  
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261 LARRY O'SULLIVAN: Yeah.  
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263 NEIL DUNN: Why can't we, at this point, we obviously need more information. So I guess if...we're making a  
264 decision tonight to continue it until we get feedback. So as far as that is, we've heard it tonight but we're  
265 looking for more feedback so we'd have to continue it to get...  
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267 JIM BUTLER: You know, if you look at point 21, it says "The New Hampshire statutes permit towns to limit  
268 growth and restrict permits pursuant to RSA 674:22, but only under very specific circumstances that include:  
269 [a.] 'If there is a demonstrated need to regulate the timing of the development based on [sic] the community's

270 lack of capacity to accommodate anticipated growth.” And then we have...we, you know, we have a memo  
271 from Andre, who no longer works for the Town, saying we don’t have a problem with the capacity. So, I mean,  
272 there are a lot of...I don’t know. My opinion is I think we need to have someone with a legal standpoint  
273 [indistinct] look at...

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275 JAMES SMITH: I think the point I’m trying to raise with the Growth Control Ordinance, the way is, I believe,  
276 was constructed was to give the Town an opportunity to put something like that in place for that time frame  
277 that they had a problem, to give them time to...

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279 LARRY O’SULLIVAN: React to it.

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281 JAMES SMITH: ...build whatever they needed or bring the town up to it. But once they reached that point, it  
282 wasn't designed to be an ongoing, forever type of law.

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284 LARRY O’SULLIVAN: I think as soon as you don’t have it ongoing, and I think that was what their point was,  
285 way back when we started this thing, it would be declared illegal if we did a particular project that has to exist  
286 for all and for any. That was what the whole point of that was. That’s the way you be fair under the law. So  
287 that means...

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289 JAMES SMITH: Are you...

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291 LARRY O’SULLIVAN: I think [indistinct]...

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293 JAMES SMITH: Are you suggesting...?

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295 LARRY O’SULLIVAN: ...consistent and constant.

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298 JAMES SMITH: They wrote what the law...wrote this growth control thing with the idea if it got to the point  
299 where it really wasn’t justified, that they would wait for somebody to...

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301 LARRY O’SULLIVAN: What...? I’m sorry, “if it wasn't justified”? No, it’s gonna be in place. It’s gonna be in  
302 place for forever.

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304 JAMES SMITH: Well, that's what I’m saying. I don’t think the Town has the justification to keep it there  
305 forever.

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307 LARRY O’SULLIVAN: That’s the whole point of the growth ordinance. It gets triggered at a certain point. As  
308 soon as growth becomes...

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310 NEIL DUNN: When does [indistinct]?

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312 LARRY O’SULLIVAN: It doesn’t matter who’s building them. It could be 300 independent homeowners  
313 scattered all over town. That’s when the limited permits happen. As soon as we reach that figure. It doesn’t  
314 matter if it’s one project or 200 of them. Five hundred of them. That’s the whole point of this. Because all of

315 a sudden, we didn't want to be brought to court for every....every time a big project came up or every time  
316 somebody in the undeveloped property, you know, in town sold a large parcel and wanted to put up two-  
317 family homes. Because we had that and it was terrible. Nobody wanted to live here then. Our taxes went  
318 through the ceiling. We had new this, new that. Additions put on everything. I mean, you guys were here.  
319 Do you want to go through again? I mean, that's what I foresee this happening unless we have growth control  
320 in place. You know, the...to me, this 101 points that we received, a lot of it's fluff and I understand it and, I  
321 mean, we see this regularly when we deny something, that you throw everything against the wall and see  
322 what sticks. But this should have been...101 points of this should have been reviewed by the Town attorney or  
323 we should have had somebody from the Planning office here who would be able to see in our minutes or on  
324 the repeats of the show on cable that these things were covered or yes, you weren't clear about something.  
325 And that's the kind of direction, when you have something as complex as, you know, capital rates of increase  
326 and you know, that type of thing. Sorry gang, that's beyond my, you know, my knowledge. I don't understand  
327 what that's gonna mean in ten years or however many years they wanna forecast out their possibilities for  
328 profit here. I also don't understand why we couldn't and when we did bring up the subject or the topics of  
329 having an independent cost review or an independent appraisal regarding costs. Why they aren't addressed  
330 in the letter. Because it's...some of the points go directly against it, saying why didn't we ask for it? Well,  
331 throughout that meeting, that was one of the purposes...I kept bringing it up. Well that's just one of the items,  
332 but there's a 101 items there that I just as soon not go through with a fine tooth comb, but the point of the  
333 matter is I don't see anything new there and that would be the issue whether we have a rehearing or not, as  
334 far as I'm concerned. I think we can ask for additional information. I don't think it was offered. I think it  
335 was...I know I requested it. I don't see it there.

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337 JAMES SMITH: Okay...

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339 NEIL DUNN: Jim, if I may, though, just one thing on the 30 days thing. Thirty days is a time clock for them to  
340 reply to request a motion for rehearing. And then the only limitation on responding to their motion for the  
341 rehearing, if you look at 677:2, is "If the decision complained against was [sic]...made by a town meeting, the  
342 application for rehearing shall be made to the board of selectmen, and, upon receipt of the [sic] application,  
343 the board of selectmen shall hold a rehearing in [sic] in thirty days." It doesn't talk about the Zoning Board.

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345 LARRY O'SULLIVAN: I don't think that's...you're in a different.

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347 JAYE TROTTIER: Later on it does.

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349 NEIL DUNN: Yeah, but it doesn't...

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351 LARRY O'SULLIVAN: ...section there.

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353 NEIL DUNN: Well, no, 22's the one. I mean, when you go to the zoning...Well, I guess my point...

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355 JAYE TROTTIER: 677:3.

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357 NEIL DUNN: Okay.

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359 JAMES SMITH: Well, one of the things...



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LARRY O'SULLIVAN: I don't have my State statutes book in front of me. But I don't think there's a question there about 30 days. I think they have until Decem...January [indistinct].

JAMES SMITH: No, the...yeah, you haven't quite found the right...if you keep on going...

NEIL DUNN: No, no, it's 3. Jaye was very good, as always, and she's right, it's under 3.

JAMES SMITH: Yeah. There is a 30 day...

LARRY O'SULLIVAN: Form the date the application is received, which is January 17. Let's get over that one, Neil.

NEIL DUNN: Okay, here, but it also says "...or suspend the order or decision complained by [sic] pending further consideration." Oh, okay, never mind. We're giving it consideration. I mean, short of that, if we're worried about the 30 days, based on what I'm presented, I guess I could go either way, but I would rather have someone look at it. I don't think we're in a position to say, you know, if...I mean, we have heard the case within the 30 day window and we're going out for more information back. And if it's gonna be technical 'cause we didn't make the decision without enough information when we have eighty points of law in front of us.

LARRY O'SULLIVAN: A hundred and one.

NEIL DUNN: We're hearing it very quickly. It was the 14<sup>th</sup>. We're hearing it five days later and we're looking for more information. I don't know where we'd be wrong in that.

LARRY O'SULLIVAN: I don't think it would be wrong, either, to request an opportunity to review.

JAMES SMITH: Okay, so the gist I'm getting, you would like to continue this...

NEIL DUNN: The motion for rehearing, pending a review from the Town attorney.

LARRY O'SULLIVAN: Yeah, but I...I don't just wanna have a review from the Town attorney. This is...you're talking about having him review what? The legality of the...of us...our decision regarding this letter? Or each of the points in that letter?

NEIL DUNN: No, no, I...well, that's the hard part. If he's gonna...if they're gonna state case law and we're supposed to decide that? I mean, I'm very willing to sit here tonight, go through this, and make my decision if I think it stands, but I'm no lawyer. When I, like the example, that 28 example when we talk about an economist that's...you know, from what I recall, the numbers were the same. That doesn't carry weight. But there's eighty more points. I...the Londonderry...[trails off]...

JAMES SMITH: Well...okay...

LARRY O'SULLIVAN: So we're looking for some guidance, alright?

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JAMES SMITH: Yeah.

LARRY O'SULLIVAN: That's, I think, what...

JAMES SMITH: Okay...

NEIL DUNN: Yeah, I don't...

LARRY O'SULLIVAN: ...the [indistinct] issue is.

JAMES SMITH: After I went home, I started thinking about the third case in particular. The one where they were talking about the 16 versus 20 versus 24 units in a building. And I think...

LARRY O'SULLIVAN: There's two parts to that one.

JAMES SMITH: What? Oh, I know. I'm just talking about that part of it.

LARRY O'SULLIVAN: Alright.

JAMES SMITH: Okay. When we started arguing and talking about that, we started talking about the impact of having on the neighborhood and all the rest of the stuff, on how many, you know, having all those units and so forth. I think we kind of got off the track on that because if you look at the ordinance for the workforce housing, it's up to the Planning Board to grant a conditional use on whether or not to even have that thing there. And they would be the ones who would determine the impact on the neighborhood and so forth as far as that. All we were really...should have been looking at was whether we want buildings which had 16 units in it...

LARRY O'SULLIVAN: Or 20.

JAMES SMITH: ...20, or 24. Now...

LARRY O'SULLIVAN: I don't think that's...I think that's what we were discussing, Jim. I don't know where you were.

JAMES SMITH: I think what we...we didn't...we got away from that. Because one of the things I think about; if you look at the 24 unit building, they were talking a footprint of about 10,000 square feet...that I remember. Now, if you went to a 16 unit building...you would need 15 buildings to get to that same number of units.

LARRY O'SULLIVAN: Right.

JAMES SMITH: Which would then be a 150,000 square feet versus 100,000. So we're increasing the footprint of those buildings by 50,000 square feet. Even if you went to the 20, and you had two-story buildings with ten on each floor...

450 LARRY O'SULLIVAN: [Indistinct] of the discussion, then you got a wasted space...  
451  
452 JAMES SMITH: ...so you have to go up by a quarter and a half.  
453  
454 LARRY O'SULLIVAN: ...and [indistinct].  
455  
456 JAMES SMITH: You would still have an increase of 50,000 square feet.  
457  
458 LARRY O'SULLIVAN: Right.  
459  
460 JAMES SMITH: So, it's, in my mind, it was really a question, do you want ten buildings with...  
461  
462 LARRY O'SULLIVAN: Fifteen or...  
463  
464 JAMES SMITH: ...and 100,000 square feet of footprint or would you rather have 15 buildings with a 150,000  
465 square feet? And to me, that didn't make sense because the more rooftop that you make, the more  
466 impervious area you have, the more runoff, the more problems you have. Also, you would have more...you'd  
467 have to spread your parking out. You'd have more driveways.  
468  
469 LARRY O'SULLIVAN: Long distance parking, yeah.  
470  
471 JAMES SMITH: So...  
472  
473 LARRY O'SULLIVAN: I understand.  
474  
475 JAMES SMITH: I don't think that made a lot of sense.  
476  
477 LARRY O'SULLIVAN: I completely agree with you.  
478  
479 NEIL DUNN: But I think because it was two-part, that part...one or the other parts failed, so we let...we just  
480 went to the vote.  
481  
482 JAMES SMITH: Yeah.  
483  
484 LARRY O'SULLIVAN: Yeah.  
485  
486 NEIL DUNN: So, I mean...  
487  
488 JAMES SMITH: So anyways, I think we should at least ask for some clarification on, you know, this is almost  
489 mind boggling to look at all these different points and decide whether there's...  
490  
491 LARRY O'SULLIVAN: There's new information in there or not?  
492  
493 JAMES SMITH: Yeah.  
494

495 LARRY O'SULLIVAN: No, there's an opinion in each one of those as well, but...  
496  
497 JAMES SMITH: Yeah.  
498  
499 LARRY O'SULLIVAN: ...the point that I would like to make is that we need some guidance about the particulars  
500 that are listed here. The 101 particulars. And as we decided, were our decisions legitimate and reasonable? I  
501 mean, short of...you know, if you didn't want to spend the money, if the Town doesn't wanna spend the  
502 money using our own Town attorney, let them sue us. I mean, those are the options. Take it or leave it.  
503 Because that's what we're at.  
504  
505 JAMES SMITH: I got a question for Jim.  
506  
507 JIM BUTLER: Yup?  
508  
509 JAMES SMITH: Do we have a termination date on the Growth Control Ordinance that you're aware of?  
510  
511 JIM BUTLER: To the best of my knowledge, no.  
512  
513 LARRY O'SULLIVAN: There shouldn't be.  
514  
515 NEIL DUNN: Well...  
516  
517 JIM BUTLER: To the best of my knowledge, no.  
518  
519 LARRY O'SULLIVAN: It shouldn't be. [Indistinct]...  
520  
521 NEIL DUNN: It becomes...it becomes [indistinct] in effect.  
522  
523 LARRY O'SULLIVAN: At town...at town meeting, we can change it.  
524  
525 JIM BUTLER: Correct.  
526  
527 JAMES SMITH: Well, no...  
528  
529 LARRY O'SULLIVAN: That's the only way we're gonna affect anything is in our...  
530  
531 JAMES SMITH: No, no, I'm just saying, the law that that's passed under specifically states that there's  
532 supposed to be.  
533  
534 NEIL DUNN: But the termination date is when it's in effect. Is it saying you get rid of the whole thing? You  
535 have to write a whole new ordinance? No, it's saying what period is it in effect for? It's ion effect for those  
536 heavy growth periods when you exceed 200-and whatever that magic number is, and it kicks back in. So it  
537 does terminate on a timeline, based on growth, but that doesn't mean you haven't to delete the whole  
538 ordinance and start again when you hit 500.  
539

540 LARRY O'SULLIVAN: Right.  
541  
542 JAMES SMITH: Mmm.  
543  
544 NEIL DUNN: Yes, it does terminate. It terminates when that growth pattern is no longer in place.  
545  
546 LARRY O'SULLIVAN: It's on a motion sensor.  
547  
548 NEIL DUNN: But it's still on the books to be reinstated when it's needed. So that's what I'm arguing. It does  
549 terminate it...  
550  
551 LARRY O'SULLIVAN: [Indistinct] one of the points, though.  
552  
553 JAMES SMITH: Oh, okay. Okay. I think the point I'm trying to get...could we get an opinion relative to that  
554 point from the attorney? Whether or not that ordinance meets that requirement?  
555  
556 LARRY O'SULLIVAN: I don't want that. If we're gonna talk to the Town attorney, let's talk about 101 points...  
557  
558 JAMES SMITH: Yeah.  
559  
560 LARRY O'SULLIVAN: ...that are in the letter. Don't be specific about that because...  
561  
562 JAMES SMITH: Yeah.  
563  
564 LARRY O'SULLIVAN: I think as far as we're concerned, as far as I'm concerned, we're not gonna change our  
565 Town ordinances based on this one issue.  
566  
567 JAMES SMITH: No.  
568  
569 LARRY O'SULLIVAN: This one case.  
570  
571 JAMES SMITH: I'm not saying we should, but I'm just saying...  
572  
573 LARRY O'SULLIVAN: In general, we have a growth ordinance that we either have it in effect and it's active, or  
574 we have it and it's inactive and something happens in the way of growth to trigger it and that is...how do you  
575 enforce it? As soon as you speed, that's when you get the ticket. That's the way it's supposed to be. You  
576 know, you can go 15 miles an hour forever. But as soon as you go above the speed limit, things have to slow  
577 down. And that's what we've already determined, Jim. So, but that's just one particular point.  
578  
579 JAMES SMITH: Yeah.  
580  
581 LARRY O'SULLIVAN: You're picking up on that one point. To me, it's...there are a 101 others, or 100 others  
582 that can be addressed. And you know, frankly...  
583

584 JIM BUTLER: I mean, I just think, to make a reasonable decision, that we would need to have someone take a  
585 look at those points of law. I mean, if we don't know...

586  
587 LARRY O'SULLIVAN: I'd like to have an idea. If there's something that we, as a Zoning Board, can request from  
588 the applicant that provides us with information that says, you know, the applicant says something along the  
589 lines, this is 'credible and uncontroverted evidence.' What? I have a hard time understand why somebody  
590 would say that about something that, you know, about everything, I guess. You got 101 points of everything  
591 here. So you know, that's why we have a controversy about this is because it's uncontroverted. But anyway,  
592 there's 101 different items there that I'd like to have some sort of an idea of an opinion, taking in full...

593  
594 NEIL DUNN: It can...

595  
596 LARRY O'SULLIVAN: Have him read it, have him review it and say 'This is a lot of baloney, but these are the  
597 things you didn't address and that you should.' And I asked the applicant specifically for bing, bing, bing.  
598 Because, frankly Scarlett, I'm not an expert. So would you like a motion, Jim>

599  
600 JIM BUTLER: And I would think that we would have to do that anyway if they don't find satisfaction here or  
601 with the Council, their course of action is what?

602  
603 LARRY O'SULLIVAN: They're not gonna go to the Council after this.

604  
605 JAMES SMITH: No, no...

606  
607 LARRY O'SULLIVAN: After this is the court.

608  
609 JIM BUTLER: After, everything goes to Superior Court, right?

610  
611 LARRY O'SULLIVAN: After this...

612  
613 JIM BUTLER: So, we'd end up having...

614  
615 JAMES SMITH: Well, actually...

616  
617 JIM BUTLER: ...an attorney look at it anyway.

618  
619 JAMES SMITH: I think they have a dual route here. If we deny this hearing, then they can take...go to Superior  
620 Court on the zoning issues...

621  
622 JIM BUTLER: Mm-hmm.

623  
624 JAMES SMITH: But I believe also under the workforce housing, there's a builders remedy where they can go to  
625 court on that...

626  
627 LARRY O'SULLIVAN: [Indistinct] the court. [Indistinct].  
628

629 JAMES SMITH: Which is a different, slightly different route.  
630  
631 LARRY O'SULLIVAN: So get the...so we should get the opinion...  
632  
633 JAMES SMITH: Yeah.  
634  
635 LARRY O'SULLIVAN: See if there's the opinion of the...I guess, the Town attorney, regarding our ordinances  
636 and our interpretations of the presentation with these 101 points. Now, frankly, what I'd like to see is I'd like  
637 to see our attorney come back and tell us we have a half dozen different points of argument that are really  
638 there. There's six, I think, that they've requested variances on. Our discussions led us all over the place.  
639 Sometimes, as you were saying, we got steered incorrectly or off the path. But the gist of what we were  
640 saying, Jim, was, as Neil pointed out just a few minutes ago, we might have agreed with you on your point, but  
641 in that same variance request, there were several other points that we didn't agree with or that they didn't  
642 meet the criteria for and that's really what we're measuring against is those criteria. You know, the points of  
643 law that they have to address in order for us to be able to assume that the requests are reasonable to any  
644 degree or not. So, that's why I'd like to get the opinion of the attorney.  
645  
646 JAMES SMITH: Okay, you wanna make a motion?  
647  
648 LARRY O'SULLIVAN: I make a motion to...what would we be doing? This is gonna be continued? We have to  
649 have a have a date to continue to, too, right Jaye? How about Christmas Eve? There you go.  
650  
651 JAMES SMITH: I don't think so.  
652  
653 NEIL DUNN: When's our January meeting?  
654  
655 JAYE TROTTIER: That would be beyond the 30 days.  
656  
657 LARRY O'SULLIVAN: So we have the first Thursday of January...  
658  
659 JAYE TROTTIER: You only have until January 11<sup>th</sup>.  
660  
661 LARRY O'SULLIVAN: Is it the first Thursday that we have a meeting?  
662  
663 JAYE TROTTIER: We...no, Master Plan is meeting that night. We could try and meet after that, but you have  
664 no idea how long that is.  
665  
666 LARRY O'SULLIVAN: Yeah.  
667  
668 JAYE TROTTIER: It's supposed to be a short meeting, but you don't know...  
669  
670 LARRY O'SULLIVAN: Some of those...  
671  
672 NEIL DUNN: I...  
673

674 LARRY O'SULLIVAN: Especially depending on who shows up at those, it could be a real long meeting.  
675  
676 NEIL DUNN: So, option two would be to say we would consider the rehearing and then go into a rehearing  
677 and then ask for a continuance to have all this stuff reviewed later? So we can meet everybody's legal dates  
678 and just keep...?  
679  
680 JAMES SMITH: Say that again. I'm not...  
681  
682 NEIL DUNN: Well, there's a motion to rehear, right?  
683  
684 JAMES SMITH: Right.  
685  
686 NEIL DUNN: So we say, "Oh yeah, we'll give it to you because you've overwhelmed us again with so much  
687 information that we're not sure about, so we'll do that and then we'll have the hearing and they'll come in  
688 January at our normal hearing time, and then we'll say 'We'd like to continue this, pending review from the  
689 lawyer,' so that we've met every legal date and time. I mean, I guess that's one way to do it.  
690  
691 LARRY O'SULLIVAN: No, but...  
692  
693 NEIL DUNN: No, I'm saying...  
694  
695 LARRY O'SULLIVAN: I don't understand...I don't see how that meets the criteria of...  
696  
697 NEIL DUNN: Well, we're worried about the 30 days. We don't have an easy way to do that, so if we want to  
698 comply, we have to make a ruling by either denying to rehear or allowing...  
699  
700 LARRY O'SULLIVAN: We can meet on a Saturday.  
701  
702 NEIL DUNN: Okay, I'm just...I'm throwing that out as another way to remedy the...all the concerns we have.  
703  
704 LARRY O'SULLIVAN: I'm not going away.  
705  
706 JAMES SMITH: I'm going away.  
707  
708 NEIL DUNN: I mean, I guess that's one way to do it. Say yeah, we'll rehear it and then get a ruling later at the  
709 next hearing. I...as long as we get to the right point for everybody involved, is really what it's about. But if  
710 we're concerned about not meeting 30 days...  
711  
712 LARRY O'SULLIVAN: Oh, so you're saying just say, 'Yeah, okay, you can have a rehearing,' and then just...Well,  
713 that's not fair.  
714  
715 NEIL DUNN: Well, we're also concerned about timelines and then them pushing the button against us not  
716 meeting a 30 day timeline. No, I'm just saying, Larry, so if we're trying to take care of everybody's needs, then  
717 let's agree to rehear and then it's gonna be these same points and then we're gonna need a ruling. I mean...at



718 least I will, unless somebody makes some kind of other ruling in between, but...You don't see where I'm going  
719 with that?  
720  
721 LARRY O'SULLIVAN: Yeah, I don't think that's fair.  
722  
723 NEIL DUNN: Well, we have a timeline, though, to meet. So unless we come up with a time or...?  
724  
725 JAYE TROTTIER: Plus you have to give the attorney time...  
726  
727 JIM BUTLER: Yeah, time to review it.  
728  
729 JAYE TROTTIER: ...to review all this and with the holidays...Let me show you what the calendar looks like.  
730  
731 NEIL DUNN: So I'm just trying to give everybody a chance and also hit all the legal points we need to. So if we  
732 said, yeah, we'll continue it based on that and then have it reviewed...I don't know. I was just looking for  
733 options for everybody to get [indistinct].  
734  
735 JAYE TROTTIER: So this is what it looks like. This is tonight. So then, here's Christmas. And this is the day  
736 after Christmas, there's nothing going on, but will he have had time to read through all of it?  
737  
738 NEIL DUNN: Yeah, right. That's [indistinct].  
739  
740 JAYE TROTTIER: So, this, apparently, the 27<sup>th</sup> is apparently open because something got cancelled, but still...  
741  
742 JAMES SMITH: Okay.  
743  
744 JAYE TROTTIER: Then once you get through the first week of...the end of December and the first week of  
745 January, most of those days are taken up and then you get into January...  
746  
747 LARRY O'SULLIVAN: And we are required to be...  
748  
749 JAYE TROTTIER: And you gotta do this by the 11<sup>th</sup> because the...  
750  
751 JAMES SMITH: Jaye?  
752  
753 JAYE TROTTIER: ...14<sup>th</sup> is a Monday.  
754  
755 JAMES SMITH: Jaye? Okay.  
756  
757 JAYE TROTTIER: So that's just what availability is.  
758  
759 JAMES SMITH: I'm looking on page 637.  
760  
761 JAYE TROTTIER: Well, you've got different books.  
762

763 LARRY O'SULLIVAN: On the RSAs? State RSAs?  
764  
765 NEIL DUNN: What statute, though?  
766  
767 JAYE TROTTIER: You've got different years.  
768  
769 JAMES SMITH: RSA, it's 677:3.  
770  
771 NEIL DUNN: Okay.  
772  
773 LARRY O'SULLIVAN: You both have the same book?  
774  
775 JAMES SMITH: Part II.  
776  
777 NEIL DUNN: No, different books.  
778  
779 JAMES SMITH: You got it?  
780  
781 NEIL DUNN: Yup.  
782  
783 JAMES SMITH: Okay. What it says..."Upon the filing of a motion of [sic] a rehearing, the board of adjustment,  
784 or [sic] a board of appeals , or the local legislative body shall within 30 days either grant or deny the  
785 application, or suspend the order or decision complained of pending further consideration."  
786  
787 LARRY O'SULLIVAN: Oh, so that we could say, "Yeah, we'll hear it, but we're gonna have additional  
788 consideration'? Is that what you're saying?  
789  
790 JAMES SMITH: No, what I'm saying is can we suspend the decision we made to deny the decision...the  
791 variance, pending further information, then use that as an excuse to delay this decision?  
792  
793 LARRY O'SULLIVAN: You got me. We did something similar at the cell phone thing. Do you remember that?  
794  
795 JAYE TROTTIER: Nothing like that, no.  
796  
797 LARRY O'SULLIVAN: Not that particular one, but we had a similar delay for...  
798  
799 JAYE TROTTIER: We had many, many delays for that.  
800  
801 LARRY O'SULLIVAN: No, I meant regarding the...  
802  
803 JAYE TROTTIER: The motion to rehear?  
804  
805 LARRY O'SULLIVAN: A motion to rehear, right.  
806  
807 JAYE TROTTIER: There may have been.

808

809 LARRY O'SULLIVAN: Yeah.

810

811 JAMES SMITH: Because with the "or's" in there, it's giving different choices.

812

813 NEIL DUNN: Mm-hmm. Yeah.

814

815 JAMES SMITH: It's not saying you have to do this or that. It's just saying you have to do one of these.

816

817 LARRY O'SULLIVAN: Okay, well...so I'm not quite sure how the motion would...our motion would read, then in  
818 order to fulfill what you feel is a completely satisfactory motion on that RSA, so that we don't wind up with  
819 another legal issue. You wanna give it a shot, Neil? Do you have that in front of you?

820

821 NEIL DUNN: Yeah, it's right here.

822

823 LARRY O'SULLIVAN: Say the same?

824

825 NEIL DUNN: I'm just...yeah, it's the same.

826

827 JAMES SMITH: I think what that would suggest...I'm reading it and mulling it over in my mind. I think if we  
828 suspended the decision, then we're basically reopening the case.

829

830 NEIL DUNN: Right, and I don't know that that's...

831

832 JAMES SMITH: Which I don't think we want to.

833

834 NEIL DUNN: I don't...

835

836 JAMES SMITH: I don't think we can do that.

837

838 LARRY O'SULLIVAN: You mean, then we'd have to take new evidence or new public input and so forth?

839

840 JAMES SMITH: Yeah, we'd have to basically open it up and have a whole new hear...you know, open the  
841 hearing back up and then go through that part of it, then go back in deliberation and make a new decision on  
842 the case.

843

844 NEIL DUNN: Did you say February...excuse me, January 14<sup>th</sup> was our deadline?

845

846 JAYE TROTTIER: Mm-hmm. Really January 11<sup>th</sup> because the 14<sup>th</sup> would be beyond the 300n days.

847

848 NEIL DUNN: So the 11<sup>th</sup>'s open?

849

850 JAYE TROTTIER: Yeah, and the 4<sup>th</sup> is open.

851

852 JAMES SMITH: What day of the weeks are those?

853  
854 JAYE TROTTIER: Fridays.  
855  
856 NEIL DUNN: Friday.  
857  
858 JAMES SMITH: Yeah, I'm available.  
859  
860 LARRY O'SULLIVAN: Well, I have no issue with when we wanna do it.  
861  
862 JAMES SMITH: Do you [indistinct]?  
863  
864 LARRY O'SULLIVAN: I'm not going anywhere.  
865  
866 JAMES SMITH: Okay, I mean, I'm just making sure we have enough...at least three people, possibly more.  
867  
868 NEIL DUNN: The [indistinct] of January...  
869  
870 JAYE TROTTIER: Maybe we'll do the 11<sup>th</sup> then, because that gives the attorney the maximum amount of time.  
871  
872 JAMES SMITH: Yeah.  
873  
874 JIM BUTLER: And we gotta make sure the attorney's around.  
875  
876 LARRY O'SULLIVAN: Who is our Town attorney right now?  
877  
878 JIM BUTLER: Mike Ramsdell.  
879  
880 NEIL DUNN: Is that right?  
881  
882 JAYE TROTTIER: Yes, they have a special meeting.  
883  
884 NEIL DUNN: Oh, February. Never mind.  
885  
886 JIM BUTLER: So there's no way in the language that we can't suspend this for another 30 days?  
887  
888 JAMES SMITH: I think if we did that, I think we'd be effectively reopening the case.  
889  
890 JIM BUTLER: Okay.  
891  
892 JAMES SMITH: And I'm not sure if we wanna do that.  
893  
894 LARRY O'SULLIVAN: It would have the same effect as a rehearing. And that's what they have a motion on the  
895 table to do, is rehear it.  
896  
897 NEIL DUNN: I think we should...for the 11<sup>th</sup> or the, what did you say, the 4<sup>th</sup>?

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942

JAYE TROTTIER: Mm-hmm.

NEIL DUNN: Go for the 11<sup>th</sup> if that's fine with everybody here 'cause we're within the window and it gives our...the review a lot longer.

JAMES SMITH: The lawyer the longest. Yeah.

NEIL DUNN: And then at the 11<sup>th</sup>, if we don't have an issue, then maybe we reopen it or we...

JAMES SMITH: Yeah.

NEIL DUNN: ...we have a better feel...

JAYE TROTTIER: Is it possible to do it before seven o'clock? Like at six o'clock or...?

NEIL DUNN: Whenever we need. Well, I'm good, I don't know about you guys.

LARRY O'SULLIVAN: On a Friday?

JAYE TROTTIER: Mm-hmm.

LARRY O'SULLIVAN: I'm just thinking about the commute.

JAYE TROTTIER: Yeah, I don't what you...

LARRY O'SULLIVAN: I have no idea what the traffic's gonna be like coming out of Mass, so...I have no idea. I'm not taking a day off from work so I can get to this meeting at six o'clock, either.

JAMES SMITH: Yeah. Yeah.

JIM BUTLER: And if there's snow in the mountains and it's a Friday...

LARRY O'SULLIVAN: I do need to get paid.

JIM BUTLER: ...believe me, I make that commute too. That's a...

NEIL DUNN: Better keep it at seven.

JIM BUTLER: That's a tough one.

JAYE TROTTIER: Yeah. That's fine.

LARRY O'SULLIVAN: Well, every Friday's tough.

943 JIM BUTLER: Yeah.  
944  
945 LARRY O'SULLIVAN: It would be tough to make a seven o'clock on most Friday's, so...Okay.  
946  
947 NEIL DUNN: Friday at seven.  
948  
949 LARRY O'SULLIVAN: Anyway, I'll do what we need to do. I'll do my best to be here.  
950  
951 NEIL DUNN: No, I think we stick with Friday at seven. I mean, it's [indistinct].  
952  
953 JAMES SMITH: Yeah, seven is...Okay.  
954  
955 LARRY O'SULLIVAN: Somebody's gonna have to buy after this one, then. Who's bringing the Sammy's? So  
956 you're looking for a motion, then...I'll withdraw the motion that I made earlier and I'll make a motion that we  
957 request...I'm sorry, we suspend, would that be the term?  
958  
959 NEIL DUNN: No.  
960  
961 JAMES SMITH: No, no, we don't wanna do that.  
962  
963 NEIL DUNN: Continue.  
964  
965 JAMES SMITH: I don't think that's...  
966  
967 LARRY O'SULLIVAN: Alright, we just continue. We continue...  
968  
969 JAMES SMITH: Just continue...  
970  
971 LARRY O'SULLIVAN: Continue case...  
972  
973 JAYE TROTTIER: Continue the deliberations.  
974  
975 JAMES SMITH: Deliberation.  
976  
977 LARRY O'SULLIVAN: Deliberations on case...  
978  
979 JAMES SMITH: On the rehearing. Request for rehearing.  
980  
981 LARRY O'SULLIVAN: ...10/17/2012-2, request for a rehearing, right? Until the...  
982  
983 JAMES SMITH: Pending...  
984  
985 LARRY O'SULLIVAN: ...January 11<sup>th</sup>. Seven o'clock.  
986  
987 JAMES SMITH: ...review of the...

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NEIL DUNN: Pending rev...yeah, okay. I second that motion.

JAMES SMITH: Okay, all those in favor?

LARRY O'SULLIVAN: Aye.

NEIL DUNN: Aye.

JAMES SMITH: Aye. We're gonna continue this to the 11<sup>th</sup>.

RESULT: THE MOTION TO REHEAR CASES 10/17/2012-2, 3 AND 4 WAS CONTINUED TO JANUARY 11, 2013.

RESPECTFULLY SUBMITTED.



NEIL DUNN, CLERK

TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

**APPROVED JANUARY 16, 2013** WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY NEIL DUNN AND APPROVED 3-0-2 WITH JAY HOOLEY AND JAMES TOTTEN ABSTAINING AS THEY HAD NOT ATTENDED THE DECEMBER 19, 2012 MEETING.